

## **Executive Summary**

### **Direct Investigation Granting of Short Term Tenancies at Nominal Rent**

#### **Background**

It is Government policy to grant short term tenancies (“STTs”) for vacant Government land that has no intended use or is not required for development in the near future. Where an STT is for a non-profit-making purpose and has the “policy support”<sup>1</sup> of the relevant policy bureau or Government department, the District Lands Office (“DLO”) concerned under Lands D will approve the application directly and grant the tenancy at nominal rent.

2. From public complaints, we noticed impropriety in some cases of DLOs’ handling of STTs at nominal rent, including failure to inspect the leased sites over a long period and to take enforcement actions against tenants who violated the tenancy agreements. The sites either became derelict or were misused. The Ombudsman, therefore, decided to initiate a direct investigation into how Lands D and its DLOs handle STTs at nominal rent. We examined:

- (1) the criteria and procedures of granting STTs at nominal rent;
- (2) the mechanism for renewing such STTs; and
- (3) the monitoring of such STTs.

#### **Current Situation**

##### ***Procedures of Processing Applications***

3. According to the Lands D guidelines which are still in use (“established guidelines”), upon receipt of an application, the DLO concerned will refer it to the relevant bureau/department for its indication of “policy support” or otherwise to the application. The DLO will also copy the application to other departments to make sure that the STT to be granted is acceptable to them. If the bureau/department gives its “policy support” and there is no objection from the other departments, the DLO will grant an STT normally of three months to seven years and usually with a clause for “automatic renewal”<sup>2</sup>.

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<sup>1</sup> “Policy support” means that the relevant bureau/department, based on its policy, supports and recommends that the DLO grant an STT at nominal rent to the applicant directly.

<sup>2</sup> “Automatic renewal of tenancy” means that if, before the expiry of a tenancy, both the DLO and the tenant have not indicated any intention to terminate it, then the tenancy will automatically continue until either party terminates it in accordance with the terms of the tenancy agreement.

### ***Roles and Responsibilities***

4. Lands D deems that, as far as the processing of STT applications is concerned, DLOs only act as an agent of Government land whose duty is to execute the decisions of the relevant bureaux/departments. They would, therefore, not participate in the bureaux/departments' deliberations on providing "policy support" to any particular application, nor do they have any responsibility to query the latter's justifications for giving "policy support". Lands D also has no authority to formulate guidelines to specify how bureaux and departments should provide "policy support" to STT applications.

### ***Criteria and Procedures of Renewal***

5. The "established guidelines" state that, at the end of an STT, if there is still no intended use or development plan for the site concerned, the STT can normally be renewed on a monthly or quarterly basis. Every three years or before the expiry of the STT, the DLO will write to seek confirmation from the tenant on his/her continued occupancy of the site. With his/her confirmation, the STT will not be terminated.

6. After we started our preliminary inquiry, Lands D issued further guidelines ("supplementary guidelines") stipulating that within three to six months before the expiry of the original STT or every three years, the DLO concerned should ask the relevant bureau/department whether it still supports the STT, and request it to confirm the following:

- (1) that the existing occupant of the site is still the organisation to which the bureau/department gave its support for granting the STT at nominal rent; and
- (2) that the existing use of the site still conforms to the purpose specified when the STT was granted.

With confirmation by the bureau/department, the DLO will not terminate the STT.

### ***Monitoring System***

7. According to the "established guidelines", the DLO should conduct site inspections of the leased land at least once every three years. Under the "supplementary guidelines", the DLO should conduct site inspections within three to six months before the expiry of the original tenancy or every three years to prevent subletting of the land, unauthorised building works on the land or illegal occupation of the adjoining Government land by the tenant.

## **Our Comments**

### ***Confused Roles and Responsibilities***

8. We accept that it is unnecessary for the DLOs to participate in the deliberations of the bureaux/departments on their “policy support” for the granting of tenancies. Nevertheless, to ensure proper use of land resources and compliance with tenancy conditions, the DLOs, as the land administrators, should play the leading role in processing STT applications and renewals and monitoring the implementation of tenancy conditions, and take the necessary actions accordingly.

