

立法會
Legislative Council

LC Paper No. CB(1)383/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/SS/2/13/2

**Subcommittee on Country Parks
(Designation) (Consolidation) (Amendment) Order 2013**

**Minutes of first meeting held on
Tuesday, 29 October 2013, at 9:00 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon CHAN Hak-kan, JP
Hon James TIEN Pei-chun, GBS, JP
Hon WU Chi-wai, MH
Hon CHAN Chi-chuen
Hon CHAN Han-pan
Dr Hon Kenneth CHAN Ka-lok
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Members absent : Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Albert CHAN Wai-yip
Dr Hon Elizabeth QUAT, JP

Public Officers attending : Agenda item II
Mr Elvis AU, JP
Assistant Director (Nature Conservation &
Infrastructure Planning)
Environmental Protection Department

Dr LEUNG Siu-fai, JP
Deputy Director of Agriculture, Fisheries and
Conservation

Mr Joseph SHAM
Assistant Director (Country & Marine Parks)
Agriculture, Fisheries and Conservation Department

Mr LEUNG Chi-hong
Senior Country Parks Officer (NW)
Agriculture, Fisheries and Conservation Department

Ms Cindy YAU
Senior Assistant Law Officer (Civil Law)
Department of Justice

Ms Lonnie NG
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Sharon CHUNG
Chief Council Secretary (1)6

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 11

Mr Fred PANG
Council Secretary (1)6

I Election of Chairman

Ms Cyd HO, the member with the highest precedence in the Council among all members of the Subcommittee present, presided over the election of Chairman of the Subcommittee. She invited nominations for the chairmanship of the Subcommittee.

2. Mr WU Chi-wai nominated Ms Cyd HO and the nomination was seconded by Dr Kenneth CHAN. Ms Cyd HO accepted the nomination. Mr WU Chi-wai, member with the second highest precedence in the Council among all members of the Subcommittee present, took over the chair and invited further nominations for the chairmanship of the Subcommittee. There

being no other nomination, Ms Cyd HO was elected Chairman of the Subcommittee. Members agreed that there was no need to elect a Deputy Chairman.

II Meeting with the Administration

(L.N. 152

-- Country Parks (Designation)
(Consolidation) (Amendment)
Order 2013

File Ref: EP CR 9/15/9

-- Legislative Council Brief

LC Paper No. LS4/13-14

-- Legal Service Division Report

LC Paper No. CB(1)162/13-14(01)

-- Marked-up copy of the Country
Parks (Designation)
(Consolidation) (Amendment)
Order 2013 prepared by the
Legal Service Division
(Restricted to members)

LC Paper No. CB(1)162/13-14(02)

-- Paper on the Country Parks
(Designation) (Consolidation)
(Amendment) Order 2013
prepared by the Legislative
Council Secretariat
(Background brief)

LC Paper No. CB(1)162/13-14(03)

-- Submission from Heung Yee
Kuk New Territories dated 25
October 2013

LC Paper No. CB(1)162/13-14(04)

-- Letter from the Sai Kung
District Council to all Hon
Members of the Legislative
Council dated 21 October 2013)

3. The Subcommittee deliberated (index of proceedings in the **Appendix**).

4. The Chairman reminded members that they should disclose the nature of any direct or indirect pecuniary interests relating to the subjects under discussion at the meeting before they spoke on the subjects.

Follow-up actions

5. The Clerk was requested to provide the following reports which covered the legal issues involved in the scrutiny of the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 for members' reference -

- (a) Report of the Subcommittee on Country Parks (Designation) (Consolidation) (Amendment) Order 2010 to the Legislative Council; and
- (b) Report of the Subcommittee to Study Issues relating to the Power of the Legislative Council to Amend Subsidiary Legislation to the House Committee meeting on 10 February 2012.

(Post-meeting note: The reports together with "President's ruling on proposed resolution to repeal the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 proposed by Hon Tanya CHAN" were circulated to members vide LC Paper No. CB(1)188/13-14 on 30 October 2013.)

