

CONFIDENTIAL

(Downgraded on 13.8.2010)

**Minutes of 422nd Meeting of the
Rural and New Town Planning Committee held on 30.7.2010**

Agenda Item 3

[Closed Meeting]

Consideration of the Draft Tai Long Sai Wan

Development Permission Area Plan No. DPA/SK-TLSW/B

(RNTPC Paper No. 7/10)

1. Mr. W.K. Hui, Assistant Director/New Territories (AD/NT), and Mr. Wilfred C.H. Cheng, District Planning Officer/Sai Kung and Islands (DPO/SKIs), were invited to the meeting at this point.

2. The Chairman said that at the last Town Planning Board (TPB) meeting on 23.7.2010, Members had a discussion on the recent excavation activities and vegetation clearance in Tai Long Sai Wan (the Area), and Members in general considered that immediate development control on the Area should be exercised. On 26 July 2010, under the delegated authority of the Chief Executive, the Secretary for Development (SDEV) directed the TPB to prepare a draft plan designating the Tai Long Sai Wan as a DPA under section 3(1)(b) of the Town Planning Ordinance (the Ordinance).

3. The Chairman continued to point out that on 28.7.2010, the Legislative Council (LegCo) Panel on Environmental Affairs and the Panel on Development had a joint meeting (the Joint Panel Meeting), with the attendance of representatives from the relevant Government bureaux and departments, to discuss the subject incident. It was noted from the Joint Panel Meeting that when the Country Parks (CPs) Plans were prepared by the Agriculture, Fisheries and Conservation Department (AFCD) some 30 years ago, AFCD made consultation with the Rural Committees (RCs) and the relevant private land owners. If no objection was received from the RCs/private land owners, the relevant private land would be included in the

boundary of CPs. For those private land whose owners had raised objection to such an inclusion, they were excluded from the boundary of CPs. It was against this background that there were some 70 enclaves in the existing CPs over the Territory. The subject Area in Tai Long Sai Wan was a case in point. Amongst these enclaves, 23 of them were subsequently covered by statutory town plans. At the Joint Panel Meeting, the Environment Bureau had undertaken to consider whether to include the enclaves, which had not been covered by statutory plans, into in the boundary of CPs. As regards the Tai Long Sai Wan, the Development Bureau and PlanD had accorded priority in preparing the DPA Plan with a view to providing an interim statutory planning framework to safeguard the natural and landscape character of the Area. In this connection, the draft Tai Long Sai Wan DPA Plan was prepared and submitted for the Committee's consideration at this meeting.

4. The Committee noted that replacement pages for Pages 4 and 5 of the Paper to rectify the typing errors in paragraphs 4.5, 5.2 and 9 (b) were tabled at the meeting for Members' reference. With the aid of a Powerpoint presentation, Mr. Wilfred C.H. Cheng, DPO/SKIs, briefed Members on the details of the draft Tai Long Sai Wan Development Permission Area (DPA) Plan No. DPA/SK-TLSW/B as detailed in the Paper and covered the following main points :

Location and Physical Characteristics

- (a) the Area (about 16.5 ha.) was located on the eastern coast of Sai Kung peninsula, about 10 km to the northeast of Sai Kung Town. The Area consisted of the northern and southern parcels of land completely enclosed by the Sai Kung East Country Park (SKECP). Though falling outside the boundary of SKECP, the Area formed part of the wider natural system of the Sai Kung countryside;

Existing Land Uses

- (b) there were mountain ranges to the north, west and south of the Area. To its east was the scenic coastline of Sai Wan. It was rural in character and in a predominantly natural landscape, comprising mainly grassland, shrubland, woodland, fallow agricultural land, village houses and streamcourses. There was no direct vehicular or marine access to the Area. It was accessible by the Maclehorse Trail;

Recognized Village

- (c) Sai Wan was the only recognized village in the Area. Village houses which were one to two-storey in height could be found in both the northern and southern parcels. The main cluster of village houses was in the southern parcel, concentrating around the area near the Sai Wan Beach. Some of them were either in dilapidated condition or left vacant though a few might still be used for habitation. The ground floors of some village houses had been converted to shop use. In the northern parcel, there were only a few village houses by the hillside, mainly in dilapidated condition. There was at present no outstanding small house application in Sai Wan. The Indigenous Inhabitant Representative had not provided the District Lands Office/Sai Kung with any figure regarding the 10-year small house demand forecasted for Sai Wan;