9. Lands D, however, has never defined with the bureaux and departments their respective roles and responsibilities in relation to the granting of STTs, including what factors the bureaux/departments should take into account in giving their “policy support”, what information they should provide to the DLOs, which level of staff in the bureaux/departments should make decisions on “policy support”, and what responsibilities the bureaux/departments and the DLOs should take in processing applications and renewals as well as the monitoring of STTs. As a result of the lack of such delineation, the DLOs and the bureaux/departments each follow their rules in handling STTs. When problems arise, they tend to shift the responsibility to each other.

### ***Inadequate Justification for Giving ‘Policy Support’***

10. In the cases we studied, most of the bureaux/departments had not explained in detail the justifications for their “policy support” and the DLOs had never raised queries.

11. In granting STTs at nominal rent Government essentially allows the tenants to use the land, a public resource, almost for free. We consider it only reasonable for the DLOs to request background information and detailed explanation from the bureaux/departments on their “policy support”. That should by no means be construed as the DLO’s undue intervention in the decisions of the bureaux/departments. Moreover, such requests would help the bureaux/departments to think twice before giving “policy support”. This would also facilitate subsequent monitoring of the STTs by the DLOs and the bureaux/departments.

### ***Failing to Follow the Procedures of Tenancy Renewal***

12. The cases studied reveal that DLOs had not, in accordance with the “established guidelines”, written to seek confirmation from the tenants on their continued occupancy of the land once every three years or before the expiry of the STTs. All the tenancies were also renewed automatically without the DLOs having consulted the bureaux/departments which had originally given “policy support”. This shows that the tenancy renewal system is lax and that the DLOs have neglected their duty in handling renewals.

### ***Lack of Regular Inspections***

13. According to the “established guidelines”, Lands D requires the DLOs to inspect each STT site at least once every three years. However, in most of the cases studied, the DLOs had not complied with this requirement. Nor had the bureaux/departments which had given “policy support” to the tenancies conducted any inspection of the STT sites.

14. We consider that both the DLOs and such bureaux/departments have a responsibility to monitor the tenants’ utilisation of STT sites, and that the DLOs should play the leading role. Lands D should, in consultation with the bureaux/departments, set up a mechanism to enable both sides to effectively monitor the utilisation of STT sites. Lands D should also step up its supervision of the DLOs to ensure that they do regularly inspect STT sites as stipulated in the “supplementary guidelines”.

### ***Failing to Take Enforcement Actions against Tenancy Breaches***

15. In one case studied, a DLO discovered in 2001 breaches of the conditions of an STT, including unauthorised building works on the site and illegal sub-letting. In 2002, it issued a “final warning” to the tenant and ordered rectification as soon as possible. However, the DLO has failed to follow through and the irregularities have continued for more than ten years after they were first discovered.

16. In another case, a DLO found in 2006 advertisement signboards erected on an STT site in breach of the tenancy conditions. Though the DLO subsequently contacted the tenant twice on some other matters, it did not request the tenant to rectify the breach, thus allowing the tenant to make private gains with public resources over a long period.

### ***Delay in Handling Applications for Regularisation***

17. Yet another case reveals that a tenant had applied for regularisation of an anomaly on an STT site, but the DLO just sat on the application for nearly four years.

### **Recommendations**

18. The Ombudsman recommended that Lands D:
- (1) discharge its duty as the land administrator by taking the initiative to formulate with the bureaux/departments providing “policy support” feasible objectives and procedures for the vetting of applications, renewal and monitoring of STTs, so as to define clearly the roles and responsibilities of both parties to facilitate cooperation and division of work;

- (2) request the bureaux/departments to provide sufficient background information when giving “policy support” and to state clearly their justifications for supporting the granting/renewal of the STTs, so as to facilitate subsequent monitoring of those tenancies;
- (3) inspect STT sites once every three years as pledged in the “supplementary guidelines”, in order to step up the monitoring of those sites;
- (4) adopt measures to ensure that STT conditions are strictly enforced by its staff and all breaches by tenants are thoroughly dealt with; and
- (5) set up a proper mechanism and performance pledges regarding the handling of applications for regularisation of breaches of tenancy conditions.

19. Lands D basically accepted our recommendations.

**Office of The Ombudsman  
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