



Chairman and Members of Panel on Development, Legislative Council
(Email: panel_dev@legco.gov.hk)

By email only
22 March 2022

Dear sir/madam,

Concerns about Legislative proposals to streamline development-related statutory processes for the Panel on Development meeting to be held on 22 March 2022 at 2:35 pm to 3:50 pm

According to our latest 10-year review report on Hong Kong biodiversity conservation against the Convention on Biological Diversity (CBD), Hong Kong has only partially achieved six out of 20 Aichi Biodiversity Targets (ABTs)¹. Hong Kong performed poorly in the past decade in halting the habitat loss, mainly due to the long-running deficiencies and loopholes in existing policy and ordinances (i.e. Town Planning Ordinance, Environmental Impact Assessment Ordinance, Waste Disposal Ordinance, etc).

Recently, the Government's proposal to streamline development-related statutory processes were put in the agenda of the meeting of Legislative Council Panel on Development scheduled on 22 March². It involves six ordinances with an ultimate aim *"to make the supply of land available for development in a more expeditious manner, now and in future, where it is needed"*. The Hong Kong Bird Watching Society (HKBWS) would like to express our views on the proposal, particularly items related to the Town Planning Ordinance (TPO) (Cap.131), Environmental Impact Assessment Ordinance (EIAO) (Cap.499) and Waste Disposal Ordinance (WDO) (Cap. 354), regarding the potential significant impacts on nature conservation in Hong Kong.

¹ HKBWS. (2021). Hong Kong Biodiversity and Conservation 10-year Review against the Convention on Biological Diversity. Available at:

https://www.hkbws.org.hk/cms/phocadownload/submissions/HKBiodiversity_10yr_En_HKBWS.pdf

² <https://www.legco.gov.hk/yr2022/english/panels/dev/papers/dev20220322cb1-78-2-e.pdf>





1) Must be in line with the spirit of TPO and maintain the enhanced transparency, effectiveness and efficiency achieved in the past reviews

First of all, we would like to emphasize that TPO is “to promote the health, safety, convenience and general welfare of the community by making provision for the systematic preparation and approval of plans for the lay-out of areas of Hong Kong as well as for the types of building suitable for erection therein and for the preparation and approval of plans for areas within which permission is required for development”³.

Since the TPO was first enacted in 1939, some major amendments have been made in 1974 and in 1991 relating to the planning permission system, planning enforcement and setting up of committees and boards. In 2005, the Town Planning (Amendment) Bill 2004 came into operation, which had three main objectives: to enhance the transparency of the planning system; to streamline the town planning process; and to strengthen enforcement control against unauthorized developments in the rural New Territories. We consider that any further amendments in TPO should follow the spirit of TPO as well as maintaining the good intention to enhance transparency, effectiveness and efficiency as in the previous amendments. .

2) Amend TPO to plug loopholes in TPO to protect sites of conservation importance without further delay

Among the amendments proposed by the Government, we only support one that covers “some enforcement-related provisions of the TPO, with a view to enabling the Planning Authority to protect more effectively certain rural areas with high ecological value but subject to development pressure and environmental degradation”.

Under the current TPO, it is possible that even though the sites were zoned as conservation and agricultural zonings under the Outline Zoning Plans (OZP), no enforcement actions could be taken due to an absence of prior coverage of a Development Permission Area (DPA) plan. Many sites of conservation importance in the rural areas are threatened by this loophole. The more widely-known cases are the unauthorized filling of freshwater wetlands within Coastal Protected Area zoning for glamping in Pui O in South Lantau, and land filling of fallow agricultural lands within Green Belt zoning for tent camping activities in Mui Tsz Lam near Ma

³ Town Planning Ordinance (Cap. 131). Retrieved from <https://www.elegislation.gov.hk/hk/cap131>





On Shan, where is also one of the 12 Priority Sites for Enhanced Conservation identified under the New Nature Conservation Policy.

In order to better protect the general welfare of the community as stipulated in the Long Title of the TPO⁴, environmental NGOs have for many years repeatedly urged the Government to amend the TPO to enable the Planning Department (PlanD) to have enforcement power in those areas. The Government announced in 2018 that she would “*review the legislation concerned and map out more effective means to control landfilling, dumping of wastes and associated development activities causing environmental damage to areas of high ecological values at Lantau, with a view to enhancing protection of the natural beauty of these areas*”⁵. However, no action has been taken since then. In the 2020 Policy Address, the Government presented that she would “*consult the relevant panel of the Legislative Council in the coming year on practicable proposal to amend the TPO to better protect areas of high ecological values in the rural parts of the New Territories that are subject to development pressure*”⁶. A year has passed and this is now included in the “Legislative Proposals for the Seventh Term of the Legislative Council” under the 2021 Policy Address. We hope that it will not again become an empty promise.

