

For information
On 21 May 2009

**Legislative Council Panel on Environmental Affairs
Subcommittee on Combating Fly-tipping**

Administration's response to views/proposed measures

PURPOSE

This paper aims to set out the Administration's response to the views and proposed measures discussed at the Subcommittee meetings.

ADMINISTRATION'S RESPONSE TO VIEWS AND FOLLOW-UP ACTIONS

2. Various deputations were invited to attend the Subcommittee meeting on 7 May 2009 to express views on measures to combat fly-tipping. The Administration was requested to provide response to the views and proposed measures put forward by the deputations, a summary of which is at **Annex**.

3. In the summary, Members are also invited to note the Administration's response to a number of follow-up actions (paper no. CB(1)1503/08-09(16)) arising from the discussion at the meeting on 20 April 2009. In particular, the Planning Department has provided in item 3 and item 4 respectively the response to the follow-up actions concerning the control on land covered by Outline Zoning Plans but outside existing Development Permission Area, and that concerning reinstatement. The Administration's response to the suggestion on increasing the penalty for fly-tipping and land filling can be found at item 7. Item 9 also sets out the action taken to relay the proposed compulsory declaration system to the construction industry.

**Environmental Protection Department
May 2009**

Subcommittee on Combating Fly-tipping

Summary of views/proposed measures put forward by deputations at the meeting on 7 May 2009

Organizations	Views/proposed measures	Administration's response
<p>Friends of the Earth (HK) (FoE) (LC Paper No. CB(1)1503/08-09(01))</p> <p>WWF Hong Kong (LC Paper No. CB(1)1503/08-09(02))</p> <p>Green Council (LC Paper No. CB(1)1503/08-09(03))</p> <p>Green Sense (LC Paper No. CB(1)1503/08-09(05))</p> <p>Kadoorie Farm & Botanic Garden Corporation (KFBGC) (LC Paper No. CB(1)1503/08-09(07))</p>	<p>1) The Environmental Protection Department (EPD) should take the lead in strengthening coordination among relevant government departments, including the Police, to take prompt actions upon receipt of complaints against fly-tipping and land filling activities. Sufficient manpower should be deployed to handle complaints, including operating the hotline on a 24-hour basis, as well as conduct surveillance and enforcement actions.</p>	<p>The Administration has reviewed the procedures in controlling illegal fly-tipping and land filling activities and introduced enhanced measures and departmental coordination mechanism. The public may report cases to the 1823 call centre which operates on a 24-hour basis. All complaints involving urgent and sensitive cases of depositing of C&D materials, such as active and on-going C&D materials depositing activities that are affecting environmentally sensitive areas would be referred to EPD for priority investigations. Where the situation requires, Government departments may also seek assistance from the Police. In collaboration with other departments, EPD has developed and maintained a database of C&D materials cases on private land and a list of fly-tipping black-spots. Inter-departmental meetings are also convened to monitor the overall situations of illegal fly-tipping and land filling throughout the territory. Ad hoc urgent meetings will also be arranged to coordinate joint actions on specific cases that are of major public concern. Apart from regular patrol, EPD will also arrange inspections and ambush operations at fly-tipping black-spots outside office hours to deter such activities. Whenever practicable, the departments concerned will pursue other preventive measures such as erection of warning signs and setting up road barriers at black-spots locations.</p>

