

立法會
Legislative Council

LC Paper No. CB(1)265/10-11
(These minutes have been seen by
the Administration)

Ref : CB1/SS/9/09

**Subcommittee on Country Parks (Designation)
(Consolidation) (Amendment) Order 2010**

**Minutes of the fifth meeting held on
Monday, 4 October 2010, at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Tanya CHAN (Chairman)
Hon WONG Yung-kan, SBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon IP Wai-ming, MH
Hon Albert CHAN Wai-yip
- Member attending** : Hon Ronny TONG Ka-wah, SC
- Public Officers attending** : Agenda item I
Dr Kitty POON, JP
Under Secretary for the Environment

Dr Ellen CHAN Ying-lung
Assistant Director of Environmental Protection

Mr Lawrence LAU Ming-ching
Principal Environmental Protection Officer
Environmental Protection Department

Mr Joseph SHAM Chun-hung
Assistant Director of Agriculture
Fisheries and Conservation

Ms Lonnie NG Wah-chi
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (1)6

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Diana WONG
Senior Council Secretary (1)8

Mr Franco KWONG
Council Secretary (1)1

Action

I Meeting with the Administration

(LC Paper No. CB(1)2939/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 27 September 2010

LC Paper No. CB(1)2939/09-10(02) -- Administration's response to CB(1)2939/09-10(01)

LC Paper No. CB(1)2935/09-10(01) -- Administration's paper for Country and Marine Parks Board on potential sites suggested for designation as part of the Clear Water Bay Country Park in connection with the encroachment of country park land by SENT Landfill extension)

The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

2. Members and the Administration exchanged views on the legal implications of repealing the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 which sought to replace the original approved map of Clear Water Bay Country Parks with a new map CP/CWB^D approved by the Chief Executive in Council. The Administration indicated that as the new map had been deposited in the Land Registry in accordance with section 13(4) of Country Parks Ordinance (Cap. 208), there might be a problem of repealing the Order unless

another new map would be available to replace CP/CWB^D at the Land Registry. The Assistant Legal Adviser however held the view that the map CP/CWB^D deposited at the Land Registry was meant for public inspection and the depositing of the map itself had no legislative effect. The Chairman requested the Administration to provide its legal views in writing for the reference of members.

Motion

3. The Subcommittee passed the following motion:

"議決由本小組委員會主席動議廢除《2010年郊野公園（指定）（綜合）（修訂）令》。"

"Resolved that a motion be moved by the Chairman of the Subcommittee to repeal the Country Park (Designation) (Consolidation) (Amendment) Order 2010."

II Any other business

4. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
29 October 2010

**Proceedings of the fifth meeting of
the Subcommittee on Country Parks (Designation) (Consolidation) (Amendment) Order 2010
on Monday, 4 October 2010, at 10:45 am
in conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action required
000224 – 000335	Chairman	The Chairman's introductory remarks.	
000336 – 000903	Chairman Administration	The Administration briefed members on its response to the concerns raised at the meeting on 27 September 2010 (CB(1)2939/09-10(02)) and the open letter issued by the Secretary for the Environment (SEN) (CB(1)2961/09-10(01)) on 3 October 2010.	
000904 – 001253	Chairman Administration Assistant Legal Adviser (ALA)	<p>In reply to the Chairman's enquiry, the Administration advised that according to section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), "where an Ordinance repeals in whole or in part any other Ordinance, the repeal shall not revive anything not in force at the time at which the repeal takes effect". As such, if the repeal of the Amendment Order took effect before its commencement date on 1 November 2010, the original approved map of the Clear Water Bay Country Parks (CWBCP) would not be affected. However, pursuant to the statutory mechanism under section 13(4) of the Country Parks Ordinance (Cap. 208) (CPO), the new map CP/CWB^D approved by the Chief Executive (CE) in Council had been deposited in the Land Registry. There might be a problem unless a new map would be available under section 15 of CPO to replace the map CP/CWB^D deposited at the Land Registry.</p> <p>ALA opined that the map CP/CWB^D deposited at the Land Registry was meant for public inspection and the depositing of the map itself had no legislative effect.</p> <p>The Chairman requested the Department of Justice to set out its response on the legal implications of repealing the Amendment Order in writing.</p>	
001611 – 001823	Chairman Ms Cyd HO Administration	<p>In reply to Ms Cyd HO's remarks that the depositing of the map was an administrative act, the Administration further advised that under section 13 of CPO, every map approved by CE in Council should be signed by the Country and Marine Parks Authority and deposited in the Land Registry. As such, it was expressly provided in CPO and was not merely an administrative act.</p> <p>Ms Cyd HO requested the Administration to make it known to the public that the map currently deposited at the Land Registry had not taken effect yet.</p>	
001824 – 002243	Chairman Mr Albert CHAN Administration	In reply to the enquiry of Mr Albert CHAN, the Administration clarified that the repeal of the Amendment Order, if any, meant that the new approved map reflecting the excision of 5 hectares	

