For discussion
on 30 June 2008

Legislative Council Panel on Environmental Affairs

Depositing of Inert Construction and Demolition Materials on Private Land

INTRODUCTION

At the special meeting of this Panel held on 16 May 2008, Members discussed measures to address public concerns over the disposal of construction and demolition (C&D) materials on private land. As presented in Paper CB(1) 1557/07-08(01), in addition to enhanced enforcement actions by relevant departments within their existing authority through better information sharing and coordination, some preliminary regulatory options have also been put forward for Members' consideration.

2. As requested by Members, supplementary information on the cases of depositing of inert C&D materials on private and government land has been set out in an information note (Paper CB(1) 1968/07-08(01)) submitted to this Panel on 18 June 2008. This paper seeks to provide more details on the regulatory options with preliminary assessment to facilitate further discussion.

OPTIONS TO FURTHER REGULATE DEPOSITING OF INERT C&D MATERIALS ON PRIVATE LAND

3. As set out in Paper CB(1) 1557/07-08(01), Government departments are empowered under existing legislation to take enforcement action against adverse environmental impacts, hygiene problems or violation of land use control arising from the depositing of inert C&D materials on private land. However, there are circumstances where the depositing of inert C&D materials becomes an eyesore and found incompatible with the surrounding natural environment, irrespective of whether they are in compliance with existing legislation. In order to address increasing public concern over the

depositing of inert C&D materials on private land, we have identified several possible options to further regulate such activities, namely,

a. licensing system to regulate the deposit of inert C&D materials on private land;
b. legislative control through environment impact assessment;
c. planning control on the depositing of inert C&D materials; and
d. trip-ticketing system for C&D materials.

4. The Administration has considered in more detail each of these options and their feasibility, and our assessment is set out in Annexes A to D.

ADVICE SOUGHT

5. Members are invited to comment on the various options as set out in Annexes A to D.

Environment Bureau
June 2008

Annex A

Licensing system to regulate the depositing of inert C&D materials on private land

The primary objective of the Waste Disposal Ordinance (Cap. 354) (WDO) is to provide for the control and regulation of the production, storage, collection and disposal of "waste". As defined under the WDO and its subsidiary legislation, "waste" means any substance or article which is *abandoned*, while construction waste means any substance, matter or thing that is generated from construction work and *abandoned*. Section 16A of the WDO was last amended in 2004 to strengthen the control on unlawful deposit of waste to tie in with the implementation of the construction waste charging scheme. It provides for an offence if waste is deposited or caused to be deposited in any place without lawful authority or without the permission of any owner or lawful occupier of the place.

2 In so far as private land is concerned, currently depositing of inert C&D materials with the consent of landowners is not an offence under the WDO. Many of the landowners claim that the materials are deposited for gainful uses, such as for land formation activities for various permitted use of the sites. The C& D materials are not regarded as "waste" under the WDO. Therefore, to introduce under the WDO a new control mechanism to regulate the depositing of these materials on private land for a purpose which may affect the landowners concerned will require careful examination as to whether the control mechanism is line with the objectives of the Ordinance. Legislative amendments, including revisions to the definition of "waste", will need to be made.

3. While depositing of inert materials on land may cause some adverse visual and landscaping impacts, they are not environmental issues that are within the purview of WDO. From the complaints received so far, we note those cases involving substantial stockpiling of C&D materials over a sizeable area usually cause the greatest public concern. In such cases, it is not unreasonable to question whether the sites would in effect serve as private fill banks. Under such circumstances, there might be a case to subject such depositing activities to control under the WDO. For example, consideration could be given to require the depositing of inert C&D materials on a site of a certain size (say over two hectares in size), or of a certain depth/height relative to the adjacent area, to obtain the prior approval from the Environmental Protection Department (EPD).

4. In processing applications for depositing inert C&D materials, a number of relevant departments would need to be consulted, such as the Planning Department, the Lands Department, the Agriculture, Fisheries and Conservation Department, the Buildings Department, the Drainage Services Department, the Food and Environmental Hygiene Department, etc. This is to ensure that possible impacts associated with such activities, including visual impact, incompatibility with surrounding landscape, compliance with lease conditions, impact on ecology, slope stability, possible blockage to watercourse, public hygiene, etc, are properly considered and appropriate conditions imposed. The due process of application would necessitate a reasonable process period, and it is also reasonable to require the applicant (who may be the land owner, occupier or any person who intends to deposit the C&D materials) to bear the cost for processing the application, in accordance with the user-pays principle. This would inevitably impose additional compliance and financial costs on the land owners, occupiers or other parties concerned.

5. While a licensing or authorization requirement for depositing of C &D materials on private land would serve as a preventive measure against potential risk in environmental, public hygiene and safety considerations, applying the requirement to all cases across the board regardless of the extent of depositing activities will go beyond the scope of WDO and will likely be seen as disproportionate interference with private property rights when there is no breach against other laws and control.

6. Whether to regulate depositing of C&D materials on private land, and if so, how the regulatory mechanism operates, will require a careful balance to be struck between respecting private property rights and safeguarding public interest. Full consultation with the stakeholders concerned and more in-depth study within the Administration will need to be undertaken.

