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Paper for House Committee meeting on 8 October 2010

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

Purpose

This paper reports on the deliberations of the Subcommittee on Country Parks (Designation) (Consolidation) (Amendment) Order 2010.

Background

Management of municipal solid waste in Hong Kong

2. To address the serious and imminent waste problem in Hong Kong in a holistic manner, the Administration published "A Policy Framework for the Management of Municipal Solid Waste (2005-2014)" (the Policy Framework) in December 2005, which set out a comprehensive waste management strategy for the next ten years with clear targets and timetables. The initiatives in the Policy Framework are related to avoidance and reduction at source, waste recovery and recycling as well as bulk reduction of waste.

3. At present, Hong Kong relies on three strategic landfills to dispose of municipal solid waste (MSW) (i.e. domestic and commercial and industrial (C&I) waste), viz, the South East New Territories (SENT) Landfill, the North East New Territories Landfill and West New Territories Landfill. According to the Administration, the three strategic landfills would start to approach their capacity one by one from about mid to late 2010s and their extensions would be necessary and essential for waste management.

The proposed extension of the SENT Landfill

4. As it is estimated that the SENT Landfill would be full by around 2013 or 2014, the Environmental Protection Department (EPD) proposes to expand it by 50 hectares (ha) to extend its lifespan by another six years. The 50 ha extension covers 30 ha of piggy-backing over the existing landfill, 15 ha of the adjoining

Tseung Kwan O (TKO) Area 137, and an encroachment of about 5 ha of land of the Clear Water Bay Country Park (CWBCP).

Country and Marine Parks Board

5. EPD consulted the Country and Marine Parks Board (CMPB) several times since December 2005 on the proposed encroachment. In September 2008, the CMPB considered that in principle country park area should not be used for landfill purpose. Nevertheless, the Board noted that there was a genuine need to extend the lifespan of the existing SENT Landfill so that EPD could have time to plan and develop other waste management facilities to address the imminent waste problem in Hong Kong. Given that there was no better alternative, the Board accepted unwillingly the proposed encroachment of 5 ha of land into the CWBCP for the SENT Landfill extension. Considering that landfilling is not compatible with the use of country park land, CMPB recommended the excision of the proposed encroached area from the approved map of the CWBCP, and a draft replacement map was made available for public inspection in November 2008. Having taken into account all the views received, CMPB considered it more appropriate to excise the land from CWBCP for landfill extension purpose and rejected all objections in March 2009.

6. In response to CMPB's recommendation, EPD agreed to provide resources to the Country and Marine Parks Authority to implement the following compensatory measures for the loss of 5 ha of country park land –

- (a) ecological enhancement by inter-planting of native species in some 5 ha of exotic woodland in the CWBCP to support various forms of wildlife;
- (b) upgrading of educational displays in the CWBCP Visitor Centre;
- (c) setting up of interpretive signs at Tai Hang Tun to provide better education facilities for park visitors; and
- (d) provision of guided tours at the CWBCP Visitor Centre for the public.

Sai Kung District Council

7. Sai Kung District Council (SKDC) and the local community had been consulted on the proposed extension project on a number of occasions since April 2004. SKDC expressed grave concern over the odour, traffic and environmental hygiene problems arising from the operation of the existing SENT Landfill, and on this basis objected to the SENT Landfill extension. SKDC set up a dedicated working group to investigate odour complaints and identify odour sources in the area, with support through an independent odour study by consultants together with academics from the University of Hong Kong and the Hong Kong Polytechnic

University (HKPU). The study commenced in May 2009 and EPD has been supporting SKDC in the study by providing technical inputs.

Environmental Impact Assessment

8. An environmental impact assessment (EIA)¹ was conducted to assess the impacts of the SENT Landfill extension on air quality (including odour), ecology, noise, water quality, waste management, landfill gas hazard as well as visual and landscape aspects. The EIA Report was submitted by EPD for approval by the EIA Authority in December 2007. On odour impact, the EIA recommended a number of mitigation measures including: –

- (a) limiting active tipping area to 30m x 40m;
- (b) no disposal of sludge from sewage treatment works (STWs);
- (c) covering non-active areas by impermeable liners;
- (d) enclosing the entire weighbridge area;
- (e) enhancing the landfill gas management system by installing vertical and horizontal landfill gas extraction well;
- (f) providing mobile cover to special waste trenches; and
- (g) enhancing odour patrols by independent odour panelists, etc.

As regards ecological impact, the following mitigation measures were recommended: –

- (a) adoption of surface water, groundwater, leachate and landfill gas management systems;
- (b) good construction practices and provision of off-site screen planting near the country park hiking trail;
- (c) mixed woodland planting of some 18 ha of the extension site, including a compensation for the loss of 6 ha of shrubland due to the landfill extension; and
- (d) provision of a mosaic of grassland and shrubland in the remaining areas of the extension site.