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	ALA Clerk	<p>(ha) of land from CWBCP would be repealed.</p> <p>ALA further advised that the Amendment Order sought to replace the original approved map in respect of CWBCP with the new approved map. If the Amendment Order was repealed before the commencement date, the original approved map remained effective.</p> <p>The clerk advised on the legislative timetable.</p>	
002244 – 002506	Chairman Mr Ronny TONG	Mr Ronny TONG agreed with the view of ALA and remarked that if the map currently deposited at the Land Registry had any legal implications prohibiting the repeal of the Amendment Order, the role and function of the Legislative Council (LegCo) in scrutinizing the subsidiary legislation would thus be upset. He stressed that this should be made very clear to the public.	
002507 – 003145	Chairman Mr KAM Nai-wai Administration ALA	In reply to Mr KAM Nai-wai's enquiry on the impact on the Tseung Kwan O (TKO) Outline Zoning Plan (OZP) if the Amendment Order was repealed, the Administration advised that amendments to the draft TKO OZP, which was gazetted on 7 May 2010, included, inter alia, rezoning of 15 ha of land in Area 137 and extending its boundary to incorporate a 5 ha site adjoining Area 137 to be excised from CWBCP and zoning it to "Open Space (2)" which allowed the piece of land to be used for country park or landfilling purpose. The Town Planning Board (TPB) would consider amendments to the draft TKO OZP in November 2010.	
003146 – 004006	Chairman Ms Emily LAU Administration	<p>Discussion on the legal implications concerning the repeal of the Amendment Order.</p> <p>Ms Emily LAU sought clarification to the Administration's response to the written submission (CB(1)2849/09-10(03)) of a TKO resident, Ms HO, that amendments to the draft TKO OZP being dealt with by TPB were made separately in accordance with statutory procedures under CPO and the Town Planning Ordinance (Cap. 131) respectively, so there was no overlap between them.</p> <p>The Administration advised that amendments to the draft TKO OZP also involved items other than Area 137 and CWBCP. TPB would make reference to LegCo's decision after scrutinizing the Amendment Order. The flexibility of zoning the 5 ha of land from CWBCP into "Open Space (2)" allowed the land to be used as country park or landfill. In case of the latter, no further amendments to the OZP would be necessary upon restoration of the landfill for returning to country park use.</p>	
004007 – 004300	Chairman Ms Miriam LAU	Ms Miriam LAU agreed that if the Amendment Order was repealed before the commencement date, the original approved map should remain effective. She considered it legal for the Government or LegCo to repeal the Amendment Order.	
004301 – 005934	Chairman Mr KAM Nai-wai	Discussion on the date for the amendments to the draft TKO OZP to take effect.	

