

Chapter 2

Provision of noise barriers for mitigating road traffic noise

Audit conducted a review of the provision of noise barriers for mitigating road traffic noise. It identified room for improvement in the following areas:

- noise barriers for planned residential developments in Pak Shek Kok (PSK);
- noise barriers for planned developments in Tai Po Area 39; and
- noise barriers for a private residential development in Ma On Shan;

Noise barriers for planned residential developments in Pak Shek Kok

2. Noting that the noise barrier works for the PSK residential developments were deleted due to changes in the planning of the PSK developments, the Committee asked whether there had been adequate communications among the departments concerned in keeping abreast of these changes and making the decision.

3. **Mr MAK Chai-kwong, Director of Highways**, responded that there was a clear programme and a detailed timetable for the developments and there had been communications among the departments concerned before deciding to install the noise barriers. Owing to the changes of the planning of the developments in 2000, the departments concerned considered the matter at an interdepartmental meeting, and decided to delete the noise barrier works.

4. According to paragraph 2.19 of the Audit Report, in early March 1999, the expected completion date of the PSK residential developments was deferred to 2008. In late March 1999, the Highways Department (HyD) awarded the contract for the Tolo Highway widening project (THWP), which included the works for the construction of noise barriers for the residential developments. In this connection, the Committee asked about the factors which the HyD had taken into account in deciding the award of the contract, and whether they included the deferred completion date.

5. In his letter of 24 December 2003, in *Appendix 16*, the **Director of Highways** explained the circumstances faced by the HyD in deciding on the noise barriers in the THWP as follows:

- tenders for the construction of the THWP were invited from pre-qualified contractors on 26 November 1998 and the construction contract was awarded on 26 March 1999. The HyD decided to include the noise barriers concerned in the THWP contract based on the following considerations:

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- (a) the approved Environmental Impact Assessment (EIA) report for the THWP stated that the noise barriers were to be built as part of the THWP. Therefore, the HyD had to meet the requirement;
- (b) the HyD had prescribed different treatment to the noise barriers in PSK and Area 39 Development. For PSK, the HyD had a clear programme whereas for Area 39, there was no programme at the time. Provision of noise barriers was thus treated differently in the two cases; and
- (c) tying in the construction of noise barriers with the completion date of the planned noise sensitive receivers for which the noise barriers were to be built was a permissible but not the only option at that time. In fact, it was not an option commonly adopted by the works departments at the time. In deciding which option to choose, works departments also had to take into account other considerations such as cost, disruption to traffic and nuisance to the community.

6. Regarding the \$13 million paid to the contractor for deleting the noise barrier works for PSK from the THWP contract (paragraph 2.17 of the Audit Report referred), the **Director of Highways** asserted that by paying \$13 million for deleting the works which would have cost more than \$50 million, the Government had made a saving of nearly \$40 million which would otherwise have been spent on the works.

7. As requested by the Committee for a response to the assertion, **Mr Peter K O WONG, Assistant Director of Audit**, said that the \$13 million was paid to the contractor by the Government due to its variation of the THWP contract in which the works had been included. If the noise barrier works for PSK had not been included in the contract, the cost of the works of more than \$50 million would have been avoidable from the outset and the payment of the \$13 million would not have been necessary.

8. According to paragraph 1.4(d) of the Audit Report, in June 1996, the Administration informed the Legislative Council (LegCo) Bills Committee on the Environmental Impact Assessment Bill of the EIA arrangements to deal with the impact of new roads on noise sensitive buildings, which included measures to protect planned noise sensitive buildings. One of these measures was that, if the planned noise sensitive buildings were to be developed at a later date, the proponent would, where practicable, provide the foundation works and install the noise mitigation measures before the completion of the buildings. In this connection, the Committee asked why such incremental approach was not taken in respect of the noise barrier works for PSK.

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9. **Dr Hon Sarah LIAO Sau-tung, Secretary for the Environment, Transport and Works**, responded that under the Environmental Impact Assessment Ordinance (EIAO), the noise mitigation measures had to be taken before the completion of the development projects. Nevertheless, as there was a time lag between the completion of roads and the nearby developments, the EIAO did not require that foundation works should be carried out first before installation of the noise mitigation measures. The provision of foundation works was, instead of a must, an option for the relevant project manager to take. In the light of the experience of the THWP, the Administration had reviewed the matter and required the project managers to provide, as far as practicable, the foundation works first and install the noise mitigation measures before the completion of the development concerned.

10. The Committee asked whether the option of providing foundation works first had been considered in respect of the noise barrier works for PSK.

11. The **Secretary for the Environment, Transport and Works** responded that unlike the Area 39 development, there was a clear programme for the PSK development which was expected to be completed in 2008. As the noise barriers would be required in 2008, the project manager concerned decided to build the noise barriers. On the other hand, as there was no programme for the Area 39 development at the time of award of the contract for the THWP, the installation of the noise barrier panels was included as provisional items in the relevant works contract.

12. The Committee asked whether the Administration would provide foundation works first or procure the noise barriers outright for a development which was expected to be completed in five years.

13. The **Secretary for the Environment, Transport and Works** and **Mr Thomas CHOW, Deputy Secretary for the Environment, Transport and Works** responded that:

- in its paper for the LegCo Transport Panel meeting on 23 January 2003, the Environment, Transport and Works Bureau (ETWB) set out five guiding principles for implementation of the Administration's policies on installation of noise barriers. Of these principles, principle 2 was on the timely implementation of mitigation measures, i.e. noise barriers. Under this principle, the project proponent could defer the noise mitigation measures to a later stage in the case of a development that would not take place until a few years after the commissioning of a new road; and

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- the spirit of the principle was to provide flexibility in terms of the timing of erecting noise barriers so that the timing could take account of the progress of the construction of the road and the noise sensitive development. As the duration of the erection works varied for different projects, it might be difficult to tie in the erection of noise barriers with the completion of the development if a specific timing was set. Moreover, the Administration also had to take into account implications such as costs and disruption to traffic in deciding the timetable for erection of noise barriers and how to tie in the erection works with the completion of the noise sensitive development.

14. The Committee asked whether the noise barrier panels would have been installed if the above guiding principle was in place at the time of award of the THWP contract.

15. In response, the **Director of Highways** admitted that if the guiding principle was in place at that time, the HyD would have adopted the option of providing only the foundation works in the contract. He pointed out that the Tolo Highway was the first highway which had been widened. Carrying out works on the road would lead to partial closure and temporary narrowing down of the widened road. As such, the HyD had to take into account the disruption to traffic in considering the timetable for erecting the noise barriers.

