An Analysis of Unauthorized Development in Inner Deep Bay

Author: Tobi Lau
Conservation Officer (Local Biodiversity)
WWF-Hong Kong
Objective

To understand the efficiency of law enforcement, the deterrence of penalty and the reinstatement of destroyed wetland when unauthorized development occurs on privately-owned land nestled within the Wetland Conservation Area and Wetland Buffer Area in Inner Deep Bay.

Source: Google
Scope

Area: Mai Po Inner Deep Bay Ramsar Site, Wetland Conservation Area and Wetland Buffer Area (a total of about 2,500ha of land from Tsim Bei Tsui to Hoo Hok Wai)

Period: 1992 to Spring 2016 (since the Development Permission Area Plan came in force)

Cases: Unauthorized development with focus on the illegal filling in of fish ponds
Ecological Importance of Fish Ponds

1997: A report by the Planning Department recognized the ecological importance of fish ponds by stating:

- Fish pond provides food and shelter for birds including water birds
- Contiguous fish ponds is crucial to the integrity of the ecosystem of Deep Bay

1999: The Town Planning Board Guidelines for Application for Developments within Deep Bay Area (TPB PG-No. 12B) stated that:

- “A substantial amount of the fish ponds within the WBA have already been lost over time through filling and certain areas have been degraded by the presence of open storage use, filling of contiguous ponds”

The issue: Lots of fish ponds within the Wetland Buffer Area have been filled in and turned into open storage facilities, reducing the ecological value of the area
Findings

Unauthorized development: 435 cases
Affected area: 153 ha

Unauthorized development on privately owned land in Inner Deep Bay from 1992 - 2015

Source: Planning Department

Upward trend!
Single VS Repeated Offences

Single offence: 116
Repeated offence*: 73

* Recurring cases of unauthorized development on the same site OR multiple cases of unauthorized development with overlapping affected areas

Seven cases occurred on the same site over 10 years

The affected areas in two cases of unauthorized development overlap

Source: Planning Department (Left and Center) & Google Map (Right)
Law Enforcement Procedure

Investigation > Evidence Collection > Enforcement > Prosecution

6 Types of Notice:
Warning Letter, Enforcement Notice, Stop Notice,
Reinstatement Notice, Compliance Notice, Cancellation Notice

The issue:
1. Law enforcement procedure is ill-defined
2. Although the offenders “satisfied” the requirements of the law enforcers, many fish ponds still lie in ruins.
80% of the land are categorized as developable:
- Village Type Development
- Other Specified Uses (Including Comprehensive Development and Wetland Enhancement Area)
- Open Storage
- Recreational
- Agricultural
- Residential (C)
- Undetermined

20% of the land is reserved as conservation areas (30ha):
- Green Belt
- Conservation Area
- Coastal Protection Area
- Site of Special Scientific Interest

**The issue:**
Most cases of unauthorized development concentrated in developable areas due to greater vehicular accessibility.

Source: Planning Department
Efficiency of Law Enforcement

- **Time taken to issue an enforcement notice**
  
  *(Warning Letter → Enforcement Notice)*

  - Worst record: 8 years

- **Time taken to resolve case**
  
  *(Warning Letter → Compliance Notice)*

  - < 1 year: 269 cases (62%)
  - 1-2 years: 71 cases (16%)
  - > 3 years: 44 cases (10%)
  - No compliance notice issued or no detail provided (12%)

Source: Planning Department
Types of Unauthorized Development

1. Change in land use
   - No direct environmental consequences

2. Filling in of land/fish ponds, dumping and site formation
   - Direct environmental consequences
Efficiency of Law Enforcement

It takes longer to handle cases linked to environmental degradation.

- Of cases closed within a year:
  - Unauthorized change in land use: 153 (56%)
  - Environmental degradation-related unauthorized development: 116 (43%)

- Of cases closed after 3 to 8 years:
  - Environmental degradation-related unauthorized development > Unauthorized change in land use
  - 5 cases of unauthorized development with direct environmental consequences took more than eight years to resolve

Source: Planning Department
Only 28 cases (6%) led to prosecution and penalty

Total penalty: HK$1,858,980
Average penalty: HK$66,392

**The issue:**
The average penalty handed down, only 13% of the highest possible penalty for first-time offenders, is lenient.

**Maximum penalty**
**First Offence:** HK$500,000
(Daily fine of HK$50,000 for incompliance after the expiry of the notice)
**Second Offence:** HK$1,000,000
(Daily fine of HK$100,000 for incompliance after the expiry of the notice)

Source: Planning Department (March 2011)
Most cases with direct environmental consequences are fined less than HK$60,000.
Filling In of Fish Ponds

Number of cases: 88
(20% of all unauthorized development)

Affected area: 85ha
(50% of total affected area)

Time taken to resolve case
(Warning Letter → Compliance Notice)
- < 1 year: 37 cases (42%)
- > 1 year: 36 cases (40%)
- No compliance notice issued or no detail provided (17%)

Single offence: 22 cases
Repeated offence: 28 cases

Reinstatement notice issued: 26 cases (30%)

