

CHAPTER 7

Lands Department

Unlawful occupation of government land

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UNLAWFUL OCCUPATION OF GOVERNMENT LAND

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PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 Land is a scarce and valuable resource in Hong Kong. **As of February 2012, Hong Kong had a total land area of 110,441 hectares (ha), of which 32,276 ha (29%) were unleased and unallocated government land, including vacant government sites pending disposal, natural slopes, barren islands and government land in remote areas.** For the other land area, 55,172 ha (50%) were allocated for use by government bureaux and departments (such as roads, parks, country parks and beaches) and 22,993 ha (21%) were held by the private sector and public organisations under leases, licences, permits, short-term tenancies (STTs) or vesting orders. Among other duties, the **Lands Department (Lands D)** is responsible for managing unleased and unallocated government land to protect such land from being unlawfully occupied.

1.3 From time to time, unlawful government land occupation cases (land control cases) are identified, including different types of unauthorised works, unauthorised land occupation for gardening use, storage and vehicle parking, and unauthorised waste dumping on government land. These land control cases are brought to the Lands D's attention as a result of media reports, complaints from members of the public, referrals from government departments and patrols conducted by the 12 District Lands Offices (DLO — Note 1).

1.4 The Lands D's Lands Administration Office oversees 12 DLOs. An organisation chart of the Lands D is at Appendix A. The DLOs (with a total of 170 officers responsible for land control duties) are responsible for administering unleased and unallocated government land and STTs on government land within their districts.

1.5 The Lands D has promulgated instructions and guidelines in the Lands Administration Office Instructions for prevention, detection and rectification of unlawful occupation of government land. Under section 6 of the Land (Miscellaneous Provisions)

Note 1: *The 12 DLOs are: DLO/Hong Kong East, DLO/Hong Kong West and South, DLO/Islands, DLO/Kowloon East, DLO/Kowloon West, DLO/North, DLO/Sai Kung, DLO/Shau Tin, DLO/Tai Po, DLO/Tsuen Wan and Kwai Tsing, DLO/Tuen Mun and DLO/Yuen Long.*

Ordinance (Cap. 28 — the Cap. 28 Ordinance), the Director of Lands has the authority to take action to clear any unauthorised occupation of government land, to take prosecution action, and to recover from the persons convicted of related offences the cost of demolition of illegal structures.

Land control problem

1.6 In 2004 and 2006, the Lands D informed the Legislative Council (LegCo) that:

- (a) the Lands D attached great importance to the management of unleased government land. However, due to resource constraints, it might not be able to respond fully to public expectations. In most cases, after the Lands D had posted statutory notices to require the occupiers to vacate the land, the occupiers would stop their unlawful occupations without incident, but in some cases they would only give up after repeated warnings and protracted arguments with the Lands D;
- (b) the Lands D encountered two major difficulties in land control. They were, firstly the large area of unleased government land that required daily management by the Government and, secondly the levels of penalty for offences of unlawful occupation did not have adequate deterrent effect given the high value of land in the territory (the second issue will be addressed in PART 3). For the first issue, the Lands D considered that due to other priorities, it was impractical to conduct inspections of all government land at specified intervals. To completely safeguard government land from illegal occupation would require round-the-clock guarding or surveillance of all unleased government land, which would incur enormous manpower and expenditure. Therefore, the Lands D would strategically protect those unleased land sites which were vulnerable to illegal occupation by fencing and conducting more regular patrols (i.e. fenced-off and black-spot sites — Note 2);
- (c) the clearance of unauthorised structures detected on government land could also be difficult due to resistance by the inhabitants, even though they were offered rehousing or accommodation by the Housing Department under the Government's policy that nobody would be rendered homeless; and
- (d) under certain circumstances, the Lands D might regularise unlawful occupation of unleased land by granting STTs at market rental to the occupiers. The

Note 2: *Some government sites are fenced off to protect them from unlawful occupation. Black-spot sites refer to locations with high risks of unlawful occupation or subject to frequent public complaints for such occupation.*

Lands D considered that regularisation was a pragmatic way of resolving the unlawful occupation problem of a particular piece of government land and would obviate the need for frequent inspections to prevent re-occupation of the government land concerned. However, in processing these applications for STTs, the Lands D would have to adhere to the principle that government land was a public resource and that the exclusive use of this resource should normally not be allowed unless under special and justifiable circumstances.

1.7 To address the land control problem, in recent years, the Lands D has taken the following improvement measures:

- (a) establishing (through internal redeployment of staff resources) the New Territories Action Team (NTAT) comprising 39 officers to deal with land control cases identified before 2007 in the New Territories;
- (b) conducting surveillance of squatter structures;
- (c) setting up departmental task forces to explore and experiment the standardisation and streamlining of land control procedures;
- (d) convening case conferences and ad hoc meetings to discuss difficult cases or issues; and
- (e) instituting prosecution in high profile cases involving unlawful occupation of government land, delivering a message to the public that resolute control actions would be taken if necessary.

1.8 In 2011, the Lands D conducted a total of 10,920 inspections to black-spot sites and sites which were subjects of complaints and referrals in respect of unlawful occupation of government land. In the same year, the total staff expenditure involved in carrying out government land control work was \$74 million.

Audit review

1.9 In 2004, the Audit Commission (Audit) conducted an audit review of the grant of land at Discovery Bay and Yi Long Wan (Chapter 6 of the Director of Audit's Report No. 43 of October 2004). In 2006, Audit conducted another audit review of the Lands D's administration of STTs (Chapter 2 of the Director of Audit's Report No. 47 of October 2006). In 2007, Audit further conducted an audit review of the temporary use of vacant government sites (Chapter 12 of the Director of Audit's Report No. 49 of October 2007).

1.10 Given that government land is a valuable resource, Audit has recently conducted another review of management of government land. This review covers the Lands D's action to prevent, detect and rectify unlawful occupation of government land, focusing on the following areas:

- (a) prevention and detection action (PART 2);
- (b) enforcement action (PART 3);
- (c) Audit's case studies (PART 4);
- (d) Land Control Information System (PART 5); and
- (e) performance reporting (PART 6).

1.11 In view of the fact that most of the unlawful government land occupation cases occurred in the New Territories (e.g. 98% of the outstanding land control cases as of December 2011 were in the New Territories — Note 3), this audit review mainly focuses on land control cases in the New Territories. Audit has found that there are areas where improvements can be made by the Lands D, and has made a number of recommendations to address the issues.

General audit observations and recommendation

1.12 One of the Lands D's main responsibilities is to manage unleased and unallocated government land to protect it from being unlawfully occupied. However, Audit notes that the Lands D has accorded a relatively low priority to land control matters as it has deployed most of its resources to other activities such as land disposal and resumption to facilitate housing, economic and infrastructural developments. In this review, Audit found that most of the land control cases were detected as a result of media reports and complaints from members of the public, and only a small percentage of the cases were identified during the DLOs' patrols. Owing to the absence of regular inspections targeting specifically at unlawful government land occupation (other than inspecting fenced-off and black-spot sites — see para. 1.6(b)), the Lands D could not always detect such unlawful act in a timely manner and could not grasp the magnitude of the problem. On various occasions, government land had been unlawfully occupied for a long period of time without detection. The Lands D did not always take prompt and effective enforcement action, as

Note 3: *Of the 3,909 outstanding land control cases as of December 2011 (see Table 1 in para. 3.3), 3,840 (98%) took place in the New Territories.*

evidenced by cases which had remained unresolved for a long time after detection. In some other cases, the unlawful government land occupation was regularised by granting STTs.

1.13 Audit also found that the existing Lands D's Land Control Information System (LCIS) was not effective in supporting the Department in managing its land control cases (see PART 5). The 15% increase in the number of land control cases (largely originated from complaints and referrals) received by the Lands D from 2008 to 2011 and the 82% reduction in the number of related prosecution cases from 2008 to 2011 are also causes for concern.

1.14 In March 2012, the Lands D informed Audit that:

- (a) the Lands D had to carry out its land disposal and resumption duties according to the time frames of other government bureaux and departments. It also took prosecution action against unlawful excavation, removal of turf and trespass;
- (b) owing to the large areas of unleased and unallocated government land and other higher priorities, DLO staff mainly relied on complaints and referrals for taking land control action and they could only conduct patrols of the fenced-off and black-spot sites (see para. 1.6(b)). Given the competing priorities, further resource redeployment to land control would unlikely be realistic;
- (c) there were many forms of unlawful occupation of government land. In the New Territories, due to historical reasons, some government land and private land were interlocking, and some private-land owners would be tempted to encroach upon the government land; and
- (d) government land unlawfully occupied by adjoining private-land owners might be regularised through granting STTs (for gardening use) for various reasons, namely putting government land into beneficial use, reducing the Lands D's cost in guarding the sites and obtaining rentals from the STTs.

1.15 **Given that land is a valuable resource in Hong Kong, in order to protect government land from being unlawfully occupied, Audit has *recommended* that the Director of Lands should conduct an overall review of the Lands D's strategy, priority and resource allocation on management of unleased and unallocated government land.**

General response from the Administration

1.16 The **Secretary for Development** agrees that the Lands D should take prompt and effective action to protect government land from unlawful occupation. She has said that:

- (a) the Lands D has to prioritise its work among the competing tasks and claims, taking into account the implications for the public;
- (b) the administration of government land, particularly in the New Territories, is always not straightforward. Government sites are spread all over the New Territories and this has made it impracticable for the Lands D to patrol them regularly (see para. 1.6(b)). For the effective use of the public resources allocated to the Lands D, acting mainly on complaints (including media reports) is a reasonable approach;
- (c) the Lands D has been taking a number of proactive measures in recent years (see para. 1.7) to enhance the effectiveness of its work on controlling unauthorised use of government land. The Lands D is committed to continue tackling the problems vigorously and pragmatically, through a flexible redeployment of staff within the resources made available to it; and
- (d) the Lands D is prepared to implement Audit's recommendations where feasible and practicable.

1.17 The **Director of Lands** agrees to consider the audit recommendation. She has said that:

- (a) the Lands D will keep the land control situation under review from time to time; and
- (b) given the competing priorities of the Lands D, an overall review of its strategy, priority and resource allocation on management of unleased and unallocated government land will take some time to complete.

Acknowledgement

1.18 Audit would like to acknowledge with gratitude the full cooperation of the staff of the Lands D, the Agriculture, Fisheries and Conservation Department (AFCD), the Civil Engineering and Development Department and the Food and Environmental Hygiene Department (FEHD) during the course of the audit review.

PART 2: PREVENTION AND DETECTION ACTION

2.1 This PART examines the Lands D's prevention and detection action against unlawful occupation of government land, focusing on:

- (a) inspections and investigations by the DLOs (see paras. 2.2 to 2.10); and
- (b) monitoring and control of surveyed structures and licensed structures (see paras. 2.11 to 2.16).

Inspections and investigations by the DLOs

Detection of suspected cases

2.2 The Lands D detects suspected unlawful government land occupation cases from the following sources:

- (a) media reports and complaints made by members of the public;
- (b) referrals from government departments, district councils and rural committees;
- (c) findings of Lands D staff while performing duties not related to land control (such as monitoring of STTs); and
- (d) patrols by Lands D land control staff and security guards employed by the Lands D.

As mentioned in paragraph 1.6(b), the Lands D has indicated that, due to other priorities, it cannot conduct inspections of all unleased government land at specified intervals and it will strategically protect those fenced-off and black-spot sites by conducting more regular patrols (i.e. risk-based inspection), and has to rely heavily on the other sources (see (a) to (c) above) to detect land control cases.

Land Control Teams

2.3 A Land Control Team of 9 to 33 officers (Note 4) is set up in each DLO for carrying out patrols, primarily at fenced-off and black-spot sites, and investigating suspected land control cases. The Team is also responsible for managing unleased government land (Note 5). The Land Control Teams will take action (Note 6) on established land control cases and will refer cases with sufficient evidence to the Lands D Prosecution Unit for follow-up action.

Audit observations and recommendations

Land control problem

2.4 Audit noted that the number of suspected land control cases received by the DLOs had increased from 7,284 in 2008 to 8,406 in 2011 (15% increase). **Given that land is a scarce and valuable resource in Hong Kong and that the public has increasing concerns on unlawful occupation of government land in recent years, Audit considers that the Lands D needs to ascertain the magnitude of the land control problem, and take necessary preventive measures to reduce the number of land control cases as far as possible.** The strengthening of publicity campaigns is one of the means to discourage and prevent unlawful occupation of government land.

Risk-based inspection programmes

2.5 In March 2010, in its reply to a question raised by a LegCo Member, the Lands D said that 93% of cases of unlawful government land occupation requiring follow-up action were identified from complaints or referrals and only 7% were detected by the DLOs' patrols.

Note 4: *For DLOs in the New Territories, such officers include Land Executives (leading and supervising inspections and enforcement action on land matters) and Land Inspectors (conducting inspections and taking enforcement action on land matters). For DLOs in the urban areas, such officers include Estate Officers (conducting inspections and taking enforcement action on land matters) and Estate Assistants (assisting Estate Officers in performing their duties).*

Note 5: *The duties include taking clearance action and fencing off sites, managing the display of roadside non-commercial publicity materials, processing various applications for temporary occupation of government land and tree management.*

Note 6: *This may include posting statutory notices to require cessation of unlawful government land occupation, issuing warning letters to the occupiers, issuing works orders to contractors for demolition and vegetation maintenance works, and supervising the work of contractors.*

2.6 Audit noted that the Lands D's patrol programmes primarily covered fenced-off and black-spot sites, but not the majority of other unleased government land. Case 2 in PART 4 revealed prolonged unlawful government land occupation without having been detected. **Audit considers that the Lands D needs to take a more proactive approach and strengthen its risk-based inspection programmes to help better monitor the land control problem.**

2.7 According to the Lands Administration Office Instructions, each DLO should devise a patrol programme taking into account the identified problem areas, the inspection areas in each patrol and the frequency of patrols. However, as far as Audit could ascertain, such patrol programmes were not properly documented by the DLOs and they were not submitted to the Lands D Headquarters for monitoring.