16. The Committee noted from paragraph 2.6 of the Audit Report that in late November 1998, the Environmental Protection Department (EPD) issued an Environmental Permit (EP) for the THWP. One of the conditions of the EP was that the noise barriers as recommended in the Tolo Highway EIA study report, which included those for the PSK planned development, should be constructed as part of the THWP. But there were subsequent changes in the expected completion date and planning parameters of the development concerned. The Committee asked why there was no flexibility for varying the EP to cater for the changes.

17. The **Director of Highways** responded that the Tolo Highway EIA study included the assessment of both the present and the future environmental impacts. As the Outline Zoning Plan (OZP) for the PSK residential area was not yet available in the course of the study, the future environmental impact was assessed on the basis of assumptions agreed by the Planning Department (Plan D), the Territory Development Department (TDD), the HyD and the EPD. The EP was issued on the basis of such assessment made in the EIA study. The HyD had to install the noise barriers in accordance with the requirements laid down in the EP.

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18. **Mr Robert J S LAW, Director of Environmental Protection**, explained that:

- inputs from relevant departments, including the Plan D, were taken into account in conducting the EIA study. While there was always room for some sorts of changes in project planning, the best available information at the time the EIA study was conducted was that the use of land was quite definite and it would proceed according to a known timetable. When a project proponent submitted to the EPD an application for an EP after the EIA study had been completed, the EPD would issue the EP according to basically what was in the application, provided that it was in line with the EIA study results;
- in the present case, the applicant proposed to include the noise barriers which were therefore included in the EP. It was possible to request in an EP application that the measures concerned would not be put in place until the time just prior to the occupation of the residential development;
- the matter might need to be considered having regard to the prevailing practices at that time. Putting in place noise barriers at a later date could be problematic from a traffic disruption point of view and, in some cases, it might not even be practicable at all from an engineering point of view. The EIA arrangements in 1996 to protect noise sensitive buildings (paragraph 1.4(d) of the Audit Report referred) should, in his view, be examined in context. At that time, concern was expressed that it might not be feasible to erect noise barriers at a later date when a development plan eventually came on stream. While it was possible to provide the foundation works first and install the noise barriers later, the focus at that time was to make sure that the noise barriers could be built; and
- in the light of the few years of experience in the operation of the EIAO, the Administration was more aware of the pitfalls of procuring the noise barriers outright. The EPD had no difficulty in providing in the EP a flexible clause to the effect that all noise barriers were required to be built before the noise sensitive development was occupied.

19. The Committee asked whether the Director of Environmental Protection could issue an EP which could cater for contingencies.

20. The **Director of Environmental Protection** responded that there were procedures to allow for flexibility if it was requested in the application and agreed by the EPD.

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21. The **Secretary for the Environment, Transport and Works** added that at the time when the EIAO was drafted, the atmosphere in the community was that Hong Kong people were more concerned about the noise problem than anything else. But the atmosphere had changed thereafter. After the installation of the noise barriers in the Tolo Highway, the public were shocked at the sight of these barriers and those people who had previously advocated the noise barriers were opposed to them. The ETWB had addressed the problem and accepted Audit's recommendations. The ETWB had taken steps to implement them since the end of 2002. It would handle installation of noise barriers with flexibility and common sense and would not give unwarranted disturbance to the environment.

22. According to paragraph 2.14 of the Audit Report, in March 1998 the Town Planning Board (TPB) gazetted a draft PSK (East) OZP. In August 1998, the PSK feasibility study was completed and a recommended outline development plan was formulated. The land use proposals in the recommended outline development plan were more articulate than those in the development concept plan. There were some changes in the layout of the residential sites in the northern part of the PSK reclamation area. Consequently, the draft PSK (East) OZP had to be revised to accommodate these changes. On 26 March 1999, the TPB gazetted an amended draft PSK (East) OZP for public inspection.

23. The Committee asked whether these changes had an impact on the construction of the noise barriers and why, despite that a more concrete plan for the PSK was in place, the HyD still awarded the contract for the construction of noise barriers for PSK in late March 1999.

24. The **Director of Highways** responded that the recommended outline development plan provided very clear planning parameters for the PSK and a very clear programme. The planning parameters in the OZP had not been changed in the course of the EIA study or before the award of the contract in late March 1999. It was in mid-2000 that the TPB decided to change these planning parameters which gave rise to the deletion of the noise barrier works.

25. The Committee asked how the HyD would, in its EP applications in future, make use of the flexibility provided by the EPD.

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26. The **Director of Highways** responded that the HyD would adopt an incremental approach to providing noise barriers and apply to the EPD for EPs accordingly. Such an approach would be more desirable in view of uncertainty in the future development of the projects concerned. The impact of road projects on the nearby developments also needed to be considered. If the expected completion date of a road project was near to that of nearby development projects, provision of foundation works for the noise barriers was necessary in view of the difficulty for such works at a later stage.

27. The Committee asked whether the HyD could apply to the EPD for an EP which could cater for situations where, in the course of construction of the relevant roads, the development project concerned either proceeded as scheduled or was terminated.

28. The **Secretary for the Environment, Transport and Works** replied that it would be difficult to issue an EP which could cater for all scenarios. It would be desirable to adopt an incremental approach which could cater for any changes in the noise barrier works.

29. The Committee further asked whether applications to the EPD had to be made for changes in the noise barrier works which were to be built under the incremental approach.

30. The **Secretary for the Environment, Transport and Works** responded that the EPD had to be approached for a variation of the EP. The procedures involved in processing the variation application were simpler than those for EP applications.

31. The Committee asked how the Administration would deal with the provision of noise barriers in road projects in future.

32. The **Secretary for the Environment, Transport and Works** stated that:

- the provision of noise barriers under the THWP had been discussed at the LegCo Transport Panel meeting in November 2002. The EIAO came into operation in 1998 which was within the period of 1996 to 2000 when the noise barrier works concerned were planned. As such, problems arose in respect of tying the timing for implementing the noise barrier works with that for meeting the statutory EIA requirements;

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- at present, the Administration had in place five guiding principles for implementation of its policies on installation of noise barriers. As such, the planning, EIA and engineering aspects of the noise barrier works would be better coordinated in future;
- moreover, for existing roads which required the provision of noise barriers, the relevant works contract would require that foundation works should be provided first and the cost of installing noise barrier panels would be calculated on the basis of the number of panels required. The problem of compensation for deletion of the entire noise barrier works would not arise; and
- as the noise barrier works were planned a number of years ahead of their implementation, it was unlikely that there would not be any changes to such works. Nevertheless, the ETWB had reached consensus with the Plan D in coping with such changes in relation to the above three aspects of the works so that the implementation of such works could tie in with the completion of the developments concerned.

