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Panel on Environmental Affairs

Subcommittee on Combating Fly-tipping

**Background brief on fly-tipping and
land filling activities on private land**

Purpose

This paper sets out the progress of measures to combat fly-tipping, and gives a brief account of the views and concerns raised at meetings of the Council and the Panel on Environmental Affairs (the Panel).

Introduction

2. Land filling refers to depositing or placement of construction and demolition (C&D) materials as fill material on land, which results in an elevation of ground level. Land filling activities are usually carried out for purposes of filling up ponds, levelling off uneven ground surfaces, forming site for development e.g. landscaping, roads, village houses, car parks or recreation facilities, stockpiling in the form of a fill bank, or depositing of C&D materials onto land as dumping ground.

3. Fly-tipping refers to illegal depositing of C&D materials, which is often associated with haphazard and casual dumping from vehicles. Fly-tipped C&D materials are usually scattered, left in heaps, and in small quantities. Most of these illegal dumping activities take place in urban built-up areas at locations with good vehicular access, such as at kerb sides or side roads branched off from main roads.

Existing control regime on land filling activities and fly-tipping

Land filling activities on private land and government land

4. Depositing of inert C&D materials on government land or private land without the consent of the concerned owners is in breach of existing land use or environmental legislation. Even if the depositing activities are on private land and with the consent of the concerned owners, when such activities cause adverse environmental impacts, hygiene problems or violation of land use control in accordance with the relevant

legislation, the relevant Government departments are also empowered to take appropriate enforcement actions. However, in the situation where the depositing of C&D materials on private land with the consent of the land owners for legitimate purposes, such as leveling uneven ground to prepare the sites for future development or permitted short-term uses, and that such activities do not cause adverse environmental and hygiene problems or violation of land use control, the relevant Government departments do not have authority under the existing legislation to enforce against such activities.

Land use planning control

5. The main objectives of land use planning as enshrined in the Town Planning Ordinance (Cap. 131) (TPO) is to promote the health, safety, convenience and general welfare of the community. Planning control is effected through the preparation of statutory plans and enforcement power under TPO. The statutory plans list out those uses/developments permitted under the plan and those requiring planning approval from the Town Planning Board (TPB). The Planning Department (Plan D) can take enforcement actions against unauthorized land filling activities falling within the Development Permission Area, in the rural New Territories, that fail to comply with the provisions of statutory plans. Generally speaking, prior planning permission from TPB is required for land filling activities in areas covered by conservation-related zones, such as "Sites of Special Scientific Interest", "Conservation Area" and Coastal Protection Area", as well as "Green Belt" or "Agriculture zones.

Land lease control

6. Apart from the land use planning system, the use of a particular piece of private land is also governed by the terms of the relevant land lease. The Lands Department (Lands D) is responsible for the disposal of land by leases and for the enforcement of the lease conditions. Whether land filling activity is allowed on private land depends on the land lease conditions.

Building control

7. All building works need to comply with the relevant provisions of the Buildings Ordinance (Cap. 123) (BO). For land filling activities, only if those undertaken for the purpose of or are associated with building construction works required prior approval from the Building Authority (BA) under BO. Otherwise, these activities per se will not come under the control of BO. However, should they affect the safety of adjacent buildings or land, such as any slope formed by the land filling is in an unstable condition, BA may consider appropriate enforcement action under BO to render it safe.

Waste Disposal Ordinance (Cap. 354)

8. Under section 16A of the Waste Disposal Ordinance (WDO), a person commits an offence if he deposits or causes or permits to be deposited waste in any place except with lawful authority or excuse, or except with permission of any owner or lawful occupier of the place. Section 23EA further provides that if the Director of

Environmental Protection has reasonable grounds to believe that an offence under section 16A has been committed, that the waste deposited in the place is likely to give rise to an imminent risk of adverse environmental impact, and that action needs to be taken immediately to reduce or eliminate that risk, the Authority may enter the place to remove the waste and recover the cost from the convicted person on application of a court order.

Environmental hygiene

9. The Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO) has provisions to deal with nuisances and require removal of litter or waste from any place. If land filling or dumping of waste on a particular piece of land gives rise to a nuisance (as defined in PHMSO) or litter, action may be taken against the land owner under PHMSO. The Food and Environmental Hygiene Department (FEHD) can issue abatement notice or notice of removal of litter or waste to the responsible person, requiring the person to abate the nuisance within a specified period of time. Failure to comply with the relevant notice will be subject to prosecution.

Drainage concerns

10. If the land filling activities affect existing stream, watercourses and drainage system, the Drainage Services Department will assess the likely drainage impacts of the activities in the area and the potential risk of flooding and monitor the drainage system to avoid flooding. It will remove any silt/debris accumulated in channels/drains within government land and carry out immediate de-silting during flood emergencies.

Discussion by the Panel

11. Despite the various control measures, the problem of fly-tipping and land filling activities is still prevalent as evidenced by the increase in number of complaints against these activities. Such activities have not only become an eyesore but are also incompatible with the surrounding natural environment, irrespective of whether it is permitted under the relevant planning and land use control. An example is the recent case of land filling activity on a piece of private agriculture land in She Shan Tsuen, Tai Po, carried out with the consent of the landowner.

