

**Living Lamma**

**Submission to the Legco Sub-Committee on Combating Fly-tipping**

**29<sup>th</sup> April 2009**

Living Lamma is greatly concerned about the dumping of construction and other waste on land zoned for agricultural use on Lamma Island. A loophole in existing legislation allows these activities to occur. Lamma Island falls outside Development Permission Areas (DPAs) designated by the Planning Department. Landowners only have to claim that they own the waste and are “storing” it on their own land for government departments to be unable to take any action to prevent such dumping. Such activities by a few local landowners destroy the ecological and agricultural value of these areas and the effects often extend to adjacent areas. This is without doubt the intention of such landowners, who aim to get the land rezoned for building at some point in the future.

If this situation is allowed to continue, land zoned for agricultural use on Lamma will increasingly be used as landfill sites. Natural habitats of protected species will be destroyed, local farmers will see their land contaminated, water sources will be polluted, public health will be threatened, and local residents will lose areas of green space forever. These actions have important repercussions for local business owners, many indigenous to Lamma, whose livelihoods depend upon the large numbers of tourists who come to enjoy the natural scenery of the island.

Living Lamma has been fighting one such case of a private owner dumping construction and other waste on land zoned for agricultural use on Lamma in the Yung Shue Long valley. We hope that decisive action can be taken urgently so that this area and others like it, which are zoned for agricultural use on Lamma, can be protected as such.

**The Case**

On 23<sup>rd</sup> March 2009, workers acting for a local landowner, Mr. Fong, removed government railings and began dumping construction waste at the bottom of Yung Shue Long valley.

Local residents were quick to contact government departments and the police. Since then the dumping has continued. The dumping has completely buried a lily pond, destroyed a breeding ground for the protected Romer's tree frog, partially obstructed a stream and blocked drainage from the neighbouring fields, which are farmed to produce vegetables sold locally.

Though the waste is largely construction rubble, bits of old pipe, plastic bottles and cans, an old toilet bowl, and other matter are clearly visible. This has obliterated an area of natural beauty and created an eyesore, which a large number of local residents have to suffer.

We have attached a number of photographs to show the extent of the dumping and damage that this has caused in the Appendices to this paper.

### **The Government's Response**

The responses from government departments, following both a joint departmental inspection on 1<sup>st</sup> April 2009 and other visits were as follows:

#### **1. Environmental Protection Department (EPD)**

The case was reported to EPD in mid-March. EPD responded that they had informed various other departments including, for reasons we cannot fathom, the Highways Department. A joint site visit was undertaken. The EPD informed us that their role was, "to investigate whether the dumping activity has created any air and noise problems, whether there are any polluted water discharging from the site and whether it constitutes illegal waste disposal."

Air and noise problems were clearly not the issues with the dumping of this waste. The EPD also noted that there was no waste water being discharged from the dumping site, though as far as we know, no tests have been made to verify whether this waste is contaminating the stream or adjacent land, or will do so in future. They also said that because the waste is being dumped with the consent of the owner, it is legal.

There is a requirement for construction projects with a value of over HK\$1 million to open a billing account and dispose of C&D materials through

government facilities. The EPD claimed that they could find no evidence that the dumped construction waste originated from contracts worth over HK\$1 million.

The existence of this HK\$1 million threshold provides a loophole for those wishing to avoid landfill charges and encourages dumping on agricultural land. Without constant surveillance it is impossible to verify the origin of the waste and without an independent assessment, it is the landowner who is committing the dumping that provides the value of the contracts from which the waste is generated. The EPD should take urgent steps to close this loophole by making it illegal to dispose of C&D waste without permission from the EPD.

The EPD has thanked us for our “concern for the environment” and has not responded to further emails. We have since arranged a meeting with Anissa Wong, Permanent Secretary of the EPD and hope that the outcome of this meeting will provide more positive results.

