



嘉道理農場暨植物園公司  
Kadoorie Farm & Botanic Garden Corporation

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

23rd March, 2018.

**By email only**

Dear The Hon. Tanya CHAN,

**Enforcement against illegal land-filling and fly-tipping of construction waste**

1. We refer to the captioned agenda item to be discussed in your panel on next Monday.
2. We would like to provide you with our submission to the Office of the Ombudsman regarding the same issue in response to their Public Consultation Exercise<sup>1</sup>. Please see **Appendix 1**.
3. As mentioned in our submission, we request that a Subcommittee should be set up under your Panel to continue the discussion regarding the captioned.
4. Should you have enquires, please feel free to contact us.
5. Thank you for your attention.

Ecological Advisory Programme  
Kadoorie Farm and Botanic Garden

cc. The Hon. Chu Hoi-dick, The Hon. LEUNG Yiu-chung, Dr. Hon. Fernando CHEUNG Chiu-hung, Dr. Hon. KWOK Ka-ki, Designing Hong Kong, Hong Kong Bird Watching Society, Save Lantau Alliance, The Conservancy Association, WWF-HK

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<sup>1</sup> <http://www.info.gov.hk/gia/general/201611/16/P2016111500557.htm>



嘉道理農場暨植物園公司  
Kadoorie Farm & Botanic Garden Corporation

The Office of The Ombudsman  
30/F, China Merchants Tower,  
Shun Tak Centre, 168-200 Connaught Road,  
Central, Hong Kong

(Email: complaints@ombudsman.hk)

15th December, 2016.

**By email only**

Dear Sir/ Madam,

**Ombudsman seeks public views and information on Government's control over  
landfilling and fly-tipping activities on private land**

1. We welcome this initiative of the Office of the Ombudsman to investigate and proactively seek public views regarding the captioned activities.
2. These activities which have been under the spot light of the Government, the media, environmental NGOs (eNGOs) and the general public for many years are widespread in the New Territories, and, are continuously destroying our rural countryside including areas of very high ecological and conservation importance. In addition, many farmlands, which are supposed to be for growing crops (i.e., providing food to the public), are also affected and lose their capacity for the production of agricultural outputs. We consider that the current situation is highly undesirable, and the Government, definitely, should and can do better to solve this problem. Unfortunately, we have not seen any real improvements, notwithstanding that this problem has been discussed between the authorities and the law-makers as well as in public forums for more than ten years, and some ordinances/ regulations have even been amended to tackle this issue.
3. In this letter, we would like to provide a brief background of these activities, share our insights and experience using some classic cases as examples, as well as, provide our views on how to tackle the problem and our predictions for the future trend of these activities.

## Background

### Role of the Planning Department

4. The recent incidents at Tin Shui Wai<sup>1</sup> and Wang Chau<sup>2</sup> should have reminded the public and the Ombudsman about the ‘Melhado’ case which happened in the 1980s (see reports<sup>2, 3, 4, 5</sup> for the background and the judgment<sup>6</sup>). The consequences of this case is that many rural areas in the New Territories started to become degraded (e.g., farmlands turned into open storage areas) because of the loss of land use control (2, 3, 4, also see article #1 of 7). In 1991, the Government introduced the concept of the Development Permission Area (DPA) Plan into the Town Planning Ordinance (TPO). The implementation of the amended Ordinance enabled the enforcement power of the Planning Department (PlanD) to become strengthened. At present, the PlanD has the power to carry out enforcement actions against unauthorised activities, including landfilling/ filling of pond, and to request the relevant party (usually the land owner) to reinstate the affected area. Under certain statutory land use zonings, planning permission from the Town Planning Board (TPB) should also be obtained before carrying out these activities (e.g., filling of land). However, the PlanD has no enforcement power in areas with no (or have not been previously covered with) DPA plans, and has also been frequently criticised by members of the public for not carrying out enforcement action in a prompt and effective manner (e.g., 8, 9). The PlanD, also, seemingly does not have the essential expertise to oversee how a proper reinstatement should be done, although it is the authority which issues reinstatement and compliance notices (following upon the enforcement notice). This makes the so-called reinstatement, meaningless, in terms of safeguarding the environment (see 10; see also

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<sup>1</sup> <http://www.legco.gov.hk/yr15-16/chinese/panels/ea/papers/ea20160425cb1-1068-1-c.pdf>

<sup>2</sup> <http://hk.apple.nextmedia.com/realtime/news/20161031/55847911>

<sup>3</sup> <http://hk.apple.nextmedia.com/news/art/20160405/19557916>

<sup>4</sup> <https://ecyyedu.wordpress.com/2009/01/20/judicial-review-on-planning-issue-3-unreasonableness-melhado-case/>

<sup>5</sup> <http://www.legco.gov.hk/yr06-07/english/panels/plw/papers/plw0424cb1-1410-5-e.pdf>

<sup>6</sup> [http://legalref.judiciary.gov.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=15259&QS=\(%24Melhado\)&TP=JU](http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=15259&QS=(%24Melhado)&TP=JU)

<sup>7</sup> <http://www.hkwildlife.net/Forum/viewthread.php?tid=53282&extra=page%3D1>

<sup>8</sup> <http://hk.apple.nextmedia.com/news/art/20161005/19791377>

<sup>9</sup> <http://cablenews.i-cable.com/ci/videopage/news/480780/%E5%8D%B3%E6%99%82%E6%96%B0%E8%81%9E/%E7%92%B0%E5%9C%98%E6%89%B9%E6%94%BF%E5%BA%9C%E8%99%95%E7%90%86%E9%9D%9E%E6%B3%95%E5%A1%AB%E5%A1%98%E5%9F%B7%E6%B3%95%E4%B8%8D%E5%8A%9B>

<sup>10</sup> <http://www.hk01.com/%E6%B8%AF%E8%81%9E/15137/-%E9%9D%9E%E6%B3%95%E6%B3%A5%E9%A0%AD%E5%B1%B1-%E6%B3%A5%E9%A0%AD%E5%8A%AB%E5%BE%8C%E5%81%87%E9%82%84%E5%8E>

below the Kam Tin case)

### Role of the Environmental Protection Department

5. From a layman's point of view, the Environmental Protection Department (EPD), under the Waste Disposal Ordinance (WDO), should have the power to solve the issue of the dumping of 'construction waste' on private land. Unfortunately, based on our experience, this is more complicated than generally thought. According to the WDO, rock, rubble, boulder, earth, soil, sand, concrete, asphalt, brick, tile, masonry or used bentonite are considered to be 'inert construction waste' (Cap. 354N, Schedule 5). But Section 16 (2c) of the same Ordinance also states that the deposit of any 'inert matter' used as landfill is exempted from the prohibition of unauthorised disposal of waste.

6. Moreover, the replies received from the EPD regarding some of our complaints about land filling/ dumping of these materials (e.g., rock, soil) indicate that, in general, once the consent is given by the land owner (e.g., for storage of soil and rubbles), it would be perceived as there being no contravention to the WDO. Recently, the EPD introduced the 'prior notification procedures' under the Waste Disposal (Amendment) Ordinance 2013 (which has come into full operation since 4th August 2014)<sup>11</sup>, which requires that the person who deposits the waste needs to appropriately acquire the consent of the land owner (i.e., a 'valid permission') and an acknowledgment from the EPD (i.e., the prior notification of the deposition to the EPD). But under this system we do not see under what circumstances the EPD can refuse to issue such an acknowledgement if all legal requirements are met, e.g., valid permission and a prior notification to the authority. A Lantau resident has launched a Judicial Review (JR) against the Government challenging this system<sup>12</sup>, but the Senior Counsel for the Government has stated that this prior notification system 'already serves the function of environmental protection'<sup>12</sup>. At this point in time, the judgment for this case has not yet been released.

### Role of the Agriculture, Fisheries and Conservation Department

7. Simply speaking, the statutory role of the Agriculture, Fisheries and Conservation Department (AFCD) regarding the issue of dumping of 'waste' on private land outside the Country Parks (CPs) is not obvious and its powers seems non-existent. Based on our

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<sup>11</sup> [http://www.epd.gov.hk/epd/english/environmentinhk/waste/prob\\_solutions/wdao.html](http://www.epd.gov.hk/epd/english/environmentinhk/waste/prob_solutions/wdao.html)

<sup>12</sup> <http://www.thestandard.com.hk/section-news.php?id=174514>



correspondence with this department, their usual reply is that they would *'keep monitoring the situation'* and would refer the case to the Lands Department (LandsD). In general, our understanding is that activities like land filling, vegetation clearance or 'works' on private land especially outside the Country Parks (e.g., in Country Park Enclaves) are usually not under their purview even though they realise that the affected areas are of very high conservation importance such as Pui O. To be frank, we do not know what enforcement measures this conservation authority can really undertake or put into action regarding dumping cases on private lots outside Country Parks. It seems that, essentially, they can do nothing.

## Case Studies

### She Shan, Lam Tsuen, Tai Po

8. Staff from our organisation spotted massive landfilling activities at this site in 2003 and 2004 and reported the cases to the Government authorities. The area of concern was zoned 'Agriculture' (AGR), and it had been covered with a DPA plan. Members of the general public were highly concerned about this case<sup>13</sup>, and the Government was requested to take 'legal' action. Surprisingly, despite the large size of the area affected and the high level of media attention, nothing really constructive or practical could be done to improve the degraded site conditions. The glaring weakness and futility of the control system at that time is well-documented in the ACE (Advisory Council on the Environment) Paper 13/2004<sup>14</sup>.

