REPORT OF THE

PUBLIC ACCOUNTS COMMITTEE

ON

THE REPORTS OF THE DIRECTOR OF AUDIT

ON

THE ACCOUNTS OF THE GOVERNMENT OF

THE HONG KONG SPECIAL ADMINISTRATIVE REGION

FOR THE YEAR ENDED

31 MARCH 2003

AND THE RESULTS OF

VALUE FOR MONEY AUDITS (Report No. 41)

February 2004

P.A.C. Report No. 41

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I. Introduction

The Establishment of the Committee The Public Accounts Committee is established under Rule 72 of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region, a copy of which is attached in ***Appendix 1*** to this Report.

2. **Membership of the Committee** The following Members are appointed by the President under Rule 72(3) of the Rules of Procedure to serve on the Committee:

Chairman	**:**	Dr Hon Eric LI Ka-cheung, GBS, JP
Deputy Chairman	**:**	Hon Emily LAU Wai-hing, JP
Members	**:**	Dr Hon David CHU Yu-lin, JP Hon SIN Chung-kai Hon Howard YOUNG, SBS, JP Hon LAU Kong-wah, JP Hon Abraham SHEK Lai-him, JP
Clerk	**:**	Ms Miranda HON Lut-fo
Legal Adviser	**:**	Mr Jimmy MA Yiu-tim, JP

II. Procedure

The Committee's Procedure The practice and procedure, as determined by the Committee in accordance with Rule 72 of the Rules of Procedure, are as follows:

(a) the public officers called before the Committee in accordance with Rule 72 of the Rules of Procedure, shall normally be the Controlling Officers of the Heads of Revenue or Expenditure to which the Director of Audit has referred in his Report except where the matter under consideration affects more than one such Head or involves a question of policy or of principle in which case the relevant Director of Bureau of the Government or other appropriate officers shall be called. Appearance before the Committee shall be a personal responsibility of the public officer called and whilst he may be accompanied by members of his staff to assist him with points of detail, the responsibility for the information or the production of records or documents required by the Committee shall rest with him alone;

(b) where any matter referred to in the Director of Audit's Report on the accounts of the Government relates to the affairs of an organisation subvented by the Government, the person normally required to appear before the Committee shall be the Controlling Officer of the vote from which the relevant subvention has been paid, but the Committee shall not preclude the calling of a representative of the subvented body concerned where it is considered that such a representative could assist the Committee in its deliberations;

(c) the Director of Audit and the Secretary for Financial Services and the Treasury shall be called upon to assist the Committee when Controlling Officers or other persons are providing information or explanations to the Committee;

(d) the Committee shall take evidence from any parties outside the civil service and the subvented sector before making reference to them in a report;

(e) the Committee shall not normally make recommendations on a case on the basis solely of the Director of Audit's presentation;

(f) the Committee shall not allow written submissions from Controlling Officers other than as an adjunct to their personal appearance before the Committee; and

(g) the Committee shall hold informal consultations with the Director of Audit from time to time, so that the Committee could suggest fruitful areas for value for money study by the Director of Audit.

2. **The Committee's Report** This Report by the Public Accounts Committee corresponds with the Reports of the Director of Audit on:

- the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2003; and

- the results of value for money audits (Report No. 41),

which were tabled in the Legislative Council on 26 November 2003. Value for money audits are conducted in accordance with the guidelines and procedures set out in the Paper on Scope of Government Audit in the Hong Kong Special Administrative Region - 'Value for Money Audits' which was tabled in the Provisional Legislative Council on 11 February 1998. A copy of the Paper is attached in ***Appendix 2***.

3. In addition, this Report takes stock of the progress of the action taken by the Administration on the recommendations made in the Committee's Report Nos. 38 and 39 and offers the Committee's views on the action taken. These are detailed in Parts III and IV of this Report.

4. **The Government's Response** The Government's response to the Committee's Report is contained in the Government Minute, which comments as appropriate on the Committee's conclusions and recommendations, indicates what action the Government proposes to take to rectify any irregularities which have been brought to notice by the Committee or by the Director of Audit and, if necessary, explains why it does not intend to take action. It is the Government's stated intention that the Government Minute should be laid on the table of the Legislative Council within three months of the laying of the Report of the Committee to which it relates.

III. Report of the Public Accounts Committee on Report No. 38 of the Director of Audit on the Results of Value for Money Audits *[P.A.C. Report No. 38]*

Laying of the Report Report No. 38 of the Director of Audit on the results of value for money audits was laid in the Legislative Council on 24 April 2002. The Committee's subsequent Report (Report No. 38) was tabled on 10 July 2002, thereby meeting the requirement of Rule 72 of the Rules of Procedure of the Legislative Council that the Report be tabled within three months of the Director of Audit's Report being laid.

2. **The Government Minute** The Government Minute in response to the Committee's Report No. 38 was laid in the Legislative Council on 16 October 2002. A progress report on matters outstanding in the Government Minute was issued on 20 October 2003. The latest position and the Committee's further comments on these matters are set out in paragraphs 3 to 8 below.

3. **Mechanised street cleansing services** (Chapter 1 of Part IV of P.A.C. Report No. 38). The Committee was informed that:

Disciplinary actions instituted by the Discipline Section of the Food and Environmental Hygiene Department (FEHD) in respect of substantiated complaints

- the FEHD had implemented new measures to heighten staff's awareness of their work performance while on duty, including the establishment of the Quality Assurance (QA) Section in 2000 and strengthening the functions of the Discipline Section;

- up to 31 July 2003, the QA Section had completed the investigation of 984 complaints alleging staff misconduct and was still investigating 80 cases. Out of the 984 cases, 171 were substantiated. They were mainly about unauthorised absence, unauthorised outside work, non-performance of duties, neglect of supervisory responsibility and unpunctuality. On the concluded cases, disciplinary action was taken against 241 officers including verbal/written warnings to 236 of them, and formal disciplinary action against the remaining five in the form of reprimand, severe reprimand with fine and compulsory retirement;

Progress made in implementing the recommendations of the review of the mechanised street sweeping service

- the FEHD had implemented all the recommendations of the review and had outsourced all the mechanised street sweeping service since November 2002;

Results of the review of the mechanised gully cleansing service

- the FEHD had implemented all the recommendations of the review. In view of the surplus of Workmen I, the FEHD would need to reschedule the outsourcing programme for the existing five in-house mechanised gully cleansing routes to ensure satisfactory redeployment of surplus staff;

Progress made in streamlining the organisational structure of the FEHD

- the FEHD had accepted and implemented most of the Management Services Unit (MSU)'s proposals in the Staffing Review of Foreman Grade with regard to the streamlining of the organisational structure. The only outstanding item was the re-engineering and streamlining of the supervisory hierarchy of the Cemeteries and Crematoria Section. Subject to the satisfactory redeployment of staff, the initiative would be fully implemented in 2003-04 and an estimated net annual recurrent saving of around $4 million would be achieved. In response to the Committee's enquiry, the **Director of Food and Environmental Hygiene** provided the breakdown of the recurrent annual savings in Annex I of his letter of 15 January 2004, in ***Appendix 3***; and

- in response to the Committee's question as to whether, after implementing the MSU's proposals, the number of tiers of staff involved in supervisory duties over the delivery of mechanised street cleansing services had been reduced, the **Director of Food and Environmental Hygiene** advised, in the same letter, that:

  (a) for the delivery of mechanised street cleansing services, the FEHD had removed two tiers of staff at Overseer and Foreman levels. The FEHD would also soon proceed to review the need to retain in the hierarchy the tier of Superintendent. The relevant post had been left vacant for some time. Revised organisation charts showing the current tiers of staff, from the Director of Food and Environmental Hygiene, involved in the provision of mechanised street cleansing services were provided in Annex II of his letter;

  (b) the day-to-day supervision of the Mechanised Street Cleansing Services Unit rested with the two tiers of staff at Health Inspector and Senior Foreman levels. They were responsible for supervising the outsourced services as well as in-house staff. With the gradual phasing in of outsourcing, the Ganger posts, who were the leaders of the frontline operatives, would also be deleted; and

(c) the other tiers of staff in the hierarchy performed policy work and system management functions. The management of the Mechanised Street leansing Services Unit only formed a small part of their daily duties.

4. The Committee wishes to be kept informed of the result of the FEHD's review of the need to retain the tier of Superintendent in the hierarchy.

5. **Liberalisation of the local fixed telecommunications market** (Chapter 2 of Part IV of P.A.C. Report No. 38). The Committee was informed that:

Measurement and reporting of the progress of competition

- the Office of the Telecommunications Authority (OFTA) had commissioned a consultant in end 2002 to develop a set of objective indicators to measure the effectiveness of and consumer benefits due to competition introduced into the telecommunications market in Hong Kong. The report had been published in June 2003. The OFTA planned to conduct a similar study in about every two years to observe the trends and effects of market competition in the telecommunications industry;

Availability of consumer choice

- the OFTA continued to conduct telephone random checks every month on the performance of the three new network operators. Over the past year, one operator achieved almost 100% service availability and the other two operators achieved around 90%. Those cases that reported to have no service were due to the fact that demand for the operators' services in the particular exchanges had reached the operators' equipment capacity. The three new network operators were therefore not in breach of the licence conditions without satisfactory explanation;

Difficulties relating to interconnections

- the OFTA had published the interconnection agreements which the incumbent, PCCW-HKT Telephone Limited, had entered into with other telecommunications service providers since October 2002;

Procedures for making determinations on interconnection-related issues

- the OFTA had continued to monitor the progress of all determination cases to ensure timely completion of the determinations. It had published progress of interconnection determination cases on its website since July 2002; and

Opening up of the incumbent's exchanges to new operators and monitoring of fulfillment of commitments by new operators

- the three new network operators had met the milestones under the Deeds of Undertakings up to the end of 2002.

6. The Committee wishes to be kept informed of further development on the subject.

7. **Financial performance of the Post Office** (Chapter 4 of Part IV of P.A.C. Report No. 38). The Committee was informed that:

The results of the Post Office (PO)'s review of the postshop service, e-post service and remittance service

- the PO had changed the layout of the Postshop to maximise its usage. The PO had also expanded the product range and increased the sales outlets for postshop products, which had also been selling through the Electronic Service Delivery Life e-shop and CP1897.com since October 2002 and January 2003 respectively. The postshop service achieved breakeven in 2002-03 and the PO expected the postshop service to generate a small profit on a full cost basis in 2003-04;

- the e-post service achieved breakeven in 2001-02 and recorded a profit in 2002-03. To ensure sustained profitability, in addition to providing a one-stop shop service to print, envelop and post items for major customers, the PO would continue to look for additional business opportunities to make better use of the capacity of the existing centre so as to optimise productivity and enhance equipment utilisation;

- the result of the PO's market research on its remittance service conducted in February 2002 showed that the service was competitive for low-value transactions (below HK$3,000). The service had been extended to cover Canada and Japan in September 2002 and May 2003 respectively. To

shorten the remittance time, the PO was discussing with the New Zealand Post and the State Postal Bureau in the Mainland the use of their networks for the implementation of electronic remittance with major cities of the world within 2003-04. In the first quarter of 2003-04, the service recorded an increase of 50% in transaction volume and revenue, as compared with the same period in 2002-03. With the automation of counter procedures in June 2003, the operating cost for the service had been further reduced;

The progress and results of the PO's delivery beat review

- the PO started a new round of beat reviews in 2001 covering all the 21 Delivery Offices and 1,730 delivery beats. The reviews would be completed by late 2004;

- in parallel, in June 2002, the PO commenced a survey of all twice-delivery beats to fast-track the exercise to identify beats that might be converted into once-delivery beats. The survey was completed in March 2003. The PO considered it feasible to convert all twice-delivery beats to once-delivery beats and the number of delivery beats would be reduced by about 100 after the conversion. In response to the recommendation of the Committee, the PO would, together with the Economic Development and Labour Bureau (EDLB), consult the Legislative Council on plans to change these beats. The PO had revised the working hours of all twice-delivery beats in March 2003. This had resulted in a reduction of 26 delivery beats and productivity enhancement;

The progress of the PO's review of the system of controlling and monitoring the overtime work of delivery postmen

- the data from the comprehensive recording system which the PO introduced in June 2002 were transferred to the Weekly and Quarterly Mail Count Reports. The Area Postal Inspectors used these reports to monitor changes in workload, mail pattern and mode of delivery of each individual beat for cost control and operational management purposes;

- the PO had put in place an additional checking system requiring Senior Postal Inspectors of delivery offices to monitor the Area Postal Inspector's assessment of the daily workload of delivery postmen; and

The results of the comprehensive review of postal policy and services

- the PO, together with the EDLB and the Financial Services and the Treasury Bureau, had continued to critically examine the challenges to the PO's operation identified by the Committee. Apart from the PO's financial performance and its operation as a trading fund, the studies had covered issues related to the postal services market. The PO had said that the complexity of the many issues involved had necessitated more detailed studies.

8. The Committee wishes to be kept informed of:

- the progress and results of the PO's conversion of the twice-delivery beats to once-delivery beats; and

- the results of the comprehensive review of postal policy and services.

IV. Report of the Public Accounts Committee on the Reports of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2002 and the Results of Value for Money Audits (Report No. 39) and Supplemental Report of the Public Accounts Committee on Report No. 38 of the Director of Audit on the Results of Value for Money Audits *[P.A.C. Report No. 39]*

Laying of the Report The Director of Audit's Report on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2002 and his Report No. 39 on the results of value for money audits were laid in the Legislative Council on 20 November 2002. The Committee's subsequent Report (Report No. 39) was tabled on 19 February 2003, thereby meeting the requirement of Rule 72 of the Rules of Procedure of the Legislative Council that the Report be tabled within three months of the Director of Audit's Report being laid.

2. **The Government Minute** The Government Minute in response to the Committee's Report No. 39 was laid in the Legislative Council on 28 May 2003. A progress report on matters outstanding in the Government Minute was issued on 20 October 2003. The latest position and the Committee's further comments on these matters are set out in paragraphs 3 to 53 below.

3. **Provision of slaughtering facilities for supplying fresh meat** (paragraphs 3 to 4 of Part III of P.A.C. Report No. 39). The Committee was informed that:

- the Food and Environmental Hygiene Department (FEHD) awarded a contract to a consultancy firm in October 2002 to forecast the slaughtering throughput of livestock in the territory for the coming years up to 2010, having regard to the result of a review on the demand for fresh meat on account of any changes to the eating habits of the population. The desktop research part of the consultancy study had been completed. The review on the demand for fresh meat and the eating habits of the population would commence once the result of the survey part had been obtained. The consultancy study was expected to be completed in the first quarter of 2004; and

- based on the outcome of the consultancy study, the FEHD would carry out a detailed assessment to ascertain the feasibility of centralising the slaughtering operation of livestock at the Sheung Shui Slaughterhouse (SSSH).

4. The Committee wishes to be kept informed of:

- the results of the consultancy study to forecast the slaughtering throughput of livestock in Hong Kong; and

- the results of the detailed study on the feasibility of centralising the slaughtering operation of livestock at the SSSH.

5. **Services provided by the Official Receiver's Office** (paragraphs 3 to 4 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

General

- the Official Receiver's Office (ORO) had set up a permanent Task Force to continuously review the practices and procedures of the ORO in the administration of insolvency cases. The following measures, inter alia, had been considered and implemented by the Task Force in the past six months:

  (a) the contracting out to private insolvency practitioners (PIPs) of the preliminary examination of bankrupts;

  (b) a review of internal circulars with a view to further simplifying the working practices and procedures of the ORO; and

  (c) a further review of the standard forms used by the ORO with a view to cancelling the obsolete ones and simplifying the remainder;

Guidelines on liquidators' remuneration

- a set of guidelines on liquidators' remuneration for PIPs drawn up jointly by the ORO and the Hong Kong Society of Accountants (HKSA) had been submitted to the company judge for comments. The judge had expressed her initial views on the matter during a talk she gave to the Insolvency Interest Group of the HKSA in July 2003. The views were noted by PIPs who would have to take them into account when they submitted their applications for remuneration in future; and

Consultancy study and fees of the ORO

- other recommendations of the consultancy study including the proposed "cab rank" system and licensing of PIPs were being further considered. The question of fees and cost recovery rates would be reviewed in 2004 subject to the progress of outsourcing bankruptcy cases to PIPs.

6. The Committee noted that the Bankruptcy (Amendment) Bill 2003 was introduced into the Legislative Council on 10 December 2003. One of the objectives of the Bill is to enable the Official Receiver to outsource bankruptcy cases to PIPs in specified circumstances. A bills committee was formed to examine the Bill.

7. The Committee wishes to be kept informed of further developments on the subject including:

- the promulgation of guidelines on liquidator's remuneration for PIPs; and

- the other recommendations of the consultancy study and the issues of fees and cost recovery rates in relation to insolvency cases.

8. **Control of obscene and indecent articles by the Television and Entertainment Licensing Authority** (paragraphs 11 to 12 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

- the review by the Commerce, Industry and Technology Bureau (CITB) and the Television and Entertainment Licensing Authority (TELA) of the Control of Obscene and Indecent Articles Ordinance (COIAO) was still in progress. Though the TELA had yet to complete the review exercise, it had continued to step up enforcement work under the COIAO and actively enhanced its public education programme to strengthen the community against obscene and indecent articles; and

- one recent initiative was to sponsor the Hong Kong Internet Service Provider Association to launch the voluntary Internet Content Rating Scheme (ICRS) in Hong Kong whereby website operators could conduct self-assessment in respect of the content at their websites and then obtain the ICRS labels. Parents could freely download the ICRS filters so that their computers could only surf those websites with the ICRS labels. This would help parents select healthy Internet material for their children without affecting freedom of expression.

9. The Committee wishes to be kept informed of the progress of the review of the COIAO by the CITB and the TELA.

10. **The provision of government wholesale food markets** (paragraphs 18 to 20 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

Development of the Cheung Sha Wan Wholesale Food Market Complex Phase II Project

- the Administration was still reviewing other options of developing the Phase II site for wholesale market purpose. It would continue to keep the Panel on Food Safety and Environmental Hygiene informed of the development; and

Progress on exploring the possibility of maximising the utilisation of the Western Wholesale Food Market site

- the Administration expected to complete the review on the need for and the development timetable of individual projects, including the reclamation of the Western District, under planning in the latter part of 2003.

11. The Committee wishes to be kept informed of the progress of:

- the development of the Cheung Sha Wan Wholesale Food Market Complex Phase II Project; and

- exploring the possibility of maximising the utilisation of the Western Wholesale Food Market site.

12. **Monitoring of charities: fund-raising and tax allowances** (paragraphs 25 to 26 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

- the Administration had continued to strengthen administrative controls over charitable fund-raising activities, to enhance their transparency and accountability. Since August 2003, the Social Welfare Department (SWD) had been conducting public consultation on a new proposed mechanism to help monitor charitable fund-raising. Under the new proposed system, the SWD would draw up a Reference Guide on Best Practices for conducting charitable fund-raising activities, covering donors' rights, fund-raising practices and accounting/auditing requirements to meet standards of transparency and public accountability. Charities which voluntarily undertook to comply with the Reference Guide might apply for listing in a Public Register for public inspection/information. Substantiated complaints against listed charities for contravening the Reference Guide would lead to removal of their names from the Public Register. This system was scheduled to be implemented by the end of 2004; and

- the SWD was also working with the Hong Kong Society of Accountants to prepare a practice note on the auditing of accounts of charitable fund-raising activities other than flag days.

13. The Committee wishes to be kept informed of further development on the subject.

14. **Relocation of the General Post Office** (paragraphs 29 to 30 of Part IV of P.A.C. Report No. 39). The Committee was informed that in view of the changes in circumstances, the Administration had re-assessed the cost-benefits of the project for the relocation of the General Post Office (GPO). Taking into account the current market conditions and the much-reduced plot ratio of the site, the expected proceeds from sale of the GPO site would not be sufficient to cover the costs for reprovisioning the facilities elsewhere. The project, which included the relocation of the GPO's offices and plants, its Counter/Post Office Box Sections and its Delivery Office, was therefore no longer economically viable and had to be abandoned.

Further developments

15. The Committee considered that as market conditions changed, the price of land would fluctuate. Whereas the expected proceeds from sale of the GPO site in the current economic situation might not be sufficient to cover the reprovisioning costs, the price of the site might rise when the economic situation improved. If the project was abandoned now, the Administration might not be able to seize the opportunity to dispose of the site when the land price rose in future. The Committee therefore asked about the costs and benefits of the relocation of the GPO, as assessed by the Administration in arriving at the conclusion that the project was no longer economically viable.

16. The **Acting Government Property Administrator** responded, in his letter of 15 January 2004 in ***Appendix 4***, that:

- the recommendation made by the Director of Audit in his Report No. 31 was that the GPO should be relocated to low value areas in order to release the existing GPO site in Central District (the Site) for redevelopment. It was the assumption then that the Site should have a plot ratio of 15 by comparison to nearby commercial/office developments. The Administration agreed with the recommendation and proceeded to take on the Relocation Project. Several reprovisioning options were considered;
- with time and efforts, an approach emerged that the GPO would need to be reprovisioned to three locations. The plan was to reprovision the GPO Headquarters and the Sorting Centre to a site in Chai Wan (Location One); the Delivery Office to a site zoned for government, institution or community use in Sai Ying Pun (Location Two); and the Counter and PO Box Sections to a commercial premises in Central District (Location Three). In order to fully utilise the site potential of the Chai Wan site, the Water Supplies Department (WSD) was identified to be another major joint-user in the project with the benefit of releasing WSD's under-developed site (zoned for commercial use) in North Point for sale;

- the costs and benefits analysis (CBA) conducted in October 2002 for the Relocation Project (in the Attachment to his letter) showed that the aggregated cost of the three reprovisioning items was $2,174 million. Together with the aggregated land cost of $59 million for the sites and other miscellaneous costs, the total costs therefore would amount to $2,233 million. On the benefits side, the relocation exercise would enable the release of three sites for redevelopment (i.e. two Hong Kong Post (HKP) sites and one WSD site). Rental savings would also be achieved by deleasing some leases. The aggregated value of the three sites was estimated to be in the region of $1,601 million. The total costs over the benefits as demonstrated in the CBA would be $632 million, if the rental savings of about $13 million per annum to HKP were to be excluded in the computation. (Note : Even if the rental savings of $13 million were to be capitalised and taken into account, the capital costs would still exceed the benefits by $479 million.);

- the main reason for undertaking the Relocation Project was that the Site was much under-utilised. In 2000, however, the land use planning of the Central District was comprehensively reviewed. As a result, the Site was included as part of a Comprehensive Development Area and subject to a height restriction of 50m above principle datum on the approved Central District (Extension) Outline Zoning Plan. The new planning criteria drastically reduced the plot ratio of the Site from 15 to about 3.6 only (representing a substantial reduction of 76%). In the meantime, the property market continued to fall and the updated estimate of capital value of the Site had to reflect the market reality; and

- having conducted the CBA, the Administration critically reviewed the position and decided to abandon the Relocation Project because there was no economic case to proceed further. It was then considered that even if the property market would rebound in future, the land sale proceeds might not cover the reprovisioning costs, given that the plot ratio had been reduced by 76%. Should there be positive change(s) in circumstances, the Administration would be prepared to review the position and assess if an economic case could be established.

17. **Recoverability of the outstanding advances to the United Nations High Commissioner for Refugees** (paragraphs 31 to 32 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

- the Administration had continued to urge the United Nations High Commissioner for Refugees (UNHCR) to make renewed efforts to look for donations from other countries with a view to settling the amount of outstanding advances, which remained at $1,162 million as at 30 September 2003. When the UNHCR Head of Desk, Bureau for Asia and the Pacific, accompanied by the Regional Representative for China and Mongolia visited Hong Kong in August 2003, the Secretary for Constitutional Affairs and the Deputy Secretary for Security reiterated during the meetings with them that Hong Kong community at large still expected recovery of the outstanding advances; and

- the Administration would continue to pursue early repayment of the outstanding advances.

18. The Committee wishes to be kept informed of the action taken by the Administration in pressing the UNHCR to repay as soon as possible the outstanding advances to the Government of the Hong Kong Special Administrative Region.

19. **Footbridge connections between five commercial buildings in the Central District** (paragraphs 33 to 34 of Part IV of P.A.C. Report No. 39). The Committee was informed that the owner of Building II had advised that because of the structural problems for Footbridge A to be built at a skewed angle, the Footbridge A alignment proposed by the owner of Building I was not acceptable. The owner of Building II would continue to explore possible options for the construction of Footbridge A with the owner of Building I.

Further developments

20. The Committee asked the Administration to provide a detailed account of:

- the current problems faced by the owners of Buildings I and II regarding the construction of Footbridge A;

- whether the owners of Buildings I and II are considering any other option(s) for constructing Footbridge A and if so, details of the option(s); and

- the possibility of successfully constructing Footbridge A, in the

Administration's assessment.

21. The **Secretary for Housing, Planning and Lands** responded, in his letter of 20 January 2004 in ***Appendix 5***, that:

- the owner of Building I had indicated that its building was not designed to take up the additional load arising from Footbridge A. This meant that if Footbridge A was to be connected to Building I, strengthening work (with cost implications) to the Building was required. The owner of Building I had indicated that it would not bear the costs for such work and its future maintenance. The owner of Building II did not agree that it should bear such costs;

- since the last report to the Committee, the owner of Building II had submitted a new footbridge proposal. The owner proposed to construct a footbridge which would cross Queen's Road Central, stopping immediately in front of Building I but would not link to the mezzanine floor (M/F) of Building I. Instead, staircases and lifts were proposed to take pedestrians from the Footbridge onto the street. This proposal, not requiring the consent of the owner of Building I, was found not acceptable because it would cause obstruction to the pedestrian flow at Queen's Road Central and could not achieve the original intention of linking up the two buildings; and

- there was no more new proposal from the owner of Building II. To facilitate the construction of Footbridge A, the Lands Department was exploring the feasibility of an alternative proposal of linking Building II with the southeast corner of Building I at its M/F. It would require column supports at the pavement on both sides of the Queen's Road Central. The Lands Department was consulting relevant departments on this alternative. The Administration would report the outcome of the deliberation to the Committee in due course.

22. The Committee wishes to be kept informed of further development on the subject.

23. **The use of energy-efficient air-conditioning systems in Hong Kong** (paragraphs 35 to 38 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

- the consultancy study for the implementation of water-cooled air-conditioning system (WACS) in Wanchai and Causeway Bay was

scheduled for completion by end 2003. The two consultancy studies for the implementation of District Cooling Scheme (DCS) in South East Kowloon Development (SEKD) and for the territory-wide implementation of WACS were substantially completed;

- the consultancy study for the implementation of DCS in SEKD found the project technically viable. However, its financial viability was sensitive to the overall service subscription rate, the pace of development of SEKD, as well as the land related costs. The consultancy study for the territory-wide implementation of WACS had examined three schemes, namely, DCS, Central Seawater Scheme and Cooling Tower Scheme. It concluded that DCS could not co-exist with the Central Seawater Scheme and DCS was more energy-efficient and cost-effective. However, DCS could co-exist with Cooling Tower Scheme. Subject to adequate capacity of the water supply infrastructure and proper design, operation and maintenance of cooling towers, the study recommended to allow the use of fresh water for cooling towers. The study also identified a list of zones in which implementation of DCS might be financially viable. The Administration had presented the findings of the two studies to the Energy Efficiency and Conservation Sub-committee and the Panel on Environmental Affairs between December 2002 and July 2003. The majority of members supported in principle the findings of both studies;

- the Electrical and Mechanical Services Department (EMSD) had posted the executive summaries of both studies in the EMSD's website for public consultation, including the major stakeholders. The majority of comments received during the consultation period February to April 2003 supported the proposed DCS in SEKD in principle. The consultation of the consultancy study for the territory-wide implementation of WACS was underway and would end in November 2003. The Administration would consider the recommendations of the consultancy studies as well as comment and/or feedback received when the consultation had been completed;

- the Administration had introduced a pilot scheme, under the management of the EMSD, in 2000 to allow the use of fresh water in evaporative cooling to improve the energy efficiency of the air-conditioning systems of non-domestic buildings. The Administration had further expanded the scheme to cover 54 areas in August 2003. The Administration had received 48 applications and 33 of them had been approved in principle, covering about 1.5 million square metres of floor area. The estimated annual savings in electricity would be about 17.5 million kilowatt-hours. Seven installations had been completed and commissioned;

- further to the completion of the first phase of inspection programme of all the existing cooling towers in October 2002, the EMSD had started the second phase of the programme in November 2002 to review the conditions of cooling towers found to be in poor conditions and to collect water samples for testing from those cooling towers from which samples could not be obtained in the first phase. It was anticipated that about 4,000 water samples would be collected for testing up to early October 2003;

- as a continuation of the 2002 large-scale clearance exercise to remove potentially dangerous and unauthorised appendages on external walls of buildings, including cooling tower supporting structures, the Buildings Department (BD) targeted at another 1,000 buildings in 2003. Up to September 2003, about 650 cooling towers supporting structures had been removed. The BD would prosecute defaulters for non-compliance with removal orders after the necessary warnings. It was estimated that 200 to 300 potentially dangerous cooling towers supporting structures erected outside commercial and industrial buildings would be removed each year; and

- the Administration would keep the Committee informed of the findings and recommendations of the three consultancy studies, the latest development of the pilot scheme on allowing the use of fresh water for WACS in non-domestic developments and the way forward on how to ensure proper design, operation and maintenance of cooling towers.

24. The Committee wishes to be kept informed of further development on the subject.

25. **Administration of allowances in the civil service** (paragraphs 39 to 40 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

- the Administration had completed the review of job-related allowances (JRAs) payable to around 6,700 staff, involving an annual expenditure of $46 million. As a result, the Administration had ceased certain allowances that were considered no longer justified because of changing circumstances, and had identified areas of improvements (e.g. tightening up payment criteria) for some others. The Administration estimated that the annual savings achievable were around $17 million, representing 37% of the annual expenditure on JRAs under review;

- in respect of the allowances which were approved for continued payment, they were subject to review within a specified time-frame of not exceeding two years. This served to ensure that payment of all JRAs was justifiable and appropriate in the prevailing circumstances;

- there were a number of Hardship Allowances which were payable for performing duties such as cleansing, drainage/sewer cleaning and handling of waste, blood or dead bodies. The annual expenditure of these allowances was around $74 million. Due to the Severe Acute Respiratory Syndrome crisis, front-line staff engaged in these duties were facing much more arduous situation. Moreover, the Government was committed to establishing and promoting a sustainable, cross-sectoral approach to improve environmental hygiene in Hong Kong. Whether and how the nature of work and workload involved for these staff concerned might be affected were uncertain at that stage. In the light of these circumstances, and taking into account views expressed by front-line staff, the Administration had decided to defer the review of these allowances in question by six months (i.e. up to 30 November 2003). These allowances would be reviewed critically before the end of the extended period to ensure that only justified allowances would continue to be paid; and

- as regards the JRAs payable to disciplined services grades, the Administration intended to introduce a similar arrangement as that applicable to the civilian grades. In other words, in future, the continued payment of all JRAs would be subject to approval by the Civil Service Bureau on a time-limited basis having regard to the recommendation of the concerned bureaux/departments and, where applicable, review and re-approval by the end of the specified period. The Administration was discussing with the disciplined services departments details of the framework for the future review and monitoring mechanism.

26. The Committee wishes to be kept informed of further development on the subject.

27. **Water purchased from Guangdong Province** (paragraphs 41 to 42 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

Further efforts to incorporate more favourable terms in future water supply agreements, including medium to long-term flexible supply arrangements

- pursuant to discussions at the Operation and Management Technical Sub-group Meeting held in March 2003, the Administration had obtained agreement from the Guangdong Authority to maintain a certain degree of flexible supply arrangement. As a result, from January to September 2003, the Administration had achieved savings of about HK$4.4 million in pumping costs through reduced delivery of Dongjiang water to impounding reservoirs. The Administration would maintain close liaison with the Guangdong Authority for further flexible supply arrangements to suit Hong Kong's prevailing reservoir storage position. It would further negotiate with the Guangdong Authority for more flexibility in the medium and long-term supply arrangements, and more favourable terms in future agreements;

Progress of measures taken to ensure that the quality of water supplied to Hong Kong meets the 1988 Environmental Quality Standard for Surface Water

- data of the quality of Dongjiang water at Taiyuan Pumping Station provided by the Guangdong Authority indicated the continual compliance with the Environmental Quality Standard for Surface Water, Type II standard of GB3838-88. With the commissioning of the entire closed aqueduct in June 2003, Dongjiang water supplied to Hong Kong bypassed all the pollution sources along the open channel. There had been a noticeable improvement in the quality of Dongjiang water received in Hong Kong;

Progress of action plans formulated to improve the quality of Dongjiang water at the Joint Working Group on Sustainable Development and Environmental Protection

- the Administration continued to closely monitor the quality of Dongjiang water supplied to Hong Kong, and kept in view progress of the works of the Guangdong Authority in protecting Dongjiang water quality, particularly the "Guangdong Green Water Improvement Scheme";

- the Guangdong Authority continued to provide the Water Supplies Department (WSD) with data on the quality of Dongjiang water near Taiyuan Pumping Station for publication annually at the WSD's website. The latest data published in May 2003 demonstrated that the water quality in 2002 continued to comply with the Type II standard of GB3838-88. Starting from 2003, the Guangdong Authority regularly published in the website of the Guangdong Provincial Bureau of Environmental Protection information concerning water quality of reservoirs, including Xinfengjiang, and different cross sections of major rivers, including Dongjiang. With the Administration's continued urge for more Dongjiang water quality data, the Guangdong Authority had agreed to consider the request, taking into account the latest national and provincial policies on release of water quality data; and

Monitoring actions with regard to the quality of Dongjiang water received at Muk Wu Pumping Station

- the stringent monitoring of water quality on Dongjiang water received at Muk Wu Pumping Station was a continuous exercise and included testing on the physical, chemical and microbiological parameters. The results were available to the public at the WSD's website and had been updated twice a year since end 2002.

28. The Committee wishes to be kept informed of:

- the Administration's further efforts to negotiate with the Guangdong Authority for more flexibility in the medium and long-term supply arrangements, and more favourable terms in future water supply agreements; and

- the progress of the works of the Dongjiang Water Quality Protection Special Panel under the Joint Working Group on Sustainable Development and Environmental Protection in protecting Dongjiang water quality, with a view to ensuring that the quality of Dongjiang water supplied to Hong Kong meets the Environmental Quality Standard for Surface Water, Type II standard of GB3838-88.

29. **Interdiction of government officers** (paragraphs 43 to 44 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

Review of the disciplinary procedures practised in the Police Force

- the Police Force management was considering the recommendations of the working group formed to review the Police Force's discipline system. The Administration would inform the Committee of the outcome in due course; and

Stoppage of salary on the date of conviction

- the Administration was reviewing the issue of amending section 37(4) of the Police Force Ordinance to stop payment of the salary of an interdicted officer with effect from the date of conviction (as opposed to the following day). The Administration would inform the Committee of the outcome in due course.

30. The Committee wishes to be kept informed of further development on the subject.

31. **Employees Retraining Scheme** (paragraphs 45 to 48 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

- the Employees Retraining Board (ERB) had conducted a job retention survey in March 2003. The results indicated that 67% of the retrainee graduates surveyed remained in employment six months after placement. The ERB would continue to further improve the post-training follow-up services to enhance the employability of retrainee graduates. Another job retention survey was conducted in June 2003; and

- the ERB would continue to take follow-up action as one of its on-going and regular activities.

Further developments

32. In response to the Committee's enquiry, the **Executive Director of the ERB** advised, in his letter of 7 January 2004 in ***Appendix 6***, that the results of the job retention

survey conducted in June 2003 indicated that 66% of the retrainee graduates surveyed remained in employment six months after placement. Two other job retention surveys had also been conducted in September and November 2003, with retention rates of 68% and 66% respectively. The next survey was planned to be conducted in February 2004.

33. **Construction of two bridges** (paragraphs 49 to 52 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

- the Administration consulted the industry again between October and December 2002 on a proposal involving a six-month sanitisation period following the settlement of dispute or arbitration award. The Administration had proposed that during the sanitisation period, the private contracting party could withhold consent to the release of commercially-sensitive information. After the sanitisation period, the Administration would inform that party before any disclosure to the Committee and that party might request to have the commercially-sensitive information disclosed on a confidential basis. If the Administration considered the request legitimate, the Administration would refer it to the Committee to decide whether the subject matter should be discussed in confidence;

- the industry reiterated its objection to the disclosure of any confidential information concerning mediation and arbitration settlements. However, having considered the need to strike a balance between public interest and contract confidentiality, the Administration informed the industry that the Government would proceed with the proposal; and

- the Environment, Transport and Works Bureau had issued a technical circular making provisions in new construction contracts and consultancy agreements to allow the Government to disclose confidential information to the Committee under certain conditions. A copy of the technical circular is provided in the **Secretary for the Environment, Transport and Works**' letter of 13 January 2004, in ***Appendix 7***.

34. **Review of the Hong Kong Sports Development Board** (paragraphs 55 to 57 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

Remuneration packages of Hong Kong Sports Development Board (SDB) staff

- the Home Affairs Bureau was still awaiting the SDB's comments on the

review report on the remuneration packages of SDB staff;

Utilisation of SDB's sports facilities

- on 8 July 2003, the Government announced the outcome of the Sports Policy Review which included a new sports administrative structure and a decision to dissolve the SDB and to reconstitute the Hong Kong Sports Institute (HKSI) on 1 April 2004. The redevelopment/upgrading of the SDB/HKSI facilities would be dealt with by the Government and the reconstituted HKSI after April 2004;

Contracting out of SDB's services

- in the new sports administrative structure, the HKSI would be reconstituted as an incorporated body on 1 April 2004. The SDB had decided that unless absolutely necessary, no new initiatives straddling the next financial year should be undertaken, so as to avoid pre-empting the reconstituted HKSI. Further contracting out initiatives would be contemplated by the reconstituted HKSI after it was established; and

Management of Sports House and grants to the National Sports Associations (NSAs)

- under the new sports administrative structure, the management of the Sports House and grants to the NSAs would revert to the Government after the dissolution of the SDB on 1 April 2004. The SDB would forward all the proposed improvement measures on funding policy to the Government for consideration.

35. The Committee noted that the Hong Kong Sports Development Board (Repeal) Bill was introduced into the Legislative Council on 26 November 2003. The Bill seeks to repeal the Hong Kong Sports Development Board Ordinance, to close the Hong Kong Sports Institute Trust Fund, and to dissolve the SDB and the Hong Kong Sports Institute Trust Fund Committee of Trustees established under the Ordinance. A bills committee was formed to examine the Bill.

36. The Committee wishes to be kept informed of the development in the implementation of the new sports administrative structure and the reconstitution of the HKSI.

37. **Provision of legal aid services** (paragraphs 64 to 65 of Part IV of P.A.C. Report No. 39). The Committee was informed that:

Some measures to contain the costs of Legal aid

- the final evaluation report on the Pilot Scheme on Family Mediation, commissioned by the Judiciary and undertaken by The Hong Kong Polytechnic University, was completed in September 2003. The Steering Committee on the Pilot Scheme on Family Mediation discussed the report in early February 2004 but had yet to take a position on the recommendations contained therein. At the request of the Committee, the Judiciary had provided a copy of the report for the Committee's reference;

- the Administration would take account of the evaluation report, as well as the outcome of the consultation conducted by the Judiciary on Civil Justice Reform initiatives, in exploring the viability to use mediation to resolve disputes as a condition for receiving legal aid. The Director of Administration would consult the Legislative Council on the way forward in due course;

Means test

- as part of the continued effort to maintain the standard and consistency of means testing work, the Legal Aid Department (LAD) arranged in September 2002 three more workshops on means assessment and two experience-sharing sessions in April 2003 for its staff;

- the LAD had continued to conduct home visits in order to verify the information provided by the applicants regarding their means. Between August 2002 and March 2003, the LAD carried out some 80 more home visits in respect of both doubtful cases and cases selected on a random basis;

- conducting workshops/experience-sharing sessions and home visits had become standard practices of the LAD;

Performance indicators and overarching strategic planning

- the LAD had published its strategic plan in the Department's 2001 Annual Report, and would publish an updated strategic plan in the 2002 Annual Report (planned for publication in June 2003), and would also upload the plan onto its website. Besides, the Department had developed a number of new efficiency and effectiveness performance indicators which would also be

published in the 2002 Annual Report; and

- the LAD would update the strategic plan and develop appropriate performance indicators on an on-going basis.

38. The Committee wishes to be kept informed of:

- the Judiciary's position on the recommendations in the final evaluation report on the Pilot Scheme on Family Mediation; and

- the viability of using the family mediation service to resolve disputes as a condition for receiving legal aid.

39. **Residential services for the elderly** (Chapter 1 of Part VII of P.A.C. Report No. 39). The Committee was informed that:

Supply of purpose-built Residential Care Home for the Elderly (RCHE) premises

- the Government announced in July 2003 a new scheme to encourage provision of purpose-built RCHE premises in new private developments. Under the scheme, eligible RCHE premises would be exempted from payment of premium in respect of land transactions relating to lease modification, land exchange and private treaty grant as long as the developers were willing to accept incorporation of certain lease conditions so that control measures to ensure the delivery of RCHE premises could be imposed;

- as at September 2003, contracts for six RCHEs were awarded providing 574 subsidised and 283 non-subsidised places;

Developing an accreditation system for RCHEs

- the two-year pilot project on the development of an accreditation system for RCHEs in Hong Kong, conducted by the Hong Kong Association of Gerontology (HKAG), had been implemented on schedule for completion by mid-2004. In light of the experience gained in phase one of the pilot exercise, the HKAG had proceeded to the second phase of the pilot exercise involving 29 RCHEs from non-governmental organisations (NGOs) and the private sector in order to refine the accreditation instrument;

Further actions taken to reduce disparity in waiting time for admission to a subvented care and attention home and a bought-place home and to ensure that level of services provided at bought-place homes is comparable to that at subvented homes

- in the recent purchase exercise for Enhanced Bought Place Scheme (EBPS) places for 2003-04, the Social Welfare Department (SWD) had increased the required percentage of trained care workers from 50% to 75%;

- the exercise of phasing out Bought Place Scheme (BPS) places and upgrading BPS places to EBPS level was implemented as scheduled for completion in 2003-04;

- the two-year pilot project on Service Quality Group for contract and EBPS homes in Central and Western district and Kowloon City district originally planned to be implemented in mid-2003 was deferred due to the outbreak of the Severe Acute Respiratory Syndrome (SARS). The SWD planned to launch the project by end-2003;

Phasing out subsidised Home for the Aged (HFA) places

- the SWD had completed a review of the cases on the waiting lists for self-care hostel and HFA places to ascertain the genuine welfare needs of the elders concerned and match these elders to appropriate services. As at 15 August 2003, the number of elders on the waiting lists for self-care hostel and HFA places was 3,166, which represented a drop of 43.5% from the figure in end-December 2002. The drop was attributed to applicants' withdrawal of applications during case review with alternative support provided as needed;

Implementing work plan on provision of subsidised long-term care services and actions taken to address problem of allocation of resources between the Hospital Authority (HA) and SWD regarding the provision of infirmary care

- the SWD had proceeded to the final stage of upgrading its computer system to facilitate implementation of a centralised registration system for both residential and community care services provided under the social welfare system;

- since April 2003, the upgraded centres including District Elderly Community Centres and Neighbourhood Elderly Centres had been providing expanded functions such as carer support service, promoting lifelong learning and healthy ageing, volunteer movement, etc. to serve elders and carers living in the community. As for home-based service, 1,120 places had been created in the new Integrated Home Care Services Teams to serve frail cases by providing enhanced care and services to those who were assessed to be at moderate or severe levels of impairment but chose to age in the community;

- the SWD had so far awarded contracts for six RCHEs providing a total of 574 subsidised and 283 non-subsidised places;

- in the context of the review on provision of infirmary beds, the Administration was examining in conjunction with the HA, SWD and Department of Health (DH) the experience gained in the temporary transfer of infirm elderly patients who were medically stable from hospitals to RCHEs operated by NGOs during the SARS outbreak. The experience gained would assist the Administration in the deliberation on providing infirmary service in a non-hospital setting;

Progress of implementing Audit's recommendations on monitoring of health care services of RCHEs

- as of September 2003, the SWD had offered 1,100 training places for health workers; 1,440 out of 2,160 multi-skilled training places for care workers with resources secured for 2001 to 2005; and 780 out of 1,440 training places on dementia for staff of RCHEs with resources secured for 2002 to 2006. On first aid certificate training, 1,200 training places were provided for staff of RCHEs from 2000 to 2003, which was over the planned target of 1,080 places; and

- the DH and SWD had strengthened liaison in providing support to RCHEs during the SARS outbreak. Measures included issuance of guidelines to and arrangement of special talks for RCHEs on infection control and isolation measures as necessary; distribution of protective materials and conduct of visits to provide on-the-site support, advice and counselling. Protocols had been introduced to ensure efficient information flow and effective working relationship among the DH, SWD and HA.

40. The Committee wishes to be kept informed of further development on the

subject.

41. **The Customs and Excise Department's efforts to protect government revenue from dutiable commodities** (Chapter 2 of Part VII of P.A.C. Report No. 39). The Committee was informed that:

Preventing, detecting and deterring abuses of cigarette duty-free concessions

- the Customs and Excise Department (C&ED) continued with its stringent enforcement actions to detect and deter abuses of cigarette duty-free concessions by incoming passengers. With the aid of the new verification mechanism, the C&ED's stepped-up inspections on incoming passengers had yielded successful enforcement results;

- the C&ED had installed computer workstations at Lowu Control Point, Lok Ma Chau Control Point and Hong Kong-Macau Ferry Terminal to enable Customs officers to conduct verification on returning Hong Kong residents efficiently on their eligibility for cigarette duty-free concessions. It was planning to install computer workstations at all other control points by June 2004;

- during the period from April to July 2003, there was a monthly average of 5,337 passengers declaring possession of excessive duty-free cigarettes — an increase of 103% when compared to 2,624 in January 2003. There was also a monthly average of 99 incoming passengers arrested for bringing in undeclared excessive duty-free cigarettes — an increase of 160% when compared to 38 in January 2003. Passengers declaring possession of excessive duty-free cigarettes either paid duty or gave up the excessive cigarettes while passengers caught not having declared excessive duty-free cigarettes were prosecuted or fined under the compounding scheme;

- the C&ED would conduct a trial scheme on "Red and Green Channels" as an additional measure to assist Customs officers in detecting incoming passengers not declaring possession of excessive quantities of duty-free cigarettes and liquors;

- the new verification procedures and revised licence conditions for the Duty Free Shop (DFS) had proved to be effective. The C&ED would continue to monitor the sales activities of the DFS closely. The C&ED regularly conducted surprise checks on the DFS and found no irregularity. The licensee of DFS also had not expressed any problem in complying with the revised licence conditions;

- the C&ED would continue with the above measures and closely monitor their effectiveness in preventing passengers from bringing in an excessive number of duty-free cigarettes illegally;

Combating illegal vehicle refuelling activities

- with the C&ED's stringent enforcement efforts, the problem of illegal vehicle refuelling activities had been kept under control;

- the C&ED was studying the UK's "Registered Dealers in Marked Oil System" and examining the feasibility of adopting a similar system in Hong Kong to prevent the illicit use of marked oil;

Managing the risk of illicit transfers of Mainland diesel

- between April and July 2003, the C&ED conducted three territory-wide fuel tank checks operations. As a result, 381 vehicles were checked and no vehicle was found using suspected Mainland diesel;

- in the same period, the C&ED also conducted spot checks on the fuel tanks of 5,701 incoming vehicles at control points. 58 vehicles (1% of 5,701 vehicles) were found to have brought in a total of 2,710 litres of diesel in excess of the duty-free concessions, representing an average of only 46 litres of excessive diesel in each case. Out of the 58 cases, three cases led to subsequent prosecutions while duty was recovered in the other 55 cases;

- the C&ED would continue to monitor the situation and would step up enforcement actions whenever necessary;

Implementation of the Open Bond System (OBS)

- the OBS had been running smoothly since its implementation on 1 April 2003 and no anomaly had been detected so far. Between April and July 2003, the C&ED conducted surprise supervision on average on 12% of loading and unloading of dutiable commodities activities. No sign of revenue fraud was detected. The C&ED would continue to flexibly deploy its resources to closely monitor the situation, in particular of those high risk traders;

- in July 2003, the Independent Commission Against Corruption and the C&ED started the post-implementation reviews on the OBS. Results of the

reviews were pending;

Customs control of river trade vessels

- the C&ED was now able to use the enhanced Customs Control System and the Marine Department (MD)'s River Trade Cargo Vessel Port Formality System to conduct risk assessment in the selection of river trade vessels for Customs actions. During April to July 2003, the C&ED referred two cases of non-compliance with the pre-arrival notification requirement to the MD for follow-up actions. The C&ED would continue to conduct risk assessment and refer cases to the MD for follow-up action when necessary;

Monitoring and performance measurement

- according to intelligence, the black market situation of illicit cigarettes remained stable in the past few months. The C&ED would continue to combat illicit cigarettes at all levels through flexible deployment of resources and constant revision of enforcement strategy; and

Customs audits of oil companies

- the post-implementation reviews on the OBS were in progress. The C&ED would study the applicability of the system-based approach in auditing oil companies in the light of the results of the reviews.

42. The Committee wishes to be kept informed of:

- the progress made by the C&ED in combating illegal vehicle refuelling activities, managing the risk of illicit transfers of Mainland diesel, implementing the OBS and adopting the system-based approach in customs audits of oil companies; and

- the development of the C&ED's trial scheme on "Red and Green Channels" as an additional measure to assist Customs officers in detecting incoming passengers not declaring possession of excessive quantities of duty-free cigarettes and liquors.