Noise barriers for planned developments in Tai Po Area 39

33. The Committee noted from paragraphs 2.26, 2.32 and 2.38 of the Audit Report that:
- in September 1999, based on the advice of the TDD that there was no development programme for Tai Po Area 39 before 2004, the HyD confirmed with its consultant that the provisional works items would *not* be instructed under the Tolo Highway widening works contract;
 - in August 2000, the HyD made a firm decision to defer the construction of noise barriers for Tai Po Area 39 and applied to the EPD for a variation of the conditions of the EP for not constructing those noise barriers;
 - nevertheless, the HyD decided to proceed with the construction works, which were completed in 2003; and
 - in Audit's view, if the decision for the deferment and the application for a variation of the EP had been made in September 1999, instead of in August 2000, time would have been made available to undertake the necessary EIA procedures to justify the deferment. The provision of the noise barriers in 2002 could have been deferred, and the subsequent removal of the barriers in 2003 could have been averted.

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34. Against the above background, the Committee asked why the deferment decision and the EP application were not made in September 1999 so as to give adequate time for undertaking the EIA procedures.

35. The **Director of Highways** responded that:

- unlike those for the PSK planned developments, the noise barrier works for the Tai Po Area 39 were included as provisional items in the THWP contract. As such, the noise barriers would not be constructed unless the project proponent gave such instructions. The spirit of such contractual arrangement was to install the noise barriers if need be. The TDD's advice of no firm timing for development was in line with the spirit of the arrangement. The HyD therefore did not need to take any action regarding the noise barrier works; and
- as stated in Note 12 of the Audit Report, in August 2000, the interdepartmental meeting agreed for the first time that it would be best to defer the construction of noise barriers for Tai Po Area 39. The HyD therefore proceeded to make the necessary arrangements to effect the deferment.

36. The Committee asked why, despite its firm decision to defer the construction of noise barriers for Tai Po Area 39 in August 2000, the HyD decided to proceed with the works in March 2001.

37. The **Director of Highways** explained that subsequent to the interdepartmental meeting's decision to defer the construction works in August 2000, the HyD applied to the EPD for a variation of the EP for not constructing the noise barriers. The EPD advised the HyD that if the construction works were to be deferred, the noise levels that some existing noise sensitive buildings would be exposed to would almost reach the statutory limit. The EPD also advised that the HyD had to go through the whole EIA process if the HyD decided to defer the construction of the noise barriers. Under these circumstances, the HyD decided to proceed with the construction works in March 2001 in order not to delay the Tolo Highways widening works.

38. The Committee asked whether, before constructing the noise barriers along the Tolo Highway, the Administration had consulted the public, including the LegCo and the District Councils concerned.

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39. The **Secretary for the Environment, Transport and Works** replied that the funding application for the THWP, which included the noise barrier works, had to be submitted to the Public Works Subcommittee (PWSC) and the Finance Committee of the LegCo for approval. The noise barrier works could be discussed when the Committees considered the application.

40. The Committee pointed out that the HyD's assessment of the effects of the construction of the noise barriers as originally planned (paragraph 2.31 of the Audit Report referred) had not been conveyed to the PWSC. Although the assessment results had indicated that the noise barriers would attract public criticism, the Administration conducted a detailed consultation with the Advisory Council on the Environment (ACE) but did not do so with the public or the District Council concerned. The Committee asked whether the consultation was adequate.

41. The **Secretary for the Environment, Transport and Works** replied that there were established consultation procedures for the Administration to follow. Detailed consultation with the ACE was necessary as the installation of noise barriers was an issue about environmental protection. There was another committee with which the visual and design aspects of the noise barriers were consulted. If LegCo Members considered that such consultation framework was inadequate, review of such framework would be necessary.

42. The Committee asked whether the HyD had considered providing the foundation works for the noise barriers first rather than procuring the noise barriers outright. Noting from paragraph 2.32(a) of the Audit Report that the whole EIA process would take eight months to complete, the Committee also asked whether the HyD had considered discussing with the EPD ways to expedite the process in order to avoid the noise barrier works.

43. The **Director of Highways** responded that only the foundation works for the noise barriers were included in the THWP contract. The installation of the noise barrier panels was included as provisional items in the contract. The HyD instructed the construction of noise barriers in 2001. He admitted that if there was closer cooperation between the HyD and EPD on this matter, the noise barrier works could have been avoided.

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44. The Committee asked about:

- the source of the information that eight months would be required for the whole EIA process for the application to defer the provision of the noise barriers; and
- the reasons for not expediting the calculations of the data required for the application.

45. The **Director of Highways** responded that:

- the eight-month processing time was an estimate by the HyD on the basis of the previous EIA processes which took about the same amount of time to complete; and
- in addition to the calculations of the data, the HyD also had to conduct a public consultation for the application. As pointed out in paragraph 2.32(a) of the Audit Report, the eight-month period included the time for another EIA study and for public consultation. Before the removal of the noise barriers in 2003, a public consultation on the matter was conducted during the entire year of 2002. As a result, the public was fully aware of the matter.

46. The **Secretary for the Environment, Transport and Works** added that:

- both the scientific proof and the public perception had to be taken into account in dealing with environmental protection matters. Before the construction of the noise barriers, most people considered that the noise levels should be as low as possible, notwithstanding that the acceptable noise limit was 70 dB. The original EIA study results indicated that apart from new buildings, the noise barriers could also protect the existing buildings through reducing by 16 dB the noise levels which these building were exposed to. As the public might already have an expectation of the installation of the noise barriers which could reduce the noise levels, there might be difficulties in consulting the public in 2000 on the proposal to withdraw the provision as it would appear to be a reduction of their welfare; and
- the circumstances changed in 2003 when the noise barriers were already in place. Being well aware of what they would gain and lose as a result of the removal of the noise barriers, the public decided not to have the noise barriers. Both the LegCo and the District Councils concerned, when consulted on the

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proposed removal, quickly lent their support to the proposal. As such, the most important step in the EIA process was the public consultation rather than calculations of the data. The process would be much expedited if the public were supportive of the proposal.

47. The Committee asked why the Administration did not conduct public consultation in 2000 on the Administration's plan to withdraw the provision of the noise barriers, bearing in mind that the HyD had already said at that time that if the noise barriers were to be constructed as originally planned, *they would not serve any useful purpose for a number of years* and would block the road users' view and would attract public criticism (paragraph 2.31 of the Audit Report referred).

48. The **Secretary for the Environment, Transport and Works** responded that at the time when the Administration intended to make an application to defer the provision of the noise barriers, both the community's concerns about environmental protection and the implementation of the EIAO gave rise to the public's high expectation that the Government should take as many environmental protection measures as possible. If public consultation on the deferment proposal was conducted at that time, there would have been a lot of objections to the proposal.

