

# 立法會 *Legislative Council*

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## **Panel on Environmental Affairs**

**Meeting on 19 December 2016**

### **Background brief on the control against illegal land filling and fly-tipping of construction and demolition waste prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper provides background information on the control against fly-tipping of construction and demolition ("C&D") waste,<sup>1</sup> and illegal land filling in Hong Kong.<sup>2</sup> It also gives a brief account of the major views and concerns expressed by Members when related issues were discussed by the relevant committees of the Fifth Legislative Council ("LegCo").

#### **Background**

##### Construction waste

2. As defined under section 2 of the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354N), construction waste, in essence,

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<sup>1</sup> 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.

<sup>2</sup> 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.

means generally any substance, matter or thing that is generated from construction works and abandoned. The majority of construction waste is inert and may be reused as construction materials. It has been Government's policy to encourage on-site sorting of C&D materials by works contractors to reuse reusable inert materials in suitable projects. As for mixed construction waste containing non-inert C&D materials, they may only be disposed of at the landfills.

### Construction Waste Disposal Charging Scheme

3. The Government has implemented the Construction Waste Disposal Charging Scheme since 2006 imposing disposal charges to provide economic incentives for construction waste producers to reduce waste and practise sorting. The existing construction waste disposal charges and new charges which will take effect from 7 April 2017 are as follows:<sup>3</sup>

<b>Construction waste disposal charge</b>	<b>Existing charge (per tonne)</b>	<b>New charge (per tonne)</b>
Landfill charge	\$125	<b>\$200</b>
Sorting charge	\$100	<b>\$175</b>
Public fill charge	\$27	<b>\$71</b>

### Statutory control against fly-tipping and illegal land filling

4. While disposal of construction waste is subject to a statutory charge under the Construction Waste Disposal Charging Scheme, some free-riders seek to evade the charge through fly-tipping and illegal land filling. Various existing legislation, administered by different government departments, may be applied to deter illegal land filling and fly-tipping of construction waste (**Appendix I**).

5. To regulate the depositing or dumping of construction waste on private land, the Environmental Protection Department ("EPD") has implemented a prior notification mechanism under the Waste Disposal (Amendment) Ordinance 2013

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<sup>3</sup> By way of the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016 ("the Amendment Notice") tabled before LegCo on 11 May 2016, the new charges will be effective from 7 April 2017. As with the existing arrangement, landfill charge will also be imposed on the disposal of construction waste at the refuse transfer stations on the outlying islands. Other refuse transfer stations do not accept construction waste.

since 4 August 2014.<sup>4</sup> 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 the 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.

#### Director of Audit's Report No. 67

6. The Director of Audit has completed a review of the Government's management of abandoned C&D materials, and the relevant findings were published in the Director of Audit's Report No. 67 ("the Audit Report") on 28 October 2016. The Audit Report pointed out the need for EPD to liaise with related government departments and other stakeholders to strengthen actions to reduce disposal of abandoned C&D materials at landfills, and formulate strategies and implementation plans for installing surveillance camera systems to prevent and detect illegal dumping of C&D materials. The Audit Report is being considered by the Public Accounts Committee of LegCo.

#### Investigation by the Ombudsman

7. In recent years, there have been frequent occurrences of fly-tipping and illegal land filling activities. In particular, the development of the soil fill near Kingswood Villas in Tin Shui Wai, which involved unauthorized land filling, has drawn criticism that the enforcement actions taken by the departments concerned were futile and ineffective. The Ombudsman announced on 16 November 2016 that it would initiate a direct investigation against EPD, Planning Department, and Agriculture, Fisheries and Conservation Department regarding Government's control over land filling and fly-tipping activities on private land,<sup>5</sup> and identify inadequacies in the current legal framework, system and enforcement regime.

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<sup>4</sup> The Waste Disposal (Amendment) Ordinance 2013 was enacted by LegCo on 18 December 2013.

<sup>5</sup> According to the Ombudsman, the ambit of the investigation covers the powers, responsibilities, mechanisms and procedures of those departments regarding the control of land filling and fly-tipping activities on private land. The Ombudsman will also examine the departments' enforcement actions and their outcomes.

