

**LegCo Panel on Planning, Lands and Works
Follow-up to Meeting on 23 March 2004**

Possible action that can be taken under the Land Drainage Ordinance in respect of the land filling activity at She Shan Tsuen as suggested by Hon James TO

As regards its purpose, the Land Drainage Ordinance (LDO) (Cap 446) makes provisions for the designation of Drainage Authority Areas (DAA) and the carrying out of drainage works within such areas. It provides the necessary statutory power for Government to carry out watercourse maintenance works effectively. Under the LDO, the Drainage Authority (DA) (i.e. D of DS) is empowered to: -

- (i) Prepare Drainage Authority Area (DAA) plans and designate any watercourses in the DAA as main watercourses;
- (ii) Enter private land for the purpose of preparing DAA plans, inspecting and executing works in main watercourses;
- (iii) Order removal of obstructions or structures from main watercourses to maintain free flow; and
- (iv) Give consent to or reject proposals of erecting obstructions and structures in main watercourses.

2. The enforcement powers under LDO are applicable with respect to Drainage Authority Areas and the main watercourse within such areas. In the present case, the private land on which the land filling activity takes place and the watercourse which may be affected are located outside the DAA. Therefore the LDO cannot be invoked to deal with the situation in the present case.

3. We have sought legal advice to examine the case against the following sections under LDO (Cap 446) to see if enforcement would be possible.

- (i) Section 26(1) of Cap 446 provides: “No person shall, without the consent in writing of the DA, carry out any engineering work or filling or erect any dam, weir, culvert or other like obstruction in any main watercourse impeding its flow.” In our case, the land filling is not in a watercourse. The land filling site is physically located outside the boundary of the DAA.

- (ii) Section 20(1) of Cap 446 which deals with the situation where “obstructions block any main watercourse or impede its free flow or are likely to cause damage to any property or life in a DAA”. “Obstruction” is defined as follows: “in Parts III and IV includes earth, stone, timber and materials of all kinds artificially placed in any main watercourse. In the present case, the slopes are on private land and not placed in a watercourse and hence, the slopes do not fall within the meaning of “obstruction”. Although some of the uncovered filling materials will end up in She Shan River, it is doubtful if such materials can be regarded as "artificially placed" in the She Shan River within the meaning of "obstruction" since they are washed down by surface runoff and are not placed in the river by the owner of the private land. Therefore section 20 cannot be invoked in the present case.
- (iii) Sections 21(1) and 27(1) of Cap 446 refer to a structure in, over or under any main watercourse. The slopes are structures on private land and not structures in, over or under any watercourse. Accordingly, those sections are also not applicable.

In conclusion, we are advised that Cap 446 cannot be invoked to deal with the situation in the present case.

Environment, Transport and Works Bureau
April 2004