49. It appeared to the Committee that in 2000 the EPD was firm about the necessity of the noise barriers in view of the protection given by the noise barriers as described in paragraph 2.30 of the Audit Report, but in 2002 it seemed to have changed its stance when there were public complaints against the barriers. The Committee asked:

- whether this was indeed the case; and
- why, unlike that for not constructing the noise barriers in Tai Po Area 39, the EIA process for variation of the EP for the removal of the noise barriers took far less than eight months to complete.

50. In response, the **Director of Environmental Protection** explained that:

- what was referred to in paragraph 2.30 of the Audit Report was that the EPD could not approve a variation unless the calculations were redone, which was part of the EIA process. At that time, the EPD, without further information presented to it, could not be sure that the existing buildings would not be exposed to noise levels exceeding the statutory limit. The EPD was

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concerned about the response of the public who had previously been consulted on the project, which incorporated the installation of the noise barriers that would provide a degree of protection to the existing buildings;

- thereafter, a lot more public consultation had been conducted and it was clear that the public, which had taken the appearance of the barriers and other factors into account, were agreeable to the removal of the noise barriers. The results of the calculations also showed that the environmental impact after the removal was acceptable. As such, the EPD approved the variation;
- whether detailed studies were required for such variations depended on the circumstances of the case;
- for a straightforward variation of an EP, the EPD could approve it within a short time. In the present case, the original EIA study indicated that the protection given by the noise barriers were not just confined to the future Area 39 development but also covered the existing development in the area. The noise levels the existing development was exposed to had been reduced by 16 dB as a result of the installation of the noise barriers. The deletion of the noise barriers in the area would remove such protection of the existing buildings and bring the noise levels very close to the statutory limit; and
- in view of such material change to the environmental impact arising from the removal, the EPD considered that a new EIA study should be conducted to recalculate the noise levels. The calculations were redone by the Hyd and presented to the EPD for consideration in approving the variation of the EP for the removal of the noise barriers. As such, the EPD was able to give the approval within a short time.

51. The Committee asked whether the removal of the noise barriers had brought the noise levels, which the relevant noise sensitive buildings were exposed to, to beyond the statutory acceptable level.

52. The **Secretary for the Environment, Transport and Works** responded that although the noise levels had increased from 55 dB when the noise barriers were in place to 69 dB after the removal of the noise barriers, the latter noise level was still within the statutory acceptable level.

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53. The Committee asked about the time required for completing the EIA process for the removal of the noise barriers.

54. The **Director of Environmental Protection** responded that the process took less than a month to complete.

55. According to Note 16 of the Audit Report, the noise barrier panels recovered from the THWP (of about 9,000 square metres) would be re-used in three other works projects starting in early 2004. Up to September 2003, the noise barrier panels were stored in the PSK reclamation area. The Committee asked about the progress of the re-use of the recovered noise barrier panels.

56. The **Director of Highways** responded that the HyD originally intended to re-use the recovered noise barrier panels in three works projects for the Yuen Shin Road, the Fanling North and South sections of the Tai Po Road respectively. However, in the consultation on the noise barrier works for the former road, the residents concerned did not support the works. As such, the re-use would only be carried out in the latter two works projects which could exhaust all the recovered noise barrier panels. These two projects had already been gazetted. The HyD would submit funding applications for these projects to the PWSC for endorsement shortly after the Chinese New Year in 2004 with a view to implementing them within the year.

57. According to paragraph 2.37 of the Audit Report, the Administration estimated that the cost of removal and trimming down of the installed noise barriers built for Tai Po Area 39 was \$8 million and the installation cost involved was about \$5 million. In this connection, the Committee asked why the cost of removal and trimming down was higher than that of installation.

58. In his letter of 27 January 2004, in *Appendix 17*, the **Director of Highways** responded that:

- the cost of \$8 million was for the removal of 1 920m of noise barriers and trimming down of 1 460m of noise barriers at Tai Po Area 39, i.e. involving a total of 3 380m of noise barriers. The works involved implementing temporary traffic management, removal of noise panels and steel posts, trimming of steel posts, re-erection of the shortened steel posts, re-installation of noise panels, and delivery of surplus steel posts and noise panels off site;

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- the cost of \$5 million was the total installation cost for 3 380m of noise barriers less the total material costs. The installation works involved implementing temporary traffic arrangement, erection of steel posts and installation of noise panels; and
- as the erection and removal processes were similar and both would require similar traffic management, the cost for trimming of the steel posts and the re-erection cost were therefore extra costs, and hence the cost of removal and trimming down was higher than that of installation.

Noise barriers for a private residential development in Ma On Shan

59. The Committee noted that in March 1996 the Government included, in the land grant of a private residential development site along Trunk Road T7 in Ma On Shan, a condition requiring the developer to provide noise mitigation measures at his own expense (paragraph 4.3 of the Audit Report referred). To meet the requirement, the developer proposed to build noise barriers within his lot boundary. However, at the meeting held in February 1998 (the Meeting), the EIA Study Management Group (SMG) decided to construct the noise barriers along Trunk Road T7 in lieu of the developer's proposed noise barriers and agreed that the TDD should follow up with the Lands Department (Lands D) on the land premium implications (paragraph 4.11 referred). The TDD said that, in the same month, the EPD had copied the minutes of the Meeting to the Lands D (paragraph 4.12(a) referred). In this connection, the Committee asked:

- for the minutes of the Meeting; and
- whether the Lands D had taken any follow-up actions on the matter; if so, the details of the actions taken and the relevant documents; if not, the reasons for that.

60. In his letter of 22 December 2003, in *Appendix 18*, the **Director of Environmental Protection** provided the Committee with the minutes of the Meeting and a memorandum from the EPD dated 23 February 1998 confirming the minutes.

