

Conservation of Sha Lo Tung A way forward

Introduction

Sha Lo Tung is widely acknowledged to be an area of outstanding natural beauty and important ecological and cultural value. An upland valley in North New Territories, it contains 3 abandoned villages (Cheung Uk, Lo Wai and Lei Uk), abandoned agricultural land and several streams that come together in the valley and flow out and down to a reservoir. The area is rich in biodiversity especially plants and dragonflies.¹ The old Hakka village houses are traditional vernacular buildings with unique architectural features and high group value. The area is popular with hikers.

Up until 1997 Sha Lo Tung had no statutory planning protection against development. It is surrounded by, but excluded from, the Pat Sin Leng Country Park. A development company acquired much of the private land from the villagers in 1979 and since the early 90's proposed several development schemes, the latest being a low rise (up to 6 storeys) residential development. While the original scheme was approved by government and later stopped by a High Court decision in 1992², none of the later schemes were approved. In early 2002 an Outline Zoning Plan under the Town Planning Ordinance was approved for Sha Lo Tung which was designed to protect the important ecological and cultural features.³ This replaced an earlier Development Permission Area plan which was gazetted in 1997.

Despite the current conservation led zoning there are concerns that Sha Lo Tung's integrity is not being adequately preserved. In addition to the current problems of war-gamers and off road vehicle users who frequent the site and damage the fragile ecology and buildings, the potential for village small house⁴ development still exists

¹ It is a unique area for dragonfly species with a record of 72 species representing 67% of the total number of species recorded in Hong Kong. It is host to 4 endemic species and the only site in the world to support 2 *Macromidia* species which were first described here as new to science. The streams and freshwater marsh in the area form a wetland ecosystem which are habitats to fish and amphibians, including 2 species of paradise fish.

² The developers originally proposed to build a residential development and 18 hole golf course in Sha Lo Tung and some of the adjacent Country Park. This was stopped by a High Court decision in 1992. The developer subsequently proposed a residential development within the valley only. The Environmental Impact Assessment (EIA) for this development was rejected by the Advisory Council on the Environment in 1996. The developer has submitted subsequent proposals.

³ The 57 ha area designated in the OZP comprises about 22 ha as SSSI (covering the streams, a 30m buffer on either side and freshwater marshes in the northeast of the site), about 12 ha of conservation area covering the freshwater marsh, fung shui woodland behind Cheung Uk and mature tree clusters behind Lei Uk and Lo Wai, about 22 ha of green belt covering foothills, lower hillslopes, spurs, isolated knolls, woodland or vegetated land and about 2 ha of village type development. Provision of sewerage and emergency vehicle access may be necessary for the village development areas. To preserve the Hakka village houses any demolition, addition, alteration to the existing village houses requires planning permission.

⁴ The village small house policy entitles all male sons of indigenous villages to build a 'small house' within the village land. Village small houses are exempt from planning and building permission and are responsible for considerable blight in the new territories.

under the current zoning plan.⁵ In the future, increasingly popular activities such as recreation and tourism could put Sha Lo Tung under harmful pressure unless properly managed.

To address the current conservation stalemate, in April 2002 Civic Exchange convened a roundtable of government and non government experts⁶ to discuss possible mechanisms that could be adopted to protect Sha Lo Tung in perpetuity. The following paper is intended as a thinkpiece to stimulate discussion on options for the way forward on Sha Lo Tung. The paper incorporates some of the main points that emerged from the discussion but does not necessarily reflect the views of the participants.

Objectives of conservation

It was agreed that the sum of Sha Lo Tung is greater than its parts and its value lies in maintaining the integrity of the whole area. Active and multi-disciplinary management is needed to restore and manage the Hakka village areas, and to control, manage and promote specialised recreation, education and ecotourism activities. Access within the site would need to be controlled to ensure that the fragile ecological areas are not harmed. It is worth extending the area to include Ping Shan Chai, an abandoned village to the north east of Sha Lo Tung which was also excluded from the Country Park, so that the whole basin is protected.

