

附件  
Annex

我們認為不切實可行的方案  
Options Considered Impracticable

收地  
Land Resumption

應用  
Application

政府可藉著收地程序，行使法定權力，強制接收私人土地的擁有權，把有關土地改作公共用途。政府過去曾多次收地，把土地用作自然保育以外的用途，例如發展新市鎮和興建大型基礎設施。受影響的土地擁有人和佔用人均獲發特惠補償，金額按既定的公式計算。不過，根據法律意見，自然保育可否視為公共用途，成為政府收地的理由，須按個別情況決定。

By means of land resumption, the Government exercises statutory power to compulsorily take over ownership of private land for achieving a public purpose. The Government has resorted to land resumption on many occasions in the past for purposes other than nature conservation. For instance, private land has been resumed for developing new towns and building major infrastructure. Ex-gratia compensation calculated according to the established formula has been paid to the affected landowners and occupants. However, according to legal advice, whether nature conservation can be justified as a public purpose for triggering land resumption needs to be determined on a case-by-case basis.

如要把收地用作保育工具，須得到社會上大多數人認同，因為完成收地程序和向合資格人士發放補償，都需要大量人力和財政資源。收地對政府財政的影響，也是須予考慮的重要事項。

Adopting land resumption as a conservation tool demands a majority consensus in the community, as considerable manpower and financial resources are required in completing the resumption procedures and providing compensation to the eligible parties. The financial implication for the Government is also an important issue that needs to be taken into account.

優點  
Merits

政府可藉著收地取得一個地點的所有控制權，並加以管理，以達到自然保育的目的。此外，有關地點也可作多種不會影響生態價值的用途，例如推廣自然保育教育、自然觀賞、其他靜態康樂活動及生態旅遊等，使市民從中受惠。

Land resumption will allow the Government to gain complete control of a site and manage it for nature conservation purpose. The site may also be made available for a number of uses that can generate benefits for the public provided that they will not adversely affect the ecological value of the area, e.g. promotion of conservation education, nature appreciation, other forms of passive recreation, eco-tourism, etc.

可行性  
Feasibility

這個方案對財政的影響極大。我們曾根據現有生態資料挑選了約十個具重要生態價值的私人地點，粗略估計收回和清理這些土地所需的費用。根據現行的補償率計算，收回和清理當中約1,000公頃私人土地的費用估計約為200億元。這尚未包括管理收回的地點所需的經常費用。收地雖然可能有利於自然保育，但所涉及的龐大財政承擔著實令人關注，亦會影響其可行性。此外，由於現行的措施已能保護本港不少重要生境，包括一些位於私人土地上的地點，因此我們對這個方案動用大量資源加強保育少數私人擁有的地點是否具有成本效益有所保留。

The financial implications of this option are tremendous. We have conducted a rough assessment on the potential resumption and clearance costs involved in the acquisition of about 10 ecologically important sites of private land that are identified based on the available ecological information. The costs estimated according to the existing compensation rates are in the order of \$20 billion for a total area of about 1,000 hectares of private land involved. That has not included the recurrent costs for managing the resumed sites. Notwithstanding the potential benefits in relation to nature conservation to be gained from the resumption of a site, the huge financial implications arising are definitely a concern and affect its practicability. Since with the existing measures many important habitats in Hong Kong including some on private land have already been conserved, there are reservations over the cost effectiveness of spending huge resources on enhancing conservation of a few additional sites under private ownership.

我們認為這個方案既不可行，也不能持久實施。

This option is considered neither feasible nor sustainable.

## 換地 Land Exchange

### 應用 Application

按照這個方案，政府會向土地擁有人批出可供發展的政府土地，以換取土地擁有人交還具重要生態價值的農地。這是一個非原址換地方案。由於涉及以私人協約方式直接批出政府土地，違反本港沿用已久的土地資源公開競爭原則，因此在現行的土地政策下，沒有充分理由支持這個方案。

This option will involve the Government granting developable government land to a landowner in exchange for his surrender of his agricultural lot of high ecological importance. It is a non-insitu land exchange that is not supported by existing land policy, since it involves a direct grant of government land by way of private treaty and is against our long established principle of open competition on land resources.

### 優點 Merits

與收地方案一樣，這個方案可以讓政府取得一個地點的所有控制權，從而保護該地點免受與保育目的不協調的活動和用途影響。受保育的地點也可用作與自然保育目的沒有抵觸的公共用途。

Similar to land resumption, this option will allow the Government to gain complete control of a site and protect it against incompatible activities and uses. The conserved site can also be made available for public uses that are compatible with the conservation objective.