2.8 **Audit considers that the Lands D needs to require the DLOs to strengthen and document their risk-based inspection programmes, specifying the frequencies and locations of sites to be inspected with focus on high-risk areas (such as those sites with past records of unlawful government land occupation), and periodically submit them to the Lands D Headquarters for monitoring. The Lands D also needs to require the DLOs to systematically document the results of their site inspections (such as the extent and severity of unlawful government land occupation identified) and the follow-up action taken.** The LCIS, which does not properly capture details of the land control cases, also requires revamping as early as possible (see the audit observations and audit recommendations in paras. 5.12, and 5.17(a) and (c)).

Audit recommendations

2.9 **Given the importance of protecting government land from being unlawfully occupied, Audit has recommended that the Director of Lands should:**

- (a) **ascertain the magnitude of the land control problem, and take necessary preventive measures to reduce the number of land control cases as far as possible;**
- (b) **strengthen the Lands D's publicity campaigns on prevention of unlawful occupation of government land;**
- (c) **require the DLOs to strengthen and document their risk-based inspection programmes;**

- (d) **require the DLOs to periodically submit their inspection programmes to the Lands D Headquarters for monitoring; and**
- (e) **require the DLOs to systematically document the results of site inspections and the follow-up action taken.**

Response from the Administration

2.10 The **Director of Lands** agrees with the audit recommendation in paragraph 2.9(e) and agrees to consider the audit recommendations in paragraph 2.9(a) to (d). She has said that:

Land control problem

- (a) the number of suspected land control cases has increased because more people make use of various complaint channels (e.g. The Ombudsman's Office, LegCo Members and District Council members). The media has also been active in pursuing complaints from members of the public;
- (b) it is impracticable for the Lands D to patrol every piece of land regularly because of the vast area involved. Therefore the Lands D is mainly acting on complaints and referrals (paras. 1.6(b) and 1.16(b) are also relevant). It should also be impracticable to ascertain the magnitude of the problem as unlawful occupation of government land may take place in different forms at different times and may recur from time to time. While the Lands D may resort to fencing off government land to guard against unlawful occupation, this is not welcomed in many places because such a measure will pose inconvenience to the nearby private-lot owners and create unpleasant scenes;

Publicity campaign

- (c) while the Lands D may resort to strengthening the publicity campaigns on prevention of unlawful occupation of government land, such publicity campaigns would lead to an upsurge of complaints and referrals, resulting in a long backlog list, thus diluting the deterrent effect of land control work;

Risk-based inspection programmes

- (d) the DLOs' patrol programmes have adopted a risk-based approach, focusing on fenced-off and black-spot sites with frequent public complaints. The DLOs' patrols are also conducted by outsourced security guards. The patrol information (including frequency of patrol visits) of the outsourced security guards has been submitted to the Lands D Headquarters for record purposes on a regular basis;
- (e) the Lands D Headquarters has issued guidelines to the DLOs for formulating their own patrol programmes, including those for mobile patrols by security guards, according to their available resources. The head of each land control team should hold bi-weekly meetings with case officers to keep track of the progress of each case;
- (f) complicated cases should be brought to the attention of the DLO at the District Review Board (DRB — Note 7) meetings. Guidelines are also given to determine the land control priorities. The Lands Administration Office Instructions state that environmental black spots and other environment problem areas may be referred to the District Management Committees (Note 8) for discussion when necessary. For better utilisation of resources, DLOs are reminded to consider employing security contractors to carry out inspections at government sites (including black spots);
- (g) at present, the DLOs draw up patrol programmes for DLO staff regarding fenced-off and black-spot sites, which are approved by senior officers of the DLOs; and

Note 7: *A DRB is set up in each DLO and is chaired by the District Lands Officer concerned. It provides directions on resolving complicated land control cases.*

Note 8: *A District Management Committee, set up under each District Council, serves as a forum for consultation, co-ordination and collaboration among different departments and the District Council.*

- (h) the district land control teams are more familiar with the situation of the districts and are well aware of the locations of black spots. Hence, it would be more practical and effective for the heads of district land control teams to formulate the inspection programmes and take up the monitoring responsibility. Moreover, the DLOs have their own DRBs to discuss the land control issues. They would set up the inspection programmes on their own in accordance with districts' resources and the local characteristics and submit the programmes to DRBs for endorsement. The Lands D is mindful not to create additional work for its staff unless such additional work is absolutely necessary or useful.

Monitoring and control of surveyed structures and licensed structures

Survey of squatter structures in 1982

2.11 In 1982, the Government conducted a survey to register squatter structures then existed. Such surveyed structures (with squatter control numbers) were allowed to remain on government land and private agricultural land on a temporary basis on the conditions that their locations, dimensions, building materials and usage should remain unchanged as compared with the survey records. Such surveyed structures will be cleared if the land is required for government programmes for development, environmental improvement or for safety reasons. As of December 2011, there were 393,400 such surveyed structures.

Licensed structures

2.12 Prior to mid-1970s, the Lands D (Note 9) had issued government land licences for erecting structures for agricultural or domestic purposes to regularise the then existed agricultural and domestic squatter structures in the rural areas. As stated in the government land licences, only structures with the specified purposes and dimensions could be erected on the government land concerned, and any modification and re-building of the structures should be approved by the Lands D. Furthermore, such licences are not transferable. The Lands D may cancel a government land licence if there is a breach of the licence conditions. With the cancellation of the licence, the structures on the government land concerned have to be removed. As of December 2011, there were about 15,000 such government land licences (Note 10).

Note 9: *Before December 1981, the then Secretary for the New Territories was the land authority in the New Territories. With the re-organisation of the Government Secretariat in December 1981, the then Secretary for City and New Territories Administration became the land authority. Since its establishment in April 1982, the Lands D has been responsible for all land administration matters. For simplicity, the Secretary for the New Territories and the Secretary for City and New Territories Administration are also referred to as the Lands D in this Report.*

Note 10: *A government land licence may cover more than one structure.*

Squatter Control Unit

2.13 In April 2006, the Lands D took over squatter control duties from the Housing Department and set up the Squatter Control Unit to monitor the surveyed structures. The Squatter Control Unit, headed by a Chief Estate Surveyor, comprises 356 officers for performing territory-wide squatter control and clearance duties, including:

- (a) inspecting surveyed structures based on inspection programmes and carrying out enforcement action upon noting irregularities;
- (b) vetting and approving applications for repairing surveyed structures;
- (c) upon noting any new building works on licensed structures or licensed areas, informing the DLOs concerned for carrying out appropriate enforcement action;
- (d) demolishing unauthorised squatter structures and unauthorised extensions to the surveyed structures (see para. 2.11); and
- (e) taking prosecution action against unauthorised occupation of unleased government land by squatter structures.

Audit observations and recommendation

2.14 Audit examination reveals that there is room for improvement in the Lands D's monitoring of surveyed structures and licensed structures. As shown in Case 3 in PART 4 (see paras. 4.9 to 4.14), the DLO/North only cancelled the pertinent land licence in November 2011, 20 years after noting in 1991 that there was a change in the occupier of the licensed structures, and that the sizes of the structures were much larger than those specified in the land licence (see items (3), (5) and (6) of Appendix C). The laxity in taking enforcement action is a cause for concern.

Audit recommendation

2.15 **Audit has *recommended* that the Director of Lands should take measures to step up the Lands D's monitoring and control of surveyed structures and licensed structures (the audit recommendations in para. 4.13 are also relevant).**

Response from the Administration

2.16 The **Director of Lands** agrees to consider the audit recommendation. She has said that:

- (a) the surveyed structures are already being patrolled by the Squatter Control Unit. However, there are some squatter structures that the Squatter Control Unit could not gain access for inspection; and
- (b) there are already quite a number of licensed structures under complaints and referrals. While the DLOs will not be able to spare resources to patrol licensed structures, they will consider setting up an arrangement for writing to licencees on an annual basis.

PART 3: ENFORCEMENT ACTION

3.1 This PART examines the enforcement action taken by the Lands D in combating unlawful occupation of government land, focusing on:

- (a) action to deal with land control cases (see paras. 3.3 to 3.15); and
- (b) prosecution action (see paras. 3.16 to 3.32).

The Land (Miscellaneous Provisions) Ordinance

3.2 The Lands D is responsible for taking land control action under the Cap. 28 Ordinance. Under section 6 of the Ordinance:

Section 6(1)

- (a) if unleased land is occupied, otherwise than under a licence or a deed or a memorandum of appropriation, the Authority (Note 11) may cause a notice, requiring the occupation of the land to cease before such date as may be specified in the notice;

Section 6(2)

- (b) if the occupation of unleased land does not cease as required by a notice under section 6(1), the Authority may remove from the land the persons (if any) thereon, and take possession of any property or structure on the land;

Section 6(2A)

- (c) if a structure is being erected (or has been erected) on unleased land, otherwise than under a licence or a deed or a memorandum of appropriation, and the Authority is reasonably satisfied that the structure is not being habitually and bona fide used, the Authority may, without giving notice, remove from the structure any person or property therein, demolish the structure, and take possession of such property and of any property resulting from the demolition of the structure; and

Note 11: *The Authority refers to the Director of Lands, the Director of Food and Environmental Hygiene or the Housing Authority, where appropriate.*

Section 6(4)

- (d) any person occupying unleased land, otherwise than under a licence or a deed or a memorandum of appropriation, who without reasonable excuse does not cease to occupy the same as required by a notice under section 6(1) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for six months.

Action to deal with land control cases

3.3 Based on quarterly returns of the DLOs and the NTAT (see para. 1.7(a)), Table 1 shows the number of land control cases received and completed, and the year-end outstanding cases from 2008 to 2011.

Table 1**Land control cases
(2008 to 2011)**

Particulars	2008 (No.)	2009 (No.)	2010 (No.)	2011 (No.)
(a) Case brought forward	5,733	5,292	4,457	4,509
(b) Add: case received during year	7,284	8,597	9,109	8,406
(c) Less: case completed during year	(7,725)	(9,432)	(9,057)	(9,006)
(d) Case carried forward	5,292	4,457	4,509	3,909

Source: *Lands D records*

3.4 Depending on the nature of an individual case, the DLO concerned or the NTAT will take one or more of the following actions:

- (a) ***Self-rectification:*** requiring the occupiers to cease the unlawful land occupation and remove any structure erected on government land. If the occupiers satisfactorily comply with the requirements, no further action will be taken against them;
- (b) ***Clearance action:*** taking clearance action on any unauthorised structure erected on government land. If the occupiers can be identified, the clearance cost will be recovered from them as far as possible;
- (c) ***Prosecution action:*** taking prosecution action against the occupiers of warranted cases with sufficient evidence (see paras. 3.16 to 3.32);
- (d) ***Referral to other government departments:*** referring the cases to other responsible government departments for follow-up action if the cases fall within the departments' law enforcement jurisdiction. For example, cases involving unauthorised dumping of construction waste will be referred to the Environmental Protection Department for action under the Waste Disposal Ordinance (Cap. 354); and
- (e) ***No enforcement action:*** taking no action on cases relating to private land or land issued with government land licences or STTs, or merely general public enquiries on land matters.

3.5 Upon satisfactory completion of one or more of the actions in paragraph 3.4, the DLO concerned or the NTAT will regard the case as "completed". Table 2 shows an analysis of the number of cases completed by the DLOs and the NTAT from 2008 to 2011.

Table 2
Cases completed by DLOs and NTAT
(2008 to 2011)

Action taken (see para. 3.4)	2008 (No.)	2009 (No.)	2010 (No.)	2011 (No.)	Total	
					(No.)	Percentage
(a) Self-rectification	1,950	1,944	2,062	2,236	8,192	23.2 %
(b) Clearance action	2,476	3,166	2,449	2,504	10,595	30.1 %
(c) Prosecution action	20	13	12	8	53	0.2 %
(d) Referral to other government departments	1,855	2,363	2,499	2,161	8,878	25.2 %
(e) No enforcement action	1,424	1,946	2,035	2,097	7,502	21.3 %
Total	7,725	9,432	9,057	9,006	35,220	100.0 %

Source: Lands D records

Categories of land control cases

3.6 According to the Lands Administration Office Instructions, cases are classified into the following three categories based on their priority for land control action:

- (a) **Category I (high priority):** cases likely to cause imminent danger to lives, serious property losses, serious pollution, or likely to jeopardise the interest and well-being of the public;
- (b) **Category II (medium priority):** cases involving unlawful cultivation, excavation, and fencing-off of government land; and
- (c) **Category III (low priority):** cases involving minor unauthorised occupation of government land, such as using land for gardening or vehicle parking.

The Office Instructions also stipulate that any upgrading or downgrading of the category of a land control case should be discussed and endorsed at DRB meetings with reasons and justifications documented in the minutes of meetings.

Audit observations and recommendations

Time for completing land control cases

3.7 As of December 2011, based on the Lands D's LCIS, there were 6,381 outstanding cases (Note 12), comprising **494 (8%) Category I cases**, 5,089 (80%) Category II cases and 798 (12%) Category III cases. All the 494 Category I cases occurred in the New Territories.

3.8 According to the Lands D's internal instructions:

- (a) Category I cases should be completed **within four months** from the dates of receipt of complaints or referrals; and
- (b) case officers need to report, with reasons, to the DRBs about details of cases not meeting the time target.

3.9 **Audit noted that, as of December 2011, of the 494 outstanding Category I cases as recorded in the LCIS (Note 13), 70% (344 cases) had exceeded the four-month target, with four outstanding for more than 10 years.** According to the Lands D, such long outstanding cases included:

- (a) complicated cases involving columbarium structures;

Note 12: *The number of cases recorded in the LCIS was different from that stated in the quarterly returns of the DLOs and the NTAT (see paras. 5.4 and 5.5). However, as information on the category of each case is not included in the quarterly returns, Audit needs to rely on the information in the LCIS for conducting this analysis.*

Note 13: *Audit found that the progress of the land control cases was not always correctly recorded in the LCIS (see para. 5.12(b)).*

- (b) cases where clearance action was not possible (e.g. village houses partly erected on government land and partly on private land — Note 14);
- (c) cases where the occupiers had sought the assistance of local dignitaries and influential bodies;
- (d) cases where Lands D staff had difficulties in gaining access to the government land concerned (Case 1 in para. 3.23 is an example);
- (e) cases encountering legal challenge such as adverse possession (Note 15); and
- (f) cases where land control actions would affect a large number of houses in an area or a whole village.

