

立法會
Legislative Council

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Panel on Development

Special meeting on 15 March 2012

Updated background brief on unauthorized building works

Purpose

This paper provides background information on the Administration's policy and measures in combating unauthorized building works ("UBWs") and a summary of major views and concerns expressed by Members in previous discussions.

Background

Definition of unauthorized building works

2. According to the Administration, under the Buildings Ordinance ("BO") (Cap. 123), all building works (except a small number of exempted works and those designated as minor works under the Minor Works Control System ("MWCS")) require the Building Authority ("BA")'s prior approval of plans and consent for commencement before such works can be carried out. Otherwise those works are UBWs and subject to enforcement action by the Buildings Department ("BD").

Approval and consent for building works

3. According to BO, any person intending to carry out building works (new building works or alterations and additions works) is required to appoint an authorized person, and where necessary, a registered structural engineer, to prepare plans for the approval of BD. Consent from BA is required for commencing the building works. A registered contractor should also be employed to carry out the approved works. Certain minor

building works which do not involve the structure of a building may be carried out without prior approval from the Government.

The 2001 enforcement policy on UBWs

4. In April 2001, the Government promulgated a new enforcement policy against UBWs in Hong Kong, under which BD accorded priority to clearing UBWs constituting obvious or imminent danger to life or property, serious health hazards or environmental nuisance, and newly erected UBWs and those found under construction. According to the Administration, the total number of UBWs in the territory was estimated to be around 800 000 in 2001. Common examples of UBWs included large canopies and large supporting frames for air conditioners on external walls of buildings, illegal rooftop structures, as well as those found on canopies and cantilevered slab balconies.

5. Under the enforcement policy introduced in 2001, BD launched various large scale operations ("LSOs") and special operations to clear the priority items. For more serious cases or cases that had been accorded high priority for clearance, BD would issue orders under section 24(1) of BO to require the owners to remove or rectify the UBWs concerned. If the owners failed to comply with the orders by the specified dates, BD would generally instigate prosecution action under section 40(1BA) of BO in order to urge the owners to remove their UBWs, and would arrange Government contractors to remove those UBWs with obvious danger. As for the UBWs which had not been accorded high priority for clearance, BD would, depending on the situation, serve advisory letters or warning notices requesting the owners to remove the UBWs voluntarily. If an owner failed to remove the UBWs specified in the warning notice by the deadline, BD would register the warning notice at the Land Registry (commonly known as "imposing an encumbrance"). If only an advisory letter was served, no further follow-up actions would be taken in general.

6. According to the Administration, since the launch of the 2001 programme, BD was able to curb the emergence of new UBWs and removed above 40 000 UBWs every year. As a result of the large-scale clearance operations and BD's enforcement actions, more than 400 000 UBWs have been cleared by the end of March 2011.

New measures to enhance building safety in Hong Kong

7. Prompted by the building collapse incident on Ma Tau Wai Road in late January 2010, the Chief Executive announced in his 2010-2011 Policy Address that the Administration decided to adopt a new multi-pronged approach to enhance building safety which covered four major areas, namely legislation, enforcement, support and assistance to owners, and publicity and public education.

Enhanced enforcement against UBWs

8. The Administration's intention is to initiate vigorous enforcement actions against UBWs, in response to the community's view for adopting a tougher stance against non-compliant owners to create a stronger deterrent effect. The Administration has decided to extend the scope of "actionable" UBWs. Instead of focusing on high-priority items under the ten-year programme, unauthorized works in rooftops, podiums, as well as yards and back-lanes of buildings would be included. The policy change implies that the Administration will be taking enforcement action against most, if not all, actionable UBWs found on the façade of a building. BD will actively respond to complaints and issue statutory orders requiring owners to conduct rectification works immediately if there are confirmed "actionable" UBWs after inspection. BD will also instigate prosecution actions more readily to sanction owners who fail to observe the statutory orders. For buildings lacking management and owners of which cannot coordinate the removal of UBWs by themselves, BD will consider arranging the concerned works on their behalf and charge the owners for the cost incurred at a later stage.