Agricultural Land

- (d) the central part of the northern parcel, which was the subject of the recently detected excavation works, was previously under agricultural use. With the decline of agricultural activities, this fallow agricultural land had once been overgrown with grass and shrubs but had been cleared as a result of the recent excavation works. In the past two months or so, land excavation works, including formation of two ponds, land levelling and turfing work had been undertaken in the private land of the northern parcel of the Area. The current conditions of the site were shown in the photographs in Plan 4a of the Paper. Some adjoining Government land had also been encroached upon by the excavation works. The extent of the excavation works were about 1.8 ha within which about 1.2 ha of private land was involved;
- (e) in the southern parcel, there were still small pockets of land being used for the growing of plant, and other agricultural land on both sides of the Maclehorse Trail were being left fallow;

Woodland/Shrubland

- (f) based on the available ecological baseline information from the AFCD, the

Area was not exceptional in terms of biodiversity or ecological importance. However, the wooded areas by the hillsides formed a continuous stretch of well-established vegetation with those located at the adjacent SKECP. Therefore, the Area had a high landscape value which complemented the overall naturalness and the landscape beauty of the surrounding SKECP;

Archaeological Interest

- (g) the Antiquities and Monuments Office (AMO) advised that the Sai Wan area (including the Area) was a site of some archaeological interest. The relics discovered so far were not of significant heritage value, and the value of the site was not sufficient for declaration as a monument under the Antiquities and Monuments Ordinance. However, upon publication of a DPA plan, AMO would be consulted on any development proposals which might affect the archaeological site and its immediate environs through the planning application system;

Land Ownership

- (h) the majority of land in the Area (about 75%) was Government land, and the remaining 25% were private land comprising mainly the agricultural and building lots in the central part of the northern parcel, and the northern and eastern parts of the southern parcel;

Need for Statutory Plan

- (i) in view of the excavation works recently detected in the northern parcel of land of the Area, the current lack of statutory planning control and the imminent development pressure which might affect the natural and landscape character as well as archaeological interest of the Area, there was an urgency to prepare a DPA plan for the Area. The Plan would provide an interim planning guidance and statutory development control for the Area pending the preparation of an Outline Zoning Plan (OZP); and would enable enforcement action to be taken against any unauthorized developments so as to safeguard the natural and landscape character of the Area;

Land Use Proposals

General Planning Intention

- (j) the general planning intention of the Area was to protect its unique and high landscape character which complemented the overall naturalness and the landscape beauty of the surrounding SKECP;

Unspecified Use

- (k) all the land covered by the Area was designated as 'Unspecified Use' area pending further and additional studies to establish the appropriate uses for the Area. The prime intention was to give statutory protection to the Area subject to further studies. Under this land use designation, apart from the 'Agricultural Use' and some uses which were permitted in the covering Notes of the Plan, all uses and developments would require planning permission from the TPB. Besides, if diversion of stream, land filling/excavation and pond filling were required for the always permitted uses (except the public works implemented and coordinated by the Government), permission from the TPB would also be required. This would help properly regulate and control any development which would pose a threat to the existing topography and natural vegetation;
- (l) the draft DPA Plan for the Area, its Notes and Explanatory Statement (ES) were in the Appendices I, II and III of the Paper; and

Consultation

- (m) the draft DPA Plan together with the Notes and ES had been circulated to the relevant Government bureaux and departments for comments. Where appropriate, departmental comments had been incorporated. The Sai Kung District Council (SKDC) and the Sai Kung Rural Committee (SKRC) had not been consulted due to the confidential nature of the plan. The SKDC and SKRC would be consulted on the draft DPA Plan after its publication under section 5 of the Ordinance.

5. Mr. W.K. Hui informed Members that the Chinese translation of “Unspecified Use” on the draft DPA Plan at Appendix I of the Paper should read as “非指定用途” but not “未指定用途”. Members noted and agreed to such a rectification.

[Post-meeting Note: Paragraph 7.5.2 of the ES in Appendix III of the Paper should be revised from “There are no sewerage and drainage systems and other utility services in the Area.” to read “There are no sewerage and drainage systems in the Area. Potable water supply to existing facilities and villagers of Sai Wan is provided.”]