## **2. Drainage Services Department (DSD)**

Prior to Mr. Fong’s dumping activity in the Yung Shue Long valley, the Drainage Services Department had carried out significant drainage works to the area just downstream of the dumping site. Their inspection concluded that the flow capacity of the concrete pipe that Mr. Fong placed in the stream was “not sufficient to cater for the quantity of flow that the downstream engineering channel was designed for.” However, other than raising their concerns with the DLO/Is and EPD, DSD have not promised any action other than to “keep the situation under monitoring.”

This weak response does nothing to protect the farmer whose land is next to the dumping site, and whose drainage has been most affected. It also does nothing to stop the dumping or cause the landowner to modify his behaviour in any way.

## **3. Agriculture Fisheries and Conservation Department (AFCD)**

The AFCD were alerted to the dumping by Dr. Nancy Karraker, specialist in the conservation of amphibians and reptiles at the Division of Ecology and Biodiversity, School of Biological Sciences, Hong Kong University and Lamma resident.

Dr. Karraker informed AFCD that Romer's tree frogs, a protected species, had been heard at the site prior to its destruction. AFCD visited the site and responded that the landowner had not technically violated the Wild Animals Protection Ordinance because he did not "willfully disturb" the habitat of the Romer's tree frogs. They also said that assessments for species listed under the Wild Animals Protection Ordinance would only be initiated for projects occurring within country parks or other protected areas, or for large-scale developments.

Ignorance of the law should not be an excuse for breaking the law. AFCD appears helpless to conserve protected species such as the Romer's tree frog. By the time they inspected the site, there was nothing to see but 2 metres of rubble. We have urged AFCD to put up notices along the Yung Shue Long valley informing landowners of the presence of Romer's tree frogs. The valley is also home to a variety of birdlife, which is protected under the Wild Animals Protection Ordinance and landowners should also be notified of this. The excuse that the damage to natural habitat is "not willful" must not be allowed to continue, and if, once informed, the landowner does not stop his activities AFCD should have the power to stop the dumping. So far, Living Lamma has not been made aware that AFCD has taken steps to notify Mr. Fong or other owners of agricultural land in the vicinity.

#### **4. District Lands Office (DO/Is)**

The DO/Is issued an advisory letter, posted at the site on 27<sup>th</sup> March 2009, which asked the owner "to be more considerate" and to stop dumping. This was ignored and the dumping continued. They also informed us that there was no justification to reinstate the railings that were removed by the landowner since, due to the dumping activities carried out there, "the level difference between the footpath and the lot no longer exists." They said that aside from monitoring for mosquito breeding and flooding, not much could be done under the terms of the lease of this land. The DO/Is advised us to contact the police, the Plan D, the DSD and the EPD. They informed us that conservation issues on private land "should be acted [sic] at the legislative level; but not at this district level."

## 5. Planning Department

The Planning Department responded that: "According to section 20(2) of the Town Planning Ordinance (Cap. 131), the Town Planning Board shall not designate as a development permission area any area that is or was previously included in an Outline Zoning Plan. Lamma Island has been covered by Lamma Island Outline Zoning Plan since 2000 and is currently covered by the approved Lamma Island Outline Zoning Plan No. S/I-LI/9 (the OZP). There is no provision for undertaking enforcement action under the Town Planning Ordinance on Lamma Island." They said that responsibility lay with the Buildings Department, Lands Department and the EPD. Living Lamma has since found documentation, which appears to contradict this (See Appendix 7).

### Actions

At the meeting of the Subcommittee on 20<sup>th</sup> April 2009, the EPD reported that it had taken steps to enhance co-operation between government departments. The department also talked about amending section 16A of the Waste Disposal ordinance to require written permission from the landowner for waste to be deposited on private land.

As we have experienced, enhanced co-operation has not resulted in significant action being taken. It has not in any way protected Lamma's agricultural land from dumping. Equally, the requirement of written permission from the owner will not deter dumping on Lamma's agricultural land. This land can only be protected through legislative change.

