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ACE 3/95
(for information)

Information Paper on Development Control and Conservation in Deep Bay Buffer Zone Areas

PURPOSE

1. This Paper is to inform Members of the actions taken by the Government in relation to the conservation of wetlands in Deep Bay Buffer Zone areas.

BACKGROUND

2. In the ACE meeting on 19.9.1994, Members raised the issue of the large-scale residential development in Nam Sang Wai area and considered that approval of this case by the Town Planning Appeal Board would have wide planning implications. In the discussion, Members suggested Planning Department to prepare a paper to update members on the Government's recent deliberations and overall position on the cumulative impact of wetland loss in the Deep Bay area. Against this background, this Paper is to inform Members of the actions taken by the Government, particularly the Planning Department, in strengthening the protection of the wetlands in the Deep Bay area.

THE ISSUE

3. The Mai Po Nature Reserve (MPNR) and its adjacent intertidal mudflats in Inner Deep Bay (IDB) are internationally-recognized important wetland habitats for a variety of waterfowls and a stop-over for many migratory birds. Most of the areas around MPNR are low-lying flood plains and fish ponds which not only provide feeding and breeding grounds for the birds but also contribute to the scenic quality of the Deep Bay area.
4. In recent years, there has been increasing development pressure in the North West New Territories particularly in areas around IDB. In recognising the importance of this environmentally significant area, the Town Planning Board has since September 1992 established a set of planning

guidelines for the purpose of controlling developments in the area. A Buffer Zone (BZ) approach is adopted (see Plan attached). In BZ 1, conservation is the primary objective and new development should not be allowed unless it is required to support the conservation of the area's natural features and scenic qualities. In BZ 2, whilst conservation remains to be the planning intention, appropriate recreational uses and low-density residential development may be considered in selected locations provided that the development will have insignificant adverse impacts on the ecological, drainage, sewerage, traffic and environmental aspects of the MPNR and the IDB area.

5. This BZ approach has provided for some measures of protection in terms of development control in the area. However, planning applications for development have continued to be received. They are mostly for residential development with recreational uses; some of them have also proposed nature reserves as part of their development schemes. The Town Planning Board has all along been taking a *precautionary principle* in considering these applications. This is to ensure that any proposed development which might pose a threat to the environment or ecology of the area will not be allowed even if there is no conclusive scientific proof linking that particular development to the environmental or ecological damage. It is up to the proposer of the development to demonstrate to the Board that the environmental and ecological threats to the area would be insignificant.
6. In August 1994 a planning appeal in respect of a major residential development proposal within BZ 2 in Nam Sang Wai was allowed by the Town Planning Appeal Board. It may be possible that other similar applications in the area would follow suit. Up to now, there are still 9 outstanding similar applications for major residential development covering about 272 ha of land in the BZ areas which have a total area of 2028 ha. If all these applications were approved and implemented, there might be substantial impact to the ecology in and around MPNR and the IDB area. As such, the Appeal Board's decision has aroused much public concern on the precedent effect of the Nam Sang Wai case and the possible further loss of wetland habitats in and around MPNR and the IDB area.

GOVERNMENT ACTIONS

7. The Administration and Town Planning Board have taken and have proposed a number of actions with a view to conserving the MPNR and the wetlands in and around IDB.

NWNT (Yuen Long District) Development Statements Study

8. The NWNT (Yuen Long District) Development Statements Study (NWNT DSS) which forms part of the NWNT Development Strategy Review has been completed and an Executive Summary has been produced recently and made available for public inspection. The Study has identified the key issues of land use development in the Yuen Long District and pointed out some broad directions for future development up to the year 2004. Whilst recognising the need for major urban development in the new towns and along the major transport corridors, the Study also pointed out the need to balance development needs with wider conservation objectives, having regard particularly to the importance of conservation in the Deep Bay area.

The Rural Outline Zoning Plans (OZPs)

9. The NWNT DSS has provided a framework for detailed district planning and a context for the preparation of the rural OZPs for the Yuen Long District which were gazetted in June/July 1994. 5 rural OZPs covering the Deep Bay area were also gazetted. The land use zonings in these OZPs also reflect the nature conservation significance of the MPNR and IDB area and the intention to protect the remaining wetlands as far as possible.