3.10 For all 344 Category I cases exceeding the four-month target, Audit could not find records documenting the reasons for not meeting the target. **In Audit's view, the Lands D needs to require the DLOs to take measures to ensure Category I cases meet the four-month target as far as possible, and document and report the reasons for not meeting the target. The requirements in paragraph 3.8 are relevant.**

3.11 The existing LCIS could neither produce ageing analyses of outstanding land control cases nor generate exception reports on long outstanding cases (see para. 5.8(b)). **Audit considers that the Lands D needs to take measures to compile periodic exception reports on long outstanding cases for effective management of land control cases, and require the DLOs to ascertain the reasons for cases which have remained outstanding for a long time and expedite action to rectify them.**

3.12 A four-month target was set for Category I cases, but similar time targets had not been set for Categories II and III cases. In March 2012, the Lands D informed Audit that it was not practicable to set targets for Categories II and III cases because:

Note 14: *According to the Lands D, prosecution action under the Cap. 28 Ordinance might be considered in these cases.*

Note 15: *Adverse possession refers to a claim for land title by a squatter or a trespasser after occupation of the land for a long period of time.*

- (a) the time taken for dealing with such cases might vary from one to another; and
- (b) the Lands D could not redeploy resources to set priorities to such cases, given other competing work priorities.

Enforcement action on land control cases

3.13 Audit has selected for examination three land control cases (Cases 4, 5 and 6) which related to enforcement action taken on unlawful government land occupation. They are reported in PART 4 (paras. 4.15 to 4.42 are relevant).

Audit recommendations

3.14 **In order to step up enforcement actions against unlawful occupation of government land, Audit has *recommended* that the Director of Lands should:**

- (a) **require the DLOs to:**
 - (i) **ascertain the reasons for cases remaining outstanding for a long time and expedite action to rectify them;**
 - (ii) **take measures to ensure Category I cases meet the four-month target as far as possible; and**
 - (iii) **document and report the reasons for each Category I case not meeting the four-month target; and**
- (b) **take measures to compile periodic exception reports on long outstanding land control cases.**

Response from the Administration

3.15 The **Director of Lands** agrees to consider the audit recommendations. She has said that:

- (a) the Lands D Headquarters will require the DLOs to provide further details or clarification on doubtful and significant cases. Under the existing arrangements, the DLOs' DRBs and the NTAT's Case Steering Board (Note 16) will discuss problematic cases and monitor outstanding cases. Minutes of the DRB meetings are submitted to the Lands D Headquarters; and
- (b) the DLOs and the NTAT will explore measures to expedite land control action.

Prosecution action

Lands D guidelines on prosecution action

3.16 According to the Lands Administration Office Instructions:

- (a) prosecution should not be initiated or continued unless there is a reasonable prospect of securing a conviction;
- (b) there should be admissible, substantial and reliable evidence that an offence has been committed by an identifiable person; and
- (c) prosecution should not be instituted if the identity of the occupier cannot be ascertained.

Prosecution Unit

3.17 A Land Control Team under the Lands D Village Improvement and Lease Enforcement/Land Control Section is responsible for taking prosecution action on land matters (Note 17). A group of five land control officers in the Team, making up the **Prosecution Unit**, are authorised under the Magistrates Ordinance (Cap. 227) to act as departmental prosecutors for offences under the Cap. 28 Ordinance. The duties of the Prosecution Unit include, among others:

Note 16: *The NTAT Case Steering Board, chaired by a Principal Land Executive, is responsible for administering the priorities, procedures and practices on action to deal with land control cases identified in the New Territories before 2007.*

Note 17: *The Team also undertakes other duties including the formulation of land control guidelines and instructions, consolidating and preparing replies to complaints, and answering enquiries from LegCo Members, media and the Development Bureau.*

- (a) considering the Lands D's land control cases to decide, in consultation with the Department of Justice (DoJ) if necessary, whether or not to take prosecution action; and
- (b) conducting, or assisting counsels appointed by the DoJ to conduct, legal proceedings for prosecution.

3.18 The DLOs will carry out investigations and collect evidence for suspected cases of unlawful occupation of government land. If sufficient evidence is collected, the DLOs will make recommendations to the Prosecution Unit for taking prosecution action.

Training on evidence collection and prosecution

3.19 Staff of the DLOs and the Prosecution Unit attended various training programmes and courses on evidence collection and prosecution in relation to land control enforcement action (see Table 3).

Table 3
Training courses on evidence collection and prosecution
(2008 to 2011)

Training course	Organised by	Course (No.)	Attended by Lands D staff (No.)
(a) Training programme on investigation skills	Hong Kong Police Force	11	223
(b) Training course for departmental prosecutors	DoJ	3	5
(c) Refresher course on investigation skills and prosecution submissions	Lands D	5	206
(d) Experience-sharing session on handling of complaint and prosecution cases	Lands D	2	57
(e) Experience-sharing session on handling of land control cases/matters	Lands D	4	188
Total		25	679

Source: Lands D records

Audit observations and recommendations

Significant reduction in recommended and prosecution cases

3.20 Table 4 shows, from 2008 to 2011, the number of cases (relating to unlawful occupation of government land) recommended by the DLOs and the NTAT for prosecution, the number of prosecution and convicted cases, and fines imposed under section 6 of the Cap. 28 Ordinance.

Table 4
Prosecution cases for unlawful occupation of government land
(2008 to 2011)

Year	Case recommended for prosecution (No.)	Prosecution case (No.)	Convicted case	
			(No.)	Fine (\$)
2008	16	11	9 (Note)	38,900
2009	10	6	5	24,000
2010	12	7	5	13,000
2011	7	2	2	6,000
Total	45	26	21	81,900

Source: Lands D records

Note: In one case in 2008, the occupier was sentenced to three-month imprisonment with suspension for three years.

3.21 As shown in Table 4, the number of cases recommended for prosecution decreased by 56% from 16 in 2008 to 7 in 2011, and the number of prosecution cases also decreased by 82% from 11 in 2008 to 2 in 2011. In March 2012, the Lands D informed Audit that:

- (a) it would encourage self-rectification and would take prosecution action as the last resort or as a deterrent against repeated or difficult offenders. The Lands D considered that it would not be too fruitful to deploy too much manpower to collect evidence and seek DoJ's advice for taking prosecution action because, in most cases, the community was more interested to see an early cessation of unlawful occupation of government land;
- (b) the Lands D's prosecution action also covered cases of unlawful excavation, trespass and unlawful removal of earth and turf (Note 18); and
- (c) if prosecution for a case was not proceeded as recommended by the departmental prosecutor, endorsement by a Chief Land Executive of the Lands D Headquarters was required.

Evidence for prosecution action

3.22 As shown in Table 4, from 2008 to 2011, of the 45 cases recommended for prosecution, the Prosecution Unit took prosecution action in 26 cases (58%) and decided not to take action in the remaining 19 cases (42%). Audit examination revealed that the reasons for not proceeding with prosecution included insufficient evidence, regularisation action taken and insufficient proof of the identity of the occupiers. According to the Lands D, reasonable excuses of the occupiers, such as old age, were also grounds for not taking prosecution action.

3.23 Of the 26 prosecution cases, 21 (81%) were conviction cases and the remaining 5 (19%) were acquittal cases. Audit examination of the court decisions revealed that the reasons for the acquittal of the cases included reasonable excuses of the defendants, unreliable witnesses and insufficient evidence. Case 1 is an example of insufficient evidence leading to the acquittal of the case.

Note 18: *Table 4 covers prosecution cases relating to unlawful occupation of government land only. If other prosecution cases (such as unlawful excavation and trespass) are also taken into account, the total number of prosecution cases will be 20 in 2008 and 8 in 2011.*

Case 1

**Unlawful government land occupation over a watercourse in Yuen Long
(March 2010 to January 2012)**

Item	Time	Key event
1	Early March 2010	The Lands D received some complaints about suspected unlawful construction of a bridge over a watercourse (which is government land).
2	10 March 2010	The DLO/Yuen Long (DLO/YL)'s site inspection noted that construction of a bridge was in progress, and the DLO/YL posted a notice under the Cap. 28 Ordinance on the bridge, requiring cessation of unlawful occupation of government land by 17 March 2010.
3	17 March 2010	The DLO/YL's site visit noted that the bridge had not been removed. At the time of the site inspection, a person (Person A) approached the DLO's officers and said that he was the person responsible for arranging a contractor for the construction works.
4	Early June 2010	The DLO/YL made a recommendation to the Prosecution Unit for carrying out prosecution against Person A. The Prosecution Unit advised the DLO/YL that it needed to take a caution statement (Note) from Person A.
5	23 June 2010	The DLO/YL approached Person A who said under caution that he was the person responsible for commissioning the construction works.
6	9 July 2010	A staff member of the DLO/YL recorded Person A's information provided on 23 June 2010 in a witness statement, without requesting Person A to sign on it.
7	September 2010	During the court hearing, Person A denied the verbal confession made on 23 June 2010.
8	December 2010	The court ruled that, as the verbal cautioned confession by Person A on 23 June 2010 was not immediately recorded, the court was not certain if Person A had made such verbal confession in the exact wordings as recalled by the witness (a staff member of the DLO/YL). In the event, the court ruled that Person A was acquitted.
9	January 2012	The bridge had not been removed (see Photograph 1).

Source: Lands D records

Note: A caution statement is a statement taken from a person after he has been reminded of his right to remain silent.

Photograph 1**An unauthorised bridge in Case 1
(January 2012)**

Source: Lands D records

- 3.24 From January to March 2012, the Lands D informed Audit that:
- (a) Case 1 was an isolated incident in which the staff concerned had failed to record the confession made by Person A immediately;
 - (b) the unauthorised bridge in Case 1 was built on three private lots and spanning over the government land (a watercourse). The Buildings Department (BD) had issued three demolition orders under the Buildings Ordinance (Cap. 123) in June 2010, ordering the removal of the unauthorised bridge supporting structures erected on the three private lots. As of February 2012, the DLO/YL was arranging joint enforcement actions with the BD;
 - (c) the unlawfully occupied government land was enclosed by private lots, and Lands D staff were not able to gain access to the bridge to take enforcement action; and
 - (d) the DLO/YL had written to the BD, the Geotechnical Engineering Office (GEO) of the Civil Engineering and Development Department and the Drainage Services Department to seek advice on the structural safety of the bridge.

3.25 In Audit's view, in Case 1, the DLO/YL should have taken action in March 2010 (when the complaints were received) to stop the construction of the unauthorised bridge. **Audit is also concerned whether the bridge meets the required safety standards. For safety reasons, the Lands D needs to expedite action to rectify the situation. To enhance the prospect of successful prosecution in future, the Lands D also needs to strengthen staff training by implementing regular training programmes on how investigation of land control cases should be conducted and how evidence should be collected, and organising experience-sharing sessions of prosecution cases.**

Continued unlawful occupation of government land after conviction

3.26 Audit noted that, as of March 2012, of the 21 convicted cases from 2008 to 2011 (see Table 4 in para. 3.20), the irregularities of nine cases had not been rectified. Of the nine cases, eight had been outstanding for over one year after court conviction. In March 2012, the Lands D informed Audit that, regarding these nine cases:

- (a) one case related to a six-storey building straddling both private land and government land. The owner was taking action to rectify the irregularities by employing an Authorised Person to carry out demolition works of the upper three building floors. The DLO/YL was closely monitoring the progress;
- (b) two cases involved applications for STTs which were still under consideration;
- (c) three cases involved applications for construction of small houses (under the Government's Small House Policy set in 1972); and
- (d) for the remaining three cases, land control actions were in progress (in two cases) or would be taken soon (in one case).

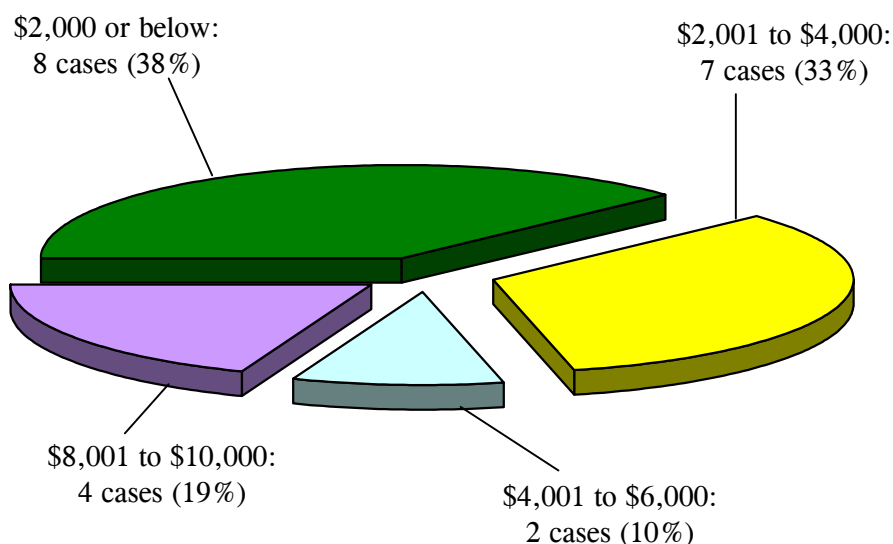
In Audit's view, the Lands D needs to take prompt rectification action in accordance with the Cap. 28 Ordinance (see para. 3.2) for cases of continued unlawful occupation of government land after court conviction.

Fines for convicted cases

3.27 Table 4 in paragraph 3.20 also shows that, of the 21 convicted cases from 2008 to 2011, the total amount of fines imposed was \$81,900, and one unlawful occupier was sentenced to three-month imprisonment in 2008 with suspension for three years. Audit analysis of the fines imposed in these 21 cases is shown in Figure 1.

Figure 1

**Fines imposed on unlawful occupation of government land
(2008 to 2011)**



Source: Audit analysis of Lands D records

Remarks: No case involved a fine of \$6,001 to \$8,000.

