

**Legco Panel on Environmental Affairs
Special Meeting on 16 May 2008**

WWF's views regarding "measures to tackle fly-tipping"

1. WWF is of prime concern that the natural environment in the New Territories, comprising important and sensitive natural habitats, has fallen as a constant target of unauthorized and illegal activities. They include, but not limited to, unauthorised land filling¹, unauthorised land excavation, and illegal tree-felling. One of WWF's key functions is to scrutinize development projects and monitor such activities. According to our records, over 20 cases occurred on environmentally sensitive areas² alone between August 2006 and April 2008 (Appendix 1). The situation is alarming and the Government should take immediate and more stringent measures to prevent further degradation of our remaining natural environment.
2. To deter unauthorised land filling on private land, WWF considers that the Planning Department³ needs to come up with comprehensive and effective planning control measures immediately (see sections B and C below).

(A) Illegal land filling a serious threat to our natural environment

3. About 50% of the unauthorised environmental destruction activities recorded between August 2006 and April 2008 were resulted from land filling on private land (Appendix 2). However, this figure does not appear to reflect the full picture and the seriousness of the issue since many cases were:
 - a. not noticed by the public,
 - b. not reported,
 - c. currently encouraged by the loopholes allowed in the Town Planning Ordinance (see section B below)

¹ Land filling is defined by the Planning Department as "the depositing or placing of earth, gravel or any other substances on land, which results in an elevation of ground level". Therefore, dumping C&D wastes or soil and paving concrete on land can be considered as land filling.

Link: http://www.info.gov.hk/tpb/en/forms/dot_revised_index_ftoo.html#fill

² WWF defines "environmentally sensitive areas" as areas which are of ecological concern but currently not covered by any statutory zoning plan or areas that are covered by such zoning plans and are zoned into the following categories:

- a. "Agriculture" with filling restrictions,
- b. "Green Belt"
- c. "Conservation Area"
- d. "Site of Special Scientific Interest"
- e. "Country Park"

³ Undertaking land use changes on private land through unauthorised land filling is currently subject to the planning control of the Planning Department.



WWF *for a living planet*

- WWF views the existing enforcement measures highly ineffective in deterring unauthorised land filling on private land. Let alone the ineffectiveness in prosecution of responsible parties who committed the unauthorized or illegal activities and in discovery of unreported cases, WWF's records clearly reveal cases of deliberate filling of areas established for protection, such as "Conservation Area" and "Coastal Protection Area" where stringent planning control should be applied. It is to our astonishment that one of the filled sites in Sai Kung is as large as the size of 15 basketball fields. The situation of illegal land filling in Hong Kong is so rampant that even Country Parks which are publicly known as primary protected areas were desecrated by tree-felling and waste/soil filling for site formation. Illegal land filling has even resulted in dangerous slopes which could be hazardous to the safety of hikers and nearby residents.

(B) Urgency in filling existing loopholes in the planning control mechanism

- In the Shing Mun Road land filling incident ("the Incident"), the Planning Department stated that the subject land filling activities on "Green Belt" ("GB") do not constitute unauthorised development under the Town Planning Ordinance because Kwai Chung Outline Zoning Plan (OZP) "... does not fall within a development permission area (DPA)". The Incident reveals a loophole in the existing planning control mechanism as the Planning Department does not have enforcement power on statutory zoning plans which are not covered by a DPA Plan. In this case, and probably many others, although the filling activity is not in line with the planning intention of the subject zoning, the Planning Department is not empowered to take action against such an activity under this existing loophole in the Town Planning Ordinance. This was confirmed by the Planning Department in response to our enquiry earlier⁴.
- Two types of statutory plans are prepared and published by the Town Planning Board (TPB) under provisions of the Town Planning Ordinance: OZP and DPA Plans. DPA Plan is a temporary arrangement effective for only 3 years and is to be replaced by OZPs⁵. Some districts in Hong Kong are covered by OZPs that replace DPA plans installed in the beginning stage, while for some other districts OZPs are put in place without the prior placement of DPA plans. Interestingly, under existing rules, the Planning Department can only exert enforcement power against unauthorised developments within DPA plans or OZPs which replace previous DPA plans.
- For OZPs where a previous DPA plan does not exist, the Planning Department is not

⁴ A letter dated 25 February 2008 from the Central Enforcement and Prosecution Unit of the Planning Department . Planning Department's Reference: (85) in CEP/G/SK-C

⁵ Leaflet of "Hong Kong: The Facts (Town Planning)" http://www.gov.hk/en/about/abouthk/factsheets/docs/town_planning.pdf



for a living planet®

empowered to take actions against unauthorized activities in those districts, such as Tai Po OZP, Ma On Shan OZP, Sha Tin OZP and South Lantau Coast OZP. Therefore, areas categorized as environmentally sensitive zones, such as Green Belt or Conservation Area, under this type of OZP statutory plans are tacitly allowed for unauthorised development or dumping activities since no enforcement action can be taken against them.

