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Panel on Environmental Affairs

Special meeting on 3 March 2017

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

Purpose

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

¹ Fly-tipping refers to illegal depositing of C&D materials, which is often associated with haphazard and casual dumping from vehicles. Fly-tipped C&D materials are usually scattered, left in heaps, and in small quantities. Most of these illegal dumping activities take place in urban built-up areas at locations with good vehicular access, such as at kerb sides or side roads branched off from main roads.

² Land filling refers to depositing or placement of C&D waste as fill material on land, which results in an elevation of ground level. Land filling activities are usually carried out for purposes of filling up ponds, levelling off uneven ground surfaces, forming sites for development, stockpiling in the form of a fill bank, or depositing of C&D waste onto land as dumping ground.

Background

Construction waste

2. As defined under section 2 of the Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Cap. 354N), construction waste, in essence, means generally any substance, matter or thing that is generated from construction works and abandoned. The majority of construction waste is inert and may be reused as construction materials. It has been the Government's policy to encourage on-site sorting of C&D materials by works contractors to reuse reusable inert materials in suitable projects. As for mixed construction waste containing non-inert C&D materials, they may only be disposed of at the landfills.

Construction Waste Disposal Charging Scheme

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

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

Statutory control against fly-tipping and illegal land filling

4. While disposal of construction waste is subject to a statutory charge under CWDCS, some free-riders seek to evade the charge through fly-tipping and illegal land filling. Various existing legislation, administered by different government

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

departments, may be applied to deter illegal land filling and fly-tipping of construction waste (**Appendix I**).

5. To regulate the depositing or dumping of construction waste on private land, the Environmental Protection Department ("EPD") has implemented a prior notification mechanism under the Waste Disposal (Amendment) Ordinance 2013 since 4 August 2014.⁴ It requires a person to obtain the written permission of the landowners given in a specified form and submit it to EPD before the intended date of the deposition. After receiving the submission, EPD will inform the relevant departments of the proposed deposition. This is to enable relevant departments to take follow-up actions under their respective purview and to ensure that the proposed deposition will comply with the relevant legislative requirements. Section 16A(1) of the Waste Disposal Ordinance (Cap. 354) ("WDO") provides that a person commits an offence if the person deposits or causes or permits to be deposited waste (including construction waste) in any place except with lawful authority or excuse, or except with the permission of any owner or lawful occupier of the place.

Director of Audit's Report No. 67

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

7. The Audit Report had been considered by the Public Accounts Committee of LegCo ("PAC").⁵ At the request of PAC, the Administration had provided written responses regarding the review of the level of charges under CWDCS, the guidelines on factors for consideration in taking prosecution actions against persons not complying with the requirements, measures to prevent and detect illegal dumping, etc.

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

⁵ PAC did not hold any public hearing on the subject of management of abandoned C&D materials in relation to the Audit Report.

Investigation by the Ombudsman

8. In recent years, there have been frequent occurrences of fly-tipping and illegal land filling activities. In particular, the development of the soil fill near Kingswood Villas in Tin Shui Wai, which involved unauthorized land filling, has drawn criticism that the enforcement actions taken by the departments concerned were futile and ineffective. The Ombudsman announced on 16 November 2016 that it would initiate a direct investigation against EPD, Planning Department ("PlanD"), and Agriculture, Fisheries and Conservation Department regarding Government's control over land filling and fly-tipping activities on private land,⁶ and identify inadequacies in the current legal framework, system and enforcement regime.

New measures to combat fly-tipping of construction and demolition materials

9. To explore new approaches to enhance detection of illegal dumping of C&D waste, EPD launched a trial scheme of setting up surveillance cameras at 12 selected black spots under the Keep Clean 2015 Campaign during late August 2015 to February 2016. EPD is conducting an overall review of the trial scheme. EPD is also examining the possibility of adopting global positioning system ("GPS") at C&D waste collection vehicles to prevent fly-tipping of C&D waste more effectively.

10. At present, the Government has implemented a trip ticket system ("TTS") in public works projects, which is a recording system that helps track the movement of C&D waste generated, and hence prevent illegal dumping. EPD is working with some public organizations which undertake major works projects to promote the adoption of TTS in these projects.

Major views and concerns expressed by Members

11. On 25 February 2013, 25 April 2016 and 19 December 2016, the Panel on Environmental Affairs ("EA Panel") discussed measures to tackle fly-tipping and illegal land filling activities. Related issues were raised at the EA Panel meeting on 21 December 2015 in connection with the Administration's proposal to increase

⁶ According to the Ombudsman, the ambit of the investigation covers the powers, responsibilities, mechanisms and procedures of those departments regarding the control of land filling and fly-tipping activities on private land. The Ombudsman will also examine the departments' enforcement actions and their outcomes.

the various charges for disposal of construction waste. A subcommittee of LegCo was formed in May 2016 to study the relevant subsidiary legislation. The major views and concerns expressed by Members on the subject are summarized in the ensuing paragraphs.

