



YOUR REF 來函檔號： CB4/PAC/R75
 OUR REF 本署檔號： L/M(19) to BD CR/4-35/2 C
 FAX 圖文傳真： 2868 3248
 TEL 電話： 3842 3010

8 January 2021

Ms Wendy JAN
 Clerk to Public Accounts Committee
 Legislative Council
 Legislative Council Complex
 1 Legislative Council Road
 Central, Hong Kong

Dear Ms JAN

Public Accounts Committee
Consideration of Chapter 9 of the Director of Audit's Report No. 75
Management of Mandatory Building Inspection Scheme by
the Buildings Department

Thank you for your letter of 23 December 2020 to the Secretary for Development and to this Department concerning the captioned Audit Report. We are pleased to provide a consolidated reply to the requested information.

2. For any further questions, please contact the undersigned or our Chief Building Surveyor / Mandatory Building Inspection 2, Mr WONG Kin-yip, Andy, at 3842 3040.

Yours sincerely



(NG Kin-shing)
 Assistant Director/ Mandatory Building Inspection
 for Director of Buildings

c.c. Secretary for Financial Services and the Treasury (Fax: 2147 5239)
 Secretary for Development (Fax: 2899 2916)
 Director of Audit (Fax: 2583 9063)

Public Account Committee
Consideration of Chapter 9 of the Director of Audit's Report No.75
Management of Mandatory Building Inspection Scheme
by the Buildings Department

Part 2: Selection of buildings for issuance of statutory notices

Reply to question 1 of Part (I) and the question at Part (II)

Question: According to paragraphs 2.5, 2.6 and 2.8(b), in May 2008, the Development Bureau (“DEVB”) informed the Legislative Council (“LegCo”) that 2 000 private buildings would be selected each year to undergo building inspection under the Mandatory Building Inspection Scheme (“MBIS”). In November 2013, DEVB informed LegCo that the Buildings Department (“BD”) had encountered major difficulties in meeting the planned progress in issuing statutory notices under MBIS (e.g. an under-estimation of workload associated with the implementation of MBIS). BD’s target number of buildings for issuance of statutory notices had decreased from 2 000 in 2014 to 400 in 2019, and then increased to 600 in 2020. Could BD explain why the workload was under-estimated at that time? Had DEVB taken any measures to help BD address the difficulties in implementing MBIS? If yes, what were the measures and why was the latest target of 600 buildings still far below the number of 2 000 that LegCo was informed of in 2008? If not, why not?

Response: The workload was under-estimated mainly in respect of the average number of household units per target building requiring statutory notices to be issued, the amount of consequential follow-up work such as preparation and serving of statutory notices and handling Registered Inspector (“RI”)s’ MBIS submissions, and the volume of public enquiries and requests for briefings received by BD. As the MBIS was a new scheme, there was limited information available for reference at that time in estimating the workload. With experience

gained and the adjustments in the target numbers of buildings for issuance of statutory notices, resources have been redeployed to enhance assistance to owners to facilitate compliance, strengthen regulation of service providers, clear backlog of large number of buildings targeted in previous years but not yet been served with statutory notices, and take enforcement action against non-compliant statutory notices.

Further, as explained in the LegCo Paper CB(1)343/13-14(03) discussed in the LegCo Panel on Development on 26 November 2013, based on feedback received then, there was a concern back then that given the novelty and complexity of the MBIS and the general lack of acquaintance with the scheme at that time, the scale of the scheme was causing a great impact on the society and pushing up cost. There was a need to allow reasonable time for the community to get familiar with and prepared for the arrangements.

As policy bureau, the Development Bureau (“DEVB”) has been working closely with BD and providing the necessary support, in terms of policy steer and resources specifically, to BD for successful implementation of MBIS and other initiatives. For instance, with DEVB’s support, the number of professional and technical staff of the Mandatory Building Inspection division of BD which are involved in the MBIS had increased from 110 in 2014-15 to 194 in 2020-21. Another recent example is the commitment of \$6 billion for launching the Operation Building Bright 2.0 (“OBB 2.0”) administered by the Urban Renewal Authority in 2018 that seeks to provide financial and technical assistance and thus incentivise building owners in complying with the MBIS.

With respect to the pace of implementation of MBIS, the reply to Question 2 below is relevant.

