

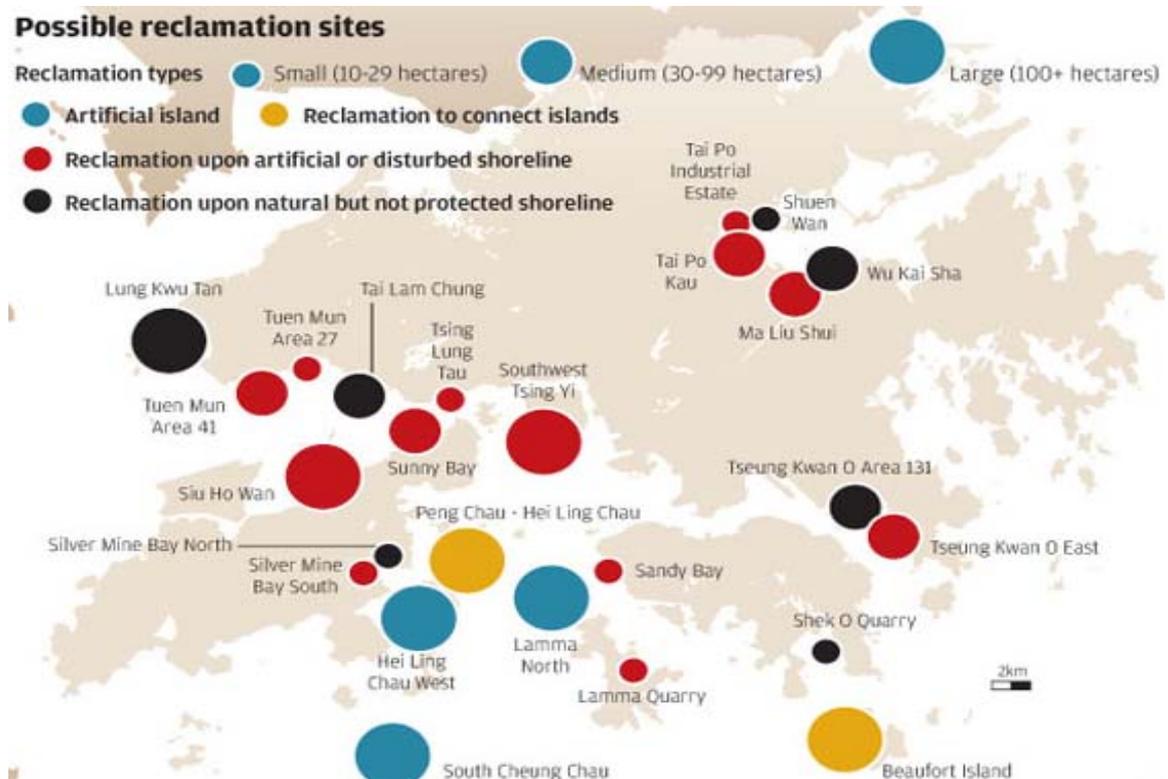
## Regional News for February 2012

### Construction News

Andrew Keung

**Man-made mega island floated** - The government has pinpointed 25 coastal sites for reclamation to satisfy demand for land proposed by Chief Executive Donald Tsang in his 2012-12 Policy Address. They include options for man-made islands, which might be used not only for housing but for industrial facilities; some sites would affect areas of natural shoreline. Some critics already said that building artificial islands for housing off the coasts of Hong Kong would be a major waste of resources and could threaten marine life. The government is now collecting views from the public so that the numbers of sites will be pared down to 10 by middle of the year for feasibility studies and further public discussion. ICES was also invited to give their views on the proposal.

The current plan is scheduled for the soonest any reclamation to be completed in 2019. The government has not quoted any cost estimates for the extra 1,500 hectares of land bank.



