

## **A. Introduction**

The Audit Commission ("Audit") conducted a review of the use and disposal of vacant school premises ("VSP").

### Background

2. According to the Education Bureau ("EDB"), the premises of schools that have ceased to operate for various reasons, such as closing, reprovioning and merger are referred to as VSP. When school sponsoring bodies ("SSBs") cease to use their existing premises located on government land (or in public housing estates under the Hong Kong Housing Authority) to operate their schools, they have to cease to occupy and relinquish possession of the existing premises. As regards schools with existing school premises located on private land (including land grant under private treaty grant ("PTG")), if they are reprovioned to other premises through School Allocation Exercises<sup>1</sup> ("SAEs"), the SSBs concerned are required to return their existing school premises to the Government as a condition of reprovioning under EDB's service agreement ("SA") with the SSBs, or they are required to handle the existing premises in accordance with the conditions of the land lease.

3. Subsequent to the cessation of school operation, VSP suitable for educational uses would be reallocated for operating schools or redeployed for other educational uses. EDB aims to put VSP to gainful use in the shortest possible time. For VSP not suitable for educational uses, EDB aims to return them to the relevant departments, mainly, the Lands Department ("LandsD") and the Housing Department ("HD") through the central clearing house mechanism<sup>2</sup> in an expeditious manner for consideration of alternative uses.

4. Under the policy on consolidation of under-utilized primary schools ("Consolidation Policy") implemented since the 2003-2004 school year, public sector primary schools not meeting the minimum threshold number of primary one students<sup>3</sup> will not be allocated primary one class and may subsequently cease operation. The Consolidation Policy has resulted in a number of VSP.

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1 EDB conducts SAE from time to time to invite SSBs to apply for new premises or VSP for operating such schools.

2 Under the central clearing house mechanism agreed by the then Steering Committee on Housing Land Supply in October 2011, EDB would pass the list of VSP not suitable for educational uses to the Planning Department which serves as a central clearing house to consider suitable alternative uses of the sites.

3 The minimum threshold number was 23 between 2003-2004 and 2007-2008 school years, 21 for 2008-2009 school year and 16 starting from 2009-2010 school year.

5. Since July 2005, the Infrastructure and Research Support Division ("IRSD") of EDB has been tasked to handle VSP. The records maintained by IRSD between July 2005 and April 2015 comprised a total of 234 VSP, including 105 VSP that were not being used as at 30 April 2015 and other 129 VSP that were being used or had been or were going to be demolished for housing or other development.

### The Committee's Report

6. The Committee's Report sets out the evidence gathered from witnesses. The Report is divided into the following parts:

- Introduction (Part A) (paragraphs 1 to 10);
- Identifying vacant school premises (Part B) (paragraphs 11 to 26);
- Allocating vacant school premises for educational or other uses (Part C) (paragraphs 27 to 48);
- Handling cases of vacant school premises not surrendered (Part D) (paragraphs 49 to 52);
- Property management of vacant school premises (Part E) (paragraphs 53 to 57); and
- Conclusions and recommendations (Part F) (paragraphs 58 to 60).

### Public hearings

7. The Committee held two public hearings on 15 December 2015 and 5 January 2016 respectively to receive evidence on the findings and observations of the Director of Audit's Report ("Audit Report").

### Declaration of interest

8. Hon Abraham SHEK Lai-him declared that he was the Chairman of Board of Governors of English Schools Foundation and a council member of the St. Stephen's Girls' College.

Opening statement by Secretary for Education

9. **Mr Eddie NG Hak-kim, Secretary for Education**, made an opening statement at the beginning of the Committee's first public hearing held on 15 December 2015, the summary of which is as follows:

- over the years, the Government had enhanced the mechanism for handling VSP on government land or private land granted to SSBs by the Government. Under the prevailing mechanism established by the then Steering Committee on Housing Land Supply in October 2011<sup>4</sup>, when vacant/to-be-vacated school premises were identified, EDB would assess the need to reallocate such premises for school or other educational uses based on their size, location and physical conditions. If EDB considered certain VSP not suitable or did not envisage the need to reallocate the VSP for educational use, EDB would return the VSP to the Planning Department ("PlanD") under the prevailing mechanism for considering whether the sites concerned were suitable for residential development or other uses, with a view to meeting various needs of Hong Kong;

*Identifying VSP*

- the existing database of VSP kept by EDB mainly contained information on VSP available to IRSD since it was specifically assigned to handle VSP in July 2005, as well as information subsequently provided by the Regional Education Offices ("REOs"). EDB was reviewing the existing database with a view to making it as comprehensive and systematic as possible. An internal manual would be drawn up to set out the requirements and guidelines on the identification, screening, allocation and management of VSP for all relevant EDB sections to follow;
- EDB would review the database of VSP against the particulars of de-registered schools and approached LandsD for checking of land leases for identifying any VSP that had been left out and taking follow-up actions under prevailing mechanism as necessary;

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4 The Committee, chaired by Financial Secretary, was set up on October 2010 to coordinate the efforts of government bureaux/departments in making available land for housing development. It has been reorganized into the Steering Committee on Land Supply since February 2013 to coordinate the overall plans for development and supply of land in Hong Kong for different types of land uses.

*Allocating VSP for educational or other uses*

- according to Table 5 of the Audit Report, of the 29 VSP under EDB's purview that were not being used, EDB had already returned four out of eight VSP that had not been earmarked for any use under the central clearing house mechanism with both LandsD and PlanD being notified accordingly. As for the remaining four VSP which were located on private land, EDB would liaise with LandsD on the possible ways of handling the VSP;
- for the 12 VSP not yet put to their allocated use, arrangements were being made for eight of them to be put to use;
- for the nine VSP earmarked for educational uses, EDB would continue to regularly review the need to retain them and the timeline of use, and review the possible short-term use by EDB and relevant government bureaux/departments ("B/Ds") on a regular basis;
- EDB had also expedited SAE. Over the past three years, eight VSP had been reallocated for school use and six of them were already in operation;

*Handling of cases of VSP not surrendered*

- according to Table 11 of the Audit Report, of the 32 VSP on private land with physical possession of the VSP not yet returned to the Government, nine of them were not put to use as at 30 April 2015. EDB had already returned four of them under the central clearing house mechanism and informed LandsD and PlanD accordingly. EDB would liaise with LandsD on ways of handling the remaining five VSP;
- for VSP that EDB considered necessary to reallocate for educational uses, EDB would discuss with relevant departments such as LandsD and consider recovering possession of the land as far as practicable in accordance with the provisions of the relevant land licences/land leases/SAs. However, the Government must act in accordance with the land licences/land leases/SAs concerned and that recovering possession of land by exercising the power conferred by the land licences/land leases/SAs might not be the only way to make good use of the land; and

*Property management of VSP*

- EDB was conducting more extensive research to identify other providers of property management services so as to compile a more comprehensive list of property management service providers for managing VSP and would monitor the contractors' performance closely. EDB would also properly evaluate contractors' performance upon completion of contract.

The full text of Secretary for Education's opening statement is in *Appendix 26*.

10. **Ms Bernadette LINN, Director of Lands**, made an opening statement at the beginning of the Committee's first public hearing held on 15 December 2015, the summary of which is as follows:

- for those VSP passed to LandsD under the central clearing house mechanism which were identified to have potential for development by PlanD, LandsD would undertake follow-up actions promptly to facilitate housing development or other specific land use purposes;
- for other VSP under LandsD's purview in which their long-term uses were yet to be determined or implemented, LandsD would try to put them to appropriate temporary uses such as renting them out on short-term tenancy ("STT") on application. These sites were usually less attractive due to their remote location with poor access; and
- as revealed in the Audit Report, there were 73 VSP under LandsD's purview which were not allocated for any use. Of the 73 VSP, 24 VSP were being planned for uses by other B/Ds or interested organizations. 18 VSP were on private land where SSBs had no obligation to deliver possession of the VSP to the Government under the relevant land leases. Actions were being taken for recovering possession of 10 VSP for which their physical possession had not yet been handed back to the Government. LandsD would continue to circulate the list of the remaining VSP to relevant B/Ds such as Social Welfare Department and Home Affairs Department, and District Councils for application on short-term basis for greening or community uses.

**B. Identifying vacant school premises**

11. The Committee noted from paragraph 2.7 of the Audit Report that IRSD maintained a database on VSP mainly based on information provided by REOs. EDB also maintained a school registration database to record details of registered/de-registered schools which contained information about their cessation of operation. Audit conducted a sample check with information contained in the two databases, and found out that 14 VSP were not included in the list of 234 VSP kept by IRSD. The Committee enquired how IRSD compiled the database of VSP and the reasons for omitting the 14 VSP in the database.

