



地政總署  
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來函檔號 Your Ref: CB4/PAC/R72

來函請註明本署檔號  
Please quote our reference in your reply

我們矢志努力不懈，提供盡善盡美的土地行政服務。  
We strive to achieve excellence in land administration.

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Clerk, Public Accounts Committee  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong  
(Attn : Mr. Anthony CHU)

**By Fax & Email**  
(Fax No. 2543 9197)

24 May 2019

Dear Sirs,

### Public Accounts Committee

### Consideration of Chapter 1 of the Director of Audit's Report No. 72

### Planning, provision and management of public parking spaces

Thank you for your letter of 10 May 2019. Our responses to Items (a) to (c) of your letter are set out below.

#### **Item (a)**

**According to paragraph 2.14 of the Audit Report, the Lands Department may lease government land not yet leased or allocated for long-term development uses by way of short-term tenancy ("STT") for fee-paying public carparks. Please provide a flow chart showing the steps leading to the leasing of STT carparks, from raising proposals, consulting departments to finding the operators, listing out the responsibilities of related department(s) at each step;**

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Please refer to **Annex A** for a flow chart on the general process for letting out government land by way of short-term tenancy under Abbreviated Tender System for fee-paying public carpark on the request of the Transport Department.

**Item (b)**

**With reference to case 2 in paragraph 2.13 of the Audit Report, please provide:**

**(i) follow-up actions taken by the Lands Department in respect of the non-compliance issue from December 2016 (when it was informed that the car park was open for public use) to October 2017 (when an inspection was conducted);**

The follow-up actions taken by Lands Department (LandsD) in respect of Case 2 during the period from December 2016 to October 2017 are set out at **Annex B**.

**(ii) reasons for not issuing a warning letter in respect of non-compliance issue discovered in October 2017; and**

According to file records, it was due to an oversight that no warning letter had been issued in respect of the breach in lease conditions after the annual site inspection of October 2017.

Nevertheless, LandsD took immediate follow-up actions with site inspection conducted on 16 May 2018 when an enquiry about Case 2 was received from Planning Department. As the same breach in lease conditions still persisted as revealed from site inspection, a warning letter was issued to the lot owner on 25 May 2018 requiring rectification of the breach within 14 days. The carpark operator replied on 29 May 2018 informing that the breach was rectified with metal fences at the carpark entrance removed. As a follow-up, another site inspection was conducted by LandsD on 31 May 2018 which revealed that the concerned metal fences were removed and the breach was considered rectified. The case file was then marked for action for the next annual site inspection to be conducted in October 2018.

**(iii) details of new guidelines promulgated to handle the non-compliance cases in which Lands Department has been informed that the non-compliance issue(s) has/have been rectified;**

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LandsD issued emails in August 2018 and October 2018 to remind District Lands Offices ("DLOs") to monitor and to check compliance of lease conditions including the issuance of warning letters and advisory letters and other follow up action in accordance with the prevailing guidelines. To reinforce the message and as a further reminder, LandsD has issued a memo recently in May 2019 consolidating previous guidelines given in August and October 2018. The previous and the latest guidelines are attached at **Annex C** for reference.

**Item (c)**

**With reference to case 3 in paragraph 2.13 of the Audit Report, please advise the procedures for handling cases where private car owners refused to make rectification as required despite repeated issuance of warning letters to them by the Lands Department, and provide the relevant guidelines, if any.**

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In general, when breach of lease conditions warranting lease enforcement actions are detected and confirmed, LandsD will take lease enforcement action according to the established procedures by issuing warning letters to the lot owner to request for rectification of the breach, the failure to comply with which may lead to registration of the warning letter in the Land Registry, with reservation of the rights to take further appropriate lease enforcement action which may include the taking of re-entry action in accordance with the lease terms and under the Government Rights (Re-entry and Vesting Remedies) Ordinance.

For Case 3, please note that the warning letters were issued to the private lot owner who is the party breaching the lease conditions and against whom the lease enforcement action is taken rather than the individual private car owners. In response to LandsD's warning letters, the lot owner had taken positive actions against the improper parking by private cars, including erecting directional signs to guide the carpark users and warning notices of taking impounding actions. At the same time, the lot owner expressed genuine difficulties in enforcing the improper parking as individual private car drivers often ignore the warning notices and parked their private cars in the spaces

designated for goods vehicles. The lot owner considered that such actions by individual drivers were beyond their control.

