

**Follow up of issues relating to the soil fill
near Kingwood Villas in Tin Shui Wai**

Planning Enforcement

On-going Planning Enforcement Action against the subject Soil Fill Case

According to the investigation of Planning Department (PlanD), the area within the boundary of the “Exiting Use” (EU) is mainly used for open storage of sand. The small amount of construction waste/rocks found does not constitute a material change in the use of the EU. There is also no evidence to prove that there is an unauthorized development (UD) under the Town Planning Ordinance (TPO).

2. Regarding the unauthorized land filling outside the EU boundary, PlanD has undertaken enforcement action according to the TPO. Since March 2016, the Planning Authority (PA) has issued 30 Enforcement Notices (ENs), 27 Reinstatement Notices (RNs) and 9 Notices to Require Provision of Information. Prosecution action has been instigated against 6 defendants for non-compliance with the Notice to Require Provision of Information, who were convicted and fined in May 2016.

3. PlanD has investigated the land filling operation near the A Kai Shan. On 24 May 2016, the PA issued the EN to the concerned land owners requiring discontinuance of the unauthorized land filling and is considering the RN requirements. As regards the unauthorized storage use (including deposit of containers), it was discontinued upon expiry of the EN and PlanD is monitoring the site conditions.

4. For the recently spotted unauthorized container storage use and filling of land, PlanD is undertaking the investigation and will take enforcement and prosecution action when there is sufficient evidence to prove the use is an UD.

5. As regards the car park in the west outside the EU boundary, the area involved is a pond in 1994. PlanD commenced the investigation upon receipt of complaint on car park use in 2004 and 2005. It was confirmed as an UD after investigation and warning letters were issued by PlanD to the registered land owners. Subsequently the car park use was discontinued. Recently, PlanD has found that the land concerned was used as parking of vehicles and commenced investigation. PlanD will take enforcement and prosecution action when there is sufficient evidence to prove the use is an UD.

6. PlanD is continuing monitoring the conditions of the said sites. PlanD will take enforcement and prosecution action in accordance with the TPO against the new UD's spotted and those non-compliance with notices cases.

7. As regards to the proposed enactment of law / amendment of the existing legislation to tighten controls on pond/land filling/disposal of construction waste, the Government is welcome and open to discuss. But at the same time, we must also take into account the historical background of the relevant legislation and regulation, and a careful balancing of various considerations on the public interest and land rights issues.

Planning Enforcement Action against the Fish Ponds to the North and Northeast of the subject Soil Fill Site

8. Regarding the fish ponds located to the northeast of the EU area, PlanD has taken enforcement action against the unauthorized land and pond filling activities on the three fish ponds after the relevant Development Permission Area Plan gazetted in 1990.

9. In 2001, the PA has issued Stop Notices (SNs) to the concerned land owners to require them to stop the unauthorized pond filling activity and also to remove the filling materials in order to reinstate the pond. Since the concerned land owners had not complied with the requirements of the SNs, the PA took prosecution action against the land owners in September 2001. Having been convicted by the court, the concerned land owners subsequently reinstated the pond and complied with the requirements of the SNs. In August 2011, it was found that some of the pond bund areas had been filled. The PA issued RNs to the concerned land owners requiring them to remove the fill materials. Since the land owners complied with the requirements of the RNs, the PA issued Compliance Notices to the land owners in September 2012. The fish pond has been reinstated since then.

10. For the smaller fish pond located nearby, it had been found that unauthorized pond filling activity taken place in 2001. Since the pond filling activity involved a contractor of a Government Department, the relevant party was requested to remove the fill materials. Site inspection conducted in May 2002 revealed that fill materials have subsequently been removed and the pond reinstated. The fish pond has been dried and grown with vegetation since early 2004 and PlanD has not received any complaints about unauthorized pond filling activity against this pond.

11. For the third pond, PlanD issued ENs to the concerned land owners in January 1996 requiring them to discontinue the unauthorized land and pond filling activities and site formation works. Taking into account that the unauthorized operations have been ceased and no baseline information on the original fish pond for formulating the requirements of the RN, the PA did not issue RNs but issued Compliance Notices to the land owners in February 1997.

12. In all the above cases, PlanD has followed-up the complaints and taken appropriate enforcement and prosecution action in accordance with the TPO.

Review of RNs

13. As at 21 June 2016, the Development Bureau (DEVB) received four applications for review by the Secretary for Development (SDEV) under section 24(1) of the TPO concerning three RNs received by two land owners, among others. These review applications were duly submitted within 30 days after service of the RNs. DEVB is processing these review applications in accordance with the relevant statutory provisions under section 24 of the TPO.

14. In accordance with the established procedures in handling review application of RN, DEVB will invite PlanD as the PA to respond to the application. On receipt of PlanD's response, DEVB will also need to invite the applicant's comments within a reasonable time as provided by the law. SDEV will make a decision on the review application after considering all the materials received.

15. By virtue of section 24(4) of the TPO, the relevant RNs under review will be suspended in operation until the review is disposed of. The lead time required for processing the review applications would depend on complexity of the case. SDEV has the statutory duty to go through the review process thoroughly.

Land Administration

16. The Yuen Long District Lands Office (YLDLO) found in late April that the filling had extended to an adjoining piece of government land with an area of about 300 square meters and the concerned land was surrounded by private lots. Taking land control action accordingly under the

Land (Miscellaneous Provisions) Ordinance (Cap. 28), YLDLO posted a notice on site to require the occupier to cease occupation of the said government land by the specified deadline. Since the occupation of the government land had not ceased upon the expiry of the deadline, YLDLO took immediate steps to gather evidence for commencing prosecution under the relevant legislation and for the recovery of any cost of clearance possibly involved. Such action had been taken without any delay. In order that the prosecution will not be prejudiced, it is not appropriate for the Lands Department to disclose any specific information related to the case at this stage. Moreover, pursuant to the request of the Planning Department, YLDLO will make arrangement to grass the government land concerned for its reinstatement.

Slope Safety

17. Based on the recent condition of the soil fill (including its height and the gradient of slope surface), there is no significant risk to the public in terms of slope safety. The Buildings Department and the Civil Engineering and Development Department will continue to keep in view the situation and maintain close liaison with the concerned departments, and will consider taking enforcement action under the Buildings Ordinance if necessary.

Follow-up Investigation by EPD

18. Environmental Protection Department (EPD) found that the site formation works there did not observe the regulations stipulated under the Air Pollution Control (Construction Dust) Regulation to prevent dispersion of dust. EPD has completed the investigation and is initiating prosecution. EPD is following up the suspected illegal dumping of construction waste on the government land, and suspected illegal dumping of construction waste from a construction site of the Housing Society. EPD will initiate prosecution action if there is sufficient evidence.

Environment Bureau
Development Bureau
Environmental Protection Department
Civil Engineering and Development Department
Buildings Department
Planning Department
Lands Department

24 June 2016