

## Brief summary of HKBWS's major views on measures to combat illegal land filling and fly-tipping of construction and demolition waste



香港觀鳥會  
THE  
HONG  
KONG  
BIRD  
WATCHING  
SOCIETY  
Since 1957 成立

The HKBWS appreciates and welcomes that a public hearing is arranged by the Panel on Environmental Affairs of the Legislative Council (the Panel) for the discussion of measures to combat illegal land filling and fly-tipping of construction and demolition waste (C&D waste). We consider that the objective of strengthening enforcement and legislation amendment is to prevent the trashing of land of agricultural, conservation, ecological, recreation or landscape value.

In fact, illegal dumping and land filling has persisted for a number of years; however, relevant policy bureaux failed to develop remedial measures despite being well aware of the issues. Many recommendations were made by the Subcommittee on combating fly-tipping under the Panel from 2008 to 2011, yet little process was seen.

Please refer to our written submission for details of each problem/solution and a few other recommendations not list in this table. The corresponding paragraph number is provided in parentheses.

Problem		Solution	Responsible authority*
Loopholes and inadequacies in existing legislation and system	No enforcement actions can be conducted for unauthorized activities in areas without DPA/IDPA (3.1)	An amendment in the TPO is urgently needed, which allows the designation of DPA in conservation zonings and areas of conservation importance in existing OZPs. Explore any possible administrative measures which allows PlanD have enforcement power in these areas.	PlanD
	Dumping on private land is allowed if the landowner's consent is reached. However, the zoning/ecological value of the habitat of the land is not considered if it is appropriate for dumping (3.2)	EPD as the authority in environment protection should safeguard health and safety of the public as well as that of the natural environment and wildlife. EPD should ask for AFCD and PlanD's advice if the private land is suitable for dumping before approving the application.	EPD, PlanD, AFCD
	Unclear definition of "agriculture use" and unregulated hydroponic/ hobby/ leisure farm uses, leading to the trashing and misuse of arable agricultural land (3.4)	Landfilling below 1.2m should be limited to soil material suitable for cultivation only. Construction and operation guidelines for hobby/leisure farms should be established. Hydroponic farms should not be considered as an always permitted agriculture use.	PlanD, AFCD, TPB



Problem		Solution	Responsible authority*
	Shortfalls of existing construction waste dumping mechanism (3.5)	The trip-ticket system should be made mandatory to both public and private projects. Apart from truck driver and landowner, work site engineer should also be liable to the dumped waste. A GPS system should be installed on every dumping truck, and measure should be taken with corresponding legislation support to ensure the GPS track records can be used as an evidence in court.	EPD
Lack of/weak enforcement	The existing penalty is far from the profit gained from land sales or the cost for proper reinstatement, thus provide incentives to trash the land for future development (4.1)	The penalty should be adjusted to the current market price and reinstatement of the damaged land should be compulsory with offender(s) bearing the repair cost to increase the deterrent effect.	PlanD, EPD
	Not all destruction can be confirmed as an UD, not all sites require the reinstatement of damaged habitat, and not all cases/evidence can be brought to court. No distinguish between dry land and wetland in the enforcement process. (4.2)	<ul style="list-style-type: none"> <li>• Establish a more comprehensive and accurate database of the land and habitat condition in Hong Kong.</li> <li>• Exploration of existing and new technology used for identifying different wetland/habitat types, precise measurement of level of land and depths of fishponds, and other useful land information which can be brought to court.</li> <li>• Reinstatement is required for <u>all</u> destruction cases in order to restore the ecological function lost.</li> <li>• AFCD should provide professional advice on the restoration of habitats and to which condition the reinstatement reaches satisfaction.</li> </ul>	PlanD, LandsD, AFCD
	Lack of resources and manpower in PlanD (4.3 & 4.4)	The Government should put more resources and manpower in the enforcement team of PlanD, so as to shorten the investigation time and increase the enforcement effort.	DevB, PlanD

Problem		Solution	Responsible authority*
	Ineffective protection of Government Lands (4.4 & 4.6)	Modify the lease conditions when renewing the lease with the tenant so that unauthorized landfilling and fly-tipping can be prevented. Officers should seek the help from The Police to carry out enforcement actions when appropriate.	LandsD, Police
	“Destroy first, build later” activities (4.5)	All members of the TPB should be well-informed about any suspected UDs related to any planning applications. Strong justification should be provided for regularising UDs through planning applications to the TPB, or else approval of these applications would facilitate and recognize the destruction events.	TPB, PlanD
Insufficient interdepartmental collaboration (7.1 - 7.4)		<ul style="list-style-type: none"> <li>• <u>Establish an interdepartmental task force</u> which consists of a quick reaction team and a collaborative prosecution team, allows swift actions be taken to discontinue unauthorized activities.</li> <li>• <u>Establish of an interdepartmental land database</u> for sharing existing and new information from the departments within the task force to carry out enforcement actions.</li> <li>• <u>Establish a nature conservation trust</u> for the protection and conservation of high ecological value private lands.</li> <li>• <u>Develop a comprehensive brownfield policy</u> to prevent the displacement of brownfield sites to adjacent areas with agricultural or ecological value which would likely lead to the trashing of land for open storage.</li> </ul>	AFCD, EPD, LandsD, PlanD and all other relevant departments/bureaux

\*Abbreviations used: AFCD - Agriculture, Fisheries and Conservation Department; DevB - Development Bureau; EPD - Environmental Protection Department; GPS - Global Positioning System; PlanD - Planning Department; LandsD - Lands Department; TPB - Town Planning Board; UD - unauthorized development.

Clerk to Panel on Environmental Affairs  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong  
(E-mail: panel\_ea@legco.gov.hk)



香港觀鳥會

THE  
HONG  
KONG  
BIRD  
WATCHING  
SOCIETY

Since 1957 成立

By email only

18 February 2017

Dear Sir/Madam,

**HKBWS's views on measures to combat illegal land filling and fly-tipping of  
construction and demolition waste**

**1 Introduction**

The Hong Kong Bird Watching Society (HKBWS) is a local civil society established in 1957 aiming at appreciating and conserving Hong Kong birds and the natural environment. Besides promoting birdwatching and conducting bird surveys and research, we have developed a wide range of works, include organizing birdwatching courses, managing important bird habitats and helping the establishment and development of birdwatching societies in mainland China. Our conservation efforts in birds is also acknowledged at a global level as we are a recognized partner of BirdLife International representing Hong Kong.

Since 2011, we have published three reports in the "*Hong Kong Headline Indicators for Biodiversity and Conservation*" series, which is the only systematic monitoring of the state and progress of biodiversity conservation in Hong Kong. One of the indicators selected is the monitoring of illegal/ unauthorized activities, which includes the trashing of land (please refer to Attachment 1 for the relevant sections of the reports). We have come across many cases that destruction is seen and made to the natural environment, yet Government departments cannot execute their enforcement power or charges cannot be made against the offender. **The number of complaints received by the Planning Department (PlanD) for unauthorized developments in rural areas<sup>1</sup> even surged from 644 in 2009 to 1,089 in 2015, with approximately 10% increase per year. However, the successful prosecution rate remains low.**

<sup>1</sup> Areas including SSSI, CA, CPA, GB, AGR and V zonings. Information for 2009 - 2015 are obtained from Planning Department through application for access to information. Data from 2009 to 2013 are published in the latest report of Hong Kong Headline Indicators for Biodiversity and Conservation, available at <http://www.hkbws.org.hk/BBS/viewthread.php?tid=24858>



**We appreciate and welcome that a public hearing was arranged by the Panel on Environmental Affairs of the Legislative Council (the Panel) for the discussion of measures to combat illegal land filling and fly-tipping of construction and demolition waste (C&D waste).**

We would like to highlight the fact that illegal dumping has persisted for a number of years with limited efforts to improve the situation. However, relevant policy bureaux failed to develop remedial measures despite being well aware of the issues. Many recommendations were made by the Subcommittee on combating fly-tipping under the Panel from 2008 to 2011<sup>2</sup>, yet little process was seen. Under the fear of land shortage in recent years, agricultural land is regarded as of high development and investment potential with paved agricultural land selling at a price five times higher than arable farmland, which provides incentives for more dumping and fly-tipping activities to facilitate development<sup>3</sup>.

