

# EXECUTIVE SUMMARY

## Direct Investigation Control of Roadside Banners

### Background

Government has a Management Scheme for the Display of Roadside Non-Commercial Publicity Materials (“the Scheme”), under which Government departments, Legislative Council (“LegCo”) Members, and District Councils (“DCs”), DC Members and certain non-profit making organisations may put up roadside banners at designated spots for display for specified period. This is administered by the Lands Department (“Lands D”).

2. Earlier, in August 2006, we completed a preliminary study on the Scheme, examining whether appropriate measures were in place to prevent proliferation of roadside banners and to ensure their secure installation and timely removal. We have been monitoring progress since.

3. We have continued to receive complaints about unclear rules and misuse of the Scheme, e.g. some banners carrying only minor, or even no, mention of the individual or organisation allocated the banner spot, as if the spot had been “loaned out” or transferred”.

4. The Ombudsman, therefore, initiated a direct investigation to examine the Scheme in greater detail.

### The Scheme

5. Under the Scheme, Lands D approves applications from **organisations** for displaying banners case by case, each for two calendar months less the last two days. In contrast, **LegCo** and **DC Members** are allocated spots for the entire tenure of their office. Moreover, their banners are not subject to Lands D’s pre-vetting.

6. According to Lands D, spots created under the Scheme number 21,821 in total. A breakdown of these spots is as follows:

### Number of Spots Created

<b>Allocated</b>	
LegCo Members (60)	8,096
DC Members (534)	5,171
<b>Available for Application</b>	
Non-profit making organisations	5,109
DCs (18) and committees	1,117
Government departments (61)	2,328
<b>Total:</b>	<b>21,821</b>

7. Lands D has published Guidelines for the Scheme, which govern, *inter alia*, the approved contents of banners as follows:

Allowed	Not Allowed
<ul style="list-style-type: none"> <li>■ Events of public interest or non-commercial activities</li> <li>■ Promotion of community services</li> <li>■ Information of general interest and benefit to the public provided by LegCo and DC Members and political bodies</li> </ul>	<ul style="list-style-type: none"> <li>■ Promotion of commodities or services at a fee or fee-paying training courses and activities</li> <li>■ Contents in breach of the laws of Hong Kong</li> <li>■ Information of an obscene or objectionable nature</li> </ul>

### **Observations and Comments**

8. Roadside banners constitute a form of encroachment upon public space and may cause visual obstruction and pollution. Where they block sightline and distract motorists or wear out and come loose, they pose traffic hazard, for drivers and pedestrians. Display of such banners should, therefore, be properly monitored and controlled.

#### ***Absence of Clear Statement of Objective***

9. The Scheme impacts on the rights of citizens to traffic safety, unimpeded movement and a pleasant environment. Sacrifice of such rights ought to be justified on grounds of public interest and the justifications should be duly promulgated. Hence, a clear statement of the objective of the Scheme is necessary to explain why there should be authorised displays and why certain individuals, organisations, kinds of activities or messages should be allocated spots for display.

#### ***Lack of Rules to Avoid Transfer of Privilege***

10. As any individual or organisation allocated a banner spot enjoys a privilege at public expense, such privilege should not be regarded as a freely disposable proprietary right. Consequently, there should be clear rules to prohibit transfer or “loaning out”, particularly a specific requirement for the individual or organisation allocated the spot to be conspicuously acknowledged on the banner.

#### ***Loose Guidelines on Banner Contents***

11. The current Guidelines are too loosely worded to be useful public information on what is permitted for display on banners. Nor can the Guidelines adequately serve as benchmark for enforcement. For example, “events of public interest”, “non-commercial activities”, “promotion of community services” and “information of general interest and benefit to the public” are all wide open to interpretation and may easily result in contention. Clearer definition is called for.

#### ***Inadequate Public Consultation***

12. Lands D had in the main consulted LegCo and DCs on the Scheme, without special regard to the fact that all LegCo and DC Members were beneficiaries of the Scheme and their views and decisions inevitably could be perceived as biased towards self-interest.

13. For proper balance of different interests, Lands D should enlist the help of the District Offices of the Home Affairs Department (“HAD”) and seek views from the public at large (e.g. through open consultation or opinion survey), or from organisations representing the interests of affected parties (such as residents groups or motorists organisations) before consulting LegCo and DC Members.

### ***Proposal Unjustifiably Shelved***

14. Lands D has proposed to replace the banner spots at central dividers of roads or close to pedestrian crossings with spots posing less risk to motorists and pedestrians. The Government departments consulted raised no objection, but HAD asked that new spots be created in compensation. Lands D eventually decided not to pursue the proposal on the following grounds:

- (a) The central dividers are regarded as prime sites by the users and replacements cannot be easily found.
- (b) When LegCo Members were previously consulted on the Scheme, they had asked for even more banner spots. It was, therefore, unlikely that LegCo and DCs would accept the proposal.

15. We take exception to these points, particularly the assumption that LegCo and DC Members would necessarily object to an overall reduction in the number of banner spots. Surely, road safety should not be compromised for administrative convenience or political expediency. We find it unfair to Members for Lands D to assume that they would not accept the proposal, which was based on self-evident public interest. We urge Lands D to follow up our recommendation and conduct public consultation, involving HAD and the relevant policy bureaux as necessary.

### **Recommendations**

16. In the light of the above observations, The Ombudsman recommends that the Administration take action as follows:

#### Lands D in conjunction with the relevant bureaux

- (1) to articulate the objective of the Scheme for public information;

#### Lands D

- (2) to revise the rules for proper administration of the Scheme, including –
  - (i) prohibition of transfer, “loaning out” or assignment of allocated spots;
  - (ii) clearly visible acknowledgement, on the banner, of the individual or organisation allocated the banner spot;
  - (iii) a clear indication in practical terms what contents may be allowed and what not for the banners;

Lands D with the help of HAD

- (3) to seek views from the public at large or interest groups before consulting LegCo and DCs;
- (4) to reconsider replacement or cancellation of the designated spots at central dividers of roads or close to pedestrian crossings.

17. Lands D generally accepted our recommendations.

**Office of The Ombudsman  
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