Roadblocks to conservation

There are a number of thorny issues that are responsible for the current stalemate over the conservation of Sha Lo Tung, including:

1. How to deal with the hope value or expectations of the developer who has spent many years and resources in applying for development.
2. How to deal with the hope value or expectations of the villagers. This includes both the Sha Lo Tung villagers who sold their land conditional on the provision of a house, and the villagers who have an entitlement to a small house in Sha Lo Tung. The latter may include sons and grandsons of villagers who have never lived or even visited Sha Lo Tung.
3. Government's reluctance to resume land or provide compensation for conservation purposes. Under the Land Resumption Ordinance land can be resumed for a public purpose such as essential infrastructure, but conservation is not defined as a public purpose for carrying out land resumption and would require a major shift in government policy. There were concerns about the precedent setting and implications for other sites.
4. Government's reluctance to compensate for the 'hope' value of land, that is agricultural land which is speculatively bought on the hope that it may be

⁵ Village house development is permitted within the 2 ha land zoned "V" for village development. It is also permitted within the 22 ha of land zoned "GB" for greenbelt provided the Town Planning Board has given approval. Within land zoned "CA" for Conservation Area only redevelopment of houses with Town Planning Board approval is permitted.

⁶ The 9 participants had expertise in ecology, legal, planning, land use and development issues.

developed one day. Many of the ecologically valuable sites elsewhere in the SAR have already been bought by speculative developers. Government is reluctant to set a precedent in case this encourages more speculation. As far as the government is concerned the Sha Lo Tung developer has no rights and has speculated at his own risk.

5. The difficulty in prioritising areas for conservation. Along with Sha Lo Tung there are over 10 sites of similar ecological value and hence deserve priority attention for conservation. There is no agreed method to measure the relative ecological value of a site. Further, as some of the criteria for conservation (e.g. beauty) may be subjective the question is where and how to draw the line? Government is concerned that they may be faced with increased pressure from landowners to resume their (ecologically valuable) land or, conversely, to release the development controls imposed under the land use zoning system.
6. The small house policy. Not only is this currently causing havoc in areas of ecological value but it is unsustainable with an estimated demand of 60-70,000 houses over the next 10 years.
7. The fact that conservation of ecology and conservation of heritage are dealt with by two separate government bodies – Environment and Food Bureau and Home Affairs Bureau respectively.
8. Funding – significant funding may be required to buy up the land at Sha Lo Tung for conservation, to restore the Hakka villages and to manage the area. In 1996 it was estimated that around \$2,400 million [1996 prices] would be needed for resumption. With the current slump in property prices the current price would be significantly less, possibly one quarter of this, but still a substantial sum.

Discussion Points

Conservation as a public purpose

It was agreed that there were many precedents where government had resumed land for purposes that were arguably not essential infrastructure eg Cheoy Lee Shipyards for a Disney theme-park. While land resumption or land swaps were acknowledged to be difficult the problems were not insurmountable, particularly if the number of sites were small (5-10). While the technical hurdles could be overcome what seemed to be lacking was the political will within government to place conservation as a priority. Government's main concern is the possible implications for other sites. While government is concerned about setting a precedent, it was pointed out that there is nothing wrong with setting a good precedent.

Compensation of hope value

It can be argued that it is unfair for government to compensate for land that has development value and not to compensate for land that has conservation value. Government is effectively rewarding the land owner who has abused his land (so that it is subsequently zoned for development or higher use values) and punishing the land owner who has looked after (or at least not abused) his land. Further, it should not make any difference whether the land is owned by villagers or developers the principle of whether to compensate or not should remain the same.

Under the current system there is an incentive for land owners to destroy any ecological value of their land in case it prevents development in future. If a system of compensation for ecologically valuable land is introduced the incentive will be for land owners to protect and enhance the ecological value in the hope that government may buy the land or offer compensation.

Prioritising sites for conservation

There have been a number of studies conducted on Hong Kong's biodiversity, most notably that done by the University of Hong Kong which identified ecological hotspots. With this and other data, there exists sufficient knowledge for government to draw up a list of top sites for protection on ecological grounds alone. While this needs to be combined with other criteria such as heritage value, visual beauty and degree of threat, it should be possible to develop a weighting system of top sites for protection. The current and future threats to those sites would need to be evaluated for government to prioritise which sites need the most urgent protection.