Immediate actions need to be taken to tackle the constant illegal landfilling and fly-tipping issue. **The HKBWS considers that the objective of strengthening enforcement and legislation amendment is to prevent the trashing of land of agricultural, conservation, ecological, recreation or landscape value.** This is an important step for Hong Kong to make in fulfilling our obligations in biodiversity conservation under the Convention on Biological Diversity and for our city to develop towards the most liveable and sustainable city in Asia.

In the following paragraphs, we would like to first briefly introduce the role of the Government departments, and then will layout the key problems we encountered with different departments in various illegal landfilling and fly-tipping cases and our recommended solutions.

---

<sup>2</sup> [http://www.legco.gov.hk/general/english/panels/yr08-12/ea\\_cft.htm](http://www.legco.gov.hk/general/english/panels/yr08-12/ea_cft.htm)

<sup>3</sup> HK\$250 per square foot for high quality arable farmland to HK\$1,309 per square foot for formed and paved agricultural land ready for development

<http://www.28hse.com/buy-property-310974.html>

<http://www.28hse.com/buy-property-319488.html>

<http://www.28hse.com/buy-property-309727.html>

<http://www.28hse.com/buy-property-317301.html>

## **2 Roles of Government departments PlanD, EPD, AFCD and LandsD**

We consider the Planning Department (PlanD), Environmental Protection Department (EPD), Lands Department (LandsD) and Agriculture, Fisheries and Conservation Department (AFCD) have a key role to tackle illegal land filling and fly-tipping cases. Please also refer to Annex 1 of the LC Paper No. CB(1)295/16-17(03).

### **2.1 Role of PlanD**

Under the Town Planning Ordinance Cap. 131 (TPO), the Director of Planning (the Planning Authority) has the power to control unauthorized development, while the Central Enforcement and Prosecution Section (CEPS) of the PlanD carries out the front line works of investigation, enforcement and prosecution. However, enforcement actions can only be taken after an unauthorized development is confirmed. Therefore, the PlanD has a relatively passive role in deterring landfilling or filling caused by fly-tipping.

### **2.2 Role of EPD**

Under the Waste Disposal Ordinance Cap. 354 (WDO), waste cannot be dumped on Government land or on private without the consent of the owner. EPD is responsible for the control and regulation of waste disposal, prevention of fly-tipping, and the enforcing of environmental laws. Under the Environmental Impact Assessment Ordinance Cap. 499 (EIAO), a designated project (e.g. earthworks or other construction work to be conducted in country park, special area, conservation area and site of special scientific interest) requires an environmental permit issued by the Director of Environmental Protection prior to the work.

### **2.3 Role of AFCD**

AFCD is responsible for nature conservation issues in Hong Kong and is the conservation authority of the Government. AFCD has an active role in conserving the flora, fauna and natural habitats, designating and managing country parks and special areas under the Country Parks Ordinance Cap. 208, and providing professional advice to other departments regarding ecological and conservation issues.

### **2.4 Role of LandsD**

LandsD is responsible for land matters in Hong Kong, including land administration and surveying and mapping. LandsD has the power to undertake land control, lease enforcement, land disposal and acquisition, valuation of land and properties, etc.

### 3 Loopholes and inadequacies in existing legislation and system

#### 3.1 Loopholes in TPO

For areas covered by a Development Permission Area (DPA) plan or an Outline Zoning Plan (OZP) which has replaced a DPA, they are subject to planning control by PlanD under the current TPO where no development shall be undertaken unless it is an existing use, a permitted development under the relevant statutory plan, or a planning permission has been granted for the development. **However, for areas with OZP but without DPA, no enforcement actions can be conducted even if it is covered with conservation zoning(s), leading to uncontrollable and continuous unauthorized activities.**

Pui O is one of the last remaining buffalo fields in Hong Kong and is well-known for its rich biodiversity, with over 180 bird species recorded by HKBWS<sup>4</sup>. It is covered by the approved South Lantau Coast OZP, which was gazetted back in 1980, at a time when the development pressure in South Lantau was low and before the amendment of the TPO – the introduction of the DPA and the enforcement power of the PlanD in the DPA. As such, PlanD cannot carry out enforcement actions even though landfilling frequently occurred at the “Coastal Protection Area” (CPA) of Pui O, in which the zoning is intended to “*conserve, protect and retain the natural coastlines and the sensitive coastal natural environment, including attractive geological features, physical landform or area of high landscape, scenic or ecological value, with a minimum of built development*” and that “*any filing of land...to effect a change of use...shall not be undertaken or continued...without the permission from the Town Planning Board under section 16 of the Town Planning Ordinance*”<sup>5</sup>. Such unauthorized activities have caused a continuous loss in buffalo fields and wetlands of high ecological value and is against the planning intention and regulation of the CPA (Figures 1a to 1d, for more destruction photographs please see HKBWS forum <http://www.hkbws.org.hk/BBS/viewthread.php?tid=1504>).

**Similar situations can also be seen at the fringes of new towns, such as Sha Tin, Ma On Shan and Tai Po, where only an OZP was gazetted at that time.** These urban fringes are usually covered by conservation zoning(s) (e.g. Green Belt) and they act as a buffer between the urban development in new towns and the Country Parks. Yet again, nothing can be done by the PlanD to stop these environmental degradation activities (Figures 2a and 2b).

---

<sup>4</sup> Lantau Jewel, and HKBWS bird records

<sup>5</sup> Notes of the Approved South Lantau Coast OZP S/SLC/19

Under the current legislation, a DPA plan cannot be gazetted after an OZP has been in place in the area. Valuable natural habitats in Hong Kong is continuously threatened and degraded by the current ever increasing development pressure and we cannot simply turn a blind eye on such serious issue. **An amendment in the TPO is urgently needed, which allows the designation of DPA in conservation zonings and areas of conservation importance in existing OZPs. Any administrative measures which can achieve the same result are also welcomed.**

### 3.2 Loopholes in the WDO

Section 16(2)(c) of the WDO stated that “*the deposit of any inert matter used as landfill*” is exempted and a license from the Director of Environmental Protection is not required. C&D wastes, such as concrete and bricks, are often regarded as inert matter and there is no regulation in using such materials for landfilling. However, it is obvious that landfilling with C&D waste can lead to degradation of the environment and a loss in ecological function (i.e. important foraging and roosting habitat for various wildlife) (please refer to the Pui O case in the previous section, Figures 1a to 1d). **Disposal material can be physically and chemically stable, but it does not mean that the dumping of such materials will not cause immediate or long term adverse ecological impacts on the environment. Therefore, the use of inert material for landfill should not be exempted in the WDO.**

In the current WDO, the Director of Environmental Protection would only check if the landowner’s consent is reached before dumping is allowed on private land; however, the Director would not consider if the zoning/ecological value of the habitat of the land is appropriate for dumping. Take the case in Pui O again as an example. As EPD noted that the private land owner agreed with the dumping, no enforcement action needs to be carried (Figure 1b). Explained in the previous section, a CPA zone is designated in Pui O under the TPO is with an intention of conserving the natural habitat and the environment. Yet without a DPA, the PlanD cannot carry out enforcement actions to stop destruction activities in the area. At the same time, the EPD allows the dumping of C&D waste at the Pui O wetlands, completely ignoring the conservation intention of the statutory zoning and thus facilitating the on-going destruction in the area. The Government should seriously consider amending the legislation or provide administrative measures to solve this dilemma between the departments. **EPD as the authority in environment protection should safeguard health and safety of the public as well as that of the natural environment and wildlife; therefore**



should ask for AFCD and PlanD's advice if the private land is suitable for dumping before approving the application.