Reply to question 2

Question: According to paragraph 2.10, based on the 2020 target of selecting 600 buildings each year, it would take about 20 years to cover some 12 000 buildings not yet selected for issuance of statutory notices under MBIS, let alone the new buildings which would be covered by MBIS coming up after 2019. Given that MBIS was founded on the principle of “prevention is better than cure”, did BD consider that such a long timeframe was not conducive to achieving the objective of MBIS? Did BD consider that the annual target could be increased? If yes, to what extent? If not, why not? Would BD formulate a long-term strategy for MBIS as recommended by the Audit Commission in paragraph 2.34(a)?

Response: The pace of implementation of MBIS is subject to, among others, the building owners’ understanding of the requirements of the MBIS, their willingness to comply with the notices, their ability to coordinate with other owners, the availability of financial and technical assistance provided to the building owners, the capacity of the market for building inspections and repairs, etc. In fact, timely and proper repair and maintenance of buildings is the primary responsibility of owners and is in the interest of owners and occupiers. The implementation of MBIS since 2012 has helped raise awareness of owners in proper maintenance and repair. There are cases where building owners sought to comply with the MBIS voluntarily without receipt of MBIS notices, and with the incentive provided under OBB 2.0, around 370 high-aged buildings without outstanding MBIS notices have joined the second round applications.

BD agrees with the Audit Report’s recommendation in paragraph 2.34(a), and will continue to regularly review the number of target buildings after taking into account the manpower required to implement the scheme, the operation experience gained, market situation, feedback from stakeholders and members of the community as well as the available assistance schemes provided to the owners. Every year, BD will formulate the target and incorporate such target into the Controlling Officer's Report. In parallel, BD will continue to optimise its efficiency by streamlining

the operational procedures with a view to stepping up the pace of the implementation of MBIS. Furthermore, BD will review the progress of compliance by the owners, in particular with reference to the implementation of OBB 2.0, in formulating the long term strategy for MBIS. If necessary, BD will apply for additional resources for the effective implementation of MBIS.

To achieve the objective of MBIS to tackle the problem of building neglect and promote the principle of “prevention is better than cure”, BD will continue to organise various public education and publicity campaigns with a view to raising public awareness on the importance of regular building maintenance, thereby prompting more people to carry out timely and necessary building inspection and repairs on their own initiative. In addition to the current mobile application on MBIS, BD will continue to make use of information technologies to enhance communication with building owners and practitioners, monitor the work progress and facilitate the implementation of the MBIS. We will also monitor the effectiveness of the ongoing OBB 2.0 in incentivising early compliance with MBIS which aims to benefit a total of 5 000 old and dilapidated buildings with a total funding of \$6 billion.

Reply to question 3

Question: According to paragraph 2.19, BD's overriding selection criterion (i.e. private residential or composite buildings aged 40 years or above) was based on building type and age. However, under the Building Score System, building type was not a selection criterion and building age was only one of the four selection criteria. Building condition which was a criterion carrying a higher weight under the System had not been taken into account. In addition, some buildings covered by MBIS not meeting BD's criterion (i.e. of different building type (e.g. industrial buildings) or aged below the specified age of this criterion) might also be of high risk to public safety as indicated by their higher scores or incidents of fallen building elements as mentioned in paragraphs 2.16 and 2.17(b) and (c). Given that buildings with higher scores under the Building

Score System were of relatively higher potential risk to public and priority should be given to such buildings, could BD explain how the use of the overriding selection criterion alone could select high-risk buildings? Did BD agree that some high-risk buildings might not be selected by using the overriding selection criterion? If yes, how could this risk be addressed? If not, why not?

Response: There is a significant number of buildings covered by MBIS and prioritisation is necessary for the implementation of MBIS. To enhance the transparency in the selection process of the target buildings and community acceptance, BD has established a selection panel (“SP”) comprising representatives from professional institutions, non-governmental organisation, property management professionals and district councils to tender advice on the selection of target buildings. Each year, the SP would select a certain number of target buildings for the implementation of MBIS.

Noting from past incidents that old private residential or composite buildings posed relatively higher potential building safety risks and owners of these buildings were less coordinated in carrying out building maintenance and repairs, and having regard to the launching of the OBB 2.0 funded by the Government and administered by the Urban Renewal Authority to provide technical and financial assistance to eligible owners of these old buildings to meet the requirements of MBIS, the SP endorsed in 2017 to focus on selecting this type of buildings first for the implementation of MBIS.

Implementation of MBIS is only part of BD’s work in ensuring building safety through enforcement of the Buildings Ordinance (“BO”). Whilst MBIS focuses on preventive maintenance through regular building inspections, apart from the implementation of MBIS, BD handles public reports on building defects and unauthorised building works. In addition, BD proactively conducts large-scale operations to take holistic enforcement actions under the BO against actionable unauthorised building works and building defects in the target buildings. If obvious defects are found during inspections, BD is empowered under the BO to issue repair orders to mandate building owners to carry out repair and rectification works.