43. **Special Finance Scheme for small and medium enterprises** (Chapter 3 of Part VII of P.A.C. Report No. 39). The Committee was informed that all government guarantees under the Special Finance Scheme (SFS) had expired. The Treasury was now processing and reviewing claims for compensation with the assistance of the Department of

Justice and the Hong Kong Monetary Authority as necessary. As at 23 October 2003, 702 claims involving a total of $296 million had been settled. Another 1,056 claims involving a total of $122 million were being processed.

44. The Committee wishes to be kept informed of further progress and the result of the Treasury's review of the remaining claims for compensation under the SFS.

45. **Small house grants in the New Territories** (Chapter 4 of Part VII of P.A.C. Report No. 39). The Committee was informed that:

Implementation of the small house policy

- the Administration was continuing with its deliberations on the various issues relating to the small house policy with a view to identifying initial options for further consultation with stakeholders;

- the discussion with the Heung Yee Kuk (HYK) on the proposed across the board three-year moratorium on assignment of small houses continued. The HYK maintained its stance against any moratorium. The Administration would continue to discuss the way forward with the HYK;

Checking of indigenous villagers' status

- the Lands Department (Lands D) had formulated new procedures for checking indigenous villagers' status and would implement them at the earliest opportunity after completing consultation with the HYK; and

Processing of small house grant applications

- the Lands D had amended the wordings in the 2003 performance pledge and removed the ambiguity and inconsistency of wordings used in the performance pledge and the information leaflet. The Lands D had prepared a draft 2004 pledge which reflected the time taken by the Department to process the applications having regard to the steps that were within the control of the Department. The Lands D was consulting the HYK on the change. When the pledge had been finalised, the Lands D would also amend the Lands Administration Office Instruction in respect of the waiting time and the processing time for small house applications.

46. The Committee urges the Secretary for Housing, Planning and Lands to expedite the pace of the deliberations on the various issues relating to the small house policy and the discussion with the HYK on the proposal to introduce a moratorium on small house assignments.

47. The Committee wishes to be kept informed of the progress of the review of the small house policy, the discussion with the HYK and the various courses of action taken by the Administration.

48. **Primary education - Planning and provision of primary school places** (Chapter 5 of Part VII of P.A.C. Report No. 39). The Committee was informed that:

Planning and provision of public-sector primary school places

To explore measures to address the problem of expected serious excess supply of school places

- in case of "over-provision" in individual districts, the Education and Manpower Bureau (EMB) would make use of the opportunity to upgrade the quality of primary education, by phasing out schools in sub-standard school buildings and schools with low enrolment. In the 2003-04 school year, a total of 51 schools had ceased operating Primary One (P1) classes due to low intake in the allocation exercise. Many of these schools were in sub-standard school buildings;

To review the school building programme

- the EMB completed a review in the last quarter of 2002, resulting in dropping a total of 14 school projects. For existing schools, the EMB would launch a rolling programme from 2003-04 school year onwards to reprovision or redevelop schools which were substantially below present-day standards, subject to the availability of both funding and land resources. The EMB would continue to conduct critical reviews of the school building programme on an on-going basis with reference to the latest population forecast and the need for reprovisioning and redeveloping existing schools;

To consult parties concerned regarding the revised criteria for operating P1 classes

- after collecting views from the Subsidised Primary Schools Council and other concerned parties, the EMB had informed aided and government primary schools of the revised criteria and associated arrangements in writing in January and March 2003. Application of the tightened criteria for approving the operation of P1 classes (i.e. 23 pupils or more) had already started from the 2003-04 school year. In addition, the EMB would keep the number of unfilled P1 places in each school net below the size of one class as far as possible, except for nets with an indication of a larger than usual in-year student influx;

Enrolment and class size

To ensure compliance with standard class size

- the EMB had advised all schools concerned to observe the standard class size when admitting new applicants. The EMB considered it counter-productive to strictly prohibit schools from any over-enrolment as these schools were popular and generally offered better quality education. The EMB would continue to closely monitor the enrolment of the schools;

Progress of the study on small class teaching

- the EMB presented the paper on the design of the Study on Effective Strategies of Small Class and Group Teaching in Primary Schools to the Panel on Education in May and June 2003. The Study started in July 2003 with a questionnaire survey on the existing practices of small class and group teaching in primary schools. The EMB would revert to the Panel on Education in early 2004 to report the preliminary findings of this survey. Interim reports would be produced in late 2004 and late 2005. The Study would be completed by 2006;

School Improvement Programme (SIP)

To explore ways to make use of the vacant classrooms temporarily, pending full implementation of whole-day primary schooling

- where situation allowed, the vacant classrooms might be considered for accommodating students from schools which needed to be temporarily

decanted for in-situ redevelopment, or for advance opening of new schools where there was a demand. For instance, the advance opening of LST Leung Kau Kui Primary School in September 2003 was realised by making use of vacant classrooms of another school in the same district;

To re-examine the SIP plans for schools which had many vacant classrooms and, where feasible, convert the existing vacant classrooms into various function rooms, instead of building additional floor areas

- where possible, the vacant classrooms would be converted into other facilities for functional use rather than providing additional floor areas. For example, eight classrooms of St Matthew's Lutheran School would be so converted within the 2003-04 school year. The EMB would continue to liaise with the schools concerned on alternative conversion options;

To shelve the SIP works or reduce the scope of the works to be carried out for schools that would be closed down in the near future, having regard to the remaining life span of the schools concerned

- the EMB had completed a review on the individual projects under the SIP. As a result, nine projects involving a funding of some $178 million had been deleted from the SIP, in view of the cost-effectiveness consideration and the demand and supply of school places. Except for projects already commenced, the EMB would not conduct the SIP for schools unless there was clear and demonstrable need for their continued operation;

Rural primary schools

- the EMB was reviewing the future development of rural schools which would be completed in early 2004;

Government primary schools

- in Hong Kong East, four half-day government primary schools would be converted into three whole-day schools. Upon completion of this conversion, the number of government primary schools would be reduced by one; and

Primary One Admission (POA) system

- the EMB had taken actions to provide the public with additional information about the POA system starting from the 2003 POA cycle, including the quota

of discretionary places and the tentative number of places available for central allocation in individual schools for parents' reference, and a quick link to information on the POA system on the front page of the EMB's website to facilitate easy access.

49. The Committee wishes to be kept informed of:

- the progress of the study on small class teaching;
- the progress made by the EMB in phasing out rural schools;
- the outcome of the review of the future development of rural primary schools; and
- the outcome of the review on the role, provision and development of government primary schools.

50. **Primary education - The administration of primary schools** (Chapter 6 of Part VII of P.A.C. Report No. 39 and Chapter 1 of Part IV of P.A.C. Report No. 40). The Committee was informed that:

Strategic planning and financial management

Review of the level of surplus funds of the Operating Expenses Block Grant (OEBG) for aided schools and the Subject and Curriculum Block Grant (SCBG) for government schools, including measures taken to help schools plan the optimum use of the surplus funds, and fundamental review of grants to schools

- the Education and Manpower Bureau (EMB) allowed aided and government schools to retain a surplus of up to 12 months' provision of OEBG and SCBG respectively. The level of surplus was required to provide schools with sufficient capacity for starting school-based initiatives and developing long-term strategies for school development. This was particularly so when, starting from the 2003-04 school year, schools were required to set out their strategic planning in a School Development Plan (SDP) covering normally a period of three years. EMB officers worked in partnership with schools in school development and improvement, including offering advice on the use of surplus funds available under OEBG/SCBG;

- to ensure more effective use of public funds, the EMB was conducting a review of school subventions with a view to consolidating various grants into lump sum grants, including surplus that schools were allowed to retain for school development purposes. The EMB would consult the school sector in the 2003-04 school year, as well as the Legislative Council in the course of the review. If supported by the parties concerned, the EMB planned to implement the new arrangements in the 2004-05 school year;

Strategic planning and self-evaluation of schools

- school self-evaluation (SSE) had been a key area of concern since the launch of the Quality Assurance (QA) Framework in September 1997. Under the QA Framework, SSE as an internal QA process was complemented by external review including QA inspections and focus inspections. The EMB had since publicised inspection findings annually to raise schools' awareness of the importance of planning and evaluation as key processes of school development work;

- based on the QA Framework, the EMB had developed a School Development and Accountability (SDA) Framework to promote systematic, rigorous and data-driven SSE and to introduce an audit mode of external school review to validate SSE. Such a development was a response to the feedback from the education sector that schools needed further support for SSE in terms of tools, processes and school performance data and that external school review needed to be conducted within a timeframe consistent with a school's development cycle. According to the SDA Framework, planning, implementation and monitoring, evaluation and review were seen as interrelated SSE processes;

- the EMB introduced the SDA Framework to schools in May 2003. Public sector schools were required to strengthen strategic planning for school development. They needed to carry out self-evaluation that entailed setting of targets and success criteria, use of evaluation tools and data, and on-going monitoring and evaluation of school programmes. They also needed to report on their performance annually using school data and to undergo the above-said audit mode of external school review conducted by the EMB in a four-year cycle. An increasing amount of territory data would be generated through this new mode of external review for use by schools to further strengthen their SSE;

- measures to support and strengthen schools' self-evaluation and strategic

planning included:
Development of tools for SSE

(a) the EMB would provide schools with the necessary tools, including a common set of key performance measures (KPM) and standard stakeholder survey questionnaires. Both schools and the EMB would use multiple sources of data and make reference to KPM to substantiate judgment on school performance and to gauge schools' progress and determine follow-up actions. A draft set of survey questionnaires was tried out in the pilot external school review in May and June 2003 and was in the process of refinement. The EMB would make all standard stakeholder survey questionnaires available on its Homepage in October 2003 and require schools to administer the surveys annually as part of SSE. The EMB would organise seminars on administration of stakeholder surveys and use of KPM in October/November 2003 to better support schools in this respect;

Training for schools in SSE

(b) the EMB completed in July 2003 the provision of training in SSE for 100 collegiate schools that would undergo external school review starting from February 2004;

Provision of reference materials on SSE

(c) the EMB would issue to schools in October 2003 a reference manual on SSE (in CD-ROM format), capturing essential elements of school planning, reporting and performance management with emphasis on use of data and evidences for sustaining school development and improving learning outcomes. The manual would also be made accessible on the EMB Homepage;

Provision of guidelines for schools

(d) the EMB had made available on its Homepage a set of guidelines, together with templates for drafting school plans and reports, for schools' reference. These would support schools' strategic development planning and direct their attention to the need to manage and report on their performance with use of multiple sources of data;

Telephone hotlines

(e) the EMB had set up telephone hotlines to handle schools' enquiries about the SDA Framework, and to advise schools on matters relating to strategic planning and SSE;

Seminars and workshops

(f) the EMB held a series of experience-sharing seminars and workshops on strategic planning and SSE and external school reviews in June and July 2003 to familiarise schools with the related processes. Relevant materials had been uploaded onto the EMB Homepage for schools' reference; and

"Saturday clinics"

(g) the EMB would organise consultation service for schools in the form of "Saturday clinics" in support of the implementation of the SDA Framework at the school level every Saturday in November and December 2003 to answer enquiries on external school review. The necessity for continuing the "Saturday clinics" would be reviewed after December 2003;

Use of information technology (IT) equipment in schools

- each school was required to work out its own IT in Education (ITEd) plan containing long-term goals and annual targets with reference to its aims and needs of students. The school then implemented its ITEd plan, monitored progress and conducted annual evaluation. The EMB's Regional Support Section and the ITEd Centres of Excellence conducted school visits on a regular basis to advise schools on ways to put IT infrastructure to good use for learning and teaching purposes. The EMB also published information and best practices on the application of IT in education. It also organised workshops and seminars for teachers to enhance sharing of knowledge and experience on application of IT in key learning areas, developing school plans having regard to the use of IT and implementing collaborative project-based learning, etc;

- the EMB was mapping out the strategic directions for the further development of IT in education in the light of experience gained under the present ITEd strategy and the needs for the future. Under the new strategy,

it was envisaged that teachers and school heads would be further empowered in integrating IT into classroom learning and teaching. It was also expected that much emphasis would be placed on continuous professional development and increased collaboration between the Government and the private sector in developing and using IT-based education support;

External audit arrangements of aided schools

- in June 2003, the EMB issued to schools in receipt of education subventions a set of guidelines on the engagement of auditors. The guidelines required schools to adopt a competitive selection process when seeking audit services and to agree with their auditors on the terms of audit engagement, which should cover specific requirements laid down by the Bureau regarding the audit of school accounts. They also required the schools to record the agreed terms in an audit engagement letter;

Human resource management

Procedures for the appointment and dismissal of teaching staff in schools

- the EMB reminded aided schools in June 2003 that they should adopt an open, fair and competitive appointment system and should comply with relevant provisions in the Education Ordinance and its subsidiary legislation in the recruitment of teachers. The EMB had also revised, to this effect, the prescribed form used by aided schools for reporting new teacher appointments. If the EMB came across cases of improper teacher appointments through, for example, appointment forms returned from schools, complaints received or school visits/inspections, it would ensure rectification of irregularities and prevent recurrence;

- the Education (Amendment) Bill 2002, which was gazetted on 22 November 2002, aimed to introduce the school-based management (SBM) governance framework to all aided schools. The management committee of an aided school would be required to incorporate under the Education Ordinance within five years after the enactment of the Bill. The sponsoring body of the aided school would be required to submit to the Permanent Secretary for Education and Manpower a draft of the constitution of the proposed incorporated management committee (IMC) for approval;

- the Bill also provided that the IMC constitution should set out the procedures for appointing members of the principal selection committee and the powers of the IMC, which included the power to employ and dismiss teaching staff

in accordance with the procedures set out in the Education Ordinance, the Codes of Aid and any direction given by the Permanent Secretary for Education and Manpower;

Review of the distribution of school holidays throughout the school year

- the EMB had, with effect from the 2003-04 school year, given schools more flexibility over the number and the distribution of school days to suit the specific needs of students and their circumstances. Instead of continuing the previous practice of specifying the 90 days which school supervisors should normally include in their school holiday list, the EMB had set out the minimum requirements that:

  (a) all general holidays must be specified as school holidays;

  (b) the total number of school days in a school year should not be less than 190 days for whole-day schools, or 209 days for bi-sessional primary schools where students had to attend school every alternate Saturday; and

  (c) the proposed school holiday list must be approved by the School Management Committee (SMC) and had the support of the parents;

- in addition, schools had been advised to consider increasing the number of active school days and to maximise the learning time for students when setting the school calendar for the 2003-04 school year. Possible ways for schools to maximise learning time for students had also been suggested. The EMB would further review the situation in the light of the holiday arrangements of schools for the 2003-04 school year;

Arrangements for the stepping down of senior teachers

- starting from September 2003, redundant senior teachers on stepping down to the basic rank would not be granted any salary increments until they were reinstated to the senior rank;

Outsourcing of janitor services and action taken to improve the cost-effectiveness of janitor services in schools

- the EMB would meet schools councils, associations of school heads and major school sponsors in the 2003-04 school year to request them to assess the costs and benefits of outsourcing their janitor services. The EMB would also continue to encourage schools to recruit multi-skilled janitor staff and provide

appropriate training opportunities to enrich the job skills of janitors employed;

Procurement procedures and asset management

Procedures in procuring goods and services and in providing procurement services for students and parents

- the EMB conducted seminars in December 2002 to equip school personnel with more knowledge about the principles and rules to be observed in tendering and purchasing and to disseminate best practices relating to corruption prevention. The EMB had also uploaded relevant reference materials onto its Homepage for reference by schools;

Use of school premises by profit-making organisations and schools' arrangements for letting out their premises

- the EMB reminded government and aided schools in June 2003 that as a general rule, no organisation should make use of the facilities in their schools without being charged as this represented a hidden subsidy to the organisation. Clear guidelines for charging were issued to these schools. The nature and the purpose of activities were the criteria for deciding whether hire charges should be levied at the standard or the reduced rate, or whether the accommodation should be provided free. Examples included levying no charges on non-profit-making uniformed organisations for holding training/educational activities and charges at reduced rates on these organisations for other activities. Profit-making organisations were not entitled to use the school premises free of charge;

Management of student matters

Donations from textbook publishers and other suppliers

- the EMB had updated schools with the general principles on the acceptance of advantages and donations. In exceptional circumstances where there were compelling reasons for schools to accept donations from trading operators/suppliers/textbook publishers, the acceptance should be fully justified, approved by SMCs in advance and properly documented. Furthermore, aided schools were required to record details of the donations received in their School Report, which would, under the SDA Framework, be uploaded onto their own homepage from the 2003-04 school year. In addition, proper donation records should be made available at all times for public inquiry and for inspections by the EMB;

- in the specific case of donations from textbook publishers, the EMB had reminded schools of the above requirements via an annual circular issued in April 2003. The circular specified that schools should not allow the choice of textbooks to be in any way influenced by a donation. Earlier, in the seminars for subject panel-chairpersons and curriculum leaders conducted by the EMB in October 2002, teachers were reminded of the same;

- in the up-coming EMB's joint meetings with the two publishers' associations scheduled for November 2003, the EMB would continue to urge publishers not to make donations to schools to avoid any possible influence on schools' choice of textbooks and to avoid additional cost on textbooks;

Trading operations/activities in schools

- the EMB was empowered under the Education Regulations to exercise control over trading operations/activities in schools. The set of revised guidelines on the subject issued in March 2003 by the EMB set out the relevant requirements for making trading arrangements, including the profit permitted. Schools would be reminded of the requirements from time to time and when seeking the Permanent Secretary for Education and Manpower's approval to new/revised trading arrangements;

Weight of school bags

- the EMB issued to schools in June 2003 an updated Guidelines on Reducing the Weight of School Bags, together with a pamphlet for parents. Both the guidelines and the pamphlet carried the recommendation of the Department of Health that, as a precautionary measure, students should avoid carrying school bags which exceeded 15% of their body weight. Schools were reminded via the guidelines to take actions in reducing the weight of school bags, e.g. advising students on packing of school bags, obtaining parents' co-operation, reviewing timetable, choosing appropriate textbooks and designing a variety of approaches and styles of homework assignment. Some examples of good practices were also included in the guidelines for schools' reference; and

Support to schools

Other actions taken by the EMB to enhance support to schools

- support measures given to schools other than those mentioned above

included:
Direct support at district level

(a) the EMB would continue to provide direct support to schools at district level in various aspects of school development, catering for the needs of individual schools;

Post-inspection action planning

(b) the EMB would continue to provide professional support to schools inspected. It would conduct action-planning workshops for the school personnel concerned for the purpose of helping them draw up an action plan in response to inspection findings. The action plan would be incorporated into the schools' SDP; and

Dissemination of good practices

(c) the EMB would continue to disseminate the good practices identified during QA inspections through experience-sharing seminars and by inviting schools to share their good practices on the EMB Homepage.

51. The Committee wishes to be kept informed of further development on the subject.

52. **Primary education - Delivery of effective primary education** (Chapter 7 of Part VII of P.A.C. Report No. 39). The Committee was informed that:

- the EMB issued a circular in September 2003 to all public sector primary schools informing them of the main observations of the Director of Audit and the Committee's conclusions and recommendations;

Actions to promote extra-curricular activities and school-based curriculum development

- the EMB had established a Life-wide Learning (LWL) Section to oversee the overall development of LWL and to provide support and professional guidance in extra-curricular activities (ECA). The section was managing the Jockey Club Life-wide Learning Fund, which was established to encourage needy students to participate in LWL activities/ECA. In the 2002-03 school year, the Fund helped more than 35,000 students (from Primary Four to Secondary Three level). It was expected that 120,000

students would benefit in the 2003-04 school year;

- a network school scheme was launched in October 2002 to research and develop strategies and quality frameworks for LWL. Good practices of the ECA and LWL had been identified and shared among the network schools. Experience-sharing sessions were also held during the 2002-03 school year;

- seminars and school-based workshops were held in collaboration with organisations such as Extra-curricular Activities Masters' Association and the Hong Kong Productivity Council in the 2002-03 school year to train teachers to develop ECA under the framework of LWL and to promote quality LWL practices. A long-term LWL professional development strategy had been developed and would be implemented in the 2003-04 school year;

- the EMB had continued to give support to primary schools in school-based curriculum development by providing each of them with an additional teacher post for five years. In addition to the 231 public-sector primary schools which were provided with the posts in the 2002-03 school year, the EMB had allocated the additional teacher posts to 235 more public-sector primary schools for the 2003-04 school year;

Guidance Notes to encourage secondary schools to take into account students' other potential in addition to academic performance

- the EMB issued in November 2002 the annual guide on "Points to Note in Handling Applications for Discretionary Places" to secondary schools for reference. The guide encouraged schools to consider the performance of the applicant students in all aspects, including their academic attainment, extra-curricular activities and social services, etc. It advised schools to avoid using students' academic achievement as the only admission criterion. Schools should display information on the admission criteria and their weightings in a prominent place of the school premises for parents' reference during the discretionary places application period;

Encouraging schools to make use of the Leisure and Cultural Services Department (LCSD)'s venues to organise sports events

- the EMB and LCSD maintained close liaison with schools to promote the Free Use Scheme (under which schools were allowed to use selected LCSD's sports facilities free of charge during non-peak hours), collect schools' views and improve the booking policies and procedures so as to cater for the needs of schools better. Apart from according higher priority to schools in

booking during non-peak hours, the LCSD had streamlined the booking procedures so that schools could submit applications on 1 June each year for use of leisure facilities under the Free Use Scheme for the following whole school year. The LCSD would then consider and approve the applications in one go. This measure had facilitated advance planning and organisation of classes by schools to meet the need of their curriculum and class schedule;

- in the 2002-03 school year, about 90,000 students from 443 primary schools took part in the various School Sports Programme activities. The LCSD planned to expand the services to 500 primary schools and 120,000 students in the 2003-04 school year;

Surveys on students' physical fitness status and participation in sports activities

- the survey on secondary school students' physical fitness status and their participation in sports activities was completed in the 2002-03 school year. The EMB was examining the draft report received in September 2003;

Performance indicators for schools to assess and report their performance

- to help primary schools to better evaluate the performance of their students especially in the affective and social domains, the EMB had provided schools with an assessment tool "Assessment Programme for Affective and Social Outcomes", which was developed from a Quality Education Fund project. The Hong Kong Institute of Education completed a series of workshops in June 2003 to familiarise schools with the use of the "Assessment Programme for Affective and Social Outcomes". About 88% of primary schools participated in the workshops. Similar workshops would be repeated annually for primary schools. From the 2003-04 school year onwards, schools would be required to use the tool annually to assess their students' affective and social outcomes as part of the self-evaluation process;

- the EMB introduced the "Hong Kong Indicators for Inclusion: Catering for Students with Diverse Needs" to schools together with training on school self-evaluation in May 2003. In July 2003, ten schools (including five secondary and five primary) participated in the tryout of the Indicators;

Disclosure of performance in annual reports/school profiles

- the EMB had issued a circular to advise schools on arrangements for planning, self-evaluation and reporting under the enhanced school

development and accountability framework with effect from the 2003-04 school year. Schools were required to include key performance measures in their annual reports;

Whole-school approach to support students with diverse needs

- the EMB had formulated a new funding model with a view to replacing, by phases, the current provision of Intensive Remedial Teaching Programmes and Integrated Education programme in support of students with special educational needs. 25 primary schools would participate in the pilot in the 2003-04 school year. The EMB intended to consult the education sector on the new funding model in March 2004, and to launch it in the 2004-05 school year;

Enhancing the effectiveness of the assessment mechanism in facilitating learning and teaching

- the EMB introduced the Student Assessment service covering Primary Three to Primary Six to all primary schools in June 2003. The service would be introduced to secondary schools progressively from the 2003-04 school year onwards. In order to provide more assistance to schools, the EMB was also developing an Assessment for Learning Resource Bank that consisted of on-line learning and teaching materials and other supportive resources for teachers to complement the Student Assessment service. As to the System Assessment, the EMB was now developing the first System Assessment which would be administered in Primary Three in July 2004. Upon introduction of the System Assessment, the Secured Hong Kong Attainment Test at Primary Three and Primary Five would be discontinued in 2004;

Strategic plans for schools

- in June 2003, the EMB uploaded the revised guidelines on compilation of school development plan, annual school plan and school report onto its homepage;

Promoting Teachers' Professional Development

- the EMB had planned over 110 professional development programmes on curriculum development for primary school heads and teachers for the 2003-04 school year;

Encouraging schools to draw up staff development policies

- the EMB requested schools to draw up their own policy for staff development in consultation with staff. The EMB advised them to set up a staff development committee to identify their own staff development needs and formulate school-based staff development programmes;

Allocation of lesson time among eight key learning areas

- schools were advised to include time-tabling arrangement and homework policy in Primary School Profiles 2003 published in September 2003 by the Committee on Home-School Co-operation (CHSC);

Promotion campaigns to convey to parents the importance of participation in their children's school activities

- a webpage for "Good Practice Sharing on Web" was set up on the CHSC's website at the end of July 2003. Schools and parent-teacher associations (PTAs) were invited to contribute quality projects in mid-July 2003;

- the CHSC organised a seminar "The Role of Parents in Educating their Children in the light of Curriculum Reform" in April 2003 to promote quality home-school co-operation and to encourage parents to actively participate in school activities;

- a new Family Volunteering Scheme, which emphasised training schools/PTA personnel and recruiting families through schools for voluntary services, was formally launched in March 2003. The Presentation Ceremony of the Parent-Also-Appreciate Teachers Drive was also held in July 2003;

Requiring schools to upload their annual school plans, annual reports and school profiles onto their websites

- to enhance transparency and accountability, the EMB had required schools to upload onto their websites the school development plan, annual school plan and school report with effect from the 2003-04 school year; and

Introducing self-evaluation arrangements for schools

- the EMB held a series of experience-sharing seminars on school self-evaluation (SSE) and external school reviews in June and July 2003 to

familiarise schools with related processes. In July 2003, training in SSE for 100 collegiate schools that would undergo external school reviews starting from February 2004 was completed. The EMB uploaded a reference manual on SSE onto its website in September 2003.

53. The Committee wishes to be kept informed of further development on the subject.

V. Committee Proceedings

Consideration of the Director of Audit's Reports tabled in the Legislative Council on 26 November 2003 As in previous years, the Committee did not consider it necessary to investigate in detail every observation contained in the Director of Audit's Reports. The Committee had therefore only selected those chapters in the Director of Audit's Report No. 41 which, in its view, referred to more serious irregularities or shortcomings. It is the investigation of those chapters which constitutes the bulk of this Report.

2. **Meetings** The Committee held a total of 14 meetings and 5 public hearings in respect of the subjects covered in this Report. During the public hearings, the Committee heard evidence from a total of 22 witnesses, including 4 Directors of Bureau and 6 Heads of Department. The names of the witnesses are listed in ***Appendix 8*** to this Report. A copy of the Chairman's Introductory Remarks at the first public hearing on 8 December 2003 is in ***Appendix 9***.

3. **Arrangement of the Report** The evidence of the witnesses who appeared before the Committee, and the Committee's specific conclusions and recommendations, based on the evidence and on its deliberations on the relevant chapters of the Director of Audit's Reports, are set out in Chapters 1 to 6 below.

4. The audio record of the proceedings of the Committee's public hearings is available in the Library of the Legislative Council for the public to listen to.

5. **Acknowledgements** The Committee wishes to record its appreciation of the cooperative approach adopted by all the persons who were invited to give evidence. In addition, the Committee is grateful for the assistance and constructive advice given by the Secretary for Financial Services and the Treasury, the Legal Adviser and the Clerk. The Committee also wishes to thank the Director of Audit for the objective and professional manner in which he completed his Reports, and for the many services which he and his staff have rendered to the Committee throughout its deliberations.

VI. Observations of the Public Accounts Committee on the Report of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2003

The Committee noted the Report of the Director of Audit on the Accounts of the Government of the Hong Kong Special Administrative Region for the year ended 31 March 2003.

Chapter 1

Public markets managed by the Food and Environmental Hygiene Department

Audit conducted a review of public markets managed by the Food and Environmental Hygiene Department (FEHD). It identified room for improvement in the following areas:

- vacant market stalls and non-trading market stalls;
- operating deficits incurred at some public markets;
- retrofitting of air-conditioning systems; and
- vacant floor space in two public markets.

Vacant market stalls and non-trading market stalls

2. According to paragraph 1.2 of the Audit Report, public markets were provided primarily for resiting the hawkers who would otherwise be trading on-street in the vicinity of the markets concerned, causing nuisance and congestion to pedestrian and vehicular traffic. Noting that many resited hawkers still traded on-street in the vicinity of the markets concerned, the Committee asked whether there was still the need to provide market stalls for resiting hawkers.

3. **Dr Hon YEOH Eng-kiong, Secretary for Health, Welfare and Food,** responded that:

- there were many problems regarding public markets. The design of these markets was one of these problems. Taking the Yuen Long Market as an example, the stalls on the ground floor of the market were not located in front of the entrance. Customers found such layout of the ground floor inconvenient. The first and second floors of the market attracted even fewer customers. Shops in the vicinity of the market attracted many customers but the market failed to do so;
- as the shopping habits of the public were changing, the Administration had to carefully consider whether or not there was a need to build markets in future. If there was such a need, the Administration had to consider the mode of operation and functions of markets as well as whether they should be managed by the Administration. The Administration was inclined to let private operators operate the markets as it was not suitable for the Administration to carry on commercial activities; and

- he would carefully discuss with the Director of Food and Environmental Hygiene the viability of markets to see whether any of them had to be closed down. For markets with viability problem, the Administration would also explore whether there were other modes of operation which could enhance the competitiveness of stall lessees in the markets. Public markets did not have competitive edge over supermarkets as items on sale in public markets were also available in supermarkets and the service quality of supermarkets could also meet the customers' requirements. The Administration would, as recommended in the Audit Report, examine the situation of every public market to identify the best way to address the viability problem.

4. According to paragraphs 2.10 and 2.14 of the Audit Report, no viability studies had been conducted before the Peng Chau Market and the Luen Wo Hui Market, which were planned by the former Regional Services Department (RSD) in the 1990s, were built for the purpose of resiting stall lessees of existing markets and hawkers in the vicinity. Noting the market stall vacancy rates (MSVRs) of the two public markets, particularly the increase of the MSVR of the Luen Wo Hui Market from 9% to 20.4% in six month's time, it appeared to the Committee that the Administration had not taken account of future demand and competition in deciding to build these markets. The Committee asked about the reasons for not doing so and whether the FEHD had reviewed its experience from these markets and set additional criteria for determining whether to construct new public markets.

5. **Mr Gregory LEUNG Wing-lup, Director of Food and Environmental Hygiene**, explained that:

- the public markets managed by the FEHD were provided primarily for resiting all the hawkers who had been trading on-street in the vicinity of the markets concerned. The resiting commitments were used as an indicator in designing markets built in the earlier days. Some markets were therefore provided with a large number of market stalls. Some of these stalls were left vacant after the commissioning of these markets; and

- taking the Luen Wo Hui Market as an example, the market aimed at resiting hawkers who had been trading in vacant space in Fan Ling for many years. However, the business turnover of the stall lessees was not as good as before for the possible reason of the change in types of customers brought about by the relocation of the market place from the central area of the township of Fan Ling to the vicinity of a private housing estate. As a result, some of the stalls became vacant.

6. The **Director of Food and Environmental Hygiene** further pointed out that, in deciding whether to build new public markets, the FEHD would determine the optimum number of market stalls to make the markets viable. Taking the new Wan Chai Market as an example, he said that the new market was originally planned for resiting all the hawkers trading in the existing Wan Chai Market, Chun Yuen Street and Tai Yuen Street. However, such resiting would cause some of the stalls which were trading on-street to be relocated to the basement, first and second floors of the new market. As a result, such stalls might no longer be viable. The FEHD was therefore currently considering whether it was possible not to resite all the hawkers to the new market. If the number of stalls in the new Wan Chai Market was smaller than that to be resited, the FEHD would have to discuss with the hawkers concerned a mutually acceptable way of sorting out the allocation of the stalls.

7. The Committee asked about the criteria for allocating market stalls and whether the hawkers to be resited would be consulted on the allocation.

8. The **Director of Food and Environmental Hygiene** responded that there was a consultative committee for every public market, the views of which were sought on important issues relating to the market. The FEHD had drawn up a number of options for the allocation. One of the options was to have a joint bid for a stall by two hawkers to be resited. Another option was to keep some stalls on the streets. Examples of such stalls were those selling dry goods which did not benefit from moving into the market and stalls of this trade therefore had the highest vacancy rate vis-à-vis stalls of other trades. A third option was, instead of resiting the hawkers concerned to the new market or allowing them to continue to trade on-street, to resite them to other public markets and offer them the same concessions in stall bidding.

9. According to paragraph 1.8 of the Audit Report, in its Report No. 29 of February 1998, the Committee urged the then Director of Urban Services to strictly follow the policy of the then Urban Council that public markets should no longer be built to satisfy resiting commitments, but should be justified by establishing a distinct demand and role for them in a District Plan; and to justify every new market by conducting a comprehensive review of the demand for such market facilities. In this connection, the Committee asked:

- whether the Administration had taken account of these views in deciding whether to construct the Peng Chau Market and the Luen Wo Hui Market; and

- whether vacant market stalls in these two markets arose from the absence or cessation of leasing of stalls.

The Committee also asked about the progress of the planning of the Aldrich Bay market.

10. **Mr Warner CHEUK Wing-hing, Deputy Director of Food and Environmental Hygiene (Environmental Hygiene),** responded that:

- construction of the Peng Chau Market began in 1996 and was completed in August 1998. The FEHD had not yet been established at that time. He believed that due to time constraints, a feasibility study could not be conducted before the construction of the market. On the other hand, a study had been conducted before the commencement of the construction of the Luen Wo Hui Market in November 1999. The study was completed before 1999. According to the then practice, the study results provided the basis for the number of stalls to be provided in the market concerned. As such, the two markets had the persistent problem of an excessive number of stalls. Since its establishment in 2000, the FEHD had fully accepted Audit's and the Committee's recommendation that viability studies should be conducted before the construction of public markets; and

- the FEHD considered that vacant market stalls in the Luen Wo Hui Market arose from the cessation of leasing of stalls. Due to the lack of customers when the market was commissioned in July 2002, the FEHD provided the stall lessees with a four-month rent-free period from July to November 2002. Thereafter, cessation of leasing began as stall lessees had to pay the rent for continuation of trading in the market. As such, the MSVR of the market increased from 9% in January 2003 to 20% in June 2003. Nevertheless, the FEHD considered that the vacancy position had become stable as a result of an increase in the number of customers in recent months.

11. The **Deputy Director of Food and Environmental Hygiene (Environmental Hygiene)** further pointed out that the construction of the Aldrich Bay Market, which was the first new public market to be constructed by the FEHD since its establishment, was planned to be completed in 2005. There were also a few markets which the former Municipal Councils had requested to build and the FEHD had found justified. There would be four such new markets, including the Aldrich Bay Market, to be commissioned in the coming three years. The numbers of market stalls in three of these markets were smaller than those to be resited. This showed that the FEHD had evaluated a number of factors, such as the population and the availability of other market facilities in the vicinity, before deciding on the construction of public markets.

12. The Committee further asked about:

- the updated MSVRs of the Peng Chau Market and the Luen Wo Hui Market and the number of stalls in the four public markets to be constructed by the FEHD; and

- the existing criteria for determining whether to build public markets.

13. The **Deputy Director of Food and Environmental Hygiene (Environmental Hygiene)** responded that:

- the updated MSVRs of the Peng Chau Market and the Luen Wo Hui Market were similar to those in June 2003. Unlike the Luen Wo Hui Market, which had more than 300 stalls, the number of stalls in most of the coming four markets would be much smaller - 190 stalls in the Wan Chai Market, 130 in the Aldrich Bay Market and more than 120 stalls in the Tai Kok Tsui Market; and

- in considering whether to build public markets, the FEHD would assess factors such as whether there were market facilities in the vicinity and whether there would be a change of population etc. Resiting all affected hawkers to the markets was not one of these factors.

14. According to paragraph 2.3 of the Audit Report, after taking over the responsibility for managing public markets from the former Urban Services Department (USD) and the former RSD in January 2000, the FEHD set an 85% target for the overall market stall occupancy rate of its markets. This indicated that the overall MSVR should not exceed 15%. With effect from 1 January 2001, the FEHD revised the target overall market stall occupancy rate of markets to 84% (i.e. the overall MSVR of markets should not now exceed 16%). The Committee asked about the reasons for setting the occupancy rate at such levels instead of aiming at a 100% occupancy rate.

15. In her letter of 26 January 2004, in ***Appendix 10***, **Dr S P Mak, Director of Food and Environmental Hygiene (Acting),** responded that the FEHD considered it unrealistic to aim at an occupancy rate of 100% for its market stalls because:

- the FEHD had operational needs to set aside a number of stalls in its public markets for reasons such as planned re-development, resiting commitments, and improvement works. Given such needs, it would never be possible to achieve full occupancy;

- the occupancy rate of FEHD's markets was determined by a host of factors. Some factors, such as the prevailing economic situation, shopping habits of the public, competition from other retail outlets in the neighbourhood, were beyond the control of the FEHD; and

- the FEHD would continue to make its best efforts to improve its market facilities and their management with a view to boosting their occupancy rate.

16. The Committee noted from Appendix A of the Audit Report that the MSVR of 15 public markets was higher than 40%, and asked whether the FEHD would close down these markets or take actions as set out in paragraph 2.17 of the Audit Report, including the setting of an individual MSVR for each market, in order to reduce the MSVR of its markets.

17. The **Director of Food and Environmental Hygiene** said that:

- the FEHD had to balance the large operating deficits arising from high MSVR of public markets against the interests of the existing stall lessees who would need to be relocated, should market closure take place. As such, the FEHD would set an individual MSVR for each market and take actions to achieve the target MSVR, failing which the FEHD would have to consider the possibility of closing down these markets in view of their high MSVR and operating deficits; and

- from mid-2003, the FEHD had tried out in three markets an upset price-setting mechanism for long-standing vacant market stalls. Under this mechanism, the upset price for these market stalls was set below the open market rent (OMR). The results of the trial scheme for the past few months were not so good. Although there had been bids for market stalls at a price below the OMR, the number of bids was not as expected. As such, the rental of these market stalls was not the only reason for the difficulty in leasing them out. The provision of more market stalls than demand was the main reason. It was necessary for the Administration to draw up measures to resolve the problem, such as giving consideration to closure of those markets which were no longer viable due to changed circumstances, as recommended by Audit.

18. The Committee asked about the respective timing for the end of the trial scheme and for the Committee to be informed of the results of the trial.

19. In her letter of 30 December 2003, in ***Appendix 11***, **Mrs Carrie YAU, Permanent Secretary for Health, Welfare and Food,** advised that the FEHD introduced the trial scheme in August 2003 in three public markets. As at the end of November 2003, 24 out of the 182 long-standing vacant stalls offered for letting at reduced upset prices had been successfully leased. The FEHD would conduct another round of auction under the trial scheme in January 2004 and the Health, Welfare and Food Bureau (HWFB) would review the results in February/March 2004. The HWFB would keep the Committee informed of the results of its review and the way forward.

20. According to paragraph 2.17(e) and (f) of the Audit Report, the FEHD had earmarked nearly $640 million over the next few years for carrying out improvement works in its public markets to improve their operating environment and was taking steps to harness entrepreneurship and creativity from the private sector by implementing a Market Manager Pilot Scheme in four markets to improve the management of its markets. In this connection, the Committee asked:

- about the markets which required the improvement works;

- whether the FEHD would recover the cost of the improvement works by raising the stall rental; and

- in which four markets the Pilot Scheme was implemented and the progress so far.

21. The **Secretary for Health, Welfare and Food** and the **Director of Food and Environmental Hygiene** replied that:

- the FEHD had conducted a simple internal assessment of the public markets which required works to improve their operating environment. The FEHD had more than 80 markets. More than 10 of them had viability problem and more than 10 other markets did not. The former markets were subject to review to see whether they merited closure. The latter markets did not need any improvement to their operating environment. The remaining 60 markets or so required works to improve their operating environment;

- the improvement works included the retrofitting of air-conditioning systems or the improvement to ventilation systems, the upgrading of drainage systems, lighting and signages, and the replacement of floor and wall finishes. The estimated costs of the retrofitting works and the other works were about $300 million and $340 million respectively. As the stall rental had been frozen for

the past six years due to the economic environment, it would be difficult to recover the cost. On the other hand, the retrofitting works would not be carried out if the stall lessees concerned did not agree to pay the recurrent cost; and

- the Pilot Scheme was implemented for a year in the Fa Yuen Street Market, the Hung Hom Market, the North Kwai Chung Market and the Smithfield Market. The FEHD was reviewing the Scheme. Under the Scheme, four teams of personnel from the private sector replaced the Foremen and Workmen, who were civil servants, in servicing the four markets. Each team was originally deployed to service one market. From January 2004, the FEHD redeployed two teams to the Headquarters for organising promotional activities for all markets. The remaining two teams would be redeployed to serve two markets or, if the markets concerned were small, more than two markets in the same district. In doing so, the FEHD hoped that the resources could be better utilised.

22. According to paragraph 2.17(h) of the Audit Report, the FEHD would further explore ways of reducing the MSVR of its markets to below the overall vacancy rate of 10.7% for private commercial premises used for retail business and below any MSVR, should such references be set, for individual markets. The Committee asked whether this meant that the FEHD would reduce both the overall MSVR of 22.6% (paragraph 2.5 referred) and the individual MSVR, which were higher than 40% for some markets, to 10.7%.

23. The **Director of Food and Environmental Hygiene** said that the overall MSVR referred to in paragraph 2.17(h) of the Audit Report was 11.8% which, according to paragraph 2.17(c), was the rate as at 31 July 2003, and was arrived at after deducting the number of purposely frozen market stalls. The overall rate was an average of the rates for individual markets. It was difficult for the FEHD to reduce the individual rates to the level of the overall rate of 10.7%. Apart from setting the individual rates, the FEHD would also explore alternative use of these vacant stalls.

24. The **Secretary for Health, Welfare and Food** added that he and the Director of Food and Environmental Hygiene would examine the viability of each public market with a view to identifying which markets merited improvement of their operating environment to reduce the MSVR and which merited closure.

25. The Committee queried whether it was appropriate for the FEHD to deduct the number of purposely frozen market stalls from the calculation of the overall MSVR of its public markets. It therefore asked:

- about the MSVR as at 31 July 2003 without such deduction;

- whether the rate of 10.7% for the private sector was calculated with similar deduction; and

- about the details of the ways to reduce its MSVR, as undertaken by the FEHD in paragraph 2.17(h) of the Audit Report.

26. The **Director of Food and Environmental Hygiene** responded that:

- the MSVR as at 31 July 2003 without the above deduction was about 22%; and

- the high MSVR was due to the excessive number of stalls in some markets, leading to an over-provision of stalls compared to demand. The large number of stalls for some old markets was justified by the demand for such market facilities at the time of constructing these markets. However, the changed circumstances of these markets since their commissioning, such as changed population size in their catchment areas and demolition of nearby housing estates, had led to a reduction in the number of customers. As a result, the MSVRs of these markets increased.

27. In his letter of 20 January 2004 in ***Appendix 12***, the **Director of Audit**, informed the Committee that, according to Audit analysis of the FEHD's records, the MSVR for public markets as at 31 July 2003 without deducting the frozen market stalls was 22.7%.

28. It appeared to the Committee that the FEHD had attempted to conceal the true MSVR of its public markets by making the deduction, thereby reducing the MSVR of its markets from 22.7% to 11.8%. As a result, its MSVR compared more favourably with the overall vacancy rate of 10.7% for private commercial premises used for retail business. On the calculation of the MSVR, the **Director of Food and Environmental Hygiene**, in his letter of 19 December 2003 in ***Appendix 13***, explained that:

- the vacancy rate of 10.7% for private commercial premises used for retail business was drawn from the Hong Kong Property Review 2003 published by the Rating and Valuation Department. The latter had made no purposeful

deductions for frozen space in working out the vacancy rate. Since private landlords had no resiting commitments towards their tenants, and given the landlords' intention to maximise income, it was reasonable to believe that any purposely frozen space in the private commercial market would be kept at a minimum; and

- in explaining the situation to the Director of Audit, the FEHD felt that it would be appropriate to express the vacancy rate of market stalls based on available space, that is, excluding those stalls that had been frozen. He apologised should this approach have caused some misunderstanding. In future, the FEHD would review how best to express the MSVR with a view to presenting a full picture to the readers.

29. The **Director of Food and Environmental Hygiene** further advised, in the same letter, that the measures to reduce the MSVR of the FEHD would include the following:

- enhancing the operating environment of the public markets, including improvement to the lighting, ventilation, drainage, signage, and floor and wall finishes;

- assisting the stall holders to improve their business viability by providing customer service training and organising promotion activities;

- improving and maintaining a high standard of cleanliness in the markets to attract customers and to improve overall viability;

- rationalising the layout inside the markets, where possible, such as by merging adjoining vacant small stalls into larger ones to make them more attractive to potential tenants;

- reducing the upset price for stalls which had been vacant for a considerable period to make them more attractive to potential bidders;

- identifying alternative uses of market stalls by bringing in new types of trade, such as banking machines, tradesmen services, and photo-processing; and

- in case where a market remained unviable with high vacancy rate, considering closing down part of or the entire market and using the space for other purposes.

30. In this connection, the Committee asked about:

- the criteria based on which the FEHD determined the closure of public markets; and

- the ranks and numbers of the FEHD's posts that would be deleted and of its staff that would become redundant if closure of markets, outsourcing of service, or transfer of market operation to private operators (paragraph 4.18 of the Audit Report referred) was implemented.

31. In his letter of 19 December 2003, the **Director of Food and Environmental Hygiene** stated that:

- in determining whether a public market might be closed, the FEHD would largely rely on the following criteria for its decision:

  (a) the stall vacancy rate in the market and whether there were cost-effective measures which the FEHD could apply to improve this vacancy rate;

  (b) the size of the Government's deficit in operating the market, and whether there were practical measures to reduce government expenditure;

  (c) the availability of retail facilities in the vicinity of the market and the ability of the market stall holders to compete successfully with these facilities; and

  (d) the social considerations that required the retention of a public market in the locality despite heavy deficit, such as in case where there was a general lack of retail facilities in the area;

- the FEHD fully understood that closing a public market was a controversial issue, which might have a significant impact on the existing stall holders and the community. The FEHD would conduct detailed studies, bearing in mind the criteria set out above, and consider other possible options before proposing to close any markets. The FEHD would consult the views of the District Councils and the stall operators; and

- given that the cleansing and security services of the markets had been outsourced, the closure of a market would involve mainly the deletion of the supervisory posts. Generally, the closure of a market might involve the deletion of up to one Overseer, three Foreman and three Workman posts.

The FEHD did not expect that it needed to make any civil servants redundant because of market closure, outsourcing or transfer of market operation to private operators. Any surplus staff identified would be taken care of through redeployment or natural wastage.

32. According to paragraphs 2.19 and 2.25 of the Audit Report, under the market stall tenancy agreement, a stall lessee must not cease carrying on business at the market stall for more than a specified number of days a year (156 and 84 for markets previously managed by the former USD and the former RSD respectively) without the FEHD's prior consent in writing. The Secretary for Health, Welfare and Food had said that tightening up on the "non-trading" rule in tenancy agreements would inevitably lead to more terminations of tenancies. This might put further pressure on the overall occupancy rate of markets and reduce rental income collectible. In this connection, the Committee asked about the enforcement of the "non-trading" rule.

33. The **Director of Food and Environmental Hygiene** stated that there were enforcement difficulties, such as in defining the minimum period in which a market stall should operate in order to qualify as a trading stall for the purposes of the "non-trading" rule. Some stall lessees might find their existing stalls too small and would therefore lease another stall for storage of goods. Nevertheless, the FEHD would strictly enforce the tenancy conditions concerning non-trading days.

34. The Committee asked about details of the FEHD's actions in monitoring non-trading market stalls in each public market and enforcement against those stall lessees who had breached the condition concerning non-trading days in the past three years.

35. In his letter of 30 December 2003, in ***Appendix 14***, the **Director of Food and Environmental Hygiene** said that the Market Foremen were responsible for conducting regular checks on the market stalls to ensure that the operators complied with tenancy terms and conditions, including the provision concerning non-trading. The FEHD would issue verbal/written warnings to market tenants if the latter were found to be in breach of the non-trading rule. Repeated offenders might have their tenancy terminated. In the past three years, a total of 545 verbal warnings and 79 written warnings were issued to market tenants for cessation of stall business in excess of the permitted period. No tenancy agreement, however, had been terminated on this account as the breaches had been subsequently rectified.

Public markets managed by the Food and Environmental Hygiene Department

Operating deficits incurred at some public markets

36. According to paragraph 1.5 and Table 3 of the Audit Report, for all public markets, property maintenance services were provided by the Architectural Services Department (ArchSD) and electrical maintenance services were provided by the Electrical and Mechanical Services Department (EMSD). In 2002-03, the total cost (excluding land cost and depreciation) of operating markets was $551.7 million, and the operating deficit was $237.5 million. The total cost included, inter alia, staff costs of $183.3 million and departmental expenses of $288.8 million. In this connection, the Committee asked:

- about the operating deficit if the hidden subsidies, which included the land cost, depreciation and accrued pension cost, were also taken into account;

- the effect of the flexible upset price-setting mechanism mentioned in paragraph 2.18(b) of the Audit Report on the above amount of deficit;

- whether public tenders had been invited for the maintenance services provided by the ArchSD and the EMSD; and

- about the details of the departmental expenses and whether these expenses and the staff costs could be reduced.