### 3.3 Time limit for prosecution made under TPO and WDO

Section 26 of the Magistrate Ordinance Cap. 227 stated that *"in any case of an offence, other than an indictable offence, where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information shall be laid within 6 months from the time when the matter of such complaint or information respectively arose"*. To our understanding, prosecution should commence within six months for unauthorized developments under the TPO and the illegal disposal of waste/ fly-tipping under the WDO. **As these offences are not indictable, it is likely that prosecution cannot be initiated if the offence took place more than six months ago or the investigation took more than six months to complete.** The six-month time limited should be extended to improve the prosecution rate of these offences and to ensure the offenders cannot escape from prosecution by making use of the time-limit as set in the law.

### 3.4 Clarify the definition of "agriculture use" and regulate hydroponic/hobby/leisure farm (PlanD, TPB and AFCD)

In recent years, there has been an increasing in planning applications for hydroponic/hobby/leisure farms via the Town Planning Board (TPB). All these uses usually require to partially pave the land for footpaths and vehicular access but only involve a limited extent of agricultural use (i.e. cultivation). At the same time, we noticed some of the sites are already formed or even trashed before applying for TPB permission (Figures 3a and 3b). Currently, landfilling over 1.2m requires permission from the TPB, yet under such height for agricultural use is always permitted. Some people use this loophole to fill and pave their land for hydroponic agriculture/hobby farms/leisure farms before they apply for TPB permission, leading to a loss in arable agricultural land. **PlanD and AFCD should consider clarifying landfilling below 1.2m is limited to soil material suitable for cultivation only, establish construction and operation guidelines for hobby/leisure farms, and consider hydroponic farms as a use not always permitted, so as to avoid the misuse of agricultural lands and to provide clear guidance to the TPB for approving applications related to these uses.**

### 3.5 Shortfalls of existing dumping mechanism (EPD)

A trip-ticket system is used to monitor the disposal of C&D waste from the work site to the disposal facilities, which is common for projects of the Government and large private companies. **This system should be made mandatory for both public and private projects.** Currently, if there is any manipulation of the system leading to an illegal dumping incident, it is usually the truck driver or the landowner is charged. **We consider that the work site engineer should also be liable to the dumped waste so as to ensure each person in the trip-ticket system is responsible for their decisions and actions. A GPS system should be installed on every dumping truck, and measure should be taken with corresponding legislation support to ensure the GPS track records cannot be manipulated and can be used as an evidence in court.** This should be applied to all projects, including small roadside works and small house development which the trip-ticket system may be difficult to implement.

## 4 **Lack of/weak enforcement**

### 4.1 The existing penalty cannot deter unauthorized activities (PlanD and EPD)

The maximum penalties for first conviction as stated in TPO, WDO and EIAO seem to be quite harsh and should be able to deter unauthorized landfilling or fly-tipping activities (see Table 1). However in reality, the fine per defendant convicted under section 23(6) ranged from HK\$17,000 to HK\$280,000 for the cases in 2015, with an average fine of HK\$51,873 per defendant; whereas the average fine convicted under section 20(7) and 20(8) was HK\$40,000 per defendant<sup>6</sup>. As in the landfilling incident at Tsim Bei Tsiu occurred in late 2015, the transportation contractor and the lorry driver were each fined HK\$15,000 under the WDO, and person-in-charge of the construction site was fined a total of HK\$40,000 for contravening the WDO and EIAO<sup>7</sup>. **All these numbers are far from the maximum penalties as stated in the TPO, WDO and EIAO; but the repair cost of the trashed wetland in Tsim Bei Tsiu is estimated to cost the Government HK\$6 million.**

---

<sup>6</sup> Appendix 3 of the Planning Department Annual Report 2016, available at [http://www.pland.gov.hk/pland\\_en/press/publication/ar\\_16/ar2016\\_index.html](http://www.pland.gov.hk/pland_en/press/publication/ar_16/ar2016_index.html)

<sup>7</sup> <http://www.info.gov.hk/gia/general/201610/19/P2016101900737.htm>

**Table 1.** Maximum penalties for contravening TPO, WDO and EIAO

<b>Ordinance</b>	<b>TPO section 23(6) (non-compliance with notices issued by the Planning Authority)</b>	<b>TPO section 20(7)(8) (undertaking or continuing the UDs)</b>	<b>WDO section 18(1) (unauthorized disposal of waste without the consent of landowner)</b>	<b>EIAO section 26(1) (offence related to environmental permit)</b>
<b>Maximum fine for first conviction</b>	HK\$500,000 and in addition to a fine of HK\$50,000 for each day	HK\$500,000	HK\$200,000 and imprisonment for 6 months	HK\$2,000,000 and imprisonment for 6 months
<b>Maximum fine for second or subsequent conviction</b>	HK\$1,000,000 and in addition to a fine of HK\$100,000 for each day	HK\$1,000,000	HK\$500,000 and imprisonment for 6 months	HK\$5,000,000 and imprisonment for 2 years

Currently, as the land and property prices soar high, many people take advantage of the development value of agricultural land. As from the website of a property agent, high quality arable farmland is sold at HK\$250 per square foot<sup>8</sup>, while formed and paved agricultural land ready for development is selling at HK\$1,309 per square foot<sup>9</sup> which is five times higher than the former. An investment company even cuts up its land into small plots and operate the area more or less like a hobby farm, but is actually selling the plots of land to interested buyers at a price five times higher than it was bought<sup>10</sup>. If the profit of selling these “modified” lands is about HK\$1,000 per square foot, then for a 1,000-square foot land, HK\$1,000,000 would be earned. This “market price” of land is much higher than the current penalty of unauthorized land uses under the TPO and WDO, or even surpassed the maximum fine for first conviction. **If the penalty is not adjusted to the current market price or if reinstatement of the damaged land is not compulsory with offender(s) bearing the repair cost, the current situation will actually provide incentives for landowners or people with development interest to trash the land for potential future development.**

<sup>8</sup> <http://www.28hse.com/buy-property-310974.html>

<sup>9</sup> <http://www.28hse.com/buy-property-317301.html>

<sup>10</sup> [http://hk.on.cc/hk/bkn/cnt/news/20150407/bkn-20150407212200465-0407\\_00822\\_001.html](http://hk.on.cc/hk/bkn/cnt/news/20150407/bkn-20150407212200465-0407_00822_001.html)

4.2 The PlanD’s judgement in determining an UD and the reinstatement of damaged habitat (or reluctance to bring cases to court)

We understand that the CEPS of PlanD has made a lot of effort in investigating suspected unauthorized developments in areas with DPAs, such that destruction activities can be discontinued and sites are restored (Table 2). **However, from our observation, some sites destroyed but were not regarded as an UD or destroyed wetlands not reinstated back into a wetland, leading to a loss in biodiversity and ecological functions.**

**Table 2.** The enforcement cases at the Kam Tin buffalo fields (data retrieved from the Town Planning Board Statutory Planning Portal 2)

