

LCQ21: Illegal land filling and fly-tipping in Lantau

Following is a question by the Hon Vincent Cheng and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (January 6):

Question:

The Government has zoned as Coastal Protection Area (CPA) a long strip of land of about 162 hectares which is located between the South Lantau coastline and South Lantau Road and stretches from Pui O to Shui Hau, so as to preserve the original natural landscape there. However, it has been reported that fly-tipping activities have frequently occurred in recent years in locations within the CPA, such as Pui O, Tong Fuk and Shui Hau, resulting in a continuous increase in both the number and area of the black spots concerned. Such situation is attributable to the fact that the relevant activities are not regulated: (i) there is no provision restricting land filling activities in the block government leases for the private lands concerned, (ii) the lands concerned are located outside the Development Permission Area, rendering the Planning Department unable to invoke provisions in the Town Planning Ordinance (Cap. 131) to take law enforcement and regulatory actions, and (iii) depositing waste on private lands with the consent of the landowners or lawful occupiers does not violate the requirements of the Waste Disposal Ordinance (Cap. 354). In this connection, will the Government inform this Council:

(1) of the number of reports of illegal land filling or fly-tipping at South Lantau received by the Government in each of the past three years, and set out, for each case, the date and time of receiving the report, the location involved, the activity reported, the follow-up action taken by the Government and the current situation of the relevant location;

(2) of the number of land filling or land excavation works, carried out within the CPA without the Town Planning Board's permission, uncovered by the Government in each of the past three years, and the follow-up actions taken by the Government; the respective numbers of persons prosecuted and convicted, as well as the penalties imposed on those convicted; and

(3) as the Chief Executive stated in the 2018 Policy Agenda that the Government would review the relevant legislation and formulate more effective measures to control the carrying out of land filling, dumping of wastes and development activities that would damage the environment in areas of high ecological values at Lantau, of the progress of the relevant work, including the proposed legislative amendments (if any) and legislative timetable, as well as the content of and implementation timetable for the new measures?

Reply:

President,

Since the establishment of the Sustainable Lantau Office (SLO) under the Civil Engineering and Development Department (CEDD) in end 2017, the SLO has been dedicated to the overarching principle of "Development in the North, Conservation for the South", gradually taking forward various short-, medium- and long-term development and conservation proposals for Lantau. With a view to strengthening the protection for ecologically valuable areas at Lantau such as the areas in 'Coastal Protection Area" (CPA) zoning, etc., the SLO has been working with relevant government departments in an endeavour to take practical and feasible measures to control land filling and fly-tipping activities at Lantau.

In response to the three parts of the question raised by the Hon Cheng, having consulted the Environmental Protection Department (EPD), CEDD, Planning Department, Lands Department and Buildings Department, we hereby provide the consolidated reply as follows:

(1) and (2) The number of cases involving land filling and fly-tipping in South Lantau reported to the Government through different channels in the past three years are tabulated below. Details of individual cases are set out in Annex.

Year	Number of cases in South Lantau (Note)	Number of cases within the CPA zone in South Lantau (Note)
2018	11	11
2019	7	5
2020	6	2

Note: The number of cases is counted based on the date of first receipt and location of the reported case.

(3) The Chief Executive set out in the 2018 Policy Address that the Government would review the legislation concerned and map out more effective means to control land filling, fly-tipping and associated development activities causing environmental damage to areas of high ecological values at Lantau, with a view to enhancing protection of these natural environments.

The progress of the legislative review is as follows:

(i) The Development Bureau (DEVB) will come up with a practicable proposal to better protect areas of high ecological values in the rural areas that are subject to development pressure through the Town Planning Ordinance (Cap. 131), and plans to consult the Panel on Development of the Legislative Council within this year.

(ii) The EPD has reviewed the statutory requirements on land filling

activities on private lots under relevant environmental and nature conservation legislation. From waste management perspective, construction waste can be put into good use; what is important is to prevent its unlawful depositing. The Waste Disposal Ordinance (Cap. 354) (WDO) stipulates that the depositing of construction waste on a private lot requires consent from the relevant owner/lawful occupier and valid permission. The EPD will take enforcement actions against any unlawful depositing activities. In 2018, in a judicial review of the EPD's acknowledgement of landowners' permission to deposit construction waste on his/her private lots in Pui O pursuant to the WDO, the High Court ruled that the EPD's current practice was in line with the WDO. Having reviewed the matter, the EPD considers that there is no need to amend the WDO in this regard.