12. Questions on the subject have been raised at various Council meetings. The questions and the Administration's response are hyperlinked below for ease of reference. The Panel has also held a series of special meetings to follow up the problems of fly-tipping and land filling activities, and to explore possible legislative options to further regulate the problems. These options include –

- (a) a licensing system to regulate the deposit of inert C&D materials on private land;
- (b) legislative control through environmental impact assessment;

- (c) planning control on the depositing of inert C&D materials; and
- (d) a trip-ticketing system for C&D materials.

Details and feasibility of and the Administration's assessment on each of these options are set out in Annexes A to D to LC Paper No. CB(1) 2043/07-08(08) which are hyperlinked below for ease of reference. Deputations were also invited to express their views.

13. Members noted that to help address the land filling problem within the "Agriculture" zone, TPB in April and July 2005 had incorporated the land filling clause into the Notes of the rural Outline Zoning Plans (OZP) for "Agriculture zones. Such amendments had helped to step up development control on land filling activities by requiring prior planning permission from TPB under section 16 of TPO for undertaking or continuing land filling activities, except those specially required under prior written instructions of Government department(s), for laying of soil not exceeding 1.2 metres in thickness for cultivation, or for construction of any agricultural structure with prior written approval issued by Lands D.

14. In the light of public concern, departments concerned had stepped up enforcement actions within their existing authority through better information sharing and coordination. To better monitor the situation and address the potential problems arising from depositing of inert C&D materials on private land, the Environmental Protection Department (EPD) would set up a database capturing cases of depositing inert C&D materials on private land gathered from routine inspection and complaints received by all relevant departments. Enforcement actions by individual departments would be recorded in the database and joint actions might be arranged where appropriate. The information of the database would be shared among all relevant departments, including EPD, FEHD, Plan D, Lands D and District Offices. In addition, regular monitoring and inspection of the identified sites for enforcement under the relevant legislative controls on environmental protection, hygiene and land use would be conducted by the departments concerned. Depending on individual circumstances, the relevant District Officer might convene district interdepartmental meetings or ask the department concerned to set up a task force with a view to dealing with the case expeditiously.

15. On the proposed amendment to WDO to introduce a new control mechanism to regulate the depositing of inert C&D materials on private land, some members agreed that actions should be taken against such activities, even with the consent of landowners, lest these might give rise to flooding. There was also a need to re-define "waste" under WDO to facilitate regulation of depositing of C&D materials on private land. Other members however noted Heung Yee Kuk's view that it was unfair for the Administration to hold landowners liable for depositing activities which were carried out without their consent. Besides, illegal disposal of waste should refer to depositing activities which would give rise to environmental degradation.

16. On the proposed planning control on the depositing of inert C&D materials, some members suggested amending TPO to give Plan D statutory enforcement power over OZP areas that were not previously protected by Development Permission Area Plans. Consideration should also be given to allowing the transfer of plot ratio for landowners whose land was not permitted for development on account of its high ecological importance. This would help prevent landowners from destroying the ecological value by land filling activities. As the suggestions fell outside the remit of the Panel, these had been referred to the Panel on Development for further discussion.

17. On the proposed trip-ticketing system, members agreed to the need to extend the existing trip-ticketing system for public works projects to major private works projects to track the movement of inert C&D materials, and that the proposal extension was worth pursuing.

Latest development

18. To enable more focused discussion on measures to tackle fly-tipping and land filling activities, the Panel decided at its meeting on 23 February 2009 to form a subcommittee to follow up on the subject.

Relevant papers

Question raised by Hon Daniel LAM at the Council meeting on 11 January 2006
http://www.legco.gov.hk/yr05-06/english/counmtg/agenda/cmtg0111.htm#q_10

Administration reply to question raised by Hon Daniel LAM at the Council meeting on 11 January 2006

<http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm0111ti-translate-e.pdf>

Information paper provided by the Administration for the Environmental Affairs Panel meeting on 11 April 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea0411cb1-1199-1-e.pdf>

Supplementary information paper provided by the Administration for the Environmental Affairs Panel meeting on 11 April 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea0411cb1-1538-1-e.pdf>

Minutes of the Environmental Affairs Panel meeting on 11 April 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ea/minutes/ea080411.pdf>

Information paper provided by the Administration for the Environmental Affairs Panel meeting on 16 May 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea0516cb1-1557-1-e.pdf>

Minutes of the Environmental Affairs Panel meeting on 16 May 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ea/minutes/ea080516.pdf>

Information paper provided by the Administration for the Environmental Affairs Panel meeting on 30 June 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea0630cb1-1968-1-e.pdf>

<http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea0630cb1-2043-8-e.pdf>

Supplementary information paper provided by the Administration for the Environmental Affairs Panel meeting on 30 June 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea0630cb1-1225-1-e.pdf>

Minutes of the Environmental Affairs Panel meeting on 30 June 2008

<http://www.legco.gov.hk/yr07-08/english/panels/ea/minutes/ea080630.pdf>

Question raised by Hon CHOY So-yuk at the Council meeting on 9 July 2008

http://www.legco.gov.hk/yr07-08/english/counmtg/agenda/cmtg0709.htm#q_18

Administration reply to question raised by Hon CHOY So-yuk at the Council meeting on 9 July 2008

<http://www.info.gov.hk/gia/general/200807/09/P200807090137.htm>

Question raised by Hon Albert HO at the Council meeting on 4 February 2009

http://www.legco.gov.hk/yr08-09/english/counmtg/agenda/cm20090204.htm#q_13

Administration reply to question raised by Hon Albert HO at the Council meeting on 4 February 2009

<http://www.info.gov.hk/gia/general/200902/04/P200902040239.htm>

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