Once government has identified the priority sites, and announced a policy limiting compensation to those sites only, this would send a clear message to other landowners who would otherwise lobby government for compensation if Sha Lo Tung was protected on an ad hoc basis. This would effectively close the floodgates that government fears would be opened if compensation was offered unconditionally.

However, there is no single mechanism that will work in each and every case. In terms of determining which mechanism should be applied, each site needs to be evaluated on a case by case basis. For some sites, zoning under the Town Planning Ordinance may be sufficient protection for the ecological resources. Village development may even be compatible, or at least not harmful, to certain habitats such as fung shui woodlands. However, in the case of Sha Lo Tung, where the integrity of the area was important, it was felt that it was necessary to acquire all the land and exclude village development.

A Way Forward

In the case of Sha Lo Tung there appear to be two possible broad mechanisms which could break the current stalemate. One of these requires government intervention, initiative and funding. The second could be organised completely independent of government.

Government land swap deal

Ideally, the government should consider a land swap deal with the developer and villagers. The land (technically the leaseholds) within Sha Lo Tung, and ideally Ping Shan Chai, would then resort to government ownership and could eventually become Country Park. This would require the following government actions:

1. Government would need to acknowledge that conservation can be included within the definition of public purpose for acquiring land.

2. The Agriculture, Fisheries and Conservation Department would need to draw up a shortlist of areas that need urgent conservation, including those that may also involve a landswap, to limit the number of possible appeals from other landowners.
3. The Lands Department would need to identify a site of similar economic value as Sha Lo Tung for the developer.
4. The Housing Department would need to allocate flats for those villagers that were formally resident in Sha Lo Tung.
5. The Lands Department would not entertain any applications for small houses within Sha Lo Tung.
6. The Agriculture, Fisheries and Conservation Department would need to gazette a new Country Park boundary to include Sha Lo Tung.

The advantages of a government land swap led approach include:

1. The area could be protected relatively quickly
2. No outlay of government funds is required (though obviously there is an opportunity cost associated with the land that is swapped for Sha Lo Tung)
3. There are existing mechanisms that could be followed.

An independent land trust

Should government lack the political will to initiate a landswap deal with the developers and villagers, an alternative mechanism would be to set up an independent land trust that would acquire and manage the land for conservation. The advantages of such a trust would be:

1. it would preclude the need for government to set a precedent on acquiring land for the public purpose of conservation
2. it would preclude the need for government to prioritise sites for conservation
3. it would be more likely to attract private sector funding and donations
4. the precedent already exists for quasi government land trusts such as the Science Park, Industrial Estates Corporation etc
5. the developers and villagers may be willing to accept cash compensation

The trust, as with the National Trust in the UK, would exist for conservation of both cultural and natural heritage. It would acquire and manage land or property for conservation purposes. It would be independent from government although its trustees may include some government officials. A high profile patron would be necessary.

Funding sources suggested included:

- Private sector – developers and wealthy benefactors
- Government – either as a direct grant or by hypothecating some of the land premiums payable from showcase developments (which could be on land swapped in return for conservation areas).
- Hong Kong Jockey Club

The trust would need a champion for it to attract sufficient funding and support both within and outside government.

Conclusions

For Sha Lo Tung and Ping Shan Chai to be protected in its entirety and for posterity, the site needs to be acquired and managed. This can be done either by the government or by the private sector. While there are obstacles to government acquiring the land, none of these are insurmountable and it comes down to a matter of political will. If the will does not exist it may be up to the community to act. An independent land trust has been suggested as one mechanism for non government actors to acquire and manage Sha Lo Tung for conservation. However, this will require significant support from the private sector and the government to be effective.

With both mechanisms there is the risk that the potential offer of a land swap or purchase of land will drive up the price offered by the developer, and in the end there is no guarantee that a mutually agreed price/deal can be found. However, given the low possibility of any large scale development being approved under the current zoning (or the zoning being amended in favour of development) it is likely that both the developer and the villagers will be willing to agree to some kind of deal.

Whether it is government or the community that finally takes the initiative, time is imperative. The conservation of Sha Lo Tung cannot be delayed any longer or this special and unique ecological and cultural site may be lost forever.

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