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<p>WWF Hong Kong KFBGC</p>	<p>2) Apart from urban areas, consideration should be given to installing close circuit televisions at black spots of fly-tipping and land filling activities in rural areas. Warning signage should also be put up to enhance deterrent effect.</p>	<p>EPD has identified two fly-tipping black-spots, one at Siu Lang Shui Road in Tuen Mun, and the other at Tai Po Road public car park, for implementation of a trial fly-tipping control scheme based on remote monitoring by the installation of closed-circuit television (CCTV). The proposal was recently presented to and supported by the relevant subcommittees of the Shatin and Tuen Mun District Councils. EPD is now working with the Electrical and Mechanical Services Department with a view to launching the project later this year. Apart from installing CCTV, warning signage will also be erected to enhance deterrence. Subject to the outcomes of the trial scheme, a review would be conducted with consideration given to the feasibility of extending the CCTV installations to other fly-tipping black-spots, including those in rural areas</p>
<p>WWF Hong Kong Living Lamma (LC Paper No. CB(1)1503/08-09(06))</p>	<p>3) To amend the Town Planning Ordinance (Cap. 131) (TPO) to empower the Planning Authority to take enforcement action against land filling or excavation activities undertaken within areas covered by Outline Zoning Plans (OZPs) but previously not covered by the Development Permission Area Plans (DPA Plans), such as the Lamma Island. As a matter of principle, land zoned for conservation purposes, regardless whether this is covered by a DPA Plan, should be protected from land filling activities unless statutory approval is granted.</p>	<p>To address public concerns on the depositing of inert C&D materials in the rural New Territories, Town Planning Board (TPB) in mid-2005 extended the land filling control from the conservation-related zonings to "Agriculture" zone on the statutory plans for rural New Territories. This helps step up the planning control on land filling activities on private land by requiring prior planning permission from TPB for undertaking or continuing such activities. Unauthorised land filling activities in areas covered by DPA Plans are subject to planning enforcement. TPO does not confer enforcement authority in respect of areas not covered by DPA Plans. These areas comprise mainly the urban areas, new towns and rural townships. In practice, for most parts of these areas where development is to be facilitated rather than</p>

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		<p>prohibited, introducing control against land filling in the planning permission process would unnecessarily prolong the development approval process.</p> <p>During the discussion of the Town Planning (Amendment) Bill 2003, a similar suggestion by the public for extending planning enforcement to areas covered by statutory plans outside the Development Permission Area was deliberated. As explained to the Bills Committee, land uses in urban areas and new towns are much more mixed and complicated due to the density of development and the highly intermixed uses of buildings. There would be technical difficulties to be resolved if enforcement power were to be extended to cover these areas. Moreover, the demand on staff resources would be enormous.</p> <p>Besides, for urban areas, new towns and rural townships outside the Development Permission Area, a large percentage of land within conservation-related zones is Government land which is already subject to control by the Lands Department.</p> <p>TPO is not considered as the most appropriate tool to control land filling activities per se. To overhaul the planning regime to forestall a particular form of illegal or unauthorized activities on the land would have far reaching implications. There is no policy intention to extend the enforcement power of the Planning Authority to areas covered by OZPs but previously not covered by DPA Plans.</p>
Green Lantau Association	4) To require the parties involved in illegal land filling	Under the TPO, the Planning Authority can serve

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<p>(LC Paper No. CB(1)1503/08-09(10))</p>	<p>activities to reinstate the land concerned.</p>	<p>statutory notices requiring the landowners, occupiers or responsible persons to discontinue an unauthorised land/pond filling activity. The Planning Authority, where appropriate, can further issue Reinstatement Notice to require the notice recipients to reinstate the land. A Reinstatement Notice can require the notice recipient(s) to reinstate the concerned land to either the condition immediately before the gazettal of the Interim DPA Plan or DPA Plan, or the condition which is more favourable to the notice recipient, as the Planning Authority considers satisfactory. Prosecution action can be instituted if the Reinstatement Notices are not complied with.</p> <p>In determining the need and scope of the reinstatement requirements, consideration would be given to the land use zoning of the site, the condition of the site and its surroundings, expert advice from departments concerned, and the circumstances of individual cases. Notice recipients are mostly required to remove the leftovers/debris/wastes, to remove the paving on site, and to grass the site, which are considered generally sufficient for achieving the objectives of reinstatement. There are cases where circumstances warrant removal of the C&D materials and reinstatement of a natural stream-course for more effective achievement of the reinstatement objective.</p> <p>Sometimes the placing and maintaining of C&D materials on unleased land may be treated as unlawful occupation of unleased land under the Land (Miscellaneous Provisions) Ordinance (Cap 28). If the occupier does not cease the occupation as required by a</p>

