

For discussion
on 8 January 2001

**LEGISLATIVE COUNCIL
PANEL ON PLANNING, LANDS AND WORKS**

BUILDING SAFETY AND TIMELY MAINTENANCE
To tackle unauthorized building works

PURPOSE

This paper seeks Members' views on measures to tackle unauthorized building works including illegal rooftop structures.

BACKGROUND

2. Under the Buildings Ordinance, all building works (except certain exempted works) require the Building Authority's prior approval of plans and consent for commencement. Otherwise, they are unauthorized and subject to enforcement action by the Buildings Department.

PROBLEM

3. Many older buildings carry unauthorized building works, in particular on their exterior. Existence of such external works aggravates the deterioration of buildings and poses risk to structural and fire safety. They may also cause hygiene problems and environmental nuisance.

4. Illegal rooftop structures are a complex and long-standing social problem which needs to be addressed through effective enforcement and appropriate rehousing arrangements. Some of these structures erected on the rooftop of single-staircase buildings block the main refuge in case of fire. The risk to life and limb is serious.

5. The Buildings Department estimates that there are about 800 000 unauthorized building works including illegal rooftop structures. Most of them are concentrated on buildings 20 to 40 years old. Some 12 000 illegal rooftop structures cover the rooftops of 4 500 single-staircase buildings.

6. Government is determined to remove these risks to public safety. In February 2000, the Secretary for Planning and Lands set up a task force to study ways *inter alia* to tackle unauthorized building works. The team has trawled records over the years and taken reference from overseas practices.

TASK FORCE PROPOSALS

7. Having examined the situation and reviewed the law and enforcement policy and practice, the task force proposes that:

- (a) Government should enhance support for owners to remove their unauthorized building works;
- (b) the enforcement policy and practice for tackling unauthorized building works should be revised and strengthened respectively in step with changes in circumstances and community expectations, with additional resources provided for the removal of such works posing a risk to safety;
- (c) the law relating to unauthorized building works should be reviewed to update powers and penalties for more effective deterrence and give professionals and competent contractors authority to assume a more active role in building control;
- (d) illegal rooftop structures on single-staircase buildings should be cleared as a priority to remove their risk as potential “fire-traps” and new unauthorized building works of any sort should be cleared as soon as they are identified;
- (e) market forces should be used to encourage building owners to face up to their statutory responsibilities for building safety and to remove their unauthorized building works;
- (f) all concerned in our community should play their part in awakening a responsible concern for our built environment; and
- (g) public education should be sustained to focus owners’ attention on unauthorized building works as a liability, not an asset.

These proposals are described in more detail in the following paragraphs.

ENHANCING GOVERNMENT SUPPORT

8. The task force has earlier put to Members a proposal for merging the existing Building Safety Improvement Loan Fund and Fire Safety Improvement Loan Fund. The ambit of the combined \$700 million-fund should be extended to cover removal of unauthorized building works.

9. In addition to financial assistance, the Buildings Department is committed to doing its best to provide technical advice and assistance to owners on building maintenance and removal of unauthorized building works. This is effected through its “one-stop” service provided by its Building Co-ordinators and enhanced by the pilot Coordinated Maintenance of Buildings Scheme. In collaboration with relevant institutes and other bodies, the department will also produce a comprehensive layman’s guide to building safety and maintenance including removal of unauthorized building works. The guide will explain the procedures for compliance with orders by the Building Authority. It will also provide advice on procurement of services of building professionals and contractors, model tender and contract documents, and indicative information on fees and charges for different types of maintenance works, including removal of unauthorized building works.

