

Report No. 58 of the Director of Audit — Chapter 7

UNLAWFUL OCCUPATION OF GOVERNMENT LAND

Summary

1. Land is a scarce and valuable resource in Hong Kong. The Lands Department (Lands D), assisted by 12 District Lands Offices (DLOs), is responsible for managing 32,276 hectares (29% of the total land area in the territory) of unleased and unallocated government land to protect such land from being unlawfully occupied. Under the Land (Miscellaneous Provisions) Ordinance (Cap. 28 — the 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. The Audit Commission (Audit) has recently conducted a review of management of government land.

Land control problem

2. In 2004 and 2006, the Lands D informed the Legislative Council that: (a) it attached great importance to the management of unleased government land, but due to resource constraints, it might not be able to respond fully to public expectations; and (b) it encountered two major difficulties in land control. They were firstly, the large area of unleased government land that required daily management 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.

3. In this review, Audit noted that: (a) most of the unlawful government land occupation cases (land control cases) were detected as a result of media reports and complaints from members of the public; (b) owing to the absence of regular inspections, the Lands D could not always detect unlawful occupation of government land in a timely manner, resulting in some government land sites having been unlawfully occupied for a long period of time without detection; and (c) the Lands D did not always take prompt and effective enforcement action on identified land control cases, resulting in some cases remaining unresolved for a long time after detection. *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.*

Prevention and detection action

4. Audit noted that the number of suspected land control cases received by the DLOs had increased by 15% from 2008 to 2011. Audit also 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. Furthermore, the DLOs' patrol programmes were not properly documented and were not submitted to the Lands D Headquarters for monitoring. *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; and (b) require the DLOs to strengthen and document their risk-based inspection programmes, submit the programmes to the Lands D Headquarters for monitoring, and systematically document the results of site inspections and follow-up action taken.*

Enforcement action

5. ***Time for completing land control cases.*** The Lands D classified those land control cases which would likely cause imminent danger to lives, serious property losses, serious pollution, or would likely jeopardise the interest and well-being of the public as Category I (high priority) cases. Audit examination however revealed that 70% of 494 outstanding Category I cases as of December 2011 had exceeded the four-month target set by the Lands D for completion, with four outstanding for more than ten years. Audit could not find records documenting the reasons for not meeting the target. *Audit has recommended that the Director of Lands should step up the Lands D's enforcement actions by: (a) requiring 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 each Category I case not meeting the four-month target; and (b) taking measures to compile periodic exception reports on long outstanding land control cases.*

6. ***Evidence for prosecution action.*** From 2008 to 2011, the Lands D had taken prosecution action in 26 cases, resulting in 21 conviction cases and 5 acquittal cases. Reasons for the acquittal of the cases included reasonable excuses of the defendants, unreliable witnesses and insufficient evidence. For example, in Case 1, the court ruled that the defendant (who had claimed to be responsible for unlawfully constructing a bridge over government land) was acquitted, because the Lands D staff concerned had not immediately recorded the verbal confession made by the defendant during case investigation. Audit is also concerned about the safety of the bridge, which had not been removed (as of January 2012). *Audit has recommended that the Director of Lands should: (a) strengthen staff training, including the organisation of experience-sharing sessions of prosecution cases; and (b) expedite action to rectify the unlawful land occupation in Case 1.*

7. ***Fines for convicted cases.*** Of the 21 convicted cases (see para. 6), the total amount of fines imposed was \$81,900, with the maximum fine under the Ordinance of \$10,000 imposed in two cases. Audit noted that the maximum fine had not been revised since 1972. Besides, the Ordinance did not provide a fine for each day during which a pertinent offence had continued, in a similar manner as that provided under the Buildings Ordinance (Cap. 123). *Audit has recommended that the Director of Lands should: (a) review the levels of penalty for pertinent offences with a view to providing an effective deterrent; and (b) consider introducing legislative provisions to the effect that a fine will be imposed for each day during which a pertinent offence has continued.*

Audit's case studies

8. 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. Case studies conducted by Audit revealed room for improvement in the Lands D's prevention, detection and enforcement action.

