

立法會
Legislative Council

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

**Background brief
prepared by the Legislative Council Secretariat**

Purpose

This paper provides background information on the Country Parks (Designation) (Consolidation) (Amendment) Order 2013 ("the Order"), and gives a brief account of the views and concerns expressed by Members on country park enclaves.

Background

Regulation of country park enclaves

2. Country park enclaves are sites that are surrounded by or are adjacent to country parks, but are not part of the country parks. Most of the country park enclaves comprise both private and government land. Control on developments on private land at the country park enclaves relies on the terms and conditions of the land leases, the Buildings Ordinance (Cap. 123) and, if available, Development Permission Area ("DPA") Plans or Outline Zoning Plans ("OZPs") under the Town Planning Ordinance (Cap. 131) ("the TPO").

3. Unauthorized excavation works were detected on both private land and government land of the country park enclave of Tai Long Sai Wan ("Sai Wan") in June 2010. This triggered significant public concerns on the protection of country park enclaves in Hong Kong. At that time, there were 77 country park enclaves, of which 23 had already been covered by OZPs under the TPO. In the 2010-11 Policy Address, the Government undertook to either include the remaining 54 enclaves into country parks, or determine their proper uses through statutory planning to meet conservation and social development needs.

4. To take forward the policy, the Agriculture, Fisheries and Conservation Department ("AFCD") and the Planning Department carry out assessments on different enclaves having regard to their situations. Relevant factors such as conservation values, landscape and aesthetic values, geographical locations, existing scale of human settlement and development pressures are taken into consideration. For enclaves which are assessed to be suitable for incorporation into country parks, AFCD will submit the designation proposals to the Country and Marine Parks Board ("CMPB") for consideration and will consult the relevant stakeholders before initiating the relevant statutory process.

5. After an assessment based on the principles and criteria for designating country parks, the first batch of three country park enclaves at Sai Wan, Kam Shan and Yuen Tun have been identified for inclusion into the Sai Kung East Country Park ("SKECP"), the Kam Shan Country Park ("KSCP") and the Tai Lam Country Park ("TLCP") respectively. The Director of Agriculture, Fisheries and Conservation, acting as the Country and Marine Parks Authority ("the Authority") under the Country Park Ordinance (Cap. 208) ("the CPO"), invoked the statutory procedures under the CPO to incorporate the three enclaves into the country parks concerned. In consultation with CMPB, the Authority prepared draft maps of SKECP, KSCP and TLCP for public inspection for a period of 60 days from 26 October to 24 December 2012, and other procedures for designation of country parks were also followed.

The Sai Wan Enclave

6. Situated on the eastern coast of the Sai Kung peninsula, Sai Wan is an enclave of SKECP. According to the Administration, 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.

7. Since the detection of unauthorized excavation works in Sai Wan in June 2010, relevant government bureaux/departments ("B/Ds") had taken different control actions under their purviews to protect the natural environment of Sai Wan. Taking into account the views of relevant B/Ds, the Secretary for Development applied development control to Sai Wan in July 2010 by designating the area as a DPA under the TPO such that unauthorized development would be subject to enforcement actions by the Planning Authority according to the provisions of the TPO and might constitute an offence. During the public inspection of the draft Sai Wan DPA plan in 2010, a total of 350 representations were received by the Town Planning Board ("TPB"), among which about 300 supported the protection and conservation of the area against incompatible uses. The general public also had strong expectation on

preserving the natural environment of Sai Wan against development that might spoil the natural scenic beauty of the area.

8. On the proposed incorporation of Sai Wan into SKECP, during the engagement exercise with relevant stakeholders prior to the initiation of the statutory public inspection and objection period under the CPO, Heung Yee Kuk ("HYK") raised objection to the proposal as they perceived the proposal as infringing on their traditional and land rights and limiting the development potentials of the localities. The Village Representatives of Sai Wan, Sai Kung Rural Committee, and Sai Kung District Council ("SKDC") expressed similar concerns as HYK. During the 60-day of public inspection of the draft maps of SKECP, KSCP and TLCP, SKDC submitted a letter to both the Chief Executive ("CE") and the Authority expressing their objection to the incorporation of Sai Wan into SKECP.