9. The assessment concluded that, with the implementation of recommended mitigation measures, the anticipated environmental impacts were acceptable and

¹ The study on air quality (including odour), noise and visual impacts covered the TKO area (including the LOHAS Park) and the Siu Sai Wan area on Hong Kong Island.

would meet the relevant requirements under the EIA Ordinance (Cap. 499). The EIA Report was approved on 6 May 2008 and the Environmental Permit for the SENT Landfill extension was granted on 5 August 2008. The amended TKO Outline Zoning Plan (OZP) made to facilitate the implementation of the SENT Landfill extension was gazetted on 7 May 2010 for public inspection for a period of two months. The amendments included, inter alia, rezoning of 15 ha of land in TKO Area 137 and extending the boundary of TKO OZP to incorporate a 5 ha site adjoining Area 137 to be excised from CWBCP and zoning the site to "Open Space". According to the Administration, the Town Planning Board would consider amendments to the TKO OZP (Plan No. S/TKO/17) in November 2010.

Country Parks (Designation) (Consolidation) (Amendment) Order 2010

10. This Amendment Order is made by the Chief Executive under section 14 of the Country Parks Ordinance (Cap. 208) (CPO), after consultation with the Executive Council, to amend the Country Parks (Designation) (Consolidation) Order (Cap. 208 sub. leg. B) by replacing the original approved map in respect of CWBCP with a new approved map, i.e. map CP/CWB^D.

11. The Amendment Order was gazetted and tabled on 4 and 9 June 2010 respectively and is to come into operation on 1 November 2010 in accordance with section 1 of the Order.

The Subcommittee

12. At the House Committee meeting held on 11 June 2010, Members agreed to form a subcommittee to study the Amendment Order. Hon Tanya CHAN was elected chairman of the Subcommittee, and the membership list of the Subcommittee is in **Appendix I**.

13. To allow time for the Subcommittee to study the subsidiary legislation, a resolution was passed at the Council meeting on 30 June 2010 to extend the scrutiny period of the subsidiary legislation to 13 October 2010. The Subcommittee has held six meetings with the Administration, one of which was to receive views from deputations and members of the public. A list of the organizations/individuals that have submitted views to the Subcommittee is in **Appendix II**. The Subcommittee also conducted a site visit to the SENT Landfill. Some SKDC members, including members of the dedicated working group on odour monitoring, joined the visit.

Deliberations of the Subcommittee

14. The Subcommittee notes that TKO residents and green groups in general object to the proposed extension of the SENT Landfill because of environmental

concerns and the proposed encroachment into CWBCP. The Subcommittee's deliberations are summarized in the ensuing paragraphs.

Environmental impacts arising from the operation of the existing SENT Landfill

Odour management and control measures

15. Deputations representing residents living in TKO complained about the persistent odour nuisance arising from the operation of the SENT Landfill. The Subcommittee notes that the number of complaints about odour problem from TKO Town South received by EPD in 2007, 2008, 2009 and 2010 (up to the end of September 2010) were 459, 943, 629 and 610² respectively, and most of them were received in hot and rainy months from May to September. In this connection, Hon Miriam LAU has commented that the Administration should have taken appropriate measures to combat the odour problem at the inception stage of the SENT Landfill extension.

16. EPD has advised that further odour management and control measures have been implemented, such as covering the tipping face with 300 mm thick layer of soil and then with a layer of cement-based material called "Posi-shell Cover"³ sprayed on top at the end of daily waste reception process during rainy season; covering the non-tipping areas with temporary impermeable liner; setting up fixed de-odourizers at the boundary and entrance/exit of the landfill; providing additional mobile de-odourizers at the tipping areas; putting a movable cover on the special waste trench; installing extra landfill gas extraction wells and mobile landfill gas flaring units; and restoring the landfill progressively to form a natural landscape. Details of these measures are given in the Administration's paper to the Subcommittee (CB(1)2469/09-10(02)).

17. Hon Miriam LAU has requested the Administration to consider ceasing the disposal of sludge from STWs at the SENT Landfill with immediate effect in order to abate the bad odour. The Administration explains that while the relevant EIA has recommended that sludge from STWs should not be disposed at the SENT Landfill extension, all the three strategic landfills in Hong Kong are currently required to receive sludge from STWs until the commissioning of the Sludge Treatment Facility in 2013. At present, the arrival times of sludge tankers have been restricted so as to limit the time of exposure of sludge before they were mixed with solid waste.