12. **Mrs Marion LAI CHAN Chi-kuen, Permanent Secretary for Education** replied at the public hearings and **Secretary for Education** supplemented in the letter dated 31 December 2015 (*Appendix 27*) that:

- IRSD of EDB had been tasked to handle VSP since July 2005. Before that, there was no designated division within EDB specifically tasked to handle VSP. A database on VSP was set up at that time with information available at that point of time. The database had been updated over the years mainly with input from REOs; and
- more school premises had become vacant after the implementation of the Consolidation Policy in the 2003-2004 school year. Information on VSP before the implementation of the Consolidation Policy was neither complete nor comprehensive. Hence, the current database on VSP could hardly capture all VSP, especially those that were vacated a long time ago. Nevertheless, EDB was reviewing the mechanism for updating the database on VSP with a view to making the VSP database as comprehensive as practicable.

13. The Committee noted that the VSP database was updated based on the information provided by REOs. The Committee enquired:

- why REOs were not aware of the 14 VSP omitted from their respective regions;
- whether REOs had conducted any physical inspection or stock-taking exercise on the number of VSP within their respective regions so as to ensure accuracy of the VSP database;

- what improvement measures had been/would be taken by IRSD to ensure that the database of VSP contained the most comprehensive and up-to-date information; and
- timetable for implementing the improvement measures.

14. **Permanent Secretary for Education** explained at the public hearings and **Secretary for Education** supplemented in the letter dated 31 December 2015 (*Appendix 27*) that:

- to ensure that the VSP database would contain the most up-to-date information on VSP, EDB was going to conduct a stock-taking exercise by comparing the databases on VSP and school registration to identify possible missed cases of VSP, if any. REOs would then conduct site visits to gather further information to ascertain whether the premises were indeed vacated;
- EDB would seek LandsD's advice on the land status of potential cases identified for consideration of necessary follow-up actions. If potential cases were confirmed to have given rise to VSP, EDB would update the database on VSP and follow up the cases based on the established mechanism accordingly;
- EDB would draw up an internal manual to set out the requirements and guidelines on the identification, screening, allocation and management of VSP for all related EDB sections to follow; and
- as there were over 3 000 entries in the registration database, EDB aimed to complete the above enhancement measures to the VSP database in six months' time. In addition, School Registration and Compliance Section of EDB would inform IRSD whenever there was any school closure. IRSD would also follow up with the respective REOs and LandsD for updating the database on VSP and to handle new VSP according to the established mechanism.

15. At the request of the Committee, **Secretary for Education** provided details on the 14 VSP not included in the database of VSP maintained by IRSD in his reply dated 31 December 2015 (*Appendix 27*) that:

- among the 14 cases, 11 of them involved private lots with no cessation of user clause in the land lease. Eight of them were used as private schools before school closure;
- as at 21 December 2015, 10 out of the 14 premises in question were in use and seven of them were for school use;
- for the remaining seven premises not for school use, one was being used for educational and welfare services, two were deployed for community uses under STT and government permit; and
- as regards the four sites that remained vacant, one had been planned for conversion into a post-graduate hostel. LandsD was processing an application regarding the use of the government land portion on one site, and a temporary waiver application on a portion of the private land of another site. The remaining VSP was located on a private land with no cessation of user clause in the relevant land lease and hence the usage of land was unrestricted.

Details on the 14 VSP, including districts where the VSP were located, land status, its current use and whether the relevant land lease contained a cessation of user clause are in *Appendix 28*.

16. In reply to the Committee's enquiry about the plan to enhance the information captured by VSP database for better identification, categorization and disposal of VSP, **Secretary for Education** supplemented in the letter dated 19 January 2016 (*Appendix 29*) that:

- the existing VSP database captured the basic information of VSP, including the former school name, address, number of classrooms and special rooms, year of closure, approximate site area and age of the premises, basic land status category (government or private land), etc. EDB was reviewing the mechanism for data collection and updating with a view to better identifying and categorizing VSP from the perspective of the use and disposal of VSP, including better defining what constituted VSP or VSP requiring handling. The land status and type of school would be main considerations; and
- EDB would add to the VSP database the finance type of the former school and information relevant to the land on which the VSP was located, including details about the type of land (e.g. whether the land

was granted under a PTG), whether the lease contained a land use restriction clause and cessation of user clause, etc., with a view to stepping up the arrangements regarding the identification, assessment and handling of VSP. EDB aimed to complete the abovementioned actions in six months' time.

17. According to paragraph 2.12 of the Audit Report, IRSD would issue a list of VSP to subject EDB divisions half-yearly for them to make proposals on the use of VSP. The Committee enquired what factors EDB divisions would take into account when assessing VSP's suitability for use and what actions had been done to promote the use of VSP which had not been earmarked for use on the circulation list.

18. **Secretary for Education** responded in his reply dated 31 December 2015 (*Appendix 27*) that:

- in assessing a VSP's suitability for school use or other educational use, EDB would consider the size, location and physical conditions of the relevant premises. In addition, EDB would also take into account factors such as the demand for public sector school places in the district, reprovisioning needs of existing schools especially those in the district and the need to provide diversity in the school system, with a view to meeting various educational needs in the territory and supporting relevant policy initiatives;
- IRSD, on a half-yearly basis, circulated a list of new VSP and VSP not yet earmarked for any use to subject EDB divisions for proposals on educational uses and/or short-term uses (where appropriate). IRSD would also circulate a list of those VSP with earmarked uses to subject EDB divisions for their advice on the timeline of the proposed uses. Besides, IRSD also identified suitable VSP for use upon subject EDB division's requests from time to time on a need basis; and
- to further promote the use of VSP, IRSD also compiled and circulated, on a half-yearly basis, a list of VSP suitable for short-term use to relevant B/Ds, including the Home Affairs Bureau, Home Affairs Department, LandsD, PlanD and Social Welfare Department, with a view to identifying short-term use pending the deployment of such premises for the designated use.

19. In reply to the Committee's enquiry on the number of VSP that were successfully allocated for use under the mechanism mentioned in paragraph 18 since 2005, **Secretary for Education** replied in his letter dated 31 December 2015 (*Appendix 27*) that:

- from August 2005 to April 2015, IRSD had conducted 16 exercises to circulate a list of VSP not yet earmarked for any use and a list of VSP with earmarked uses to subject EDB divisions half-yearly. EDB divisions had indicated interests in a total of 106 VSP for school or other educational use during these exercises; and
- among the 106 VSP, 67 VSP had been re-deployed or re-allocated for school or other educational use and nine were being earmarked for school or other educational use. As at 21 December 2015, of remaining 30 VSP, one had been demolished, one had been deployed for other uses, 26 had been returned to the Government for consideration on alternative uses under the central clearing house mechanism. As regards the remaining two VSP, they were located on private land and EDB would consult LandsD about feasible way forward under the relevant land lease conditions.

#### *Central clearing house mechanism*

20. Referring to paragraphs 2.3 to 2.5 of the Audit Report, the Committee noted that PlanD would serve as the central clearing house to consider suitable alternative uses of VSP returned by EDB which were no longer required for school or educational uses. However, PlanD would not be tasked to provide oversight on the optimal allocation and disposal of VSP. The Committee enquired how the Administration could ensure a timely and efficient disposal of VSP if no dedicated B/D was to be assigned an oversight responsibility on the allocation of VSP.

21. **Secretary for Development** replied in his letter dated 22 January 2016 (*Appendix 30*) that:

- according to the central clearing house mechanism, PlanD would serve as a central clearing house to consider suitable long-term alternative uses (e.g. Government, Institution or Community, residential and other uses) for vacant or to-be-vacated school sites when EDB notified PlanD and other relevant B/Ds that it no longer required such sites for school use. If a long-term alternative use was identified, PlanD would

proceed with the statutory rezoning procedures, if necessary, to facilitate development of the sites for the relevant uses;

- for VSP on government land under the purview of different B/Ds, the relevant B/Ds were responsible for their disposal according to the long-term alternative uses identified by PlanD. The relevant B/Ds would, where appropriate, pursue and arrange short-term uses to ensure efficient use of land resources;
- for VSP on government land not immediately required for the long-term uses identified and under LandsD's control, LandsD had been endeavouring to put those VSP to gainful use by inviting users through circulation to other B/Ds as well as District Councils, District Offices and District Social Welfare Offices. The lists of sites were available in District Land Offices ("DLOs") for public inspection by any interested party; and
- for VSP on sites governed by private land leases and government land licences, LandsD would seek the return of the sites to the Government where such action was in line with the terms of the leases/licences.

#### *VSP included in the School Improvement Programme*

22. The Committee noted from paragraph 2.21 of the Audit Report that, in considering whether to include school premises in the School Improvement Programme ("SIP"), EDB set a general principle that if the school premises could be used for five years or more after the completion of the improvement works, the school would be included in the programme. However, of the 79 VSP which had been included in the SIP, four of which vacated the premises before completion of improvement works and 22 vacated the premises within five years after. Reasons for vacating the school premises included drop in student enrolment (14 cases); re-provisioning of the school (five cases); school merger (two cases) and other reasons such as redevelopment of the housing estate (five cases). In this connection, the Committee enquired:

- why EDB still approved SIP for the 26 schools who vacated before or within five years after the completion of improvement works, and why EDB had not envisaged the closure of the schools and excluded them from SIP; and

- what the criteria adopted by EDB were in considering and approving schools' application for the programme.

