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Panel on Environmental Affairs

Meeting on 25 April 2016

**Background brief on the soil fill and suspected illegal land filling
near Kingswood Villas in Tin Shui Wai
prepared by the Legislative Council Secretariat**

Purpose

This paper provides background information on the soil fill and suspected illegal land filling near Kingswood Villas in Tin Shui Wai. It also gives a brief account of the major views and concerns expressed by Members recently on the incident as well as fly-tipping and illegal land filling activities in general.

Background

2. Land filling refers to depositing or placement of construction waste 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 construction waste onto land as dumping ground.

Statutory control against fly-tipping and illegal land filling

3. Various existing legislation, administered by different government departments, may be applied to deter illegal land filling and fly-tipping of construction waste (**Appendix I**). While disposal of construction waste is subject

to a statutory charge under the Construction Waste Disposal Charging Scheme,¹ some free-riders seek to evade the charge through fly-tipping and illegal land filling.

4. To cope with the depositing or dumping of construction waste on a private land, the Environmental Protection Department ("EPD") has implemented a prior notification mechanism under the Waste Disposal (Amendment) Ordinance 2013 since 4 August 2014.² It requires a person to obtain the written permission of the landowners given in a specified form and submit it to EPD before the intended date of the deposition. After receiving the submission, EPD will inform the relevant departments of the proposed deposition. This is to enable relevant departments to take follow-up actions under their respective purview and to ensure that the proposed deposition will comply with the relevant legislative requirements. Section 16A(1) of Waste Disposal Ordinance (Cap. 354) ("WDO") provides that a person commits an offence if the person deposits or causes or permits to be deposited waste (including construction waste) in any place except with lawful authority or excuse, or except with the permission of any owner or lawful occupier of the place.

The soil fill and suspected land filling near Kingswood Villas in Tin Shui Wai

5. Media reports in early March 2016 revealed a massive soil fill and suspected illegal land filling near Kingswood Villas in Tin Shui Wai. The case has aroused concerns about the risks posed by the soil fill to public safety, potential adverse impact of the soil fill on the environment, and the persistent problem of fly-tipping and illegal land filling in Hong Kong.

6. On 8 March 2016, an inter-departmental meeting was held to discuss joint enforcement actions by relevant government departments (including EPD, the Planning Department ("PlanD"), the Buildings Department, the Civil Engineering and Development Department and the Lands Department ("LandsD")) in relation to the soil fill and suspected illegal land filling near Kingswood Villas. According to the Administration:

¹ In order to promote waste reduction and recycling in the construction industry, the Government has implemented the Construction Waste Disposal Charging Scheme since 2006, imposing construction waste disposal charges comprising (a) a public fill charge (at \$27 per tonne), (b) a sorting charge (at \$100 per tonne) and (c) a landfill charge (at \$125 per tonne). These charges were at that time set at levels that represented 100% recovery of the full costs of the relevant construction waste handling facilities.

² The Amendment Ordinance was enacted by the Legislative Council on 18 December 2013.

- (a) while there is no indication of imminent collapse of the soil fill, the fill materials are found to be loose due to the lack of proper compaction and the vegetation on the soil fill has been removed recently, resulting in a potential risk of the collapse of the exposed parts of the soil. The situation may worsen in the upcoming rainy season;
- (b) the concerned site is mainly zoned "Recreation" on the Ping Shan Outline Zoning Plan. Any recreational or other developments, including filling of land/excavation of land for such developments in the said zone requires prior planning permission from the Town Planning Board or otherwise constitute an unauthorized development under the Town Planning Ordinance (Cap. 131)("TPO"). However, PlanD's records reveal that the site in question was used for open storage of sand before the first gazettal of the draft Ping Shan Development Permission Area Plan on 18 June 1993. As such, storage of sand at the site is regarded as an "existing use" under TPO and does not constitute an unauthorized development;
- (c) the lots involved in land filling are private agricultural land held under Block Government Lease, and there is no restriction on the land use under the Lease. It is not in breach of the conditions of the Lease for private agricultural land used for open storage. Therefore, LandsD cannot take enforcement actions according to the conditions of land lease;
- (d) filling of land is observed in an area to the east of the site which was beyond the boundary of open storage of sand existed before the Ping Shan Development Permission Area Plan had come to effect in 1993. The said filling of land involves an area which is largely zoned "Green Belt" on the Ping Shan Outline Zoning Plan. Such operation constitutes an authorized development under TPO as no planning permission has been granted by the Town Planning Board. There are also signs of further unauthorized filling of land expanding to the west of the site; and
- (e) in 2007 and 2008, the landowners concerned had, in accordance with the requirements of WDO, confirmed to EPD that the site in question was to be used for deposition of large quantity of construction materials. However, the site formation works in question had not

