

For Information

On 20.9.2006

**LEGISLATIVE COUNCIL PANEL
ON PLANNING, LANDS AND WORKS**

**Policy on Short Term Alienation of Government Land and
Ex-Short Term Tenancy 1150 at Kwun Yam Shan**

Purpose

This paper is to inform Members of the policy and administration of short term alienation of government land, case details of the Ex-Short Term Tenancy (STT) 1150 at Kwun Yam Shan and improvement measures in enforcement of tenancy conditions.

Administration of Short Term Tenancies

2. The Hong Kong Special Administrative Region has a total land area of 110 372 hectares (ha). Some 34 517 ha is unleased Government land or land held under licence or STT. This land requires management by LandsD. The Administration's well established policy is that where there is vacant government land which has not been designated for a specific use or is not required for development in the near future, opportunity will be taken to make the land available through STT for temporary use. The policy objectives relating to STT can be summarized as follows :-

- (a) To ensure temporary beneficial use of the land with consequential reduction in the costs of preventing sites from unlawful occupation or creating environmental/health problems ;
- (b) To obtain revenue from what would otherwise be idle resources; and
- (c) To establish a system of temporary tenure which can be administered easily, fairly and cost effectively.

As at 1 July 2006, there were 4 542 STT covering a total area of about 770 ha. The rental income generated from STT during the last three financial years averaged at about \$1,000 million per annum.

Types of Short Term Tenancies

3. Currently, STT may be created in four ways -
- (a) *By Open Tender* – Land that is likely to be of general commercial interest is let by open tender. Uses are for purposes such as storage of goods/vehicles/construction equipment & materials, fee-paying public car park, plant nurseries and golf driving ranges etc.
 - (b) *By Direct Grant* – STT may be granted directly where there is no general commercial interest in the land or where there is only one interested party in need of the land. Examples of such uses include works areas required for public projects or by Utility Companies; or sites for non-profit making activities by charitable/non-profit-making organizations for which policy support by the relevant policy bureau has been given.
 - (c) *By Regularization of unauthorized occupation of Government land (GL)* – When unlawful occupation of GL without structures is detected by LandsD, they may be regularized under certain circumstances by the issue of STTs at market rental to the occupiers. It is a pragmatic way of resolving the unlawful occupation problem of a particular piece of GL and obviates the need for deploying considerable manpower in conducting frequent inspections to prevent re-occupation of the GL concerned.
 - (d) *By Conversion from Government Land Licence/Permit* – Since the mid 1970's, it has been Government policy to convert old land licences governing occupation of GL to STT to effect better land control.

Enforcement of Tenancy Conditions

4. LandsD enforces the contractual right to effect rectification by the tenant for his breaches. The sequence of enforcement actions could be summarized as follows -
- (a) notify the tenant of the detected breach on site verbally, if appropriate, or in writing and ask him to rectify the breach;
 - (b) send warning letter to the tenant if the breach is not purged within a reasonable period of time;
 - (c) issue a notice of Intended Re-entry if the warning is ignored;
 - (d) deliver a Notice to Quit to the tenant by fax or by mail. The same to be posted;

- (e) take action to recover possession of site;
- (f) arrange demolition of any structures on site, as appropriate or as necessary.

District Lands Offices handle the cases based on the severity and urgency of the purported breach. Given the need to respect the tenant's right of peaceful occupation and privacy, officers will not normally conduct inspection inside the premises erected on the STT sites unless persistent breaches had been detected previously, or in cases where complaints have been received.

History of Ex-STT No. 1150

5. In August 1976, the contractor of China Light and Power Company Limited applied for temporary use of a piece of Government land at Kwun Yam Shan in connection with construction works of the 132KV Overhead Line from Hammer Hill to Sha Tin. **STT 108** was subsequently approved by Shatin District Land Conference (STDLC) in October 1976. The terms of STT 108 and subsequent STTs are summarised at Annex for reference.

Change of Tenancy

6. Upon completion of its works in July 1979, the said contractor requested District Office/Shatin¹ (DO/ST) to transfer the tenancy to its sub-contractor for other electricity and utilities network projects. The application was approved by the then District Officer/Shatin. STT 108 was cancelled and replaced by **STT 315** granted to the sub-contractor.

7. In October 1983, the tenant of STT 315 made a request to transfer the tenancy to the wife of Mr. HEUNG Cheuk-kei and to reduce the tenancy area. Moreover, in November 1983, the tenant through its lawyers submitted a Power of Attorney dated 28 October 1982 authorizing Mr. HEUNG to deal with all aspects of the tenancy. The request for transfer was rejected as the tenancy was non-assignable whilst the reduction in tenancy area was approved in December 1983 by the District Lands Officer/Shatin.

