

Submission to LegCo for 5<sup>th</sup> November 2013.

Breaches of Country Park Enclave Policy has contributed to defective new strategy for excessive V zones in Country Park Enclaves.

Notes for LegCo Meeting on Country Park Enclave Policy

1. Development Bureau comments by Paul Chan on 9<sup>th</sup> September 2013 and 16<sup>th</sup> October 2013 on development in the Country Parks and our countryside, which covers about 70% of Hong Kong, when seen in context with Planning Department's draft plans this year providing hugely expanded V zones in Country Park Enclaves, show that Development Bureau and **PD and some sectors have devised a new strategy to greatly increase Small Houses in Country Park Enclaves, which subvert the policy objective of the Country Park Enclave Policy of May 2011.**
2. **The Enclave Policy Objective** was to protect against "immediate development threats" to the countryside by according priority for protection whilst the Enclaves are assessed for Country Park extension according to principles and criteria. The precedent case was Tai Long Sai Wan which was made a DPA in 2010 to provide stop gap protection and then gazetted for CP in October 2012.
3. Instead of following this precedent and the Enclave Policy, only a few, about 3 Enclaves have been considered and assessed for Country Park Extension, whereas **the majority of the Enclaves are being processed by PD as DPA for OZP and with greatly expanded areas of V zone which will cause immediate development threats on a larger scale.**
4. **This new strategy must stop** pending the Country and Marine Parks Authority and Board and AFCD together with all relevant NGO stakeholders assessing the suitability of the Enclaves for CP extension under the principles and criteria in the Enclave Policy. The relevant Enclaves can be first protected as DPA as a stopgap protection. If the Board and Authority decides the DPA Enclave is suitable for CP Extension then it is protected pending CP gazettal as in the Tai Long Sai Wan case. It is only after this process is completed, and the Enclave is rejected for CP extension because it does not fit the criteria, that the PD has the need to make the DPA/Enclaves into OZP.
5. **This has not been the process.** Instead, departments have not been assessing all the Enclaves for Country Park Extensions as a priority under the Enclave Policy, but they have been helping PD assess for OZP for their expanding Small House Enclave Strategy instead.
6. **In so doing the Development Bureau/PD are undermining the integrity of the Country Parks as a whole.** It was the Policy Objective of the Enclave Policy to prevent this threat being caused by development by assessing each Enclave under the principles and criteria of the Enclave Policy and then

having Country Park extensions. The DB/PD are increasing the scale of the threats to the integrity of the Country Parks as a whole by planning for greatly expanded V zones in those Enclaves they are making into OZP.

7. Even worse, as PD well knows, the land in the expanded V zones often coincides with land already sold to outsiders and development companies so when PD gives this land development value, the land cannot legitimately be made into Small Houses for genuine need for Indigenous Villagers. **The new Strategy is thus facilitating future breaches of the Small House policy.**
8. **The new Strategy will encourage a new wave of Small House cancer into the best countryside of Hong Kong, namely the Enclaves surrounded by Country Park, directly contrary to the objectives of the Enclave Policy.**
9. **Special safeguards and conditions are needed and the Strategy needs to be stopped until such are implemented. The draft OZP needs to be shelved and the DPA extended for a year to enable all Departments to do their jobs according to law and the Enclave Policy.**
10. **It must be accepted as principle and policy that the Enclave Policy has precedence and priority over the DB/PD Small House Strategy for Country Parks.** The Enclave Policy is a planning policy for the countryside providing a **presumption against development in Country Park Enclaves** so as to protect the integrity of the Country Parks as a whole. Although the Country Parks Ordinance does not permit new developments in existing Country Parks, this situation is akin to the Harbour, another precious natural asset of Hong Kong, which is protected by the need for any proponent to prove **an overriding public need for the development in or near the protected area.**
11. **The Policy Address of 2013** with its declarations for protection of our Country Parks, Enclaves, and areas of high conservation value and compliance with our conservation obligations under the Convention on Biological Diversity must be implemented.
12. **The Way Forward with Safeguards and conditions could be as follows.**
13. Further to the policy and principles for Country Park Enclaves set out above, **the Enclave Policy will be taken forward** with prudent criteria and management to conserve, whilst maintaining the status quo on Country Parks and zoning and taking up enforcement pending decisions and evidence for best use of areas. **The new strategy of expanding V zones in Country Park Enclaves will be frozen and V zones limited to existing Building Lots which may have building rights.**

