

立法會 *Legislative Council*

LC Paper No. CB(1)2156/02-03(03)

Ref: CB1/BC/9/02

Bills Committee on Buildings (Amendment) Bill 2003

Background Brief

Purpose

This paper sets out the background of the Buildings (Amendment) Bill 2003 (the Bill), and summarizes the legislative proposal therein and views of Members on related issues prior to the introduction of the Bill.

Background

2. The Buildings Ordinance (Cap. 123) (BO) was enacted in 1955. Back in January 2000, Members of the Legislative Council considered that despite the amendments made to certain provisions of BO and the related subsidiary legislation over the years, BO still failed to meet the practical needs of present-day Hong Kong in the face of continuing and rapid economic development, social evolution, changes in the natural environment and technological advancements. The Council passed a motion on 26 January 2000 urging the Administration to conduct a comprehensive review of BO to, inter alia, streamline the vetting procedure and define clearly the powers and responsibilities of building professionals and registered contractors to ensure building safety. The Secretary for Planning and Lands, in his response, informed the Council that a review of BO was underway aiming at submitting legislative proposals to update the BO by phases. In the short term, amendments would be made to tighten regulation in geotechnical areas and raise penalties for contravention of the provisions in BO. The wording of the motion carried is attached at **Appendix I**.

3. In April 2001, the Administration announced a multi-prong strategy for building safety and timely maintenance. There were at that time some 42 000 private buildings territory-wide. About 11 400 of them were 20 to 40 years old and were more susceptible to maintenance problems. There were 220 000 signboards and 800 000 unauthorized building works (UBWs) including illegal rooftop structures.

4. The multi-prong strategy covered the following major areas of initiatives -
 - (a) initiatives on building maintenance;
 - (b) actions against UBWs;
 - (c) registration of signboards;
 - (d) public education and community participation; and
 - (e) further initiatives for implementation such as financial assistance for owners via owners' corporations and registration of building management companies.
5. Among the above initiatives, the actions against UBWs involve legislative amendments to the BO. The Administration proposed that against the principle that building control should be commensurate with the degree of risk to safety, a new category of "minor works" and a new register of "minor works contractors" be created under the BO. It was also then proposed to amend the BO -
 - (a) to empower BD to cease illegal erection on site immediately;
 - (b) to upgrade advisory letters (which most offending owners ignore) to statutory warning notices registrable against the title; and
 - (c) to update penalties.

The Bill

6. The proposed amendments in the Bill aim to -
 - (a) rationalize the building control regime;
 - (b) strengthen safety requirements;
 - (c) facilitate law enforcement; and
 - (d) improve service to the public.

Proposals to rationalize the building control regime

Introducing a new category of minor works and registration of minor works contractors

7. The Bill proposes the introduction of a new category of relatively simple and small-scale building works, referred to as "minor works" in the Bill, and a new

category of registered contractors, namely, registered minor works contractors. Registered minor works contractors may carry out minor works on their own, or under the supervision of an authorized person or registered structural engineer, without the submission of building plans for the approval of the Building Authority (BA). These proposed arrangements are intended to facilitate building owners' compliance with the requisite building requirements; owners will have less cause to ignore the BO and erect UBWs.

Registration of geotechnical engineers

8. The Bill also proposes the establishment of a system for the registration of geotechnical engineers, and for registered geotechnical engineers to be appointed to undertake investigation, design and supervision of geotechnical works, and be statutorily responsible for their works. The objective of this proposal is to define the statutory role and responsibility of geotechnical engineers who are actually involved in the design and supervision of geotechnical works.

Strengthening safety requirements

9. The Bill proposes to amend the Building (Planning) Regulations (Cap. 123 sub. leg. F) to prescribe the specifications of signboards and the supporting structures of air-conditioning units projecting over a street, and to require provision of an emergency vehicular access to all new buildings in accordance with requirements specified by the BA unless exempted by him.

Facilitating law enforcement

Responsible party for unauthorized building works

10. To address the difficulties in identifying the responsible owners in serving removal orders, the Bill proposes to -

- (a) provide that a removal order made under the BO shall be served on -
 - (i) the owner of the unit in which the UBW has been erected; but
 - (ii) if the UBW erected in one unit is connected to another unit and the UBW is occupied or used by the owner or occupier of the latter unit, the owner of the latter unit; and
 - (iii) if the UBW is a signboard, a person in the following priority - the person for whom the signboard is erected; the person who is receiving rent of the signboard or who would receive the same if the signboard were let to other persons; owner of the premises or land on which the signboard is erected;

- (b) to provide for the registration of removal orders issued under the BO in the Land Registry upon serving such removal orders; and
- (c) to enable BA to recover the cost of removal work from either the person served with the removal order or, where that order has been registered with the Land Registry, the person who at the date of completion of the work is the owner of the unit involved.