9. On 15 October 2013, the Secretariat received a letter from a solicitors' firm stating that judicial review proceedings have been initiated against the decision of CE in Council to approve the draft map of SKECP.

The Kam Shan and Yuen Tun Enclaves

10. As for the proposal to incorporate the enclave of Kam Shan into KSCP and the enclave of Yuen Tun into TLCP, the respective District Councils (i.e. the Sha Tin District Council and the Tsuen Wan District Council) in general supported the proposal. There was, however, objection from the rural community to the incorporation of the Kam Shan Enclave into KSCP.

The Order

11. The Order was made by CE under section 14 of the CPO after consultation with the Executive Council¹. The Order amends the Country Parks (Designation) (Consolidation) Order (Cap. 208 sub. leg. B) by replacing with new approved maps the original approved maps in respect of the following three country parks –

¹ A recent example of orders made by CE under section 14 of Cap. 208 is the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 ("the 2010 Amendment Order"). The 2010 Amendment Order amended the Country Parks (Designation) (Consolidation) Order (Cap. 208B) by replacing the original approved map in respect of 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 Amendment Order 2010. During the course of study, the issue as to whether the Legislative Council ("LegCo") had the power to repeal an order made under section 14 of Cap. 208 was considered. Hon Tanya CHAN, Chairman of the Subcommittee, proposed on behalf of the Subcommittee to repeal the Amendment Order 2010. The proposed amendment which the President ruled to be in order was passed by LegCo at its meeting on 13 October 2010. Members may refer to the report of the subcommittee issued vide LC Paper No. CB(1)3017/09-10 (hyperlinked in the **Appendix**) for background information.

- (a) KSCP (Plan No. CP/KS1^A approved on 14 June 1977 by the Governor in Council to be replaced by Plan No. CP/KS^B approved on 7 May 2013 by CE in Council);
- (b) SKECP (Plan No. CP/SK(E)^A approved on 17 January 1978 by the Governor in Council to be replaced by Plan No. CP/SK(E)^B approved on 7 May 2013 by CE in Council); and
- (c) TLCP (map CP/TL^E approved on 21 March 1995 by the Governor in Council to be replaced by Plan No. CP/TL^F approved on 7 May 2013 by CE in Council).

Deliberation by Members

12. In view of the wide public concern over the protection of country park enclaves against incompatible development, the Panel on Development and the Panel on Environmental Affairs held a joint meeting on 28 July 2010 to discuss the related matters.

13. Members in general were concerned about the destruction of conservation value of sites in the New Territories to facilitate development. They stressed the need for the Administration to strike a balance between development and environmental protection as well as to take a more proactive approach in protecting sites with high conservation value rather than reacting to complaints.

14. Members generally supported nature conservation and opined that the Administration should endeavour to uphold environmental principles and map out more proactive measures, including legislative initiatives to avoid further damages and expedite the process of designation of sites with conservation value as DPAs. Relevant B/Ds should hold regular quarterly meetings to discuss measures in collaboration with environmental groups. Meanwhile, a priority list of conservation sites together with a timeframe for preparation of respective OZPs, and necessary policies and guidelines to protect the natural environment for the enjoyment of the people should be worked out. Publicity efforts should also be stepped up to promote public awareness of the need to protect sites with conservation value. There was also a need to review the nature conservation policy, country parks policy, rural planning policy, and small house policy, etc.

15. A member suggested that the Government should buy out sites with conservation value as otherwise the sites would be acquired by developers. The

District Land Office should also work out a watch list to monitor the land transaction of ecologically sensitive areas and their subsequent development.

16. Noting the conflict between development and environmental protection, some members considered that TPB should take into account land ownership in land planning. They were of the view that landowners should have the rights to seek compensation if development of their land was frozen. A fund should therefore be set up to compensate owners who lost the rights to develop their land due to conservation. Other measures, including land resumption, land exchange, and transfer of plot ratio etc, should be considered to compensate landowners. A land resumption mechanism similar to that of the Urban Renewal Authority should apply to rural areas as this could also help to resolve landowners' objection against conservation.