37. The **Director of Food and Environmental Hygiene** said, at the public hearing and in his letter of 30 December 2003, that:

- the operating cost of $551.7 million for 2002-2003 had included accrued pension cost but not land cost and depreciation. The FEHD did not have any information on the assessed historical land cost of the 82 public markets. The FEHD was unable to take into account depreciation of the market buildings due to the difficulty in tracking down, for most of the markets, their historical construction costs. It could be, however, safely assumed that the operating deficit per annum would be much higher if the opportunity cost of the land concerned and depreciation of the buildings were to be included;

- the FEHD introduced in August 2003, on a trial basis, in three public markets a more flexible upset price-setting mechanism for long-standing vacant market stalls. Together, these three markets accounted for, in 2002-2003, an operating deficit of $12.8 million. As at the end of November 2003, 182 long-standing vacant stalls in these three markets were offered for letting at reduced upset price and 24 stalls (or 13%), including six stalls at 80% of the OMR and 18 stalls at 60% of the OMR, were leased, generating an additional

rental income of $258,720 per annum. This would help bring down the annual operating deficit by an equivalent sum;

- public tenders had been invited for individual items of the electrical maintenance services. The EMSD was successful in some of these tenders. Private service providers were successful in recent public tenders. As the maintenance service charges were affected by the number of parts to be changed which could only be known by the end of the contract period, whether the EMSD or the private sector provided a cheaper service could only be known by then; and

- the departmental expenses mainly included four parts, i.e., electricity charges, electrical maintenance charges, and fees for cleansing and security services. These charges and fees constituted about 33% and 20% of the total cost respectively. The departmental expenses, together with the staff costs at about 33% of the total cost, accounted for about 85% thereof. The remaining 15% of the total cost was on water charges and on maintenance fees charged by the ArchSD. The staff costs were those of four to six staff members for servicing each market. They had to work on shift in view of the long opening hours for markets which opened every day. As such, the chance for reducing these staff costs was small. The fees for cleansing and security services might even increase. This was because the number of shifts had to be changed from two in the existing contract for security service to three in the new contract. As a result, the number of security guards was expected to increase. Overall speaking, the room for reducing the total cost was not much.

38. It appeared to the Committee that the FEHD had not given a full and frank account of the operating conditions of public markets, including the real demand for the markets and the total amount of tangible and hidden government subsidies, e.g. the use of government land and buildings. The Committee considered that these were all important factors which decision makers had to take into account in assessing the viability of each of the public markets vis-à-vis the private ones. In this connection, the Committee noted from paragraph 4.19 of the Audit Report that the FEHD had embarked on a study to identify markets that might merit closure. The Committee asked when the study results would be available.

39. The **Director of Food and Environmental Hygiene** responded that, as stated in paragraph 4.18 of the Audit Report, the FEHD would take into account the factors mentioned in paragraph 4.17(a) when identifying those public markets that should be closed because of unresolvable viability problems. To determine whether the viability problem of a market with high MSVR was unresolvable, the FEHD would attempt to ascertain the causes of the high MSVR. Once the FEHD had finalised the list of markets that should be closed, it would draw up an action plan. This would take at least six months.

40. The **Secretary for Health, Welfare and Food** added that he and the Director of Food and Environmental Hygiene would consider the scale of public markets and examine which markets merited closure and which merited continuation of operation. They would try to draw up a timetable for assessing the viability of each market. For those markets which merited closure, the FEHD did not consider it necessary to bring down their MSVRs, as additional resources would be required for doing so. A difficulty in improving the viability of markets was that the operating cost could not be offset by the rental, which had been frozen. Nevertheless, the FEHD would examine whether the cost of operating markets could be reduced. It would also consider the feasibility of transferring the operation of markets to private operators.

Retrofitting of air-conditioning systems

41. According to paragraphs 5.6 and 5.16 of the Audit Report, the MSVRs of the three public markets retrofitted with air-conditioning systems had in fact increased after the retrofitting works. Consequently, the FEHD's share of the recurrent cost of air-conditioning in respect of vacant market stalls had also increased. The Committee enquired:

- whether the provision of air-conditioning systems could significantly improve the viability of markets or incur more operating deficits; and

- about the reasons for the increase of the MSVRs of the three markets retrofitted with air-conditioning systems.

42. The **Director of Food and Environmental Hygiene** responded that:

- there was a belief that customers preferred shopping at supermarkets to shopping at public markets because, unlike the latter, the former was provided with air-conditioning. As such, providing air-conditioning systems in markets could improve their viability. However, the experience of the above

three markets seemed to disprove the belief. The FEHD would take into account this experience in considering the provision of air-conditioning systems in markets in future; and

- the FEHD was puzzled by the increase of the MSVRs of the three markets as, due to the freeze of rent, the stall lessees were not yet required to bear the recurrent electricity and maintenance costs. Yet some stall lessees ceased their stall business. The reason for such cessation of business might be a change of the surrounding environment of the markets concerned. As a result, the number of customers shopping at these markets dropped.

43. The **Secretary for Health, Welfare and Food** added that the Administration would carefully consider whether to proceed with the retrofitting works for the other public markets. The consent from stall lessees to bear the recurrent cost for air-conditioning was only one of the factors. The Administration would also consider the viability of these markets in deciding whether to proceed with the retrofitting works.

44. According to paragraph 5.9 of the Audit Report, the FEHD decided that the retrofitting of air-conditioning systems in 18 public markets would only proceed if an 85% majority consent from stall lessees was obtained. The Committee asked whether the 85% majority consent was the only pre-condition for the retrofitting of air-conditioning and whether the FEHD had assessed the cost-effectiveness of these markets.

45. The **Director of Food and Environmental Hygiene** responded that the stall lessees had divided views on the retrofitting of air-conditioning. Some stall lessees believed that the retrofitting would improve the business turnover while others were unwilling to bear the recurrent cost for the air-conditioning. It would be worthwhile to proceed with the retrofitting works if the provision of air-conditioning could improve the market viability. After all, the provision of public markets was not entirely commercial in nature but was also a social responsibility. Instead of only considering the cost-effectiveness of these markets, the FEHD had to balance the commercial interest and the social responsibility in operating public markets.

46. According to paragraph 5.11 of the Audit Report, the FEHD obtained funding for retrofitting of air-conditioning at the Yue Wan Market in April 2003, had withdrawn the funding proposal for the retrofitting works at the Fa Yuen Street Market, and had not yet sought funding approval for the retrofitting works at the San Hui Market. The Committee asked whether the FEHD would proceed with the retrofitting of air-conditioning systems in these three markets, as originally planned.

47. In his letter of 19 December 2003, the **Director of Food and Environmental Hygiene** responded that:

- to follow up commitments made by the former Municipal Councils, the FEHD had agreed to install air-conditioning systems in 18 public markets, subject to such proposal obtaining an 85% majority consensus from stall lessees. Based on this criterion, the FEHD had obtained funding for providing air-conditioning at the Yue Wan Market and was planning to seek funding for similar works at the San Hui Market and the Fa Yuen Street Market; and

- the FEHD maintained an open mind on the provision of these proposed air-conditioning systems. In view of the concerns expressed on value for money for such works, the FEHD would review the need and cost-effectiveness of these projects and consult the Legislative Council Food Safety and Environmental Hygiene Panel in early 2004 on whether the FEHD should continue to proceed with the project at the Yue Wan Market which had already been tendered, and whether the FEHD should seek funding approvals for the other works. The FEHD would inform the Committee as soon as it had consulted the Panel and made a decision.

Vacant floor space in two public markets

48. The Committee noted that the vacant market floor space on the second floor of the Fa Yuen Street Market and in the basement of the To Kwa Wan Market, had a total gross floor area of 2,310 square metres, had not been put to beneficial permanent use since 1988 and 1994 respectively. The Committee considered that the vacant floor space should have been put to beneficial use, such as for use as office accommodation, by the Government or non-governmental organisations. In this connection, the Committee enquired whether it was possible to put the vacant floor space to such use.

49. The **Director of Food and Environmental Hygiene** responded that its district offices had to be located in the districts concerned in order to be easily accessible by the local residents. If the FEHD had accommodation needs in Kowloon in future, it would explore the feasibility of turning the two floors, which were designed for market purpose, into offices to meet such needs.

50. To ascertain whether the FEHD had actively explored the possibility of using the vacant space as office accommodation, the Committee asked about the locations and floor areas of office accommodation provided to the FEHD and the former USD since the commissioning of the Fa Yuen Street Market and the To Kwa Wan Market in 1988 and 1984 respectively.

51. In his letter of 19 December 2003, the **Director of Food and Environmental Hygiene** provided two tables setting out the location and floor areas of office accommodation provided to the former USD and the FEHD respectively since the commissioning of the two markets. He pointed out that Part 6 and Appendix I of the Audit Report had set out the various proposals that had been explored for putting these two vacant market floors to permanent use. The two floors were designed for market purpose. It was not certain whether they were suitable for turning into offices, and if so, what the conversion costs would be. The FEHD would take the lead in exploring the feasibility of this option together with the Government Property Agency (GPA) and the ArchSD, and if this was not a desirable option, identify possible alternative permanent uses.

52. The Committee noted from the above letter that the former USD and the FEHD had acquired 21,578 square metres of office accommodation in government premises since 1988. Regarding the accommodation leased by the FEHD since its establishment in 2000, which was listed in Annex II of the above letter, the Committee asked about the annual rental for the accommodation and the rental expenditure so far.

53. In her letter of 26 January 2004, the **Director of Food and Environmental Hygiene (Acting)** stated that the FEHD had spent $1,203,526 between January 2000 and December 2003 for leasing the four premises in the New Territories for District Environmental Hygiene Offices. She also provided details of the annual rental and total rental expenditure incurred for the respective leased premises.

54. According to paragraphs 6.13 to 6.16 of the Audit Report, both the Director of Food and Environmental Hygiene and the Secretary for Health, Welfare and Food considered that it was more appropriate to entrust to the GPA the task of putting vacant market floor space to beneficial permanent use. In paragraph 6.17(a), the Government Property Administrator had said that public markets were specialist buildings and the responsibility for their management and use rested with the department concerned. The Committee asked whether, from the policy perspective, the GPA might be entrusted with the task.

Public markets managed by the Food and Environmental Hygiene Department

55. In her letter of 5 December 2003, in ***Appendix 15***, the **Secretary for Financial Services and the Treasury**, responded that:

- as the Government Property Administrator pointed out in paragraph 6.17 of the Audit Report, public markets were specialist buildings. In line with established policy, the responsibility for the management and use of such buildings rested with the user department concerned; and

- with particular reference to the vacant premises cited in the Audit Report, it should be noted that these consisted entirely of market stalls. They were specifically designed and built as an integral part of the public markets which would continue to be operated and managed by the FEHD. Any proposals for their alternative use must therefore have due regard to the compatibility of use, effective operation and efficient management of the public markets proper. With these considerations in mind, it would be appropriate for the Director of Food and Environmental Hygiene to continue to identify alternative use for the surplus market stalls and putting the vacant premises to beneficial use. The GPA would be pleased to offer assistance and advice in resolving the problems.

56. The Committee asked whether the Financial Services and the Treasury Bureau would explore the feasibility of converting vacant market floor space into office space and in finding suitable users for the accommodation.

57. **Miss Elizabeth TSE, Deputy Secretary for Financial Services and the Treasury (Treasury) 1**, responded that the Financial Services and the Treasury Bureau noted that the FEHD's ability to put the floor space to beneficial permanent use was constrained by its functional ambit. The GPA would offer assistance and advice in resolving the problem of the vacant market floor space.

58. **Conclusions and recommendations** The Committee:

- acknowledges that the public markets managed by the Food and Environmental Hygiene Department (FEHD) are provided primarily for resiting the hawkers who would otherwise be trading on-street in the vicinity of the markets concerned, causing nuisance and congestion to pedestrian and vehicular traffic;

- expresses dismay that the FEHD has not given a full and frank account of the operating conditions of public markets, including the real demand for the markets and the total amount of tangible and hidden government subsidies, e.g. the use of government land and buildings. These are all important factors which decision makers have to take into account in assessing the viability of each of the public markets vis-à-vis the private ones;

Many market stalls were vacant or non-trading

- expresses concern that:

  (a) the overall market stall vacancy rate (MSVR) of public markets increased from 15.7% as at 31 March 2000 to 22.6% as at 31 March 2003;

  (b) many market stalls have been vacant for a long period of time. As at 31 March 2003, 61.7% of the vacant market stalls had been vacant for two years or more;

  (c) some public markets built in recent years have not attracted many customers. Consequently, these markets are unable to achieve the target overall MSVR. As at 30 June 2003, the overall MSVR of the eight markets commissioned after 1998 was 19%. For five markets, the MSVRs ranged from 20% to 53.5%;

  (d) in 20 public markets randomly selected for audit survey in April and May 2003, 17.6% of the market stalls leased out were not being used for trading; and

  (e) the planning standard for public markets in the Hong Kong Planning Standards and Guidelines has not been updated since 1989. The current planning standard appears outdated, given the changed circumstances brought about by the abundant supply of superstores, supermarkets and fresh provision shops in recent years;

- expresses serious dismay that the FEHD had attempted to conceal the true MSVR by:

  (a) changing the target overall market stall occupancy rate of 85%, which was set in January 2000, to 84% in January 2001. As a result, the overall MSVR which should not be exceeded was revised from 15% to 16%;

(b) deducting the number of purposely frozen market stalls from the calculation of the overall MSVR, thereby reducing the MSVR for its markets from 22.7% to 11.8%, which compared more favourably with the overall vacancy rate of 10.7% for private commercial premises used for retail business; and

(c) only issuing verbal/written warnings to stall lessees for cessation of stall business in excess of the permitted non-trading period, instead of terminating the tenancy agreement. The existence of many non-trading market stalls has distorted the true vacancy position of market stalls;

- notes that the Director of Food and Environmental Hygiene:

(a) has apologised for the misunderstanding caused by the FEHD's approach of expressing the MSVR based on available space, that is, excluding those market stalls that had been frozen; and

(b) will review how best to express the MSVR with a view to presenting a full picture;

- acknowledges that the Director of Food and Environmental Hygiene will implement Audit's recommendations mentioned in paragraph 3.6 of the Audit Report;

- urges the Director of Food and Environmental Hygiene to expeditiously implement Audit's recommendations mentioned in paragraphs 2.16 and 2.23 of the Audit Report;

Large operating deficits incurred at some public markets

- expresses concern that:

(a) in 2002-03, the FEHD incurred an operating deficit at 74 public markets. At the ten markets with the highest operating deficits, the amount ranged from $6.46 million to $11.79 million. At the ten markets with the highest operating deficit per leased market stall, the deficit per stall ranged from $90,000 to $156,000; and

(b) there will still be operating deficit even if all the long-standing vacant market stalls are leased out under the more flexible upset price setting mechanism, which is being implemented by the Health, Welfare and Food Bureau (HWFB) on a trial basis;

- acknowledges that the FEHD has embarked on a study to identify public markets that may merit closure. Upon completion of this study, the HWFB will draw up a rationalisation plan, including options for terminating the tenancies of incumbent stall lessees;

- recommends that the FEHD and the HWFB should consult the stakeholders involved, including the Legislative Council, in conducting the study to identify markets that may merit closure and drawing up the rationalisation plan;

Retrofitting of air-conditioning systems to improve the viability of public markets

- expresses concern that Audit's findings do not seem to support the belief that providing air-conditioning systems can significantly improve the viability of public markets because:

  (a) as at 30 June 2003, the MSVR of some markets which were not provided with air-conditioning systems was very low (as low as 0.5%), while the MSVR of some markets provided with air-conditioning systems was very high (as high as 53.5%); and

  (b) during the period March 2000 to June 2003, the overall MSVR of the three markets retrofitted with air-conditioning systems increased by 9.2% while the overall MSVR of all markets increased by only 6.9%;

- acknowledges that the Director of Food and Environmental Hygiene has undertaken to review the need and cost-effectiveness of the projects for the provision of air-conditioning systems in the Yue Wan Market, the San Hui Market and the Fa Yuen Street Market. The FEHD will consult the Legislative Council Food Safety and Environmental Hygiene Panel in early 2004 on whether it should continue to proceed with the project at the Yue Wan Market which has already been tendered, and whether it should seek funding approvals for the other works;

Vacant floor space in two public markets not put to beneficial permanent use

- expresses serious dismay that:

  (a) the FEHD has failed to put to beneficial permanent use since 1988 and 1994 respectively the vacant market floor space on the second floor of the Fa Yuen Street Market and in the basement of the To Kwa Wan

Market, which have a total gross floor area of 2,310 square metres. Since 1988, the former Urban Services Department and the FEHD have acquired 21,578 square metres of office accommodation in government premises; and

(b) in leaving the market floor space vacant for a long time, the FEHD has incurred significant wastage, including the cost of the land concerned, depreciation of the market buildings and the opportunity cost of the vacant market floor space and the government premises concerned;

- acknowledges that the Director of Food and Environmental Hygiene will, in coordination with the Government Property Administrator, implement Audit's recommendations mentioned in paragraph 6.14 of the Audit Report;

- urges the Financial Services and the Treasury Bureau to take the lead to explore ways to put the vacant market floor space to beneficial use by the Government or non-governmental organisations; and

Follow-up actions

- wishes to be kept informed of the results of the:

(a) FEHD's comprehensive review on the MSVR of public markets;

(b) FEHD's review of the ways to express the MSVR;

(c) FEHD's review on the justifications for the maximum number of non-trading days allowed in a year;

(d) FEHD's review of the demand for public market facilities;

(e) FEHD's study to identify markets that may merit closure and details of the HWFB's rationalisation plan to be drawn up;

(f) reassessment of the need to retrofit air-conditioning systems in public markets, including the Yue Wan Market, the San Hui Market and the Fa Yuen Street Market; and

(g) identification of beneficial permanent use of the vacant market floor space in the Fa Yuen Street Market and the To Kwa Wan Market.

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:

(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.

Provision of noise barriers for mitigating road traffic noise

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 relevent 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

- 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.

Provision of noise barriers for mitigating road traffic noise

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.

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 unwarrnated 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.

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 Novemeber 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 requirments;

- 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.

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.

Provision of noise barriers for mitigating road traffic noise

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.

Provision of noise barriers for mitigating road traffic noise

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

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

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.

Provision of noise barriers for mitigating road traffic noise

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;

- 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 lettr 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:

"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;

- 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.

Provision of noise barriers for mitigating road traffic noise

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.

Provision of noise barriers for mitigating road traffic noise

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).

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.

Provision of noise barriers for mitigating road traffic noise

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.

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

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

- 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;

- 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

- 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

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

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.

Provision of noise barriers for mitigating road traffic noise

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

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

(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.

Chapter 3

Buildings Department's efforts to tackle the unauthorised building works problem

Audit conducted a review to examine the Buildings Department (BD)'s efforts in tackling the unauthorised building works (UBW) problem and to ascertain whether there were areas for improvement.

BD's achievements in removing UBW

2. The Committee noted from paragraphs 1.6 and 1.7 of the Audit Report that, in April 2001, the Executive Council (ExCo) endorsed a comprehensive strategy for building safety and timely maintenance (the 2001 Strategy) to tackle, among other things, the UBW problem. To implement the 2001 Strategy, the BD had been allocated $167 million in 2001-02 for additional staff and to pay for outsourcing some of its work to the private sector. The annual provision allocated to the BD for this purpose was $205 million from 2002-03 onwards.

3. Paragraphs 2.4 and 2.5 mentioned that under the 2001 Strategy, the BD expected to remove between 150,000 and 300,000 UBW within five to seven years. Audit estimated that the BD would be able to remove 208,550 UBW in the seven years from 2001 to 2007. While this would exceed the lower end of the BD's expectation, it still fell short by nearly one-third of the upper-end expectation of removing 300,000 UBW.

4. The Committee considered that the BD was expected to implement the 2001 Strategy as a matter of urgency to protect life and property when it was allocated the large amount of additional resources. However, it appeared to the Committee that the BD had not fully achieved the targets set under the strategy. It queried why the BD had not met the upper-end expectation of removing 300,000 UBW by 2007.

5. **Mr Marco WU, Director of Buildings**, explained that:

- the range of 150,000 to 300,000 UBW to be removed by 2007 was only an estimate based on the number of buildings targeted for clearance operations. This was because the number of UBW that existed in a building and the number of those that could be removed were not certain until the BD conducted operation on the target building. Hence, the 2001 Strategy paper specified such a large range of between 150,000 and 300,000 UBW. In fact, the BD's targets were to conduct blitz operations (i.e. large-scale clearance operations) on 900 buildings in 2001, and 1,000 buildings in 2002 and thereafter; and

- the BD estimated in 2001 that there were about 800,000 UBW in Hong Kong. It aimed to remove 150,000 to 300,000 UBW, instead of all the 800,000 UBW, in five to seven years. As pointed out by Audit, the BD should be able to remove about 200,000 UBW by 2007. In the coming years, the BD would continue to work towards meeting the target number of buildings each year. More UBW would be removed if more were identified during the operations. The BD also agreed to Audit's suggestion of conducting more blitz operations where resources permitted.

6. In the light of the Director of Buildings' reply, the Committee asked:

- about the number of buildings that had UBW when the BD sought resources for implementing the 2001 Strategy; and

- the actual numbers of buildings on which blitz operations had been conducted in each of the years since the implementation of the 2001 Strategy, and whether the target of conducting operations on 1,000 buildings a year had been achieved.

7. The **Director of Buildings** and **Mr CHEUNG Hau-wai, Deputy Director of Buildings**, said that when the BD applied for resources, the objectives included improving the safety conditions and outlook of buildings from 20 to 40 years old by removing the UBW found in these buildings, clearing illegal rooftop structures (IRS), and controlling signboards. Regarding the removal of UBW, the target was set at 1,000 buildings a year. While it was expected that the BD would be able to clear about 200,000 UBW found in the buildings by 2007, it would still strive to meet the upper-end expectation of removing 300,000 UBW by then.

8. In his letter of 23 December 2003, in ***Appendix 28***, the **Director of Buildings** advised that the numbers of buildings on which blitz operations had been conducted in each of the years since the implementation of the 2001 Strategy were 1,571, 1,759 and 1,000 for 2001, 2002 and 2003 respectively. The BD had achieved all the targets of conducting blitz operations i.e. conducting operations on 900 buildings in 2001 and 1,000 buildings per year since 2002.

9. As the number of buildings that were 20 to 40 years old would increase every year, the Committee asked whether the BD would consider enlisting the assistance of the Urban Renewal Authority or the Hong Kong Housing Society in removing UBW, with a view to expediting the progress of removing UBW in Hong Kong and meeting the upper-end target of removing 300,000 UBW by 2007.

10. **Mr Michael SUEN Ming-yeung, Secretary for Housing, Planning and Lands**, and the **Director of Buildings** responded that:

- in the past few years, the BD had already engaged contractors to perform those duties that preceded the issuance of statutory removal orders, including site inspection and drafting of orders. The BD would consider whether there were other duties that could be handled by other organisations. However, statutory power could not be transferred. The follow-up work after the issuance of removal orders, such as taking actions against the owners for non-compliance with the orders, involved the exercise of statutory power and had to be undertaken by civil servants; and

- to deal with the increase in old buildings and related problems, the Administration would conduct a public consultation exercise shortly with a view to engaging the community in discussions about the appropriate approach to tackling the building neglect problem and promoting the idea that it was the owners' responsibility to keep their buildings in good repair. The Administration hoped to educate the owners about their responsibility to remove UBW voluntarily without being compelled by removal orders. This would be a long-term solution to the problem.

Extent of compliance with section 24 orders and complaint cases

11. The Committee understood from paragraph 3.1 of the Audit Report that, having identified a UBW that required enforcement action, the BD might issue a statutory order under section 24 of the Buildings Ordinance (section 24 order) requiring the owner to remove the UBW within a specified period (usually within 60 days). The Committee was concerned that, as revealed in paragraph 3.3 of the Audit Report, the section 24 orders only had an overall compliance rate of 57%, ranging from 74% for orders issued in 2000 to 32% for those issued in 2002. Moreover, Audit's analysis of 18,300 outstanding section 24 orders indicated that 11,500 (or 62%) had been issued more than 16 months ago, including 1,590 (or 8%) that had been issued more than seven years ago (paragraph 3.5). The Committee asked about the actions taken by the BD to clear the large number of long outstanding section 24 orders.

12. The **Director of Buildings** stated that:

- it was natural that the compliance rates of the section 24 orders issued in the earlier years were higher than those issued in recent years. Owners needed time to remove their UBW and comply with the orders. Nevertheless, the senior management of the BD was concerned about the substantial backlog of outstanding section 24 orders, particularly those that were issued long ago. Regarding the orders issued more recently, such as those in 2001 and 2002, the BD was rather confident that, given time, most of the owners would comply with them; and

- the BD had set up a dedicated team in July 2000 for the purpose of clearing the backlog, but the pace was still less than satisfactory. This was because some cases were complicated and required more time to settle. The BD would have to consider other ways to deal with the problem. It would also consider allocating more resources internally to clear the backlog.

13. The **Secretary for Housing, Planning and Lands** supplemented that:

- within the resources available to him, he would have to determine the amount of resources allocated to the various departments under his purview. Given the current stringent financial situation, there were no new resources. Even existing resources might have to be cut. While he would certainly give top priority to cases that directly affected life and safety, other cases would inevitably be accorded a lower priority; and

- it was undeniable that the BD's performance in enforcing the removal of UBW was unsatisfactory. The compliance rate of only 32% in 2002 was too low. The Administration would suitably allocate more resources to this task. However, whereas the Administration would try its best to improve the compliance rate, there was no guarantee that 100% of the orders issued would be complied with.

14. On the duties of the dedicated team, the **Acting Director of Buildings** informed the Committee, in his letter of 2 January 2004 in ***Appendix 29***, that:

- in July 2000, the BD set up a dedicated Backlog Team to clear outstanding orders issued before 1996. In May 2002, this dedicated team also took up the task of clearing the outstanding orders issued before 3 July 2000, except those orders issued under large scale operations such as Blitz UBW Clearance operation. The latter was being followed up by other district teams;

- the duties of the Backlog Team included screening case files, carrying out site inspections, recommending and following up with necessary enforcement actions, attending meetings with the public arising from the clearance of the backlog orders; and

- when the backlog orders had been discharged, the Backlog Team would also update the information in the Buildings Condition Information System (BCIS) in respect of the backlog orders.

15. Referring to the Secretary for Housing, Planning and Lands' statement that the Administration would accord top priority to cases affecting life and safety but lower priority to other cases, the Committee wondered whether the BD would stop following up those outstanding section 24 orders that did not cause immediate danger to life and safety and, if so, whether the law allowed the BD to prioritise the removal of UBW on such a basis.

16. The **Secretary for Housing, Planning and Lands** and the **Director of Buildings** clarified that:

- the BD would definitely take action to ensure that all section 24 orders that had been issued were complied with. The BD was also making special efforts to clear the backlog of orders that had been outstanding for a long time. Since its establishment in July 2000, the Backlog Team had reduced the backlog from 3,400 to about 1,400 cases;

- the law empowered the BD to take enforcement actions against UBW by issuing section 24 orders, but did not specify the kind of UBW that deserved priority action. Regarding new cases, the BD would have to prioritise its work having regard to the resources available. In fact, the BD's approach was in line with the revised enforcement policy against UBW as set out in the 2001 Strategy. Under the Strategy, the BD was to re-focus priorities in taking enforcement actions against UBW. Resources were directed to the removal of the following seven categories of items:

  (a) items constituting obvious or imminent danger to life or property;

  (b) new items;

  (c) items in or on buildings, on podiums and rooftops, in yards and lanes constituting a serious hazard or a serious environmental nuisance, as determined by the Building Authority;

(d) major individual items;

(e) items in or on individual buildings with extensive UBW;

(f) items identified in buildings or groups of buildings targeted for large-scale operations or maintenance programmes; and

(g) unauthorised alteration to or works in environmentally friendly features of a building for which exemption from calculation of gross floor area has been granted by the Building Authority; and

- the Administration adopted a two-pronged strategy with a view to tackling the UBW problem at source. On one hand, the BD took enforcement action against UBW. On the other hand, it hoped that the public would accept that it was their responsibility to maintain their buildings in good condition, thereby curbing the emergence of new UBW.

17. The Committee noted Audit's recommendation in paragraph 3.7(e) of the Audit Report that the Director of Buildings should provide the public with information on the extent of compliance with section 24 orders and ageing analyses of outstanding cases. The Committee also noted that some BD officers had expressed concern about their capacity to cope with additional work. The Committee asked whether the BD accepted Audit's recommendation, which could enhance the transparency of the BD's performance and help to solicit BD staff's support in meeting the department's performance targets.

18. The **Director of Buildings** responded at the hearing, and the **Acting Director of Buildings** stated in his letter of 2 January 2004, that:

- to address the concern of staff about their workload, the BD would provide more training to ensure that they understood the nature of and the procedure involved in their work. He would also make better deployment of resources and discuss with BD staff the appropriate prioritisation of their work;

- the BD proposed to set additional performance targets for the clearance of outstanding section 24 orders, details of which were given in Annex II of the letter of 2 January 2004; and

- the BD also intended to provide the public with information on the extent of compliance with section 24 orders, the ageing analyses of the outstanding orders and the BD's additional performance targets for the clearance of outstanding orders in its website starting from 1 April 2004.

Buildings Department's efforts to tackle the unauthorised building works problem

19. Turning to the UBW cases arising from complaints, the Committee noted that the BD had introduced the BCIS, which was a major computer system, in mid-2002 at a cost of $20 million. Its objective was to maintain a database of the conditions of all existing private buildings in Hong Kong, which would provide an effective means of recording, processing and retrieving details of complaints, referrals, planned surveys, statutory orders and works orders.

20. Audit's analysis of the BCIS data revealed, however, that, as at July 2003, only 31,200 complaint cases (or 83%) of the 37,570 cases received by the BD in 2001 and 2002 had an "initial action date" (e.g. the date of initial screening) recorded in the BCIS, which indicated that action had been initiated. The remaining 6,370 cases (or 17%) had no such data recorded in the BCIS. Of the 31,200 complaint cases with an "initial action date", Audit's analysis of the BCIS data revealed that, as at July 2003, in 2,270 cases (or 7%), no site inspections had been carried out, although the case screening (i.e. the initial action) had taken place more than four months earlier. In 1,660 cases (or 5%), section 24 orders had not been issued, although the site inspections had been carried out more than four months earlier. Hence, there could have been delays in the BD's follow-up action in these cases.

21. Against the above background, the Committee asked:

- whether the BD had taken remedial measures in respect of the 17% of cases with no records of the "initial action date" in the BCIS, and when the relevant data would be entered into the BCIS;

- why no site inspections were carried out months after case screening had been performed and no section 24 orders were issued months after the site inspections, and whether these were due to the shortage of manpower;

- how the BD would prevent the recurrence of similar delays in future; and

- why the BD had not made good use of the BCIS.

22. The **Director of Buildings** advised, at the public hearing and in his letter of 23 December 2003, that:

- with reference to the complaint cases in the BCIS without the "initial action date", the BD would deploy additional resources with a view to entering all relevant data into the BCIS by March 2004 and completing all outstanding "initial actions" by June 2004;

- the reason for the delay in taking follow-up actions on the cases was a lack of resources, as the same group of BD staff had to deal with both complaint cases and large-scale operations. To avoid undue slippage in its enforcement action, the BD had put in place a procedure to monitor the progress of follow-up action at both district supervisory and management level. The former would monitor the progress of every case in detail and the latter would monitor the overall progress of all cases with the help of the BCIS; and

- the BCIS had just been put to use at the beginning of 2003. Before the launching of the BCIS, the BD had stored the information in other ways and in other computer systems. The information was now being transferred to the BCIS and the BD would make good use of the system.

Blitz operations

23. According to paragraphs 5.12 to 5.15 of the Audit Report, due to unsatisfactory performance of the contractors, BD staff had to spend a lot of time and effort on supervising outsourced blitz operations, rendering them less cost-effective than those conducted in-house. The average operating cost of the outsourced operations for each building was $42,000, $4,000 (or 10%) higher than the average cost for each building (i.e. $38,000) in in-house operations. This was mainly due to the high supervision costs incurred, which accounted for $24,000 (or 57%) of the operating cost per building of the outsourced operations. In view of the audit findings, the Committee enquired:

- about the reasons for the high supervision costs;

- whether the BD had selected the relatively more complicated cases for outsourcing while retaining the simpler ones for in-house operations; and

- how the BD would reduce the supervision costs.

24. The **Secretary for Housing, Planning and Lands** and the **Director of Buildings** explained that:

- the above cost comparison between in-house blitz operations and outsourced operations was made by the BD after the first batch of blitz operations had been outsourced. Delays had occurred as some contractors were not experienced in handling the blitz operations and some were not familiar with the BD's requirements. On some occasions, the survey reports, information or photographs submitted by the contractors were incomplete or of poor quality, and had to be returned for amendments;

- with the experience gained from the first batch of the outsourced contracts and the implementation of the measures proposed by the BD to address the problem of high supervision costs (set out in Table 9 in paragraph 5.14 of the Audit Report) in the new batch of outsourced contracts, the BD was confident that supervision costs could be reduced. However, the extent of reduction had yet to be ascertained after the new batch of contracts had been implemented for a period of time; and

- the BD had not outsourced the cases on a selective basis and had contracted out as many operations as possible.

25. The Committee enquired whether it was possible to reduce the costs incurred in supervising the blitz contractors by further outsourcing the supervisory work involved. The **Director of Buildings** said at the public hearing, and the **Acting Director of Buildings** supplemented in his letter of 2 January 2004, that:

- the costs of law enforcement work had been included in the "supervision costs" in the Audit Report. To outsource law enforcement work as a means to lower the "supervision costs" would necessitate amendments to existing legislation;

- section 2(2) of the Buildings Ordinance (BO) stated that "the duties imposed on and the powers granted to the Building Authority under this Ordinance may be carried out and exercised by an officer of any Department of the Government specified in the Fourth Schedule who is authorized by the Director of Buildings either generally or particularly and subject to his instructions." A private contractor was not a public officer of any of the departments specified in the Fourth Schedule. He could not exercise such powers; and

- if the BD were to empower the private contractor to carry out law enforcement work, such as issuing statutory orders and accepting the discharge of orders, legislative amendment would be necessary. Such legislative amendment involving the principal ordinance would require submission of a bill to the Legislative Council. However, this would involve a major policy change in law enforcement and would need to be carefully examined as regards its implications.

Buildings Department's efforts to tackle the unauthorised building works problem

26. In response to the Committee's invitation, the **Director of Audit** offered his comments on the matter. He advised, in his letter of 27 January 2004 in ***Appendix 30***, that:

- outsourcing the supervisory work was in principle worth pursuing. In the light of the audit findings and the Director of Buildings' remarks at the public hearing and his reply of 2 January 2004, it would appear that:

  (a) the BD could reduce its supervision costs by implementing Audit's recommendations mentioned in paragraph 5.16(c), (d) and (e) of the Audit Report. The Director of Buildings was taking action to implement the recommendations;

  (b) administratively, outsourcing the supervisory work would create another layer of contractors between the BD and the blitz contractors. Contract administration work of the BD would likely increase in terms of both volume and complexity; and

  (c) at present, certain statutory duties and powers (e.g. the issuing of statutory orders) could not be exercised by the blitz contractors. Until legislative amendments were enacted, the statutory duties and powers would have to be excluded from the scope of any outsourced supervisory work; and

- generally speaking, outsourcing had been widely used by public organisations to enhance cost-effectiveness. On the other hand, outsourcing the supervisory work involved in blitz operations was a fairly complicated issue that required a thorough feasibility study and a policy change before implementation.

27. Paragraph 5.17 of the Audit Report mentioned that, in response to Audit's observation that the 2001 outsourced blitz operations had fallen behind schedule, the Director of Buildings had said that the original target dates set for completing the key stages might have been too optimistic. The BD had revised the target completion dates for the new batches of outsourced contracts. It would also require the new contractors to engage staff who had at least three years' experience in this type of work. The Committee asked:

- how the revised target completion dates compared to the original ones; and

- whether the new requirement for experienced staff had led to higher contract prices.

28. In his letter of 23 December 2003, the **Director of Buildings** provided a comparison of the revised target completion dates of key stages for the new batch of outsourced contracts under the Blitz UBW Clearance (BUC) 2003 and the original ones under BUC 2001. He also said at the public hearing and in his letter that:

- in the past, the BD had specified in the contracts the qualifications required of the staff engaged by the blitz contractors for filling certain ranks or posts, although the years of experience required were not spelt out. With the experience gained from the contracts under BUC 2001, the BD found that the experience of the contractors' staff was very important; and

- the requirement for experienced staff had been introduced in the new batch of outsourced contracts of BUC 2003. The average contract price per building for outsourced contracts under BUC 2001 and BUC 2003 were $17,438 and $17,578 respectively. As many other factors, such as market conditions and the complexity of the jobs in individual contracts e.g. number of UBWs identified and to be removed in the target building, might affect the contract prices, it was difficult to determine whether the new requirement for experienced staff had led to higher contract prices.

The Coordinated Maintenance of Buildings Scheme (CMBS)

29. Paragraph 6.11 of the Audit Report stated that BD staff had expressed concern about the tight timeframe of the CMBS operations, and suggested that more time should be allowed for their completion. The Committee asked about the reasons for the staff's concern and whether they had been consulted when the CMBS was designed.

30. The **Secretary for Housing, Planning and Lands**, the **Director of Buildings** and the **Deputy Director of Buildings** replied that:

- unlike blitz operations, the CMBS aimed at promoting owners' awareness of their building maintenance responsibilities. Under the CMBS, the BD encouraged owners and owners' corporations (OCs) to voluntarily identify and carry out repairs considered necessary to improve the safety of their buildings. The BD did not have tight control of the progress of a CMBS operation because, very often, it had to allow more time for the owners to hold meetings, or for setting up OCs;

- the CMBS was introduced as a pilot scheme. With the experience gained from the pilot scheme, BD staff found that the original timeframe for CMBS operations was too tight and should be adjusted. The BD had now allowed more time in individual cases for the owners to organise the necessary repair works, having regard to owners' willingness and readiness to organise themselves and carry out the works. In the long term, the BD would assess the effectiveness of the CMBS and decide whether it should be carried on or be shelved; and

- one of the objectives of the consultation document to be published was to stimulate public discussion of the issues involved in building management and maintenance. For example, the industry might provide one-stop services to owners through pulling together the necessary legal, surveying, architectural, management and other related expertise. Such private sector efforts would enable owners to better discharge their responsibilities for the upkeep of their buildings and the Government's effort and spending in this aspect could be reduced.

Illegal rooftop structures (IRS)

31. According to paragraphs 7.2 to 7.9 of the Audit Report, under the 2001 Strategy, the Administration undertook to clear IRS on 4,500 single-staircase buildings within seven years. It was the BD's objective to remove, by 2007, all IRS that posed a serious fire risk from all single-staircase buildings. However, since 2001, the BD had identified additional single-staircase buildings with IRS posing a serious fire risk which were not included in the original list of 4,500 buildings.

32. The Committee was concerned that the BD's objective might not be achieved, unless it revisited on a regular basis the annual target for IRS clearance (presently 700 buildings a year), taking into account the number of newly identified single-staircase buildings with IRS posing a serious fire risk. The Committee therefore asked whether the BD:

- could meet its target of removing all IRS that posed a serious fire risk from all single-staircase buildings by 2007;

- had achieved its annual target of removing IRS on 700 single-staircase buildings in the past few years; and

- would consider conducting a systematic survey of the single-staircase buildings in the territory, as recommended in paragraph 7.15(d) of the Audit Report.

33. The **Director of Buildings** responded that:

- the BD had made progress in removing IRS in the past three years. The numbers of single-staircase buildings with IRS removed in 2000, 2001, 2002 and 2003 (as at end of September) were 220, 402, 632 and 522 respectively. The BD was confident that it could meet the target of 700 buildings by the end of 2003. It would also try its best to remove IRS on more than 700 buildings annually in the next few years; and

- the current figure of 4,500 single-staircase buildings with IRS was based on the BD's survey in 1998. After conducting detailed inspections on those buildings since then, the BD found that there were other single-staircase buildings that were not included in the original figure. It also found that some buildings which were included in the original figure had in fact more than one staircase. The BD intended to conduct a detailed exercise in 2004 to verify the information in order to arrive at a more accurate figure.

34. The Committee further enquired:

- whether the BD would take any remedial measures to reduce the fire risk of single-staircase buildings, pending the completion of the verification exercise; and

- whether the Housing Authority's revised rehousing eligibility criteria for public rental housing had facilitated the clearance operations.

35. The **Director of Buildings** and the **Deputy Director of Buildings** informed the Committee that:

- the Administration had imposed restrictions on the design of single-staircase buildings in order to reduce the fire risk of such buildings. For instance, a single-staircase building could not have more than six levels. Moreover, the upper floors of such buildings could only be used for residential purpose while the ground floor could be used as shops or for other purposes; and

- in December 2002, the Housing Authority had relaxed the requisite residence requirement for rehousing to public rental housing. In the past, the requirement was residence in the IRS on or before 1982. Under the new arrangements, families would be eligible for rehousing if they had resided in the affected IRS for two years. The relaxed residence requirement could facilitate the clearance operations.

Control of signboards

36. The Committee understood from paragraphs 8.7 to 8.13 of the Audit Report that, according to the 2001 Strategy, the Administration undertook to introduce a signboard registration scheme in the 2001-02 legislative session. However, this scheme had not materialised as the Housing, Planning and Lands Bureau (HPLB) encountered difficulties in drawing up a feasible registration scheme. The HPLB considered that signboards were basically a type of building works and it was unnecessary to devise an entirely new control scheme to regulate them. It decided to subsume the control of signboards under the Buildings (Amendment) Bill 2003, which had been introduced into the Legislative Council in April 2003. The Bill provided for a new control scheme for minor works. The Committee asked:

- about the effectiveness of the new minor works control scheme in ensuring the safety of advertisement signboards, in the Administration's assessment; and

- as the new minor works control scheme lacked most of the key features of the signboard registration scheme, which formed part of the 2001 Strategy and had been approved by the ExCo, whether the HPLB had reported the change to the ExCo.

37. In response, the **Secretary for Housing, Planning and Lands**, the **Director of Buildings** and **Mr Parrish NG, Principal Assistant Secretary (Planning and Lands)**, stated that:

- the Administration considered that the degree of control on different kinds of building works should be commensurate with their nature, scale, complexity and degree of risk. Under the Buildings (Amendment) Bill 2003, minor works, including signboards and other minor building works, were classified into three categories with different submission and supervision requirements. Works on larger signboards were to be carried out under the supervision of authorised persons and registered structural engineers, and the relevant plans

and documents had to be submitted to the BD. Smaller signboards were to be erected by registered contractors. The Administration considered that the new minor works control scheme could achieve the objective of ensuring the safety of signboards;

- when the HPLB submitted the proposed Buildings (Amendment) Bill 2003 to the ExCo, it had explained to the ExCo its intention to subsume the control of advertisement signboards under the new minor works control scheme; and

- while the main features and implementation details of the new minor works control scheme were different from those of the proposed signboard registration scheme, they both aimed at ensuring the safety of signboards. The HPLB would carry out a post-implementation review of the new minor works control scheme to ascertain its effectiveness and report the results to the ExCo as appropriate.

The BD's prosecution policy and practice

38. According to paragraphs 9.6 to 9.9 of the Audit Report, it was the BD's stated objective to use prosecutions as an effective deterrent and to enhance respect for the law and for the BD as law enforcement agent. Although the BD had more than doubled its prosecution efforts in recent years, the result (i.e. 476 prosecutions in 2002) had fallen short of the BD's pledge to initiate 2,000 prosecutions a year, a pledge that had been repeatedly made by the Director of Buildings. In addition, as at April 2003, 43,500 section 24 orders issued before 1 January 2003 were still outstanding. These included 11,500 orders (or 26%) that had been outstanding for more than 16 months. These figures suggested that, despite the BD's objectives, many building owners continued to flout the law by ignoring the section 24 orders.

39. Paragraph 9.10 further revealed that a possible reason for the small number of prosecution cases instigated was the case officers' reluctance to initiate prosecution action. They were concerned that prosecution action would increase their workload.

40. Against the above background, the Committee asked:

- whether and how the BD would step up its prosecution efforts so as to fulfill its pledge of instigating 2,000 prosecutions a year; and

- how the BD would address the case officers' concern.

41. The **Director of Buildings** responded that:

- he understood that the former Director of Buildings had said on various occasions that the BD was prepared to increase the number of prosecutions to 2,000 a year. He agreed that, given the large number of outstanding section 24 orders and the number of prosecutions instigated by the BD presently, the BD should step up its prosecution efforts in order to meet the target;

- he was confident that the BD could instigate 500 prosecutions in 2003 and 1,000 prosecutions in 2004. Additional resources would be deployed internally with a view to meeting the target of instigating 2,000 prosecutions in 2005; and

- the BD staff were concerned about the additional workload generated by prosecution action because they had to handle different tasks at the same time. The BD would suitably increase the resources for prosecution work and provide more training for staff.

42. Regarding the BD's prosecution practice, the Committee noted from paragraphs 9.4 and 9.5 of the Audit Report that the BD's case officers could exercise discretion on whether to recommend prosecution action for individual cases. Where prosecution action was recommended, the recommendation had to be approved by a BD directorate officer (D1), before the case was referred to the BD's Legal Section for prosecution. However, where no prosecution action was recommended, there was no procedure that required the case to be submitted to a directorate officer for agreement, and the reasons for not taking prosecution action did not have to be specified.

43. The Committee questioned whether the BD considered it appropriate to let relatively junior staff decide whether or not to recommend prosecution action for individual cases.

44. The **Director of Buildings** replied at the hearing, and the **Acting Director of Buildings** stated in his letter of 2 January 2004, that:

- with the aid of the BCIS, all overdue cases, irrespective of whether prosecution action had been recommended or not, could be monitored by the BD's management in future; and

- at district level, the chief professional officers (CPOs) and senior professional officers could generate from the BCIS, for monitoring purpose, various exception reports, which would include a list of long outstanding cases that had not been recommended for prosecution. Cases of undue delay would be brought up for discussion at the Progress Monitoring Subcommittee (PMS) meeting chaired by the CPOs. Difficult cases might be further reported to the top management level at the Progress Monitoring Committee (PMC) meeting. The PMC would monitor the overall progress of the BD's enforcement work and steer the direction in resolving difficult cases.

Findings arising from Audit's case studies

45. Referring to the results of the five case studies mentioned in paragraph 11.2 of the Audit Report, the Committee was concerned that there were instances where delays had occurred at various stages of the BD's enforcement process. The Committee enquired how the BD would prevent the recurrences of similar delays.

46. The **Deputy Director of Buildings** said that:

- in the past few years, the BD had focused its efforts on implementing the measures set out in the 2001 Strategy, including blitz operations, CMBS operations and the clearance of IRS. As resources were limited, there had been delays in the follow-up action on complaints; and

- to avoid undue slippage in its enforcement action, the BD had recently set up a system to monitor closely the progress of follow-up action at both operational and management level. Through the PMS and PMC, and with the help of the BCIS, the BD's management could closely monitor the progress of enforcement work.

47. In response to the Committee's request, the **Director of Buildings** provided, in his letter of 23 December 2003, a detailed account of the reasons for the delays in the five cases studied by Audit, the ranks of the BD officers who caused the delays, and the ranks of the supervisors of the officers concerned. The **Director of Buildings** further informed the Committee that, when seen in context, the delays in the five cases might be due to a number of common factors in addition to their individual circumstances and particular reasons. The common factors included:

- there had been a significant increase in the workload and performance targets over the past few years. For example, the number of complaints attended to had increased from 8,300 cases in 1993 to 15,600 cases in 2002. The annual target of "UBWs removed and irregularities rectified" had doubled from 15,000 in 2001 to 30,000 from 2002 onwards;

- some major operations and key events might have interrupted the progress of individual cases during the material time as detailed below:

  (a) a major internal re-organisation of the BD took place in July 2000. This re-organisation exercise enabled the BD to improve its overall efficiency in dealing with existing buildings, but inevitably caused some temporary disruptions to the BD's work when it was implemented; and

  (b) a number of large-scale operations had been launched. Substantial resources had been drawn to these operations at various critical stages, such as the selection of target buildings, survey inspections, issuance of statutory orders and compliance inspections;

- to implement the 2001 Strategy, additional resources had been obtained which had partly been used to recruit new staff on a contract or temporary basis. As a result, over 540 new staff members had been recruited in 2001 and 2002. These new recruits had to spend some time at the beginning to familiarise themselves with the work procedures for carrying out enforcement against UBW; and

- before the launching of the BCIS in January 2003, the BD did not have a comprehensive progress monitoring system which could help the supervisory staff to monitor the progress of the follow-up action on individual cases.

48. As regards the present position of the five cases, the **Director of Buildings** advised, in the same letter, that:

- ***Case 1 – UBW on a building in Shamshuipo, Kowloon****:* The case officer re-inspected the site on 30 August 2003. The subject UBW had not yet been removed. A removal order was issued on 30 August 2003. The case officer conducted compliance inspection on 18 November 2003. The UBW was found removed;

- ***Case 2 – UBW on a building in Tai Po, New Territories****:* The BD had initiated prosecution action against the owner of the subject UBW for non-compliance with the section 24 order. Summons was issued to the owner on 11 November 2003. First plea hearing was scheduled for 31 December 2003;

- ***Case 3 – IRS on a single-staircase building in Shamshuipo, Kowloon****:* The owner voluntarily removed the IRS on 13 October 2003 and the BD subsequently discharged the section 24 order;

- ***Case 4 – IRS on a single-staircase building in Mongkok, Kowloon****:* The subject IRS was voluntarily removed on 27 November 2003 and the section 24 order was subsequently discharged; and

- ***Case 5 – An abandoned signboard in Nathan Road, Kowloon****:* In September 2003, the consultant submitted the details of the abandoned signs. The BD served Dangerous Structure Removal Notices for the remaining abandoned signs on 5 September 2003. The BD instructed the government contractor on 22 September 2003 to remove all those abandoned signs in one go. The signboard in question was subsequently removed on 9 November 2003.

