

CHAPTER 7

Development Bureau Lands Department

Management of short term tenancies by the Lands Department

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MANAGEMENT OF SHORT TERM TENANCIES BY THE LANDS DEPARTMENT

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MANAGEMENT OF SHORT TERM TENANCIES BY THE LANDS DEPARTMENT

Executive Summary

1. The Lands Department (LandsD) is the land administrative agency of the Government. Land within the territory of Hong Kong was about 110,700 hectares (ha) as of September 2019. Apart from those disposed of, allocated or occupied under other land instruments, any remaining land is broadly termed unleased and unallocated government land. According to LandsD: (a) unleased and unallocated government land (about 65,430 ha as of September 2019) covered a vast range of land which may not have potential for temporary uses. These include, for example, land occupied by public infrastructure or facilities under management and/or maintenance by various government departments without any formal land allocation (e.g. country parks, roads and public transport interchanges). As of September 2019, the area of such land was about 57,300 ha (88% of the unleased and unallocated government land of 65,430 ha); (b) for sites on unleased and unallocated government land with possible potential for temporary uses, if there are no relevant competing demands from government bureaux/departments (B/Ds), they will be made available for short term tenancy (STT) use by parties outside the Government; (c) as of September 2019, LandsD managed 5,582 STTs with a total land area of 2,411 ha and 955 vacant government sites (VGSs) suitable for STT use with a total land area of 192 ha; and (d) the rental income from STTs for 2018-19 was \$1,575 million.

2. According to LandsD, the policy objectives relating to STTs include ensuring temporary beneficial use of the land and obtaining revenue from what would otherwise be idle resources. STTs are granted by LandsD by means of open tender or direct grant. LandsD will take into account the timetable for the long-term use and development of the sites in determining the duration of STTs. In general, STTs are granted for a fixed term of a duration ranging from one year to five years and thereafter on a periodic basis. With policy justifications, a longer term of up to seven years may be granted. If upon expiry of the fixed term or the first 3 years (whichever is the later), the sites concerned are not immediately required for permanent or other temporary uses within 3 years, they will usually be re-tendered for another fixed term (for STTs granted by tender) or continue on a monthly or

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quarterly basis (for STTs by direct grant). STTs are granted to tenants for specific uses as stipulated in the tenancy agreements. Site inspections are carried out by LandsD to ascertain if there are breaches of tenancy conditions. Upon detection of tenancy breaches, enforcement actions (including taking action to recover possession of the site) may be taken as appropriate. The 12 District Lands Offices (DLOs) of LandsD are responsible for administration of STTs, including the granting and renewal of STTs, monitoring and enforcement of conditions of STTs and keeping of site records and information. The Audit Commission (Audit) has recently conducted a review to examine the management of STTs by LandsD.

Granting and renewal of short term tenancies

3. *Long time taken for processing STT applications.* Audit analysed the processing time of 1,165 STTs approved by LandsD from 2014-15 to 2018-19, and noted that: (a) the processing time ranged from less than 1 month to 22 years, averaging 20 months; and (b) for 204 (18% of 1,165) STTs, the processing time was longer than 3 years. Audit examination revealed one case in which the DLO concerned had not taken adequate and timely actions in following up the granting of an STT site, including the processing of the STT application (which took 14 years) and ensuring fulfilment of the related tenancy conditions for granting the STT. In this connection, Audit noted that LandsD had not set any time target for processing STT applications (paras. 2.5 and 2.6).

4. *Scope for enhancing guidelines for processing STT applications.* According to LandsD guidelines, STT applications received are vetted by individual DLOs. Audit noted that LandsD had no specific guidelines on: (a) handling STT applications from applicants with no capacity (e.g. an unincorporated body) to sign the tenancy agreements (including whether the applicant should be rejected right away or a grace period could be given for rectification); and (b) handling STT applications with lack of policy support, including whether the applicant should be informed of the reason for lack of policy support, and whether such application should be rejected or the applicant could be allowed to modify its proposal in order to obtain the policy support (paras. 2.7 and 2.8).

5. *Different practices in demanding deposits from STT tenants.* According to LandsD guidelines, a deposit should be demanded from the tenant when a tenancy agreement is signed to cover the cost of removing structures erected on the STT site

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upon termination of the tenancy agreement. For STTs granted to non-profit-making or charitable organisations, the requirement to pay a deposit is waived. Audit examination revealed that there were different practices in demanding deposits from two tenants which were both charitable organisations and approved to erect structures on the STT sites. In the event, no deposit was demanded from one tenant while a deposit was demanded from the other. In Audit's view, LandsD needs to consider providing further guidelines on demanding deposits from non-profit-making or charitable organisations for STTs (paras. 2.12 and 2.13).

6. ***Need to consider setting time frame for publishing tenancy information of all STTs granted.*** With a view to enhancing transparency of land information, information of sites granted by STTs since 1 January 2018 has been published on GeoInfo Map since December 2018. According to LandsD, tenancy information of STTs granted prior to January 2018 would be uploaded onto GeoInfo Map progressively. Of the 5,590 STTs managed by LandsD as of October 2019, tenancy information of only 1,333 (24%) STTs had been uploaded onto GeoInfo Map. Audit noted that LandsD did not have a time frame for publishing tenancy information of all STTs granted on GeoInfo Map. In Audit's view, to enhance the transparency of land information, LandsD needs to consider setting such a time frame (paras. 2.14 and 2.15).

7. ***Need to analyse the reasons for allowing the same tenants to continue their STTs for a long time.*** According to LandsD guidelines, STTs generally have a fixed term of not more than 7 years. According to the Development Bureau (DEVB), temporary or short-term uses on a site should not prejudice any planned permanent development of the site and should comply with statutory planning requirements. Audit analysed the 5,590 STTs managed by LandsD as of October 2019, and noted that for 4,565 (82% of 5,590) STTs, the tenants had remained the same for over 7 years. In fact, the tenants for 2,353 (42% of 5,590) STTs had remained the same for more than 20 years (up to 55 years). Audit noted that LandsD had no readily available information on the reasons for allowing the same tenants to continue their STTs for a long time and whether the statutory planning requirements were met (paras. 2.18 to 2.20).

8. ***Scope for improvement in rental review process.*** According to LandsD guidelines, rents charged under STTs are generally reviewed every three or five years. For STTs for regularisation of unauthorised occupation of government land, inspections should be carried out by relevant DLOs to determine whether the

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tenancies should be renewed upon the rental review process. Audit selected 5 such STTs for examination and found that: (a) one DLO had suspended all site inspections in relation to rental review for garden STT cases since October 2016; and (b) another DLO had not carried out site inspection in three rental review exercises of an STT granted for regularisation of unauthorised occupation of government land (paras. 2.21 and 2.22).

Monitoring of tenancy conditions

9. *Need to conduct site inspections as required.* According to LandsD guidelines, in order to prevent tenants from subletting the premises, erecting unauthorised structures or extending the area of occupation into adjacent government land, it is mandatory that all STT sites have to be inspected once every 3 years for non-private garden STTs or 5 years for private garden STTs (hereinafter referred to as mandatory requirements). Where practicable and staff resources permitting, DLOs should consider formulating and implementing a regular inspection programme based on the inspection priorities of STTs (i.e. high, medium and low priority cases). As of October 2019, LandsD managed 5,590 STTs, of which 456 STTs were not yet due for inspection under the mandatory requirements. Of the remaining 5,134 STTs with inspections needed under the mandatory requirements, Audit noted that: (a) no site inspection had been conducted for 1,409 (27% of 5,134) STTs; and (b) for the 3,725 (73% of 5,134) STTs with site inspections conducted, the site inspections for 1,538 (41% of 3,725) STTs had not been conducted in compliance with the mandatory requirements (paras. 3.2 and 3.3).

10. *Need to improve effectiveness of site inspections.* According to LandsD, DLOs should conduct site inspections upon receipt of complaints. In particular, for special cases, site inspections should be carried out outside office hours if situation warrants. Audit noted one case in which site inspections conducted by one DLO were not effective in investigating a complaint on alleged breach of tenancy conditions. While the alleged breach related to non-compliance with tenancy conditions on Sundays, site inspections were conducted on weekdays instead of Sundays (para. 3.4).

11. *Need to strengthen enforcement actions against breaches of STT conditions.* In general, an STT agreement contains terms and conditions which require the tenant's compliance. According to LandsD guidelines, DLOs should follow the stipulated time frames for taking enforcement actions against breaches of STT conditions. Audit noted 2 cases in which DLOs had not taken adequate and

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timely enforcement actions against breaches of STT conditions, including breaches related to unauthorised structures on an STT site and breach of restriction on use of an STT site. In Audit's view, LandsD needs to take adequate and timely enforcement actions against breaches of STT conditions (paras. 3.7 and 3.9).

12. *Need to improve the recording of STT information in Tenancy Information System (TIS).* TIS was introduced in 2009 for recording information of STTs granted by LandsD. Audit examination of selected STT records in TIS found that they had errors and omissions (e.g. date of application and date of site inspection). In Audit's view, LandsD needs to take measures to ensure the completeness and accuracy of STT information in TIS (paras. 3.14 to 3.16).

13. *Making better use of information technology for providing management information.* Audit noted that some important STT information was not readily available from TIS, including: (a) inspection priorities (see para. 9); (b) date of site inspection (omitted in some TIS records — see para. 12); and (c) information of warning letters issued against breaches of STT conditions (which was not always input into TIS). In Audit's view, LandsD needs to take measures to make better use of information technology for providing management information for monitoring the management of STTs (paras. 3.17 and 3.18).

Management of vacant government sites suitable for short term tenancy use

14. As of September 2019, LandsD managed 955 VGSs suitable for STT use, which, in general, comprised: (a) 92 sites (with a total land area of 69 ha) of general commercial interest to the public which were suitable to be let out for commercial uses through STT by means of open tender; and (b) 863 sites (with a total land area of 123 ha) of no general commercial interest to the public which could be granted directly to particular organisations or bodies (e.g. non-governmental organisations (NGOs)) for community, institutional or non-profit-making uses that support specific policy objectives (para. 4.2).

15. *Need to ensure completeness and accuracy of lists of VGSs suitable for STT use.* According to LandsD, DLOs maintain lists of VGSs suitable for STT use in respect of sites under their respective management. On a quarterly basis, DLOs

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update and submit such lists to the relevant District Review Boards (DRBs) for review, the relevant Regional Assistant Directors of LandsD for monitoring and the LandsD Headquarters for records. Audit examination of the records of three DLOs found that some VGSs under their management might be suitable for STT use but these sites were not included in the lists of VGSs suitable for STT use as of September 2019. After verification by the three DLOs upon Audit's referrals: (a) 11 sites (with a total land area of 0.4 ha) were found suitable for STT use by NGOs and would be made available for such use; and (b) 67 sites (with a total land area of 4.3 ha) were pending reviews on the suitability for STT use. In addition, according to LandsD's lists of VGSs suitable for STT use, as of September 2019, 92 sites were of general commercial interest to the public suitable to be let out through STT. Audit examination revealed that, for 23 of the 92 sites, after verification by the pertinent DLOs upon Audit's referrals, it was found that these sites should not have been included in the lists of VGSs suitable for STT use due to various reasons (e.g. allocated to other B/Ds). Subsequent to Audit's referrals, LandsD Headquarters issued a memorandum to DLOs in January 2020 to provide further guidelines on the management of the STT use of VGSs. Audit considers that LandsD needs to make continued efforts to ensure the completeness and accuracy of lists of VGSs suitable for STT use. LandsD also needs to early complete the reviews on suitability for STT use of the sites identified by Audit (paras. 4.4 to 4.7).

16. ***Scope for improving documentation of selection criteria for VGSs suitable for STT use and the decisions on suitability for STT use.*** According to LandsD, local circumstances and demand for VGSs suitable for STT use are different in each district. In selecting VGSs suitable for STT use, each DLO has its own set of criteria which are endorsed by its DRB. Audit noted that: (a) of the 3 DLOs selected for examination by Audit, 2 DLOs could not locate the documentation for the selection criteria endorsed by their respective DRBs; and (b) according to LandsD guidelines, in DRB meetings, assessments on VGSs as to whether any sites are suitable for STT use will be made and agreed. All the decisions should be properly documented for record purposes. However, Audit noted that as of January 2020, 5 of the 12 DLOs had not prepared minutes of meetings to document their respective DRBs' decisions made for the quarter ended 30 September 2019 (para. 4.8).

17. ***Scope for making better use of information technology in monitoring VGSs suitable for STT use.*** According to LandsD, its Headquarters assumes the role of overall supervision and monitoring of DLOs' work to ensure compliance with the established policy and guidelines. As information relating to VGSs suitable for STT use is maintained by DLOs concerned, LandsD Headquarters needs to call regular

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returns (in the form of spreadsheets) from DLOs for monitoring purposes. As far as could be ascertained, LandsD Headquarters had not compiled regular management information (e.g. executive summary or highlights) on VGSs suitable for STT use for senior management's information. In Audit's view, there is merit for LandsD to make better use of information technology to record information of VGSs suitable for STT use with a view to enhancing the provision of management information for monitoring purposes (para. 4.10).

18. ***Scope for improving consultation with B/Ds concerned and exploring measures for putting VGSs suitable for STT use to beneficial use.*** For three VGSs suitable for STT use, which had been reserved since 2004 for a development programme, there were three applications for beneficial use of the sites between 2010 and 2016. Audit noted that: (a) LandsD had not consulted the concerned bureau about the then latest development programme before rejecting the first application; and (b) regarding the second and the third applications, LandsD had consulted the concerned bureau who objected/did not agree to the applications due to various reasons (e.g. the proposed tenancy period might impose constraints on the permanent use of the sites). However, there was no documentary evidence showing that LandsD had explored with the concerned bureau whether its concerns could be addressed (e.g. by shortening the tenancy period) (para. 4.13).

19. ***Need to keep under review effectiveness of the funding scheme to support the use of VGSs suitable for STT use by NGOs.*** To support the use of VGSs suitable for STT use and of no general commercial interest to the public by NGOs, DEVB launched a \$1 billion "Funding Scheme to Support the Use of Vacant Government Sites by Non-Government Organisations" (Funding Scheme) in February 2019. The Funding Scheme would provide successful NGO applicants with subsidies to support the costs of basic works required to make the leased sites fit for use. According to DEVB, since the launch of the Funding Scheme and up to September 2019, a total of eight applications had been received and approved. LandsD had provided information on approved STT applications to DEVB for consideration of funding support under the Funding Scheme. As the Funding Scheme is a new measure, in Audit's view, DEVB, in collaboration with LandsD, needs to keep under review the effectiveness of the Funding Scheme and enhance publicity as and when needed with a view to making better use of such VGSs suitable for STT use (paras. 4.15 to 4.17).

20. ***Inadequacies in site management of some VGSs suitable for STT use.*** Between October and December 2019, Audit conducted site visits to 17 VGSs suitable

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for STT use with land areas of over 1 ha each, and noted inadequacies in management of some sites, including: (a) broken fences; (b) gates at the entrance opened/unlocked; (c) illegal dumping of waste; and (d) suspected unauthorised occupation of land for vehicle parking. In Audit's view, there is scope for LandsD to take measures to improve the site management of VGSs suitable for STT use (paras. 4.23 and 4.24).

