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Panel on Environmental Affairs

Meeting on 26 March 2018

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 illegal land filling,¹ and fly-tipping of construction and demolition ("C&D") waste 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 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.

² 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.

Background

Construction and demolition 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 C&D 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 C&D waste containing non-inert 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 C&D waste producers to reduce waste and practise sorting. The current disposal charges are as follows:³

Types of construction waste disposal charge	Charge (per tonne)
Landfill charge	\$200
Sorting charge	\$175
Public fill charge	\$71

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

4. While disposal of C&D 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 departments, may be applied to deter illegal land filling and fly-tipping of C&D waste (**Appendix I**).

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 disposal charges have been increased to these levels with effect from 7 April 2017. Under the existing arrangement, landfill charge is also imposed on the disposal of C&D waste at the refuse transfer stations on the outlying islands. Other refuse transfer stations do not accept C&D waste.

5. To regulate the depositing or dumping of C&D waste on private land, the Environmental Protection Department ("EPD") has implemented a prior notification mechanism under the Waste Disposal Ordinance (Cap. 354) ("WDO") since 4 August 2014. 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 WDO provides that a person commits an offence if the person deposits or causes or permits to be deposited waste (including C&D 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 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").⁴ 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.

Investigation by the Ombudsman

8. The Ombudsman announced on 16 November 2016 that it would initiate a direct investigation into Government's control over fly-tipping of construction

⁴ PAC did not hold any public hearing on the subject of management of abandoned C&D materials in relation to the Audit Report.

waste and land filling activities on private land,⁵ and identify inadequacies in the current legal framework, system and enforcement regime. Based on the findings of the investigation report released on 1 February 2018, the Ombudsman has made a number of recommendations to the departments concerned. The recommendations are set out in **Appendix II**.

New or enhanced measures to combat illegal land filling and fly-tipping of construction and demolition waste

Interdepartmental coordination mechanism

9. EPD has coordinated an interdepartmental meeting with nine concerned Government departments to exchange intelligence and gather information regarding illegal land filling and fly-tipping cases.⁶ EPD and various departments also conduct an annual review of actions taken against illegal dumping of C&D waste and uploaded a list of land filling and fly-tipping black spots onto EPD's website to facilitate monitoring of these black spots by members of the public.

Installation of surveillance camera system at black spots

10. EPD launched a trial scheme of setting up surveillance cameras at 12 selected black spots of illegal dumping of C&D waste under the Keep Clean 2015 Campaign during late August 2015 to February 2016. EPD completed an overall review of the trial scheme and concluded that installation of surveillance cameras at the black spots would generally help gather information for identification of offenders on dumping from waste collection vehicles and enhance the deterring effect at the black spots. Based on the experience and results of the trial scheme, EPD is working on the installation of surveillance camera systems in phases at suitable black spots.

⁵ The ambit of the investigation covered the powers, responsibilities, mechanisms and procedures of those departments regarding the control of fly-tipping of construction waste and land filling activities on private land. The Ombudsman also examined the departments' enforcement actions and their outcomes.

⁶ The nine concerned Government departments are Agriculture, Fisheries and Conservation Department, Buildings Department, Civil Engineering and Development Department, Drainage Services Department, Food and Environmental Hygiene Department, Highways Department, Home Affairs Department, Lands Department and Planning Department.

Mandatory use of global positioning system at construction and demolition waste collection vehicles

11. 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. Through pilot trials, it has been affirmed that the GPS technology is technically mature and there are affordable applications in the market. Mandatory use of GPS at C&D waste collection vehicles may help track and log the activities of the vehicles, which may in turn deter fly-tipping of C&D waste and facilitate monitoring/investigation. Having regard to experience gained from the trials, EPD is drawing up the operational details of the regulatory regime, and will consult the trade further.

Adoption of trip ticket system

12. The Government has been implementing a trip ticket system 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 the system in these projects.

Major views and concerns expressed by Members

13. The Panel on Environmental Affairs ("EA Panel") discussed measures to tackle illegal land filling and fly-tipping of C&D waste at the meetings held on 25 February 2013, 25 April 2016 and 19 December 2016, and received public views on the matter at a special meeting on 3 March 2017. Related issues were raised at the EA Panel meeting on 21 December 2015 in connection with the Administration's proposal to increase the various charges for disposal of C&D waste, and 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.

Penalties to deter illegal land filling and fly-tipping of construction and demolition waste

14. Members urged the Administration to consider increasing the penalties for illegal land filling and fly-tipping of C&D waste so as to enhance the deterrent effect. They also urged EPD to consider measures to assist the courts in considering and imposing heavier fines, including sharing the evidence collected

by surveillance cameras with other relevant Government departments for taking legal actions against such activities and lodging appeals for increasing penalties against the persons convicted of illegal dumping of C&D waste.

15. The Administration considered that the existing penalties were appropriate and the relevant Government departments would continue to explore feasible measures to enhance the effectiveness of law enforcement. EPD would continue to provide more information on the environmental impact caused by illegal land filling for reference by the courts for imposing appropriate penalties. EPD would also share with other relevant Government departments the evidence collected through surveillance cameras or other sources for enforcement purposes, and would liaise with the Department of Justice on the appropriateness of filing appeals for imposing heavier penalties on the convicts where appropriate.

Inter-departmental coordination

16. 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 concerned Government 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 the 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.

