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for Information

Proposed Sha Lo Tung Development **Land resumption option**

Purpose

This paper sets out the government's position on the land resumption option in the context of the proposed Sha Lo Tung development by a developer.

Background

2. Sha Lo Tung valley is situated at the north of Tai Po in the North East New Territories and is surrounded by the Pat Sin Leng Country Park. The valley has been inhabited by indigenous villagers since 1680. There are two indigenous villages within the valley, namely, Cheung Uk and Lei Uk and most of the lands were owned by the villagers or their Tso/Tong. A land sales agreement has been entered into between the villagers and the Sha Lo Tung Development Company Limited.

3. Sha Lo Tung is not covered by any statutory town plan. It is designated as 'Recreation Priority Area' on the draft Tai Po Outline Development Plan and is intended for recreational facilities that can be made available to the general public. Low density residential development to support the public recreational facilities may be considered. Most of the private lands in Sha Lo Tung are unrestricted under the land lease in terms of use except for building works. There are also about 240 private lots with building rights. Under the small house policy, the indigenous villagers can ask for permission to build small houses around the two villages.

4. The proposed development by the Sha Lo Tung Development Company Limited covers an area of 59.36 hectares. Most of the land is abandoned paddy fields with 100 old village houses in two major village areas. There are no villagers living there now.

Conservation objective for the Sha Lo Tung area

5. The most ecologically important aspect in Sha Lo Tung is the dragonfly which relies on the stream course to lay eggs. By conserving the stream course, the dragonfly is unlikely to be affected detrimentally.

Hence, the most important objective of conservation at Sha Lo Tung would be to ensure the integrity of the stream course.

Legal position with regard to land resumption

6. Private land can be resumed by government under the Crown Lands Resumption Ordinance (the Ordinance) (Cap. 124) if the Governor in Council decides that the resumption of land is required for a public purpose. Although under the power vested in the Ordinance the Governor in Council may decide what is a public purpose, the Attorney General's Chambers have advised that as a matter of law, there are certain constraints attached to that power. The constraints are summarized as follows:

- (a) it is not open to the Governor in Council to declare that a thing is a public purpose if it has no public character;
- (b) the 'public purpose' must include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is concerned;
- (c) the general interest of the community must be directly and vitally concerned; and
- (d) the power must be exercised bona fide.

Problems relating to land resumption

7. The most immediate problem would be the adverse reaction of the land owners and the potential benefactors of the proposed development, i.e., the indigenous villagers. The development at Sha Lo Tung was first proposed in 1979 and has been revised a number of times to accommodate changing circumstances, including objections from the environmental point of view. The scale of the proposal has been reduced substantially by removing the golf course and related facilities from the development. Many villagers believe that their land rights are being infringed upon and that their interest has been ignored. They believe that the developer has made many concessions as a result of intervention by the government and environmental interests. They are likely to object strongly to any plan for land resumption. They may also resume earth moving activities which could affect the dragonfly habitat and the dragonfly.

8. The cost of resuming the land in the valley is estimated to be around \$2,400 million at current value. However, the amount is certainly going to be disputed by the villagers (and probably the developer) as it does not take into account the scale of development being applied for. Notwithstanding this, it would be difficult for the government to justify incurring even this expenditure when Sha Lo Tung is not the only conservation area in the territory and when another possible option is open to achieve the conservation objective, i.e. the proposal as put up by the developer in the SEIA report. The nearby Ping Shan Chai, for instance, has a similar countryside setting with similar fauna and flora which could be argued for protection by land resumption as well. The acquisition of land in excess of the minimum required for the private development would also be difficult to justify, as the proposed development does not touch the stream course and most of the valley floor.

Government's position on land resumption

9. With reference to the criteria set out in paragraph 5 above, the public nature of resuming the land in Sha Lo Tung is not self-evident. We think the government would be in a weak position if the land resumption action is challenged in the courts. It is also highly questionable whether the cost of the land resumption can be justified.

10. Resuming land at Sha Lo Tung could set a precedent for other ecologically sensitive areas. This may send the wrong signal to land owners who would apply to develop private lands located in ecologically sensitive areas with a view to obtaining similar treatment. This might attract a large number of development applications and lead to many land resumption requests, especially in the remote parts of the New Territories where normally no developer would be interested in the land. Apart from the cost involved, this course of action could result in the unnecessary disturbance of wildlife and habitat.

11. Land resumption at Sha Lo Tung could also send a wrong message to the public, that is conservation is the responsibility of the government and the government alone. Instead of working with the developer, the government prefers to spend public money to resume land. The wisdom of this approach is doubtful.

12. Land resumption is a serious matter as it means taking away the land rights of individuals. It needs to be considered carefully. Such an option should not be contemplated until all other possibilities have been exhausted. In the case of Sha Lo Tung, the main conservation objective could be achieved with the proposed development.

13. In summary, the government is of the view that land resumption is not a viable option in the context of the proposed Sha Lo Tung development for the following reasons -

- (a) the legal basis of the land resumption option is weak;
- (b) the land resumption action would be problematic, given the likely reaction of the villagers and the land owners;
- (c) it is difficult to justify the expenditure of public funds to resume the land;
- (d) land resumption at Sha Lo Tung would send the wrong message to the public; and
- (e) land resumption is not necessary to achieve the conservation objective at Sha Lo Tung.

Planning, Environment and Lands Branch
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