TACKLING UNAUTHORIZED BUILDING WORKS

Buildings Department to step up action

10. To safeguard the public, Government has been stepping up its enforcement action against unauthorized building works. Since September 1999, the Director of Buildings has launched major operations on an unprecedented scale to clear at one go all the unauthorized building works on the external walls of more than 300 buildings. This “blitz” approach has proven effective in improving owners’ compliance with removal orders from 20-30% to 70-80%. It has helped to speed up the removal of unauthorized building works, generate greater deterrent impact and cut voluminous case-work processing. The Buildings Department has been allocated additional resources to clear external unauthorized building works of 400, 500 and 600 buildings in 2000, 2001 and 2002 respectively.

11. To achieve the best impact possible, the task force proposes that the department should continue to adopt this approach for clearances and mount large-scale operations on a target block, building or group of buildings basis in one or more districts. The task force also supports the department’s pledge to remove new

or re-erectments promptly so as to give a clear message to the public that Government will not tolerate perpetuation of the problem.

12. To enhance further the deterrent effect, the department is planning to step up prosecution against non-compliant owners by ten times, from the current 200 summonses to 2 000 a year. Relevant offences and penalties under the existing legislation should also be updated in the context of the review of the Buildings Ordinance (*paragraph 21(h) below*).

13. In this light, the task force proposes that the Buildings Department should be given further resources to clear unauthorized building works, particularly those on the exterior of buildings 20 to 40 years old and some on podiums and rooftops and in yards and lanes. The department aims to increase the number of buildings to be cleared of external unauthorized building works from 500 and 600 to 900 and 1000 in 2001 and 2002 respectively. As the effectiveness of such enforcement action depends much on the co-operation of building owners, it is not realistic to set a precise target in the number of items to be cleared. Nevertheless, the Buildings Department estimates that its “blitz” operations, together with other programmes (such as Coordinated Maintenance of Buildings Scheme) to encourage and support owners to carry out timely maintenance, are likely to result in the clearance of 150 000 to 300 000 unauthorized building works in five to seven years. Extensive clearance of such illegal works will gather greater momentum when a new culture is fostered among owners to take on their responsibility and initiate removal action themselves. To enhance the cost-effectiveness, the department will study and try out different modes of outsourcing some of this work to the private sector.

Enforcement policy to be revised

14. At present, the Buildings Department enforces the law in accordance with a policy established in 1988 after public consultation, which divides unauthorized building works into “high priority” for action and “low priority” for deferment. The aim is to remove risk to public safety and to curb such works within resources available. In response to complaints, the department issues non-statutory letters advising the owners to remove the unauthorized building works. On high-priority items, the department follows up with a statutory removal order registrable against property titles. In 1999, the department issued some 15 000 statutory orders on high-priority items and 26 000 non-statutory advisory letters on high- and low-priority items.

15. While the recent “blitz” operations conducted by the Buildings Department have been successful in raising significantly the rate of owners’ compliance with removal orders, the same cannot be said of the thousands of non-

statutory advisory letters issued over the years. It is apparent that too many in the community are prepared to turn a blind eye to the safety risks associated with unauthorized building works. Even some “low-priority” unauthorized building works may become dangerous as they await enforcement action for what could be years.

16. The 1988 policy for setting priorities, based mainly on the degree of danger, is generally reasonable and realistic. However, certain aspects require clarification and updating in step with changes in circumstances and increases of resources for the Buildings Department. In this context, the task force considers that the policy should:

- (a) continue to focus on the risk to public safety;
- (b) curb further increase of unauthorized building works;
- (c) deter non-compliance with the law;
- (d) maximize the resources available for enforcement; and
- (e) minimize the bureaucratic impact on the community.

17. After consultation with the Director of Buildings and in the light of his plans for progressive removal of unauthorized building works (*paragraphs 10 to 13 above*), the task force proposes that enforcement policy should be revised to **re-focus** priorities so that resources are directed principally to the removal of:

- (a) items constituting obvious or imminent danger to life or property;
- (b) new items, irrespective of the date of completion of the building where they have been carried out;
- (c) items in or on buildings, on podiums and rooftops, in yards and lanes (including unauthorized site formation works) constituting a serious hazard or a serious environmental nuisance, as determined by the Building Authority;
- (d) major individual items;
- (e) items in or on individual buildings with extensive unauthorized building works; and

- (f) items identified in buildings or groups of buildings targeted for large-scale operations or maintenance programmes.