Warning notices

11. To encourage owners to remove UBWs voluntarily and to enable prospective property buyers to be aware of the existence of UBWs, the Bill proposes to empower BA to issue a warning notice on UBWs and to register the notice in the Land Registry.

Increasing fines

12. The fines for serious offences involving substandard building works or construction danger have not been reviewed for some 20 years. The Bill proposes to increase the maximum fines for selected offences by between four and six times their current levels to achieve the intended deterrent effect.

Uncooperative owners

13. To enable Owners' Corporations (OCs) to comply with statutory orders for repair works or removal of UBWs more easily, the Bill proposes to provide that owners who obstruct their OC in complying with an order served by the BA may be prosecuted.

Improving service to the public

14. The Bill proposes to enable the BA to provide a non-certified copy of plans and prescribed documents or permit a person to inspect such a plan/document at a prescribed fee. The fee will be determined on a cost recovery basis.

Consultation with the Panel on Planning, Lands and Works

15. The legislative proposals under the Bill were discussed at the meeting of the PLW Panel on 14 June 2002. At the meeting, the Panel was briefed on the background and objectives of the proposed amendments to the BO and its regulations.

Proposed amendments relating to minor works

16. On the proposed amendments relating to minor works, a member expressed grave concern that the quality of building works in Hong Kong was far from satisfactory and that the proposed amendments to relax the requirements for minor works would aggravate the situation. Some other members expressed support for the

simplified arrangements for minor works but considered that the types of minor works should be clearly defined.

Monitoring mechanism on building professionals and contractors under the BO

17. Whilst taking note of the proposal to increase the maximum fines for offences involving substandard building works or construction dangers, some members raised concern on the adequacy of the prevailing monitoring mechanism on building professionals and contractors. A member expressed concern on whether BD had exercised due diligence in taking enforcement actions against non-complying professionals and contractors. In response, the Administration advised that the monitoring mechanism comprised the relevant registration systems, prosecution and disciplinary actions as provided under the BO. The details are set out in the Administration's letter dated 6 September 2002 to the Panel (LC Paper No. CB(1)2489/01-02), attached at **Appendix II**. Statistics on the prosecution cases initiated by BD were also provided in the letter.

Proposal to prosecute uncooperative owners

18. On the proposal to prosecute uncooperative owners who without reasonable excuse obstruct their OC in complying with an order for repair works or removal of UBWs in common parts of the building, the Administration advised that individual owners would be prosecuted under two circumstances, namely the owners concerned obstructed the conduct of the repair/removal works or the owners concerned refused to pay their share to fund the required works.

19. Members pointed out the need for a clear definition of "reasonable excuse" to avoid disputes between OCs and individual owners. Highlighting that there were cases where OCs required individual owners to pay unreasonably substantial sums for repair works, a member urged the Administration to reconsider the proposal to prosecute uncooperative owners for failure to pay their share to fund the works. Another member opined that the above proposal was not necessary as OCs were already empowered under the Building Management Ordinance (Cap. 344) to take action against uncooperative owners and BA was empowered under the BO to remove UBWs and recover the cost from the owners concerned.

20. After the meeting, the Administration advised that it would not pursue the "failure to pay" in the amendments to the BO as the Home Affairs Bureau's proposal to amend the Building Management Ordinance to empower OCs to borrow from the Building Safety Loan Scheme on behalf of uncooperative owners already met the objective of dealing with uncooperative owners not paying their share of the works commissioned by OCs to comply with statutory orders.

21. A member suggested that the Administration should examine the feasibility of putting in place an administrative appeal mechanism for handling cases of uncooperative owners. After the meeting, the Administration advised that owners would be given sufficient warning and notice, and would only be prosecuted if they

continued to refuse to cooperate without reasonable excuse. As such, the Administration considered it not necessary to put in place an appeal mechanism before prosecution was taken.

Provision of Emergency Vehicular Access

22. On the proposal to empower BA to grant exemptions from the requirement to provide emergency vehicular access, a members urged the Administration to clearly specify the criteria for granting such exemptions.

