

# **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.