9. ***Case 2 relating to the prolonged unlawful occupation of government land which was subsequently regularised by the granting of a short-term tenancy (STT).*** In this case, the Government resumed a private land lot in Sheung Shui in March 1980 from a former land owner for a public works project. In January 2001, in response to the Buildings Department's referral, inspection by the DLO/North found that there were unauthorised structures on the resumed land lot. In December 2004, the DLO/North granted an STT to the former land owner to regularise the unlawful government land occupation. 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. *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.*

10. ***Case 3 relating to the Lands D's insufficient monitoring of licensed structures.*** Prior to mid-1970s, the Government had issued government land licences to regularise the then existed agricultural and domestic squatter structures (licensed structures) in the rural areas. As of December 2011, there were about 15,000 such government land licences. The Lands D has informed Audit that there are quite a number of licensed structures under complaints and referrals. In Case 3, the Lands D had noted serious breaches of the licence conditions of some structures in Sheung Shui 20 years ago, but only cancelled the government land licence for the structures in late 2011. The unauthorised structures on the site were subsequently removed in December 2011. *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; and*

(b) require the DLOs to take prompt follow-up action after the issue of warning letters relating to unauthorised building works on government land, and cancel land licences in a timely manner upon detection of serious breaches of licence conditions.

11. ***Case 4 relating to prolonged unlawful land occupation in a country-park area.*** In this case, the unlawful government land occupation had not been rectified for more than 18 years after detection. The DLO/Yuen Long noted as early as in April 1993 that there was a commercial recreational park development in Yuen Long (partly located within a country park), with unauthorised structures erected on both private land and government land. From June 1996 to November 2011, the DLO/Yuen Long conducted 25 site inspections and issued 12 warning letters to the park operator, requiring him to demolish the unauthorised structures. During the period, the park operator had submitted eight STT applications for regularising the unauthorised structures on government land, all of which were rejected by the Lands D. As of February 2012, the recreational park was still in operation and the DLO was processing a new STT application submitted by the park operator. *Audit has recommended that the Director of Lands should expedite effective enforcement action to rectify the unlawful occupation of government land in Case 4.*

12. ***Case 5 relating to intermittent unlawful government land occupation.*** In this case, the DLO/Shu Tin received a complaint in October 1999 on unlawful occupation of government land near a village house in Sha Tin. The irregularity was rectified in December 1999 after the posting of a notice under the Ordinance. From April 2000 to February 2010, the DLO's site inspections on 36 occasions, in response to complaints, 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 for using the land lot for gardening purposes. *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.*

13. ***Case 6 relating to unauthorised works on a government slope.*** In this case, in response to an STT application of July 2003, the DLO/Tuen Mun's site inspection revealed that a platform on a government slope had been unlawfully formed near a house without the approval of the Lands D and the Geotechnical Engineering Office (GEO) of the Civil Engineering and Development Department. In December 2011, the DLO granted a temporary government land occupation permit to the house owner for carrying out site investigation and slope upgrading works on the site. Audit noted that the DLO had not consulted the GEO before granting the permit. The safety of the unauthorised platform built on the government slope is of audit concern. *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.*

Land Control Information System

14. *Effectiveness of the Land Control Information System (LCIS).* Audit noted that the LCIS was not effective in supporting the Lands D in managing its land control cases. Audit examination revealed that there were significant variances between the land control data provided in the DLOs' quarterly returns submitted to the Lands D Headquarters and those maintained in the LCIS, and the Lands D mainly relied on the quarterly returns, instead of the LCIS, to monitor the progress of its land control work. Audit also found that the DLOs did not input data into the LCIS accurately and timely, and the LCIS did not provide various essential system functions. In 2010, the Lands D pointed out that it faced various problems in using the LCIS, including that the system could not meet its reporting needs due to changes of user requirements over time, and indicated that it needed to be revamped. Although funding was approved in the same year for revamping the LCIS, Audit noted that the revamped LCIS would not be available until mid-2014. *Audit has recommended that the Director of Lands should: (a) take measures to ensure the accuracy and completeness of the LCIS; and (b) revamp the LCIS as early as possible.*

Response from the Administration

15. The Director of Lands generally agrees with the audit recommendations.

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