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By E-mail ONLY

Measures to combat illegal landfilling and fly-tipping of construction and demolition waste

Dear Sir/Madam,

The problem of landfilling and fly-tipping on private land destroying natural habitats reserved for conservation continues unabated. This hampers the Government's strategy of 'Conservation and Development'.

The following measures are required to enable to the government to take effective control.

1. 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.
- Issuing permits must take into account the conservation, environmental and protection values of the land prior to allowing any waste disposal activities

2. 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"
- DPAs provide the Planning Department with enforcement powers. The proposed amendment enables the Chief Executive to direct the Town Planning Board to prepare Development Permission Area plans (DPA) for land already covered by an Outline Zoning Plan. The priority would be to ensure that all rural land excluding existing and planned towns/town extensions, and excluding land already protected under the Country Park Ordinance, is protected.

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

- The Law should make the land owners responsible for protecting, maintaining and managing their land, and for all activities thereon. 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.

4. 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.

5. 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.
- Land for such uses should be reserved under a separate dedicated zoning.

6. Clarifications of the Town Planning Ordinance Cap 131 (TPO) Reinstatement?

- When is reinstatement demanded? What reinstatement is considered appropriate and satisfactory?
- Government should more aggressively demand reinstatement, and when this is not implemented, the government should enter and reinstate the land.

7. 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.
- Law reform is needed to improve the prosecution rate.

8. 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.
- 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. The success rate would improve by making sure the owner of the vehicle involved in fly-tipping is held liable.

Yours,

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