

Bills Committee for Waste Disposal (Amendment) (No.2) Bill 2003

A Possible Option to Address the issue of Land Filling Activities on Private Land

Purpose

This paper sets out a possible option for addressing the issue of land filling activities on private land.

Background

2. The recent case of land filling activity on a piece of private agricultural land in She Shan Tsuen, Tai Po, carried out with the consent of the landowner, has given rise to concerns that the proposed construction waste disposal charging scheme may result in an increase of such activities. The site concerned is zoned “agriculture” in the Outline Zoning Plan¹. The materials being used for filling are construction waste that will attract a charge of \$27 per tonne for disposal at a public fill reception facility under the proposed charging scheme.

3. The Administration has been examining the control and regulatory regimes under the relevant ordinances in the attempt to identify a valid basis for enforcement action against the activity. However, there is so far no sufficient evidence to instigate prosecution under the relevant ordinances. We acknowledge that the current situation where no enforcement action can be taken under the relevant ordinances is not satisfactory. The Administration as a whole will continue to monitor the activity and consider what can be done.

4. Past record shows that the She Shan Tsuen case is an isolated incident of such scale in recent years. As the materials being used for filling will attract a charge of \$27 per tonne, but not \$125 per tonne that will be charged for materials at landfills, under the proposed charging scheme, we do not expect any drastic increase in incidents such as that in She Shan Tsuen as a result of the introduction of the charging scheme. Despite that, we agree that there is a need to regulate such activities to prevent them from causing unacceptable environmental impacts.

¹ Under the existing outline zoning plan, the uses always permitted for the site include agricultural use, ancestral hall, on-farm domestic structure, plant nursery, police post/police reporting centre, rural committee building/village office, shrine and tree plantation.

Possible options to address the issue

5. At the meeting of the LegCo Panel on Planning, Lands and Works on 23 March 2004, the Permanent Secretary for Housing, Planning and Lands (Planning and Lands) considered that the suggestion of a clean record system for the Town Planning Board to make reference to in its consideration of planning applications could be explored in consultation with TPB members, and that the proposal of introducing deeming provisions in the Town Planning Ordinance (TPO) to control the scale and duration of landfilling activities on private land could be dealt with under the second stage amendments to the TPO. Separately, we are also considering possible options from the environmental protection perspective.

6. Despite the fact that environmental laws, including the Waste Disposal Ordinance, Air Pollution Control Ordinance, Water Pollution Control Ordinance and Noise Control Ordinance, are already in place, we recognize that the public is also concerned that private land filling activities may adversely affect the rural environment of the area. While fully recognizing the public concerns, we consider that there is no valid reason to ban such activities on private land. We also need to take into consideration the rights of land owners in respect of the use of their private land. On balance, we consider that regulation rather than prohibition will be an appropriate way to address the issue. Only those land filling activities that can fully meet the regulatory requirements should be allowed.

7. Given the wide coverage of the Environmental Impact Assessment (EIA) Ordinance (Cap. 499) covering impact on air quality, noise, water, waste management, ecology, fisheries, visual, landscape and sites of cultural heritage, we consider that a possible option is to subject major land filling activities for any purposes to EIA control. This will help ensure that only land filling activities not causing unacceptable environmental impacts including landscape and visual problems would be allowed. Also, the proposal will help identify the potential impact of major land filling activities in the early planning stage such that avoidance, and if necessary, mitigation could be considered at the earliest possible opportunity before the operation begins.

A possible option to regulate land filling activities under the EIA

Ordinance

8. Under Part 1 of Schedule 2 of the EIA Ordinance, public dumping area of not less than 2 hectares in size is already prescribed as a designated project requiring an environmental permit from the Director of Environmental Protection (DEP) and subject to regulation. A possible option is to revise the Schedule to include also land filling areas of not less than 2 hectares in size and with a depth of filling of not less than 1.2 metres as a designated project under the EIA Ordinance.

9. The rationale for adopting 2 hectares as the area size threshold is –

- (a) the objective of the EIA Ordinance is to subject major projects that are likely to cause significant unacceptable impacts on the environment to its control; and
- (b) a same threshold of 2 hectares is being adopted for public dumping areas which are currently defined as designated projects under the EIA Ordinance.

10. Moreover, as we do not intend to regulate land filling activities for genuine gardening and agricultural purposes under the EIA Ordinance, we propose to adopt 1.2 metres as the threshold for the depth of filling because, according to the Agriculture, Fisheries and Conservation Department, the amount of top soil needed for vegetable farming is about 30-45 cm, while that for landscape tree planting is about 1.2 metres. Therefore, the setting of the threshold for the depth of filling would not unnecessarily disturb genuine gardening and agricultural activities.

11. Under the option, land filling areas falling within the new control criteria would be regarded as designated projects under Schedule 2 of the EIA Ordinance. Any project proponent of such designated projects would be required to apply for an environmental permit from DEP before construction or operation of the designated projects can begin, failing which he would be liable to prosecution². The project proponent would need to go through the statutory EIA process. While the option will not forbid land filling activities from taking place on private land, it

² Under section 26 of the EIA Ordinance, any person who construct or operate a designated project or decommission a designated project without an environmental permit for the project commits an offence and is liable on a first conviction on indictment to a fine of \$2,000,000 and to imprisonment for 6 months; on a second or subsequent conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years.

will serve to regulate such activities to ensure that they will not give rise to unacceptable environmental impacts.

Way Forward

12. Members are invited to comment on the possible option as outlined above. We will further discuss the details of the option and operational mechanism with the relevant Bureaux/departments in the light of Members' views and comments.

Environment, Transport and Works Bureau
June 2004