23. **Permanent Secretary for Education** responded at the public hearings and **Secretary for Education** supplemented in his letter dated 31 December 2015 (*Appendix 27*) that:

- SIP was implemented between 1994 and 2007 with the aim of progressively upgrading the teaching and learning environment of public sector schools built to old planning standards as far as practicable by providing additional spaces and facilities;
- in considering the eligibility of schools to be included in SIP and the prioritization of SIP into different phases, factors including operational needs, age, size, utilization, physical conditions of the schools, technical feasibility and cost-effectiveness of the project would be taken into consideration;
- as the SIP projects had to go through several years of planning such as technical feasibility study, design, tenders etc. before commencing the construction, changes in time and circumstances could lead to unforeseen development;
- while striving to adhere to the principle of prudent use of public resources, EDB at that time was also mindful that it would be unfair to those schools and students should the Government put a halt to the respective SIP works simply because of a possibility of under-enrolment of students in future, as SIP was aimed at improving the schools' facilities and enhancing learning and teaching environment of the schools. Having considered all relevant factors, EDB at that time was of the view that terminating SIP works would not be in the best interests of the schools and the students concerned; and
- these public sector schools built to old planning standards were generally less competitive in student admission than newly-built schools, and therefore terminating SIP completely would diminish these schools' capacity of student admission.

24. In reply to the Committee's further enquiry on the total costs of improvement works for these 26 schools, **Secretary for Education** responded in the letter dated 31 December 2015 (*Appendix 27*) that total costs of the SIP works for

these 26 schools were approximately \$380 million. He added that although the 26 schools had ceased operation shortly before or after undergoing SIP, most of the school premises with improved facilities had been put into other uses afterwards. As at 21 December 2015, 12 of the 26 VSP were deployed for school use. Two of them were used for setting up time-limited primary schools and two for temporary use by international schools. Four were deployed for post-secondary and other educational uses, one used by a community organization and one as an EDB office. For the remaining four VSP, three had been demolished for redevelopment of housing estate and one had been returned to the Government under the central clearing house mechanism.

*Disclosure of information relating to VSP to the Legislative Council*

25. According to paragraphs 2.14 to 2.17 of the Audit Report, EDB provided information relating to the use and disposal of VSP to the Legislative Council ("LegCo") from time to time. However, information provided to LegCo by EDB mainly covered primary schools that had ceased operation because of the Consolidation Policy implemented since 2003-2004 school year and did not cover all VSP in the database maintained by IRSD. For instance, in answering a LegCo Member's question in the Examination of Estimates of Expenditure 2015-2016 on the details of existing VSP, EDB disclosed that the number of VSP as at March 2015 was 108 in total, which did not cover all 234 VSP known to EDB. The Committee enquired why EDB did not give a full disclosure of information relating to VSP to LegCo.

26. **Permanent Secretary for Education** responded at the public hearings and **Secretary for Education** supplemented in his letter dated 31 December 2015 (*Appendix 27*) that:

- the data on VSP released to LegCo were first compiled in relation to the questions raised by LegCo concerning the Consolidation Policy in the Examination of Estimates of Expenditure in 2006. Information on VSP before the implementation of the Consolidation Policy was neither complete nor comprehensive. For the sake of consistency and in the light of the information available, EDB had been adopting the Consolidation Policy as the framework for preparing subsequent VSP-related replies and information to LegCo, and had set out the framework adopted clearly in the replies to questions raised by LegCo Members in the Examination of Estimates of Expenditure of the Government; and

- EDB had also provided information on VSP outside the Consolidation Policy upon request every now and then, but with a marker that the data provided might not be comprehensive given the limitation of the VSP database.

### **C. Allocating vacant school premises for educational or other uses**

27. The Committee enquired about EDB's policy on handling, managing and allocating VSP and how the policy on VSP had been implemented regarding the 234 VSP listed on its database.

28. **Permanent Secretary for Education** responded at the public hearings and **Secretary for Education** supplemented in his letter dated 19 January 2016 (*Appendix 29*) that:

- it had all along been EDB's policy objective to put VSP to gainful use. To achieve this policy objective, when there was a vacant or to-be-vacated school premises, EDB would consider the size, location and physical conditions of the relevant premises with a view to assessing VSP's suitability for educational use or whether the premises were needed to be re-allocated for school or other educational use;
- in considering whether to allocate VSP for school or other educational use, EDB would take into account factors like the demand for public sector school places in the district, re-provisioning needs of existing schools especially those in the district, the need for decanting premises for in-situ redevelopment or extension of existing schools, the need to provide diversity in the school system, etc.; and
- once EDB confirmed that the VSP were no longer required by EDB for school or other educational uses, EDB would refer them to PlanD for consideration of suitable alternative uses in accordance with the central clearing house mechanism.

29. The Committee noted that it was EDB's aim to put VSP to gainful use in the shortest possible time. However, according to Table 5 of the Audit Report, there were 29 VSP under EDB's purview which were not being used. Of the 29 VSP, eight VSP had not been earmarked for any use (the schools had ceased operation for 6.4 years on average); nine VSP had been earmarked but not yet allocated to such

uses (the VSP had been earmarked for 3.9 years on average) and 12 VSP had not yet been put to allocated uses (the VSP had been allocated for 2.2 years on average). In this connection, the Committee enquired:

- the reasons for taking so long to put the VSP to gainful use and whether EDB would set a target on the vacancy period of VSP for their optimal utilization in an expeditious manner;
- for the nine VSP earmarked for mainstream/temporary school use for an average of 3.9 years, justifications for earmarking the VSP for such a long period of time without returning them to the Government for consideration of alternative uses and the mechanism in place for monitoring earmarked VSP to ensure that they were put to gainful use as early as practicable; and
- reasons for not putting the 12 VSP into allocated use.

30. **Secretary for Education** gave an account at the public hearings and in his reply dated 31 December 2015 (*Appendix 27*) on the latest development of the 29 VSP as at 21 December 2015:

Eight VSP not earmarked for any use

- four VSP located on private land were returned to the Government under the central clearing house mechanism and PlanD as well as LandsD had been informed accordingly;
- for the remaining four VSP located on private land, EDB would consult LandsD about the feasible way forward under the relevant land leases;

Details of the eight VSP are set out in *Appendix 31*.

12 VSP allocated and not yet put to use

- one VSP had been used by a primary school as extension since September 2015;
- two secondary schools had used a VSP as a shared extension since June 2015;

- one VSP had been used by a primary school for whole-day conversion since September 2015;
- three time-limited primary schools had commenced operation at three VSP since September 2015;
- one VSP had been used as an EDB office since November 2015;
- one VSP was handed over to an international school operator in November 2015 following the execution of a tenancy agreement;
- among the four remaining VSP in question, one was located on private land and the SSB concerned had applied to LandsD to deploy the VSP for operating kindergartens with EDB's policy support;

Efforts made by EDB to put VSP to gainful use and the feasibility of setting a target vacancy period of VSP

- despite uncontrollable or unforeseeable factors which might affect the use of VSP, EDB would closely monitor the follow-up actions to avoid unnecessary delay in putting an allocated VSP to use as far as practicable;
- in assessing the possible educational use of a VSP, there was a need to retain/earmark some VSP on hand to cater for uncertainties about the actual demand arising from parental choices and fluctuations of student population in future, such as using the VSP in the setting up of a time-limited school to meet the transient increase in demand;
- to fully utilize the land resources, EDB would continue the existing practice to internally review possible short-term uses of VSP earmarked by EDB located on government land, and invite relevant B/Ds to consider VSP for short-term use on a regular basis; and
- it was not practicable to impose a fixed target on the vacancy period of a VSP. Setting a fixed target of vacancy period arbitrarily might result in returning VSP to the Government in haste and compromising the flexibility required for meeting changing demand and various needs, such as reprovisioning of existing schools or decanting of schools for in-situ redevelopment.

31. At the request of the Committee, EDB, with the input from LandsD, provided flowcharts on the mechanisms for handling of VSP on government land and private land. The flowcharts are in *Appendices 32, 33 and 34*.

32. Referring to Table 11 of Audit Report regarding the 105 VSP which were not being used, the Committee requested Director of Lands and Secretary for Education to indicate the statuses of these VSP based on the procedures set out in the flowcharts on the mechanisms for handling of VSP on government land and private land (*Appendices 32, 33 and 34*).