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	Administration	<p>In reply to Mr KAM Nai-wai's enquiries, the Administration explained that:-</p> <ul style="list-style-type: none"> (a) the number of complaints about odour problems from TKO Town South and from LOHAS Park in 2010 (up to the end of September 2010) was 370 and 240/250 respectively, which was broadly similar to the number of complaints from TKO Town South in 2009 (up to the end of September 2009) was 610; (b) posi-shell was a new technology yet to be adopted commonly by landfills overseas; and (c) according to the outcome of odour detection survey conducted by the Environmental Protection Department (EPD) at three different TKO residential estates in August 2007, odour could be detected in only 0.2% of the total 336 survey hours (i.e. about 40 minutes), giving an intensity level of just one to two. In 2009, the dedicated working group under the Sai Kung District Council (SKDC) had commissioned an independent consultant to carry out similar odour surveys in a systematic manner. In addition to e-nose monitoring, the Administration would consider conducting the odour detection survey again in the coming year. 	
005935 – 010927	Chairman Mr Ronny TONG Administration	<p>Mr Ronny TONG expressed grave concern that SEN should attend the Subcommittee meeting and exchange views with members instead of just paying visit to the SENT Landfill and issuing the open letter. As the Government had a responsibility to deal with the odour problem in TKO irrespective of the source to prevent further deterioration, he considered the Administration should repeal the Amendment Order and implement substantive measures including installing e-noses at appropriate locations before re-introducing the subsidiary legislation.</p> <p>The Administration indicated that some SKDC members had somehow expressed objection to installing e-noses at LOHAS Park as they perceived that the Owners' Corporation would not give consent to do so. At the request of Housing and Environmental Hygiene Committee under SKDC, the Administration would continue its liaison with the LOHAS Park on the matter. Nevertheless, the Administration assured members that after the commissioning of the Sludge Treatment Facility using modern incineration technology in 2013, the odour problem caused by SENT Landfill, which was largely due to sludge, should be less serious.</p>	
010928 – 011559	Chairman Ms Miriam LAU Administration	<p>Ms Miriam LAU questioned the effectiveness of e-nose monitoring as residents in Ocean Shores had been lodging complaints about odour problem for some 10 years but drainage/sewage problem within the development only emerged from 2009.</p> <p>Ms LAU expressed concern that the waste collection operators</p>	

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		<p>should be assured about the possible outcome if the proposed extension of the SENT Landfill would not proceed. The Administration advised that in that circumstance, the waste collection operators had no choice but to send the collected refuse to the other two strategic landfills. It assured members that the Government would spare no effort in implementing various waste reduction and recycling initiatives and commissioning waste treatment facilities to reduce the demand for landfill capacity.</p>	
011600 – 012512	Chairman Mr IP Wai-ming Administration	<p>Mr IP Wai-ming expressed concern that the Administration did not take on board members' suggestions until the Subcommittee indicated it might repeal the Amendment Order. He enquired</p> <p>(a) whether the Administration would seek to extend the SENT Landfill again after the present proposed extension; and</p> <p>(b) the timetable of subsidizing private waste collection operators in retrofitting their refuse collection vehicles with metal tailgate covers and waste sump tanks.</p> <p>The Administration responded that: -</p> <p>(a) it would liaise further with the trade and consider the feasibility of subsidizing them in retrofitting RCVs and the timetable would be subject to their operational needs; and</p> <p>(b) the Administration understood that extending landfills was not a sustainable method in waste treatment. The Government would seek to reduce and recycle waste through various measures, including public education, which should greatly reduce the demand for landfill capacity.</p>	
012513 – 013539	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU expressed concern that no principal officials had attended the visit to the SENT Landfill conducted by the Subcommittee on 26 July 2010 but SEN visited it on 3 October 2010, just one day before the Subcommittee would consider moving a motion at the Council to repeal the Amendment Order. She reiterated that the Administration should gain the support of SKDC and local residents by addressing the odour problem and offering district betterment facilities as compensation. The Administration undertook to provide betterment facilities for the integrated waste management facilities after the decision on the final site by the end of 2010.</p> <p>In reply to Ms LAU's further enquiries, the Administration responded that:-</p> <p>(a) it would continue to implement the various odour control measures by the inter-departmental working group led by the Sai Kung District Officer even if the Amendment Order was eventually repealed; and</p> <p>(b) unlike the North East New Territories Landfill and West</p>	