**Hong Kong's first Zero Carbon Building** - Construction Industry Council (CIC), in collaboration with the Development Bureau, has commenced work on the Hong Kong's first Zero Carbon Building (ZCB). The HK\$240 million 3-storey building is located at Sheung Yuet Road, Kowloon Bay, with a total site area of 147,000 square feet. Due to complete and open in mid 2012, it will serve as a platform for the construction industry to share knowledge of eco-building design and technologies as well as raise community awareness of sustainable living. CIC also launched a naming competition for the Zero Carbon Building after the ground-breaking ceremony.

**New Law for Clean-air by 2014** - Hong Kong's clean-air targets will be toughened for the first time in a quarter of a century from 2014. Speaking at a press conference earlier this month, the Secretary for the Environment, Mr Edward Yau, proposed a set of new AQOs benchmarked against the WHO's Interim Targets and revealed a series of steps to update the Air Quality Objectives. To underscore the Government's commitment to adopting the best practices as well as to provide greater certainty to works departments in planning new development projects, all Government projects for which **EIA studies** have not yet commenced would endeavour to adopt the proposed new AQOs as the benchmark for conducting air quality assessment under the EIA studies.

## Legal Corner

*Steven Yip*

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**Mediation Bill will provide important statutory protections** Early in 2011, the Hong Kong Government's Working Group on Mediation set out to promote a wider recourse for civil disputes by establishing a legislative framework for the mediation process. Chaired by the Secretary for Justice, the group published 48 recommendations in its report of February 2010 following a 3 month consultation period. The resulting Mediation Bill was recently gazetted and introduced to the Legislative Council on 30 November 2011.

**Why have a Mediation Bill?** Mediation is increasingly used across many jurisdictions to resolve disputes and avoid court proceedings. Despite its widespread use in Hong Kong to good effect, many organisations are still concerned about whether communications made during mediation (which are supposed to attract protection from subsequent use by the other party should the dispute not be settled by mediation) are in practice adequately protected from subsequent use in court or arbitration proceedings. At present no safeguarding statute law exists.

The Bill aims to promote, encourage and facilitate the resolution of disputes by mediation, and to protect the confidentiality of mediation communications. The

spokesman for the Department of Justice stated that *the Bill is necessary to provide legal certainty regarding confidentiality of mediation communications and admissibility of mediation communications in evidence.*

**Content of the Bill** The Bill aims to standardize the terminology and Chinese renditions of 'mediation' and 'conciliation' used in existing ordinances and contains provisions including the following:

- ✚ **Meaning of Mediation (s.4)** The meaning of 'mediation' is defined as a structured process comprising one or more sessions in which one or more impartial individuals, without adjudicating the dispute, assists the parties to do any or all of the following:
  - identify the issues in dispute
  - explore and generate options
  - communicate with one another, and
  - reach agreement regarding the resolution of the whole or part of the dispute.
  
- ✚ **Scope (s.5)** The Bill applies to any mediation conducted under an agreement to mediate if either:
  - the mediation is wholly or partly conducted in Hong Kong, or
  - the agreement provides that the Bill or the laws of Hong Kong is to apply to the mediation.

The proposed law will not apply to mediations under the Labour Relations, Ombudsman or Arbitration Ordinances, conciliations under the Labour Tribunal and Labour Relations Ordinances or other anti-discrimination ordinances.

- ✚ **Confidentiality (s.8)** Provisions have been made to clarify the boundaries of confidentiality in mediation. A person must not disclose mediation communication unless it is:
  - made with consent of all the parties and the mediator
  - necessary to prevent danger or injury to a person or serious harm to a child,
  - or in accordance with a requirement of the law.
  
- ✚ **Admission of Evidence (s.9 & s.10)** Only with leave of the court or tribunal may mediation communication be admitted in evidence in any proceedings (including judicial, arbitral, administrative or disciplinary).

**Support for the Bill** The courts now openly encourage parties to consider mediation, and have under certain circumstances penalized those who unreasonably refused to participate. In the light of the increasing demand for

mediation, the recommendation to enact legislation on mediation met with overwhelming support during the consultation period.

Despite the Bill (and subsequent passage into law), an underlying uncertainty will remain for some litigants who are uncomfortable with disclosing documents or communicating on a less formal and 'without prejudice' basis, which is necessary for mediation to work as intended. However, enactment of the Bill will enable the parties to have some confidence, knowing that statutory protection is in place.