In an emergency situation, BD will mobilise the Government contractor to remove the danger to ensure public safety and will recover the cost of works and supervision charge from the responsible owners in accordance with the BO.

Reply to question 4

Question: According to paragraphs 2.22 and 2.23, BD had prioritised buildings based on the list of private buildings. While there were a total of 17 508 buildings covered by MBIS as of December 2018, 7 514 buildings were still not given scores by BD. Given that the main reason admitted by BD was due to the fact that a majority of 7 514 buildings had already been selected under MBIS. Did BD consider that there was a need to ensure that all buildings covered by MBIS were scored with the Building Score System for reviewing purpose?

Response: BD agrees with the Audit Report's recommendation in paragraph 2.34(e) and will score all buildings covered by MBIS in accordance with the Building Score System in future for reviewing purpose.

Reply to question 5

Question: According to paragraph 2.25, after the Selection Panel's endorsement of the nomination list (for target buildings to be selected under MBIS), BD might change some buildings in the endorsed building list due to various reasons. BD deleted a total of 76 buildings after their selection by the Selection Panel from 2017 to 2019, including 67 buildings with replacement from the list of buffer buildings and nine buildings without replacement. Could BD explain why some buildings were deleted with replacement while some were deleted without replacement?

Response: In general, target buildings deleted after selection would be replaced by buildings from the list of buffer buildings for issuing of statutory notices. BD would conduct initial checks on the selected target buildings shortly after they were nominated by the SP before

assigning them to the consultants for preparation and service of statutory notices. Consultants would serve such notices in batches. Nine buildings selected in 2017 and 2018 were later deleted without replacement from the list of buffer buildings as the deletion took place at a late stage of the consultancy after the buildings were found to have been demolished or substantially repaired. That said, in fact BD had issued notices to 54 additional buildings altogether in 2017 and 2018 on top of the annual target of selecting 400 target buildings. These additional target buildings were in a defective state or belonged to the same cluster¹ of the buildings selected by the SP.

With effect from 2021, BD will ensure replacement of all deleted buildings and update the SP accordingly.

Reply to question 6

Question: With reference to paragraph 2.27 regarding the building selection exercise for MBIS in 2019, there were 35 buildings with higher scores than some buildings in BD's nomination list of target buildings but were not included in the nomination list. No documentation was available showing BD's assessment that such buildings were in fair condition. Could BD explain why this happened? What improvement measures would BD take to avoid recurrence of similar problem in future?

Response: As mentioned above, after selection of target buildings, BD would conduct initial checks on these nominated buildings (including the list of selected buildings and the list of buffer buildings) within a short period of time before assigning them to the consultants for preparation and service of statutory notices. Within such short processing period, the initial check records had not been properly

¹ Paragraph 2.3(e) of the Audit Report explains that for a number of buildings situated on the same land lot with owners being jointly responsible for maintenance and repair of the common parts in the buildings, the buildings concerned will form a building cluster. If a building forms part of a building cluster is selected, all buildings in the building cluster will also be selected together regardless of their scores.

maintained.

BD has since September 2020 required all initial check results be recorded in files.

Reply to question 7

Question: With reference to paragraphs 2.29, 2.30 and 2.31 regarding the issuance of statutory notices under MBIS for building selected in 2018, BD engaged a consultant to carry out the work. However, the consultant completed all the work in eight months later than the original contract completion date. Apart from issuing warning letters and reminder letters, would BD take any other measures to strengthen the monitoring of consultants' performance?

Response: To strengthen the monitoring of consultants' performance, BD has enhanced relevant provisions in the consultancy agreements in 2019. Under the extant consultancy agreements, the following enhancements have been implemented:

- (a) To strengthen monitoring of the progress by requiring the consultants to attend regular monthly progress meetings with BD officers. Such requirements also provide a communication platform with the consultants for timely discussion on problems encountered by the consultants (e.g. access problems); and
- (b) To add two more milestones in the work programme (i.e. submission of desk study reports and submission of draft statutory notices) to facilitate closer monitoring of progress of work.

BD will enhance the progress monitoring reports by providing an automatic checking feature to identify assignments behind schedule. The enhancement will be completed in the second quarter of 2021.

Part 3: Follow-up actions on compliance with statutory notices

Reply to question 8

Question: According to paragraph 3.8, as at 30 April 2020, among the 24 639 non-compliant statutory notices, no warning letters had been issued to owner in 6 941 (28%) cases of non-compliance with statutory notices. For almost all (6 862(99%)) of these 6 941 cases, more than one month time target for issuing warning letters set out in BD’s guidelines had not been met in these cases. Did BD consider this not satisfactory? What follow-up actions had been taken? What was the latest position of these non-compliant notices?