3.28 From 2008 to 2011, the maximum fine of \$10,000 was imposed in two cases. Audit also noted that the maximum fine had not been revised since 1972 (Note 19). In this connection, at a meeting of the LegCo Panel on Planning, Lands and Works in February 2004, the Director of Lands said that the existing levels of penalty for offences of unlawful occupation of land did not have an adequate deterrent effect, given the high value of land in the territory (see para. 1.6(b)). In April 2007, the Lands D raised the issue with its policy bureau, proposing to increase the penalty and introduce a system of daily fine, but the issue had not been pursued. **In Audit's view, the Lands D needs to review the levels of penalty for such offences with a view to providing an effective deterrent.**

Note 19: *In 1972, the former Crown Land Ordinance (Cap. 28) was enacted. On 1 July 1997, the Crown Land Ordinance was repealed and substituted by the Cap. 28 Ordinance. The penalties provided for the relevant offences have however not been revised since 1972.*

3.29 For benchmarking, Audit noted that, under the Buildings Ordinance, any person who, without reasonable excuse, fails to comply with a demolition order for unauthorised building works served on him under section 24(1) of the Ordinance shall be guilty of an offence and shall be liable on conviction to a fine of \$200,000 and to imprisonment for one year, and further to a fine of \$20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued. However, a similar daily penalty is not provided in the Cap. 28 Ordinance. **In Audit's view, the Lands D needs to consider the need for such a penalty in order to provide an effective deterrent on continued unlawful occupation of government land.**

Audit recommendations

3.30 **To better protect government land from unlawful occupation, Audit has recommended that the Director of Lands should:**

- (a) **strengthen staff training by implementing regular training programmes on conducting investigation of land control cases and evidence collection, and organising experience-sharing sessions of prosecution cases;**
- (b) **expedite action to rectify the unlawful land occupation in Case 1;**
- (c) **require the DLOs to take prompt clearance action for cases of continued unlawful land occupation after court conviction;**
- (d) **review the levels of penalty for pertinent offences with a view to providing an effective deterrent; and**
- (e) **consider introducing legislative provisions to the effect that a fine will be imposed for each day during which a pertinent offence has continued, with reference to similar provisions under the Buildings Ordinance.**

Response from the Administration

3.31 The **Secretary for Development** agrees with the audit recommendations in paragraph 3.30(d) and (e).

3.32 The **Director of Lands** agrees with the audit recommendation in paragraph 3.30(b) and agrees to consider the audit recommendations in paragraph 3.30(a) and (c) to (e). She has said that:

Staff training

- (a) the Lands D will continue to strengthen staff training in prosecution action. It has conducted training courses, refresher courses, seminars on land control and prosecution work, for the land control staff;

Action to rectify Case 1

- (b) the DLO/YL will take the following land control action in Case 1:
 - (i) preparing an action plan and inviting the BD to take joint enforcement action;
 - (ii) taking lease enforcement action against the owners of the three land lots where the bridge supports are situated;
 - (iii) arranging to post notice under section 6(1) of the Cap. 28 Ordinance;
 - (iv) considering taking demolition action upon expiration of the notice (see (iii) above) if the unlawful government land occupation persists. The DLO may also consider taking prosecution action against the occupier if sufficient evidence could be gathered; and
 - (v) deploying contractors to use metal chains with locks to block off the part of the bridge located on government land and erecting government notice boards there. In order to avoid confrontation with the villagers or occupiers, the DLO/YL will seek assistance from the District Office (Yuen Long) to liaise with the villagers for the action. If the DLO/YL encounters resistance and has difficulties in gaining access to the site through the private lots, it will seek the assistance of the District Office (Yuen Long) and the Hong Kong Police Force; and

Continued unlawful land occupation after court conviction

- (c) concerning cases of continued unlawful government land occupation after court conviction, the Lands D will attempt to clear the structures as far as possible. However, on some occasions such as a structure straddling private land and government land, demolition of the structure may not be feasible. In the circumstances, the Lands D will consider taking further prosecution action if the unlawful occupation of government land still persists.

PART 4: AUDIT'S CASE STUDIES

4.1 This PART describes Audit's examination of five cases involving unlawful occupation of government land.

Case studies conducted by Audit

4.2 **Prolonged unlawful government land occupation cases may be perceived as the Lands D's lack of determination in taking enforcement action in land matters. They also set undesirable examples and undermine the Lands D's reputation.** In this PART, Audit reported the findings of five case studies (Cases 2 to 6) which related to the Lands D's detection of unlawful government land occupation and its enforcement action taken in tackling the cases. The five cases are summarised below.

Cases relating to prevention and detection action

- (a) **Case 2.** This case involved prolonged unlawful government land occupation without having been detected (see paras. 4.3 to 4.8);
- (b) **Case 3.** In this case, the Lands D had noted serious breaches of the licence conditions of some structures 20 years ago, but only cancelled a government land licence for the structures in late 2011 (see paras. 4.9 to 4.14);

Cases relating to enforcement action

- (c) **Case 4.** This case involved unlawful government land occupation in a country-park area for more than 18 years after detection (see paras. 4.15 to 4.28);
- (d) **Case 5.** This case involved intermittent unlawful government land occupation for more than ten years after detection (see paras. 4.29 to 4.32); and
- (e) **Case 6.** This case involved unauthorised slope works on government land for more than six years after detection, giving rise to slope safety concern (see paras. 4.33 to 4.42).

Prolonged unlawful occupation of government land without detection (Case 2)

4.3 Case 2 related to the prolonged unlawful occupation of government land which was subsequently regularised by the granting of an STT. In this case, the Government resumed a private land lot in March 1980 from a former land owner (Person B) in Sheung Shui for a public works project. In January 2001, in response to the BD's referral, the DLO/North's inspection found that there were unauthorised structures on the resumed land lot. In December 2004, the DLO/North granted an STT to Person B to regularise the unlawful government land occupation. Appendix B shows the chronology of key events in Case 2.

Audit observations and recommendation

4.4 According to the minutes of the Land Administration Meeting (Note 20) in April 2002 (see item (5) of Appendix B):

- (a) the records relating to the land lot after the land resumption in March 1980 were not available or were incomplete. The DLO/North had contacted the Highways Department, the Drainage Services Department and the then Territory Development Department but could not trace the relevant land resumption records; and
- (b) it seemed that the majority of the structures on the site might have been erected before the land resumption in 1980 (and had not been demolished). However, the Lands D could not ascertain whether that was the actual case, or if they were re-built and re-occupied after March 1980.

Having considered the case history and situation, the Lands D approved the granting of an STT to Person B (who might further sublet part of the STT site — Note 21) to rectify the unlawful government land occupation.

Note 20: *The Land Administration Meeting is chaired by the Deputy Director (General) of the Lands D's Lands Administration Office. Its terms of reference includes considering specific issues affecting individual land transactions.*

Note 21: *The Lands D normally does not allow subletting under an STT. However, based on an individual case's merits, the Land Administration Meeting may approve the inclusion of a subletting clause in an STT.*

4.5 In March 2012, the Lands D informed Audit that:

- (a) it considered each STT application on its merits (Note 22). In general, an STT would be considered if:
 - (i) the government land under application was incapable of separate alienation;
 - (ii) the government land would not be used by the Government for potential long-term use in the near future (say in two to three years' time);
 - (iii) no adverse comments were given by relevant government departments; and
 - (iv) there was no local objection;
- (b) the granting of an STT in Case 2 was a pragmatic measure for land administration;
- (c) as a normal practice, the resumed land should have been handed over to the project department for project implementation. However, in Case 2, the relevant land resumption file records were not traceable; and
- (d) the Lands D found no unlawful occupation of government land in Case 2 during another site visit conducted on 14 February 2012.

4.6 In Audit's view, in Case 2:

- (a) after the land resumption in March 1980, the structures on the land lot should have been demolished, and the Lands D should have fenced off the land lot to guard against unlawful occupation. However, it appeared that the land lot had been left unattended between 1980 and November 2001 (before commencement of an STT in December 2001) with the structures remaining there (see para. 4.4(b)). In the event, the whole or part of the land lot might have been unlawfully occupied during the period;

Note 22: *The Lands Administration Office Instructions provide that due to the diverse nature and scale of unlawful occupation of government land, it is not considered appropriate to draw up hard and fast rules under which unlawful occupation may be regarded as acceptable for regularisation by the granting of an STT, and each case needs to be assessed on its own merits.*

- (b) as the relevant Lands D records could not be found (see para. 4.4(a)), Audit could not ascertain whether the DLO/North had detected any unlawful occupation of government land between March 1980 and December 2000 (20 years and nine months — see items (1) and (2) of Appendix B). Therefore, the actual period of unlawful occupation of government land could not be ascertained;
- (c) since the DLO/North was unable to identify the occupiers and ascertain the actual period of unlawful government land occupation before November 2001, the Lands D could not recover from the occupiers the cost of land occupation before November 2001. The loss of file record for the case is also a cause for concern;
- (d) given the lapse in time and the loss of file records, the unlawful occupation of government land can only be resolved in a pragmatic way by granting an STT in this case (see item (6) of Appendix B); and
- (e) at times, the Lands D may regularise the unlawful occupation of government land by the granting of an STT to the occupier. According to the Lands D, the regularisation by granting STTs, if situations warrant, is one of the ways of resolving the unlawful government land occupation problem (see para. 1.6(d)). Whilst Audit notes the Lands D's view that the granting of an STT may be a pragmatic way to regularise the unlawful occupation of government land, Audit is concerned that some people may take advantage of the STT arrangement by first unlawfully occupying government land, and then applying for an STT after the Lands D's detection. The granting of an STT in this case (see item (6) of Appendix B) is an example.

Audit recommendation

4.7 Audit has recommended that the Director of Lands should take steps to ensure that the regularisation of unlawful occupation of government land by the granting of STTs is always under strict control to avoid possible abuse.

Response from the Administration

4.8 The **Director of Lands** agrees to consider the audit recommendation. She has said that:

- (a) the Lands D has resorted to the granting of an STT as a pragmatic measure to deal with de facto occupation of government land which can be acceptable at least on a short-term basis, and it helps to prevent recurrence of unlawful occupation of the government land involved; and
- (b) this arrangement will also generate government revenue (at market rent). An STT may be terminated by giving notice according to its terms.

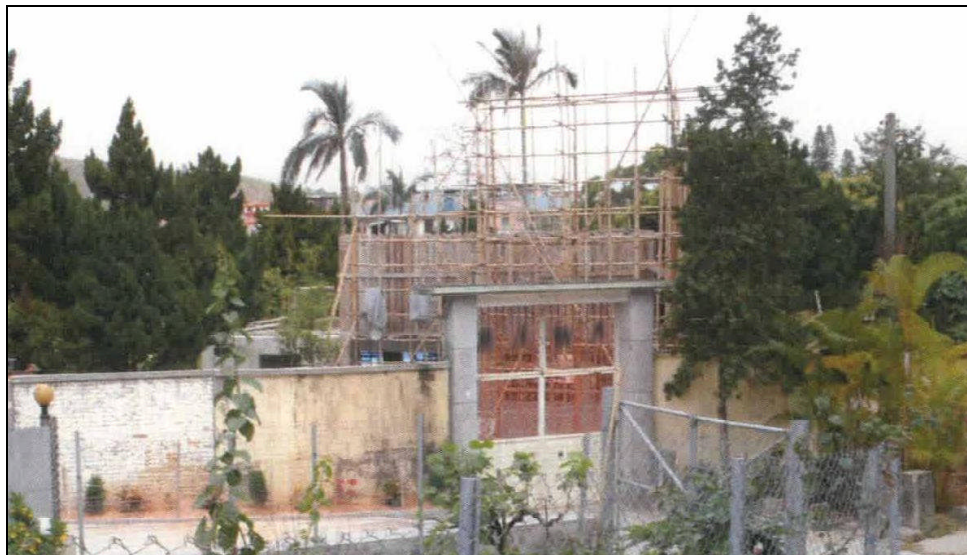
Insufficient monitoring of licensed structures (Case 3)

4.9 **Case 3 revealed the Lands D's insufficient monitoring of surveyed structures and licensed structures.** In this case, the Lands D issued a government land licence (the Licence) in November 1971 to a person (Person C1), permitting him to erect three structures having a total area of 70.6 square metres (m²) on a piece of government land (Site A) in Sheung Shui. In 1982, the Housing Department's survey found squatter structures on three government land sites (Sites A, B and C) in close proximity, including the three squatter structures erected under the Licence on Site A. Subsequently, the squatter structures were registered as surveyed structures.

4.10 In March 2010, the DLO/North's site inspection noted re-building of structures under the Licence (see Photograph 2). In November 2011, the DLO/North's site inspection found that the dimensions and usage of structures erected on Site A did not tally with those of the permitted structures under the Licence. In the same month, the Squatter Control Unit's inspection also revealed that all structures on Sites A, B and C were different from those in the Lands D records. In the event, the Licence for Site A and the registration of the squatter structures erected on Sites A, B and C were cancelled in November 2011 (20 years after noting in 1991 that there was a change in the occupier of the licensed structures and that the sizes of the structures were much larger than those specified in the Licence — see item (6) of Appendix C). The unauthorised structures on Sites A, B and C were subsequently removed in December 2011. Appendix C shows the chronology of key events in Case 3.

Photograph 2

**Unauthorised re-building of licensed structures in Case 3
(March 2010)**



Source: Lands D records

Remarks: Unauthorised building works were in progress (see item (11) of Appendix C).

- 4.11 In March 2012, the Lands D informed Audit that, in Case 3:
- (a) Sites A, B and C were land locked by private properties and access to the sites were restricted unless permission from the concerned lot owners could be obtained. In fact, major portions of the walls surrounding the concerned private lots were erected on private lots (not on government land); and
 - (b) transfer of government land licence was accorded low priority in the DLO/North due to competing priorities. A change of work priority to deal with transfer of government land licence was implemented in July 2005. The pertinent licence transfer application (see item (8) of Appendix C) was subsequently reviewed in May 2006.

