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**Subcommittee on Country Parks (Designation) (Consolidation)
(Amendment) Order 2017**

Background brief

Purpose

This paper provides background information on the Country Parks (Designation) (Consolidation) (Amendment) Order 2017 ("the Amendment Order"), and gives a brief account of the views and concerns expressed by Members on measures to protect the environments in country park enclaves.

Background

Country park enclaves

2. Country park enclaves are sites that are surrounded by or adjacent to country parks designated under the Country Parks Ordinance (Cap. 208) ("CPO"), but are left outside the boundaries of those country parks. Some of the country park enclaves comprise both private and Government lands. Control of developments on private land at 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) ("TPO").¹

¹ The purpose of DPA Plans is to provide interim planning control and development guidance for selected areas pending the preparation of OZPs. A DPA Plan is effective for a period of three years from the date of first publication unless the effective period is extended by the Chief Executive.

Protection of country park enclaves

3. In June 2010, unauthorized excavation works were detected on the private and Government lands at Sai Wan, an enclave of the Sai Kung East Country Park ("the Sai Wan enclave"). 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 TPO. For the other 54 enclaves, the Administration undertook in the 2010-2011 Policy Address to either include them into country parks or determine their proper uses through statutory planning to meet conservation and social development needs. At present, amongst the 54 enclaves, six of them have been or are being incorporated into country parks while 29 enclaves are now covered by OZPs. The Agriculture, Fisheries and Conservation Department ("AFCD") will continue to assess the suitability of the remaining 19 enclaves for incorporation into country parks. According to the Administration, when suitable enclaves have been identified, AFCD will consult the Country and Marine Parks Board ("CMPB") and relevant stakeholders on the incorporation proposals in accordance with established procedures as appropriate.

Incorporation of enclaves at Sai Wan, Kam Shan and Yuen Tun into country parks

4. The Administration had identified the first batch of three country park enclaves at Sai Wan, Kam Shan and Yuen Tun for inclusion into the Sai Kung East Country Park, Kam Shan Country Park and Tai Lam Country Park respectively. After completing the statutory procedures under CPO, the Administration gazetted the Country Parks (Designation) (Consolidation) (Amendment) Order 2013 ("the 2013 Amendment Order") and tabled it at the Legislative Council ("LegCo") in October 2013. Came into operation on 30 December 2013, the 2013 Amendment Order amended the Country Parks (Designation) (Consolidation) Order (Cap. 208B) by replacing the original approved maps with new approved maps, in which the three enclaves above had been incorporated into the boundaries of the respective country parks.

Proposed incorporation of enclaves at Fan Kei Tok, Sai Lau Kong and the site near Nam Shan into country parks

5. At the end of 2015, AFCD activated the relevant statutory procedures for incorporating three other enclaves, which are situated in Fan Kei Tok, Sai Lau Kong and the site near Nam Shan, into country parks. In accordance with the provisions of CPO, the Director of AFCD, acting as the Country and Marine Parks Authority ("the Authority"), prepared the draft maps of the Plover Cove Country Park ("PCCP") and Lantau South Country Park ("LSCP"). The draft

maps were available for public inspection from 30 September to 28 November 2016.

The enclaves at Fan Kei Tok and Sai Lau Kong

6. Fan Kei Tok is an inland enclave located north of Wu Kau Tang and is wholly surrounded by PCCP. Sai Lau Kong is an enclave at a headland bounded by Yan Chau Tong Marine Park to the east and Ngau Shi Wu Wan to the west and adjoining PCCP to the south. According to the Administration, no stakeholders raised objection to or adverse comments on the proposal to incorporate these two enclaves into PCCP during the Authority's consultation with them, but some stakeholders reminded the Authority to duly respect the rights of Government Land Licence ("GLL") holders in Sai Lau Kong. On 13 February 2017, CMPB heard an objection to the draft map of PCCP received during the public inspection period, and rejected the objection in whole.

The enclave at the site near Nam Shan

7. The enclave at the site near Nam Shan is located on a slope east of Yi Tung Shan and is enclosed by LSCP. Stakeholders did not raise any objection to or have major comments on the proposal to incorporate the enclave into LSCP during the Authority's consultation with them. At the request of the South Lantau Rural Committee, the Authority clarified in writing whether the rights of GLL holders would remain the same after the designation. There was no objection against the draft map of LSCP during the public inspection period.