**We, therefore, ask that the subcommittee and the administration take urgent action to close the loophole, which allows individuals to dump waste regardless of the environmental costs or the negative impact on the wider community by ensuring the protection of ALL land zoned for agricultural use throughout Hong Kong, not just that covered by the DPAs, by prohibiting the dumping of all waste, save for the depositing of soil for the purposes of agriculture.**

Living Lamma  
April 2009

## Appendix 1: Site of dumping – Lots 24RP and 25RP



The farmer who produces vegetables sold locally farms lot 34RP and adjacent lots upstream from the dumping site. Drainage from his fields used to flow next to the footpath to the left of the farmer's field (see graphic below), as well as into the main stream. The flow through the main stream has been reduced to a 600mm concrete pipe by the landowner of lots 24RP and 25RP. His dumping activities have partially blocked the stream outside the area of the pipe and completely blocked the drainage next to the footpath.

Appendix 2: Graphic from SCMP Article of 12 April 2009 showing dumping across lot 25RP. The dumping now extends downstream and to the path on the left hand side, completely covering the lily pond.



**Appendix 3: The site before dumping began**







**Appendix 4: The site after dumping began**







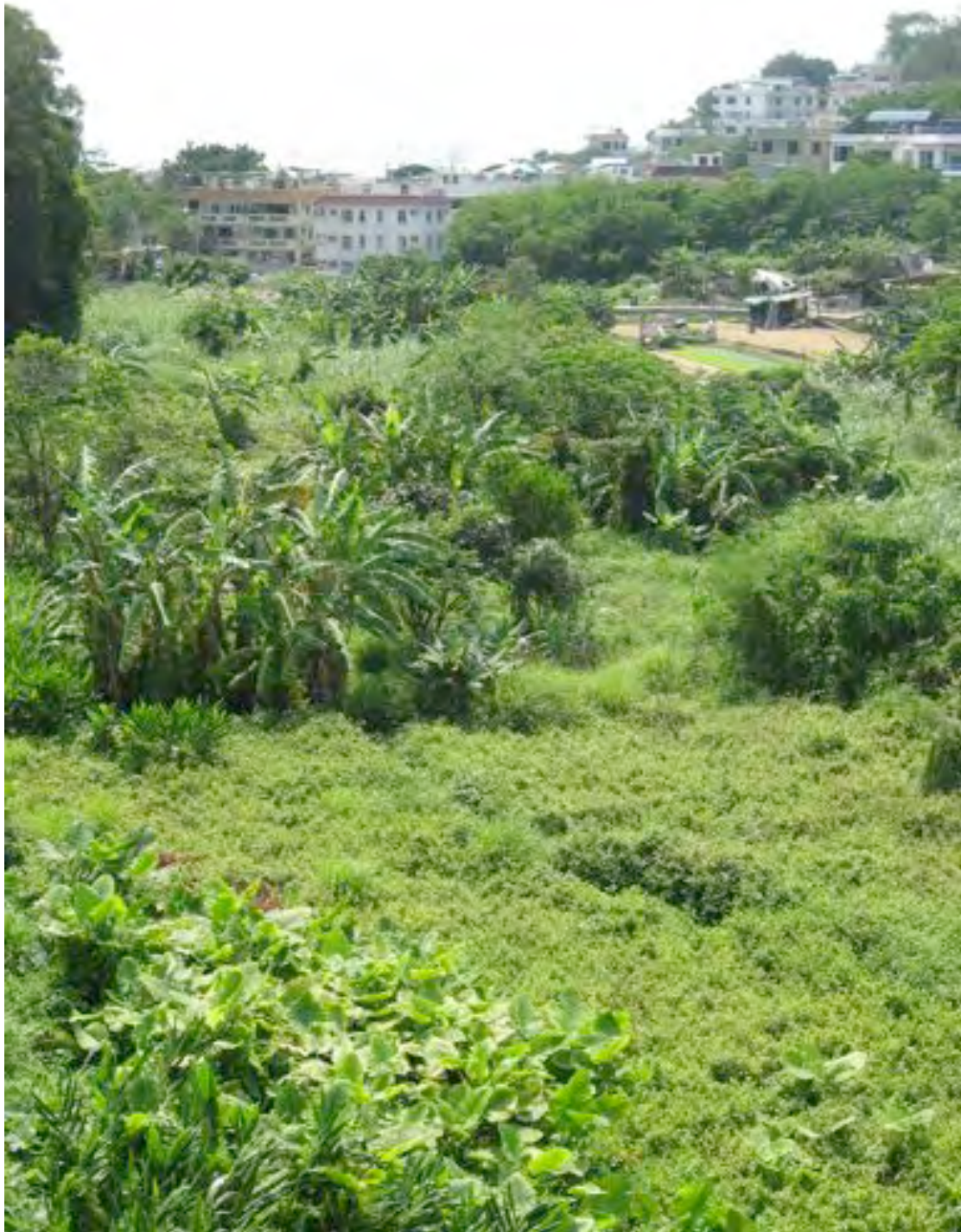
### **Appendix 5: The site and the adjacent land in the valley**