### *Outcomes and Current Situation*

9. Subsequently, in order to tackle the problem, the PlanD reviewed the planning control mechanism and in 2005 the TPB agreed to amend the 'Notes for the "AGR" zone on Outline Zoning Plans (OZPs)' to stipulate that planning permission from the Board is required for any filling of land except laying of soil not exceeding a thickness of 1.2 metres for cultivation<sup>15</sup>.

10. At present, the She Shan site is fenced and largely vacant (**Figure 1**). There have been planning applications for residential development and the land owner, according to some news reports<sup>16, 17</sup>, is keen to develop the area into a residential complex. Some sectors of the public

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<sup>13</sup> [http://www.epd.gov.hk/epd/english/boards/advisory\\_council/files/ace\\_paper11\\_2004\\_e.pdf](http://www.epd.gov.hk/epd/english/boards/advisory_council/files/ace_paper11_2004_e.pdf)

<sup>14</sup> [http://www.epd.gov.hk/epd/sites/default/files/epd/english/boards/advisory\\_council/files/ace\\_paper13\\_2004\\_e.pdf](http://www.epd.gov.hk/epd/sites/default/files/epd/english/boards/advisory_council/files/ace_paper13_2004_e.pdf)

<sup>15</sup> [http://www.epd.gov.hk/epd/sites/default/files/epd/english/boards/advisory\\_council/files/ace\\_paper9\\_2005\\_e.pdf](http://www.epd.gov.hk/epd/sites/default/files/epd/english/boards/advisory_council/files/ace_paper9_2005_e.pdf)

<sup>16</sup> <http://paper.hket.com/article/104130/%E5%A4%A7%E5%9F%94%E7%A4%BE%E5%B1%B1%E6%9D%91%E8%BE%B2%E5%9C%B0%20%E6%93%AC%E5%BB%BA267%E7%8D%A8%E7%AB%8B%E5%B1%>

are highly concerned that there would be more ‘destroy first and build later’ activities/ attempts if the application for development is approved at this particular site<sup>17</sup>.

### Kam Tin, Yuen Long

11. There was once a buffalo field wetland evolved from abandoned farmlands in the Kam Tin area. It was an important habitat for rare wetland birds such as the Greater Painted Snipe and the Grey-headed Lapwing. As an eNGO dedicated to nature conservation, we considered that it was a unique habitat type in Hong Kong as it supported an uncommon bird community (please refer to Chapter 6 of our book for more details<sup>18</sup>). This area, too, is largely zoned AGR and has been covered with a DPA plan. Thus, theoretically, the PlanD can carry out enforcement action in this area. In 2003, we first reported a dumping case at this site and, unfortunately, over time this could not cease the destruction of the whole area. There were numerous dumping cases which repeatedly happened. We have reported many similar dumping episodes that occurred at this site from 2005 to 2008. Based on the information retrieved from the statutory planning portal website, there were many enforcement cases (i.e., enforcement notices issued), and, reinstatement and compliance notices were also served for these cases. Usually, the PlanD would request the relevant parties to remove the debris and ‘grass the land’ under the reinstatement notices.

### *Current Situation*

12. Based on our current observations (**Figure 2**), we consider that the Kam Tin ‘buffalo field wetland’ has already disappeared. Most of the wetland area has dried out and many areas are still obviously covered with construction wastes even those subject to enforcement actions with reinstatement and compliance notices issued by the PlanD. Some areas have re-vegetated but the plant community is dominated by weedy, exotic species (**Figure 3**). Based on the soil condition and the vegetation type, we can only now classify most of the site as waste ground – this is a habitat type with negligible ecological value. We can, categorically, say that this once unique habitat – the buffalo field wetland – has already been ecologically destroyed, i.e., no longer functioning as an important habitat for unique wetland birds; although buffaloes still inhabit the area. There were some planning applications but they were usually rejected by the TPB. Some parts of the area have become non-arable as the ground condition would not be

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<sup>17</sup> <http://hk.apple.nextmedia.com/news/art/20130513/18258191>

<sup>18</sup> Wong, L.C., V.W.Y. Lam and G.W.J. Ades. Eds. 2009. *Ecology of the Birds of Hong Kong*. Kadoorie Farm and Botanic Garden, Hong Kong Special Administrative Region.

suitable for cultivation or farming (see the reasons by the TPB to reject the planning application No. A/YL-KTN/394<sup>19</sup>).

### Ho Sheung Heung, Sheung Shui

13. Complaints from the public (and our organisation) regarding the dumping case at Ho Sheung Heung were received by the authorities in 2009<sup>20</sup>. The affected area was covered with an AGR zone<sup>20</sup> and was within the ‘Priority Site for Enhanced Conservation’ under the ‘New Nature Conservation Policy’<sup>21</sup>. The Government and the media were both highly concerned about this case<sup>22</sup>. Enforcement actions were taken by the relevant authorities including the PlanD and the EPD, and, there were successful prosecutions (for details, please see the Legislative Council (LegCo) discussion paper CB(1)1338/10-11(02)<sup>20</sup>). According to the statutory planning portal website, the PlanD’s enforcement case no. for this locality was E/NE-KTN/106.

### *Current Situation*

14. After 2009, some planning applications were submitted for building Small Houses (New Territories Exempted Houses) (e.g., A/NE-KTN/137, A/NE-KTN/156) in the area. An application (A/NE-KTN/137) was considered by the Rural and New Town Planning Committee (RNTPC, which is under the TPB) on 28th May, 2010<sup>23</sup>. Some members of the public (including a villager of Ho Sheung Heung) raised concerns regarding this application, and these comments (as documented in the minutes of the RNTPC meeting<sup>23</sup>) are reproduced, as follows:

- *One of these public comments objected to the application on ground that the site was involved in an enforcement case of illegal dumping of construction materials and considered that **the application was for regularization of illegal dumping at the site.** Similar illegal dumping of construction materials would take place should the application be approved;*

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<sup>19</sup> [http://www.info.gov.hk/tpb/en/meetings/RNTPC/Minutes/m483rnt\\_e.pdf](http://www.info.gov.hk/tpb/en/meetings/RNTPC/Minutes/m483rnt_e.pdf)

<sup>20</sup> [http://www.legco.gov.hk/yr10-11/english/panels/ea/ea\\_cft/papers/ea\\_cft0224cb1-1338-2-e.pdf](http://www.legco.gov.hk/yr10-11/english/panels/ea/ea_cft/papers/ea_cft0224cb1-1338-2-e.pdf)

<sup>21</sup> [https://www.afcd.gov.hk/english/conservation/con\\_nncp/con\\_nncp\\_list/files/8\\_Long\\_Valley\\_and\\_Ho\\_Sheung\\_Heung.pdf](https://www.afcd.gov.hk/english/conservation/con_nncp/con_nncp_list/files/8_Long_Valley_and_Ho_Sheung_Heung.pdf)

<sup>22</sup> <http://paper.wenweipo.com/2010/01/20/HK1001200022.htm>

<sup>23</sup> [http://www.info.gov.hk/tpb/en/meetings/RNTPC/Minutes/m418rnt\\_e.pdf](http://www.info.gov.hk/tpb/en/meetings/RNTPC/Minutes/m418rnt_e.pdf)

- *the second comment was from a villager of Ho Sheung Heung who raised concerns on the fact that the applicant had carried out illegal landfilling which destroyed the agricultural land and fish pond of the area; **the application was for regularization of the illegal dumping of construction waste at the site**; and complaints had been lodged to the Development Bureau and concerned Government departments. The Board should not make decision of the application until investigation results were available from the bureau and Government departments; and*
- *the third comment was from the Designing Hong Kong Limited who stated that the application site was zoned “Agriculture” (“AGR”); and the area lacked a plan for a sustainable village layout. **Approval of the application would set a disastrous precedent for “destroy first, develop later” attitude among land owners.***

15. The RNTPC had a lengthy discussion regarding this application. The Chairperson concluded that: *‘the Committee was very concerned about the community’s criticism of the so-called the “destroy first and build later” approach. However, the planning application and enforcement were under two separate statutory procedures. Under the TPO, the TPB/Committee had the statutory duties to decide on planning applications. In considering the applications, if the TPB/Committee considered that all the relevant TPB Guidelines and pertinent planning criteria had been met, it would be appropriate for the TPB/Committee to grant planning permission in a consistent manner with other similar applications **notwithstanding that there was on-going enforcement actions.** As the applicant for the current application was also the recipient of the Reinstatement Notice (RN) of an enforcement case, he had the responsibility to fulfill the requirements under the RN. As the subject application had fully met the ‘Interim Criteria’ (for consideration of Small House application), it could be approved with appropriate conditions to address the technical requirements of the concerned Government departments.’<sup>23</sup> Eventually the application was approved with conditions on the same date.*

16. In July 2011, the TPB announced in a ‘press release’ that they *‘will not tolerate any deliberate action to destroy the rural and natural environment in the hope that the Board would give sympathetic consideration to subsequent development on the site concerned.’<sup>24</sup>*

17. In 2012, we objected to another application for Small House (A/NE-KTN/156) in Ho

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<sup>24</sup> <http://www.info.gov.hk/gia/general/201107/04/P201107040255.htm>

Sheung Heung as we were concerned that the application site might have been involved in the previous landfilling case<sup>25</sup>. According to the meeting minutes of the RNTPC<sup>25</sup>, the Chief Town Planner/ Central Enforcement and Prosecution of the PlanD advised that *‘the application site occupied part of the site of a previous enforcement case where Enforcement Notice and Reinstatement Notice were issued to the concerned landowners. Compliance Notices were issued to the concerned landowners on 8.11.2011 and 9.11.2011 subsequently. The application site was currently not involved in any active enforcement cases and he had no comment on the application.’* Finally, the application was approved (with conditions) on 15th June, 2012<sup>25</sup>.

