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Panel on Environmental Affairs

Meeting on 23 February 2009

**Background brief on depositing of inert construction and
demolition materials on government and private land**

Purpose

This paper sets out the regulatory regime under existing legislation in dealing with depositing of inert construction and demolition (C&D) materials on private and government land, and gives a brief account of the views expressed at meetings of the Council and the Panel on Environmental Affairs (the Panel).

Problem

2. The problem of fly-tipping has all along been a public concern, as evidenced by the increasing number of complaints against depositing of inert C&D materials on private land. Given the inadequacy of the existing regulatory regime in controlling fly-tipping, particularly under the disguise of land filling activities, many parts of the New Territories have become dumping grounds, causing unacceptable impacts on the surrounding. In the light of the recent cases of depositing of inert C&D materials on government land and private land at Shing Mun Road and Nam Sang Wai, questions on the need to strengthen the existing regulatory regime on fly-tipping have been raised at various Council meetings. The questions and the Administration's response are hyperlinked below for ease of reference.

Existing regulatory regime

Depositng of inert C&D materials on private and government land

3. Depositng of C&D materials on private lots with consent of the owners for purposes of filling up land to level off uneven ground surfaces, reclaiming a piece of flat terrain to turn the land into other uses such as car parking or recreational uses, or stockpiling of C&D materials conducted in accordance with the relevant legislation are not disallowed.

Land use planning control

4. Planning control is effected through the preparation of statutory plans and enforcement power under the Town Planning Ordinance (Cap. 131). The statutory plans list out those uses/developments permitted under the plan and those requiring planning approval from the Town Planning Board (TPB). In proposing the land use zoning on statutory plans to TPB, the Planning Department (Plan D) would take into account relevant factors, such as government policies, planning principles, infrastructure and environmental consideration, site conditions and public aspiration etc. Plan D can take enforcement actions against depositing of C&D materials unauthorized land filling activities falling within the Development Permission Area (DPA), in the rural New Territories, that fail to comply with the provisions of statutory plans. Generally speaking, for areas covered by conservation-related zones, such as Site of Special Scientific Interest, Conservation Area, Coastal Protection Area, Green Belt or Agriculture zones, prior planning permission from TPB is required for land filling activities.

Land lease control

5. Apart from the land use planning system which guides the development and use of land at a broad zoning level, the terms of the relevant land lease also govern the use of a particular piece of private land. The Lands Department (Lands D) is responsible for the disposal of land by leases, and for the enforcement of the lease conditions. Land lease is a form of contract and hence cannot be altered unilaterally by the lessor (the Government as the landlord) or the lessee once entered. Hence, the Government cannot impose without the agreement of the lessee additional terms on an existing lease to tighten the control over the use of the land concerned.

Building control

6. Prior approval from the Building Authority (BA) under the Buildings Ordinance (Cap. 123) (BO) is required for land filling activities undertaken for the purpose of or associated with building construction works. Otherwise, these activities per se will not come under the control of BO. However, BA may consider appropriate enforcement action under BO should depositing of inert C&D materials affect the safety of adjacent buildings or land, such as any slope formed by the land filling is in an unstable condition.

Pollution control

7. Pollution arising from particular activities, including land filling activities, is regulated under the Waste Disposal Ordinance (Cap. 354) (WDO), Air Pollution Control Ordinance (Cap. 311), Water Pollution Control Ordinance (Cap. 358), and Noise Control Ordinance (Cap. 400). For example, section 16A of WDO provides that 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 with permission of any owner or lawful occupier of the place. These ordinances apply to the entire territory,

irrespective of the land status.

Environmental hygiene

8. Apart from the specific pollution control ordinances, the Public Health and Municipal Services Ordinance (Cap. 132) also has provisions to deal with nuisances and require removal of litter or waste from any place. If depositing of inert C&D materials on a particular piece of land give rise to a nuisance (as defined in the Ordinance) or litter, action may be taken against the land owner under the Ordinance. The Food and Environmental Hygiene Department can issue abatement notice or notice of removal of litter or waste to the responsible person, requiring him to abate the nuisance within a specified period of time, failing which will be subject to prosecution.

Drainage concerns

9. If depositing of inert C&D materials affects existing stream, watercourses and drainage system, the Drainage Services Department will assess the likely drainage impacts 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.

Additional measures

10. The Administration has launched a pilot construction waste fly-tipping spotter scheme. In gist, three districts with high number of fly-tipping complaints, namely the Shamshuipo, Shatin and Eastern Districts, have been selected for the trial. 110 spotters, including EPD staff, have joined the scheme. They are required to submit details on the fly-tipping activities and act as witnesses in the course of prosecution. So far, no prosecutions have been made under the scheme. Subject to the experience gained and the outcome of the reviews, consideration would be given to extending the pilot scheme to cover other districts.