The Country Parks (Designation) (Consolidation) (Amendment) Order 2017

8. The Amendment Order is made by the Chief Executive ("CE") under section 14 of CPO after consultation with the Executive Council.² It amends the Country Parks (Designation) (Consolidation) Order by replacing the original approved maps with new approved maps in respect of PCCP and LSCP:

² The issue of whether LegCo has the power to repeal an order made by CE under section 14 of CPO was considered by the subcommittee formed to study the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 ("the 2010 Amendment Order"). Hon Tanya CHAN, Chairman of the subcommittee, proposed on behalf of the subcommittee to repeal the 2010 Amendment Order. 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 (LC Paper No. [CB\(1\)3017/09-10](#)) for more information.

- (a) PCCP: Plan No. CP/PC^B approved on 21 March 1978 by the Governor in Council is to be replaced by Plan No. CP/PC^C approved on 25 April 2017 by CE in Council; and
- (b) LSCP: plan CP/LT(S)^A approved on 4 April 1978 by the Governor in Council is to be replaced by Plan No. CP/LT(S)^B approved on 25 April 2017 by CE in Council.

9. The Amendment Order will take effect on 1 December 2017. After the amendments, the country park enclaves at Fan Kei Tok and Sai Lau Kong will be incorporated into PCCP and the country park enclave near Nam Shan will be incorporated into LSCP. The legal effect of the amendments is that the control and management of the two country parks as shown in the new approved maps will be vested in the Authority.

Major views and concerns expressed by Members

10. The Panel on Development and the Panel on Environmental Affairs held a joint meeting on 28 July 2010 to discuss measures to protect the Sai Wan enclave and other country park enclaves. A subcommittee was formed to study the 2013 Amendment Order. In addition, during examination of the Estimates of Expenditure 2017-2018, Members enquired about the latest progress in enhancing protection of the environments in country park enclaves. The major views and concerns expressed by Members are summarized in the ensuing paragraphs.

Criteria for consideration of inclusion of enclaves into country parks

11. In view of the unauthorized excavation works at the Sai Wan enclave, Members in general considered that the Administration should map out more proactive measures to protect country park enclaves, and step up publicity efforts to enhance public awareness of the need to protect sites with high conservation values. It was also suggested that relevant bureaux and departments should hold regular meetings with environmental groups to discuss environmental protection measures to be implemented in country park enclaves.

12. The Administration advised that AFCD would assess whether the enclaves were suitable for inclusion into country parks in accordance with the principles and criteria for the designation of new country parks or expansion of

existing country parks agreed by CMPB.³ Such principles and criteria included conservation value, landscape and aesthetic value, recreation potential, size, proximity to existing country parks, land status and land use compatibility, and other relevant considerations.

Alternative measures to protect a country park enclave

13. Some Members queried why the Administration had adopted different ways to control the uses of lands in different country park enclaves (i.e. covering the enclaves with DPA Plans/OZPs or incorporating them into country parks). They held the view that the preparation of DPA Plans/OZPs would be adequate in controlling the uses of lands on the sites concerned.

14. Some other Members, however, had reservation on applying statutory planning under TPO to country park enclaves. They expressed concern that some indigenous villagers might transfer their rights to build "small houses" to developers, thereby enabling large-scale residential developments to take place in areas zoned for "Village Type Development" in the enclaves.⁴

15. The Administration explained that if an enclave was incorporated into a country park, the Authority would allocate resources for habitat and amenities improvement, thereby increasing the site's aesthetic value. By contrast, although statutory town plans prepared under TPO would set out the land use framework and make provision for planning enforcement, the Planning Department or the Town Planning Board would not allocate resources to sites covered by statutory town plans for habitat and amenities improvement. Regular management of the sites like patrol and refuse collection would also fall outside their ambits.

³ According to the LegCo Brief on the 2013 Amendment Order, a revised set of principles and criteria for designation of new country parks or extending country parks was unanimously endorsed by CMPB in May 2011. According to the revised principles and criteria, while Government land is preferred when a country park is designated, the mere existence of private land will not be taken as a determining factor for exclusion from the boundary of a country park. If the use of private land is compatible with the country park setting, it should be incorporated into the country park.

⁴ Commonly known as "small houses", the village houses built by indigenous villagers under the New Territories Small House Policy are a kind of New Territories Exempted Houses, and are subject to the control of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121).

Management of country parks

16. Members requested the Administration to elaborate how it would improve the protection and management of an enclave after its incorporation into a country park, and explain whether this would bring improvements to the living environment of local villagers.

17. The Administration advised that, once an enclave was incorporated into a country park, the Authority would take active management of the area concerned. AFCD had dedicated law enforcement staff, i.e. the Park Rangers, to carry out regular patrols and surveillance in country parks. If suspected cases of unauthorized developments were detected in country parks, AFCD would take enforcement actions under CPO or refer such cases to the relevant departments as appropriate for follow up actions to be taken in accordance with relevant legislation or lease conditions. Regarding benefits brought to local villagers, the Authority would arrange vegetation management and refuse collection services in country parks, and provide technical support if villagers wished to resume farming on leased agricultural lands. If necessary, the Authority would also assist in improving village roads to facilitate villagers' access or use of village vehicles.

