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Panel on Environmental Affairs

Meeting on 25 February 2013

**Updated 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 by Members at meetings of the Council, the Panel on Environmental Affairs ("the Panel") and the Subcommittee on Combating Fly-tipping formed under the Panel.

Background

2. The problem of fly-tipping¹ and illegal land filling² has all along been a public concern, as evidenced by the complaints against such activities on government land and private land. Given the limitation of the existing regulatory regime in controlling such activities, many parts of the New Territories have become dumping grounds, causing unacceptable impacts on the areas. In the light of the severity of the problem, questions on the need to strengthen the existing regulatory regime on fly-tipping and illegal land fillings have been raised at various Council meetings. The questions and the Administration's response are hyperlinked in the **Appendix** for ease of reference.

¹ Fly-tipping refers to illegal depositing of C&D materials, which is often associated with haphazard and casual dumping from vehicles. Fly-tipped C&D materials are usually scattered, left in heaps, and in small quantities. Most of these illegal dumping activities take place in urban built-up areas at locations with good vehicular access, such as at kerb sides or side roads branched off from main roads.

² Land filling refers to depositing or placement of C&D materials as fill material on land, which results in an elevation of ground level. Land filling activities are usually carried out for purposes of filling up ponds, levelling off uneven ground surfaces, forming sites for development, stockpiling in the form of a fill bank, or depositing of C&D materials onto land as dumping ground.

Existing regulatory regime

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

3. Depositing of C&D materials on private lots with consent of the owners for purposes of filling up land to level off uneven ground surfaces, or stockpiling of C&D materials conducted in accordance with the relevant legislation are not disallowed. Section 16A of Waste Disposal Ordinance (Cap. 354) ("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 except with permission of any owner or lawful occupier of the place.

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 ("PlanD") would take into account relevant factors, such as government policies, planning principles, infrastructure and environmental consideration, site conditions and public aspiration, etc. PlanD can take enforcement actions against 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 ("LandsD") 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 leasee once entered. Hence, the Government cannot impose without the agreement of the leasee 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 WDO, Air Pollution Control Ordinance (Cap. 311), Water Pollution Control Ordinance (Cap. 358), and Noise Control Ordinance (Cap. 400). These ordinances apply to the entire territory, irrespective of 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 to control land filling activities

10. 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 LandsD.

11. 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 has been set up. Information of the database is 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.

Discussion by the Panel

12. The Panel has been following up the subject of depositing of inert C&D materials. It held a number of meetings on 11 April, 16 May and 30 June 2008, as well as 23 February 2009 to discuss the problem of fly-tipping. 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.

13. 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 PlanD 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-ticket system³ ("TTS") 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.

Work of the Subcommittee on Combating Fly-tipping

14. To enable more focused discussion on the Government's efforts in tackling fly-tipping and land filling activities, the Subcommittee on Combating Fly-tipping ("the Subcommittee") was formed under the Panel during the 2008-2009, 2009-2010 and 2010-2011 sessions to review the existing policies on enforcement against such activities and suggest improvement measures. The work of the Subcommittee is set out below.

Enhanced control measures against the depositing of C&D materials

Trial scheme on monitoring of fly-tipping activities using closed-circuit television systems

15. With the support of the Tuen Mun and Sha Tin District Councils, closed-circuit television ("CCTV") systems had been installed at the two fly-tipping black-spots at Siu Lang Shui in Tuen Mun and Tai Po Road car park in January 2010 on trial for about one year to test out their effectiveness in collecting evidence on fly-tipping activities. According to the Administration, the occurrence of fly-tipping activities at the two locations had become less frequent since the installation of CCTV systems and stepping up of enforcement effort by relevant departments. While the CCTV system had been effective and useful in deterring fly-tipping activities at the two black spots in the trial scheme, further extension of the use of CCTV in other fly-tipping locations to collect evidence on fly-tipping activities had to be carefully considered having regard to views of the neighbouring community and privacy concerns.

