



世界自然基金會
香港分會

WWF-Hong Kong

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16th Dec 2016

Office of The Ombudsman

30/F, China Merchants Tower, Shun Tak Centre
168-200 Connaught Road Central,
Hong Kong
(E-mail: complaints@ombudsman.hk)

By E-mail ONLY

Dear Ms Connie Lau,

**RE: Investigation into Government control measures
against illegal land filling and fly-tipping activities on private land**

WWF welcomes the Ombudsman initiating an enquiry of Government authorities, Environmental Protection Department (EPD), Planning Department (PlanD), and Agriculture, Fisheries and Conservation Department (AFCD) regarding their ongoing control measures against illegal land filling and fly-tipping activities on private land.

In the past decade WWF-Hong Kong environmental watchdog team has documented and reported to the authorities many new incidents of environmental vandalism in rural countryside areas. Private lots include ecologically important sites such as the Tsim Bei Tsui Site of Special Scientific Interest¹ in the Inner Deep Bay and Mai Po Ramsar Site have been degraded by land filling (including filling of fish ponds) and fly tipping activities. These dumping activities cause serious damage to the environment and our precious local biodiversity, whilst the use of construction and demolition waste in pond filling (Fig. 1) can contaminate the water body and the fish raised there, posing possible risk to human health. We strongly believe the individual government departments need to be more proactive and take a co-ordinated joint task force approach to quickly and effectively deal with any degradation and destruction of our natural environment and so deter such illegal activities.

1 Apple daily 車隊倒泥頭「肢解」米埔紅樹林 毀具科學價值地 工人穿中國建築外套 Dec 30, 2015

Link: <http://hk.apple.nextmedia.com/news/art/20151230/19432128>

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Illegal Dumping increasing – a worrying trend

Statistics sourced from the PlanD and EPD have indicated that illegal dumping activities on private land are on the rise;

- PlanD has reported the area of illegal land/pond filling in the North West New Territories, North East Territories, Sai Kung and the Islands from 2010 to 2014 has increased 46%, from 28.4 ha to 50.3 ha².
- According to the EPD, suspected illegal dumping activities on private lots reported by the public showed a 17% increase from 389 cases in 2010 to 456 cases in 2015, and the number of summonses issued has increased by 125%, from 12 to 28³.
- The private land of 12 Country Park enclaves have also suffered from large scale habitat destruction, caused by activities including land filling, pond filling and dumping of construction waste, between 1997 to 2014⁴.

Limitations with the Town Planning Ordinance (Cap 131)

We understand that PlanD currently enforces unauthorised development in areas that are covered by Development Permission Area (DPA) Plans but has no jurisdiction in areas that are covered by Outline Zoning Plans (OZPs) only or have no statutory land use plan. Current legislation limits PlanD effectiveness for a role on land use control and enforcement action to only areas with DPAs. The repeated dumping of construction waste on the fresh water marsh at Pui O, South Lantau is an example of an area where PlanD has been unable to act effectively. The Pui O marsh is recognised to be an amphibian hotspot⁵ and has diverse aquatic plants and bird fauna. Its importance is reflected by its zoning as a “Coastal Protection Area” in OZP, however as the area is not covered by a DPA so that PlanD has not acted to tackle blatant dumping activity.

2 Planning Department Annual Reports in year 2011, 2012, 2013, 2014 and 2015

3 Replies to initial written questions raised by Finance Committee Members in examining the Estimates of Expenditure 2016-17.

Link: http://www.enb.gov.hk/sites/default/files/en/node4014/fcq_1617_e.pdf

4 WWFHK (2014) Country Park Enclaves Investigation Report, p14. Link: http://awsassets.wwfhk.panda.org/downloads/cp_enclaves_report_2014.pdf

5 Lau, M.W.N. (1998) Habitat Use by Hong Kong Amphibians with special reference to the Ecology and Conservation of *Philautus romeri*. Ph.D. thesis, the University of Hong Kong, Hong Kong.