49. **Conclusions and recommendations** The Committee:

- considers that the Buildings Department (BD) was expected to implement the comprehensive strategy for building safety and timely maintenance as a matter of urgency to protect life and property when funds amounting to $167 million in 2001-02 and $205 million annually from 2002-03 onwards were allocated to it for implementing the strategy;

- concurs with the Secretary for Housing, Planning and Lands that the BD's performance in enforcing the removal of unauthorised building works has been unsatisfactory, particularly taking into account the large amount of additional funding allocated to the BD for this purpose;

Extent of compliance with section 24 orders and complaint cases

- expresses serious dismay that the BD had failed to put to use the Buildings Condition Information System (BCIS), which was introduced at a cost of $20 million, contributing to a backlog of outstanding section 24 orders;

- expresses serious concern:

  (a) about the large number of long outstanding section 24 orders and the delays in taking action to ensure that all such orders are complied with; and

  (b) that follow-up action in some complaint cases had not been promptly taken or duly recorded;

- notes that:

  (a) the BD has put in place a procedure to monitor the progress of follow-up action at both operational and management level. It has also set up a dedicated Backlog Team to clear the backlog of outstanding section 24 orders issued before 1996 and the team will update the data in respect of the backlog orders in the BCIS;

  (b) regarding the complaints cases in the BCIS without the "initial action date", the BD will deploy additional resources with a view to entering all relevant data into the BCIS by March 2004 and completing all outstanding "initial actions" by June 2004; and

  (c) the BD will publish in its website information on the extent of compliance with section 24 orders, the ageing analyses of outstanding orders and its additional performance targets for the clearance of outstanding orders;

Blitz operations

- expresses serious concern about the problems relating to the BD's blitz operations (i.e. programme slippage and high supervision costs);

- notes that the Director of Buildings is implementing Audit's recommendations mentioned in paragraph 5.16 of the Audit Report;

The Coordinated Maintenance of Buildings Scheme (CMBS)

- expresses concern about the problems relating to the CMBS (i.e. programme slippage and late issuing of section 24 orders for buildings with Authorised Persons appointed to supervise repair works);

- notes that:

  (a) the BD has given more time in individual cases for the owners to organise the necessary repair works under the CMBS, having regard to owners' willingness and readiness to organise themselves and carry out the works. In the long term, the BD will assess the effectiveness of the CMBS and decide whether it should be carried on or be shelved; and

  (b) the Director of Buildings is implementing Audit's recommendations mentioned in paragraph 6.17 of the Audit Report;

Illegal rooftop structures (IRS)

- notes that it is the BD's objective to remove, by 2007, all IRS that pose a serious fire risk from all single-staircase buildings;

- expresses concern that this objective may not be achieved, unless the BD revisits on a regular basis the annual target for IRS clearance (presently 700 buildings a year), taking into account the number of newly identified single-staircase buildings with IRS posing a serious fire risk;

- notes that the Director of Buildings is implementing Audit's recommendations mentioned in paragraph 7.15 of the Audit Report;

Control of signboards

- expresses concern that the new minor works control scheme lacks most of the key features of the registration scheme designed to ensure the safety of signboards;

- notes the assurance of the Secretary for Housing, Planning and Lands that:

  (a) in subsuming the control of signboards under the new minor works control scheme, the Administration has not departed from the original primary objective of the registration scheme (i.e. to ensure safety of signboards); and

  (b) he will carry out a post-implementation review of the new minor works control scheme to find out whether it meets the objective of the registration scheme, and report the results to the Executive Council as appropriate;

- expresses concern that there was a significant discrepancy between the BD's computer and manual records on outstanding "Dangerous Structure Removal Notices", and that some of these Notices had been long outstanding;

- notes that the Director of Buildings is implementing Audit's recommendations mentioned in paragraph 8.21 of the Audit Report;

The BD's prosecution policy and practice

- expresses serious dismay that, despite the large number of outstanding section 24 orders, the number of prosecutions instigated by the BD had fallen far short of the pledge of 2,000 prosecutions a year made by the Director of Buildings. There was still reluctance on the part of BD staff to initiate prosecution action;

- notes that the Director of Buildings:

  (a) has undertaken to deploy additional resources with a view to instigating 1,000 prosecutions in 2004 and meeting the pledge of 2,000 prosecutions in 2005; and

  (b) is implementing Audit's recommendations mentioned in paragraph 9.11 of the Audit Report;

Removal action by government term contractor

- expresses concern that the BD seldom uses the government term contractor to enforce the large number of outstanding section 24 orders;

- notes that the Director of Buildings is implementing Audit's recommendations mentioned in paragraph 10.6 of the Audit Report;

Findings arising from Audit's case studies

- expresses concern that:

  (a) as shown by Audit's case studies, there are instances where delays have occurred at various stages of the BD's enforcement process; and

  (b) important decisions leading to inaction (or deferment of action) were not made by BD officers of appropriate seniority;

- notes that the Director of Buildings is implementing Audit's recommendations mentioned in paragraph 11.14 of the Audit Report; and

Follow-up actions

- wishes to be kept informed of:

  (a) any further developments and progress made in implementing the various Audit recommendations and improvement measures; and

  (b) the result of the BD's assessment of the effectiveness of the CMBS and its decision on whether the CMBS should be carried on or be shelved.

Chapter 4

Planning and provision of public secondary school places

Audit conducted a review of the planning and provision of public secondary school places to examine the Education and Manpower Bureau (EMB)'s system of planning and providing such places and to ascertain whether there were areas for improvement.

2. At the public hearing, **Prof Hon Arthur LI Kwok-cheung, Secretary for Education and Manpower**, made an opening statement. He said that:

- the EMB would ensure the effective use of resources. In planning for the provision of school places, the Government aimed to achieve two broad objectives. First, in quantitative terms, it aimed to ensure the provision of sufficient public sector school places for all eligible children. Specifically, the Government is committed to providing nine-year free and universal basic education for all school-age children, as well as subsidised senior secondary and vocational training places for all Secondary Three students who have the ability and wish to continue their studies;

- secondly, in qualitative terms, the Government had to upgrade the quality of education. Hence, it promoted the adoption of the "through train" mode in schools, and redeveloped or reprovisioned schools accommodated in substandard premises. In order to provide choices for parents and students and to help encourage schools' self-improvement, diversity and market mechanism were introduced into the education system through the development of Direct Subsidy Scheme (DSS) schools and Private Independent (PI) schools. Diversity and choices would be empty promises if a reasonable degree of surplus supply of school places was not available to facilitate student movement and to identify the less popular or relatively weak schools;

- the School Building Programme was updated and adjusted on a regular basis, taking into account such factors as the updated forecast of the supply and demand situation as identified in the annual population projections, new policy initiatives, parental choice, as well as availability of land and funds. There was a need to build new schools at suitable locations to meet the new demands identified. Even in the absence of new demands, new schools might need to be built to reprovision the premises of well-performing schools which might have become old and poorly equipped;

- according to the latest projection in 2003, the demand for secondary school places would continue to rise until 2007-08 when the number of school-age children would begin to drop. Thus, there was a need to implement the new school construction projects to ensure that there would be sufficient public

sector secondary school places in the coming few years for allocation to all eligible students and for achieving various education policy objectives; and

- in the long term, the new projects might result in surplus school places or aggravate the surplus situation in individual districts. However, in order that the Government could fulfill its pledge to provide quality education, it was necessary to retain a reasonable degree of surplus school places to enhance parental choice. The new premises could also encourage high-quality school sponsoring bodies (SSBs) to run schools.

Classroom utilisation

3. According to paragraph 2.2 of the Audit Report, as at the beginning of the 2002-03 school year, there were 145 vacant classrooms in 50 of all public secondary schools in Hong Kong. On the other hand, the EMB was planning to build 34 new secondary schools by 2008. Against this background, the Committee was concerned about the continued construction of new secondary schools. The Committee asked whether the Administration agreed that the vacant classrooms represented under-utilisation of educational resources.

4. **Mrs Fanny LAW FAN Chiu-fun, Permanent Secretary for Education and Manpower**, responded that:

- the situation of vacant classrooms was not serious. Although the number of vacant classrooms appeared to be great in absolute terms, 145 vacant classrooms amounted to only 1.4% of all classrooms available in public secondary schools in Hong Kong. Moreover, whereas there were more than 20,000 unfilled school places, there were also additional places provided by over-enrolled classes and floating classes. Taking the additional places into account, the number of net unfilled places was even less;

- the percentage of vacant classrooms might increase in future due to the declining student population and government policy. The EMB hoped to provide parents and students with more choices by developing more DSS and high-quality PI schools. If these schools were welcome by students, the number of unfilled places in aided schools was bound to increase. The EMB would then take action to combine or cut classes. It would also encourage schools with insufficient student intake to offer diversified curricula, such as by changing into senior secondary schools;

- among the 50 schools with vacant classrooms, 27 were built more than 20 years ago. Their original school designs reflected the then prevailing policy and they were not provided with special-purpose rooms. In contrast, the Year 2000 design nowadays included a generous provision of special rooms. Although there were vacant classrooms in these schools, they were not left idle. Instead, they might be converted to other uses, enhancing the quality of education. 11 of the 50 schools were new schools and had not yet operated to their maximum capacity. They would progressively expand their number of operating classes at each level year-on-year starting from Secondary One; and

- the construction of new schools was required for introducing diversity in the school system. Actually, in 1999, the Panel on Education had agreed that the Administration should not reduce the number of classes in a school which had vacant school places as a result of parental choice. The Panel members considered that those schools should be allowed to retain their existing resources even if the number of students dropped so that they could pay more individual attention to students with relatively poor performance. Nevertheless, given the lack of resources nowadays, the Administration agreed that it was appropriate to combine under-enrolled classes to a reasonable degree.

5. Noting the Permanent Secretary for Education and Manpower's reply, the Committee asked whether the Administration required those schools with insufficient student intake but were allowed to retain their classes to practise small class teaching, and whether additional resources were allocated to them for the purpose.

6. The **Permanent Secretary for Education and Manpower** explained that the Government did not have a policy to implement small class teaching as this would require a lot of resources. The Administration had adopted a more tolerant attitude towards those schools with under-enrolled classes, in the hope that the teachers might have more time to take care of students with different learning capabilities. No additional resources were allocated to these schools.

7. Referring to the 145 vacant classrooms mentioned in paragraph 2.2 of the Audit Report, the Committee asked Audit whether they were left idle all year round or being put to beneficial use by the schools concerned.

Planning and provision of public secondary school places

8. In his letter of 31 December 2003, in ***Appendix 31***, the **Director of Audit** stated that:

- Audit staff visited ten schools (out of the 50 public secondary schools with vacant classrooms as at September 2002 according to the EMB's records) in September 2003 and found that in four schools, the vacant classrooms were locked at the time of the visit; and

- as regards whether the four schools concerned had actually left their vacant classrooms idle all the year round, the information obtained was as follows:

  (a) ***School 1***: There were seven vacant classrooms out of 42 classrooms in this school as at September 2002. Four vacant classrooms had generally been utilised for teaching. As to the remaining three vacant classrooms, one was used to store physical education equipment, one was used as a student guidance room during lunch breaks, and one was reserved and kept vacant;

  (b) ***School 2***: There were 12 vacant classrooms out of 23 classrooms in this school as at September 2002. Eight vacant classrooms had generally been utilised for teaching. As to the remaining four vacant classrooms, one was used as the social worker's office, one was used to store musical instruments and for after-school activities, and the other two were used as an English study room and an ETV room, which were open to students as and when necessary;

  (c) ***School 3***: There were five vacant classrooms out of 16 classrooms in this school as at September 2002. All of the five vacant classrooms had generally been utilised for teaching; and

  (d) ***School 4***: There were ten vacant classrooms out of 30 classrooms in this school as at September 2002. Two vacant classrooms had generally been utilised for teaching. As to the remaining eight vacant classrooms, four were used as ETV and IT teaching rooms and were open to students as and when necessary, one was used as a multi-language room and was open to students as and when necessary, and three were reserved and kept vacant.

9. Responding to the Committee's question as to whether the EMB had encouraged the schools to make use of their vacant classrooms, the **Permanent Secretary for Education and Manpower** replied that:

- as there were a lot of schools in Hong Kong, it was difficult for EMB staff to frequently check whether they had made good use of their resources. But the schools would certainly make use of their classrooms; and

- regarding Schools A, B, C and D mentioned in paragraphs 2.5 to 2.16 of the Audit Report, which were found to have a more serious problem of vacant classrooms, there were in fact reasons for retaining the schools concerned. One of the schools was providing educational services for students from ethnic minority groups, two were located in Islands District, and the other one was a new school which would have a progressive expansion in classes.

10. In an information note provided to the Committee, in ***Appendix 32***, the **Secretary for Education and Manpower** confirmed that Schools A to D had actually made use of their vacant classrooms for educational purposes. Some of the rooms with expensive equipment were locked up when they were not in use for security reasons. He also provided the details of the use of the classrooms.

11. To ascertain the severity of the problem of vacant classrooms, the Committee enquired:

- whether the EMB had the practice of conducting surveys to find out if those public secondary schools with vacant classrooms had made beneficial use of the classrooms for the benefits of students; if so, what the findings of the surveys were; and

- about the overall vacant classroom rates in public secondary schools in each school year since 1993-94, and whether the figures indicated a upward or downward trend in the number of vacant classrooms.

12. The **Secretary for Education and Manpower** provided the overall "vacant classroom" rates since the 1993-94 school year in the Annex of the same information note. He also stated that:

- in the Audit Report, the number of "vacant classrooms" referred to the numerical difference between the number of classrooms as registered with the

EMB and the number of approved classes. The term "vacant classrooms" did not carry its intuitive meaning that the classrooms were left vacant. Although no formal surveys on classroom utilisation were conducted, the EMB maintained a good understanding of the use of space in school premises for teaching and support purposes through regular school visits, as well as schools' formal notification of or application for change of designated use of rooms;

- compared to the Year 2000 school design, many existing schools were accommodated in substandard premises. It was indeed common that many secondary schools with "vacant classroom" had expressed difficulties in finding enough space for various educational activities. In response to the Audit Report, the EMB had specifically checked out the situation of the 50 schools identified and confirmed that the "vacant classrooms" were put to beneficial use for students. The EMB would continue to keep a vigilant eye on classroom utilisation to optimise the use of resources; and

- regarding the overall "vacant classroom" rate, over the years more schools had rationalised their class structures transforming from asymmetrical (e.g. 6-6-6-4-4-2-2) to symmetrical ones (e.g. 5-5-5-5-5-2-2). It was educationally undesirable to use up every registered classroom to operate additional classes if such an arrangement would result in an asymmetrical class structure. Furthermore, a few reserve classrooms could be used as a small buffer for operating additional classes to meet sudden, transient changes in demand.

13. On the development of through-train schools, the Committee noted that many schools adopting the "through train" mode were located in the new districts. However, primary school students might move to another district when they were promoted to secondary schools and leave the through-train secondary school, giving rise to unfilled places in the secondary schools. The Committee wondered whether the Administration should continue to promote the development of through-train schools and build new schools for this purpose.

14. The **Permanent Secretary for Education and Manpower** responded that, from an educational point of view, the concept of through-train schools was definitely good because such schools offered a coherent curriculum that provided continuity of learning experience throughout the primary and secondary schooling. This facilitated the transition from primary to secondary education for students. Hence, the EMB encouraged schools in the same districts, including those that belonged to different sponsoring bodies, to become

through-train schools as far as possible. Even government schools could link up with aided schools to form through-train schools. As the adoption of the through train mode was a new initiative, attainment of the policy objective had to rely on the establishment of new schools.

15. The Committee noted that, on the basis of the value-added scores obtained by Schools A to D, Audit had recommended that the EMB should encourage those schools which were providing added value to the educational process to operate classes in all their available classrooms. As for those schools that had not made significant contributions to the progress of their students, the EMB should require them to make improvements within a reasonable period of time. In response, the Secretary for Education and Manpower said in paragraph 2.18(i) and (o) of the Audit Report that the EMB would take into account a host of indicators to evaluate the performance of schools and the value-added score was only one of the many indicators. To ensure a fair assessment of a school, a myriad of performance data should also be considered. The EMB was pursuing a School Development and Accountability Framework (SDAF) in which a balanced set of indicators and data would be used to evaluate the performance of schools in all key aspects.

16. Against the above background, the Committee asked:

- about the details of the SDAF and whether the schools had agreed to the set of indicators and data for evaluating their performance; and

- whether the performance of schools as evaluated under the SDAF would affect the amount of resources allocated to the schools.

17. The **Permanent Secretary for Education and Manpower** explained that:

- it was very difficult, not only in Hong Kong but also all over the world, to evaluate the quality of education. In the past, schools focused on students' performance in public examinations. The EMB had introduced the value-added scores in recent years. However, these scores were silent on the absolute academic performance of students. It was possible for a secondary school to have a high value-added score but low absolute performance in the Hong Kong Certificate of Education Examination (HKCEE). Hence, it was necessary to look at both a school's value-added scores and its academic performance;

- in early 2003, the EMB launched a trial scheme in 100 schools to implement the SDAF. Under the SDAF, schools were required to conduct self-evaluation annually and to be reviewed by the EMB every four years. There were dozens of key performance measures (KPM) covering four domains, i.e. management and organisation, learning and teaching, student support and school ethos, and student performance. Schools were required to provide school level information on all KPM for the EMB to generate territory-wide norms against which school performance could be compared and assessed. Such information would be published on the schools' websites; and

- the key processes of the SDAF focused on strengthening schools' capacity for continuous development through school self-evaluation and external school review. Schools' performance on the KPM was not relevant to the allocation of resources to the schools concerned. If a school had insufficient intake of students but good performance on the KPM, the EMB would have to seriously consider whether it was appropriate to reduce its classes.

18. In the light of the Permanent Secretary for Education and Manpower's reply that a school's performance as evaluated under the SDAF was not relevant to the allocation of resources to the school, the Committee wondered whether and how the SDAF could help address the under-utilisation of classrooms in schools.

19. At the Committee's invitation, the **Director of Audit**, in his letter of 30 December 2003 in ***Appendix 33***, commented that, in Audit's view, the EMB should, in principle, take action to ensure that schools made use of all available classrooms. Where vacant classrooms existed in a school, it was up to the Secretary for Education and Manpower to decide whether to use the value-added scores or the myriad of indicators under the SDAF to assess the school's performance in order to take appropriate action to address the problem.

20. The Committee pointed out that Audit had used the number of vacant classrooms in a school and the school's value-added scores as the bases for highlighting those schools that should be monitored by the EMB. However, the EMB considered that the value-added scores were only one of the many indicators to evaluate the performance of schools. It appeared to the Committee that the EMB had not put forward any objective criteria to help determine the amount of resources that should be allocated to individual schools. Under the circumstances, the Committee queried how the EMB assured the public that resources had not been wasted even where a school had five or more vacant classrooms.

Planning and provision of public secondary school places

21. The **Permanent Secretary for Education and Manpower** reiterated that:

- the problem of vacant classrooms was not serious. While there were 50 public secondary schools with vacant classrooms, 27 in fact lacked special rooms and 11 were new schools which had yet to operate classes at higher levels. Of the remaining 12 schools, some were located in remote areas and served ethnic minority children. These schools could not be closed. Moreover, when vacant classrooms were put to good use for the benefits of students, there was no question of wasting taxpayers' money;

- actually, the unfilled places in many under-enrolled classes were scattered in different schools and could not be regarded as a waste of resources. Moreover, the small amount of vacant classrooms could provide a small buffer for operating additional classes to meet sudden changes in demand due to various reasons. For example, in a Year of the Dragon, there could be 10,000 more students than in another year;

- as the EMB was required by the Financial Services and the Treasury Bureau to save resources, it would certainly try to combine under-enrolled classes. This was a money saving measure that should not jeopardise the quality of education. For example, if a school was allowed to operate five Secondary One classes but could only admit sufficient students for two classes, it was already the existing practice that the school would be required to operate less classes at that level in the following year. The minimum class size for secondary schools was 35 students. If there were 35 students in a class, the EMB would not force the school to combine classes; and

- the EMB was also discussing with some aided schools the possibility of their transforming into other types of schools, such as senior secondary schools. The EMB hoped that there could be 19 senior secondary schools but there were now only 13. In the past, it was difficult to persuade aided schools to transform. It might be easier nowadays due to the projected decrease in population.

22. The Committee enquired about the measures taken by the Administration in the past three years to reduce the number of under-enrolled classes in secondary schools, the number of classes that had been reduced and the amount of saving achieved as a result.

Planning and provision of public secondary school places

23. The **Secretary for Education and Manpower** advised, in the information note, that:

- packing under-enrolled classes was a regular exercise carried out by the EMB to maximise the utilisation of school places. In implementing this measure, the EMB would take into account educational and administrative factors to minimise disruption to both the schools and the students. For example, it would be most disruptive to schools' time-tabling and planned activities to pack classes right at the beginning of a school year immediately after the headcount. A more practicable way was to pack classes by approving fewer classes at the next higher levels before finalising the class structure for the following school year, having regard to the existing enrolment situation;

- the numbers of classes reduced through this exercise in the past three years were as follows:

2001-02 School Year	**2002-03 School Year**	**2003-04 School Year**
2 classes	14 classes	49 classes*

  * This was the actual number of classes packed. The Audit Report had referred to the estimated number of 50; and

- the notional savings were estimated to be about $2.6 million in the 2001-02 school year, $18.6 million in the 2002-03 school year and $64 million in the 2003-04 school year.

24. The Committee referred to the Secretary for Education and Manpower's opening statement that diversity and choices would be empty promises if a reasonable degree of surplus supply of school places was not available to facilitate student movement and to identify the less popular or relatively weak schools. It asked whether:

- vacant classrooms and unfilled school places were the price that the community had to pay in order to provide choices for students;

- the Administration, in order to meet its objective of introducing diversity and choices into the education system, had set a target percentage of surplus school places; and

- the Administration had set a tolerance limit of vacant classrooms or unfilled school places beyond which it would take action.

Planning and provision of public secondary school places

25. The **Secretary for Education and Manpower** and the **Permanent Secretary for Education and Manpower** replied that:

- the EMB did not consider vacant classrooms or unfilled school places as a price for the provision of choices. It was a question of striking a balance. To provide for choices, there must be a reasonable number of surplus school places to enable students to choose their preferred schools. For example, if there were three schools in a district which only provided sufficient places for all the students in the same locality and no more, building a fourth school would provide a choice for students to switch to this new school. But this would also give rise to unfilled places. In the circumstances, the EMB would have to strike a balance between the provision of choices and the creation of surplus supply;

- the Government did not have a policy of leaving some school places vacant. Actually, the unfilled secondary school places had arisen as it was impossible to achieve a perfect match between what was planned and what actually happened. Moreover, the unfilled places were also due to the Government's policy initiatives to identify the less popular schools through the introduction of market mechanism into the education system. As these were new initiatives, their results had yet to be seen. For instance, the first batch of DSS schools was only set up in 2000. Even taking into account all DSS school projects included in the current School Building Programme, the places provided by DSS schools would still only account for about 5% of all school places, which was a small percentage. The EMB needed more time to assess their popularity; and

- it was the EMB's policy that it would not allocate students to DSS schools if they had not chosen such schools. Therefore, when projecting the future supply of public secondary school places, the EMB could not factor in all the DSS places available. If the EMB had taken into account 100% of the DSS places but it turned out that only 60% of students chose such schools, there would not be enough subsidised school places for the remaining students. Hence, the EMB had to leave some leeway when making projections. Nevertheless, the EMB noted Audit's comment that the 60% of DSS school places that it took into account were on the low side. It was reviewing the enrolment records of DSS schools and would consider adjusting the assumptions used in the supply forecast.

Planning and provision of public secondary school places

26. Regarding the EMB's plan to build 34 new secondary schools, the Committee pointed out that some school principals were dissatisfied that new schools were built while some schools had to reduce classes. They were concerned that this would lead to vicious competition among schools. The Committee enquired:

- about the Administration's views on the school principals' concern; and

- whether the Administration would proceed with all the 34 projects.

27. The **Secretary for Education and Manpower** and the **Permanent Secretary for Education and Manpower** responded that:

- the EMB understood the school principals' concern. However, to achieve quality and self-improvement, it was necessary to have healthy competition and diversity in the school system. Schools that performed well could attract students and continue to operate whereas those that did not have sufficient intakes would be phased out. The redundant teachers might switch to teaching in other types of schools;

- since 1999, the EMB had introduced an open, competitive process for allocation of new schools to SSBs. Each SSB had to submit a proposal for consideration by a vetting committee before it would be selected. The proposal would become part of the service agreement between the EMB and the school. The school would be required to undergo a detailed school inspection within ten years of their completion. If its performance was not satisfactory, the EMB could take back the school premises according to the service agreement. Hence, the new schools could better respond to parents' and the community's expectations;

- all the 34 schools had been allocated to SSBs and the EMB hoped that the Legislative Council would continue to allocate funding to these projects. The SSBs concerned had spent a lot of efforts on preparing the proposals and had undertaken a lot of preparation work. Some had employed school principals to design the curricula and some were already operating in temporary school premises; and

- at present, some 400 schools either had a site area of less than 3,000 square metres, which was less than half of the standard site area for a Year 2000 secondary school, or were built more than 30 years ago. New school premises were needed for the reprovisioning or redevelopment of these schools.

28. The Committee further asked the Administration:

- of the 34 new schools, the respective numbers of those which would be used for reprovisioning or redeveloping old schools and for meeting new demand; the justifications for building schools to meet new demand; and how the old school premises would be disposed of upon reprovisioning or redevelopment of the old schools; and

- of the 400 schools which were accommodated in substandard facilities or were very old, the number which would be reprovisioned or redeveloped.

29. The **Secretary for Education and Manpower** stated, in the information note, that:

- the 34 new schools referred to in the Audit Report were taken from the School Building Programme as at March 2003 and they were required to meet new demand. Of these 34 schools, 14 had come into operation in the 2003-04 school year. The School Building Programme was updated in the last quarter of 2003, taking into account the latest forecast in supply and demand of school places. With a forecast shortfall of 423 classes, the EMB planned to complete 19 new secondary schools between 2004 and 2007, in order to meet the Government's pledge of providing nine-year free and universal basic education for all eligible children and subsidised senior secondary places for form three students who had the ability and wish to continue their studies;

- in addition, the current School Building Programme had included seven new secondary school projects which were planned for reprovisioning or redeveloping existing schools. Upon reprovisioning, it was the Government's general policy to require the SSBs concerned to surrender the vacated premises to the Government for alternative use, including for other educational purposes, such as re-allocation to other school sponsors after appropriate conversion or redevelopment; and

- reprovisioning and redevelopment of schools accommodated in substandard premises was a long-term target and the number of schools to be included was subject to the availability of funds and land. The EMB aimed to take forward a rolling programme, covering a few schools each year at the initial stage. Although numerous existing schools were still accommodated in substandard premises, many of them had been provided with reasonable improvements in facilities and premises under the School Improvement Programme.

Planning and provision of public secondary school places

Unfilled places in public secondary schools and the model for projecting future supply and demand for public secondary school places

30. Paragraphs 3.11 to 3.14 of the Audit Report revealed that many students who wished to pursue studies in Hong Kong after passing the HKCEE could not be admitted to Secondary Six due to the limited number of places, yet many of those admitted to Secondary Six chose not to study in Secondary Seven. This was because some of them went abroad to continue their studies or were admitted to local universities after completing Secondary Six through the Early Admission Scheme. Audit recommended that the EMB should increase slightly the class size standard of 30 students per class for Secondary Six classes. The Committee noted the Secretary for Education and Manpower's response in paragraph 3.16(b) that some schools had already voluntarily enrolled more than 30 students in their Secondary Six classes.

31. Against the above background, the Committee asked whether the Administration would, instead of allowing schools to operate over-enrolled classes, consider increasing the class size standard for Secondary Six to, say, 32 students per class.

32. The **Permanent Secretary for Education and Manpower** replied that:

- although it was the Government's policy to let one-third of Secondary Five students move up to Secondary Six, about 36% or 37% of students could be admitted to Secondary Six in recent years. Schools were indeed given the flexibility of enrolling more than 30 students in their Secondary Six classes; and

- as the curriculum of Secondary Six aimed at preparing students for admission into tertiary institutions, it might not be appropriate to expand enrolment at this level in anticipation of possible dropout at Secondary Seven level. Rather, when there were unfilled places at Secondary Seven, the EMB expected the schools to make efforts to better prepare the remaining students for the Hong Kong Advanced Level Examination (HKALE). There were other diversified learning opportunities for the less academically inclined students.

33. The Committee noted from paragraph 3.13 of the Audit Report that, in recent years, the number of Hong Kong students going abroad to continue studies had increased by 55%, from about 9,700 in 1998 to 15,000 in 2001. The Committee asked whether the Administration had identified the reasons for the significant increase. In addition, the Committee also queried whether the Early Admission Scheme had caused confusion among secondary schools.

Planning and provision of public secondary school places

34. The **Secretary for Education and Manpower** and the **Permanent Secretary for Education and Manpower** responded that:

- it was inappropriate to suggest that students had chosen to further their studies abroad because the local education system was at fault. It was indeed a blessing that Hong Kong people could afford studying abroad, leaving the local school places to those who could not afford it. Moreover, many students who studied abroad would return to Hong Kong after completing their studies, adding to the talents in Hong Kong. It should also be noted that overseas universities would not admit Hong Kong students if their performance was not up to standard. This reflected that students furthering their studies abroad had received good education in Hong Kong;

- one of the reasons for implementing the Early Admission Scheme was to save students' learning time by admitting them to universities after they had completed Secondary Six without requiring them to sit for both the HKCEE and the HKALE within two years' time. The scheme would certainly benefit the students. Moreover, the EMB would not reduce the resources allocated to schools even though some of their students were selected under the scheme; and

- as regards whether the scheme would have adverse impact on the other students not selected, it depended on whether the school principals and teachers could prevent the remaining students from developing a sense of frustration. It was possible that the remaining students' confidence might be enhanced after the top students had left as they would have more opportunities to demonstrate their abilities.

35. The Committee noted from paragraph 5.4 of the Audit Report that the EMB's projected demand for Secondary Six places in any given year was derived by taking one-third of the number of subsidised Secondary Four places two years earlier. The number of Secondary Seven places was assumed to be the same as that of Secondary Six a year earlier. The Committee asked the Administration whether, when making projections for the future supply and demand of secondary school places, it would consider operating more Secondary Six classes and less Secondary Seven classes, taking into account the growing trend of Secondary Six students furthering their studies abroad and not studying in Secondary Seven, so as to make the best use of resources.

36. The **Permanent Secretary for Education and Manpower** said that there were a lot of uncertainties that might affect the future supply and demand of secondary school places. Examples were parental choice, the number of students going abroad to pursue studies and whether the proposed "3+3+4" structure (i.e. a three-year junior secondary, three-year senior secondary and four-year undergraduate programme) would be adopted. The implementation of such a structure would require a lot of additional resources. The EMB would have to consult the public before making a decision. Nevertheless, the EMB would try its best to make its forecast as accurate as possible.

37. On the question of caput schools, the Committee was concerned that while there were some 20,300 unfilled places in public secondary schools, the Government had spent $246 million on buying 7,300 school places from caput schools in the 2002-03 school year. The unfilled places were more than sufficient to absorb the places provided by caput schools. According to paragraph 3.31(a), the EMB had undertaken to consider reducing the number of places bought from the caput schools with a substantial number of unfilled places. The Committee asked:

- about the likely reaction of the caput schools to the EMB's proposal of buying less school places from them; and

- whether the Government had any contractual or legal obligation to buy places from caput schools; if so, what the contractual or legal implications would be if the Government was to reduce the number of places bought from such schools, and how it would address the problems.

38. The **Permanent Secretary for Education and Manpower** said that:

- the EMB would critically review the demand for caput schools in different districts, taking into account the quality of the schools. In some districts, such as Kwun Tong, there were insufficient school places. The EMB would consider continuing to buy places from the caput schools in those districts. In other districts, such as Tai Po, there were surplus places. The EMB would discuss with the principals of the caput schools concerned. It would also discuss the future of caput schools with the caput school council;

- in 2000, the EMB had offered the option of changing to DSS schools to those caput schools the quality and premises of which met the required standard. A lot of private schools accepted the offer at that time. The EMB had also invited caput schools to change to aided schools. But they refused because if they did so, the Government would take back the land on which their schools

were located. The existing caput schools had rejected both offers. The EMB would need to discuss with these schools with a view to gauging their views on their future development; and

- the EMB would adopt a gradual approach to reduce the number of places bought from a caput school, allowing a transitional period for the school to make preparation. Probably, the EMB would reduce the number of school places bought on a level-by-level basis.

39. As regards the Government's contractual or legal obligation to buy places from caput schools, the **Secretary for Education and Manpower** advised, in the information note, that:

- the Government had been buying places from caput schools since the 1970s' and administered the scheme through the Caput Grant Rules. While there was no contractual or legal obligation for the Government to continue buying the places at all levels, caput schools might expect the Government to continue to allow them to retain their caput status, to process their class structure in a way similar to their counterparts in the aided sector, and to provide parents with choices of school places; and

- there were some caput schools with full enrolment even though they were in districts with declining demand for school places. From an educational point of view, the Government should reward good performance and not withdraw subvention from popular schools. The EMB would consider phasing out subvention for the caput schools that were weak in performance and were grossly under-enrolled.

Government secondary schools

40. According to paragraph 4.5 of the Audit Report, in response to the Committee's recommendations in its Report No. 15, the Administration had reviewed the policy on the provision of government schools in 1993. It stated that the purpose of government schools was to meet objectives which could not be met by aided schools, including gaining first-hand experience in running schools, providing a testing ground for experimental teaching methods and practices, providing education for children who might have difficulty in obtaining a school place, as well as meeting demand in case of sudden closure of schools.

Planning and provision of public secondary school places

41. Since the review on the policy on government schools was conducted some ten years ago, the Committee enquired whether the EMB would revisit the objectives of providing such schools to see if they were still valid in present-day circumstances. For instance, given the current decline in student population, aided schools might be more willing to accept over-aged children or new immigrants than before.

42. The **Permanent Secretary for Education and Manpower** replied that:

- the Administration agreed that there was a need to review the policy on the provision of government schools again due to the changing societal needs and trends in student population. The EMB had already set up a Working Group to review the future roles and development of government schools;

- some of the reasons for running government schools given in 1993 were still valid today. EMB staff still encountered difficulties in obtaining places in aided schools for some problem children, such as those who had quitted school for some time or those who had bad record. Government schools also had a role to play in implementing many education initiatives, such as opening up School Management Committees to parents and community members, particularly when no aided schools were willing to try out the new initiatives;

- the criteria for cutting classes in aided schools also applied to government schools. The EMB would seriously consider closing those government schools which had a large number of unfilled places. In the 2004-05 school year, there would be one or two government secondary schools which would not admit any more Secondary One students and would be phased out gradually; and

- on the other hand, there were high-quality government secondary schools which were very popular and should be retained. As pointed out by Audit, the high operating cost of government schools was mainly due to the high staff cost for civil servants instead of these schools spending more money than aided ones in other aspects. It would be unreasonable to force closure of well-performing government schools in order to cut staff cost. Actually, some government school teaching posts had already been filled by staff employed on contract terms.

Planning and provision of public secondary school places

43. **Conclusions and recommendations** The Committee:

Classroom utilisation

- expresses concern that there were 145 vacant classrooms in public secondary schools as at September 2002;

- notes that:

  (a) the Permanent Secretary for Education and Manpower has commented that the 145 vacant classrooms amounts to only 1.4% of all classrooms available in the public secondary schools and the situation of vacant classrooms is not serious. However, the Secretary for Education and Manpower agrees that the persistent under-utilisation of classrooms needs to be tackled;

  (b) most of the vacant classrooms are being put to beneficial use; and

  (c) the EMB has generally accepted Audit's recommendations in paragraph 2.17 of the Audit Report;

Unfilled places in public secondary schools

- expresses concern that:

  (a) many eligible students could not be admitted to Secondary Six due to the limited number of places, yet many of those admitted chose not to study in Secondary Seven;

  (b) the under-utilisation problem in ex-prevocational/technical schools was widespread; and

  (c) while there were some 20,300 unfilled places in public secondary schools, the Government had spent some $246 million on buying 7,300 school places from caput schools in the 2002-03 school year;

- notes that the Secretary for Education and Manpower:

  (a) has undertaken to critically review the demand for caput schools in different districts and consider reducing the number of places bought from the caput schools which have a substantial number of unfilled places;

(b) has accepted Audit's recommendations mentioned in paragraphs 3.9, 3.19 and 3.30 of the Audit Report; and

(c) has no objection to Audit's recommendations in paragraph 3.15 of the Audit Report;

Government secondary schools

- expresses concern that:

  (a) the broad guideline that each district should have one government secondary school has not been followed;

  (b) some of the objectives of providing government secondary schools could be met by other means;

  (c) some government secondary schools had under-utilisation problems; and

  (d) government secondary schools are more costly to operate than aided secondary schools. The cost differential in 2002-03 was about $10,000 per student;

- notes that:

  (a) the EMB is prepared to close those government secondary schools which have a large number of unfilled places and to retain the quality ones. In the 2004-05 school year, there will be one or two government secondary schools which will not admit any more Secondary One students; and

  (b) the EMB has accepted Audit's recommendations in paragraph 4.19 of the Audit Report and has set up a Working Group to review the future roles and development of government schools;

Model for projecting future supply and demand for public secondary school places

- expresses concern that, in making projections for the future supply and demand of public school places, the EMB might not have fully taken into account all available school places, because:

  (a) some of the 145 vacant classrooms could be utilised to provide additional school places;

(b) the number of school places reserved for repeaters at Secondary One to Three could be reduced;

(c) more places provided by Direct Subsidy Scheme schools could be taken into account;

(d) not all new schools under planning were included in the projection; and

(e) the size of Secondary Six classes could be increased slightly as the number of unfilled places at Secondary Seven was significantly higher than that in Secondary Six. There is also a clear trend that many Secondary Six students will choose not to study in Secondary Seven;

- notes that the Secretary for Education and Manpower has generally accepted Audit's recommendations in paragraph 5.16 of the Audit Report; and

Follow-up action

- wishes to be kept informed of any further developments and progress made in implementing the various Audit recommendations and improvement measures.

Chapter 5

The acquisition and clearance of shipyard sites

The Committee held a public hearing on 11 December 2003 to receive evidence on this subject. The Committee also received additional information from the witnesses after the public hearing.

2. To allow itself more time to consider the various issues involved and the additional information provided by the witnesses, the Committee has decided to defer a full report on this subject.

Chapter 6

Funding of tertiary education

As part of the on-going value for money audits on the University Grants Committee (UGC) funded institutions, Audit conducted a review to examine the funding of tertiary education.

2. At the public hearing, **Prof Hon Arthur LI Kwok-cheung, Secretary for Education and Manpower**, made an opening statement. He said that:

- the Education and Manpower Bureau (EMB) welcomed Audit's recommendations that, based on the principles of prudent financial management and effective use of resources, appropriate measures should be taken to enhance the transparency of the funding methodology adopted by the UGC and to ensure the best use of public funds on the higher-education sector;

- the EMB agreed that in conducting the review on the appropriateness of using the current student unit cost as the basis for funding the UGC sector, reference should be made to the student unit cost in similar higher-education institutions in overseas countries. However, when drawing reference from overseas institutions, the differences in the socio-economic conditions and the higher-education system in the countries concerned should be taken into account;

- under the existing mechanism, funds were distributed to the institutions by the UGC in the form of block grants. This funding methodology aimed at providing the institutions with a high degree of autonomy and flexibility in their internal allocation of resources in a way that could best meet their development needs. The EMB believed that further enhancement in the transparency of the UGC's funding methodology could enable the institutions to better understand how funds were distributed to them. Besides, it could enhance the institutions' accountability in the use of public funds;

- on the Research Assessment Exercise (RAE) and implementation of research projects, the EMB considered that the recommendations put forward by Audit would help enhance transparency and promote more efficient use of resources by the institutions;

- the EMB considered that as a matter of principle, there should be no hidden subsidy to the self-financing activities operated by the institutions so as not to dilute resources intended for the UGC funded endeavours, and to avoid unfair competition with the private sector; and

- as regards the Government's policy on refund of government rents and rates, any non-profit-making institutions the premises of which were occupied for educational purpose were eligible for such refund. The EMB agreed that this policy should be promulgated to all educational institutions in Hong Kong.

UGC's endeavours in benchmarking the cost of tertiary education

3. The Committee noted that in Hong Kong, the established practice was to adopt a crude average student unit cost in determining the funding of the UGC sector. This student unit cost, which was historical-based, had been adjusted to take into account the changes in price levels over the years. There had been public concerns about whether the student unit cost of tertiary education in Hong Kong was on the high side, compared to those in advanced countries. However, the UGC's endeavours in benchmarking the student unit cost in Hong Kong against those in overseas countries had not been successful. Despite the failure in the benchmarking exercise, the Government/UGC had not conducted any major review to ascertain whether the crude average student unit cost would continue to serve as the appropriate basis for funding tertiary education.

4. According to paragraphs 2.3 to 2.6 of the Audit Report, in 1999, the UGC conducted a crude analysis by comparing the Hong Kong student unit cost with those of 56 institutions in the USA. The exercise concluded that the average student unit cost of the UGC sector was comparable to that of similar institutions in the USA. In 2002, a management consultant was commissioned to conduct a more precise assessment of how the student unit cost in Hong Kong compared to that of similar institutions overseas. It was intended that the data collected would be used for determining the level of funding for the local tertiary education sector.

5. Phase I of the consultancy study was completed in late 2002. After studying the findings of the Consultancy Report, the UGC expressed considerable reservations over the appropriateness of some of the benchmarking partners nominated for the institutions in Hong Kong. Taking into account the difficulties in the interpretation of student unit cost data of different countries as revealed by the Phase I Consultancy Report, the UGC decided not to proceed further with other phase of the consultancy. The Committee also noted that The University of Hong Kong (HKU) and the Hong Kong Baptist University (HKBU) had expressed some reservations about the comparison of the local student unit cost with those in overseas countries due to the unique circumstances in Hong Kong.

6. Against the above background, the Committee enquired:

- about the cost of the consultancy study, and the justifications for discontinuing the study; and

- whether the Government considered it worthwhile to conduct a comparison of the student unit cost in Hong Kong with those in overseas countries; if so, when the benchmarking exercise would be further pursued; if not, the reasons for that.

7. **Mr Michael STONE, Secretary-General of the UGC**, said that:

- the consultancy study was designed to be carried out in two phases. The first phase was a feasibility study, which involved the setting of the peer group and the nomination of the benchmarking partners. The feasibility study aimed at helping the UGC to assess the prospect of having reliable results before proceeding to the second phase, i.e. the actual benchmarking exercise against institutions of the selected countries; and

- after studying the findings of the Phase I Consultancy Report, the UGC considered that the benchmarking partners nominated did not provide a good basis for making sound judgment. Hence, in order not to commit further resources, the UGC decided not to proceed to Phase II of the study. The costs of the consultancy study were approximately $0.25 million for Phase I, and $1 million for Phase II if the study were conducted.

8. The **Secretary for Education and Manpower** said that:

- he considered it worthwhile to conduct a comparison of the local student unit cost with those in overseas countries, so as to ascertain whether the cost of tertiary education in Hong Kong was low, reasonable or expensive;

- there was a general comment that the cost of tertiary education in Hong Kong was more expensive than that of Harvard University. However, it should be noted that Harvard University had received numerous endowments to subsidise many of its student programmes, but this kind of subsidy was not reflected in its student unit cost. Consequently, comparing Hong Kong's student unit cost with that of Harvard University might result in the former's student unit cost being more expensive; and

- therefore, when making reference to the student unit cost in higher-education institutions overseas, the differences in the socio-economic conditions and the higher-education system between the countries concerned should be duly taken into account.

9. According to paragraph 2.15 of the Audit Report, the Vice-Chancellor of the HKU stated that the use of the crude average student unit cost as a basis for funding was outmoded and could not meet the rapidly changing environment in which higher-education institutions had to operate. The HKU had introduced a funding methodology that was based on measurement of performance and a strategic development plan. The HKU considered that this methodology was superior to the one based predominantly on student unit cost. The Committee asked about the UGC's and the Administration's views on the HKU's statement.

10. In response, the **Secretary-General of the UGC** and the **Secretary for Education and Manpower** said that:

- the HKU's funding methodology was used for its internal allocation of resources, while the crude average student unit cost was used as the basis for funding the entire UGC sector;

- following the Higher Education Review in 2002, the UGC was reviewing its funding methodology with a view to encouraging role differentiation among institutions, rewarding performance in accordance with role, and promoting competition among institutions on the basis of merit in teaching, research, governance, management and community service. The new methodology was intended to be adopted with effect from the 2005-08 triennium. As the recommendations arising from the Higher Education Review entailed considerable changes to existing systems and took time to implement, the 2001-02 to 2003-04 triennium would roll-over for one year to cover the 2004-05 academic year, thus postponing the new triennium to 2005-06 to 2007-08; and

- it was envisaged that the higher-education sector would be facing further funding reductions in the coming years, especially the 2004-05 academic year for which a 10% reduction was expected, and the funding methodology that determined the level of funding for the UGC sector might also be changed. Against this background, it was not opportune to review the crude average student unit cost at this point. The more appropriate time-frame for conducting the review would be during the 2005-08 triennium when the situation became more stable.

11. Given that the level of recurrent grants to individual institutions would, in future, be determined on the basis of the institutions' performance rather than the student unit cost, the Committee enquired whether the review of the crude average student unit cost recommended by Audit in paragraph 2.12 of the Audit Report was still necessary.

12. **Mr David LEUNG Moon-tong, Assistant Director of Audit**, said that the student unit cost served as a useful indicator for ascertaining whether the cost of tertiary education in Hong Kong was high, reasonable or low as compared with those in advanced countries. Hence, there was a need to work out the student unit cost in Hong Kong, irrespective of whether other indicators would be developed for use by the local tertiary education sector.

13. In response to the Committee's enquiry as to whether the institutions agreed to conduct a review on the appropriateness of using the current crude average student unit cost as the basis for funding the UGC sector, the **Secretary-General of the UGC** responded in his letter of 31 December 2003, in ***Appendix 34***, that the institutions agreed that the review should be conducted but regarded that this was a matter for the UGC to take forward in consultation with the institutions. In the light of the many reforms underway in the sector, a meaningful review could only be started during the 2005-08 triennium when the situation became more settled.

14. In paragraph 2.12(b) of the Audit Report, Audit recommended that the UGC should consider carrying out an in-depth review of the budgets of the institutions. In his letter of 8 December 2003 in ***Appendix 35***, **Prof NG Ching-fai, President and Vice-Chancellor of the HKBU**, expressed reservation about this recommendation. He considered that such a review went against the principle of institutional autonomy and the rules of the existing block grant system. The information on the expenditure of the institutions filed periodically with the UGC Secretariat should enable the carrying out of an in-depth review of the expenditure incurred by each institution.

15. In the light of the HKBU's comments, the Committee asked whether the UGC still considered it necessary to carry out an in-depth review of the budgets of the institutions. In response, the **Secretary-General of the UGC** said that he agreed that institutional autonomy should not in any way be compromised. But there were merits if the UGC knew, on a broad basis, how the institutions spent their money. With such information, the UGC was able to ascertain whether the institutions were focusing their work on their pre-defined roles and missions and whether they were spending their funds in the best way. Under the new performance-based funding methodology, this kind of information could

provide useful reference to the UGC in determining the appropriate level of recurrent grants to individual institutions.

Funding and resource allocation

16. The Committee noted that in February 2001, when seeking commitment of funding for the 2001-02 to 2003-04 triennium, it was clearly stated in the Finance Committee (FC) paper that the triennial recurrent grants comprised about 75% for teaching, 23% for research and 2% for professional activities. Recurrent grants covered the block grant, which was the major component of the recurrent grants, and earmarked grants, which were for specific purposes such as the Earmarked Research Grants and the Language Enhancement Grants. Based on the information provided in the FC paper, there was a general expectation that the UGC should allocate the recurrent grants broadly in the proportion of 75% for teaching, and 25% for research (including the 2% for professional activities). However, the UGC had "top-sliced" 5% of the funds for subsequent allocation to the institutions as earmarked grants which were largely for research purpose. The effect of allocating "top-sliced funds" of more than 25% for research had had the result of increasing the overall proportion of recurrent funds allocated for research. The actual allocations exceeded the funding intention of 25% for research by 2.57 percentage points.

17. The Committee also noted from Note 8 in paragraph 3.19 of the Audit Report that, in response to the invitation by the Chairman of the UGC for comments on the funding of the 2001-02 to 2003-04 triennium, seven institutions had expressed their views in August 1999 that there was a need to:

- make the funding methodology more transparent;

- disclose the funding split between teaching and research; and

- disclose more detailed information about the relative cost weightings for different programmes and different levels of study.

On that occasion, some institutions had also pointed out that due to the lack of transparency, they could make no meaningful suggestion on how the funding methodology could be improved.

Funding of tertiary education

18. According to paragraph 3.20 of the Audit Report, the Chairman of the UGC advised the Secretary for Education and Manpower that the methodology for assessing the institutions' recurrent funding requirements was essentially very simple and transparent. It was not transparent only in two respects: the specific weightings used for different disciplines and levels of study, and the exercise of judgment by the UGC after the calculations had been done. However, the UGC firmly believed that further transparency in these respects would be counter-productive and would actually undermine the institutions' autonomy in the use of their eventual allocations. The matter was, therefore, not pursued further when allocating funding for the 2001-02 to 2003-04 triennium.

19. Against the above background, the Committee questioned why:

- in allocating recurrent grants to the institutions, the UGC had not adhered to the funding intention of 75% for teaching and 25% for research, but instead had "top-sliced" 5% of the recurrent funding for subsequent allocation to the institutions as earmarked grants, resulting in the actual allocations exceeding the funding intention of 25% for research;

- the institutions were not given clear and full information on how the recurrent grants for teaching and research were allocated by the UGC; and

- the UGC had not followed the practice in the UK and Australia where the full details of the funding arrangements for the higher-education sector were disclosed in public reports and made available on the Internet.