18. At present, Small Houses and a swimming pool (**Figure 4**) can be seen within the area which occupies part of the site of the enforcement case no. E/NE-KTN/106.

#### Pui O, South Lantau

19. The buffalo field wetland at Pui O (**Figure 5**) which is believed to be abandoned paddy field is largely zoned as a ‘Coastal Protection Area’ (CPA) under the Approved South Lantau Coast OZP. It provides habitats for many rare animal and plant species. It has a high conservation importance which is recognised by the AFCD<sup>26, 27, 28</sup> and the EPD<sup>29</sup>. According to a recent Environmental Impact Assessment (EIA), most of the CPA at Pui O is considered to be a marsh habitat with moderate to high ecological value<sup>30, 31</sup> (i.e., the buffalo field wetland). According to the OZP, the planning intention of this CPA is *‘to conserve, protect and retain the natural coastlines and the sensitive coastal natural environment’*<sup>32</sup>, and in general ‘any filling of land’ in this zone requires the permission from the TPB<sup>32</sup>. Unfortunately, since the area has NOT been covered with any DPA plan (the preparation of this OZP started in 1972), no enforcement action can be carried out by the PlanD and, thus, this ‘protection area’ exists only on paper without any “teeth” in the enforcement powers.

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<sup>25</sup> [http://www.info.gov.hk/tpb/en/meetings/RNTPC/Minutes/m467rnt\\_e.pdf](http://www.info.gov.hk/tpb/en/meetings/RNTPC/Minutes/m467rnt_e.pdf)

<sup>26</sup> [http://www.epd.gov.hk/epd/english/boards/advisory\\_council/files/ncsc\\_paper04\\_2009.pdf](http://www.epd.gov.hk/epd/english/boards/advisory_council/files/ncsc_paper04_2009.pdf)

<sup>27</sup> [http://www.epd.gov.hk/epd/english/boards/advisory\\_council/files/ncsc\\_paper03\\_2010.pdf](http://www.epd.gov.hk/epd/english/boards/advisory_council/files/ncsc_paper03_2010.pdf)

<sup>28</sup> [https://www.afcd.gov.hk/english/conservation/con\\_wet/streams\\_rivers\\_hk/Con\\_NSR/Ecologically\\_Important\\_Streams.html](https://www.afcd.gov.hk/english/conservation/con_wet/streams_rivers_hk/Con_NSR/Ecologically_Important_Streams.html)

<sup>29</sup> <http://www.epd.gov.hk/eia/register/study/latest/esb-209.pdf>

<sup>30</sup> [http://www.epd.gov.hk/eia/register/report/eiareport/eia\\_2462016/EIA%20HTML/Figures/5.4a-m.pdf](http://www.epd.gov.hk/eia/register/report/eiareport/eia_2462016/EIA%20HTML/Figures/5.4a-m.pdf)

<sup>31</sup> [http://www.epd.gov.hk/eia/register/report/eiareport/eia\\_2462016/EIA%20PDF/PDF/S5.pdf](http://www.epd.gov.hk/eia/register/report/eiareport/eia_2462016/EIA%20PDF/PDF/S5.pdf)

<sup>32</sup> [http://www1.ozp.tpb.gov.hk/plan/ozp\\_plan\\_notes/en/S\\_SLC\\_19\\_e.pdf#nameddest=CPA](http://www1.ozp.tpb.gov.hk/plan/ozp_plan_notes/en/S_SLC_19_e.pdf#nameddest=CPA)



20. This area has been seriously affected, every so often, by the dumping of construction wastes; some areas have even been covered with concrete pavement and structures (see photographs at **Figure 6**). Although some people may argue that the ‘materials’ shown in the photographs may not induce serious ‘pollution’ (e.g., dust, polluted effluents) to the environment, we would like to mention that deposition of these materials (including inert waste) on the buffalo field wetland simply reduces the myriad habitats where wetland animals and plants can flourish. Direct loss of wetland habitats (see illustration in **Figure 7**) is a serious and irreversible environmental impact.

21. Indeed, there is scientific evidence showing the adverse ecological impacts of filling wetlands with construction and demolition (C&D) waste<sup>33</sup> (details as outlined below).

22. Over many years, with a view to saving the Pui O buffalo field wetland, we have been sending innumerable letters/ emails to various Government departments and have even conducted on-site visits together with these departments. These departments included the PlanD, the EPD, the AFCD, the LandsD, the Drainage Services Department and the Home Affairs Department. To date, after so many years, it seems nothing much can be done to improve or reverse the on-going environmental impacts of waste dumping at Pui O. Indeed, we cannot see how any Government department can take any practical and effective action to bring about an improvement to the continued degradation of Pui O. New dumping sites have appeared and the materials on many old dumping grounds have not been removed. A summary of the replies (with regard to the situation at Pui O) of the three departments that is the subject of inquiry by the Ombudsman Office is as follows:

- PlanD: The concerned sites were not previously covered by a DPA plan; the planning authority is not empowered to take any enforcement action under the TPO.
- EPD: We noted that consent had been given by the land owner for storage of soil and rubbles, as such, contravention to the WDO could not be perceived (received in 2012).
- AFCD: We have undertaken site investigation and found that the suspected dumping and site formation activities at the locations mentioned in your email fall mainly on private lots. As such, response from LandsD regarding the legality of such activities would be more appropriate, OR, as the areas concerned are on private land, we would

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<sup>33</sup> [http://epa.oszk.hu/02500/02583/00035/pdf/EPA02583\\_applied\\_ecology\\_2014\\_02\\_457-479.pdf](http://epa.oszk.hu/02500/02583/00035/pdf/EPA02583_applied_ecology_2014_02_457-479.pdf)



not be able to pursue any further action. By copy, grateful if LandsD would check whether the filling activities had breached any land lease conditions.

#### *Current situation*

23. As aforementioned, new dumping sites have appeared and materials on old sites are still there. We are highly concerned that, after the JR case, as mentioned above, is settled, there would be even more dumping activities and the buffalo field wetland at Pui O will eventually completely disappear. There are only two remaining buffalo field wetlands in Hong Kong – Pui O and Shap Long. The other buffalo field wetland at Shap Long, South Lantau, is suffering from the same problem. As previously mentioned, the buffalo field wetland at Kam Tin, Yuen Long, has already disappeared due to uncontrollable dumping activities.

#### **Main problems identified**

24. From our observations, our numerous correspondences with the relevant authorities and the actual futile outcomes regarding various dumping cases, simply said, we consider that **the existing laws/ regulations cannot solve the problems related to landfilling and fly-tipping activities on private land.**

25. These activities not only create environmental hygiene, visual and landscape impacts but the environment, arable lands and people/ living organisms inhabiting/ visiting those places are also suffering. A TV programme recently produced by Radio Television Hong Kong (RTHK) in 2015 clearly illustrates the situation<sup>34/ 35</sup>, showing the serious threats to the natural environments (i.e., habitat loss), their function (i.e., ecosystem services) and food security (i.e., farmland loss).

26. From the numerous papers documenting the discussion for this issue, we consider that the main obstacle to progress is the, sometimes, incomprehensible, stubborn mindset of some Government departments. These Government departments simply refuse to solve the fundamental problems which are already well-known and documented. Indeed, sometimes, we can even see that the buck is passed among departments (e.g., see 34/ 35). We hope that the Ombudsman can bring about a real improvement to the current ridiculous and undesirable

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<sup>34</sup> <https://www.youtube.com/watch?v=0dpgr4bqKzY&feature=youtu.be>

<sup>35</sup> <http://programme.rthk.hk/rthk/tv/programme.php?name=tv/thisweek2014&d=2015-05-05&p=6075&e=301616&m=episode>

situation, in view of the fact that this issue has been discussed for years by various sectors of society and is of high public interest. The major problems are discussed, as below.

Dumping of construction waste would unlikely create environmental problems?

27. We are highly frustrated to learn that our ‘environmental protection authority’, the EPD, has stated: ‘*In view of the inert nature of C&D (construction and demolition) materials, the depositing of such materials on private land would unlikely create environmental problems. Such activities, if carried out with the consent of the land owners, are arguably not covered by the existing WDO and other environmental legislations. If we are to extend our power to handle such cases in question, the Administration would need to be given power to exercise control over non-environmental factors, such as visual impact and incompatibility with surrounding landscape. It is worth noting that such amendment could risk stretching the ambit of WDO beyond its scope to cover non-environmental consideration.*’<sup>36</sup> **We consider that the above statement oversimplifies or even downplays the effects of landfilling and, thus, may cause the Government and some members of the public to underestimate the impacts of these activities.** Quite simply, if the area affected is ecologically sensitive, the ecological impacts caused by the dumping of C&D materials can be disastrous, and **this, of course, constitutes a serious environmental problem!**

28. As clearly reflected from the Kam Tin case, the habitat conditions of the impacted locality would significantly change if construction waste or ‘materials’ have been dumped onto a site. Construction waste usually consists of hard materials (e.g., gravel, concrete, brick; see **Figure 2**) and these materials overlying the natural soil cover would affect the growth of plants (e.g., the root system). In such conditions, usually only weedy species can flourish. This may explain why extensive parts of the Kam Tin site are now dominated by weedy species (see **Figure 3**). Indeed, a scientific study has found that wetlands infilled with construction waste would have a higher percentage of ruderal plant communities<sup>33</sup>. Wetland animals would be affected as well. The same study found there would be fewer wetland organisms in areas affected by construction waste because of the changes in soil pH, moisture and organic content<sup>33</sup>. The Kam Tin buffalo field was once a unique habitat for wetland birds in Hong Kong<sup>18</sup> which has been destroyed because of the dumping activities (see reports from Hong Kong Bird Watching Society and other sources<sup>37, 38, 39</sup>).