Inadequate Enforcement by Planning Department in DPAs

We are concerned that records even for areas that are regulated by statutory land use plans, show a rise in illegal dumping activities. Of particular concern to WWF are both the fish ponds of the Inner Deep Bay, which together with other wetland habitats in Mai Po, support tens of thousands of migratory water birds and are of international significance. Even though these fish ponds receive additional protection from private development by the Town Planning Board Guidelines 12c, unauthorized developments involving land and/or pond filling, land formation and waste dumping frequently occur (Fig 2).

WWF's Deep Bay Unauthorized Development Report⁶ (the Deep Bay Report) shows over the last 25 years there were 435 unauthorized development cases with 153 ha of affected private land found to be within the Wetland Conservation Area and Wetland Buffer Areas of Inner Deep Bay (Fig 3). One particular example of degradation of ecologically important land is an area along Tun Yu Road in San Tin, with over 10 unauthorized development cases occupying an area larger than 15 soccer fields (the blue box in Fig 3).

Our Deep Bay Report also shows that in only 55% of the pond filling cases were persons required to reinstate land back to fish ponds. This can result in a net loss of important wetland habitat close to the Inner Deep Bay Mai Po Ramsar Site. There was a pond filling and site formation case (E/YL-ST/002) at Mai Po Lung in which PlanD issued compliance notice to the recipient without the requirement of reinstatement. This apparently resulted in further unauthorized developments and changes in land use in the subsequent 15 years with more enforcement cases (E/YL-ST/147 and E/YL-ST/239). By not requiring offenders to reinstate land back to ponds to redress ecological degradation, there is not enough deterrent and such practice may encourage further illegal dumping. There are a number of other cases where illegal pond filling led to further encroachment to the surrounding ponds and land (e.g. E/YL-LFS/187, Fig 4a, 4b, 4c, and adjoining 6 cases).

⁶ Deep Bay Unauthorized Development Report. Link:

<http://awsassets.wwfhk.panda.org/downloads/deepbayunauthorizeddevelopmentreport.pdf>

Even when a reinstatement notice is given, it may take a long time to resolve. The pond filling case E/NE-MTL/003 at Hoo Hok Wai “Conservation (1)” zone happened in 2015 (Fig 5a). The reinstatement notice stipulated the recipient “*to remove all fill materials (including concrete) deposited in the pond...*” and the notice has expired on 21 Oct 2015 (Fig 5b and 5c) but the structure built on the filled area remains along the pond edge.

Penalties are not a sufficient deterrent and need revising

Our Deep Bay Report analyses the fines imposed on illegal dumping activities which we consider were too low to be a deterrent. Only 14% of the total pond-filling cases involved fines and the average fine was just HK\$61,308 for first offence, compared to the maximum penalty of HK\$500,000. Even the maximum fine is not significant when compared with the possible profits which may be generated from open storage or other unlawful land use. For example, an illegal pond filling case (E/YL-ST/002) with site paving in Mai Po Lung was advertised for monthly renting at \$120,000 with the unit cost of \$4 per ft. (Fig 6). The potential financial reward from unauthorised development often far outweighs the low fine imposed, hence the maximum penalty fails to have a sufficient deterrent effect.

Need for Environmental Baseline Information

During dialogue with the PlanD, we have understood that the enforcement team has had difficulties, in particular regarding fish ponds, because of the lack of environmental baseline information which it could use as a reference to support issuing a reinstatement notice for filled areas. In fact, E/YL-ST/339 is the only enforcement case that was provided with baseline measurements for reinstating the filled fish pond (Fig 7) amongst the 435 cases we reviewed. Environmental baseline information is clearly now needed to support any future enforcement, to clearly show the current ecological state of the affected sites so that when prosecuting future offenders authorities can seek reinstatement of ponds.

Waste Disposal Ordinance should protect the environment and land rights

EPD as the Government’s lead environmental authority takes action under the Waste Disposal (Amendment) Ordinance if waste is put on private land without the consent of the land owners or lawful occupiers, and no prior notification of the deposition sent to

the EPD. In a dumping case at Pui O wetlands on South Lantau, the Director of EPD advised he would not need to take environmental consideration into account when notification of waste disposal is received, a position that was challenged in judicial review. The senior counsel representing the government quoted various Legislative Council documents to point out that the Amendment's intent was not the protection of the environment but to protect the rights of the landowners⁷. The Government's position undermines its own duty to protect the environment and land rights.