18. According to the Administration, the odour in TKO town area could be coming from other sources. A district inter-departmental working group, comprising representatives from EPD, the Drainage Services Department, Food and

² 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 is broadly similar to the number of complaints from TKO Town South for the same period in 2009 which was 610.

³ It is a new technology yet to be adopted commonly by overseas landfills.

Environmental Hygiene Department (FEHD), District Lands Office, Housing Department, Highways Department and the Hong Kong Police Force, was established by the District Officer of Sai Kung. The inter-departmental working group has identified potential sources of odour, and the responsible departments have taken corresponding actions such as cleaning of storm water and sewage systems, cleaning of roads affected by waste skips and dripping leachate, maintaining cleanliness of refuse collection vehicles (RCVs) etc.

Monitoring of odour control measures

19. Hon KAM Nai-wai has expressed concern that while the Administration appears rather proactive in implementing odour control measures in order to solicit support for the proposed extension, it may not have monitored the effectiveness of these measures in a comprehensive manner. The Administration has advised that apart from requiring the landfill operator to carry out environmental monitoring in accordance with the contract requirements, EPD site staff also patrols the landfill four times a day. Moreover, the independent consultants carry out regular daily odour inspections on weekdays, and conduct joint inspections with the landfill operator weekly to the waste tipping areas, general site area, perimeter access road, weighbridge area and entrance/exit of the landfill.

20. According to the Administration, in August 2007, EPD conducted a high level odour detection survey at three different residential estates in TKO Town South area. The survey was conducted 24 hours a day continuously for a period of 14 days by specially trained tertiary students of environmental science academic background. It was found that in 99.8% of the time during the 336 survey hours, "no odour" could be detected at the monitoring locations and the remaining 0.2% of time (i.e. about 40 minutes) garbage, sewage, sludge and other odours such as faeces, seawater and rotten eggs could be detected.

21. The Subcommittee notes that EPD has, at the request of SKDC, installed electronic odour detection system (i.e. e-nose) at the SENT Landfill and Ocean Shores in mid July 2010 to help identify the sources and nature of odour reported in the TKO Town area. In this connection, Hon Emily LAU has asked the Administration what conclusion will be drawn if the findings of the e-nose turn out to be different from those detected by local residents. Hon IP Wai-ming is of the opinion that it is more practical for the Administration to gauge the views of local residents in assessing the odour impact instead. The Administration has advised that all information including the odour reports from local residents, data collected by human noses during odour patrols, and also the findings of the e-nose monitoring will be used for formulating the strategy and mitigation measures for combating the odour problem. The Subcommittee notes that no direct relationship is observed between the data collected by the two e-noses over the first five weeks' operation. About 5% of time recorded by the e-nose at Ocean Shores detected was similar to odour relating to wastewater, including sewage from TKO STW, foul water from Ocean Shores, sewage screenings from STWs and landfill leachate. To have a better understanding of the nature and source of odours in TKO area,

EPD has proposed to install additional e-noses at locations between the landfill and Ocean Shores, such as the LOHAS Park. Hon Miriam LAU questions the effectiveness of the e-nose monitoring since residents in Ocean Shores have been complaining about odour problems for some ten years but drainage/sewage problem within the development only emerged from 2009. Hon CHAN Hak-kan and Hon Ronny TONG urge the Administration to tackle the odour problem irrespective of the source.

Refuse collection vehicles (RCVs)

22. During the site visit to the SENT Landfill on 26 July 2010, Subcommittee members detected mild odour at the weighbridge area and entrance/exit of the landfill where RCVs gathered. They also found that the odour nuisance at Wan Po Road was more serious than that at the landfill, which was primarily originated from RCVs delivering waste to the landfill. TKO residents have expressed grave concern that the odour from these vehicles has persistent adverse impact on the living environment. To tackle this problem, EPD has undertaken to upgrade the existing wheel washing facility for RCVs to a full-body washing facility to ensure that the entire body of every RCV is washed mandatorily before leaving the landfill. Pending commissioning of the facility within October 2010, the SENT Landfill contractor has since early September 2010 set up an interim facility to provide free manual vehicle-body cleaning service to about ten private RCVs each day. Given that some private RCVs may undergo full-body washing only once a year before annual check-up, Hon Cyd HO urges that additional resources be allocated to provide the services to more private RCVs. The Administration has advised that it has worked out with the landfill contractor to double the manpower for the washing service and provide two washing bays. As regards Hon Tanya CHAN's concern about measures to ensure the cleanliness of Wan Po Road, the SENT Landfill contractor has commenced from end August 2010 additional flushing and sweeping of Wan Po Road (around six round-trips daily from 8:00 am to mid-night) between the landfill entrance and the Hang Hau roundabout.