Audit observations and recommendations

4.12 Regarding Case 3, Audit noted that:

- (a) the dimensions and layout of licensed structures on Site A had changed significantly over the years from 1971 to 2010. As a result, the area of the licensed structures, originally occupying an area of 70.6 m² in 1971, was subsequently found to have increased to 77.4 m² in 1982 and further to 86.6 m² in 1991. However, the DLO/North only took action after a media enquiry in November 2011 (see item (18) of Appendix C) to verify whether the licence conditions were complied with and whether details of the surveyed structures tallied with the survey records. In the event, the registration of surveyed structures on Site A was cancelled on 9 November 2011, and the Licence cancelled on 16 November 2011 (see items (20) and (22) of Appendix C);
- (b) had the DLO/North conducted periodic inspections of licensed structures, the breaches of the licence conditions in this case could have been detected at an earlier time and the Licence could have been cancelled in a timely manner. The prolonged land occupation in the case could have been avoided;
- (c) the DLO/North had not taken prompt follow-up action after issuing warning letters in March and December 2010 (see items (11) and (15) of Appendix C) relating to the unauthorised building works at Site A;
- (d) in response to a person (Person C2)'s application in July 1991 for re-issue of the Licence under his name (see item (5) of Appendix C), the DLO/North only informed him in May 2006 (see item (8) of Appendix C), 14 years and ten months later, that his application could not be approved;
- (e) the DLO/North only cancelled the Licence in November 2011 (see item (22) of Appendix C) despite the fact that it had noticed as early as in November 1991 (see item (6) of Appendix C), 20 years ago, that the dimensions of the structures on Site A had changed; and
- (f) periodic inspections before November 2011 conducted by the Squatter Control Unit had not revealed significant changes in the surveyed structures on Sites B and C (other than the identification of an unauthorised structure on Site C in 1992 — see item (7) of Appendix C).

Audit found that the DLOs had not formulated risk-based inspection programmes to monitor licensed structures, and the Squatter Control Unit had not effectively carried out periodic inspections of surveyed structures (see para. 2.14).

Audit recommendations

- 4.13 **Audit has recommended that the Director of Lands should:**
- (a) **formulate and implement a risk-based inspection programme for detecting unauthorised modifications or re-building of licensed structures;**
 - (b) **require the Squatter Control Unit to strengthen its inspections of surveyed structures; and**
 - (c) **require the DLOs to:**
 - (i) **take prompt follow-up action after the issue of warning letters relating to unauthorised building works on government land;**
 - (ii) **process applications for changes in land licence conditions in a timely manner; and**
 - (iii) **take action to cancel land licences in a timely manner upon detection of serious breaches of licence conditions.**

Response from the Administration

4.14 The **Director of Lands** agrees with the audit recommendations in paragraph 4.13(b) and (c), and agrees to consider the audit recommendation in paragraph 4.13(a). She has said that:

Inspections of licensed structures

- (a) the Lands D will explore the feasibility in formulating and implementing a black-spot inspection programme having regard to the situations of individual districts. While the DLOs will not be able to spare resources to inspect licensed structures periodically, the Lands D will consider setting up an arrangement to write to licencees on an annual basis (see para. 2.16(b));

Inspections of surveyed structures

- (b) there are existing inspection programmes for the Squatter Control Unit to inspect all the surveyed squatter structures. However, there are some squatter structures that the Squatter Control Unit could not gain access for inspection (similar to the situation of the surveyed structures on Sites B and C in Case 3) so that irregularities continue to exist for a long time. In order to strengthen the inspections aiming to detect irregularities at an early stage for taking appropriate squatter control actions, further guidelines will be issued to the Squatter Control Unit laying down the procedures and measures for inspection of such cases;

Prompt action after issuing warning letters

- (c) the Lands D will endeavour to take prompt follow-up action after the issue of warning letters relating to unauthorised building works on government land;

Applications for changes in land licence conditions

- (d) the Lands D will endeavour to process applications for changes in land licence conditions in a timely manner; and

Cancellation of land licences

- (e) the Lands D Headquarters has recently reminded the DLOs to take action to cancel land licences in a timely manner upon detection of serious breaches of licence conditions. Enforcement actions under the licence conditions may be more effective in some situations.

Unlawful land occupation in a country park (Case 4)

4.15 **Case 4 relates to the prolonged unlawful occupation of a country-park area.** In this case, the AFCD informed the DLO/YL in April 1993 that there was a commercial recreational park development in Yuen Long, with unauthorised structures erected on both private land and government land. In December 1995, enforcement action was carried out to clear some of the unauthorised structures. In June 2002, the DLO/YL noted that although some structures had been demolished, some still remained on the government land. From June 1996 to November 2011, the DLO/YL conducted 25 site inspections and issued 12 warning letters to the park operator (Person D), requiring him to demolish the unauthorised structures. As of February 2012, the recreational park was still in operation.

4.16 From October 1997 to November 2011, Person D had submitted eight STT applications for regularising the unauthorised structures on the government land, all of which had been rejected by the DLO/YL. As of March 2012, the DLO/YL was processing a new STT application submitted by Person D. Appendix D shows the chronology of key events in Case 4.

Audit observations and recommendations

Enforcement action

4.17 The recreational park was partly located within the Tai Lam Country Park. Section 10 of the Country Parks Ordinance (Cap. 208) stipulates that, without the prior approval of the Director of Agriculture, Fisheries and Conservation, no new development shall be carried out within the country-park area. The AFCD is responsible for patrolling country parks and will inform the DLOs concerned of any suspected unauthorised structures for follow-up action. The AFCD is also responsible for taking follow-up action for unauthorised developments within country parks not involving structures or unauthorised land excavation works.

4.18 Audit noted that, based on the aerial photographs of the Survey and Mapping Office of the Lands D taken in 1977, 1995, 2005 and 2011, there was extensive site formation with landscaping, footpaths and open space in some of the country-park area. Based on a site plan submitted by Person D in June 2000, the recreational park covered an area of 12,397 m², comprising 7,725 m² of private land and 4,672 m² of government land.

4.19 Audit also noted that the DLO/YL and the AFCD had expressed reservations on granting STTs for regularising the unlawful government land occupation in the Tai Lam Country Park, as follows:

- (a) in 1996, the DLO/YL said that it could not make a direct grant of an STT to a commercial operator for running business on government land;
- (b) in 2000, the AFCD said that the land within country parks should be preserved for the benefit and enjoyment of all people, instead of a small group of paid visitors; and
- (c) in 2011, the AFCD said that the granting of an STT for development in the Tai Lam Country Park would set an undesirable precedent for further encroachment of development into country parks.

In Audit's view, the Lands D and the AFCD need to expedite effective enforcement action in this case, as the unlawful occupation of government land in the Tai Lam Country Park had taken place for more than 18 years (since April 1993).

Operation of the recreational park

4.20 According to FEHD and AFCD records, the recreational park provided some catering services (including a canteen and a barbeque site serving food to visitors) and entertainment facilities and exhibition of insect specimens to visitors and it kept some animals too. Audit noted that some of the facilities might require licences (including a restaurant licence under the Food Business Regulation (Cap. 132X) and a place of public entertainment licence under the Places of Public Entertainment Ordinance (Cap. 172) — see Appendix E). In December 2011, January and March 2012, the FEHD and the AFCD informed Audit that:

FEHD

- (a) the FEHD had not received any application for licences under its purview from the recreational park;
- (b) the FEHD's investigation on the operation of the recreational park found that:
 - (i) visitors were required to pay a fee for admission to the park and might join different activities (e.g. rope playing, exhibition, horse riding and barbeque) with or without additional fees;
 - (ii) site inspection in March 2012 found that the unlicensed food business had ceased and dismantling of the metal shade covering the business area was in progress;
 - (iii) a food stall and a kiosk were selling organic vegetables, bottled drinks and pre-packaged foods, but both did not require a food licence from the FEHD;
 - (iv) site inspection in December 2011 found that there were exhibition rooms displaying butterfly specimens, vegetables, and farming apparatus, facilities for cart riding, horse riding and war games, and a goldfish pond. Further site inspection in March 2012 found that the exhibition rooms had been closed down;

- (v) after seeking legal advice, the FEHD noted that, apart from the three exhibition rooms (see (iv) above) for displaying vegetables, farming instrument and insects (butterfly specimen) which required a licence under the Places of Public Entertainment Ordinance for their operation, all other activities within the recreational park did not require a licence under the Ordinance; and
- (vi) the bat cave had been closed. As regards the feeding of animals, picking of strawberries, touring of orchard, the Chinese Sturgeon and lotus pond, and the rope playground, the FEHD considered that these farming activities and scenic appreciation did not fall within the definition of "entertainment" under the Places of Public Entertainment Ordinance;

AFCD

- (c) the keeping of cattle, sheep and goats were governed by the provisions of the Public Health (Animals and Birds) (Keeping of Cattle, Sheep and Goats) Regulations (Cap. 139C), which however did not apply to the New Territories;
- (d) exhibition of animals and birds to the public on paying a fee was under the control of the Public Health (Animals and Birds) (Exhibitions) Regulations (Cap. 139F). Person D was convicted for contravention of regulation 3 of the Regulations in 2006. He was prosecuted with a similar charge in 2007 but the prosecution was unsuccessful owing to insufficient evidence. As of January 2012, no admission fee was charged for people visiting the premises. Hence, it did not fall within the definition of "Exhibition" under the Regulations; and
- (e) keeping a riding establishment was under the control of the Public Health (Animals) (Riding Establishment) Regulations (Cap. 139J). The AFCD had issued a licence to Person D which would expire in August 2012.

4.21 In Audit's view, the FEHD needs to conduct investigations on the recreational park to ensure its compliance with the Food Business Regulation and the Places of Public Entertainment Ordinance, and take necessary enforcement action upon collection of sufficient evidence for any breach of the statutory requirements.

Prevention of infectious diseases of birds for exhibition

4.22 According to the Public Health (Animals and Birds) Ordinance (Cap. 139), the AFCD is responsible for matters relating to quarantine and prevention of diseases of animals and birds, and the protection and safety of the public places where wild animals and birds are exhibited. In Audit's view, the AFCD needs to closely monitor the bird-exhibition places of the recreational park for the prevention of infectious diseases of wild birds, such as Avian Flu. Upon noting such diseases, the AFCD also needs to inform the Department of Health for appropriate management of persons potentially exposed to wild birds kept for exhibition.

Audit recommendations

4.23 **Audit has recommended that the Director of Lands should expedite, in collaboration with the Director of Agriculture, Fisheries and Conservation, effective enforcement action to rectify the unlawful occupation of government land in Case 4.**

4.24 **Audit has recommended that the Director of Food and Environmental Hygiene should conduct investigations on the recreational park in Case 4 to ensure its compliance with the Food Business Regulation and the Places of Public Entertainment Ordinance, and take necessary enforcement action upon collection of sufficient evidence for any breach of the statutory requirements.**

4.25 **Audit has recommended that the Director of Agriculture, Fisheries and Conservation should closely monitor the bird-exhibition places of the recreational park in Case 4 for the prevention of infectious diseases of wild birds.**

Response from the Administration

4.26 The **Director of Lands** agrees with the audit recommendation in paragraph 4.23. She has said that:

- (a) the DLO/YL will continue to process the STT application submitted on 22 November 2011 to regularise the remaining government land portion of the recreational park which situates outside the Tai Lam Country Park by way of granting an STT for an area of about 523 m²; and
- (b) Person D has agreed to demolish the unauthorised structures erected on government land in the Tai Lam Country Park in two-months' time. The DLO/YL will resume land control action should Person D fail to demolish the

unauthorised structures within the prescribed period. The DLO/YL will not accept new STT applications if the STT application under processing is finally rejected. Subsequent land control action will be taken against any unauthorised occupation of government land at the site.

4.27 The **Director of Food and Environmental Hygiene** agrees with the audit recommendations in paragraph 4.24. He has said that:

- (a) the FEHD will continue to monitor the operation of the recreational park and take enforcement action as appropriate; and
- (b) Person D was prosecuted for running an unlicensed public entertainment business and restaurant business on 21 December 2011 and 30 January 2012 respectively.

4.28 The **Director of Agriculture, Fisheries and Conservation** agrees with the audit recommendations in paragraphs 4.23 and 4.25.

Intermittent unlawful government land occupation (Case 5)

4.29 **Case 5 shows the enforcement action taken by the DLO/Shan Tin in a case that involved intermittent occupation of government land for more than ten years after detection.** In this case, the DLO/Shan Tin received a complaint in October 1999 on unlawful erection of an advertisement signboard and provision of restaurant services on government land near a village house in Shan Tin. The irregularity was rectified in December 1999 after the DLO/Shan Tin posting a notice under the Cap. 28 Ordinance. From April 2000 to February 2010, the DLO/Shan Tin's site inspections on 36 occasions found similar irregularities, each of them was subsequently rectified either by the occupier or the Lands D's term contractor. In February 2010, the Lands D granted an STT to the village house owner (Person E) for using the land lot for gardening purposes. Appendix F shows the chronology of key events in Case 5.

Audit observations and recommendation

4.30 Intermittent unlawful government land occupation is a high-risk area requiring effective enforcement action. In Case 5, the intermittent land occupation had taken place for ten years and four months (from October 1999 to February 2010) and was subsequently regularised by granting of an STT (see item (7) of Appendix F). In March 2012, the Lands D informed Audit that:

- (a) for unlawful occupation of government land cases, the most efficient and effective way to deal with the problem is to conduct physical clearance of the occupied area;
- (b) for Case 5, when the occupier complied with the Lands D's notices issued under the Cap. 28 Ordinance to cease occupation of government land, there was no offence committed and hence no prosecution could be taken; and
- (c) for those scenarios when the occupier failed to comply with the Lands D's notices issued under the Cap. 28 Ordinance to cease occupation of government land, the Lands D had rectified the situation by taking clearance action, installing government land notice boards and bollards, or fencing off the site. Prosecution would be considered if there was sufficient evidence.