EPD needs to be more responsive to complaints

It is expected that EPD as the lead environmental agency should have mechanisms in place to deal with complaints where fly tippers are still at a site and could be caught red-handed resulting in successful prosecution. An alleged illegal dumping case in Lut Chau reported to EPD in Mar 2013 showed the department did not respond effectively and claimed not to have enough resources to combat illegal dumping of waste even at the ecologically sensitive "Site of Special Scientific Interest". WWF observed a convoy of trucks unloading the waste at the site and immediately reported to the EPD (Fig 8a and 8b) but the department was unable to conduct a timely onsite inspection visit that day claiming they did not have a 4-wheel-drive vehicle to access the site.

AFCD can be more proactive in countering dumping of C&D waste

AFCD wardens patrol many areas of ecological importance and can be an effective frontline force to respond to complaints of suspected illegal dumping. In the case of some fish pond operators introducing construction and demolition (C&D) waste in Deep Bay fish ponds, AFCD has so far found this to be a common practice conducted by fish farmers to facilitate transportation of feed, harvest and equipment. (Fig 9a). These commercial fish ponds naturally attract feeding migratory water birds and the concern is that continued practice introducing quantities of C&D waste may unnecessarily degrade fish pond habitat, affecting the health of the fish on which both people and migratory water birds feed. Government should carefully monitor the practices of commercial ponds and conduct testing to ensure the health of fish for human consumption (Fig 9b).

⁷ The Standard, Court fight on Pui O dumping Carain Yeung Sep 28, 2016 Link: <http://www.thestandard.com.hk/section-news.php?id=174514>

Country Park Enclaves need urgent protection

In June 2010, excavation works were detected in the country park enclave of Sai Wan and triggered public concern for the protection of country park enclaves in Hong Kong. At that time, there were 77 country park enclaves, of which 23 had already been covered by OZPs under the TPO. The Administration promised to either include the remaining 54 enclaves into country parks or determine their proper use through statutory land use plans to better protect them⁸. At present, 6 enclaves have been incorporated into country parks, 52 enclaves have been covered by statutory land use plans under TPO, and 19 enclaves still remain unprotected (Table 1).

Table 1 Current status of country park enclaves (as of 7 Dec 2016)

CP Enclaves	No. of enclaves	Area (ha)
Covered with OZPs in Oct 2010 before the Sai Wan Incident	23	721
Covered with new OZPs	24	1510
Covered with new DPAs	5	330
Incorporated into CPs	6	50
Subtotal	58	2611
No action undertaken:	19	186
TOTAL	77	2797

The need for more Planning Control to Protect Enclaves

The 52 enclaves that are protected by statutory land use plans are nevertheless vulnerable to land filling and other destructive activities. Statutory land use plans only provide “passive” protection for the enclaves by controlling unauthorized use and development. Agricultural use on private land is always permitted even in the “Unspecified Use” zone in DPAs, and, in “Green Belt”, “Conservation Area” and “Coastal Protection Area” zones in OZPs. This often provides a reason or excuse for unmonitored land clearance and may unnecessarily destroy ecologically important natural habitat, as was seen in Sha Lo Tung (Fig. 10), the second ranking priority site for enhanced conservation actions in the 2004 New Nature Conservation Policy⁹ and several other enclaves¹⁰. In addition, “existing uses”, i.e. uses present before the

⁸ HKSAR 2010. *2010-11 Policy Address: Nature Conservation* [Online]. Hong Kong: HKSAR.

⁹ http://www.afcd.gov.hk/english/conservation/con_nncp/con_nncp_leaf/files/leaflet2.pdf

¹⁰ WWFHK (2014) Country Park Enclaves Investigation Report, p14. Link: http://awsassets.wwf.hk.panda.org/downloads/cp_enclaves_report_2014.pdf

gazetting of a statutory plan are permitted, and provides an unintended incentive that could actually result in destroying the ecology of the enclaves by means not always permitted, such as filling and excavation, prior to a statutory plan is produced.

