

A. Introduction

The Audit Commission ("Audit") conducted a review of the Administration's efforts in managing roadside skips.

Background

2. A skip is an open-top container of rectangular shape mostly made of iron. Very often, it is placed at roadside near a construction site or a building under renovation for temporary storage of construction and renovation waste removed from the site or building. Using skips for disposal of construction and renovation waste is an effective means to reduce environmental nuisance and facilitates the construction and fitting-out trades in disposing of such waste in a tidy and orderly manner.

3. In recent years, there has been a significant increase in the number of public complaints over the problems caused by roadside skips, including unlawful occupation of government land, nuisance and obstruction caused to neighbourhood and pedestrians, obstruction and safety risks posed to road users, damage to roads, and environmental and public hygiene problems.

4. The Committee held one public hearing on 2 December 2013 to receive evidence on the findings and observations of the Director of Audit's Report ("the Audit Report").

Declaration of interests

5. At the Committee's public hearing held on 2 December 2013, **Hon Abraham SHEK Lai-him** declared that he was a Member of the Legislative Council returned by the Real Estate and Construction functional constituency.

Opening statement by the Secretary for Development

6. **Mr Paul CHAN Mo-po, Secretary for Development**, made an opening statement at the beginning of the Committee's public hearing held on 2 December 2013, a summary of which is as follows:

Management of roadside skips

- the Development Bureau ("DEVB") and the Lands Department ("Lands D") agreed with the recommendations of the Audit Report. To address the issues caused by roadside skips, he, the Secretary for the Environment and the Secretary for Transport and Housing agreed to set up a working group ("WG") to jointly review the problems caused by skip operations and the effectiveness of the existing regulatory regime, and formulate action plans for regulating and facilitating skip operations; and
- as the problems caused by roadside skips were multi-faceted, the tentative plan would be to complete the review in a year.

The full text of the Secretary for Development's opening statement is in *Appendix 17*.

Opening statement by the Secretary for the Environment

7. **Mr WONG Kam-sing, Secretary for the Environment**, made an opening statement at the beginning of the Committee's public hearing held on 2 December 2013, a summary of which is as follows:

- the Environment Bureau ("ENB") and the Environmental Protection Department ("EPD") agreed with the recommendations of the Audit Report. The ENB and the EPD would work with the DEVB and the Transport and Housing Bureau ("THB") to jointly examine the problems caused by roadside skips;
- before the results of the joint study became available, the EPD would collaborate with concerned government departments to step up publicity for the construction industry and associated transport trades and to jointly promote the adoption of the good work practices featured in the existing guidance on roadside skips; and
- the site inspections by the EPD indicated that the operation of roadside skips generally did not cause significant environmental nuisance. Where there were situations which indicated violation of the environmental protection legislation, enforcement action would be taken by the EPD.

The full text of the Secretary for the Environment's opening statement is in *Appendix 18*.

Opening statement by the Acting Secretary for Transport and Housing

8. **Mr YAU Shing-mu, Acting Secretary for Transport and Housing**, made an opening statement at the beginning of the Committee's public hearing held on 2 December 2013, a summary of which is as follows:

- it was the policy of the THB and the Transport Department ("TD") to promote and ensure road safety. From the traffic and transport management perspectives, skips were best placed in works sites rather than at roadside. However, the THB understood that operationally the relevant trades might not be able to place skips inside works sites or works areas;
- to reduce public nuisance caused by skips which might affect the smooth flow and safety of road traffic, the TD in response to the request of the Steering Committee on District Administration ("the Steering Committee") established under the Home Affairs Bureau ("HAB")¹, published in 2008 the Guidelines for Mounting and Placing of Skips ("TD Guidelines") to stipulate good practices for skip operation, with a view to reducing obstruction to pedestrian and vehicular traffic. Skip users of course had to comply with relevant legislation if they wanted to place their skips legally on government land, including roads. There was an established mechanism under the existing law to deal with illegally placed skips; and
- in order to better handle the problems caused by skips, the Government would set up a joint WG to follow up on the recommendations in the Audit Report. THB and TD would proactively support the joint WG by providing advice and assistance from the traffic and transport management perspectives.

The full text of the Acting Secretary for Transport and Housing's opening statement is in ***Appendix 19***.

¹ The Steering Committee was chaired by the Permanent Secretary for Home Affairs with members including the Commissioner of Police, the Director of Lands and the Commissioner for Transport.

Management of roadside skips

B. Government actions on regulating roadside skips

Effectiveness of enforcement actions against roadside skips

9. The Committee noted from the Audit Report that the existing enforcement actions taken by the Lands D and the Hong Kong Police Force ("HKPF") on roadside skips were not effective in that:

- although the Lands D could remove a skip under section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) ("the Cap. 28 Ordinance"), the Lands D needed to provide a 24-hour notice before removal action could be taken on a skip. Hence, a skip user could easily get around the Lands D's enforcement actions by moving a skip away from its original location before the expiry of a notice posted under the Cap. 28 Ordinance and moving the skip back to the same place again later. According to paragraph 3.8 of the Audit Report, between January 2008 and June 2013, the Lands D had posted a total of 4 125 notices under the Cap. 28 Ordinance on roadside skips, and had removed 29 skips (on average one skip in two months) which had remained on site after expiry of the notices. Of the 4 125 skips involved, 4 096 (99%) had been removed before the Lands D's re-inspections. Of the remaining 29 skips, the Lands D could only institute prosecution action in one case; and
- the HKPF would only remove skips under the common law and take prosecution actions on skips under section 4A of the Summary Offences Ordinance (Cap. 228) ("the Cap. 228 Ordinance"), if the skips were causing serious obstruction or imminent danger to the public on roads and pavements.

