

**For discussion
On 28 July 2010**

**Legislative Council
Panel on Environmental Affairs and Panel on Development**

Follow-up actions arising from the Sai Wan incident

Purpose

This paper seeks to brief Members on the follow-up actions the Administration has taken in respect of the Sai Wan incident, and sets out measures being pursued to better protect the Sai Wan area.

Background

The Government Policy in Protecting Country Parks

2. Many of our country parks were designated in the 1970s and over the years, the number of country parks has been increased to 24 and now covers some 40% of our land areas. These country parks have in general achieved the purposes of nature conservation and provided recreational facilities to members of the public.

3. In designating the country parks, the Government has all along noted that there are pre-existing private lots and human settlements inside or adjacent to the proposed country parks boundaries. It has been our consideration that human settlements could continue to blend in well with the country park environment, and the traditional rights of the villagers should not be adversely affected in the designation of country parks. In accordance with this consideration, private land is usually left outside the country park boundaries except where the private land owners did not raise objection to the incorporation of their land as part of the country parks.

4. As regards those sites of private land excluded from the country park boundaries, they become “country park enclaves”, as they are surrounded by or are adjacent to the country parks. Many of these

country park enclaves comprise both private and Government land. The developments of these country park enclaves have mainly been subject to the terms and conditions of the land lease, and if available, outline zoning plans (OZPs) under the Town Planning Ordinance.

The Sai Wan Enclave

5. Sai Wan is an enclave of the Sai Kung East Country Park (SKECP). It is situated on the eastern coast of the Sai Kung peninsula. The SKECP was designated in 1978, covering an area of 4,477 hectares (ha). Back then, there was a small population engaging in agricultural activities on land in Sai Wan. Together with some Government land in the vicinity of the private land to provide buffer areas, an area of about 16 ha had not been included in the boundary of the SKECP.

Excavation works reported at Sai Wan

6. On 1 June 2010, the Agriculture, Fisheries and Conservation Department (AFCD) received a verbal complaint from the public about suspected development at Sai Wan. The location of the site where excavation works were detected (the subject site) is shown in the **Annex**. The subject site falls outside the country park area of SKECP.

7. Since then, relevant departments, including AFCD, the Lands Department (LandsD), the Planning Department (PlanD) and the Environmental Protection Department (EPD) took different actions in respect of the case under their purviews. These include actions as outlined in the subsequent paragraphs.

Control actions taken

8. At present, the subject site is not subject to statutory planning control. Based on the site survey report, the subject site comprises 63 Old Schedule agricultural lots (total area is 17,981m², i.e. about 1.798 ha) and 10 Old Schedule building lots (total area is 340.7m², i.e. about 0.03407 ha). Out of the 1.8 ha private land, about 1.2 ha of the land was found to have signs of soil excavation, formation of two ponds, land leveling and turfing work. For Old Schedule agricultural lots,

notwithstanding that the lots may be described in the Schedule as, for example “padi”, such description does not preclude using the lots concerned for non-agricultural purposes that do not involve erection of structure(s)/building(s)¹. The erection of buildings or structures, however, will require prior approval from LandsD. As to the small number of Old Schedule building lots, there are houses erected thereon. Any new buildings to be erected thereon would require Government’s approval. So far, District Lands Office/Sai Kung (DLO/SK) has not received any application for erection of structures or buildings on the agricultural lots, or redevelopment of the building lots on the subject site. Buildings Department (BD) has also not received any site formation or building proposals on such private land.

9. However, excavation signs are found on the adjoining Government land which measures about 5,535m² (i.e. about 0.55 ha) in size. DLO/SK issued two letters to the land owner to remind him to respect the Government land and comply with the leases of the private land. DLO/SK also planted notice boards on the Government land to warn against any unauthorized excavation on such Government land. Furthermore, DLO/SK is considering follow up action including investigation as to whether any offences under the Land (Miscellaneous Provisions) Ordinance have been committed by any person.

10. Three excavators and some machinery were found on the subject site. While the subject site falls outside the boundary of SKECP, the Country Parks and Special Areas Regulations (the Regulations) controls, among others, the entry of any vehicle into the subject site via the SKECP. AFCD is conducting an investigation and collecting evidence on the route by which the excavators were brought onto the site. Prosecution action will be taken if sufficient evidence is obtained. The contractor on site has been warned that permission from AFCD under the Regulations is required to transport the excavators or machinery out of the subject site via the SKECP.