23. The Subcommittee notes that a SKDC member has complained about the odour nuisance from loaded RCVs stationed at the public car parks near the LOHAS Park. Hon Emily LAU has suggested the Administration to designate an area within the SENT Landfill for the loaded RCVs to park overnight. EPD has advised that owing to practicality considerations and liability concern such as potential fire hazards, a landfill site is not considered an appropriate place for providing overnight parking of private RCVs. Nevertheless, EPD has discussed with the landfill contractor to overcome the constraints in designating an area with the landfill within October 2010 for overnight parking of up to 30 RCVs. In exploring other measures to accommodate those loaded RCVs requiring overnight parking, EPD has identified two public car parks in the TKO Industrial Estate adjacent to LOHAS Park and EPD will continue to liaise with the Transport Department for possible diversion of the concerned RCVs to park at these car parks.

24. The Subcommittee notes that FEHD has adopted a compaction and enclosed type design with tailgate cover for around 70% of its in-house RCVs while private RCVs largely use the compaction plates to form the enclosed vehicle body. At present, there are no statutory requirements to mandate RCVs to equip with tailgate cover and wastewater sump tank. While it is a longer term measure to introduce the statutory requirements, EPD will encourage private waste collectors to retrofit existing RCVs or to include such devices on newly purchased RCVs. FEHD has agreed to consider including more specific provisions in the outsourced contracts requiring contractors to provide such devices in their RCVs. At the request of Hon IP Wai-ming, the Administration has agreed to liaise further with the trade and consider the feasibility of subsidizing private waste collection operators in retrofitting their refuse collection vehicles. The implementation timetable would be subject to the operational need.

25. Private waste collectors are reminded through regular Landfill Users Liaison Meetings to keep their vehicles clean and properly maintained, and not to cause any nuisance arising from spattering waste and dripping leachate. Property management companies and commercial establishments will also be encouraged to include in the service contract the best practices for maintaining and operating the RCVs. EPD will educate refuse collection service users as well as the general public to use thicker rubbish bags for disposal of waste to avoid dripping of leachate from food waste. Under the Public Health and Municipal Services Ordinance (Cap. 132), FEHD may, with sufficient evidence, institute prosecutions against people concerned in case of RCVs causing sanitary nuisances.

26. Hon Miriam LAU has expressed concern that the Administration seems to have advised the private waster collectors that they may have to travel an extra distance of hundreds of thousand kilometers to divert the waste to the other two strategic landfills if the proposed SENT Landfill extension will not proceed. The Administration indicates that there is no other choice but the Government will strive to reduce and recycle waste with a view to reducing the demand for landfill capacity.

Other environmental impact control measures

27. Hon Albert CHAN and Hon WONG Yung-kan have expressed concern about the effectiveness of the pest control measures at the landfill and the possible impact on nearby waters and marine ecology. According to the Administration, the landfill contractor applies environmental-friendly pesticides/insecticides to the landfill site on a weekly or monthly basis. In the past three years, no mosquito was seen around the landfill site during site inspections and the amount of flies at the landfill was not considered a nuisance.

28. On traffic impact, the Subcommittee notes that according to the relevant traffic impact assessment completed in 2008, the number of vehicles going to the SENT Landfill extension will be similar to the current traffic flow to the landfill. However, as the design traffic flow at some junctions along Wan Po Road will run

unsatisfactorily due to the planned developments in TKO area, EPD will carry out some improvement works at two junctions in order to alleviate the problem before commissioning the SENT Landfill extension. As regards the concern raised by local residents about the noise caused by RCVs, the Administration highlights that various measures have been taken by the developer of the LOHAS Park to mitigate the noise impacts, such as adopting low noise road surface for the section of Wan Po Road along the development.

Excision of land from Clear Water Bay Country Park

29. A number of green groups have expressed objection to the proposed encroachment of about 5 ha of land of CWBCP, and pointed out that section 4 of CPO provides that it shall be the duty of the Country and Marine Parks Authority "to encourage the use and development of country parks for recreation and tourism, to protect the vegetation and wild life inside them and to preserve and maintain sites [...] of historic or cultural significance within them". Noting that the proposed site covers one of the two historic remains of volcano in Hong Kong that should be properly preserved, the green groups consider the proposed encroachment, if approved, would set a very bad example for the younger generation that country park land may be used for landfilling. Given the proposed 50 ha extension project will involve 15 ha of the adjoining TKO Area 137, there is a suggestion that an additional 5 ha of land from Area 137 may be designated for landfill purpose thereby obviating the excision of land from CWBCP.