14. Country Parks are viewed by the public as a whole piece of contiguous countryside, the same holistic way the Enclave Policy views them, even though there may be un protected Enclaves therein. Any loss of Enclaves to development will need to be justified and compensated for or mitigated for. **A system of countryside compensation will need to be in place and land exchange can play a part in this give and take.**
15. **The Country Park Enclaves need to be assessed or re-assessed whether or not they are suitable Country Park extensions based on the objective of the Enclave Policy, to protect against development pressures in Enclaves,** not with the objective of providing MORE land for V zones.
16. **The assessment of suitability of each Enclave must be done with surveys and reports in a full and transparent manner** using the appropriate principles and criteria so public participation is engaged as required by CBD standards. It is wrong if such decisions have been made internally by Government alone. It is not adequate that the Country and Marine Parks Board considers and decides upon the assessments in the absence of public information and participation.
17. **Suitable Enclaves for Country Park extension can be made into DPA as a stopgap measure to provide protection such as in Tai Long Sai Wan Country Park Extension.**
18. **Village Layout Plans are needed now from PD for their OZP so that EIA reports can be published on the likely adverse impacts and consequences on the Enclaves themselves and the Integrity of the Country Parks as a Whole, in cases where an Enclave is rejected for Country Park extension.** If there is a proved need for many Small Houses there will be cumulative impacts of effluent discharges leading to a need for Sewage Treatment Plants. If there is a need for Roads or other damaging infrastructure, the cumulative impact needs to be planned and assessed in advance with Village Layout Plans.
19. **The assessment of impacts from OZP must include the impacts on Country Park visitors, walkers facing large private developments, Sewage Treatment Plants and the fumes and disturbance of vehicles on roads instead of the current scenery, freedom of movement and peace and quiet of the wilder parts of our countryside.**
20. **Management Plans by AFCD and EPD and others to protect the Country Parks against the impacts are needed now so that TPB and PD can quantify the costs and workloads as part of the compensation and mitigation needed for letting the cancer of Small Houses into the Enclaves.**

21. **Special protection needed for Country Park Enclaves.** For those Enclaves decided to be not suitable for Country Park Extension but become OZP, they will be at special risk of adverse impacts and the integrity of the Country Parks as a whole will be at risk. This is especially the case where expanded V zones are to be provided by Planning Department. There must be no expansion unless there is proved actual need for expansion. For those Enclaves which are deemed suitable for OZP, not CP, the land must be mostly CA with building of Small Houses to be Column 2 uses requiring approval by TPB to provide some degree of transparency and control. The precedent would be the final OZP for Tai Long Wan in 2001, see OZP (S/SK-TLW/W5, and see Case Studies below.
22. The Small House Policy has been abused by cases of misrepresentation and false declarations whereby IV applicants are used to front developments by others and which have been described and reported through the court system. **There is a need for measures to be implemented to detect and prevent schemes involving false declarations and misrepresentations** as seen in the cases of Chung Mui Teck v Hang Tak Buddhist Hall, CACV 20/2001, Court of Appeal 22<sup>nd</sup> May 2001, and Cheung Chi Fai v Wan Hing Ping HCA 193/2002, A.Cheung J, 17<sup>th</sup> November 2004. This must not be permitted to continue to happen in Enclaves as it will lead to greater damage to the integrity of the Parks as a whole. **A fairer system requires a higher standard of proof of genuine need for a Small House for own use.** In particular the **actual needs** of Indigenous Villagers will now require to be proved, it is not sensible to make V zoning decisions on “demands” or wants from interested parties which are not actual proved “needs”. **Certification of proof of Need and Residence in each Small House is now required.**
23. DLO have lost control over the Small Houses in the NT generally and a new regime which is transparent and fair to all HK residents is needed. **The Town Planning Board needs to become the body responsible for considering applications and imposing conditions to protect the land in Country Parks.** More control is needed over permissions for Small House and over fake farming or works on land done in the pretence of agriculture when in fact it is actually part of site clearance or unauthorized site formation and drainage works done by developer landowners or their agents. **Building works and Farming should now be Column 2 in the Schedules requiring Town Planning Board approval.**
24. The Small House Policy has become unsustainable and unfair partly because most of the grants are on sold to outsiders. **Restraints on alienation of ancestral or inherited village land should be enforced so that Small Houses remain within the ownership of the Indigenous Villagers as far as possible and not sold to outsiders for profit.** In this way future Indigenous Villager generations are not prevented from living in their home village by even more sales by the present generation. The “demand” for Small Houses