6. The Administration was requested to provide the following information to address members' concerns --

- (a) the assessment criteria of the Director of Lands in respect of approval of development of small houses on private land within a country park, in particular, whether modification of the land lease for building small houses would be allowed under certain conditions and/or upon the payment of land premium;
- (b) a comparison of the rights of the landowner before and after a piece of land in the New Territories was incorporated into a country park;
- (c) the compensation mechanism for any loss, damage or cost suffered by the concerned landowner over the incorporation of his/her land into a country park (in addition to the information provided in the Legislative Council Brief);
- (d) the details of the views against the draft maps of the Sai Kung East Country Park ("SKECP") and the Tai Lam Country Park received by the Country and Marine Parks Board and the Administration's positions on these views (other than the information provided at Annex B to the Legislative Council Brief);
- (e) the reasons why statutory planning for the land at the Sai Wan Enclave could not achieve the same purpose of incorporating the Enclave into SKECP; and

- (f) the progress of the initiative of encouraging non-profit-making organizations to work with the owners of the land at the Sai Wan Enclave to make good use of their land.

(Post-meeting note: The Administration's supplementary information was circulated to members vide LC Paper No. CB(1)216/13-14(35) on 4 November 2013.)

III Any other business

Legislative timetable

7. The Subcommittee noted that the expiry date of the scrutiny period of the Country Parks (Designation) (Consolidation) (Amendment) Order 2013 ("the 2013 Amendment Order") was 13 November 2013 and the deadline for giving notice of amendment to the Amendment Order was 6 November 2013. The Subcommittee agreed that the Chairman should move a motion at the Council meeting of 6 or 13 November 2013 to extend the scrutiny period to the Council meeting of 4 December 2013.

Invitation of public views and date of next meeting

8. The Subcommittee agreed to invite the public to give views on the 2013 Amendment Order and to receive these views at the next meeting of the Subcommittee on 5 November 2013 at 4:30 pm.

Date of further meetings

9. The Chairman advised that the third and fourth meetings were scheduled for 6 and 12 November 2013 respectively, both at 9:00 am.

10. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
22 November 2013

**Proceedings of first meeting of the
Subcommittee on Country Parks
(Designation) (Consolidation) (Amendment) Order 2013
on Tuesday, 29 October 2013, at 9:00 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Election of Chairman			
000817 – 001014	Ms Cyd HO Mr WU Chi-wai Dr Kenneth CHAN	Election of Chairman	
Agenda Item II – Meeting with the Administration			
001015 – 001140	Chairman	Legislative timetable Date of next meeting	
001141 - 002244	Chairman Assistant Legal Adviser 11 (ALA11) Administration	<p>The Chairman said that legal and constitutional issues had arisen from the scrutiny of the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 ("the 2010 Amendment Order"). There were different views between the Administration and the Legislative Council ("LegCo") as to whether LegCo had the power to repeal the 2010 Amendment Order. She invited ALA11 to recapitulate the controversy over the repeal of the 2010 Amendment Order.</p> <p>ALA11's remarks that --</p> <p>(a) The 2010 Amendment Order amended the Country Parks (Designation) (Consolidation) Order (Cap. 208B) by replacing the original approved map in respect of the Clear Water Bay Country Park ("CWBCP") with a new approved map with the effect of carving out space in CWBCP for landfill purpose. A subcommittee was formed to study the 2010 Amendment Order.</p> <p>(b) During the course of study, the issue as to whether LegCo had the power to repeal an order made under section 14 of Cap. 208 (such as the 2010</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Amendment Order) had been raised.</p> <p>(c) The Administration had advised that LegCo did not have power to amend or repeal the 2010 Amendment Order as to do so would be inconsistent with the power to make the Order under section 14 of the Country Park Ordinance (Cap. 208) ("CPO").</p> <p>(d) The Legal Service Division of the LegCo Secretariat held the view that by virtue of the interpretative provisions of the Interpretation and General Clauses Ordinance (Cap. 1), the expression "amend" included "repeal". Section 28(1)(c) of Cap. 1 expressly empowered the maker of a piece of subsidiary legislation to amend it in the same manner in which it was made. It followed that as the Chief Executive ("CE") had the power to make, he also had the power to repeal. Under section 14, CE had no power to designate any area other than an area in the approved map to be a country park or to designate any area not to be a country park.</p> <p>(e) Pursuant to the decision of the subcommittee on 4 October 2010, the Chairman of the subcommittee had given notice to move a proposed resolution to repeal the 2010 Amendment Order ("the Resolution"). The President of LegCo had ruled that the Resolution was in order under the Rules of Procedure ("RoP"). The Resolution was passed at the Council meeting of 13 October 2010 and the 2010 Amendment Order had been repealed.</p> <p>The Chairman added that the Administration had not sought judicial review of the Resolution. She instructed the Clerk to</p>	<p>The Clerk to take action as in para. 5 of</p>