30. The Administration has stressed that it attaches great importance to protecting the country parks and endeavours to maintain their integrity. However, after thorough consideration of all alternatives and options, the Administration concluded that if the SENT Landfill is not extended, the resulting environmental impact would be very substantial, and that there would be no better way than extending the SENT Landfill into CWBCP to solve the imminent waste problem. Among the five options⁴ studied, the present one is the only option to provide the highest void capacity for meeting the future need. As there is a strong demand for land in TKO Area 137, the suggestion of taking further land from Area 137 for the purpose is considered not feasible. The Government therefore considers that there is an overriding need to excise land from CWBCP for landfilling purpose.

31. The green groups have also expressed grave concern that there is no compensation for the loss of 5 ha of land in CWBCP. They consider that the planned designation of about 600 ha of land at Robin's Nest in North District as country park could not compensate the land loss in CWBCP. They urge that under the no-net-loss principle, at least the same amount of new country park land should be designated in the vicinity of CWBCP as compensation. Otherwise, the proposed excision will set a bad precedent and damage the integrity of the country parks system in Hong Kong. The Subcommittee notes that the Administration does not have a policy of area-for-area compensation at present. However, the

⁴ The layout plans of these five options are given in Annex 2 to CB(1)2647/09-10(02).

Administration has considered two potential sites in the vicinity of the CWBCP, i.e. Razor Hill and Siu Chik Sha, for extending the country park. Unfortunately, both of them are considered unsuitable owing to their problem of accessibility and low ecological and amenity values. Some green groups have suggested several potential sites to be considered for inclusion as part of the CWBCP, and the Government agrees to assess their suitability against the set of established criteria, namely, landscape quality, recreation potential, conservation value, size, land status, and effectiveness of management etc.

32. Members note that CMPB have met on 21 September 2010 to consider the potential sites for designation as part of CWBCP. Having compared the assessments of potential sites, CMPB considered the upper slope above the Tai Au Mun Road of about 15 ha suitable for incorporation into the boundary of CWBCP to replenish the loss of 5 ha land for the SENT Landfill extension. Converting the site into country park land will involve amendments to the Clear Water Bay Peninsula South OZP and the replacement of approved map of CWBCP. Hon Tanya CHAN is pleased to note about the new designation and urges the Government to make it a policy requiring area-for-area compensation when country park lands are designated for other uses.

Justifications and alternatives to extending the SENT Landfill

33. The Subcommittee shares the observation of a SKDC member that as the solid waste actually disposed of at the SENT Landfill has steadily decreased since 2006 and fallen below the estimated landfill demand cited in the EIA Report for the landfill extension project, it is no longer justifiable to extend the SENT Landfill. The Administration explains that the original estimation of territory-wide demand of around 200 million tonnes of landfill space required from 2006 to 2025 was outdated as the estimation was made before mid-2000s when waste reduction measures, including the implementation of construction waste disposal charging scheme in January 2006, were not fully in place. Although the annual waste disposal quantity shows a gradually declining trend since mid-2000s, the trend will likely reverse due to population and economic growth, and also the increase of infrastructural works in the coming years. The Administration's current forecast is that the three existing landfills will be exhausted one by one from mid to late 2010s, starting with the SENT Landfill which will be exhausted in 2013 or 2014 due to its regional demand and limited remaining capacity. Apart from the proposed extension, the Administration has no plan to further expand the area of the SENT Landfill.

34. The Subcommittee notes that some TKO residents and green groups do not support the SENT Landfill extension project on the ground that it is not a sustainable approach of waste management. Some Subcommittee members, including Hon Miriam LAU, Hon Cyd HO and Hon WONG Yung-kan share the view that the Government should consider other alternatives and new technologies to manage MSW (e.g. treated by incineration or disposal at isolated islands), and reduce food waste disposal at landfills (e.g. via organic treatment).

35. The Administration has stressed that, like other developed countries and cities, Hong Kong still need landfills as the final repositories for non-recyclable waste, inert waste and waste residues after treatment. Apart from a series of initiatives on waste reduction and recycling set out in the Policy Framework, the Administration is developing a proposal to introduce MSW charging in Hong Kong to further promote waste reduction and recovery. In order to substantially reduce the volume of waste that requires disposal, the Integrated Waste Management Facilities will be developed with advance incineration with energy recovery as the core technology. It is expected that the final site for the incineration facilities will be decided by the end of 2010 with a view to commissioning the works in mid-2010s.

36. The Subcommittee notes that food waste constitutes some 37% of MSW disposed at the landfills in 2009. The Administration is planning to develop the Organic Waste Treatment Facilities (OWTF) in phases⁵ to treat source separated food waste from the C&I sectors so as to recover useful resources from the waste and to reduce landfill disposal. Hon Cyd HO urges the Administration to consider partnering with social enterprises in re-distributing left-over food for the needy to reduce the amount of food waste requiring landfill disposal. According to EPD, it has set up the Food Waste Recycling Partnership Scheme with the C&I sectors in the end of 2009 for promotion of good food waste management practices. EPD will explore with the C&I sectors about the possibility of collecting left-over food from them by non-government organizations⁶ for meaningful distribution to the needy as well as reduction in food waste disposal.

