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**Legco Panel on Environmental Affairs
Special Meeting on 30 June 2008**

“Measures to tackle fly-tipping”

A summary of WWF Hong Kong’s views

It is of prime concern that the natural environment in the New Territories, comprising important and sensitive natural habitats, has fallen as a constant target of unauthorized and illegal activities. They include, but not limited to, unauthorised land filling¹, unauthorised land excavation, and illegal tree-felling. Previous cases uncovered reveal a large loophole in the existing planning control mechanism as the Planning Department does not have enforcement power on statutory Outline Zoning Plans (OZP) which are not covered by Development Permission Area (DPA) Plans.

In this case, and probably many others, although the filling activity is not in line with the planning intention of the subject zoning (usually conservation zoning), the Planning Department is not empowered to take action against such an activity under this existing loophole in the Town Planning Ordinance.

WWF calls on the Government to:

1. Amend the Town Planning Ordinance Ch. 131 to give the Planning Department statutory enforcement power over those OZPs that are not previously covered by DPA plans.
 - The rationale behind
Such an amendment should provide statutory power for the Planning Department to declare acts of land filling or land excavation that violates the planning intentions of areas under conservation zoning, such as “Green Belt” and “Conservation Area”, as unauthorized in existing non-DPA covered districts. The filling of this loophole in the Town Planning Ordinance should allow the Government to resolve the environmental nuisance caused to the public by penalising the subject party and requesting reinstatement.
2. Increase the level of punishment and fine with a deterrent effect against unauthorised land filling and land excavation by empowering the court to confiscate vehicles/machines that are used to commit such environmental crimes, which is a practice employed in other

¹ Land filling is defined by the Planning Department as “the depositing or placing of earth, gravel or any other substances on land, which results in an elevation of ground level”. Therefore, dumping C&D wastes or soil and paving concrete on land can be considered as land filling.

Link: http://www.info.gov.hk/tpb/en/forms/dot_revised_index_ftoo.html#fill



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countries, such as the United Kingdom.

- The rationale behind

Similar to the \$1,500 fine for littering, the person who commits the crime should bear the consequence of his/her act. Such a penalty is adopted in the UK as an important measure to curb fly-tipping and there is no reason why Hong Kong should not adopt similar measures. This type of penalty appears to have a much stronger deterrent effect than simply paying a fine which is pitifully lower than the maximum fine as meted out by the court in previous cases (amounting to a few thousand dollars on average).

3. Incorporate a new clause into the existing Town Planning Board (TPB) guidelines and inform the public that any unauthorised development or environmental degradation activity in the hope to:

- a. rezone a piece of land from conservation zonings, such as “Green Belt” or “Conservation Area”, to development zonings or
- b. apply for development directly on conservation zonings

will not gain sympathetic consideration from the TPB.

- The rationale behind

Giving sympathetic consideration is power that TPB members may use to meet the strong demand of various types of development such as open storage and small houses on conservation zonings even though these types of development may not be in line with the planning intentions of these zonings. It is WWF’s view that the board should waive its sympathetic consideration when environmental degradation activities are involved in development applications since the public expects the board members to examine these types of applications more carefully in order to avoid setting a bad precedent. Such a clause ought to be developed and the public be informed so as to eliminate the incentive for undertaking environmental degradation activities.



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WWF’s views in details

Amending the Town Planning Ordinance to close a loophole that currently encourages large scale environmental degradation activities in many new towns in Kowloon and the New Territories

1. Amend the Town Planning Ordinance Ch. 131 to give the Planning Department statutory enforcement power over those Outline Zoning Plans that are not previously covered by Development Permission Area plans.

Our detailed rationale behind such a request

The loophole in the Town Planning Ordinance as disclosed by the Shing Mun Road Incident

2. One of the statutory functions of the Town Planning Board (TPB) is to prepare statutory zoning plans for many districts in Hong Kong in order to guide the land use and development of these areas.
3. Two types of statutory zoning plans are currently prepared by TPB under the provisions of Town Planning Ordinance. They are Outline Zoning Plan (OZP) and Development Permission Area (DPA) Plan. DPA Plan is a temporary arrangement effective for only 3 years and is to be replaced by OZPs.
4. Some districts in Hong Kong are covered by OZPs that eventually replace DPA plans installed in the beginning stage, while for some other districts OZPs are put in place without the prior placement of DPA plans.
5. Interestingly, under existing rules, the Planning Department can only exert enforcement power against unauthorised developments within DPA plans or OZPs which replace previous DPA plans.
6. For OZPs where a previous DPA plan does not exist, the Planning Department is not empowered to take actions against unauthorized activities in those districts.
7. Take the Shing Mun Road Incident as an example; the Planning Department stated that



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the subject land filling activities on “Green Belt” (“GB”) do not constitute unauthorised development under the Town Planning Ordinance because Kwai Chung Outline Zoning Plan “... *does not fall within a development permission area*”.

8. Controlling the dumping of construction and demolition wastes from the sources may reduce the number of unauthorised land filling in Hong Kong. However, simply controlling dumping from the sources will not resolve the environmental nuisance caused to the public if the Shing Mun Road Incident appears to be only the tip of an iceberg and repeated cases are likely to come in the future.
9. The absence of enforcement power poses as the fundamental cause of the widespread of unpunished environment damaging activities. A legal basis is urgently needed for the Government to take action to resolve the environmental nuisance caused by land filling or excavation on those areas previously not covered by DPA plans as shown in Appendix 1.