Roles of various Government departments

10. The Committee further noted that:

- in October 2001, the HKPF suggested that the TD should set up a system to monitor the movement and placing of skips (paragraph 3.2 of the Audit Report refers);
- in January 2007, the HAB set up the Steering Committee to enhance support amongst Government departments for district management work, including the regulation of roadside skips, as tackling problems caused

Management of roadside skips

by roadside skips required effective co-ordination among related Government departments (paragraph 3.3 of the Audit Report refers);

- relevant trade associations indicated at a meeting with the EPD and the TD in April 2007 that they preferred some kind of a permit system for regulating the placing of roadside skips to stepping up enforcement actions by the Government (paragraph 4.9(a) of the Audit Report refers);
- at a Steering Committee meeting in May 2007, the HKPF indicated that it welcomed the setting up of a permit system as the HKPF could then trace the skip owners in case of emergencies. At the same meeting, the Lands D was invited to explore the feasibility of setting up a permit system as a long-term measure for regulating the placing of roadside skips. The Lands D indicated at the meeting that an approach requiring skip operators to apply to the authority in advance for placing of skips could be explored with the relevant trade associations (paragraph 4.9 (b) and (c) of the Audit Report refers);
- at a Steering Committee meeting in February 2009, the TD said that it supported the regulation of roadside skips with a permit system and stood ready to provide professional advice from road safety and traffic management perspectives in processing permit applications (paragraph 4.9(e) of the Audit Report refers); and
- in February 2009, the Steering Committee considered that, on the grounds that the problems caused by roadside skips might not be serious to the extent warranting a legislative exercise to establish a permit system for regulating roadside skips, the Administration should first work within the existing statutory powers to tighten enforcement against roadside skips, and the setting up of a permit system would not be pursued. In May 2010, the Steering Committee concluded that the problem of roadside skips was in general under control and the issue would not be pursued at the Committee's meetings for the time being (paragraph 3.6 of the Audit Report refers).

11. The Committee was of the view that:

- there was no basis for the Steering Committee to conclude that the problem of roadside skips was in general under control and the issue of introducing a permit system to regulate and facilitate skip operations

Management of roadside skips

would not be pursued. According to Figure 1 referred to in paragraph 1.6 of the Audit Report, the total number of complaints over roadside skips handled by the HKPF and the Lands D increased from 645 in 2008 to 1 366 in 2012, representing a 112% increase; and

- the main reason why the introduction of a permit system to regulate and facilitate skip operations was not taken forward back in 2009 was because neither the Lands D nor the TD was willing to establish and administer the permit system. The Lands D considered that the regulation of roadside skips concerned road safety and regulation of road traffic, which did not fall within the Lands D's areas of expertise. The TD considered that skips were not "vehicles" in the context of the Road Traffic Ordinance (Cap. 374) ("the Cap. 374 Ordinance") in that a roadside skip was no different from a pile of building materials or unwanted furniture causing obstruction. Therefore, the subject of skips was essentially a land, not transport, issue.

12. The Committee urged that:

- the shirking of responsibility to establish and administer a permit system for regulating and facilitating roadside skips would not happen again in the joint review to address the issues caused by roadside skips;
- the THB should lead the WG with a view to introducing a permit system for regulating and facilitating skip operations, amongst other action plans, having regard to the facts that skips were most often placed at roadside and roadside skips caused obstruction and posed safety risks to road users and it was the policy purview of the THB and the TD to ensure smooth vehicular traffic and road safety; and
- the one-year working timeframe of the WG be shortened, as the HKPF had, as early as October 2001, suggested the setting up of a system to monitor the movement and placing of skips; and the Chief Secretary for Administration had said, at a meeting discussing street management issues with the HAB and the Home Affairs Department ("HAD") in January 2009, that a permit system for regulating the placing of roadside skips should be introduced (paragraph 4.9(d) of the Audit Report refers).

Management of roadside skips

13. **Acting Secretary for Transport and Housing** responded that:

- similar to other street management issues, the problems caused by roadside skips were multi-faceted and did not simply concern a road safety or traffic management issue. The THB would contribute to the work of the WG by providing advice and assistance from traffic and road safety perspectives;
- although the Cap. 374 Ordinance did not cover roadside skips, the HKPF would take enforcement actions on skips causing serious obstruction or imminent danger to the public. Besides, skip operators were advised to comply with the TD Guidelines, published by the TD in January 2008, stipulating good practices for skip operations focusing on measures to reduce public safety risks and obstruction to pedestrian and vehicular traffic;
- the THB, the DEVB and the ENB agreed with Audit that there was room for improvement in the management of roadside skips; and
- it was important to allow sufficient time for the WG to address the problems caused by roadside skips. Although the tentative plan would be to complete the review in a year, every effort would be made to expedite the process where practicable.

14. **Secretary for Development** and **Secretary for the Environment** assured the Committee that the Administration would strive to expedite the work of the WG as far as possible.

Establishment of a permit system to regulate and facilitate skip operations

15. The Committee noted from paragraph 3.3 of the Audit Report that since November 2003, the Lands D, the TD and the HAD had discussed street management issues including matters relating to roadside skips at various meetings. The Committee enquired whether the issue of introducing a permit system for regulating skip operations had been raised.

Management of roadside skips

16. In her reply to the Committee after the hearing (in *Appendix 20*), **Ms Bernadette LINN, Director of Lands**, stated that:

- as stated in paragraph 3.3 of the Audit Report, there had been a series of ad-hoc inter-departmental discussions (some by correspondence) on the handling of roadside skips between November 2003 and January 2004. The discussions preceded the establishment of the Steering Committee in early 2007. Those ad-hoc discussions involved mainly the Lands D, the HKPF, the TD and the Highways Department; and
- in the course of those discussions, it was agreed that the HKPF would take immediate action if the skip concerned was posing imminent danger to members of the public or causing serious obstruction on the road, whilst the Lands D would arrange posting of notice under the Cap. 28 Ordinance and subsequent removal of the skip if required for non emergency case. The rationale behind this agreement had not been documented in the file records. The Lands D believed the arrangement had taken into account limitations cited by other departments and what could possibly be done under existing laws.

