

**HPLB/BAB Paper/06/04**

**Bills Committee on  
Buildings (Amendment) Bill 2003**

**Impact of the Bill on  
Building Works in the New Territories**

**Purpose**

This paper sets out the Administration's response to questions raised by Members at the Bills Committee meetings on 12 December 2003 and 23 February 2004 concerning the impact of the Buildings (Amendment) Bill 2003 (the "Bill") on the carrying out of building works in the New Territories (N.T.).

**Existing building control regime in the N.T.**

2. The Buildings Ordinance (BO) applies to the whole territory of Hong Kong, including the N.T. However, under the Buildings Ordinance (Application to the New Territories) Ordinance, Cap. 121, the Director of Lands (D of L) may issue certificates of exemption in respect of any building works, site formation works and drainage works, in the N.T. In particular, the D of L shall issue a certificate of exemption in respect of building works for a building in the N.T. of dimensions not greater than those specified in the Schedule to Cap. 121 (**Annex A**). The effect of the certificates of exemption is that, subject to compliance with any conditions imposed by D of L, the following provisions of the BO shall not apply in respect of the works or the building specified in the certificates :

- (a) section 4 of the BO - appointment of an authorized person (AP) or registered structural engineer (RSE) to design and supervise such works;
- (b) section 9 of the BO - appointment of a registered

contractor (RC) to carry out the works;

- (c) section 14 of the BO - obtaining approval of plans and consent to commencement of works from the Building Authority (BA);
- (d) section 21 of the BO - obtaining an occupation permit before the building can be occupied;
- (e) section 30 of the BO – obtaining consent from the BA for the construction or formation of any means of access or opening to or from any street; and
- (f) all subsidiary regulations made under the BO.

In other words, all buildings or building works in the N.T. not issued with a certificate of exemption under Cap. 121 are required to comply with the provisions of the BO. For buildings and building works issued with such a certificate, the provisions of the BO will also apply except for those provisions described above.

### **Impact of the Bill in general**

3. The Bill neither changes nor poses any effect on Cap. 121. Upon enactment of the Bill, for any proposed buildings in the N.T. that fully comply with the exemption criteria under Cap. 121, they would still be exempt from those provisions of the BO as explained in paragraph 2 above if they are issued with a certificate of exemption. For other buildings in the N.T. not issued with a certificate of exemption under Cap. 121, all the provisions of the BO will apply, including all such amendments and new provisions stipulated in the Bill as enacted.

4. At the Bills Committee meeting on 23 February 2004, Members requested the Administration to clarify whether repair works or alteration works to small houses and squatter houses were subject to the BO and the proposed MW control regime.

5. The Bills Committee has agreed at the meeting of 23 April to delete the minor works proposal from the Bill to allow time to finish scrutiny of other parts of the Bill. The position of repair works or alteration works in an existing exempted building in the N.T. will be the same irrespective of whether there will be a minor works control regime or not. In other words, repair works or alteration works in an existing exempted building would be exempt from those provisions of the BO as explained in paragraph 2 above, provided that such works would not result in the building exceeding the exemption criteria set out in Cap. 121. Repair works or alteration works in an existing building not issued with a certificate of exemption would be subject to the provisions of the BO.

6. Squatter houses erected on unleased Government land or erected on leased land in breach of a government lease are under the control of both the Lands Department and Housing Department under the Land (Miscellaneous Provisions) Ordinance. Any application for repair works or alteration works to such squatter houses shall be made to the Lands Department or Housing Department.

### **Provision of emergency vehicular access**

7. Some Members raised queries about the application of the requirement of mandatory provision of emergency vehicular access (EVA) to building works involving small houses and low-density residential complex in the N.T.

8. As explained in paragraph 2 above, the regulations under the BO would not apply to any proposed small houses or residential developments in the N.T. if they are issued with a certificate of exemption in respect of building works under Cap. 121. Therefore, the requirement of provision of EVA under the new regulation 41D of the Building (Planning) Regulation (B(P)R) will not apply to buildings which are issued with such a certificate.