Other than the WDO, land filling activities shall also comply with the requirements of other environmental legislation. For instance, if the activities concerned cause dust emission, noise, or wastewater discharge, the EPD will take enforcement actions against any breaches in accordance with the Air Pollution Control Ordinance (Cap. 311), the Water Pollution Control Ordinance (Cap. 358) and the Noise Control Ordinance (Cap. 400).

As regards nature conservation, the relevant legislation (including the Country Parks and Special Areas Regulations (Cap. 208A), the Wild Animals Protection Ordinance (Cap. 170) and the Forests and Countryside Ordinance (Cap. 96)) has provided for the regulation and protection for country park areas (including the private land therein), protected wild animals and plants as well as the ecology on government lands. The EPD considers that amending them cannot solve the problems concerned, as they were not designed for regulating land filling, fly-tipping and damages to the environment associated with development activities on private land.

In addition, the SLO has been collaborating with relevant government departments to implement measures to tackle land filling and fly-tipping at source, which include:

- (i) The EPD has installed surveillance camera systems at six locations, or their main access roads, in South Lantau that fly-tipping was previously found. Moreover, unmanned aircraft systems have been deployed to collect information/intelligence from different locations to facilitate enforcement.
- (ii) The DEVB has promulgated a circular memorandum to restrict contractors of new public works contracts from occupying or renting private lands of ecological value.
- (iii) The SLO has prohibited all dump trucks engaged in the works contracts of Tung Chung New Town Extension from using Tung Chung Road, which will lead to South Lantau, in the delivery of construction and demolition (C&D) waste. The dump trucks should also be equipped with global positioning system or equivalent for effective monitoring of their movements.
- (iv) The SLO has been studying using technology devices to track vehicles entering South Lantau that are without valid closed road permit. The SLO has

also requested relevant stakeholders, through conducting briefings and correspondence, to enhance monitoring and control over fly-tipping of C&D waste.

At present, many conservation resources on Lantau are privately owned. The Government has set up the Lantau Conservation Fund (LCF) of which \$500 million will be used to subsidise non-governmental organisations, landowners, etc., to carry out conservation projects involving private land. These projects can cover nature conservation, cultural conservation, village revitalisation, environmental education, community engagement, etc. The LCF will help raise public awareness of conservation and provide financial incentives to encourage landowners to participate in conservation projects. The SLO is responsible for the daily administration of the LCF and has invited applications for the first round of the conservation projects in December 2020.

LCQ14: New public market in Tung Chung

Following is a question by the Hon Alice Mak and a written reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council today (January 6):

Question:

The Chief Executive announced in the 2017 Policy Address that the Government would carry out a project to build a new public market (new market) in Tung Chung. She announced in the 2018 Policy Address that the site selected for the new market was located on the lower floors of a commercial building in Area 6 adjacent to Tung Chung MTR Station. While some residents in the district consider that the siting is not good enough, some other residents are concerned that the project has not commenced after a protracted period of time, resulting in indefinite delay in the completion of the new market. In this connection, will the Government inform this Council:

(1) whether it has consulted the residents in the district so as to grasp to what extent they support the aforesaid siting; if so, of the details and the outcome; if not, the reasons for that;

(2) as quite a number of the residents in the district consider that the siting is not good enough and have requested for re-siting, how the Government responds to those views, and whether it will re-site the new market;

(3) of the latest progress of the new market project, and the expected dates for works completion and commissioning; and

(4) as some Tung Chung residents have pointed out that before the commissioning of the new market, the traders need to keep paying high rentals and the residents need to bear heavy living expenses, whether the Government will, by making reference to its practice adopted for Tin Shui Wai, provide a temporary market in Tung Chung before the commissioning of the new market; if so, of the details; if not, the reasons for that?

Reply:

President,

Having consulted the Development Bureau, my reply to the question raised by Member is as follows:

(1) to (3) The Government announced in October 2018 the plan to build a new market on the lower floors of a proposed development at the commercial site in Area 6 adjacent to Mass Transit Railway (MTR) Tung Chung Station and consulted the Islands District Council on the site selected and proposed development mode for the market in the same month. The District Council expressed support to the Government's proposal of constructing a new public market.

In identifying suitable sites for building new markets, consideration will be given to their geographical location, existing/planned uses, usable area and ancillary transport facilities nearby etc., in order to ensure that, upon completion, the markets will be of a substantial scale to attract patrons and that public finances and land resources can be optimised. During the site selection process for the new market, we have considered other sites suggested by the community and opine that the current site in Area 6 adjacent to MTR Tung Chung Station is the most suitable one. The site, being well-connected by public transport, close to the MTR station and a public transport interchange, as well as adjacent to the retail and dining hub in the town centre, is accessible to the public for purchasing fresh provisions.