8. In February 1993, Mr. HEUNG requested District Lands Office/Shatin (DLO/ST) to transfer the tenancy to him. As (i) neither the Government Property Agency nor the then Agriculture and Fisheries Department wished to acquire the site; (ii) leaving the site vacant

¹ Land administration in the New Territories was under the portfolio of the District Office of New Territories Administration prior to 1982 when it was taken over by the District Lands Office (DLO) following the establishment of Lands Department.

would result in loss of rental income and management problems due to its remote location and (iii) no public complaint had been received in the previous 10 years (i.e. since 1983), the District Lands Officer/Shatin approved the grant of **STT 958** to Mr. HEUNG (hereinafter referred to as “the tenant”) and **STT 315** was cancelled.

Irregularities

9. According to the information available from file records, during the tenure of STTs 315 and 958, the irregularities detected and actions taken by DLO/ST are as follows :-

Date	Nature of breach as detected by DLO/ST	Action taken	Outcome
9.8.1984	Residential use	Verbal warning to Mrs. Heung who was on site	The premises were reverted back to storage purposes during subsequent inspections on 18.9.1984, 4.10.1984 and 19.12.1984. Inspection on 25.10.1985 revealed that the premises were left unattended and no irregularities were detected.
14.4.1989	Residential use	Mr. Heung visited DLO/ST on 18.7.1989 and stated that the things he stored in the premises were samples of building materials	Reverted back to storage purpose, according to inspection on 12.9.1989. The premises were locked up but it could be seen from the outside that boxes were stacked up everywhere.
17.9.1990	Residential use	On 21.9.1990, warning letter was issued to the tenant of STT 315	No irregularities were detected during inspection on 21.11.1990. Inspection on 29.5.1991 revealed that the premises were left unattended and no irregularities were found. No irregularities were detected according to

Date	Nature of breach as detected by DLO/ST	Action taken	Outcome
			inspection on 8.7.1991.
20.10.1992	Residential use	As it was suspected that the tenant of STT 315 no longer existed, action was taken to identify its status and the role of Mr. Heung under the Power of Attorney provided by the tenant of STT 315. Consideration was given to issuing a STT to Mr. Heung	STT 958 to Mr. Heung (hereinafter referred to as “the tenant”) was approved by DLO/ST on 17.6.1993.
23.6.1994	Nearby villagers alerted DLO/ST that the tenant had occupied additional Government Land	Warning letter issued on 6.7.1994 to the tenant. On 27.7.1994, the case was referred to Housing Department (HD) to take action. Further memos were sent on 9.9.1994, 4.10.1994 and 17.2.1995 to remind HD	HD’s action was not identified on DLO’s file. According to HD file, action was withheld as the tenant had sent them a letter saying that he was negotiating with DLO/ST on matters relating to the tenancy.
25.11.1996	Residential use	Verbal warning was given to the wife of the tenant	Reverted to storage use according to an inspection on 21.5.1997. All furniture and belongings were covered up by plastic sheeting.
14.12.1999	Residential use	Warning letter was issued on 16.12.1999 to the tenant	The breach was confirmed to have been rectified by a letter issued by DLO/ST to the tenant on 15.3.2000.

Request for residential use

10. In response to the warning letter issued in December 1999 by DLO/ST, the tenant enquired about the possibility of amending the user condition of STT 958 to “workshop,

recreation and residential uses”. The tenant was informed in February 2000 that his request for allowing residential accommodation would not be considered and the breach must be purged before 7.3.2000, failing which the tenancy would be terminated without further notice. An inspection was conducted on 2.3.2000 by the staff of DLO/ST with the tenant, and the latter was advised of the rectification works required. The required works were completed when the site was inspected one week later. DLO/ST subsequently issued a letter confirming that the breach had been rectified.

11. According to file records, the tenant in 2000 had raised his concern to LandsD over the care of the substantial number of pet dogs kept on the STT site. In view of the above, LandsD agreed in February 2000 that the use of the premises for STT 958 could be broadened to include “kennels”. Subsequently, STT 958 was replaced by STT 1150 granted to the tenant on 1.3.2000. The permissible uses included storage of non-dangerous goods and a kennel.

12. Caretaker’s quarters was not explicitly permitted in the tenancy agreement. However, in May 2002 the District Lands Officer/Shatin, after being notified of the tenant’s complaint on a series of break-ins, accepted the tenant’s suggestion that a watchperson could stay on site to improve security.

13. In October 2002, the tenancy area was found to have been used for residential purpose. After receiving a written warning from DLO/ST, the tenant submitted a written reply in November 2002 stating that general repair works were carried out in Summer. The works included re-painting the corrugated steel structure and replacing the broken windows and doors which were damaged by burglars. Pruning and weeding of the surrounding shrubs were conducted to prevent insect infestation as mosquitoes and flesh eating flies had caused death to his dogs. The works were done to improve the environment and to make burglars to believe that the place was not unattended. The tenant also assured that he had no intention to convert the premises to residential use. District Lands Officer/Shatin personally inspected the premises in December 2002 and considered that the situation of the premises complied with the user restriction. The staff of DLO/ST inspected the site again in September 2005 and on 1.8.2006 and found that the situation of the premises remained unchanged from that in December 2002. Furnitures and belongings were covered up by plastic sheeting and many storage boxes were stacked up inside the premises. It was therefore considered that there was no breach of tenancy conditions.