9. BD will conduct LSOs and special operations to tackle "actionable" UBWs in an orderly and systematic manner. Starting from 2011-2012, BD has initiated three types of LSOs, namely on comprehensive clearance of UBWs on rooftops, podiums, as well as yards and lanes; inspection of targeted dilapidated buildings; and on inspection of subdivided flats. To ensure BD staff will implement the enhanced policy in a fair and equitable manner, BD has drawn up guidelines which are attached at **Appendix I**.

Legislation to enhance building safety

10. The Buildings (Amendment) Bill 2010, passed by the Legislative Council ("LegCo") in June 2011 and enacted as the Buildings (Amendment) Ordinance 2011, has put in place the Mandatory Building Inspection Scheme ("MBIS") and Mandatory Window Inspection Scheme. Under MBIS, BA will select private old buildings every year and require their

owners to carry out inspection and, where necessary, repair works in relation to common parts, external walls and projections of the buildings. The registered inspectors appointed for MBIS inspections will be required to report to BA UBWs identified in the common parts and external walls of the buildings and assess the safety conditions of the UBWs. For UBWs posing an imminent danger, BD will order their removal in accordance with its enforcement policy against UBWs. According to the Administration, implementation of MBIS will enable BD to have a better grasp of UBWs conditions of old building in Hong Kong.

11. In December 2011, the Administration introduced the Buildings Legislation (Amendment) Bill 2011 into LegCo to bring in new measures to further enhance building safety in Hong Kong. The major proposals in the Bill include empowering BD officers to apply to the court for a warrant to enter a flat for inspection and the introduction of a signboard control regime. The Bill is under scrutiny by a Bills Committee. The Administration will also introduce legislative amendments to the Building (Minor Works) Regulation to further include various types of works commonly associated with sub-divided flat units, such as erection or alteration of partition walls in buildings, addition or alteration of floor screeding in buildings, formation of openings to fire escape route, etc., under MWCS.

Public education and assistance to building owners

12. The Administration, in collaboration with the Hong Kong Housing Society and Urban Renewal Authority, has been providing technical and financial support for building owners in promoting building safety and carrying out timely maintenance and repairs for their buildings. These included the Operation Building Bright, the Integrated Building Maintenance Assistance Scheme¹, and the Government funded Comprehensive Building Safety Improvement Loan Scheme and Building Maintenance Grant Scheme for Elderly Owners, as well as efforts under the Co-ordinated Maintenance of Building Scheme². Furthermore, the Administration has been organizing publicity and public education activities on building safety covering various topics including removal of

¹ The Hong Kong Housing Society used to operate three assistance schemes, namely the Building Maintenance Incentive Scheme, the Building Management Incentive Scheme and the Home Renovation Loan Scheme. The two schemes operated by the Urban Renewal Authority were the Building Rehabilitation Materials Incentive Scheme and the Building Rehabilitation Loan Scheme. On 1 April 2011, the five schemes were amalgamated into the "Integrated Building Maintenance Assistance Scheme" for building owners in need.

² According to the Administration, in association with six other government departments, BD conducts the "Coordinated Maintenance of Buildings Scheme" in various districts throughout Hong Kong. The purpose of the scheme is to assist building owners and owners' corporations in resolving building management and maintenance problems.

UBWs, alteration and addition works, and building maintenance etc., with a view to fostering a building safety culture among building owners.

Major views and concerns expressed by Members

Discussions by Panel on Development and Subcommittee on Building Safety and Related Issues

13. The Panel on Development ("the Panel") discussed with the Administration issues relating to control of UBWs under BO at meetings on 23 February 2010 and 20 June 2011. Shortly after the building collapse incident on Ma Tau Wai Road in late January 2010, the Panel set up the Subcommittee on Building Safety and Related Issues ("the Subcommittee") to examine issues including, building inspection and maintenance, supervision of building maintenance, enforcement and penalties against unauthorized alteration works, etc. The Subcommittee so far has held six meetings to discuss with the Administration follow-up actions on the Ma Tau Wai Road Incident and measures to enhance building safety and maintenance. The major views and concerns expressed by members of the Panel and the Subcommittee are summarized in the ensuing paragraphs.