On other items, the Buildings Department should issue statutory warning notices registrable against property title (*paragraph 21(g) below*).

MODERNIZING THE LAW AND ENHANCING THE ROLE OF PROFESSIONALS AND CONTRACTORS

18. The task force recognizes a need to review and modernize the Buildings Ordinance in relation to the definition of building works, the role of building professionals and contractors in building control, the powers of the Building Authority and deterrent penalties.

Modernizing the Buildings Ordinance

19. The objective of the Buildings Ordinance is to ensure that buildings meet safety standards and environmental conditions. The Ordinance allows little scope for devolution of authority to building professionals and contractors. The task force considers that there should be greater scope for building professionals and contractors to be given more responsibility in certain areas of building safety and control with the Building Authority focussing on audit control.

20. The Ordinance has also become outdated in parts. For example, some unauthorized building works are minor amenity features not in the original design of older buildings but which may now be considered essential to daily living, such as light-weight canopies and drying racks. Depending on circumstances, workmanship and maintenance, such additions may not pose safety risks. The task force considers that the degree of control should be commensurate with the risk to safety.

21. Members have previously been informed that the Buildings Ordinance will be reviewed and the exercise is in hand. The task force proposes for consideration in the review that:

- (a) “building works” should be re-defined along the lines suggested;
- (b) a category should be created for “minor works” (such as erection of lightweight canopies, drying racks and signboards) as they do not require the level of control under the current provisions of the Ordinance;

- (c) a category of “minor works contractors” should be introduced to carry out new or strengthen existing minor works, remove unauthorized building works, erect and maintain signboards and perform building maintenance works;
- (d) Authorized Persons, Registered Structural Engineers and minor works contractors should be empowered to certify the safety of certain works as specified by the Building Authority;
- (e) the Buildings Department should be empowered to recover the cost for the removal of unauthorized building works in common parts of buildings from all individual owners apart from the owners’ corporation, which often experiences difficulty in collecting funds from owners for this purpose;
- (f) the Building Authority’s powers should be strengthened to cease erection of any unauthorized building works including illegal rooftop structures on site immediately;
- (g) the Buildings Department’s advisory letters should be upgraded to statutory warning notices registrable against the title with the Land Registry, so as to give fair warning to potential buyers and deter anyone concerned with conveyancing of such properties; and
- (h) penalties should be updated to provide a more effective deterrent.

22. With implementation of the above proposals and an increase in resources, the Buildings Department should be able to enforce the law more effectively and efficiently against unauthorized building works, in particular those on the exterior of buildings. In time, property owners’ own efforts should gather momentum and the situation improve even further.

REMOVING ILLEGAL ROOFTOP STRUCTURES

23. Illegal rooftop structures are unauthorized building works. The solution to this long-standing social problem involves effective enforcement and appropriate rehousing arrangements.

Enforcement

24. Government's prime concern is to remove the risk to public safety. Illegal rooftop structures posing a serious risk, eg those erected on the rooftop of single-staircase buildings thus blocking the main refuge in case of fire, must always be a high priority for enforcement action. To remove such risk, the Buildings Department conducts clearance operations in collaboration with relevant departments, in particular with the Housing Department over rehousing of affected occupants. In 1999, the Buildings Department cleared the rooftops of 165 buildings with 520 illegal structures. This involved 342 families, with 160 requiring rehousing and 182 moving out voluntarily. In 2000, 2001 and 2002 respectively, the Buildings Department has been given resources to clear illegal rooftop structures on 300, 400 and 500 buildings.