As the development project at the commercial site in Area 6 is adjacent to railway facilities, the Civil Engineering and Development Department is conducting a further technical feasibility study for the entire commercial building development project (including the new market portion) to ensure that the development project will not affect the safe operation of the MTR. The Government will brief the District Council on the details in a timely manner upon completion of the study.

If the project is confirmed to be technically feasible, the developer will build the commercial building development project through land sale by the Government, including preparing the market design according to the requirements and conditions specified by the Government and building the new market portion.

(4) Constructing a public market requires the use of scarce land resources and entails public financial commitment, both capital and recurrent. In

considering whether a public market should be built, we have to duly assess the need for the market and cost-effectiveness and to ensure proper use of public resources.

Public markets, including temporary markets, must also comply with the relevant hygiene and safety requirements. Considerable amount of resources and provision of basic facilities will be required, such as building structures and layouts, electrical installations, water supply system, drainage system, sewage system, ventilation facilities, lighting system, fire safety system, refuse handling facilities, loading and unloading areas, etc. The difficulty in identifying locations for the provision of temporary or permanent markets in developed areas like Tung Chung Town Centre cannot be underestimated. Since temporary markets are transitional arrangements in nature, it is of utmost importance to identify suitable sites which are technically feasible and options which allow completion and commissioning of the market within a short period of time.

LCQ10: Taking forward public works projects

Following is a question by Dr the Hon Lo Wai-kwok and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (January 6):

Question:

The Chief Executive (CE) stated in the 2020 Policy Address that "the Government will continue to invest in infrastructure with an estimated annual expenditure of over \$100 billion on average in the next few years". In this connection, will the Government inform this Council:

(1) as CE has indicated that in consideration of the current high unemployment rate in the construction sector and the fact that investments in the construction sector will spur economic activities in other sectors, the Government will initiate the tendering procedures in parallel with the submission of funding applications of public works projects to the Finance Committee of this Council, of the details of the relevant arrangements, and the estimated time by which the commencement dates of the works projects may thereby be advanced;

(2) whether it will improve the existing criteria for evaluating tenders for public works projects, so as to avoid placing undue emphasis on the "lowest bid wins" principle, thus resulting in malpractices; if so, of the details; if not, the reasons for that; and

(3) as CE has indicated that the works departments have repackaged large-scale works contracts into manageable scales so as to enable more small and medium enterprises to participate for riding out the crisis together, of the details of the relevant arrangements?

Reply:

President,

The Government has been continuously investing in capital works to improve people's quality of life, enhance Hong Kong's long-term competitiveness and promote its economic development. The annual capital works expenditure has been maintained at a level of \$70 billion since 2017. We expect the annual capital works expenditure will continue to grow from 2021-22 onwards and exceed \$100 billion in coming years. Under the principle of "stimulate the economy, safeguard jobs", we believe that the increasing investment in capital works can effectively support the economy, accelerate social revival and create significant number of job opportunities, so as to benefit different sectors of society.

My reply to the three parts of the question raised by Dr the Hon Lo Wai-
kwok is as follows:

(1) To facilitate timely delivery of capital works projects and reduce the risk of cost overrun or unnecessary lock-up of public resources, the Government has issued internal guidelines in September 2020 requesting Controlling Officers to adopt parallel tendering for the procurement of all works contracts and works-related consultancies funded under the Capital Works Reserve Fund unless they have sought exemption from the relevant authority, i.e. to commence tender invitation or consultancy selection exercises prior to or in parallel to securing funding. The works contract or consultancy will only commence after obtaining funding approval from the Legislative Council.

The objective of parallel tendering is for early commencement of works contract/works-related consultancy after obtaining funding approval from the Legislative Council Finance Committee, and to reflect the returned tender price in the Approved Project Estimate as far as practicable. In general, the adoption of parallel tendering can advance the commencement of works contract or consultancy by one to two quarters.

(2) For tender evaluation of public works contract, the Government does not solely take the lowest price approach as the procurement principle. Apart from tender price, the two tender evaluation methods applicable to general public works projects will also take into account the technical capability and past performance of a tenderer.

Generally, a "two-envelope two-stage" approach is adopted in tendering for public works projects. Tenderers are required to submit technical proposals and price proposals separately to the Tender Assessment Panel of the works departments. Depending on the complexity of the project, the

weightings of a tender's scores on technical and price aspects against the overall score are 40 per cent to 60 per cent and 60 per cent to 40 per cent respectively. The Tender Assessment Panel will evaluate the tenders in two stages, first the technical proposal and then the price proposal. Afterwards, the overall score will be calculated based on the weightings stipulated in the tender documents and only the tenderer with the highest overall score will be awarded the contract.