Extension of the trip-ticket system to major works projects in the private sector

16. Given that the TTS and related waste management practices for public works projects were not only effective in monitoring the flow of C&D materials but also helped prevent overloading of dump trucks, the Administration was requested to consider extending TTS to major private works projects. The Administration had advised that it had relayed members' suggestion to the Construction Industry Council ("CIC") which had approved a set of Guidelines

³ Trip-ticket system refers to a direct settlement system requiring waste producers to open accounts and pay waste disposal charges direct to the Government through waste handlers under a ticket system.

on TTS for Disposal of Construction and Demolition Materials in Private Sector works for implementation in the second quarter of 2011. The Guidelines are similar to the Technical Circular (Works) No. 6/2010 – "Trip ticket system for disposal of construction and demolition materials" issued by the Works Branch of the Development Bureau. The Committee on Environment and Technology under CIC would monitor the progress of application after publication of the Guidelines.

17. The Subcommittee noted that the Hong Kong Dumper Truck Drivers Association ("HKDTDA") had, in its submission, suggested adopting relevant global positioning system ("GPS") applications to track dump trucks to prevent illegal dumping. As the proposal did not have the support of CIC, HKDTDA had conducted its own trial to install GPS applications in 100 dump trucks for a period of six months starting from March 2011. Preliminary performance assessment revealed that the system was good for tracking and fleet management, but not necessarily effective in monitoring overloading or illegal dumping. The GPS service provider would have to look at some technical issues, such as prevention of tempering of device and manipulating of record. There was also a need to further explore how the relevant records could complement prosecution actions as evidences admissible in court. All these issues had to be examined before the suitability of GPS applications for addressing the overloading problem could be ascertained.

Legislative amendment

Waste Disposal Ordinance (Cap. 354)

18. In the 2009-2010 legislative session, the Subcommittee was briefed on the proposal to amend WDO to enhance the effectiveness of enforcing section 16A of WDO against unauthorized depositing of abandoned C&D materials on private land. Under the proposal, a person who carries out unauthorized depositing activity on private land without owners' written consent will be held liable for prosecution. The proposal aims to prevent depositing activities that will cause environmental problem, and to safeguard the interest of private landowners by preventing the abuse of private land for depositing without their consent. The new notification mechanism under the proposal will also enable government departments to be notified in advance of possible depositing of abandoned C&D materials on private land so that the related departments could remind parties concerned of the relevant statutory requirements, thus preventing the occurrence of illegal activities.

19. According to the Administration, a public consultation was conducted in 2010 to solicit views on the proposal. In general, the public and relevant

stakeholders were positive and supportive towards the proposal. The Administration would take into account views and comments received during the public consultation in preparing the legislative proposal on amendment to WDO with the aim to submit the amendment proposal to the Legislative Council as soon as possible.

Town Planning Ordinance (Cap. 131)

20. The Administration was requested to review the feasibility of amending TPO to empower the Planning Authority to take enforcement action against land filling activities undertaken within areas covered by Outline Zoning Plans ("OZPs") but previously not covered by DPA Plans. The Administration had advised that the preparation and review of statutory plans was an on-going task of PlanD. Apart from OZP reviews for the built-up areas, PlanD was in parallel preparing DPA Plans/OZPs for the rural areas currently not covered by statutory plans so as to step up statutory planning control in areas of high conservation value, subject to development pressure, or susceptible to unauthorized use, etc.

21. Some members had expressed concern about illegal land filling activities in country park enclaves, particularly in the light of the Tai Long Sai Wan incident. They considered that to protect country park enclaves with high conservation value, efforts should be made to cover the enclaves by statutory plans as soon as possible.

22. According to the Administration, country park enclaves are sites that are surrounded by or adjacent to the country park, but not part of the country parks. Most of the enclaves comprise both private land and government land. Control on development on private land at the enclaves relies on the land leases. Enforcement action would be taken according to DPA Plans or OZPs prepared under TPO, where applicable, if a breach of lease conditions can be established. In his Policy Address 2010-2011, the Chief Executive announced that the Tai Long Sai Wan incident had highlighted the need for prompt action to regulate land use in country park enclaves to forestall human damage. To meet conservation and social development needs, the Administration would either include country park enclaves into country parks or determine their proper uses through statutory planning, having regard to various factors such as accessibility of the enclaves, immediate development threats, conservation value, landscape value, geographical location of the enclaves, and existing scale of human settlement. It would continue to carry out relevant works in accordance with the direction in the Policy Address. The Agriculture, Fisheries and Conservation Department would continue its patrolling efforts in country park enclaves and alert the relevant departments of any irregular activities so that prompt enforcement action could be taken against unauthorized activities under the existing legislative framework.