61. In his letter of 22 December 2003, in *Appendix 19*, Mr Patrick LAU, **Director of Lands**, responded that:

- STTL 446 was sold by tender in February 1996 to the highest bidder. Special Condition SC 50(a) in the Conditions of Tender read as follows:

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“The Grantee shall within six months from the date of this Agreement submit to the Director for his approval in writing proposals to mitigate environmental problems identified by the Director of Environmental Protection who shall as soon as practicable after the execution of this Agreement notify the Grantee in writing full details of such problems and upon receipt of the Director’s approval to the said proposals the Grantee shall at its own expense implement the approved proposals in all respects to the satisfaction of, and within the time limits stipulated by the Director.”;

- the construction of a noise barrier within the site by the Grantee was not a specific requirement in the Special Conditions of Grant but was proposed by the Grantee after liaising with the EPD as part of its environmental mitigation measures. However, at the Meeting held on 6 February 1998, which was chaired by the EPD (Lands D was not represented on the SMG), it was stated in paragraph 7 of the minutes that “it was understood that the developer would install a 5m noise barrier within their site boundary to mitigate the traffic noise impact from Road T7. However, based on the visual and noise reduction effectiveness consideration, the EIA recommended to provide 5m roadside noise barrier continuously at the road section fronting the STTL 446 site. With such mitigation measures at the road, it was considered that the noise barrier within the site itself would no longer be necessary for traffic noise mitigation purpose. EPD would write to the District Lands Officer/Shatin (DLO/ST) informing such recommendation for them to pass the message to the developer for necessary action. For land premium implication if any, the Project Manager/New Territories East (PM/NTE) will follow up with DLO/ST later.”;
- on 23 February 1998, the EPD (by copy of a memorandum to PM/NTE) drew the attention of DLO/ST to paragraph 7 of the aforementioned minutes and asked that the developer of STTL 446 be informed about the recommended noise barrier at Road T7, so that the developer might take appropriate action as necessary. DLO/ST subsequently notified the developer of this fact on 6 March 1998 and suggested PM/NTE be approached for details of the EIA Study. As regards the question of land premium implications, there was no written record in Lands D to indicate that, pending a follow-up request by PM/NTE as agreed at the SMG Meeting, consideration was given by DLO/ST at the same time to any land premium implication. However, for the reasons explained below, this lack of action at that time would not have led to an outcome different from the present situation;

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- on 12 June 2003, DLO/ST received a memo of the same date from PM/NTE referring to the above EPD's memorandum of 23 February 1998 and asking if DLO/ST had followed up the land premium implication with the developer and, if not, to provide a reason. DLO/ST replied on 17 June 2003 advising that there was no provision under the Conditions of Grant governing STTL 446 for the Grantee to pay for any works outside the lot boundaries;
- the decision that the noise barrier within the site STTL 446 was no longer necessary was made at the SMG Meeting. The Lands D was not represented at that meeting and therefore could not have pointed out to the SMG that the Conditions of Grant only required the Grantee to carry out such measures as were deemed appropriate by the EPD. With the certification by the EPD that the Grantee's mitigation measures (without the noise barrier) were in order, and the implementation of those measures, the Grantee was deemed to have fulfilled his obligations under the land grant. In the circumstances, any request to the Grantee for a contribution to the cost of that section of the noise barrier provided by the TDD fronting STTL 446 would have been entirely outwith the Conditions of Grant. In the absence of a contractual obligation on the Grantee, the Lands D could not realistically expect an agreement to such a contribution as a matter of goodwill; and
- arising from the Audit Report, the Lands D issued on 8 December 2003 Lands Administration Office Technical Circular 734, which was applicable to all relevant cases not yet executed, to add a related provision such that Government at its discretion might offer to provide the required or alternative environmental mitigation measures in place of the Grantee/Purchaser, if this could be agreed by the parties. In such event, the Grantee/Purchaser had to pay the Government the required costs as agreed.

62. In connection with the issuance of the above Technical Circular, the Committee asked the Lands D about the effectiveness of the additional provision referred to in the Technical Circular in addressing the concerns raised by Audit and meeting the requirements recommended in the Audit Report, bearing in mind that the provision was subject to agreement of the Grantee/Purchaser concerned.

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63. In his letter of 9 February 2004, in *Appendix 20*, the **Director of Lands** responded that:

- the relevant recommendation in paragraph 4.18(c) of the Audit Report was that the Administration should “issue guidelines to ensure that provision will be incorporated into a land grant such that the Government is empowered to ask the grantee to contribute to the Government’s cost of provisioning environmental mitigation measures which, by the conditions of the land grant, is the grantee’s responsibility.”;
- it was considered appropriate that the right of the Government in such provisions should be subject to the agreement of the grantee/purchaser because of the following considerations:
 - (a) where the precise form of the environmental mitigation measures had not been specified in the land grant, the form, timetable and cost of such measures adopted or proposed to be adopted by the grantee might differ from those to be adopted by the Government whilst still meeting the requirements of the Director of Environmental Protection. The possibility of the project’s construction cost, building plans, construction timetable, and occupation permit being adversely affected by Government’s unilateral decisions at any time during the course of the project could create great uncertainty and difficulty for the grantee who would have factored his own assessment of the likely costs of the environmental mitigation measures into the premium he paid for the lot. It would not be reasonable for the Government to unilaterally determine the amount of any such contribution by the grantee after the execution of the land grant;
 - (b) the grantee might have already commenced or completed the environmental mitigation measures and fulfilled his obligations under the land grant prior to Government’s decision to provide the environmental mitigation measures in place of the grantee; and
 - (c) the grantee might not be able to agree to the Government’s provisioning the mitigation measures for other reasons such as delays caused by changes to building and layout plans and hence completion of the development.

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64. Noting the contents of the minutes of the SMG Meeting and the Director of Lands' above letter of 22 December 2003, the Committee asked:

- why the EPD, which chaired the SMG, did not monitor the progress of the follow-up action on the land premium implications; and
- if DLO/ST had negotiated with the developer regarding his contribution to the cost of noise barriers constructed by the Government but he refused to make the contribution, whether the Government would still proceed with the construction works for the reason of providing continuity; if so, the justifications (including any legal and public interests grounds) for doing so; if not, the reasons for that.

65. In addition, the Committee asked for a copy of the graphic design of the on-site noise barriers proposed by the developer, which was accepted by the EPD in December 1997.

66. In his letter of 21 January 2004, in *Appendix 21*, the **Director of Environmental Protection** responded that:

- the SMG was set up under the then Joint Planning, Environment and Lands Branch Technical Circular No. 2/92 and Works Branch Technical Circular No. 14/92, which provided that “the group shall be convened by the Director of Environmental Protection to guide the work of the EIA, to provide comments and advice on its methodology, findings and implications, and to act as a forum for discussion of environmental issues associated with the project” (Paragraph 12 of Appendix IV of the Circular referred). Land premium issues were generally not within the ambit of the SMG and the EPD had no authority over such matters. In accordance with the discussion and agreement at the SMG Meeting on 6 February 1998, the EPD would write to DLO/ST informing the EIA recommendation and PM/NTE would follow up with DLO/ST later on any land premium implication; and
- under Works Bureau Technical Circular No.18/98 (Planning, Environment and Lands Bureau Technical Circular No.10/98) the Government policy on mitigation of traffic noise impacts was that proponents of new road projects were required to assess noise impacts and identify suitable alignments, consider options to prevent and mitigate traffic noise impacts, and propose the best practicable package of noise mitigation measures to protect both existing and planned sensitive uses (paragraph 59 of the Circular referred).