Time marker	Speaker	Subject(s)	Action required
		<p>circulate two relevant subcommittee reports to members for reference.</p> <p>The Chairman enquired about the Administration's position regarding the legal effect of amending/repealing the Country Parks (Designation) (Consolidation) (Amendment) Order 2013 ("the 2013 Amendment Order").</p> <p>The Administration replied that --</p> <p>(a) It maintained its position that LegCo only had the same power as the original maker of subsidiary legislation and was subject to the same statutory constraints as the original maker when exercising its power to amend a piece of subsidiary legislation under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).</p> <p>(b) As CE did not have the power to lawfully amend/repeal the 2013 Amendment Order, it followed that LegCo did not have the power to do so under section 34 of Cap. 1.</p>	the minutes
002245 – 002334	WU Chi-wai Chairman	Discussion on whether a decision made by the Subcommittee to amend/repeal the 2013 Amendment Order might be subject to judicial review	
002335 – 002833	Chairman Administration	Briefing by the Administration on the 2013 Amendment Order	
002834 – 003505	Chairman Administration Mr WU Chi-wai Mr CHAN Chi-chuen	<p>With reference to an incident which occurred in June 2010 involving unauthorized excavation works in Sai Wan ("the Sai Wan incident"), the Chairman enquired about the actions taken by the Administration to deal with the incident.</p> <p>The Administration replied that --</p> <p>(a) Unauthorized excavation works had</p>	

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		<p>been detected in 2010 on both private and Government land in Sai Wan ("the site") which fell outside the boundary of the Sai Kung East Country Park ("SKECP").</p> <p>(b) The relevant Government departments including the Agriculture, Fisheries and Conservation Department ("AFCD"), the Environmental Protection Department ("EPD") and the Lands Department ("LandsD") had investigated the incident and taken different actions in accordance with CPO, the relevant pollution control legislation and the land lease, etc.</p> <p>(c) Prosecution action had been taken against the contractor concerned which had violated the Country Parks and Special Areas Regulations by bringing into vehicles to transport construction machinery to the site via SKECP without permission from the Country and Marine Parks Authority.</p> <p>In response to the enquiries of Mr WU Chi-wai and Mr CHAN Chi-chuen, the Administration confirmed that action under CPO and its Regulations might not be relevant if the contractor involved in the Sai Wan incident had not brought into vehicles to transport the machineries to the site or had not transported them via SKECP without permission.</p>	
003506 – 004032	Mr WU Chi-wai Chairman Administration	<p>Mr WU Chi-wai enquired about the criteria for assessing whether a country park enclave was suitable to be incorporated into a country park or included in a statutory plan under the Town Planning Ordinance (Cap. 131) ("TPO").</p> <p>The Administration replied that --</p> <p>(a) The assessment criteria for designation</p>	

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		<p>of new country parks or extending country parks which had been revised and endorsed by the Country and Marine Parks Board ("CMPB") in May 2011 included conservation value, landscape and aesthetic value, recreation potential, existing scale of human settlement and development pressures, etc. Apart from these factors, the compatibility of an enclave of a country park with the natural environment of the country park was also an important factor to determine whether a country park enclave should be incorporated into a country park or included in a statutory plan under TPO.</p> <p>(b) According to the criteria, the mere existence of private land would not be taken as a determining factor for exclusion from the boundary of a country park.</p> <p>At the Chairman's request, the Administration explained the consultation and statutory process that had been gone through to come up with the proposal under the 2013 Amendment Order.</p>	
004033 – 005158	Dr Kenneth CHAN Administration	<p>Dr Kenneth CHAN sought clarification on whether incorporating private land in a country park enclave into a country park would affect indigenous villagers' rights to develop New Territories Exempted Houses ("small houses") on the land.</p> <p>The Administration replied that --</p> <p>(a) Incorporating private land into a country park would not deprive the ownership of the private land or revert the land back to the Government.</p> <p>(b) Currently, there were small houses on some of the private land within the country parks.</p>	