17. In his reply to the Committee after the hearing (in *Appendix 21*), **Mr Andy TSANG Wai-hung, Commissioner of Police**, stated that:

- since October 2001, the HKPF raised the issue of skips placed on public roads suggesting the setting up of a system to monitor the movement and placing of skips on public roads; and
- in February 2004, subsequent to discussions at the then Team Clean² Ad-hoc Inter-departmental Meeting on Street Management, the HKPF agreed to take enforcement action against skips causing serious obstruction on a road or posing imminent danger to the public. Otherwise, all complaints would be referred to the Lands D for land control action. For a roadside skip which caused serious obstruction or imminent danger to the public or vehicles, the HKPF would take removal action under the common law and prosecution action under section 4A of the Cap. 228 Ordinance. It was supposed to be a short-term measure "pending a longer-term solution" in which appropriate legislative amendments might be required.

² Team Clean, set up in May 2003 and disbanded in August 2003, was led by Chief Secretary for Administration and comprised members from the HAB, the HAD, the DEVB and the Lands D. Its mission was to establish and promote a sustainable and cross-sectoral approach to improving environmental hygiene in Hong Kong.

Management of roadside skips

18. On the question as to why the proposed permit system for regulating skip operations was not taken forward by the Steering Committee back in 2009, **Mrs Ingrid YEUNG HO Poi-yan, Commissioner for Transport**, explained as follows:

- the TD did not consider that it was in the position to process the skip permit applications, as road safety was only one of the considerations in processing the applications; and
- the statistics on accidents caused by roadside skips were insignificant at the time and that the HKPF was already empowered under section 4A of the Cap. 228 Ordinance to remove any roadside skip causing serious obstruction or imminent danger to road users.

19. **Director of Lands** also explained that:

- a permit system for regulating skip operations, if pursued, should be for the purpose of controlling interference with highways and streets, as in the case of the relevant permit system in the United Kingdom, instead of premised on the basis of unauthorized use of government land;
- the permit system should also be supported by an effective enforcement regime, and in this regard the taking of land-control action under the Cap. 28 Ordinance against breaches of the permit system would not be effective. This was because land-control action under the Cap. 28 Ordinance, by its nature, was meant to target occupation by structures, rather than skips which were readily movable but were causing obstruction or inconvenience; and
- for the proposed permit system to be effective, new legislation or amendments to appropriate legislation would be required.

20. After the public hearing, the **Secretary for Development**, the **Secretary for the Environment** and the **Secretary for Transport and Housing** provided a joint reply regarding the work of the WG (in *Appendix 22*). In gist, on the question as to which policy bureau would lead the WG, the three Secretaries replied that at the initial stage, the DEVB would co-ordinate the input of the relevant bureaux and

Management of roadside skips

departments to the work of the WG³. As regards the timeframe for the WG to complete its work, the three Secretaries replied that one year was necessary as the WG needed to ascertain the relevant legal aspects and explore different options to enhance the existing mechanism or introduce new regulatory system. The WG would also need to allow sufficient time for the relevant stakeholders to provide feedback on the options to be identified.

21. Responding to the Committee's enquiry on whether consideration would be given to re-visiting the permit system considered by the Steering Committee and to require skip owners/operators to purchase accident insurance for their skips placed on roadside, **Secretary for Development** advised after the hearing (in Appendix 22) that the issues raised would be amongst those to be considered by the WG.

Actions taken by the HKPF

22. The Committee noted from Table 4 referred to in paragraph 3.11 of the Audit Report that of the 1 592 roadside skip cases handled by the HKPF from January 2008 to June 2013, the HKPF had taken actions to remove 32 skips (on average one skip in two months) and prosecute persons involved in 25 cases. The Committee enquired about the reasons for such low enforcement rates.

23. **Mr LO Wai-chung, Acting Commissioner of Police**, explained at the meeting and further elaborated by **Commissioner of Police** in his reply to the Committee after the hearing (in Appendix 21) that:

- using skips for disposal of construction and renovation waste was an effective means to reduce environmental nuisance and facilitate the construction and fitting-out trades in disposing of such waste in a tidy and orderly manner. Therefore, Police action had to be reasonable and proportional and appropriate to the prevailing circumstances;
- factors for judging whether the presence of a skip was causing serious obstruction or imminent danger to the public would very much depend on different circumstances prevailing at the scene, such as the layout of the road, traffic flow, visibility and line of sight obstruction caused to motorists or pedestrians. A Police officer had to make a professional

³ The Secretary for the Environment informed the Committee in his letter dated 14 January 2014 that with immediate effect the ENB would take the lead to co-ordinate the Administration's efforts in improving the management of roadside skips. The relevant letter is in *Appendix 23*.

Management of roadside skips

judgement as to whether a skip was causing serious obstruction and/or imminent danger to the public and if so, a Police officer of the rank of Sergeant or above would be called upon to make any decision regarding its immediate removal. The response of the Police officer must be seen as appropriate to the prevailing circumstances and represent a reasonable and proportional response to the situation;

- the terms "serious obstruction" and "imminent danger" were a matter of professional judgement. Having considered all the circumstances prevailing at the scene, such as the layout of the road; traffic flow; visibility and line of sight obstruction caused to motorists or pedestrians, Frontline officers had been reminded to take into consideration the TD Guidelines which might assist them in determining the degree of "serious obstruction" or "imminent danger";
- skips causing serious obstruction or imminent danger to the public on roads and pavements should be removed; this might be achieved through the owners' own actions in removing the skip at the Police's request or by Police employing a contractor to remove the skip. The skip operator might be prosecuted by way of summons if there was sufficient evidence for a prosecution. Where a skip was not causing serious obstruction or imminent danger to the public, the case would be referred to the Lands D for follow-up actions. However, an individual officer might give advice or warning to the skip operator on the basis of his/her professional judgement as to which was appropriate and proportional to achieve the objective of resolving the situation; and
- since May 2010, the HKPF had regularly reminded frontline officers of their responsibility in respect of enforcement action against skips causing serious obstruction or imminent danger to the public. It must also be emphasized that enforcement actions against roadside skips included immediate removal and other Police actions, depending on the situation, such as, (a) if the skip owner could be located, they would be requested to remove the skip; (b) the issue of advice or warning to skip operator; (c) applying for a summons; and (d) referring to the Lands D for follow-up actions.