Response: Since August 2020, BD has streamlined the procedures for issuing of warning letters. With respect to the 6 941 non-compliant cases without warning letters issued as at 30 April 2020, only 2 617 cases were pending for issuing of warning letters as at 30 November 2020 notwithstanding the special work arrangement for Government employees during this period. BD aims to complete issuing of warning letters to all these cases in the second quarter of 2021.

Out of 24 639 non-compliant statutory notices as at 30 April 2020, 4 131 (17%) of them have been discharged as at 30 November 2020. BD would continue to closely follow-up on the non-compliant notices.

Reply to question 9

Question: According to paragraph 3.16(b), as at 30 April 2020, BD had said that the Building Condition Information System (“BCIS”) would be enhanced to ensure timely referral of the statutory notices served on the common parts of a building to the Land Registry for registration, timely issue of warning letters as well as timely and accurate updates of registration records of statutory notices at the Land Registry. What was the progress in enhancing BCIS? When would the enhancement be completed?

Response: BD plans to commence the enhancement to the BCIS in the first quarter of 2021 for completion by the first quarter of 2022.

Reply to question 10

Question: According to paragraph 3.21, among the 1 071 non-compliant statutory notices referred to prosecution teams in 2019 for instigating prosecution, 696 (65%) notices were referred more than two years and up to six years after the completion due dates of the statutory notices. Could BD explain why it took such a long time to refer cases to prosecution teams? What measures would be taken to expedite the referral process?

Response: Given the novelty and complexity of the new MBIS and that the community needs time to understand the requirements and be prepared to take up their responsibility as building owners to contribute and arrange for the necessary inspection and repair works, BD has focused its resources on providing technical and financial supports to owners and allowing the building owners and practitioners more time to understand MBIS and get prepared in meeting MBIS requirements as well as comprehending their responsibilities and obligations. From 2012 to 2015, much efforts had been made on the publicity and public education activities on MBIS and through responses to enquiries and briefings to encourage building owners to comply with the statutory notices in a voluntary and cooperative manner. Prosecution actions against non-compliant owners at that early stage would unlikely to be effective in compelling the owners to discharge their statutory responsibilities for MBIS. Hence, prosecution action against non-compliant statutory notices was not accorded with priority at that time.

After years of publicity on MBIS and taking into account the feedback from stakeholders and the community and operational experience gained, BD has stepped up its prosecution actions against non-compliant statutory notices since 2016. In addition, Fast Track Prosecution Teams were set up in early 2019 to streamline and

expedite the prosecution actions for non-compliant notices. That said, whether prosecution should be instigated would depend on facts of individual cases and thus the number of prosecution could be smaller than the number of outstanding notices. While prosecution would remain one of the measures (instead of the sole measure) to encourage compliance of MBIS, BD will continue to step up prosecution and to explore measures to streamline and facilitate BD's prosecution work while at the same time providing technical and financial assistance to needy owners.

Reply to question 11

Question: According to paragraphs 3.28 and 3.29, default works for the required inspection and repair under MBIS had been carried out by BD since 2016. According to BD guidelines, demand notes should be issued to the building owners within six months after completion of default works and settlement should be made within 14 days. However, among the eight cases issued with demand notes, demand notes for five cases (involving a total amount of about \$2.7 million) had been overdue for about seven to 19 months. What actions had been taken so far on these outstanding demand notes? What improvement measures would BD take to avoid recurrence of similar problem in future?

Response: Of the five cases with outstanding settlement of demand notes, BD has recovered costs from three cases as at 30 November 2020. For the remaining two cases, BD has issued certificates under section 33 of the BO to concerned owners and registered the certificates at the Land Registry, which will constitute a first charge against the title of their property. BD has also referred the two cases to the Department of Justice for taking legal action to recover the outstanding payment.

Since June 2020, BD has enhanced the BCIS to facilitate monitoring on the progress of the cost recovery actions. The progress of cost recovery action is also being monitored in the regular sectional meetings to ensure timely follow-up actions.

Reply to question 12

Question: According to paragraphs 3.6 to 3.31, BD had not taken timely follow-up actions, such as issuing warning letters, registering statutory notices at the Land Registry and referring cases to prosecution teams, on many cases of non-compliance with statutory notices. Would BD consider outsourcing more work under MBIS so as to expedite the follow-up actions on non-compliant cases?