<b>Enforcement Case No.</b>	<b>Date of first issue of enforcement notice</b>	<b>Unauthorized Use</b>	<b>Reinstatement required?</b>	<b>Reinstatement requirement</b>
E/YL-KTN/163	11 May 2006	Filling of land	No	/
E/YL-KTN/206	9 Aug 2007	Filling of land	No	/
E/YL-KTN/214	27 Nov 2007	Filling of land	Yes	Grass the land
E/YL-KTN/223	5 Jan 2009	Filling of land	Yes	Remove the leftover and debris on land; grass the land
E/YL-KTN/243	25 Feb 2010	Filling of land	Yes	Remove leftovers on the land; grass the land
E/YL-KTN/254	1 Apr 2011	Filling of land	Yes	Remove the leftover, debris and miscellaneous objects on the land; grass the land
E/YL-KTN/308	26 Oct 2012	Filling of land	Yes	Remove debris, stones and gravels on the land; grass the land

The Kam Tin buffalo fields used to be a wetland and a birding hotspot in the past (Figure 4a), where Greater Painted-snipe (*Rostratula benghalensis*), Grey-headed Lapwing (*Vanellus cinereus*) and various species of starlings are commonly seen. Greater Painted-snipe prefers areas of inactive wet agriculture characterised by dense aquatic vegetation, and according to the bird records of HKBWS, there are still breeding records in Kam Tin area up till 2006. However, the maximum number of individuals recorded in Kam Tin dropped to single

digits in 2010 and no records of the species was received since 2012. In the past, flocks of starlings of various species, including Red-billed Starling (*Spodiopsar sericeus*), White-cheeked Starling (*Spodiopsar cineraceus*) and Common Starling (*Sturnus vulgaris*), forages in the open fields of Kam Tin; but now such scene is not seen anymore (Figures 4b and 4c, please see the HKBWS forum for more destruction photographs at Kam Tin <http://www.hkbws.org.hk/BBS/viewthread.php?tid=6488>). The drastic drop in numbers of these wetland dependent bird species in Kam Tin or the disappearance of the Greater Painted-snipe indicates that **there is a significant loss in suitable breeding and foraging grounds for the birds, which is likely to be caused by the ongoing landfilling activities and the failure to reinstate the wetland habitats (i.e. by removal of dumped materials and grassing the land) in the Kam Tin area.**

It maybe because that many of the evidence collected by the CEPD of PlanD need to be presented in the court for prosecution. **Whether the site is destroyed or reinstatement has reached satisfaction, is determined in favour to win the court case rather than in terms of ecology (i.e. so as to ensure the offender will be convicted and to avoid setting undesirable precedent caused by losing the court case). Moreover, there is no distinguish between dry land and wetland in the enforcement process.** Therefore, sites destroyed may not be a UD while reinstatement requirements failed to restore its original ecological function.

**In order to facilitate PlanD to confirm more UD cases and send more cases to court and properly reinstate damaged habitats,** a more comprehensive and accurate database of the land and habitat condition in Hong Kong is necessary. Perhaps exploration of existing and new technology used for identifying different wetland/habitat types, precise measurement of level of land and depths of fishponds, and other useful land information which can be presented at the court may be required. On the other hand, we consider that reinstatement is required for all destruction cases in order to restore the ecological function lost. There are some cases where the offender refused to reinstate the damaged land (Figures 5a and 5b). Mechanisms should be developed to ensure the offender cannot escape from this duty and the land will be restored back to its original status. Besides, opportunities for AFCD to provide professional advice on the restoration of habitats and to which condition the reinstatement reaches satisfaction should be explored.

#### 4.3 Lack of resources and manpower in CEPS of PlanD

The number of complaints received by the Planning Department (PlanD) for unauthorized developments in rural areas<sup>11</sup> increase from 644 in 2009 to 1,089 in 2015, with approximately 10% increase per year. However, the number of confirmed UD cases remains more or less the same, ranging from 100 to 148 cases, and the successful prosecution rate is still low. We consider that the large difference between the number of complaints and UD cases cannot be purely due to the duplication of complaints. It is likely that the resource and manpower the CEPS of PlanD has can only handle such number of cases per year. Currently, there are only 68 staff of the PlanD handling the planning enforcement and prosecution actions against UDs and they need to handle nearly 2,000 suspected UD cases<sup>12</sup>. **We consider that the Government should put in more resources and manpower to the CEPS of PlanD, so as to shorten the investigation time and increase the enforcement effort.**

#### 4.4 Enforcement actions on development zonings (PlanD and LandsD)

Due to limited resources and manpower of PlanD, priority is set higher for enforcement actions against UDs within conservation zonings<sup>13</sup>. So habitats within development zonings, which maybe resulted from “poorly zoned” statutory plans, are not protected. In the Mai Po San Tsuen case, a landscape pond which is mainly within V zone but a small corner covered by CA zone is now filled (Figures 6a and 6b). The LandsD confirmed that landfilling does not violate the conditions in the land lease, but landfilling needs the approval from the TPB. However, PlanD replied that at the site is mainly within development zoning and there is no material change of use, the department will just continue to monitor the site for the time being. This is again the problem caused by the shortage of resources and manpower where enforcement actions cannot be taken. **Besides improving the resources and manpower for the enforcement team of PlanD, the LandsD should also look into possibility of modifying the lease conditions when renewing the lease with the tenant so that unauthorized landfilling and fly-tipping can be prevented.**

---

<sup>11</sup> Areas including SSSI, CA, CPA, GB, AGR and V zonings. Information for 2009 - 2015 are obtained from Planning Department through application for access to information. Data from 2009 to 2013 are published in the latest report of Hong Kong Headline Indicators for Biodiversity and Conservation, available at <http://www.hkbws.org.hk/BBS/viewthread.php?tid=24858>

<sup>12</sup> In 2015, there are a total of 1,924 suspected UDs. Information retrieved from the Planning Department Annual Report 2016.

<sup>13</sup> [http://www.pland.gov.hk/pland\\_en/info\\_serv/cep/enforcement/priority.htm](http://www.pland.gov.hk/pland_en/info_serv/cep/enforcement/priority.htm)

#### 4.5 Deter “destroy first, build later” activities (TPB and PlanD)

The TPB has promised to adopt approaches to deter “destroy first, build later” activities in a press release made in 2011<sup>14</sup>. Indeed, the TPB has made some efforts in not granting approval to developments which have involved in unauthorized activities. However, we noticed there are some difficulties that members of the TPB encountered in their deliberation process, thus may affecting their final decision on the application. One member expressed concern that “it was difficult to define whether an application would be a ‘destroy first, build later’ case, particularly when there was no evidence that the existing vegetation was cleared by the applicant”<sup>15</sup>. In another meeting, the vice-chairman supplemented that “it was the normal practice of PlanD to include relevant information of the site including record of enforcement action into the paper for the Committee’s consideration”<sup>16</sup>. As such, the amount of information provided by the PlanD becomes crucial and may affect the decision of the TPB. **The PlanD should ensure all members of the TPB are well-informed about any suspected UDs related to the applications which the members are assessing. Moreover, there should be strong justification for regularising UDs through planning applications to the TPB, or else approval of these applications would facilitate and recognize the destruction events.**

#### 4.6 Ineffective protection of Government Lands by the LandsD

In various cases involving eco-vandalisms on Government Lands and illegal access through Government Lands, we have seen LandsD erect bollards, Government Notices Boards, fencings and concrete blocks to stop further destruction of the site. However, we have also seen in some cases that these obstacles were removed and the destruction continues (Figure 7). It seems that these measures cannot effectively deter people from accessing the site. **Recently, officers from LandsD were even threatened by villagers when the officers came to remove an illegal structure on Government Land in Sha Lo Tung**<sup>17</sup>. We consider that government officers should seek the help from The Police to carry out enforcement actions when appropriate.