Audit recommendations

21. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Director of Lands should:**

Granting and renewal of STTs

- (a) **strengthen measures to ensure that adequate and timely actions are taken by LandsD staff in following up the granting of STT sites, including the processing of STT applications and ensuring the fulfilment of the related tenancy conditions for granting the STT (para. 2.16(a));**
- (b) **consider setting a time target for processing STT applications (para. 2.16(b));**
- (c) **provide guidelines for processing applications involving applicants with no capacity to sign tenancy agreements and handling STT applications with lack of policy support from the relevant policy bureaux/departments (para. 2.16(c));**
- (d) **consider providing further guidelines on demanding deposits from non-profit-making or charitable organisations for STTs involving erection of permitted structures (para. 2.16(e));**
- (e) **consider setting a time frame for publishing tenancy information of all STTs granted on GeoInfo Map (para. 2.16(f));**
- (f) **ensure that LandsD staff:**

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- (i) analyse the reasons for allowing the same tenants to continue their STTs for a long time (para. 2.25(a)(i)); and
- (ii) ascertain whether the statutory planning requirements regarding temporary or short-term uses of land are met (para. 2.25(a)(ii));
- (g) ensure that site inspections are conducted for rental review purpose in accordance with LandsD guidelines (para. 2.25(b));

Monitoring of tenancy conditions

- (h) take measures to ensure that LandsD staff conduct site inspections as required and improve their effectiveness (para. 3.5);
- (i) strengthen enforcement actions against breaches of STT conditions (para. 3.12(a));
- (j) ensure the completeness and accuracy of STT information in TIS (para. 3.19(a));
- (k) make better use of information technology (e.g. TIS or other related computer systems) for providing management information for monitoring the management of STTs (para. 3.19(b));

Management of VGSs suitable for STT use

- (l) make continued efforts to ensure the completeness and accuracy of lists of VGSs suitable for STT use and early complete the reviews on suitability for STT use of the sites identified by Audit (para. 4.11(a) and (b));
- (m) improve the documentation of the selection criteria for VGSs suitable for STT use as endorsed by DRBs and the decisions of DRBs on the suitability of VGSs for STT use (para. 4.11(c));

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- (n) **make better use of information technology to record information of VGSs suitable for STT use with a view to enhancing the provision of management information for monitoring purposes (para. 4.11(d));**
 - (o) **consult the B/Ds concerned on applications for temporary use of VGSs suitable for STT use and reserved for development, and fully explore with them possible ways of addressing their concerns in considering applications (para. 4.18(a) and (b)); and**
 - (p) **take measures to improve the site management of VGSs suitable for STT use (para. 4.32(a)).**
22. **Audit has also *recommended* that the Secretary for Development should, in collaboration with the Director of Lands, keep under review the effectiveness of the Funding Scheme and enhance publicity as and when needed with a view to making better use of VGSs suitable for STT use and of no general commercial interest to the public by NGOs (para. 4.19).**

Response from the Government

23. The Secretary for Development and the Director of Lands accept the audit recommendations.

PART 1: INTRODUCTION

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

Background

1.2 The Lands Department (LandsD) is the land administrative agency (Note 1) of the Government. According to LandsD, in terms of land status, land within the territory of Hong Kong (about 110,700 hectares (ha) as of September 2019) may be:

- (a) disposed of by land grant (e.g. land lease) for private developments;
- (b) permanently or temporarily allocated by land allocation to government bureaux/departments (B/Ds) for various government uses (e.g. government premises); or
- (c) occupied under other land instruments (e.g. by short term tenancy (STT — see para. 1.4) or Vesting Order (Note 2)).

Any remaining land is broadly termed unleased and unallocated government land.

1.3 According to LandsD, unleased and unallocated government land covered a vast range of land which may not have potential for temporary uses, including:

- (a) land occupied by public infrastructure or facilities under management and/or maintenance by various government departments without any formal land allocation (e.g. country parks, roads and public transport

Note 1: *Being a land administrative agency, LandsD is mainly responsible for land disposal and transaction, allocation of land, development control and compliance under leases and other land instruments, land acquisition and clearance, as well as land enforcement and maintenance.*

Note 2: *A Vesting Order is a means of vesting the control and management of government land, typically to statutory bodies, to meet specific policy objectives.*

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interchanges). As of September 2019, the area of such land was about 57,300 ha (88% of the unleased and unallocated government land of 65,430 ha);

- (b) land with man-made features such as reinforced slopes, retaining walls, accesses, staircases, surface drains, etc.;
- (c) land in undisturbed natural terrain, hillside slopes or virgin land etc. that does not require management or maintenance; and
- (d) intermingling or narrow strips of land in between developed land parcels.

1.4 For sites on unleased and unallocated government land with possible potential for temporary uses, if there are no relevant competing demands from B/Ds, they will be made available for STT use by parties outside the Government. According to LandsD, as of September 2019, LandsD managed:

- (a) 5,582 STTs with a total land area of 2,411 ha; and
- (b) 955 vacant government sites (VGSs) suitable for STT use with a total land area of 192 ha (comprising 92 sites (69 ha) of general commercial interest and 863 sites (123 ha) of no general commercial interest to the public — see para. 1.6(a) and (b)) (Note 3).

Granting and renewal of STTs

1.5 According to LandsD, the policy objectives relating to STTs are to:

- (a) ensure temporary beneficial use of the land with consequential reduction in the costs of preventing sites from unlawful occupation or creating environmental/health problems;
- (b) obtain revenue from what would otherwise be idle resources; and

Note 3: *According to LandsD, as of September 2019, apart from the 955 VGSs suitable for STT use, LandsD also managed 653 VGSs not suitable for STT use.*

- (c) establish a system of temporary tenure which can be administered easily, fairly and cost effectively.

1.6 According to LandsD, STTs are granted by LandsD by means of the following:

- (a) ***Open tender.*** Sites of general commercial interest to the public (including those with specific uses supported by or acceptable to relevant B/Ds) are granted through open tender (Note 4) and full market rent will be charged. Their use includes, for example, fee-paying public car parks (see Photograph 1 for an example) and storage of goods;
- (b) ***Direct grant (for community, institutional or non-profit-making uses).*** With policy support provided by the relevant policy bureaux/departments, sites of no general commercial interest to the public may be granted directly to particular organisations or bodies for community, institutional or non-profit-making uses that support specific policy objectives. Their use includes, for example, utilities, works area (Note 5), education, religious and sports (see Photograph 2 for an example). Nominal/concessionary rent will be charged for such STTs if further policy support to such nominal/concessionary rent is provided by the relevant policy bureaux/departments. Otherwise, full market rent will be charged; and

Note 4: *Sites of specific uses to meet policy objectives (e.g. recycling of municipal solid waste) may be granted through restricted tender.*

Note 5: *Works areas were granted to, for example, the MTR Corporation Limited for railway projects and the Hong Kong Housing Authority for public housing projects.*

Photograph 1

STT site used as a fee-paying public car park



Source: LandsD records

Photograph 2

STT site used by a sports association



Source: LandsD records

- (c) **Direct grant (for private use).** Such direct grant does not require policy support and covers the following:
- (i) sites of no general commercial interest to the public may be granted directly to individuals or organisations for private use (e.g. private garden or guardhouse) upon receiving applications, subject to conditions (see Note 16 to para. 2.4(b)); and
 - (ii) it is the Government's policy to regularise unauthorised occupation of government land (Note 6) through STTs subject to fulfilment of specific criteria (Note 7) and convert government land licences (GLLs) (Note 8) to STTs.

Full market rent will be charged for the above STTs.

1.7 LandsD will take into account the timetable for the long-term use and development of the sites in determining the duration of STTs. In general, STTs are granted for a fixed term of a duration ranging from one year to five years and thereafter on a periodic (e.g. quarterly or monthly) basis. With policy justifications,

Note 6: *According to LandsD, appropriate land control actions (i.e. clearance and prosecution) should be taken in accordance with the Land (Miscellaneous Provisions) Ordinance (Cap. 28) against unauthorised occupation of government land. Land control actions will normally be withheld upon receipt of STT application for regularisation. If the regularisation application is rejected, LandsD will resume land control actions at a designated time frame determined according to the land control priorities of each case.*

Note 7: *According to LandsD: (a) if the government land being occupied without authorisation is incapable of reasonable separate alienation and is not required for other development in the near future, and an application for regularising its unauthorised occupation through the issue of a new STT is not violating other existing government policies, the District Lands Offices of LandsD (see para. 1.12) may consider approving the application to regularise the unauthorised occupation; (b) this measure is a pragmatic way of resolving the problem of unauthorised occupation of unleased land and obviate the need for deploying considerable manpower in conducting inspections to prevent the re-occupation of such land; and (c) it would not accept any application for regularisation of new unauthorised occupation commencing on or after 28 March 2017.*

Note 8: *GLLs were issued to regularise squatters in the rural areas of the New Territories or for other specific purposes in the past. According to LandsD, GLLs are rarely issued nowadays.*

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a longer term of up to seven years may be granted. If upon expiry of the fixed term or the first 3 years (whichever is the later), the sites concerned are not immediately required for permanent or other temporary uses within 3 years:

- (a) for STTs granted by tender (see para. 1.6(a)), they will usually be re-tendered for another fixed term (together with a periodic term thereafter); and
- (b) for STTs by direct grant (see para. 1.6(b) and (c)), they will, in general, continue on a monthly or quarterly basis.

1.8 An STT may be terminated by the Government by giving 3 months' notice or the prescribed notice period stated under the terms of the tenancy agreement if the site is required for its long-term planned use.

1.9 STTs granted by LandsD from 2014 to 2018 are shown in Table 1. For the five years from 2014-15 to 2018-19, annual rental income from STTs increased from \$1,349 million in 2014-15 to \$1,575 million in 2018-19.

Table 1

**STTs granted by LandsD
(2014 to 2018)**

Way of granting	No. of STTs (land area) (Note 1)				
	2014	2015	2016	2017	2018
Open tender	54 (37 ha)	60 (20 ha)	57 (25 ha)	43 (20 ha)	57 (23 ha)
Direct grant (for community, institutional or non-profit-making uses)	39 (23 ha)	18 (6 ha)	37 (1,715 ha) (Note 2)	29 (25 ha)	22 (10 ha)
Direct grant (for private use)	147 (4 ha)	144 (12 ha)	132 (4 ha)	161 (8 ha)	101 (1 ha)
Total	240 (64 ha)	222 (38 ha)	226 (1,744 ha)	233 (53 ha)	180 (34 ha)

Source: LandsD records

Note 1: The same STT site might be granted more than once during the years 2014 to 2018 (e.g. retendering of STT site upon expiry of the tenancy term).

Note 2: STTs granted in 2016 included sites with area of 1,640 ha to the Airport Authority Hong Kong for use as works site of the Three-runway System and 50 ha to an association for a special camping event held during the year.

Monitoring of STTs

1.10 STTs are granted to tenants for specific uses as stipulated in the tenancy agreements. According to LandsD, site inspections are carried out to ascertain if there are breaches of tenancy conditions. Upon detection of tenancy breaches, depending on the severity of breaches, enforcement actions (including warning, issuing a Notice-to-quit (Note 9) and taking action to recover possession of the site) may be taken as appropriate.

Note 9: *A Notice-to-quit serves to terminate an STT legally and require the tenant to quit and return the area possessed under the STT back to LandsD at a designated date.*

Introduction

Funding scheme to support the use of VGSs suitable for STT use by non-governmental organisations

1.11 The Financial Secretary announced in the 2018-19 Budget Speech that \$1 billion would be set aside to set up the “Funding Scheme to Support the Use of Vacant Government Sites by Non-Government Organisations” (hereinafter referred to as the Funding Scheme). The Funding Scheme subsidises the costs of basic works of eligible projects for user organisations to make better use of VGSs suitable for STT use and of no general commercial interest to the public (see para. 1.6(b)). After the approval of the Finance Committee of the Legislative Council in January 2019, the Development Bureau (DEVB) has launched the Funding Scheme since February 2019. Applicants of the Funding Scheme should be non-governmental organisations (NGOs) which have obtained in-principle approval by LandsD for use of the concerned VGS. Applications for assistance under the Funding Scheme would be vetted by an inter-departmental assessment committee chaired by DEVB.

Responsible divisions of LandsD

1.12 Among other duties, the Estate Management (EM) Section under LandsD’s Lands Administration Office (LAO) is responsible for policy matters on STTs and 12 District Lands Offices (DLOs) under LAO are responsible for administration of STTs (including the granting and renewal of STTs, monitoring and enforcement of conditions of STTs and keeping of site records and information). As of September 2019, there were 7 staff under EM Section and 1,523 staff under 12 DLOs (Note 10). An extract of LandsD’s organisation chart as at 30 September 2019 is at Appendix A.

Audit review

1.13 In 2006, the Audit Commission (Audit) completed a review of the administration of STTs and the results were reported in Chapter 2 of the Director of Audit’s Report No. 47 of October 2006.

Note 10: *According to LandsD, apart from management of STTs, the 7 staff under EM Section and 1,523 staff under 12 DLOs were also responsible for other duties such as processing of lease modification and land exchange cases. Breakdown of staff resources solely for the management of STTs is not available.*

1.14 In October 2019, Audit commenced a review to examine the management of STTs by LandsD. The audit review has focused on the following areas:

- (a) granting and renewal of STTs (PART 2);
- (b) monitoring of tenancy conditions (PART 3); and
- (c) management of VGSs suitable for STT use (PART 4).

Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

Acknowledgement

1.15 Audit would like to acknowledge with gratitude the full cooperation of the staff of DEVB and LandsD during the course of the audit review.

PART 2: GRANTING AND RENEWAL OF SHORT TERM TENANCIES

2.1 This PART examines LandsD's work in granting and renewal of STTs, focusing on:

- (a) granting of STTs (paras. 2.2 to 2.17); and
- (b) renewal of STTs (paras. 2.18 to 2.26).

Granting of short term tenancies

2.2 STTs are generally granted by LandsD by means of open tender and direct grant (see para. 1.6). The 12 DLOs of LandsD are responsible for processing STT applications under their purview.