9. On the other hand, new developments in the N.T. that do not comply with the exemption criteria and not issued with a certificate of exemption in respect of building works under Cap. 121 have to fully comply

with the provisions of the BO and its regulations, including the new regulation 41D of B(P)R. However, the owner may apply for exemption from the provision of EVA if the development falls within circumstances stipulated in the new regulation 41D(3) of B(P)R. Details of the proposals for the provision of EVA to new buildings are described in LC Paper No. CB(1) 465/03-04.

### **Appointment of registered geotechnical engineer**

10. Some Members raised queries about the application of the requirement of appointment of Registered Geotechnical Engineer (RGE) to building works involving small houses and low-density residential complex in the N.T.

11. Under section 6(a) of Cap. 121, where D of L has issued a certificate of exemption for a building in the N.T., he may also issue a certificate of exemption in respect of site formation works. The criteria for exemption of site formation works are listed at **Annex B**. As explained in paragraph 2 above, section 4 of the BO shall not apply to such site formation works and thus the appointment of an authorized person and registered structural engineer is not required.

12. Upon enactment of the Bill introducing the requirement of appointment of RGE under the new section 4(1)(c) of the BO (Clause 5(a)), if a certificate of exemption has been issued under Cap. 121 for any proposed site formation works in the N.T., such requirement will not apply to such site formation works. On the other hand, the requirement of appointment of RGE will apply to site formation works that are not exempt under Cap. 121. For example, if site formation works are required for the construction of a small house issued with a certificate of exemption but the criteria for exemption of site formation works are not satisfied, then the owner will have to appoint an AP and a RGE to submit plans of the site formation works to the BA for approval. Details of the proposal for providing a statutory framework for the registration of geotechnical engineers are described in the LC Paper No. CB(1) 545/03-04(02).

## **Conclusion**

13. The Bill does not introduce any changes to Cap. 121 and it has no effect on the carrying out of building works in the N.T. to which Cap. 121 applies. Hence, building works in the N.T. that are currently exempted from certain provisions of the BO by virtue of Cap. 121 will continue to be so exempted after the enactment of the Bill.

May 2004

Housing, Planning and Lands Bureau

SCHEDULE under  
Buildings Ordinance (Application to the New Territories) Ordinance

CONDITIONS

PART I

CERTIFICATE OF EXEMPTION IN RESPECT OF NEW HOUSING OR  
COMMUNITY USE, OR ISSUED UNDER SECTION 4

1. (1) The building, when constructed, will be a building of not more than 3 storeys and-
  - (a) of a height of more than 7.62 m but not more than 8.23 m and with a roofed-over area not exceeding 65.03 square metres, and in respect of which the thickness of each load-bearing wall-
    - (i) in the case of a load-bearing reinforced concrete wall is not less than 175 mm thick; or
    - (ii) of the lowest storey is in the case of a load-bearing brick wall not less than 340 mm; and
    - (iii) of any higher storey is in the case of a load-bearing brick wall not less than 225 mm; or
  - (b) of a height of not more than 7.62 m-
    - (i) with a roofed-over area not exceeding 92.90 square metres where the building complies with approved plans; or
    - (ii) with a roofed-over area not exceeding 65.03 square metres.
- (2) In this "approved plans" (批准圖則) means plans prepared by the Director or plans so prepared and modified with his consent.

## PART II

### CERTIFICATE OF EXEMPTION IN RESPECT OF AGRICULTURAL USE

2. The building when constructed will be of a single storey and a height of not more than 4.57 m.

## PART III

### CERTIFICATE OF EXEMPTION IN RESPECT OF REPLACEMENT HOUSING

3. The building when constructed will have a roofed-over area of not more than 37.16 square metres and be of a height of not more than 5.18 m.

**Criteria for Exemption of Site Formation Works**

- (a) The maximum gradient across the lot from boundary to boundary is not more than 15 degrees.
- (b) The overall gradient of an area bounded by lines 10m outside the lot boundary in any direction is less than 15 degrees.
- (c) There is no slope within the area 10m outside the lot boundary steeper than 30 degrees or higher than 1.5m.
- (d) There is no retaining wall or terrace wall either within the lot or within the area 10m outside the lot which is higher than 1.5m.