14. Some members expressed concerns about the many management and hygiene problems associated with UBWs and BD's slow action in tackling UBWs, the lack of assistance to building owners in clearing UBWs and control on building works relating to sub-divided flat units, and enforcement action on UBWs, in particular the issuance and follow up of statutory removal orders on UBWs. Members called on the Administration to provide re-housing for affected tenants in illegal rooftop structures and sub-divided flat units so as to ensure that nobody would become homeless as a result of the Administration's enforcement actions against UBWs. There was a suggestion from some members that the Administration might consider registering UBWs which had been in existence for a long period of time subject to certification of their structural safety. In fairness to all building owners, BD should adopt a unique arrangement giving owners same period of time to clear their UBWs. Moreover, BD should issue removal orders against UBWs in time to dovetail repair works initiated by owners for their buildings, or works conducted under the Operation Building Bright. BD should also arrange the removal works if owners concerned failed to comply with the order and recover the costs from owners. There was support from some members on the proposal to set up a control regime to regulate signboards.

15. On the resources provided to BD for tackling the problem of UBWs, some members raised concerns about the professional competence of contract staff engaged by BD in assessing risks of UBWs and that BD staff were not provided with adequate equipment for undertaking inspection of old buildings. The Administration was urged to provide sufficient resources for BD to undertake increased workload arising from the control of UBWs. Some members further suggested that the Administration should enlist the support of legal professionals to deal with legal issues relating to UBWs.

16. On the approach in tackling UBWs, while some members considered that the Administration should accord high priority to tackle problems of UBWs, water seepage, and sub-divided flat units, they cautioned that a tough approach against UBWs might lead to undesirable repercussion in the community. The Administration should therefore be flexible with its enforcement actions. In this regard, members stressed the need for the Administration to develop a comprehensive policy to tackle UBWs at all fronts, to strengthen public education clarifying UBWs subject to demolition and the responsibility of building owners to remove UBWs, and to improve co-ordination among relevant departments in resolving building maintenance and management problems. Members also suggested the Administration to set up a high-level cross bureaux and departments task force to tackle the various problems.

Discussions at Council meetings

17. LegCo Members have raised questions on different aspects of UBWs and the control of sub-divided flats over the years. Details on the questions raised by Members in 2010, 2011 and 2012 are shown in the hyperlinks at **Appendix II**.

Recent developments

18. At the meeting of the Panel on 28 February 2012, Hon LEE Wing-tat referred to his letter dated 15 February 2012 to the Chairman expressing concern about UBWs at Nos. 5A and 7 York Road, Kowloon Tong which had aroused grave public concern ("the case"), and proposed the Panel to hold a special meeting as soon as possible to discuss issues relating to enforcement strategy in handling UBWs. The Administration advised that pursuant to the Chairman's request, it would provide a written response on follow-up actions on the case to be available on 29 February. After discussion, members agreed to Mr LEE's proposal of holding a special meeting to discuss with the Administration the enforcement strategy

in relation to handling of UBWs. The special meeting will be held on 15 March 2012.

Relevant papers

19. A list of the relevant papers with their hyperlinks is in **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
14 March 2012

Unauthorized building works

List of relevant papers

Council/Committee	Date of meeting	Paper
Panel on Development	23 February 2010	<p>Administration's paper on progress of enforcement action against unauthorized building works [LC Paper No. CB(1)1157/09-10(06)] http://www.legco.gov.hk/yr09-10/english/panels/dev/papers/dev0223cb1-1157-6-e.pdf</p> <p>Paper on unauthorized building works prepared by the Legislative Council Secretariat (Background brief) [LC Paper No. CB(1)1157/09-10(07)] http://www.legco.gov.hk/yr09-10/english/panels/dev/papers/dev0223cb1-1157-7-e.pdf</p> <p>Minutes of the meeting [LC Paper No. CB(1)1712/09-10] http://www.legco.gov.hk/yr09-10/english/panels/dev/minutes/dev20100223.pdf</p>
Council meeting	10 March 2010	<p>An oral question raised by Dr Hon PAN Pey-chyou on removal of unauthorized building works http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_5882.html</p>
Council meeting	21 April 2010	<p>A written question raised by Dr Hon Priscilla LEUNG Mei-fun on building safety and urban redevelopment plans http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_5933.html</p>