8. According to a recent news reports⁶, a piece of abandoned agricultural land south of South Lantau Road became a target of such unauthorized activities. Since it falls within the South Lantau Coast OZP which is previously not covered by any DPA Plan, land filling on environmentally sensitive zones on this private land is not subject to any enforcement action.

WWF's Recommendations

9. The Government urgently needs to fill this loophole by making a necessary amendment to the Town Planning Ordinance. Failing that, the value and functions of the zoning system for protecting environmentally sensitive areas will be severely eroded by unauthorized activities which violate the original planning intentions of these zones.

(C) Beef up enforcement effectiveness and proactively examine the feasibility of effectual deterrent measures

10. WWF considers that the effectiveness of enforcement measures by the Planning Department against unauthorised land filling on private land is low because:
 - a. Insufficient manpower was deployed to spot check such activities and catch offenders red-handed.
 - b. Initiators of the unauthorized activities, usually the landowners, land operators or developers, could hardly be tracked down in most of the previous cases, catching only the contractors who carried out the actual filling/dumping works.
 - c. Under the current enforcement procedure, the Planning Department will issue a notice to warn an offender not to carry out further a dumping act which was already done. Only if the offender fails to comply with such a warning and continues such unauthorized acts, he/she will be fined. This lenient approach of catching offenders contradicts most of the Government's other more serious efforts in catching offenders of other types, such as smokers and people dumping rubbish onto streets. Offenders of these other types will be prosecuted upon discovery without any pre-warning given. We believe serious law enforcement measures should be deployed to deter offenders from committing illegal filling repeatedly. The existing measures apparently lack

⁶ 東方日報 – 港聞版。11-5-2008. “貝澳濕地保育點淪堆填區”



for a living planet[®]

incentives to punish people who damage our environment illegally.

- d. Tougher penalties and higher fines are needed. According to the Planning Department's 2007 annual report, the average fine imposed for each convicted case of unauthorised development in 2007 was only \$15000 – a highly affordable cost for developers to damage the environment for potential development land space. In view of the increasing and large number of cases of illegal dumping on private land, this level of fine is very far from serving any deterrent effect.