33. **Director of Lands** replied in her letter dated 20 January 2016 (*Appendix 35*) that:

- regarding the 77 VSP (49 on government land and 24 on private land under LandsD's purview as at 30 April 2015 plus four VSP under EDB's purview as at 30 April 2015 but had recently been returned by EDB for considering alternative uses under the central clearing house mechanism) not required by EDB for school/other educational uses, their present statuses in the context of the mechanisms for handling of VSP on government land and private land were as follows:

49 VSP on government land - flowchart at *Appendix 32*

- (a) 41 VSP were at the stage of action step 5 of the mechanism shown in the flowchart at *Appendix 32*, i.e. "Land to be disposed of for long-term uses having regard to PlanD's view or put to temporary uses pending long term use or put on the list of vacant government sites available for application for temporary uses if there are no known temporary uses". Among them, two had been approved for alternative long-term uses and were pending site possession by the project proponents. 18 VSP had planned uses/applications being considered and processed by LandsD. The remaining 21 VSP were on the list of vacant government sites available for use on short-term basis;
- (b) eight VSP were at action step 3 of the mechanism shown in the flowchart at *Appendix 32*, i.e. "LandsD to terminate the government land licence/STT". In some of the cases the former licensees had objected to returning the sites to the Government for reasons that the school premises had been constructed at their

costs and they wished to retain the premises for other uses. Pending the Government's identification of specific long-term uses for these sites, LandsD would continue to liaise with the concerned parties to arrange gainful use of the VSP during the interim. At present, the concerned parties of four VSP had put forward proposals to retain the sites for short-term uses. These proposals were being considered in consultation with relevant B/Ds pending the identification of specific long-term uses by the Government;

28 VSP on private land - flowchart at *Appendix 34*

- (c) 21 VSP did not have cessation/diminution of user clause under lease and action step 2 of the mechanism shown in the flowchart at *Appendix 34* had been completed, i.e. "No further action by LandsD, until land is to be resumed for public purpose under statutory power or lease enforcement action is warranted due to lease breach". LandsD would inform EDB of position for record purpose;
- (d) seven VSP had cessation/diminution of user clause under lease (one of which had a cessation/diminution of user clause applying only to one out of eight lots comprising the VSP) that allowed the Government to re-enter the land upon the cessation of school use. Actions had proceeded to action step 3 of the mechanism shown in the flowchart at *Appendix 34*, i.e. "Re-entry action by LandsD". If the grantee put forward a proposal to use the site for education or other purposes, LandsD would process the proposal in consultation with relevant policy bureau, taking into account also long-term use identified by PlanD; and
- (e) the lease in respect of one VSP was modified in 2012 to accommodate another non-profit making use; proposals for other uses had been received for two VSP which were being considered/processed by LandsD in consultation with relevant B/Ds in accordance with the prevailing policy while LandsD continued its actions to recover possession of the other four VSP.

34. **Secretary for Education** replied in his letter dated 19 January 2016 (*Appendix 29*) that:

- there were 29 VSP under EDB's purview which were not being used as at 30 April 2015. The statuses of these 29 VSP as at 21 December 2015 were as follows:
  - (a) for the four VSP located on private land which EDB had confirmed not required for school or educational use, PlanD and LandsD had been informed under the central clearing house mechanism. LandsD would handle the four cases in accordance with the mechanism set out in *Appendix 34*. Three of these four premises did not contain a cessation of user clause in the respective land lease;
  - (b) there were 19 VSP located on government land and retained by EDB for school or other educational use. Among them, seven premises had already been re-deployed and one premises had been handed over to an international school operator allocated with that premises following execution of the tenancy agreement. The remaining 11 VSP had been earmarked or allocated for school use/temporary school use;
  - (c) for the remaining six premises located on private land, one of them had been allocated for educational use and three premises were being used or had been planned for educational use with EDB's policy support. The SA of one premises (i.e. Case 6 of Audit Report) contained a surrender clause and EDB was exploring with relevant departments on how to require the SSB to carve out and surrender the relevant school site in accordance with SA. As for the remaining one premises, EDB would ascertain whether it was required for educational use and would follow-up with LandsD in accordance with the mechanism set out in *Appendices 33 and 34*; and
  - (d) regarding the three premises under HD on government land which had not been put to use, EDB was considering whether to earmark one of them for school use again. The remaining two VSP had been returned under the central clearing house mechanism with PlanD being notified for consideration of alternative use.

35. The Committee enquired whether EDB and LandsD would consider setting an indicative timeframe for each procedure of the mechanism for handling VSP on government land and private land, where appropriate, with a view to expediting the processing of VSP and facilitating the monitoring by LegCo and the public.

36. **Secretary for Education** replied in his letter dated 19 January 2016 (*Appendix 29*) that setting a fixed target of vacancy period or number of VSP arbitrarily might result in returning VSP under the central clearing house mechanism in haste and compromising the flexibility required for meeting changing demand and various needs, including reprovisioning of existing schools for improved teaching environment or decanting use by existing schools to facilitate in-situ redevelopment or extension. With the policy objective of putting VSP to gainful use in mind, EDB strived to facilitate the utilization of VSP in an expeditious manner. Notwithstanding, it was not practicable to impose a fixed target on the time allowed or a fixed timetable for the process.

37. **Director of Lands** replied in her letter dated 20 January 2016 (*Appendix 35*) that LandsD had been taking actions to recover possession of the VSP where appropriate, and put the VSP to gainful use. It might not be practical or appropriate to set a timeframe across-the-board for each procedure in the mechanisms for handling of VSP on government land and private land as the circumstances of each case might vary. For instance, the conditions of the land lease or government land licences varied and so did the responses of the concerned parties, attractiveness of the site for arranging alternative short-term use or local reaction to applications for alternative uses etc. However, LandsD would consider setting a timeline for bringing up the cases for review by senior officers at the district and headquarters levels to strengthen the monitoring and review of progress throughout the work processes. The ultimate objective was to expedite the necessary follow up actions and resolve problems in good time, with a view to putting the VSP to gainful long-term uses or short-term uses in a timely manner.

38. Referring to Case 3 of Audit Report, the Committee noted that School U had been used for temporary school decanting use since December 2008 and was being used as a decanting site of an international school. In this connection, the Committee enquired:

- when the current decanting exercise ended and plan for using the premises afterwards; and

- number of VSP currently used for decanting purpose and plan(s) for using these sites afterwards.

39. **Secretary for Education** replied in his letter dated 19 January 2016 (*Appendix 29*) that:

- regarding Case 3 of the Audit Report, the land grantee had arranged the premises of School U for temporary decanting use by an international school during its redevelopment until July 2016 after obtaining the temporary waiver relating to the land use restriction from LandsD. EDB would liaise with LandsD on how to handle the premises after expiry of the said temporary waiver, pursuant to the mechanisms for handling of VSP on government land and private land; and
- as at 30 April 2015, 77 of 102 premises being used were under EDB's purview. Among these premises, six were now being used as temporary premises for decanting of schools under in-situ redevelopment or extension or phasing out during the transient period. These included four premises on government land and two on private land. The four premises on government land had been earmarked for educational uses. EDB would review the relevant timetable and explore possible uses in a timely manner upon the expiry of the current decanting use in accordance with the established mechanism. Regarding the two premises on private land, EDB would deal with the premises in accordance with the mechanisms for handling of VSP on government land and private land.

40. The Committee enquired:

- how EDB would exercise effective monitoring on the operation of international schools built on government land granted by PTG at nil or nominal premium and/or provided with interest-free capital works assistance loans by the Administration;
- cases under which the SSBs did not comply with conditions imposed by EDB in the past five years; and
- follow-up actions taken by EDB and/or other B/Ds on these non-compliance cases.

41. **Secretary for Education** replied in his letter dated 19 January 2016 (*Appendix 29*) that:

- generally speaking, international schools operated on a self-financing and market-driven basis. The SSBs might decide on matters such as the curriculum offered, student mix as well as admission criteria and arrangements;
- since 2008, any SSB allocated with VSP or greenfield sites for international school development was required to enter into an SA with EDB. SAs stipulated that the international schools operated and managed by such bodies must comply with the detailed school proposals they submitted under SAE, the school development plans, the Education Ordinance (Cap. 279), the Education Regulations (Cap. 279A), specific conditions under SAE, other relevant laws, as well as other requirements and education policies applicable to international schools as promulgated by the Government from time to time;
- EDB would conduct on-site inspection to individual international schools, and examine the enrolment statistics and audited annual accounts submitted by the schools from time to time to check if the operation of these schools complied with the relevant requirements, e.g. the overall enrolment percentage of non-local students. If any SSB breached the provisions in SA or found to have committed any material breach of SA provisions, EDB would take follow-up actions, including terminating or not renewing the SA and resuming possession of the school premises;
- in accordance with prevailing policy, subject to the approval by LegCo Finance Committee, the Government might provide interest-free capital works assistance loans to international schools allocated with greenfield sites for constructing the school premises. It was common for international schools to raise capital through introducing various schemes, such as debentures, nomination rights or levy for the purpose of funding infrastructural projects in meeting the schools' long term development needs and enhancing school facilities. EDB had all along requested SSB to consult parents and relevant stakeholders before introducing any such schemes, and SSBs concerned should clearly explain the reasons for introducing the schemes and the related implementation details. EDB also encouraged schools to set up

different scholarship and tuition fee assistance schemes to support families in need; and

- in the past five years, no international schools had committed material breach of the provisions of SA or tenancy agreement/PTG. Only a few schools had not met specific SA requirements in a timely manner, e.g. offering the specific number of places as set out in the school proposals, ensuring that a specific percentage of students were non-local students, etc. EDB had already requested the schools concerned to provide explanation and commitment to meet the relevant requirements within a specified time, and all such schools had followed up accordingly.