However, according to the latest discussion paper, only a one-page board idea was provided in Annex B. It is proposed to prescribe a new power under TPO, such that the Secretary for Development may designate certain areas of high ecological value (not previously designated as a DPA) that is covered by an OZP but subject to development pressures and environmental degradation to be an “Enforcement Area”. Enforcement actions can be taken against eco-vandalism in these areas. We consider this amendment should be placed at first priority without further delay, covering all conservation (including Green Belts) and agricultural zonings. A conservation-oriented mechanism should also be in place to reduce the potential risk of deliberate action (e.g. by land owners or occupants) to degrade the land before the enforcement power is in place.

⁴ Town Planning Ordinance (Cap. 131). Retrieved from <https://www.elegislation.gov.hk/hk/cap131>

⁵ <https://www.policyaddress.gov.hk/2018/eng/pdf/Agenda.pdf>

⁶ The Chief Executive of HKSAR. (2020). Supplement of the Chief Executive’s 2020 Policy Address. Retrieved from https://www.policyaddress.gov.hk/2020/eng/pdf/supplement_full.pdf





3) Public involvement, effectiveness and transparency of the planning system should not be compromised by efficiency

During the TPO amendment in 2004, the Government tried to strike a balance between increasing efficiency and enhancing effectiveness, transparency and public involvement in the planning system. Special attention was made to enhance public participation in planning application, approval and plan-making process, so as to improve the openness of the system. This laid a good foundation for public involvement in the planning process and allowed Town Planning Board (TPB) members to make a better decision for the general welfare of the community.

However, the Government is now proposing to i) reduce different rounds of receiving representations and comments into one during the plan-making process, ii) only allow representers to attend a meeting to answer questions when TPB members wish to make inquiries, iii) disallow the public to make comments to TPB in respect of the rezoning application under section 12A, and iv) disallow the public to apply for rezoning application if the applicant does not include the landowner of the application site or a relevant public officer or public body. We are concerned not only that all these proposals will greatly reduce the public participation and the openness of the planning process, but also the new mechanism will not ensure the TPB are well-informed about all the public comments and take them into consideration, which would allow the TPB to make a more comprehensive planning decision.

HKBWS has been proactively commenting on different development projects in the statutory planning processes. For instance, the plan-making for different Country Park enclaves like Pak Lap and Hoi Ha, planning or rezoning application in conservation-related zonings like Nam Sang Wai real-estate development and Green Belt rezoning at ecologically valuable sites. In many occasions, HKBWS together with representers/commenters from other green groups organized ourselves to make a focused and systematic presentation to the TPB to avoid repetition and deliver a clear message to TPB members for their consideration. We consider individual representation is important, however, the combined representations at the hearings are equally important as it provides TPB members a bigger picture of the items/plans under consideration.





4) Should strengthen planning enforcement under TPO in rural areas to deter eco-vandalism

The Government proposed to streamline and expedite rezoning and planning process under the TPO, “so that the various reclamation works and NDA (New Development Area) projects as well as public and private housing projects can be completed as early as possible”⁷. Instead of streamlining, we consider the government should strengthen the planning enforcement and control against “destroy first, develop later” especially when the development of NDAs in New Territories would create development hopes among the landowners around these areas.

In the past, many sites of ecological/conservation value were destroyed by unauthorized developments, and failed to be reinstated under the current planning control mechanism. The report published in 2018 by the office of the Ombudsman on Government’s control over fly-tipping of construction waste and landfilling activities on private land recommended PlanD “to require the RN (Reinstatement notice) recipients as far as possible to fully reinstate the sites to their original state in order to achieve the purpose of conservation”. Though this gives clear guidance to PlanD that RNs should be framed to achieve the conservation objective and enforced with an intention to achieve the purpose of ecological restoration, we have not yet seen any successful restoration case issued with RNs, in response to the above recommendation. Many wetlands and marshes still fail to be fully reinstated under the current system.

Even worse, planning applications at these destroyed sites associated with “destroy first, build later” may not necessarily be rejected by the Town Planning Board. In fact, many unauthorized activities were even regularized through applying for planning permission, for instance, the caravan and holiday camp applications were approved at the destroyed Kam Tin Buffalo fields.

We would like to emphasize that the planning enforcement must be strengthened to deter any land speculation activities including eco-vandalism and brownfield development in rural areas, especially those areas close to the future NDA projects.

