



香港觀鳥會有限公司

The Hong Kong Bird Watching Society Limited

認可公共性質慈善機構 Approved Charitable Institution of Public Character

NENT Development Study Second Round Public Engagement

Submission of the Hong Kong Bird Watching Society

31st December, 2009

EXECUTIVE SUMMARY

Objection:

Hong Kong Bird Watching Society (HKBWS) objects in the strongest terms to the proposed zoning of Long Valley, a site of acknowledged ecological value, with a zoning – Comprehensive Development Nature Conservation Enhancement Area (CDNCEA) – that creates a presumption of development, and makes conservation conditional upon development.

Proposal:

HKBWS proposes that Long Valley should be given a zoning commensurate with its current status as an area of acknowledged ecological value. Conservation Area (CA), Nature Reserve (NR) or Site of Special Scientific Interest (SSSI) would all be acceptable.

HKBWS further proposes that the HKSAR Government reinforces this protection by resuming Long Valley to ensure permanent protection of its outstanding ecological value against all present and future development threats.

Resumption is important not only to protect its ecological value, but to recognize Long Valley's importance for people - as a site where conservation has triumphed over development, where traditional farming practices that are beneficial to nature conservation continue, and as a site the public can visit for passive recreation.



國際鳥盟支會

BirdLife International Affiliate

GROUNDNS FOR OBJECTION & ALTERNATIVE APPROACH

Recognized ecological value of Long Valley

Prior to the second round of this consultation, it has been the intention of the HKSAR Government since at least 19 November 1999, when it was mentioned by Bowen Leung, then Secretary for Planning Environment & Lands, to protect the ecological value of Long Valley by zoning it as a nature park as part of the redevelopment of Kwu Tung North New Town.

This recognition of the ecological value of Long Valley is not in dispute, as can be seen from the following public and private bodies that recognize this, including the proponents, consultants, and ecologists of the current study:

1. Hong Kong Government
 - a. Nature Conservation Policy (AFCD and Env Bureau)
 - b. Environment & Conservation Fund (three Management Agreements)
 - c. 1999 & 2009 NENT Development Studies (CEDD & Plan D)
 - d. Advisory Council on the Environment (various minutes 1999 – 2009)
 - e. Legislative Council papers (Spur Line funding approval)
 - f. Rejection of Lok Ma Chau Spur Line EIA on ecological grounds (EPD)
 - g. EIA Appeal Board (see judgment on EPD website)
2. BirdLife International – Inner Deep Bay & Shenzhen River Catchment IBA
3. The consultants and professional ecologists for both NENT studies
4. Hong Kong environmental NGOs
5. The Hong Kong press and public

Why a conservation zoning is appropriate

There is no question that Long Valley merits a conservation zoning. Indeed the Hong Kong Bird Watching Society and World Wide Fund for Nature (Hong Kong) have an outstanding application to the Town Planning Board to zone Long Valley as Conservation Area. HKBWS would fully support the zoning of Long Valley as either CA, NR or SSSI.

Several hundred hectares of rural land in Hong Kong in private ownership are zoned with a conservation intention – SSSI, Conservation Area, Nature Reserve, Country Park, and Green Belt. There is no reason why one of these zonings cannot be applied to Long Valley. Indeed, to do so is clearly in the public interest. Indeed the long title of the Town Planning Ordinance explicitly states that town planning be carried out in the public interest. Since the NENT Study is being conducted under the aegis of the Planning Department, and is in fact a planning study, there is no question that the zonings proposed made must be consistent with the broad intention and the specific direction of the Town Planning Ordinance – that is to zone areas of high ecological value with a zoning that reflects this current value in the public interest.

Conservation conditional on development is compromised conservation

CDNCEA only allows conservation to happen as part of a larger plan that includes development. This is problematic for two reasons:

- 1) It creates a presumption in favour of development and opens the door for a range of dilutions of the conservation intention, including possible fragmentation from multiple development plans.
- 2) It makes conservation conditional on development, and probably the goodwill of private developers, for whom nature conservation is only ever a means to an end rather than an end in itself

Both of these issues show the relative weakness of a CDNCEA zoning when compared with one of purely conservation-oriented zonings listed above, and make CDNCEA unfit for the purpose of protecting a site of high ecological value. It would be irrational and perverse for PlanD to propose development for land that is so widely recognized as having high ecological value.

Opposition to a conservation zoning

The only opposition to a purely conservation zoning comes from the development aspirations of private landowners. However these aspirations, sometimes referred to as “hope value”, have no basis in law. While it may be legitimate to hope, there is no basis for recognizing this hope as a legal right to development.

Landowners often hold a speculative hope that they be able to secure an upzoning that would permit more lucrative residential, recreational or industrial development. However, even when such an upzoning is achieved, developers must pay a premium that is calculated by the Lands Department to secure this right. Until that point, under normal circumstances, the true value of the land can only be measured in reference to its potential agricultural productivity.

The exception to this is when the Government resumes land for New Towns. There is a precedent for resuming land of high ecological value in New Town development. The land for the Wetland Park was resumed for the compensation for the loss of ecological function when wetlands were filled to build Tin Shui Wai New Town. The Wetland Park concept was only added subsequently as a Millennium Project.

Should the government wish to compensate landowners, the appropriate method is to resume the land and to offer compensation according to a set rate calculated by the Lands Department.

Value for people as well as for wildlife

Long Valley has been recognized and indeed managed for conservation of nature, sustainable agriculture and education purposes over the last three years and is now as widely recognized as Mai Po, Kadoorie Farm and Hoi Ha as a site where Hong Kong people can receive guided visits to sites of high ecological value. Continuation of such activities is welcomed, although HKBWS believes a study should be conducted to assess the carrying capacity of the site as there is already a high level of disturbance and this may be compromising the ecological function of Long Valley.

Fortunately the topography of the site allows relatively disturbance-free access along the drainage channel access road, and while Long Valley is too small and the pathways too fragile for general public access to be advisable, careful planning will allow many people to enjoy the site without minimal disturbance.

Consequently, HKBWS fully supports the resumption of Long Valley up to and including the boundaries set out by the Agriculture, Fisheries and Conservation Department and published on its website at:
http://www.afcd.gov.hk/english/conservation/con_nncp/con_nncp_list/files/long_valley_ho_sheung_heung.pdf

ALTERNATIVE OPTION

Land Exchange

If the Government wants to gift landowners with development rights for land that carries no such value it is totally unacceptable that they should do so to the detriment of a public asset – land of outstanding ecological value. The method for doing this is to allocate land of very low or nil ecological value at another site in exchange. This is called non-in-situ land exchange.

Non in-situ land exchange is successfully used in many countries to resolve such issues. There is no reason why it should not be used in Hong Kong. Indeed it has been used in Hong Kong for other purposes (King Yin Lei Mansion is the most recent example).

Mike Kilburn
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