

# EXECUTIVE SUMMARY

## Direct Investigation on Allocation and Monitoring of Government Land

### Background and Ambit

In the course of investigating a complaint in 2008, this Office noted an apparent lack of monitoring by the Administration over the use of a piece of Government land (“the Site”) by a sports association (“the Association”). After a preliminary inquiry, The Ombudsman declared in June 2009 a direct investigation to examine:

- (a) the award of the use of the Site to the Association; and
- (b) the monitoring of the use of the Site by the Education Bureau (“EDB”) and the Lands Department (“Lands D”).

2. The Education Department (“ED”) and the New Territories Administration (“NTA”) were the forerunners of EDB and Lands D respectively insofar as this case is concerned.

### Facts of Case

3. Our investigation has revealed the following:
  - (a) The Association was formed in the 1960s under the Societies Ordinance.
  - (b) In 1974, the Director of Education (“D of E”) was appointed to the Executive Committee of the Association.
  - (c) On 19 August 1974, D of E wrote to the District Officer concerned of NTA stating that “ED would like to obtain a lot of land ... for the purpose of establishing an outdoor education centre for schools primarily”.
  - (d) On 23 December 1974, the Secretary for the New Territories replied to D of E that “allocation of the site shown coloured pink on the attached plan (i.e. the Site) ... is now made subject to the enclosed Engineering Conditions (for Government Projects)”. The Association was named under the caption of the Engineering Conditions.
  - (e) In 1974 and 1978, the Association obtained two grants of \$500,000 and \$110,000 respectively from the then Governor’s Special Fund for the construction of an activity centre and an extension to the centre on the Site.

- (f) In October 1976, D of E applied to the Deputy Financial Secretary (“DFS”) for a subvention of \$25,000 per annum to the Association for maintenance and operation of the centre. DFS rejected the application on the ground that the activities were not subvention-worthy.
- (g) In December 1976, D of E sought DFS’ approval to pay rent to the Association at \$1,500 per month for using part of the Association’s accommodation on the Site. The fact that D of E himself was the allocatee of the Site was not mentioned in his application.
- (h) In February 1977, D of E’s application was approved. Thereafter, the rent was adjusted from time to time according to the advice of the Ratings and Valuation Department. However, no written lease agreement between ED/EDB and the Association was made. The lease was terminated in 2004 when EDB ceased to use the Site. The total rental paid over the years amounted to \$1.8 million.
- (i) In 1992, D of E was appointed ex-officio member of the Executive Committee of the Association.
- (j) During 2000 to 2006, the number of participants in the Association’s activities per year was as follows:

<b>Year</b>	<b>Number of Participants</b>
2000	175
2001	215
2002	175
2003	280
2004	204
2005	128
2006	120

- (k) In 2007, with the Association ceasing its activities, the number of participants dropped to zero.
- (l) In February 2007, the Police temporarily removed the Association from the list of societies.
- (m) In October 2007, the Association resumed its activities.
- (n) In 2008, the Association was incorporated as a limited company.
- (o) Between 2006 and 2008, EDB and Lands D had a dispute over which department should be responsible for taking action on the under-utilised Site. EDB argued that as Lands D was the sole competent authority to decide whether the Site should continue to be used by the Association, it should contact the Association direct to get

back the Site.

## **Our Observations**

### ***Shirking of Responsibility***

4. EDB argued that “the District Office (of NTA) and the Association were well aware of the fact that the Site was actually allocated to (the Association) using the technical means of Government Land Allocation (“GLA”) ... to effect an administrative convenience”. In support of this argument, EDB referred to the caption of the Engineering Conditions (**para. 3(d)**) and the direct contacts between the Association and the District Office on matters pertaining to the use of the Site.

5. Lands D retorted that under Government’s land policy, allocation of Government land to Government departments is by GLA, and that to non-government organisations by Short Term Tenancy or Private Treaty Grant. For unallocated Government land, Lands D is responsible for its administration. For Government land allocated by GLA, the allocatee Government department will take over the role of Lands D in managing the Government land. In the case under consideration, the Site was allocated not to the Association, but to ED.

6. Having examined the submissions by EDB and Lands D, we find EDB’s argument unconvincing. ED’s request to NTA for land and NTA’s allocation of the Site to ED in 1974 were stated in unequivocal language and documented on file (**paras. 3(c) and (d)**). The allocation conformed with the prevailing land policy (**para. 5**). The caption of the Engineering Conditions (**para. 3(d)**) and the direct contacts between NTA and the Association are no evidence that the Site was allocated by NTA to the Association direct. We, therefore, find ED, and now EDB, to be the allocatee of the Site.

7. As the allocatee of the Site, EDB should have readily accepted responsibility for the Site, when approached by Lands D in 2006. However, EDB had acted otherwise (**paras. 3(o) and 4**). Its response fell short of the standard required of an accountable Government department.

8. If “the technical means of GLA” had, as alleged, been used “to effect an administrative convenience” for awarding the Site to the Association (**para. 4**), that would have been an abuse of GLA and a serious act of maladministration.

### ***Lack of Monitoring***

9. EDB claimed to have “supervised” the Association, for the sake of promoting school sports activities, by collecting from it yearly figures of activities for conducting curriculum review and responding to enquiries relating to student learning in physical education, and advising it to stop its activities upon learning that it had been temporarily removed from the list of societies (**para. 3(l)**). After the Association’s resumption of activities (**para. 3(m)**), EDB sought agreement for its officers to visit the Association twice a year, and for the Association to provide EDB with yearly figures of activities, notes of annual general meetings, and notices of change of office-bearers.

10. We consider that EDB, as the allocatee of the Site and ex-officio member of the Executive Committee of the Association (**paras. 3(d) and (i)**), should have done more than just collecting statistics and paying infrequent visits under the notion of promoting school sports activities. If EDB had exercised due care and diligence, it would have noticed that the Site was

seriously under-utilised (**paras. 3(j) and (k)**) and taken early and appropriate remedial action, for example, discontinuing the use of the Site by the Association and returning it to Lands D. At the very least, it should have worked out proper arrangements with the Association for monitoring and appraisal to ensure that the Bureau's policy support to the Association continued to be justified.

11. It was reasonable of Lands D to expect EDB, the allocatee of the Site, to account for its use. When Lands D questioned the usage of the Site, it checked that with EDB and considered the need for reallocating the Site to other users. Lands D has thus duly discharged its duty.

### ***Payment of Rent***

12. We find it absurd that ED had to pay rent to the Association for using part of the Site, of which the Department itself was the allocatee. We are also baffled by the lack of a written agreement between ED/EDB and the Association for leasing the premises (**para. 3(h)**).

### **Recommendations**

13. The Ombudsman recommends that:

- (a) **EDB** keep a close watch over the use of the Site by the Association to ensure that the agreed aims and objectives are achieved;
- (b) **EDB** make proper arrangements (including setting of standards) for monitoring and appraising the activities of the Association;
- (c) **EDB** discontinue the use of the Site by the Association in case of under-utilisation or abuse, and return it to Lands D; and
- (d) **Lands D**, in consultation with all bureaux/departments, examine whether any similar cases exist and rectify any anomalies as soon as possible.

**Office of The Ombudsman**  
**September 2010**