The red and white tape marks the boundary of the dumping site, which comes right up to land currently being farmed.





**Appendix 6: What next? Please protect the rest of the valley.**



**Appendix 7: Excerpts from “Approved Lamma Island Outline Zoning Plan No. S/I-LI/9” issued by the Town Planning Board in June 2007.**

1. Pages 10-11 of the Explanatory Statement

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8.9 Agriculture (“AGR”) : Total Area 37.02 ha

8.9.1 This zone is intended primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for

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rehabilitation for cultivation and other agricultural purposes.

8.9.2 The areas zoned “AGR” are located in the vicinity of the villages. They are classified as good quality agricultural land by the Agriculture, Fisheries and Conservation Department. The “AGR” zones near Tai Peng and Lo So Shing are under active cultivation.

8.9.3 As filling of land may cause adverse drainage and environmental impacts on the adjacent areas, permission from the Board is required for such activity. However, filling of land specifically required under prior written instructions of Government department(s), or for the purposes of genuine agricultural practice including laying of soil not exceeding 1.2m in thickness for cultivation, and construction of agricultural structure with prior written approval from the Lands Department is exempted from the control.



2. Pages 17-18 of the Notes, which form part of the Plan (“Being an Approved Plan for the Purposes of the Town Planning Ordinance”)

AGRICULTURE

Column 1 Uses always permitted	Column 2 Uses that may be permitted with or without conditions on application to the Town Planning Board
Agricultural Use Government Use (Police Reporting Centre only) On-Farm Domestic Structure Public Convenience Religious Institution (Ancestral Hall only) Rural Committee/Village Office	Animal Boarding Establishment Barbecue Spot Burial Ground Field Study/Education/Visitor Centre Government Refuse Collection Point Government Use (not elsewhere specified) House (New Territories Exempted House only) Picnic Area Place of Recreation, Sports or Culture (Horsing Riding School, Hobby Farm, Fishing Ground only) Public Utility Installation Religious Institution (not elsewhere specified) School Utility Installation for Private Project

Planning Intention

This zone is intended primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

(Please see next page)

AGRICULTURE (Cont'd)

Remarks

Any filling of land, including that to effect a change of use to any of those specified in Columns 1 and 2 above or the uses or developments always permitted under the covering Notes (except public works co-ordinated or implemented by Government, and maintenance, repair or rebuilding works), shall not be undertaken or continued on or after the date of the first publication in the Gazette of the notice of the draft Lamma Island Outline Zoning Plan No. S/I-LI/6 without the permission from the Town Planning Board under section 16 of the Town Planning Ordinance. This restriction does not apply to filling of land specifically required under prior written instructions of Government department(s) or for the purposes specified below:

- (i) laying of soil not exceeding 1.2m in thickness for cultivation; or
- (ii) construction of any agricultural structure with prior written approval issued by the Lands Department.

**Question**

Why, given these statements, does the Planning Department say that they cannot act to prevent dumping on land zoned for agricultural use on Lamma?

**About Living Lamma**

Living Lamma is a newly established group, which acts as a watchdog on sustainable development and community projects on Lamma Island. For further information, please write to: [info@livinglamma.org](mailto:info@livinglamma.org) or telephone Laura Ruggeri or Jo Wilson.