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Annex B

Legislative control through environmental impact assessment

The Administration has previously explored the possibility of subjecting the depositing of inert C&D materials to the control of the Environmental Impact Assessment Ordinance (Cap. 499) (EIAO). The EIAO is a tool for preventing environmental problems from large or major developments. It covers impact on air quality, noise, water quality, waste management, ecology, fisheries, visual, landscape and sites of cultural heritage. This option was raised at this Panel in January 2005, but Members expressed reservation on its practicability. In view of the recent public concern on the depositing of inert C&D materials on private land, the Administration has revisited this option.

2. Under Part 1 of Schedule 2 to the EIAO, public dumping area of not less than 2 hectares in size is already prescribed as a designated project requiring an environmental permit from Director of Environmental Protection (DEP). A possible option, therefore, is to revise the Schedule to include also "land filling areas of not less than 2 hectares in size and with a depth of filling of not less than 1.2 metres" as a designated project under the EIAO.

3. The rationale for adopting 2 hectares as the area size threshold is to follow the objective of the EIAO in only applying the environmental impact assessment (EIA) regime to large or major development projects. We propose to adopt 1.2 metres as the threshold for the depth of filling because we do not intend to regulate land filling activities intended for genuine gardening and agricultural purposes. According to the Agriculture, Fisheries and Conservation Department, the amount of top soil needed for landscape tree planting is about 1.2 metres. Therefore, the setting of the threshold for the depth of filling would not inadvertently affect genuine gardening and agricultural activities.

4. Under this option, land filling areas falling within the proposed criteria will be regarded as designated projects under Schedule 2 to the EIAO. Project proponents of such designated projects will be required to apply for environmental permits from DEP before construction or operation of the designated projects can begin, failing which he is liable to

prosecution[1]. To obtain an environmental permit, the project proponent will need to go through the statutory EIA process which normally will take 1 to 2 years to complete including impact assessment, report preparation, vetting by DEP, public inspection and seeking advice from the Advisory Council on the Environment.

5. Site formation is a routine procedure for many construction works which are being conducted without causing problems under the existing environmental legislative control. If this option is adopted, many routine site formation works will have to go through the EIA process, which could be time-consuming and costly. Furthermore, many land filling activities on private land are relatively small in size, and this option will not help improve the condition of small scale activities. Reducing the size limit of 2 hectares will catch many small land filling activities on private land but at the same time will inadvertently include all construction works involving site formation under the EIA control regime.

6. This option will serve to act as a supplement to the existing environmental legislation to ensure that the environmental impacts of such land filling activities will be controlled to within limits under the law. It will also help communicate the environmental control requirements to the project proponents during the planning stage before the land filling activities take place. However, it will not forbid land filling activities from taking place on private land since the Technical Memorandum of the EIAO explicitly states that an environmental permit cannot be refused on land use ground. Hence it is not a tool for stopping non-conforming land uses. Furthermore, in view of the side effect of inadvertently hitting the genuine construction activities severely, strong objection from the construction sector and their clients is anticipated if this option is pursued.

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[1] Under the EIAO, any person who constructs or operates a designated project or decommissions a designated project without an environmental permit for the project commits an offence and is liable on a first conviction on indictment to a fine of $2,000,000 and to imprisonment for 6 months; and a second or subsequent conviction on indictment to a fine of $5,000,000 and to imprisonment for 2 years.

Annex C

Planning control on the depositing of inert C&D materials

The legislative intent of the Town Planning Ordinance (Cap.131) (TPO) is essentially to regulate land use and development through the preparation of statutory town plans and operation of the planning application systems. The TPO is not an effective means to tackle the problem of the depositing of C&D materials in the rural New Territories (NT) since planning enforcement and prosecution action can only be instigated after the damage to the natural environment has already taken place. Besides, the deposit of C&D materials, which is defined as a land filling operation under the planning regime, is part of the development process that is incidental to the land uses and developments that are permitted as of right. The TPO is thus not the right tool to regulate the depositing of C&D materials, which should be tackled at source to prevent the degradation of the natural environment.

2. The Town Planning (Amendment) Ordinance (1991) provides the Planning Authority with enforcement power against unauthorized developments (UDs) within the development permission areas (DPAs) or those areas with the replacement Outline Zoning Plans (OZPs). Within these areas, all developments are unauthorized unless the development is either in existence before the gazettal of the DPA plans, permitted under the OZPs or covered by valid planning permission.

3. At present, about 67% of the total area covered by the rural OZPs is already subject to the land/pond filling control regime, in areas zoned for conservation-related uses, "Green Belt" or "Agriculture" zones. The remaining areas are zoned for development purposes, such as "Village Type Development", "Residential (Group D)" and "Open Storage". Building, engineering and other operations ancillary to the permitted uses and developments within these zonings are always permitted and no separate planning permission is required. Besides, the Planning Authority cannot exercise any enforcement power against a suspected UD once the subject site is covered by a valid planning permission for use or development. Any suggestion for authorization from the Planning Authority or the Town Planning Board (TPB) prior to deposit of C&D materials on development-related zones, particularly those covered by Block Government Lease, would be criticised as unnecessarily constraining the development process and work against the policy objective to streamline the development

approval process. There could also be strong objections from the construction industry and landowners for infringement on private property rights.