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The TDD, being proponent for the T7 project, had acted according to the policy and recommended a package of noise barriers to address the noise problem in their Environmental Review Report under the EP application in May 2000. The construction of the proposed barriers was then included as a condition in the EP and became a legal requirement under the EIAO.

67. In the same letter, the **Director of Environmental Protection** also provided a drawing extracted from the traffic noise impact assessment accepted by the EPD in December 1997 showing the noise barriers proposed by the developer.

68. According to paragraph 4.17 of the Audit Report, the TDD had not mentioned in the June 2000 PWSC paper for the Trunk Road T7 project that the developer had the obligation to provide noise mitigation measures under the land grant conditions of March 1996, and the circumstances leading to the use of public funds of about \$40 million to build the noise barriers by the Government. As such, there was a lack of public accountability about such use of the public funds.

69. In view of the developer's obligation mentioned above, the Committee wondered whether, in making the decision in February 1998 to construct the noise barriers along Trunk Road T7 in lieu of the noise barriers to be provided by the developer within his lot boundary, the Government had the choice of whether or not to spend public funds of about \$40 million to build the noise barriers, and whether it was reasonable for the Government to negotiate with the developer so that he would contribute to the cost incurred by the Government in providing the noise barriers.

70. The Committee asked:

- about the reasons for spending the public funds to build the noise barriers and for the absence of such negotiations; and
- if the Government considered that there was no mechanism for negotiating with the developer in such circumstances, details of the mechanism that should be put in place to enable the Government to conduct such negotiations with the developer.

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71. In his letter of 31 December 2003, in *Appendix 22*, the **Director of Territory Development** responded that:

- the noise barriers along Trunk Road T7 were not constructed in lieu of the noise barriers to be provided by the developer within his lot boundary. Under the EIAO, the road project proponent was required to protect all noise sensitive receivers in compliance with the noise standards set out in the Technical Memorandum (TM). The on-site noise barriers proposed by the developer could only protect 72% of the residential units. Regardless of whether those on-site noise barriers were put up by the developer, direct noise mitigation measures were still required on Trunk Road T7 to provide 100% protection to the residents as far as practicable under the EIAO. In addition, the EIA for Trunk Road T7 recommended, on visual and noise reduction effectiveness considerations, the provision of continuous roadside noise barrier at the road section fronting the lot. The semi-enclosures put up by the TDD under the Road T7 project were therefore needed in order to fulfill the requirements of the EIAO. Regarding the land premium implications, the EPD had drawn the Lands D's attention to the SMG's decision in February 1998; and
- according to paragraph 4.20 of the Audit Report, the Director of Lands had said that it was possible to draft land grant conditions to meet the requirement as recommended in paragraph 4.18(c). The Director of Lands had issued on 8 December 2003 Technical Circular No. 734 – Clause allowing Government to provide environmental mitigation measures in place of the Grantee/Purchaser. The Government would conduct negotiations in accordance with the Technical Circular if similar cases occurred in future.

72. Noting the above reasons, the Committee further asked:

- whether the Government would break the law by not providing the noise barriers concerned; if so, of the legislation concerned; and
- if negotiations with the developer had been held but he refused to contribute to the cost of the noise barriers constructed by the Government, whether the Government would still proceed with the construction for reason of providing continuity; if so, the justifications (including any legal and public interest grounds) for doing so; if not, the reasons for that.

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73. The Committee also invited Audit's comments on these reasons. In particular, the Committee asked whether, in Audit's opinion, the Government had the option of not providing the noise barriers at public expense.

74. In his letter of 21 January 2004, in *Appendix 23*, the **Director of Territory Development** responded that:

- the Government would break the law by not providing the noise barriers concerned, as it was a condition in the EP of the T7 project that they should be built. The legislation concerned was the EIAO and its associated TM. Under both the EIAO and the administrative EIA system in operation prior to the commencement of the EIAO, proponents of road projects were required to protect all noise sensitive receivers from excessive traffic noise (i.e. 100% compliance with the noise standard of 70dB(A) for domestic premises) as far as practicable. The on-site barriers proposed by the developer could only protect 72% of the residential units. Direct noise mitigation at source was therefore necessary to protect the residents as far as practicable. If the TDD had not proposed construction of the noise barriers along that section of road T7 despite the fact that it was practicable to do so, the Director of Environmental Protection would not have approved the TDD's application for an EP for the project. The road project could not have proceeded without a valid EP. The construction of the noise barriers concerned formed part of the conditions in the EP issued for the project in May 2000 under the EIAO. It was thus a statutory requirement for the TDD to construct those noise barriers. Failure to do so would be a violation of the EIAO; and
- if negotiations with the developer had been held but he refused to contribute to the cost of the noise barriers, the TDD would still be required to proceed with the construction of the noise barriers concerned on Road T7 in order to mitigate the traffic noise as far as practicable and to comply with the statutory requirements of the EIAO. Had the TDD failed to do so, it would be in breach of the EP condition and accordingly in violation of the EIAO.

75. In his letter of 19 January 2004, in *Appendix 24*, the **Director of Audit** commented that:

- according to the TM, a road project proponent was required to provide direct noise mitigation measures such as noise barriers as far as practicable (paragraph 1.7 of the Audit Report referred). Given that the noise barriers proposed by the developer and accepted by the EPD in December 1997 could

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only protect 72% of the residential units (paragraph 4.5 referred), the TDD, as the road project proponent of Trunk Road T7, was required to provide the noise barriers at public expense in order to meet the EIAO requirements (paragraph 4.16 referred);

- while the Government did not have the option of not providing the noise barriers at public expense, it should be noted that the land grant condition required the developer to implement at his own expense the approved noise mitigation measures (paragraph 4.3 referred). The noise barriers proposed by the developer's consultant were accepted by the EPD in December 1997. Therefore, it was reasonable to negotiate with the developer for his agreement to contribute to the Government's cost of providing the noise barriers as a quid pro quo for relieving his obligation of implementing the approved noise mitigation measures under the land grant condition when he submitted such a proposal in April 1998 (paragraph 4.7 referred); and
- the Director of Lands had remarked that "With the certification by the EPD that the Grantee's mitigation measures (without the noise barrier) were in order, and the implementation of those measures, the Grantee was deemed to have fulfilled his obligations under the land grant In the absence of a contractual obligation on the Grantee, we could not realistically expect an agreement to such a contribution as a matter of goodwill." Such remark highlighted the importance of negotiating with the developer before the EPD's certification of the revised mitigation measures in June 1998 (paragraph 4.7 referred). However, based on the information provided by the TDD and the Lands D, there was no written record to show that there had been discussion between the two departments about the land premium implication, let alone any action to negotiate with the developer before 2003.