2.3 *Procedures for granting an STT by open tender.* According to LandsD, the general procedures for granting an STT by means of open tender are as follows (summarised in Figure 1):

- (a) *Tender preparation.* DLO will draft the tenancy agreement (including conditions and plans) which forms part of the tender document, and seek relevant B/Ds' comments on these documents. In general, the District Lands Conference (DLC — Note 11) or the District Lands Officer of the relevant DLO (for straightforward cases) will consider the comments received and approve the tenancy agreement;
- (b) *Invitation of tenders.* After the tender document, including the tenancy agreement, is vetted by the Legal Advisory and Conveyancing

Note 11: *According to LandsD guidelines, a DLC is set up by each DLO. Its terms of reference include considering, in the light of overall land policy and Land Instructions, the terms and conditions for the disposal of land. It is chaired by the Regional Assistant Director overseeing the relevant DLOs, and its membership includes the head of the relevant DLO (a District Lands Officer), other relevant officers of LandsD and representatives from various B/Ds.*

Granting and renewal of short term tenancies

Office (LACO) of LandsD, tenders will be invited. Interested parties are required to submit a form of tender, a cheque or cashier order for the required deposit, and other necessary documents (e.g. a proposed scheme of security in case of fee-paying public car park);

- (c) ***Checking of tenders received.*** DLO will check conformance of the tenders received (e.g. the amount stated in the cheque or cashier order) with the tender requirements;

- (d) ***Approval and award of tender.*** Under the delegated authority from the Director of Lands, the District Lands Officer of the relevant DLO may approve to award a tender to the highest tenderer. If the highest tender is received from persons, companies or their related companies (i.e. companies with substantially the same directors or shareholders) whose past or current performance as tenants of the Government is unsatisfactory, the award of tender should be considered by the Land Administration Meeting (LAM — Note 12). DLO will inform the successful tenderer of the award, send the tenancy agreement for its execution, and issue a demand note for the first instalment of rent to it. Unsuccessful tenderers will be notified of the tender results; and

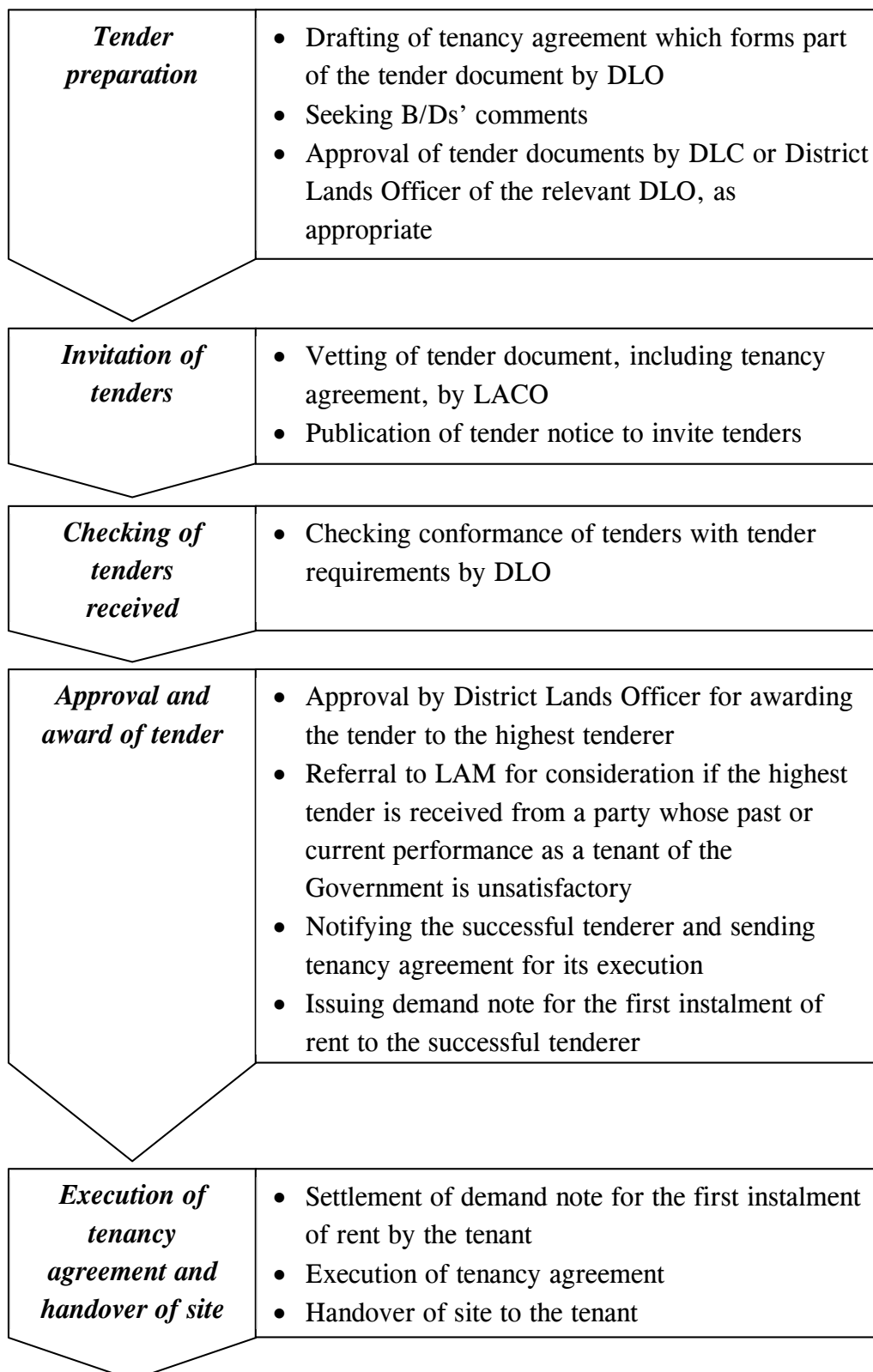
- (e) ***Execution of tenancy agreement and handover of site.*** Upon receipt of the tenancy agreement executed by the tenant and settlement of the demand note for the first instalment of rent, the tenancy agreement will be executed by DLO (Note 13). The site will be handed over to the tenant on the commencement date of the STT.

Note 12: *According to LandsD guidelines, LAM is set up under LAO of LandsD. Its terms of reference are to consider specific issues affecting individual land transactions and decide the specific issues in other cases. It is chaired by one of the two Deputy Directors of LAO, and its membership includes the other Deputy Director of LAO, Assistant Director of LAO, Assistant Director(s) of LACO and Senior Estate Surveyor of Technical Information Unit of LAO.*

Note 13: *According to LandsD, before the tenancy agreement is executed by both the tenant and the Government, the written acceptance of the tender shall constitute a binding contract between the tenant and the Government.*

Figure 1

General procedures for granting an STT by open tender



Source: LandsD records

2.4 ***Procedures for granting an STT by direct grant.*** According to LandsD, the general procedures for granting an STT by direct grant for community, institutional or non-profit-making uses and private use (see para. 1.6(b) and (c)) are as follows (summarised in Figures 2 and 3 respectively):

(a) ***Application from interested party***

- (i) ***For community, institutional or non-profit-making uses.*** An interested NGO or social enterprise may apply for use of an STT site of no general commercial interest. The list of sites of no general commercial interest is compiled and published on the Government's GeoInfo Map (Note 14) and updated every two weeks (see para. 4.29). For sites other than those published on GeoInfo Map, an interested party may also approach LandsD to express its interest; and
- (ii) ***For private use.*** An interested individual/party may apply for using a VGS for private use (e.g. private garden) by approaching LandsD to express his interest;

Note 14: *GeoInfo Map is a web map service launched by the Survey and Mapping Office of LandsD to provide free public access to maps of Hong Kong, as well as the locations and related information of various public facilities and services. The list of sites for community, institutional or non-profit-making uses has been published on the GeoInfo Map since 2017. Prior to 2017, such lists were circulated to all District Offices, District Social Welfare Offices and District Councils who were encouraged to share the lists with interested NGOs to facilitate their applications for STTs of these sites.*

Granting and renewal of short term tenancies

- (b) ***Checking validity of application received.*** DLO will check the application received (Note 15). For granting of STT by direct grant for private use, DLO will also check for the fulfilment of criteria stipulated in LandsD guidelines (Note 16). If it cannot be accepted as a valid application, the applicant will be informed of the reasons at the earliest possible time;

- (c) ***Seeking B/Ds' comments and support***
 - (i) ***For community, institutional or non-profit-making uses.*** After passing the validity checking, DLO will seek B/Ds' comments and support from relevant B/Ds on the application. For an application of direct grant at nominal or concessionary rent, DLO will also seek further policy support from the relevant B/Ds; and

 - (ii) ***For private use.*** After passing the validity checking, DLO will seek B/Ds' comments. For simple and straightforward private garden STT cases, no departmental circulation is required in general. A 14-day notice will be posted at the STT site for private garden in a village to determine if any objection regarding the STT is received;

Note 15: *For example, whether the application form is properly completed and supporting documents are provided.*

Note 16: *According to LandsD guidelines, in general, an application for direct grant may be processed or be approved provided that: (a) the government land under application is incapable of reasonable separate alienation to any parties apart from the applicant; (b) the government land under application is not required for other uses in the near future (or there is no designated long-term use); (c) the government land under application has no general commercial interest to others due to its incapability of separate alienation mentioned in item (a) above or any other reasons; and (d) the application is not for domestic purpose (i.e. habitation).*

Granting and renewal of short term tenancies

- (d) ***Approval of application.*** The application will then be submitted to DLC, District Lands Office Conference (DLOC — Note 17) or District Lands Officer of the relevant DLO for consideration, as appropriate. Under the delegated authority from the Director of Lands, the Regional Assistant Director overseeing the relevant DLO or the District Lands Officer of the relevant DLO may approve the application, as appropriate. If the application is not approved, the applicant will be informed of the result including the reasons for rejection as appropriate;

- (e) ***Issue of basic terms offer letter.*** After the application is approved and vetting of relevant documents have been carried out by LACO, DLO will issue a basic terms offer letter (including major terms of the proposed tenancy) for the acceptance by the applicant; and

- (f) ***Execution of tenancy agreement/acceptance of basic terms offer letter and handover of site.*** In case of straightforward private garden cases, it is normally granted by way of basic terms offer letter, which forms the agreement. In other cases, DLO will arrange for execution of the tenancy agreement. The handover of site would be arranged upon execution of the tenancy agreement/acceptance of the basic terms offer letter and payment of rent and deposit (if applicable) by the applicant.

Note 17: *According to LandsD guidelines, a DLOC is set up by DLO. Its terms of reference include, among others, considering in the light of the Small House Policy and Land Instructions, straightforward STTs (e.g. garden tenancies). It is chaired by the District Lands Officer of the relevant DLO, and its membership includes District Officer, District Planning Officer, District Senior Estate Surveyor, District Land Surveyor, Chief Land Executive and Senior Land Executive.*

Figure 2

General procedures for granting an STT by direct grant for community, institutional or non-profit-making uses

<i>Application from interested party</i>	<ul style="list-style-type: none"> • NGO or social enterprise applying for use of an STT site of no general commercial interest published on the Government's GeoInfo Map
<i>Checking validity of application received</i>	<ul style="list-style-type: none"> • Validity checking of application received by DLO
<i>Seeking B/Ds' comments and support</i>	<ul style="list-style-type: none"> • Circulation of application to relevant B/Ds for comments • Obtaining policy support from relevant B/Ds for direct grant and further policy support for nominal or concessionary rent
<i>Approval of application</i>	<ul style="list-style-type: none"> • Application submitted to DLC, DLOC or District Lands Officer of the relevant DLO for consideration, as appropriate • Approval by the Regional Assistant Director or District Lands Officer of the relevant DLO, as appropriate
<i>Issue of basic terms offer letter</i>	<ul style="list-style-type: none"> • Vetting of relevant documents by LACO • Issue of basic terms offer letter to applicant by DLO
<i>Execution of tenancy agreement and handover of site</i>	<ul style="list-style-type: none"> • Execution of tenancy agreement • Payment of rent and deposit (if applicable) by the tenant • Handover of site to the tenant

Source: LandsD records

Figure 3

General procedures for granting an STT by direct grant for private use

<i>Application from interested party</i>	<ul style="list-style-type: none"> • An individual/party approaching LandsD to express interest on using a VGS for private use
<i>Checking validity of application received</i>	<ul style="list-style-type: none"> • Validity checking of application received and fulfilment of criteria set out in LandsD guidelines (see Note 16 to para. 2.4(b)) by DLO
<i>Seeking B/Ds' comments and support</i>	<ul style="list-style-type: none"> • Circulation of application to relevant B/Ds for comments, as appropriate • Posting of 14-day notice at the STT site (for private garden in a village) to determine if any objection is received
<i>Approval of application</i>	<ul style="list-style-type: none"> • Application submitted to DLC, DLOC or District Lands Officer of the relevant DLO for consideration, as appropriate • Approval by the Regional Assistant Director or District Lands Officer of the relevant DLO, as appropriate
<i>Issue of basic terms offer letter</i>	<ul style="list-style-type: none"> • Vetting of relevant documents by LACO • Issue of basic terms offer letter to applicant by DLO
<i>Execution of tenancy agreement/ acceptance of basic terms offer letter and handover of site</i>	<ul style="list-style-type: none"> • Execution of tenancy agreement or acceptance of basic terms offer letter • Payment of rent and deposit (if applicable) by the tenant • Handover of site to the tenant

Source: LandsD records

Granting and renewal of short term tenancies

Long time taken for processing STT applications

2.5 Based on information in the Tenancy Information System (TIS — see para. 3.14), Audit analysed the processing time of the 1,165 STTs approved by LandsD from 2014-15 to 2018-19 (see Table 2), and noted that:

- (a) the processing time ranged from less than 1 month to 22 years, averaging 20 months; and
- (b) for 204 (18% of 1,165) STTs, the processing time was longer than 3 years.

Table 2

**Processing time of STTs
(2014-15 to 2018-19)**

Processing time	No. of STTs
1 year or less	642 (55%)
More than 1 year to 2 years	217 (19%)
More than 2 years to 3 years	102 (8%)
More than 3 years to 6 years	150 (12%)
More than 6 years to 12 years	46 (4%)
More than 12 years to 18 years	5 (1%)
More than 18 years to 22 years	3 (1%)
Total	1,165 (100%)

Source: Audit analysis of LandsD records

Remarks: Processing time refers to the time between the dates of circulation of tender documents to B/Ds for comments (for STTs granted by open tender) or the dates of STT applications (for STTs granted by direct grant), and the dates of approval of STTs.

2.6 Audit noted one case (involving processing time of 14 years) in which the DLO concerned had not taken adequate and timely actions in following up the granting of an STT site (see Case 1).

Case 1

**Adequate and timely actions not taken
in following up the granting of an STT site
(March 2003 to February 2020)**

1. In March 2003, Applicant A submitted an STT application to the then DLO/Hong Kong South (DLO/HKW&S — Note 1) for direct grant of a private garden and an access road with a total area of 314 square metres (m²) in Southern District. In June 2003, DLO/HKW&S circulated the application to relevant B/Ds for comments.

2. In September 2003, DLO/HKW&S informed Applicant A that concern over the stability conditions of adjoining slopes was raised by the then Civil Engineering Department (CEDD — Note 2), and requested Applicant A to provide further information. In January 2004, CEDD advised that it had no objection to the STT application if the applicant undertook geotechnical assessment and carried out slope upgrading works. In response to the request, Applicant A submitted relevant geotechnical assessment report to DLO/HKW&S, which referred the same to CEDD in March 2004. In April 2004, CEDD reiterated its concern on the slope condition. Upon receipt of CEDD's advice, Applicant A submitted a revised geotechnical assessment report in June 2004.