20. On the question of the 75:25 funding split, **Ms Irene YOUNG Bik-kwan, Principal Assistant Secretary for Education and Manpower (Higher Education)** referred the Committee to the response given by the Secretary for Financial Services and the Treasury in paragraph 3.25 of the Audit Report, which stated that:

- in all three FC papers for the last three triennia, the FC was asked to accept the total recurrent funding requirement of all the institutions in a triennium. The approval was not in respect of funding requirements broken down into teaching and research funding; and

- this understanding was most explicitly stated in the FC paper on recurrent funding for the 2001-02 to 2003-04 triennium (reference: FCR(2000-01)73), which clearly indicated that the FC's approval was sought for the overall amount of the Government's subvention to the UGC. Issues such as how the UGC intended to apportion the Government's subvention among the

institutions, how resources were utilised within the institutions, and how individual institutions made their management and academic decisions were separate from, and beyond the remit of, that proposal.

21. The **Secretary-General of the UGC** clarified that:

- the existing 75:25 funding split assumed in the UGC funding model was intended to apply only to the calculation of the recurrent funding of the institutions and was, therefore, not intended to be applicable to the earmarked grants which were set aside for allocation to the institutions for specific purposes;

- in practice, it was difficult to separate teaching from research because, in many circumstances, academic staff members in the institutions were performing both teaching and research duties. Besides, as not all institutions were research-led institutions, the volume of research conducted, and the amount of time and resources devoted to research varied from one institution to another. Hence, the research allocations for different institutions would also be different. The level of funding to individual institutions for research purpose was determined by the RAE last conducted in 1999 which assessed the research performance of different institutions, having regard to their number of active research workers and their cost of research in respective fields;

- the distribution of research funding under the current funding methodology was performance based, the purpose of which was to reward institutions' performance rather than to limit their resource input for research. While the UGC's funding methodology had become more performance based, it was, however, not the UGC's intention to change the block grant system of allowing the institutions to decide the internal allocation of resources on their own, which underpinned the academic freedom of the institutions; and

- on the question concerning disclosure of full details of the funding arrangements to the public, the UGC and the institutions generally agreed that there should be more transparency in this respect, in particular the funding split between teaching and research. In their view, this endeavour should be pursued in a measured way so as to ensure that the information to be disclosed could really serve the intended purpose of providing useful and meaningful reference to members of the public as well as the UGC sector. However, there were differing views among the institutions on the extent of the information to be disclosed and the pace of pursuing the matter.

22. The Committee then enquired about the actions to be taken by the UGC and the institutions and the timetable for implementing Audit's recommendations in paragraph 3.23 of the Audit Report concerning the enhancement of the transparency of the funding split between teaching and research. After consulting the institutions, the **Secretary-General of the UGC** advised, in his letter of 31 December 2003, that as a new funding methodology was being developed by the UGC for the assessment exercise of the 2005-06 to 2007-08 triennium, institutions supported that more transparency regarding the funding split between teaching and research should be made when the new assessment exercise was completed in early 2005, with institutions retaining the autonomy in the internal deployment of resources.

RAE and implementation of research projects

23. The Committee noted that the RAE was an important tool by which public funds for higher education were allocated, with due regard to research performance. It aimed to measure the output and quality of research of the institutions by cost centres for the purpose of allocating some of the research portion of recurrent grants in a publicly accountable way. So far, three RAEs had been conducted, in 1993, 1996 and 1999. The next one was planned to be conducted in 2005-06.

24. The Committee understood that Hong Kong had broadly followed the UK system of funding research at tertiary institutions. In the UK, the full results of the RAE were posted on the Internet. However, in Hong Kong, the UGC had not disclosed the full results of the 1999 RAE to the institutions and the public. Indeed, the RAE panels and their individual members had offered valuable comments on a wide range of issues, including those which might affect the planning and the strategies for academic research in Hong Kong. These valuable comments were, however, not disclosed to the public.

25. The Committee referred to paragraph 4.16 of the Audit Report in which the Secretary-General of the UGC said that the UGC shared the general spirit of Audit's recommendation on disclosure of RAE results. This was in line with the UGC's decision for a greater degree of transparency when conducting the next RAE in 2005-06. But the need for greater transparency should be carefully weighed against the possible danger of misinterpretation or misuse of data. In principle, the UGC was prepared to consider publishing more details regarding the RAE results, but it should guard against unwarranted and superficial institutional comparisons which would not contribute to the healthy development of research in Hong Kong. The Committee queried who might misinterpret or misuse the data, and enquired about the basis for the UGC to hold these views.

26. The **Secretary for Education and Manpower** said that he might be one of the parties who would misinterpret or misuse the data. He explained that:

- each and every institution had its own strengths and should nurture those strengths. It was not uncommon that an institution was outstanding in only one or two areas of research. If the full results of the RAE of all institutions were published as a league table, those institutions which were outstanding in only one single area of research might be rated much lower down in terms of their overall performance. This was unfair to the researchers in that area and was undesirable from the morale point of view. The practice of disclosing full RAE results to the public in the UK had also aroused a lot of controversy; and

- therefore, caution had to be exercised when deciding on the method of publishing this kind of information. It was prudent to ensure that the public understood how to interpret the data and judge the institutions fairly before the information was disclosed.

27. In his letter of 31 December 2003, the **Secretary-General of the UGC** informed the Committee that in the UGC's Higher Education Review Report published in March 2002, it was proposed that the RAE should be refined to promote higher levels of excellence in university research. The UGC had been actively working on a refined methodology for the next exercise due for completion in 2006 and had decided that the results of the new exercise, together with the comments made by the RAE panels, should be suitably disclosed in due course. The institutions would work with the UGC to determine on exactly what, how and when to disclose.

28. The Committee noted that the Competitive Earmarked Research Grant (CERG) represented the largest portion of the Earmarked Research Grants which were administered by the Research Grants Council (RGC) of the UGC. According to Audit's findings in paragraphs 4.29 to 4.32 of the Audit Report, between 1995-96 and 2002-03, the CERG awarded funding for a total of 4,671 research projects. As at 23 July 2003, of these 4,671 projects, 4,452 (95.3%) were on-going or completed, and 219 (4.7%) were terminated before completion. In this connection, Audit examined the 57 CERG projects approved between 2000-01 and 2002-03 which had subsequently been terminated. Audit's findings indicated that the $9.2 million spent on the direct costs of 54 of these terminated projects was largely nugatory. For the remaining three terminated projects, their accounts were not finalised at the time of audit. Audit also found that of these 57 projects, 45 had been terminated due to the departure of the Principal Investigators (PIs). Of these 45 PIs, 20 left the institutions within six months after commencement of the project and 10 left between six and 12 months.

29. The Committee further referred to the UGC's response in paragraph 4.35(b) of the Audit Report which stated that under the present RGC policy, a change of PI was strictly not allowed within the first 12 months of the project's duration. Its response in paragraph 4.35(c) also stated that the existing application procedures required the institutions to confirm at the time of application that a staff member employed on a fixed-term contract would be eligible for at least the first year of the project's planned duration. There was also a clear stipulation in the explanatory notes accompanying the application form to remind the institutions that they should, to the best of their knowledge, satisfy themselves that the PI was available to complete the project if funded. The Committee questioned why, with the RGC policy and the above procedures in place, the situation where 30 PIs had left the institutions within the first year after project commencement had occurred.

30. The **Secretary-General of the UGC** explained that:

- there were many reasons accounting for the early departure of the PIs and, in many cases, the circumstances were beyond the control of the PIs and the institutions and were unforeseen. Even for a long-term contract, there was no way to predict or prevent a staff member from giving notice to terminate his/her employment, especially in the case of local institutions where their academic staff mix was fairly international, which implied that there were higher chances of their academic staff moving in and out of Hong Kong. Contract renewal was basically a personnel decision involving complex considerations, such as finance and performance. While such information, if known and available, was a valid consideration, it was not appropriate to attach undue weight to the "certainty" of employment; and

- when examining the subject, one should avoid conveniently equating "terminated" projects with "failure" or "waste of money". Research was usually done in stages and, depending on progress, some results, though partial or limited, were available in some terminated projects. These results would add to existing knowledge and contribute to future research. Furthermore, for research, both the results and the process were valuable and, in this regard, the training and educational benefits which could be derived from the process should not be ignored.

31. In respect of the 30 projects which had been terminated due to the departure of the PIs within 12 months after the commencement of the projects, the Committee invited Audit to provide further information to ascertain whether there were any PIs who departed the institutions due to expiry of their employment contracts and, if so:

- the number of such PIs and the names of the institutions concerned; and

- the remaining duration of their employment contracts with the institutions:

  (a) at the time of application and the reasons for the institutions' submitting the application although they knew that the remaining duration of the PI's employment contract was 12 months or less;

  (b) at the time of research grant award and the reasons for not withdrawing the project proposals although the institutions knew that the remaining duration of the PI's employment contract was 12 months or less; and

  (c) at the time of commencement of the project and the reasons for commencing the project although the institutions knew that the remaining duration of the PI's employment contract was 12 months or less.

32. The **Director of Audit** provided the information in his letter of 5 January 2004, in ***Appendix 36***. According to his response, there were five projects, involving three institutions, which had been terminated due to expiry of the employment contracts of the PIs. Details of the response are summarised as follows:

Table 1

Breakdown of the five projects terminated due to expiry of employment contracts of PIs

	PI left **within six months** after project commencement	PI left **between six and 12 months** after project commencement
	No. of project(s)	
HKU	1	2
City University of Hong Kong (CityU)		1
The Hong Kong University of Science and Technology (HKUST)		1
	Total: 5 projects	

Table 2

Remaining duration of employment contract of the PI who left <u>within six months</u> after commencement of the project

	Remaining duration of PI's employment contract			Remarks
	at the time of application	at the time of research grant award	at the time of project commencement	
HKU	13 months	5 months	3 months	The PI left in December 2002 after commencement of the project in September 2002.

33. In the case cited in Table 2 above, the HKU explained that due to unforeseen circumstances, the PI was not able to accept the renewal of contract and left for Europe to resume a tenure position as Professor. The PI had proposed to continue the project as a Co-Investigator, but this was rejected by the HKU in conformity with the CERG regulations.

Table 3

Remaining duration of employment contracts of PIs who left <u>between six and 12 months</u> after commencement of the project

	Remaining duration of PI's employment contract			Remarks
	at the time of application	at the time of research grant award	at the time of project commencement	
HKU:				
- Project A	21 months	13 months	11 months	The PI left in July 2001 after commencement of the project in September 2000.
- Project B	22 months	14 months	12 months	The PI left in August 2002 after commencement of the project in September 2001.
CityU	20 months	12 months	7 months	The PI left in June 2001 after commencement of the project in December 2000.
HKUST	14 months	6 months	6 months	The PI left in January 2002 after commencement of the project in July 2001.

34. As to why the HKU had proceeded with the two projects cited in Table 3 above, the HKU advised that:

- as at the end of November 2003, about 45% of full-time, paid academic staff (excluding honorary, visiting and temporary appointees) holding the ranks of Assistant Lecturers to Professors were placed on contract terms. Such contractual arrangements were introduced to enable the HKU to react effectively to a declining budgetary situation. As uncertainty about the following year's budget level grew, Heads of Departments found themselves increasingly being unable to plan proactively and decisively about staff contracts. Therefore, at the time of submitting CERG applications, i.e. in October each year, a degree of uncertainty surrounded the status of a number of contracts;

- the HKU, however, would not discourage its academic staff from submitting CERG proposals in October as it was precisely the staff's duty to seek outside sources to support their research work, unless it was already certain by the following June that certain staff would not have the requisite period of service remaining in their contract to make them eligible for CERG grants. Institutions could, however, be expected to withdraw or accept a CERG grant when the outcome of previous year's prepared submissions was announced;

- in an atmosphere of funding uncertainty which militated against prudent financial and academic planning, the HKU's Research Services Section had the established practice of reminding Heads of Departments annually of the need to consider whether contracts of CERG applicants would be renewed or otherwise. The administration was, however, careful to emphasise that no implications were attached to a renewal or otherwise due to a CERG grant. Such reminders were issued only to enable the HKU to discharge its duty and obligation to the RGC by way of ensuring that a CERG applicant's appointment status must be in conformity with the RGC rules; and

- the HKU currently had in total more than 680 funded and on-going CERG projects. It must be accepted that not all cases were within the institution's control. These terminated projects only represented a very small percentage of the pool of projects.

35. As to why the CityU had proceeded with the project cited in Table 3 above, the CityU advised that:

- the project was approved in June 2000. The PI was the sole investigator of the project. In the absence of a Co-Investigator, according to the RGC rules, the project had to be terminated upon departure of the PI a year after project approval. Approval of CERG projects was usually announced by the RGC in late June or early July every year. To allow for preparatory work before the start of the project, e.g. recruitment of research staff or acquisition of specialised equipment items, the commencement date of the project reported to the RGC was usually three to six months from the approval date, and this was acceptable to the RGC. In reality, CERG projects started from the date of approval of the award in June. Counting from the project commencement date might not accurately reflect the situation;

- the issue of termination of CERG projects arising from staff departure shortly after granting of approval/commencement was related to the CERG application schedule and the CityU's internal personnel decisions cycle. PIs prepared their CERG applications and submitted them by the end of October every year when decisions on contract renewal/substantiation of appointments for contracts due to expire in July of the following year were not yet confirmed. There were also cases where the employment contracts ended in January or February, or where more lengthy performance assessments were involved. The process could end in as late as May or June, shortly before award announcement. In deciding whether to submit an application at the time, the institution and the PI could only consider the existence of a reasonable expectation and an intention of further employment;

- the CityU always endeavoured to report on the latest development and/or to request withdrawal for confirmed cases of staff departure, during the project updates to the RGC in April; and

- staff departure was a personnel decision which involved a number of factors and it was difficult to ascertain these expectations/intentions. In most of the cases where projects were terminated within six months of commencement, they involved late confirmation of such decisions and, hence, withdrawal of the PI and return of the grant to the RGC.

36. As to why the HKUST had proceeded with the project cited in Table 3 above, the HKUST advised that contract renewal was under review at the time of research grant award and project commencement. The PI left between six and 12 months after commencement of the project, with project funding fully returned to the RGC.

37. The Committee then enquired about the feasibility of putting in place further administrative safeguards to ensure completion of research projects, such as:

- disbursing research grants in phases based on the progress made, so as to minimise the risk of not completing the research projects due to various reasons;

- requiring the applicant to assign an additional investigator who, in case of the departure of the PI within the first year of the project's duration, would also be able to complete the project; and

- requiring the applicant to submit a contingency plan, at the time of application, stating how the project would be completed in case of the departure of the PI within the first year of the project's duration.

38. In response, the **Secretary-General of the UGC** said that:

- the funding involved in each CERG project was on average about $0.6 million, and was disbursed to the institution concerned on a lump sum basis. The administration of CERG projects was indeed quite a time-consuming and expensive exercise compared to the amount invested in these projects. It was necessary to strike a reasonable balance between the amount of resources spent on running the projects and on monitoring them;

- the vetting and approving of a research project had gone through a rigorous process of internal screening and vetting by the institutions concerned before submission to the RGC for approval. There were also sufficient administrative safeguards as part of the eligibility rules to ensure that research grants were only awarded to projects for which there was reasonable assurance about the PIs' availability to complete the projects. Furthermore, before actually releasing the grants, as a standing practice, the institutions were requested again to confirm if there were any projects that need to be withdrawn due to the ineligibility, including early departure, of the PI;

- the existing monitoring policy required PIs to submit annual progress reports to account for the progress achieved with respect to the approved project objectives. Whenever irregularities were detected, comments were fed back and the PIs concerned were required to follow up as appropriate. Detailed explanations would be sought from the PIs if the projects had deviated from or failed to accomplish any of the objectives;

- at present, a change of the PI would only be approved under very exceptional circumstances. This policy was important to ensure that the PI, who was the "soul" of the project, was sufficiently committed to the work and could steer the project through to maturation. From the academic justification point of view, it was considered inappropriate to change the PI within the first 12 months after the commencement of the project; and

- in sum, the UGC believed that the present system had been working well. Nevertheless, it appreciated the arguments behind Audit's recommendations on termination of funded research projects and recognised the need to keep the matter under constant review. It would take into account Audit's recommendations in striving for improvements.

39. The Committee noted from Table 7 in paragraph 4.43, and paragraph 4.45 of the Audit Report that of the 2,604 projects approved between 1999-2000 and 2002-03, 1,835 had been granted extension of time by the institutions, which represented an average of 71% of the 2,604 approved projects. However, at present, there was no requirement, at the application stage of a project, to state the key milestones to be achieved at different stages of the project. The Committee asked whether the UGC would consider taking measures to tighten the control over the granting of extension of time by the institutions.

40. The **Secretary-General of the UGC** replied that:

- the RGC attached importance to timely completion of projects but acknowledged the need for flexibility in adjusting the timeline of research. The RGC would take into account Audit's suggestions and consider if there was room to strengthen the existing monitoring mechanism. The RGC kept the policy under constant review and had, since 2001, tightened the relevant rules to cap all project extensions at the maximum of 18 months (the previous policy allowed up to 24 months). The RGC would continue to keep in view the situation and, where required, remind the institutions to adopt a consistently stringent standard in handling applications for extension; and

- it must be stressed that project extension did not necessarily mean a delay of work in all cases. On the contrary, in many cases, project extension was well justified on the strength that the original work plan would need to be adjusted to take account of recent and unanticipated developments in the research fields. Such adjustment of the work plan and, hence, the timeline was needed for maximisation of outputs and value.

Funding of self-financing activities

41. The Committee noted that the UGC Notes on Procedures required that the institutions should aim to reflect the full costs of the activities concerned when determining the level of overhead charges to be levied on their self-financing activities. In 1998, the institutions agreed amongst themselves that they should normally charge overhead at a standard flat rate of 15% (on direct costs) for non-UGC-funded research projects. Around that time, the institutions already noticed that a costing exercise of university indirect expenses on each project had indicated that these indirect components would constitute around 38% in 1997-98. For the three-year period 1999-2000 to 2001-02, the overall weighted average overhead percentage (on direct costs) for all the institutions was 59.2%, which was equivalent to about 37.2% on total costs. This suggested that the standard overhead recovery rate of 15% set by the institutions was on the low side.

42. The Committee also noted that the HKBU and the HKUST had adopted overhead recovery rates below 15% for some of their self-financing activities. Moreover, nearly all institutions did not charge any overhead costs to their student hostels, despite the UGC Notes on Procedures which clearly stated that student hostels should be operated on a self-financing basis.

43. In his letter of 8 December 2003 in ***Appendix 37***, the **President of the HKUST** provided an update on the University's overhead recovery rate referred to in Table 9 in paragraph 5.14 of the Audit Report. He informed the Committee that the HKUST had increased the floor overhead recovery rate for self-financing activities from 11% in 2002-03 to 18% in 2003-04 with effect from 1 September 2003.

44. In paragraph 5.20(f) of the Audit Report, the institutions pointed out that student hostel operation was part of a university's core activity. Student hostels were run as separate self-financing operations without the usual overheads of the regular academic and research activities of the universities. It was questionable to suggest charging the same overhead costs of the universities. In their view, charging full overhead to their student

hostel operations would result in substantially higher hostel fees and was entirely contrary to the aim of encouraging students to participate in campus life as an integral part of university education.

45. While the Committee fully appreciated the great educational value of hostel life, it considered that the existing requirement as stipulated in paragraph 5.2 of the UGC Notes on Procedures that student hostels should be operated on a self-financing basis should be followed by the institutions as far as possible. In this connection, the Committee asked whether the UGC and the institutions would:

- reconsider whether or not student hostels should be subject to overhead charging. If it was decided in the negative, whether the UGC would revise the UGC Notes on Procedures accordingly; and

- conduct a thorough review to see whether the standard overhead recovery rate of 15% for self-financing activities was still appropriate, and whether the institutions would appoint external auditors to assist them in the review.

46. The **Secretary-General of the UGC** advised in his letters of 31 December 2003 and 18 February 2004, in ***Appendix 38***, that:

- the institutions had formed a Working Group on Review of Overhead Recovery Practices on Self-financing Activities of UGC-funded Institutions, comprising the Directors of Finance of all the institutions, to conduct the review on the overhead recovery rates. The UGC expected that external auditors of the institutions would be consulted as and when necessary. Fair and appropriate overhead recovery rates would be worked out by individual institutions for each self-financed operation, having regard to the differences in the circumstances of the institution, the size of the self-financed operation concerned in relation to the institution's core activities and the variation in the administrative efforts incurred. Details of the Working Group's work plan were set out in the letter of 18 February 2004; and

- the UGC would revise the UGC Notes on Procedures should it be decided that the student hostels should not be subject to overhead charging.

Funding of tertiary education

47. **Conclusions and recommendations** The Committee:

- expresses concern:

  (a) that the higher-education institutions were not given clear and full information on how funds were distributed to them by the University Grants Committee (UGC);

  (b) about the lack of objective criteria agreed among the institutions for the allocation of funds by the UGC;

  (c) that the funding methodology adopted by the UGC is not well understood by the public; and

  (d) about the views of the Secretary for Education and Manpower and the Secretary-General of the UGC that there is a possible danger of misinterpretation or misuse of data if the full results of the Research Assessment Exercise (RAE) are disclosed to the public;

- notes the institutions' view that the UGC's funding methodology should be made more transparent;

UGC's endeavours in benchmarking the cost of tertiary education

- expresses concern that:

  (a) the UGC's endeavours in benchmarking the student unit cost of tertiary education in Hong Kong against that in overseas countries had not been successful; and

  (b) the Government/UGC has not conducted any major review to ascertain whether the crude average student unit cost would continue to serve as the appropriate basis for funding tertiary education;

- concurs with Audit that the student unit cost serves as a useful indicator for ascertaining whether the cost of tertiary education in Hong Kong is high, reasonable or low as compared with those in advanced countries. Hence, there is a need to work out the student unit cost in Hong Kong, irrespective of whether other indicators will be developed for use by the local tertiary education sector;

- notes that the Secretary-General of the UGC will implement Audit's recommendations mentioned in paragraph 2.12 of the Audit Report;

Funding and resource allocation

- expresses concern that:

  (a) the effect of allocating "top-sliced funds" of more than 25% for research has had the result of increasing the overall proportion of recurrent funds allocated for research. The actual allocations exceeded the funding intention of 25% for research by 2.57 percentage points;

  (b) the institutions were not given clear and full information on how the recurrent grants for teaching and research were allocated by the UGC; and

  (c) in the Controlling Officer's Report of the Annual Estimates, only a single sum of the annual recurrent grants is shown, without any indicative breakdown for the provision of funding between teaching and research;

- notes that the Secretary-General of the UGC will implement Audit's recommendations mentioned in paragraphs 3.23 and 3.32 of the Audit Report;

Research Assessment Exercise and implementation of research projects

- expresses concern that:

  (a) the full results of the RAE were not disclosed to the institutions and the public, and the RAE panels' comments were not disclosed to the public;

  (b) there was little representation from the commercial and industrial sectors and other users of research to represent the users in the RAE panels;

  (c) the major cause of project termination was that the Principal Investigators had left the institutions;

  (d) on many occasions, the institutions granted extensions of time for completing research projects; and

  (e) there is no requirement, at the application stage of a project, to state the key milestones to be achieved at different stages of the project;

- notes that the Secretary-General of the UGC will implement Audit's recommendations mentioned in paragraphs 4.14, 4.22, 4.36 and 4.46 of the Audit Report;

Funding of self-financing activities

- expresses serious concern that:

  (a) the standard overhead recovery rate of 15% set by the institutions is on the low side;

  (b) nearly all institutions do not charge any overhead costs to their student hostels, despite the UGC Notes on Procedures which clearly state that student hostels should be operated on a self-financing basis; and

  (c) non-compliance with the agreed standard rate of overhead recovery by some institutions has cast doubt on the effectiveness of the existing arrangements;

- notes that the Secretary-General of the UGC will implement Audit's recommendations mentioned in paragraph 5.17 of the Audit Report;

Refund of government rents and rates

- expresses concern that there is no clear UGC guideline on whether the self-financing commercial or quasi-commercial activities operated by the institutions are eligible for refund of government rents and rates;

- notes that:

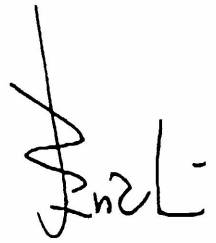
  (a) the Secretary for Education and Manpower will implement Audit's recommendation mentioned in paragraph 6.11 of the Audit Report; and

  (b) the Secretary-General of the UGC will implement Audit's recommendations mentioned in paragraph 6.12 of the Audit Report; and

Follow-up action

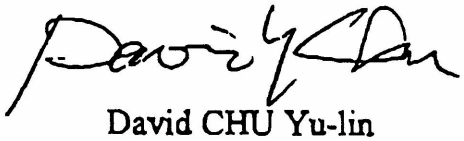
- wishes to be kept informed of any further developments and progress made in implementing the various Audit recommendations and improvement measures.

SIGNATURES OF THE CHAIRMAN,
DEPUTY CHAIRMAN AND MEMBERS OF THE COMMITTEE



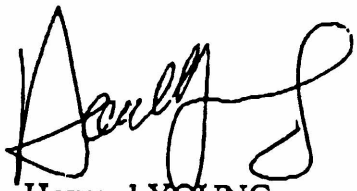
Eric LI Ka-cheung
(Chairman)

Emily LAU Wai-hing
(Deputy Chairman)



David CHU Yu-lin

SIN Chung-kai



Howard YOUNG

LAU Kong-wah

Abraham SHEK Lai-him

11 February 2004

CHAPTERS IN THE DIRECTOR OF AUDIT'S REPORT NO. 41 DEALT WITH IN THE PUBLIC ACCOUNTS COMMITTEE'S REPORT

Director of Audit's Report No. 41 Chapter	Subject	P.A.C. Report No. 41 Chapter
2	Public markets managed by the Food and Environmental Hygiene Department	1
5	Provision of noise barriers for mitigating road traffic noise	2
6	Buildings Department's efforts to tackle the unauthorised building works problem	3
7	Planning and provision of public secondary school places	4
8	The acquisition and clearance of shipyard sites	5
9	Funding of tertiary education	6

RULES OF PROCEDURE OF THE LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

72. Public Accounts Committee

(1) There shall be a standing committee, to be called the Public Accounts Committee, to consider reports of the Director of Audit –

(a) on the accounts of the Government;

(b) on such other accounts required to be laid before the Council as the committee may think fit; and

(c) on any matter incidental to the performance of his duties or the exercise of his powers as the committee may think fit.

(2) The committee shall also consider any report of the Director of Audit laid on the Table of the Council which deals with examinations (value for money audit) carried out by the Director relating to the economy, efficiency and effectiveness of any Government department or public body or any organization to which his functions as Director of Audit extend by virtue of any Ordinance or which receives public moneys by way of subvention.

(3) The committee shall consist of a chairman, deputy chairman and 5 members who shall be Members appointed by the President in accordance with an election procedure determined by the House Committee. In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence. The chairman and 2 other members shall constitute a quorum.

(4) A report mentioned in subrules (1) and (2) shall be deemed to have been referred by the Council to the committee when it is laid on the Table of the Council.

(5) Unless the chairman otherwise orders, members of the press and of the public shall be admitted as spectators at meetings of the committee attended by any person invited by the committee under subrule (8).

(6) The committee shall meet at the time and the place determined by the chairman. Written notice of every meeting shall be given to the members and to any person invited to attend a meeting at least 5 clear days before the day of the meeting but shorter notice may be given in any case where the chairman so directs.

(7) All matters before the committee shall be decided by a majority of the members voting. Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall have a casting vote.

(8) The chairman or the committee may invite any public officer, or, in the case of a report on the accounts of or relating to a non-government body or organization, any member or employee of that body or organization, to give information or any explanation or to produce any records or documents which the committee may require in the performance of its duties; and the committee may also invite any other person to assist the committee in relation to any such information, explanation, records or documents.

(9) The committee shall make their report upon the report of the Director of Audit on the accounts of the Government within 3 months (or such longer period as may be determined under section 12 of the Audit Ordinance (Cap. 122)) of the date on which the Director's report is laid on the Table of the Council.

(10) The committee shall make their report upon the report of the Director of Audit mentioned in subrule (2) within 3 months (or such longer period as may be determined by the Council) of the date on which the Director's report is laid on the Table of the Council.

(11) Subject to these Rules of Procedure, the practice and procedure of the committee shall be determined by the committee.

Paper presented to the Provisional Legislative Council by the Chairman of the Public Accounts Committee at the meeting on 11 February 1998 on Scope of Government Audit in the Hong Kong Special Administrative Region - 'Value for Money Audits'

SCOPE OF WORK

1. The Director of Audit may carry out examinations into the economy, efficiency and effectiveness with which any bureau, department, agency, other public body, public office, or audited organisation has discharged its functions.

2. The term "audited organisation" shall include -

(i) any person, body corporate or other body whose accounts the Director of Audit is empowered under any Ordinance to audit;

(ii) any organisation which receives more than half its income from public moneys (this should not preclude the Director from carrying out similar examinations in any organisation which receives less than half its income from public moneys by virtue of an agreement made as a condition of subvention); and

(iii) any organisation the accounts and records of which the Director is authorised in writing by the Chief Executive to audit in the public interest under section 15 of the Audit Ordinance (Cap. 122).

3. This definition of scope of work shall not be construed as entitling the Director of Audit to question the merits of the policy objectives of any bureau, department, agency, other public body, public office, or audited organisation in respect of which an examination is being carried out or, subject to the following Guidelines, the methods by which such policy objectives have been sought, but he may question the economy, efficiency and effectiveness of the means used to achieve them.

GUIDELINES

4. The Director of Audit should have great freedom in presenting his reports to the Legislative Council. He may draw attention to any circumstance which comes to his knowledge in the course of audit, and point out its financial implications. Subject to these Guidelines, he will not comment on policy decisions of the Executive Council and the Legislative Council, save from the point of view of their effect on the public purse.

5. In the event that the Director of Audit, during the course of carrying out an examination into the implementation of policy objectives, reasonably believes that at the time policy objectives were set and decisions made there may have been a lack of sufficient, relevant and reliable financial and other data available upon which to set such policy objectives or to make such decisions, and that critical underlying assumptions may not have been made explicit, he may carry out an investigation as to whether that belief is well founded. If it appears to be so, he should bring the matter to the attention of the Legislative Council with a view to further inquiry by the Public Accounts Committee. As such an investigation may involve consideration of the methods by which policy objectives have been sought, the Director should, in his report to the Legislative Council on the matter in question, not make any judgement on the issue, but rather present facts upon which the Public Accounts Committee may make inquiry.

6. The Director of Audit may also -

(i) consider as to whether policy objectives have been determined, and policy decisions taken, with appropriate authority;

(ii) consider whether there are satisfactory arrangements for considering alternative options in the implementation of policy, including the identification, selection and evaluation of such options;

(iii) consider as to whether established policy aims and objectives have been clearly set out; whether subsequent decisions on the implementation of policy are consistent with the approved aims and objectives, and have been taken with proper authority at the appropriate level; and whether the resultant instructions to staff accord with the approved policy aims and decisions and are clearly understood by those concerned;

(iv) consider as to whether there is conflict or potential conflict between different policy aims or objectives, or between the means chosen to implement them;

(v) consider how far, and how effectively, policy aims and objectives have been translated into operational targets and measures of performance and whether the costs of alternative levels of service and other relevant factors have been considered, and are reviewed as costs change; and

(vi) be entitled to exercise the powers given to him under section 9 of the Audit Ordinance (Cap. 122).

PROCEDURES

7. The Director of Audit shall report his findings on value for money audits in the Legislative Council twice each year. The first report shall be submitted to the President of the Legislative Council within seven months of the end of the financial year, or such longer period as the Chief Executive may determine. Within one month, or such longer period as the President may determine, copies shall be laid before the Legislative Council. The second report shall be submitted to the President of the Legislative Council by the 7th of April each year, or such date as the Chief Executive may determine. By the 30th April, or such date as the President may determine, copies shall be laid before the Legislative Council.

8. The Director's report shall be referred to the Public Accounts Committee for consideration when it is laid on the table of the Legislative Council. The Public Accounts Committee shall follow the rules governing the procedures of the Legislative Council in considering the Director's reports.

9. A Government minute commenting on the action Government proposes to take in respect of the Public Accounts Committee's report shall be laid on the table of the Legislative Council within three months of the laying of the report of the Committee to which it relates.

10. In this paper, reference to the Legislative Council shall, during the existence of the Provisional Legislative Council, be construed as the Provisional Legislative Council.

食物環境衞生署署長
Director of
Food and Environmental Hygiene

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Your Ref. : CB(3)/PAC/R38 & CB(3)/PAC/CS(38&39)
Our Ref. : (16) in L/M (2) in FEHD HQ 2/3/83 V

15 January 2004

Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn : Ms Miranda Hon)

Dear Ms Hon,

The Public Accounts Committee's consideration of
The Director of Audit's Report No. 37

Mechanised street cleansing services

I refer to your letter of 5 January 2004.

The re-engineering and streamlining of the supervisory hierarchy of the Cemeteries and Cremation (C&C) Section through the introduction of the C&C Venue Manager Scheme (the Scheme) has started since September 2002. Subject to the smooth implementation of the Scheme in 2003-04, an estimated net annual recurrent savings of around $4 million will be achieved. Details of the breakdown of the recurrent annual savings are provided at **Annex I**.

For the delivery of mechanised street cleansing services referred to in page 224 and 225 of the Committee's Report No. 38, we have removed two tiers of staff at Overseer and Foreman levels. We will also soon proceed to review the need to retain in the hierarchy the tier of Superintendent. The relevant post has been left vacant for some time. Revised organisation charts are at **Annex II**.

In this connection, I would also like to make the following observations –

(a) The day-to-day supervision of the Mechanised Street Cleansing Services Unit (MCSU) rests with the two tiers of staff at Health Inspector and Senior Foreman levels. They are responsible for supervising the outsourced services as well as in-house staff. With the gradual phasing in of outsourcing, the Ganger posts, who are the leaders of the frontline operatives, will also be deleted.

(b) The other tiers of staff in the hierarchy perform policy work and system management functions. More important, they all have other work to do and the management of the MCSU only forms a small part of their daily duties.

Yours sincerely,

(Gregory Leung)
Director of Food and Environmental Hygiene

Annex I

Part I - FEHD's Annual savings

Salary (Annual mid-point salary)

Rank (a)	No. (b)	$ NAMS value (c)	$ Annual savings (d)=(b) x (c)
Health Inspector I/II	2	357,630	715,260
Senior Overseer	2	361,200	722,400
Overseer	13	284,640	3,700,320
Senior Foreman	11	222,840	2,451,240
Foreman	15	175,740	2,636,100
		Sub-total (A):	10,225,320

Allowance

Type (a)	No. of staff (b)	Monthly rate $ (c)	No. of months (d)	$ Annual savings (e)=(b) x (c) x (d)
ODA+	26	671	12	209,352
SDA#	22	892	3	58,872
		451	9	89,298
		Sub-total (B) :		357,522
		Total (A+B) :		10,582,842

(I)

Part II - Additional requirement

Additional DE requirement

NCSC Staff

Rank (a)	No. (b)	$ Annual rate (c)	$ Annual requirement (d)=(b) x (c)
Venue Manager	11	227,700	2,504,700
Assistant Venue Manager	24	165,000	3,960,000
		Total :	6,464,700

(II)

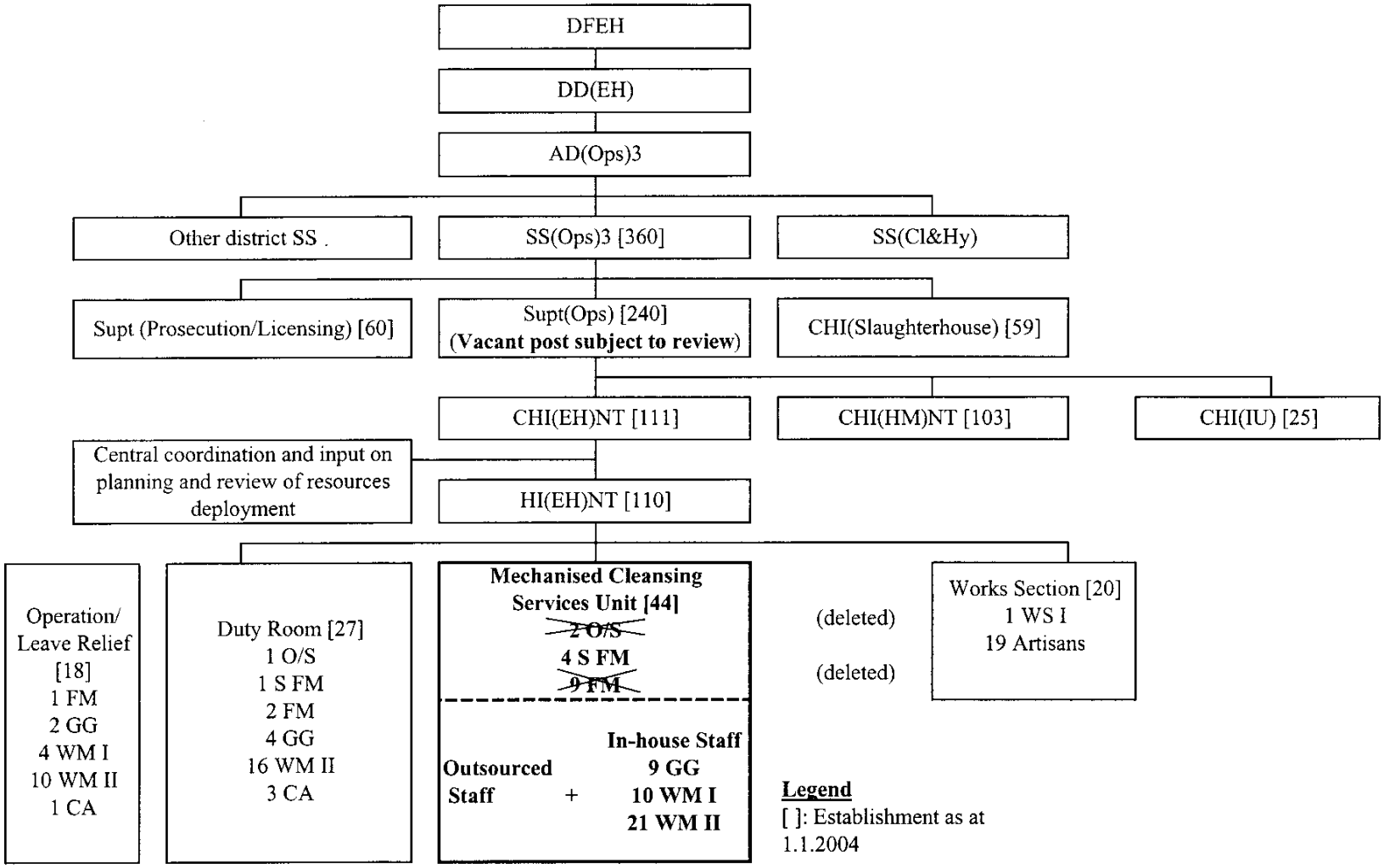
Net savings : (I) - (II)	$4,118,142

Note: Salary level as at September 2003

+ ODA - Obnoxious duty allowance

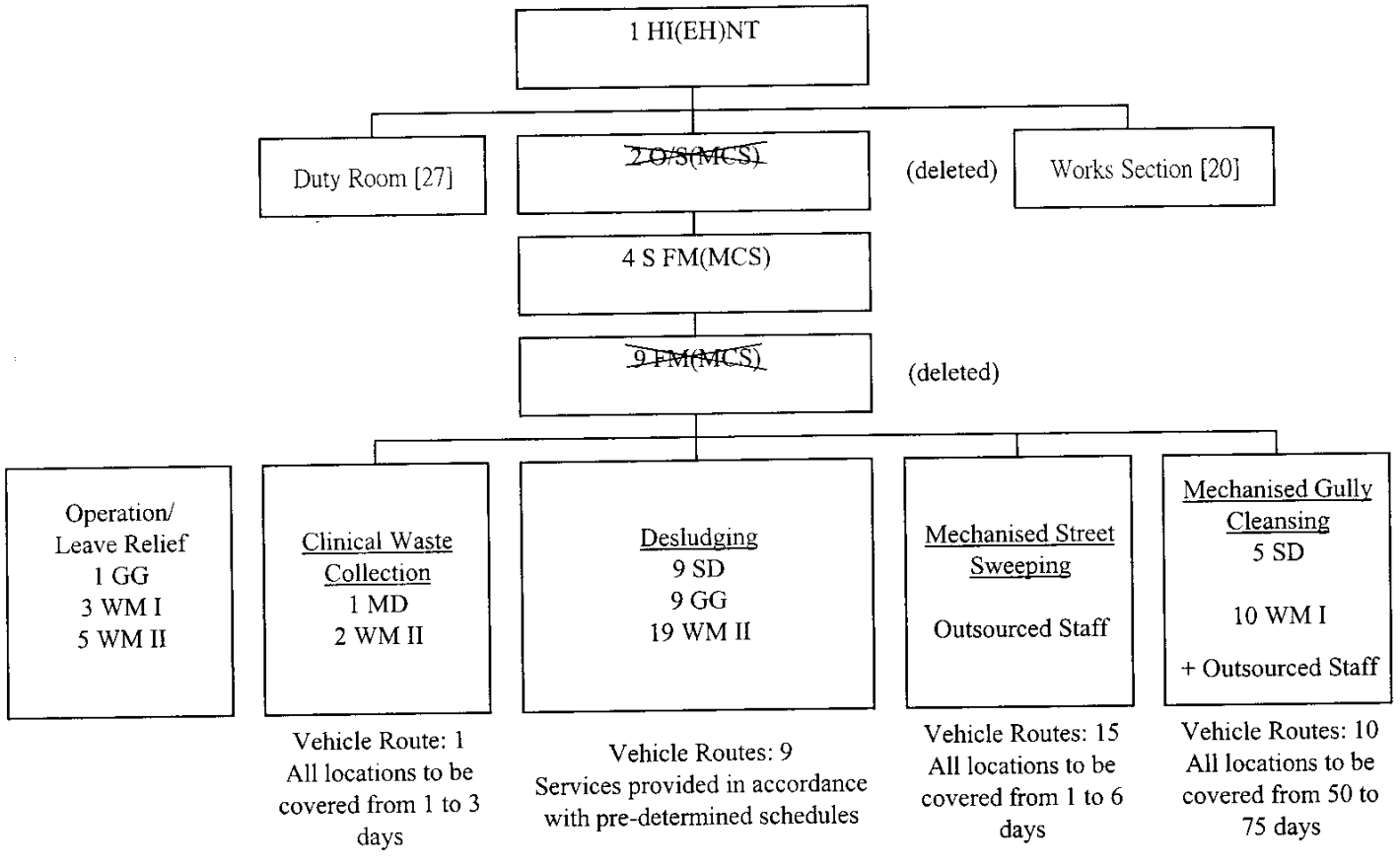
SDA - Shift duty allowance

Organisation Chart of SS(Ops)3 Functions in Operations Division 3 (after delayering/re-engineering of mechanised street cleansing services)



食物環境衞生署
FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT

Organisation Chart of Mechanised Cleansing Services Unit (after delayering/re-engineering of mechanised street cleansing services)



食物環境衞生署
FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT

Government
Property Agency
政府產業署

31 Fl., Revenue Tower, 5 Gloucester Road, Hong Kong.
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Tel: 2594 7611 (Fax No. 2583 9758)

本署檔號 Our Ref.: (163) in GPA/AS/AUDIT/GPO/195C II

來函檔號 Your Ref.: CB(3)/PAC/R31&CB(3)/PAC/CS(38&39)

15 January 2004

Ms Miranda HON
Clerk, Public Accounts Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms HON,

The Public Accounts Committee's consideration of the Director of Audit's Report No. 31

Relocation of the General Post Office (GPO)

Thank you for your letter dated 5 January 2004. I attach hereto the Costs and Benefits Analysis (CBA) conducted in October 2002 for the captioned project.

The recommendation made in the Audit Report No. 31, published in October 1998, was that the General Post Office (GPO) should be relocated to low value areas in order to release the existing GPO site in Central District (the Site) for redevelopment. It was the assumption then that the Site should have a plot ratio of 15 by comparison to nearby commercial/office developments. The Administration agreed with the recommendation and proceeded to take on the Relocation Project. Several reprovisioning options were considered. With time and efforts, an approach emerged that the GPO would need to be reprovisioned to three locations. The plan was to reprovision the GPO Headquarters and the Sorting Centre to a site in Chai Wan (Location One); the Delivery Office to a site zoned for government, institution or community use in Sai Ying Pun (Location Two); and the Counter and PO Box Sections to a commercial premises in Central District (Location Three). In order to fully utilise the site potential of the Chai Wan site, the Water Supplies Department (WSD) was identified to be another major joint-user in the project with the benefit of releasing WSD's under-developed site (zoned for commercial use) in North Point for sale.

The above-mentioned CBA (Attachment) showed that the aggregated cost of the three reprovisioning items was $2,174 million. Together with the aggregated land cost of $59 million for the sites and other miscellaneous costs, the total costs therefore would amount to **$2,233 million**. On the benefits side, the relocation exercise would enable the release of three sites for redevelopment (i.e. two HKP sites and one WSD site). Rental savings would also be achieved by deleasing some leases. The aggregated value of the three sites was estimated to be in the region of **$1,601 million**. The total costs over the benefits as demonstrated in the CBA would be **$632 million**, if the rental savings of about $13 million per annum to HKP were to be excluded in the computation. (Note : Even if the rental savings of $13M were to be capitalised and taken into account, the capital costs would still exceed the benefits by $479 million.)

As mentioned earlier, the main reason for undertaking the Relocation Project was that the Site was much under-utilised. In 2000 however the land use planning of the Central District was comprehensively reviewed. As a result, the Site was included as part of a Comprehensive Development Area and subject to a height restriction of 50m above principle datum on the approved Central District (Extension) Outline Zoning Plan. The new planning criteria drastically reduced the plot ratio of the Site from **15** to about **3.6** only (representing a substantial reduction of **76%**). In the meantime, the property market continued to fall and the updated estimate of capital value of the Site had to reflect the market reality. Having conducted the CBA, the Administration critically reviewed the position and decided to abandon the Relocation Project because there was no economic case to proceed further. It was then considered that even if the property market would rebound in future, the land sale proceeds might not cover the reprovisioning costs, given that the plot ratio had been reduced by 76%. Should there be positive change(s) in circumstances, the Administration would be prepared to review the position and assess if an economic case can be established.

If further clarification is required, I should be happy to provide it.

Yours sincerely,

(K K MOK)
Acting Government Property Administrator

c.c. Director of Audit

Cost-Benefit Analysis of relocating the General Post Office (as at October 2002)

Costs	HK$ (million)	HK$ (million)	**Benefits**	HK$ (million)
Lump Sum				
Proposed Reprovisioning Projects			Value of sites to be released through relocation exercise	
i New Post Centre in Chai Wan :				
Site value	50		i GPO site in Central	484
Construction cost		1,730	(forming part of CDA)	
ii Delivery Office in Sai Ying Pun :			ii IMC site in Hung Hom	437
Site value	9			
Construction cost		160	iii WSD site in North Point	680
iii Counter/PO Box in Central (in a commercial development)				
Procurement Cost		45		
Other costs :				
Infrastructure machinery & equipmer		238		
Removal of miscellaneous items		1		
	59	**2,174**		**1,601**
			Benefits minus Cost	**-632** (Note)
Recurrent				
			Annual rental savings	**13** (Note)

Note
the result of taking into account rental savings:

Benefits	1,601	M
add rental savings $13M,		
capitalised at 8.5% yield	153	M
	1,754	M
minus total costs	2,233	M
	-479	M

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局
香港花園道美利大廈

Housing, Planning and Lands Bureau
Murray Building,
Garden Road, Hong Kong
TEL: 2848 2266
FAX: 2845 3489

本局檔號 Our Ref. (5) in HPLB(L) 35/05/187 Pt. 10

來函檔號 Your Ref. CB(3) PAC/R31&CB(3)/PAC/CS(38&39)

20 January 2004

(By Post and Fax : 2537 1204)

Ms Miranda Hon
Clerk
Public Accounts Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Hon,

The Public Accounts Committee's consideration of the Director of Audit's Report No. 31

Footbridge connections between five commercial buildings in the Central District

Thank you for your letter of 5 January 2004.

As regards the questions raised by the Public Accounts Committee ("the Committee"), the relevant information is as follows :

(a) Owner of Building I indicated that its building was not designed to take up the additional load arising from Footbridge A. This means that if Footbridge A is to be connected to Building I, strengthening work (with cost implications) to the Building is required. The owner of Building I has indicated that it would not bear the costs for

such work and its future maintenance. The owner of Building II does not agree that it should bear such costs.

(b) Since the last report to the Committee, the owner of Building II submitted a new footbridge proposal. The owner proposed to construct a footbridge which would cross Queen's Road Central, stopping immediately in front of Building I but would not link to the mezzanine floor (M/F) of Building I. Instead, staircase and lift were proposed to take pedestrians from the Footbridge onto the street. This proposal, not requiring the consent of owner of Building I, was found not acceptable because it would cause obstruction to the pedestrian flow at Queen's Road Central and could not achieve the original intention of linking up the two buildings.

(c) There is no more new proposal from the owner of Building II. To facilitate the construction of Footbridge A, the Lands Department is exploring the feasibility of an alterative proposal of linking Building II with the southeast corner of Building I at its M/F. It would require column supports at the pavement on both sides of the Queen's Road Central. The Lands Department is consulting relevant departments on this alternative. We will report outcome of the deliberation in due course.

Yours sincerely,

(Gary Y.S. Yeung)
for Secretary for Housing, Planning and Lands

c.c.