25. The task force proposes that the problem should be addressed as follows:

- (a) all illegal rooftop structures on single-staircase buildings should be cleared as a matter of priority;
- (b) all vacant illegal rooftop structures, vacated by the occupant of their own volition or evacuated by enforcement action, must be cleared as soon as identified; and
- (c) every effort must be made –
 - to clear new illegal rooftop structures upon construction and before, or soonest possible after, occupation; and
 - to abort attempts at re-erection.

26. Such action will remove the risk from these potential "fire-traps" and also facilitate the retrofitting, where necessary, of fire services installations. The Buildings Department should be given additional resources to clear illegal rooftop structures on all single-staircase buildings. In this connection, the Housing Department has agreed to assist in rehousing arrangements for affected rooftop occupants.

Rehousing

27. On the one hand, illegal rooftop structures should not be encouraged or tolerated as they breach the law and pose risk to public safety. On the other hand, they serve as homes for some in our community.

28. Occupants of these illegal rooftop structures are generally with low income. Some of them are newly arrived from the Mainland. Most occupants are unable to afford alternative private housing.

29. Enforcement against illegal rooftop structures must therefore be taken at the pace of rehousing. Any action must not encourage more illegal rooftop structures and have to be fair to waiting-list applicants. The Housing Authority and the Housing Department offer public housing assistance to affected rooftop occupants according to their eligibility. Enforcement policy against illegal rooftop structures is set out in *paragraph 25* above.

Consistency of treatment by Government departments

30. Government has been criticized for apparently allowing different departments to treat illegal rooftop structures differently. For instance, rates are collected on some rooftop structures. This has led to some misunderstanding over the status of illegal rooftop structures. In this light, the task force proposes that rates should not be collected from new or re-erected illegal rooftop structures. The prompt identification and removal of new or re-erected illegal rooftop structures will obviate the need to supply water and electricity and thereby remove a further source of apparent tolerance of these structures.

USING MARKET FORCES TO PROMOTE REMOVAL OF UNAUTHORIZED BUILDING WORKS

31. The task force firmly believes in the effectiveness of economic considerations and market forces in encouraging building owners to face up to their statutory responsibility for building safety. The task force considers that there are several ways in which the market can help in achieving this objective, as outlined below.

Building classification scheme

32. As earlier put to Members, the task force considers a voluntary, privately-initiated building classification scheme viable (*Legislative Council Panel on Planning, Lands and Works paper dated 4 December 2000 paragraph 45*). Owners should be encouraged to come forward for independent rating of their buildings by appropriate professional bodies after repairs and maintenance has been effected. The rating system and the ratings awarded to individual buildings should be publicized for the information of prospective property buyers and tenants. To kick-start the scheme, buildings that have been cleared of unauthorized building

works or repaired through the Buildings Department's enforcement programme can be assigned a basic rating.

33. A building that is well maintained, with no unauthorized building works, should qualify for a high rating and thereby command a higher market value and attract more favourable mortgage terms and rental income. Insurance premium and management fee may also be more favourable. A building classification system is therefore expected to motivate owners to remove unauthorized building works and keep their buildings in good order.

Public liability insurance

34. The Building Management Ordinance provides for all owners' corporations to take out public liability insurance for the common parts of new buildings. The task force proposes that owners of existing buildings without owners' corporations should also be encouraged and, if necessary, required to take out public liability insurance for the common parts of their buildings after they have been repaired and any unauthorized building works removed. The task force believes owners' desire for lower insurance premium would help motivate them to remove unauthorized building works and to maintain their own properties.

Certification of "no unauthorized building works" upon transfer of title

35. It has been suggested that owners could be required, before transfer of title, to appoint building professionals to certify that their property carries "no unauthorized building works on external walls". This aims to guard against loss of life and limb from falling objects: it is a measure to protect public safety and public interest and will support the Buildings Department's enhanced enforcement action. However, such a requirement may be considered to have implications on property transfer rights: owners and champions of human rights are likely to view this as an infringement. Members' advice on this will be particularly appreciated.