Management of roadside skips

24. Responding to the Committee's enquiry as to whether the HKPF had used section 32 of the Cap. 228 Ordinance⁴ to require skip operators to remove their skips, **Commissioner of Police** stated (in Appendix 21) that section 32 was not practical because it failed to secure the removal of a roadside skip causing a serious obstruction or imminent danger expeditiously. Legal advice was sought from the Department of Justice; it was confirmed that the use of section 4A was correct in that it achieved the objective of removing the skip and, where felt appropriate and proportional, prosecute the skip operator for placing the skip on a road causing serious obstruction or imminent danger.

25. The Committee noted from paragraph 1.5 of the Audit Report that during the period November 2009 to June 2013, the HKPF recorded 10 traffic accidents involving skips, in which a total of 15 persons were injured (of whom four were seriously injured). However, according to the reply given by the Secretary for the Environment to a written question raised by a Member at the Council meeting on 9 March 2011 and the reply given by the Secretary for Development to an oral question raised by a Member at the Council meeting on 14 November 2012, the number of traffic accidents involving skips was 66 in 2010 and 77 in 2011. The Committee enquired about the reason for such large discrepancies between the figures provided in the Audit Report and that provided in the replies to Members.

26. **Secretary for Development** and **Secretary for the Environment** responded that the Administration attached great importance to questions raised by Members. In gathering information from other bureaux/departments for the replies to Members, every care was made to ensure that the information came from the proper authority.

27. **Acting Commissioner of Police** expressed his regret and apologized for the erroneous statistics. He explained that this error had occurred because some Police officers had mistakenly selected "skip" instead of "slip" or "skid" as causation factors in the computer system. Steps had now been taken to add the appropriate Chinese terms in the system. He admitted that the HKPF was not aware of this problem, until the Audit requested the HKPF in 2013 to provide information on the number of accidents caused by skips in the past three years. At the request of the Committee,

4 Section 32(1) stipulates that "It shall be lawful for the Commissioner of Police to require any person whose duty it may be to remove any filth or obstruction, or to do any other matter or thing required to be done by this Ordinance, to do so within a certain time to be then fixed by the said officer, and, in default of such requisition being complied with, the officer shall cause to be removed such filth or obstruction or do or cause to be done such other matter or thing as aforesaid".

Management of roadside skips

Acting Commissioner of Police agreed to give the explanation in details in writing (in *Appendix 24*).

Actions taken by the Lands D

28. According to paragraph 2.18 of the Audit Report, during the nine months from August 2012 to April 2013, the Lands D had received a total of 166 public complaints over skips placing at Performing Arts Avenue. The Committee enquired about the reasons for allowing such prolonged illegal occupation of the road to happen.

29. **Director of Lands** responded that the District Lands Office/Hong Kong East ("DLO/HKE") acted on the 166 complaints for unauthorized placing of skips at Performing Arts Avenue during the period from August 2012 to April 2013 and posted the Cap. 28 Ordinance notices. All the subject skips were found self-removed before the date of expiry of the Cap. 28 Ordinance notices. Obviously during that period the area was re-occupied by the same or different skip operators after DLO/HKE had completed each round of land control action. As mentioned in the Audit Report, the Cap. 28 Ordinance was not an effective tool for enforcing against skip operations which were mobile by nature and easily movable.

30. According to paragraph 3.7(b) of the Audit Report, the Lands Administration Office Instructions provide that DLO staff should, in each DLO, draw up a list of black spots of unauthorized placing of skips and formulate a patrol programme for the black spots, update the list regularly, and forward the list to the relevant District Councils and District Offices of the HAD to enlist their assistance in monitoring roadside skips placed at the black spots, and referring cases observed to the DLO for actions. The Committee enquired whether a black-spot list had been drawn up for HKE.

31. **Director of Lands** responded at the hearing and further elaborated in her reply to the Committee (in *Appendix 20*) that:

- although no black-spot list pinpointing the unauthorized placing of skips had been drawn up by DLO/HKE, DLO/HKE had been joining other departments in conducting regular patrol of a list of environmental hygiene black-spots (which may cover roadside skips) drawn up under the ambit of the Food and Environmental Hygiene Committee of Wan

Management of roadside skips

Chai District Council. The list currently covered two black-spots of unauthorized placing of skips, namely Sharp Street East and Jaffe Road/Pervical Street (near Sino Plaza). With hind sight, having regard to the frequency of complaints received, the Performing Arts Avenue could have been included; and

- DLO/HKE was now drawing up a list of black spots pinpointing unauthorized placing of roadside skips in the geographical area of Wan Chai District Council and would soon refer the list to Wan Chai District Council and District Office (Wan Chai) to enlist their assistance in monitoring the black-spots and reporting cases. The list would cover, inter alia, the areas at/near Performance Arts Avenue, Sharp Street East and Jaffe Road/Pervical Street (near Sino Plaza). DLO/HKE would also review the cases for drawing up a similar list in respect of geographical areas covered by the Eastern District Council.