Audit recommendation

4.31 **Audit has recommended that the Director of Lands should require the DLOs to take more effective enforcement action in cases involving intermittent occupation of government land, including taking prosecution action in warranted cases with sufficient evidence.**

Response from the Administration

4.32 The **Director of Lands** agrees to consider the audit recommendation. She has said that:

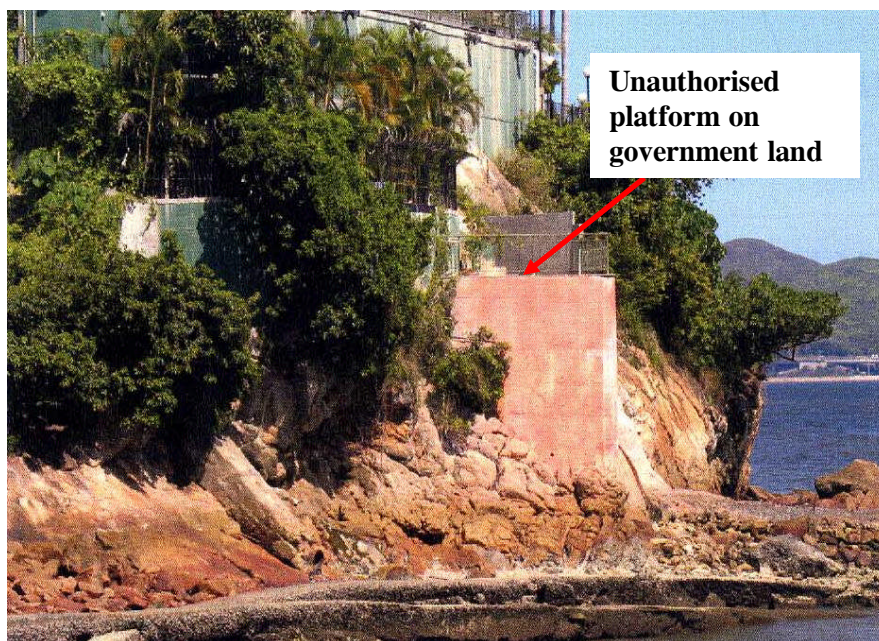
- (a) granting of an STT to rectify unlawful occupation of government land could be a pragmatic measure in some cases; and
- (b) if an offender is to repeat the unlawful occupation of government land after rectification, the Lands D needs to re-issue a notice under the Cap. 28 Ordinance and allow a reasonable time for the offender to rectify on each occasion.

Unauthorised works on a government slope (Case 6)

4.33 **Unauthorised slope works on government land pose safety risks. Case 6 involved unauthorised slope works on government land in Tuen Mun (see Photograph 3), where the unlawful government land occupation had taken place for six years and six months.**

Photograph 3

Unauthorised slope works on government land in Case 6 (July 2011)



Source: Lands D records

4.34 In this case, the registered owner (Person F1) of a house lot (Site D) in Tuen Mun applied to the DLO/Tuen Mun (DLO/TM) in July 2003 for an STT for occupying a government land lot adjoining Site D for private gardening purposes. The DLO/TM's subsequent inspection revealed that a platform on a government slope had been unlawfully formed on the proposed STT site without the approval of the Lands D and the GEO. In May 2005, after seeking the GEO's comments, the DLO/TM rejected the STT application. In April 2011, a person (Person F2) who had acquired Site D in mid-2007 submitted an STT application for using Site D for gardening purposes. In December 2011, the DLO/TM granted a temporary government land occupation permit to Person F2 for carrying out site investigation and slope upgrading works on Site D. Appendix G shows the chronology of key events in Case 6.

Audit observations and recommendations

4.35 Under the existing slope checking system, all proposed permanent slope works, either on private or government land, should be submitted to the GEO for checking before implementation. **In Case 6, Audit noted that slope works had been carried out to form a gardening platform without seeking the approval of the GEO. Audit considers that**

the DLO/TM needs to take measures, in collaboration with the GEO, to ensure the safety of the unauthorised platform built on the government slope. The DLO/TM also needs to ensure that in future, the consent of the GEO is obtained before the commencement of any slope upgrading works.

4.36 Persons F1 and F2 submitted in total four STT applications for gardening use from 2003 to 2010. However, the DLO/TM rejected all the four applications after consulting the GEO. In March 2011, the GEO reiterated that:

- (a) it did not support the STT applications because the stability of slopes and retaining walls in the proposed STT area (mainly occupied by the gardening platform) and vicinity was unknown;
- (b) measures to avoid further unauthorised slope works should be implemented;
- (c) the area should be fenced off for public safety; and
- (d) Person F2 should remove the unauthorised slope works and prosecution action should be taken.

4.37 In April 2011, Person F2 applied for a temporary government land occupation permit for carrying out site investigation and upgrading the unauthorised slope works, and submitted a tentative work programme to the DLO/TM. In December 2011, the DLO/TM granted the temporary government land occupation permit for site investigation and slope upgrading works for three years, with retrospective effect from 4 February 2010.

4.38 According to the Lands Administration Office Instructions, the Lands D may approve temporary occupation of government land for different purposes (including carrying out maintenance works and site investigation) after consulting the government departments concerned. However, Audit noted in this case that the GEO had not been consulted before the Lands D issued the temporary government land occupation permit in December 2011. **In view of the potential safety risk of the unauthorised platform (see para. 4.36(a)), the Lands D needs to consult the GEO on the works programme submitted by Person F2.** In March 2012, the Civil Engineering and Development Department and the Lands D informed Audit that:

- (a) in February 2012, the DLO/TM referred the works programme submitted by Person F2 to the GEO for comments; and

- (b) in the same month, after reviewing the programme, the GEO informed the DLO/TM that Person F2 should shorten the duration of geotechnical assessment report submission by a month, so that the entire works programme could be finalised within one year. The DLO/TM subsequently conveyed the GEO's comments to Person F2 and requested him to forward a revised programme to the DLO/TM.

In Audit's view, the GEO should have been consulted before granting the temporary government land occupation permit in December 2011.

4.39 Audit also noted that, from 2003 to 2011, the DLO/TM had conducted 12 site inspections and issued a total of 13 warning letters, but had not taken any clearance or prosecution action. **In the event, the unlawful occupation of government land had taken place for six years and six months (from July 2003 to January 2010). Audit considers that the Lands D needs to take effective enforcement action in similar cases in future.**

Audit recommendations

4.40 **Audit has recommended that the Director of Lands should:**

- (a) **in collaboration with the GEO, take measures to ensure the safety of the unauthorised platform built on the government slope in Case 6; and**
- (b) **require the DLOs to consult the GEO before granting temporary government land occupation permits for carrying out site investigations and slope works in future.**

Response from the Administration

4.41 The **Director of Lands** agrees with the audit recommendations. She has said that:

- (a) safety measures, such as railings, have been erected on the concerned concrete platform. Moreover, the site is not accessible by the general public. Furthermore, the proposed geotechnical investigation works are to be undertaken by a geotechnical engineer. The DLO/TM will seek the GEO's advice and closely monitor the progress of the proposed geotechnical works with a view to ensuring the safety of the unauthorised platform built on the government slope; and

- (b) the DLOs will consult the GEO before granting temporary government land occupation permits for carrying out site investigations and slope works in future.

4.42 The **Director of Civil Engineering and Development** agrees with the audit recommendations in paragraph 4.40.

General audit recommendations on enforcement action

4.43 Audit examination has revealed that the Lands D needs to strengthen enforcement action in cases involving prolonged unlawful government land occupation, intermittent unlawful government land occupation and unauthorised slope works on government land. Cases 2 to 6 in paragraphs 4.3 to 4.42 are relevant.

Audit recommendations

4.44 **Audit has recommended that the Director of Lands should:**

- (a) **conduct a review to identify other long outstanding cases of unlawful government land occupation and take prompt and effective action to rectify and prevent such unlawful occupation; and**
- (b) **require the DLOs to take prompt and effective enforcement action on other land control cases.**

Response from the Administration

4.45 The **Director of Lands** agrees with the audit recommendation in paragraph 4.44(b) and agrees to consider the audit recommendation in paragraph 4.44(a). She has said that:

- (a) the handling of problematic cases and long outstanding cases is a long-drawn and continuous battle. Such cases are discussed in the DRBs and the minutes of meeting are submitted to the Lands D Headquarters for information and record purposes; and
- (b) the Lands D Headquarters will request the DLOs to provide clarifications for doubtful cases. Given the competing priorities, the Lands D has difficulties in conducting the review in paragraph 4.44(a).

PART 5: LAND CONTROL INFORMATION SYSTEM

5.1 This PART examines the effectiveness of the LCIS in supporting the Lands D's management of unleased government land. Two areas are examined, namely:

- (a) effectiveness of the LCIS (see paras. 5.2 to 5.18); and
- (b) the LCIS revamping project (see paras. 5.19 to 5.23).

Effectiveness of Land Control Information System

5.2 The existing LCIS is a primitive computer system. It was developed by the Lands D in 2001 to maintain some information of its land control cases, and was modified and upgraded in 2004. The LCIS is used by the 12 DLOs and the Lands D Headquarters. The system has the following objectives:

- (a) to facilitate the DLOs to record and update details of land control cases; and
- (b) to enable the Lands D Headquarters to retrieve and consolidate pertinent data from the DLOs and generate statistical reports for monitoring the progress of land control cases.

5.3 For each land control case, the responsible DLO inputs into the LCIS case details, including the date of detection, case nature and the date of completion of land control action. Each month, the Lands D Headquarters collects the LCIS data from the DLOs for consolidation (Note 23).

Audit observations and recommendations

Effectiveness of the LCIS

5.4 In accordance with the procedures laid down in the Lands Administration Office Instructions, each DLO compiles and submits to the Lands D Headquarters quarterly returns on its land control work. The quarterly returns contain information on the number of:

Note 23: *The Lands D holds ad hoc meetings to discuss specific cases which have been the subject of enquiry by the media, the Ombudsman or other stakeholders.*

- (a) cases brought forward from the last return;
- (b) new cases identified during the period;
- (c) cases with land control action completed during the period;
- (d) cases with land control action in progress;
- (e) cases with prosecution action completed during the period; and
- (f) cases with prosecution action in progress.

5.5 Audit examination revealed that there were significant variances between the land control data provided in the DLOs' quarterly returns and those maintained in the LCIS of the Lands D Headquarters (see Table 5).

Table 5

**Land control data
(2011)**

	Based on DLOs' quarterly returns (No.)	Based on LCIS of the Lands D Headquarters (No.)
(a) Case brought forward from December 2010	4,509	6,653
(b) Add: case received in 2011	8,406	7,908
(c) Less: case completed in 2011	(9,006)	(8,180)
(d) Case carried forward to January 2012	3,909	6,381

Source: Audit analysis of Lands D records

5.6 Audit examination revealed that the Lands D mainly relied on the DLOs' quarterly returns (instead of the LCIS) to monitor the progress of their land control work. According to the Lands D, the variances between the quarterly returns and the LCIS might be attributable to various reasons, including manual adjustments made by the DLOs in compiling the quarterly returns due to, for example, repeated complaints on the same land control case which had been captured as separate cases in the LCIS.

5.7 **Audit considers that the Lands D needs to take measures to ensure the accuracy and completeness of the LCIS as far as possible.** In this connection, Audit notes that data in the existing LCIS will in future be used to build up the database for the new LCIS targeted for implementation in 2014 (see para. 5.19).

5.8 Audit examination of the LCIS revealed that the system had various limitations, including the following:

- (a) the LCIS could not support effective monitoring of the land control cases as it did not record the date of posting any statutory notice requiring clearance of structures on government land, or the date of any land control action taken; and
- (b) many system functions, such as ageing analyses of outstanding land control cases and exception reporting of long outstanding cases, were not available.

5.9 In a submission of June 2010 to the Office of the Government Chief Information Officer (OGCIO — Note 24) of the Commerce and Economic Development Bureau seeking funds for revamping the LCIS, the Lands D pointed out that it faced the following problems in using the system:

Note 24: *The OGCIO is responsible for overseeing the use of information, communication and technology of the Government, including the funding policies, procedures and monitoring of computerisation projects. According to OGCIO Circular No. 3/2007 of June 2007, administrative computer systems and system development costing between \$150,001 and \$10 million are funded under the block allocation Subhead A007GX of the Capital Works Reserve Fund Head 710.*

- (a) the LCIS was an end-user computing system developed in 2001 for running on a standalone computer. The computer programs were modified in 2004 to enable data sharing by running the system in local file servers. The system was then installed for use in both the Lands D Headquarters and the 12 DLOs. There was however no centralised database. Each DLO kept its own copy of database. The Headquarters could not obtain timely information relating to the land control cases. To retrieve case information, the Lands D had to perform a database consolidation process by copying and merging data files from all DLOs through networks. The process took more than an hour to complete;
- (b) the LCIS only provided case recording functions without any workflow applications. It could not support users in case monitoring. It did not maintain financial information of outsourced land control work, resulting in substantial manual efforts for fund control;
- (c) the LCIS could not meet the Lands D's reporting needs due to changes of user requirements over time. Users had to prepare reports manually; and
- (d) the LCIS did not support Chinese processing and could not cope with the significant increase in the number of land control cases to be handled.

The Lands D then indicated that there was a need to revamp the LCIS to a web-based application with all land control cases stored in a centralised database so as to facilitate data sharing and collaboration among the 12 DLOs and the Headquarters.

5.10 Audit shares the Lands D's view that the LCIS needs to be revamped. In view of the various limitations of the LCIS, Audit considers that there is an urgent need for the Lands D to be equipped with an efficient and effective computer system to support the management of its land control work. However, Audit noted that the new LCIS would not be available until July 2014 (see para. 5.19). Audit considers that the Lands D needs to revamp its LCIS as early as possible. In order to improve staff efficiency, there are also merits for the Lands D to make use of mobile devices to support the Land Control Teams' inspections, including recording the inspection results of land control cases and uploading the results to the LCIS.

Data input

5.11 In 2007, the Management Services Team (Note 25) of the Lands D conducted a review of the LCIS and identified a number of inadequacies that affected the accuracy and completeness of data contained in the LCIS. Such inadequacies included:

- (a) inconsistencies in recording the “Date of Receipt”, “Date of Detection” and “Date of Completion” of land control cases;
- (b) incorrect recording of case details;
- (c) some cases not being timely recorded; and
- (d) some cases not being recorded at all.

For the two DLOs (the DLO/North and the DLO/Kowloon East) selected for examination, the Management Services Team estimated that 25% of the data input were incomplete or not timely entered and 11% of the data were inaccurate. To improve the situation, in 2009, the Lands D issued the following internal instructions:

- (a) case officers in DLOs were required to input data of all land control cases into the LCIS and make updates of the data and progress in a timely manner; and
- (b) supervisory staff of case officers were required to carry out random checks to ensure the accuracy of the data recorded in the LCIS, properly record their checks on file, and remind case officers to keep and update the land control records timely and properly.