### 可行性 Feasibility

根據過往經驗，任何換地過程預料都需時多年才能完成，因為政府與土地擁有人就換地條件進行的談判極有可能曠日持久。政府能否成功換取有關的私人土地，也沒有保證。此外，政府一旦表明有意換取某幅土地，在談判中便會處於不利的位置。再者，一些土地（特別是新界土地）所涉及的共有業權，亦會引發很多複雜的問題。最重要的是，政府的土地儲備中並無足夠土地，可供實行這個方案。

Based on past experience, any land exchange is expected to take years to complete, as negotiations with the landowners over the terms of exchange are likely to be protracted. Acquisition of the private land concerned also cannot be guaranteed. Besides, the Government's position in the negotiations may be severely undermined by the proclaimed desire to acquire the land. Multiple landownership particularly in respect of land in the New Territories will also give rise to complicated problems. Most importantly, there will not be enough government land in the land reserve for implementing this option.

我們認為這個方案並不切實可行。

This option is considered not practicable.



## 收緊現時的自然保育措施 Tightening of the Existing Conservation Measures

### 應用 Application

按照這個方案，規劃圖則上自然保育地帶的准許用途定義會收緊，藉此加強保護這些地帶內的生境。  
Under this option, protection of habitats under conservation zonings on town plans will be strengthened by tightening the uses permitted within those zonings.

當局根據《城市規劃條例》劃定不同的用途地帶，規管個別地點的土地用途，以達到預先訂定的規劃目標，例如住宅發展、商業用途或自然保育等。正如第二章所述，具特殊科學價值地點、自然保育區及海岸保護區一般被視為自然保育地帶，因為這些地帶的規劃目標都是保護有關地區內的自然景物。規劃圖則的註釋列明每個地帶經常准許的用途，以及須事先經城市規劃委員會(城規會)批准的用途。為了保護生態環境，自然保育地帶的准許用途頗為有限。

Under the TPO, zonings are designated for regulating land uses at specific sites to meet pre-defined planning objectives such as residential development, commercial use, nature conservation, etc. As explained in Chapter 2, SSSI, CA and CPA are commonly regarded as conservation zonings since they all share the common objective of protecting the natural features of an area concerned. The notes to a town plan would specify for each zoning a list of uses that are always permitted and a list of uses that would require approval by the Town Planning Board (TPB) before they are allowed to proceed. For protection purpose, the number of uses that are permitted within conservation zonings is fairly limited.

規劃署最近完成了一項檢討，其中一個結論是准許用途的定義可進一步收緊，以加強保育重要生境。舉例來說，城規會最近已同意加強管制具特殊科學價值地點，收緊“經常准許的用途”的範圍至主要包括郊野公園和野生動物保護區。

The Planning Department has recently completed a review and considers that, inter alia, there are rooms for further tightening of the permitted uses for enhancing conservation of important habitats. For example, TPB has recently agreed to tighten the control over SSSI by restricting the scope of the "always permitted uses" to cover mainly country park and wild animals protection area.

### 優點 Merits

這個方案會加強自然保育地帶所發揮的保育功能，而且較為易於實行，因為在《城市規劃條例》下已有既定程序對法定規劃圖則進行修改。

This option will enhance the conservation function of the conservation zonings. Implementation will be relatively simple since there are established procedures for making changes to statutory town plans under the TPO.

### 可行性 Feasibility

由於土地用途分區制度基本上只是管制土地用途的一種規劃工具，人類活動不在其管制範圍內。因此，即使有人在個別地帶內進行與規劃目的不協調的活動，只要沒有改變該地帶的准許用途，這個制度便不能禁止這些活動。這個方案也沒有向土地擁有人提供任何誘因，促使他們進行能加強保育有關地點的活動。另一方面，針對非法土地用途的巡查和執法行動，也需要大量資源。再者，如在劃定自然保育地帶之前，某些與保育目的不協調的土地用途已經存在，當局便無法加以禁止。

The land use zoning system is primarily a planning tool for controlling land uses, and human activities are beyond its ambit. It therefore cannot protect a site from incompatible activities provided that they do not constitute any changes to the land uses allowable under the respective zonings. It does not provide any incentives to the landowners to carry out activities that will better conserve the site either. On the other hand, policing and enforcement against illegal land uses require tremendous resources.

In addition, it is impossible to prohibit land uses that may not conform with the conservation zonings if they were already in existence before the land use zoning was imposed.

這個方案不能解決保育具有重要生態價值的私人土地所涉及的主要問題，因此效用極為有限。

This option cannot tackle the main problems relating to conservation of private land of high ecological importance and hence its effectiveness is very limited.

## 在工程場地之外採取緩解措施 Off-site Mitigation

### 應用 Application

這個方案容許《環境影響評估條例》(《環評條例》)下指定工程項目的倡議人向一個基金投入款項，以補償他們的工程項目對生態造成的不良影響，而無須在工程場地之內採取緩解措施。

Under this option, proponents of designated projects under the EIA Ordinance will be allowed to compensate for the adverse ecological impacts arising from their projects by putting money into a Fund instead of implementing on-site mitigation measures.