Measures to prevent fly-tipping and illegal land filling

12. Members expressed concerns about the ineffectiveness of existing measures to combat fly-tipping and illegal land filling in Hong Kong. There were also concerns that the problem might worsen after implementation of the new charges for construction waste disposal. Members enquired about the progress in considering mandatory use of GPS at C&D waste collection vehicles to combat the problem.

13. The Administration advised that, through the pilot trials, it was affirmed that the GPS technology was technically mature and there were affordable applications in the market. Mandatory use of GPS at C&D waste collection vehicles might help track and log the activities of the vehicles, which might in turn deter fly-tipping of C&D waste and facilitate monitoring/investigation. Having regard to experience gained from the trials, EPD was drawing up the operational details of the regulatory regime, and would consult the trade further. The Administration also advised that based on the legal advice from the Department of Justice, personal privacy issues arising from such use of GPS could be addressed by ensuring that the usage for tracking dump trucks was solely for the purpose of law enforcement.

14. Members also urged the Administration to consider increasing the penalties for fly-tipping and illegal land filling so as to enhance the deterrent effect. The Administration considered that the existing penalties were appropriate and it would continue to explore feasible measures to enhance the effectiveness of law enforcement. In response to members' request, the Administration had provided supplementary information on the maximum penalties against illegal land filling and fly-tipping of C&D waste, the number of prosecutions and convictions made, and the penalties imposed on convicted cases from 2013 to mid-2016.⁷

⁷ Please refer to Annex I to the Administration's written responses on issues arising from the meeting on 19 December 2016 issued on 20 February 2017 (LC Paper No. CB(1)573/16-17(02)).

Shortcomings of the existing regulatory regime

Inter-departmental coordination

15. Members opined that the involvement of various ordinances which straddled the ambits of different government departments under the existing regulatory regime against illegal land filling and fly-tipping of C&D waste had undermined enforcement capability. Departments concerned might only take actions within their own purview without making concerted and coordinated efforts in enforcement. The Administration stressed that EPD had been coordinating efforts of nine relevant departments in combating illegal dumping of C&D waste. Since the introduction of a prior notification mechanism under WDO, the Administration was able to alert other relevant government departments in advance so that the latter could take follow-up actions in ensuring that the proposed deposition would comply with the relevant legislative requirements.

Effectiveness of prior notification mechanism under the Waste Disposal Ordinance

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

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

Regulatory powers of the Planning Department

18. Some Members observed that the Town Planning Ordinance (Cap. 131) ("TPO") appeared to have limited the regulatory powers of PlanD in respect of land use covered by Development Permission Area ("DPA") plans (or any Outline Zoning Plans subsequently drawn up as their replacements). They urged the Administration to plug the loopholes in TPO by extending PlanD's regulatory control over unauthorized land filling activities on areas outside DPAs.

19. The Administration reiterated that in imposing planning control through designation of DPAs, it was necessary to strike a balance between nature conservation and protection of private property rights. When taking relevant enforcement actions, reference would be made to the baseline environmental conditions of the lot of land involved as appropriate.

Public monitoring and detection of illegal land filling activities

20. Some Members urged the Administration to comprehensively review the extent of land information that should be made available to facilitate public monitoring and detection of illegal land filling activities. The Administration took note of the suggestion and indicated that the Lands Department had maintained and kept updating relevant land information for land management. Information such as land boundaries and aerial photos, etc. could be provided upon request if the location of the lot of land concerned could be clearly specified.

Council questions

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

Recent development

22. At the special meeting on 3 March 2017, EA Panel will meet with deputations and the Administration on measures to combat illegal land filling and fly-tipping of C&D waste.

Relevant papers

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

Council Business Division 1
Legislative Council Secretariat
28 February 2017

Statutory control over illegal land filling and fly-tipping activities

Illegal land filling and fly-tipping activities are regulated by various environmental, land management, planning, drainage, public health or country park legislations which are enforced by a number of Government departments.

1. Environmental Protection Department ("EPD"): <i>Waste Disposal and Pollution Control</i>	
Waste Disposal Ordinance (Cap. 354)	Enforce against illegal land filling and fly-tipping activities for waste deposition on Government land, or on private land without the consent of the land owners or lawful occupiers.
Air Pollution Control Ordinance (Cap. 311), the Noise Control Ordinance (Cap. 400) and the Water Pollution Control Ordinance (Cap. 358)	Control dust emission, noise and wastewater discharges arising from illegal land filling activities.
2. Lands Department : <i>Land management</i>	
Land (Miscellaneous Provisions) Ordinance (Cap. 28)	To remove construction and demolition ("C&D") waste illegally dumped on unallocated Government land excluding Government land under the control of other Government departments where formal land allocation is not required as unlawful occupation.
3. Planning Department : <i>Planning control</i>	
Town Planning Ordinance (Cap. 131)	Enforce against unauthorized land filling activities falling within the Development Permission Areas ("DPAs") in the rural area when provisions of statutory plans are not complied with. (Planning permission from the Town Planning Board is required for land filling mainly in conservation-related zones, "Green Belt" and "Agriculture" zones within DPAs.)