17. Some members suggested that the Administration should provide a list of the scenic sites where natural landscape should be protected so that with greater transparency, landowners would be made fully aware of whether development of these sites would be allowed subject to planning control. Consideration could be given to reinstating the practice adopted in the 1970s whereby land exchange in the form of "Letter B" would be provided to landowners who lost their development rights due to conservation needs.

18. In response to members' concerns, the Administration advised that it was fully committed to protecting the natural environment. Apart from reviewing the feasibility of extending the CPO to country park enclaves, the Administration would consider the feasibility of designating these enclaves as DPAs. The designation of DPAs and the subsequent preparation of OZPs would help strike a balance between the needs of nature conservation and protecting the rights of private landowners. There would be more public participation in the planning process. In view of the increasing development pressure being faced in these enclaves, AFCD, in conjunction with other B/Ds concerned, had been monitoring closely different enclaves and would review the adequacy of existing protection against incompatible development having regard to the circumstances of each of the enclaves. Consideration would also be given to providing incentives to facilitate landowners to make use of their land for conservation activities.

19. As requested, the Administration provided for members' reference a list of country park enclaves together with information on whether the sites had already been covered by OZPs. The information was set out in LC Paper No. CB(1)2721/09-10(01)), which is hyperlinked in the **Appendix**.

Latest development

20. The Order was gazetted on 11 October 2013 and tabled in the Council on 16 October 2013. At the House Committee meeting on 18 October 2013, Members agreed that a subcommittee should be formed to examine the Order.

Relevant papers

21. A list of relevant papers is set out in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
28 October 2013

Appendix

List of relevant papers

Council/ Committee	Date of meeting	Paper
<p>Panel on Development and Panel on Environmental Affairs</p>	<p>28 July 2010</p>	<p>Administration's paper on "Follow-up actions arising from the Sai Wan incident" (LC Paper No. CB(1)2656/09-10(01)) http://www.legco.gov.hk/yr09-10/english/panels/ea/papers/devea0728cb1-2656-1-e.pdf</p> <p>Administration's response to the follow-up actions arising from the discussion at the meeting on 28 July 2010 (LC Paper No. CB(1)2721/09-10(01)) http://www.legco.gov.hk/yr09-10/chinese/panels/ea/papers/devea0728cb1-2721-1-c.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)459/10-11) http://www.legco.gov.hk/yr09-10/english/panels/ea/minutes/devea20100728.pdf</p>
<p>Legislative Council</p>	<p>13 October 2010</p>	<p>Report of the Subcommittee on Country Parks (Designation) (Consolidation) (Amendment) Order 2010 (LC Paper No. CB(1)3017/09-10) http://www.legco.gov.hk/yr09-10/english/hc/sub_leg/sc09/reports/sc091013cb1-3017-e.pdf</p>
<p>Panel on Development</p>	<p>--</p>	<p>A letter from Dr Hon Kenneth CHAN Ka-lok dated 24 October 2012 regarding the conservation of country park enclaves (Chinese version only) (LC Paper No. CB(1)73/12-13(01)) http://www.legco.gov.hk/yr12-13/chinese/panels/dev/papers/dev1030cb1-73-1-c.pdf</p> <p>Administrations' response to Dr Hon Kenneth CHAN Ka-lok's letter dated 24 October 2012 (LC Paper No. CB(1)180/12-13(01)) http://www.legco.gov.hk/yr12-13/english/panels/dev/papers/devcb1-180-1-e.pdf</p>

Council/ Committee	Date of meeting	Paper
Legislative Council	16 October 2013	Legislative Council Brief issued by the Environmental Protection Department and the Agriculture, Fisheries and Conservation Department on 17 July 2013 (EP CR 9/15/9) http://www.legco.gov.hk/yr13-14/english/subleg/brief/152_brf.pdf