Recommended improvements to the control measures against illegal land filling and fly-tipping activities on private land

WWF recommends the following improvements be considered:

- PlanD seeks Amendment to the Town Planning Ordinance so that more areas of ecological importance are put under a control scheme as Development Permission Areas, in order to control land use and better preserve local biodiversity.
- EPD seeks amendment to the Waste Disposal Ordinance so that the disposal of all C&D waste will need prior approval from EPD and active monitoring. The location of disposal will need to be approved by EPD with consent of the land owner and demonstrating no environmental impact. The penalties for illegal dumping of waste should be reviewed to properly reflect the damage to Hong Kong's precious environment.
- Enable PlanD, EPD and AFCD to implement control measures by ensuring they have enough resources to take timely and effective monitoring and enforcement action to prevent and detect illegal land filling and waste dumping. The departments need a joint task force approach to tackle these illegal activities.
- PlanD to take enforcement actions against all unauthorized developments affecting fish ponds should with reinstatement notice issued that specifies their restoration.
- The government should help the fish pond operators to locate sources/suppliers of environmental friendly material for the fish pond operators to use in strengthening their pond bunds rather than use C&D waste. The health of fish produced and available for human consumption at fish po RE should be subject to testing for health safety.
- The government should set up a comprehensive and publicly accessible database that contains information on the land status, land use, landscape,

habitat of all rural areas in Hong Kong to provide the environmental baseline for prosecution and reinstatement.

- Ecologically-important enclaves even those with private land rights should be incorporated into country parks for proper protection. This should also apply to those important enclaves that are already covered by statutory land use plans such as Sha Lo Tung and Tai Ho.
- AFCD needs to expedite the process of incorporating enclaves into the country parks, if they meet the criteria adopted in May 2011¹¹ by producing a clear timetable for their incorporation.

We hope the information we have provided is useful for your ongoing enquiries.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Michael Lau". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Michael LAU (Dr.)
Director, Wetlands Conservation

¹¹ Country & Marine Park Authority 2011. Review of the Criteria for Designating Country Parks and Proposed Measures for Protecting Country Park Enclaves. Hong Kong: AFCD. Link: http://www.afcd.gov.hk/english/aboutus/abt_adv/files/common/WP_CMPB_6_2011eng.pdf

Fig 1 Illegal dumping activities at a Deep Bays fish pond (photo taken on 20 Feb 2013)