42. According to paragraph 3.14(a) of the Audit Report, there were 73 VSP under LandsD's purview which were not being used for an average of 12.1 years. The Committee enquired:

- reasons for taking so long to put the 73 VSP to use and the follow-up actions to be taken;
- according to paragraph 3.15(b) of the Audit Report, 22 VSP were being planned for use, the timetable for putting them to use; and
- actions LandsD would take on the 18 VSP with physical possession of the VSP not delivered to the Government, such as to re-enter the site, and whether the Government would consider resuming the land in question in accordance with Lands Resumption Ordinance (Cap. 124).

43. **Director of Lands** replied at the public hearings and in her reply dated 30 December 2015 (*Appendix 36*) that:

- it was since the inter-departmental meeting held in November 2005 as mentioned in paragraph 2.3 of the Audit Report that EDB started to pass a list of VSP or school premises to be vacated to LandsD for reference and future actions as appropriate;
- notification by EDB of VSP no longer required for educational uses did not necessarily mean that the Government would have control over the land and premises therein, as some of those VSP were situated on

private land governed by land leases or situated on government land held by external bodies through government land licences or STT;

- where a long-term use had been identified and agreed, LandsD would make arrangements to dispose of the site for the said purpose. Where the long-term use was yet to be implemented/determined, LandsD would try to put VSP to temporary uses such as allocating it for uses by B/Ds, renting it out on STT or including it into the list of vacant government sites available in the relevant districts for application for greening and community uses on short-term basis;

#### 22 VSP with planned uses

- as at December 2015, the planned uses for two of the 22 VSP were not pursued further by the concerned parties. These two VSP would be included in the list of vacant government sites available for application for short-term uses. LandsD would continue processing the remaining 20 proposals with a view to putting them into gainful use as early as possible;
- the processing time required for the 20 VSP would depend on individual circumstances. Assuming positive progress on all fronts, such as sufficient information on the proposal for assessment, policy support for direct grant to the applicant was given by the relevant bureau, government requirements were met by the applicant and no major objections received etc., it was expected that an application for temporary use could be approved in about a year's time after the application was received. It was estimated that the processing of 13 cases would be completed within the 2016-2017 financial year;

#### 18 VSP with physical possession of the VSP not delivered to the Government

- the 18 VSP were wholly or partly on private lots held by private land owners. As the sites were not granted by the Government to the lessees and had been privately owned before the schools existed, it was understandable that there was no cessation/diminution of user clause under the leases. In the circumstances, the Government had no right to demand surrender of the private land, unless there was a breach of lease conditions warranting re-entry by the Government as the landlord or unless the land was resumed for a public purpose under statute; and

- resumption of private land under the Lands Resumption Ordinance was invoked only if the private land was required for identified public purpose(s) and compensation would be payable by the Government in accordance with the law. LandsD had not been advised of a need to invoke resumption powers to resume any of the 18 VSP for a project of public purpose.

44. In reply to the Committee's enquiry on whether LandsD would take actions to promote the use of those 21 VSPs on the list of vacant government sites available for application on short-term uses, such as providing incentives on their use or undertaking minor works to increase their attractiveness, **Director of Lands** replied at the public hearings and in her reply dated 30 December 2015 (*Appendix 36*) that it was not a normal practice for LandsD to undertake improvement works for government sites/premises just for the sake of attracting applications for temporary uses. First, the improvement works would become abortive if the premises were not taken up in good time. Secondly, the improvement works might vary depending on the nature, duration and design requirements to suit the particular temporary use proposed by a project proponent. While the general expectation was for the project proponent to pursue any improvement works required for its proposal, it was for relevant policy bureau supporting a particular use to consider whether, and if so how, further assistance might be given by the Government in implementing the improvement works required.

45. The Committee noted that where the long-term use of a VSP (with physical possession returned to LandsD) was yet to be implemented or determined, LandsD would try to put it to appropriate temporary use such as renting it out on STT on application or allocating it for use by other B/Ds. Audit findings revealed that there was room for improvements in the arrangements (Table 8 of Audit Report refers) on the provision of the VSP list by DLOs available for public inspection. The Committee enquired about the details, including the timeframe, of the improvement measures LandsD would undertake on the provision of information on short-term uses of VSP by DLOs, such as whether the list would be put on LandsD's website to ensure that the public would have ready access to updated and complete information about VSP.

46. **Director of Lands** replied at the public hearings and in her reply dated 20 January 2016 (*Appendix 35*) that internal guidelines were being prepared to standardize and refine the arrangements for making available the list for public inspection at DLOs. The guidelines were targeted to be issued in January 2016.

As regards the suggestion of putting the list of VSP on LandsD's website for public inspection, Director of Lands said that only eligible organizations were allowed to apply VSP on short-term basis for greening and community uses, such as non-profit making organizations. Nevertheless, she would discuss with DLOs regarding the Committee's suggestion.

47. Noting from paragraph 3.17 of the Audit Report that there was one VSP under the HD's purview that had not been allocated for any use with a vacancy period of 4.6 years, the Committee enquired the reasons for not allocating the VSP to use and actions taken by HD in assessing and considering how the VSP could be put into optimal use.

48. **Director of Housing** replied at the public hearing and in his letter dated 31 December 2015 (*Appendix 37*) that:

- while the school site had ceased to operate for 4.6 years, it was only allocated to HD by the central clearing house mechanism for consideration of use for public housing in May 2012;
- HD had conducted various studies in exploring how best to use the VSP, including the feasibility for development of public rental housing ("PRH");
- due to the limited site area of the VSP of about 0.48 hectare with about 500 PRH flat production, the supporting facilities such as educational, recreational, public transport facilities etc. that would have to be catered for, and in view of the complexity involved because of multiple ownership of the site concerned, the option of using the site for development of PRH was not pursued; and
- HD formally informed the relevant departments in October 2015 to consider alternative use of the site. In November 2015, EDB indicated the intention to re-use the school site for educational purpose.

#### **D. Handling cases of vacant school premises not surrendered**

49. The Committee noted with concern that as at 30 April 2015, physical possession of 71 VSP had not been delivered to the Government after cessation of school operation. 62 VSP were situated on private land and nine were situated on

government land (Table 11 of the Audit Report refers). Director of Lands mentioned at the public hearing that of the 62 VSP situated on private land, 28 of them the land lease of which did not contain a cessation/diminution of user clause which allowed the Government to re-enter the site if it was no longer used for permitted purpose or if there was a substantial diminution of use. The Committee enquired about details relating to these 28 sites, including forms of land grant, land lease conditions, any other specified purposes of the land and whether the land was granted at nil or nominal premium.

50. **Director of Lands** replied in her letter dated 20 January 2016 (*Appendix 35*) that:

- the leases of three VSP in the New Territories were missing and therefore the history or lease conditions could not be ascertained;
- 21 VSP in the New Territories were held under Block Government Lease or Old Schedule Leases which did not have specific user restrictions;
- one VSP on Hong Kong Island was granted by land exchange at premium for the purposes of church and non-profit making school; and
- three VSP on Hong Kong Island were granted under PTG with the leases being virtually unrestricted. Among these cases, two were granted at nil premium in 1910 and 1920 and one was granted at premium under Conditions of Grant dated 1963.

51. Of the 62 VSP on private land the physical possession of the VSP had not been delivered to the Government, the Committee further enquired about the number of sites granted under PTG to the relevant SSBs and whether the PTG concerned contained a cessation/diminution of user clause that allowed the Government to re-enter the site.

52. **Director of Lands** replied in her letter dated 20 January 2016 that:

- among the 62 VSP, the sites of 30 VSP were granted by the Government by way of PTG. Among them, 27 had a cessation/diminution of user clause under lease that allowed the Government to re-enter the site upon cessation of school uses; and

- for the remaining three PTGs without the clause, two were granted by Government Leases in 1910 and 1920 at nil premium while one with Conditions of Grant dated 1963 was granted at premium.

#### **E. Property management of vacant school premises**

53. The Committee enquired about measures taken by EDB, LandsD and HD for the management and maintenance of VSP to prevent illegal break-in or trespassing, total cost incurred on the maintenance and management of VSP not allocated for use in the past 10 years, and details of the management of VSP which was graded as a historic building.