---

<sup>14</sup> <http://www.info.gov.hk/gia/general/201107/04/P201107040255.htm>

<sup>15</sup> Paragraph 53 of the 520th meeting of the Rural and New Town Planning Committee on 17 Oct 2014

<sup>16</sup> Paragraph 193-194 of the 541th meeting of the Rural and New Town Planning Committee on 18 Sep 2015

<sup>17</sup>

<https://www.hk01.com/%E7%92%B0%E4%BF%9D/10038/%E6%9D%91%E6%B0%91%E9%98%BB%E5%9C%B0%E6%94%BF%E6%8B%86%E6%B2%99%E8%9E%BA%E6%B4%9E%E9%81%95%E8%A6%8F%E6%A9%8B-%E5%86%8D%E6%90%9E%E5%B0%B1%E5%91%8A%E5%88%B0%E8%81%AF%E5%90%88%E5%9C%8B->

On the other hand, we have reported cases which dumping of waste was repeatedly found in the same location on Government Land (Figure 8). Even though actions were taken by the LandsD after the incidents in 2012 and early 2016 on a fishpond bund in Mai Po, dumping of C&D waste occurred in the same location again in October 2016. For abandoned Government fishponds, we consider that the more effective way to protect the fishpond from dumping of waste or pond filling is to **introduce wetland management practices or traditional fish farming back to the abandoned fishponds. Regular patrol and management of the fishponds would be effective to deter unauthorized dumping at abandoned Government fishponds.**

## 5 Lack of interdepartmental collaboration

### 5.1 Interdepartmental collaboration between PlanD and LandsD

Most of the land surveying data and photographs are currently owned by the LandsD, and they have the technology to identify the difference in the land status/condition/level. These information is important and useful for the PlanD in determining an UD. **The LandsD should ensure they have enough manpower and resources to cope with the information requests from the PlanD for case investigation**, so as not to delay the enforcement and prosecution process made by the PlanD and to prevent further destructions of the environment.

### 5.2 The use of C&D waste for fishpond bunds (AFCD, EPD, CEDD)

There are many cases of dumping of C&D wastes at fishponds, claiming it is a usual fishpond operation practice. Indeed, the bricks and concrete within these C&D waste may help strengthen the fishpond bunds, yet other materials within the waste such as mirrors and tyres maybe harmful to the fish culture environment. The improper storage of these materials would lead to temporary filling of land/pond/marsh and it may not be completely reinstated by the landowner (Figures 9a to 9c). Moreover, the waste at pond bunds do not encourage the growth of vegetation, which may be utilized by various bird species. Currently, the HKBWS have Management Agreements with fish farmers in the Deep Bay area. Through communication with fish farmers, we can explore the possibility of adjusting the agreements for more environmental friendly practices in the management of fishponds. However, not all fishpond operators across the territory has participated in this kind of agreement and such agreement is relatively short-term in which the fishpond operator can drop out if they wish to. **Therefore, we consider that the AFCD, EPD and CEDD should work together in the long run to identify and provide environmental friendly materials for strengthening the fishpond bunds and establish management**



**guidelines for fishpond operators to follow.**

5.3 Failure of relevant policy bureaux to develop remedial measures

The PlanD and LandsD is under the jurisdiction of the Development Bureau while the EPD and the nature conservation section of AFCD is under that of the Environment Bureau. **All the problems addressed in the previous sections are not new stories and has persisted for a long time.** The Bureaux should be well-aware of this and should work together to develop remedial measures or policies which could address these cross-departmental issues.

**6 Proactive protection of land**

6.1 Designation of statutory plans and Country Park (CP) (AFCD and PlanD)

Due to the Tai Long Sai Wan incident, the Government promised in the policy address of 2011 to protect the 77 CP enclaves in Hong Kong. 23 enclaves were already covered by OZPs at 2010 and the PlanD has worked on 29 more afterwards. While up till now, AFCD only designated 3 enclaves as CP and is currently working on 3 more (which the proposed new plans are now at the public consultation stage). **We consider that the AFCD should speed up the CP designation process to prevent undesirable damages to these areas due to lack of statutory protection.** For areas and enclaves already covered with OZPs, the AFCD can still consider if any of them are still suitable for inclusion into the CP system. Furthermore, there are still other areas without protection, which some of them are located between the outskirts of OZPs and existing CPs, such as Wong Chuk Yeung at Fo Tan. The use of land in these areas is only controlled by the conditions as set in the land lease and the enforcement actions by LandsD on Government Land. **The AFCD and the PlanD should consider incorporate these areas without statutory protection into the CP or cover with statutory plan.**

6.2 Active advisory role (AFCD)

As the conservation authority of the Government, **the AFCD should take an active advisory role in supporting the enforcement works of EPD and PlanD,** such that conservation elements or measures within conservation zonings and the Wetland Buffer Area/Wetland Conservation Area in the Deep Bay wetlands can be strengthened.

## 7 Other recommendations

Besides the recommendations given separately in the sections above, we would also like to offer a few more recommendations which we think are essential in tackling the landfilling and fly-tipping issues.

### 7.1 Establishment of an interdepartmental task force

A task force consists of a quick reaction team and a collaborative prosecution team, allows swift actions be taken to discontinue unauthorized activities. AFCD, EPD, LandsD, PlanD and other relevant departments should be within the task force, with an increase in resources and manpower for each department in dealing with landfilling and fly-tipping matters. Collaborative effort of all departments should be made to plug loopholes in existing legislation and mechanisms.

### 7.2 Establishment of an interdepartmental land database

An interdepartmental database is important for sharing existing and new information from the departments within the task force to carry out enforcement actions (e.g. determining UD cases/reinstatement requirements/if landfilling on private land should be approved by EPD). These data and information should include but not limited to the land status, zonings, habitat type, vegetation, fishpond depth, soil depth, existing ecological and conservation value, landscape value, etc., and should be able to be used as evidence in court.

### 7.3 Establishment of a nature conservation trust

We are highly concerned about cases involving landfilling, pond filling and fly-tipping on private lands as these activities will destroy the natural habitats with ecological value at the site. **We consider that the establishment of a nature conservation trust is a wayout for the conservation of habitats on private lands.** This provides landowners incentives not to fill or dump the land, and as well as to conserve and protect the land. Reference can be made to the National Trust in the UK, which is different from Environment and Conservation Fund in Hong Kong. The trust should be an independent charity not controlled by the Government and is regulated by legislation. The trust has the power to “freeze” land and regulate the activities on the land to avoid damages made. Any development on the land needs to be discussed in the LegCo.

#### 7.4 A comprehensive brownfield policy

Currently, there are new developments planned at existing brownfield sites. The Government should have a comprehensive policy to relocate the business to **prevent the displacement of brownfield sites to adjacent areas with agricultural or ecological value (which would likely lead to the trashing of land for open storage) and for the better utilisation of land.**

#### 8 **Conclusion**

The HKBWS considers that tackling the problem of landfilling and fly-tipping is not the responsibility of a single Government department, but it requires the collaborative effort of all related departments. With the enhancement of enforcement effort, ensuring all loopholes are plugged, provision of incentives to stop fly-tipping and interdepartmental collaboration, we hope that land with agricultural, conservation, ecological and landscape values in Hong Kong can be adequately protected.

We hope the members of the Panel on Environmental Affairs of the Legislative Council would consider our comments and recommendations in the public hearing and in future meetings related to illegal land filling and fly-tipping.

Thank you for your kind attention.

Yours faithfully,



Woo Ming Chuan  
Conservation Officer  
Hong Kong Bird Watching Society

**Figure 1a.** Reply from PlanD dated 8 February 2011 (ref. no.: (44) in CEP/G/LI-C(II)) in response to our complaint of the dumping in Pui O. No enforcement action can be carried out under the TPO.

**Suspected Unauthorised Activities in Pui O**

I refer to your letter dated 1 February 2011 on the captioned subject.