Fig 2 The rising trend of unauthorised development cases in Inner Deep Bay

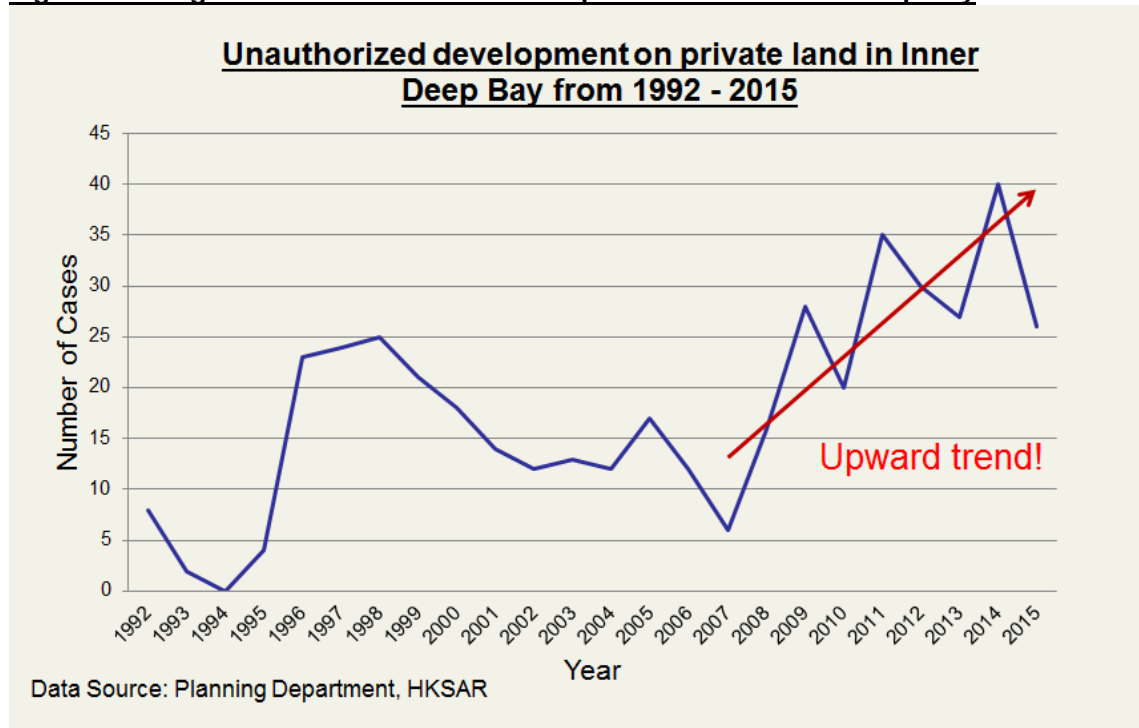


Fig 3 Locations of the 435 unauthorised development cases in Inner Deep Bay (shown in red areas)



Note: The affected area at Tun Yue Road is marked with blue outline
Data source: Planning Department, HKSAR

Fig 4a Enforcement Information of the E/YL-LFS/187 case

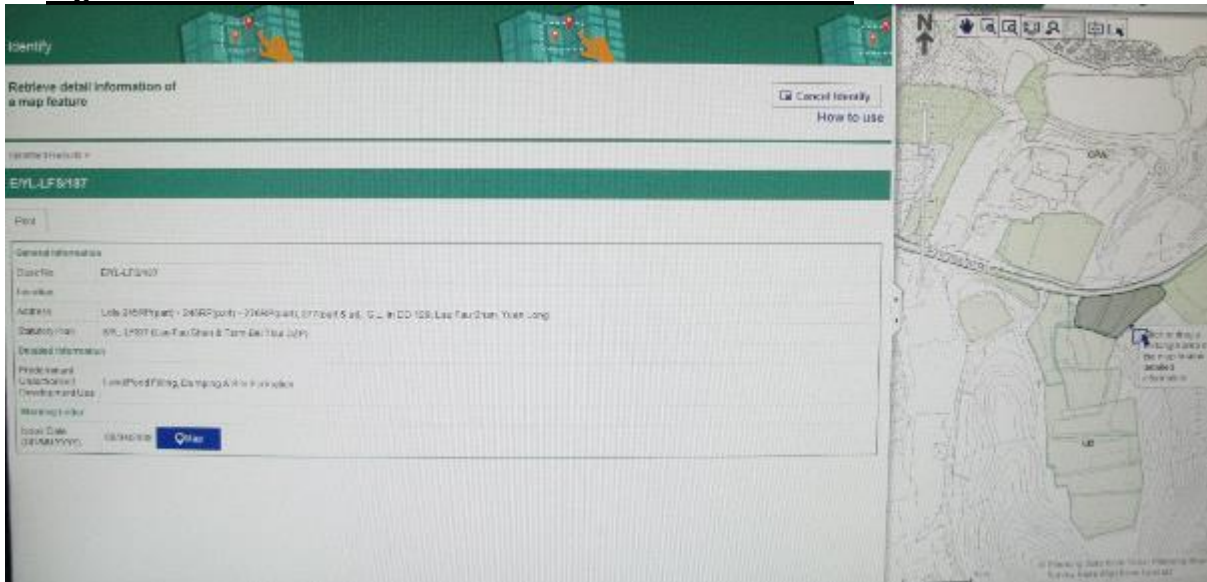


Image source: Portal of the Planning Department, HKSAR Government

Fig 4b Unauthorised development and landscape change continued in the general area of the E/YL-LFS/187 case



Image source: Google Earth, accessed on 2 Dec 2016

Fig 4c Subsequent to the E/YL-LFS/187 case, over 15 unauthorized development cases had been enforced in the adjoining area (within the red outline)



