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Panel on Environmental Affairs

Meeting on 24 October 2005

Updated background brief on nature conservation

Background

To protect Hong Kong's beautiful natural environment against competing demands for land to meet economic and social needs, the Administration has put in place a nature conservation policy and adopted various measures, including –

- (a) the establishment of country parks and special areas for management by the Agriculture, Fisheries and Conservation Department under the Country Parks Ordinance;
- (b) the designation of conservation zonings, including Site of Special Scientific Interest, Conservation Area and Coastal Protection Area, on town plans made under the Town Planning Ordinance to protect the sites from development threats and incompatible land uses;
- (c) the establishment of restricted areas under the Wild Animals Protection Ordinance to control access to important wildlife habitats;
- (d) the implementation of the Environmental Impact Assessment Ordinance under which proponents of designated projects are required to avoid causing adverse environmental impact or, where avoidance is not practicable, to mitigate the impact to an acceptable level;
- (e) the implementation of conservation plans for important habitats (e.g. wetlands at Mai Po and Inner Deep Bay) and species (e.g. the Chinese White Dolphin and Black-faced Spoonbill); and
- (f) public education and publicity to enhance public awareness of our valuable natural environment and the importance of protecting it.

Review of nature conservation policy

2. Notwithstanding the measures referred to in the preceding paragraph, there have been debates from time to time on whether a particular site really deserves conservation, particularly when there are plans to develop the site. There are also criticisms about the limitations of the existing nature conservation policy and measures in conserving ecologically important sites that fall under private ownership. In this connection, the Government conducted a review of the existing policy and measures with a view to identifying areas for further improvement.

3. The review revealed that through the designation of country parks, special areas and conservation zonings on town plan, about 48 200 hectares, or 43% of the total land area of Hong Kong, are now put under protection in one form or another. While this “protected areas” system has helped to maintain the integrity of many important natural habitats and preserving the biodiversity in Hong Kong, the existing conservation measures are not without limitations. In particular, Hong Kong lacks a system for evaluating the ecological value of individual sites in an objective and systematic manner. This may lead to debates on whether and what sort of nature conservation efforts and priority for action should be accorded to individual sites. These debates may in turn affect planning of development projects. Besides, the existing conservation measures are not fully effective in protecting sites of high ecological importance that fall under private ownership from incompatible human activities such as change of agricultural practices.

4. In July 2003, the Administration issued the Consultation Document on Review of Conservation Policy to seek public views on –

- (a) the introduction of a scoring system for assessing, in a more objective and systematic manner, the relative ecological importance of sites with the objective of reaching a consensus within the community on the priority sites for enhanced conservation; and
- (b) practicable ways to better conserve ecologically important sites that are under private ownership within limited resources. Two possible options, including management agreements with landowners (management agreements)^{Note1} and private-public partnership (PPP)^{Note2}, were identified for further examination.

The consultation period expired on 18 October 2003.

^{Note1} Under this new measure, non-governmental organizations (NGOs) may apply for funding from the Government for entering into management agreements with the landowners. NGOs will provide landowners with financial incentives in exchange for management rights over their land or their co-operation in enhancing conservation of the sites concerned. For example, NGOs may employ a landowner to implement measures to enhance the ecological value of his land or NGOs may jointly organize revenue-generating activities such as eco-tours with landowners and share the income with them on the condition that the ecological value of the land will be conserved or enhanced.

^{Note2} Under this new measure, developments at an agreed scale will be allowed at the less ecologically sensitive portion of a site provided that the developer undertakes to conserve and manage the rest of the site that is ecologically more sensitive on a long-term basis. In order to provide potential proponents with the required flexibility, proposals involving non in-situ land exchange for development with full justifications may also be considered, but they have to be examined and approved by the Executive Council on a case-by-case basis.