Please be advised that the site is covered by the approved South Lantau Coast Outline Zoning Plan No. S/SLC/16. Since the site was not previously covered by a Development Permission Area Plan, the Planning Authority is not empowered to take enforcement action under the Town Planning Ordinance. Nevertheless, as the matter is related to dumping of construction and demolition wastes, we have taken the liberty to refer the case to the Environmental Protection Department for action under their purview.

**Figure 1b.** Reply from EPD dated 4 March 2011 (ref. no.: (7) in EP3/N09/RS/002523-11) in response to our complaint of the dumping in Pui O. Similarly, no enforcement actions can be carried out under the WDO.

**Suspected Unauthorized Activities in Pui O**

We refer to your letter dated 1 February 2011 addressing to Planning Department (Plan D) on the captioned subject.

Plan D had copied your letter to us suggesting the case might involve deposition of construction and demolition wastes. So far, we understood the construction and demolition waste on the concerned location had been deposited on some of the private lots by the lot owners themselves or under their consent. Therefore, there was no contravention to the Waste Disposal Ordinance, and no enforcement action could be taken by this Department.

We are of the view that cases like this probably involved land use and development issues and should be better tackled through proper land use and planning control. We therefore reported our findings to Plan D on 28 February 2011 for their further consideration.

Thank you for your concern on the environment.

**Figure 1c.** The dumping of C&D waste continues in the buffalo fields zoned as Coastal Protection Area in Pui O. Photographs taken on 28 November 2011.



**Figure 1d.** A truck unloading C&D waste at the buffalo fields zoned as Coastal Protection Area, which threatens the wildlife and wetland habitats in Pui O. Image from a video taken by a member of the HKBWS on 27 November 2014.



**Figure 2a.** The dumping of C&D waste and concrete at a wetland zoned as Green Belt in Wong Yue Tan, Tai Po. Photographs taken on 4 May 2011. But due to lack of DPA for new towns OZPs, no enforcement actions can be carried out by the PlanD. The reply from PlanD dated 13 May 2011 (ref. no.: (61) in CEP/G/NE-C(VII)) in response to our complaint of the dumping in Wong Yue Tan in Tai Po is similar to that of the case in Pui O.



**Suspected unauthorized activities involving dumping of  
C&D wastes at Wong Yue Tan Village, Tai Po**

I refer to your letter dated 4 May 2011 addressed to Environmental Protection Department and this Office.

The area under complaint is covered by the draft Tai Po Outline Zoning Plan No. S/TP/22. Since the area has not been previously covered by a Development Permission Area Plan, the Planning Authority is not empowered to undertake enforcement action in this area under the Town Planning Ordinance.

As regards your concern on the possible degradation of the natural environment arisen from the captioned activity in the subject site, I trust Environmental Protection Department would take appropriate follow-up action under their purview.

**Figure 2b.** Filling of land and dumping of C&D waste at a wetland zoned as Green Belt for parking cars in Cheung Muk Tau, Ma On Shan. Photographs taken on 15 February 2017. But again, due to lack of DPA, no enforcement actions can be carried out by the PlanD as clearly stated in their email reply dated 15 February 2017.

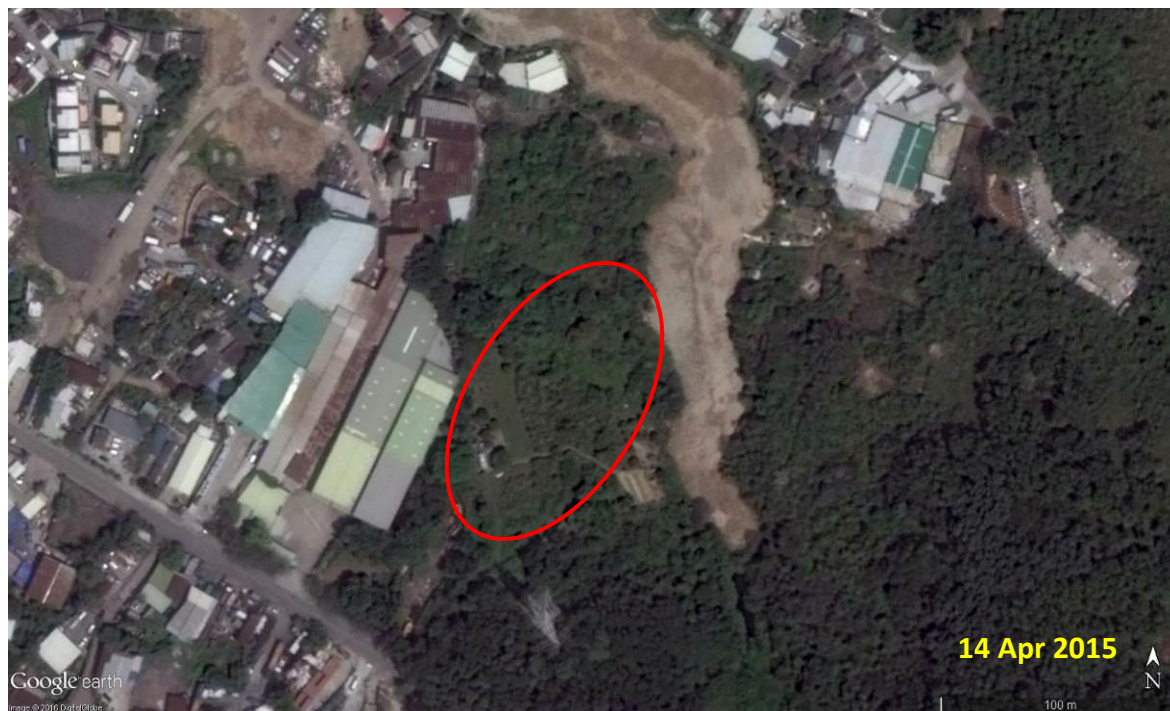


I refer to the subject email on the caption received today at noon hour.

Our investigation reveals that the site under concern is zoned "Green Belt" on the Ma On Shan Outline Zoning Plan. However, the subject area is not previously covered by any Interim Development Permission Area (IDPA) and/or Development Permission Area (DPA) Plans. I regret to inform you that there is no enforcement power by the Planning Authority within the subject area under the Town Planning Ordinance.



**Figure 3a.** The Town Planning Board receive their application on 14 October 2016<sup>18</sup>. However, site formation was already seen on the Google Earth aerial photograph taken on 29 July 2016 (approximate location indicated by the red circle).



<sup>18</sup> [http://www.info.gov.hk/tpb/en/plan\\_application/A\\_YL-TT\\_394.html](http://www.info.gov.hk/tpb/en/plan_application/A_YL-TT_394.html)

**Figure 3b.** Facilities of the hobby farm were already set up at the application site and may already be in operation (photograph taken in 7 November 2016).



**Figure 4a.** The buffalo fields at Kam Tin (photograph taken by HF Cheung on 28 October 2000).



**Figure 4b.** Destruction and dumping at Kam Tin. Photographs taken on 18 November 2008.



**Figure 4c.** The current situation in the Kam Tin. Photograph taken on 17 February 2017. Most wetlands are now filled, grassed and fenced off. The drastic drop in numbers of wetland dependent bird species in Kam Tin or the disappearance of the Greater Painted-snipe indicates that there is a significant loss in suitable breeding and foraging grounds for the birds, which is likely to be caused by the ongoing landfilling activities and the failure to reinstate the wetland habitats (i.e. was just required to remove dumped materials and grass the land) in the Kam Tin area.



**Figure 5a.** One of the abandoned fishponds with well-vegetated surroundings at the southern end of the application site for the hobby farm (photograph taken on 3 November 2011).



**Figure 5b.** The current status of the application (photograph taken on 7 November 2016). All fishponds are filled and the offender did not reinstate the land since the reinstatement notice was issued in 27 January 2016 and expired on 27 April 2016. The offender is currently facing prosecution for contravening section 23(6) of the TPO, but it is uncertain if the damaged site will ever be reinstated in the end.