Urgency of the matter – the uncovered cases are tip of an iceberg

10. It is urgent to fill the loophole of the Town Planning Ordinance because:
 - a. Dumping of construction and demolition wastes at the sub-urban areas around an urban town poses serious disturbance to the public.
 - b. The conservation zonings within 14 districts in Kowloon and the New Territories are currently vulnerable to the imminent threat of land filling and other environmental damaging activities such as land excavation due to the absence of enforcement power from the Planning Department.
 - c. According to the Appendix 1, the Planning Department has no statutory enforcement power over 7 800 ha of “GB”, 713 ha of “Conservation Area” (“CA”) and 316 ha of “Coastal Protection Area” in Kowloon and New Territories including Outlying Islands.
 - d. The Government’s policy of planning enforcement ought to be consistent.



Beef up enforcement measures with a deterrent effect

11. The court should be given the power to confiscate the vehicles or machines that are used to commit unauthorised land filling and land excavation in order to deter repeated offences and future occurrence of such environmental crimes.

Our detailed rationale behind such a request

12. Environmental crime is not recognised as a severe problem by the court in general as the actual fine imposed by the court is far lower than the maximum fine set out in the relevant ordinances in Hong Kong. This huge gap apparently shows that the current measures are ineffective in tackling the problem, as illustrated by the following table:

Relevant Ordinances	Example(s) of environmental crime regulated by the Ordinance	Maximum penalty level specified in the Ordinance	Average fine imposed by the court in 2007
Waste Disposal Ordinance (WDO) Ch. 354	Depositing of wastes in any place, except with lawful authority or with permission of land owners or lawful occupiers (Source: Section 16A of WDO)	\$500 000 and imprisonment for 6 months (Source: WDO Section 18)	\$4 028 (Source: EPD Website ²)
Lands (Miscellaneous Provisions) Ordinance Ch. 28	Unlawful excavation in unleased land (Source: Section 10 of L(MP)O)	\$50 000 and imprisonment for 6 months (Source: Section 10 of L(MP)O)	\$2 750 (Source: WWF's record)
Town Planning Ordinance Ch. 131	Unauthorised development on private land (Source: Section 21 of TPO)	\$1 000 000 (Source: PlanD website ³)	About \$15 000 (Source: PlanD Annual Report 2008)

13. Therefore, it is obvious that the existing fine imposition has failed to deter environmental damaging activities such as unauthorised land filling and land excavation.

14. Confiscating the vehicles that are used to conduct fly-tipping is a measure adopted in UK in which under the Environmental Protection Act 1990, *‘the court may also make an order to deprive the offender of his rights to a vehicle (and its contents) if the court is satisfied that the vehicle was used to commit an offence’*⁴

15. This type of penalty can become a strong deterrent measure since it creates a risk to the business operation of waste handling companies which commit environmental crimes.

² http://www.epd.gov.hk/epd/english/laws_regulations/enforcement/resource_enfor2.html

³ http://www.pland.gov.hk/info_serv/cep/enforcement/enforce_e.htm#q14

⁴ ENCAMS. *‘Flytipping and the law – a guide for the public’*. Pg 4.



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16. It is easy to gather the evidence for prosecution since the public can easily identify the registration number of a vehicle. Such a measure also addresses the safety concern of an environmental spotter.

Revise the existing Town Planning Board guidelines

17. Incorporate a new clause into the existing TPB guidelines and inform the public that any unauthorised development or environmental degradation activity in the hope to

- a. rezone a piece of land from conservation zonings, such as “Green Belt” or “Conservation Area”, to development zonings or
- b. apply for development directly on conservation zonings

will not gain sympathetic consideration from the TPB.

Our detailed rationale behind such a request

18. WWF has come across many cases in which environmental crimes such as unauthorised land filling, land excavation and illegal tree-felling are deliberately undertaken to degrade the area in order to increase the chances of obtaining planning permission from the TPB.

19. Currently, there is an existing TPB guideline which states that TPB can refuse to grant sympathetic consideration to planning applications if unauthorised development or environmental degradation occurred beforehand in the hope to rezone a piece of land from “GB” or “CA” to “**Other Specified Uses**” annotated “**Rural Uses**”.

20. However, such a guideline does not provide a basis for the TPB to refuse granting sympathetic consideration if the environment is damaged and the applicant is applying:

- to change the existing conservation zonings to development zonings such as “Village Type Development” or “Open Storage” or
- for development directly on conservation zonings

21. Giving sympathetic consideration is an existing argument that TPB members may use to meet the strong demand of various types of development such as open storage and small houses on conservation zonings even though these types of development may not be in line with the planning intention of these zonings. The board should not give sympathetic consideration when environmental degradation activities are involved in development applications since the public expects the board members to examine these types of applications more carefully in order to avoid setting a bad precedent.

22. Such a clause ought to be developed and the public be informed so as to eliminate the incentive for undertaking environmental damaging activities.