For those works projects of simple nature, the Tender Assessment Panel will consider both the tender price and past performance of a tenderer in evaluating the tender.

(3) We have issued guidelines to the works departments to take into account measures to facilitate the participation of small and medium-sized enterprises (SMEs) when arranging public works contracts and consultancy agreements. These include splitting mega public works projects into contracts of manageable scales and avoid grouping different projects into a single contract. Furthermore, tenders for specialist works are invited separately where possible and small and medium-sized contractors are allowed to participate in tendering for contracts that are of value higher than their group tender limits but are relatively simple in nature. This allows companies of different sizes (such as SMEs) to participate. We will also raise the group tender limits for small and medium-sized contractors to provide them with more opportunities to participate in capital works projects.

LCQ8: Performance management of government officers

Following is a question by Dr the Hon Chiang Lai-wan and a written reply by the Secretary for the Civil Service, Mr Patrick Nip, in the Legislative Council today (January 6):

Question:

It is learnt that in recent years, quite a number of governments around the world have, in response to the advocacy of the Organization for Economic Co-operation and Development, implemented government performance management, in order to enhance the effectiveness of governance. Moreover, in a speech delivered on October 14 last year at the celebration ceremony of the 40th anniversary of the establishment of the Shenzhen Special Economic Zone, the State President stated that "we need to establish and improve the incentive mechanism, steering it towards the right direction of promoting the capable and demoting the incapable, rewarding the outstanding and eliminating the underperforming...to stand strong against formalism and bureaucracy, and

nurture a clean political ecosystem". In this connection, will the Government inform this Council:

- (1) of the number of officers of the Administrative Officer grade in the various policy bureaux who are responsible for policy formulation, with a breakdown by the rank to which they belong;
- (2) whether it has drawn up key performance indicators for evaluating the performance of the officers mentioned in (1); if so, of the details; if not, the reasons for that;
- (3) given that Permanent Secretaries, being the most senior civil servants in policy bureaux, play an important role in policy formulation and have the responsibility for leading the officers in the bureaux to properly implement policies to achieve the desired effects, of the mechanism currently in place for handling those Permanent Secretaries whose performance is unsatisfactory; and
- (4) whether it will consider, by following the practice of the Singapore Government, i.e. to link the remuneration for all civil servants to their performance, linking the remuneration for politically appointed officials and those civil servants who take part in policy formulation to the performance in policy implementation of the bureau/government department to which they belong, so that they are collectively held accountable for the performance in policy formulation and implementation, thereby manifesting the policy objective of "Hong Kong people administering Hong Kong"?

Reply:

President,

My reply to the question is as follows:

(1) The process of policy formulation involves the joint efforts by bureaux and relevant departments on comprehensive researches and analyses, public engagement and communication with stakeholders taking into account the demands of the society and stakeholders, and the implementation experience of existing policies, etc. Therefore, it involves not only the Administrative Officers (AOs) in bureaux, but also AOs and staff of other departmental grades in implementation departments.

The AO Grade comprises seven ranks. AOs across all ranks serving in bureaux or implementation departments are involved in policy formulation. The actual number of staff of the Grade as at November 30, 2020 is as follows:

Rank	Actual number of staff
Administrative Officer Staff Grade A1 (D8)	16
Administrative Officer Staff Grade A (D6)	19
Administrative Officer Staff Grade B1 (D4)	23
Administrative Officer Staff Grade B (D3)	64

Administrative Officer Staff Grade C (D2)	200
Senior Administrative Officer	165
Administrative Officer	206
Total	693

(2) and (3) Unlike the approach adopted by private organisations, evaluation of the performance of civil servants should not rely solely on quantitative targets. In particular, the process of policy formulation and implementation requires not only team work and interactions among different bureaux and departments, but also the efforts by the officers involved on researches, judgement calls, public engagement and communication with stakeholders, resource allocation and management, etc. The effectiveness of and required skill sets for these duties could not simply be reflected by quantitative targets. In addition, some public administration work including safeguarding procedural justice and public interest could hardly be quantified or measured by cost effectiveness. For Government services provided directly to the public, all departments have suitably established performance pledges and targets, and promulgated regularly the deliverables with a view to ensuring the quality of services provided.

As regards the performance of individual civil servants, the Government adopts a fair, accurate and timely performance appraisal system based on a continuous performance management cycle. The cycle starts with performance planning whereby the appraising officer agrees with the appraisee on the performance targets and communicates with the appraisee the expected performance standards, and continues with the appraising officer's regular monitoring of progress and key concerns of the appraisee and on-going provision of feedback to the appraisee to address the areas of concerns throughout the appraisal period.