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<sup>36</sup> <http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea0516cb1-1557-1-e.pdf>

<sup>37</sup> <http://www.hkbws.org.hk/BBS/viewthread.php?tid=6488&extra=page%3D1>

<sup>38</sup> <http://www.hkwildlife.net/Forum/viewthread.php?tid=38620>

29. According to the Technical Memorandum on the EIA Process (EIA Ordinance (EIAO), Cap. 499, S. 16), wetlands (e.g., freshwater marshes such as those at Pui O) are, in general, considered to be important habitat types. In terms of environmental impacts, permanent and irreversible changes (e.g., permanent habitat loss) are considered more significant than temporary and reversible effects. **Hence, we would like the Ombudsman to inquire of our environmental protection authority, if the well-documented and significant changes that have happened at the Kam Tin buffalo field cannot be considered to be an environmental problem, then, what can?** If C&D wastes are not considered to be a kind of waste when they are deposited at sensitive ecological environments or landfilling activities are not considered to be an act that would impact on the environment, then, we can simply stop and forget about this whole discussion, right now.

Can the recent minor amendments to the WDO protect the public interest?

30. After the Ho Sheung Heung case, the Government introduced the prior notification procedures into the WDO, in order to ‘*enhance the control of the dumping of construction waste on private land*’<sup>11</sup>. While these procedures can further protect the interests of the land owner, we do not consider that this can effectively protect the environment, i.e., prevent destruction of sensitive habitats. From the cases of Pui O, we see that consent from the land owners could usually be obtained such that **the amended system merely adds more administrative procedures related to the dumping process**. Under this system, the acknowledgement from the Director of Environmental Protection is only a representation that the notification of deposition activity is in compliance with Section 16B (3) of the WDO<sup>11</sup>. Most importantly, even when the site to be affected is of high conservation importance like Pui O, we cannot see **how the EPD can refuse** to issue the acknowledgement if all legal requirements and procedures are in compliance, e.g., a valid permission (consent) from the land owner(s) is obtained; all the required forms are properly completed, submitted and posted according to statutory procedures.

31. In a LegCo discussion paper on the dumping issue (CB(1)1557/07-08(01); published in 2008), the EPD stated that: ‘*...if the landowner or occupier has already given the consent, imposing further control on the depositing of inert C&D materials.....may also be considered as a disproportionate interference with private property.*’<sup>36</sup> In another LegCo paper for the same issue (CB(1)1094/09-10(01)), the EPD stated that the proposed amendment (to the WDO)

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<sup>39</sup><https://www.thestandnews.com/nature/%E9%8C%A6%E7%94%B0%E5%8D%81%E5%B9%B4%E8%AE%8A%E6%B3%A5%E7%94%B0/>

also aimed to ‘safeguard the existing interest of private landowners by preventing the abuse that arises from depositing activities on private land which are carried out without the consent of the landowners.’<sup>40</sup> From these LegCo papers, we can see that the interest of the land owner is always highlighted. **We would like the Ombudsman to ask the Government authorities, in view of the cases mentioned above and the impacts caused by many other dumping cases that have been widely reported, whether an appropriate balance between environmental protection (obviously, a matter of public interest) and the ‘right to deposit construction waste (or inert materials) as landfill’ has been struck under the current WDO?** Our view is that this balance does not exist. We also consider that the current notification mechanism under the WDO is merely another additional administrative measure to ‘rationalise/ regularise the dumping process’ and to ‘protect the landowner’ **BUT not to really protect the environment.** Furthermore, we would like the Ombudsman to take note that sometimes it is perhaps the owner himself/ herself who deposits the ‘construction waste’ on his/ her land. This has actually happened and can be seen at Pui O, and has also been reported at Ting Kok<sup>34/ 35</sup>.

32. We would like to take this opportunity to re-iterate to the Government – again – that the general public is highly concerned about the never-ending saga of dumping cases (e.g., 1, 34/ 35). This is a matter of both public record and public interest. The current system must be thoroughly reviewed as we consider that the recent amendments made to the WDO are woefully inadequate to safeguard the public interest or to protect the environment and the ecosystem services of our rural surroundings and countryside.

#### Government refuses to plug the obvious legal loophole in the planning system

33. As mentioned above, the planning authority has no enforcement power against landfilling activities in areas NOT previously covered with a DPA plan even when the areas of concern are covered with conservation zonings and such activities are clearly stated as requiring planning permission in the OZPs. This creates an unusual, contradictory and incomprehensible situation. Nevertheless, this is the reality in many areas of Hong Kong, such as:

- the entire coastal area of South Lantau;
- the entire of Lamma Island; and
- some of the rural surrounding areas in Tai Po, Ma On Shan and Tung Chung.

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<sup>40</sup> <http://www.legco.gov.hk/yr09-10/english/panels/ea/papers/ea0222cb1-1094-1-e.pdf>

34. This obvious deficiency in the TPO has indeed been discussed many times in the LegCo and, the planning authority has inexplicably strongly resisted amending the law to rectify this glaring loophole in its enforcement authority. The several main points made by the PlanD<sup>(see 41)</sup> are reproduced, as below:

- *TPO does not confer enforcement authority in respect of areas not covered by DPA Plans, including mainly the urban areas, new towns and rural townships. In practice, for most parts of these areas where development is to be facilitated rather than prohibited, introducing control against land filling in the planning permission process would unnecessarily prolong the development approval process. Besides, land uses in urban areas and new towns are much more mixed and complicated due to the density of development and the highly intermixed uses of buildings.*
- *A large percentage of land within conservation-related zones is Government Land which is already subject to control under existing legislation.*
- *There are also technical difficulties to be resolved if enforcement power were to be extended to cover these areas and the demand on staff resources would be enormous.*
- *TPO is not considered as the most appropriate tool to control land filling activities. To overhaul the planning regime to forestall a particular form of illegal or unauthorized activities would have far-reaching implications.*

35. We consider that the authority has contorted/ misunderstood what we have been urging for many years AND that is we only want rural or countryside areas to be appropriately protected. Our main areas of concern do not lie in the urban centres. Many of the rural or countryside areas are already covered with AGR zones or even conservation zonings under the OZPs (e.g., CPA at Pui O). In these zones, advocating development is definitely and clearly NOT the planning intention. There is even a **presumption against development** in conservation zonings<sup>42</sup>. **Therefore, imposing new and proper control measures in areas which already have these zonings, by no means will affect the so-called development potential or unnecessarily prolong the development approval process, in any way whatsoever, as fundamentally these areas are not intended for and are not suitable for development or**

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<sup>41</sup> [http://www.legco.gov.hk/yr08-09/english/panels/ea/ea\\_cft/reports/ea\\_cftcb1-2453-e.pdf](http://www.legco.gov.hk/yr08-09/english/panels/ea/ea_cft/reports/ea_cftcb1-2453-e.pdf)

<sup>42</sup> [http://www.pland.gov.hk/pland\\_en/tech\\_doc/hkpsg/full/ch10/ch10\\_text.htm#3](http://www.pland.gov.hk/pland_en/tech_doc/hkpsg/full/ch10/ch10_text.htm#3)



**urban expansion, in the first instance.**

36. We are aware that as a matter of course Government Land under the existing legislative framework is relatively better protected. What we would like to highlight is that **our main focus is those privately-owned areas with conservation importance**; many of these areas are flatlands or lowlands under private ownerships (e.g., active farmlands in the past), usually not within the protected area system (i.e., Country Park and Special Area), but at the same time are ‘disproportionately important in terms of biodiversity’<sup>43</sup>. These sites of course are usually not located within the centre of the ‘towns’ but are in the rural or countryside areas and many have already been covered with conservation zonings under the OZP planning framework.

37. In a study on the nature conservation framework of Hong Kong<sup>44</sup>, the following is mentioned:

- *The town planning process is another means of protecting ecologically significant sites. The Town Planning Ordinance provides several zoning types, which prevent incompatible land uses in important habitats. A key benefit is that zoning provisions can be applied on private land, ensuring the biological diversity of such areas is retained.*

38. We consider that there is an obvious loophole in the current system but the Government strongly refuses to fix it, as shown in the excuses reproduced above; the Government cannot deny that the planning system is one of the tools to protect the environment as incompatible land uses that would cause environmental impacts are not allowed in the regulations.

Lack of Proper Reinstatement – mere removal of deposited materials and grassing over of the land?