32. The Committee noted from paragraph 3.17 of the Audit Report that as of June 2013, of the 12 DLOs, only one DLO, i.e. DLO/Sai Kung, had compiled a black-spot list of unauthorized placing of skips, and only four DLOs had sought assistance from the pertinent District Councils and the District Offices of the HAD for referring observed skips to the DLOs for land-control actions. Responding to the Committee's enquiry on when the black spot list would be drawn up for each of the remaining 11 DLOs, **Director of Lands** advised at the hearing and further elaborated in her reply to the Committee after the hearing (in Appendix 20) that:

- all DLOs would be reminded to review on a periodic basis the need for drawing up and updating such a list having regard to empirical evidence. The black spots should be included in the routine land control patrol programme. Moreover, DLOs should also refer the list to relevant District Councils and District Offices to enlist their assistance in monitoring the black spots and reporting cases; and
- in May 2009, the Lands D issued new guidelines for handling roadside skips. In particular, the guidelines tighten the timeframe for enforcement action. Specifically, land control staff should inspect the site under complaint/referral as soon as possible and in any case no more than two working days from the date of receipt of the complaint/referral, bringing along copies of notice under section 6(1) of the Cap. 28 Ordinance for immediate posting once the breach was confirmed. After that, the district term contractor should be alerted about the potential clearance operation to be commenced and completed on the

Management of roadside skips

expiry date of the section 6(1) notice. The land control staff should re-inspect the site in the morning of the expiry date. If the skip was still there, they should instruct the district term contractor to remove the skip within the same day.

Actions taken by the TD

33. The Committee enquired about the reasons for the TD to only issue the TD Guidelines, instead of formulating a legislation to regulate roadside skips. **Commissioner for Transport** explained and further elaborated in her reply to the Committee after the hearing (in *Appendix 25*) that:

- "obstruction by on-street skips" was one of the inter-departmental district management issues discussed by the Steering Committee set up in January 2007. Before the second Steering Committee meeting in May 2007, the TD and the EPD jointly convened a meeting with six trade associations (representing around 80% of skip operators) during which the TD proposed some short-term measures to improve the safety of skips, for example, improving the colour and outlook of skips such as painting in bright yellow and installing yellow flash lights at night. Representatives from the trade were generally supportive of TD's suggestions;
- at the Steering Committee meeting in May 2007, it was agreed that the TD should develop guidelines aimed at improving the safety of skips placed on roads. The meeting also agreed that the TD and the EPD should consult the trade on the guidelines before promulgation. The TD Guidelines were finalized and distributed to the trade in January 2008; and
- although the TD did not have the power take any enforcement action against roadside skips, the TD would:
 - (a) continue to maintain liaison with skip operators;
 - (b) participate constructively in the work of the WG set up to formulate strategies and action plans for regulating and facilitating skip operations; and
 - (c) arrange for complaints about skips placed at roadside received by the 1823 hotline to be copied to the TD (at present majority of the

Management of roadside skips

complaints were sent to the HKPF and the Lands D as they were the departments responsible for taking enforcement actions). This would enable the TD to have a full picture of the situation. The TD would also re-examine cases sent to the Lands D, i.e. cases classified as not causing serious obstruction or imminent danger to the public or vehicles. Should any cases sent to the Lands D were found to be causing serious obstruction or imminent danger to the public or vehicles, the TD would refer these cases to the HKPF for enforcement action to be taken.

34. As revealed in paragraphs 2.12 and 3.18 of the Audit Report, compliance by skip operators with the TD Guidelines was low. Whilst noting that such compliance was on a voluntary basis, the Committee considered that more should be done by the TD to educate the skip operators on the importance of complying with the TD Guidelines. In this regard, the TD was requested to provide a response to the following questions after the hearing:

- what were the numbers of TD Guidelines printed and distributed by the TD to skip operators when the Guidelines were promulgated in January 2008;
- whether the TD had re-printed the TD Guidelines; if so, when was this done and what were the numbers printed and distributed to skip operators respectively;
- whether the TD had launched any exercise to educate the skip operators on the importance of complying with the TD Guidelines; and
- whether the TD would step up efforts to educate skip operators on the importance of complying with the TD Guidelines.

35. **Commissioner for Transport** explained and further elaborated in her reply to the Committee after the hearing (in Appendix 25) that:

- a total of 62 000 hard copies of the TD Guidelines, comprising 60 000 copies in Chinese and 2 000 copies in English, were printed in January 2008;
- the TD had not arranged for further printing of the Guidelines based on the following considerations:

Management of roadside skips

- (a) sufficient copies of the Guidelines were still available in stock;
- (b) the TD understood that the trade/skip operators were well aware of the Guidelines including the recommendations therein; and
- (c) a soft copy of which was available in the TD's website.

The TD would continue to distribute the Guidelines to relevant parties as appropriate;

- the TD had explained the Guidelines to skip operators in a meeting with the 關注全港廢物處理聯席會議 held in 2011. The TD had also corresponded with skip operators over the Guidelines and it was clear from the exchanges that the trade was well aware of the Guidelines; and
- the TD would step up promotion of the Guidelines to the trade whilst working together with other relevant departments and bureaux in the joint WG to formulate strategies and action plans for regulating and facilitating skip operations.

Actions taken by the EPD

36. According to paragraph 2.2 of the Audit Report, in December 2007, after consulting the relevant trade associations, the EPD issued guidelines ("the EPD Guidelines") to the associations requesting skip operators to take the following environmental measures on a voluntary basis when operating roadside skips:

- skips shall be covered with clean waterproof canvas;
- skips shall have clear markings indicating that disposal of domestic, flammable, hazardous and chemical waste is not permitted; and
- operation of skips shall be suspended from 11 p.m. every day to 7 a.m. of the following day, and at all times on public holidays.