Council/Committee	Date of meeting	Paper
Subcommittee on Building Safety and Related Issues	27 April 2010	<p>Administration's paper on building safety concerns and enhancement measures related to the Ma Tau Wai collapse incident [LC Paper No. CB(1)1685/09-10(01)] http://www.legco.gov.hk/yr09-10/english/panels/dev/dev_bs/papers/dev_bs0427cb1-1685-1-e.pdf</p> <p>Administration's paper on report on the collapse of the building at 45J Ma Tau Wai Road, To Kwa Wan, Kowloon -- K.I.L. 8627 on 29 January 2010 [LC Paper No. CB(1)1716/09-10(01)] http://www.legco.gov.hk/yr09-10/english/panels/dev/dev_bs/papers/dev_bs0427cb1-1716-1-e.pdf</p> <p>Administration's paper on report on the inspection of buildings aged 50 or above [LC Paper No. CB(1)1716/09-10(02)] http://www.legco.gov.hk/yr09-10/english/panels/dev/dev_bs/papers/dev_bs0427cb1-1716-2-e.pdf</p> <p>Paper on building safety prepared by the Legislative Council Secretariat (Background brief) [LC Paper No. CB(1)1685/09-10(02)] http://www.legco.gov.hk/yr09-10/english/panels/dev/dev_bs/papers/dev_bs0427cb1-1685-2-e.pdf</p> <p>Minutes of meeting [LC Paper No. CB(1)2314/09-10] http://www.legco.gov.hk/yr09-10/english/panels/dev/dev_bs/minutes/bs20100427.pdf</p>
Council meeting	19 May 2010	<p>A written question raised by Dr Hon LAM Tai-fai on illegal rooftop structures on single-staircase building http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6000.html</p>

Council/Committee	Date of meeting	Paper
Subcommittee on Building Safety and Related Issues	27 July 2010	<p>Administration's paper on enforcement against unauthorized alteration works inside private premises [LC Paper No. CB(1)2605/09-10(01)] http://www.legco.gov.hk/yr09-10/english/panels/dev/dev_bs/papers/dev_bs0727cb1-2605-1-e.pdf</p> <p>Administration's paper on assistance for the implementation of the Fire Safety (Buildings) Ordinance [LC Paper No. CB(1)2605/09-10(02)] http://www.legco.gov.hk/yr09-10/english/panels/dev/dev_bs/papers/dev_bs0727cb1-2605-2-e.pdf</p> <p>Minutes of meeting [LC Paper No. CB(1)2787/09-10] http://www.legco.gov.hk/yr09-10/english/panels/dev/dev_bs/minutes/bs20100727.pdf</p>
Council meeting	1 December 2010	<p>A written question raised by the Hon Mrs Regina IP Lau Suk-ye on sub-division of flat units http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6310.html</p>
Council meeting	1 December 2010	<p>A written question raised by Ir Dr Hon Raymond HO on safety of buildings http://www.info.gov.hk/gia/general/201012/01/P201012010238.htm</p>
Subcommittee on Building Safety & Related Issues	13 January 2011	<p>Administration's paper on measures to enhance building safety in Hong Kong [LC Paper No. CB(1)681/10-11(01)] http://www.legco.gov.hk/yr10-11/english/panels/dev/dev_bs/papers/dev_bs0113cb1-681-1-e.pdf</p> <p>Minutes of the meeting [LC Paper No. CB(1)1949/10-11] http://www.legco.gov.hk/yr10-11/english/panels/dev/dev_bs/minutes/bs20110113.pdf</p>