observed the regulations stipulated under the Air Pollution Control (Construction Dust) Regulation (Cap. 311R) to prevent dispersion of dust.

7. The enforcement actions taken or to be taken by the relevant government departments are highlighted in **Appendix II**. Separately, the Government has set up an inter-departmental coordination mechanism coordinated by EPD to strengthen the monitoring of illegal waste dumping condition, facilitate the exchange of intelligence, and coordinate control actions. Under the mechanism, the departments will exercise their functions under their respective purview and conduct on-site inspection and enforcement work as necessary. EPD and the various departments will conduct annual review of actions taken against illegal dumping of construction waste.

Major views and concerns expressed by Members

Measures to combat land filling and fly-tipping activities

8. On 25 February 2013, the Panel on Environmental Affairs ("EA Panel") discussed measures to tackle fly-tipping of construction waste and illegal land filling. Related issues were raised at the Panel meeting on 21 December 2015 in connection with the Administration's proposal to increase the various charges for disposal of construction waste under the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354N).³

9. Members expressed concerns about the persistent problem of illegal land filling and fly-tipping of construction waste in Hong Kong, and criticized the absence of effective measures by the Administration to combat the problem. Members urged the Administration to strengthen enforcement efforts, in particular to address the serious problem of waste dumping in country parks.

10. The Administration responded that in cooperation with other departments, district offices and district councils, EPD had continued to enhance intelligence and information gathering regarding black spots of fly-tipping, erect fencing and barricades at such black spots, and step up enforcement including patrols and ambush operations. EPD was also actively exploring options to enhance the existing control, including a trial scheme of using surveillance cameras at black

³ The relevant subsidiary legislation for effecting the proposed fee increase has not yet been gazetted and tabled before the Legislative Council.

spots of fly-tipping. Subject to review of the effectiveness of the trial scheme, the Administration would consider installation at more black spots or problem areas of fly-tipping as appropriate.

11. Members noted that the Administration was conducting a trial on the application of the global positioning system ("GPS") to track dump trucks with a view to preventing illegal dumping. Some Members suggested that the installation of GPS in dumper trucks might be regarded as a good practice which could be given more favourable consideration by the Administration when awarding relevant government contracts. The Administration responded that it would carry out detailed study on its practicability and would consult the industry as appropriate.

12. Some Members urged the Administration to prescribe a minimum fine in WDO to enhance deterrence against fly-tipping of construction waste on private land. The Administration explained that while no minimum penalty level was set under WDO for relevant offences, the court would take into account various factors, such as the nature or seriousness of the offences, environmental impacts and mitigation, before sentencing in each case.

The soil fill and suspected illegal land filling near Kingswood Villas in Tin Shui Wai

13. After revelation of the soil fill and suspected illegal land filling near Kingswood Villas in Tin Shui Wai in March 2016, some Members had written to the Chairmen of the EA Panel or the Panel on Development expressing grave concerns about the matter and making suggestions on the follow-up actions to be taken by the government departments. The major suggestions are:

- (a) PlanD should take enforcement actions in accordance with TPO against unauthorized land use, if any, at the soil dump site near Kingswood Villas;
- (b) the landowners of the soil dump site should be required to restore the land to prevent collapse of the slopes created and ensure public safety;
- (c) EPD and LandsD should promptly identify any other locations of illegal land filling in the territory and take enforcement actions; and
- (d) all registered dump trucks in Hong Kong should be required to install GPS for tracking and monitoring the movement of construction waste.