Yours faithfully,



( Ms Sophia CHIANG )  
for Director of Lands

- |   |                     |
|---|---------------------|
| cc. Secretary for Transport and Housing           | (fax no. 2537 6519) |
| Secretary for Development                         | (fax no. 2147 3691) |
| Commissioner for Transport                        | (fax no. 2802 2361) |
| Director of Environmental Protection              | (fax no. 2891 2512) |
| Commissioner of Police                            | (fax no. 2866 2579) |
| Director of Planning                              | (fax no. 2869 7241) |
| Director of Leisure and Cultural Services         | (fax no. 2961 4661) |
| Secretary for Financial Services and the Treasury | (fax no. 2147 5239) |
| Director of Audit                                 | (fax no. 2583 9063) |

Flow Chart for Letting out Government Land by way of  
Short Term Tenancy (STT) under Abbreviated Tender System (ATS) for  
fee-paying public carpark use

1. Lands Department (LandsD) to consider to let out Government sites which are capable of reasonable separate alienation, have general commercial interest and are not immediately required for permanent use to implement the planning intention under Outline Zoning Plan or other temporary uses not yet identified by other Bureaux/Departments (B/Ds) by way of STT under ATS.

2. LandsD to circulate an STT proposal to relevant B/Ds including Transport Department (TD), Planning Department, Highways Department, Drainage Services Department and Water Supplies Department etc for comments, including conducting local consultation through District Office concerned. For sites located closed to villages in rural area, notice may be posted by LandsD.

3. The concerned B/Ds to comment on the STT proposal including the user and TD to raise request for letting out the STT site for fee-paying public carpark use with imposition of specified requirements they consider appropriate such as the types of vehicles to be allowed.

4. LandsD to resolve local objections as far as possible, to consolidate comments received from the concerned B/Ds; and to submit the STT proposal for fee-paying carpark car parking use upon such request from TD to the concerned District Land Conference (DLC) which is chaired by Assistant Director (Regional) of LandsD and is attended by representatives of various B/Ds including TD.

5. Upon approval of DLC, LandsD to finalise tender document including legal vetting.

6. LandsD to arrange for publication of advertisement in the press and to arrange printing of documents with the Government Logistics Department.

7. Upon close of the tender and receipt of tender bids from Government Tender Board, LandsD to assess whether the highest rental submitted under the conforming tenders received is within reasonable market range. If positive, LandsD to cash the deposit and arrange tender award to the tenderer with the highest rental and to arrange execution of the tenancy agreement and payment of first instalment of rent in advance and then to arrange the site hand-over to the successful tenderer.

## Annex B

Follow-up actions taken by Lands Department ("LandsD") from December 2016 to October 2017 in respect of the non-compliance issue of Case 2

Date	Follow-up actions
6.12.2016	<p>In response to warning letter dated 17.11.2016 issued by Lands Department to the owner of the subject carpark ("the Owner"), the carpark operator ("the Operator"), on behalf of the Owner, replied as follows:</p> <p>(1) The public car park is open 24-hour to public for parking. Hourly and monthly parking rates are displayed at the car park entrance and contact number is also provided for assistance.</p> <p>(2) The portable metal fences are placed to stop unauthorised use of the area between the car park entrance and the car park barrier gates after a few incidents in which unauthorised vehicles had used the area for loading/ unloading causing obstruction to vehicles including refuse collection vehicles from accessing the car park and the refuse collection chamber respectively.</p>
19.12.2016	<p>Further letter was issued by Lands Department to the Operator reminding them to observe and comply with the requirement stipulated under the concerned Special Condition of the Conditions of Sale governing the subject lot of Case 2. In addition, Lands Department reserved the right to take any enforcement action under lease should any breach exists at the date thereof or be detected thereafter.</p>
17.10.2017	<p>Lands Department's annual site inspection revealed that the ingress and egress points of the subject carpark were blocked by metal fences and no goods vehicles was parked therein.</p>

**MEMO**

From Assistant Director/Specialist 2  
 Ref. ( ) in LD 54/4030/07 II  
 Tel. No. 2231 3673  
 Fax. No. 2868 4707  
 Date 23 May 2019

To All DLOs  
 (Attn.: )  
 Your Ref. in  
 dated Fax. No.  
 Total Pages 2 + encl.

**Handling Complaints and Referrals  
 relating to Non-compliance of Lease Conditions  
 and follow up actions after Rectification**

This memo provides general guidelines for non-compliance of lease conditions arising from inspection, referral, complaint and rectified cases.

2. In general, when complaints or referrals are received, please carry out investigation work as soon as possible. Upon conducting the inspection for monitoring and checking of compliance, DLOs are required to take prompt follow up action once irregularity has been detected, for example issuance of warning letter and other actions. If during the last inspection, there was confirmed or suspected breach of lease condition and even though such breach was rectified, please act vigilantly and follow up as necessary. If the complaint or referral relates to public access of public facilities (such as public pedestrian passage, open space, footbridge and public carpark) under lease (LAOI D-34 refers), the monitoring and checking of compliance for these types of facilities should be carried out by way of annual inspection after the breach is rectified.
3. If a breach of lease conditions is established, a warning letter should be issued by DLOs immediately. The issuance of "Advisory Letter" should only be for situation if there is no specific lease restriction or the breach cannot be established but LandsD wishes to advise the lot owners to take note of certain matters.
4. Where certain cases are also under the jurisdiction of other departments (e.g. issuance of licence for food processing) or the matter would more appropriately be dealt with by other Government departments, DLOs will refer such cases to the relevant departments for their action under their purview, whilst LandsD would continue follow up the matters as appropriate.
5. For cases where the lessees or their agents notify that the non-compliance matters have been rectified, the concerned DLO should conduct inspection to make sure each irregularity has been rectified to the satisfaction of DLO. If the irregularity is not rectified up to a satisfactory level, further lease enforcement action should be taken forthwith. Besides, the concerned owner/agent should be informed of the findings. Please be reminded that field records such as plans, photos and site reports should be properly kept in the subject file for record.