Director of Audit	2824 2087
Director of Lands	2868 4707
District Lands Officer/Hong Kong West	2834 4324
AA/SHPL	2537 5139

Employees Retraining Board
僱員再培訓局

Your ref.: CB(3)/PAC/R35 & CB(3)/PAC/CS(38&39)

Our ref.: (38) in ERB/D/AC/001(5)

7 January 2004

(By fax and post)

Clerk to Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Attn: Ms Dora WAI)

Dear Ms WAI,

The Public Accounts Committee's consideration of
The Director of Audit's Report No. 35
Employees Retraining Scheme

Thank you for your letter dated 2 January 2004 on the captioned subject.

The Employees Retraining Board (ERB) conducted a job retention survey in June 2003. The results indicated that 66% of the retrainee graduates surveyed remained in employment six months after placement. Two other job retention surveys had also been conducted in September and November 2003, with retention rates of 68% and 66% respectively. The ERB will continue to conduct retention surveys as one of its on-going and regular activities. The next survey is planned to be conducted in February 2004.

Yours sincerely,

(S S KWONG)
Executive Director
Employees Retraining Board

c.c. Secretary for Education and Manpower
Director of Audit

1992 - 2002

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

政府總部
環境運輸及工務局
香港花園道美利大廈

Environment, Transport and Works Bureau
Government Secretariat
Murray Building, Garden Road, Hong Kong

本局檔號 Our Ref. ETWB(CR)(W)172/47
來函檔號 Your Ref. CB3/PAC/R35 &CB3/PAC/CS(38&39)

Tel No. 2848 1108
Fax No. 2801 5034

13 January 2004

Clerk to Public Accounts Committee,
Legislative Council,
Legislative Council Building,
8 Jackson Road, Hong Kong.
(Attn.: Ms Dora Wai)

Dear Ms Wai,

The Public Accounts Committees consideration of the Director of Audit's Report No. 35

Construction of two bridges

I refer to your letter dated 2 January 2004.

As requested, I enclose a copy of the Environment, Transport and Works Bureau Technical Circular (Works) No. 29/2003 (in English version only). As regards the specific conditions under which government could disclose the relevant confidential information to the Committee, please be advised that such conditions have been spelled out in paragraphs 9 and 10 of the said circular. The two paragraphs are reproduced at the annex for members' easy reference.

Chinese translation for this letter will be forwarded you later.

Yours sincerely,

(K M Bok)
for Secretary for the Environment,
Transport and Works

c.c. Director of Audit

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

政府總部
環境運輸及工務局
香港花園道美利大廈

Environment, Transport
and Works Bureau
Government Secretariat
Murray Building, Garden Road,
Hong Kong

Ref : **ETWB(W) 510/83/06**
ETWB(PS)106/1
Group : **5, 6**

21 October 2003

Environment, Transport and Works Bureau
Technical Circular (Works) No. 29/2003

Confidentiality clauses in works contracts and consultancy agreements

Scope

This circular makes provisions in all construction contracts and consultancy agreements to allow Government to disclose confidential information, under certain conditions, to the Public Accounts Committee of the Legislative Council concerning matters relating to mediation settlements, arbitration awards and settlement agreements via any other means of dispute resolution process.

Effective Date

2. This circular takes immediate effect.

Effect on Existing Circular

3. This circular is to be read in conjunction with WBTC No. 4/99, Construction Mediation Rules (1999 Edition) and Administrative Guidelines. The library of Standard Special Conditions of Contract promulgated under WBTC No. 18/2000, when updated, shall include the Special Conditions of Contract promulgated under this circular. WBTC No. 29/99, Place of Arbitration, is hereby cancelled.

Application

4. The special provisions given in the Appendix hereto apply to all construction contracts including term contracts and Design and Build Contracts and to all consultancy agreements.

The Policy Background

5. The Public Accounts Committee (PAC) considers reports of the Director of Audit on the accounts and the results of value-for-money audits of the Government and other organizations which are within the purview of public audit. It may invite Government officials and senior staff of public organizations to attend public hearings to give explanation, evidence or information to the PAC, or it may invite any other person to assist it in relation to such explanation, evidence or information if deemed necessary.

6. The PAC is accountable to the public. Accountability can only be meaningful if adequate information is available for consideration and evaluation. Government recognizes that any claims of commercial confidentiality in relation to its dealing with a private contracting party may have the effect of diminishing the effectiveness of accountability to the public for the expenditure of the public funds. There is no intention whatsoever to allow the issue of confidentiality erode the capability of PAC to be accountable to the public.

7. However, Government also recognises that disclosing information indiscriminately would undermine the fundamentals of the dispute resolution mechanisms in our standard forms of contracts, namely mediation and arbitration, and would destroy the confidence parties had enjoyed over the years in adopting these mechanisms to reach amicable settlement of disputes.

8. There is therefore a need to strike a delicate balance between public interest and contractual confidentiality. The maintenance of confidentiality in relation to business dealings including commercial settlements is an important issue for private companies and more generally for Hong Kong's reputation as an international business centre. To maintain the creditability of the Government and to protect its image by observing every provision of a commercial contract signed by the Government is in itself also an important consideration of public interest.

9. In view of the competing interests, and following consultation with the construction industry, it has been decided that in relation to mediation settlements and arbitration awards, Government will introduce a sanitization period whereby the contractor/consultants will have the opportunity to withhold consent to the release of commercially sensitive information. The sanitization period is set at 6 months following settlement of the dispute or arbitration award, as the case may be. After the sanitization period, the contractor/consultants will be deemed to have given consent, but they will be informed before any disclosures to the PAC and they may then request commercially sensitive information to be disclosed on a confidential basis. If the request is considered legitimate, it will be referred to PAC for its consideration.

10. Disclosure of information should be confined to the "outline" of the dispute and the terms of the settlement (i.e. summary of the essential facts and issues). All such disclosures to the PAC should have the endorsement of the Controlling Officer.

(W S Chan)
Deputy Secretary for the Environment,
Transport and Works (Works) 2

(I) Standard General Conditions of Contract

Special Condition of Contract

General Conditions of Contract Clause 8 is amended by adding the following as sub-clause (3):

"(3) Notwithstanding sub-clause (2) of this Clause, but subject to the following provisions, the Employer may disclose the outline of any dispute and the terms of settlement for which a settlement agreement has been reached with the Contractor or the outcome of the arbitration or any other means of resolution of dispute to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Employer shall inform the Contractor. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute without the written consent of the Contractor but such consent shall not be unreasonably withheld. The Contractor shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute. The Contractor may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Employer to disclose such specified information to the said Committee strictly on a confidential basis. If the Employer considers that there are legitimate grounds to accede to the Contractor's request, the Employer shall convey the request to the said Committee for its consideration."

(II) HKSARG Construction Mediation Rules

Rule 12 shall be amended as follows–

"12.1 Mediation is a private and confidential process and every aspect of communication for the purpose of or related to the mediation process shall be without prejudice. Confidentiality also extends to the settlement agreement except where disclosures –

(a) are necessary for implementation or enforcement;

(b) are required by the parties' auditors or for some other legitimate business reason;

(c) are required by any order of the courts of Hong Kong or other judicial tribunal;

(d) which are necessary for the making of claims against any third party or to defend a claim brought by any third party.

12.2 Notwithstanding Rule 12.1 and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the the other party and the terms of the settlement agreement to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the settlement agreement without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the settlement agreement. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration.'

12.3 The parties shall not rely on or introduce as evidence in any subsequent arbitral or judicial proceedings:

(a) any oral or written exchanges within the mediation between either party and the mediator or between either party;

(b) any views expressed or suggestions made within the mediation either by the mediator or either party in respect of a possible settlement of the dispute;

(c) any admission made by a party within the mediation;

(d) the fact that either party had or had not indicated a willingness to accept any suggestion or proposal for settlement by the mediator or by the other party; and

(e) any documents brought into existence for the purpose of the mediation including any notes or records made in connection with the mediation by the mediator or either party."

(III) HKIAC Domestic Arbitration Rules

Special Condition of Contract

Sub-clause (5) of General Conditions of Contract Clause 86 shall be replaced by the following:

"(5) (a) Subject to paragraphs (b) and (c) of this sub-clause, the Hong Kong International Arbitration Centre Domestic Arbitration Rules (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.

(b) Notwithstanding Article 8.2 and Article 13 of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

(c) Article 26 of the Arbitration Rules shall be deleted and replaced by:

'26.1 The arbitration proceedings are private and confidential between the parties and the arbitrator. No information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Disclosures are permissible where disclosures –

(a) are necessary for implementation or enforcement;

(b) are required by the parties' auditors or for some other legitimate business reason;

(c) are required by any order of the courts of Hong Kong or other judicial tribunal;

(d) which are necessary for the making of claims against any third party or to defend a claim brought by any third party.

26.2 Notwithstanding Article 26.1 and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party

and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration.' "

(IV) Consultancy Agreement - Engineering and Architectural Consultancy

Special Conditions of Employment

SCE XX

Sub-clause (D) of General Conditions of Employment Clause 9 is deleted and replaced by the following:

"(D) If the Consultants have provided the Employer with documents and information which they have declared in writing to be confidential and stamped accordingly whether in relation to their practice or special circumstances or for other good causes, unless the Director within two months of receipt of such information by notice in writing disagrees, then that information will be treated as confidential. In relation to disputes between the Employer and the Consultants, the Employer may subject to the following provisions disclose the outline of any dispute and the terms of settlement for which a settlement agreement has been reached with the Consultants or the outcome of the arbitration or any other means of resolution of dispute to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Employer shall inform the Consultants. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the

case may be, outcome of other means of resolution of dispute without the written consent of the Consultants but such consent shall not be unreasonably withheld. The Consultants shall be deemed to have given their consent to disclosures on the expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute. The Consultants may, if they consider necessary to protect the sensitive nature of certain information relating to them, request the Employer to disclose such specified information to the said Committee strictly on a confidential basis. If the Employer considers that there are legitimate grounds to accede to the Consultants' request, the Employer shall convey the request to the said Committee for its consideration."

SCE YY

Sub-clause (D) of General Conditions of Employment Clause 44 shall be replaced by the following:

"(D) (i) Subject to paragraphs (ii) and (iii) of this sub-clause, the Hong Kong International Arbitration Centre Domestic Arbitration Rules (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.

(ii) Notwithstanding Article 8.2 and Article 13 of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

(iii) Article 26 of the Arbitration Rules shall be deleted and replaced by:

'26.1 The arbitration proceedings are private and confidential between the parties and the arbitrator. No information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Disclosures are permissible where disclosures –

(a) are necessary for implementation or enforcement;

(b) are required by the parties' auditors or for some other legitimate business reason;

(c) are required by any order of the courts of Hong Kong or other judicial tribunal;

(d) which are necessary for the making of claims against any third party or to defend a claim brought by any third party.

26.2 Notwithstanding Article 26.1 and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration.' "

Annex

Extract from the ETWB Technical Circular 29/2003

"9. ....., and following consultation with the construction industry, it has been decided that in relation to mediation settlements and arbitration awards, Government will introduce a sanitization period whereby the contractor/consultants will have the opportunity to withhold consent to the release of commercially sensitive information. The sanitization period is set at 6 months following settlement of the dispute or arbitration award, as the case may be. After the sanitization period, the contractor/consultants will be deemed to have given consent, but they will be informed before any disclosures to the PAC and they may then request commercially sensitive information to be disclosed on a confidential basis. If the request is considered legitimate, it will be referred to PAC for its consideration.

10. Disclosure of information should be confined to the "outline" of the dispute and the terms of the settlement (i.e. summary of the essential facts and issues). All such disclosures to the PAC should have the endorsement of the Controlling Officer."

Witnesses who appeared before the Committee
(in order of appearance)

Dr Hon YEOH Eng-kiong, JP	Secretary for Health, Welfare and Food
Mr Eddy CHAN, JP	Deputy Secretary for Health, Welfare and Food (Food and Environmental Hygiene)
Mr Gregory LEUNG Wing-lup, JP	Director of Food and Environmental Hygiene
Mr Warner CHEUK Wing-hing, JP	Deputy Director of Food and Environmental Hygiene (Environmental Hygiene)
Hon Michael SUEN Ming-yeung, GBS, JP	Secretary for Housing, Planning and Lands
Mr Parrish NG	Principal Assistant Secretary (Planning and Lands)
Mr Marco WU, JP	Director of Buildings
Mr CHEUNG Hau-wai, JP	Deputy Director of Buildings
Prof Hon Arthur LI Kwok-cheung, GBS, JP	Secretary for Education and Manpower
Mrs Fanny LAW FAN Chiu-fun, GBS, JP	Permanent Secretary for Education and Manpower
Mr David WONG Fok-loi	Principal Assistant Secretary for Education and Manpower (Infrastructure and Research Support)
Ms Irene YOUNG Bik-kwan	Principal Assistant Secretary for Education and Manpower (Higher Education)
Mr Michael Stone, JP	Secretary-General, University Grants Committee

Mr Alan LAI Nin, GBS, JP	Permanent Secretary for Financial Services and the Treasury (Treasury)
Dr Hon Sarah LIAO Sau-tung, JP	Secretary for the Environment, Transport and Works
Mr Thomas CHOW Tat-ming, JP	Deputy Secretary for the Environment, Transport and Works (Environment and Transport)
Mr MAK Chai-kwong, JP	Director of Highways
Mr John CHAI Sung-veng, JP	Director of Territory Development
Mr KAM Chak-wing	Chief Engineer (New Territories East), Territory Development Department
Mr Patrick LAU Lai-chiu, JP	Director of Lands
Mr Robert Law, JP	Director of Environmental Protection
Mr Elvis AU Wai-kwong	Assistant Director of Environmental Protection (Environmental Assessment and Noise)

Introductory Remarks by
Chairman of the Public Accounts Committee,
Dr Hon Eric LI Ka-cheung, GBS, JP,
at the First Public Hearing of the Committee
on Monday, 8 December 2003

Good morning, ladies and gentlemen. Welcome to the Public Accounts Committee's first public hearing relating to Report No. 41 of the Director of Audit on the results of value for money audits, which was tabled in the Legislative Council on 26 November 2003.

The Public Accounts Committee is a standing committee of the Legislative Council. It plays the role of a watchdog over public expenditure through consideration of the reports of the Director of Audit laid before the Council on the Government's accounts and the results of value for money audits of the Government and those organisations which receive funding from the Government. The purposes of the Committee's considering the Director's reports are to receive evidence relevant to the reports in order to ensure that the facts contained in the Director's reports are accurate, and to draw conclusions and make recommendations in a constructive spirit and forward-looking manner. I also wish to stress that the objective of the whole exercise is such that the lessons learned from past experience and our comments on the performance of the public officers concerned will enable the Government to improve its control over the expenditure of public funds, with due regard to economy, efficiency and effectiveness.

The consideration of the Director's reports follows an established process of public hearings where necessary, internal deliberations and publication of the Committee's report. The Committee has an established procedure for ensuring that the parties concerned have a reasonable opportunity to be heard. After the Committee is satisfied that it has ascertained the relevant facts, it will proceed to form its views on those facts, followed by a process of formulating its conclusions and recommendations to be included in its report. In accordance with Rule 72 of the Rules of Procedure of the Legislative Council, the Committee is required to make its report on the Director's report to the Legislative Council within three months of the date at which the Director's report is laid on the Table of the Council. Before then, we will not, as a committee or individually, be making any public comment on our conclusions.

Following a preliminary study of the Director of Audit's Report No. 41, the Committee has decided, in respect of six chapters in the Report, to invite the relevant public officers and parties concerned to appear before the Committee and answer our questions. We have, apart from this morning's hearing, also set aside the mornings of 10 and 11 December for the public hearings.

I now declare the Committee to be in formal session.

食物環境衞生署署長
Director of
Food and Environmental Hygiene

香港金鐘道六十六號金鐘道政府合署四十五樓
45/F Queensway Government Offices, 66 Queensway, Hong Kong

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Ref. : (25) in FEHD(CR) 2/3/90 Pt 3

26 January 2004

Clerk, Public Accounts Committee
(Attn. : Mr. Colin Chui)
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr. Chui,

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 2 : Public markets managed by the Food and Environmental Hygiene Department

Thank you for your letter of 8 January. The additional information required by the Public Accounts Committee is set out below :

(a) The Food and Environmental Hygiene Department (FEHD) has spent $1,203,526 between January 2000 and December 2003 for leasing the four premises in the New Territories for District Environmental Hygiene Offices. Details of annual rental and total rental expenditure incurred for respective leased premises are set out at **Annex**.

(b) We consider it unrealistic to aim at an occupancy rate of 100% for our market stalls because :

i) we do have operational needs to set aside a number of stalls in FEHD markets for reasons such as planned re-development, resite commitments, and improvement works. Given such needs, it will never be possible to achieve full occupancy.

ii) The occupancy rate of our market is determined by a host of

factors and some such as the prevailing economic situation, shopping habits of the public, competition from other retail outlets in the neighbourhood are beyond the control of the FEHD.

We will continue to make our best efforts to improve our market facilities and their management with a view to boosting their occupancy rate.

Yours sincerely,

(Dr S P Mak)
Director of Food and Environmental Hygiene (Acting)

Annex

Information on Office Accommodation leased by FEHD since 2000

Branch / Division / District	**Location**	**Date of Allocation from GPA**	**Annual Rental ($)**				**Rental Expenditure up to Dec 2003 ((A) + (B) + (C) + (D)) ($)**
			2000 (A)	**2001 (B)**	**2002 (C)**	**2003 (D)**	
Sha Tin District Environmental Hygiene Office (DEHO)	Chung Wo House, Chung On Estate, Ma On Shan	11/2000	13,000	78,000	78,000	77,000 (Note 1)	246,000
Sha Tin DEHO	Tower II, Grand Central Plaza	12/2001		35,467	413,374 (Note 2)	410,928	859,769
Sai Kung DEHO	Yan Lam House, Tsui Lam Estate, Tseung Kwan O	6/2002			32,429 (Note 3)	50,628	83,057
Sha Tin DEHO	Lee Hing House, Lee On Estate, Ma On Shan	6/2003				14,700	14,700
		Total	13,000	113,467	523,803	553,256	**1,203,526**

Note

1. The lease at the monthly rate of $6,500 ended in Oct 2003 and a new lease was renewed at a monthly rate of $6,000 with effect from Nov 2003.
2. The lease at the monthly rate of $35,467 ended in Feb 2002 and a new lease was renewed at a monthly rate of $34,244 with effect from Mar 2002.
3. The lease at the monthly rate of $4,943 ended in Sept 2002 and a new lease was renewed at a monthly rate of $4,219 with effect from Oct 2002.

中華人民共和國香港特別行政區政府總部衞生福利及食物局
Health, Welfare and Food Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
The People's Republic of China

Tel No. : 2973 8138
Fax No. : 2537 3753

30 December 2003

Chairman
Public Accounts Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Attention: Mr Colin Chui

Dear Mr Chui

I refer to your letter of 17 December 2003, seeking information on the timing for the trial scheme on a more flexible upset price-setting mechanism.

The Food and Environmental Hygiene Department introduced the trial scheme in August 2003 in three public markets. As at the end of November 2003, 24 out of the 182 long-standing vacant stalls offered for letting at reduced upset prices had been successfully leased. The Department will conduct another round of auction under the trial scheme next month and we shall review the results in February/March 2004. We shall keep PAC informed of the result of our review and the way forward.

Yours sincerely

(Mrs Carrie Yau)
Permanent Secretary for Health, Welfare and Food

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來函檔號 Your Ref. : CB(3)/PAC/R41

20 January 2004

Clerk
Public Accounts Committee
(Attn: Mr Colin CHUI)
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr Chui,

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 2: Public markets managed by the Food and Environmental Hygiene Department

I refer to your letter of 16 January 2004.

The Director of Food and Environmental Hygiene has said that, after deducting the number of purposely frozen market stalls, the market stall vacancy rate for public markets as at 31 July 2003 was 11.8% (see para. 2.17(c) of the Audit Report). According to audit analysis of the Food and Environmental Hygiene Department's records, the market stall vacancy rate for public markets as at 31 July 2003 without such deductions was 22.7%.

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,

(Patrick K Y LEUNG)
for Director of Audit

c.c. Secretary for Health, Welfare and Food
Director of Food and Environmental Hygiene

食物環境衞生署署長
Director of
Food and Environmental Hygiene

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Ref : (14) in FEHD (CR) 2/3/90 Pt 3

19 December 2003

Clerk, Public Accounts Committee
(Attn : Mr Colin Chui)
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr Chui,

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 2 : Public markets managed by the Food and Environmental Hygiene Department

Thank you for your letter of 10 December 2003. The additional information required by the Public Accounts Committee is set out at below :

(a) The vacancy rate of 10.7% for private commercial premises used for retail business was drawn from the Hong Kong Property Review 2003 published by the Rating and Valuation Department. The latter has made no purposeful deductions for frozen space in working out the vacancy rate. Since private landlords have no resite commitments towards their tenants, and given the landlords' intention to maximize income, it is reasonable to believe that any purposely frozen

space in the private commercial market will be kept at a minimum. In explaining our situation to the Director of Audit, we felt that it would be appropriate to express the vacancy rate of market stalls based on available space, that is, excluding those stalls that had been frozen. I apologize should this approach have caused some misunderstanding. For the future, we shall review how best to express the market stall vacancy rate with a view to presenting a full picture to the readers.

(b) We undertook in paragraph 2.17 (h) of the Audit Report that FEHD will explore ways to reduce its market stall vacancy rate. These measures would include the following :

(i) Enhance the operating environment of the markets, including improvement to the lighting, ventilation, drainage, signage, floor and wall finishes and so on;

(ii) assist the stall holders to improve their business viability by providing customer service training and organizing promotion activities;

(iii) improve and maintain a high standard of cleanliness in the markets to attract customers and improve overall viability;

(iv) rationalize the layout inside the markets, where possible, such as by merging adjoining vacant small stalls into larger ones to make them more attractive to potential tenants;

(v) reduce the upset price for stalls which have been vacant for a considerable period to make them more attractive to potential bidders;

(vi) identify alternative uses of market stalls by bringing in new types of trade, such as banking machines, tradesmen services, photo-processing and others; and

(vii) in cases where a market remains unviable with high vacancy rate, consider closing down part of or the entire market and use the space for other purposes.

(c) To follow up commitments made by the former Municipal Councils, FEHD has agreed to install air-conditioning systems in 18 public markets, subject to such proposal obtaining an 85% majority consensus from stall lessees. Based on the above criterion, we have obtained funding for providing air-conditioning in Yue Wan Market and are planning to seek funding for similar works in San Hui Market and Fa Yuen Street Market.

We maintain an open mind on the provision of these proposed air-conditioning systems. In view of the concerns expressed on value for money for such works, we shall review the need and cost-effectiveness of these projects and consult the Legislative Council Food Safety and Environmental Hygiene Panel in early 2004 on whether we should continue to proceed with the project in Yue Wan Market which has already been tendered, and whether to seek funding approvals for the other works. We shall inform PAC as soon as we have consulted the Panel and made a decision.

(d) In determining whether a market may be closed, FEHD would largely rely on the following criteria for its decision :

(i) the stall vacancy rate in the market and whether there are cost-effective measures which we can apply to improve this vacancy rate;

(ii) the size of the Government deficit in operating the market, and whether there are practical measures to reduce Government expenditure;

(iii) the availability of retail facilities in the vicinity of the market and the ability of the market stall holders to compete successfully with these facilities; and

(iv) the social considerations that require the retention of a public market in the locality despite heavy deficit, such as in cases where there is a general lack of retail facilities in the area.

We fully understand that closing a public market is a controversial issue, which may have significant impact on the existing stall holders and the community. We shall conduct detailed studies, bearing in mind the criteria set out above, and consider other possible options before proposing to close any markets. We shall consult the views of the District Councils and the stall operators.

Given that the cleansing and security services of the markets have been outsourced, the closing of a market will involve mainly the deletion of the supervisory posts. Generally, the closing of a market may involve the deletion of up to 1 Overseer, 3 Foreman and 3 Workman posts. We do not expect that we need to make any civil servant redundant because of market closure, outsourcing or transfer of market operation to private operators. Any surplus staff identified will be taken care of through redeployment or natural wastage.

(e) Please find at attached two tables setting out the location and floor areas of office accommodation provided to the former Urban Services Department and FEHD respectively since the commissioning of To Kwa Wan Market and Fa Yuen Street Market. Part 6 and Appendix I of the Audit Report have set out the various proposals that have been explored for putting these two vacant market floors to permanent use. The two floors are designed for market purpose, and it is not certain whether they are suitable for turning into offices, and if so,

what would be the conversion costs. FEHD will take the lead in exploring the feasibility of this option together with Government Property Agency and Architectural Services Department, and if this is not a desirable option, to identify possible alternative permanent uses.

Yours sincerely,

(Gregory Leung)
Director of Food and Environmental Hygiene

Annex I

Office Accommodation provided to ex-USD 1984 - 1999

Branch/Division/District	Location	Date of Allocation	Floor Area (m^2)	Remarks
Eastern District	Quarry Bay Municipal Services Building (MSB)	1988	527	District Environmental Hygiene Office (DEHO)
Wanchai District	Lockhart Road MSB	1987	2,709	DEHO
	Wong Nai Chung MSB	1996	116	DEHO
Central & Western Districts	Sheung Wan MSB	1989	2,094	DEHO
	Shek Tong Tsui MSB	1991	187	DEHO
	Smithfield MSB	1996	110	DEHO
Kwun Tong District	Shui Wo Street MSB	1988	1,200	DEHO
Kowloon City District	To Kwa Wan Market & Government Offices	1984	466	DEHO
	Kowloon City MSB	1988	1,500	DEHO
	Hung Hom MSB	1996	1,270	DEHO
Wong Tai Sin District	Tai Shing Street Market Building	1998	2,130	DEHO
Yau Tsim District	Kwun Chung MSB	1991	1,351	DEHO
Mong Kok District	Fa Yuen Street MSB	1988	1,802	DEHO

Branch/Division/District	Location	Date of Allocation	Floor Area (m^2)	Remarks
Sham Shui Po District	Po On Road MSB	1988	130	DEHO
	Pei Ho Street MSB	1995	2,447	DEHO
	Un Chau Street MSB	1985	1,323	DEHO

Annex II

Office Accommodation allocated to FEHD since 2000

I. Government Premises

Branch / Division / District	Location	Date of Allocation from Government Property Agency	Floor Area (m^2)	Remarks
Food and Public Health (FPH) Branch, Headquarters	Canton Road Government Offices (CRGO)	3/2000	416	Pest Control Advisory Section
Cemeteries and Crematoria Section, Headquarters	Cheung Sha Wan Government Offices	10/2000	119	Cremation Booking Office
Yuen Long District	Yuen Long Government Offices	3/2001	65	District Environmental Hygiene Office (DEHO)
Kwai Tsing District	Kwai Hing Government Offices	9/2001	136	DEHO

Branch / Division / District	Location	Date of Allocation from GPA	Floor Area (m^2)	Remarks
Administration and Development (A&D) Branch, Headquarters	CRGO	11/2001	776	Temporary accommodation for Complaints Management (CM) & Quality Assurance (QA) Sections
FPH Branch, Headquarters	CRGO	12/2001	150	Insect Control Operation Team and Dengue Fever Control and Prevention Unit
Eastern District	Chai Wan Municipal Services Building (MSB)	3/2001	3,880	DEHO
Islands District	Harbour Building, Central	4/2002	71.5	DEHO
FPH Branch, Headquarters	Middle Road Carpark Building	4/2002	240	Food Labelling Sub-Unit
Yuen Long District	Au Tau Departmental Quarters, Yuen Long	4/2002	90	DEHO
Sai Kung District	Sai Kung Government Offices	7/2002	105	DEHO
Central District	Western Wholesale Food Market	11/2002	97	DEHO

Branch / Division / District	Location	Date of Allocation from GPA	Floor Area (m^2)	Remarks
A&D Branch, Headquarters	Harbour Building, Central	3/2003	155	Special duties team
A&D Branch, Headquarters	Queensway Government Offices, Low Block	4/2003	413	Long-term accommodation for CM & QA Sections

II. Leased Premises

Branch / Division / District	**Location**	**Date of Allocation from GPA**	**Floor Area (m^2)**	**Remarks**
Sha Tin District	Chung Wo House, Chung On Estate, Ma On Shan	11/2000	62.5	DEHO
Sha Tin District	Tower II, Grand Central Plaza	12/2001	159	DEHO
Sai Kung District	Yan Lam House, Tsui Lam Estate, Tseung Kwan O	6/2002	43.4	DEHO
Sha Tin District	Lee Hing House, Lee On Estate, Ma On Shan	6/2003	17	DEHO

食物環境衞生署署長
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Ref : (18) in FEHD (CR) 2/3/90 Pt 3 30 December 2003

Clerk, Public Accounts Committee
(Attn : Mr Colin Chui)
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr Chui,

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 2 : Public markets managed by the Food and Environmental Hygiene Department

Thank you for your letters of 17 and 19 December 2003. The information required by the Public Accounts Committee is set out at below :

(a) The operating cost of $551.7 million for 2002-2003 has included accrued pension cost but not land cost and depreciation. We do not have any information on the assessed historical land cost of the 82 public markets. We are unable to take into account depreciation of the market buildings due to the difficulty in tracking down, for most of the markets, their historical construction costs. It can be, however, safely assumed that the operating deficit per annum will be much higher if the opportunity cost of the land concerned and depreciation of the buildings were to be included.

(b) The Market Foremen are responsible for conducting regular checks on the market stalls to ensure that the operators comply with tenancy terms and conditions, including the provision concerning non-trading. FEHD will issue verbal/written warnings to market tenants if the latter are found to be in breach of the non-trading rule. Repeated offenders may have their tenancy terminated. In the past three years, a total of 545 verbal warnings and 79 written warnings were issued to market tenants for cessation of stall business in excess of the permitted period. No tenancy agreement, however, has been terminated on this account as the breaches had been subsequently rectified.

(c) FEHD introduced in August 2003, on a trial basis, in three public markets a more flexible upset price-setting mechanism for long-standing vacant market stalls. Together, these three public markets accounted for, in 2002-2003, an operating deficit of $12.8 million. As at the end of November 2003, 182 long-standing vacant stalls in these three markets had been offered for letting at reduced upset price and 24 stalls (or 13%), including six stalls at 80% of the Open Market Rent (OMR) and 18 stalls at 60% of the OMR had been leased, generating an additional rental income of $258,720 per annum. This would help bring down the annual operating deficit by an equivalent sum.

Yours sincerely,

(Gregory Leung)
Director of Food and Environmental Hygiene

財經事務及庫務局
（庫務科）
香港下亞厘畢道
中區政府合署

FINANCIAL SERVICES AND THE TREASURY BUREAU
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來函檔號 Your Ref. : CB(3)/PAC/R41

5 December 2003

Ms Miranda HON
Clerk, Public Accounts Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Fax: 2537 1204)

Dear Ms HON,

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 2: Public markets managed by the Food and Environmental Hygiene Department

Thank you for your letter of 4 December.

As the Government Property Administrator rightly pointed out in paragraph 6.17 of the Audit Report, public markets are specialist buildings. In line with established policy, the responsibility for the management and use of such buildings rests with the user departments concerned.

With particular reference to the vacant premises cited in the Report, it should be noted that these consist entirely of market stalls. They were specifically designed and built as an integral part of the public markets which will continue to be operated and managed by the Food and Environmental Hygiene Department. Any proposals for their alternative use must therefore have due regard to the

compatibility of use, effective operation and efficient management of the public markets proper. With these considerations in mind, it would be appropriate for the Director of Food and Environmental Hygiene to continue to identify alternative use for the surplus market stalls and putting the vacant premises into beneficial use. The Government Property Agency will be pleased to offer assistance and advice in resolving the problems.

Yours sincerely,

(Miss Amy Tse)
for Secretary for Financial Services and the Treasury

c.c. Secretary for Health, Welfare and Food
Director of Food and Environmental Hygiene
Government Property Administrator
Director of Audit
Secretary for Financial Services and the Treasury
(Attn: Mrs Avia Lai and Mr Manfred Wong)

HIGHWAYS DEPARTMENT
5TH FLOOR, HO MAN TIN GOVERNMENT OFFICES,
88 CHUNG HAU STREET, HOMANTIN, KOWLOON, HONG KONG

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24 December, 2003

Clerk to Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn: Mr. Colin CHUI)

Dear Sir,

Re: The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 5: Provision of noise barriers for mitigating road traffic noise

Thank you for your letter dated 12 December 2003 relaying the request of the Public Accounts Committee for additional information in respect of the factors the Highways Department (HyD) had taken into account in deciding the award of the contract for the Tolo Highway widening project (THWP).

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. HyD decided to include the noise barriers concerned in the THWP contract based on the following considerations -

(a) the approved EIA report for the THWP stated that the noise barriers were to be built as part of the THWP. Therefore, HyD had to meet the requirement;

(b) HyD has prescribed different treatment to the noise barriers in PSK and Area 39 Development. For PSK, we 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 are 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 have to take into account other considerations such as cost, disruption to traffic and nuisance to the community.

I hope the above has explained the circumstance faced by the HyD in deciding on the noise barriers in the THWP.

Yours faithfully,

(MAK Chai-kwong)
Director of Highways

c.c. SETW (Attn: DS(T)1
DS(E)2)

HIGHWAYS DEPARTMENT
5TH FLOOR, HO MAN TIN GOVERNMENT OFFICES,
88 CHUNG HAU STREET, HOMANTIN, KOWLOON, HONG KONG

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27 January 2004

By fax and post

Clerk to Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn : Mr. Colin CHUI)

Dear Sir,

Re: The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 5: Provision of noise barriers for mitigating road traffic noise

Thank you for your letter dated 15 January 2004 relaying the request of the Public Accounts Committee for additional information in respect of the cost of removal and trimming down of installed noise barriers built for Tai Po Area 39, and the installation cost involved as stated in paragraph 2.37 of the Audit Report.

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 & 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.

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.

/As .....

As the erection and removal processes are similar and both would require similar traffic management, the cost for trimming of the steel posts and the re-erection cost are therefore extra costs, and hence the cost of removal and trimming down was higher than that of installation.

Yours faithfully,

(MAK Chai-kwong)
Director of Highways

c.c. SETW (Attn.: DS(T)1
DS(E)2)
Director of Audit

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環境保護署總部
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22 December 2003

Clerk of Public Accounts Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn.: Mr. Colin Chui)

Dear Mr. Chui,

The Director of Audit's Report on the
Results of value for money audits (Report No. 41)
Chapter 5 : Provision of noise barriers for mitigating road traffic noise

With reference to your letter of 12 December 2003, please find attached a memo dated 9 February 1998 with the draft minutes of the Environmental Impact Assessment Study Management Group held on 6 February 1998 and another memo dated 23 Februray 1998 confirming the minutes. Chinese translation of the document are also attached. The soft copies will be forwarded to you via email as requested.

Yours faithfully,

(Robert J.S. Law)
Director of Environmental Protection

c.c. w/e Secretary for the Environment, Transport and Works
Director of Territory Development
Director of Lands
Director of Audit

Internal – AD(EA)

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Environmental Protection Department

環境保護署

Distribution

TO:
(Attn.:)

YOUR REF.: ( ) in

YOUR FAX NO.:

FROM: Matthew Chan

OUR REF.: ( ) in EP 2/N1/29 V

TEL NO.: 2835 2163

DATE: 9.2.98

OUR FAX NO.: 2591 0558

Trunk Road T7 in Ma On Shan
Environmental Impact Assessment (EIA) Study

Further to the EIA SMG meeting for the captioned project on 6.2.98, please find attached the draft minutes of meeting for your comments. Please advise your comments, if any, 19.2.98.

(Matthew Chan)
Environmental Protection Officer
for Director of Environmental Protection

Distribution.

	Attention	Fax
PM/NTE, TDD	Mr. W. H. Kwan	2721 8630
SLA, HyD	Mr. Vicent Luk	2714 5216
DO/ST	Mr. Harvey Lau	2695 4305
NMPG/EPD	Mr. Alfred Lo	2802 4511
MCAL	Dickson Lo	2375 6399
ERM	Mr. Freeman Cheung & Mr. Richard Kwan	2316 7919

c.c.

	Attention	Fax
Housing Bureau	Mr. C. W. Chan	2509 9988
GLA/HQ (LS&A)	Mr. Edmond Yiu	2523 4973
DAF	Mr. K. T. Chan	2311 3731
DRS	Mr. K. F. Tang	2602 1480
CTE/NT, TD	Mr. W. T. Cheng	2381 3799
CHE/NT, HyD	Mr. Y. W. Wong	2715 3573
DLO/ST	Mr. T. C. Cheung	2602 4093
DLO/TP	Mr. C. Y. Chow	2652 1187
DO/TP	Mr. K. F. Mak	2650 9896
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CE/MS, DSD	Mr. C. K. Chu	2771 9640
CE/MNE, WSD	Mr. H. C. Cheung	2789 2149

Internal S(AP)2 S(WP)4 S(NP)3 S(TA)3

DRAFT

Trunk Road T7 in Ma On Shan
Environmental Impact Assessment Study
Minutes of Study Management Group Meeting on 6 February 1998

Date : 6 February 1998
Time : 2:30 p.m. - 6:00 p.m.
Venue : EPD's Meeting Room at Room 2501, Southorn Centre, Wanchai
Attendance :

Name	Department/Company	Telephone	Facsimile
Mr. Lawrence Ngo (Chairman)	TAG, EPD	28351751	25910558
Mr. W. H. Kwan	PM/NTE, TDD	23011372	27218630
Mr. Vincent Luk	Landscape Unit, HyD	27623389	27145216
Mr. Harvey Lau	STDO	26048078	26954305
Mr. Alfred Lo	NMPG, EPD	25946573	28024511
Mr. Dickson Lo	MCAL (Consultants)	23754455	23756399
Mr. Freeman Cheung	ERM-HK Ltd (Consultants)	27229704	23167919
Mr. Richard Kwan	ERM-HK Ltd (Consultants)	27229791	ditto
Mr. James Worthington	Hassell (Consultants)	25529098	
Mr. Matthew Chan (Secretary)	TAG, EPD	28352163	25910558

Minutes of Meeting

Introduction	Action
1. As the EIA Study for the proposed Trunk Road T7 project is approaching the completion stage, with draft EIA Final Report, Environmental Monitoring & Audit (EM&A) Manual and Executive Summary (English version) were produced and distributed to each of the EIA SMG members, the Chairman advised that the purpose of the meeting was to discuss the reports and to consider for the endorsement of the EIA report.	
2. Prior to the discussion, the Consultants provided a brief of the project and the key findings of the EIA study.	
Construction Impact	
3. The EIA study concluded that, with implementation of the recommended mitigation measures, the construction air quality, noise, water quality and waste impacts could be controlled to within established standards.	

		Action
4.	On ecological impact, the EIA study concluded that the Ma On Shan Country Park and the nearby Sites of Specific Science Interest (SSSI) would not be affected. Although some secondary woodland and plantation woodland would be affected, the EIA study recommended mitigation measures to minimise the impact. The measures included minimisation of the woodland encroachment, avoidance of unnecessary tree felling and on-site compensatory woodland replanting.	
	Operational Impact	
5.	The EIA study concluded that the operational air quality and water quality impacts would be minimal.	
	Traffic Noise	
6.	The Consultants presented figures (attached) showing the revised traffic noise mitigation measures package. With the proposed noise mitigation measures, it was found that :-	
	Area 86B - Based on the current layout of the proposed Sandwich Class Housing, traffic noise levels of the dwellings facing the Road T7 will comply HKPSG standard;	
	Kam Ying Court - Traffic noise levels of the dwellings facing the Road T7 will comply HKPSG standard; no indirect technical remedy in form of acoustic insulation is required.	
7.	For the STTL 446 site, 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 DLO/ST informing such recommendation for them to pass the message to the developer for necessary action. For land premium implication, if any, PM/NTE will follow up with DLO/ST later.	EPD TDD
8.	For the proposed rail depot and residential development at Lee On, with the recommended direct noise mitigation measures, there might be marginal exceedance at one particular floor (20th floor). The Chairman suggested and the Consultants agreed to re-check the prediction to see if the exceedance really existed.	MCAL

		Action
9.	After discussion, all attending parties agreed the recommended package of traffic noise mitigation measures. The Consultants would discuss and agree with NMPG/EPD about the text of traffic nose.	MCAL
	Visual and Landscape	
10.	The Consultants briefed the recommended mitigation measures for the potential landscape and visual impacts of the project. Mitigation measures included replanting along slope of the road alignment and the interchange area. It was estimated that area of about 6.5 ha would be available for woodland replanting and landscaping works. In addition, tunnel option would be used at the interchange to avoid excessive slope cut-back and hence minimise the visual impact. Transparent noise barriers would be suitably designed to harmonise with the surrounding environment so as to minimise the visual impact of the noise barriers.	
11.	LU/HyD agreed with the assessment and mitigation measures of the landscape and visual impacts. LU/HyD advised some comments on the figures showing the recommended mitigation measures for landscape and visual impacts and the Consultants would revise accordingly.	MCAL
12.	TDD would make submissions to ACABUS in due course.	TDD
	Access to Ma On Shan Country Park	
13.	Before the meeting, AFD raised a concern over phone to EPD about the potential blockage of access to the Ma On Shan Country Park. To address it, the Consultants assured and TDD undertook that access road to Ma On Shan Country Park would be maintained during construction and operational phases of the project. In the project, a subway was proposed to provide access to the Country Park.	TDD
	Maintenance Responsibility of Replanted Woodland	
14.	TDD advised that, within the establishment period (usually 12 - 24 months) after the completion of the project construction, the contractors would be responsible for the maintenance of the woodland replanted. After that period, the guidelines as stated in the WBTC 24/94 "Tree Felling" would be followed. Therefore, within 30m of the road alignment, RSD would be responsible for the tree maintenance. There might be some grey area of maintenance responsibility of the area outside 30m of the road alignment. The Consultants advised that low maintenance species would be planted. The Consultants would check the area boundary of replanting in this project. If there were some areas outside the RSD's remit, TDD would start the discussion with relevant parties to sort out the responsibility issue.	MCAL TDD

	Action
General Comments on EIA Report	
15. In addition to text amendments as requested and suggested by SMG members, the Chairman requested and the Consultants would take the following actions on the EIA report :-	
i. double-side printing for all EIA documents;	
ii. detach the summary of Comments and Responses from the forthcoming EIA Final Report; and	
iii. add the Environmental Mitigation Measures Implementation Schedule in the EIA Final Report.	
EM&A Manual	
16. LU/HyD commented that there should be clear procedures stated in the Manual to monitor the proper implementation of mitigation works for landscape and visual impacts, to define the responsibility party and to protect the existing tree from unnecessary felling.	
17. The Consultants responded that TDD and the Environmental Manager would be responsible for the proper implementation of mitigation measures. Anyway, the Consultants would revise the Implementation Schedule of the Manual to emphasize the protection of existing tree from unnecessary felling. In addition, TDD undertook to update the EM&A Manual in due course.	TDD MCAL
18. Based on the revised traffic noise mitigation package, the Consultants would revise the EM&A Manual accordingly. The Consultant would also revise the Manual as per EPD's comments given vide the fax dated 6.2.98.	MCAL
Executive Summary (ES)	
19. The Consultants would revise the ES as if necessary as per the latest version of the EIA Final Report.	MCAL
District Board Consultation	
20. TDD would submit the proposed T7 project to the Development and Housing Committee of the Shatin District Board (STDB) for consultation on 24.2.98. Based on the experience in the previous STDB consultation in March 97, the members would likely to raise concerns on the traffic noise impact. TDD, with the assistance by STDO, would consider for a pre-meeting to lobby support from some STDB members.	TDD

	Action
Delivery of Final EIA Documents to PELB	
21. TDD would deliver 15 copies of EIA Final Report and EM&A Manual, and 50 copies of ES to PELB by 11.2.98 for the ACE Consultation on 2.3.98.	TDD
Undertaking of Implementation of Mitigation Measures	
22. TDD undertook to implement all environmental mitigation measures recommended in the EIA study.	TDD
Endorsement of the EIA Report	
23. Having considered the views of SMG members, the Chairman concluded that the EIA report was considered as endorsed by the SMG, subject to the incorporation of comments as discussed above.	
- end -	

By Fax Only (Fax : 2721 8630)

MEMO

From Director of Environmental Protection	**To** PM/NTE, TDD (Attn : CE/ST)
Ref. ( ) in EP2/N1/29 V	
Tel No. 2835 1751 (Fax No. 2591 0558)	**Your Ref.**
Date 23 February 1998	**Dated**

Trunk Road T7 in Ma On Shan
Environmental Impact Assessment (EIA) Study

Further to our fax dated 9.2.98 enclosing the draft minutes of the EIA Study Management Group (SMG) meeting held on 6.2.98 for the captioned project, please be informed that no comments were received on the draft minutes up to date.

2. As such, please treat the minutes as a confirmed minutes, and the captioned EIA Study is considered as endorsed by the EIA SMG.

3. By copy of this memo, would DLO/ST please draw attention on paragraph 7 of the minutes. Grateful if you can inform the developer of STTL 446 about the recommended noise barrier at the Trunk Road T7 in front of his/her site so that the developer may take appropriate action as if necessary.

(Matthew CHAN)
Senior Environmental Protection Officer (Atg.)
for Director of Environmental Protection

c.c	Attention	Fax
Housing Bureau	Mr. C. W. Chan	2509 9988
GLA/HQ (LS&A)	Mr. Edmond Yiu	2523 4973
DAF	Mr. K. T. Chan	2311 3731
DRS	Mr. K. F. Tang	2602 1480
CTE/NT, TD	Mr. W. T. Cheng	2381 3799
CHE/NT, HyD	Mr. Y. W. Wong	2715 3573
DLO/ST	Mr. T. C. Cheung	2602 4093
DLO/TP	Mr. C. Y. Chow	2652 1187
DO/ST	Mr. Harvey Lau	2695 4305
DO/TP	Mr. K. F. Mak	2650 9896
DPO/STN	Mr. K. T. Ng	2691 2806
CE/MS, DSD	Mr. C. K. Chu	2771 9640
CE/MNE, WSD	Mr. H. C. Cheung	2789 2149
SLA, HyD	Mr. Vincent Luk	2714 5216

Internal S(AP)2 S(WP)4 S(NP)3

APPENDIX 19

地 政 總 署
LANDS DEPARTMENT

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本署檔號 Our Ref: LD 1/ST/LS/95 (TC) III
來函檔號 Your Ref: CB(3)/PAC/R41

Urgent By Fax & By Post

22 December 2003

Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn : Mr Colin CHUI)
[Fax: 2537 1204]

Dear Sir,

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 5 : Provision of noise barriers for mitigating road traffic noise

I refer to your letter of 12 December 2003 and in response to the points raised in the second paragraph thereof (reproduced hereunder for easy reference) would advise as follows.

"The Committee noted that in February 1998, when making the 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, the Environmental Impact Assessment (EIA) Study Management Group agreed that the Territory Development Department (TDD) should follow up with the Lands Department (Lands D) on the land premium implications (paragraph 4.11 of the Audit Report refers). The TDD said that in the same month, the Environmental Protection Department had copied the minutes of the EIA Study Management Group Meeting to the Lands D (paragraph 4.12 (a) refers). In this connection, the Committee would like to know whether the Lands D had taken any follow-up actions on the matter; if so, of the details of the actions taken and the relevant documents; if not, the reasons for that."

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

"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 to 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."

3. 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 Environmental Protection Department (EPD) as part of its environmental mitigation measures. However on 6 February 1998 at a meeting of the Environmental Impact Assessment Study Management Group (SMG) for Road T7, which was chaired by EPD (Lands Department was not represented on this Group), it was stated in paragraph 7 of the minutes that "it was understood that the developer would install a 5-metre 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 5-metre 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 DLO/ST informing such recommendation for them to pass the message to the developer for necessary action. For land premium implication if any, PM/NTE will follow up with DLO/ST later."

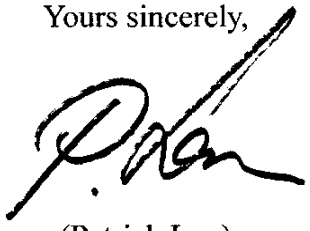
4. On 23 February 1998, EPD (by copy of a memorandum to PM/NTE) drew the attention of DLO/ST to paragraph 7 of the aforementioned minutes and asked that the developer of STTL 446 be informed about the recommended noise barrier at Road T7, so that the developer might take appropriate action as necessary. 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, if any, there is 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 in paragraphs 5 and 6 below, had this issue been considered at that time, the outcome would not have been different from the present situation.

5. On 12 June 2003, DLO/ST received a memo of the same date from PM/NTE referring to the memorandum from DEP of 23 February 1998 in paragraph 4 above 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.

6. The decision that the noise barrier within the site STTL 446 was no longer necessary was made at the SMG Meeting. 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 EPD. With the certification by 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 TDD fronting STTL 446 would have been entirely outwith the Conditions of 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.

7. Arising from this Audit Report, Lands D has on 8 December 2003 issued LAO Technical Circular 734 (copy attached), applicable to all relevant cases not yet executed to add a related provision such that 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 Government the required costs as agreed.

Yours sincerely,



(Patrick Lau)
Director of Lands

c.c. Secretary for the Environment, Transport and Works
Director of Territory Development
Director of Environmental Protection
Director of Audit

LANDS ADMINISTRATION OFFICE

Technical Circular No. 734

Clause allowing Government to provide Environmental Mitigation Measures in place of the Grantee/Purchaser

At the request of departments, such as Environmental Protection Department, special conditions have been or may in the future be incorporated into our land documents requiring the Grantee/Purchaser to provide certain environmental mitigation measures at his own expense.

2. Arising from an Audit Report related to the provision of noise barriers, it is important to ensure that in such circumstances, a related provision should also be incorporated into the land document 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 Government the required costs as agreed. This provision should be implemented with immediate effect to all applicable cases not yet executed. If possible such provision should also be extended to cases where binding agreement had been reached.