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		<p>(c) The "Note on the Use or Development of Land within a Country Park Enclave after Inclusion into a Country Park" ("the advisory note") prepared by CMPA set out the focus of concern on assessing applications for small house development within a country park. There were precedent cases of approval on small house application within country park areas.</p> <p>Dr CHAN's enquiries on --</p> <p>(a) whether the Administration had received any applications for small house developments on private land in a country park since the issue of the advisory note;</p> <p>(b) the status and applicability of the advisory note; and</p> <p>(c) whether the proposal to incorporate the enclaves of Kam Shan and Yuen Tun into country parks had aroused any controversy</p> <p>The Administration replied that --</p> <p>(a) No applications for small house developments on private land in a country park had been received since the issue of the advisory note.</p> <p>(b) The advisory note had been made public through AFCD's website. CMPA would consider the focus of concern set out in the note when assessing small house applications concerning land within a country park before giving its views to the District Lands Office.</p> <p>(c) The proposal to incorporate the enclaves of Kam Shan and Yuen Tun</p>	

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		into country parks had not aroused any controversy.	
005159 – 005220	Chairman	The Chairman reminded members on the requirements under RoP on declaration of interests.	
005221 – 010153	Mr CHAN Hak-kan ALA11 Chairman Administration	<p>Referring to the judicial review against CE in Council relating to the 2013 Amendment Order that had been initiated, Mr CHAN Hak-kan enquired whether the scrutiny of the Amendment Order would be affected if the applicant sought an injunctive relief.</p> <p>ALA11 advised that --</p> <p>(a) The 2013 Amendment Order was a piece of subsidiary legislation made and published in the Gazette under Cap. 1. Section 34(2) of Cap. 1 gave LegCo the power to amend any subsidiary legislation. Article 73(1) of the Basic Law provided that the powers and functions of LegCo included "to enact, amend or repeal laws".</p> <p>(b) The Subcommittee was formed to scrutinize the 2013 Amendment Order as part of the legislative process. The scrutiny should have no conflict with the court proceedings.</p> <p>(c) In the event that a court order in connection with the 2013 Amendment Order had been issued, the Subcommittee should then consider whether the scrutiny should continue.</p> <p>In response to Mr CHAN's enquiry on whether, apart from the said judicial review, the Secretariat had received any notification from any parties about the action that they would take against the 2013 Amendment Order, the Clerk replied in the negative.</p>	

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		<p>The Chairman enquired whether the Administration was aware of the scope of the judicial review proceedings that had been initiated.</p> <p>The Administration replied that --</p> <p>(a) The judicial review proceedings were initiated against the decision of CE in Council to approve the draft map of SKECP. The leave to move for the judicial review had not yet been granted by the Court.</p> <p>(b) The Subcommittee's scrutiny of the 2013 Amendment Order might continue as the Court had not granted an injunction in relation to it.</p> <p>ALA11 said that pursuant to Rule 41(2) of RoP, when members spoke at the meetings of a committee/subcommittee, reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the Chairman, might prejudice that case. However, there was not much information about the court proceedings available to the Subcommittee at this stage.</p> <p>The Chairman remarked that the discretion for her under the rule would be exercised with prudence and with reference to the issues being raised in the judicial review. However, not much information about the judicial review was available at this stage. She requested ALA11 to alert and advise her and members on the rule where and when appropriate.</p>	
010154 – 010602	Mr WU Chi-wai Administration Chairman	<p>Mr WU Chi-wai's enquiries about --</p> <p>(a) the existing uses of the private land in the enclave of Sai Wan ("the Sai Wan Enclave"); and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the current arrangements, including the charging of premium, to deal with a small house development proposal on private land where the proposed development was not permitted under the relevant land lease.</p> <p>The Administration replied that --</p> <p>(a) The 4 hectares of private land in the Sai Wan Enclave comprised mainly agricultural land and scattered village houses.</p> <p>(b) The approval of small house developments on private land was subject to the terms and conditions of the land lease concerned. Applications for lease modification were handled by LandsD.</p> <p>(c) The conditions to be imposed on the approval of applications for lease modification, including the charging of premium, were subject to the Small House Policy.</p> <p>(d) The Administration would provide information about the assessment criteria adopted by the Director of Lands in respect of approval of development of small houses on private land in a country park.</p> <p>The Chairman said that there were concerns about the transfer of the right to build small houses from indigenous villagers to developers (commonly referred to as "tao ding"). If such transfer was made for developers to build a large-scale small house development, public access to the areas around the development might become difficult. She asked the Administration to pay heed to such developments.</p>	<p>The Administration to take action as in para. 6(a) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
010603 – 011223	Mr CHAN Han-pan Chairman Administration	<p>Mr CHAN Han-pan's enquiries on --</p> <ul style="list-style-type: none"> (a) whether prosecution action could be taken against the contractor involved in the Sai Wan incident if the excavation works had been done by hand instead of machinery; (b) whether the Administration would allow excavation works on private land within a country park and transportation of machinery to the site concerned; (c) the difference in the rights and interests of the landowner before and after his/her land was incorporated into a country park; and (d) the compensation mechanism for any loss, damage or cost suffered by the concerned landowner over the incorporation of his/her land into a country park. <p>The Administration replied that following the inclusion of a country park enclave into a country park under CPO, AFCD would enhance the management and conservation of the enclave and protect it against incompatible development. It would provide written response to Mr CHAN's questions at (c) and (d) above.</p> <p>Mr CHAN's further enquiry on whether the enhanced management and conservation measures to be taken by AFCD within country park areas would apply to private land in a country park.</p> <p>The Administration replied that –</p> <ul style="list-style-type: none"> (a) In 2011, the Management Agreement ("MA") Scheme under the New Nature Conservation Policy had been extended to cover private land in country park enclaves as well as private land within 	<p>The Administration to take action as in paras. 6(b) and 6(c) of the minutes</p>