《環評條例》規定指定工程項目的倡議人須盡可能避免對環境造成不良影響；如完全避免是不切實可行，便須把這些影響紓緩至可以接受的程度。該條例的技術備忘錄訂明須在工程場地之內採取緩解措施；假如無法在工程場地之內採取緩解措施，方可考慮在工程場地之外採取這些措施。不過，在某些個案中，在工程場地之內為個別工程項目採取的緩解措施規模小，而且較零碎。在這些情況下，讓工程項目倡議人選擇向一個基金投入款項，在金錢上作出補償，或許更能達到自然保育的目的。這個基金可用來收回具重要生態價值的選定地點，進行積極的保育工作，以彌補失去的生態功能。

The EIA Ordinance requires proponents of designated projects to avoid causing adverse environmental impact as far as practicable, and if total avoidance is not practicable, to mitigate the adverse impact to an acceptable level. As stipulated under the Technical Memorandum to the EIA Ordinance, mitigation measures should be conducted on-site. Off-site mitigation may only be considered after the potential for implementing on-site mitigation has been exhausted. However, in some cases on-site mitigation measures implemented for individual projects are small in scale and piece-meal in nature. In these cases, it may better serve the nature conservation purpose if project proponents are allowed the alternative of putting monetary compensation into a Fund. The Fund can then be used for resuming selected sites of high ecological importance for active conservation management to compensate for the ecological functions lost.

### 優點 Merits

這個方案可以讓政府無須動用公帑，便能收回具重要生態價值的私人土地，同時在制訂緩解措施方面，為《環評條例》下指定工程項目的倡議人提供更大的彈性。假如在工程場地之內採取實際的緩解措施並不切實可行(例如受實際環境所限)，或者當局認為與其花錢在工程場地之內採取緩解措施，不如利用這些款項保護生態價值更高的其他地點，都可以採用這個方案。

This option can enable the Government to acquire ecologically important sites under private ownership without drawing on public money and will also provide proponents of designated projects under EIA Ordinance with more flexibility in drawing up mitigation measures. It could be used for projects where substantive on-site mitigation is not practicable because of, for example, site constraints, and for cases where it is considered that the money to be spent on on-site mitigation could be better used to protect other sites of higher ecological importance.

### 可行性 Feasibility

如要實行這個方案，便須修訂《環評條例》及其技術備忘錄，更改有關紓緩工程對生態的潛在影響的現有規定。舉例來說，當局須制定條文，容許發展商向基金投入款項，以代替在工程場地之內採取緩解措施；容許無須根據“同類彌償同類”及“最後選擇”的原則，在工程場地之外採取緩解措施；以及放寬目前計算生態補償時採用的“無淨損失”原則等。由於須修訂現行環評機制下一些沿用已久的緩解/補償原則，這個方案影響深遠，而且從自然保育的角度來看，整體的效益也難以預料。

Amendment of the EIA Ordinance and its Technical Memorandum to change the existing requirements regarding mitigation of possible ecological impacts will be required for implementing this option. For example, provisions need to be made for payment of money by developers into the Fund instead of conducting on-site mitigation, allowing the adoption of off-site mitigation not on a "like for like" and "last resort" basis, relaxing the current "no-net-loss" principle in calculating ecological compensation, and so on. The need to revise these well-established mitigation / compensation principles under the existing EIA mechanism would have huge implications, and the overall merits from the nature conservation perspective are uncertain.

此外，為了決定這個方案適用於哪些指定工程項目，以及發展商應向基金投入多少款項以代替在工程場地之內採取緩解措施，當局必須擬訂清晰而廣為人所接受的準則。這是極為困難，甚至不可能的事。這些決定很可能因有關事件被政治化而引起爭議，而且預料須進行冗長的辯論或磋商。由工程對生態造成影響，直到在工程場地之外採取緩解措施以彌補失去的生態功能，其間會有一段時間差距。這也是一個令人關注的問題。

Besides, it could be very difficult, if not impossible, to draw up clear and widely acceptable criteria for deciding on the designated projects to which this option could be applied and the amount of money developers are to pay into the Fund in lieu of on-site mitigation. The decisions are likely to be politically controversial, and lengthy debates or negotiations are expected. The gap between the time when the ecological impacts surface and the time when the off-site mitigation to compensate for the ecological functions lost will be implemented is also a concern.

這個方案實行起來困難重重，而且不明朗因素甚多。

The practical difficulties and uncertainties associated with this option are immense.



## 轉移發展權益 Transfer of Development Rights

### 應用 Application

按照這個方案，政府為了保護某一地點，以達到自然保育的目的，會把另一幅土地的發展權益批予該地點的土地擁有人，而土地擁有人則須交出該地點的發展權益，作為交換。由於本港發現有重要生境的私人土地通常都以農地租約批出，而根據這類租約，土地擁有人並無任何發展權益可供轉移，因此我們認為這個方案不適用於香港。

Under this option, the Government will grant development rights to a landowner on another piece of land in exchange for surrendering his development rights at the site to be protected for nature conservation purpose. This option is considered not applicable in Hong Kong, since the private land where important habitats are found are usually held under agricultural leases under which the landowners are not entitled to any development rights for transfer.