Council/Committee	Date of meeting	Paper
Subcommittee on Building Safety & Related Issues	11 May 2011	<p>Administration's paper on re-organization of Buildings Department for implementation of package of measures to enhance building safety [LC Paper No. CB(1)2087/10-11(01)] http://www.legco.gov.hk/yr10-11/english/panels/dev/dev_bs/papers/dev_bs0511cb1-2087-1-e.pdf</p> <p>Administration's paper on consolidation of financial assistance schemes for building maintenance and repair safety [LC Paper No. CB(1)2087/10-11(02)] http://www.legco.gov.hk/yr10-11/english/panels/dev/dev_bs/papers/dev_bs0511cb1-2087-2-e.pdf</p> <p>Minutes of meeting [LC Paper No. CB(1)971/11-12] http://www.legco.gov.hk/yr10-11/english/panels/dev/dev_bs/minutes/bs20110511.pdf</p>
Council meeting	18 May 2011	<p>An oral question raised by Hon LEE Wing-tat on unauthorized building works in village houses in New Territories http://www.info.gov.hk/gia/general/201105/18/P201105180264.htm</p>
Council meeting	1 June 2011	<p>A written question raised by Hon LEUNG Kwok-hung on unauthorized building works http://www.info.gov.hk/gia/general/201106/01/P201106010211.htm</p>
Council meeting	1 June 2011	<p>An oral question raised by Hon WONG Kwok-kin on sub-division of flat units http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6609.html</p>
Council meeting	8 June 2011	<p>An oral question raised by Hon Paul TSE Wai-chun on unauthorized building works http://www.info.gov.hk/gia/general/201106/08/P201106080210.htm</p>

Council/Committee	Date of meeting	Paper
Council meeting	15 June 2011	A written question raised by Hon WONG Yuk-man on unauthorized building works http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6648.html
Council meeting	22 June 2011	An oral question raised by Hon Starry LEE Wai-king on fire safety of buildings with sub-divided units http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6667.html
Council meeting	22 June 2011	An oral question raised by Dr Hon Priscilla LEUNG Mei-fun on sub-division of flat units http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6666.html
Council meeting	13 July 2011	An oral question raised by Prof Hon Patrick LAU Sau-shing on fire safety problem of sub-divided units http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6709.html
Subcommittee on Building Safety & Related Issues	26 August 2011	Administration's paper -- Buildings Department's initial response to the findings of the coroner's inquest on the building collapse incident at Mau Tau Wai Road [LC Paper No. CB(1)2930/10-11(01)] http://www.legco.gov.hk/yr10-11/english/panels/dev/dev_bs/papers/dev_bs0826cb1-2930-1-e.pdf Paper on building safety prepared by the Legislative Council Secretariat (Updated background brief) [LC Paper No. CB(1)2930/10-11(04)] http://www.legco.gov.hk/yr10-11/english/panels/dev/dev_bs/papers/dev_bs0826cb1-2930-4-e.pdf Minutes of meeting [LC Paper No. CB(1)1214/11-12] http://www.legco.gov.hk/yr10-11/english/panels/dev/dev_bs/minutes/bs20110826.pdf

Council/Committee	Date of meeting	Paper
Council meeting	7 December 2011	An oral question raised by Hon WONG Yuk-man on sub-divided units http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6916.html
Subcommittee on Building Safety & Related Issues	8 December 2011	Administration's paper on Enforcement against unauthorized building works in New Territories Exempted Houses: Progress on implementation of the enhanced enforcement strategy and the proposed creation of a Supernumerary Chief Building Surveyor/ Chief Structural Engineer post (D1) [LC Paper No. CB(1)524/11-12(01)] http://www.legco.gov.hk/yr11-12/english/panels/dev/dev_bs/papers/dev_bs1208cb1-524-1-e.pdf Paper on unauthorized building works in New Territories exempted houses prepared by the Legislative Council Secretariat (Updated background brief) [LC Paper No. CB(1)524/11-12(02)] http://www.legco.gov.hk/yr11-12/english/panels/dev/dev_bs/papers/dev_bs1208cb1-524-2-e.pdf
Council meeting	29 February 2012	A written question raised by Hon KAM Nai-wai on unauthorized building works involving senior government officials http://www.info.gov.hk/gia/general/201202/29/P201202290292.htm