54. **Secretary for Education** responded in his reply letter dated 31 December 2015 (*Appendix 27*) that:

- EDB was responsible for the management of VSP located on sites under the Permanent Government Land Allocation to EDB, including those returned to LandsD under the central clearing house mechanism but that LandsD had requested EDB to continue the management until the next users had been identified and the relevant Permanent Government Land Allocation were terminated;
- management of the VSP concerned mainly included security patrol and inspections, pest control, removal of litter, cleansing and weeding. Such management services had been provided since 2007 on a daily, weekly, or bi-weekly basis, depending on EDB's assessment of the need, value and condition of the VSP concerned, as well as the cost involved;
- on top of routine management services, housekeeping services such as reinstatement of wire fencing had also been carried out for sake of security. Should there be break-in cases, the responsible property management services company would report to the Police for investigation. EDB had also required the responsible property management services company to step up management services of those VSP with reported break-in cases, and requested the Police to step up patrol in the vicinity of such VSP;
- total costs incurred since the provision of management services in 2007 had been about \$5.796 million, with breakdown as follows:

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| Year | Management cost (\$) (rounded to nearest \$'000) | Number of VSP included in that year |
|------|--|-------------------------------------|
| 2007 | 277,000  | 11                                  |
| 2008 | 572,000  | 13                                  |
| 2009 | 468,000  | 12                                  |
| 2010 | 370,000  | 10                                  |
| 2011 | 676,000  | 13                                  |
| 2012 | 764,000  | 10                                  |
| 2013 | 747,000  | 15                                  |
| 2014 | 868,000  | 14                                  |
| 2015 | 1,054,000  | 13                                  |

- among the VSP managed by EDB, one VSP was classified as Grade 1 Historic Building by the Antiquities Advisory Board in 2010. EDB had provided it with 24-hour property management services based on the advice from the Antiquities and Monuments Office. Routine management services were provided with due care to avoid causing disturbance or damage to the historic fabrics and structures thereon and thereof as per the Antiquities and Monuments Office's advice.

55. In reply to the Committee's enquiry on the substantial increase of management cost of VSP from \$868,000 in 2014 to \$1,054,000 in 2015 while the number of VSP had decreased in the same period, **Secretary for Education** replied in his letter dated 19 January 2016 (*Appendix 29*) that the number of VSP under EDB's management contracts in 2015 had decreased by one and the management cost had increased by \$186,000 when compared to 2014. Apart from the increase in service charges under the new contracts, EDB had been arranging 24-hour property management for a VSP which was classified as a Grade 1 Historic Building since July 2014, i.e. six-month 24-hour management services were provided to this VSP in 2014, and for 2015, EDB needed to provide 24-hour property management services to this VSP for the entire year (12 months). As a result, the related management cost had increased.

56. **Director of Lands** replied in her letter dated 30 December 2015 (*Appendix 36*) that:

- the management and maintenance of VSP under LandsD's control was performed as part of the land control work of individual DLOs of LandsD. The work involved cleaning, erecting government notice

boards and fencing on site, grass-cutting as necessary and providing security service through stationing security guards on site or by patrolling;

- total cost incurred in the past 10 years on maintenance and management of VSP was estimated at about \$7.6 million, averaging at about \$0.76 million per year; and
- measures taken by LandsD for the management and maintenance of VSP to prevent illegal break-in or trespassing included fencing off from public access, erection of warning notice boards, patrol by district land control staff or deployment of security guards through outsourced contractors.

57. **Director of Housing** replied in his letter dated 31 December 2015 (*Appendix 37*) that the VSP under HD's purview had all along been locked up and the Hong Kong Housing Authority's property management agency kept surveillance on it by daily patrol at the surrounding area. Repair and maintenance was arranged on a need basis which was mainly related to safety concern. As the school was generally in an acceptable physical condition, the recurrent maintenance cost for the past few years was solely for the annual inspection fee on the fire service installation, which was around \$4,500 per year.

## **F. Conclusions and recommendations**

|                         |
|-------------------------|
| <b>Overall comments</b> |
|-------------------------|

58. The Committee:

- expresses grave dismay and finds it unacceptable that:
  - (a) despite the scarcity of land resources, the Education Bureau ("EDB") and the Lands Department ("LandsD") have not effectively managed and allocated the vacant school premises ("VSP") under their respective purviews for meeting different needs of society;
  - (b) EDB failed to compile and maintain a comprehensive and up-to-date database on VSP which is conducive to the effective

management and allocation of VSP. Even though EDB was aware that information contained in the VSP database was incomplete and incomprehensive, they had not taken timely and proactive steps to rectify the situation;

- (c) although a central clearing house mechanism is introduced with the aim of putting VSP to gainful use expeditiously by the Administration as a whole, no dedicated government bureau/department ("B/D") is tasked to provide oversight to ensure that VSP are allocated and disposed of in an efficient and coordinated manner;
- (d) EDB and LandsD have adopted a lax attitude in handling cases of VSP not surrendered by the concerned school sponsoring bodies ("SSBs"). LandsD had not taken action to take back VSP on government land, and EDB had not sought LandsD's advice and assistance to re-enter VSP on private land the land lease of which contained a cessation/diminution of user clause; and
- (e) EDB disclosed incomplete information relating to VSP to the Legislative Council ("LegCo") on many occasions in which EDB only disclosed information relating to schools that had ceased operation due to the policy on consolidation of under-utilized primary schools ("Consolidation Policy")<sup>5</sup>;

#### Responsibility of EDB for handling of VSP

##### *Policy perspective*

- expresses grave dismay and finds it unacceptable that EDB, which is responsible for the identification, allocation and management of VSP, has failed to formulate a comprehensive policy on effective utilization of VSP to put these valuable resources to gainful use expeditiously:
  - (a) EDB has not formulated any policy and/or directives on how to put VSP to gainful use for its divisions and/or other stakeholders,

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<sup>5</sup> Under the Consolidation Policy implemented since 2003-2004 school year, public sector primary schools not meeting the minimum threshold number of primary one students will not be allocated primary one class and may subsequently cease operation. The minimum threshold number was 23 between 2003-2004 and 2007-2008 school years, 21 for 2008-2009 school year and 16 starting from 2009-2010 school year.

such as prioritization and categorization of VSP into possible educational uses and promoting such uses proactively; and

(b) although mechanisms are in place on the handling of VSP, there is no indicative timeframe for the procedures in the mechanisms. Despite EDB's aim to put VSP to gainful use in the shortest possible time, some VSP have been left idle for a long period of time. Moreover, most VSP were handled on a case-by-case basis, resulting in VSP not being put to optimal uses for effective implementation of EDB's educational policies as illustrated by the following two cases:

(i) as at 30 April 2015, there were 29 VSP under EDB's purview that were not being used, of which eight VSP had not been earmarked for any use (the schools had ceased operation for 6.4 years on average); nine VSP had been earmarked but not yet allocated to earmarked uses (VSP had been earmarked for 3.9 years on average) and 12 VSP had not yet been put to allocated uses (VSP had been allocated for such uses for 2.2 years on average); and

(ii) in Case 3 referred to in the Director of Audit's Report ("Audit Report"), School U refused to surrender its site after school closure in accordance with the cessation of user clause contained in the land lease. However, EDB had not followed up the case with LandsD to take back the site. As a result, its intention to use the site for conversion of a nearby bi-sessional primary school into a whole-day primary school could not be met. The site had been allocated to temporary use since 2008;

- urges EDB to take a more proactive role in allocating the use of VSP and promoting their gainful use by its divisions and/or stakeholders by formulating a policy and/or directives on the allocation and use of VSP. An indicative timeframe should be set for handling each VSP case as far as practicable to avoid VSP being left idle for a long period of time. In addition, EDB should avoid adopting a case-by-case approach and adhere to the mechanisms on the handling of VSP as far as practicable;

*Identification of VSP*

- expresses grave dismay and finds it unacceptable that there were inadequacies in EDB's compilation and maintenance of the list of VSP. The database on VSP maintained by the Infrastructure and Research Support Division ("IRSD") of EDB is incomplete and incomprehensive. It could not facilitate EDB to take appropriate actions in managing and allocating VSP, as evidenced by the following:
  - (a) a sample check conducted by the Audit Commission ("Audit") revealed that 14 VSP were not identified and recorded in the list of 234 VSP maintained by EDB. Of the 14 schools, one ceased operation in 1946 and 12 ceased operation between 1989 and 2011 (the date of cessation of operation of the remaining school is unknown);
  - (b) the database on VSP is updated based on information of vacant/to-be-vacated school premises provided by Regional Education Offices ("REO"), but REOs have not conducted any stock-taking exercise or physical inspections within their regions to proactively ascertain whether information on VSP maintained in the database included all records of VSP in Hong Kong;
  - (c) the database does not contain sufficient information, such as its current use, forms of land grant of the concerned school site, land lease conditions or any other specified purposes of the site, to facilitate IRSD to exercise effective management and monitoring of the handling of VSP; and
  - (d) EDB has not issued a comprehensive manual to lay down requirements and provided guidelines for related EDB divisions on the identification, screening, allocation and management of VSP;
- notes the explanation of EDB that the database on VSP was compiled by EDB based on the information available before the implementation of the Consolidation Policy, which was incomplete and incomprehensive;
- urges EDB to take improvement measures expeditiously to ensure that the database of VSP would contain complete and up-to-date

information necessary for the identification, screening, allocation and management of VSP by EDB;