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		notice posted under the Ordinance, the Director of Lands may remove the C&D materials.
FoE WWF Hong Kong KFBGC Designing Hong Kong Hong Kong Dumper Truck Drivers Association (HKDTDA) (LC Paper No. CB(1)1503/08-09(09))	5) Support the proposed amendment to the Waste Disposal Ordinance (Cap. 354) (WDO) to require any person who intends to deposit waste on any land to, when requested by the authority, produce the written permission from the landowner/occupier concerned, failing which will constitute an offence. As a step forward, consideration should be given to requiring the landowner/occupier to obtain prior approval from EPD and display the permit which contains clear demarcation of the land concerned for inspection by all relevant departments.	EPD is examining the feasibility of tightening the control under WDO. EPD is working with relevant bureaux and departments to develop the details and look into a number of legal and practical issues of the proposal.
KFBGC	6) Need to clarify the term "waste" under WDO to include C&D materials deposited on private land.	Please see Administration's response to item 5 above.
WWF Hong Kong KFBGC Green Lantau Association	7) To amend the relevant legislation to impose heavier penalties, ranging from increased fine to suspension of licenses and confiscation of dump trucks, for fly-tipping and land filling activities to achieve greater deterrent effect.	The Administration agrees that the sentence upon offenders of fly-tipping and tree-felling cases should carry sufficient deterrence. In case the penalty imposed by the court is considered too lenient or insufficient to reflect the severity of the offence, the Administration will, where the circumstances of an individual case justify, apply via the Department of Justice for a court review of the sentence. Separately, the Advisory Council on the Environment wrote to the Judiciary Administrator in 2003 and 2008 to express their views on the sentencing of fly-tipping cases, that the sentences imposed should effectively deter such illegal activities.

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		<p>There is no provision under WDO or TPO that empowers the authorities to confiscate the vehicles used for illegal fly-tipping or land filling activities. Under WDO, enforcement actions can only be undertaken against the persons found to be responsible for the activities, but not against the owners of the vehicles used for such activities. As many of the defendants of such cases are drivers, instead of owners, of the vehicles, this proposal may not effectively deter fly-tipping.</p>
<p>KFBGC The Conservancy Association</p>	<p>8) To consider introducing individual blacklisting systems for construction contractors and waste haulers who have been involved in fly-tipping or land filling activities</p>	<p>For public works contractors, the Development Bureau (DEVB) operates a contractor management system which could sanction contractors involved in illegal dumping, including suspension from tendering for public works contracts. Therefore, there may not be the need to establish a blacklisting system.</p>
<p>FoE KFBGC Green Lantau Association The Conservancy Association Federation of Hong Kong Transport Worker Organizations Hong Kong Waste Disposal Industry Association (HKWDIA)</p>	<p>9) To control fly-tipping and land filling activities at source, consideration should be given to extending the mandatory trip-ticket system (TTS) and related waste management practices for public works projects to cover private works projects to keep track of construction and demolition (C&D) materials. Inspections should be stepped up to ensure efficacy of the system.</p>	<p>The Administration has followed up Members' request that the TTS be voluntarily adopted in private works projects. The proposal was presented to the Committee on Environment and Technology of the Construction Industry Council (CIC) on 26 March 2009. The Committee's response was generally supportive and would prepare guidelines on the TTS aiming for voluntary adoption by the industry. The Committee would further deliberate on the strategies to promulgate the guidelines. The Administration has written to the CIC conveying Members' suggestion about the use of mandatory TTS, Compulsory Declaration System and Global Positioning System in private works projects.</p>

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<p>Hong Kong Construction Association (LC Paper No. CB(1)1503/08-09(08))</p>	<p>10) To provide additional works areas associated with Government contracts specifically for sorting and recycling of C&D materials.</p>	<p>We will endeavour to provide additional works areas for public works contracts to facilitate sorting and recycling of C&D materials as far as practicable.</p>
	<p>11) To encourage contractors to reduce, segregate and reuse C&D materials by increasing the weight of these practices in assessing tenders for Government building and engineering contracts.</p>	<p>In tender evaluation of public works contracts by marking scheme method, marks have been assigned to the tenderer's technical proposal about the use of environmentally friendly products and processes. The marks will depend on the nature of the works. Further, extra credits will be given for any measures proposed in the tenderers' technical proposal that well exceed the contract requirements offering extra credits to the project or the public e.g. contractor's proposed method of construction could reduce construction waste well below the normally expected level.</p>
	<p>12) To consider including the use of Global Positioning System to keep track of dump trucks as a condition in contracts of Government, MTR Corporation Limited and developers.</p>	<p>The TTS currently adopted by public works contracts has been very effective in preventing fly-tipping. Therefore, the use of Global Positioning System to keep track of dump trucks as a condition in public works contracts seems not necessary</p>
	<p>13) To provide hands-on training to waste haulers to foster a more proactive manner towards proper disposal of waste, as well as impress on them the dire consequences of illegal dumping.</p>	<p>To ensure that the relevant parties, including the rural landowners, construction waste transporters, property developers/contractors/managers are aware of the statutory requirement, EPD and the other Government departments concerned have jointly developed three sets of comprehensive guides for them respectively. The guides provide useful information on the various statutory requirements governing C&D materials dumping activities and the steps that the affected parties need to take to guard against illegal land filling and fly-tipping activities. The guides also encourage the</p>