Control of advertisement signboards

23. There had been a lot of discussions in the Council and at the PLW Panel on the safety and control of advertisement signboards. At the PLW Panel meetings on 15 April 1999 and 19 December 2000, members were briefed on a proposed scheme to control signboards by means of a statutory registration system. It was also mentioned in the LegCo Brief on "A comprehensive strategy for building safety and timely maintenance - implementation plan" issued in April 2001 that the Administration would introduce legislation on a simple self-financing registration system for signboards in the 2001-02 legislative session.

24. In reply to an oral question on "signboards hanging from buildings" at the Council meeting on 18 June 2003, the Secretary for Housing, Planning and Lands advised that in the course of considering the implementation details of a signboard registration system, the Administration had found that the simplest and most effective way was to subsume the relevant control under the building control system. The erection of most advertisement signboards would be categorized as minor works. The Administration considered that the proposals in the Buildings (Amendment) Bill 2003 would achieve the objective of ensuring the safety of signboards and that an additional signboard registration system was not necessary.

Motion debate on review of the Buildings Ordinance

The Legislative Council passed the following motion moved by Ir Dr Hon Raymond HO as amended by Hon Edward HO and Hon LEE Wing-tat on 26 January 2000 -

"That, as the existing Buildings Ordinance was enacted many years ago and despite the amendments to certain provisions thereof and the related subsidiary legislation, the concerned legislation fails to meet the practical needs of present-day Hong Kong in the face of continuing and rapid economic development, social evolution, changes in the natural environment and technological advancements, this Council urges the Government to expeditiously consult the industries concerned, conduct a comprehensive review and amend the Buildings Ordinance and related subsidiary legislation, with the objectives of:

- (a) streamlining the vetting procedure;
- (b) defining clearly the powers and responsibilities of authorized persons, registered engineers, other professionals and registered general building contractors or registered specialist contractors, in order to ensure building safety;
- (c) providing incentives to encourage developers to adopt designs and use building materials that are environmentally friendly; and
- (d) enhancing the capability of future buildings, with regard to their structure and planning, in withstanding natural disasters such as earthquakes, flooding, subsidence and natural slope failure, etc.,

meanwhile, the Government should ensure that future building developments tie in with the principles of sustainable development, including the protection of the environment and the promotion of economic development and advanced and new technologies; this Council also urges the Government to impose heavier penalty on building contractors and related persons who contravene the Buildings Ordinance or related subsidiary legislation, so as to strengthen its deterrent effects."

Appendix II

LC Paper No. CB(1)2489/01-02

HPLB(B) 30/30/102(02) Pt.5

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6 September 2002

Clerk of Panel
(Attn: Mrs Queenie Yu)
LegCo Panel on Planning, Lands and Works
Legislative Council Chamber
8 Jackson Road, Central
Hong Kong

Dear Mrs Yu,

Proposed Amendments to the Buildings Ordinance

At the meeting of the Panel on Planning, Lands and Works held on 14 June 2002, the Administration undertook to follow up on a few issues. The following is a joint reply from the Housing, Planning and Lands Bureau and the Buildings Department on these follow up items.

Review of the Buildings Ordinance

2. A Member asked about the scope and timetable for future reviews of the Buildings Ordinance.
3. Over the years, the Administration has been revising the Buildings Ordinance (BO) from time to time to ensure its continued relevance to changing circumstances. The more recent examples include –
 - (a) the Building (Administration) (Amendment) Regulation 2000, revising the fee for the provision of certified copy of documents from \$190 to \$45; and
 - (b) the Buildings (Amendment) Ordinance 2000, providing for access facilities in new buildings for telecommunications and broadcast network operators and provision of space for the recovery of reusable / recyclable materials.

4. Since 2000, we have undertaken another round of review of the BO. The upshot of the review is the proposed amendments to the BO outlined in the Administration's paper "Review of the Buildings Ordinance" discussed at the June 2002 meeting of the Panel on Planning, Lands and Works. The proposals include rationalization of the building control regime, facilitating law enforcement and improving services to the public. Their final shape as they go through the legislative process, the discussion during the process and the time taken will all have an effect on the scope and timing of the next phase(s) of the review of the BO. Nonetheless, we are already in the process of reviewing the regulations to the BO with a view to modernizing the standards therein. These standards relate to such matters as loading requirements, stability and factors of safety, sanitary fitment requirements and lighting and ventilation requirements.