Source: Planning Department
Case Study 1

The issue: Not all destroyed fish ponds are required to be reinstated

- **Location:** Castle Peak Road, San Tin, Yuen Long
- **Period:** Since 1992
- **Affected area:** 1ha (1992) → 4ha (2016)
- **Number of cases:** 9 (Including 1 filling in of fish ponds and land excavation)
- **Penalty:** HK$174,500 for the first offence (filling in of fish ponds) – 2nd highest penalty recorded
- **Number of reinstatement notices:** 0
- **Note:** Issued cancellation notice in 2015

Source: Google Earth
## Case Study 1 (Timeline)

<table>
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<th>Case no</th>
<th>District</th>
<th>Area</th>
<th>WBA/WC/Zone</th>
<th>UU</th>
<th>1. WL</th>
<th>2. En</th>
<th>Sn</th>
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<th>3. Rn</th>
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</table>

Source: Planning Department
Case Study 2

The issue: Legal requirements over fish pond restoration are neglected

Location: Tun Yu Road, San Tin, Yuen Long (Wetland Conservation Area)
Period: Since 1998
Affected area: 3ha (1998) → 22ha (2016)
Number of cases: 14 (10 cases of filling in of fish ponds)
Penalty: HK$350,000 for 5 offences in total
Number of reinstatement notices: 7
All cases of unauthorized development occurred within the Wetland Conservation Area, defying the principle of “no-net-loss in wetland”

Authorities did not demand the reinstatement of the fish ponds found destroyed in the first three cases, setting a bad precedent and abetting the plundering of ecologically important wetlands

While law enforcers are handling an unauthorized development case at one site, another case emerge on an adjacent site with flagrant disregard for the law

Although some of the destroyed fish ponds are later required to be restored and the offender is penalized, the legal requirements have yet to be met
Case Study 2 (Fish Pond Restoration)

Location: Tun Yu Road (near Lok Ma Chau Control Point)
Environmental consequence:
- 1 hectare-large wetland affected
- Water body was filled in
- Pond bund was covered with asphalt

Oct 2015: Reinstatement notice is issued
Jan 2016: Reinstatement notice expires
April 2016: Reinstatement notice has yet to be complied

Source: Planning Department
Case Study 2: Ecological Impact

Location: Wetlands north of Tun Yu Road (around Lok Ma Chau Spur Line)
Ecological importance: 85 black-faced spoonbills are recorded in a 2016 survey (23% of the total black-faced spoonbills recorded in Hong Kong)
Case Study 3

The issue: Drawn-out and ineffective enforcement

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<td>2007 8 20</td>
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<td>2012 9 27</td>
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</table>

Source: Planning Department

Location: Mai Po Lung, San Tin, Yuen Long
Affected area: 0.02ha
Number of cases: 3
Number of enforcement notices: 4
Case handling time: 8 years
(Warning Letter → Enforcement Notice)

Source: Planning Department
**Case Study 3**

- **2007:** Reinstatement notice was issued
- **2012:** Cancelation notice was issued
- **2015:** Fish ponds have yet to be restored

Source: Google Earth

Source: Google Map street view
Conclusion

The bane of the rife destruction of fish ponds:

- Law enforcement against unauthorized development should be conducted with greater efficiency and rigor.
- The authorities should inspect sites proactively to ensure enforcement and reinstatement requirements are satisfied.
- The financial reward brought by illegally developments outweighs the light fines handed down by the court, thus the penalty fail to provide a deterrent effect.
The longer law enforcement drags out, the greater the negative impact on the environment, and the costlier it is to restore the habitat to its original state.
Wetland Turned Landfills

1997: Planning Department demarcated fish ponds and wetlands in Deep Bay as Wetland Conservation Area and Wetland Buffer Area to prevent development from causing irreversible environmental degradation.

Today: Planning Department’s ineffective enforcement has allowed environmental degradation to proliferate, which is at odds with the objective of setting up the Wetland Conservation Area and Wetland Buffer Area.

Convention of Biological Diversity (CBD) has been extended to Hong Kong and we are formulating Biodiversity Strategy and Action Plan (BSAP):

Two of the CBD global targets, known as Aichi Biodiversity Targets, stipulates that:

- “By 2020, the rate of loss of all natural habitats, including forests, is at least halved and where feasible brought close to zero, and degradation and fragmentation is significantly reduced.”
- “By 2020, areas under agriculture, aquaculture and forestry are managed sustainably, ensuring conservation of biodiversity.”

If the predicament persist, migratory birds and the globally important Mai Po Inner Deep Bay wetlands would be in jeopardy and the targets of BSAP cannot be met.
Our requests

- Strengthen law enforcement and penalty
- Provide law enforcement departments with more resources to rigorously monitor land use
- Establish a set of law enforcement guidelines
- Demand all destroyed fish ponds to be restored according to standards demonstrated in E/YL-ST/33
- Establish a database of baseline ecological information of rural areas to ensure destroyed areas are restored satisfactorily to its original state
- Make the unauthorized development database (similar to the Environmental Protection Department’s list of Land Filling Sites of Public Concern) available to the public so the public can monitor the law enforcement progress of each case
- Mainstream the objectives of BSAP to various departments

The standards of fish pond restoration as stipulated in E/YL-ST/339

Environmental Protection Department’s list of Land Filling Sites of Public Concern