## **Major views and concerns expressed by Members**

8. On 25 February 2013 and 25 April 2016, the Panel on Environmental Affairs ("EA Panel") discussed measures to tackle fly-tipping and illegal land filling activities. 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. A subcommittee of LegCo was formed in May 2016 to study the relevant subsidiary legislation. The major views and concerns expressed by Members on the subject are summarized in the ensuing paragraphs.

### Measures to prevent fly-tipping and illegal land filling

9. Members expressed concerns about the ineffectiveness of existing measures to combat fly-tipping and illegal land filling in Hong Kong. There were also concerns that the problem might worsen after implementation of the new charges for construction waste disposal. Some Members suggested the Administration consider using the global positioning system ("GPS") for tracking and monitoring the movements of construction waste on construction waste collection vehicles.

10. The Administration advised that EPD had launched a trial scheme of using surveillance cameras at 12 black spots of fly-tipping to aid investigation. It was observed that the installation of such devices could provide useful information for identification of fly-tippers, and deter fly-tipping at black spots to some extent. The Administration would further review the trial scheme and consider the suitability of deploying the surveillance camera system in the long run.

11. The Administration further advised that the Civil Engineering and Development Department was conducting a pilot trial to examine the technical feasibility of mandating the use of GPS on construction waste collection vehicles to track and log the activities of the vehicles, which could in turn deter fly-tipping of construction waste and facilitate investigation. The Administration pointed out that legal issues in relation to personal privacy would need to be sorted out before making any further proposal on using GPS for the said purpose.

12. Members also urged the Administration to consider increasing the penalties for fly-tipping and illegal land filling so as to enhance the deterrent effect. The Administration considered that the existing penalties were appropriate and it would continue to explore feasible measures to enhance the effectiveness of law enforcement.

### Land filling activities on private land

13. Members criticized that there might be loopholes in law enforcement as land filling activities on private land were not unlawful so long as the prior consent of the land owner had been obtained and EPD had been notified, and prior approval by the relevant departments including EPD was not required. Members stressed the importance to maintain a proper balance between the personal interests of landowners and the public at large, and minimize conflicts between conservation and development of private lands. Some Members suggested providing some forms of incentives, like tax concessions, to landowners concerned to encourage their compliance with the planned uses of private lands. The Administration should also consider the possibility of acquiring private lands in conservation zones for the purpose of conservation.

14. The Administration explained that it was not practicable to subject the depositing of construction waste on private land to prior approval by EPD because such authorization would require consideration of factors other than environmental protection, which would go beyond the purview of EPD. The Administration also pointed out that most of the agricultural land in the New Territories was held under the Block Government Lease, and there was no restriction on the use of agricultural land under the Lease. The suggested provision of incentives or compensation to landowners or acquisition of private land for conservation purposes involved significant resources and complex issues that would warrant careful consideration.

### **Council questions**

15. At the Council meetings of 5 June 2013, 3 December 2014 and 8 July 2015, Dr CHIANG Lai-wan, Dr Elizabeth QUAT and Mr CHAN Han-pan raised questions respectively relating to disposal of construction waste and measures to combat fly-tipping. The questions and the Administration's replies are hyperlinked in **Appendix II**.

### **Recent developments**

16. At the meeting on 19 December 2016, the Administration will brief EA Panel on the actions being taken by the Administration in tackling illegal land filling and fly-tipping activities in Hong Kong.

**Relevant papers**

17. A list of relevant papers is set out in **Appendix II**.

Council Business Division 1  
Legislative Council Secretariat  
13 December 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.

<b>1. Environmental Protection Department ("EPD") : <i>Waste Disposal and Pollution Control</i></b>	
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.
<b>2. Lands Department: <i>Land management</i></b>	
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.
<b>3. Planning Department : <i>Planning control</i></b>	
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.)

<b>4. Food and Environmental Hygiene Department ("FEHD"): <i>Environmental Hygiene</i></b>	
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.
<b>5. Buildings Department: <i>Building approvals</i></b>	
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.
<b>6. Agriculture, Fisheries and Conservation Department ("AFCD"): <i>Country Park management</i></b>	
Country Park Ordinance (Cap. 208)	Enforce against illegal dumping within country park.
<b>7. Drainage Services Department: <i>Flood control</i></b>	
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\(06\)](#)]