5. The Panel on Environmental Affairs held two meetings on 17 and 22 July 2003 to discuss the consultation paper.

6. While welcoming the proposals in the Consultation Document as these would make clear to owners the limits of development of agricultural land with high value, there was concern about the interest of owners whose land had a diminished development potential due to its ecological importance. Members expressed worries that owners concerned might rush to apply for change of land use prior to the introduction of the proposed scoring system or even destroy the ecological value of the sites in an attempt to reduce the score so that they could set aside the land to await the revival of the property market. To prevent landowners to resort to such extreme actions, a member suggested that legislation be introduced so that approval for development would not be given to landowners even after they had destroyed the ecological value of their land.

7. The Administration's explanation was that applications for exchange of land use had to be accompanied by an environmental review and were subject to the approval of the Town Planning Board. Hence, it was unlikely that such applications could be rushed through during the consultation period. Besides, owners concerned could enter into management agreements with non-government organizations to draw up PPP proposals to develop the less ecologically sensitive part of the land on an agreed scale while undertaking to conserve the remaining part on a long-term basis. It was expected that a start-up fund would be required for managing the sites, after which the fund would be perpetually generated through profits gained from activities within the sites. The Administration also undertook to take on board the member's suggestion of introducing legislation to prevent destruction of natural habitats of ecological importance despite that it was not an easy task to destroy the habitats given the wide span of these sites.

8. Members noted that the Administration had in mind some 20 sites to be protected. They questioned the need for the scoring system. According to the Administration, the sites referred to were considered deserving for conservation by the environmentalists but the list of priority sites for enhanced conservation could only be drawn up after the scoring system had been finalized. The scoring system was worked out after drawing reference to international practices and the scoring would be based on the uniqueness of the habitat and biodiversity of individual sites.

9. Query was also raised on the propriety of promoting eco-tourism as "eco" and "tourism" were incompatible with each other. Once a site of ecological importance was frequented by tourists, the habitat would be destroyed and the ecological value would diminish. The Administration's explanation was that eco-tourism was common worldwide and was viable so long as suitable restrictions were imposed. Notwithstanding, the Administration agreed to the need for proper planning and control in the development of eco-tourism to prevent damage to habitats. Education should also be stepped up to instill the concept of environmental protection in the younger generation at an early stage and fostered within the family.

Subsequent development

10. In November 2004, the Administration announced the new conservation policy and implementation programme. It had revised the conservation policy statement to –

“Our nature conservation policy is to regulate, protect and manage natural resources that are important for the conservation of biological diversity of Hong Kong in a sustainable manner, taking into account social and economic considerations, for the benefit and enjoyment of the present and future generations of the community. The policy objectives are –

- (a) to identify and monitor the important components of biological diversity;
- (b) to identify, designate and manage a representative system of protected areas for the conservation of biological diversity;
- (c) to promote the protection of ecosystems and important habitats, and the maintenance of viable populations of species in natural surroundings;
- (d) to identify, monitor and assess activities that may have adverse impacts on biological diversity and to mitigate such impacts;
- (e) to rehabilitate degraded ecosystems and promote the recovery of threatened species where practicable;
- (f) to promote the protection and sustainable use of natural resources that are important for the conservation of biological diversity;
- (g) to provide opportunities for people to appreciate the natural environment;
- (h) to collaborate with the private sector, including the business community, non-governmental organizations and the academia to promote nature conservation, and to conduct research and surveys as well as to manage ecologically important sites for such purpose; and
- (i) to co-operate with participate in regional and international efforts in nature conservation.”

11. In light of the divergent views on the proposed scoring system collected during the public consultation, the Administration convened an Expert Group involving prominent ecological experts and major green groups to discuss and revise

the scoring system solely based on ecological principles. The revised scoring system is in **Appendix I**. According to the Administration, the scoring system is not designed to measure the absolute ecological value of a site. It is drawn up for assessing the relative ecological importance of sites that cannot be protected effectively under the existing system so as to facilitate the allocation of the Government's limited resources to the most deserving sites. Based on the scoring system, the Expert Group worked out the list of priority sites for enhanced conservation in **Appendix II**. Public criticisms or concerns about the inclusion or exclusion of any site from the priority list will be referred to the Agriculture, Fisheries and Conservation Department (AFCD), which will consult the Expert Group and the Advisory Council on the Environment (ACE), and make changes as appropriate.