3. In July 2004, DLO/HKW&S conducted inspection of the site and found that construction works on the garden had begun. In April 2005, DLO/HKW&S sent a proposed tenancy plan to Applicant A and requested Applicant A to follow up the outstanding issues, including the programme and duration of the proposed slope upgrading works. Applicant A and DLO/HKW&S agreed on the new STT boundaries in May 2005 but Applicant A did not provide the requested information. In October 2005, Applicant A submitted an application to DLO/HKW&S for carrying out works on the slope outside the site concerned after obtaining consent from the Buildings Department.

4. In May 2006 and April 2007, Applicant A wrote to DLO/HKW&S to enquire about the status of its STT application submitted in March 2003. DLO/HKW&S did not give a reply.

Granting and renewal of short term tenancies

Case 1 (Cont'd)

5. In September 2009, DLO/HKW&S conducted inspection of the site and found that construction works of the garden had been completed. In October 2009, DLO/HKW&S enquired whether Applicant A intended to continue with the STT application and Applicant A confirmed its intention with DLO/HKW&S in February 2010. In March 2010, DLO/HKW&S requested Applicant A to advise the completion date of the landscape garden and gate. In August 2010, DLO/HKW&S examined the STT application in detail with the available information and found that not all outstanding issues had been resolved.

6. In August 2014, Applicant A wrote to DLO/HKW&S to enquire about the status of its STT application. DLO/HKW&S did not give a reply.

7. In March 2017, the STT application submitted by Applicant A was approved. According to LandsD:

- (a) the STT application submitted by Applicant A was examined and approved by DLC in March 2017 to regularise unauthorised occupation of government land;
- (b) relevant tenancy conditions (which required the tenant to complete the outstanding slope works to the satisfaction of the Government within 1 year or other extended period subject to the approval of DLO/HKW&S) were imposed to address the concerns of CEDD; and
- (c) in August 2017, rent of some \$1.7 million (i.e. annual rent of about \$126,000) was demanded from Applicant A with retrospective effect from July 2004 (see para. 3) and was subsequently settled in September 2017.

8. According to LandsD, as of February 2020, the required slope works (see para. 7(b)) had not been completed.

Case 1 (Cont'd)

Audit comments

9. Audit noted that:
- (a) Applicant A's STT application submitted in March 2003 was approved in March 2017 (involving processing time of 14 years). The construction works of the garden had been completed before the STT application was approved (see para. 5);
 - (b) DLO/HKW&S had not timely responded to enquiries raised by Applicant A (see paras. 4 and 6);
 - (c) the need to address concerns over stability conditions of adjoining slopes was an issue leading to long processing time for this case. While the tenant was required to complete the outstanding slope works within 1 year as a condition for approving the STT in March 2017 (see para. 7(b)), as of February 2020 (i.e. three years later), the required slope works had not been completed. As far as could be ascertained, there was no documentary evidence showing that DLO/HKW&S had followed up the progress of the slope works with the tenant; and
 - (d) LandsD had not set any time target for processing STT applications.
10. In Audit's view, LandsD needs to strengthen measures to ensure that adequate and timely actions are taken in following up the granting of STT sites, including the processing of STT applications and ensuring the fulfilment of the related tenancy conditions for granting the STT. To enhance accountability and monitoring work, there is merit for LandsD to set a time target for processing STT applications.

Source: Audit analysis of LandsD records

Note 1: The then DLO/Hong Kong South and the then DLO/Hong Kong West were merged into DLO/Hong Kong West and South (DLO/HKW&S) with effect from April 2004. For simplicity, the then DLO/Hong Kong South is also referred to as DLO/HKW&S in this Audit Report.

Note 2: The then Civil Engineering Department and the then Territory Development Department were merged into the Civil Engineering and Development Department (CEDD) with effect from July 2004. For simplicity, the then Civil Engineering Department is also referred to as CEDD in this Audit Report.

Scope for enhancing guidelines for processing STT applications

2.7 According to LandsD guidelines, STT applications received are vetted by individual DLOs. Audit selected 10 STT applications received or processed during 2014-15 to 2018-19 by 7 DLOs (Note 18) for examination. Audit noted that there was scope for enhancing LandsD guidelines in processing STT applications involving:

- (a) applicants with no capacity to sign tenancy agreements (see Case 2); and
- (b) the handling of STT applications with lack of policy support (see paras. 2.8 and 2.9).

Case 2

Scope for enhancing LandsD guidelines in handling STT applications from applicants with no capacity to sign tenancy agreements (May 2009 to August 2014)

1. In May 2009, Applicant B submitted an application to DLO/Kowloon East (DLO/KE) for STT by direct grant of a site of 1,740 m² in Kwun Tong District for the use as office premises for a term of 3 years. In July 2009, policy support was given by the relevant bureau in granting the STT to Applicant B at nominal rent.

2. In response to an enquiry made by DLO/KE in January 2010, LACO/Kowloon advised DLO/KE in February 2010 that as Applicant B was a society registered under the Societies Ordinance (Cap. 151), it was an unincorporated body and could not be regarded as a legal entity suitable to sign the tenancy agreement. Instead, the president of the society should be named as the tenant of the STT or Applicant B should be incorporated as a limited company.

Note 18: *The seven DLOs were DLO/Hong Kong East, DLO/HKW&S, DLO/Kowloon East, DLO/Kowloon West, DLO/Sai Kung, DLO/Sha Tin and DLO/Yuen Long.*

Case 2 (Cont'd)

3. In response to DLO/KE's enquiry, in May 2010, Applicant B said that it was undergoing the registration process as a limited company. In July 2011, another applicant submitted an STT application for the same site. However, the application was rejected on the grounds that the application received from Applicant B was being processed.

4. DLO/KE resumed the processing of Applicant B's application in May 2012 when Applicant B was successfully incorporated as a limited company. From 2012 to 2014, Applicant B further revised the site boundary and the use of the site (i.e. from office premises to providing amateur radio communication support services for non-profit-making activities and for the related non-profit-making training purposes). The STT was finally approved by LandsD in August 2014.

Audit comments

5. Applicant B was found lacking the capacity to sign the tenancy agreement in February 2010 after LACO/Kowloon had been consulted (i.e. some 9 months after the application was received in May 2009). DLO/KE suspended the processing of Applicant B's application for two years (from May 2010 to May 2012) as the applicant claimed that it was undergoing the registration process as a limited company (see para. 3). During this period, an application for the site was received from an interested party but was rejected due to the fact that Applicant B's application was under processing (see para. 3). In the event, the STT was approved in August 2014 (five years after Applicant B's application was received). Audit noted that LandsD had no specific guidelines on handling STT applications from applicants with no capacity to sign the tenancy agreement (including whether the applicant should be rejected right away or a grace period could be given for rectification). In Audit's view, LandsD needs to provide guidelines for processing such applications (e.g. disseminating to interested parties information relating to capacity of applicants to sign tenancy agreements to facilitate their applications).

Source: Audit analysis of LandsD records

Granting and renewal of short term tenancies

2.8 *Handling of STT applications with lack of policy support.* Audit noted that LandsD had no specific guidelines relating to the handling of STT applications with lack of policy support from the relevant policy bureaux/departments, including:

- (a) whether the applicant should be informed of the reason for lack of policy support; and
- (b) whether such application should be rejected or the applicant could be allowed to modify its proposal in order to obtain the policy support.

2.9 Audit noted that, in an STT application from Applicant C (see Table 3):

- (a) LandsD informed the applicant that the application was rejected as policy support could not be obtained from the relevant bureau; and
- (b) LandsD did not inform the applicant of the reason for lack of policy support.

In Audit's view, LandsD needs to provide guidelines for handling STT applications with lack of policy support from the relevant policy bureaux/departments.

Table 3

**Handling of an STT application from Applicant C
(April 2013 to August 2017)**

	Particulars
DLO	DLO/Sai Kung (DLO/SK)
Date of STT application	April 2013
Area of STT site	311 m ²
DLO's handling of STT application	After seeking the relevant bureau's comments (Note), DLO/SK informed Applicant C in August 2017 that the application was rejected as policy support could not be obtained from the relevant bureau. The reason was not explained.
Result of STT application	STT was not granted to Applicant C.

Source: Audit analysis of LandsD records

Note: In August 2017, the relevant bureau informed DLO/SK that while it fully appreciated the objectives of Applicant C to provide religious, education and cultural activities in the proposal, it considered that the main projects in the proposal (e.g. religious and cultural education, school homework assistance to children, extra-curricular activities and language lessons) were not for religious purpose and it was not in the position to provide policy support for the proposal.

Granting and renewal of short term tenancies

Tenancy requirements not complied with before commencement of operation

2.10 After the approval of an STT application, a tenancy agreement will be signed by both the tenant and the Government for execution. The tenant is required to comply with the tenancy requirements.

2.11 Audit selected 10 STTs approved by the 7 DLOs (see Note 18 to para. 2.7) during 2014-15 to 2018-19 for examination and noted that in one case the tenancy requirements for fire safety were not complied with before commencement of operation (see Case 3).

Case 3

Tenancy requirements for fire safety not complied with before commencement of operation (July 2018 to September 2019)

1. In July 2018, a tender was awarded to Tenant A by DLO/Hong Kong East (DLO/HKE) for the operation of a fee-paying public car park at an STT site of 2,070 m² in Eastern District for 1 year. According to the tender award letter, possession of site would be given to Tenant A upon due execution of tenancy agreement (STT A).
2. According to the tenancy agreement:
 - (a) subject to compliance of fire service requirements as approved by the Director of Fire Services, liquefied petroleum gas cylinder wagons were permitted to be parked in the liquefied petroleum gas cylinder wagons parking area of the site; and
 - (b) approval of the Director of Fire Services should be obtained in relation to the construction of walls along the periphery of the liquefied petroleum gas cylinder wagons parking area as fire barriers by September 2018.

Case 3 (Cont'd)

3. Since the operation of car park in August 2018, public complaints on fire safety concern (e.g. inadequate fire safety measures in the car park) had been received by DLO/HKE. Warning letters had been issued to Tenant A by DLO/HKE.

4. In April 2019, DLO/HKE enquired the Fire Services Department whether Tenant A's facilities at the site complied with the fire service requirements. In May 2019, the Fire Services Department advised that the fire service facilities installed by Tenant A at the site were considered unacceptable.

5. In late May 2019, Tenant A served a notice to DLO/HKE to terminate the tenancy and the site was returned to DLO/HKE in September 2019.

Audit comments

6. While Tenant A's fire service facilities installed at site (i.e. construction of walls along the periphery of the liquefied petroleum gas cylinder wagons parking area) were considered unacceptable (see paras. 2(b) and 4), Tenant A had continued to operate the car park for one year until it served a notice to terminate the tenancy in September 2019 (see para. 5). During this operating period, the relevant fire service requirements had not been complied with. In Audit's view, LandsD needs to take measures to ensure that the tenant complies with tenancy requirements (including the related fire service requirements) before commencement of operation.

Source: Audit analysis of LandsD records

Granting and renewal of short term tenancies

Different practices in demanding deposits from STT tenants

2.12 According to LandsD guidelines, only structures of a temporary nature should be permitted on an STT site to facilitate clearance upon termination of the tenancy agreement. The cost of removing structures erected on an STT site is taken into account in calculating the amount of deposit demanded from the tenant at the time a tenancy agreement is signed (see para. 2.10). According to LandsD guidelines, for STTs granted to non-profit-making or charitable organisations (Note 19), the requirement to pay a deposit is waived.

2.13 Audit's examination of the 10 STTs (see para. 2.11) revealed that there were different practices in demanding deposits from two tenants (Tenants B and C). Both Tenants B and C are charitable organisations which, according to LandsD guidelines, are exempt from the requirements to pay a deposit under STT. Audit noted that the two tenants were approved to erect permitted structures on the two STT sites (see Table 4). In the event, no deposit was demanded from Tenant B while a deposit of \$70,000 was demanded from Tenant C. In Audit's view, LandsD needs to consider providing further guidelines on demanding deposits from non-profit-making or charitable organisations for STTs involving erection of permitted structures.

Note 19: *Charitable organisations are exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112).*

Granting and renewal of short term tenancies

Table 4

Inconsistency in demanding deposits from tenants

	STT B	STT C
Tenant	Tenant B	Tenant C
DLO	DLO/KE	DLO/Sha Tin (DLO/ST)
Area of STT site	593 m ²	5,020 m ²
Permitted structure on STT site	One structure not exceeding 3-storey (see Photograph 3)	3-metre high structures and total built-over-area not exceeding 200 m ² (see Photograph 4 for one of the eight structures at the site)
Amount of deposit demanded	Waived	\$70,000

Source: Audit analysis of LandsD records

Photograph 3

The structure erected on site under STT B



Source: LandsD records

Photograph 4

One of the structures erected on site under STT C



Source: LandsD records

Granting and renewal of short term tenancies

Need to consider setting time frame for publishing tenancy information of all STTs granted

2.14 To facilitate NGOs in identifying sites available for STT use, the list of sites of no general commercial interest has been published on the Government's GeoInfo Map since 2017 (see para. 2.4(a)(i)). Besides, with a view to enhancing transparency of land information, information of sites granted by STTs (e.g. location and rent) since 1 January 2018 has also been published on GeoInfo Map since December 2018. According to LandsD, tenancy information of STTs granted prior to January 2018 would be uploaded onto GeoInfo Map progressively.

2.15 According to LandsD records, of the 5,590 STTs managed by LandsD as of October 2019, tenancy information of only 1,333 (24%) STTs had been uploaded onto GeoInfo Map. Audit noted that LandsD did not have a time frame for publishing tenancy information of all STTs granted on GeoInfo Map. In Audit's view, to enhance the transparency of land information, LandsD needs to consider setting a time frame for publishing tenancy information of all STTs granted on GeoInfo Map.

Audit recommendations

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

- (a) **strengthen measures to ensure that adequate and timely actions are taken by LandsD staff in following up the granting of STT sites, including the processing of STT applications and ensuring the fulfilment of the related tenancy conditions for granting the STT (including the case identified by Audit in para. 2.6);**
- (b) **consider setting a time target for processing STT applications;**
- (c) **provide guidelines for processing applications involving applicants with no capacity to sign tenancy agreements and handling STT applications with lack of policy support from the relevant policy bureaux/departments;**
- (d) **take measures to ensure that the tenant complies with tenancy requirements (including the related fire service requirements) before commencement of operation;**

- (e) **consider providing further guidelines on demanding deposits from non-profit-making or charitable organisations for STTs involving erection of permitted structures; and**
- (f) **consider setting a time frame for publishing tenancy information of all STTs granted on GeoInfo Map.**

Response from the Government

2.17 The Director of Lands accepts the audit recommendations. He has said that:

- (a) LandsD will review the current instructions/guidelines and mechanisms:
 - (i) for processing of STT applications with a view to strengthening progress monitoring;
 - (ii) to incorporate an appropriate time target for processing STT applications;
 - (iii) for handling STT applications involving applicants with no capacity to sign tenancy agreements or with lack of policy support from the relevant policy bureaux/departments; and
 - (iv) for handling STT applications to ensure that the tenant complies with tenancy requirements, where applicable, before commencement of operation;
- (b) LandsD will review the current instructions/guidelines on demanding deposits from non-profit-making or charitable organisations for STTs involving erection of permitted structures; and
- (c) LandsD had uploaded information of 1,494 STTs onto GeoInfo Map as of December 2019, and will continue to update the information on a quarterly basis. LandsD's current programme aims to publish on GeoInfo Map tenancy information of all STTs granted by 2023.