Revision to the Town Planning Board Guidelines for Application for Development within Deep Bay Buffer Zones

10. To make the planning intention for BZ 2 more explicit, the Town Planning Board in November 1994 revised the "TPB Guidelines for Application for Development within Deep Bay Buffer Zones under section 16 of the Town Planning Ordinance". In the revised guidelines, the intention to preserve the fish ponds in the BZ areas and the adoption of the precautionary principle in considering applications for development within the BZ areas have been clearly spelt out. In addition, a requirement has been included in the guidelines for the submission of an ecological study of at least a 12-month duration as part of a development application in the BZ areas.

Judicial Review of the Town Planning Appeal Board's Decision on Nam Sang Wai Development

11. The Town Planning Board considered that the decision of the Town Planning Appeal Board to allow a residential development at Nam Sang Wai would set a precedent for other similar applications in the BZ areas. The cumulative loss of these wetlands might create a tremendous adverse impact to the MPNR and cause irreversible ecological damage. Furthermore, it was felt that the Appeal Board had not

considered the application in the proper context and had set approval conditions which were ultra vires. Upon the advice of a legal counsel, the Town Planning Board applied for leave for a judicial review on the Appeal Board's decision. Leave for the judicial review has been granted and the hearing of the judicial review will be held in a few months' time.

Ecological Study on Fish Ponds

12. In parallel with the above actions, the Planning Department has sought funds to commission a consultancy study on the ecological value of the fish ponds in the Deep Bay area. The study area covers the Inner Deep Bay waterbody and the mudflats, BZ 1 and BZ 2, as well as the existing fish ponds adjoining the BZ areas. The study primarily aims at establishing the level of ecological value, both in qualitative and quantitative terms, of the fish ponds in the Deep Bay area to wildlife, especially waterbirds, and to the wetland ecosystem. It will consist of a review of the ecological and land use changes in the study area, and field investigations to collect scientific data on the ecology of the area and to establish baseline ecological profile. Furthermore, the carrying capacity of the MPNR and fish ponds in the wetland system, and the cumulative impact on carrying capacity due to changes of use in the study area will be assessed. The study will review the BZ concept and the appropriateness of the current boundaries of Zones 1 and 2 and will identify alternative beneficial uses in the wetland areas. The findings of the study will also serve as a basis for reviewing the relevant provisions and planning intentions of the relevant rural Outline Zoning Plans and Town Planning Board Guidelines.
13. The study will commence in March/April this year and will take about 17 months for completion. The study will include a full 12-month field investigation to provide baseline information of existing wildlife habitats, flora and fauna in the study area, and their seasonal changes. If necessary and possible, an interim paper reporting on the results of the first 6 months of field investigations will be prepared to provide interim guidance to the assessment of development projects and proposals in the area. The multi-disciplinary study team will include experts on wetland ecology, conservation and ornithology.

Ramsar Designation

14. At the same time, the proposed designation of Mai Po and IDB as a Ramsar Site under the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (the Ramsar Convention) is being considered. The Government is now assessing the implications and the resources involved in the proposed Ramsar designation.

CONCLUSION

15. The NWNT area, being located in close proximity to the Border area, has been subject to tremendous development pressure in recent years, including substantial population and landuse changes and the incorporation of major transport infrastructure proposals. The planning strategy for the sub-region has attempted to set out a framework providing adequate land in appropriate locations to cater for essential developments, while taking the wider conservation objective in mind. The conservation of Mai Po Marshes and its surrounding wetland areas has therefore been duly reflected in the strategy. The implementation of the conservation objectives requires both statutory powers with sound justifications to control undesirable developments in ecologically and environmentally sensitive locations, as well as other measures and resources to embark on the management of the habitats. The study on the ecological value of fish ponds may be seen as a first step in the formulation of a comprehensive conservation management strategy for the Deep Bay area; its findings should also provide a better basis for the Administration to assess future development proposals in the area.