12. To better evaluate the effectiveness of the management agreement and PPP options, the Administration will conduct a pilot scheme first. It has sought the agreement of the Environment and Conservation Fund (ECF) Committee to allocate \$5 million from ECF for implementation of pilot management agreement projects. Non-governmental organizations (NGOs), including green groups, educational institutions and community organizations, may submit funding applications for implementing pilot management agreement projects for the sites in Appendix II during the period from 1 December 2004 to 31 May 2005. All applications received will firstly be vetted by the Environment, Transport and Works Bureau (ETWB)/AFCD in consultation with other relevant departments and ACE (or its subcommittee) where appropriate. The recommendations will then be submitted to ECF Committee for endorsement.

13. As regards PPP, the Administration will allow six months (from 1 December 2004 to 31 May 2005) for submission of PPP proposals for the sites in Appendix II. An Inter-departmental Task Force to be chaired by ETWB and comprising representatives from other relevant bureaux/departments will be set up to examine the submissions with a view to identifying the pilot projects as well as facilitating and overseeing their early implementation. ACE (or its subcommittee) will be consulted on the Task Force's recommendations. Each selected PPP pilot project will be submitted to the Executive Council for approval. In implementing a selected PPP pilot project, the proponent will still be required to fulfill the statutory requirements, including application for change of land use zoning or application for planning permission where appropriate in accordance with the Town Planning Ordinance (Cap. 13), and application for an environmental permit under the Environmental Impact Assessment Ordinance (Cap. 499) where the proposed development involves designated projects as defined in the Ordinance. With the necessary planning approvals and agreement of the parameters for the proposed development, the proponent will also need to obtain approval from the Lands Department for the necessary land exchange or lease modification where appropriate. The Inter-departmental Task Force will examine ways to streamline the process as far as possible.

14. A review of the implementation of management agreements and PPP, including the approval process, monitoring mechanism and above all, their effectiveness in enhancing conservation of the sites concerned, will be conducted in two to three years' time, depending on the commencement dates and duration of the pilot projects. Based on the experience gained from the pilot projects, the Administration will review the implementation framework and decide on the way forward having regard to, among others, the resources available.

15. In light of the comments received during the public consultation, the Administration will enhance the existing conservation measures, strengthen ACE's advisory role in nature conservation, step up conservation education and publicity and consider the feasibility of a nature conservation trust to facilitate the pooling of funds from all sectors for protection and conservation of the natural heritage of Hong Kong.

16. When the new nature conservation policy and its implementation programme were discussed by the Panel, some members remained concern that the interest of landowners would be compromised. They opined that the Consultation Document only focused on measures to conserve the natural environment and made no reference to the need to protect the interest of landowners. This was not only unfair to hold landowners responsible for conserving the natural environment, which should be the duty of the Government, but also at variance with the people-oriented approach advocated by the Government. Given the complex statutory requirements under PPP, only major developers who had the financial resources might be able to participate, thereby compromising the interest of owners of small plots of land. Consideration should be given to providing land exchange to private owners whose land was identified for enhanced conservation. Other members were concerned that PPP might lead to litigation over development rights, and that some property developers might exploit PPP as a means to develop sites of high ecological value. It was also pointed out that the proposed establishment of the nature conservation trust might not be able to serve its intended purpose if the proponents failed to discharge their responsibility in conserving the sites after the sale of developments. Given that developers were more intent and knowledgeable about property development rather than nature conservation, consideration should be given to requiring them to plough back part of their proceeds from the sale of properties for conservation purpose.