Views of the Subcommittee

37. A number of Subcommittee members, including Hon Miriam LAU, Hon Emily LAU, Hon Cyd HO, Hon IP Wai-ming and Hon CHAN Hak-kan, urge the Administration to repeal the Amendment Order and re-introduce it after the measures taken to address the odour problem have proven to be effective or after securing the support of SKDC and local residents by drawing up concrete odour abatement measures with implementation timetable. Hon IP Wai-ming, Hon Emily LAU and Hon KAM Nai-wai consider it erroneous planning for new residential developments to be built near the SENT Landfill, as evidenced by the high number of complaints about odour problem lodged by LOHAS Park. Hon Emily LAU and Hon Cyd HO urge the Administration to proactively discuss with SKDC the provision of compensatory facilities in TKO for district betterment. Hon Cyd HO and Hon Tanya CHAN considered it unfair to TKO residents if no

⁵ The first phase of OWTF in Siu Ho Wan of Lantau Island could handle about 200 tonnes of source-separated food waste each day and is planned for commissioning in 2013/2014, whereas the second phase of OWTF in Sha Ling of North District will have a treatment capacity of 300 tonnes per day.

⁶ Such as those operating food banks/programmes that distribute food to the needy in Hong Kong, or acquiring left-over good from food companies, hotels or markets etc. The Social Welfare Department provides subsidies to some of these organizations.

compensation with district betterment facilities will be made.

38. At the Subcommittee meeting on 27 September 2010, members noted that there was not much progress during summer to combat the odour problem in TKO and SKDC maintains its objection to the proposed extension of the SENT Landfill remained unchanged. At the meeting, the Subcommittee passed a motion requesting the Chief Executive to repeal the Amendment Order. The Government has responded that as there is an urgent need to extend the SENT Landfill to address the imminent waste problem, the Government considers it undesirable to repeal the Amendment Order.

39. The Administration has also raised concern on the legal implications of repealing the Amendment Order which sought to replace the original approved map of CWBCP with a new map CP/CWB^D approved by CE in Council. As the new map has been deposited in the Land Registry in accordance with section 13(4) of CPO, there may be a problem of repealing the Order unless another new map would be available to replace CP/CWB^D at the Land Registry. In this connection, Subcommittee members share the view of the legal adviser to the Subcommittee that the map CP/CWB^D deposited at the Land Registry is meant for public inspection and the depositing of the map itself has no legislative effect. If the Amendment Order is repealed before the commencement date, i.e. 1 November 2010, the original approved map remains effective.

40. The Subcommittee further notes the Administration's view that as the 5 ha of land to be excised from CWBCP has been zoned as "Open Space" under the amendments to the TKO OZP, repealing the Order will not affect the statutory procedure under the Town Planning Ordinance (Cap. 131) as the designation of "Open Space" allows the piece of land to be used for country park or landfilling purpose.

41. At the meeting on 4 October 2010, the Subcommittee passed the following motion:

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

Upon the request of Subcommittee members, the Administration confirms that the inter-departmental working group will continue to implement the various odour control measures as undertaken even if the Amendment Order is eventually repealed.

42. Subsequent to the meeting on 4 October 2010, the Administration has provided its further view on the legal implications concerning repeal of the Amendment Order. According to the Administration, LegCo when exercising its power to amend under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) has the same power as the original maker of subsidiary legislation and is subject to the same statutory constraints as the original maker. It is the view of the Administration that CE does not have the power to lawfully repeal the Amendment Order. It follows that LegCo does not have power to repeal the Amendment Order. If the Amendment Order is repealed, the repeal would have no effect in law and the Amendment Order would remain in force. Details of the Administration's view (CB(1)2976/09-10(01)) is given in **Appendix III**.

43. The Subcommittee held an urgent meeting on 6 October 2010 to consider and discuss the issues given rise by the legal position taken by the Administration. Members note the comments of Legal Adviser (LA) of LegCo that by virtue of the interpretive provisions of Cap. 1, the expression "amend" includes "repeal". Section 34(2) of Cap. 1 gives LegCo the power to amend, and therefore repeal, any subsidiary legislation. LA also states that the limitations imposed by section 14 of CPO only apply to CE in making an order of designation. As the commencement date of the Amendment Order is 1 November 2010, any repeal of the Amendment Order before that date will not be a repeal of any designation. If the Amendment Order is repealed at the Council meeting on 13 October 2010, the designation made in respect of plan CP/CWB^B approved on 18 September 1979 by the former Governor in Council remains in full force. Comments provided by the LegCo's Legal Service Division (LS99/09-10) are given in **Appendix IV**.

