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1 April 2009

Miss Becky YU
Clerk to Panel on Environmental Affairs
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Miss YU,

At the special meeting of the Panel on Environmental Affairs held on 30 June 2008, the Administration undertook to provide a written reply on the proposal to amend the Town Planning Ordinance to extend planning enforcement power to areas covered by Outline Zoning Plans that were not previously designated as Development Permission Area. The Administration's response was set out in the written reply to the Legislative Council question no. 18 raised by Hon Choy So-yuk on 9 July 2008, which is reproduced at Annex for Members' information. Thank you.

Yours sincerely,

(Kerr LI)
for Secretary for the Environment

c.c. Secretary for Development (Attn: PAS (P&L)2)

Annex

LCQ18: Town Planning Ordinance

Following is a question by the Hon Choy So-yuk and a written reply by the Secretary for Development, Mrs Carrie Lam, in the Legislative Council today (July 9):

Question:

There is public concern that the natural environment in the New Territories, comprising important and ecologically sensitive natural habitats, has fallen as a constant target of unauthorized and illegal activities. These activities include, but not limited to, unauthorized land filling and excavation, as well as illegal tree felling. Previous uncovered cases have revealed that as the Planning Department does not have the power to enforce the Town Planning Ordinance (Cap. 131) in areas which are covered by statutory zoning plans but not Development Permission Area Plans ("DPAPs"), there is a large loophole in the existing planning control mechanism. As a result, the Planning Department is not empowered to take action against the above activities, although they are not in line with the planning intention of the zoning plans concerned. In this connection, will the Government inform this Council:

(a) of the areas on Hong Kong Island, in Kowloon and the New Territories in which existing legislation against unauthorized and illegal activities which violate the planning intention is not enforceable (i.e. areas which are currently not covered by a DPAP), as well as the location of such areas and the land area involved;

(b) of the number of cases uncovered in the past three years in which enforcement action could not be taken against the relevant unauthorized and illegal activities because of the above loophole; and

(c) given that there is an increase in the number of cases in which the above loophole in the Town Planning Ordinance is exploited, and the unauthorized and illegal activities involved will damage the environment and affect the future development of the areas concerned, what action the Government will take to plug the loophole, and whether it will consider amending the existing legislation?

Reply:

Madam President,

Unauthorized and illegal activities that may have an adverse impact on the natural environment in the New Territories take various forms. It must remain the responsibility of the respective land owners to prevent such activities from occurring. The relevant Government departments will also adopt measures to deter such activities or take enforcement action under their respective legal powers. To address the problem more effectively, concerted efforts are being made by relevant Government departments.

Since the Hon. Choy So-yuk's question is apparently focused

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on unauthorised land filling activities and the relevance of the town planning regime, I shall respond to her three-part question on these aspects:

(a) The prime objective of the Town Planning Ordinance is to regulate land use and related developments. Except for certain zonings which prohibit development, developments conforming to the zonings are permitted as of right, and land filling operations are considered as part of the development process. Development control in these areas is exercised by way of statutory Outline Zoning Plans (OZPs) and the planning permission system under the Town Planning Ordinance, as well as building controls under the Buildings Ordinance and the relevant control provided for in the land leases.

The Ordinance does not confer enforcement authority in respect of areas not covered by Development Permission Area (DPA) plans. These areas comprise mainly the urban areas and new towns. Even for DPAs, the Planning Department's enforcement action against unauthorised land filling activities is confined to "Green Belt", "Agriculture" and conservation-related zonings (such as "Sites of Special Scientific Interest", "Conservation Area" and "Coastal Protection Area"), as designated areas in the rural New Territories are also planned for suitable developments, such as "Village Type Development", "Residential (Group D)" and "Open Storage". Land filling operations in these development-related land use zonings would not be prohibited as they are incidental to development. Areas in the New Territories, including the Frontier Closed Area, which are at present neither included in country parks nor subject to statutory planning (OZP/DPA) control make up about 10.8% of all land in Hong Kong, mainly scattered in the less developed and remote parts of the rural New Territories.

(b) The report submitted to the Legislative Council Panel on Environmental Affairs on June 30 2008 has listed 152 cases uncovered in the past three years about inert construction and demolition materials being deposited on private land. Out of the 152 cases, Planning Department has undertaken enforcement action on 92, the majority of which fall in "Green Belt", "Agriculture" and conservation-related zonings within DPAs. It was either not possible or appropriate to take enforcement action under the Town Planning Ordinance against the remaining 60 cases. These comprise 19 cases which fall within development-related zonings within DPAs; 20 cases where there was insufficient evidence for action or where planning permission had been obtained; 15 cases were located within OZP areas not previously designated DPAs; and 6 cases were in areas not covered by any statutory plans.

It should be noted that enforcement action was not or would not be taken in many cases because the respective land filling operation was not prohibited under the prevailing zoning or planning mechanism.

(c) Given the background outlined in part (a) above, we do not consider the Town Planning Ordinance to be the most appropriate tool to control land filling activities per se. To lightly contemplate overhauling the planning regime to forestall a particular form of illegal or unauthorised activities on the land would have far reaching implications. In practice, for most parts of the urban areas and new towns where development is to be facilitated rather than prohibited, introducing control against land filling in the planning permission process would

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also unnecessarily prolong the development approval process.

At present, relevant Government departments exercise control over the deposit of construction and demolition materials on private land in accordance with the legislations and administrative measures under their purview. As reported to the Legislative Council Panel on Environmental Affairs on June 30 2008, the Environmental Protection Department is, in collaboration with other Government departments, setting up a database on such activities to capture all basic information including site locations, their zonings, sizes, land uses, etc., and will also record all the actions taken by the concerned Government departments. The database will be readily accessed and updated by the concerned Government departments. They will also meet regularly to ensure effective and co-ordinated actions are taken in accordance with the legislation under their respective jurisdiction.

Ends/Wednesday, July 9, 2008
Issued at HKT 14:33

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