- acknowledges that EDB will undertake the following actions for updating the database on VSP:
  - (a) review the mechanism for data collection and updating, including the identification and categorization of VSP for better monitoring and managing the use and disposal of VSP;
  - (b) draw up internal manual to set out the requirements and guidelines on identification, screening, allocation and management of VSP for all related EDB divisions to follow;
  - (c) conduct a stock-taking exercise by comparing the VSP database with the school registration database to identify possible missed case of VSP, and REOs to conduct site visits to ascertain whether school sites are vacant or not; and
  - (d) seek LandsD's advice on the land status of potential cases of VSP that warranted follow-up actions;

#### *Allocation of VSP*

- expresses grave dismay and finds it unacceptable that:
  - (a) there were consistent delays in conducting half-yearly exercises by IRSD for circulating the list of unused VSP for other EDB divisions to make proposals on the use of VSP. For those VSP remaining on the circulation list that were left idle for a long time, no further actions had been taken in promoting their uses to EDB divisions or other stakeholders;
  - (b) 29 VSP under EDB's purview were not being used as at 30 April 2015 and had not been returned to the Planning Department ("PlanD") under the central clearing house mechanism for considering alternative uses; and
  - (c) for those VSP that have been put into use, some of them are only partially utilized for the allocated uses, while others are allocated for temporary uses for a long period of time;

- notes the explanation by EDB that:
  - (a) EDB has taken actions to expedite the handling of VSP. Four VSP not earmarked for any use were returned under the central clearing house mechanism to PlanD for considering their alternative uses;
  - (b) there is a need for EDB to earmark VSP for school use to cater for uncertainties about actual demand for school places arising from parental choices and fluctuation of student population; and
  - (c) EDB would internally review possible short-term uses of VSP earmarked and invite relevant B/Ds to consider VSP for short-term use on a regular basis;
- urges EDB to consider ways to promote the use of VSP remaining on the circulation list within EDB. If these VSP were considered not suitable for educational use, they should be returned to PlanD under the central clearing house mechanism for considering their alternative uses expeditiously;

#### *Management of VSP*

- expresses serious concern and finds it unacceptable that there were inadequacies in EDB's management of VSP on private land. According to the mechanism on handling VSP on private land, EDB should inform LandsD to re-enter the site if the SSB concerned refused to surrender the school site the land lease of which contains a cessation/diminution of user clause. However, EDB had not taken proactive actions to follow up the cases with LandsD for taking appropriate actions:
  - (a) as at 30 April 2015, there were 32 VSP under EDB's purview the physical possession of which had not been delivered to the Government;
  - (b) of the 32 VSP, 23 were being used and nine were not being used. Even 23 VSP had been put into use, their uses were mainly arranged by the SSBs concerned without going through a proper mechanism of allocation of VSP by EDB. As such, the 23 VSP might not have been put to optimal uses for the effective implementation of EDB's education policies; and

- (c) EDB had all along relied on voluntary surrender of VSP on private land by SSBs. While EDB might negotiate with SSBs on taking back the VSP, they seldom informed LandsD to take escalated actions to re-enter the site according to the cessation/diminution of user clause even if such negotiations turned out to be futile;
- urges EDB to take a more proactive role and follow up with LandsD on appropriate actions to take back VSP not surrendered by the SSBs concerned if the relevant land leases contain a cessation/diminution of user clause;

Responsibility of LandsD for handling of VSP

- expresses serious concern and finds it unacceptable that LandsD had not spent sufficient efforts on its handling of VSP as evidenced by the following:
  - (a) LandsD has not optimally utilized VSP that have been returned by EDB under the central clearing house mechanism and put them to gainful use expeditiously. As at 30 April 2015, there were 73 VSP returned by EDB under LandsD purview which were not put to use. According to EDB's records, 0.6 to 35.6 years (averaging 12.1 years) had elapsed since the cessation of operation of the schools concerned; and
  - (b) there were rooms for improvement in promoting short-term uses of VSP by other B/Ds or outside parties. As revealed by Audit's sample check, there were inconsistencies in the way some of the District Lands Offices ("DLOs") handled public enquiry on the availability of the list of VSP for application on a short-term basis. Some DLOs were unaware of the list, while some lists provided for public inspection contained incomplete information;
- urges LandsD to
  - (a) expedite the processing of VSP with identified uses so as to put the VSP to gainful use as soon as practicable;

- (b) for those VSP the physical possession of which had not been delivered to the Government, take appropriate actions in accordance with the relevant land lease conditions; and
- (c) ensure that interested outside parties could have ready access to updated and complete information about VSP available for short-term uses, such as by uploading the list onto LandsD's website for public inspection;

#### Responsibility of Housing Department for handling of VSP

- expresses dissatisfaction and disappointment that there was one VSP under the Housing Department's ("HD") purview that had not been allocated for any use as at 30 April 2015. Vacancy period of the site was 4.6 years;
- notes HD's reply that:
  - (a) HD had conducted various studies on how to put the site to gainful use, such as using the site for redevelopment of public housing estates. Taking into account the size of the site and the complexity involved because of multiple ownership of the site concerned, the option was not pursued; and
  - (b) as at November 2015, the site has been returned to PlanD under the central clearing house mechanism to consider its alternative uses. EDB had indicated the intention to re-use the VSP for educational purposes;
- urges HD to review its mechanism in assessing the use of possible sites, including VSP, for housing development with a view to expediting the whole process so that these sites could be released to other departments for more gainful uses should the sites be considered not suitable for housing purpose;

#### Central clearing house mechanism for handling VSP

- expresses grave concern and finds it unacceptable that even though a central clearing house mechanism was introduced at a meeting held by

the then Steering Committee on Housing Land Supply<sup>6</sup> in October 2011 under which EDB would pass VSP assessed to be not suitable for educational use to PlanD for considering suitable alternative uses, no dedicated government department was tasked to oversee the reallocation of VSP. It was agreed at the meeting that PlanD would serve as the central clearing house for identifying suitable alternative uses of VSP passed by EDB, but this would not make PlanD as the management agent for the sites before their reallocation. The efficacy of such mechanism for the Government to dispose of VSP amongst B/Ds in an expeditious and coordinated manner is doubtful if there is no department to undertake a coordinating role;

- notes the Development Bureau ("DEVB")'s reply on the central clearing house mechanism on the handling of VSP that:
  - (a) according to the central clearing house mechanism, PlanD serves as a central clearing house to consider suitable long-term alternative uses for vacant or to-be-vacated school sites which are no longer required for school or educational uses. If a long-term alternative use is identified, PlanD would proceed with the statutory rezoning procedures, if necessary, to facilitate development of the sites for the relevant uses; and
  - (b) for VSP on government land under the purview of different B/Ds, the relevant B/Ds would be responsible for their disposal according to the long-term alternative uses identified by PlanD. For VSP on sites governed by private land leases and government land licences, LandsD would seek the return of the sites to the Government where such action is in line with the terms of the leases/licences;
- urges DEVB to strengthen the coordination and promotion on the use of VSP under the central clearing house mechanism amongst B/Ds. Consideration could be given to appointing a government department to perform such a coordinating role so as to ensure that valuable land resources could be put to optimal use in an efficient and timely manner;

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<sup>6</sup> The Committee, chaired by Financial Secretary, was set up in October 2010 to coordinate the efforts of B/Ds in making available land for housing development. It has been reorganized into the Steering Committee on Land Supply since February 2013 to coordinate the overall plans for development and supply of land in Hong Kong for different types of land uses.

VSP included in School Improvement Programme

- expresses serious dismay and finds it unacceptable that EDB failed to ensure that public money was well spent when approving School Improvement Programme ("SIP")<sup>7</sup> as evidenced by the following:
  - (a) even though it was a general principle that for school premises to be included in SIP, the school premises concerned should be able to be used for five years or more after the completion of improvement works, there were 26 VSP being included in SIP which were vacated before or within five years after completion of improvement works. The improvement works could only benefit the students for a short period before the school premises were vacated;
  - (b) the total costs of the SIP works for these 26 schools were approximately \$380 million; and
  - (c) the major reasons for the 26 schools to vacate their premises after approval of works included a drop in student enrolment (54%), re-provisioning of the school concerned (19%), school merger (8%) and other reasons such as redevelopment of the housing estate (19%). EDB should have envisaged the cessation of operation for some of these 26 schools and taken prudent measures when approving SIP to ensure that public money was well spent in this regard;
- expresses serious dismay and finds it unacceptable that in formulating the Consolidation Policy, EDB has not given sufficient thoughts to lessen its impacts on the schools under SIP, thus ensuring precious resources could be used in more gainful ways;
- notes the explanation of EDB that:
  - (a) EDB, in approving the SIP works for the 26 schools, was mindful at that time that it would be unfair to those schools and students should the Government put to halt the improvement works because of a possibility of under-enrolment in future.