44. The Subcommittee has also invited the Administration to clearly explain its position and legal considerations. Subcommittee members are gravely concerned that the Administration has not raised these issues until the Subcommittee has decided to move a motion to repeal the Amendment Order, and such an approach has adversely affected the relationship between the Executive and the Legislature. Several Members including Hon Ronny TONG, Hon Cyd HO, Hon Emily LAU, Hon Albert CHAN, Hon KAM Nai-wai and Hon IP Wai-ming consider that the Government's legal view seems to suggest that CE but not LegCo has the ultimate power to make laws, and that LegCo may not have the power to vet or amend certain subsidiary legislation subject to the negative vetting procedure. As this would have constitutional and legal implications, these Members express grave reservations about the Government's legal position on the matter. Hon Cyd HO requests the Administration to provide a list of subsidiary legislation that, in the view of the Administration, could not be repealed by LegCo under the negative vetting procedure. Upon Hon Emily LAU's enquiry about the action to be taken by the Administration if the motion to repeal the Amendment Order is passed at the Council meeting on 13 October 2010, LA advises that the Administration has to comply with section 34(5) of Cap. 1 which states that "[a]ny resolution passed by

the Legislative Council in accordance with section 34 of Cap. 1 shall be published in the Gazette not later than 14 days after the passing thereof or within such further period as the Chief Executive may allow in any particular case".

45. After deliberations, the Subcommittee agrees to proceed with its original decision of the Chairman's moving a motion at the Council meeting on 13 October 2010 to repeal the Amendment Order. Members also note that CE has the discretion to adjust the commencement date of the Amendment Order. Hon Tanya CHAN conveys the view of Hon Miriam LAU who is unable to attend the meeting on 6 October 2010 that should the Subcommittee not proceed with repealing the Amendment Order, she would propose the Subcommittee moving a motion to amend the commencement date to 1 November 2014. Hon Emily LAU expresses the view that Members belonging to the Democratic Party would not agree to allowing the Amendment Order to come into operation automatically upon gazettal without being vetted by LegCo.

Proposed repeal of the Amendment Order

46. The Subcommittee decided on 4 October 2010 that the Chairman should, on behalf of the Subcommittee, move a motion to repeal the Amendment Order at the Council meeting on 13 October 2010. The decision is reaffirmed on 6 October 2010.

Advice sought

47. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
6 October 2010

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

Membership list

Chairman

Hon Tanya CHAN

Members

Hon WONG Yung-kan, SBS, JP

Hon Miriam LAU Kin-yee, 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

(Total: 9 members)

Clerk

Ms Debbie YAU

Legal Adviser

Mr KAU Kin-wah

Date

22 June 2010

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

**List of organizations/individuals that have provided views
to the Subcommittee**

1. Choi Ming Court Management Office
2. Designing Hong Kong Ltd
3. Environmental Contractors Management Association *
4. Friends of Sai Kung
5. Friends of the Earth (HK) *
6. HKFTU New Territories East Community Update *
7. HKFTU Tseung Kwan O District Service Department
8. Hong Kong Bird Watching Society
9. Hong Kong Green Nature Union
10. Kadoorie Farm and Botanic Garden
11. Le Prestige Guest Services Centre, LOHAS Park *
12. Liberal Party (NT East)
13. Mr Andy NI Bingwen
14. Mr CHEUNG Kwok-keung, Sai Kung District Council member *
15. Mr Gary FAN Kwok-wai, Sai Kung District Council member *
16. Mr LAU King-nam *
17. Mr LEUNG Koon-wah
18. Mr LEUNG Li, Sai Kung District Council member *
19. Mr Thomas HUI *
20. Mr William TIN Wai-ling
21. MTR Corporation Limited *
22. Ocean Shores Owners' Committee
23. Owners' Committee of The Capital
24. Owners' Committee of The Grandiose
25. Sai Kung District Council
26. Sai Kung Tseung Kwan O Environmental Association
27. The Conservancy Association
28. WWF Hong Kong
29. 終極關閉將軍澳堆填區大聯盟
30. 關注東南堆填區聯席會議 *
31. A member of the public *
32. A resident of Tseung Kwan O Plaza *
33. A group of owners' corporations and residents in Tseung Kwan O*
34. A group of Sai Kung District Council members and individuals*
35. Residential Owners Sub-Committee and residents of Metro Town*
36. Residents of Le Point*
37. Residents of Le Prestige*

* Provide submissions only

**Legal implications concerning repeal of the
Country Parks (Designation)(Consolidation)(Amendment) Order 2010**

Under section 14 of the Country Parks Ordinance (Cap. 208), where the CE in Council has approved a draft map under section 13 of the Ordinance submitted to it by the Authority in accordance with the statutory procedures in Part III of the Ordinance, and the map has been deposited in the Land Registry, the CE shall make an order designating the area shown in the approved map to be a country park. The provision is cast in mandatory terms. Although the CE has some discretion as to the timing of the order and the commencement date, he is bound to make the order.