3. A sample clause at Appendix I can be used as a reference.

(Albert CHEUNG)
Senior Estate Surveyor/
Technical Information
8 December 2003

Distribution

All professional staff in LAO) *by cc:Mail &*
SPLE, PLEs, CLEs, SLEs and LEs) *one hard copy to*
CEstO, PEstOs, SEstOs and EstOs) *each DLO/Section*
STA
DD/SM, AD/SM, CLSs and SLSs
D of Territory Development
D of Planning
D of Building
ETWB

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SETW
ICAC
D of A
DHA (Attn : AO(1))
LD 18/5010/96 VII

Clause allowing Government to provide Environmental Mitigation Measures in place of the Grantee/Purchaser

(a) [*Provisions for noise mitigation measures for the particular case with Noise Mitigation Features defined*]

(b) Notwithstanding sub-clause (a) of this Special Condition, the Director may at his discretion, at the sole expense of the Purchaser but subject to the prior agreement of the Purchaser as to the design, construction programme and cost for the design, construction and maintenance therefor, design, provide, construct and maintain the Noise Mitigation Features within the lot or on Government land.

(c) For the purpose of carrying out the works referred to in sub-clause (b) of this Special Condition, the Government, its officers, agents, contractors, workmen or other duly authorized personnel shall have the free and uninterrupted right at all reasonable times to enter into the lot or any part thereof and any building or buildings erected or to be erected thereon. The Government, its officers, agents, contractors, workmen or other duly authorized personnel shall have no liability in respect of any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the Purchaser arising out of or incidental to the exercise by him or them of the right of entry conferred under this sub-clause, and no claim shall be made against him or them by the Purchaser in respect of any loss, damage, nuisance or disturbance.

地 政 總 署
LANDS DEPARTMENT

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圖文傳真 Fax: 2868 4707
本署檔號 Our Ref: (14) in LD 1/ST/LS/95 (TC) IV
來函檔號 Your Ref: CB(3)/PAC/R41

Urgent By Fax & By Post

9 February 2004

Clerk of Public Accounts Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn : Mr Colin Chui)
[Fax: 2537 1204]

Dear Sir,

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 5 : Provision of noise barriers for mitigating road traffic noise

I refer to your letter of 4th February 2004 and in response to the points raised in the second paragraph thereof (reproduced hereunder for ease of reference) would advise as follows.

In the above connection, the Committee would like to know, in the Lands D's assessment, 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 is subject to agreement of the Grantee/Purchaser concerned.

We note 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."

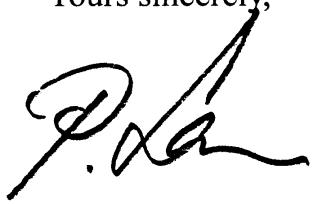
It is considered appropriate that the right of the Government in such provisions should be subject to the agreement of the grantee/purchaser because of the following considerations:

(a) where the precise form of the environmental mitigation measures have not been specified in the land grant, the form, timetable and cost of such measures adopted or proposed to be adopted by the grantee may 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.

Yours sincerely,



(Patrick Lau)
Director of Lands

c.c. Secretary for the Environment, Transport and Works
Director of Territory Development
Director of Environmental Protection
Director of Audit

本署
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Environmental Protection Department
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28th Floor, Southorn Centre,
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Wan Chai, Hong Kong.

環境保護署總部
香港灣仔
軒尼詩道
一百三十號
修頓中心廿八樓

21 January 2004

Clerk of Public Accounts Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn.: Mr. Colin Chui)

Dear Mr. Chui,

The Director of Audit's Report on the
Results of value for money audits (Report No. 41)
Chapter 5 : Provision of noise barriers for mitigating road traffic noise

Please find attached the information in both English and Chinese as requested in your letter of 15 January 2004.

Yours faithfully,

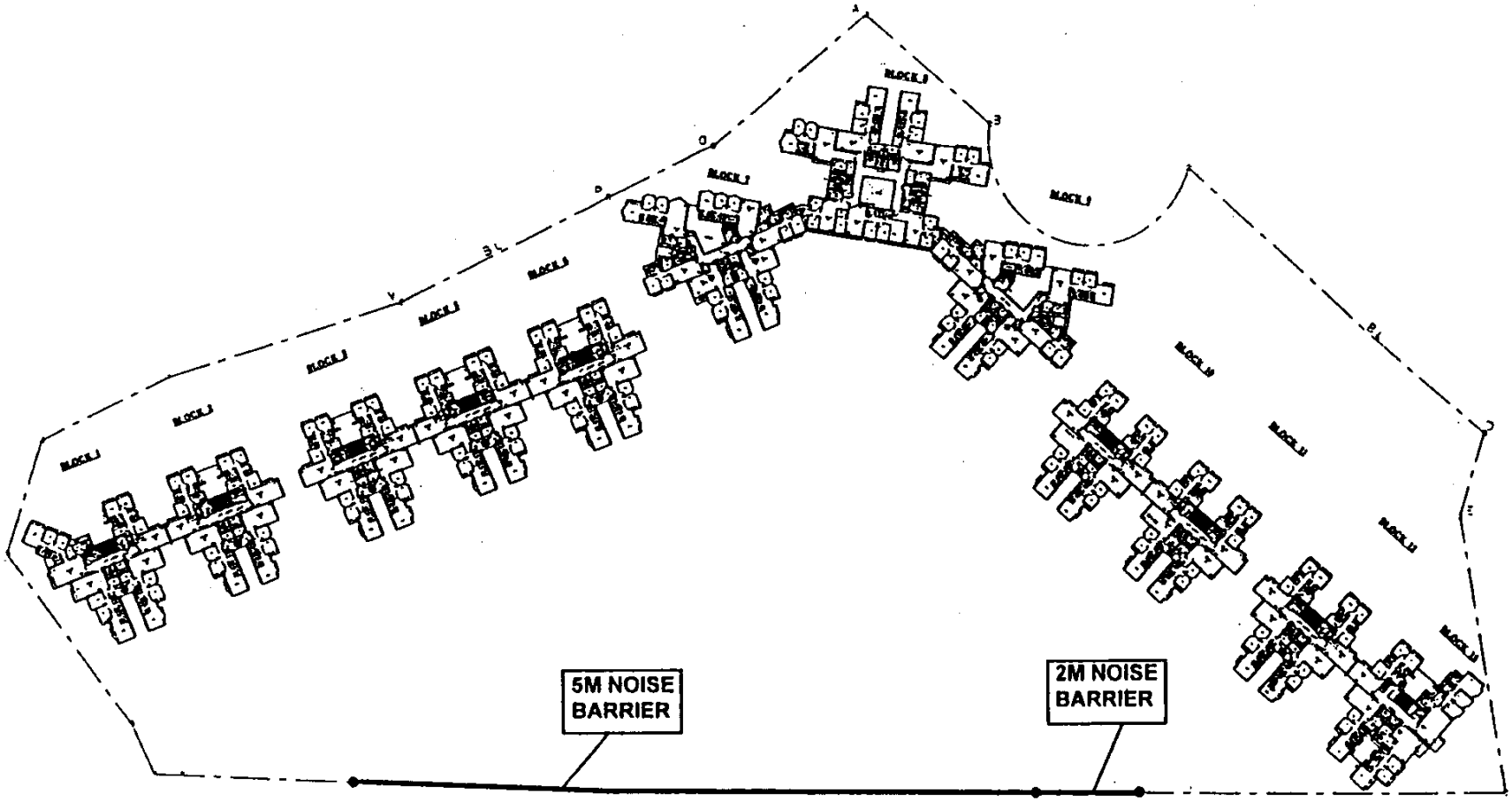
(Robert J.S. Law)
Director of Environmental Protection

c.c. w/e Secretary for the Environment, Transport and Works
Director of Territory Development
Director of Lands
Director of Audit

(a) The EIA Study Management Group 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 DEP 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, Appendix IV). Land premium issues were generally not within the ambit of the Group and EPD has no authority over such matters. In accordance with the discussion and agreement at the EIA Study Management Group meeting on 6.2.98, 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.

(b) 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 is that proponents of new road projects are 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). TDD as proponent for the T7 project has acted according to the policy and recommended a package of noise barriers to address the noise problem in their Environmental Review Report under the Environmental Permit application in May 2000. The construction of the proposed barriers was then included as a condition in the Permit and became a legal requirement under the EIA Ordinance (Cap.499).

As requested please find attached the drawing showing the noise barriers proposed by the developer, which is an extract from the traffic noise impact assessment accepted by EPD in December 1997.



Proposed Residential Development in STTL 446 Area 108, Ma On Shan- TNIA

Proposed Noise Barrier on Southern Site Boundary (Plan)

Fig.No.	Page No.
10b	
Scale: NTS	Date: 10/97

AEC

Ref: PELB(E)55/10/13(88)II
WB(W)271/32/05(88)II

Planning, Environment and
Lands and Works Branches
Government Secretariat
Murray Building
Garden Road
Hong Kong

21 April 1992

PLANNING, ENVIRONMENT AND LANDS BRANCH
TECHNICAL CIRCULAR NO. 2/92

WORKS BRANCH TECHNICAL CIRCULAR NO.14/92

Environmental Impact Assessment of Major Development Projects

Introduction

This circular supersedes Lands and Works Branch Technical Circular No. 9/88 of 5 May 1988, and provides updated procedures for application of the environmental impact assessment (EIA) process to public sector projects. The circular does not deal with procedures for hazard assessment which are outlined in the Circular for the Coordinating Committee on the Land-use Planning and Control relating to Potentially Hazardous Installations. Similar procedures for reviewing private sector projects are dealt with in Environmental Protection Department Advice Note 2/90 "Application of the Environmental Impact Assessment Process to Major Private Sector Projects". This circular clarifies and puts into writing current practice, and refines it as necessary. Procedures for release of the results of EIA studies to the public are contained in Planning, Environment and Lands Branch General Circular No. 2/92, "Public Access to Environmental Impact Assessment Reports".

2. The EIA process is a structured and systematic approach to the assessment and control of possible environmental impacts arising from a project, and can be applied at all stages of the project, from conception and design to construction, operation and ultimate decommissioning.

3. Many public sector projects have the potential to cause environmental problems because of their impacts on the environment or because they locate sensitive receivers near a source of pollution. The potential environmental consequences of major public sector projects need to be considered at all stages of project planning in order to prevent pollution problems, minimize environmental damage and avoid expensive remedial measures.

4. Public sector projects are subject to controls under existing environmental protection legislation. It is Government's intention to introduce legislation for applying the environmental impact assessment process to major public and private sector development projects. Until this requirement is introduced into legislation, the administrative procedures in this circular should be followed by Government departments and agencies, including corporations, authorities and other bodies wholly owned by Government.

Summary of Procedures

5. If a project is likely to have an adverse impact on the environment (including people and the natural environment), the proponent shall notify the Director of Environmental Protection (DEP) of the project at an early stage of project planning and development. The proponent is the department, agency or body, directly responsible for the project development at different stages of activities such as feasibility study, design and implementation. For example, during the project feasibility study, the department who evaluates the need and subsequently initiates the project shall be the proponent. As the project advances into the design stage, the proponent shall be the department who carries out the design work by their in-house staff or who employs the project development consultant. An illustration of the proponent as defined at different stages of project activities for some typical development projects is given in Appendix I.

6. Examples of projects for which notification is required are listed in Appendix II. DEP shall also be notified if a project to provide housing, educational, health care, recreational and similar facilities, is proposed for a site which could experience adverse environmental impacts from another development. The proponent for a project which is to be implemented through Public Works Programme procedures (as detailed in Financial Circular No. 8/90) shall notify DEP at the Category C stage of the Public Works Programme. If project planning is initiated outside normal PWP procedures, DEP should

be notified of the project immediately. Where a proponent is in any doubt about the need to notify, he should consult DEP.

7. DEP shall undertake an "environmental review" of the proposed project, based on information about the project. A project profile, which conforms to the guidelines in Appendix III, should be provided by the proponent. The environmental review is a preliminary screening exercise to decide whether an EIA study is required and, if so, what matters it will address. This will not involve a detailed assessment.

8. If an EIA study is needed, DEP shall prepare a study brief for the proponent with details of the study requirements and the proponent may wish to discuss it with DEP if any disagreement arises. DEP shall also establish a study management group representing the various interests within Government, to guide and review the work of the EIA study.

9. The EIA Study Brief will require the EIA study to identify the environmental and social advantages of the project, as well as disbenefits and mitigation measures proposed for it. The proponent shall be responsible for funding and completing the study in accordance with the Study Brief. Likely costs of the necessary studies will be identified by discussion between DEP and the proponent during preparation of the project profile. The proponent must ensure that funds for necessary studies are included in the project estimates.

10. The proponent, or any department, agency or contractor to whom responsibility for implementation is given by the proponent, is responsible for:

(a) undertaking the EIA study (usually through employment of environmental consultancy specialists although it is normal and desirable for this work to be taken on by the in-house environmental consultancy staff of the engineering consultancy firm) [DEP holds a list of environmental consultancy firms which can be consulted by proponents];

(b) implementing the necessary pollution control and environmental protection measures (called "mitigation measures") identified in the study;

(c) undertaking an environmental monitoring and audit programme to ensure that the project's expected environmental performance is achieved. The funding and responsibility for the implementation of monitoring and audit programme

during the construction period shall lie with the executing department; and

(d) taking any necessary remedial measures to address unanticipated or unacceptable impacts arising during project construction and operation.

11. When an environmental monitoring and auditing programme at the post-construction stage is recommended by the EIA study and agreed by DEP, DEP shall advise the proponent of the scope and funding requirements of the programme for incorporation into the PWSC paper when upgrading the project to Category A. Upon approval, funds will be allocated under the project.

12. The actual arrangements for implementing the programme may vary from project to project, depending on the nature of the work, and should be agreed between the proponent and EPD. In many cases, it would be appropriate for the work to be carried out by consultants, appointed either by the proponent or EPD, depending on circumstances. The project vote will be open normally for about two years after the commissioning of the project to provide funds for the programme. If any further extension of the programme is needed, the funding arrangements will have to be discussed and agreed between EPD and the proponent.

13. The EIA process is a planning tool, and not merely a means for identifying measures to reduce unacceptable environmental impacts. If the adverse impacts of a project are predicted to be very serious and cannot be reduced to an acceptable level, the project should be abandoned in its current form, or substantially modified to achieve acceptable environmental performance. In such cases the proposal shall be referred by DEP to the Secretary for Planning, Environment and Lands (SPEL) and the relevant Policy Secretaries as soon as its environmental unacceptability is known. If the EIA report shows that the project cannot be implemented without serious environmental impacts, even with all reasonable mitigation measures taken, or unless mitigation measures are taken but at a cost unacceptable to the proponent department, DEP shall advise SPEL accordingly and recommend whether the project should be allowed to proceed.

14. The proponent shall allocate sufficient time for the EIA study to be completed before irrevocable development decisions which have environmental implications are taken. If for any reason the proponent feels that this is not possible, he shall advise SPEL

accordingly. DEP shall also seek the proponent's agreement to implement the mitigation measures.

15. If agreement is not reached in cases mentioned in paragraphs 12, 13 and 14 above, DEP shall inform SPEL who shall then seek to resolve the disagreement in consultation with the proponent, DEP and the relevant Policy Secretaries. If full resolution is not achieved, the unresolved issues shall be referred to the Chief Secretary for determination.

16. Detailed procedures for notification, environmental review and environmental impact assessment study are outlined in Appendix IV.

Reference in the Public Works Programme

17. When a submission is made to PWSC to upgrade a project to Category A in order to proceed from detailed design to tender or construction, the proponent shall make reference to the outcome of the environmental review and the results of the EIA study (when required). This reference shall indicate whether environmental protection measures recommended by DEP or (where applicable) mitigation measures and monitoring and audit requirements arising from EIA studies, are included in the detailed planning, design and budget of the project.

(A G Eason)
Secretary for Planning,
Environment and Lands

(James Blake)
Secretary for Works

Proponent as Defined at Different Stages of the Project Activities

Facilities	Feasibility Study	Design	Implementation	Maintenance	User
Transport infrastructure, termini, and depots	TD/TDD HyD	HyD/TDD	HyD/TDD	HyD S	TD
New Town Development	TDD	TDD	TDD	Various Depts	Various Depts
Housing Development	HD	HD	HD	HD	HD
Kai Tak Airport facilities	CAD/CED/ASD	ASD/CED/EMSD	ASD/CED/EMSD	ASD/CED/EMSD	CAD
Reclamations, typhoon shelters and breakwaters	MD/TDD/CED	TDD/CED	TDD/CED	CED	MD
Sewage and drainage facilities	EPD/DSD/TDD	DSD/TDD	DSD/TDD	DSD	DSD
Sewage treatment facilities	EPD/DSD/TDD	DSD/TDD	DSD/TDD	DSD	DSD
Water supply facilities and water treatment plants	WSD	WSD	WSD	WSD	WSD
River training and diversion, and flood protection works	BLD/TDD/CED/DSD	BLD/TDD/CED/ DSD	TDD/CED/DSD	CED/DSD	Various Depts
Waste collection, storage	EPD/USD/RSD/ASD	ASD/USD/RSD	ASD/USD/RSD	ASD/USD/RSD	USD/RSD
Waste treatment and disposal facilities	EPD/EMSD/CED	EPD/EMSD/CED	EPD/EMSD/CED	EPD/EMSD	EPD
New abattoirs and crematoria	CED/USD/RSD	CED/EMSD	ASD/EMSD	EMSD	USD/RSD
Marine and Land borrow areas and marine dumping ground	CED /TDD	CED/TDD	CED/TDD	CED	Various Depts
Sporting and recreational facilities.	USD/RSD/TDD	ASD/TDD	ASD/TDD	ASD	USD/RSD

Appendix II

LIST OF MAJOR GOVERNMENT PROJECTS REQUIRING NOTIFICATION

1. Major transport and land use planning studies
2. New town development studies, urban redevelopment proposals, and planning of new industrial areas
3. Major road and rail projects, including major road improvement schemes
4. Development of road, rail, marine and air transport termini and depots
5. Development of port facilities, including container terminals and barge loading areas
6. Construction of reclamations, typhoon shelters and breakwaters
7. Construction of sewerage and drainage facilities
8. Sewage treatment facilities and pumping stations
9. Schemes for re-use of treated sewage effluent
10. Construction of tunnels, bridges, piers, nullahs and canals
11. Water supply projects and water treatment plants
12. River training and diversion, and flood protection works
13. Construction of oil, gas and water and other pipelines
14. Electricity transmission lines and large sub-stations
15. Waste collection, storage, treatment and disposal facilities
16. Extraction of materials from marine or land borrow areas, and schemes for disposal of marine muds
17. Development of mariculture
18. Development of major sporting and recreational facilities
19. Proposals for new abattoirs and crematoria
20. Major housing development projects near major roads or industrial areas.

Appendix III

PROJECT PROFILE
INFORMATION REQUIRED FOR NOTIFICATION OF PROJECTS

Use of the following checklist for preparing a project profile will ensure that most of the significant environmental factors of a proposed development are able to be considered by DEP in deciding whether an EIA study is required and what matters it will address. This decision will be made as a result of an environmental review of the information in the project profile.

2. The checklist is reasonably thorough, but it is for guidance only. If the proponent feels that additional or alternative types of information would also be useful, this information should also be provided in the profile.

3. Wherever appropriate, the information should be accompanied by plans, process flowcharts, diagrams, illustrations and other information which may assist in carrying out the environmental review.

4. In preparing the proposal and hence the project profile, the proponent should take into account the provisions of the environmental chapter, Chapter 9, of the Hong Kong Planning Standards & Guidelines.

BASIC INFORMATION

Project title

Purpose and nature of the project

Name of project proponent

Location of project (include plans)

Name and telephone number of contact person(s)

Project budget

OUTLINE OF PLANNING AND IMPLEMENTATION PROGRAMME

How will the project be planned and implemented? (consultant, contractor or in-house)

What is the project time-table?
(e.g. for appointment of consultants, finalizing of design, commencement of construction, commissioning and operation)

Are there any interactions with broader programme requirements or other projects which should be considered?

POSSIBLE IMPACT ON THE ENVIRONMENT

Outline any processes involved, including process flow diagrams, site plans, storage requirements, and information on emissions and discharges

Comment on any activities associated with the proposed project which may result in the following types of environmental impacts or issues, either during the construction or operation of the project:

gaseous emissions
dust
odour
noisy operations
night-time operations
traffic generation
liquid effluents, discharges, or contaminated runoff
generation of waste or by-products
storage, handling, transport, or disposal of hazardous materials or wastes
risk of accidents which would result in pollution or hazard
disposal of spoil material, including potentially contaminated material
disruption of water movement
unsightly visual appearance

MAJOR ELEMENTS OF THE SURROUNDING ENVIRONMENT

Consider sensitive receivers and sensitive parts of the natural environment including:

residential developments
temporary housing areas
educational institutions, including schools, kindergartens and nurseries
health care facilities, including hospitals, clinics, and homes for the aged
places of worship, including temples and churches
recreational facilities including amphitheatres, stadiums, recreational grounds and sporting clubs
agricultural areas
water courses and confined bodies of water
beaches, gazetted or otherwise
water catchment areas and gathering grounds
ground-water resources

fisheries and mariculture areas
industries which are sensitive to pollution
airsheds with limited capacity to disperse pollution
country parks
areas of conservation value, including woodlands, wildlife habitat, ecologically significant areas, and sites of cultural, archaeological and scientific interest
fung shui
places of high visual value

Outline the major elements of the surrounding environment which might affect the area in which the project is proposed to be located, such as:

existing pollution blackspots
nearby industrial operations
nearby trunk roads, and primary or secondary distributors
nearby noisy commercial or community activities
aircraft noise
rail noise
existing or planned waste handling, treatment and disposal facilities
potentially hazardous installations
noisy or dusty open storage uses

ENVIRONMENTAL PROTECTION MEASURES TO BE INCORPORATED IN THE DESIGN AND ANY FURTHER ENVIRONMENTAL IMPLICATIONS

Consider measures to minimize environmental impacts or enhance the environment, including the following:

pollution control technology
waste management systems and practices
potential for waste and wastewater minimization
acoustic barriers and insulation
buffer zones and landscaping
site layout and building design
retention and enhancement of natural environmental features
control of construction work practices
application of the Deep Bay Guidelines for dredging, reclamation & drainage works
application of Chapter 9 of the Hong Kong Planning Standards & Guidelines

Comment on the possible severity, distribution and duration of environmental effects:

beneficial and adverse effects
short and long term effects
secondary and induced effects
cumulative effects
transboundary effects

Comment on any further implications, such as:

history of similar projects
public consultation to date
public interest and political sensitivity

DETAILED PROCEDURES FOR THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS

Notification Procedures

DEP should be notified by proponents of proposals for major public sector projects, or any other projects with the potential for significant environmental impacts, as early as possible in the project planning process, irrespective of whether they are for permanent or temporary use. It is essential to have an appropriate level of environmental input to all stages and levels of project planning: strategic, conceptual, pre-feasibility, site selection, feasibility, and detailed design. In this way the proponent can integrate environmental, technical and economic assessments to produce the best overall project design.

2. Notification shall include a project profile, and DEP may also issue notes from time to time to guide proponents of particular types of projects in the submission of the necessary information. Where DEP finds that insufficient information has been provided in the project profile, he may request additional information from the proponent.

3. In some cases DEP may initiate the process of notification and environmental review at an early stage of project planning, by writing to a proponent and requesting a project profile. This is likely to occur, for example, where a relatively minor project is to be located in a sensitive environment, or where a proponent may have overlooked the need for early notification.

4. Proposals for large infrastructure projects, major planning exercises, and large public facilities would normally require an EIA study and hence should always be notified to DEP, preferably at the conceptual or pre-feasibility stage. Even if it is intended to privatize the design, construction and/or operation of the project at a later stage, the proposal should be notified to DEP by the department responsible for taking the project forward.

5. For many of the projects for which notification is required, the EIA study will need to be conducted in stages, in parallel with the staged development of the proposal itself from a concept or strategy to a detailed design or implementation plan, or the calling of tenders. Early notification will assist DEP to determine the form that each of these staged components of the EIA study will take.

6. It is important to recognize that housing, educational, recreational and health care facilities can indirectly create environmental problems if they are located too close to industrial areas, major roads and other sources of pollution. Also, relatively minor projects will often require EIA if they are proposed to be located near especially sensitive receivers (such as sites of special scientific interest). Therefore, notification of proposals of these types at the planning stage, and especially during site selection, is strongly recommended.

7. Where planning of a project has stopped or its development has been delayed, and more than one year has elapsed from submission of the project profile without commencement of an EIA study which has been required by DEP, the proponent shall notify DEP again when the project is re-activated and submit a revised project profile if there has been any substantial change to the proposal which would affect the scope and content of the EIA study.

8. Similarly, if a project for which an EIA study was not required by DEP undergoes a significant change of direction during project planning, and that change has potentially adverse environmental implications, the proponent shall notify DEP and provide the additional information necessary for a supplementary environmental review.

Procedures for Environmental Review

9. Upon notification of a project by a proponent DEP will conduct an environmental review, which shall be completed and the results advised to the proponent within two months of submission of an adequate project profile. The result of the review will fall into one of the following two categories:

(a) that the project has a limited potential for environmental problems and no EIA study is required (if required, environmental protection and pollution control measures will be recommended by DEP for the design, construction and operation of the project) [most projects will fall into this category] ; or

(b) that the project is likely to cause significant environmental impacts or be susceptible to adverse impacts, and that these should be addressed in an EIA study.

10. Where planning and development of a project involves several stages leading to detailed design and implementation plans, DEP may determine that an EIA study of appropriate scope and detail is required at each stage.

Environmental Impact Assessment Study

11. Where an EIA study is required by DEP, he will advise the proponent on the scope, form and content of the study required. This advice will take the form of an EIA study brief, prepared within two months of notification. An EIA study is normally undertaken in two stages:

(a) an initial assessment to provide sufficient information to identify key environmental issues and problems to be subjected to detailed assessment, and to identify any early implications for project development and design; and

(b) an evaluation stage to study key issues in greater detail, quantify potential problems, identify necessary mitigation measures, and prepare environmental monitoring and audit requirements for the construction and operational phases of the project. Included in the Study shall be consideration of the environmental and social benefits of the proposed project.

12. DEP shall establish an EIA study management group with appropriate terms of reference to guide the work of the study, 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. The group shall be convened by DEP and the membership shall include representatives of all Government branches, departments, agencies and consultants with a genuine interest in the environmental implications of the project. DEP shall assess the performance of the work of the study, the accuracy of its findings, the adequacy of its recommendations for protecting the environment, and the acceptability of residual environmental impacts. Where the study management group is constituted under a project steering group convened by the proponent department or the relevant policy branch, DEP's representative shall advise the steering group of his overall assessment of the project and the outcome of the EIA study. DEP's representative shall also bring all significant views of the study management group to the attention of the steering group. SPEL will also be advised if there is any substantive disagreement within the study management group about the findings and recommendations of a study.

13. If DEP believes that the mitigation measures identified in the study will enable an acceptable level of environmental quality to be achieved and maintained in the implementation of the project, and that an adequate environmental monitoring and audit programme has been prepared in the study, he shall endorse the EIA study and accept the study report. Environmental monitoring and audit is a structured approach to (i) monitoring the performance of a project and the effectiveness of mitigation measures during its construction and operation, (ii) verifying the environmental

impacts predicted in the EIA study, (iii) determining project compliance with regulatory requirements and Government policies, and (iv) taking remedial action if unexpected problems or unacceptable impacts arise.

14. Mitigation measures and monitoring and audit requirements will be specified as an output of the EIA study, usually in an environmental schedule. The schedule will explain how it is expected that these requirements will be implemented (e.g. through statutory pollution controls and planning controls, conditions in leases and other agreements, works contract clauses, design documents, construction and operating manuals, etc.). It is essential that project planning should, as far as possible, allow sufficient time for these requirements to be prepared and incorporated into the relevant documentation.

15. Proponents should note that EIA studies often extend beyond the control of pollution and management of wastes to considerations of visual impact, ecology, conservation and enhancement of the natural environment, fung shui, and sites of scientific, cultural and archaeological interest. This is by arrangement with those departments with the relevant administrative responsibilities.

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

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香港花園道美利大廈

規劃環境地政局
香港花園道美利大廈

WORKS BUREAU
MURRAY BUILDING, GARDEN ROAD,
HONG KONG

PLANNING, ENVIRONMENT & LANDS BUREAU
MURRAY BUILDING, GARDEN ROAD,
HONG KONG

Ref : PELB(E)55/10/13A(98)
WB(PM)590
Group : 2, 5, 6

16 October 1998

Works Bureau Technical Circular No. 18/98

Planning, Environment and Lands Bureau Technical Circular No. 10/98

PROCEDURES FOR ENVIRONMENTAL IMPACT ASSESSMENT OF DEVELOPMENT PROJECTS AND PROPOSALS

designated projects cannot be reached between DEP and a proponent department, DEP shall refer the case to SPEL for resolution. DEP will provide full details of the case but the proponent department may present its case to SPEL if it so wishes. SPEL would then seek to resolve the disagreement in consultation with the proponent department, DEP and the relevant Policy Secretaries and other relevant departments.

Upgrading of Non-designated Projects to Category A

56. When a submission of a non-designated project is made to the PWSC for upgrading to Category A or to other major decision making bodies, proponent departments shall make reference to the environmental implications of a project and the agreed mitigation measures according to the environmental information generated under this circular, state the funding arrangement for the mitigation measures, and include a commitment to implement those measures. The Financial Circular on the clearance of "Environmental Implications" sections of the PWSC papers shall apply.

57. Proponent departments are responsible for the full implementation of the mitigation measures identified in the PER or other environmental studies, as well as taking remedial measures against any unacceptable environmental impacts during the construction and operation of a project.

MITIGATION OF RESIDUAL TRAFFIC NOISE IMPACTS FROM NEW ROADS ON PLANNED USES

58. This section sets out the requirements for relevant departments to incorporate the off-site mitigation measures agreed during the EIA process into the land use plan and/or the land sale mechanisms to address the residual traffic noise impact of a new road, after the road proponents implement all practicable traffic noise mitigation measures on roads as identified in an EIA study.

59. Proponents of road projects are required to assess, among other things, noise impacts on both the existing and planned noise sensitive uses, 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. As a general principle, equitable redress in the

form of direct mitigation measures will be provided wherever practicable to protect existing and planned sensitive uses which would otherwise be exposed to traffic noise exceeding the planning guidelines. Indirect mitigation measures such as acoustic insulation and air conditioning will be provided to existing sensitive receivers to protect them from residual noise impacts after adoption of direct mitigation measures on the roads and subject to ExCo's approval on the merits of the case. If additional measures include setback and/or building disposition, even after the adoption of all practicable mitigation measures at source, the EIA process would evaluate and confirm their practicality. The agreed environmental requirements on future adjacent sensitive uses and any development constraints identified during the EIA process should be taken into account when assessing the development potential of the sensitive uses and be made known to potential developers.

60. The following step-by-step procedures shall apply:

(a) the proponent of a new road is required to implement all practicable direct mitigation measures at source to abate the traffic noise impacts,

(b) if, after the implementation of all practicable measures at source, the residual noise impacts are envisaged to exceed the established criteria, the proponent of the new road should define the environmental constraints and the mitigation measures at planned sensitive receivers, and assess the practicality and feasibility for implementation by developers;

(c) as future developers have to implement mitigation measures at receivers, the Planning Department and Lands Department will agree with the road proponents, during the EIA process, to the site constraints and/or the findings about the feasibility and the practicability for developers to implement the measures at planned sensitive uses. This agreement, which will be recorded during the EIA process, is particularly important when the layout designs might affect development parameters of the affected sites. During the EIA study, the road proponents should ensure, to their best endeavour, that the development potential of a site would not be affected;

(d) once agreed, Planning Department will incorporate the constraints into the land uses plans and, where applicable, submit the necessary

amendment plan to the Town Planning Board for approval. Lands Department will also incorporate the constraints and mitigation measures agreed during the EIA process into the realistic calculation of the development potential;

(e) Lands Department shall make known of the agreed constraints and measures to the developers before the sale or grant of lands. Lands Department should incorporate appropriate clauses in the lease or grant conditions such that the agreed measures will be implemented by the developers.

61. If there is a conflict about the measures at planned sensitive uses that cannot be resolved, the conflict shall be referred by DEP to SPEL for him to resolve the matter with other Policy Secretaries.

PROCEDURES FOR ENVIRONMENTAL APPRAISAL OF PROPOSALS SUBMITTED TO THE EXECUTIVE COUNCIL

62. Article 119 of the Basic Law states that "The Government of the Hong Kong Special Administrative Region shall formulate appropriate policies to promote and co-ordinate the development of various trades, such as manufacturing, commerce, tourism, real estate, transport, public utilities... , and pay regard to the protection of the environment."

63. The Executive Council (ExCo) Procedures Manual (1997 edition) requires the incorporation of an environmental implications section in all ExCo memoranda where there are likely to be environmental issue or impact, including benefits, involved. The procedures set out below aim to assist policy bureaux in identifying the environmental implications and paying regard to the protection of the environment when formulating policies, so that requirements in the Basic Law and ExCo Procedures Manual can be met.

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Territory Development Department, Hong Kong

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Public Accounts Committee
Legislative Council Secretariat
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(Attn : Mr Colin Chui)

Dear Mr Chui

The Director of Audit's Report on the results of value for money audits (Report No. 41)
Chapter 5 : Provision of noise barriers for mitigating road traffic noise

I refer to your letter of 17 December 2003 and provide additional information as follows: -

(a) The reasons for spending the public funds to build the noise barriers and for the absence of such negotiation

The noise barriers along Trunk Road T7 are not constructed in lieu of the noise barriers to be provided by the developer within his lot boundary. Under the Environmental Impact Assessment (EIA) Ordinance, the road project proponent is required to protect all noise sensitive receivers in compliance with the noise standards set out in the Technical Memorandum. 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

13/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong

measures were still required on Trunk Road T7 to provide 100% protection to the residents as far as practicable under the EIA Ordinance. 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 TDD under the Road T7 project were therefore needed in order to fulfill the requirements of the EIA Ordinance.

Regarding the land premium implications, EPD had drawn the Lands Department's attention to the EIA Study Management Group's decision in February 1998. We noted that Director of Lands has already explained the situation to the PAC via his letter dated 22 December 2003.

(b) If the Government considers 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 developer

In paragraph 4.18 (c) of Audit Report, Audit has recommended that "The Administration should issue guidelines to ensure that provisions 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 land grant, is the grantee's responsibility."

In paragraph 4.20 of the Audit Report, the Director of Lands has replied that it is possible to draft land grant conditions to meet the requirement as recommended in paragraph 4.18 (c). We noted that theDirector of Lands has issued Technical Circular No. 734 – Clause allowing Government to provide Environmental

Mitigation Measures in place of the Grantee/Purchaser on 8 December 2003. Government would conduct negotiations in accordance with the technical circular if similar cases occur in future.

Yours sincerely

(John S V Chai)
Director of Territory Development

c.c. Secretary for the Environment, Transport & Works
Director of Lands
Director of Environmental Protection
Director of Audit

JC/jl

拓展署
Territory Development Department, Hong Kong

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Public Accounts Committee
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(Attn : Mr Colin Chui)

Dear Mr. Chui

The Director of Audit's Report on the
Results of value for money audits (Report No. 41)
Chapter 5: Provision of noise barriers for mitigating road traffic noise

I refer to your letter dated 14 January 2004 on the Director of Audit's Report No. 41. My response to the two questions in Paragraphs 1(a) and 1(b) of your letter are as follows:

(a) whether the Government would break the law for not providing the noise barriers concerned; if so, of the legislation concerned.

Yes, the Government would break the law for not providing the noise barriers concerned, as it is a condition in the Environmental Permit of the T7 project that they should be built. The legislation concerned is the Environmental Impact Assessment Ordinance (Cap. 499) ('the EIAO') and the associated Technical Memorandum (TM).

Under both the EIAO and the administrative EIA system in operation prior to the commencement of the EIAO, proponents of road projects are 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

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residents as far as practicable. If we had not proposed construction of the noise barriers along that section of road T7 despite the fact that it is practicable to do so, the Director of Environmental Protection would not have approved our application for an Environmental Permit (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 is thus a statutory requirement for TDD to construct those noise barriers. Failure to do so would be a violation of the EIAO.

(b) 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 the reason of providing continuity; if so, of the justifications (including any legal and public interest grounds) for doing so; if not, the reasons for that.

If negotiations with the developer had been held but he refused to contribute to the cost of the noise barriers, we 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 we failed to do so, we would be in breach of the EP condition and accordingly in violation of the EIAO.

Yours sincerely

(John S V Chai)
Director of Territory Development

c.c. Permanent Secretary for the
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Director of Lands
Director of Environmental Protection
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19 January 2004

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Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Mr Chui

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 5: Provision of noise barriers for mitigating road traffic noise

Thank you for your letter of 14 January 2004 inviting my comments on the reasons provided by the Director of Territory Development in his letter of 31 December 2003 for the following matters:

(a) provision of noise barriers along Trunk Road T7 for a private residential development in Ma On Shan at public expense and, in particular, whether the Government had the option of not providing the noise barriers at public expense; and

(b) absence of negotiations with the developer on his contribution to the cost incurred by the Government in providing the noise barriers.

Provision of the noise barriers at public expense

2. According to the Technical Memorandum of the Environmental Impact Assessment Ordinance, a road project proponent is required to provide direct noise mitigation measures such as noise barriers as far as practicable (para. 1.7 of the Audit Report). Given that the noise barriers proposed by the developer and accepted by the Environmental Protection Department (EPD) in December 1997 could only protect 72% of the residential units (para. 4.5 of the Audit Report), the Territory Development Department (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 requirements of the Environmental Impact Assessment Ordinance (para. 4.16 of the Audit Report). 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 (para. 4.3 of the Audit Report). 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 (para. 4.7 of the Audit Report).

Absence of negotiation with the developer

3. In paragraph 6 of the Director of Lands' letter of 22 December 2003 referred to by the TDD, it was stated that "With the certification by 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." The Director of Lands' remark highlighted the importance of negotiating with the developer before the EPD's certification of the revised mitigation measures in June 1998 (see para 4.7 of the Audit Report). However, based on the information provided by the TDD and the Lands Department, 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.

4. A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,

(Peter K O WONG)
for Director of Audit

c.c. Secretary for the Environment, Transport and Works
Director of Environmental Protection
Director of Territory Development
Director of Lands

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9 February 2004

Mr Colin Chui
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8 Jackson Road
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Dear Mr Chui,

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 5: Provision of noise barriers for mitigating road traffic noise

Thank you for your letter of 4 February 2004. I set out below the information requested.

(a) whether the absence of the option of not providing the noise barriers along Trunk Road T7 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.

2. In April 1998, the Environmental Impact Assessment Ordinance came into operation. Audit's view that "the Government did not have the option of not providing the noise barriers along Trunk Road T7" refers to the position after the Ordinance came into operation. Under the Ordinance, the Government had to provide the noise barriers at public expense because the Ordinance 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.

(b)(i) the basis for the Audit's observation 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."

3. Audit's observation in paragraph 4.15 of the Audit Report **refers to the position in 1995** when the land grant condition for the Ma On Shan site was being drafted. At that time, the Environmental Impact Assessment 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 is why Audit has recommended that the Administration should issue guidelines to ensure that provisions 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.

(b)(ii) whether there was any reasonable prospect for the Government to recover the cost from the developer.

4. As mentioned in paragraph 2 of my letter of 19 January 2004, 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, as pointed out by the Director of Lands in paragraph 6 of his letter of 22 December 2003 that, with the certification (in June 1998) by the Environmental Protection Department 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.

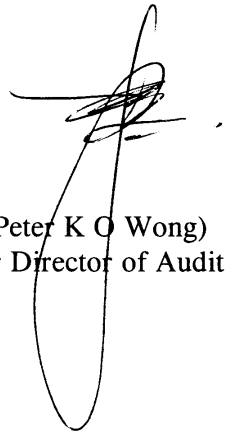
(b)(iii) the justifications for the concerns about the use of public funds for the noise barriers works and the absence of recovery action raised in the Audit Report.

5. 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 is 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.

6. A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,



(Peter K O Wong)
for Director of Audit

c.c. Secretary for the Environment, Transport and Works
Director of Environmental Protection
Director of Territory Development
Director of Lands

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

政府總部
環境運輸及工務局
香港花園道三號
萬國寶通銀行大廈十樓

本局檔號 Our Ref.

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Environment, Transport and Works Bureau
Government Secretariat
10/F., Citibank Tower,
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31 December 2003

Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Mr Colin Chui)
[Fax: 2537 1204]

Dear Mr Chui,

The Director of Audit's Report on the Results of value for money audits (Report No.41)

Chapter 5: Provision of noise barriers for mitigating road traffic noise

We refer to your letter of 17 December 2003 and provide below the information that you are seeking on behalf of the Public Accounts Committee –

(a) 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.

The Hong Kong Planning Standards and Guidelines (HKPSG), which was already in place before the commencement of the Environmental Impact Assessment (EIA) Ordinance in 1998, provides guidance on the environmental issues that should be considered in the planning of both public and private development projects. It prescribes road traffic noise standards for different types of noise sensitive receivers and

provides 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 cannot be provided. Those noise mitigation measures include 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 EIA Ordinance 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 Environmental Protection Department (EPD) and, if required by 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 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 EPD. For private residential development projects at sites involving change in land use or those that required the approval of the Town Planning Board, the Town Planning 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 lot concerned, EPD would provide their advice to the relevant authorities and help to ensure that mitigation measures to minimize 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.

(b) As the Government, being the proponent of public road projects, is required to provide noise mitigation measures under the EIAO, whether the EIAO has the effect of relieving private developers of their responsibility of providing noise mitigation measures for their developments along these road projects?

At the time when the EIA Bill was processed through the Legislative Council around 1996, there was a strong demand from private sector developers and some Members of the Legislative Council 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 stands, requires 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 are 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 will 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 will be taken into account when assessing the development potential of the site, and will be incorporated into the land lease or land grant as conditions and made known to potential developers.

Yours sincerely,

(Thomas Chow)
for Secretary for
the Environment, Transport and Works

c.c. DEP (Attn: Mr Elvis Au) 25753371

拓展署
Territory Development Department, Hong Kong

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本署檔號 Our Reference	TDD(CR) 8/4/3
電話 Telephone	2231 4567
傳真 Fax	2805 7006
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日期 Date	9th February 2004

Public Accounts Committee
Legislative Council Secretariat
No. 8 Jackson Road
Central
Hong Kong

(Attn : Mr Colin Chui)

Dear Mr Chui

The Director of Audit's Report on the
Results of value for money audits (Report No. 41)
Chapter 5: Provision of noise barriers for mitigating road traffic noise

I refer to your letter reference CB(3)/PAC/R41 dated 4 February 2004 in which you ask:

"why TDD has not waited until it was known if the developer was willing to contribute to the cost of the above noise barriers work (*adjacent to the private development*) before carrying out the works which had the effect of allowing the developer not to build noise barriers which he was obligated to do so under the land grant and, as a result of relieving his obligation, losing Government's bargaining power in securing the developer's agreement to contribute."

TDD was obliged by the Environmental Permit 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, TDD did not have to await the outcome of any negotiations, even if those were initiated, before carrying out the noise barrier works. As explained by the Director of Lands in his letter of 22 December 2003 to the PAC, 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 TDD could not have affected the Government's bargaining power even if the issue had been brought up with the Grantee.

Nevertheless, in paragraph 3 of his letter to you reference UB/PAC/ENG/41-2 dated 19 January 2004, the Director of 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 EIA Study Management Group agreed on the proposed omission of the developer's noise barrier, to June 1998 before which Government might have held 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.

Moreover, since the concerned noise barriers, now being constructed by TDD will protect 100% of the dwellings in the development as required by the Environmental Permit, the noise barriers originally to be built within the developer's lot boundaries protecting only 72 % of the dwellings are nugatory, it was an appropriate step not to require the Grantee to construct the noise barriers.

Yours sincerely

(John S V Chai)
Director of Territory Development

c.c. Secretary for the Environment, Transport and Works
Director of Lands
Director of Environmental Protection
Director of Audit

JC/jl

屋宇署
BUILDINGS DEPARTMENT

YOUR REF 來函檔號： CB(3)/PAC/R41
OUR REF 本署檔號： BD(CR)FIN/12
FAX 圖文傳真： 2840 0451
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23rd December 2003

Clerk to Public Accounts Committee
(Attn: Ms Miranda HON)
Public Accounts Committee
Legislative Council Building,
8 Jackson Road, Central,
Hong Kong.

Dear Ms Hon,

The Director of Audit's Report on the
Results of value for money audits (Report No. 41)

Chapter 6: Buildings Department's efforts
to tackle the unauthorized building works (UBW) problem

Thank you for your letter dated 12 December 2003 seeking additional information further to the public hearing on 8 December 2003. I provide below the information required in the order as set out in your letter.

(a) The numbers of buildings on which Blitz operations had been conducted in each of the years since the implementation of the 2001 Strategy were 1,571, 1,759 and 1,000 for Year 2001, 2002 and 2003 respectively. We have achieved all the targets of conducting Blitz operations i.e. conducting operations on 900 buildings in Year 2001 and 1,000 buildings per year since 2002.

(b) With reference to the complaint cases in the Building Condition Information System (BCIS) without the "initial action date", we will deploy additional resources with a view to entering all relevant data into the BCIS by March 2004 and completing all outstanding "initial actions" by June 2004.

(c) The comparison between the revised target completion dates of key stages for the new batch of outsourced contracts under the Blitz UBW Clearance (BUC) 2003 and the original ones under BUC 2001 is listed below:

Key stages	**BUC2001** [Note 1]	**BUC2003** [Note 2]
Completion of Survey Report	15th week	Ranging from 7th - 17th week
Issue of statutory order	19th week	Ranging from 14th - 29th week
Completion of first compliance inspection report	41st week	Ranging from 34th – 80th week
Completion of final report	67th week	Ranging from 62nd - 106th week

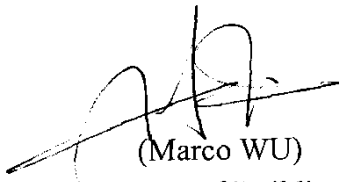
Note 1: Based on BD's Action Plan for BUC 2001
Note 2: Based on programmes agreed with the outsourced consultants for carrying out BUC operations in July 2003. Target completion dates may vary according to the complexity of the cases such as the nature and estimated number of UBWs involved in the target buildings.

The requirement of engaging experienced staff has been introduced in the new batch of outsourced contracts of BUC 2003. The average contract price per building for outsourced contracts under BUC2001 and BUC2003 are $17,438 and $17,578 respectively. As there are many other factors that may affect the contract prices such as the market conditions and the complexity of the jobs in individual contracts e.g. number of UBWs identified and to be removed in the target building, it is difficult to determine whether the new requirement for experienced staff has led to higher contract prices.

(d) The details are provided at Annex.

I should be grateful if you could convey the above information to Members of the Committee.

Yours sincerely,



(Marco WU)
Director of Buildings

Encl.

c.c. Secretary for Housing, Planning and Lands
Director of Audit

b.c.c. AA/SHPL

Annex

Buildings Department's efforts to tackle the unauthorized building works problem – Reasons for delay in five cases

1. **General**

Regarding Cases 1 to 5 in Part 11 of the Audit Report, an account for the reasons for the delay, the rank(s) of the staff who were responsible for the delay and the rank(s) of the supervisors of the staff concerned is provided in the following paragraphs.

When seen in context, the delays in those cases might be due to a number of common factors in addition to their individual circumstances and particular reasons. These common factors include:

a) There has been a significant increase in the workload and performance targets over the past few years. For example, the number of complaints attended to has increased from 8,300 cases in 1993 to 15,600 cases in 2002. The annual target of 'UBWs removed and irregularities rectified' has doubled from 15,000 in 2001 to 30,000 from 2002 onwards.

b) Some major operations and key events might have interrupted the progress of individual cases during the material time as detailed below:

(i) A major internal re-organisation of the Buildings Department (BD) took place in July 2000. This reorganization exercise enabled us to improve our overall efficiency in dealing with existing buildings but inevitably caused some temporary disruptions to our work when it was implemented.

(ii) A number of large scale operations were launched, including:

- in September 1999 - Blitz UBW Clearance (BUC) 99 involving 307 target buildings;
- in September 2000 - BUC 2000 involving 404 target buildings;
- in December 2000 – Co-ordinated Maintenance of Buildings Scheme (CMBS) 2000 involving 150 target buildings;
- in November 2001 – first batch of BUC 2001 involving 1,571 target buildings;
- in December 2001 – second batch of BUC 2001 involving 1759 target buildings;
- in December 2001 - CMBS 2001 involving 200 target buildings;
- in December 2002 - CMBS 2002 involving 200 target buildings;
- in July 2003 - BUC 2003 involving1,000 target buildings;
- in April 2003 – Inspection of external drain pipes of some 18,000 buildings in the wake of the outbreak of SARS; and
- in June 2003 - Priority District Hygiene Black-spots Clearance Operation involving 85 rear lanes.

Substantial resources were drawn to these operations at various critical stages such as the selection of target buildings, survey inspections, issuance of statutory orders and compliance inspections.

c) To implement the 2001 Strategy, additional resources were obtained which were partly used to recruit new staff on a contract or temporary basis. As a result, over 540 new staff were recruited in Year 2001 and 2002. Understandably,

these new recruits had to spend some time at the beginning to familiarize themselves with the work procedures for carrying out enforcement against UBW.

d) Before the launching of the Building Condition Information System (BCIS) in January 2003, we did not have a comprehensive progress monitoring system which could help the supervisory staff to monitor the progress of the follow-up action on individual cases.

2. Case 1 – UBW on a building in Shamshuipo, Kowloon

a) As described in Paragraph 11.4 of the Audit Report, Audit observed that: "*Although the BD received a referral from the Lands D on 22 June 1999, its staff did not carry out a site inspection until* ***609 days*** *later...*"

Reasons for delay

At the sectional meeting held on 21 April 1999, the Chief Officer instructed all staff to clear backlog orders involving unauthorized building works (UBW) which posed an imminent danger as a top priority.