Recent development

14. At the meeting on 25 April 2016, the EA Panel will discuss with the Administration issues relating to the soil fill and suspected illegal land filling near Kingswood Villas in Tin Shui Wai.

Relevant papers

15. A list of relevant papers is set out in **Appendix III**.

Council Business Division 1
Legislative Council Secretariat
20 April 2016

Statutory control over land filling and fly-tipping activities

Land filling and fly-tipping activities are regulated by various planning, environmental, drainage, public health or country park legislations which are enforced by a number of government departments.

1. Environmental Protection Department ("EPD") : <i>Waste Disposal and Pollution Control</i>	
Waste Disposal Ordinance (Cap. 354)	Enforce against land filling and fly-tipping activities for waste deposition on government land, or on private land without the consent of the landowners or lawful occupiers.
Air Pollution Control Ordinance (Cap. 311), the Noise Control Ordinance (Cap. 400) and the Water Pollution Control Ordinance (Cap. 358)	Control dust emission, noise and wastewater discharges arising from land filling activities.
2. Lands Department: <i>Land management</i>	
Land (Miscellaneous Provisions) Ordinance (Cap. 28)	To remove construction and demolition ("C&D") materials illegally dumped on unallocated Government land excluding Government land under the control of other Government departments where formal land allocation is not required as unlawful occupation.
3. Planning Department : <i>Planning control</i>	
Town Planning Ordinance (Cap. 131)	Enforce against unauthorized land filling activities falling within the Development Permission Areas ("DPAs") in the rural area when provisions of statutory plans are not complied with. (Planning permission from the Town Planning Board is required for land filling activities at conservation-related zones within DPAs.)

4. Food and Environmental Hygiene Department ("FEHD"): <i>Environmental Hygiene</i>	
Public Health and Municipal Services Ordinance (Cap.132)	Enforce against the responsible person if filling or dumping of C&D materials on a particular piece of private land gives rise to sanitary nuisances. Also against deposition that leads to an accumulation of water resulting in breeding of mosquitoes.
Public Cleansing and Prevention of Nuisances Regulation (Cap.132BK)	Against the registered owner or hirer of the specified vehicle for littering offences.
5. Buildings Department: <i>Building approvals</i>	
Buildings Ordinance (Cap. 123)	Enforce against unapproved building works; building works including those associated with land filling on private land have to comply with the Buildings Ordinance.
6. Agriculture, Fisheries and Conservation Department ("AFCD"): <i>Country Park management</i>	
Country Park Ordinance (Cap. 208)	Enforce against illegal dumping within country park.
7. Drainage Services Department: <i>Flood control</i>	
Land Drainage Ordinance (Cap.446)	Gain access onto private land to remove illegal structure that causes stormwater drainage obstructions to designated watercourses so as to control flooding.

Note: Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) is also being applied by Government Departments (the Hong Kong Police Force, AFCD, EPD, FEHD, the Housing Department, the Leisure and Cultural Services Department and the Marine Department) to tackle certain public cleanliness offences including littering and minor waste deposition.

[Source: Adapted from Annex I to LC Paper No. [CB\(1\)569/12-13\(06\)](#)]

Enforcement actions taken or to be taken in relation to the soil fill and suspected illegal land filling near Kingswood Villas in Tin Shui Wai

Department	Enforcement actions
<p>Buildings Department ("BD")</p>	<ul style="list-style-type: none"> • On 8 March 2016, BD served Dangerous Hillside Orders to the owners of the concerned pieces of land under section 27A of the Buildings Ordinance (Cap. 123), requiring them to appoint registered building professionals to undertake an investigation of the land and submit a remedial proposal to ensure public safety, and commence urgent shotcreting work for the provision of a protective cover. • If the landowners fail to comply with the orders, BD may arrange carrying out of the work and recover the full cost of the work together with a supervision charge and a surcharge of not exceeding 20% on the cost of the work from the landowners. • If the landowners fail to comply with the Dangerous Hillside Orders, the Building Authority will consider instigating prosecution against them.
<p>Planning Department (PlanD")</p>	<ul style="list-style-type: none"> • On 21 March 2016, the Planning Authority served a Notice to Require Provision of Information under section 22(7) of the Town Planning Ordinance (Cap. 131) to the landowners and the responsible person to collect more information on the use of the site. • Should there be sufficient evidence to prove any unauthorized development occurred on site, PlanD will take appropriate enforcement actions. • On 21 March 2016, the Planning Authority issued an Enforcement Notice under section 23(1) of the Town Planning Ordinance (Cap. 131) to the concerned landowner requiring discontinuance of the