Renewal of short term tenancies

Need to analyse the reasons for allowing the same tenants to continue their STTs for a long time

2.18 According to LandsD guidelines, STTs generally have a fixed (i.e. initial) term of not more than 7 years. In general, an STT may be renewed/allowed to continue on a periodic basis as follows:

- (a) for an STT granted by tender, upon expiry of the fixed term or the first 3 years (whichever is the later), if it is clearly established that the site will be available for temporary use for 3 years or more, the site will be re-tendered (Note 20). Otherwise, the STT will be allowed to continue on a periodic basis (usually monthly or quarterly) according to the terms of the tenancy agreement until the site is required for its permanent use or suitable for re-tendering;
- (b) for an STT under direct grant for community, institutional or non-profit-making uses, when the initial term has expired, the STT will continue on a monthly or quarterly basis, until the site is required for its permanent use and subject to rental review and the tenant observing the tenancy conditions. For an STT granted at nominal rent with policy support, the initial supporting B/D's policy support for continuation of the tenancy will be sought; and
- (c) for an STT under direct grant for private use, when the initial term has expired, the STT will continue on a monthly or quarterly basis, subject to rental review and the tenant observing the tenancy conditions.

Note 20: *The re-tendering exercise should be conducted within the last 6 months of the fixed tenancy term and the existing tenant is allowed to participate in it. According to LandsD, there are special circumstances that the STT sites would not be re-tendered (e.g. as requested by relevant policy bureaux/departments in order to meet specific policy objectives (e.g. port back-up uses); or for STTs granted by restricted tender to parties affected by implementation of public works, including clearance for reclamation).*

Granting and renewal of short term tenancies

2.19 According to DEVB, temporary or short-term uses on a site should not prejudice any planned permanent development of the site. Besides, all temporary or short-term uses should comply with statutory planning requirements, as follows:

- (a) the following uses are always permitted and no planning permission is required:
 - (i) uses which are always permitted under relevant zonings (Column 1 uses) or covering Notes of the relevant statutory town plans (Note 21); or
 - (ii) temporary or short-term uses in urban and new town areas that are expected to be 5 years or less; and

- (b) the following uses are permitted upon obtaining planning permission from the Town Planning Board:
 - (i) uses that may be permitted with or without conditions on application to the Town Planning Board under relevant zonings (Column 2 uses) (see Note 21 to para. 2.19(a)(i)); or
 - (ii) temporary or short-term uses in rural areas for not more than 3 years, even such uses are not provided for in terms of the relevant statutory town plans (Note 22).

2.20 STTs generally have a fixed term of not more than 7 years (see para. 2.18) and thereafter on a periodic basis. Audit analysed the 5,590 STTs managed by

Note 21: *Statutory town plans include the Outline Zoning Plan, which is a kind of statutory plan prepared by the Town Planning Board under the Town Planning Ordinance (Cap. 131). The Outline Zoning Plan shows the land-use zonings and major road systems of individual planning scheme areas. Each Outline Zoning Plan is accompanied by a Schedule of Notes which show for a particular zone the uses always permitted (i.e. Column 1 uses) and uses that would require permission from the Town Planning Board (i.e. Column 2 uses) upon application.*

Note 22: *Open storage and port back-up uses in areas falling within certain land use zones (such as "Conservation Area", "Coastal Protection Area", "Site of Special Scientific Interest", "Other Specified Uses (Comprehensive Development and Wetland Protection Area)") are prohibited even for temporary use.*

Granting and renewal of short term tenancies

LandsD as of October 2019, and noted that for 4,565 (82% of 5,590) STTs, the tenants had remained the same for over 7 years (see Table 5). In fact, the tenants for 2,353 (42% of 5,590) STTs had remained the same for more than 20 years (up to 55 years). Audit noted that LandsD had no readily available information on the reasons for allowing the same tenants to continue their STTs for a long time and whether the statutory planning requirements were met (see para. 2.19). In Audit's view, LandsD needs to analyse the reasons and ascertain the compliance with the statutory planning requirements. There is also merit to provide the results regularly to senior management of LandsD for monitoring purpose.

Table 5

**Duration of STTs granted continuously to the same tenants
(October 2019)**

Duration	No. of STTs	
3 years or less	316	(5%)
More than 3 years to 7 years	709	(13%)
More than 7 years to 10 years	618	(11%)
More than 10 years to 20 years	1,594	(29%)
More than 20 years to 30 years	1,021	(18%)
More than 30 years to 40 years	1,006	(18%)
More than 40 years to 55 years	326	(6%)
Total	5,590	(100%)

Source: Audit analysis of LandsD records

Scope for improvement in rental review process

2.21 According to LandsD guidelines, rents charged under STTs are generally reviewed every three years (Note 23). For STTs for regularisation of unauthorised

Note 23: *Except for STTs granted by direct grant for the use of private gardens, in which case, rental review will be carried out every 5 years.*

Granting and renewal of short term tenancies

occupation of government land, inspections should be carried out by relevant DLOs to determine whether the tenancies should be renewed upon the rental review process. LandsD would then advise the tenant of the revised rent by issuing a rent review letter (Note 24). If the tenant does not accept the revised rent, the tenancy should be terminated.

2.22 Audit selected 5 STTs for regularisation of unauthorised occupation of government land that were renewed during 2014-15 to 2018-19 by 5 DLOs (Note 25) for examination and noted that:

- (a) one DLO (DLO/SK) had suspended all site inspections in relation to rental review for garden STT cases since October 2016 owing to competing priority. The suspension arrangement was reviewed by DLO/SK in January 2020 and had been further extended to July 2020; and

- (b) another DLO had not carried out site inspection for rental review of an STT (STT D). STT D was granted by DLO/Yuen Long (DLO/YL) to Tenant D for regularisation of unauthorised occupation of government land in February 2010. Audit found that:
 - (i) rental review of STT D was conducted by DLO/YL in February 2013, October 2015 and December 2018. As far as could be ascertained, there was no documentary evidence showing that site inspection had been conducted by DLO/YL in the three rental review exercises;

 - (ii) according to LandsD guidelines, for STTs for regularisation of unauthorised occupation of government land, inspections should be carried out by relevant DLOs to determine whether the STTs should be renewed upon the rental review process; and

Note 24: *In cases where the new rent cannot be finalised before the commencement date of the new tenancy term, it is intended that the old rent be demanded in the interim.*

Note 25: *The five DLOs were DLO/HKE, DLO/HKW&S, DLO/SK, DLO/ST and DLO/Yuen Long.*

Granting and renewal of short term tenancies

- (iii) there was no documentary evidence showing that DLO/YL had conducted inspection at the STT site for rental review purposes during 2013 to 2018.

In Audit's view, LandsD needs to take measures to ensure that site inspections are conducted for rental review purpose in accordance with its guidelines.

Need to obtain regular information about tenants' operations for determining continuation of STTs by direct grant

2.23 According to LandsD guidelines, given that STTs granted by direct grant are allowed to continue monthly or quarterly upon expiry of their initial term (see para. 2.18(b) and (c)), the justifications for approving the STT applications should be revisited at regular intervals to determine whether the justifications are still valid and the tenancies should be continued. In particular, for STT sites directly granted for non-profit-making uses, it is necessary to monitor the uses of STT sites in determining whether the tenancies should be continued.

2.24 Audit's examination of the 10 STTs (see para. 2.11) revealed that there were different practices in monitoring tenants' operations for determining continuation of STTs by direct grant. The salient points are as follows:

- (a) for an STT (STT E), which commenced in May 2017 and was directly granted to Tenant E at nominal rent for non-profit-making purposes (i.e. training venue for Chinese martial arts, dragon dance and lion dance), Tenant E was required to submit operation reports (e.g. activities organised and corresponding number of attendance) every 6 months to the policy bureau for monitoring purpose. The requirement was also incorporated into the tenancy agreement;
- (b) for another STT (STT F), which commenced in February 2016 and was directly granted to Tenant F for a term of 3 years certain (from 1 February 2016 to 31 January 2019) and thereafter quarterly at nominal rent for non-profit-making purposes (i.e. sports development centre), in September 2018, LandsD approached the Home Affairs Bureau (HAB) for its policy support for the continuation of STT F at nominal rent. In response, HAB requested Tenant F to submit operation reports for 2017 and 2018 for HAB's consideration. Audit noted that the tenancy agreement

did not require Tenant F to submit operation reports to HAB on a regular basis; and

- (c) Audit noted that, as of January 2020 (i.e. 12 months after the expiry of the 3-year fixed term of STT F), policy support from HAB was still pending. According to HAB, given the unsatisfactory utilisation rates as reflected in Tenant F's operation reports for 2017 and 2018, HAB had asked Tenant F to provide further information on site utilisation to facilitate consideration of whether policy support should be given.

In Audit's view, for STTs directly granted for non-profit-making purposes, to facilitate the relevant policy bureaux/departments' determination of whether or not policy support should be given for continuation of STTs, there is merit for LandsD to consult the relevant policy bureaux/departments on the need to obtain regular information about the tenants' operations and to incorporate this as a tenancy requirement.

Audit recommendations

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

- (a) **ensure that LandsD staff:**
 - (i) **analyse the reasons for allowing the same tenants to continue their STTs for a long time;**
 - (ii) **ascertain whether the statutory planning requirements regarding temporary or short-term uses of land are met; and**
 - (iii) **do so regularly with results provided to senior management for monitoring purpose;**
- (b) **ensure that site inspections are conducted for rental review purpose in accordance with LandsD guidelines; and**

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- (c) **consult the relevant policy bureaux/departments on the need to obtain regular information about the tenants' operations and incorporate this as a tenancy requirement for STTs directly granted for non-profit-making purposes.**

Response from the Government

2.26 The Director of Lands accepts the audit recommendations. He has said that:

- (a) LandsD will review the current instructions/guidelines to:
 - (i) ensure that the continuation of STTs meets the relevant requirements and LandsD will make use of information technology, including TIS or other related computer systems, to record relevant data for regular analysis and monitoring including by supervisors and senior management; and
 - (ii) incorporate the requirement of consulting the relevant policy bureaux/departments on the need to obtain regular information about tenants' operations. Subject to the agreement of the relevant policy bureaux/departments to monitor the use of the STT site, LandsD will incorporate this as a tenancy requirement for each direct grant STT for non-profit-making purposes. LandsD will also take enforcement action in case of irregularities on the advice of the relevant policy bureaux/departments; and
- (b) apart from reminding staff to conduct site inspections for rental review purpose in accordance with current instructions/guidelines, LandsD will also work out monitoring measures to ensure such.

PART 3: MONITORING OF TENANCY CONDITIONS

3.1 This PART examines LandsD's work in monitoring of tenancy conditions, focusing on:

- (a) site inspection programme (paras. 3.2 to 3.6);
- (b) enforcement actions against breaches of STT conditions (paras. 3.7 to 3.13); and
- (c) recording of STT information (paras. 3.14 to 3.20).

Site inspection programme

3.2 According to LandsD guidelines, in order to prevent tenants from subletting the premises, erecting unauthorised structures or extending the area of occupation into adjacent government land, it is mandatory that all STT sites have to be inspected once every 3 years (for STTs not involving private gardens) or once every 5 years (for private garden STTs). DLOs should, where practicable and staff resources permitting, consider formulating and implementing a programme for conducting site inspections at regular intervals based on the inspection priorities of STTs (including both private garden or non-private garden STTs) as follows:

- (a) for high priority cases (e.g. STTs with high risk of breach or STTs with breaches rectified in the past 12 months), inspections should be carried out annually;
- (b) for medium priority cases, inspections should be carried out randomly, with an inspection frequency generally higher than the low priority cases (i.e. meeting only the mandatory requirements — see (c)), subject to availability of resources. DLOs should have regard to the nature and type of STTs in their respective districts and other relevant factors (Note 26) in determining the criteria on how the medium priority cases were selected for inspections; and

Note 26: *Factors for consideration include individual case merits, number of problematic STT cases or cases subject to serious breaches/complaints in hand.*

Monitoring of tenancy conditions

- (c) for low priority cases (e.g. STTs granted at nominal rent or STTs with no records of breaches), the mandatory requirements should be met (i.e. once every 3 years for non-private garden STTs and 5 years for private garden STTs).

Need to conduct site inspections as required and improve their effectiveness

3.3 *Need to conduct site inspections as required.* According to LandsD records, LandsD managed a total of 5,590 STTs as of October 2019. Based on information in TIS (see para. 3.14), Audit analysed the site inspections conducted on these 5,590 STTs. As TIS did not record information on inspection priorities of STTs (i.e. high, medium or low — see also paras. 3.17(a) and 3.18), Audit could only make reference to the mandatory requirements (i.e. once every 3 years for non-private garden STTs and 5 years for private garden STTs — see para. 3.2(c)) to ascertain whether site inspections were conducted timely. Audit noted that, of the 5,590 STTs, 224 non-private garden STTs and 232 private garden STTs were granted within 3 years and 5 years respectively (and therefore not yet due for inspection under the mandatory requirements). For the remaining 5,134 STTs (i.e. 3,396 non-private garden STTs and 1,738 private garden STTs), with inspections needed under the mandatory requirements, Audit noted that:

- (a) no site inspection had been conducted for 1,409 (27% of 5,134) STTs, comprising 836 non-private garden STTs and 573 private garden STTs; and
- (b) of the remaining 3,725 (5,134 – 1,409) STTs with site inspections conducted (comprising 2,560 non-private garden STTs and 1,165 private garden STTs), the site inspections for 1,057 non-private garden STTs and 481 private garden STTs had not been conducted in compliance with the mandatory requirements (i.e. once every 3 or 5 years for these two types of STTs respectively — see Table 6). Case 4 shows that, for an STT, site inspection had not been conducted for a long time with no reasons documented.

Monitoring of tenancy conditions

Table 6

**Time having elapsed from date of last inspection
for 3,725 STTs with inspection conducted
(October 2019)**

Time having elapsed from date of last inspection	Non-private garden STTs (No.)	Private garden STTs (No.)	Total (No.)
1 year or less	475	84	559
More than 1 year to 2 years	569	110	679
More than 2 years to 3 years	459	107	566
More than 3 years to 5 years	482	383	865
More than 5 years to 7 years	412	316	728
More than 7 years to 9 years	157	159	316
More than 9 years to 24 years	6	6	12
Total	2,560	1,165	3,725

Source: Audit analysis of LandsD records

Case 4

**Site inspection not conducted for a long time with no reasons documented
(November 2006 to January 2020)**

<p>1. STT G was directly granted to Tenant G for the use of a site in Yuen Long as a preserved food factory. STT G commenced in January 1976 with a fixed term of 1 year and continued quarterly thereafter.</p> <p>2. The last site inspection was conducted by DLO/YL in November 2006 with no irregularity noted. As far as could be ascertained, up to January 2020, there was no documentary evidence showing that inspections had been conducted by DLO/YL after November 2006. Neither were the reasons for not conducting site inspections documented.</p>
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Monitoring of tenancy conditions

Case 4 (Cont'd)

Audit comments

3. It was unsatisfactory that DLO/YL had not conducted any site inspection for STT G since the last inspection in November 2006 (i.e. some 13 years ago), which was far below the mandatory inspection frequency of once every 3 years for non-private garden STTs. Besides, reasons for not conducting site inspections had not been documented.