will be for the genuine “need” of IVs who wish to live in their village so the supply will be controlled by IV need, not speculative outsider demands. This will match the old rules of customary law in South China where much ancestral or inherited land was held on trusts as custodians of the land for future generations and descendants and sale or alienation to outsiders was only permitted in cases of grave hardship such as famine. Adequate investigation is needed so that the TPB has evidence to assess whether land granted under the Small House may be on-sold in each case.

25. **In all this, all existing property development rights will be preserved.** There are now safeguards to ensure fairness and compliance with the purpose and intention of the original Small House Policy.
26. These will be combined with a **series of new Certificates of compliance** to ensure that laws, regulations and standards which are often not followed for Small Houses are followed to the degree needed to ensure conservation, environmental protection and protection of the values of the Country Park as a whole. The certificates will help governance and decision making by the TPB and others and provide some accountability for what happens or does not happen in years to come.
27. **There are thus good reasons for requiring the new Strategy to be shelved,** the proper process for assessing Country Park Enclaves under the Enclave Policy is needed to proceed, and the draft OZPs need to be shelved while the necessary preparatory work outlined above is done. There is power to extend the DPAs for a year so this work can be done.

### Case Studies.

28. **The attempted abuse in the 2000 Tai Long Wan Case is now followed by other cases.** The concerted attempt to increase V zones in areas where IVs have long sold their building lots and much other land to developers or migrated from their village had a remarkable precedent in Tai Long Wan, next door, to Tai Long Sai Wan, in the period 2000 onwards. The history of this attempt to abuse the Small House Policy is set out in Unforgettable Tai Long Wan, by Daniel C, Jan 2012 page 196. “A total of 370 applications for Ding house building permits, all from the 5 adjacent villages in the Tai Long valley including Tai Long, Ham Tin, and the long deserted Tai Wan, Cheung Uk Wai and Lam Uk Wai, were all submitted simultaneously, in spite of the fact that most of the applicants had already migrated overseas for a long time and had no intention at all to return to their villages. Someone had made special trips overseas to visit each of the migrated villagers and persuaded them into making the Ding house applications. It was believed that there was in fact a large development plan including a golf course by clearing the wide span of woodland from Tai Long Au to Ham Tin, and a private holiday resort at Ham Tin beach. In order to meet such huge demand of Ding houses development,

the Hong Kong government released a Draft Tai Long Wan OZP in 2001 and planned to have 5 “Village Type Development” zones in the area. This was actually equivalent to turning on the green light to large scale developments within the nature conservation area, and it had directly triggered the birth of the first “Save Tai Long Wan” campaign.” At page 210 the author writes “In April 2000, the Hong Kong government released the Draft Tai Long Wan OZP (OZP No.S/SKTLW/1) that had included within the nature conservation area 5 “Village Type Development” zones, drawn to meet the demand of 370 village houses and a population of 1000 in the area in the next 10 years....”