Land filling activities on private land

17. Members criticized that there might be loopholes in legislation 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 Government 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.

18. The Administration explained that it was not practicable to subject the depositing of C&D 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.

Regulatory powers of the Planning Department

19. Some Members observed that the Town Planning Ordinance (Cap. 131) ("TPO") appeared to have limited the regulatory powers of the Planning Department 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 the Planning Department's regulatory control over unauthorized land filling activities on areas outside DPAs.

20. The Administration advised that TPO empowered the Planning Authority to enforce against unauthorized developments within the DPAs in the rural New Territories. Prior planning permission from the Town Planning Board was required for land filling in conservation related zones such as "Sites of Special Scientific Interest", "Conservation Area", "Coastal Protection Area" as well as "Green Belt" and "Agriculture" zones within DPAs. The Planning Authority could only take enforcement actions against unauthorized land filling activities falling under these zonings within the DPAs in the rural New Territories if no planning permission had been obtained. In imposing planning control through designation of DPAs, it was necessary to strike a balance between nature conservation and protection of private property rights.

Public monitoring and detection of illegal land filling activities

21. 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 advised that the Lands Department operated a Land Information System for maintaining the territory-wide digital map and land information databases to facilitate various land administration functions. Members of the public might search for the approximate locations and boundaries of individual private land lots through the GeoInfo Map on the Internet. The Lands Department also maintained a repository on aerial photos covering the whole territory of Hong Kong. Members of the public might purchase these aerial photos from the map sales counter or through the Hong Kong Map Service Website. Subject to availability of resources, the Lands Department might also provide photogrammetric survey

services to relevant Government departments to facilitate their monitoring of and enforcement against suspected or confirmed cases of illegal land filling under their respective purview.

Council questions

22. At the Council meetings of 5 June 2013, 3 December 2014, 8 July 2015 and 21 March 2018, Dr CHIANG Lai-wan, Dr Elizabeth QUAT, Mr CHAN Han-pan and Mr LEUNG Yiu-chung raised questions respectively relating to disposal of C&D waste and measures to combat fly-tipping of such waste. The questions and the Administration's replies are hyperlinked in **Appendix III**.

Latest development

23. At the meeting on 26 March 2018, the Administration will update the EA Panel on the enforcement actions to combat illegal land filling and fly-tipping of C&D waste and the latest progress in the development of measures to facilitate enforcement.

Relevant papers

24. A list of relevant papers is set out in **Appendix III**.

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), Noise Control Ordinance (Cap. 400) and 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)	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\(03\)](#)]

Recommendations made by the Ombudsman based on the findings of its direct investigation into Government's control over fly-tipping of construction waste and land filling activities on private land

Recommendations to the Environmental Protection Department:

- to reallocate or augment resources to step up inspections and enforcement action outside office hours and on weekends and holidays as necessary;
- to draw up proactive inspection plans for stronger actions against fly-tipping activities;
- to take greater initiative to coordinate with other Government departments, enhance communication through inter-departmental meetings and arrange joint enforcement operations as and when necessary;
- to expedite the study on the operational details of the mandatory use of global positioning system technology on construction waste collection vehicles, and push forward with the necessary amendments to the relevant legislation without delay;

Recommendations to the Planning Department:

- to review the enforcement procedures to avoid unnecessary repeat inspections, and to take resolute further enforcement actions against offenders who delay their compliance with Reinstatement Notices ("RNs");
- to alert the court to the seriousness of the problem in cases of a serious nature, and seek more severe penalties in terms of heavier fines for stronger deterrent effect; and
- to review the factors to be considered in drawing up RNs; where sites of ecological/conservation value are involved, to require the RN recipients as far as possible to fully reinstate the sites to their original state in order to achieve the purpose of conservation.

[Source: Adapted from the executive summary of the Ombudsman's direct investigation report on Government's control over fly-tipping of construction waste and land filling activities on private land released on 1 February 2018]

**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> <p>Background brief on soil fill and suspected</p>

Date of meeting	Event	Papers
		<p>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))
----	Consideration by the Public Accounts Committee	Public Accounts Committee Report No.67 tabled on 15 February 2017 Chapter 4 on "Management of abandoned construction and demolition materials"
3 March 2017	Special 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 the measures to combat illegal land filling and fly-tipping of construction and demolition waste (LC Paper No. CB(1)1027/16-17(02))</p> <p>Updated 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)622/16-17(01))</p> <p>Minutes of special meeting (LC Paper No. CB(1)1122/16-17)</p>

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
21 March 2018	Press release on Council question (written) raised by Mr LEUNG Yiu-chung

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

Date of letter	Letters
8 March 2016	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)) The Administration's written response (LC Paper No. CB(1)723/15-16(01))
9 March 2016	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)) The Administration's written response (LC Paper No. CB(1)725/15-16(01))

Date of letter	Letters
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 hold a 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>

Hyperlink to relevant documents:

Organization	Document
Audit Commission	<p>Director of Audit's Report No. 67 published on 28 October 2016</p> <p>Chapter 4 on "Management of abandoned construction and demolition materials"</p>
Ombudsman	<p>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"</p>
Ombudsman	<p>Direct investigation report on Government's control over fly-tipping of construction waste and land filling activities on private land (Chinese version only)</p> <p>Executive summary of the report</p>