39. There were many enforcement cases (handled by the PlanD; e.g, E/YL-KTN/223, E/YL-KTN/254) in the Kam Tin buffalo field wetland (usually involving filling of land). Many of these cases were settled with reinstatement notices and compliance notices issued by the PlanD. Unfortunately, many reinstatement notices only requested the following: 1. to remove

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<sup>43</sup><http://www.scmp.com/news/hong-kong/health-environment/article/1918094/green-dream-hong-kongs-rural-leaders-and>

<sup>44</sup> Kilburn, M. and Lau, W. 2012. *Protecting Sites of Ecological Value: A Guide for Decision-makers*. Civic Exchange, Hong Kong.



the leftover materials (e.g., debris, stones, gravels, miscellaneous objects) on the land, and 2. to ‘grass’ the land (gleaned from the information obtained from the statutory planning portal website).

40. From the prevailing condition of the Kam Tin buffalo field, we would like the Ombudsman to understand that under the current reinstatement mechanism of only requiring removal of the deposited materials and grassing the land, sensitive/ sophisticated habitats cannot be really reinstated and the reinstatement results are usually unsatisfactory. It is not like-for-like reinstatement of the habitats. We would like the Ombudsman to inquire of the PlanD why the requirements in the reinstatement notices with regard to restoration of habitats are usually so simple. We would like the Ombudsman to investigate the role and inputs of the AFCD in this matter of proper restoration of degraded or destroyed habitats. As the conservation authority, does the AFCD provide all the essential information and technical expertise to assist the planning authority regarding their reinstatement requirements especially in areas with high conservation interest (e.g., in the Deep Bay fish pond areas)? Alternatively, does the PlanD actually request the AFCD to provide such information when it is formulating the reinstatement requirements? If there is no such consultation and co-ordinating mechanism, how can the planning authority have adequate conservation and ecological expertise to determine what is a proper and appropriate reinstatement of sensitive habitats affected by dumping activities? Without a proper reinstatement guided and overseen by relevant persons with scientific expertise, the ecological function of the original habitats would never be restored<sup>45</sup>.

Can ‘destroy first, build later’ activities actually be deterred under the current system?

41. In 2011, the TPB released a statement that they will ‘adopt approaches’ to deter ‘destroy first, build later’ activities<sup>24</sup>. Surprisingly, less than one year later, they approved a planning application for Small Houses in which the application site occupied part of the site of a previous enforcement case (i.e., the Ho Sheung Heung case)<sup>25</sup>, and that locality is now occupied by many Small Houses and a swimming pool (**Figure 4**).

42. According to the information retrieved from the statutory planning portal website, the level of fines relating to the enforcement case at Ho Sheung Heung (E/NE-KTN/106) ranged from HK\$5,000 to \$30,000 (under the TPO). In addition, there were eight convictions under the WDO with fines of only HK\$22,400 in total. One other defendant was also convicted and

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<sup>45</sup> [http://www.hkbws.org.hk/web/chi/documents/2014\\_HeadlineIndicatorsReport\\_eng\\_web.pdf](http://www.hkbws.org.hk/web/chi/documents/2014_HeadlineIndicatorsReport_eng_web.pdf)

fined HK\$5,000 under the WDO<sup>20</sup>. It seems that these levels of fines are almost negligible when compared to the development pressure for higher-return commercial activities. As an aside, we would like to inform you that, based on the information from a property agency, the recent selling price of a Small House (gross area: 2,100 sq. ft.) at Ho Sheung Heung could be over HK\$10 million; the selling price of a single apartment (gross area: 700 sq. ft.) of a Small House could be over HK\$4 million<sup>46</sup>.

43. Under such circumstances, there is a perverse incentive – it can be seen that dumping/landfilling could become part of a ‘destroy / site formation first, apply later’ strategy<sup>47</sup>. The Ho Sheung Heung case clearly reflects that the scenario foreseeable by some members of the public and eNGOs actually came true – from dumping to building Small House<sup>47</sup>. Can the public still believe the Government really has the will to deter ‘destroy first, build later’ activities?

### **Our Recommendations**

44. There have been numerous recommendations from various sectors of the community and most have already been well-documented by the Administration in relation to the issue of landfilling and fly-tipping activities on private land.

45. For instance, this issue has been discussed by the Panel on Environmental Affairs of the LegCo<sup>(e.g., 48)</sup> and a Subcommittee on Combating Fly-tipping was even formed under the Panel (08-12)<sup>49</sup>. Innumerable papers documenting the recommendations and responses can be found from these official websites. The public, of course, has also provided LegCo with a lot of suggestions<sup>50</sup>. Recently, a number of eNGOs also sent a joint statement to the LegCo in response to the Tin Shui Wai case<sup>51</sup>.

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<sup>46</sup><http://www.cnp.hk/eng/property.php?d=NSS&b=HO+SHEUNG+HEUNG&s=&t=&n=&c=&room=&p=&o=&e=&y=1&pt=R&agtcode=>

<sup>47</sup> <https://landjusticehk.org/fly-tipping/>

<sup>48</sup> [http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea\\_w.htm](http://www.legco.gov.hk/yr07-08/english/panels/ea/papers/ea_w.htm)

<sup>49</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>50</sup> [http://www.legco.gov.hk/yr11-12/english/panels/ea/ea\\_cft/papers/cft\\_c.htm](http://www.legco.gov.hk/yr11-12/english/panels/ea/ea_cft/papers/cft_c.htm)

<sup>51</sup> [http://www.designinghongkong.com/v4/wp-content/uploads/2016/04/Green-groups-land-justice-liber-joint-letter\\_final\\_Eng.pdf](http://www.designinghongkong.com/v4/wp-content/uploads/2016/04/Green-groups-land-justice-liber-joint-letter_final_Eng.pdf)

46. Our recommendations are largely based from the main points of these papers and submissions. Some of these ideas have been discussed for years but continue to be rejected by the Government or simply noted by the Government and responded to in a bureaucratic manner (e.g., see the Administration's Responses at 52). Basically, we consider that without clarifying the basic concepts and resolving the fundamental problems, there **would not be any real changes to effectively manage the issue of landfilling and fly-tipping activities on private land.**

Review the mechanism under the WDO of 'disposal of C&D materials'

47. There should be no doubt that 'disposal of C&D materials' on sensitive habitats can create environmental impacts. An appropriate statutory control under the environmental protection authority should be imposed; the current notification system does not give the authority the right to refuse the application for landfilling once valid permission from the landowner is obtained and all other legal requirements are fulfilled. Right now, the environmental protection authority cannot perform the duty to protect the environment (i.e., refuse the application) even if potential environmental impacts are foreseeable. Landfilling activities should not be allowed to occur haphazardly without proper assessment, justification and authorisation by the authority. We understand that we need to respect the right of the landowners but obviously this right should not override the public interest. We, thus, recommend the Government review and amend the WDO to confer the environmental protection authority with effective powers to deal with the issue of landfilling and fly-tipping activities on private land:

- The act to deposit inert matter (e.g., C&D materials or construction waste) as landfill should NOT be exempted from Section 16 of Cap. 354 (WDO), i.e., prohibition of unauthorised disposal of waste.
- Besides a valid permission from the land owner and a prior notification to the EPD, disposal of C&D materials or construction waste in areas under conservation zonings and AGR zone as defined by the planning authority and areas with known conservation importance (after consulting AFCD) should obtain planning permission and/ or authorisation from relevant departments first, even the area of concern has not been previously covered with a DPA plan. Only after the permission/ authorisation is obtained the Director of Environmental Protection can issue the acknowledgement and the materials can be deposited. [Remarks: 1. This can also help to plug the loophole in the planning system; for instance, under the Approved South Lantau Coast

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<sup>52</sup> [http://www.legco.gov.hk/yr08-09/english/panels/ea/ea\\_cft/papers/ea\\_cft0507cb1-1503-15-e.pdf](http://www.legco.gov.hk/yr08-09/english/panels/ea/ea_cft/papers/ea_cft0507cb1-1503-15-e.pdf)

OZP, landfilling in areas with conservation zonings requires planning permission (which is clearly written in the OZP); but because the land has not been covered with a DPA plan this requirement is not enforceable by the PlanD. 2. We consider that development potential of these areas would not be affected by imposing this measure as these areas, such as AGR zones and conservation zones, are not intended for development, and genuine traditional agricultural activities normally do not need hard materials like construction wastes.]

#### Reinforce the whole planning system

48. The planning authority should speed up the preparation of DPA plans for areas not yet covered by statutory plans (and not within Country Park boundary) in the rural New Territories. There are still many rural areas not protected either by statutory plans or the Country Parks system, and, some of these areas hold habitats and species of conservation interest.

49. For all places which have already been covered with an OZP but which were NOT subject to a previous designation with DPA plans (e.g., the entire South Lantau coast), measures should be implemented to extend and impose statutory planning control to the conservation zonings (i.e., Country Park, Sites of Special Scientific Interest, Conservation Area, Coastal Protection Area and Green Belt)<sup>42</sup> and AGR zones in these areas. This glaringly obvious loophole must be plugged without delay. These zones are not intended for development and the development potential in these areas would not be affected as there is a general presumption against development in conservation zonings under the OZP system<sup>42</sup>.

50. The Central Enforcement and Prosecution Section of the PlanD should be expanded with the provision of more resources and recruitment of more new staff with scientific expertise especially in the environmental field in order to increase the capacity for conducting patrols and capability for field investigations. Staff from the AFCD can also be seconded to this team.