Source: Audit analysis of LandsD records

3.4 ***Need to improve effectiveness of site inspections.*** According to LandsD, DLOs should conduct site inspections upon receipt of complaints. It was further stipulated in LandsD guidelines that, for special cases, site inspections should be carried out outside office hours if situation warrants. Audit noted one case in which site inspections conducted were not effective in investigating a complaint on alleged breach of tenancy conditions (see Case 5).

Case 5

Site inspections conducted not effective in investigating a complaint on alleged breach of tenancy conditions (January 2019 to April 2019)

1. STT H was directly granted to Tenant H for the use of a site in Sai Kung as a boatyard. STT H commenced in January 1976 with a fixed term of one year and continued quarterly thereafter.

2. In January 2019, DLO/SK received a complaint in relation to breaches of usage under STT H, stating that, instead of using the site as boatyard, Tenant H provided barges and jet-skis renting services on Sundays as well.

3. In response to the complaint received, DLO/SK conducted site inspections on 2 weekdays in January and April 2019. According to LandsD records, DLO/SK found no anomaly in both inspections.

Case 5 (Cont'd)

Audit comments

4. As the alleged breach related to providing barges and jet-skis renting services on Sundays, site inspections should have been carried out on Sundays instead of weekdays to improve the effectiveness in investigation of the complaint.

Source: Audit analysis of LandsD records

Audit recommendation

3.5 **Audit has recommended that the Director of Lands should take measures to ensure that LandsD staff conduct site inspections as required and improve their effectiveness (e.g. conducting inspections outside office hours if situation warrants).**

Response from the Government

3.6 The Director of Lands accepts the audit recommendation. He has said that apart from reminding LandsD staff to conduct site inspections in accordance with current instructions/guidelines and take measures to improve their effectiveness in accordance with the guidelines, LandsD will also work out monitoring measures to ensure such.

Enforcement actions against breaches of short term tenancy conditions

3.7 In general, an STT agreement contains terms and conditions (e.g. use, tenure, built-over-area and rental) which require the tenant's compliance. Any breach of STT conditions would be subject to LandsD's enforcement actions, including issuing warning letters and termination of tenancy. According to LandsD guidelines, DLOs should follow the stipulated time frames for taking enforcement actions against breaches of STT conditions (see Figure 4).

Figure 4

Enforcement actions against breaches of STT conditions

<i>First warning letter</i>	<ul style="list-style-type: none"> • Issue within 7 days of date of discovery (first inspection) • Specify rectification of breaches to be completed within 28 days
<i>Second inspection</i>	<ul style="list-style-type: none"> • Conduct within 7 days after the 28-day rectification period
<i>Second warning letter</i>	<ul style="list-style-type: none"> • Issue within 7 days after second inspection, if the breaches are not rectified • Specify rectification of breaches to be completed within 14 days
<i>Third inspection</i>	<ul style="list-style-type: none"> • Conduct within 7 days after the 14-day rectification period
<i>Termination of tenancy</i>	<ul style="list-style-type: none"> • Pursue termination of tenancy if breaches of STT conditions persist

Source: Audit analysis of LandsD records

Remarks: In case the same breach (though rectified) is discovered again within 12 months, the subject DLO has the discretion to issue an immediate warning letter specifying rectification of breaches to be completed within 14 days. Inspection should be conducted within 7 days after the 14-day rectification period. If the tenant fails to rectify the breach or respond with a pragmatic and reasonable rectification schedule, the tenancy should be terminated.

3.8 Audit noted that LandsD had no readily available information regarding the enforcement actions taken against breaches of STT conditions (including warning letters issued for each site and the follow-up actions taken — see also paras. 3.17(b) and 3.18). Audit selected 20 STTs from 4 DLOs (DLO/HKW&S, DLO/SK, DLO/ST and DLO/YL — Note 27) to examine their work in this regard. Audit noted room for improvement in LandsD’s enforcement actions against breaches of STT conditions (see para. 3.9).

Need to strengthen enforcement actions against breaches of STT conditions

3.9 Audit noted 2 cases in which DLOs had not taken adequate and timely enforcement actions against breaches of STT conditions (see Case 6 (for breaches related to unauthorised structures on an STT site) and Case 7 (for breach of restriction on use of an STT site)).

Case 6

**Adequate and timely enforcement action not taken
against unauthorised structures on an STT site
(October 2017 to December 2019)**

1. STT I was directly granted to Tenant I for the use of a site in Sai Kung as a private garden and vehicle parking. STT I commenced in June 2002 with a fixed term of 5.5 years and continued half-yearly thereafter.

2. In October 2017, DLO/SK conducted a site inspection and identified several unauthorised structures on or adjoining the STT site, as follows:

Unauthorised structures identified	Area (m ²)
Additional porch adjoining covered carport (exceeding the permitted built-over-area by 10.8 m ²)	14.50
Additional storeroom	7.80
Additional platform with staircase	16.80
Additional porch (partly within STT area)	1.45
Total	40.55

Note 27: *The DLOs were selected from the three regional divisions under LAO, namely, Regional 1, Regional 2 and Regional 3.*

Monitoring of tenancy conditions

Case 6 (Cont'd)

3. In July 2018, DLO/SK considered that it was necessary to take enforcement actions against the irregularities found on site. However, Audit noted that as of December 2019, no enforcement action had been taken against the breaches of STT conditions.

Audit comments

4. The unauthorised structures were identified in October 2017. While DLO/SK considered it necessary to take enforcement action against the unauthorised structures in July 2018, up to December 2019 (about 17 months later), no enforcement action had been taken. In Audit's view, LandsD needs to take adequate and timely enforcement actions against unauthorised structures on STT sites.

Source: Audit analysis of LandsD records

Case 7

Adequate and timely enforcement action not taken against breach of restriction on use of an STT site (January 2002 to January 2020)

1. An STT site in the Southern District was first granted by way of restricted tender in 1988 (STT J) to Tenant J for re-settlement of operators affected by Apleichau North Reclamation. STT J commenced in November 1988 and was granted for the purpose of a marine engine workshop or a marine associated trade workshop. It had a fixed term of 3 years and continued half-yearly thereafter.

2. DLO/HKW&S's site inspection in January 2002 found that the premises at the site were used for retail shop operation, contravening the user clause of STT J (see para. 1). It issued two warning letters to Tenant J requiring the tenant to rectify the irregularities. DLO/HKW&S carried out 2 site inspections in August 2003 and July 2006 and found that the use of the premises complied with the user clause of STT J.

Case 7 (Cont'd)

3. During the 9-year period from May 2009 to May 2018, DLO/HKW&S conducted 4 site inspections (in May 2009, April 2012, August 2015 and May 2018) and found that the premises at the site were used as a retail shop, contravening the user clause of STT J (see para. 1). However, up to January 2020, no enforcement action (including issuance of warning letter) had been taken by DLO/HKW&S.

Audit comments

4. Audit considers it unsatisfactory that despite breach of restriction on use of the STT site having been identified during DLO/HKW&S's site inspections from May 2009 to May 2018, DLO/HKW&S had not taken any enforcement action. In Audit's view, LandsD needs to take adequate and timely enforcement action against breaches of STT conditions.

Source: Audit analysis of LandsD records

Long time taken in processing application for rectification of breaches of STT conditions

3.10 According to LandsD guidelines, breaches of STT conditions should normally be rectified in 1 to 3 months (Note 28). DLOs should tighten up enforcement actions on those serious breaches that are actionable under a tenancy and closely monitor the rectification progress. If the tenant fails to rectify the breaches within a reasonable time frame, the tenancy shall be terminated.

3.11 Audit's examination of the enforcement actions of the 4 DLOs (see para. 3.8) revealed one case in which the DLO had taken a long time in processing application for rectifying breach of STT conditions (see Case 8).

Note 28: *A further extension of not more than 3 months can be given, subject to agreement of a Regional Assistant Director.*

Case 8

Long time taken in processing application for rectifying breach of STT conditions (September 2011 to December 2019)

1. STT K was directly granted to Tenant K for the use of a site in Central and Western District as pleasure garden. STT K commenced in February 1997 with a fixed term of one year and continued quarterly thereafter.
2. In September 2011, DLO/HKW&S conducted a site inspection and found that a garden shed having an area of 49.4 m² exceeded the area permitted (45 m²). In November and December 2011, two warning letters were issued to Tenant K requiring rectification. The breach was found rectified by Tenant K during a site inspection by DLO/HKW&S in September 2013.
3. In October 2015, DLO/HKW&S conducted another site inspection and found that the garden shed had been enlarged to an area of 50.3 m² which exceeded the area permitted (45 m² — see para. 2). In April 2016, DLO/HKW&S issued another warning letter to Tenant K requiring rectification. In the same month, Tenant K applied for regularisation of the excessive area of the garden shed. In June 2016, DLO/HKW&S advised and Tenant K agreed that regularisation of the excessive area of the garden shed would be processed subject to the payment of administrative fee and full market rent for the excessive area of the garden shed from October 2015.
4. In September 2017, DLO/HKW&S conducted a site inspection and confirmed that the garden shed still existed. As of December 2019, the application for regularisation of the excessive area of the garden shed submitted by Tenant K three years ago (in April 2016) was still being considered by DLO/HKW&S.

Audit comments

5. In Audit's view, LandsD needs to take measures to ensure that applications for rectification of breaches of STT conditions are processed promptly and enforcement actions are taken in the event the applications are not approved.

Source: Audit analysis of LandsD records

Audit recommendations

- 3.12 **Audit has recommended that the Director of Lands should:**
- (a) **strengthen enforcement actions against breaches of STT conditions (including the cases identified by Audit in para. 3.9); and**
 - (b) **take measures to ensure that applications for rectification of breaches of STT conditions are processed promptly and enforcement actions are taken in the event the applications are not approved (including the case identified by Audit in para. 3.11).**

Response from the Government

3.13 The Director of Lands accepts the audit recommendations. He has said that:

- (a) LandsD will review the current instructions/guidelines with a view to strengthening enforcement actions including the issuance of warning letters. LandsD will also work out monitoring measures on enforcement actions taken. For Case 7 in paragraph 3.9, LandsD issued a warning letter to Tenant J on 21 February 2020; and
- (b) apart from reminding DLOs to process applications for rectification of breach of STT conditions promptly and further review of enforcement action in accordance with the current instructions/guidelines, LandsD will also consider setting a time target for processing of applications for rectification of breaches of STT conditions.

Recording of short term tenancy information

3.14 TIS was introduced in 2009 for recording information of STTs granted by LandsD. TIS is a web-based system which could be accessed by Headquarters Section, EM Section and 12 DLOs (Note 29). TIS contains information including

Note 29: *All user accounts are given the read permission to view all DLOs' STT records.*

Monitoring of tenancy conditions

name of tenant, how it is granted, tenancy term, commencement date, rent, rent review pattern, amount of deposit, current rent and some basic conditions of each STT granted. According to LandsD guidelines, TIS should be updated by DLO staff upon:

- (a) granting of an STT;
- (b) any change made to the tenancy conditions;
- (c) conduct of a site inspection; and
- (d) termination of an STT.

Need to improve the recording of STT information in TIS

3.15 Audit selected 40 STT records (involving 7 DLOs — see Note 18 to para. 2.7) from TIS. Audit noted that STT records in TIS had errors and omissions, including date of application (3 records), date of execution (2 records), status of STT (2 records) and date of site inspection (16 records).

3.16 In Audit's view, LandsD needs to take measures to ensure the completeness and accuracy of STT information in TIS.

Making better use of information technology for providing management information

3.17 Audit noted that some important STT information was not readily available from TIS, as follows:

- (a) ***Inspection priorities.*** Inspection priorities of STTs were not readily available from TIS (see para. 3.3). According to LandsD, no such data field was available in TIS; and

- (b) ***Inspection conducted and enforcement actions taken against breaches of STT conditions identified.*** Audit noted that:
- (i) omissions were found in recording the date of site inspection in TIS (see para. 3.15); and
 - (ii) information of warning letters issued against breaches of STT conditions was not always input into TIS (Note 30).

3.18 In Audit's view, LandsD needs to take measures to make better use of information technology (e.g. TIS or other related computer systems) for providing management information for monitoring the management of STTs.

Audit recommendations

3.19 **Audit has recommended that the Director of Lands should take measures to:**

- (a) **ensure the completeness and accuracy of STT information in TIS; and**
- (b) **make better use of information technology (e.g. TIS or other related computer systems) for providing management information for monitoring the management of STTs.**

Response from the Government

3.20 The Director of Lands accepts the audit recommendations. He has said that LandsD will take steps to make use of information technology, including TIS or other related computer systems, to enhance the completeness and accuracy of STT information and management of STTs.

Note 30: *Of the 15 warning letters issued between 2011 and 2019 in respect of 8 STTs by 4 DLOs against breaches of STT conditions, information of 14 warning letters was not recorded in TIS.*

PART 4: MANAGEMENT OF VACANT GOVERNMENT SITES SUITABLE FOR SHORT TERM TENANCY USE

4.1 This PART examines LandsD's work in managing VGSs suitable for STT use, focusing on:

- (a) identification of VGSs suitable for STT use (paras. 4.3 to 4.12);
- (b) efforts in putting VGSs suitable for STT use to beneficial use (paras. 4.13 to 4.21); and
- (c) site management and disclosure of site information (paras. 4.22 to 4.33).

VGSs suitable for STT use

4.2 According to LandsD, as a matter of principle, efforts to put VGSs to short-term uses should not jeopardise the long-term development of the sites, and if there is a risk that the long-term development of the sites would be adversely affected, a careful judgment will have to be made to balance the interests. As of September 2019, LandsD managed 955 VGSs suitable for STT use (with a total land area of 192 ha), which, in general, comprised:

- (a) 92 sites (with a total land area of 69 ha) of general commercial interest to the public which were suitable to be let out for commercial uses through STT by means of open tender (see para. 1.6(a)); and
- (b) 863 sites (with a total land area of 123 ha) of no general commercial interest to the public which could be granted directly to particular organisations or bodies (e.g. NGOs) for community, institutional or non-profit-making uses that support specific policy objectives (see para. 1.6(b)).

Identification of vacant government sites suitable for short term tenancy use

4.3 LandsD Headquarters (comprising the senior management and relevant sections including EM Section and Headquarters Section) is responsible for formulating the policy and guidelines for management and disposal of VGSs, and coordinating their implementation. The 12 DLOs of LandsD are responsible for day-to-day operations in managing VGSs under their respective purview, having regard to the policy and guidelines provided by LandsD Headquarters.