Image source: Portal of the Planning Department, HKSAR Government

Fig 5a Unauthorised development in the E/NE-MTL/003 case at Hoo Hok Wai (photo taken on 19 June 2015)



Fig 5b Details of enforcement action in the E/NE-MTL/003 case at Hoo Hok Wai

Case No.	E/NE-MTL/003				
Localiik					
Address	Lots 2133(part), 2134(part), 2136(part), 2140(part), 2141(part), 2142(part) and 2935(part) in D.D.93, Hoo Hok Wai, New Territories				
Statutory Plan	E/NE-MTL/2 (Ma Tau Lung and Hoo Hok Wai OZP)				
Detailed Information					
Predominant Unauthorised Development Use	Land/Ford Filling, Dumping & Site Formation				
Warning Letter					
Issue Date (DD/MM/YYYY)	00/03/2015 Map				
Notice	Type of Notice	Issue Date (DD/MM/YYYY)	Expiry Date (DD/MM/YYYY)	Schedule 1	Schedule 2
Map	Enforcement Notice	11/03/2015	25/03/2015	Lots 2133(part), 2134(part), 2136(part), 2140(part), 2141(part), 2142(part) and 2935(part) in D.D.93 and adjoining Government Land, Hoo Hok Wai, New Territories.	Filling of land and filling of pond 1. To remove the leftovers and debris on the area as shown (coloured pink stippled block), (pink hatched block) and (pink cross hatched block) on the attached plan; 2. To remove the fill material on the area as shown (coloured pink hatched block) and (pink cross-hatched block) on the attached plan; 3. To remove all fill materials (including concrete) deposited in the pond as shown (coloured pink stippled block) on the attached plan; and 4. To grass the area as shown (coloured pink stippled block) on the attached plan.
Map	Rescaled Notice	21/07/2015	21/10/2015	Lots 2133(part), 2134(part), 2136(part), 2140(part), 2141(part), 2142(part) and 2935(part) in D.D.93, Hoo Hok Wai, New Territories.	

Image source: Portal of the Planning Department, HKSAR Government

Fig 5c The emergent structure remains in the pond, only the roof that encroached into the Government land has been removed (photo taken on 19 June 2015)



Fig 6 Rental advertisement in July 2016 relating to the area covered by the E/YL-ST/002 case

放盤詳情		快盤相片
樓盤編號:	001871	
物業用途:	倉/地/牛欄	
地區:	元朗	
街道(中):	洋菊徑村	
街道(英):	MAI PO LUNG TSUEN	
大廈(中):	---	
大廈(英):	---	
層數:	---	
單位:	---	
建築面積:	30000 呎	
實用面積:	---	
售價:	---	
出租價:	\$120,000	
呎價(編碼/實用):	---	
呎價(建築/實用):	\$4.00 / ---	
入伙年份:	---	
地庫車位:	---	
住宅禁區:	---	
樓層:	---	
裝修:	---	
備註:	OU地大熟地	
更新日期:	2016-07-07	
放盤人資料		
聯絡人:	馮天寶, 岑益 C-063250-A000 WAI TIN PROPERTY AGENCY LIMITED	
電話:	36860927, 92255086	
買家留言		
閣下姓名:	<input type="text"/>	

Information source: <http://www.cnp.hk/listing.php?ref=WAT00187>. Accessed on 31 July 2016

Fig 7 The standards of fish pond reinstatement stipulated in E/YL-ST/339

attached plan; 2. To remove the fill materials (including all construction wastes) deposited on the land as shown coloured [pink hatched black] on the attached plan at 4.5mPD; 3. To remove the fill materials (including all construction wastes) deposited in the pond as shown coloured [pink triangulated black] on the attached plan at 1.7mPD; 4. To remove the fill materials (including all construction wastes) deposited in the pond as shown coloured [pink stippled black] on the attached plan to form a slope ascending from the pond level at 1.7mPD to match the land level at 4.5mPD; 5. To remove

Image source: Portal of the Planning Department, HKSAR Government

Fig 8a Email communication with EPD regarding the report of suspected illegal dumping at Lut Chau

