

For Information
On 30 June 2009

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

**Response to Views/Proposed Enhancement Measures
related to Planning Enforcement
raised in Meeting held on 15 June 2009**

This paper sets out the Planning Department's response to the views and proposed enhancement measures discussed at the Subcommittee meeting held on 15 June 2009.

RESPONSE TO VIEWS AND PROPOSED MEASURES

2. In the Subcommittee meeting held on 15 June 2009, Members proposed, amongst others, that "to enhance deterrent effect, the Planning Department should apply for a court review through the Department of Justice if it considers the penalty imposed by the court in relation to an illegal land filling activity is too lenient. Consideration should also be given for the Planning Department to carry out the reinstatement works first and reimburse the costs incurred from the parties concerned afterwards." Planning Department's response and clarification in relation to the proposed measures are appended below.

Review of Sentence

3. The Planning Authority would lodge a review or appeal of the court sentence after seeking advice from Department of Justice when it is considered that the sentence imposed is wrong in principle, not authorized in law, or manifestly excessive or manifestly inadequate in that it fails to

reflect the severity of the offence under the enforcement provisions of the Town Planning Ordinance. We have lodged five reviews on sentence. Two of these reviews involved also unauthorised site formation works. The reviews have been lodged mainly on the ground that the fines imposed were considered too low to have the deterrent effect.

4. The Planning Department would continue to monitor the level of fines imposed on the offence under the enforcement provisions of the Town Planning Ordinance and, where the facts, merits and principles justify, would seek the advice of Department of Justice and lodge a review or appeal as appropriate.

Reinstatement

5. Under the Town Planning Ordinance, the Planning Authority can serve 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 (RN) to require the notice recipients to reinstate the land. A RN can require the notice recipient to reinstate the concerned land to either the condition immediately before the gazettal of the Interim Development Permission Area (DPA) Plan or DPA Plan, or the condition, which is more favourable to the notice recipient, as the Planning Authority considers satisfactory, and to reinstate the land by a date not earlier than 30 days after service of RN.

6. Prosecution action can be instigated against the recipient of RN if the requirement specified in the RN for the purpose of reinstating the land is not complied with within the specified period. Given that the non-compliance of statutory notice is an offence subject to prosecution, recipients of RN generally would take steps and deploy their resources to comply with the reinstatement requirements on their own expenses.

7. For non-compliance with the statutory notice, the Planning Authority has also invoked s.23(7) and s.23(8) of the Town Planning Ordinance to enter the land, to reinstate the land, and to recover from concerned parties expenses incurred by the Authority as a civil debt.

This enforcement tool would be deployed prudently where the circumstances and merits of the case justify and taking into account advice of concerned departments.

Planning Department
June 2009