Ban on conveyancing and letting of illegal rooftop structures

36. The Buildings Department has periodically enlisted the help of the Law Society in tackling the problem of illegal rooftop structures and the Society has issued circulars reminding solicitors:

- (a) to advise prospective purchasers that transaction of rooftop involves only the assignment of a share in land, not any structure thereon; and

- (b) to highlight to their clients the risks of transaction of illegal structures.

37. The task force considers that, while such advice is of help, it has not had the effect of stopping such transactions. The ethics of continuing to permit the transaction of illegal structures that may pose significant safety risks are questionable. The task force proposes that serious consideration be given to prohibiting the conveyancing and letting of rooftop area built with such structures in the interests of public safety and respect for the law. The task force proposes that owners, estate agents and solicitors be banned from participating in such transactions.

38. Meanwhile, under the Estate Agents Ordinance, estate agents are already required to clear with property vendors whether there are any structural additions or alterations. This provision helps to identify the existence of unauthorized building works, but does not require their removal or prevent a transaction involving such works.

PROMOTING COMMUNITY PARTICIPATION

39. Success in removing unauthorized building structures can be achieved only if all concerned in our community play their part. Property owners and occupants, the Legislature and District Councils, building professionals, contractors, and the media must join with the Government in awakening a responsible concern for our built environment and helping owners to face up to their responsibility for maintaining their property and removing their unauthorized building works.

40. In particular, property owners and occupants should not construct, or allow anyone to construct, unauthorized building works including illegal rooftop structures. Owners must comply with the law and must also be vigilant.

41. It is essential to have local participation and support to assist owners. In this connection, District Councils have a vital role: promoting the well-being of our community is an integral part of their functions. The task force proposes that District Councils be enlisted to support actions to remove safety risks and support enforcement action.

SUSTAINING PUBLIC EDUCATION

42. To evolve more positive attitudes, particularly among owners and occupants, the task force proposes to publicize the risks of neglect, to explain the law, to change attitudes and to emphasize unauthorized building works as a liability.

43. Departments concerned should coordinate and sustain a multi-media public education programme and target clear messages for different groups such as:

- to clarify the law to owners' corporations, insurers, management companies and the public;
- to focus property owners and occupants on their responsibilities for timely maintenance, proper use of buildings and removal of their unauthorized building works;
- to encourage individual owners to organize themselves to form owners' corporations to manage and maintain their buildings;
- to emphasize the benefits and marketability of well managed and well maintained buildings with no unauthorized building works; and
- to encourage banks and lending institutions to offer mortgages for longer periods for well maintained second-hand properties.

These messages should be repeated and refreshed from time to time, to foster a culture of care for building safety and timely maintenance.

IMPLEMENTATION

44. Implementation of the proposed strategy requires extra resources. Government will have to increase manpower and financial resources for the departments concerned. This is investment for public safety and long-term savings. Some of the above proposals will also require legislative back-up: to modernize the law, to clarify definitions and to update penalties.

45. The proposed strategy will bring many employment and training opportunities for our workforce in different sectors. For property owners and occupants, also the community at large, there will be safer homes with longer service life, higher property value and a sound built environment.

46. The Secretary for Planning and Lands will steer, coordinate and monitor implementation. Subject to the outcome of consultation, Government will refine the action plan to make our built environment safe and attractive, upgrade our building conditions, improve property value and enhance our image as a world city.

CONCLUSION

47. Members are invited to advise on the proposals, viz:

paras 8 to 9 enhancing Government support in removal of unauthorized building works;

paras 10 to 17 tackling unauthorized building works;

paras 18 to 22 modernizing the law and enhancing the role of professionals and contractors;

paras 23 to 30 removing risk from illegal rooftop structures

paras 31 to 38 bringing market forces into play;

paras 39 to 41 partnering with our community; and

paras 42 to 43 sustaining public education.

Planning and Lands Bureau
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