4.4 According to LandsD:

- (a) proactive management is taken in putting the pool of VGSs (Note 31) to gainful STT use as far as possible;
- (b) DLOs are required to maintain a good and full record of all VGSs under their respective management for the purpose of identifying sites suitable for STT use to better monitor and utilise such sites. DLOs maintain lists of VGSs suitable for STT use in respect of sites (both with and without general commercial interest to the public) under their respective management; and
- (c) on a quarterly basis, DLOs update lists of VGSs suitable for STT use and submit the lists to the relevant District Review Boards (DRBs — Note 32) for review, the relevant Regional Assistant Directors of LandsD for monitoring and EM Section for records.

Note 31: *The pool of VGSs will change due to addition of new vacant sites (e.g. sites returned to LandsD by government departments after using as temporary works sites) and deletion of existing sites (e.g. sites granted by STTs).*

Note 32: *Each DLO runs a system of DRB with meetings chaired by the District Lands Officer (i.e. head of the DLO) to review land administration work of the district, including the work regarding VGSs.*

Management of vacant government sites suitable for short term tenancy use

Need to ensure completeness and accuracy of lists of VGSs suitable for STT use

4.5 *Some VGSs suitable for STT use not included in the lists.* Audit examination of the records of three DLOs (DLO/HKW&S, DLO/Tsuen Wan and Kwai Tsing (DLO/TW&KT) and DLO/Tai Po (DLO/TP)) as of September 2019 found that some VGSs under their management might be suitable for STT use but these sites were not included in the lists of VGSs suitable for STT use (Note 33). Audit referred these sites to the three DLOs for verification. The three DLOs informed Audit in December 2019, and January and March 2020 that:

- (a) 11 sites (with a total land area of 0.4 ha) were suitable for STT use by NGOs and would be made available for such use; and
- (b) 67 sites (with a total land area of 4.3 ha) were pending reviews on the suitability for STT use.

4.6 *Some VGSs not suitable for STT use included in the lists.* According to LandsD's lists of VGSs suitable for STT use, as of September 2019, 92 sites were of general commercial interest to the public suitable to be let out through STT (see para. 4.2(a)). Audit examination revealed that, of the 92 sites, 69 sites were under tendering, granting or allocation process. For the remaining 23 sites, after verification by the pertinent DLOs upon Audit's referrals, it was found that these sites should not have been included in the lists of VGSs suitable for STT use because:

- (a) 3 sites had been allocated to or would be required by other B/Ds, or under disposal process for long-term development;
- (b) 7 sites were not suitable for STT use; and
- (c) 13 sites had their suitability for STT use being explored.

Note 33: *According to the three DLOs' records as of September 2019, these VGSs were of no general commercial interest to the public but there were no remarks on whether they were suitable for STT use by NGOs.*

4.7 Audit noted that, subsequent to Audit's referrals of various VGSs to the pertinent DLOs for verification (see paras. 4.5 and 4.6), LandsD Headquarters issued a memorandum to DLOs in January 2020 to provide further guidelines on the management of the STT use of VGSs (Note 34). Given that the lists of VGSs suitable for STT use serve as an important record for monitoring and utilising such sites, Audit considers that LandsD needs to make continued efforts to ensure the completeness and accuracy of lists of VGSs suitable for STT use. LandsD also needs to early complete the reviews on suitability for STT use of the sites identified by Audit in paragraphs 4.5(b) and 4.6(c).

***Scope for improving documentation of selection criteria for
VGSs suitable for STT use and the decisions on suitability for STT use***

4.8 Audit noted that there was scope for improvement in the following areas:

- (a) ***Selection criteria for VGSs suitable for STT use not properly documented by some DLOs.*** According to LandsD, local circumstances and demand for VGSs suitable for STT use are different in each district. In selecting VGSs suitable for STT use, each DLO has its own set of criteria (Note 35) which are endorsed by its DRB (see Note 32 to para. 4.4(c)). In response to Audit's enquiries of the selection criteria adopted by the three DLOs (see para. 4.5):
 - (i) two DLOs informed Audit in January and February 2020 that they could not locate the documentation for the selection criteria endorsed by their respective DRBs; and

Note 34: *The memorandum provides more guidelines on various areas, including the identification of new VGSs (e.g. sources from which new sites may arise) and the assessment on the suitability of VGSs for STT use (e.g. examples of criteria for selecting VGSs suitable for STT use by NGOs).*

Note 35: *In May 2008, LandsD Headquarters completed a review of the criteria set by DLOs for selecting VGSs suitable for STT use and, in June 2008, informed all DLOs of the review result. All DLOs are required to take into account the review result and make additional consideration or provide more elaboration, where appropriate, when adopting the criteria for selecting a VGS suitable for STT use. In January 2020, further guidelines were issued by LandsD Headquarters (see para. 4.7).*

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- (ii) one DLO provided Audit with the selection criteria endorsed by its DRB (Note 36); and
- (b) *Decisions of DRBs not properly documented by some DLOs.* According to LandsD guidelines, in DRB meetings, assessments on VGSs as to whether any sites are suitable for STT use (by means of open tender or direct grant — see para. 1.6) will be made and agreed. All the decisions and reasons or justifications for the identification of VGSs suitable for STT use should be properly documented for record purposes. In response to Audit’s enquiries of the documentation of the decisions made by the 12 DRBs for the quarter ended 30 September 2019, as of January 2020:
 - (i) 5 DLOs informed Audit that they had not prepared minutes of meetings to document their respective DRBs’ decisions;
 - (ii) 2 DLOs informed Audit that they were preparing the minutes of meetings to document their respective DRBs’ decisions; and
 - (iii) 5 DLOs had documented their respective DRBs’ decisions in the minutes of meetings.

4.9 In Audit’s view, there is scope for LandsD to improve the documentation of:

- (a) the selection criteria for VGSs suitable for STT use as endorsed by DRBs; and
- (b) the decisions of DRBs on the suitability of VGSs for STT use.

Note 36: *The selection criteria are that: (a) the STT use of a VGS should not prejudice the permanent land use as imposed in statutory plan; (b) any vacant or unoccupied government site with a land area of over 500 m² and with vehicular access would be short-listed for STT use subject to availability of resources in DLO; and (c) priority would be given to those applications with policy directives.*

Scope for making better use of information technology in monitoring VGSs suitable for STT use

4.10 According to LandsD, its Headquarters assumes the role of overall supervision and monitoring of DLOs' work to ensure compliance with the established policy and guidelines. As information relating to VGSs suitable for STT use is maintained by DLOs concerned, LandsD Headquarters needs to call regular returns (in the form of spreadsheets) from DLOs for monitoring purposes. As far as could be ascertained, LandsD Headquarters had not compiled regular management information (e.g. executive summary or highlights) on VGSs suitable for STT use for senior management's information. In Audit's view, there is merit for LandsD to make better use of information technology to record information of VGSs suitable for STT use (e.g. exploring the feasibility to incorporate information relating to VGSs suitable for STT use in TIS, which is a web-based system for recording information of STTs granted (see para. 3.14), or other related computer systems) with a view to enhancing the provision of management information for monitoring purposes.

Audit recommendations

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

- (a) **make continued efforts to ensure the completeness and accuracy of lists of VGSs suitable for STT use;**
- (b) **early complete the reviews on suitability for STT use of the sites identified by Audit in paragraphs 4.5(b) and 4.6(c);**
- (c) **improve the documentation of:**
 - (i) **the selection criteria for VGSs suitable for STT use as endorsed by DRBs; and**
 - (ii) **the decisions of DRBs on the suitability of VGSs for STT use; and**
- (d) **make better use of information technology to record information of VGSs suitable for STT use (e.g. exploring the feasibility to incorporate**

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information relating to VGSs suitable for STT use in TIS or other related computer systems) with a view to enhancing the provision of management information for monitoring purposes.

Response from the Government

4.12 The Director of Lands accepts the audit recommendations. He has said that:

- (a) LandsD has already fine-tuned the current instructions/guidelines on the management of the use of VGSs in January 2020 (see para. 4.7); and
- (b) LandsD will take steps to make use of information technology, including TIS or other related computer systems, to:
 - (i) monitor and ensure the completeness and accuracy of information and proper documentation of selection criteria and DRBs' decisions in respect of VGSs suitable for STT use; and
 - (ii) record relevant information of VGSs suitable for STT use and to enhance analysis and monitoring.

Efforts in putting vacant government sites suitable for short term tenancy use to beneficial use

Need to strengthen efforts in putting VGSs suitable for STT use to beneficial use

4.13 Audit noted that there was scope for strengthening efforts in putting VGSs suitable for STT use to beneficial use, as follows:

- (a) scope for improving consultation with B/Ds concerned and exploring measures for putting VGSs suitable for STT use to beneficial use (see Case 9); and
- (b) need to keep under review effectiveness of the Funding Scheme and enhance publicity (see paras. 4.14 to 4.17).

Case 9

**Scope for improving consultation with B/Ds concerned and exploring measures
for putting VGSs suitable for STT use to beneficial use
(July 2004 to January 2020)**

1. For three VGSs suitable for STT use (Sites A, A1 and A2 with land areas of 13,900 m², 4,930 m² and 4,150 m² respectively) located side by side in Lantau Island, in July 2004, upon the then Health, Welfare and Food Bureau's request, the three sites were reserved for the development of the second phase of North Lantau Hospital.

Applications for beneficial use of Sites A, A1 and A2

2. *First application for STT use of Site A1.* In July 2010, a religious organisation (Applicant D) submitted an STT application for Site A1 for religious and ancillary uses for a period of three to five years. In August 2010, DLO/Islands (DLO/Is) rejected Applicant D's application as there was a development plan for Site A1.

3. In January 2020, in response to Audit's enquiry, DLO/Is said that:

- (a) according to file records, Site A1 was reserved for hospital use. It was believed that the rejection of the STT application was based on such information; and
- (b) regarding the STT application, it had not made any circulation to the Food and Health Bureau (FHB) to enquire the then latest development programme for the permanent use of Site A1.

4. *Second application for temporary use of Sites A and A1.* In February 2013, the Transport Department submitted an application for temporary use of Sites A and A1 as a stacking area for non-franchised bus for a period of 3.5 years. DLO/Is referred the application to FHB for comments. In April 2013, FHB objected to the application on the grounds that the proposed temporary use of 3.5 years might impose constraints on the permanent use of the sites (Note 1) and there might be possible management issues concerning the road accessed by non-franchised bus to the stacking area.

Case 9 (Cont'd)

5. *Third application for STT use of Sites A, A1 and A2.* In July 2016, a sports organisation submitted an STT application for Sites A, A1 and A2 for sports use for a period of three years. DLO/Is referred the application to FHB for comments in November 2017. FHB did not agree to the application as the proposed STT term of three years would be beyond the planned commencement date of site investigation works and related minor studies of the development of the second phase of North Lantau Hospital.

Temporary use of Sites A and A1

6. Sites A and A1 have been put to temporary use as a resting place since July 2019 and a football pitch since April 2017 respectively under a co-management arrangement in which the facilities are co-managed by various B/Ds (Note 2). According to LandsD, the two sites are still available for STT application (Note 3).

Audit comments

7. Audit noted that:

- (a) DLO/Is had not consulted FHB about the then latest development programme for the permanent use of Site A1 before rejecting the first application (see para. 3(b) above);
- (b) regarding the second and the third applications, DLO/Is had consulted FHB who objected/did not agree to the applications because the proposed tenancy period might impose constraints on the permanent use of the sites and would be beyond the planned works commencement date, and there would be other management issues (see paras. 4 and 5 above). However, there was no documentary evidence showing that LandsD had explored with FHB whether its concerns could be addressed (e.g. by shortening the tenancy period); and
- (c) Sites A and A1 had been put to temporary use under the co-management arrangement since July 2019 and April 2017 respectively (see para. 6 above).

Case 9 (Cont'd)

8. With a view to putting VGSs suitable for STT use to beneficial use, in Audit's view, LandsD needs to:
- (a) consult the B/Ds concerned on applications for temporary use of VGSs suitable for STT use and reserved for development;
 - (b) fully explore with the B/Ds concerned possible ways of addressing their concerns in considering applications for temporary use of VGSs suitable for STT use and reserved for development; and
 - (c) consider using the co-management arrangement to put VGSs suitable for STT use to beneficial use as and when appropriate.

Source: Audit analysis of LandsD records

Note 1: According to FHB, a review on the development of private hospital services at Sites A and A1 was underway at that time and the sites might be required shortly depending on the result of the review.

Note 2: The construction and maintenance costs of the facilities at Sites A and A1 are funded by the Islands District Council. Upon completion, the facilities are co-managed by various B/Ds which are responsible for operational matters under their respective purview. For example, the Home Affairs Department is responsible for handling public complaints and daily maintenance of the facilities, and LandsD is responsible for handling cases involving unauthorised occupation of land.

Note 3: According to LandsD, if any alternative proposals are submitted by the public or other B/Ds in respect of Sites A and A1, it will, in consultation with the B/Ds involved in the co-management arrangement, consider whether the proposals could achieve a more gainful use of the sites to facilitate the Government as a whole to make an informed decision.

4.14 Need to keep under review effectiveness of the Funding Scheme and enhance publicity. According to DEVB, some VGSs suitable for STT use and available for community, institutional or non-profit-making uses by NGOs are subject to technical constraints, such as constraints posed by adjoining slopes, dilapidated building structures requiring substantial restoration and repair works, or inadequate infrastructural support. Currently, a prospective NGO tenant is expected to resolve these concerns and take up the costs of the capital works on its own, but the required

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efforts and financial commitment may be regarded by some to be disproportionate to the proposed non-profit-making uses or may go beyond some NGOs' financial and technical capability.

4.15 To support the use of VGSs suitable for STT use and of no general commercial interest to the public by NGOs, DEVB launched a \$1 billion Funding Scheme (see para. 1.11) in February 2019. The Funding Scheme would provide successful NGO applicants with subsidies to support the costs of basic works (e.g. slope upgrading and site formation) required to make the leased sites fit for use to take forward worthy projects for the community.

4.16 According to DEVB and LandsD:

DEVB

- (a) DEVB had made efforts in promoting the Funding Scheme (e.g. leveraging referrals from government departments, such as LandsD and the Home Affairs Department, as well as professional institutes and other relevant organisations in reaching out to interested applicants);
- (b) since the launch of the Funding Scheme in February 2019 and up to September 2019, a total of eight applications (Note 37) had been received and approved;
- (c) since the launch of the Funding Scheme in February 2019, DEVB had invited LandsD to bring up cases of STT applications in which there were particular concerns among bureaux in relation to the granting of policy support or otherwise. This would facilitate a more timely approach to be taken to discuss the applications with the concerned bureau(x) for a decisive outcome. This trial arrangement was bearing fruits in terms of taking forward a number of STT applications. DEVB was prepared to collaborate with LandsD closely in order to expedite the processing of pending STT applications, particularly those proposing beneficial uses for the community, by individual DLOs; and

Note 37: *The eight applications involved a total approved funding of \$70.3 million.*

LandsD

- (d) LandsD had provided information on approved STT applications to DEVB for consideration of funding support under the Funding Scheme.