**Figure 6a.** The pond is filled, partly paved with concrete and some pots of plants were placed on top. Photographs taken on 14 February 2016.



**Figure 6b.** The Google street view photograph shows the affected area was previously not filled (image taken in July 2011)

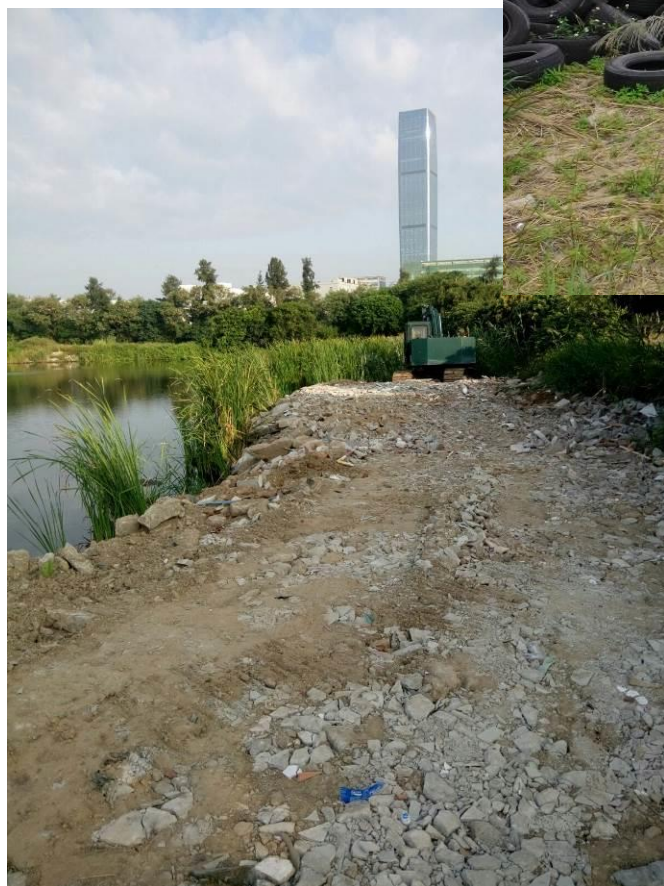


**Figure 7.** Government Notices Boards, fencings and concrete blocks erected by LandsD were removed or moved aside. Dirt tracks of trucks were seen.





**Figure 8.** Dumping of waste was repeatedly reported at the same fishpond bund on Government Land in Mai Po. Photographs were taken in June 2012 (top), February 2016 (middle) and October 2016 (bottom).



**Figure 9a.** The piles of C&D waste and rubbish dumped next to a marsh in Ma Tso Lung. Photographs taken on 15 November 2015.



**Figure 9b.** The reply from EPD dated 24 December 2015 (ref. no. EP3/N07/RN/29679-15) in response to our complaint of the dumping at Ma Tso Lung. The investigation revealed that the materials were claimed to be *“temporarily stored for paving the access roads and/or repairing the earth bund of the fish pond”*.

**Complaint of suspected unauthorized dumping at Ma Tso Lung, North District**

I refer to your email dated 17 November 2015 regarding the above mentioned pollution complaint.

Our staff conducted several site inspections to the captioned location. During the first inspection, crushed brick and concrete materials were seen on-site, but no fly-tipping was spotted during the site inspection. The manager there was interviewed, who explained that the materials were temporarily stored for paving the access roads and/or repairing the earth bund of the fish pond. Nevertheless, we have reminded the manager to observe the requirements of relevant laws in carrying out the activities. In our follow-up inspections, the materials have been cleared. Based on the information obtained at this stage, there are insufficient evidences to take further legal action.

**Figure 9c.** The email reply from LandsD dated 29 Jan 2016 in response to our complaint of the dumping at Ma Tso Lung. LandsD stated that *“some construction waste was still found on site and the dumping area is located at private lots”*.

Refer to our conversation just now, staff of this office conducted site inspection on 30.11.2015 and found that the affected area was diminished. Some construction waste was still found on site and the dumping area is located at private lots.

Since the case has been forward to Environmental Protection Department and Planning Department, we believe that they will follow up accordingly.

# HONG KONG HEADLINE INDICATORS FOR BIODIVERSITY & CONSERVATION

## 2011 REPORT



October 2011

Mike Kilburn

Cheng Nok Ming

## Results and Discussion

### 1. Community-based conservation

1.1. Percentage of instances of illegal/unauthorized activity (trashing, trapping, collection, etc.) reported per year by environmental NGOs and verified sources (e.g. media and websites) where enforcement action led to a) successful prosecution, and b) restoration of ecological function

Table 1.1a Information from EnvNGOs and other verified sources

	2009	2010
involved sites (cases)	37	35
Successful prosecution	2 (5.4%)	3 (8.5%)
Restoration of ecological function	none confirmed	none confirmed

Table 1.1b Information from Planning Department and Lands Department regarding unauthorized developments (UD) in rural areas<sup>4</sup>

	2009	2010
no. of complaints received	644	604
Confirmed cases of UD	115	100
Not empowered under Town Planning Ordinance due to absent of Development Permission Area plans	37 (32.2%)	23 (23%)
Successful prosecution	6 (5.2%)	3 (3%)

Table 1.1c Information from AFCD on illegal activities in Country Parks<sup>5</sup>

	2009	2010
No. of complaints received	12	26
Successful prosecutions	1 (8.3%)	7 (27%)

## Discussion

The low prosecution rate is consistent in all sources.

**The rate of successful prosecutions (3%-27%)  
for environmentally destructive activities is extremely low.**

Loopholes remain in the current legislative framework and government departments are often not empowered to carry out enforcement actions. The low prosecution rate is consistent for all departments. One of the reasons is that there is often insufficient investigation, gathering and inter-departmental sharing of evidence for making successful prosecutions in cases of fly-tipping and other unauthorized activities. Not all cases result in prosecution – in many situations government departments may issue warnings or order remedial action.

There are also a significant proportion of cases in which the Planning Department is not empowered to carry out any enforcement actions due to absence of Development Permission Area (DPA) Plans. There is an obvious need to speed up the issue of DPA Plans in remaining Country Park enclaves to control unauthorized developments.

It is also essential to close the loophole for areas where an Outline Zoning Plan was issued without the coverage of DPA plans. In such cases enforcement is not empowered if the activities were agreed by the owner of a private lot. Tree felling on private land is poorly regulated, and specific legislation is required to protect trees.



Fly-tipping in Pui O, Lantau – None of the government departments are empowered to carry out enforcement actions. ©HKBWS



# HONG KONG HEADLINE INDICATORS FOR BIODIVERSITY & CONSERVATION

## 2012 REPORT



January 2013

The Hong Kong Bird Watching Society

## Results and Discussion

### 1. Community-based conservation

1.1. Percentage of instances of illegal/unauthorized activity (trashing, trapping, collection, etc.) reported per year by environmental NGOs and verified sources (e.g. media and websites) where enforcement action led to a) successful prosecution, and b) restoration of ecological function

Table 1.1a Information from EnvNGOs and other verified sources

	2009	2010	2011
Involved sites (cases)	37	35	27
Successful prosecution	2 (5.4%)	3 (8.5%)	0 (0%)
Restoration of ecological function	none confirmed	none confirmed	none confirmed

Table 1.1b Information from Planning Department and Lands Department regarding unauthorized developments (UD) in rural areas<sup>4</sup>

	2009	2010	2011
No. of complaints received	644	604	778
Confirmed cases of UD*	115	100	148
Not empowered under Town Planning Ordinance due to absent of Development Permission Area plans	37	23	46
Successful prosecution	6 (5.2%)	3 (3%)	1** (0.6%)

\* The Planning Department has issued enforcement notices for all of the cases.