29. **A similar threat exists for other Enclaves now, 10 years on. So Lo Pun, a village with zero IV residents for many years, has been planned in 2013 for an alleged demand of 270 houses for 1000 inhabitants. Despite PD not being in a position to verify the accuracy of this forecast, such figure is the basis for the excessively increased V zone. The failure to plan for genuine need instead of using inflated demand is an abuse of planning.**
30. **Hoi Ha has a good road and is an active village, and despite this, only 7 new Small Houses have been built in 20 years, and none of the houses are occupied by the Applicant. This shows that the 2013 draft OZP based on forecast alleged demand of 84 houses over 10 years cannot be the genuine IV need and such need must be assessed or else over provision of V zone land enabling outsider speculation and abuse will be facilitated. Government knows of the abuse which happens when only alleged forecast ‘demand’ is to be considered, not assessment of genuine ‘need’ by IVs for own residence in the village.**
31. Much of the expanded V zone in Hoi Ha being proposed by Draft OZP is actually owned by outsider developers. This is typical. Such land cannot be developed unless there are schemes drawn up to evade the conditions for applicant’s own residence of the Small House, so such excessive V zones are providing the zoning for more land for more abuse, this time in the Country Park Enclaves where strict control is needed. **Government pretends to not know about the false declarations and misrepresentations and illegality involved in many applications.**
32. **The Government knows of the abuses and schemes proved by the Court decisions over the last 10 years, yet by this Strategy**
  - a. knowingly persists in the pretence that the increased V zones are for IV Small Houses and
  - b. proposes increased V zones, which it knows are based on inappropriate demand figures instead of genuine proved IV need figures, and
  - c. zones yet more land to V zone, not needed for genuine IV residence, which in turn fuels schemes which defraud and permanently deprive the

public of its countryside land because the V zone land is actually developed for houses for outsiders, not for IVs own residence.

33. **The PD must reverse these decisions and only zone V zones based on actual genuine assessed needs**, which is probably the existing limits of the existing villages in most Enclave cases. Knowing of the abuses which are prevalent, the DLO, PD and TPB
  - a. cannot reasonably or rationally continue to pretend that the forecast “demand” based figures are evidence of actual genuine IV “need”,
  - b. cannot reasonably or rationally zone so much land when there is not the need for it, and
  - c. cannot rationally zone so much land for V zone when they know much of it has been sold to outsiders and thus not appropriate for IV Small House construction.
  
34. **This situation is the result of failures such as noted above and such mistakes must not be repeated or facilitated by the new Strategy** which ignores the Enclave Policy. Legislators are duly warned that the best course for Tai Long Sai Wan is for the Enclave Policy to be followed, and the assessment for Country Park designation being supported. Legislators can see the new Strategy adopted by Development Bureau for other Enclaves and OZP is similar to this Tai Long Wan attempt which failed and which was rejected after public objections.
  
35. **Happy ending?** At page 211-212 the author describes how the campaign, with a Greenmarch to Tai Long Wan on 11<sup>th</sup> March 2001 succeeded. “As a result of the overwhelming public concerns, a month later **the Town Planning Board accepted a revised plan which reduced the extent of “Village Type Development” substantially, and emphasized that the planning intention of the Tai Long Wan area was to conserve the natural scenery, ecology and cultural and archeological features unique to the area.** The Chief Executive in Council approved the revised Tai Long Wan OZP on 25<sup>th</sup> September 2001, and drew a curtain of the year long campaign.”
  
36. **Precedents such as this must be followed. OZPs must be assessed based on genuine assessed need.**
  
37. **The draft OZPs with massive increase in V zones must be shelved as such cannot be proved to be needed for genuine IV residences and some of the proposed V zones are not suitable for IV residences because it has been sold to outsider developers.**
  
38. **The Country Park Enclave Policy which was devised later to ensure good planning appropriate to protecting the integrity of the country park as a whole, must now be followed.**

39. **Legislators are asked to endorse the Enclave Policy approach in the public interest.**

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4<sup>th</sup> November 2013

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