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		<p>public and all the relevant parties to report to the Government on any suspected illegal dumping activities so that the Government can follow up on these cases promptly. These guides, which are produced in the form of leaflets for easy promulgation, have been widely distributed to the various stakeholders through the relevant trade associations, Government departments and their public outlets. The guides are also available on the website of EPD.</p>
<p>WWF Hong Kong Green Lantau Association</p>	<p>14) To consider introducing a “spotter scheme” with District Councils and green groups to recruit volunteers with relevant knowledge to report any fly-tipping and land filling activities.</p>	<p>EPD always supports and encourages the public to assist in surveillance against fly-tipping and land filling activities. EPD recently launched a dedicated webpage on these activities, whereby members of the public are invited to report fly-tipping and land filling incidents in a prescribed form to EPD for follow up actions. Similarly, in our published guidelines for stakeholders, they are advised to report suspected illegal fly-tipping and land filling incidents to EPD or other relevant departments. EPD will continue to encourage public participation in deterring these activities.</p>
<p>Ms CHAN Shu-ying Tuen Mun District Council member</p>	<p>15) The Home Affairs Department (HAD) should be involved in combating fly-tipping and land filling activities since many roads in the rural area are commissioned by HAD under the Minor Works Programmes. Fly-tipping and land filling activities in the proximity of these roads should come under the jurisdiction of HAD.</p>	<p>The Administration has reviewed the procedures in controlling illegal fly-tipping and land filling activities and introduced enhanced measures and departmental coordination mechanism. Inter-departmental meetings are also convened to monitor the overall situations of illegal fly-tipping and land filling throughout the territory. HAD will render support in accordance with the departmental coordination mechanism.</p>

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Designing Hong Kong	16) Need to adopt a holistic approach to review the New Nature Conservation Policy to take into account conservation and development needs.	The New Nature Conservation Policy is to regulate, protect and manage natural resources that are important for the conservation of biological diversity of Hong Kong in a sustainable manner, taking into account social and economic considerations, for the benefit and enjoyment of the present and future generations. As and when the Administration reviews the New Nature Conservation Policy, we will take into account all relevant considerations including the conservation and development needs.
	17) Fly-tipping and land filling activities are expected to surge if the waste disposal charges for C&D waste increase.	Noted. The introduction of construction waste disposal charging in December 2005 provides an economic incentive for waste producers to minimise the generation of C&D materials. By the end of 2008, the amount of C&D waste disposed of at landfills was reduced by about 52%, while the overall disposal of C&D waste was reduced by about 26%.
HKDTDA HKWDIA	18) It is not fair to hold waste haulers responsible for fly-tipping and land filling activities because most of them are just taking instruction from contractors.	There are already provisions under WDO to protect the interest of waste haulers. Section 16A provides a defence to a person who can prove that he acted under instructions from his employer; and that he had no reason to believe that an offence would be committed. There are also guides published for the waste haulers explaining the legal requirements under the various Ordinances to help them better understand their responsibilities and how they can help to prevent illegal fly-tipping activities.
WWF Hong Kong KFBGC	19) To step up publicity and public education on land use issues and restrictions, particularly for rural communities, with a view to enhancing environmental	PlanD has maintained publicity and public education to enhance the public awareness that unauthorised developments are subject to enforcement and prosecution

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	awareness.	action. These include distribution of pamphlets, warning posters, website, regular broadcast in television and radio, in form of an announcement of public interest as well as educational outreach programme to secondary schools.
Mr YAU Yuk-lun Sai Kung District Council member	20) Need to strike a balance between conservation and rights of landowners, particularly indigenous villagers.	Noted.
WWF Hong Kong	21) To amend the relevant legislation to empower relevant departments to take enforcement action against tree-felling activities in private land within Country Parks and Conservation Areas.	It would not be appropriate to amend existing legislations to act against tree-felling activities in private agricultural land because this may infringe rights of land owners allowed under existing lease conditions.
The Real Estate Developers Association of Hong Kong (LC Paper No. CB(1)1503/08-09(11))	22) Support the measures taken by the Administration as set out in LC Paper No. CB(1) 1319/08-09(01).	Noted.