

Management of short term tenancies by the Lands Department

The Audit Commission ("Audit") conducted a review to examine the management of short term tenancies ("STTs") by the Lands Department ("LandsD").

2. LandsD is the land administrative agency¹ of the Government. For sites on unleased and unallocated government land with possible potential for temporary uses, if there are no relevant competing demands from government bureaux/departments ("B/Ds"), they will be made available for STT use by parties outside the Government. As of September 2019, LandsD managed 5 582 STTs with a total land area of 2 411 hectares and 955 vacant government sites ("VGSs") suitable for STT use with a total land area of 192 hectares. The rental income from STTs for 2018-2019 was \$1,575 million.

3. The Committee noted the following findings from the Director of Audit's Report:

The processing of STT applications

- of the 1 165 STTs approved by LandsD from 2014-2015 to 2018-2019, the processing time for 204 (18%) STTs was longer than three years. For Case 1 (paragraph 2.6 of the Audit Report):
 - (a) Applicant A's STT application submitted in March 2003 was approved 14 years later in March 2017; and
 - (b) Applicant A was required to complete the slope upgrading works within one year as a condition for approving the STT in March 2017, but the required works had not been completed as of February 2020, and there was no documentary evidence showing that the relevant District Lands Office ("DLO")² had followed up the progress of the slope works with Applicant A;
- Audit examined 10 STT applications received or processed during 2014-2015 to 2018-2019 by seven DLOs and noted that:

¹ LandsD is mainly responsible for land disposal and transaction, allocation of land, development control and compliance under leases and other land instruments, land acquisition and clearance, as well as land enforcement and maintenance.

² 12 DLOs of LandsD are responsible for processing STT applications in the area under their purview.

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- (a) LandsD had no specific guidelines on handling STT applications from applicants with no capacity to sign the tenancy agreement (e.g. whether the applicant should be rejected right away or given a grace period for application rectification). For Case 2 (paragraph 2.7 of the Audit Report):
 - (i) policy support was given by the relevant bureau in granting the STT to Applicant B in July 2009, yet it was discovered in February 2010 that Applicant B was an unincorporated body and could not be regarded as a legal entity suitable to sign the tenancy agreement; and
 - (ii) the relevant DLO suspended the processing of Applicant B's application from May 2010 to May 2012 as applicant B claimed that it was undergoing the registration process as a limited company. During this period, the relevant DLO rejected another application for the site as Applicant B's application was under processing. The STT was subsequently approved in August 2014;
- (b) LandsD had no specific guidelines relating to the handling of STT applications with lack of policy support from the relevant B/Ds, including whether the applicant should be informed of the reason for lack of policy support, and whether the applicant could be allowed to modify its proposal in order to obtain the policy support, or whether such application should be rejected;
- (c) for Case 3 (paragraph 2.11 of the Audit Report), the tenancy requirements for fire safety were not complied with before Tenant A commenced to operate a public car park at an STT site in August 2018. Tenant A operated the car park until it served a notice to DLO in May 2019 to terminate the STT, and the site was returned to DLO in September 2019. During the whole operating period, fire service facilities installed at site were found unacceptable and the relevant fire service requirements had not been complied with; and
- (d) according to LandsD guidelines, non-profit-making or charitable organizations were exempt from the requirements to pay a deposit under STT. However, it was found that one DLO demanded deposits from a charitable organization for STT involving erection of permitted structures;

Renewal of STTs

- in general, STTs had a fixed (i.e. initial) term of not more than seven years. Audit examined the 5 590 STTs managed by LandsD as of October 2019 and noted that the tenants of 4 565 (82%) STTs had remained the same for over seven years, while 2 353 (51.5% of 4 565) of them had remained the same for more than 20 years (up to 55 years);
- for STTs for regularization of unauthorized occupation of government land, inspections should be carried out by relevant DLOs to determine whether the tenancies should be renewed upon the rental review process. However, one DLO had suspended all site inspections in relation to rental review for garden STT cases since October 2016 owing to competing priority;

Inspections of STTs and enforcement actions against breaches of STT conditions

- of the 5 134 STTs with inspections needed under the mandatory requirements,³ as of October 2019:
 - (a) no site inspection had been conducted for 1 409 (27%) STTs; and
 - (b) for the 3 725 (73%) STTs with site inspections conducted, the site inspections for 1 057 non-private garden STTs and 481 private garden STTs had not been conducted in compliance with the mandatory requirements;
- Audit noted in the following three cases (paragraphs 3.9 to 3.11 of the Audit Report) in which DLOs had not taken adequate and timely enforcement actions against breaches of STT conditions/had taken a long time in processing an application for rectifying breach of STT conditions:

³ In order to prevent tenants from subletting the premises, erecting unauthorized structures or extending the area of occupation into adjacent government land, it is mandatory that all STT sites have to be inspected once every three years (for STTs not involving private gardens) or once every five years (for private garden STTs). DLOs should, where practicable and staff resources permitting, consider formulating and implementing a programme for conducting site inspections at regular intervals based on the inspection priorities of STTs.