2. LegCo when acting under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) has the same power as the original maker of subsidiary legislation but is subject to the same statutory constraints as the original maker.

3. It would not be a lawful exercise of power on the part of CE to repeal the Designation Order without taking account of the statutory requirements of or for purposes other than the statutory purposes of Cap. 208. Based on an analysis of the statutory requirements and the purposes of the Ordinance, the CE himself does not have the power to lawfully repeal the Designation Order. It follows that the LegCo does not have power to do so under section 34 of Cap. 1 and to do so would be inconsistent with the power to make such order in the first place.

4. There are general powers under Cap. 1. In particular, section 28(1)(c) of Cap. 1 provides that where an ordinance confers power on a person to make subsidiary legislation, the subsidiary legislation may be amended by the same person in the same manner by and in which it was made. For this purpose "amend" in general includes "repeal". However, any exercise of the powers under this provision would need to take account of the statutory requirements of the original empowering ordinance and could only be for the statutory purposes of that ordinance.

5. If LegCo approved a motion to repeal the Designation Order, the legal implications would be as follows –

- (1) The repeal would have no effect in law and the Designation Order would remain in force.
- (2) The map approved by the CE in Council and deposited in the Land Registry in accordance with section 13(4) would remain in the Land Registry unless and until replaced by the statutory procedure under section 15 of Cap 208.

Department of Justice
October 2010

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立法會

Legislative Council

LC Paper No.LS99/09-10

**Comments on the paper of the Department of Justice
on Repeal of the Country Park (Designation)(Consolidation)
(Amendment) Order 2010**

The views expressed in the paper of the Department of Justice (DoJ) (LC Paper No. CB(1)2976/09-10(01)) turn on the interpretation of section 14 of the Country Parks Ordinance (Cap. 208). The Administration's arguments rely heavily on taking the word "shall" to have imposed on the Chief Executive (CE) a statutory duty to designate the area shown in the approved map to be a country park. Section 14 provides—

“Where the Chief Executive in Council has approved a draft map under section 13 and it has been deposited in the Land Registry, the Chief Executive shall, by order in the Gazette, designate the area shown in the approved map to be a country park.”

2. It is clear that before CE could make any order to designate, two conditions must have been fulfilled, namely, (a) a draft map has been approved under section 13; and (b) the approved map has been deposited in the Land Registry. Under section 14 CE has 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. In this sense, CE has no discretion in the designation. For this matter, CE must make the designation by order in the Gazette. These are the explicit limitations imposed by section 14.

3. The procedural provision for the exercise of the power of designation under section 14 is the making of an order in the Gazette. Such an order is subsidiary legislation and therefore comes within the ambit of section 34 of the Interpretation and General Clauses Ordinance (Cap.1). The question is the scope of this power to make an order.

4. By virtue of the interpretive provisions of Cap.1, the expression “amend” includes “repeal”. Section 28(1)(c) of Cap. 1 expressly empowers the maker of a piece of subsidiary legislation to amend it in the same manner in which it was made. It follows that as CE has the power to make, he also has the power to repeal. The limitations imposed by section 14 only require that the consequence of a repeal is not to affect any designation of country park.

5. Section 34(2) of Cap.1 gives the Legislative Council (LegCo) power to amend, and therefore repeal, any subsidiary legislation consistent with the power to make the subsidiary legislation. Hence, LegCo has the same power to repeal subject to the same limitation as stated above. There is nothing in section 14 that rules out repeal so long as the limitations set out in paragraph 2 are not infringed. The arguments of DoJ would render the power of negative vetting by LegCo nugatory.

6. Further, it must not be overlooked that the Country Park (Designation)(Consolidation)(Amendment) Order 2010 (the Amendment Order) has not yet come into operation. The commencement date stated in section 1 is 1 November 2010. This means that the designation made under the Amendment Order is not yet effective. Any repeal of the Amendment Order will not be a repeal of any designation. The designation made in respect of plan CP/CWB^B approved on 18 September 1979 by Governor in Council remains in full force.

7. On the basis of the above analysis, unless more compelling evidence is advanced, it is submitted that DoJ has not made out its case that CE, and consequently LegCo, has no power to repeal the Amendment Order.

Prepared by

Legal Service Division
Legislative Council Secretariat
5 October 2010