37. The Committee noted from paragraph 2.12 of the Audit Report that none of the 470 skips identified in the road survey conducted by Audit from August 2012 to July 2013 had fully complied with the EPD Guidelines. Referring to the low compliance rates of the EPD Guidelines by skip operators set out in Appendix A to

Management of roadside skips

the Audit Report, the Committee enquired whether, and if so, what actions would be taken by the EPD to improve the compliance rates.

38. **Secretary for the Environment** responded that:

- from 2011 to September 2013, three complaints about skips were received by the EPD per month on average. These complaints were mainly about the skips not covered with clean waterproof canvas;
- during the corresponding period, the EPD conducted some 100 to 200 site inspections to follow up on the complaints received. In the great majority of cases, the skip operators swiftly rectified the problems upon advice from the EPD staff; and
- the EPD had written to the construction trade and related transport trade associations in November 2013 to step up publicity. The EPD would also collaborate with the trades to organize activities in the coming months to promote the adoption of the good practices in the EPD Guidelines.

39. **Ms Anissa WONG Sean-ye**, **Director of Environmental Protection**, supplemented that similar to other commercial and industrial activities, the operation of roadside skips was subject to the requirements of the various pollution control legislation. If the operation of roadside skips caused pollution or environmental nuisance, the EPD would apply the established requirements and standards of the relevant legislation in determining the follow-up enforcement action.

40. On whether the EPD would consider setting up a hotline to receive complaints over environmental nuisance caused by roadside skips, **Director of Environmental Protection** advised that there was no such need. In addition to the 1823 Citizen's Easy Link, the EPD also operated a customer service hotline to directly receive and handle pollution complaints reported by the public, including complaints of environmental nuisance caused by roadside skips.

Actions taken by the Food and Environmental Hygiene Department

41. According to paragraph 3.5(a) of the Audit Report, the Food and Environmental Hygiene Department ("FEHD") has not taken any enforcement action

Management of roadside skips

against skip owners in the past 10 years. **Mr Clement LEUNG Cheuk-man, Director of Food and Environmental Hygiene**, replied in his letter to the Committee that the FEHD would take appropriate enforcement action under the Public Health and Municipal Services Ordinance (Cap. 132) if there was evidence that the skip owners or users had littered or were responsible for causing environmental hygiene nuisances to the vicinity. However, no breach of the Ordinance could be observed in the past suggesting that persons using the skips would normally clean up the surrounding area after loading/unloading the waste. The Director's letter is in *Appendix 26*.

C. Government system for facilitating skip operations

42. According to paragraph 4.4 of the Audit Report, under section 5 of the Cap. 28 Ordinance, a skip owner may apply for a licence from the Lands D for temporary occupation of government land. From January 2003 to August 2013, the Lands D had not received any application for a licence under the Cap. 28 Ordinance for placing skips on public roads. The Committee queried why this was the case, having regard to the fact that the total number of complaints over roadside skips handled by the HKPF and the Lands D increased from 645 in 2008 to 1 366 in 2012.

43. **Director of Lands** explained that given the short-term and changing-location nature of skip operations and that non-compliance with the application and permit requirements would have little consequence, skip operators generally had little incentive, if any, to apply for a temporary licence under the Cap. 28 Ordinance. Whilst it could not be ruled out that a skip operator who obtained a licence for occupation of government land under the Cap. 28 Ordinance would still breach the relevant legislation, the issue of whether skip operators would in future be required to first obtain a licence under the Cap. 28 Ordinance would be amongst other issues to be considered by the WG.

44. According to paragraph 4.13(b) of the Audit Report, in September 2013, the DEVB and the Lands D informed Audit that if a licensing system was to be established and one of the criteria for licensing was that the skips should not cause road obstruction problems (a major problem currently caused by roadside skips), no permit could be granted and all skips would be subject to enforcement action. The Committee considered that a licensing system should not give rise to enforcement difficulties if there were clear criteria on what would constitute the problems caused by roadside skips.

Management of roadside skips

45. **Director of Lands** responded that the DEVB and the Lands D were not opposed to the establishment of a licensing system to regulate roadside skips. However, if a licensing system was to be established, it was necessary to define what were "acceptable" and "unacceptable" skip operations given the short-term and changing-location nature of skip operations.

46. As revealed in paragraph 4.3 of the Audit Report, some fitting-out companies have made provisions in their tender prices (for bidding building renovation works) for meeting fines relating to unlawful placing of skips on public roads for disposing of renovation waste. Audit considers this practice unsatisfactory and there is a need for the establishment of a better Government system for regulating and facilitating skip operations. The Committee enquired whether the Buildings Department ("BD") had information on the usage of roadside skips in operation.

47. **Secretary for Development** replied in his reply to the Committee (in Appendix 22) that:

- the BD was responsible for making provision for the planning, design and construction of buildings and associated works under the Buildings Ordinance (Cap. 123) ("BO"). Under the BO, all building works in private buildings required prior approval of building plans and consent for commencement from the Building Authority ("BA"), except for building works exempted under section 41 of the BO or minor works covered by the Building (Minor Works) Regulation. The approval and consent process would ensure that the proposed works were generally in compliance with the BO and the allied regulations. In addition, except for exempted building works, submission of notices to the BA prior to the actual commencement and after completion of the building works was in general required. The notices would serve the purpose of informing the BA of the start and end of the relevant building works; and
- the use of roadside skips concerned choice of working procedures for temporary storage of construction or renovation waste by the Authorized Person or building contractors/decorators and owners/clients concerned, having regard to the site constraints, etc. Such temporary storage was not a matter covered by the approvals, consents or notices as mentioned above. Thus, the BD did not have information on the usage of roadside skips in operation. The use of roadside skips was not a matter

Management of roadside skips

regulated under the BO. It was not appropriate for the BA to impose any condition in relation to this aspect in granting approval of building plans and consent to the commencement of building works. Besides, as explained above, not all the building works required prior approval of building plans and consent for commencement from the BA.