For appraisees (including Permanent Secretaries and all other AOs) whose performance has shown signs of deterioration, or who are sub-standard performers, Head of Departments/Head of Grades (in case when Permanent Secretary is the appraisee, it would mean politically-appointed officials (PAOs) whom he/she reports to) should ensure that suitable counselling, guidance and assistance are given to them promptly and their performance is monitored closely. Where the deterioration in an appraisee's performance so warrants, prompt management actions (including verbal warnings or the issue of advisory letters to urge for improvement) should be taken without waiting for the next appraisal. For appraisees with substandard performance, his/her increment could be stopped or deferred. For persistent sub-standard performers, consideration could be given to triggering the procedures to retire them in the public interest under the Public Service (Administration) Order.

(4) Regarding civil servants, the Hong Kong Special Administrative Region (HKSAR) Government attaches great importance to civil service performance management. The Civil Service Regulations provide that an individual civil servant may be granted an increment only if his/her performance at work

(including conduct, diligence and efficiency) has been satisfactory during the appraisal period. There are also provisions for stoppage or deferment of increment for those with substandard performance. As for the overall pay adjustment for the civil service, the HKSAR Government would, from a broad perspective, consider relevant factors including the state of Hong Kong's economy and the Government's fiscal position when determining the rate of adjustment. Every country and region adopts different approaches to civil service pay administration based on its specific needs. It is not appropriate to apply an individual country or region's pay arrangement directly to Hong Kong.

As regards PAOs, our reply prepared in consultation with the Constitutional and Mainland Affairs Bureau is as follows:

The remuneration package of PAOs of the HKSAR was discussed at the Legislative Council (LegCo) and approved by the Finance Committee (FC). Insofar as the current term (i.e. the fifth term) of the HKSAR Government is concerned, the remuneration package is implemented in accordance with the recommendations of the "Independent Commission on Remuneration for Members of the Executive Council and the Legislature, and Officials under the Political Appointment System of the Hong Kong Special Administrative Region" (the Independent Commission) in 2016 (see Note), which was approved by the LegCo FC in 2017.

The individual performance of PAOs is not a factor for consideration under the current remuneration package and the cash remuneration adjustment mechanism. Nonetheless, under the existing mechanism, the "Code for Officials under the Political Appointment System" (the Code) clearly stipulates that the Chief Executive can decide the applicable sanctions against PAOs who are in breach of duty or the provisions set out in the Code, including warning, public reprimand, suspension or dismissal, or in the case of Principal Officials, recommendation to the Central People's Government for their suspension or dismissal. More importantly, PAOs, especially the Secretaries of Departments, Directors of Bureaux and Deputy Directors of Bureaux are required to explain government policies to members of the public and the LegCo. In other words, their work is subject to the scrutiny of the public and the LegCo.

The terms of reference of the above Independent Commission includes "carries out periodic review of the remuneration package for Officials under the Political Appointment System, say once every five years and normally about a year before the start of a new term of the HKSAR Government". The Independent Commission will review and advise the Government on the remuneration package for PAOs of the sixth-term HKSAR Government which will commence operation in July 2022.

The Government will, in the light of operational experience, further enhance the Political Appointment System as and when necessary.

Note: The Independent Commission completed a review of the remuneration package for PAOs in 2016 and recommended that the remuneration should be

adjusted annually in line with the movement of the Consumer Price Index (C), and that the other components of the remuneration package should remain unchanged.

ICAC's latest service arrangements

The following press release is issued on behalf of the Independent Commission Against Corruption:

In view of the epidemic situation, the ICAC today (January 6) announced that starting from tomorrow (January 7), the Commission will continue to maintain essential and emergency public services.

The ICAC's Report Centre at the ICAC headquarters, North Point and the report corruption hotline (2526 6366) will continue to operate round-the-clock. Meanwhile, all Regional Offices will open from 9am to 7pm, Monday to Friday to receive corruption complaints and enquiries from the public.

Other enquiry hotlines, including the Corruption Prevention Advisory Service hotline (2526 6363) and the Business Ethics Development Centre hotline (2826 3288) will also maintain their normal operation.

The ICAC will continue to implement appropriate measures to reduce the risk of the spread of COVID-19. All ICAC staff and members of the public will have their body temperature checked when entering the ICAC Building and Regional Offices. Only those with normal temperature will be allowed access.

Also, in accordance with the Prevention and Control of Disease (Wearing of Mask) Regulation, members of the public are required to wear a mask while they are inside the ICAC Building and Regional Offices.

The ICAC will review the situation and adjust the relevant arrangements and preventive measures as and when necessary.