6. Please also note that the above guidelines are applicable to all lease enforcement cases with immediate effect. This memo has consolidated the guidelines issued on 10 Aug 2018 and 11 Oct 2018 and will soon be uploaded in the Document Retrieval System (Miscellaneous\ List of Record and Useful Information \Guidelines/Manual) for easy reference. Please also note that these guidelines will be included in the Land Instructions in due course.



(Alan K L LO)

Assistant Director/Specialist 2

Encl.

Appendix 1 - Copy of email dated 10.8.2018@9:19am from AD/S2 to DLOs

Appendix 2 - Copy of Memo dated 11.10.2018 from AD/S2 to DLOs

c.c.

DL, DD/G, DD/S, AD/HQ  
All regional ADs  
SES/TI



Urgent  Return receipt  Sign  Encrypt  Mark Subject Restricted  Expand personal&public groups



{In Archive} Public carpark within private development

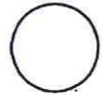
2018/08/10 AM 09:19

From: Alan KL LO/LAO/LANDSD/HKSARG  
To: All DLO@LANDSD,  
Cc: Karen PY CHAN/LAO/LANDSD/HKSARG@LANDSD, Tony  
MOYUNG/LAO/LANDSD/HKSARG@LANDSD, Patrick YH  
LEUNG/LAO/LANDSD/HKSARG@LANDSD, James KY  
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Sophia CW CHIANG/LAO/LANDSD/HKSARG@LANDSD, Rosanna SK  
TSE/LAO/LANDSD/HKSARG@LANDSD  
Bcc: Gigi YM HO/LAO/LANDSD/HKSARG@LANDSD  
Archive: This message is being viewed in an archive.

I refer to recent press enquiry in relation to suspected breach of lease condition on the opening of public carpark under the relevant lease condition.

If complaints are received, please carry out investigation work asap. Besides acting on complaint, the monitoring and checking of compliance of these types of facilities should be carried out by way of annual inspection (LI D-34). If during the last inspection, there was confirmed or suspected breach of lease condition, please take a vigilant eye on the issue and follow up as necessary.

Alan LO , AD/S2  
Tel : 2231 3673

**MEMO**

From Assistant Director/Specialist 2  
 Ref. ( ) in LD 54/4030/07 II  
 Tel. No. 2231 3673  
 Fax. No. 2868 4707  
 Date 11 October 2018

To All DLOs  
 (Attn.: \_\_\_\_\_)  
 Your Ref. \_\_\_\_\_ in \_\_\_\_\_  
 dated \_\_\_\_\_ Fax. No. \_\_\_\_\_  
 Total Pages 2 + encl.

**Lease Enforcement on breaches  
 relating to Public Facilities in Private Developments**

In view of a recent direct investigation being conducted by the Ombudsman on lease enforcement on breaches relating to public facilities in private developments, I wish to draw your attention on the following issues:

(a) Issuance of "Warning Letter" and "Advisory Letter"

According to paragraph 2 of AD/EM's email dated 4.6.2012 (copy attached at Appendix), if a breach of lease conditions is established, the letter issued by DLOs should call "Warning Letter" and not "Advisory Letter". The issuance of "Advisory Letter" should only be for situation if there is no specific lease restriction or the breach cannot be established but LandsD wishes to advise the lot owners to take note of certain matters.

(b) Prompt follow up action upon detection of irregularity at annual inspection

Upon conducting the annual inspection in accordance with paragraph 4 of LAOI D-34, DLOs are required to take prompt follow up action once irregularity has been detected, for example issuance of warning letters and other actions. All records of the follow up actions should be properly kept in file accordingly.

(c) Referral of cases to relevant departments

Pursuant to LAOI K-1F(ii), where certain cases are also under the jurisdiction of other departments (e.g. issuance of licence for food processing) or the matter would more appropriately be dealt with by other Government departments, DLOs will refer such cases to the relevant departments for their action under their purview, whilst LandsD would continue follow up the matters as appropriate.

2. This memo will be uploaded in the Document Retrieval System \ Miscellaneous \ List of Record and Useful Information \ Guidelines/Manual for easy reference.

( Alan K L LO )  
 Assistant Director/Specialist 2

Encl.

c.c. DD/G  
 DD/S

AD/HQ  
All regional ADs  
SES/TI  
File ref. LD CR/COM/1/1 (2017-12) C