4. Whilst the Planning Authority would continue to enforce against land/pond filling activities in an expeditious and proactive manner to address public concern, the TPB, with the directive from the Chief Executive, would progressively and systematically prepare DPA plans for rural areas that are subject to development pressure such that the Planning Authority can instigate planning enforcement action against UDs in these areas. Rural areas such as the Frontier Closed Area and Lantau South, would continue to be accessed under a restricted road/car permit system.

5. Regarding the suggestion to extend the planning enforcement power to the urban areas and new towns, it should be noted that the OZPs prepared for these areas are intended primarily to regulate development and land uses and most of the zonings are development-related to optimise the use of the roads and utility services already in place. Development control in these areas has all along been exercised by way of the TPO, Buildings Ordinance and lease control. There is no policy intention to extend the planning enforcement power of the Planning Authority to the urban areas and the New Towns.

Development Bureau
Planning Department
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Annex D

Trip-ticketing system for C&D materials

The Government operates a trip-ticketing system to ensure that the C&D materials from public works projects are properly disposed of at designated disposal facilities. As outlined below, the system relies heavily on conscientious efforts of the site supervisory staff to issue a trip ticket to every truck leaving the site, and to compare regularly site delivery records against the reception record at the designated facilities.

2. Extending the system to private projects might help prevent fly-tipping, but would ***not*** help regulate the deposition of C&D materials on private sites, if permission of landowners or lawful occupiers has been obtained and if they have the right to give such permission. Furthermore, should the system be applied to private projects, owners and contractors will have to ensure adequate site personnel to exercise due diligence in issuing trip tickets, verifying delivery records, and complying with environmental requirements. This may sometimes cause difficulty in case of minor building works or renovation projects. In any event, if the system is to be introduced on a mandatory basis, it would require legislative back up and additional resources to police and enforce the operation, and it would be necessary to consult the construction industry and other relevant stakeholders on such a proposal.

Outline of the Trip-ticketing system for public works projects

<u>Pre-construction Stage</u>

(i) The project officer seeks confirmation from the Civil Engineering Development Department (CEDD) whether public fill reception facilities are available for disposal of inert C&D materials, and from EPD whether landfills are available for disposal of non-inert C&D materials.

(ii) CEDD and EPD will designate public fill reception facilities and landfills respectively and advise the project officer of the acceptance criteria.

(iii) The project officer then specifies the designated disposal facilities and the acceptance criteria in the tender documents.

(iv) Upon commencement of a contract, the Contractor may apply to the Project Architect/Engineer for the use of an alternative disposal site, which could be other construction sites or private land. The application shall include proper evidence of authority for the disposal site to receive the inert C&D materials.

Construction Stage

(v) A trip ticket is required for each truckload leaving the site.

(vi) The truck driver shall carry the trip ticket issued by the project officer for every vehicular trip transporting C&D materials to the public fill reception facilities and landfills.

(vii) For each vehicular trip on arrival at the disposal facility, the truck driver shall present the trip ticket at the entrance gate, proceed with the disposal operation and then obtain a receipt from the operator of the disposal facility at the exit gate.

(viii) For disposal at public fill reception facilities and landfills, the disposal records will be posted at the CEDD and EPD websites respectively normally within three working days after the disposal to facilitate checking.

(ix) For disposal at an alternative disposal site, the owner or agent of the site shall establish a system for transmitting disposal record to the Architect/Engineer's Representative.

Site Establishment to Ensure Proper Operation of the System

(x) The Contractor shall appoint a senior staff member fully responsible for implementing and overseeing the operation of the trip-ticketing system, prepare a monthly programme for disposal of C&D materials of the site, establish site procedures to ensure that each truckload of C&D materials leaving the site will bear a duly completed trip ticket, and maintain a daily record of C&D materials from the site, including details of the C&D materials, the truck number, departure time, etc, using the Daily Record Summary (DRS).

(xi) The Contractor's senior staff member shall appoint experienced persons to man each exit from the site for the purpose of checking every truck carrying C&D materials leaving the site so as to ensure that the truck driver bears a duly completed trip ticket.

(xii) The Architect/Engineer's site supervisory staff shall issue the trip

tickets and keep a comprehensive register of the trip tickets issued. He shall conduct daily checks on the DRS record submitted by the Contractor against the trip tickets issued and the disposal records provided by CEDD and EPD at the websites. He shall conduct daily spot checks on the Contractor's staff manning each exit of the site and the trucks carrying C&D materials leaving the site to see if they bear duly completed tickets.

(xiii) Works Departments conduct technical audits of their contracts for compliance with written policies, procedures and instructions. The trip-ticketing system is included as a standard item in the technical audit.

Development Bureau
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