11. Pollution control legislation such as the Water Pollution Control Ordinance, Waste Disposal Ordinance, Air Pollution Control Ordinance

¹ Attorney General v Melhado Investment Ltd[1983] HKLR 327, the Court of Appeal concluded that the use stated in the Schedule to a Block Government Lease was purely descriptive. That description did not restrict the use to which a Lot under that lease could be put.

and Noise Control Ordinance control work site pollution activities. EPD will continue to monitor the activities at the subject site. The EPD has conducted investigation to check against any violation under the various pollution control legislation. The EPD will continue to monitor the activities at the subject site

12. The Antiquities and Monuments Office (AMO) advises that the Sai Wan area (including the subject site) is a site of some archaeological interest. However, the relics discovered so far are not of significant heritage value, and the value of the site is not sufficient for declaration as a monument under the Antiquities and Monuments Ordinance. Under the existing heritage protection and monitoring mechanism, which is administrative in nature, development proposals affecting any site of archaeological interest when received by LandsD, PlanD and BD will be sent to AMO for comments. Once alerted, the Commissioner for Heritage and the AMO will approach the site owner to learn more about the development plan for the site, assess the possible heritage impact, as well as discuss any necessary measures and options for conserving the heritage value of the site, with reference to the heritage policy adopted in 2007. In this case, AMO has not been alerted by any department of any development proposal submission. Notwithstanding this, upon the case being reported in public, the AMO has issued an advisory letter to the site owner, reminding him of the need to assess the archaeological value of the subject site in respect of any development proposal.

13. All departments concerned will continue to closely monitor the site situation and take vigorous enforcement actions under their legislation and administrative guidelines where necessary.

Additional Measures to Protect the Sai Wan's Natural Environment

14. Sai Wan has until recently been used for agricultural uses. Though not outstanding in ecological value, the site has a high landscape value which complements the overall naturalness and the landscape beauty of the surrounding SKECP. It is also ranked the top of the Hong Kong Best Ten Scenic Sites in a public campaign organised by the Friends of the Country Parks in 2006. The Government shares the public concern on the urgency to provide necessary planning control over

the site to avoid it being used for incompatible purposes.

15. Taking into account the views of the Secretary for the Environment and the Director of Agriculture, Fisheries and Conservation (DAFC), and given the apparent imminent development pressure at Sai Wan, the Secretary for Development has decided to apply development control to the area by way of a Development Permission Area (DPA) plan under the Town Planning Ordinance (TPO). On 26 July 2010, in accordance with the TPO and under the delegated authority of the Chief Executive, she directed the Town Planning Board (TPB) to designate Sai Wan as a DPA. After the DPA plan is gazetted, the procedure for which will be taken forward expeditiously, no new development activities, such as building, engineering, and mining or other operations as well as material change of use at the subject site, will be allowed unless with the approval of the TPB or permitted as specified in the DPA plan. Unauthorized development will be subject to enforcement actions by the Planning Authority according to the provisions of the TPO and may be an offence.

16. Notwithstanding the designation of Sai Wan as a DPA, the DAFC will critically assess and seek advice of the Country and Marine Parks Board as necessary on the most appropriate measure to protect the natural environment of Sai Wan, including how the site should be zoned in order to provide adequate protection to it from nature conservation angle, and whether there would be justifications for incorporating Sai Wan as part of the SKECP to afford it the same protection from incompatible developments available to other private lands within country parks.

17. Apart from Sai Wan, we note that there are other country park enclaves in Hong Kong. The situation of these enclaves will be closely monitored and concerned departments will enhance their alert system to deter unauthorized developments. In the light of the increasing concern of protection against development in these enclaves, AFCD, in conjunction with departments concerned, will review the adequacy of the existing protection against incompatible development having regard to the circumstances of each of these enclaves and if they should be included within the boundary of country parks or if other control should be imposed.

18. It should be noted that, subject to resources, it has indeed been the Administration's long-term target to prepare OZPs for all areas of Hong Kong. For areas falling just outside the boundary of country parks, 23 enclaves identified by AFCD are already covered by respective OZPs. However, since DPA plans are effective for a period of three years (unless extended for up to one additional year) as provided in the TPO during which period DPA plans may need to be replaced by OZPs as the case may be, and detailed planning studies would have to be undertaken in preparing the OZPs, it would be unrealistic to trigger the preparation of DPA plans for those lands that are not covered by country parks at the same time, which would have immense resource implications for PlanD.

Other proposals

19. We note that there are different views from members of the public on how best to protect sites with nature conservation value that are in private ownership. It is our policy to strike a balance between nature conservation and respecting private property rights. A number of the country park enclaves are now covered by OZPs which allow for different land use compatible with the site conditions and private rights to be incorporated. DAFC is one of the consultees in the planning process and he will offer views on the zonings of the sites to be covered by OZPs with a view to providing adequate protection to these sites from the nature conservation angle, and assess the merits, justifications and implications of incorporating any of the enclaves into the country park boundaries. Advice of the Country and Marine Parks Board will be sought as and when necessary.

20. We also note there are suggestions that land resumption is an option that may be considered to protect sites with nature conservation value that are in private ownership. The Administration has consulted the public on this issue in the context of drawing up the New Nature Conservation Policy in 2003. While the Lands Resumption Ordinance provides for resumption of land for a public purpose, whether nature conservation can be justified as a public purpose for triggering land resumption has to be determined on a case-by-case basis, it should be pointed out that this option will have significant resource implications bearing in mind the huge areas of land involved. The issue of relative

priority in competition for scarce public resources and the adverse implications over private property rights are important principles that have to be carefully deliberated. At this stage, we remain of the view that land resumption for conservation purpose is not the appropriate option.

Advice sought

21. Members are invited to note the follow-up actions in respect of the Sai Wan incident.

**Environment Bureau
Development Bureau
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