6. A Member referred to paragraph 3 of the Covering Notes of the draft DPA Plan and enquired how to define “existing” use in relation to the recently detected excavation works within the Area, and whether the TPB had the power to request the land owner to reinstate the subject land to its previous state before the excavation activities and vegetation clearance. In response, Mr. W.K. Hui said that “existing” use should be the use in existence immediately before the first publication in the Gazette of the notice of the draft DPA Plan. Regarding the site in the northern parcel of land in the Area where excavation activities were carried out, unless the land owner reinstated the land to its former land use, i.e. fallow agricultural land prior to the date of Gazette of the draft DPA Plan, the two ponds, the land levelling and turfing work currently found on the site would be regarded as “existing” use. There was no provision under the Ordinance empowering the TPB to require the land owner to restore the land to its former use before the excavation works.

7. Another Member said that the excavation works on the subject site was a kind of building/engineering works which required permission from the Buildings Department (BD) and the Geotechnical Engineering Office (GEO) of the Civil Engineering and Development Department (CEDD). This Member opined that the relevant Government departments should have the necessary power to require the land owner to reinstate the land to their satisfaction.

8. In response to a Member’s enquiry, the Chairman said that on the day when the draft DPA Plan for the Area was published in the Gazette, aerial photos would be taken and on-site detailed land use surveys would be carried out to establish the “existing” land uses of the Area. Unless the two ponds on the site were reinstated prior to the date of the publication

of the draft DPA Plan in the Gazette, these ponds would become the “existing” use on the site. The TPB was not empowered under the Ordinance to require the owner of the site to reinstate the ponds to the state before the excavation works. According to his understanding, the Government had not received any development proposal for the site. In response to the Chairman’s enquiry, Mr. Simon K.M. Yu said that the majority of the area concerned was privately owned and held under Block Government Lease demised for agricultural use. According to the judgement of Melhado case, the use of land as listed in the Schedule to the Block Government Lease was descriptive only and did not restrict the land use. However, the erection of structures would require prior approval of the Lands Department (LandsD). Mr. Simon Yu continued to point out that there were also smaller areas of old schedule house lots where some old houses were built. The redevelopment on the old schedule house lots required approval from the Government.

9. A Member enquired whether the land owner of the site concerned had any basis to seek a judicial review (JR) of the publication of the draft DPA Plan. In response, Mr. W.K. Hui said that the subject draft DPA Plan was prepared and submitted to the Committee for consideration and approval in accordance with the provisions under the Ordinance. Upon the publication of the draft DPA Plan in the Gazette, any person (including the land owner and any other parties) might make representations to the TPB within the statutory publication period. The TPB would then consider the representations at a hearing meeting and to decide whether any amendment to the draft DPA Plan should be made to meet the representations. The statutory plan making process had provided the avenue for the land owner or any person to make their views known to the TPB. If the statutory plan making process of the draft DPA Plan for the Area was undertaken according to the provisions under the Ordinance, it was unlikely that the TPB would be challenged in the court.

10. The Chairman supplemented that the grounds for seeking JR were the concerned authority had acted ultra virus, there was procedural impropriety or the concerned authority had acted so unreasonably that no reasonable body would do so. The Chairman went on to say that the TPB should ensure the plan making process of the draft DPA Plan was strictly in accordance with the provisions of the Ordinance.

11. In response to a Member’s enquiry, Mr. W.K. Hui referred to Plan 2b of the Paper and explained that the boundaries of the draft DPA Plan, the village ‘environs’ (‘VE’) for the

indigenous village of Sai Wan, and the Sai Wan Archaeological Site were delineated by the red, yellow and green lines respectively on the Plan. Mr. W.K. Hui continued to say that as a matter of urgency to exercise immediate planning control on the Area so as to safeguard its natural and landscape character, the subject draft DPA Plan was prepared in a relatively short time and the land use designation on the DPA Plan would not be as definitive as that for an Outline Zoning Plan (OZP). The whole area within the subject draft DPA Plan was designated as “Unspecified Use” area where planning permission was required for all types of development, including the Small House development by the indigenous villagers of Sai Wan and excavation/filling works, unless otherwise permitted in terms of the Notes attached to the draft DPA Plan. According to the Ordinance, the DPA Plan would have to be replaced by an OZP with comprehensive land use zonings based on the findings of detailed planning studies in three years’ time.