	unauthorized filling of land which involved an area largely zoned "Green Belt" on the Ping Shan Outline Zoning Plan.
Environmental Protection Department ("EPD")	<ul style="list-style-type: none">• EPD has warned the responsible person of the site formation works in question for not having observed the regulations stipulated under the Air Pollution Control (Construction Dust) Regulation (Cap. 311R) to prevent dispersion of dust.• EPD is preparing for instituting prosecutions in accordance with Cap. 311R.

[Source: The Administration's written response dated 29 March 2016 to the letter from Mr LEE Cheuk-yan regarding the soil fill near Kingswood Villas in Tin Shui Wai (LC Paper No. [CB\(1\)723/15-16\(01\)](#))]

**Issues relating to soil fill and suspected illegal land filling
near Kingswood Villas in Tin Shui Wai**

List of relevant papers

Date of meeting	Event	Papers
25 February 2013	Meeting of the Panel on Environmental Affairs	<p>Administration's paper on "Measures to tackle fly-tipping of construction and demolition waste and illegal land filling" (LC Paper No. CB(1)569/12-13(06))</p> <p>Updated background brief on "Depositing of inert construction and demolition materials on government and private land" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)569/12-13(07))</p> <p>Minutes of meeting (LC Paper No. CB(1)1066/12-13)</p>
30 March 2015	Special meeting of Finance Committee for examination of Estimates of Expenditure 2015-2016	Written question raised by Member and Administration's reply (Reply serial number: ENB315)
21 December 2015	Meeting of the Panel on Environmental Affairs	<p>Administration's paper on "Review of the Construction Waste Disposal Charging Scheme" (LC Paper No. CB(1)299/15-16(04))</p> <p>Background brief on "Reduction of construction waste" prepared by the Legislative Council Secretariat (LC Paper No. CB(1)299/15-16(05))</p> <p>Minutes of meeting (LC Paper No. CB(1)630/15-16)</p>

Government press releases

Date of issuance	Press release
8 March 2016	Press release on "Inter-departmental meeting held to discuss joint enforcement action against illegal site formation in Tin Shui Wai"
19 March 2016	Press release by the Buildings Department on its response to media enquiries on follow-up actions on suspected illegal site formation in Tin Shui Wai
21 March 2016	Press release on " Further enforcement actions against Tin Shui Wai soil fill"

Letters from Members of the Legislative Council and the Administration's response on the subject

Date of letter	Letters
8 March 2016	<p>Letter from Mr LEE Cheuk-yan requesting the Panel on Environmental Affairs to discuss issues arising from suspected fly-tipping of construction waste and illegal landfilling in Tin Shui Wai (Chinese version only) (LC Paper No. CB(1)670/15-16(01))</p> <p>The Administration's written response (LC Paper No. CB(1)723/15-16(01))</p>
9 March 2016	<p>Letter from Mr LEUNG Che-cheung requesting the Panel on Development to discuss issues arising from suspected illegal soil dumps (Chinese version only) (LC Paper No. CB(1)672/15-16(01))</p> <p>The Administration's written response (LC Paper No. CB(1)725/15-16(01))</p>

Date of letter	Letters
30 March 2016	Joint letter from Dr KWOK Ka-ki, Mr Frederick FUNG, Dr Fernando CHEUNG, Mr Alan LEONG, Mr Alvin YEUNG and Mr Dennis KWOK requesting the Panel on Development to hold a joint-Panel meeting to discuss issues related to illegal dumping of soil in the New Territories (Chinese version only) (LC Paper No. CB(1)769/15-16(01))