Follow-up on individual cases

23. The Subcommittee had monitored nine private land filling sites in the database that were under constant monitoring or actions by government departments as they fell within the conservation-related zonings, such as "Coastal Protection Area" and "Green Belt". These land filling sites included Shing Mun Road; DD96, Chau Tau; Hop Shing Wai; DD99, Chau Tau; Nam Sang Wai; Ham Tin Kau Tsuen; Ha Tsuen; Lau Fau Shan; and Sha Kiu Tsuen. The Subcommittee had also discussed the enforcement actions against illegal landfilling activities at Ho Sheung Heung and Hung Shui Kiu. Some members had expressed concern that the penalties for illegal land filling activities upon conviction were too light to reflect the gravity of offences. The Administration had advised that the amount of fine is determined by the court taking into account the merits of individual cases. Legal advice on the need for appeal would be sought from the Department of Justice if the Administration considered the penalty too light.

Latest development

24. The Administration has been requested to brief members on the latest progress of the measures to tackle fly-tipping of C&D waste and illegal land filling at the Panel meeting on 25 February 2013, with particular reference to the recent fly-tipping incident at Ma Tong Village, Chuen Lung, Tsuen Wan.

Relevant papers

25. A list of relevant papers is set out in the **Appendix**.

Appendix

Depositing of inert construction and demolition materials on government and private land

List of relevant papers

Council/ Committee	Date of meeting	Paper
Panel on Environmental Affairs	11 April 2008	<p>Administration's paper on land filling activities on Government land and private land using construction and demolition materials - The Shing Mun Road incident (LC Paper No. CB(1)1199/07-08(01)) http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea0411cb1-1199-1-e.pdf</p> <p>Minutes of special meeting (LC Paper No. CB(1)1931/07-08) http://www.legco.gov.hk/yr07-08/english/panels/ea/minutes/ea080411.pdf</p>
Panel on Environmental Affairs	23 February 2009	<p>Administration's paper on the latest progress of measures to enhance control on the depositing of construction and demolition materials (LC Paper No. CB(1)807/08-09(05)) http://www.legco.gov.hk/yr08-09/english/panels/ea/papers/ea0223cb1-807-5-e.pdf</p> <p>Background brief on depositing of inert construction and demolition materials on government and private land (LC Paper No. CB(1)807/08-09(06)) http://www.legco.gov.hk/yr08-09/english/panels/ea/papers/ea0223cb1-807-6-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)1355/08-09) http://www.legco.gov.hk/yr08-09/english/panels/ea/minutes/ea20090223.pdf</p>

Council/ Committee	Date of meeting	Paper
Panel on Environmental Affairs	22 February 2010	Administration's paper on the proposal to further enhance the regulation of depositing of abandoned construction and demolition materials on private land (LC Paper No. CB(1)1094/09-10(01)) http://www.legco.gov.hk/yr09-10/english/panels/ea/papers/ea0222cb1-1094-1-e.pdf Minutes of meeting (LC Paper No. CB(1)1660/09-10) http://www.legco.gov.hk/yr09-10/english/panels/ea/minutes/ea20100222.pdf
Subcommittee on Combating Fly-tipping	27 June 2011	Report of the Subcommittee on Combating Fly-tipping for submission to the Panel on Environmental Affairs (LC Paper No. CB(1)2526/10-11) http://www.legco.gov.hk/yr10-11/english/panels/ea/ea_cft/reports/ea_cftcb1-2526-e.pdf

Hyperlinks to relevant Council Questions:

Date	Council Questions
28 November 2007	Council question raised by Hon LI Kwok-ying http://www.info.gov.hk/gia/general/200711/28/P200711280153.htm
4 February 2009	Council question raised by Hon Albert HO Chun-yan http://www.info.gov.hk/gia/general/200902/04/P200902040239.htm
28 October 2009	Council question raised by Hon LEE Wing-tat http://www.info.gov.hk/gia/general/200910/28/P200910280148.htm
25 November 2009	Council question raised by Hon LI Fung-ying http://www.info.gov.hk/gia/general/200911/25/P200911250217.htm
12 May 2010	Council question raised by Hon Regina IP LAU Suk-ye http://www.info.gov.hk/gia/general/201005/12/P201005120117.htm