Land ownership and compensation issues

18. Members enquired whether the incorporation of a private land into a country park would lead to changes in land ownership and restrictions on land development, and whether affected landowners would be compensated for any associated loss, damages or costs. Some Members suggested that the Administration should put in place a compensation mechanism similar to that under the Land Resumption Ordinance (Cap. 124) for conservation of rural areas.

19. The Administration responded that incorporating a private land into a country park was by no means depriving anyone of the ownership of the private land or reverting the land back to the Government. Upon designation of an enclave as a country park area, if the Authority was of the opinion that any use or proposed use of, or any new development on, any leased land within the site would substantially reduce the enjoyment and amenities of the country park as such, he might request the appropriate Land Authority to exercise the powers conferred by CPO. The Land Authority might then require the occupier to discontinue or modify a use, prohibit the occupier from proceeding with the proposed use, or modify the proposed use. If such use was permitted by any lease under which the land was held, any aggrieved occupiers could object, appeal or seek compensation according to the procedures prescribed in CPO. Save in the circumstances described above, no compensation would be paid to the owner of, or to any person interested in, any land because it was situated

within or is affected by a country park. As land resumption for nature conservation purposes would have significant resource implications due to the huge areas of land involved, the Administration did not consider it an appropriate option at this stage.

Relevant motion and questions moved/raised at Council meetings

20. At the Council meetings of 9 October 2013, 16 October 2013, 14 May 2014 and 18 November 2015, Hon WU Chi-wai, Dr Hon Kenneth CHAN and Hon CHAN Yuen-han respectively raised questions on country park enclaves. Issues covered in the questions include the timetable for incorporation of enclaves into country parks, the consultation process of the proposals to incorporate enclaves into country parks, enforcement actions against unauthorized uses of lands in enclaves, etc. At the Council meeting of 4 December 2013, Hon WU Chi-wai moved a motion about the policy on enclaves. The motion was negated. The questions, the Administration's replies to the questions, and the wording of the motion above are hyperlinked in the **Appendix**.

Latest development

21. At the House Committee meeting on 6 October 2017, Members agreed to form a subcommittee to study the Amendment Order.

Relevant papers

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

**Subcommittee on Country Parks (Designation) (Consolidation)
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List of relevant papers

Date	Event	Paper
June – October 2010	Subcommittee on Country Parks (Designation) (Consolidation) (Amendment) Order 2010	Report of the Subcommittee (LC Paper No. CB(1)3017/09-10)
28 July 2010	Joint meeting of Panel on Development and Panel on Environmental Affairs	Administration's paper on "Follow-up actions arising from the Sai Wan incident" (LC Paper No. CB(1)2656/09-10(01)) Administration's follow-up paper (LC Paper No. CB(1)2721/09-10(01)) Minutes of meeting (LC Paper No. CB(1)459/10-11)
16 October 2013	The Country Parks (Designation) (Consolidation) (Amendment) Order 2013 was tabled at the Legislative Council	Country Parks (Designation) (Consolidation) (Amendment) Order 2013 Legislative Council Brief (File Ref.: EP CR 9/15/9) Legal Service Division Report (LC Paper No. LS4/13-14)
October – November 2013	Subcommittee on Country Parks (Designation) (Consolidation) (Amendment) Order 2013	Report of the Subcommittee (LC Paper No. CB(1)372/13-14)
4 December 2013	Council meeting	Motion moved by Hon WU Chi-wai

Date	Event	Paper
5 April 2017	Special meeting of Finance Committee for examination of Estimates of Expenditure 2017-2018	Written questions raised by Members and Administration's replies (Reply serial numbers: ENB011, 013, 014, 127, 134, 160, 182, 197, 230 and 234)
12 July 2017	The Country Parks (Designation) (Consolidation) (Amendment) Order 2017 was tabled at the Legislative Council	Country Parks (Designation) (Consolidation) (Amendment) Order 2017 Legislative Council Brief (File Ref.: EP CR 9/15/6) Legal Service Division Report (LC Paper No. LS99/16-17)

Hyperlinks to relevant Council Questions:

Date	Council Question
9 October 2013	Press release on Council question (oral) raised by Hon WU Chi-wai
16 October 2013	Press release on Council question (written) raised by Dr Hon Kenneth CHAN
14 May 2014	Press release on Council question (written) raised by Hon WU Chi-wai
18 November 2015	Press release on Council question (written) raised by Hon CHAN Yuen-han