76. In view of Audit's opinion that the Government did not have the option of not providing the noise barriers along Trunk Road T7 for the site at public expense, the Committee asked:

- whether the absence of the above option implied that the Government had to provide the noise barriers at public expense, incurring about \$40 million, irrespective of the developer's obligation to do so under the land grant condition; and

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- if the answer was in the affirmative:
 - (a) the basis for the Audit's observation in paragraph 4.15 of the Audit Report that "there was a **possibility** that the Government would still be required to provide the noise barriers under the Trunk Road T7 project for the Ma On Shan site at public expense, notwithstanding the provision of noise mitigation measures by the developer under the land grant condition.";
 - (b) whether there was any reasonable prospect for the Government to recover the cost from the developer; and
 - (c) the justifications for the concerns about the use of public funds for the noise barrier works and the absence of recovery action raised in the Audit Report.

77. In his letter of 9 February 2004, in *Appendix 25*, the **Director of Audit** clarified that:

- Audit's view that the Government did not have such option referred to the position after the EIAO came into operation in April 1998. Under the EIAO, the Government had to provide the noise barriers at public expense because the EIAO required a higher standard of noise protection by direct mitigation measures (such as noise barriers) than the 72% level of protection that could be provided by the developer's proposed noise barriers within his site boundary;
- Audit's observation in paragraph 4.15 of the Audit Report **referred to the position in 1995** when the land grant condition for the Ma On Shan site was being drafted. At that time, the EIA Bill was under public consultation. Therefore, there was a possibility that the Government would be required to provide the noise barriers under the Trunk Road T7 project for the Ma On Shan site at public expense, notwithstanding the provision of noise mitigation measures by the developer under the land grant condition. That was why Audit had recommended that the Administration should issue guidelines to ensure that provisions would be incorporated into a land grant such that the Government was empowered to ask the grantee to contribute to the Government's cost of provisioning environmental mitigation measures;

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- it was reasonable to negotiate with the developer for his agreement to contribute to the Government's cost of providing the noise barriers as a quid pro quo for relieving his obligation of implementing the approved noise mitigation measures under the land grant condition when he submitted such a proposal in **April 1998. There was a reasonable prospect for the Government to recover the cost from the developer if action was taken at that time.** However, with the certification (in June 1998) by the EPD that the Grantee's mitigation measures (without the noise barrier) were in order, and the implementation of those measures, the Grantee was deemed to have fulfilled his obligations under the land grant. **After June 1998,** in the absence of a contractual obligation on the Grantee, it would not be realistic to expect an agreement to such a contribution as a matter of goodwill; and
- as mentioned in paragraph 4.14 of the Audit Report, as the land grant condition was made known to the developer before the land sale, it was reasonable to expect that he would have taken into account the cost of the required noise mitigation measures in determining the land premium he would pay to the Government. From the value for money point of view, there should be adequate measures to ensure that the Government could get full value from the money spent or revenue foregone in this case, i.e. either the Government would not subsequently have to build the noise barriers at public expense, or failing which the Government could recover the relevant cost from the developer. However, it turned out that the Government still had to build the noise barriers at public expense and timely action was not taken to recover the relevant cost from the developer.

78. The Committee noted that, notwithstanding the developer's obligation to provide noise mitigation measures for the Ma On Shan site under the land grant conditions of March 1996, the implementation of the EIAO in April 1998 brought in statutory requirements under which the TDD had to provide noise barriers for the site.

79. In this connection, the Committee asked:

- about the details of the Administration's policy and guidelines on the provision of noise mitigation measures before the implementation of the EIAO, under which a developer could be required to provide noise mitigation measures at his own expense; and

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- as the Government, being the proponent of public road projects, was required to provide noise mitigation measures under the EIAO, whether the EIAO had the effect of relieving private developers of their responsibility of providing noise mitigation measures for their developments along the roads concerned.

80. In his letter of 31 December 2003, in *Appendix 26*, the **Secretary for the Environment, Transport and Works** advised that:

- the Hong Kong Planning Standards and Guidelines, which were already in place before the commencement of the EIAO in 1998, provided guidance on the environmental issues that should be considered in the planning of both public and private development projects. It prescribed road traffic noise standards for different types of noise sensitive receivers and provided guidelines on noise mitigation measures that could be adopted at the noise emitter and the noise sensitive receiver's ends in cases where an adequate buffer distance between the two could not be provided. Those noise mitigation measures included noise barriers at the noise emitter's end, self-protecting building design and integrated building and noise source design;
- under the administrative EIA system that was in operation before the EIAO commenced and the statutory EIA system was introduced, for public development projects which might have adverse impacts on the environment or which would locate sensitive receivers near a source of noise pollution (for example, road projects and housing projects near major roads), the project proponent would be required to notify the EPD and, if required by the EPD, carry out an EIA study for the project. If an EIA study was conducted, the project proponent would be required to implement the noise mitigation measures recommended in the EIA study to ensure that the noise impact of the public development project on the noise sensitive receivers would be contained within an acceptable level;
- as regards private sector residential development projects, upon the advice of the EPD, the District Lands Conference would examine and decide whether a lease condition should be imposed to require the purchaser or grantee to propose and implement measures to mitigate environmental problems, including road traffic noise impact identified by the EPD. For private residential development projects at sites involving change in land use or those that required the approval of the TPB, the Board could include similar requirements as approval conditions where appropriate. In cases where the lease, or other conditions, stated that mitigation measures had to be implemented by the developer to address environmental problems of the land

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lot concerned, the EPD would provide their advice to the relevant authorities and help to ensure that mitigation measures to minimise the noise impact were incorporated into the residential development plan as far as practicable. Those mitigation measures had to be implemented by the developer at his own expense and could form the basis for the issue of the certificate of compliance; and

- at the time when the EIA Bill was processed through the LegCo around 1996, there was a strong demand from private sector developers and some LegCo Members that the onus to mitigate road traffic noise should be placed on the proponent of the road project rather than the developer. The statutory EIA system, as it currently stood, required the proponent of the road project to propose and implement noise mitigation measures on the road as far as practicable to protect the existing and planned noise sensitive receivers. If additional noise mitigation measures were required at the planned sensitive receivers to address the residual noise impact after the adoption by the proponent of the road project of all practicable direct mitigation measures on the road, the EIA process would evaluate and confirm practicability of those additional measures. The agreed environmental requirements on the planned noise sensitive receivers and any development constraints identified by EIA would be taken into account when assessing the development potential of the site, and would be incorporated into the land lease or land grant as conditions and made known to potential developers.