From June 1999 to June 2000, the case officer (a Principal Survey Officer (PSO)), under the supervision of a Senior Building Surveyor (SBS), was engaged in another complicated backlog case which required breaking into and closure of a flat for the removal of an unauthorized structure. Apart from clearing backlog orders, the case officer also received in the same period an average of 50 complaints about UBWs and carried out about 20 inspections on complaints every month.

After the internal re-organisation of BD on 3 July 2000, which involved changes in job duties, the case officer made preparations for the launching of two large scale operations, namely the BUC2000 in September 2000 and CMBS2000 in December 2000. Thereafter, the case officer was preoccupied with work on surveying 10 target buildings and issuing 158 statutory orders under BUC 2000.

b) As described in Paragraph 11.5, Audit observed that "*From the date of site inspection, the time taken for completion of the inspection report was **79 days**...*"

Reasons for delay

During the period between February 2001 and September 2001, the case officer was engaged in handling one target building for CMBS2000 and served a total number of 39 removal orders. He also carried out 116 complaint inspections and 126 compliance inspections for orders issued during the period.

c) As described in Paragraph 11.6, Audit observed that "*the action team did not proceed to the next step until **140 days** after the completion of the inspection report, ...Thereafter, no substantive actions were taken for **646 days**, counting up to 5 July 2003 (i.e. the date of audit review)*"

Reasons for delay

From November 2001 onwards, the case officer has been engaged in several large scale operations. These are:

i) From November 2001 onwards, to supervise a BUC2001 outsourced contract consisting of 54 target buildings;

ii) From December 2001 onwards - to handle 2 target buildings under CMBS2001;

iii) From December 2002 –onwards - to handle 2 target buildings under CMBS2002;

iv) From April 2003 to August 2003 - to inspect external drain pipes in 202 buildings in the wake of the outbreak of SARS;

v) From June 2003 onwards – to take part in Phase I Clearance of environmental hygiene Black-spots under Team Clean; and

vi) From July 2003 –onwards – to supervise a BUC2003 outsourced contract consisting of 12 target buildings.

d) Current Status

The case officer re-inspected the site on 30 August 2003. The subject UBW had not yet been removed. A removal order was issued on 30 August 2003. The case officer conducted compliance inspection on 18 November 2003. The UBW was found removed.

3. **Case 2 – UBW on a building in Tai Po, New Territories**

a) As described in Paragraph 11.4, Audit observed that "*A referral was received on 19 January 2000. However, BD staff did not complete the site inspection until **118 days later**...*"

Reasons for delay

In response to a referral memo, the case officer, a Structural Engineer (SE), conducted a site inspection on 22 February 2000 (Day 34). During the inspection, his supervisor, a Senior Structural Engineer (SSE), instructed him to carry out an emergency inspection at another location.

In view of the many other similar UBWs in the building, the case officer decided to handle all of them in one go and planned to return to the subject site for a full survey at a later stage. The subject case was therefore held in abeyance while the case officer was engaged in other more urgent complaint cases. On 16 May 2000 (84 days after first inspection), the case officer continued his full survey inspection on the subject UBW and other similar UBWs in the building.

b) As described in Paragraph 11.8, Audit observed that "*BD issued a s.24 Order on 22 September 2000. However, a compliance inspection was not conducted until **245 days later**, on 25 May 2001.*"

Reasons for delay

After the internal re-organisation of BD on 3 July 2000, the subject case was taken up by another case officer, who was also a Structural Engineer (SE) under the supervision of another Senior Structural Engineer (SSE). A s.24 order was served on 22 September 2000. Although the case officer brought up the case file on 28 December 2000 with a view to carrying out the compliance inspection, he was engaged in other duties at that time which included:-

i) to handle 3 target buildings under BUC1999 in Sham Shui Po;

ii) From 3 July 2000 onwards, to attend to over 800 complaints in Tai Po and many backlog orders;

iii) From September 2000 to August 2001 – to survey 10 target buildings under BUC2000 and to issue orders and carry out compliance inspections to these buildings;

iv) From December 2000 to June 2002 - to handle 3 target buildings under CMBS2000.

Due to the heavy workload during that period, the case officer could not conduct the compliance inspection until 25 May 2001.

c) Current Status

BD has initiated prosecution action against the owner of the subject UBW for non-compliance with the s.24 order. Summons was issued to the owner on 11 November 2003. First plea hearing is scheduled for 31 December 2003.

4. **Case 3 – IRS on a single-staircase building in Shamshuipo, Kowloon**

a) As described in Paragraph 11.5, Audit observed that "*From the date of site inspection, the time taken for completion of the inspection reports was **66 days**.*"

Reasons for delay

Between 27 March 2001 and 22 August 2002, the case officer was a Building Safety Officer (BSO). After his resignation, a Senior Survey Officer (SSO) took up the post on 23 August 2002. They were under the supervision of a Building Surveyor (BS) and a Senior Building Surveyor (SBS).

Although the inspection report only records the date of the first inspection by BD, 27 March 2001, in fact, the site concerned was inspected twice before the inspection report was prepared. The case officer conducted the second inspection on 12 April 2001.

Moreover, during the early phase of the IRS clearance operation, the case officer first conducted inspections on a number of target buildings, and then prepared the inspection reports for each of these buildings afterwards. Therefore, there was a time-lag between the inspection and the preparation of the report.

b) As described in Paragraph 11.7, Audit observed that "*the closure order was executed on 16 November 2001. However, no action was recorded on the file until **73 days later** (i.e. on 28 January 2002), ...In April 2003, an instruction was issued to arrange for a site inspection. However, up to 5 July 2003, there was no record to indicate that the inspection had been carried out.*"

Reasons for delay

After execution of the closure order, it was noted that the owner was staying in the IRS while his property on 5/F was rented out. He was not eligible for re-housing. The owner indicated willingness to demolish the IRS voluntarily when he could move back to his own property after his tenant moved out. In view of the hardship the owner was facing, immediate enforcement action was not taken. The case officer failed to report to his supervisor on the progress of the case.

The case officer above resigned on 22 August 2002, and the case was taken up by another case officer. As such, he kept the case in view, pending the owner's action to resolve his re-housing problem. On 3 December 2002, he called the owner to follow up the matter and learnt that the owner had financial problems. Subsequently, on 23 April 2003, he instructed his sub-ordinate to arrange for a site inspection which took place on 18 July 2003.

The progress of IRS clearance operation could be affected by social, financial and re-housing problems faced by owners of the IRS. Case officers generally sympathized with the owners' situation and allow more time to owners to solve their re-housing problems before taking enforcement action to remove the structures.

c) Current Status

The owner voluntarily removed the IRS on 13 October 2003 and BD subsequently discharged the s.24 order.

5. **Case 4 – IRS on a single-staircase building in Mongkok, Kowloon**

a) As described in Paragraph 11.6, Audit observed that "*the action team did not proceed to the next step until **437 days** after the completion of the inspection report*"

Reasons for delay

The case officer was a Building Safety Officer (BSO) under the supervision of a Building Surveyor (BS) and a Senior Building Surveyor (SBS).

After the first inspection on 27 October 2000, the ownership information was obtained from the Land Registry on 11 November 2000. Based on the ownership information, it was noted that a probate in respect of the ownership of a share of the roof was pending registration, thus the ownership of the roof was in doubt. The case officer could not proceed to the next step at the time.

Moreover, in 2001, the case officer did not follow up the subject case because he was engaged in other work of conducting site inspections, serving s.24 orders and executing closure orders in a number of enforcement cases against IRS. During this period, he has served 90 s.24 orders to 42 target buildings and has removed IRS on 37 target buildings.

b) As described in Paragraph 11.7, Audit observed that "*the closure order was executed on 28 August 2002. In July 2003, the subject IRS was still there. During this period, the BD paid only one site visit.*"

Reasons for delay

The occupant claimed that he needed re-housing, but he did not approach Housing Department for assistance and stayed in Mainland China since August 2002. As the occupant kept his personal belongings in the subject IRS, the case officer decided not to take any immediate action for the time being. He had not consulted his supervisor for advice on this matter.

c) Current Status

The subject IRS was voluntarily removed on 27 November 2003 and the s.24 order was subsequently discharged.

6. **Case 5 – an abandoned signboard in Nathan Road, Kowloon**

a) As described in Paragraph 11.8, Audit observed that "*the BD issued a DSRN on 13 March 2001. Up to the time of audit review on 31 July 2003 (i.e.* ***870 days after*** *the issue of the DSRN), no substantive actions had been taken to remove the abandoned signboard.*"

Reasons for delay

The case officer was a Structural Engineer (SE) under the supervision of a Senior Structural Engineer (SSE).

It was stipulated in an internal guideline, Information Paper for Planned Survey of Signs and Enhanced Removal of Abandoned Signs that -

> "*For cost-effectiveness, staff should properly plan the removal action and issue works orders to cover a number of abandoned signs in vicinity, say 4 to 5 nos.*"

As the subject abandoned sign did not pose immediate danger to the public, and the removal action would involve temporary closure of part of Nathan Road, the case officer deferred the removal action to await opportunities for the joint removal of other abandoned signs in the vicinity.

In August 2001, the case officer noted other abandoned signs on the subject building while he was conducting preliminary survey for the selection of target buildings for BUC2001. He decided to include the detailed survey of these

abandoned signs in the outsourced BUC2001 to be carried out by the consultant.

After the implementation of the BUC 2001, a consultant was appointed to carry out BUC operations in the subject building. The consultant submitted the full survey report for the subject building on 7 January 2002. It was noted that the submitted report did not include the details of the abandoned signs of the building. BD's comments were conveyed to the consultant on 5 March 2002 regarding the abandoned signs. Later on, the consultant submitted the compliance inspection report on 11 March 2003 but still did not include the details of the abandoned signs. BD's comments were given to the consultant on 17 March 2003 regarding the abandoned signs. Afterwards, the case officer was engaged in a large amount of urgent work arising from the outbreak of SARS. Such work included assisting owners and inspecting external drain pipes in buildings in the wake of the outbreak of SARS and taking part in Phase 1 clearance of environmental hygiene black-spots. Hence the case officer could not follow up closely on the progress of the subject case.

b) Current Status

In September, the consultant submitted the details of the abandoned signs. BD served DSRNs for the remaining abandoned signs on 5 September 2003. BD instructed the Government Contractor on 22 September 2003 to remove all those abandoned signs in one go. The subject sign was subsequently removed on 9 November 2003.

屋宇署
BUILDINGS DEPARTMENT

YOUR REF 來函檔號： CB(3)/PAC/R41
OUR REF 本署檔號： BD(CR)FIN/12
FAX 圖文傳真： 2840 0451
TEL 電話： 2626 1200

2 January 2004

Clerk to Public Accounts Committee
(Attn: Ms Miranda HON)
Public Accounts Committee
Legislative Council Building,
8 Jackson Road, Central,
Hong Kong.

Dear Ms Hon,

The Director of Audit's Report on the Results of value for money audits (Report No. 41)

Chapter 6: Buildings Department's (BD) efforts to tackle the unauthorized building works (UBW) problem

Thank you for your letter dated 18 December 2003. I provide below the information required in the order as set out in your letter.

(a) (i) The targets relevant to the enforcement of statutory orders are not performance pledges per se but are performance measures which are set out in the annual Controlling Officer's Report. These performance measures are divided into two categories, namely targets and indicators. Key performance measures in respect of existing buildings for Year 2001, 2002 and 2003 are provided at Annex I.

We propose to set additional performance targets for the clearance of outstanding s.24 orders, details are given in Annex II.

(ii) We intend to provide the public with information on the extent of compliance with s. 24 orders, the ageing analyses of outstanding s. 24 orders and our additional performance targets for the clearance of outstanding orders via BD's website starting from 1st April 2004.

(b) In July 2000, we set up a dedicated Backlog Team to clear outstanding orders issued before Year 1996. In May 2002, this dedicated team also took up the task to clear outstanding orders issued before 3 July 2000 except those orders issued under large scale operations such as Blitz UBW Clearance operation. The latter is being followed up by other District Teams.

The duties of this Backlog Team include screening case files, carrying out site inspections, recommending and following up with necessary enforcement actions, attending meetings with the public arising from the clearance of the backlog orders.

When the backlog orders have been discharged, the Backlog Team will also update such information in the Buildings Condition Information System (BCIS) in respect of the backlog orders.

For cases arising from complaints, as mentioned in paragraph 4.7 of the Audit Report, they are being handled separately by our District Teams. We are deploying additional resources to expedite the actions.

(c) A copy of the documents provided to the Blitz Contractors under Blitz UBW Clearance Operation 2001 is enclosed for your information.

(d) Please note that the costs of law enforcement work have been included in the "supervision costs" in the Audit Report. We believe what was mentioned at the public hearing was the possibility of outsourcing ***law enforcement work***, as a means to lower the "supervision costs".

Section 2(2) of the Buildings Ordinance (BO) states that "the duties imposed on and the powers granted to the Buildings Authority under this Ordinance may be carried out and exercised by an officer of any Department of the Government specified in the Fourth Schedule who is authorized by the Director of Buildings either generally or particularly and subject to his instructions."

A private contractor is not a public officer of any of the department specified in the Fourth Schedule. He cannot exercise such a power. If we were to empower the private contractor to carry out law enforcement work such as issuing statutory orders and accepting the discharge of orders, legislative amendment would be necessary. Such legislative amendment involving the principal ordinance would require submission of a Bill to the Legislative Council. However, this would involve a major policy change in law enforcement and would need to be carefully examined as regards its implications.

(e) An organization chart showing the BD staff involved and duties of each tier of the organizational structure is provided at Annex III.

(f) Current procedures for prosecution

Under current procedures, if a s.24 order is not complied with, the Team Leader (TL) will refer the file to the Senior Professional Officer (SPO) with the recommendation for sending a letter to the owner warning him that the department may take prosecution action against him.

In considering a case for prosecution, the TL should ensure that sufficient site inspections and record checks have been carried out to ensure that the details specified in the order are correct. Supplementary and / or superceding orders should be initiated when necessary. Having satisfied himself that the order is enforceable and that a voluntary compliance cannot be anticipated, the TL should make a recommendation whether the offender(s) concerned should be prosecuted. This recommendation should be submitted through the SPO to the Chief Professional Officer (CPO) for endorsement.

In accordance with BO s.40(1B)(b), where on the assessment of the facts, a defendant is certainly able to establish a reasonable excuse, then there will not be a realistic prospect of securing a conviction. In this connection, there are practical difficulties in initiating prosecution in cases of multiple ownership. In such cases, the TL should offer practical assistance and advice to building owners on how they can best cooperate to meet the requirements of the orders and comply with the BO.

In cases where a person has appealed under BO s. 44(1) against the order,

the Building Authority (BA) is normally bound by the decision of the Appeal Tribunal. In such cases, prosecution would only be pursued if the Tribunal rules in favour of the BA.

Once the CPO has endorsed a recommendation for prosecution, the TL will arrange for the relevant information to be referred to the Legal Section of the Buildings Department which will proceed with prosecution actions. In case of trial, the inspecting officers, which may include the TL and his assistants, will be called to be the prime prosecution witness.

Monitoring of outstanding cases using the BCIS

With the aid of the BCIS, all overdue cases can be monitored by BD's management in future. At district level, CPOs and SPOs can generate from the BCIS for monitoring purpose various exception reports, which will include a list of long outstanding cases that have not been recommended for prosecution. . Cases of undue delay will be brought up for discussion at the Progress Monitoring Subcommittee meeting chaired by the CPO. Difficult cases may be further reported to the top management level at the Progress Monitoring Committee (PMC) Meeting. PMC will monitor overall progress of BD's enforcement work and will steer the direction in resolving difficult cases.

(g) Please refer to the Annex of our previous letter dated 23th December 2003 regarding the current status of Cases 1 to 5 in Part 11 of the Audit Report.

(h) Mr. LEUNG Chin-man was the Director of Buildings from 26 August 1999 to 30 June 2002, both dates inclusive.

I should be grateful if you could convey the above information to Members of the Committee.

The Chinese version of this letter and the enclosures will follow.

Yours sincerely,

(CHEUNG Hau-wai)
Director of Buildings (Atg)

Encl.

c.c. Secretary for Housing, Planning and Lands – Attn: Mr. Parrish Ng
Director of Audit – Attn: Mrs Josephine W F Ng

Annex I

The Key Performance Measures relating to s. 24 Orders for Year 2001, 2002 and 2003

Targets	Target	2001 (Actual)	2002 (Actual)	**2003 Plan**
(1) 24-hour Emergency Services time for responding to emergencies	3 hours	98.7%	98%	**100%**
(2) Existing Buildings				
(a) number of buildings targeted for clearance of unauthorized building works	1000 / year	1 571	1 759	**1 000**
(b) number of buildings covered by the co-ordinated maintenance of buildings scheme	150 / year	150	200	**200**
(c) number of single-staircase buildings improved under rooftop structure clearance operations	700 / year	402	632	**700**
(d) number of advertisement signboards removed / repaired	1 200 / year	1 491	1 917	**1200**

Indicators	2001 (Actual)	2002 (Actual)	**2003 (Estimate)**
(1) 24-hour Emergency Services			
number of emergency reports attended to	852	836	**900**
(2) Existing Buildings			
(a) number of reports from members of the public on unauthorized building works attended to	13 817	15 555	**13 000**
(b) number of removal orders issued on unauthorized building works	13 212	54 010	**25 000**
(c) number of unauthorized structures removed and irregularities rectified	20 647	37 923	**30 000**

Annex II

Proposed Additional Performance Targets

Proposed additional performance targets for the clearance of outstanding s.24 orders by 31 March 2005[1] are as follows:

1. For the clearance of backlog orders issued in or before Year 1999:

   (i) To clear[2] **all** orders issued in or before Year 1990;
   (ii) To clear **75%** of all outstanding orders issued from Year 1991 to 1995;
   (iii) To clear **50%** of all outstanding orders issued from Year 1996 to 1998;
   (iv) To clear **35%** of all outstanding orders issued in Year 1999;

2. For the clearance of orders issued in Year 2000 and thereafter:

   (i) To clear **80%** of all orders issued in Year 2000;
   (ii) To clear **75%** of all orders issued in Year 2001;
   (iii) To clear **52%** of all orders issued in Year 2002; and
   (iv) To clear **40%** of all orders issued in Year 2003.

[1] The targets for the clearance of backlog cases after 31 March 2005 have not been determined as the amount of financial provision to be allocated to BD for such clearance operations is not yet known.
[2] An order is "cleared" through voluntary compliance by the owner(s), initiating prosecution action by BD or other enforcement actions such as removal of UBW by government contractors.

Sample Documents provided to the BUC2001 consultants

(a) BUC2001 Contract Brief

One copy of the approved building plans and a list of outstanding statutory Orders for the targeted buildings; (not included in this sample)

(b) One copy of the Comprehensive List of actionable UBW;

(c) A copy of sample inspection report, statistical return, standard format for translating Chinese addresses from records obtained from the Land Registry;

(d) A copy of sample advisory letters to owners (bilingual) with a copy of pamphlet about the handling of asbestos materials issued by the Department of Environmental Protection;

(e) Sample Orders/ Notices issued under sections 24, 26, 26A and 28 of the Buildings Ordinance and under section 105 of the Public Health and Municipal Services Ordinance with covering letters and attachments current for the duration of the Agreement;

(f) A copy of a set of standard letters (in English and Chinese) including compliance letters current for the duration of the Agreement;

(g) A copy of sample of Notice of Appeal;

(h) A copy of guidelines for the Removal of Typical Unauthorized Building Works and General Maintenance of External Walls;

(i) A copy of Advice to Building Owners – Appointment of Authorized Persons and Registered Contractors;

(j) A copy of Introduction on the Building Safety Improvement Loan Scheme to Owners;

(k) A copy of the latest version of the Manual for Inspection, Assessment and Repair of buildings;

(l) Other particulars or manuals issued by the Building Authority on the repair and maintenance to buildings and on the removal of UBW provided at the discretion of the Director's Representative.

*_Note by Clerk, PAC_:

The Sample Documents not attached.

Annex III

Organization and Duties of BD Staff in Supervising Outsourced Blitz UBW Clearance Operations (BUC)

1. Outsourced BUC are managed by six District Teams of BD's Existing Buildings Division. Each Section manages 10 or 11 contracts under BUC 2001 and 5 contracts under BUC 2003.

2. In general, the Chief Professional Officer (CPO) in each section carries out the duties of the Director's Representative as stipulated in the contract. He certifies payment to the Contractor, endorses Contractor's performance report, reviews appeal cases and handle difficult cases. He is assisted by five Senior Professional Officers (SPO) who are in charge of the day-to-day operation of the contracts.

3. The SPO monitors the works progress and the contractor's performance. He endorses reports submitted by the Contractor and signs orders, notices and letters prepared by the Contractor. He signs letters relating to enquiries and complaints, as prepared by his subordinate. He handles appeal cases, attends hearing and meeting associated with appeal cases. He also personally attends to some complaints and meetings as necessary. He is assisted by two to three Team Leaders (TL) who may be Professional Officers (PO), Principle Technical Officers (PTO) or Principle Survey Officers (PSO).

4. The TL is responsible for most of the liaison work such as liaison with owners, other government departments and other sections of BD for synchronizing enforcement actions on the same target buildings. The TL also checks reports and documents submitted by the Contractor. He handles complaints and enquiries arising from the operation, processes loan applications and makes recommendation on the enforcement action including instigating prosecution actions or mobilizing the government contractor. Since November 2003, TL is also responsible for signing s.24 orders and their compliance letters.

5. A TL is assisted by a Survey Officer (SO) or a Technical Officer (TO). SO/TO retrieves information such as approved plans and documents for the

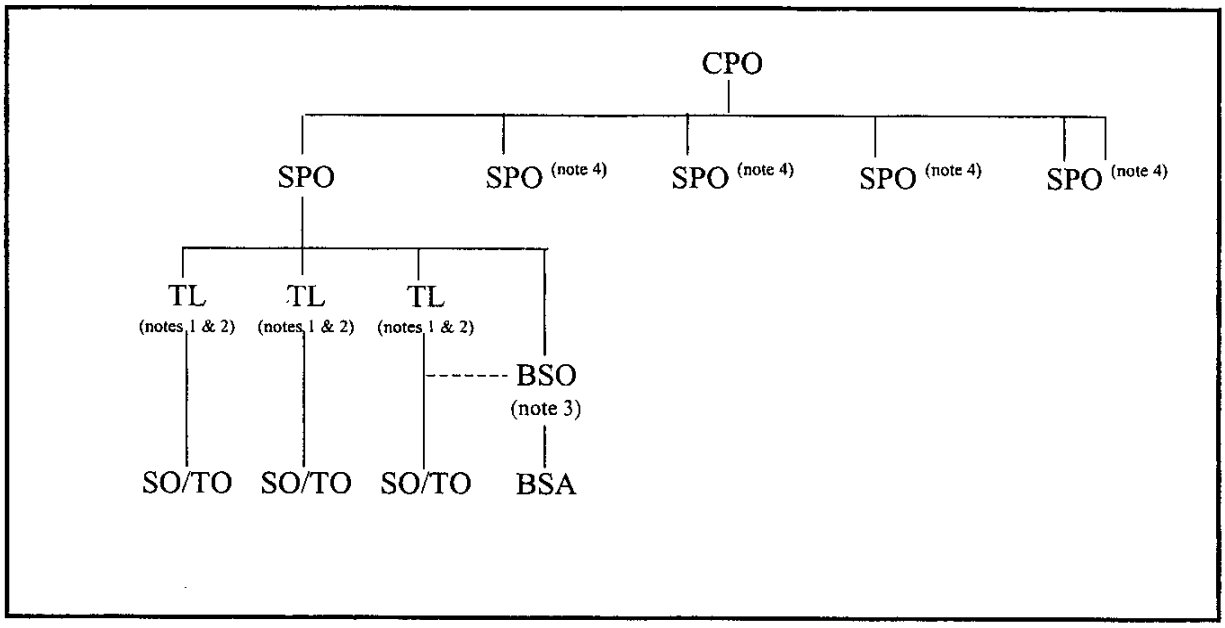
Contractor. He arranges for ownership checks, handles public enquiries, compiles statistics and situation reports, carries out audit checks on the factual accuracies in reports, orders and letters prepared by the consultant, coordinates and liaises with the contractor on daily work, performs site audits and conducts other administrative work as instructed by the TLs.

6. According to the organization structure of individual sections, Building Safety Officer (BSO) may work under the TLs or directly under the SPO in managing the contractors. BSOs are in general less experienced than the TLs. BSOs are assisted by Building Safety Assistants (BSA) whose work may be similar to an SO or TO.

7. A chart showing the organization of BD staff in a District Team in supervising outsourced BUC is at Appendix to this Annex.

Appendix
to Annex III

Organization of BD staff in a District Team in supervising outsourced Blitz UBW Clearance Operations (BUC)



Notes:

1. TL may be a PO, PTO or PSO.
2. A SPO may be assisted by 2 or 3 TLs.
3. BSO may work under the TL or directly under the SPO depending on the organization structure of individual section.
4. Similar structure is adopted among units headed by SPOs. Hence, organization structure is not repeated in this chart.

Legends:-			
CPO :	Chief Professional Officer	PSO	Principal Survey Officer
SPO :	Senior Professional Officer	SO :	Survey Officer
TL :	Team Leader	TO :	Technical Officer
PO :	Professional Officer	BSO	Building Safety Officer
PTO :	Principal Technical Officer	BSA	Building Safety Assistant

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27 January 2004

Ms Miranda HON
Clerk, Public Accounts Committee
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8 Jackson Road, Central
Hong Kong

Dear Ms Hon,

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 6: Buildings Department's efforts to tackle the unauthorised building works problem

Thank you for your letter dated 15 January 2004 seeking Audit's views on whether the idea of further outsourcing the supervisory work involved in blitz operations is worth pursuing.

Audit's views

Audit considers that outsourcing the supervisory work is in principle worth pursuing. In the light of the audit findings and the Director of Buildings' remarks at the public hearing and his reply dated 2 January 2004, it would appear that:

(a) the Buildings Department can reduce its supervision costs by implementing the audit recommendations mentioned in paragraphs 5.16(c), (d) and (e) of the Audit Report. The Director of Buildings has acknowledged this point and is taking action to implement the recommendations (please see page 27 of verbatim report, lines 7 to 10, copy attached);

(b) administratively, outsourcing the supervisory work will create another layer of contractors between the Buildings Department and the blitz contractors. Contract administration work of the Buildings Department will likely increase in terms of both volume and complexity; and

(c) at present, certain statutory duties and powers (e.g. the issuing of statutory orders) cannot be exercised by the blitz contractors. Until legislative amendments are enacted (as indicated in the Director of Buildings' letter dated 2 January 2004), the statutory duties and powers will have to be excluded from the scope of any outsourced supervisory work.

Generally speaking, outsourcing has been widely used by public organizations to enhance cost-effectiveness. On the other hand, outsourcing the supervisory work involved in blitz operations is a fairly complicated issue that requires a thorough feasibility study and a policy change before implementation.

Proposed PAC action

The Buildings Department needs to implement the audit recommendations to achieve the intended cost reduction. The PAC may wish to urge the Director of Buildings to:

(a) closely monitor the implementation of the audit recommendations mentioned in paragraphs 5.16 (c), (d) and (e) of the Audit Report;

(b) evaluate and inform the PAC of the outcome as soon as possible; and

(c) pursue other options (including outsourcing the supervisory work) if the evaluation indicates that the measures now being implemented fail to achieve the desired effects.

A Chinese translation letter will be forwarded to you shortly.

Yours sincerely,

(YING Kwok-wing)
for Director of Audit

Note by Clerk, PAC:

Page 27 of verbatim report not attached.

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31 December 2003

Ms Miranda HON
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Legislative Council Building
8 Jackson Road
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Dear Ms Hon,

The Director of Audit's Report on the results of value for money audit (Report No. 41)

Chapter 7: Planning and provision of public secondary school places

Thank you for your letter dated 11 December 2003 enquiring whether four of the ten schools visited by Audit Commission staff have actually left their vacant classrooms idle all the year round.

To put the PAC's question in perspective, it needs to be pointed out that these ten schools were among the 50 public secondary schools with vacant classrooms as at September 2002 according to the EMB's records (para. 2.4). Audit Commission staff visited ten schools (out of the 50) in September 2003 and found that in four schools, the vacant classrooms were locked at the time of the visit.

As regards whether the four schools concerned had actually left their vacant classrooms idle all the year round, the information obtained is as follows:

> ***School 1.*** There were seven vacant classrooms out of 42 classrooms in this school as at September 2002. Four vacant classrooms had generally been utilised for teaching. As to the remaining three vacant classrooms, one was used to store physical education equipment, one was used as a student guidance room during lunch breaks, and one was reserved and kept vacant.

School 2. There were 12 vacant classrooms out of 23 classrooms in this school as at September 2002. Eight vacant classrooms had generally been utilised for teaching. As to the remaining four vacant classrooms, one was used as the social worker's office, one was used to store musical instruments and for after-school activities, and the other two vacant classrooms were used as an English study room and an ETV room, which were open to students as and when necessary.

School 3. There were five vacant classrooms out of 16 classrooms in this school as at September 2002. All of the five vacant classrooms had generally been utilised for teaching.

School 4. There were ten vacant classrooms out of 30 classrooms in this school as at September 2002. Two vacant classrooms had generally been utilised for teaching. As to the remaining eight vacant classrooms, four were used as ETV and IT teaching rooms and were open to students as and when necessary, one was used as a multi-language room and was open to students as and when necessary, and three were reserved and kept vacant.

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,

(David M T LEUNG)
for Director of Audit

c.c. Secretary for Education and Manpower

Information requested by the Public Accounts Committee

1. Clerk's letter of 11 December 2003

(a) Packing under-enrolled classes is a regular exercise conduced by the EMB to maximise the utilisation of school places. In implementing this measure, we would take into account educational and administrative factors to minimise disruption to both the schools and the students. For example, it will be most disruptive to schools' time-tabling and planned activities to pack classes right at the beginning of a school year immediately after the headcount. A more practicable way is to pack classes by approving fewer classes at the next higher levels before finalising the class structure for the following school year, having regard to the existing enrolment situation. The number of classes reduced through this exercise in the last three years is as follows —

2001/02 School Year	2002/03 School Year	2003/04 School Year
2 classes	14 classes	49 classes*

* This is the actual number of classes packed. The Audit Report has referred to the estimated number of 50.

The notional savings are estimated to be about $2.6 million in the 2001/02 school year, $18.6 million in the 2002/03 school year and $64 million in the 2003/04 school year.

(b) The Audit visits were carried out in September 2003 independently without our knowledge. As far as Schools A to D referred to in paragraphs 2.5 to 2.16 of Audit Report No.41 are concerned, they have actually made use of their vacant classrooms for educational purposes. Some of the rooms with expensive equipment are locked up when they are not in use for security reasons. The details are as follows —

School A : The five vacant classrooms have been used as multi-media learning centre, self-access learning

rooms and religious room pending the gradual phasing in of the ultimate class structure. They have been frequently used by students, especially during recess and lunchtime.

School B : All five vacant classrooms have been actively in use. Two classrooms have been used as multi-media learning centre and computer room. The other three have been used for remedial/split class teaching.

School C : The five vacant classrooms have been used for split class teaching.

School D : Three vacant classrooms have been used for remedial/split class teaching. Another three have been used as student guidance room, teaching resource room, and language laboratory/ETV room. They were actively used throughout the year. The remaining one was held for reserve purposes. (Separately, classrooms for S5 and S7 were locked up during the HKCEE and HKAL examination periods when students had already left school.)

2. Clerk's letter of 18 December 2003

(a) In the Audit Report, the number of "vacant classrooms" refers to the numerical difference between the number of classrooms as registered with this Bureau and the number of approved classes. The term "vacant classrooms" does not carry its intuitive meaning that the classrooms are left vacant. Although no formal surveys on classroom utilisation are conducted, we maintain a good understanding of the use of space in school premises for teaching and support purposes through regular school visits, as well as schools' formal notification of or application for change of designated use of rooms. As Members may know, compared to the Year 2000 school design, many existing schools are accommodated in sub-standard premises. It is indeed common that many secondary schools with "vacant classroom" have expressed difficulties in finding enough space for various educational activities. In response to the Audit Report, we have specifically checked out the situation of the 50 schools identified and confirmed that the "vacant classrooms" are put to beneficial

use for students. We will continue to keep a vigilant eye on classroom utilisation to optimise the use of resources.

(b) The overall "vacant classroom" rate, according to the Audit definition, since the 1993/94 school year is provided in the Annex. Members may wish to note that over the years more schools have rationalised their class structures transforming from asymmetrical (e.g. 6-6-6-4-4-2-2-) to symmetrical ones (e.g. 5-5-5-5-5-2-2). It is educationally undesirable to use up every registered classroom to operate additional classes if such an arrangement would result in an asymmetrical class structure. As explained above, "vacant classrooms" have generally been put to good use for the benefits of students. Furthermore, a few reserve classrooms can be used as a small buffer for operating additional classes to meet sudden, transient changes in demand.

(c) The Government has been buying places from Caput Schools since the 1970s' and administered the scheme through the Caput Grant Rules. While there is no contractual or legal obligation for the Government to continue buying the places at all levels. Caput schools may expect the Government to continue to allow them to retain their caput status, to process their class structure in a way similar to their counterparts in the aided sector, and to provide parents with choice of school places. There are some caput schools with full enrolment even though they are in districts with declining demand for school places. From an educational point of view, the Government should reward good performance and not withdraw subvention from popular schools. We will consider phasing out subvention for Caput schools which are weak in performance and are grossly under-enrolled.

(d) The 34 new schools referred to in the Audit Report were taken from the School Building Programme as at March 2003 and they were required to meet new demand. Of these 34 schools, 14 have come into operation in the 2003-04 school year. The School Building Programme was updated in the last quarter of 2003, taking into account the latest forecast in supply and demand of school places. With a forecast shortfall of 423 classes, we plan to complete 19 new secondary schools between 2004 and 2007, in order to meet the Government's pledge of providing nine-year free and universal basic education for all eligible children and subsidised senior secondary places for form three students who have the ability and wish to continue their study. In addition, our

current Programme has included seven new secondary school projects which are planned for reprovisioning or redeveloping existing schools. Upon reprovisioning, it is our general policy to require the school sponsoring bodies concerned to surrender the vacated premises to the Government for alternative use, including for other educational purposes, such as re-allocation to other school sponsors after appropriate conversion or redevelopment.

(e) Reprovisioning and redevelopment of schools accommodated in sub-standard premises is a long-term target and the number of schools to be included is subject to availability of funds and land. We aim to take forward a rolling programme, covering a few schools each year at the initial stage. Although numerous existing schools are still accommodated in substandard premises, many of them have been provided with reasonable improvements in facilities and premises under the School Improvement Programme.

Annex

"Vacant Classroom" Rates in Public Sector Secondary Schools (Since 1993/94 School Year)

School Year	"Vacant Classroom" Rate
2003/04	1.4%
2002/03	1.4%
2001/02	1.3%
2000/01	1.3%
1999/00	1.1%
1998/99	0.8%
1997/98	0.7%
1996/97	0.7%
1995/96	0.6%
1994/95	0.5%
1993/94	0.5%

Note : The number of "vacant classrooms" refers to the numerical difference between the number of registered classrooms and the number of operating classes.

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30 December 2003

Ms Miranda HON
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8 Jackson Road
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Dear Ms Hon,

The Director of Audit's Report on the results of value for money audit (Report No. 41)

Chapter 7: Planning and provision of public secondary school places

Thank you for your letter dated 19 December 2003 seeking audit's views on whether and how the School Development and Accountability Framework (SDAF) is relevant to the issues raised under the question of under-utilisation of classrooms. My views are given below.

Relevance of SDAF to classroom utilisation

As at the beginning of the 2002-03 school year, there were 145 vacant classrooms in 50 public secondary schools. Among those aided schools with vacant classrooms, the problem was more serious in four schools (i.e. Schools A, B, C and D), each of which had five or more vacant classrooms. Schools B, C and D had difficulties in attracting students. However, Audit noted that Schools B and C had obtained positive value-added scores in the three core subjects (i.e. Chinese, English and Mathematics) in 2000, 2001 and 2002, whereas School D had obtained low scores in the three years (paras. 2.2 to 2.14).

On the basis of these scores, Audit recommended that the Secretary for Education and Manpower (SEM) should encourage those schools which are providing added value to the educational process to operate classes in all their available classrooms. As for those schools which have not made significant contributions to the progress of their students, Audit recommended that the SEM should require such schools to make improvements within a reasonable period of time. In response, the SEM said that the Education and Manpower Bureau (EMB) "will take into account a host of indicators to evaluate the performance of schools. The EMB's value-added score is only one of the many indicators". The SEM also said that "to ensure a fair assessment of a school, a myriad of performance data should also be considered. The EMB is indeed pursuing an SDAF in which a balanced set of indicators and data will be used to evaluate the performance of schools in all key aspects" (paras. 2.18(i) and (o)).

In Audit's view, the EMB should, in principle, take action to ensure that schools make use of all available classrooms. Where vacant classrooms exist in a school, it is up to the SEM to decide whether to use the value-added scores or the myriad of indicators under the SDAF to assess the school's performance in order to take appropriate action to address the problem.

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,

(David M T LEUNG)
for Director of Audit

c.c. Secretary for Education and Manpower

大學教育資助委員會
University Grants Committee

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31 December 2003

Clerk, Public Accounts Committee
Legislative Council
8 Jackson Road
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(Attn.: Ms Dora Wai)

Dear Ms Wai,

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 9: funding of tertiary education

Thank you for your letter dated 15 Dec 2003. Please find below the joint response of the institutions on the following issues as requested by the Public Accounts Committee.

Review of the Crude Average Student Unit Cost

(a) The institutions agree that a review of the appropriateness of using the current crude average student unit cost as the basis for the funding the UGC Sector should be conducted but respect that this is a matter for the UGC to take forward in consultation with the institutions. In the light of the many reforms underway in the sector, a meaningful review could only be started during the 2005-2008 triennium when the situation becomes more settled.

Enhancement of Transparency of the 'Teaching' and 'Research' funding split

(b) As a new funding methodology is being developed by the UGC for the assessment exercise of the 2005-2008 triennium, institutions support that more transparency regarding the funding split between teaching and research should be made when the new assessment exercise is completed in early 2005, with institutions retaining the autonomy in the deployment of resources.

Disclosure of RAE result

(c) In the UGC's Higher Education Review Report published in March 2002, it is proposed that the Research Assessment Exercise (RAE) should be refined to promote higher levels of excellence in university research. The UGC has been actively working on a refined methodology for the next exercise due for completion in 2006 and has decided that the results of the new exercise, together with the comments made by the RAE panels, should be suitably disclosed in due course. The institutions would work with the UGC to determine on exactly what, how and when.

Overhead Recovery Rate

(d) Institutions are forming a small working group comprising the Directors of Finance of the institutions to conduct the review to the overhead recovery rates. We expect a work plan will be available in early 2004 from the Group and external auditors of the institutions will be consulted as and when necessary. We also expect that fair and appropriate overhead recovery rates will be worked out by individual institutions for each self-financed operation, having regard to the differences in the circumstances of the institution, the size of the self-financed operation concerned in relation to the institution's core activities and the variation in the administrative efforts incurred.

(e) The UGC will revise the UGC Notes on Procedures should it be decided that the student hostels should not be subject to overhead charging.

Please kindly note that the above is also broadly in line with the UGC's thinking on the matters, based on its discussions so far. Nevertheless, due to the very tight deadline for response, I have not been able to consult the UGC on the details of several of the matters raised. I shall write to you again in due course in the unlikely event that the UGC holds a different view from those attributed to it above.

Yours sincerely,

(Michael V Stone)
Secretary-General

c.c. HoIs
SEM
Permanent Secretary for Financial Services and the Treasury (Treasury)
Director of Audit

香港浸會大學
HONG KONG BAPTIST UNIVERSITY

From the President and Vice-Chancellor

校長：吳清輝教授

Prof. Ng Ching-Fai
BE(Chem), MSc, PhD

Ref.: PDO/0312/200
8 December 2003

Ms. Miranda Hon
Clerk
Public Accounts Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms. Hon,

Public Accounts Committee Hearing on Report No. 41
Scheduled on 10 December 2003

Thank you for agreeing to the suggestion that the Secretary-General of the University Grants Committee represents the Heads of Institutions, including myself, at your Committee's hearing on 10 December 2003. Please take note that this University has earlier on provided our comments on the Director of Audit's findings and recommendations in Report No. 41, and these have been captured in the Report itself.

2. While the University does not see the need to repeat each and every one of those comments here, I would like to add one further comment as follows:

> Par 2.12 (b) The suggestion of an in-depth review of the budgets of the institutions goes against the principle of institutional autonomy and the rules of the existing Block Grant System. The information on the expenditure of the institutions filed periodically with the UGC Secretariat should enable an in-depth review of the expenditure incurred by each institution to be carried out. Therefore the University has reservation about this recommendation.

Yours sincerely

C F Ng
President & Vice-Chancellor

c.c. Secretary-General, UGC
Director of Audit

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5 January 2004

Clerk, Public Accounts Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn: Ms Dora WAI)

Dear Ms Wai,

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 9: Funding of tertiary education

Thank you for your letter of 12 December 2003 regarding the 30 projects which had been terminated due to the departure of the Principal Investigators within a year after the commencement of the projects (Table 6 in para. 4.32 of the Audit Report). According to information provided by the institutions, there were five projects which were terminated due to expiry of the employment contracts of the Principal Investigators. Details about the names of the institutions concerned, and the employment of these Principal Investigators, including the remaining duration of their employment contracts with the institutions at the time of application, research grant award and project commencement are shown in the following paragraphs.

The University of Hong Kong (HKU)

Principal Investigators left within six months after commencement of project

There was one project where the Principal Investigator left within six months after project commencement. The Principal Investigator left in December 2002 after commencement of the project in September 2002. The remaining

duration of the Principal Investigator's employment contract with the institution, at various stages before project commencement, is shown below:

At the time of	Remaining duration of Principal Investigator's employment contract (months)
application	13
research grant award	5
project commencement	3

The HKU explained that due to unforeseen circumstances, the Principal Investigator was not able to accept the renewal of contract and left for Europe to resume a tenure position as a Professor. The Principal Investigator also proposed to continue the project as a Co-Investigator, but this was rejected by the HKU in conformity with the Competitive Earmarked Research Grant (CERG) regulations.

Principal Investigators left between six and 12 months after commencement of project

There were two projects where the Principal Investigators left between six and 12 months after project commencement. The Principal Investigator of one project (Project A) left in July 2001 after commencement of the project in September 2000. The Principal Investigator of the other project (Project B) left in August 2002 after commencement of the project in September 2001. The remaining duration of these two Principal Investigators' employment contracts with the institution, at various stages before project commencement, is shown below:

At the time of	Remaining duration of Principal Investigator's employment contract in Project A (months)	Remaining duration of Principal Investigator's employment contract in Project B (months)
application	21	22
research grant award	13	14
project commencement	11	12

As to the reasons for proceeding with the projects, the HKU advised that currently (as at end of November 2003) about 45% of full-time, paid academic staff (excluding honorary, visiting and temporary appointees) holding the ranks of Assistant Lecturers to Professors are placed on contract terms. Such contractual arrangements were introduced to enable the HKU to react effectively to a declining budgetary situation. As uncertainty about the following year's budget level grows, Heads of Departments find themselves increasingly being unable to plan proactively and decisively about staff contracts. Therefore, at the time of submitting CERG applications, i.e. in

October each year (Note), a degree of uncertainty surrounds the status of a number of contracts. The HKU, however, would not discourage HKU's academic staff from submitting CERG proposals in October as it is precisely the staff's duty to seek outside sources to support their research work, **unless** it is already certain by the following June that certain staff will not have the requisite period of service remaining in their contract to make them eligible for CERG grants. Institutions can, however, be expected to withdraw or accept a CERG grant when the outcome of previous year's prepared submissions is announced. The HKU has also advised that:

— in an atmosphere of funding uncertainty which militates against prudent financial and academic planning, HKU's Research Services Section has the established practice of reminding Heads of Departments annually of the need to consider whether contracts of CERG applicants would be renewed or otherwise. The administration is, however, careful to emphasise that no implications are attached to a renewal or otherwise due to a CERG grant. Such reminders are issued only to enable the HKU to discharge its duty and obligation to the RGC by way of ensuring that a CERG applicant's appointment status must be in conformity with the RGC rules; and

— the HKU currently has in total more than 680 funded and ongoing CERG projects. It must be accepted that not all cases are within the institution's control. These terminated projects only represent a very small percentage of the pool of projects.

City University of Hong Kong (CityU)

Principal Investigators left between six and 12 months after commencement of project

There was one project where the Principal Investigator left between six and 12 months after project commencement. The Principal Investigator left in June 2001 after commencement of the project in December 2000. The remaining duration of the Principal Investigator's employment contract with the institution, at various stages before project commencement, is shown below:

Note: *The CERG calls for applications once a year. Applications endorsed by the institutions are submitted to the Research Grants Council (RGC) by October/November. The applications received are examined by the subject panels of the RGC between December and May with assistance from specialist academic assessors/referees either in Hong Kong or overseas. The panels then select proposals to be recommended for funding support to the RGC. The RGC holds meetings in June to decide how the CERG should be distributed. A research project normally commences within six months on approval of grant (i.e. by 31 December).*

At the time of	Remaining duration of Principal Investigator's employment contract (months)
application	20
research grant award	12
project commencement	7

The CityU explained that the project was approved in June 2000. The Principal Investigator was the sole investigator of the project. In the absence of a Co-Investigator, the project had to be terminated according to RGC rule upon departure of the Principal Investigator a year after project approval. Approval of CERG projects is usually announced by the RGC in late June/early July every year. To allow for preparatory work before the start of the project e.g. recruitment of research staff or acquisition of specialised equipment items, the commencement date of the project reported to the RGC is usually three to six months from the approval date, and this is acceptable to the RGC. In reality, CERG projects start from the date of approval of the award in June, and counting from the project commencement date may not accurately reflect the situation.

The CityU has also advised that:

— the issue of termination of CERG projects arising from staff departure shortly after grant approval/commencement has to do with the CERG application schedule and CityU's internal personnel decisions cycle. Principal Investigators prepare their CERG applications and submit by the end of October every year when decisions on contract renewal/ substantiation of appointments for contracts due to expire in July of the following year are not yet confirmed. There are also cases where the employment contracts end in January/February, or where more lengthy performance assessments are involved. The process could end as late as May/June, shortly before award announcement. In deciding whether to submit an application at the time, the institution and the Principal Investigator could only consider the existence of a reasonable expectation and an intention of further employment;

— the CityU always endeavours to report on the latest development and/or to request withdrawal for confirmed cases of staff departure, during the project updates to the RGC in April; and

— staff departure is a personnel decision which involves a number of factors and it is difficult to ascertain these expectations/intentions. In most of the cases where projects were terminated within six months of commencement, they involved late confirmation of such decisions, and hence withdrawal of the Principal Investigator and return of the grant to the RGC.

The Hong Kong University of Science and Technology (HKUST)

Principal Investigators left between six and 12 months after commencement of project

There was one project where the Principal Investigator left between six and 12 months after project commencement. The Principal Investigator left in January 2002 after commencement of the project in July 2001. The remaining duration of the Principal Investigator's employment contract with the institution, at various stages before project commencement, is shown below:

At the time of	**Remaining duration of Principal Investigator's employment contract** (months)
application	14
research grant award	6
project commencement	6

The HKUST explained that contract renewal was under review at the time of research grant award and project commencement. The Principal Investigator left after six months and before 12 months after commencement of the project with project funding fully returned to the RGC.

If you have any questions, please contact the undersigned at 2829 4251 or Mr John Chu at 2829 4253 (email address: john_nc_chu@aud.gov.hk).

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,

(David M T LEUNG)
for Director of Audit

c.c. Secretary-General, University Grants Committee

Office of the President
校長辦公室

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8 December 2003

Your Ref.: CB(3)/PAC/R41

Ms Miranda Hon
Clerk, Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Ms Hon,

The Director of Audit's Report on the results of value for money audits (Report No. 41)
Chapter 9: Funding of tertiary education

I write to confirm my earlier discussion with the Deputy Chairman of the Public Accounts Committee (PAC), Hon Emily Lau, JP that I would not be able to attend the upcoming PAC public hearing to be held on 10 December 2003.

I would like to take the opportunity to provide an update on our University's overhead recovery rate referred to in Table 9 and paragraph 5.15 of the report. We have increased the floor overhead recovery rate for self-financing activities from 11% in 2002-03 to 18% in 2003-04, effective 1 September 2003.

I hope the above information is useful for the Committee.

Sincerely yours,

Paul Chu
President

c.c. Secretary-General, University Grants Committee

UGC 大學教育資助委員會
University Grants Committee

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18 February 2004

Clerk, Public Accounts Committee
Legislative Council
8 Jackson Road
Central
Hong Kong
(Attn.: Ms Dora Wai)

Dear Ms Wai,

The Director of Audit's Report on the results of value for money audits (Report No. 41)

Chapter 9: funding of tertiary education

Further to my letter dated 31 December 2003, I would like to provide the Public Accounts Committee with the following additional information which has been given by the Heads of Universities Committee (HUCOM).

Overhead Recovery Rate

At a meeting held recently, HUCOM agreed to set up a Working Group on Review of Overhead Recovery Practices on Self-financing Activities of UGC-funded Institutions, comprising the Directors of Finance of all the institutions, with the following work plan:

- July 2004 - Draft proposal for overhead recovery practices on self-financing academic programs and continuing and professional education programs

- October 2004 - Draft proposal for overhead recovery practices on non-UGC-funded research contracts and grants

- December 2004 - Final proposal for HUCOM's decision

I am pleased the Institutions have formed this Working Party and wished to draw its establishment to your attention.

Yours sincerely,

(Michael V Stone)
Secretary-General

c.c. HoIs
SEM
Permanent Secretary for Financial Services and the Treasury (Treasury)
Director of Audit