D. Conclusions and recommendations

48. The Committee:

Overall comments

- considers that:

- (a) a permit system to regulate and facilitate skip operations should be introduced as soon as practicable, as the existing enforcement actions taken by the Lands Department ("Lands D") and the Hong Kong Police Force ("HKPF") on roadside skips are not effective in that:
 - (i) although the Lands D could remove a skip under section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) ("the Cap. 28 Ordinance"), the Lands D needs to provide a 24-hour notice before removal action can be taken on a skip. Hence, a skip user could easily get around the Lands D's enforcement actions by moving a skip away from its original location before the expiry of a notice posted under the Cap. 28 Ordinance and moving the skip back to the same place again later; and
 - (ii) the HKPF would only remove skips under the common law and take prosecution actions on skips under section 4A of the Summary Offences Ordinance (Cap. 228), if the skips are causing serious obstruction or imminent danger to the public on roads and pavements; and
- (b) the Transport Department ("TD") should take the lead to introduce a permit system for regulating and facilitating skip operations, having regard to the facts that skips are most often placed at roadside and roadside skips cause obstruction and pose safety risks

Management of roadside skips

to road users and it is the policy purview of the Transport and Housing Bureau ("THB") and the TD to ensure smooth vehicular traffic and road safety;

- expresses alarm and strong resentment, and finds it unacceptable about the unrepentant attitude of the THB to evade the responsibility for directing the TD to take the lead in introducing a permit system for regulating and facilitating skip operations as soon as practicable to make up for the lost time, as evidenced by the joint replies from the Secretary for Transport and Housing, the Secretary for Development and the Secretary for the Environment to the Committee (in Appendices 22 and 23) in that the THB reiterated that the issues arising from the management of roadside skips are multi-faceted, despite the facts that:
 - (a) skips placed at public roads have caused obstruction to vehicular and pedestrian traffic, giving rise to environmental and hygiene problems, and safety hazards of motorists and pedestrians;
 - (b) from November 2009 to June 2013, a total of 15 persons were injured, of whom four were seriously injured, in 10 traffic accidents involving skips placed at roadside;
 - (c) the HKPF had, as early as October 2001, suggested the setting up of a system to monitor the movement and placing of skips; and
 - (d) the Chief Secretary for Administration had said, at a meeting discussing street management issues with the Home Affairs Bureau and the Home Affairs Department ("HAD") in January 2009, that a permit system for regulating the placing of roadside skips should be introduced;
- expresses alarm and strong resentment, and finds it unacceptable that although relevant trade associations and relevant Government departments, notably, the HKPF, the Lands D and the TD, were generally in support of introducing a permit system to regulate and facilitate skip operations back in 2007, the proposed permit system was eventually not taken forward. The Lands D considered the placing of roadside skips a road management issue, whilst the TD considered it a land issue;

Management of roadside skips

- considers it inexplicable and unacceptable that a lax attitude had been adopted by the Administration in managing roadside skips, as evidenced by the following:
 - (a) no survey had been conducted on the operation of skips to ascertain the magnitude of the skip problems;
 - (b) only one out of the 12 District Lands Office ("DLO") had compiled a black spot list of unauthorized placing of skips;
 - (c) only four of the DLOs had sought assistance from the pertinent District Councils and District Offices of the HAD for referring observed skips to the DLOs for land-control actions;
 - (d) little or no effort had been made by the TD and the Environmental Protection Department ("EPD") to ensure voluntary compliance with the TD and EPD Guidelines on skip operations, as a result of which the compliance rates were extremely low or even nil; and
 - (e) no evaluation had been conducted on the effectiveness of the TD and EPD Guidelines on skip operations since their introduction in 2008;
- urges that the TD and the EPD should step up efforts to educate skip operators on the need of complying with the TD and EPD Guidelines on skip operations;
- notes that the TD will arrange for complaints about roadside skips received by the 1823 hotline to be copied to the TD to enable the TD to have a full picture of the situation. TD will also re-examine cases sent to the Lands D, i.e. cases classified as not causing serious obstruction or imminent danger to the public or vehicles. Should there be any cases that are found to be causing serious obstruction or imminent danger to the public or vehicles, the TD will refer them to the HKPF for enforcement action to be taken;
- considers that there was no basis in the conclusion made by the Steering Committee on District Administration in May 2010 that the problem of roadside skips was in general under control and the issue of setting up a permit system to regulate skip operation would not be pursued, having regard to the fact that the total number of complaints handled by the

Management of roadside skips

HKPF and the Lands D increased from 645 in 2008 to 1 366 in 2012, representing a 112% increase;

- notes that:

- (a) a joint working group ("WG") will be formed with key participation from the Development Bureau ("DEVB"), the Environment Bureau ("ENB") and the THB as well as other relevant departments to analyze the problems relating to roadside skips and discuss how best these problems should be tackled, including examining the most suitable authority for the overall management of skip operations and ascertaining the relevant legal aspects and exploring different options to enhance the existing mechanism or introduce new regulatory system. At the initial stage, the ENB will co-ordinate the input of the relevant bureaux and departments to the work of the WG; and
- (b) the initial assessment of the WG is that about one year is required to complete its work. The WG will commence the necessary work as soon as possible and endeavour to expedite actions with a view to mapping out more effective measures as appropriate. The WG will report progress in its half-yearly report to the Committee; and

- urges that:

- (a) the WG should strive to shorten the timeframe for completing its work to considerably less than one year, as the problems of roadside skips have been left not effectively attended to for unduly long and there has been a significant increase in the number of public complaints over roadside skips in recent years; and
- (b) the THB should direct the TD to take the lead in introducing a permit system for regulating and facilitating skip operations without further delay.