81. According to paragraph 4.16 of the Audit Report, the EIA study report of February 1998 had already recommended that the on-site noise barriers should be omitted from the private residential development, and be replaced by Government-built noise barriers along Trunk Road T7. In Audit's view, *before* accepting the proposal of April 1998 that the developer would not build the noise barriers within his site, the Administration should have addressed the following issues: (a) the relevant policy bureaux (including the Financial Services and the Treasury Bureau) should have been consulted as to whether the proposed arrangement was consistent with established public finance policies; and (b) whether, following the intention of the land grant condition, negotiations could be held with the developer so that he would contribute to the cost incurred by the Government of providing the noise barriers under the Trunk Road T7 project.

82. Against this background, the Committee asked why TDD had not waited until it was known if the developer was willing to contribute to the cost of the above noise barrier works before carrying out the works, which had the effect of allowing the developer not to build noise barriers which he was obligated to do under the land grant and, as a result of

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relieving his obligation, losing Government's bargaining power in securing the developer's agreement to contribute.

83. In his letter of 9 February 2004, in *Appendix 27*, the **Director of Territory Development** explained that:

- the TDD was obliged by the EP to construct the noise barriers in question irrespective of whether or not the developer was willing to contribute to the cost of the noise barriers. Therefore, the TDD did not have to await the outcome of any negotiations, even if those were initiated, before carrying out the noise barrier works. There was no provision under the Conditions of Grant governing the development for the Grantee to pay for any works outside the lot boundaries. In the absence of such an obligation on the Grantee, the Government could not realistically expect an agreement to such a contribution as a matter of goodwill. In the circumstances, the carrying out of the noise barrier works by the TDD could not have affected the Government's bargaining power even if the issue had been brought up with the Grantee;
- nevertheless, Audit highlighted the importance of negotiating with the developer before the EPD's certification of the developer's revised mitigation measures in June 1998. Effectively, there was only a short window of four months, from February 1998, when the SMG agreed on the proposed omission of the developer's noise barrier, to June 1998 before which Government might have had any bargaining power to negotiate with the developer for a contribution. Therefore, by the time when the contract for construction of Road T7, including the noise barriers, started on 10 January 2001, delaying such construction would not have changed Government's negotiating position since any bargaining power that might have existed was long gone; and
- moreover, since the concerned noise barriers, now being constructed by the TDD would protect 100% of the dwellings in the development as required by the EP, the noise barriers originally to be built within the developer's lot boundaries protecting only 72% of the dwellings were nugatory. It was an appropriate step not to require the Grantee to construct the noise barriers.

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84. Conclusions and recommendations The Committee:

Noise barriers for planned residential developments in Pak Shek Kok

- expresses serious concern that:
 - (a) the Territory Development Department (TDD) and the Highways Department (HyD) did not use an incremental approach to provide the noise barriers for Pak Shek Kok (PSK) although there were indications at the time of award of the Tolo Highway widening works contract that the planned land uses in PSK would not take place for a few years after the completion of the contract and that changes to the planning parameters of the land uses might be expected; and
 - (b) the Government had to pay the contractor \$13 million for deleting the noise barrier works for PSK from the contract, and rejects the Director of Highways' assertion that by paying \$13 million for deleting the works which would have cost more than \$50 million, the Government had made a saving of nearly \$40 million which would otherwise have been spent on the works;
- notes that:
 - (a) the Director of Highways has admitted that if the guiding principle of timely implementation of mitigation measures (i.e. noise barriers), under which the project proponent can defer the noise mitigation measures to a later stage in the case of a development that will not take place until a few years after the commission of a new road, was in place at the time of award of the Tolo Highway widening works contract, the HyD would have adopted the option of providing only the foundation works in the contract; and
 - (b) the Secretary for the Environment, Transport and Works has accepted Audit's recommendations mentioned in paragraph 2.20 of the Audit Report;

Noise barriers for planned developments in Tai Po Area 39

- expresses serious dismay that:
 - (a) the HyD had not allowed sufficient time in the implementation plan of the Tolo Highway widening works contract to complete the

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Environmental Impact Assessment Ordinance procedures relating to a variation of the environmental permit (EP) for deferring the noise barrier works; and

- (b) as a result of the removal and trimming down of the installed noise barriers for the planned developments in Tai Po Area 39, about \$13 million, consisting of about \$5 million for the installation and \$8 million for the removal and trimming down, had been wasted. The Government had also incurred an unnecessary cost of \$24 million for the prolongation of the contract;
- notes that:
 - (a) there are procedures in the Environmental Protection Department under which it can approve a straightforward variation of an EP within a short time, as in the present case in which a variation of the EP allowing the removal of the noise barriers was approved in less than one month;
 - (b) the Secretary for the Environment, Transport and Works and the Director of Highways have undertaken that the HyD will adopt an incremental approach to provide noise barriers for new roads, so that the installation works can tie in with the programme of the planned developments; and
 - (c) the Secretary for the Environment, Transport and Works has accepted Audit's recommendation mentioned in paragraph 2.39 of the Audit Report;

Noise barriers for a private residential development in Ma On Shan

- expresses concern that:
 - (a) the TDD had not mentioned in its June 2000 paper on the Trunk Road T7 project for the Public Works Subcommittee of the Legislative Council that the developer had the obligation of providing noise mitigation measures under the land grant conditions of March 1996, and the circumstances leading to the use of public funds of about \$40 million to build the noise barriers by the Government;
 - (b) the land grant conditions of the Ma On Shan site did not contain any provision which would entitle the Government to recover from the developer the cost of putting in place the noise mitigation measures if they were to be provided by the Government; and

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- (c) there was no record indicating that the Administration had taken any follow-up actions on the land premium implications arising from the Environmental Impact Assessment (EIA) Study Management Group's decision to construct the noise barriers along Trunk Road T7 in lieu of the noise barriers to be provided by the developer within his lot boundary, although the EIA Study Management Group had agreed that the TDD should follow up with the Lands Department (Lands D) in this regard;
- notes that:
 - (a) the Administration has accepted Audit's recommendations mentioned in paragraph 4.18 of the Audit Report;
 - (b) according to the legal advice recently obtained by the Lands D, it is now not possible to recover any cost from the developer; and
 - (c) the Lands D has issued a Technical Circular, which is applicable to all relevant cases not yet executed, to add a related provision such that the Government at its discretion may offer to provide the required or alternative environmental mitigation measures in place of the Grantee/Purchaser, if this can be agreed by the parties. In such event, the Grantee/Purchaser shall pay the Government the required costs as agreed;

Other audit findings

- acknowledges that the Administration has accepted Audit's recommendations in paragraphs 3.13 and 5.17 of the Audit Report; and

Follow-up action

- wishes to be kept informed of the progress of the Administration's follow-up action on Audit's recommendations.