4.17 As the Funding Scheme is a new measure to support the use of VGSs suitable for STT use and of no general commercial interest to the public by NGOs, in Audit's view, DEVB, in collaboration with LandsD, needs to keep under review the effectiveness of the Funding Scheme and enhance publicity as and when needed with a view to making better use of such VGSs suitable for STT use.

Audit recommendations

4.18 **Audit has *recommended* that the Director of Lands should, with a view to putting VGSs suitable for STT use to beneficial use:**

- (a) **consult the B/Ds concerned on applications for temporary use of VGSs suitable for STT use and reserved for development;**
- (b) **fully explore with the B/Ds concerned possible ways of addressing their concerns in considering applications for temporary use of VGSs suitable for STT use and reserved for development; and**
- (c) **consider using the co-management arrangement to put VGSs suitable for STT use to beneficial use as and when appropriate.**

4.19 **Audit has *recommended* that the Secretary for Development should, in collaboration with the Director of Lands, keep under review the effectiveness of the Funding Scheme and enhance publicity as and when needed with a view to making better use of VGSs suitable for STT use and of no general commercial interest to the public by NGOs.**

Response from the Government

4.20 The Director of Lands accepts the audit recommendations in paragraph 4.18. He has said that LandsD will:

- (a) review the current instructions/guidelines and mechanisms to ensure that the relevant B/Ds are consulted on applications for temporary use of VGSs reserved for development under their respective purview;
- (b) take steps to explore with the relevant B/Ds possible ways of addressing their concerns when considering applications for temporary use of VGSs reserved for development under their respective purview; and
- (c) take steps to explore with the concerned B/Ds on the co-management arrangement for VGSs when considering applications for temporary use of VGSs reserved for development under their respective purview with a view to putting those VGSs to beneficial use as and when appropriate.

4.21 The Secretary for Development accepts the audit recommendation in paragraph 4.19. The Director of Lands has said that LandsD will cooperate with DEVB in implementing the audit recommendation.

Site management and disclosure of site information

Inadequacies in site management of some VGSs suitable for STT use

4.22 LandsD is responsible for the site management of VGSs suitable for STT use before their granting, including fencing on site, providing guarding services or patrolling services, grass cutting and removal of rubbish and stagnant water, and clearance of illegal structures. Site management work is provided under LandsD's term contracts (Note 38).

4.23 Between October and December 2019, Audit conducted site visits to 17 VGSs suitable for STT use (with land areas of over 1 ha each) managed by eight DLOs (DLO/HKE, DLO/HKW&S, DLO/Is, DLO/TW&KT, DLO/North, DLO/TP, DLO/Tuen Mun (DLO/TM) and DLO/YL). Audit noted inadequacies in management of some sites (each of them had one or more inadequacies), as follows:

- (a) 12 (71%) sites with broken fences (see Photograph 5 for an example);
- (b) 10 (59%) sites with gates at the entrance opened/unlocked (see Photograph 6 for an example);
- (c) 2 (12%) sites with growing of long grass which would lead to pest control issues (e.g. breeding of mosquitoes) (see Photograph 7 for an example);
- (d) 7 (41%) sites with illegal dumping of waste (see Photograph 8 for an example);
- (e) 2 (12%) sites with defective government land notice boards; and

Note 38: *As of September 2019, LandsD had 18 site management term contracts, comprising 3 contracts for security guard services, 5 contracts for maintenance of vegetation and 10 contracts for clearance and minor works. These contracts are of terms of 18 to 30 months in general. According to LandsD, apart from site management services, these term contractors also provide other services such as break-in operations in connection with removal of unauthorised occupiers within unauthorised structures and tree-risk assessments.*

Management of vacant government sites suitable for short term tenancy use

- (f) 1 (6%) site with suspected unauthorised occupation of land for vehicle parking (see paras. 4.25 and 4.26).

Photographs 5 to 8

Inadequacies in site management

Photograph 5

Broken fences



Photograph 6

Gate at the entrance opened



Photograph 7

Growing of long grass



Photograph 8

Illegal dumping of waste



Source: Photographs taken by Audit staff in November/December 2019

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4.24 For the VGSs suitable for STT use and with irregularities noted during Audit's site visits, Audit considers that there is scope for LandsD to take measures to improve the site management, as illustrated by site management problems at two sites (see paras. 4.25 to 4.28).

4.25 For a VGS suitable for STT use (Site B) with a land area of 32,200 m² in Tuen Mun, Audit's site visit in October 2019 found that there was suspected unauthorised occupation of land for vehicle parking (see Photograph 9). Audit examination of the records of the pertinent DLO (i.e. DLO/TM) revealed that, in March 2017 and November 2019, DLO/TM conducted site inspections and found unauthorised occupation of Site B for vehicle parking. In February and March 2020, DLO/TM informed Audit that:

- (a) no record was found for the follow-up actions on the irregularity identified in the site inspection conducted in March 2017; and
- (b) for the illegal parking problem identified in the site inspection conducted in November 2019, while DLO/TM would continue to take action to expel the vehicles parked at Site B, it had also sought assistance from the Hong Kong Police Force in December 2019. As parts of Site B were existing vehicular accesses, it was impractical to fence off the site entirely. DLO/TM would consider erecting barriers such as bollards and concrete blocks at vulnerable points to curb the illegal parking activity without obstructing the existing accesses.

Photograph 9

**Suspected unauthorised occupation of land
for vehicle parking**



Source: Photograph taken by Audit staff on 27 October 2019 at 3:50 p.m.

4.26 In Audit's view, LandsD needs to take timely enforcement actions against unauthorised occupation of VGSs suitable for STT use.

4.27 For a VGS suitable for STT use (Site C — with a land area of 14,900 m² located close to a residential area in Tuen Mun) visited by Audit, Audit noted that there were site management problems. The salient points are as follows:

- (a) in 2018 and 2019, DLO/TM received repeated complaints from nearby residents on site management. The complaints included broken fences, the gate at the entrance broken, trespassing for playing model planes/cars, unauthorised occupation for placing miscellaneous articles (e.g. goal posts and flags) on the site and hygiene problem caused by illegal dumping of waste;
- (b) follow-up actions (e.g. site inspections, repair works, posting notices requiring removal of miscellaneous articles placed on the site and erection

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of a government land notice board) were taken by DLO/TM in about one month's time after receiving the complaints;

- (c) in view of the repeated complaints, in March 2019, DLO/TM instructed its security guard term contractor to deploy two shifts of guard service at Site C and the related guard service commenced on 1 April 2019. However, after the commencement of guard service, the gate at the entrance of Site C was still found broken on two occasions during DLO/TM's site inspections in April and October 2019; and
- (d) Audit's site visit in December 2019 found that the gate at the entrance was opened and there was illegal dumping of waste.

There were repeated complaints on the site management problems at Site C (see (a) above). While DLO/TM had taken follow-up actions on the site management problems, the problems had not yet been fully resolved (see (c) and (d) above).

4.28 In March 2020, DLO/TM informed Audit that:

- (a) the broken gate and fence were repaired and Site C was tidied up; and
- (b) DLO/TM had also issued a letter to the security guard term contractor to remind it to report to DLO/TM immediately if any irregularities were detected.

In Audit's view, LandsD needs to make continued efforts to ensure that the site management problems at Site C are timely resolved.

Need to improve disclosure of information relating to VGSs suitable for STT use

4.29 For those VGSs suitable for STT use and of no general commercial interest to the public (see para. 4.2(b)), since November 2017, LandsD has compiled and published a list of such sites (hereinafter referred to as the List of sites for NGOs) on the Government's GeoInfo Map web page (see Note 14 to para. 2.4(a)(i)). The List sets out key site information, including site location, site area, estimated available period, site condition and application status. Interested NGOs may make reference

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to the List and submit STT applications to the relevant DLOs. According to LandsD, the List would be updated every two weeks. As of September 2019, there were 863 sites on the List.

4.30 Of the 863 sites on the List of sites for NGOs as of September 2019, 351 (41%) had land areas of over 500 m² each. Audit examined the site condition information disclosed for the 351 sites and noted that:

- (a) 26 (7%) sites did not have information on site topography (i.e. whether the sites are flat land or contain slopes), while the remaining 325 (93%) sites had such information;
- (b) 238 (68%) sites did not have information on whether vegetation existed or not (i.e. whether the sites are with trees, grassland or concrete-paved), while the remaining 113 (32%) sites had such information; and
- (c) 101 (29%) sites did not have information on whether vehicular/pedestrian access existed or not, while the remaining 250 (71%) sites had such information.

4.31 In Audit's view, LandsD needs to take measures to improve the disclosure of information relating to VGSs suitable for STT use on the Government's GeoInfo Map web page (e.g. providing more comprehensive site condition information) with a view to facilitating interested parties in making STT applications.

Audit recommendations

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

- (a) **take measures to improve the site management of VGSs suitable for STT use, including:**
 - (i) **taking timely enforcement actions against unauthorised occupation of VGSs suitable for STT use; and**

- (ii) **making continued efforts to ensure that the site management problems at Site C are timely resolved; and**

- (b) **take measures to improve the disclosure of information relating to VGSs suitable for STT use on the Government’s GeoInfo Map web page (e.g. providing more comprehensive site condition information) with a view to facilitating interested parties in making STT applications.**

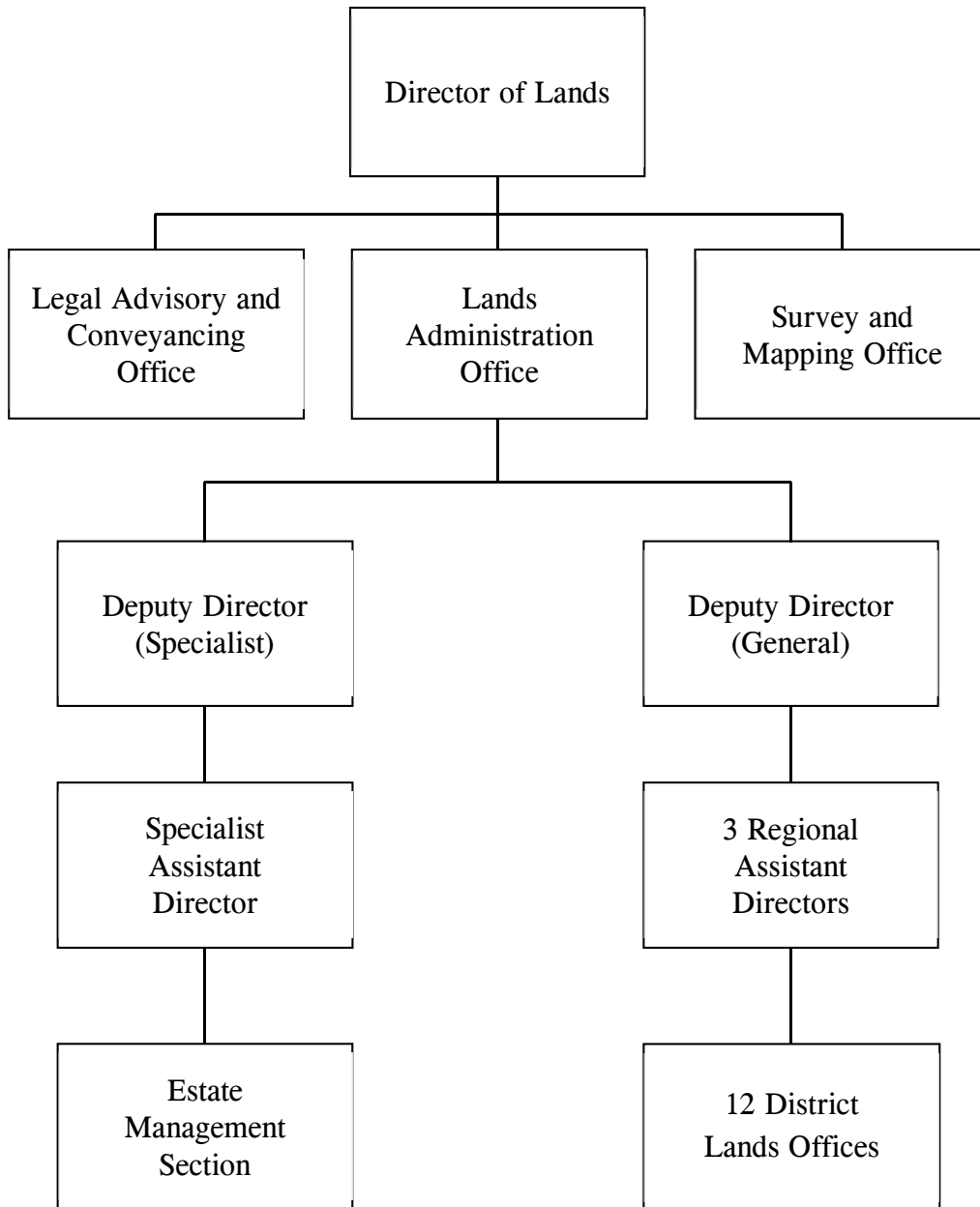
Response from the Government

4.33 The Director of Lands accepts the audit recommendations. He has said that LandsD will:

- (a) take measures to improve the site management of VGSs suitable for STT use, including taking timely enforcement actions against unauthorised occupation of VGSs suitable for STT use and making continued efforts to ensure that the site management problems at Site C are timely resolved, having regard to resources and priorities; and

- (b) take steps to make use of information technology, including TIS or other related computer systems, to improve the disclosure of information relating to VGSs suitable for STT use.

**Lands Department:
Organisation chart (extract)
(30 September 2019)**



Source: LandsD records

Acronyms and abbreviations

Audit	Audit Commission
B/Ds	Government bureaux/departments
CEDD	Civil Engineering and Development Department
DEVB	Development Bureau
DLC	District Lands Conference
DLO	District Lands Office
DLO/HKE	District Lands Office/Hong Kong East
DLO/HKW&S	District Lands Office/Hong Kong West and South
DLO/Is	District Lands Office/Islands
DLO/KE	District Lands Office/Kowloon East
DLO/SK	District Lands Office/Sai Kung
DLO/ST	District Lands Office/Shau Tin
DLO/TM	District Lands Office/Tuen Mun
DLO/TP	District Lands Office/Tai Po
DLO/TW&KT	District Lands Office/Tsuen Wan and Kwai Tsing
DLO/YL	District Lands Office/Yuen Long
DLOC	District Lands Office Conference
DRB	District Review Board
EM	Estate Management
FHB	Food and Health Bureau
GLL	Government land licence
ha	Hectares
HAB	Home Affairs Bureau
LACO	Legal Advisory and Conveyancing Office
LAM	Land Administration Meeting
LandsD	Lands Department
LAO	Lands Administration Office
m ²	Square metres
NGO	Non-governmental organisation
STT	Short term tenancy
TIS	Tenancy Information System
VGSs	Vacant government sites