5.12 Audit’s recent examination of the LCIS records in three DLOs (namely the DLO/YL, the DLO/Shan Tin and the DLO/North) revealed the following inadequacies in data input:

- (a) some case officers did not timely input case details into the LCIS. Table 6 shows that 65% of the LCIS records created in October 2011 in the DLO/YL related to cases detected before that month, with some detected more than six months ago. That is, the LCIS records for such cases should have been created earlier;

Note 25: *The Team was established in May 2007 to promote operational efficiency and effectiveness of the work of the Lands Administration Office.*

Table 6

LCIS records created in October 2011 in DLO/YL

Detection date	Records	
	(No.)	Percentage
1 to 31 October 2011	28	35%
1 to 30 September 2011	17	21%
1 July to 31 August 2011	11	14%
1 April to 30 June 2011	14	17%
1 October 2010 to 31 March 2011	9	11%
On or before 30 September 2010	2	2%
Total	81	100%

} 65%

Source: Lands D records

- (b) some cases with action completed were still recorded as action in progress in the LCIS. For example, as of December 2011, of the 494 outstanding Category I cases in the LCIS (see para. 3.7), 12 were recorded to have remained outstanding for more than ten years. Audit however found that eight of them had in fact been completed; and
- (c) there was no evidence that the supervisory staff had vigilantly checked the accuracy of LCIS data.

5.13 The delay in updating the LCIS and the inaccuracy of data kept in the LCIS are causes for concern. In Audit's view, the Lands D needs to require the DLOs to strengthen their supervisory checks to ensure that accurate data are input into the LCIS in a timely manner.

Cases treated as completed upon receipt of STT applications

5.14 In 2009, the Lands D issued an instruction promulgating that, for records in the LCIS:

- (a) a land control case will be regarded as having been completed upon receipt of an STT application; and
- (b) if the application is rejected, land control action will be resumed and a new land control case will be created in the LCIS.

5.15 In Audit's view, for a case with an STT application, it is more appropriate to treat the case as "completed" only after an STT has been granted, instead of upon receipt by the Lands D of the STT application. This helps avoid a situation where an STT application is subsequently cancelled or not approved, but the case is regarded as "completed" in the LCIS. Case 7 is an example.

Case 7

**A land control case in Yuen Long
(April 2003 to March 2012)**

Item	Time	Key event
1	April 2003	The DLO/YL's site inspection found unlawful occupation of government land in front of a village house, and made a record (Case H1 in the LCIS) for follow-up action.
2	April 2003	The DLO/YL posted a notice requiring the occupier to cease the unlawful occupation. The occupier submitted an STT application for using the site for gardening purposes.
3	November 2005	The DLO/YL rejected the STT application.
4	May 2008	The Lands D posted a new notice on the site requiring the occupier to cease the unlawful occupation. In the same month, the occupier applied for granting an STT for gardening purposes again.
5	May 2008	The DLO/YL marked in the LCIS that the case had been completed, and made a record of a new case (Case H2 in the LCIS) for the same case.
6	September 2008	The occupier withdrew the application.
7	February 2010	The Lands D decided not to take prosecution action against the occupier because of insufficient evidence.
8	February 2012	The DLO/YL posted a notice requiring the occupier to cease the unlawful occupation.
9	March 2012	The Lands D informed Audit that if the occupier failed to cease the unlawful occupation upon expiry of the notice in item (8) above, the DLO/YL would take appropriate land control action.

Source: Lands D records

5.16 In Case 7, the unlawful government land occupation had remained unresolved for eight years and 11 months (from April 2003 to March 2012), but the case was recorded in the LCIS as outstanding only for three years and ten months (from May 2008 to March 2012).

Audit recommendations

5.17 **Audit has recommended that the Director of Lands should:**

- (a) **take measures to ensure the accuracy and completeness of the LCIS as far as possible;**
- (b) **consider making use of mobile devices to facilitate the Land Control Teams' inspections;**
- (c) **require the DLOs to strengthen their supervisory checks to ensure that accurate data are input into the LCIS in a timely manner; and**
- (d) **review the propriety of the existing Lands D arrangement of marking a land control case in the LCIS as "completed" once the occupier has submitted an STT application, and creating a new case if the STT application is subsequently cancelled or not approved.**

Response from the Administration

5.18 The **Director of Lands** agrees with the audit recommendations. She has said that:

Accuracy and completeness of the LCIS

- (a) the Lands D has from time to time issued guidelines to the DLOs to ensure the accuracy and completeness of the LCIS. In February 2012, the Lands D issued a memorandum advising the DLOs that only LCIS statistical reports (instead of quarterly returns) would be required starting from the quarter ending March 2012. In the memorandum, the Lands D also reminded the DLOs to adopt a uniform approach in counting the number of cases, and to timely submit statistical reports. The Lands D will circulate the memorandum every six months. The Lands D has also reminded the land control staff of the requirements during training courses and seminars;

Using mobile devices

- (b) the Lands D will explore feasibility of using mobile devices to facilitate Land Control Teams' inspections;

Supervisory checks

- (c) the Lands D has from time to time issued guidelines reminding the DLOs to strengthen supervisory checks to ensure that accurate data are input into the LCIS in a timely manner. The Lands D has also reminded the land control staff of the requirement during training courses. It will periodically issue reminders to the DLOs on the matter; and

Handling STT applications

- (d) the Lands D will review the guidelines for handling land control cases relating to STT applications and issue directives as appropriate.

The LCIS revamping project

5.19 In June 2010, funding of \$9.3 million was approved for the LCIS revamping project which was then planned to commence in July 2010 for completion in June 2012. However, in June 2011, the Lands D informed the OGCIO that due to deployment of manpower resources to other assignments of high priority, it would postpone the LCIS revamping project by deferring the project commencement to April 2012 and the project completion to July 2014. Accordingly, the revamped LCIS would not be available for use until mid-2014.

Audit observations and recommendation

Need to expedite LCIS revamping

5.20 According to OGCIO Circular No. 3/2007 of June 2007:

- (a) delay in a project programme will defer the achievement of expected benefits, and may also disrupt the financial and resource planning of both the user department and the OGCIO; and

- (b) bureaux and departments should therefore endeavour to complete a project on time and within budget.

5.21 The new LCIS is expected to provide a centralised database that facilitates data sharing and collaboration among the 12 DLOs and the Headquarters (see para. 5.9), and would provide monitoring and alerting functions that could improve the efficiency and effectiveness of the Lands D in the handling of land control cases. **Given the various limitations of the existing LCIS (see paras. 5.8 and 5.9), Audit considers that the Lands D needs to accord higher priority to the LCIS revamping project and make the new LCIS available for use as early as possible.**

Audit recommendation

5.22 **Audit has recommended that the Director of Lands should revamp the LCIS as early as possible.**

Response from the Administration

5.23 The **Director of Lands** agrees with the audit recommendation. She has said that the Lands D has deployed resources to re-activate the LCIS revamping project since February 2012.

PART 6: PERFORMANCE REPORTING

6.1 This PART examines the Lands D's performance reporting on its land control action.

Performance targets and indicators

6.2 Effective setting of performance targets and timely publishing of the extent of achievement of the targets help enhance public accountability and provide incentives for service improvements. Performance information is set out in the Controlling Officer's Report (COR) and the Performance Pledges. In its circular memorandum on submission of draft Estimates of General Revenue Account issued in September or October each year, the Financial Services and the Treasury Bureau provides guidelines to bureaux and departments on developing performance targets and indicators.

6.3 In 1992, the Government introduced Performance Pledges as an initiative in the government management framework with a view to engendering a customer service culture within the civil service and improving the standards across the full range of government services. Reviewed and updated regularly, Performances Pledges help bureaux and departments to monitor their performances in service delivery and to enhance such performances where practicable. In September 2009, the Civil Service Bureau issued Circular No. 7/2009 "Performance Pledges in the Civil Service", setting out the guidelines for the implementation of Performance Pledges in the civil service.

Audit observations and recommendations

Performance targets and indicators for land control action

6.4 Of the seven performance targets and 29 performance indicators under the programme area of "Land Administration" included in the Lands D's 2011-12 COR, only one performance indicator relates to land control action (see Table 7). Audit also noted that there was no performance pledge for land control action.

Table 7
Performance indicator on land control action
(2009 to 2011)

Performance indicator	2009 (Actual) (No.)	2010 (Actual) (No.)	2011 (Estimate) (No.)
Government sites cleared and guarded	5,486	7,022	7,020 (Note)

Source: Lands D's 2011-12 COR

Note: According to the Lands D, the actual number of government sites cleared and guarded in 2011 was 6,909.

6.5 In order to enhance public accountability, the Lands D needs to provide on its website the number of new land control cases in a year, and the number of outstanding land control cases at year end.

Reporting of performance information

6.6 In examining the Draft Estimates of Expenditure 2011-12, a LegCo Member enquired about the reasons for the increase in the number of government sites cleared and guarded from 2009 to 2010 (see Table 7). In response, the Lands D said that, in 2010, the Lands D redeployed additional staff to some of the district Land Control Teams and, as a result, the number of cases had increased.

6.7 Audit examination revealed that, as shown in Table 7:

- (a) the 7,022 cases for 2010 included 2,499 cases that had been referred to other government departments for follow-up action, while the 5,486 cases for 2009 did not include such cases; and
- (b) the 5,486 cases for 2009 included 363 sites guarded and patrolled while the 7,022 cases for 2010 did not include such sites.

6.8 If the basis for 2010 had been adopted for 2009, the number of cases in 2009 would have become 7,486 (Note 26), instead of 5,486. As such, there was a decrease of 464 (7,486 less 7,022) cases in 2010, as compared with 2009, instead of an increase of 1,536 (7,022 less 5,486) cases. **Audit considers that the Lands D needs to adopt a consistent basis in publishing its performance information. In the event of any change in the basis, the Lands D needs to provide a footnote to explain the change and its impact.**

Audit recommendations

6.9 **Audit has recommended that the Director of Lands should, in respect of land control action:**

- (a) **publish on the Lands D's website, the number of new land control cases in a year and the number of outstanding land control cases at year end; and**
- (b) **in publishing performance information, adopt a consistent basis over different time periods and provide explanatory notes for any change in the basis and its impact.**

Response from the Administration

6.10 The **Director of Lands** agrees with the audit recommendation in paragraph 6.9(b) and agrees to consider the audit recommendation in paragraph 6.9(a).

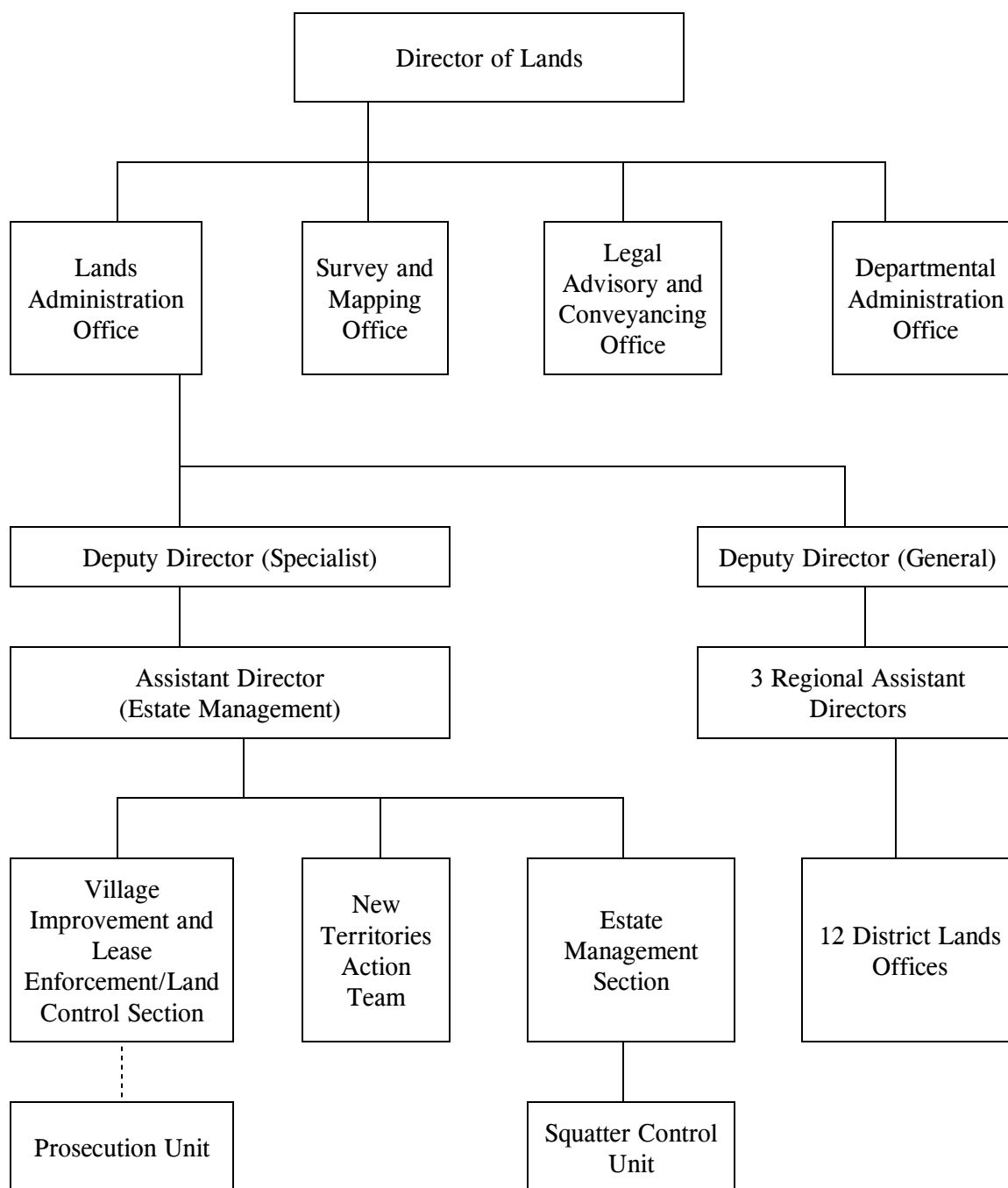
6.11 The **Secretary for Financial Services and the Treasury** has said that:

- (a) in preparing the draft Estimates in future, the Financial Services and the Treasury Bureau will keep in view follow-up actions taken by the Lands D in setting performance targets and indicators in the COR in respect of the land control action; and
- (b) he expects that the Lands D will have due regard to the audit recommendations in paragraph 6.9.