51. The reinstatement requirements stipulated by the PlanD should also be specific, fit-for-purpose and scientifically compatible with the original degraded or destroyed habitats, i.e., there should be a like-for-like reinstatement, e.g., if a wetland is lost the reinstated habitat should be a wetland and not something else. Thus, environmental experts familiar with natural habitat types, their features and biodiversity compositions are needed for such a role. In addition, we believe that a more complex and scientifically robust technical requirement of the reinstatement order will also engender a correspondingly higher cost of the reinstatement works. This, in itself, would act to discourage dumping, in the first instance, if the subsequent

potential cost implications of re-instatement works are likely to be high. We consider that such proper reinstatement requirements will act as a deterrent to dumping activities when a like-for-like reinstatement order is actually enforced by the Authorities<sup>34/35</sup>.

A central database documenting the land status

52. A request for a database (for watercourses) has previously been made by the members of the Sub-committee on Combating Fly-tipping but the Administration has replied that there are resource implications to maintain such a database. The current use of 1:1000 survey maps and aerial photographs (as stated in 41) would not be able to provide the authority with a clear insight as to what type of habitats should be reinstated on the ground (as in the disastrous Kam Tin buffalo field example). In order to facilitate a like-for-like reinstatement, we urge that a comprehensive database documenting land status including but not limited to the following information should be maintained:

- Level (mPD level) and topography
- Habitat type
- Vegetation type
- Ground feature
- Existing land use
- Ownership
- If it is a water body, the depth of the aquatic system should be measured and recorded.

53. Such database should be initiated and maintained by the PlanD, the AFCD, the LandsD and other relevant departments such as the Drainage Services Department. The areas covered by this database should be those rural places located outside the Country Parks and Special Areas as these are already protected under the Country Parks Ordinance (Cap. 208). This should not be too difficult a task as the Government has carried out a study entitled '*Terrestrial Habitat Mapping and Ranking Based on Conservation Value*'<sup>53</sup>. Much information is already available as numerous habitat maps have also been prepared for various locations in EIA reports under the EIAO (e.g., 54). The AFCD should also have a database regarding areas of conservation importance (e.g., 55). All this information should be collated into a central database.

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<sup>53</sup> <http://www.enb.gov.hk/sites/default/files/susdev/html/en/su/C2432Final.pdf>

<sup>54</sup> [http://www.epd.gov.hk/eia/register/report/eiareport/eia\\_2462016/EIA%20HTML/Figures/5.4a-m.pdf](http://www.epd.gov.hk/eia/register/report/eiareport/eia_2462016/EIA%20HTML/Figures/5.4a-m.pdf)

<sup>55</sup> [http://www.hkecomap.net/distribution\\_detail.asp?AnimalID=5&SiteID=48&lang=eng](http://www.hkecomap.net/distribution_detail.asp?AnimalID=5&SiteID=48&lang=eng)



No more approval of ‘destroy first and build (reward?) later’ applications submitted to the TPB

54. The removal of perverse incentives is one deterrent strategy as there would be less to gain financially by dumping. The approval of Small House applications as seen in the Ho Sheung Heung case could in fact be seen as to encourage more dumping activities (e.g., 23). Indeed, we consider that the any approval for development after trashing the land is simply contradictory to what the TPB itself has announced in their own press release, i.e., not to tolerate destroy first, build later approach<sup>24</sup>.

55. A ‘Clean Record Test’ system was proposed by eNGOs, many years ago (see 23). A similar mechanism was also proposed by a Legislative Councilor (see 52). In general, this system was for the TPB not to approve a planning application submitted by an applicant who did not have a clean record (e.g., a record indicating no alleged violations or infringement of planning regulations, land lease conditions or environmental regulations for all sites owned by the applicant over the past few years). There would, of course, be administrative difficulties in implementing such test<sup>23</sup>. However, we consider that there is still a need to explore a similar system which must be supported by a reinforced planning framework (as outlined above).

56. At present, there is no real mechanism to implement what the TPB has announced<sup>24</sup>, and the existing reinstatement requirements as outlined above are usually too simple. Currently, after the compliance notice is issued (e.g., after the debris is removed and the land is ‘grassed’), there would no longer be any active enforcement status and this would mean there is ‘no unauthorised activity’ at the site. The key point is that the current reinstatement requirements should be reviewed; just removing the debris and grassing the land should not be considered to be a proper reinstatement measure. As aforementioned, an environmental baseline database should be set up and the planning authority should be given the resources to recruit personnel with the relevant expertise to monitor restoration of ‘trashed’ areas. Any planning application for a site previously affected by an unauthorised activity can be considered by the TPB only after the site has actually been properly reinstated to a satisfactory condition.

57. Guidelines should also be formulated for the TPB to consider applications in which the application sites have been subjected to unauthorised activities. In response to a previous similar request, the Administration replied that such guidelines have already been promulgated for the ‘OU (RU)’ zone<sup>52</sup> (i.e., *stipulating that any unauthorised development or environmental degradation in the hope of getting agreement from the TPB for rezoning the land for ‘OU (RU)’ zone will be subject to enforcement by the relevant authorities including the Planning Authority, and the TPB will not give sympathetic consideration when assessing the application*



for re-zoning to deter destroy first and build later approach). However, this set of guidelines does not seem to be applicable to zonings other than ‘OU(RU)’ zone<sup>(see 56)</sup>. We, thus, now urge that **a new set of guidelines** should be specifically set up for deterring ‘destroy first and build later activities’ (not just relying on statements in a press release). Furthermore, deterrent measures should be incorporated in the guidelines; for instance, once a site has been affected by unauthorised activity (e.g., enforcement notice is issued), planning applications for development at this site should not be considered within a 5-year period after the compliance notice was issued.

A committee should be set up under the auspices of LegCo

58. We are disappointed to learn that a Sub-committee relating to this issue has not been formed under the current LegCo Panel on Environmental Affairs or other Panels. Under the previous Sub-committee on Combating Fly-tipping, at least the amendment to the WDO was discussed<sup>57</sup> and we now have the prior notification system although it is debatable as to whether it is useful in protecting the environment.

59. All the cases that we have outlined in this submission to the Office of the Ombudsman and all the new cases that have arisen throughout Hong Kong clearly indicate that the land use control and environmental protection systems are still far from satisfactory. In order to rigorously pursue amendments to legislation and other Government measures to tackle the problem, a committee on combating fly-tipping under the auspices of LegCo is essential to deal with this widespread problem in the Hong Kong countryside. Indeed, a member of the previous Subcommittee even recommended that a Standing Committee of LegCo should be set up regarding the issue<sup>52</sup>.

A Government Taskforce should be set up to combat landfilling and fly-tipping activities on private land

60. As the solutions related to dumping activities fall across several Government departments with different legal and administrative powers, it is imperative that the overall approach to deal with this land control failure in the New Territories be better co-ordinated through the formation of a new joint Task Force. The Advisory Council on the Environment has also previously recommended setting up such a Task Force<sup>52</sup>. This joint Task Force can co-ordinate and oversee the strategy to deal with dumping cases and to ensure all adversely impacted sites

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<sup>56</sup> [http://www.info.gov.hk/tpb/en/forms/Guidelines/TPB\\_PG\\_38.pdf](http://www.info.gov.hk/tpb/en/forms/Guidelines/TPB_PG_38.pdf)

<sup>57</sup> [http://www.legco.gov.hk/yr10-11/english/panels/ea/ea\\_cft/reports/ea\\_cftcb1-2526-e.pdf](http://www.legco.gov.hk/yr10-11/english/panels/ea/ea_cft/reports/ea_cftcb1-2526-e.pdf)

can be appropriately reinstated to a satisfactory condition.

#### Increase penalties

61. As mentioned in our submissions to the Subcommittee on Combating Fly-tipping under the LegCo Panel on Environmental Affairs (08-12)<sup>58, 59</sup>, we consider that the fines handed down by the courts regarding illegal landfilling were far removed from a level to deter dumping (see the Ho Sheung Heung example above, and other cases mentioned in our submission<sup>59</sup>). We consider that the fines relating to these offences must be increased to a realistic level that can exert a deterrent effect and sentencing guidelines with regard to dumping of construction wastes should be formulated by the relevant authority.

#### Enforcement actions should be speeded up

62. The authorities have frequently been criticised by the public for not carrying out enforcement actions in a prompt and effective manner. For instance, a dumping case was discovered in Ting Kok, Tai Po, in 2014<sup>34/35, 60</sup>. The enforcement notice was issued in 2014 but the reinstatement notice was issued in 2016. A similar situation has also occurred in Pui O. A land lot within the CPA zone was paved with concrete and a structure appeared on the land in 2014 (see **Figure 6**). The LandsD, EPD and PlanD were informed; the Buildings Department also noticed the case and had said that they would do something about it but in June 2016, the structure was still there. We consider that the Government should seriously increase the manpower resources of various departments for tackling fly-tipping and other associated problems.