17. According to the Administration, it was well aware of the concerns of landowners about the impact of the new conservation policy on their development rights, and had consulted the Heung Yee Kuk and landowners upon release of the Consultation Document. It was pointed out that the sites in Appendix II (mostly held under private agricultural leases) had been "frozen" under the present land use zoning system because of their ecological importance. Besides, most of the land was left idle and no active conservation management measures could be taken on the private land involved. The management agreement and PPP arrangements aimed to provide landowners with more options and above all, the incentives to conserve the sites concerned. As regards the options of land resumption and land exchange for sites with high ecological importance, the Administration's explanation was that these were

impracticable given the financial and land resource implications. Keeping these options open might give rise to false hopes among the landowners concerned. A better arrangement was to involve the owners in conserving their own land. The community would be able to see for themselves how management agreements and PPP could make better use of the sites with high ecological importance. Furthermore, appropriate monitoring and enforcement mechanism would be put in place to ensure compliance with the conditions set out in the undertakings. Proponents failing to observe such conditions would be liable for penalties.

18. In view of the far-reaching implications of the new nature conservation policy, members agreed that a joint meeting with the Panel on Planning, Lands and Works would be held to examine the impact of the policy, and that affected parties should be invited to express their views.

Council Business Division 1
Legislative Council Secretariat
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Scoring System for the Assessment of the Relative Ecological Importance of Sites

Criteria	Weighting	Description	Score	Description
Naturalness	15%	Habitats that are natural or with least modification by human activities in the past history will have higher conservation value. Truly natural habitats (i.e. not modified by man) are usually highly valued. However, most areas of the territory have been modified. Generally, those habitats less modified will tend to be rated higher.	0	Build-up or highly degraded areas with little conservation value.
			1	Man-made or intensively modified by human, e.g. agricultural land.
			2	Semi-natural or moderately modified, e.g. disturbed woodland.
			3	Truly natural or relatively free from human modification, e.g. natural woodland.
Habitat diversity	15%	Generally, the greater the number of major habitats, the greater the overall importance of the site as a whole. Major habitat types include woodland, inter-tidal mudflat, mangrove stand, natural stream course, freshwater marsh, etc.	0	Containing no major natural habitats or habitats which are highly degraded.
			1	Containing only one major habitat type.
			2	Containing two to three major habitat types.
			3	Containing four or more major habitat types.
Non-recreatability	10%	Habitats which are difficult to be recreated are valued higher. This evaluates the complexity of the habitat types, the time and effort needed to recreate the ecosystem and the degree of uncertainty in recreating the habitats.	0	Easy to recreate, but recreated habitats would have little conservation value e.g. landscaped areas.
			1	Easy to recreate, e.g. fishponds, abandoned agricultural land.
			2	Possible to recreate but it takes much time and effort, e.g. secondary forests.
			3	Very difficult or impossible to recreate regardless of time and effort, e.g. inter-tidal mudflats, natural woodlands, streams.

Species diversity & richness	30%	The more diverse the species assemblages and communities of a site, the higher is its conservation value.	0	Insignificant diversity (as a reference, 5% of total number of recorded species in Hong Kong of a particular taxa group) for all taxa groups.
			1	Low diversity (5% < diversity 20%) of at least one taxa group.
			2	Moderate diversity (20% < diversity 50%) of at least one taxa group.
			3	High diversity (>50%) of a particular taxa group or moderate diversity of at least three taxa groups.
Species rarity / endemism	30%	The more rare / endemic species the site supports, the higher is its conservation value.	0	Not known to support any population of rare or endemic species.
			1	Support populations of rare species of at least one taxa group.
			2	Support a population of endemic species, or populations of rare species of two to three taxa groups.
			3	Support a population of extremely rare species or rare endemic species, or populations of rare or endemic species of more than three taxa groups.

Appendix II

List of Priority Sites for Enhanced Conservation

Sites	Rank	Score
Ramsar Site	1	2.85
Sha Lo Tung	2	2.70
Tai Ho	3	2.40
Fung Yuen	4	2.30
Luk Keng Marsh	4	2.30
Mui Tsz Lam and Mau Ping	6	2.25
Wu Kau Tang	7	2.15
Long Valley and Ho Sheung Heung	8	2.05
Deep Bay Wetland outside Ramsar Site	9	1.90
Cheung Sheung	10	1.75
Yung Shue O	10	1.75
Sham Chung	12	1.45