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- (a) for Case 6, unauthorized structures were identified on or adjoining the STT site in October 2017, but no enforcement action had been taken up to December 2019;
- (b) for Case 7, breach of restriction on use of the STT site had been identified during DLO's site inspections from May 2009 to May 2018, but no enforcement action had been taken up to January 2020; and
- (c) for Case 8, the application for regularization of the excessive area of the garden shed submitted by Tenant K in April 2016 was still being considered by DLO as of December 2019;

Recording of STT information

- there were errors and omissions in the STT records in the Tenancy Information System.⁴ Important STT information such as inspection priorities of STTs and the enforcement actions taken against breaches of STT conditions were not readily available from the system;
- Audit examined the records⁵ of three DLOs as of September 2019 and identified that some VGSs might be suitable for STT use but were not included in the lists of VGSs suitable for STT use, and some VGSs should not have been included in the lists;
- each DLO had its own set of criteria in selecting VGSs suitable for STT use, but the selection criteria and the decisions on suitability for STT use were not properly documented by some DLOs;
- LandsD Headquarters had not compiled regular management information (e.g. executive summary or highlights) on VGSs suitable for STT use for senior management's information;

⁴ Tenancy Information System is a web-based system which was introduced in 2009 for recording information of STTs granted by LandsD.

⁵ DLOs maintain lists of VGSs suitable for STT use in respect of sites under their respective management. On a quarterly basis, DLOs update and submit such lists to the relevant District Review Boards for review, the relevant Regional Assistant Directors of LandsD for monitoring and the LandsD Headquarters for records.

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Efforts in putting VGSs suitable for STT use to beneficial use

- for Case 9 (paragraph 4.13 of the Audit Report), three VGSs suitable for STT use had been reserved since 2004 for a development programme, and there were three applications for beneficial use of the sites between 2010 and 2016. Audit noted that:
 - (a) LandsD had not consulted the Food and Health Bureau about the then latest development programme before rejecting the first application; and
 - (b) for the other two applications, LandsD had consulted the Food and Health Bureau who objected/did not agree to the applications due to various concerns, yet there was no documentary evidence showing that LandsD had explored with the Food and Health Bureau whether its concerns could be addressed; and

Management of VGSs suitable for STT use

- between October and December 2019, Audit conducted site visits to 17 VGSs suitable for STT use and noted inadequacies in management of some sites,⁶ such as gates at the entrance opened/unlocked and suspected unauthorized occupation of land for vehicle parking.

4. The Committee asked for written responses regarding the granting and renewal of STTs, the monitoring of tenancy conditions and management of VGSs suitable for STT use. The replies from **Secretary for Development** and **Acting Director of Lands** are in *Appendices 52* and *53* respectively.

5. After studying the above replies, the Committee decided to hold a short public hearing on 12 June 2020 to seek details from the Administration on the measures that had been/would be taken to address/rectify the inadequacies identified in the Audit Report. **Mr Michael WONG Wai-lun, Secretary for Development** and **Ms Karen CHAN Pui-ye, Acting Director of Lands** respectively made an

⁶ LandsD is responsible for the site management of VGSs suitable for STT use before their granting, including fencing on site, providing guarding services or patrolling services, grass cutting and removal of rubbish and stagnant water, and clearance of illegal structures. Site management work is provided under LandsD's term contracts.

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opening statement at the beginning of the short public hearing. The full texts of their opening statements are in *Appendices 54* and *55* respectively.

6. At the short public hearing, **Secretary for Development** further explained to the Committee about the measures to regulate temporary structures erected on STT sites granted to non-profit-making or charitable organizations if the tenants were exempted from the requirement to pay a deposit; the measures to enhance LandsD's communication with B/Ds in relation to STT applications and applications for temporary use of VGSs suitable for STT use; the revamp of Tenancy Information System; and the action plan of LandsD in response to Director of Audit's recommendations. The supplementary written responses provided by **Acting Director of Lands** after the short public hearing are in *Appendix 56*.

7. The Committee wishes to be kept informed of the progress made in implementing the various recommendations made by Audit.