#### Extension of trip-ticket system to private projects

63. There have been numerous requests to extend the 'trip-ticket system' (TTS) to major private development projects (e.g.,<sup>57</sup>). However, the progress of this proposed extension has been slow and the LegCo Subcommittee on Combating Fly-tipping even expressed their disappointment on the delay<sup>61</sup>; the Subcommittee eventually suggested that a deadline should be set for the mandatory introduction of TTS to major private development works as mentioned in a report published in 2011<sup>57</sup>. We would strongly request that the Ombudsman follow-up on this and ask the relevant authorities, after so many years, what has been done to implement this

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<sup>58</sup> [http://www.legco.gov.hk/yr08-09/english/panels/ea/ea\\_cft/papers/ea\\_cft0507cb1-1503-7-e.pdf](http://www.legco.gov.hk/yr08-09/english/panels/ea/ea_cft/papers/ea_cft0507cb1-1503-7-e.pdf)

<sup>59</sup> [http://www.legco.gov.hk/yr09-10/english/panels/ea/ea\\_cft/papers/ea\\_cft0413cb1-1560-1-e.pdf](http://www.legco.gov.hk/yr09-10/english/panels/ea/ea_cft/papers/ea_cft0413cb1-1560-1-e.pdf)

<sup>60</sup> <http://hk.apple.nextmedia.com/news/art/20150419/19117947>

<sup>61</sup> [http://www.legco.gov.hk/yr09-10/english/panels/ea/ea\\_cft/reports/ea\\_cftcb1-2894-e.pdf](http://www.legco.gov.hk/yr09-10/english/panels/ea/ea_cft/reports/ea_cftcb1-2894-e.pdf)

suggestion. If, so far, nothing has been done nor anything is going to be done about this practical and effective suggestion, we would like the Ombudsman to investigate as to whether there has been maladministration. Furthermore, we consider that the TTS should also be extended to cover ALL private development projects (i.e, major projects and small-scale projects including renovation of domestic premises as a considerable amount of C&D wastes would also be produced from these domestic works).

Land resumption/ land exchange/ setting up conservation trust for nature conservation

64. We consider that land resumption and land exchange mechanisms are the ultimate solution to protect natural habitats on land in private ownership from dumping activities. However, such options have, generally, been deemed to be impractical by the authority<sup>62</sup>. Nevertheless, similar mechanisms have been put in place by the Government for protecting cultural heritage (e.g., land exchange for preserving King Yin Lei from demolition<sup>63</sup>). Moreover, the Government has also providing direct monetary subsidies for nature conservation. In late 2012, the trawling ban, which is aimed to protect the marine ecosystem<sup>64</sup>, came into effect and the Government provided *ex-gratia* payments to owners of fishing vessels affected by the ban, bought back trawlers and provided one-off assistance to affected fishermen/ related parties<sup>64</sup>. This whole compensation exercise would cost taxpayers HK\$1.7 billion<sup>65</sup>. More recently, in the Northeast New Territories New Development Area, land resumption would be considered by the Government to be carried out at Long Valley (which is famous for its importance to migratory water birds), for the setting up of a Nature Park<sup>66, 67</sup>. This Park is, of course, for nature conservation.

65. The setting-up of a Conservation Trust is also an idea which has been discussed for many years as a statutory vehicle for protecting sensitive environments on privately owned land<sup>43, 68</sup>. **The idea for a Conservation Trust has the support of both the eNGOs and the rural leaders<sup>43</sup>**, but the attitude of the Government seems to be very negative<sup>43</sup>. In the Subcommittee

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<sup>62</sup>[http://www.afcd.gov.hk/english/conservation/con\\_nncp/con\\_nncp\\_pnce/files/consultationdocument\\_annex\\_graphic.pdf](http://www.afcd.gov.hk/english/conservation/con_nncp/con_nncp_pnce/files/consultationdocument_annex_graphic.pdf)

<sup>63</sup> <http://www.heritage.gov.hk/en/kyl/background.htm>

<sup>64</sup> [http://www.afcd.gov.hk/english/fisheries/fish\\_cap/fish\\_cap\\_con/fish\\_cap\\_con.html](http://www.afcd.gov.hk/english/fisheries/fish_cap/fish_cap_con/fish_cap_con.html)

<sup>65</sup> <http://www.scmp.com/news/hong-kong/article/1116809/trawling-ban-means-end-era-hong-kongs-fishermen>

<sup>66</sup> [http://www.info.gov.hk/tpb/en/papers/TPB/1038-tpb\\_9392.pdf](http://www.info.gov.hk/tpb/en/papers/TPB/1038-tpb_9392.pdf)

<sup>67</sup> [http://www.nentnda.gov.hk/doc/pe/info\\_digest.pdf](http://www.nentnda.gov.hk/doc/pe/info_digest.pdf)

<sup>68</sup> <http://www.scmp.com/comment/letters/article/1079000/urgent-need-hong-kong-conservation-trust>

on Combating Fly-tipping, a Legislative Councilor recommended the authority to consider allowing land exchange or transfer of plot ratio for landowners so that they would not try to destroy the biodiversity of the land with a view to facilitating development. So far, only a bureaucratic response has been given to this recommendation<sup>52</sup>.

66. We urge the Ombudsman should emphasise that indeed these options are the ultimate solution to permanently stop dumping in sensitive habitats, and that the Government should seriously investigate again all these options.

### **Future trends, our predictions and more recommendations**

#### Development of Lantau Island and its surrounding waters

67. The Government is now very keen to develop Lantau Island and its surrounding waters, and, a committee entitled the Lantau Development Advisory Committee (LanDAC) has also been formed to promote development plans<sup>69</sup>. Currently, there are also many development proposals for Lantau Island and some will be carried out soon, e.g., the reclamation at Tung Chung East and the massive new town development at Tung Chung West<sup>70</sup>. In addition, under the 2030+ Consultation Document, an artificial island called the East Lantau Metropolis is proposed, which will join up with Mui Wo on Lantau Island. Under this 2030+ proposal (as well as the LanDAC development plans), new roads will be constructed to connect Hong Kong Island, the artificial island and Lantau Island<sup>69, 71</sup>. These projects will generate massive amounts of C&D wastes. Under the current planning status of South Lantau, if these C&D waste materials are then transported and deposited there, no enforcement action can be carried out by the PlanD; and after the land owner's consent is obtained and all the necessary forms are filled (with the prior notification to the EPD), these activities on private lots would also not be considered to be unauthorised under the WDO.

68. We are deeply concerned about the extensive 'trashing of the environment' arising on South Lantau in the foreseeable future. If the statutory loopholes as described above are not plugged, we can foresee that the whole South Lantau coast would become a massive uncontrolled open dumping ground in the near future. Indeed, some areas there are already looking like a construction wastes dump site (**Figure 8**).

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<sup>69</sup> <http://www.landac.hk/en>

<sup>70</sup> [http://www.epd.gov.hk/eia/register/report/eiareport/eia\\_2332015/MainV1\\_CH.htm](http://www.epd.gov.hk/eia/register/report/eiareport/eia_2332015/MainV1_CH.htm)

<sup>71</sup> [http://www.hk2030plus.hk/document/ELM\\_EN.pdf](http://www.hk2030plus.hk/document/ELM_EN.pdf)

69. Besides the aforementioned recommendations, we consider that the current road restrictions on vehicle access now in force on the South Lantau Road should not be relaxed in order to prevent too many vehicles especially construction and dump trucks from entering the South Lantau region.

Northeast New Territories, Hung Shui Kiu, Yuen Long South New Development Areas and brownfield sites

70. Other than forthcoming development proposals, like those in the 2030+ Consultation Document (e.g., <sup>71</sup>), there are many approved new development projects (Northeast New Territories, Hung Shui Kiu, Yuen Long South New Development Areas) and these will be implemented soon; these projects will generate massive quantities of C&D wastes. In addition, during the implementation of these new development projects, many of the existing open storage facilities that now operate within these areas (e.g., Hung Shui Kiu, Yuen Long South) would need to re-locate to other areas to continue their operations. We are concerned that, because of the need to relocate these open storages, more dumping cases (e.g., for site formation) would happen and more rural areas would be impacted. Brownfield sites would thus simply move from one area to another, potentially impacting more untouched rural areas. If the Government is not going to solve the dumping issue, brownfield sites would further spread across the rural areas in the New Territories.

Further increases in landfill charges fuel more dumping on private lots

71. The TV programme by RTHK investigated and explained why dumping ‘C&D wastes’ on private lots can be more economically beneficial to the depositors as compared to transporting them all the way for disposal at a public landfill, i.e., savings are incurred between the ‘charges’ and the reduction in traveling distance to the landfill site in terms of costs of fuel and the convenience of time. As the charges for landfill and public fill will be increased next year<sup>72</sup>, we are concerned that there will be more dumping of ‘C&D wastes’ on private land lots.

Problems of hydroponic farms/ hobby farms/ leisure farms

72. In recent years, there has been a mushrooming of hydroponic farms/ hobby farms/ leisure farms in the rural areas. While some of these are genuine farming operations, nevertheless, there are some worrisome trends in the expansion of these farming activities in the countryside (see **Figure 9**). Sometimes, people would argue that site formation (e.g., in the form of landfilling) is essential for setting up a hydroponic system, and under this circumstance the

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<sup>72</sup> <http://www.info.gov.hk/gia/general/201605/06/P201605060327.htm>

PlanD may face difficulties in carrying out enforcement action (e.g., can that be considered to be part of the planned agricultural activities (hydroponics)?). We urge that the TPB and the PlanD should formulate new guidelines (in association with the AFCD) on applications for these farms, and paving concrete/ dumping of C&D wastes (e.g., for site formation) should never be allowed in these farms.

### **Concluding Remarks**

73. Taken together with the existing malfunctions in the land use and environmental protection systems, we are highly concerned that the remaining unspoilt rural countryside would eventually disappear due to development pressure for higher-return commercial activities and by displacement of brownfield sites.

74. We believe that our representation and detailed outline of the issues should convince the Office of the Ombudsman that urgent statutory measures are needed to control landfilling and fly-tipping on private land. Since numerous mega-development projects will soon commence throughout the territory, we urge that the Government should proactively investigate and implement practical and effective measures to solve this problem and not be caught unprepared to deal with the environmental consequences which have the inevitable capacity to permanently blight our countryside. Otherwise, there will be nothing left other than dumping grounds, brownfield sites, open storage yards and Small Houses covering large expanses of the rural areas. It would be a sad indictment if one day in the future another report which re-visits and reviews this issue comes up with a story of Government intransigence, delay, inaction and environmental injustice.