Note 26: *The calculation is as follows:*

	<i>Cases</i>
<i>Original number of cases for 2009</i>	5,486
<i>Add: number of cases referred to other government departments</i>	2,363
<i>Less: number of sites guarded and patrolled</i>	<u>(363)</u>
<i>Adjusted number of cases for 2009</i>	<u>7,486</u>

**Lands Department : Organisation chart
(February 2012)**



Source: Lands D records

**Chronology of key events of Case 2 in Sheung Shui
(March 1980 to February 2012)**

Item	Time	Key event
1	March 1980	The Government resumed a private land lot (with structures erected thereon) from a former land owner (Person B) in Sheung Shui for a public works project (Note).
2	December 2000	The BD received a complaint about construction of a cockloft on one of the structures (see item (1) above) and referred the case to the Lands D.
3	January 2001	The DLO/North inspected the site in response to the BD's referral and found that there were unauthorised structures on the resumed land lot, with some shops operated by different persons using the structures.
4	July 2001	The DLO/North received an application for an STT for using the land lot.
5	April 2002	The Land Administration Meeting approved the granting of an STT to Person B for using the land lot.
6	December 2004	The DLO/North granted an STT covering an area of 71 square metres (m ²) to Person B with the tenancy date commencing from 1 December 2001.
7	February 2012	The Lands D's inspection found no unlawful occupation of government land at the site.

Source: Lands D records

Note: According to the Lands D, the relevant file records relating to the land resumption could not be located.

**Chronology of key events of Case 3 in Sheung Shui
(January 1969 to December 2011)**

Item	Time	Key event
1	January 1969	A government land licence was issued to a person (Person C1), authorising him to erect structures on a government land site in Sheung Shui for domestic purposes.
2	September 1971	Person C1 applied for re-building the permitted structures which had been destroyed during a typhoon.
3	November 1971	Person C1 was issued with a new licence (the Licence) to replace the licence mentioned in item (1) and to grant permission to erect three structures having a total area of 70.6 m ² on a piece of government land (Site A).
4	1982	The Housing Department's survey found eight squatter structures on three government land sites (Sites A, B and C) in close proximity in Sheung Shui, including the three squatter structures (occupying an area of 77.4 m ²) erected under the Licence on Site A. Subsequently, the eight squatter structures were registered as surveyed structures.
5	July 1991	The DLO/North received an application from a person (Person C2) for re-issue of the Licence. Person C2 claimed that he had acquired and occupied the structures under the Licence since 1979.
6	November 1991	The DLO/North's site inspection revealed that the structures under the Licence had occupied an area of 86.6 m ² , and the dimensions and layout of some structures had been changed as compared with those as recorded in the Licence (such as the size of the dwelling, the kitchen and the agricultural storage area).
7	1992	The Lands D Squatter Control Unit's patrols detected an unauthorised structure on Site C, and that the size of a surveyed structure on Site A was larger than that in its record.
8	May 2006	The DLO/North informed Person C2 that his application for changing the licensee of the Licence could not be accepted as he was not the immediate family member of Person C1.
9	May 2008	The DLO/North asked Person C1 to update the particulars of the Licence.

Appendix C
(Cont'd)
(paras. 2.14, 4.10
to 4.12 refer)

Item	Time	Key event
10	June 2009	The DLO/North received a notification for the change of Person C1's correspondence address.
11	March 2010	Subsequent to a site inspection in response to a complaint about re-building of structures under the Licence, the DLO/North issued a warning letter to Person C1 requiring him to rectify any irregularities on the site to comply with the Licence conditions.
12	April 2010	The Squatter Control Unit detected building works on Site A and referred the case to the DLO/North for action. The DLO/North informed the BD about the unauthorised building works. In response, the BD said that unauthorised building works on government land were not under its jurisdiction.
13	October 2010	The DLO/North received another complaint about unlawful occupation of Sites A, B and C.
14	November 2010	The DLO/North conducted a site inspection on Sites A, B and C.
15	December 2010	The DLO/North referred the case to the Squatter Control Unit for action, and issued another warning letter to Person C1 requiring him to rectify the unauthorised re-building of structures on Site A within two months, and reminding him that failure to comply with this requirement might result in cancellation of the Licence.
16	January 2011	The Squatter Control Unit issued two warning notices to the occupier (Person C3) of the squatter structures erected on Sites A, B and C.
17	February 2011	The Squatter Control Unit requested the DLO/North to take action to remove a wall built on government land surrounding Sites A, B and C to enable access to the sites.
18	1 November 2011	The Lands D received a media enquiry on suspected unauthorised structures on government land in Sheung Shui.
19	2 November 2011	The DLO/North's site inspection found that the dimensions and usage of structures erected on Site A did not tally with those of the permitted structures under the Licence (Note).

Item	Time	Key event
20	9 November 2011	The Squatter Control Unit cancelled the registration of three squatter structures on Site A following the DLO/North's site inspection, which revealed that the structures were different from those in the 1982 survey records (see item (4)).
21	14 November 2011	The DLO/North issued a warning letter to Person C1 requiring him to rectify the unauthorised structures on Site A.
22	16 November 2011	The DLO/North informed Person C1 that the Licence had been cancelled for non-compliance with the licence conditions, and posted a notice under the Cap. 28 Ordinance, requiring the occupier to cease occupying Site A. On the same day, the Squatter Control Unit posted notices on Sites B and C requesting Person C3 to produce documentary evidence (to show that the surveyed structures were being habitually and bona fide used) for their inspection in one week.
23	18 November 2011	The Squatter Control Unit's inspection revealed that all structures on Sites A, B and C were different from those in the Lands D records (Note).
24	23 November 2011	The Squatter Control Unit posted notices under the Cap. 28 Ordinance on Sites B and C, requiring Person C3 to cease occupying the government land, and served a letter to the occupier stating that the squatter status of the five structures erected thereon had been cancelled as the number, dimensions and usage of the structures did not tally with those in the 1982 survey records.
25	December 2011	The DLO/North's site inspections revealed that all unauthorised structures on Sites A, B and C had been removed.

Source: Lands D records

Note: During their inspections, the DLO/North and the Squatter Control Unit also found unauthorised structures on private agricultural land. However, because this Audit Review focuses on unlawful occupation of government land, the unauthorised structures on private agricultural land are not examined in this Report.

**Chronology of key events of Case 4 in Yuen Long
(April 1993 to February 2012)**

Item	Time	Key event
1	April 1993	The AFCD informed the DLO/YL that there was a commercial recreational park development in Yuen Long, with unauthorised structures erected (on both private land (Note) and government land), including unauthorised toilets and containers for storage. About 8.2 ha (or 82,000 m ²) of government land within the Tai Lam Country Park was unlawfully occupied for planting fruit trees.
<i>Enforcement action</i>		
2	April 1993 to December 1995	The DLO/YL conducted 12 site inspections and issued four warning letters to the park operator (Person D) requiring him to demolish the unauthorised structures and cease the unlawful occupation of government land.
3	8 November 1995	The DLO/YL posted a notice under the Cap. 28 Ordinance, requiring the occupier to cease the unlawful occupation of government land.
4	12 December 1995	An inter-departmental working group, led by the DLO/YL and the AFCD, carried out enforcement action to clear some of the unauthorised structures and the unlawfully planted fruit trees.
5	14 May 1996	The DLO/YL conducted a site inspection and found unauthorised structures erected on government land. The DLO/YL posted a notice under the Cap. 28 Ordinance, requiring the occupier to cease the unlawful occupation of government land.
6	28 May 1996	The DLO/YL noted that Person D had demolished some of the unauthorised structures on government land.
7	June 1996 to June 2002	The DLO/YL conducted 19 site inspections and issued nine warning letters to Person D requiring him to demolish the unauthorised structures and cease the unlawful occupation of government land. During the period, the DLO/YL also posted statutory notices on two occasions under the Cap. 28 Ordinance, requiring the occupier to cease the unlawful occupation of government land.

Appendix D
(Cont'd)
(para. 4.16 refers)

Item	Time	Key event
8	November 2001	Person D demolished and removed some of the structures on government land within the country-park area.
9	June 2002	Person D again demolished and removed some other structures on government land within the country park area. The DLO/YL noted that some structures including a Pai Lau (a Chinese arch), a children playground, some wooden railings and a toilet had remained on the government land.
10	July 2002 to November 2011	The DLO/YL conducted six site inspections and issued three warning letters to Person D requiring him to demolish the unauthorised structures and cease the unlawful occupation of government land.
<i>STT applications</i>		
11	October 1997 to November 2011	Person D submitted nine applications for STTs for operating some recreational activities (including a children playground) and a walkway, and regularising the unauthorised structures on government land.
12	End of November 2011	Eight of the nine STT applications had been rejected.
13	February 2012	The DLO/YL informed Person D that the AFCD did not support the granting of an STT within the Tai Lam Country Park. The DLO/YL was processing an STT application submitted by Person D on 22 November 2011 for using the land lots.

Source: Lands D records

Note: During investigations by the Lands D and the BD, they also noticed issues of non-compliance with private-land lease conditions and the Buildings Ordinance and took follow-up action. As this Audit Review focuses on unlawful occupation of government land, the issues on private land and compliance with the Buildings Ordinance are not examined in this Report.

Related licensing requirements for Case 4

Legislation	Type of licence
(a) Food Business Regulation (Cap. 132X) under the Public Health and Municipal Services Ordinance (Cap. 132)	Restaurant licence (general or light refreshment), food factory licence and fresh provision shop licence
(b) Places of Public Entertainment Ordinance (Cap. 172)	Places of public entertainment licence (cinemas/theatres, or for places other than cinemas/theatres)
(c) Public Health (Animals and Birds) (Exhibitions) Regulations (Cap. 139F) under the Public Health (Animals and Birds) Ordinance (Cap. 139)	Animal exhibition licence
(d) Public Health (Animals) (Riding Establishment) Regulations (Cap. 139J) under the Public Health (Animals and Birds) Ordinance (Cap. 139)	Riding establishment licence

Source: AFCD and FEHD records

**Chronology of key events of Case 5 in Sha Tin
(October 1999 to February 2010)**

Item	Time	Key event
1	October 1999	The DLO/Shia Tin received a complaint on unlawful erection of an advertisement signboard and provision of restaurant services on government land near a village house in Sha Tin.
2	November 1999	The DLO/Shia Tin posted a notice requiring the occupiers to cease the unlawful government land occupation.
3	December 1999	The DLO/Shia Tin's site inspection found that the irregularity had been rectified.
4	March 2000	The DLO/Shia Tin's site inspection noted that the unlawful government land occupation had resumed.
5	April 2000	The DLO/Shia Tin posted another notice requiring the occupiers to cease the unlawful government land occupation. In the same month, the DLO/Shia Tin's site inspection found that the irregularity had been rectified.
6	April 2000 to February 2010	In response to complaints, the DLO/Shia Tin's site inspections on 36 occasions noted that there had been unlawful occupation of the government land by a restaurant, erection of canvas canopies or erection of advertisement signboards. Every time, the irregularity was subsequently rectified either by the occupier or the Lands D's term contractor.
7	February 2010	The Lands D granted an STT to the village house owner (Person E) for using the land lot for gardening purposes.

Source: Lands D records

**Chronology of key events of Case 6 in Tuen Mun
(July 2003 to December 2011)**

Item	Time	Key event
1	July 2003	The registered owner (Person F1) of a house lot (Site D) in Tuen Mun applied to the DLO/TM for an STT for occupying a government land lot adjoining Site D for private gardening purposes. The DLO/TM's subsequent inspection revealed that a platform on a government slope had been unlawfully formed on the proposed STT site without the approval of the Lands D and the GEO (Note).
2	May 2005	In view of the GEO's comments that Person F1 had not submitted an assessment of the stability of a retaining wall on the slope, the DLO/TM rejected the STT application.
3	April 2006	Person F1 submitted another STT application which was again rejected by the DLO/TM in August 2007.
4	August 2007	Person F1 informed the DLO/TM that Site D had been sold to another owner (Person F2).
5	November 2007	Person F2 submitted an STT application which was again rejected by the DLO/TM in May 2009.
6	12 March 2010	Person F2 submitted a new STT application (with a reduced area).
7	December 2010	The DLO/TM and the Marine Department received a complaint against unauthorised excavation of government land for erection of staircases on the slope and a pier outside the proposed STT area.
8	March 2011	The DLO/TM posted a statutory notice under the Cap. 28 Ordinance, requiring Person F2 to cease occupying the government land on or before 6 April 2011.
9	April 2011	Person F2 informed the DLO/TM that the unlawful occupation was partly rectified, with the staircases and the pier demolished, and submitted a new STT application for using the site for gardening purposes. He also applied for a temporary government land occupation permit for carrying out site investigation and slope upgrading works. Subsequently, the DLO/TM conducted two follow-up inspections (one in April 2011 and another in July 2011).

Item	Time	Key event
10	August 2011	The DLO/TM considered that no further land control action would be required for the staircases and pier.
11	December 2011	The DLO/TM granted a temporary government land occupation permit (at a fee of \$42,600 a year) of the site to Person F2 for carrying out site investigation and slope upgrading works for three years with retrospective effect from 4 February 2010.

Source: Lands D records

Note: The GEO is responsible for ensuring slope safety in Hong Kong.

Acronyms and abbreviations

AFCD	Agriculture, Fisheries and Conservation Department
Audit	Audit Commission
BD	Buildings Department
COR	Controlling Officer's Report
DLO	District Lands Office
DLO/TM	District Lands Office/Tuen Mun
DLO/YL	District Lands Office/Yuen Long
DoJ	Department of Justice
DRB	District Review Board
FEHD	Food and Environmental Hygiene Department
GEO	Geotechnical Engineering Office
ha	hectares
Lands D	Lands Department
LCIS	Land Control Information System
LegCo	Legislative Council
m ²	square metres
NTAT	New Territories Action Team
OGCIO	Office of the Government Chief Information Officer
STT	Short-term tenancy