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		<p>country parks in order to enhance the conservation of the country parks.</p> <p>(b) Under the MA Scheme, funding support would be granted under the Environment and Conservation Fund to enable competent non-profit making organizations to enter into management agreements with landowners. The Administration would also assist villagers interested in applying for the scheme for conservation activities which were compatible with the land use and objectives of the country parks in the private land of the country parks.</p> <p>Recalling that the Administration had undertaken to assist the owners of land at the Sai Wan Enclave in making good use of their land in collaboration with non-profit-making organizations, the Chairman requested the Administration to provide information about the progress of the initiative.</p>	<p>The Administration to take action as in para. 6(f) of the minutes</p>
011224 – 012154	Mr Christopher CHUNG Administration	<p>Mr Christopher CHUNG's queries on --</p> <p>(a) whether there were alternatives other than incorporating the Sai Wan Enclave into SKECP that could achieve the conservative objectives and cater for the needs and aspirations of the affected villagers; and</p> <p>(b) why an inclusion of Sai Wan Enclave into a statutory plan could not achieve the same purpose of incorporating the enclave into SKECP.</p> <p>The Administration replied that --</p> <p>(a) The initiative to incorporate enclaves into country parks was undertaken in response to huge public concerns on the protection of enclaves following the Sai Wan incident.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) The Administration had all along carefully assessed each of the enclaves in Hong Kong against the established criteria to determine whether it would be suitable for designation as part of a country park.</p> <p>(c) The Sai Wan Enclave had a high landscape and aesthetic value which complemented the overall naturalness and the landscape of SKECP and was considered highly suitable for country park designation. Including the Sai Wan Enclave into a statutory plan could not fully achieve the conservation objectives.</p> <p>(d) Following the incorporation of a country park enclave into a country park, the Administration could improve the village environment, implement more active management measures including refuse collection, patrols and law enforcement, provision of country park facilities such as information boards, warning signs, camp sites, etc., enhance the overall conservation and landscape value of the area, as well as increase its enjoyment and amenities.</p> <p>(e) The Administration had consulted local stakeholders including the Sai Kung District Council and its Task Force on Planning Issues related to Tai Long Sai Wan ("the Task Force") on the proposed incorporation of Sai Wan into SKECP. It would follow up the recommendations of the Task Force.</p>	
012155 – 012518	Mr James TIEN Administration	In response to Mr James TIEN's enquiry about the objecting views received against the draft maps of SKECP and the Tai Lam Country Park, the Administration highlighted some of such views set out at Annex B to the LegCo Brief and undertook to provide more details.	The Administration to take action as in para. 6(d) of the minutes

Time marker	Speaker	Subject(s)	Action required
012519 – 012805	Ir Dr LO Wai-kwok Chairman	<p>Ir Dr LO Kwok-wai's views that --</p> <p>(a) The Administration had not fully addressed the concerns on why including the Sai Wan Enclave into a statutory plan was not a better alternative than incorporating it into SKECP.</p> <p>(b) Statutory town plans prepared under TPO would help set out clearly the land use framework of the land concerned and make provision for planning enforcement.</p> <p>(c) Due regard should be given to the concerns expressed by the existing residents at the Sai Wan Enclave on the incorporation of the enclave into SKECP.</p> <p>The Chairman requested the Administration to provide written response to Ir Dr LO's concerns.</p>	The Administration to take action as in para. 6(e) of the minutes
012806 – 013027	Chairman	<p>Invitation of public views</p> <p>Meeting arrangements</p>	