75. Should the Ombudsman has any enquires regarding this issue and/ or our submission, please do not hesitate to contact us. We would be very happy to have a meeting with the Office of the Ombudsman to discuss the problems.

76. Thank you for your attention.

Ecological Advisory Programme  
Kadoorie Farm and Botanic Garden



cc. The Hon. CHU Hoi Dick  
Conservancy Association  
Countryside Foundation  
Designing Hong Kong  
Green Power  
Hong Kong Bird Watching Society  
Save Lantau Alliance  
Save Country Park Alliance  
WWF-HK

**Figure 1.** Present condition of the She Shan dumping site and its surroundings.



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Figure 1. Cont'd.



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**Figure 2.** The Kam Tin Buffalo Field – Outlook of the landscape around early 2000s and the present state of the land.





Figure 2. Cont'd.





Figure 2. Cont'd.





Figure 2. Cont'd.



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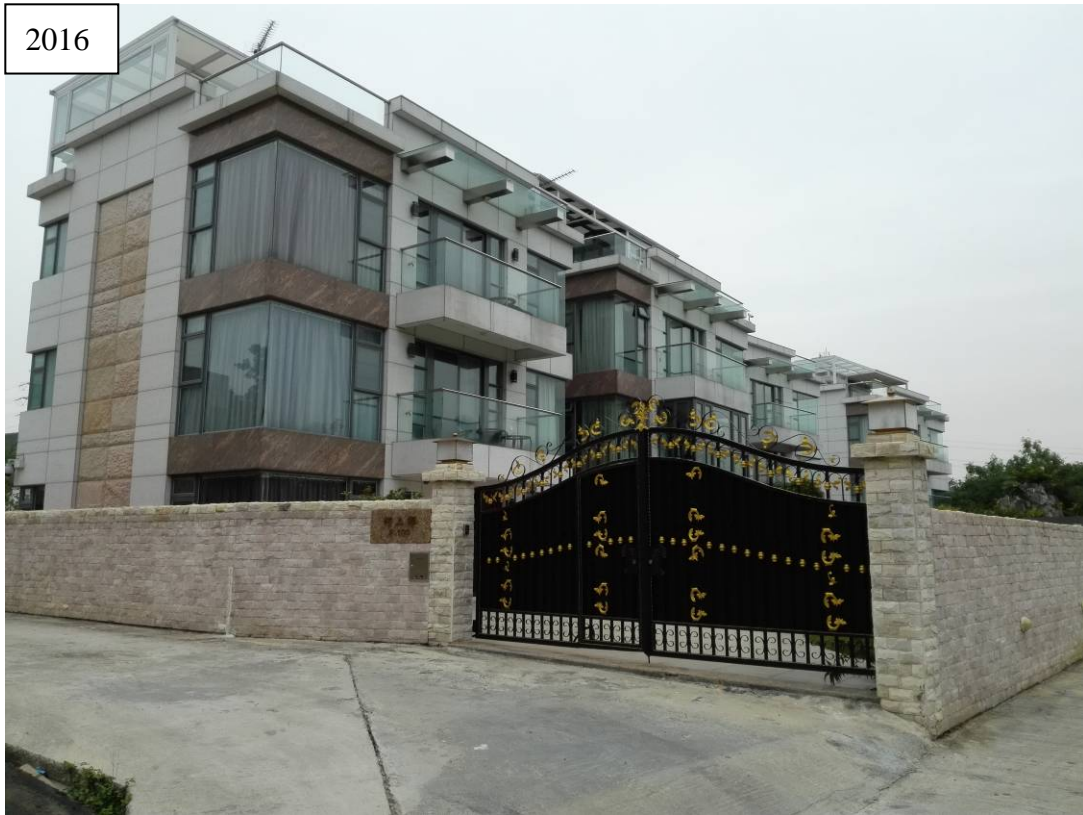


**Figure 3.** Exotic plant community at the Kam Tin Buffalo Field.





**Figure 4.** Recent photographs of Small Houses taken at Ho Sheung Heung.



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Figure 4. Cont'd.



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**Figure 5.** Buffalo field wetland at Pui O.





Figure 5. Cont'd.





**Figure 6.** Dumping of rubble and construction waste, concrete paved areas and built structures at the Coastal Protection Area of Pui O.





Figure 6. Cont'd.





Figure 6. Cont'd.





Figure 6. Cont'd.





Figure 6. Cont'd.

We reported to the Government that this site which is within the CPA was paved with concrete in 2013.



We spotted this structure in 2014 and it was still there on our site visit in June 2016.





Figure 6. Cont'd.



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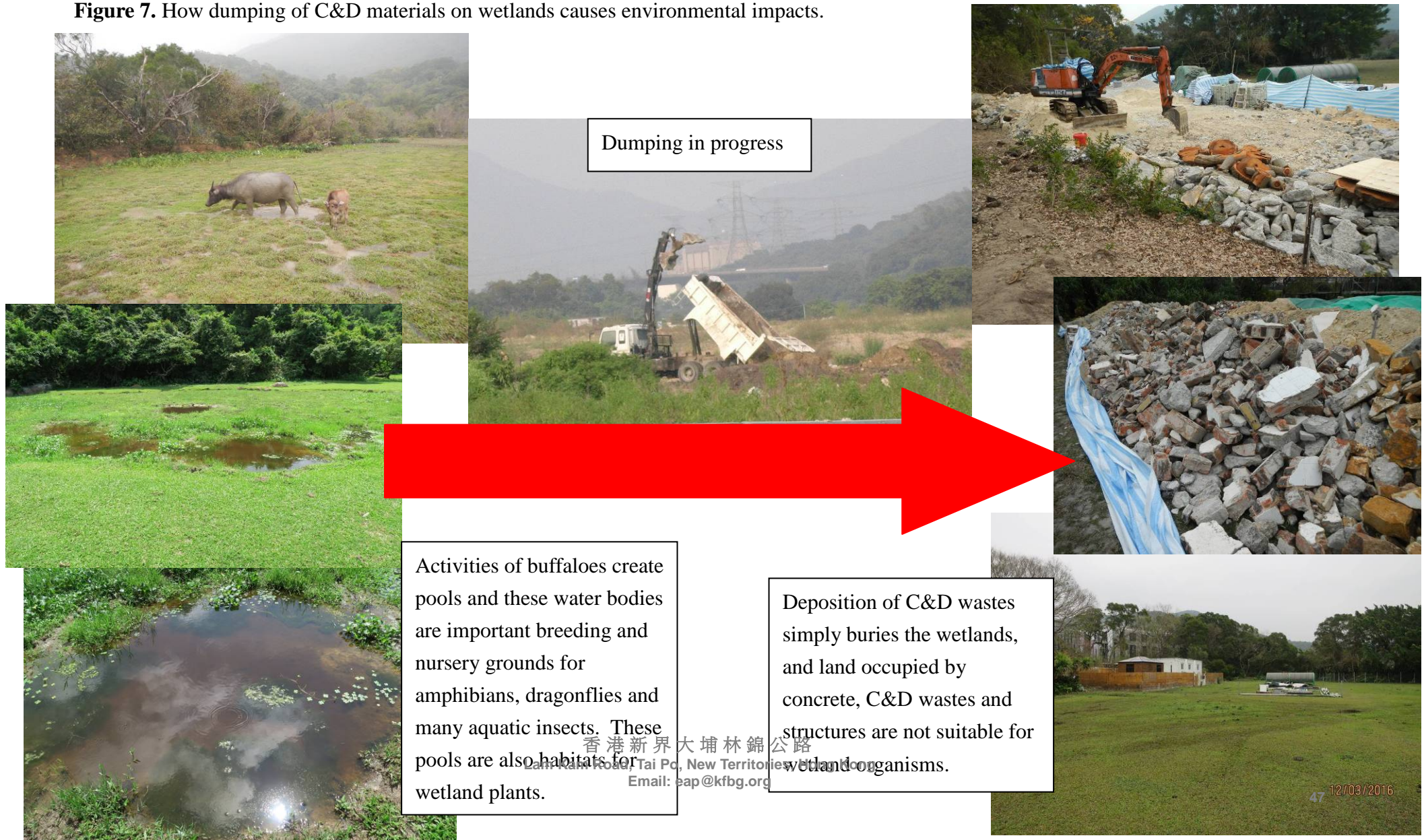
Figure 6. Cont'd.



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**Figure 7.** How dumping of C&D materials on wetlands causes environmental impacts.



Dumping in progress

Activities of buffaloes create pools and these water bodies are important breeding and nursery grounds for amphibians, dragonflies and many aquatic insects. These pools are also habitats for wetland plants.

Deposition of C&D wastes simply buries the wetlands, and land occupied by concrete, C&D wastes and structures are not suitable for wetland organisms.

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**Figure 8.** Other dumping sites in South Lantau



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Figure 8. Cont'd.



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**Figure 9.** Some ‘farms’ with extensive site formation/ hard pavement observed in the New Territories

Farm A



Farm A





Figure 9. Cont'd.





Figure 9. Cont'd.

Farm B



Farm B



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Figure 9. Cont'd.





Figure 9. Cont'd.





Figure 9. Cont'd.

Farm D



Farm D