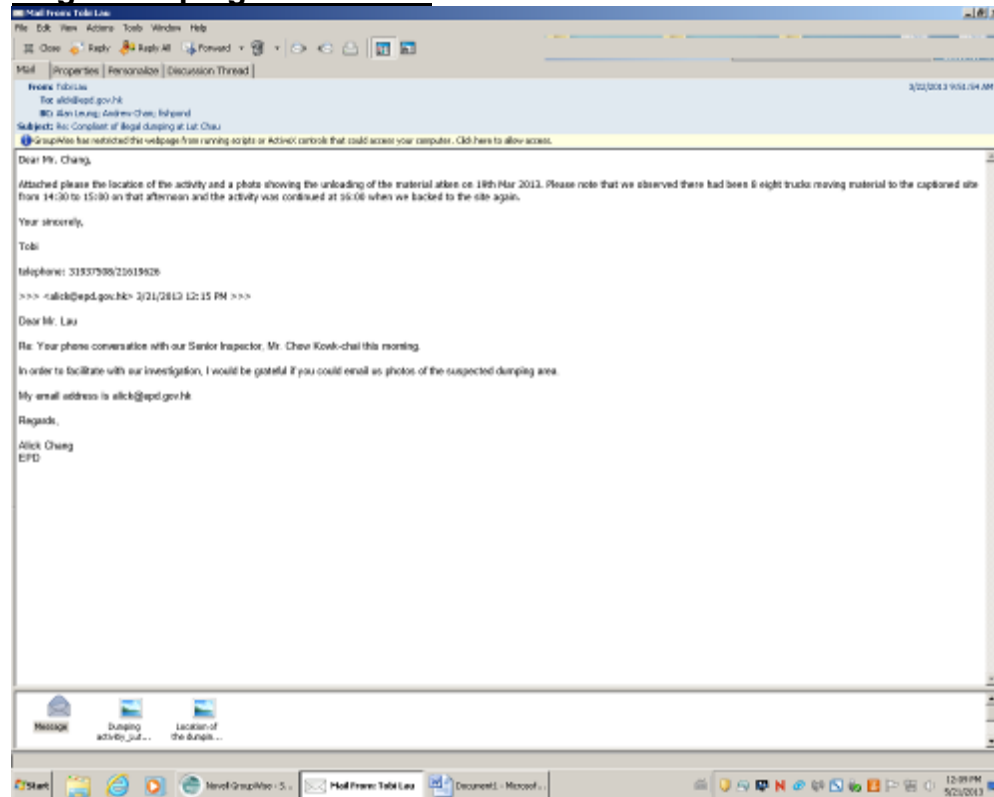


Image source: E-mail communication between EPD and WWF-HK

Fig 8b A truck dumping at Lut Chau (photo taken on 19 Mar 2013)



Fig 9a Government reply with AFCD advice on a complaint of dumping construction and demolition waste (C&D waste) in a fish pond

Dear Sandra CHOW,

Further to my preceding email below, please be informed that the area under question is covered with a valid Government Land Licence.

2. This office also referred the case to Agriculture, Fisheries and Conservation Department and Environmental Protection Department for appropriate action.

Agriculture, Fisheries and Conservation Department had inspected the site and advised that:

"some of the pond bunds at the subject site had been resurfaced and widened using rocks, rubbles and tiles. This is a common practice conducted by fish farmers to facilitate transportation of feed, harvest and equipment."

Environmental Protection Department (EPD) had inspected the site and advised that:

"No landfilling activity nor any other irregularity was spotted during their inspection, with little refuse found. They met and interviewed a pond owner on field. EPD had reminded the pond owner of the regulatory restriction on landfilling activity on government land and the area being zoned as "Site of Special Scientific Interest."

3. Thank you for bringing the matter for attention of this office.

Regards,
LEUNG Sum-ping
LE/LC(E2), DLO/YL

Image source: E-mail communication between Lands Department and WWF-HK

Fig 9b Dumping of C&D waste at a fish pond that has joined AFCD's accredited fish farm scheme (photo taken on 12 May 2016)



Fig 10 Destruction of Sha Lo Tung (Photo taken in Oct 2015)