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		<p>New Territories Landfill which received largely domestic waste, the SENT Landfill, which mainly handled waste from commercial and industrial sectors, had to operate longer until 11 pm. In fact, due to operational needs, the peak usage hours of the SENT Landfill fell between 8 pm to 11 pm. Nevertheless, the Administration would liaise with the trade further on the feasibility of shortening the landfill operation hours.</p>	
013540 – 014246	<p>Chairman Mr CHAN Hak-kan Administration Ms Miriam LAU</p>	<p>Mr CHAN Hak-kan expressed concerns that the odour control measures recently implemented or proposed, such as mobile deodourizers, covering the waste with posi-shell, full-body vehicle washing, cleaning Wan Po Road etc were ineffective in addressing the odour problem, or their effectiveness was uncertain at this stage. He considered it more reasonable for the Government to repeal the Amendment Order and re-introduce it after the measures were proven to be effective.</p> <p>The Administration outlined the series of odour control measures implemented since 2008, and highlighted that the proposed extension of the SENT Landfill was an urgent solution to solve the imminent waste problem as the landfill would be full by around 2013.</p> <p>Discussion on the motion to be moved by the Subcommittee.</p>	
014247 – 014619	<p>Chairman Mr Albert CHAN Clerk</p>	<p>Mr Albert CHAN urged other LegCo Members to support the Subcommittee's stance in repealing the Amendment Order.</p> <p>The Clerk advised that a resolution had been passed at the Council meeting on 30 June 2010 to extend the scrutiny period of the subsidiary legislation to 13 October 2010.</p>	
014620 – 015056	<p>Chairman Administration</p>	<p>The Chairman expressed concern that TKO residents were disappointed to note that the SENT Landfill would continue operation indefinitely, and extension would not be compensated with any betterment facilities. She considered this unfair to TKO residents. While she was pleased to note that 15 ha of land in the area along Tai Au Mun Road would be designated as part of CWBCP, the Chairman urged the Government to make it a policy requiring area-for-area compensation when country park lands were designated for other use.</p> <p>The Administration called on the Subcommittee and other LegCo Members to support the Amendment Order. It was hoped that with the continual implementation of more waste reduction measures, the demand for landfill capacity would greatly decrease and TKO residents' concern about the associated odour problem due to transportation of waste would be addressed.</p>	
015057 – 015924	<p>Chairman Ms Cyd HO Mr KAM Nai-wai Mr Ronny TONG</p>	<p>Ms Cyd HO urged the Administration to devise concrete measures in providing district betterment facilities in TKO as compensation to the proposed extension of the SENT Landfill. In reply to her enquiry, the Administration confirmed that the measures of arranging overnight parking for RCVs within the</p>	

Time Marker	Speaker	Subject(s)	Action required
		<p>SENT Landfill would be implemented in October 2010 and providing automatic full-body vehicle cleaning services to RCVs would be implemented in October 2010.</p> <p>Mr KAM Nai-wai relayed the objection of Members belonging to the Democratic Party to the Amendment Order because the Government had not implemented the odour control measures they suggested. Noting the high number of complaints about odour problem in LOHAS Park, he considered that this was due to erroneous planning.</p> <p>Noting that the odour detected by the e-nose at Ocean Shores seemed to be related to wastewater, including sewage from TKO STW or foul water from Ocean Shores itself, Mr Ronny TONG queried why the odour problem was not addressed despite the source was identified. The Administration assured members that the problem would be tackled by the inter-departmental working group led by the Sai Kung District Officer.</p> <p>Ms Miriam LAU believed that TKO residents as well as Subcommittee members would give their support to the Amendment Order after various odour control measures were proven to be effective.</p>	
015925 – 020124	Chairman Mr Albert CHAN Ms Emily LAU	The motion for the Subcommittee to move a resolution to repeal the Amendment Order at the Council meeting on 13 October 2010 was carried	