\*\* Other cases are under different stages of enforcement action and therefore the figure is subject to revision.

Table 1.1c Information from AFCD on illegal activities in Country Parks<sup>5</sup>

	2009	2010	2011
No. of reports	12	26	64**



Successful prosecutions	1 (8.3%)	7 (27%)	29 (45.3%)
-------------------------	----------	---------	------------

\*\* 39 cases are reported by public and 25 cases detected by AFCD staff

### Discussion

There is an increase in reported unauthorized activities both inside and outside the Country Parks. While this may reflect growing pressure on the environment by such activities, increasing public awareness may also be a reason for the higher number of reports. This could be related to the extensive media coverage on illegal occupation of government land (e.g. the Tai Tong case in Yuen Long) and environmental vandalism.

It is encouraging to see that the prosecution rate inside Country Parks has increased in 2011. We hope that the relevant departments could continue putting effort in enforcement actions to tackle the activities.

**There were more reported cases of environmental destruction in 2011, but the rate of successful prosecutions in Country Parks also increased.**

However, there are still no confirmed cases of restoration of ecological function. While in some cases there is no authority to carry out enforcement, reinstatement of any kind is seldom carried out except by the government on government land. It also takes time for the habitat to recover its ecological function. It is suggested that the Green Groups should re-visit affected sites after some time in order to observe habitat conditions.



Suspected site formation and vegetation clearance on Po Toi Island. © Geoff Welch/HKBWS



# HONG KONG HEADLINE INDICATORS FOR BIODIVERSITY & CONSERVATION

## 2013 & 2014 REPORT



December 2015

The Hong Kong Bird Watching Society

## The Headline Biodiversity Conservation indicators - 2013 & 2014 update

Focus Areas and Indicators	Data year	Status in 2011	Status in 2012	Status in 2013	Progress in 2014
<b>Focus Area 1: Community-based conservation</b>					
<b>1.1.</b> Percentage of instances of illegal/unauthorized activity (trashing, trapping, collection, etc.) reported per year by environmental NGOs and verified sources (e.g. media and websites) where enforcement action led to a) successful prosecution, and b) restoration of ecological function	2009-2013	↓	↑	↓	↓
<b>Focus Area 2: Establish (and strive to improve upon) accepted global best practices for the conservation and sustainable use of biological diversity in Hong Kong</b>					
<b>2.1</b> Percentage of taxa on a published Red Data List protected by law and covered by species action plans	2009-2013	↓	↔	↔	↔
<b>Focus Area 3: Reversing the decline in native biodiversity</b>					
<b>3.1</b> Percentage of (terrestrial and marine) protected areas covered by published, resourced and active biodiversity management plans	2009-2013	↓	↑	↔	↔
<b>3.2</b> Total area impacted by planning proposals that involves conservation zonings (SSSI, CA, CPA, GB, AGR)	2009-2013	↓	↔	↓	↓
<b>3.3</b> Percentage of lowland rivers (below 200m) that (a) remain in natural state and (b) are impacted by channelization	2006-2013 (partly)	?	↓	↓	↓

Focus Areas and Indicators		Data year	Status in 2011	Status in 2012	Status in 2013	Progress in 2014
<b>3.4</b> Trends in number and populations of known alien invasive species	a) House Crow	2007-2013	↔	↔	↔	↑ *
	b) Apple Snail	...	?	?	?	?
	c) Mikania	...	?	?	?	?
<b>3.5</b> Trends in populations of flagship and umbrella species	a) Waterbirds	2006-2013	↔	↓	↔	↓ *
	b) Chinese White Dolphin	2006-2013	↓	↔	↔	↔
	c) Breeding egrets and herons	2006-2013	↓	↔	↔	↔ *
	d) Dragonfly diversity and abundance	...	?	?	?	?
	e) Big-headed Turtle	...	↓	?	?	?
	f) Buddha Pine	...	?	?	?	?
	g) Grassland Orchid	...	?	?	?	?
<b>Focus Area 4: Reversing impacts on global biodiversity</b>						
<b>4.1</b> Hong Kong's ecological footprint		2005, 2007-2008	↓	?	?	↓
<b>4.2</b> Change in greenhouse gas emissions attributable to Hong Kong		2005-2010	?	↔	↔	↔

Focus Areas and Indicators	Data year	Status in 2011	Status in 2012	Progress in 2013	Progress in 2014
<b>Focus Area 5: Plans &amp; resources for biodiversity conservation</b>					
<b>5.1</b> In how many months' time will an approved, resourced, and active BSAP that meets the principles and standards of the CBD be in place?	N/A	↓	↑	↑	↑

\*Natural fluctuations occur for some indicators. The figures are compared to the mean value and standard deviations of previous years. A difference is larger than 2 standard deviations is considered to represent a significant change.

\*\* The report is structured in that the reporting year is one year preceding the year of which the data is obtained

Legend and Summary		
Deterioration since previous year	↓	5
Same situation as previous year	↔	5
Improvement since previous year	↑	2
Insufficient Information	?	6

## Results and Discussion

### 1. Community-based conservation

1.1. Percentage of instances of illegal/unauthorized activity (trashing, trapping, collection, etc.) reported per year by environmental NGOs and verified sources (e.g. media and websites) where enforcement action led to a) successful prosecution, and b) restoration of ecological function.

Table 1.1a Information from EnvNGOs and other verified sources

	2009	2010	2011	2012	2013
Involved sites (cases)	37	35	27	26	33
Successful prosecution	2 (5.4%)	3 (8.5%)	0 (0%)	0 (0%)	1 (3%)
Restoration of ecological function	none confirmed	none confirmed	none confirmed	none confirmed	none confirmed

Table 1.1b Information from Planning Department and Lands Department regarding unauthorized developments (UD) in rural areas<sup>5</sup>

	2009	2010	2011	2012	2013
No. of complaints received	644	604	778	870	944
Confirmed cases of UD*	115	100	148	138	113
Enforcement not possible under Town Planning Ordinance due to absence of DPA plans	37	23	46	41	22
Successful prosecutions	6 (5.2%)	3 (3%)	1 (0.6%)	2 (1.5%)	0 (0%)

\* The Planning Department has issued enforcement notices for all of the cases.

Table 1.1c Information from AFCD on illegal activities in Country Parks<sup>6</sup>

	2009	2010	2011	2012	2013
No. of reports	12	26	64*	67	96
Successful prosecutions	1 (8.3%)	7 (27%)	29 (45.3%)	22 (32.8%)	9 (9.4%)**

\* 39 cases are reported by public and 25 cases detected by AFCD staff

\*\* Some cases are still open for investigation as of January 2014

### Discussion

2013 saw an increase in reported unauthorized activities both inside and outside the Country Parks. Overall, successful prosecutions continue to remain low. In 2013, there was a decrease in the number of cases that could not be pursued under the Town Planning Ordinance due to the absence of Development Permission Areas Plans. This may be a positive outcome of the Government's action to extend planning protection to formerly unprotected sites.

Illegal activities in Country Parks increased substantially while successful prosecutions remain low. Illegal harvesting of Incense Trees (*Aquilara sinensis*) has become increasingly common<sup>7</sup>.

There continue to be no confirmed cases of restoration of ecological function. While in some cases there is no authority to require or carry out reinstatement of any kind, in other cases dumped material was removed, but this cannot be classified as restoration of ecological function. It is suggested that the EnvNGOs should re-visit affected sites after some time in order to observe habitat conditions. Without restoration, enforcement serves only as a deterrent and provides no reversal of the harm that has been done. A mechanism that can truly deliver a restoration of ecological function is urgently needed.

**The Planning Department should continue to designate Development Permission Areas Plans where plans are absent. Restoration opportunities at damaged sites should be explored by AFCD.**