**Control against illegal land filling and fly-tipping of construction and demolition waste**

**List of relevant papers**

<b>Date of meeting</b>	<b>Event</b>	<b>Papers</b>
25 February 2013	Meeting of the Panel on Environmental Affairs ("EA Panel")	<p>Administration's paper on measures to tackle fly-tipping of construction and demolition waste and illegal land filling (LC Paper No. <a href="#">CB(1)569/12-13(06)</a>)</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. <a href="#">CB(1)569/12-13(07)</a>)</p> <p>Minutes of meeting (LC Paper No. <a href="#">CB(1)1066/12-13</a>)</p>
21 December 2015	Meeting of EA Panel	<p>Administration's paper on review of the Construction Waste Disposal Charging Scheme (LC Paper No. <a href="#">CB(1)299/15-16(04)</a>)</p> <p>Background brief on reduction of construction waste prepared by the Legislative Council Secretariat (LC Paper No. <a href="#">CB(1)299/15-16(05)</a>)</p> <p>Minutes of meeting (LC Paper No. <a href="#">CB(1)630/15-16</a>)</p>
25 April 2016	Meeting of EA Panel	<p>Administration's paper on issues relating to the soil fill near Kingswood Villas in Tin Shui Wai (LC Paper No. <a href="#">CB(1)817/15-16(05)</a>)</p>

<b>Date of meeting</b>	<b>Event</b>	<b>Papers</b>
		<p>Background brief on soil fill and suspected illegal land filling near Kingswood Villas in Tin Shui Wai prepared by the Legislative Council Secretariat (LC Paper No. <a href="#">CB(1)817/15-16(06)</a>)</p> <p>Minutes of meeting (LC Paper No. <a href="#">CB(1)1005/15-16</a>)</p>
11 May 2016	Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016 tabled at the Council meeting	<p>Legislative Council Brief (File Ref: <a href="#">EP CR 9/65/7</a>)</p> <p>Legal Service Division Report (LC Paper No. <a href="#">LS52/15-16</a>)</p> <p>Report of the Subcommittee (LC Paper No. <a href="#">CB(1)1039/15-16</a>)</p>

**Hyperlinks to relevant Council Questions:**

<b>Date</b>	<b>Council Question</b>
5 June 2013	<a href="#">Press release</a> on Council question (written) raised by Dr CHIANG Lai-wan
3 December 2014	<a href="#">Press release</a> on Council question (written) raised by Dr Elizabeth QUAT
8 July 2015	<a href="#">Press release</a> on Council question (written) raised by Mr CHAN Han-pan

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

<b>Date of letter</b>	<b>Letters</b>
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. <a href="#">CB(1)670/15-16(01)</a>)</p> <p>The Administration's written response (LC Paper No. <a href="#">CB(1)723/15-16(01)</a>)</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. <a href="#">CB(1)672/15-16(01)</a>)</p> <p>The Administration's written response (LC Paper No. <a href="#">CB(1)725/15-16(01)</a>)</p>
30 March 2016	<p>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 a hold joint-Panel meeting to discuss issues related to illegal dumping of soil in the New Territories (Chinese version only) (LC Paper No. <a href="#">CB(1)769/15-16(01)</a>)</p>
22 April 2016	<p>Letter from Dr Kenneth CHAN Ka-lok on illegal land filling at or near the Deep Bay Wetland (Chinese version only) (LC Paper No. <a href="#">CB(1)839/15-16(01)</a>)</p> <p>The Administration's written response (LC Paper No. <a href="#">CB(1)948/15-16(01)</a>)</p> <p>Letter from Mr LEUNG Che-cheung on issues relating to the soil fill near Kingswood Villas in Tin Shui Wai (Follow-up paper) (Chinese version only) (LC Paper No. <a href="#">CB(1)847/15-16(01)</a>)</p>

<b>Date of letter</b>	<b>Letters</b>
24 June 2016	Administration's response to the further submission dated 13 June 2016 from Mr LEE Yuet-man, Yuen Long District Council member (LC Paper No. <a href="#">CB(1)1068/15-16(01)</a> )

**Hyperlink to relevant documents:**

<b>Organization</b>	<b>Document</b>
Audit Commission	Director of Audit's Report No. 67 published on 28 October 2016 <a href="#">Chapter 4</a> on "Management of abandoned construction and demolition materials"
Ombudsman	<a href="#">Press release</a> dated 16 November 2016 on "Ombudsman seeks public views and information on Government's control over landfilling and fly-tipping activities on private land"