11. TPB has incorporated the land filling clause into the Notes of the rural Outline Zoning Plans for "Agriculture" zones. Such amendments have 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.

12. A database capturing cases of depositing of inert C&D materials on private land gathered from routine inspection and complaints received by all relevant departments would be set up. Information of the database would be shared among all individual departments, which would continue to take enforcement actions as appropriate upon receipt of complaints from the public or being notified through updates of the database.

Possible options to regulate depositing of inert C&D materials on private land

13. To explore the feasibility of a clean record system for TPB to make reference to in its consideration of planning applications in consultation with TPB members, and the proposal of introducing deeming provisions in TPO to control the scale and duration of land filling activities on private land under the second stage amendments to TPO.

14. To revise Part I of Schedule 2 of the Environmental Impact Assessment (EIA) Ordinance (Cap. 499) to include land filling areas of not less than two hectares in size and with a depth of filling of not less than 1.2 metres as a designated project under the EIA Ordinance. Any project proponent of such designated projects would be required to apply for an environmental permit from the Director of Environmental Protection before construction or operation of the designated projects can begin, failing which would be liable to prosecution. The option will not forbid the taking place of land filling activities on private land on the one hand, and will serve to regulate such activities to ensure that they will not give rise to unacceptable environmental impacts on the other.

Discussion by the Panel

15. The Panel held a number of meetings to discuss the problem of fly-tipping, including the three recent meetings on 11 April, 16 May and 30 June 2008 where deputations were invited to express their views at the latter meeting. It was noted that fly-tipping had become more rampant following the implementation of the charging scheme on disposal of C&D waste as some construction contractors tried to evade the disposal charges by dumping the waste on government land or private land or along the roadside. In view of the increasing number of complaints and the low prosecution figures by the Environmental Protection Department (EPD), members considered it necessary for the Administration to set out clear guidelines to differentiate between land filling and fly-tipping activities in order to plug the loophole. Better inter-department coordination within the Administration was also required to enforce against fly-tipping. Some members further pointed out that the restriction on development for land with high ecological value might have prompted the land owners concerned to allow land filling activities with a view to destroying the biodiversity of the land. To this end, consideration should be given to allowing land exchange or transfer of plot ratio for the land owners so that ecologically sensitive areas could be preserved.

16. Members also supported the extension of regulatory control over depositing activities. These included amending section 16A of WDO to require authorization from EPD for any depositing of C&D materials on private land (even with the permission from land owners or lawful occupiers), amending TPO to give Plan D statutory enforcement power over areas that were not previously covered by DPA plans, amending TPB guidelines on the vetting of development applications such that any unauthorized development or environmental degradation activity in the hope to change the conservation zone to development zone would not gain sympathetic consideration from TPB, extending the trip-ticketing system currently applicable to public works

projects to cover private projects to ensure that C&D waste was properly disposed of, stepping up regular inspections at notorious black spots of fly-tipping, and imposing heavier penalties to increase the deterrent effect etc.

Latest development

17. The Administration is requested to brief members on the latest progress on measures to tackle fly-tipping at the Panel meeting on 23 February 2009.

Relevant papers

Information paper provided by the Administration for the Environmental Affairs Panel meeting on 24 January 2005

<http://www.legco.gov.hk/yr04-05/english/panels/ea/papers/ea0124cb1-735-4-e.pdf>

Minutes of the Environmental Affairs Panel meeting on 24 January 2005

<http://www.legco.gov.hk/yr04-05/english/panels/ea/minutes/ea050124.pdf>

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 24 April 2006

<http://www.legco.gov.hk/yr05-06/english/panels/ea/papers/ea0424cb1-1300-6-e.pdf>

Minutes of the Environmental Affairs Panel meeting on 24 April 2006

<http://www.legco.gov.hk/yr05-06/english/panels/ea/minutes/ea060424.pdf>

Information paper provided by the Administration for the Environmental Affairs Panel meeting on 26 March 2007

<http://www.legco.gov.hk/yr06-07/english/panels/ea/papers/ea0326cb1-1182-4-e.pdf>

Supplementary information paper provided by the Administration for the Environmental Affairs Panel meeting on 26 March 2007

<http://www.legco.gov.hk/yr06-07/english/panels/ea/papers/ea0326cb1-1964-1-e.pdf>

Minutes of the Environmental Affairs Panel meeting on 26 March 2007

<http://www.legco.gov.hk/yr06-07/english/panels/ea/minutes/ea070326.pdf>

Information paper provided by the Administration for the Environmental Affairs Panel special 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 special 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 special 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 special 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 special 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 special 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>

Minutes of the Environmental Affairs Panel special 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>