Specific comments

49. The Committee:

Problems caused by roadside skips

- notes that the Audit Commission identified a total of 470 roadside skips and a number of irregularities based on road inspections in three Districts and a one-year road survey;
- expresses alarm and strong resentment, and finds it unacceptable that:
 - (a) there has been a significant increase in the number of public complaints over roadside skips in recent years (from 645 in 2008 to 1 366 in 2012);
 - (b) roadside skips have caused traffic accidents and injuries;
 - (c) the guidelines issued by the EPD in 2007 and the TD in 2008 on skip operations were generally not complied with by skip operators;
 - (d) the guidelines in (c) above have not been formulated under any legislation and skip operators are only requested to comply with them on a voluntary basis;
 - (e) many skips are unlawfully occupying government land every day, causing environmental and hygiene problems, obstruction to vehicular and pedestrian traffic and damage to roads, and posing safety risks to road users; and
 - (f) the Government does not have any statistics on the number of skip operators, the number of skips in operation and the number of skips placed at roadside every day;
- notes that:
 - (a) the Secretary for Development, the Secretary for the Environment and the Secretary for Transport and Housing have agreed with the audit recommendations in paragraph 5.6(a) and (c)(i) of the Director of Audit's Report ("Audit Report"), and will conduct a

Management of roadside skips

survey to ascertain the magnitude of the skip problem, and formulate strategies and action plans for regulating and facilitating skip operations; and

- (b) the TD will arrange for complaints about roadside skips received by the 1823 hotline to be copied to the TD to enable the TD to have a full picture of the situation. The TD will also re-examine cases sent to the Lands D, i.e. cases classified as not causing serious obstruction or imminent danger to the public or vehicles. Should there be any cases that are found to be causing serious obstruction or imminent danger to the public or vehicles, the TD will refer them to the HKPF for enforcement action to be taken;

Government actions on regulating roadside skips

- considers it inexplicable and unacceptable that:
 - (a) the Cap. 28 Ordinance may not be an effective tool to regulate skip operations given the long time sometimes taken by the Lands D in taking enforcement actions under the Ordinance;
 - (b) the long time taken by the Lands D in conducting site inspections in response to some public complaints on roadside skips did not meet the public expectations;
 - (c) many DLOs did not comply with Lands Administration Office Instructions ("Lands D Instructions") to draw up a list of black spots of unauthorized placing of skips, and formulate a patrol programme for the black spots;
 - (d) Audit road survey and inspections revealed that amongst the 470 skips identified:
 - (i) 39% of the skips had been placed at "no-stopping" restricted zones which might cause danger to the public;
 - (ii) 25% of the skips had been placed at roadside within 25 metres of junctions, roundabouts, pedestrian crossings, public transport facilities, exits and run-ins of developments which might cause traffic accidents;

Management of roadside skips

- (iii) 98% of the skips had not been provided with yellow flashing lights during the hours of darkness;
 - (iv) 19% of the skips had been placed on bus routes; and
 - (v) 92% of the skips had not been placed at general lay-bys; and
 - (e) the HKPF's actions to remove only one skip every two months might not have reflected the magnitude of the skip problem;
- notes that:
- (a) the Secretary for Development, the Secretary for the Environment and the Secretary for Transport and Housing have agreed with the audit recommendations in paragraph 5.6(b) and (e) of the Audit Report, and will conduct a review of the effectiveness of the existing enforcement actions on roadside skips taken by the Lands D and the HKPF;
 - (b) the Director of Lands has agreed with the audit recommendations in paragraph 5.7 of the Audit Report and will remind her staff to comply with Lands D Instructions; and
 - (c) the Commissioner of Police has agreed with the audit recommendation in paragraph 5.8 of the Audit Report and will remind his staff to step up enforcement actions on roadside skips;

Government system for facilitating skip operations

- notes that although a skip owner may apply for a licence under section 5 of the Cap. 28 Ordinance for temporary occupation of government land, the Lands D had not received any application for a licence to place skips on public roads in the past 10 years;
- notes that some overseas authorities, such as Melbourne of Australia, New York City of the United States of America and Westminster of the United Kingdom, have implemented a permit system for regulating the placing of roadside skips;

Management of roadside skips

- expresses alarm and strong resentment, and finds it unacceptable that:
 - (a) although relevant trade associations and Government departments were generally in support of introducing a permit system to regulate skip operations, such a system has not been introduced in Hong Kong; and
 - (b) both the Lands D and the TD are reluctant to take up the responsibility for regulating skip operations;
- notes that:
 - (a) a joint WG will be formed with key participation from the DEVB, the ENB and the THB as well as other relevant departments to analyze the problems relating to roadside skips and discuss how best these problems should be tackled, including examining the most suitable authority for the overall management of skip operations and ascertaining the relevant legal aspects and exploring different options to enhance the existing mechanism or introduce new regulatory system. At the initial stage, the ENB will co-ordinate the input of the relevant bureaux and departments to the work of the WG; and
 - (b) the initial assessment of the WG is that about one year is required to complete its work. The WG will commence the necessary work as soon as possible and endeavour to expedite actions with a view to mapping out more effective measures as appropriate; and
- urges that:
 - (a) the WG should strive to shorten the timeframe for completing its work to considerably less than one year, as the problems of roadside skips have been left not effectively attended for unduly long and there has been a significant increase in the number of public complaints over roadside skips in recent years; and
 - (b) the THB should direct the TD to take the lead in introducing a permit system for regulating and facilitating skip operations, having regard to the facts that skips are most often placed at roadside and roadside skips cause obstruction and pose safety risks to road users and it is the policy purview of the THB and the TD to ensure smooth vehicular traffic and road safety.

Follow-up action

50. The Committee wishes to be kept informed of progress made in implementing the various audit recommendations, including the recommendation in paragraph 5.6(c)(ii) of the Audit Report on directing a Government department for regulating and facilitating skip operations.