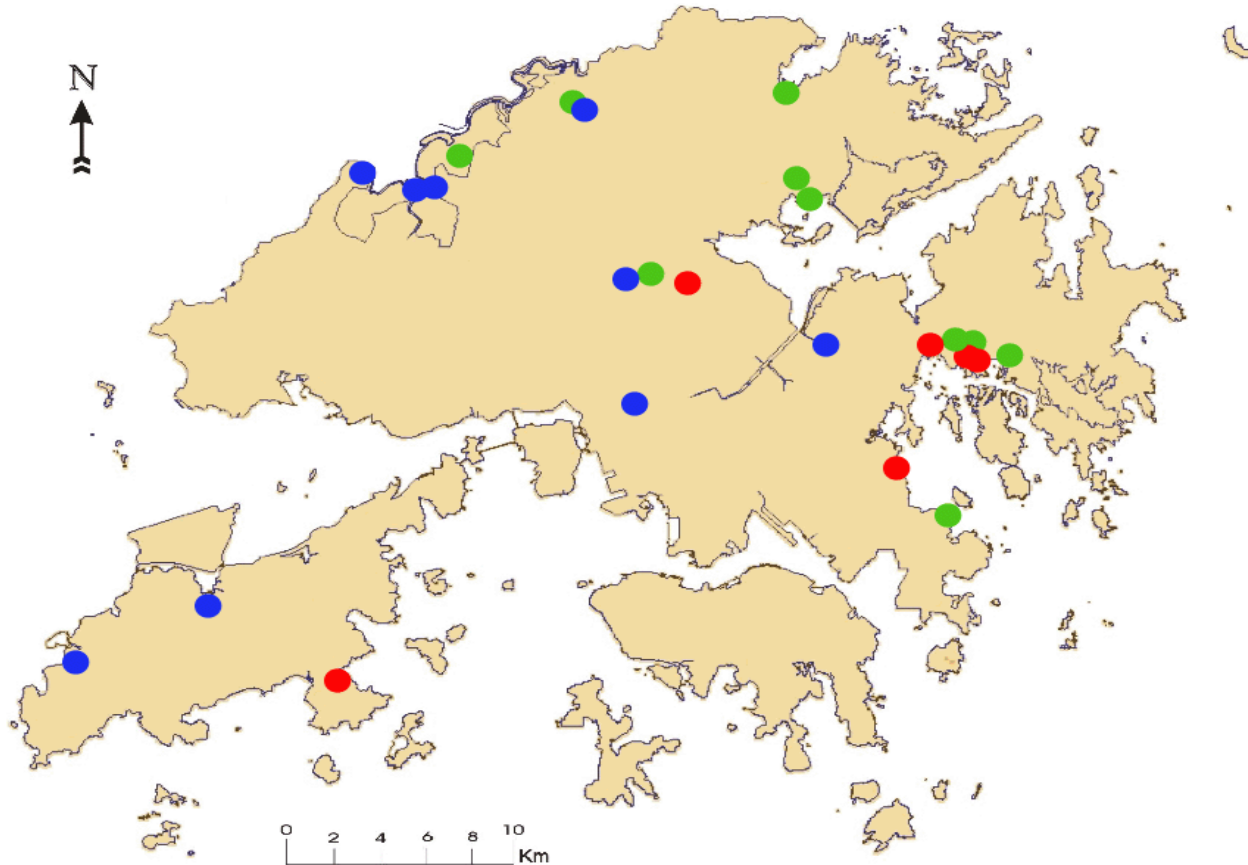
WWF's Recommendations

11. The Planning Department should urgently undertake a comprehensive review of the existing planning control measures to ensure punishment with a deterrent effect is meted out to prevent repeated offences and stop the surge of illegal land filling cases. Such a comprehensive review should include, but not be limited to the following:
 - a. Co-organise “environmental spotter scheme” with EPD to equip voluntary members of the public with the relevant knowledge required in monitoring unauthorised land filling at the black spots in the New Territories, as an effort to utilize community power to curb such unauthorized activities on a local basis.
 - b. Whenever an offence is committed, the investigation should be extended to enquiring with the landowner as to his/her knowledge about and involvement in the offence. If there is proven evidence that the landowner directly or indirectly endorses or agrees to the dumping activity, he/she should also be held legally responsible for such acts.
 - c. If the landowner is proven legally responsible, restrictions on the future land use of the dumping site, especially those categorized as ecologically sensitive zones, should be proactively examined by the Government. This could be an important measure to deter intentions from landowners to illegally desecrate a sensitive site and destroy its ecological value prior to their potential applications for land use conversion for future development purposes.
 - d. For the execution of more stringent law enforcement measures, the Planning Department may explore the need of extending further administrative power necessary for implementing those measures under of the realm of the Town Planning Ordinance.
 - e. Identify existing loopholes in the Town Planning Ordinance, as mentioned in paragraph 10c, and make necessary amendments to fill those loopholes.
 - f. Review the gap between the statutory maximum fine and the average actual fine meted out by the court and study how such a gap can be addressed with existing or additional measures from the Planning Department or the Environmental Protection Department to tackle environmental crimes such as dumping/filling.



WWF *for a living planet*

Appendix 1 The distribution of environmental destruction activities on sensitive areas between August 2006 and April 2008



- Cases of unauthorised land filling on private land
- Cases of unauthorised land filling on government land, land excavation, tree-felling and bridge/dam building across natural stream
- Cases of environmental destruction which cannot be regarded as illegal due to loopholes of existing environmental law or whose legality cannot be confirmed due to investigation in progress



WWF *for a living planet*

Appendix 2: Unauthorised land filling activities on private land from August 2006 to April 2008

Note: The following table is a consolidation of cases considered as unauthorised land filling by the Planning Department under the Town Planning Ordinance. These cases were unauthorised because they involved land filling on private land designated as conservation zones or “Agriculture” zones with filling restrictions.

Case No.	Date of occurrence	Place of occurrence	Land use zoning and/or land status of the subject site
1	Aug 06	Tam Wat, Sai Kung	1) Zoning: Green Belt (GB) 2) Land status: subject site is mostly private land Remarks: Dumping site has a size of at least 10 to 15 basketball fields
2	Jan 07	Shan Liu, Tai Po	1) Zoning: Agriculture (AGR) with filling restriction 2) Land Status: subject site is mostly private land
3	Jan 07	Ngau Tau Sham, Sai Kung	1) Zoning: Conservation Area (CA) 2) Land Status: Private land
4	April 07	Mai Po Sun Tsuen, Yuen Long	1) Zoning: Other Specified Use (Comprehensive Development to include Wetland Enhancement Area) 2) Land Status: both government and private land are affected
5	April 07	Long Valley, Sheung Shui	1) Zoning: AGR with filling restrictions 2) Land Status: private land
6	May 07	Wong Keng Tei, Sai Kung	1) Zoning: Coastal Protection Area (CPA) 2) Land Status: private land
7	Jul 07	Nam Chung in the Northeast New Territories	1) Zoning: AGR with filling restrictions 2) Land Status: private land
8	Oct 07	Wong Mo Ying, Sai Kung	1) Zoning: Country Park 2) Land Status: private Land
9	Apr 08	Ting Kok, Tai Po	1) Zoning: AGR with filling restriction 2) Land Status: private land (unsure if government land is affected)
10	Apr 08	Ng Tung Chai, Tai Po	1) Zoning: AGR with filling restriction 2) Land Status: private land