## **Change under New Engineering Contract**

*Cordia Yu*

**21 Feb by Mr. Ian Heaphy** - This seminar was given by Mr. Ian Heaphy, Director of Navigant. The talk covered how change is dealt with under Engineering and Construction Contract 3<sup>rd</sup> edition under the NEC family. It outlines the change control process from initial risk allocation, through the early warning process and into compensation events. How change should be addressed at each stage and considers in how the parties should assess the impact of change, covering time, cost and disruption.

He concluded that the assessment of change under the ECC is different to the process under most traditional standard forms. The success factor for running projects under ECC is the parties act as stated in the contract in a spirit of mutual trust and cooperation.

The talk was very well attended. Mr. Heaphy has extensive experience in the implementation of NEC in UK and Middle East. He gave a very informative presentation on assessment of change under NEC. He also shared with our members his valuable experience.



*Ian is experienced in most major forms of contract and is an authority on the NEC forms of contract*



*Senor Vice-Chairman Michael Wong (right) presents a souvenir to Ian*

## Past Events / Reaching Out Activities

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**7 Jan 2012:** **Stage 1 Public Engagement on Reclamation outside Victoria Harbour** - Andrew Keung attended this topical group discussion and presented the summary report for his group for the floor discussion.

**9 Jan 2012:** **ICE Presidential Reception** – Honby Chan and Michael Wong attended this Membership Certificate Presentation Ceremony.

**13 Jan 2012:** **CI Arb (EAB) YMG Annual Party** - Honby Chan, Steven Chan, Cordia Yu and Michael Wong attended this annual event.

**4 Feb 2012:** **Public Forum on Enhancing Land Supply Strategy** – Andrew Keung, Alan Cheung and Michael Wong attended the forum and gave their views on the guiding principles and site selection criteria for reclamation outside Victoria Harbour or rock cavern development.

**21 Feb 2012:** “**The Assessment of Changes under NEC**” will be presented by **Ian Heaphy**, Director of Navigant, in Room 202, Duke of Windsor Social Service Building, No. 15 Hennessey Road, Wan Chai.

## Coming Events

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**5-12 Mar 2012:** **Ian Cowling, Chief Examiner of ICES** is visiting Hong Kong and Beijing. As the membership of the Institution is expanding in this Region, we need more examiners. He will conduct training for new examiners and refresher training for existing examiners.

**8 Mar 2012:** “**Acceleration of Works**” will be presented by **Ian Cowling** in a joint function with the Joint Construction Management Talk Group at Beijing Arbitration Commission Centre in Beijing.

**27 Mar 2012:** Annual General Meeting will be held at the Hong Kong Polytechnic University

**27 Apr 2012:** Annual Dinner will be held at the City View Hotel

## Annual General Meeting

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**27 Mar 2012: Annual General Meeting** will be conducted at Room CD304, The Hong Kong Polytechnic University, Hung Hom, Kowloon.

This is a very good chance to meet our Region Committee to express your view and participate in managing the Hong Kong Region; members at all grades are welcome to join. For information and enquiry please contact Ms. Cordia Yu at [cordiayu@cices.org.hk](mailto:cordiayu@cices.org.hk)

## Congratulation to our New Fellows

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The following elections were recently approved by Council of Management of the Chartered Institution of Civil Engineering Surveyors:

**LAI Yuk Fai Stephen**, Rider Levett Bucknall, Hong Kong  
**WONG Thien Nyen**, AECOM, Hong Kong  
**CHAN Man**, Dragages Hong Kong  
**BASTABLE, Jonathan** Bachy Soletanche, Hong Kong  
**LEE, Colin**, The Contract Group, Hong Kong  
**Clayton, Peter**, Pinsent Masons, Hong Kong  
**Lui Ching Yee, Miranda**, Hong Kong  
**HUANG Tiande**, COVEC, Beijing  
**QIU, Chuang**, Beijing