4. Food and Environmental Hygiene Department ("FEHD"): <i>Environmental Hygiene</i>	
Public Health and Municipal Services Ordinance (Cap.132)	Enforce against the responsible person if filling or dumping of C&D waste on a particular piece of private land gives rise to sanitary nuisance. Also against deposition that leads to an accumulation of water resulting in breeding of mosquitoes.
Public Cleansing and Prevention of Nuisances Regulation (Cap.132BK).	Against the registered owner or hirer of the specified vehicle for littering offences.
5. Buildings Department: <i>Slope Safety</i>	
Buildings Ordinance (Cap. 123)	Enforce against dangerous slope on private land arising from land filling activities.
6. Agriculture, Fisheries and Conservation Department ("AFCD"): <i>Country Park management</i>	
Country Parks and Special Areas Regulations (Cap. 208A)	Enforce against illegal dumping on Government land within country parks and special areas.
7. Drainage Services Department : <i>Flood control</i>	
Land Drainage Ordinance (Cap.446)	Gain access onto private land to remove illegal structure that causes stormwater drainage obstructions to designated watercourses so as to control flooding.

Note: Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570) is also being applied by Government departments (Hong Kong Police Force, Housing Department, Leisure and Cultural Services Department, Marine Department, AFCD, EPD and FEHD) to tackle certain public cleanliness offences including littering and minor waste deposition.

[Source: Adapted from Annex I to LC Paper No. CB(1)295/16-17(03)]

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

List of relevant papers

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

Date of meeting	Event	Papers
		<p>Background brief on soil fill and suspected illegal land filling near Kingswood Villas in Tin Shui Wai prepared by the Legislative Council Secretariat (LC Paper No. CB(1)817/15-16(06))</p> <p>Minutes of meeting (LC Paper No. CB(1)1005/15-16)</p>
11 May 2016	Waste Disposal (Charges for Disposal of Construction Waste) Regulation (Amendment of Schedules) Notice 2016 tabled at the Council meeting	<p>Legislative Council Brief (File Ref: EP CR 9/65/7)</p> <p>Legal Service Division Report (LC Paper No. LS52/15-16)</p> <p>Report of the Subcommittee (LC Paper No. CB(1)1039/15-16)</p>
19 December 2016	Meeting of EA Panel	<p>Administration's paper on actions to combat illegal land filling and fly-tipping of construction and demolition waste LC Paper No. CB(1)295/16-17(03)</p> <p>Administration's response on actions to combat illegal land filling and fly-tipping of construction and demolition waste LC Paper No. CB(1)573/16-17(02)</p> <p>Background brief on the control against illegal land filling and fly-tipping of construction and demolition waste prepared by the Legislative Council Secretariat (LC Paper No. CB(1)295/16-17(04))</p> <p>Minutes of meeting (LC Paper No. CB(1)504/16-17)</p>

Date of meeting	Event	Papers
23 January 2017	Policy briefing of EA Panel	Administration's paper on 2017 Policy Address - policy initiatives of Environment Bureau: environmental protection LC Paper No. CB(1)451/16-17(01)
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Hyperlinks to relevant Council Questions:

Date	Council Question
5 June 2013	Press release on Council question (written) raised by Dr CHIANG Lai-wan
3 December 2014	Press release on Council question (written) raised by Dr Elizabeth QUAT
8 July 2015	Press release on Council question (written) raised by Mr CHAN Han-pan

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

Date of letter	Letters
8 March 2016	<p>Letter from Mr LEE Cheuk-yan requesting the Panel on Environmental Affairs to discuss issues arising from suspected fly-tipping of construction waste and illegal land filling in Tin Shui Wai (Chinese version only) (LC Paper No. CB(1)670/15-16(01))</p> <p>The Administration's written response (LC Paper No. CB(1)723/15-16(01))</p>
9 March 2016	<p>Letter from Mr LEUNG Che-cheung requesting the Panel on Development to discuss issues arising from suspected illegal soil dumps (Chinese version only) (LC Paper No. CB(1)672/15-16(01))</p> <p>The Administration's written response (LC Paper No. CB(1)725/15-16(01))</p>
30 March 2016	<p>Joint letter from Dr KWOK Ka-ki, Mr Frederick FUNG, Dr Fernando CHEUNG, Mr Alan LEONG, Mr Alvin YEUNG and Mr Dennis KWOK requesting the Panel on Development to a hold joint-Panel meeting to discuss issues related to illegal dumping of soil in the New Territories (Chinese version only) (LC Paper No. CB(1)769/15-16(01))</p>
22 April 2016	<p>Letter from Dr Kenneth CHAN Ka-lok on illegal land filling at or near the Deep Bay Wetland (Chinese version only) (LC Paper No. CB(1)839/15-16(01))</p> <p>The Administration's written response (LC Paper No. CB(1)948/15-16(01))</p> <p>Letter from Mr LEUNG Che-cheung on issues relating to the soil fill near Kingswood Villas in Tin Shui Wai (Follow-up paper) (Chinese version only) (LC Paper No. CB(1)847/15-16(01))</p>

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

Hyperlink to relevant documents:

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