12. A Member pointed out that the current excavation works within the Area might be considered by BD as an unauthorised building works under the Buildings Ordinance (BO), and BD might require the land owner to reinstate the two ponds on the subject site to their former land use. However, according to the draft DPA Plan, the two ponds were “existing” use and changing them into other uses needed planning permission from the TPB. Hence, the BD’s requirement for reinstating the two ponds might require the land owner to obtain planning permission from the TPB. This Member raised the concern that the requirement by the BD under the BO and the requirement by the TPB under the Ordinance might contradict with each other and render the development control on the subject site ineffective. In response, the Chairman said that if the land owner of the subject site was required to obtain a planning permission from the TPB in order to comply with the reinstatement requirement of the BD under the purview of the BO, the necessary statutory procedures had to be followed. The above views were shared by other Members.

13. In response to another Member’s enquiry, Mr. W.K. Hui referred to Plans 2a and 4b of the Paper and pointed out the location of the existing village houses in the indigenous village of Sai Wan. The Chairman supplemented that while taking into account of the “VE” for Sai Wan, the delineation of which was under the purview of the LandsD, PlanD would draw up the boundary of the “Village Type Development” (“V”) zone for Sai Wan during the preparation of the draft OZP in the next three years, having regard to other considerations such as site characteristics, topography of the Area and the forecast of the 10-Year Small House

demand.

14. In response to two Members' view that the BD might undertake enforcement action against the subject excavation works under the provisions of the BO, the Chairman said that Members' view would be conveyed to the BD.

15. A Member enquired about the actions to be undertaken after the publication of the draft DPA Plan in the Gazette. In response, the Chairman said that the planning control on new developments would come into effect once the DPA Plan was gazetted for public inspection. It was intended that the subject DPA Plan would be published in the Gazette on 6.8.2010. The draft DPA Plan would be exhibited for two months for public inspection. During the statutory public inspection period, any person including the land owner and green groups might make representations to the TPB on the draft DPA Plan. The TPB would consider the representations at a hearing and to decide whether any amendment to the draft DPA Plan should be made to meet the representations. The DPA Plan should be submitted to the Chief Executive in Council (CE in C) for approval within nine months from the end of the two-month statutory public inspection period. The Chairman continued to point out that PlanD would conduct detailed planning studies at a later stage with a view to preparing an OZP which would replace the DPA Plan in three years' time.

16. A Member enquired whether the boundary of the DPA Plan could be extended to cover an area to the northeast of the southern parcel of land where some village houses were located. In response, the Chairman referred Members to Plan 2b and Plan 3 and said that the area was already included in the boundary of the SKECP. Members noted and agreed that the subject DPA Plan boundary was appropriate.

17. Two Members appreciated the speedy action by the PlanD on the preparation of the draft DPA Plan which would provide statutory planning control on the Area so as to safeguard the natural and landscape character of the Area, and to address the public concern on the subject excavation works promptly.

18. In response to a Member's enquiry, the Chairman advised that the Joint Panel was advised on 28.7.2010 that PlanD had been progressively and systematically preparing DPA Plans/OZPs for the rural areas outside the CPs and currently not covered by statutory plans.

Priority would be given to areas with conservation value and subject to development pressure. The subject DPA Plan for Tai Long Sai Wan was a priority case in view of the need for immediate development control on the Area. Moreover, the Country and Marine Parks Board would consider whether the enclaves should be included within the boundary of CPs.

19. After further deliberation, the Committee decided to agree that :

- (a) the draft Tai Long Sai Wan Development Permission Area (DPA) Plan No. DPA/SK-TLSW/B together with the rectification mentioned in paragraph 3 (to be renumbered to DPA/SK-TLSW/1 upon exhibition) (Appendix I of the Paper) and its Notes (Appendix II of the Paper) were suitable for exhibition on 6.8.2010 for public inspection under section 5 of the Ordinance;
- (b) the Explanatory Statement (ES) (Appendix III of the Paper) was suitable to serve as an expression of the planning intention and objectives of the TPB for the draft Tai Long Sai Wan DPA Plan and that the ES would be published together with the DPA Plan and issued under the name of the TPB; and
- (c) a briefing on the draft DPA Plan would be conducted for the Sai Kung District Council and the Sai Kung Rural Committee after its publication under section 5 of the Ordinance.

20. The Chairman thanked Mr. W.K. Hui, AD/NT, and Mr. Wilfred C.H. Cheng, DPO/SKIs, for their attendance to answer Members' enquires. Messrs. Hui and Cheng left the meeting at this point.