

Hong Kong, 14 December 2016

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By E-mail ONLY

**RE: Government's control over land filling and fly-tipping activities  
on private land**

Dear Ms Connie Lau,

*Dumping and land filling on land reserved for conservation and agricultural uses continues to impact Hong Kong's habitats, ecology and biodiversity.*

*Concern groups and environmental NGOs are deeply concerned over the lack of preventive and enforcement action by government against unauthorized and unintended land uses.*

*In addition to increasing the headcount and budgets for the enforcement teams of government departments, including EPD, AFCD, PlanD, BD and LandsD, we urge government to remove obstacles.*

***Amend the Waste Disposal Ordinance s16 (2)(c) Cap 354***

- Delete the exemption for dumping of "inert waste". All waste dumping including construction waste should require a permit.
- Require statutory permits which take into account the conservation, environmental and protection values of the land prior to allowing any waste disposal activities
- Require enhanced control measures against C&D waste disposal, such as applying mandatory trip-ticketing system to private projects and adopting GPS applications to track dump trucks
- Apart from landowners and drivers, the works site engineer should also be liable for any waste from the works site.

***Amend the Town Planning Ordinance Cap 131, S20(2)***

- "The Board shall not (add: , **unless otherwise directed by the Chief Executive,** ) designate as a development permission area any area that is or was previously included in a plan under this Ordinance"
- This amendment will enable the Town Planning Board to prepare Development Permission Area plans (DPA) for all rural land, including those already covered by an Outline Zoning Plan. DPAs provide the Planning Department with enforcement powers. Rural land is defined as all land excluding existing and planned towns/town extensions, and excluding land already protected under the Country Park Ordinance.

## *Amend the Town Planning Ordinance Cap 131, section 20(7) and (8) and section 21*

- Land owners who fail to prevent, stop and remove an unauthorized development should be deemed to commit an offence and be subject to prosecution without prior warning/notice.
- Current law is limited to “any person who undertakes or continues” and this renders enforcement impractical as government officials would need to observe the culprits in action.
- The Law should make the land owners responsible for protecting, maintaining and managing their land, and for all activities thereon.

## *Clarifications of the Town Planning Ordinance Cap 131 (TPO) What is soil?*

- How is that inert materials and paved surfaces are tolerated as land fill?
- Soil is permitted under TPO for filling of land. However, soil is normally the upper layer of earth in which plants grow, a dark brown mixture of organic remains, clay and rock particles.
- Land filling with any substance other than soil should thus be considered a material change in the use of that land.

## *Clarifications of the Town Planning Ordinance Cap 131 (TPO) What limits are there for structures and land filling for agriculture land?*

- Leisure farms and hydroponic farms involve the filling and paving of land and erecting structures. Such activities and structures should not easily be allowed on land reserved for agriculture.
- Should land for such uses be reserved under a separate dedicated zoning?

## *Clarifications of the Town Planning Ordinance Cap 131 (TPO) Reinstatement?*

- When is reinstatement demanded? What reinstatement is considered appropriate and satisfactory?
- And when reinstatement is not implemented, when will the government enter and reinstate the land?

## *Clarifications of the Town Planning Ordinance Cap 131 (TPO) Prosecution success rate*

- The Magistrates Ordinance Cap 227 s26 deems that prosecution should commence within 6 months including for unauthorized land use offences under the TPO. As these offences are not indictable, prosecution can't be started if the crime took place more than six months earlier.
- What law reform is needed to improve the prosecution rate? What are other obstacles?

## **More readily apply the Public Health and Municipal Services Ordinance (Cap 132)**

- Cap 132 (公共衛生及市政條例) has proven to be effective in combatting certain fly-tipping cases. It is also helpful because it applies to both Government and private land.
- However, penalties should be drastically increased, and the FEHD and EPD must be given additional manpower. Should, ideally, all waste handling and cleansing activities of FEHD and EPD should be merged under one 'Waste Authority' to streamline operations?
- Enforcement is severely constrained by evidence required under the existing Law for successful prosecution. Would the success rate improve by making sure the owner of the vehicle involved in fly-tipping is held liable?

## **Establish a public and transparent land database**

- Establish a comprehensive and transparent database with details such as land status, ownership, previous and existing observed land uses, habitat type, topography, ground features, and previous and outstanding zoning, planning, small house and building applications.
- Such as to provide baseline information for the reinstatement of damaged sites, allows better monitoring by the community, allows more efficient operations and coordination among government departments, and so forth.

## **Establish a Conservation Enforcement Task Force**

- Set up an inter-departmental nature conservation enforcement task force (including key implementing departments such as Agriculture, Fisheries and Conservation Department, Environmental Protection Department, Lands Department, Planning Department and the Food and Environmental Hygiene Department) to co-ordinate and oversee all enforcement cases and ensure all damaged sites are properly restored. Increase budgets and headcount for the enforcement teams of government departments, including EPD, AFCD, PlanD, BD and LandsD.

Yours sincerely



Paul Zimmerman  
CEO  
Designing Hong Kong Limited