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<sup>7</sup> The School Improvement Programme was a policy initiative implemented between 1994 and 2007 to bring up the facilities of all government and aided primary, secondary and special schools to the prevailing standards in-situ as far as practicable. The improvement works included the provision of additional space and facilities for teaching, out-of-class activities and supporting services for teachers and students.

The relevant SIP works would improve the schools facilities and enhance these schools' capacity of student admission;

- (b) since SIP works were complicated and had to go through several years of planning, changes in time and circumstances could lead to unforeseen development; and
  - (c) most of the school premises with improved facilities have been put to other uses after cessation of operation of the schools concerned;
- urges that EDB, in approving future school improvement/extension works, should critically evaluate all relevant factors, such as decline in student population, in order to ensure that public money would be well-spent to deliver the intended benefits of such works for the students;

#### Disclosure of information relating to VSP

- expresses grave dismay and finds it unacceptable that EDB had not fully disclosed information relating to the number and usage of VSP to LegCo on many previous occasions. The incomplete disclosure of information and lack of transparency on the usage of VSP would not be conducive to effective monitoring by LegCo and the public of EDB's efforts in putting VSP to gainful use. Two of such occasions are:
- (a) even though it had become a regular question for LegCo Members to enquire about uses of VSP since 2005-2006 when the annual Estimates of Expenditure of the Government were submitted to LegCo Finance Committee for examination, EDB only disclosed information relating to VSP that had ceased operation due to the Consolidation Policy; and
  - (b) in answering a LegCo Member's question in the examination of the Estimates of Expenditure 2015-2016 on the details of existing VSP, EDB disclosed that the number of VSP as at March 2015 was 108 in total, which did not cover all 234 VSP known to EDB. The figure did not include schools that had ceased operation due to reasons other than the Consolidation Policy since 2003-2004 school year;

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- notes the explanation of EDB that data on VSP released to LegCo were first compiled in relation to the question raised concerning the Consolidation Policy in the examination of the Estimates of Expenditure in 2006. As information on VSP before the implementation of the Consolidation Policy was neither complete nor comprehensive, EDB has been adopting the Consolidation Policy as the framework for preparing subsequent VSP-related replies for the sake of consistency; and
  - urges EDB to provide LegCo with complete and updated information of VSP to facilitate LegCo's monitoring role in future.

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| <b>Specific comments</b> |
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59. The Committee:

Identifying VSP

- expresses grave dismay and finds it unacceptable that:
  - (a) while EDB has an established mechanism for identifying and handling VSP, a sample check conducted by the Audit revealed 14 VSP not identified and handled in accordance with the mechanism;
  - (b) EDB has not issued a comprehensive manual to lay down requirements and provide guidelines on the identification, screening, allocation and management of VSP;
  - (c) there were delays in conducting half-yearly exercises by EDB to determine uses of VSP;
  - (d) in response to questions about VSP raised by LegCo Members, EDB mainly provided information on primary schools that had ceased operation due to the Consolidation Policy since 2003-2004 school year, instead of consolidating and disclosing information on VSP arising from all kinds of reasons. There was a significant number of VSP of schools that had ceased operation due to reasons other than the Consolidation Policy; and

- (e) while EDB's SIP implemented between 1994 and 2007 intended to benefit the students for at least five years, 26 schools included in the Programme vacated the premises within five years of completion of improvement works, mainly due to drop in student enrolment. The total costs of the SIP works for these 26 schools were approximately \$380 million;
- notes that Secretary for Education has agreed with Audit's recommendations in paragraphs 2.18 and 2.26 of the Audit Report;

Allocating VSP for educational or other uses

- expresses grave dismay and finds it unacceptable that:
  - (a) 29 VSP under EDB's purview were not being used as at 30 April 2015, comprising:
    - eight VSP that had not been earmarked for any use. The eight schools concerned had ceased operation for 1.6 to 10.6 years (averaging 6.4 years);
    - nine VSP that had been earmarked for school uses for 0.1 to 6.3 years (averaging 3.9 years) but had yet to be allocated for such uses. The nine schools concerned had ceased operation for 1.6 to 15.6 years (averaging 6 years); and
    - 12 VSP that had been allocated for school or other educational uses for 0.3 to 7.8 years (averaging 2.2 years) but had not yet been put to such uses. The 12 schools concerned had ceased operation for 1.6 to 11.6 years (averaging 6.4 years);
  - (b) 73 VSP considered by EDB as not suitable for educational uses and returned to LandsD were not being used as at 30 April 2015. The 73 schools concerned had ceased operation for 0.6 to 35.6 years (averaging 12.1 years);
  - (c) there were inadequacies in LandsD's arrangements for providing interested parties with ready access to updated and complete information about VSP available for short-term uses;

- (d) one VSP under HD's purview with a vacancy period of 4.6 years was not allocated for any use as at 30 April 2015; and
  - (e) of the 77 VSP under EDB's purview that were being used as at 30 April 2015, four VSP were only partially utilized for the allocated uses (including three VSP each having about half of the floors/blocks not being used) and another 14 VSP had not been earmarked for any specific long-term educational uses and were allocated for temporary uses only (including four VSP that had been allocated for temporary uses to various parties for over six years);
- notes that:
- (a) Secretary for Education has agreed with Audit's recommendations in paragraphs 3.19 and 3.29 of the Audit Report;
  - (b) Director of Lands has agreed with Audit's recommendation in paragraph 3.20 of the Audit Report; and
  - (c) Director of Housing has agreed with Audit's recommendation in paragraph 3.21 of the Audit Report;

#### Handling cases of VSP not surrendered

- expresses grave dismay and finds it unacceptable that:
- (a) as at 30 April 2015, physical possession of 71 VSP had not been delivered to the Government after cessation of school operation, comprising nine on government land and 62 on private land;
  - (b) as at 30 April 2015, eight of the nine VSP on government land with physical possession not delivered to the Government were not being used. The nine schools concerned had ceased operation for 6.6 to 18.6 years (averaging 11.2 years). LandsD had not taken effective actions to take back the government land;
  - (c) as at 30 April 2015, 33 of the 62 VSP on private land with physical possession not delivered to the Government were not being used. The uses of the remaining 29 VSP were mainly arranged by SSBs but not through EDB's or LandsD's established

mechanism for handling VSP and, therefore, such VSP might not have been put to optimal uses for the effective implementation of EDB's education policies;

- (d) while the leases of at least 34 of the 62 VSP on private land with physical possession not delivered to the Government contain a cessation/diminution of user clause specifying that the Government has the right to re-enter the site, EDB seldom approached LandsD for advice on the follow-up actions such as re-entry to be enforced by LandsD;
- (e) LandsD did not adequately check the lease conditions of the 62 VSP on private land with physical possession not delivered to the Government. The Audit sample check of 10 VSP checked by LandsD to be not containing a cessation/diminution of user clause revealed that two of them actually contain such clause;
- (f) EDB has been keeping records on cases of VSP not surrendered by SSBs but did not produce summarized information for LandsD's action on a regular basis. Furthermore, information on such cases has not been released to enhance transparency and accountability; and
- (g) while in reprovisioning a school on private land EDB staff were required to include in the service agreement with the SSB a surrender clause specifying that the SSB should voluntarily surrender the existing school site and premises, the Audit case studies revealed room for improvement in attending to the details in the surrender of the old school premises, as follows:
  - in one case, the surrender clause was omitted from the service agreement;
  - in another case, the surrender clause in the service agreement was nullified by a side agreement between EDB and the SSB; and
  - in yet another case, the surrender clause in the service agreement required the SSB to carve out only a portion from the private treaty grant site for returning to the Government, but road access and utility connection

problems made it difficult for the Government to use the carved-out site;

- notes that:
  - (a) Secretary for Education and Director of Lands have agreed with Audit's recommendations in paragraph 4.11 of the Audit Report; and
  - (b) Secretary for Education has agreed with Audit's recommendations in paragraph 4.19 of the Audit Report;

Property management of VSP

- expresses serious concern and finds it unacceptable that:
  - (a) in the two quotation exercises conducted by EDB in 2014-2015 for procuring property management services for VSP, contracts were awarded to the only bidder, which was the contractor of the existing contract and was not on EDB's supplier lists;
  - (b) EDB did not require contractors to prepare comprehensive monthly reports on their work done in accordance with the contracts, and did not require EDB staff to keep comprehensive records of inspections of VSP managed by contractors; and
  - (c) EDB did not follow the requirement of the Stores and Procurement Regulations to evaluate the performance of contractors upon completion of the contract; and
- notes that Secretary for Education has agreed with Audit's recommendations in paragraphs 5.12 and 5.19 of the Audit Report.

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| <b>Follow-up action</b> |
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60. The Committee wishes to be kept informed of the progress made in implementing the various recommendations made by the Committee and Audit.