⁷ <https://www.budget.gov.hk/2022/eng/budget63.html>





5) Should not encourage piecemeal development through mechanism of “minor works”

The Government proposed to expand the scope of “minor works” in the Roads (Works, Use and Compensation) Ordinance and the Railways Ordinance, such that more projects (e.g. widening and re-alignment of existing carriageway) could be regarded as “minor works” and exempted from statutory gazettal. This was also proposed to apply to the Foreshore and Sea-bed (Reclamations) Ordinance, such that small-scale projects like construction of landing steps and floating pontoons could also be exempted.

We are concerned that the expanded scope of “minor works” could also bring significant ecological impacts. Taking the recent gazetted widening works in Deep Bay Road as an example. It is located in the Lau Fau Shan and Pak Nai area, where is very close to egret and is ecologically connected to the globally important intertidal wetlands within the “Inner Deep Bay and Shenzhen River catchment” Important Bird Area (IBA) recognized by BirdLife International. This “minor works” could be a threat to those ecologically sensitive sites due to the construction works and intensifying the development pressure in the locality because of the increased accessibility. Currently, the public could only comment on the project during the statutory gazettal procedure. We thus urge the Government to seriously review the scope of “minor works” and we urge for a transparent mechanism that allows the public to comment should be introduced to monitor those “minor works”.

6) Should not undermine the functions of EIAO as the last gatekeeper of environmental protection against developments

The government should comprehensively review the current EIAO to address the long-standing deficiencies in the EIA process. However, the main objective of the review is to shorten the completion time for the EIA process. We would like to remind the authority that EIAO is “to provide for assessing the impact on the environment of certain projects and proposals, for protecting the environment and for incidental matters”. The current review objectives are considered not in line with the purpose and spirit of EIAO. We, instead, urge for a comprehensive review proposal to tackle the long-existing inadequacies in the EIA system, such as lack of public consultation for the variation in Environmental Permits (EP), no time limit for the granted EP, and the conflicting roles of the Environmental Protection Department as the project proponent and the gatekeeper. A holistic review is important not only to enhance the





protection of the environment against developments, but also to increase the credibility of the EIA system.

7) Plug the loopholes in WDO to combat fly-tipping in ecological sensitive sites

For the unauthorized developments involving illegal dumping of waste materials on private land, apart from planning enforcement, it also relies on EPD to carry out enforcement actions under the WDO. In many cases, however, the consent from the landowner was obtained and EPD was notified before the deposition. In 2015, such acknowledgement from EPD was challenged in court, that the environmental impacts of the deposition should also be considered before issuing the acknowledgement. Yet in 2018 the court finally ruled that EPD does not have such power to do so. Therefore, it is expected that the on-going landfilling in the private lands, especially those areas that are not regulated by TPO like Pui O, would continue to worsen, causing more wetland loss. We thus urge for an amendment on WDO, to allow the authority to consider the ecological value of the site before the approval of waste dumping in private land.

8) Establish nature conservation as a legal “Public Purpose” Land Resumption Ordinance

The Government has proposed to resume the private fishponds and wetlands in the Deep Bay area for the public purpose of nature conservation under the Land Resumption Ordinance (Cap. 124) in the Northern Metropolis Strategy. We appreciate the intention of land resumption for the establishment of Wetland Conservation Parks to conserve and manage 2,000 hectares of ecologically healthy important wetland ecosystems. However, we are concerned the private landowners may have expectations for the land resumption process and may change the operation of the fishponds or wetlands, which may have potential adverse impacts on the overall ecological value of the Deep Bay wetlands. Therefore, we urge the Government to ensure the land resumption process is smooth and effective. We recommend the Government to formally include “nature conservation” as a legal “Public Purpose” under the Land Resumption Ordinance, and an increased land premium for sites handed over with demonstrated high ecological or ecosystems services value, so as to facilitate the resumption of lands required for public purposes of nature conservation.





Final remark

We consider that ordinance amendments have significant and long-lasting impacts on the community and the environment, and they should be proceeded with great care and caution. However, the current proposals of amendments were rushed through with the aim of speeding up land supply without a comprehensive scoop of review and an appropriate timeframe for the consideration of the amendments. This is against the original intention of the ordinances, especially for TPO and EIAO where the general welfare of the public and our environment should be safeguarded. We urge the Government to take our comments and recommendations into consideration. We believe that such steps would allow Hong Kong to be a more livable city and to contribute to China's commitment to the CBD.

Yours faithfully,
Wong Suet Mei
Conservation Officer
The Hong Kong Bird Watching Society

香港觀鳥會 Hong Kong Bird Watching Society

電話 Tel No. +852 2377 4387 電郵 E-mail info@hkbws.org.hk 地址 香港九龍荔枝角青山道532號偉基大廈7C
傳真 Fax No. +852 2314 3687 網頁 Website www.hkbws.org.hk Address 7C, V Ga Building, 532 Castle Peak Road, Lai Chi Kok, Kowloon, Hong Kong

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