Response: BD will continue to explore measures to streamline and facilitate the follow-up actions on non-compliant notices, including the feasibility of assigning certain types of follow-up action to outsourced consultants so as to speed up the enforcement process.

Part 4: Monitoring of registered inspectors' submissions

Reply to question 13

Question: According to paragraph 4.6, among the 7 408 certificates of building inspection received from registered inspectors ("RIs") by BD under MBIS in 2019, 3 860 (52%) certificates were received more than seven days and up to 4.5 years (averaging 56 days) after completion of building inspection, thus not meeting the seven-day statutory requirement. Among the 607 certificates of building repair received from RIs in 2019, 238 (39%) certificates were received more than 14 days and up to 4.5 years (averaging 162 days) after completion of building repair, thus not meeting the 14-day statutory requirement. Did BD consider this not satisfactory? What were the reasons for late submission by RIs? What measures would be taken to ensure compliance with the statutory requirements?

Response: Some RIs after completion of building inspection or repair might first submit their inspection/completion reports to the owners for agreement and payment. This practice of seeking prior agreement with owners however could take some time, leading to late submission of completion certificates to BD. There are also cases that RIs have completed inspections/repairs for several premises in

the same building on different dates but choose to submit the certificates for all premises in one go to BD. This practice would also render the earlier completed cases late for BD submission. In addition, there were resubmissions of certificates due to incompleteness of or incorrect information in the previously submitted certificates.

BD has reminded practitioners to comply with statutory requirements on submission at its regular briefing sessions with RIs in November 2020. In addition, BD will include checking of timely submission of certificates in the document audit² to ensure compliance. Furthermore, the information system will be enhanced to compile regular reports on the compliance situation to facilitate monitoring.

Reply to question 14

Question: According to paragraph 4.9, among the 1 174 MBIS submissions with BD's audit checks completed in 2019, 213 (18%) submissions had BD's audit checks completed more than one year and up to five years (averaging 1.8 years) after receipt of submissions by BD. Did BD consider this not satisfactory? What were the reasons for taking a long time to complete BD's audit checks? According to paragraph 4.17(b), the relevant internal instructions would be updated to include the time target for completing BD's audit checks. Had the guidelines been updated? If yes, what was the time target for completing BD's audit checks? If not, when would BD do so?

Response: BD has set time targets for completing actions on inviting owners to provide access for site audit checks in internal guidelines. BD however has not set a time target for owners to arrange for access into their premises for site audit checks. In order to successfully conduct site audit checks, BD usually would suit owners' time schedule as far as practicable. Sometimes even with initial positive response, owners may change their mind later, resulting in

² According to paragraph 4.3(b) of the Audit Report, for MBIS submissions selected for audit checks, BD will conduct document audit on submissions to verify compliance with the scopes and requirements under the BO, the relevant code of practice and practice notes.

rescheduling the site audit checks or declining BD's request for site audit check. Hence, there were cases taking longer time to complete site audit checks.

Having regard to past experience, BD will set the maximum waiting time for owners' arrangement for access into their premises for site audit checks and update the internal guidelines in the first quarter of 2021.

Reply to question 15

Question: Regarding paragraph 4.20, according to BCIS records, as of April 2020, a total of 35 639 statutory notices issued under MBIS had been complied with. However, for some of these statutory notices, there were no BCIS records for the receipt of some of the required submissions, including notification of appointment of RI for building inspection and repair (for 4 747 (13%) notices), certificates of building inspection (for 1 314 (4%) notices) and certificate of building repair (for 596 (2%) notice with building repair needed). Could BD explain why, on the one hand, BCIS recorded that the related statutory notices had been complied with, but on the other hand, there were no BCIS records for the receipt of some of the required submissions? What measures would be taken to ensure that BCIS records were complete, accurate and up-to-date?

Response: After serving statutory notices, some buildings may subsequently be demolished for redevelopment while in other cases, the owners may provide proof of recent completion of major building repairs. Under these circumstances, owners are not required to make further arrangement to meet the requirements of MBIS and BD would discharge the statutory notices with no record of RI's MBIS submission in the BCIS.

There are also cases that after checking of RI's MBIS submissions and serving of compliance letters to owners, no corresponding records were made in the BCIS.

As an improvement measure, BD will enhance the BCIS to mandate data entry to all fields related to RI's MBIS submissions before creating and storing of compliance records in the BCIS, except for cases not required to make further arrangement to meet the requirements of MBIS.

BD plans to commence the enhancement to the BCIS in the first quarter of 2021 for completion by the first quarter of 2022.