Current Position

14. On 9.8.2006, the tenant served one week’s notice to DLO/ST to terminate the

tenancy. The notice was accepted and DLO/ST took possession of the premises on 17.8.2006. The ex-tenant was asked to clear the structures on site within 2 weeks and reinstate the site in the subsequent 2 weeks and to bear all related costs. At present all structures were demolished and re-instatement works were completed. The site will be kept as part of the Green Belt.

15. LandsD had received the preliminary opinion of the leading counsel on whether the terms and conditions of the STTs had been breached, and is examining the case with the Department of Justice. The relevant information cannot be disclosed at the present moment to avoid prejudicing Government's position in subsequent actions.

Improvement Measures

16. In the light of the circumstances of the tenancy at Kwun Yam Shan and other problems relating to STTs, LandsD will conduct inspection to all STTs (more than 4,500 numbers) in Hong Kong within 4 months and follow up any breaches. LandsD will continue to review the procedures of tenancy enforcement and the following improvement measures are being considered or taken to further enhance the effectiveness of LandsD in administering the STT system :

- (a) Formulation of a set of indicators to complete enforcement action from issuing warning letters to notice of termination within specific time limit;
- (b) Outsourcing part of the patrol and tenancy enforcement work with a view to conduct inspection on every STT case at least once a year;
- (c) For recurring breaches, a shorter warning period will be given to expedite case handling;
- (d) Demanding higher deposits from tenants found to have repeatedly caused minor breaches;
- (e) Reviewing and optimizing the existing guidelines of the Department, especially on the handling of rent arrears, monitoring tenant's performance in fulfilling the tenancy conditions and the taking of tenancy enforcement actions by the staff;
- (f) Revision of the standard tenancy conditions with a view to strengthening tenancy enforcement. This includes the Government's right to set off rent arrears owed by a tenant, against his rent deposits held for other STTs;
- (g) Introduction of a system for self-certification of compliance by private professionals for specific tenancies involving large areas or with mixed users; and
- (h) For some specific tenancies, Government may carry out financial audit of the

prospective tenant prior to the granting of STT to ensure that the prospective tenant is financially capable to operate the permitted facilities under the tenancy.

Annex

Summary of the Short Term Tenancy (STT) granted at Kwun Yam Shan, Sha Tin

Lands Department

September 2006

Summary on the Short Term Tenancy (STT) granted at Kwun Yam Shan, Sha Tin

STT No.	Tenant	Period	Area (about)	User	Rental	Remarks
108 Authority: STDLC	Steel Structures (鋼鐵建築)	1.12.1976 to 30.11.1979	1,858 m ²	Storage and helipad only Structure : Not exceeding 25% of the tenancy area nor exceeding 6.1 metres in height.	\$24,000 p.a. (standard rate)	The subject site was used for works in connection with the construction works for 132KV Overhead Line from Hammer Hill to Sha Tin for China Light and Power Company Limited (CLP).
315 Authority: DO/ST	Hing Shing Metal Co. (興盛五金行)	1.12.1979 to 31.12.1993	1,480 m ² Reduced to 740 m ² w.e.f. 21.10.1983 Authority: DLO/ST	Storage of non-dangerous goods and helipad only Structure : Not exceeding 25% of the tenancy area (i.e. 370m ²) nor exceeding 6.1 metres in height.	\$29,881 p.a. (standard rate)	(i) The tenant was the sub-contractor of "Steel Structures" who would perform further network projects for CLP. (ii) Power of Attorney to deal with the tenancy, given by Hing Shing Metal Company to Mr. Heung Cheuk-kei dated 28.10.1982, was received.
958 Authority: DLO/ST	Mr. Heung Cheuk-kei	1.1.1994 to 29.2.2000	740 m ²	Storage of non-dangerous goods Structure : Not exceeding 25% of the tenancy area (i.e. 185m ²)	\$130,000 p.a. Full Market Rent (FMR)	(i) At the request of Mr. Heung on 12.2.1993, the attorney of Hing Shing Metal Company, Government agreed on 17.6.1993 to cancel STT 315 and issue a fresh STT to him. (ii) The tenant enquired on 22.12.1999 about change of user. DLO/ST rejected application.

<p>1150 Authority: DLO/ST</p>	<p>Mr. Heung Cheuk-kei</p>	<p>1.3.2000 to 16.8.2006</p>	<p>1,070 m²</p>	<p>Storage of non-dangerous goods and kennel</p> <p>Structure : 155 m²x 7m - storage 90 m²x 4m - porch 1 m² - water tank</p>	<p>\$192,600 p.a. FMR</p>	<p>(i) The tenant requested to extend the tenancy area to cover the existing structures and to add the use “a kennel”. Thereafter, STT 958 was cancelled and STT 1150 was issued.</p> <p>(ii) The rent was reviewed on 1.3.2003 and was maintained at \$192,600.00 p.a. Another rent review on 1.3.2006 increased the rent to \$214,000.00 p.a.</p> <p>(iii) DLO/ST inspected premises on 4.12.2002 and considered the premises being used for storage of non-dangerous goods and kennel use.</p>
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