5. At this stage, any indication of the way beyond the current phase of the review is bound to be highly tentative. Our plan is as follows –

- (a) introduction of Buildings (Amendment) Bill into the Legislative Council – second half of the 2002/03 session. The scope will essentially be that outlined in the June 2002 Panel paper; and
- (b) assuming passage of the Buildings (Amendment) Bill in the second half of the 2003/04 session, commencement of review of the BO as amended – latter half of 2004. The scope will include performance-based and modern standards for building works, as well as issues arising from discussions of the Buildings (Amendment) Bill. An example of the latter is the effect of the minor works regime on such matters as advertisement signboards. Depending on the number of items to be covered and their scope, we may decide to further phase the review to make the tasks more manageable.

Prosecution Cases

6. A Member asked for a breakdown of the number of prosecution cases under the BO and its regulations. This is at Annex A.

Monitoring Mechanism

7. A Member asked for a table on the monitoring mechanism of professionals and contractors registered under the BO. This is at Annex B.

8. We have carefully reviewed the existing mechanism for ensuring adequate supervision of building works. We are satisfied that, overall, it is working well. As such we do not consider it necessary to set up a dedicated task force to review how supervision of building works could be improved. However, the Buildings Department will continue to be vigilant in discharging its regulatory functions and will put in place improvement measures where they are identified for improving the quality of building works.

Appeal Mechanism

9. A Member suggested that the Administration examine the feasibility of an administrative appeal mechanism for handling cases of uncooperative owners.

10. As explained at the June 2002 Panel meeting and also set out in the Panel paper, owners will be given sufficient warning and notice, and will only be prosecuted if they continue to refuse to cooperate without reasonable excuse. There should, therefore, be ample opportunity for them to seek clarification from and put forward their explanation to the Buildings Department already. As such we consider it unnecessary to put in place an appeal mechanism before prosecution is taken.

11. Separately, we have reviewed our proposal on deterrents against uncooperative owners against the Home Affairs Bureau's proposal to amend the Building Management Ordinance to empower Owners Corporations (OCs) to borrow from the Building Safety Loan Scheme on behalf of uncooperative owners. We believe that the Home Affairs Bureau's proposal should already meet the objective of dealing with uncooperative owners not paying their share of the works commissioned by the OCs to comply with statutory orders. As such we do not propose to further pursue the "failure to pay" idea in the context of amendments to the BO.

12. We should be grateful if you would advise Members of the above points.

Yours sincerely,

(Miss Cheung Siu Hing)
for Secretary for Housing, Planning and Lands

c.c. Director of Buildings

**Statistics on number of prosecution cases initiated by
Buildings Department (1992 – 2001)**

In the past ten years, i.e. 1992 – 2001, the Buildings Department had initiated 1992 prosecution cases under the Buildings Ordinance (BO).

Out of these 1992 cases:

(a) 157 cases were related to the carrying out of unauthorized building works in existing buildings (without the prior approval and consent of the Building Authority) [BO s 40(1) cases];

(b) 1705 cases were related to failure to comply with an order served under the Buildings Ordinance [BO s 40(1B)(b) cases];
and

(c) the remaining 130 cases were related to site irregularities for new building works, demolition works or 'alteration and addition' works [BO s 40(2A)(b), s 40(2AA), s 40(2AB), s 40(2AC), s 40(2B)(a)&(b), B(DW)R s 13(2) and s 13(4) cases].

Monitoring Mechanism of Building Professionals (Authorized Persons and Registered Structural Engineers) and Contractors (Registered General Building Contractors and Registered Specialist Contractors)

The monitoring mechanism of building professionals under the Buildings Ordinance comprises the following elements:

- (1) registration of Authorized Person (AP), Registered Structural Engineer (RSE), Registered General Building Contractor (RGBC) and Registered Specialist Contractor (RSC);
- (2) prosecution; and
- (3) disciplinary action.

The details are set out below. Where relevant, proposed changes to the Buildings Ordinance are also set out for ease of reference.

1	REGISTRATION		
	<u>Provision</u>	<u>Details</u>	<u>Proposed Changes</u>
1.1	<u>BO s 3</u> Registers of AP and RSE	<u>AP and RSE to be registered</u> - The Building Authority (BA) shall keep registers of all persons who are qualified in performing the duties and functions of an AP or RSE respectively in accordance with the Buildings Ordinance (BO).	<i>We propose to extend the registration period.</i>

		<u>Control</u> - Only persons who have obtained the prescribed qualifications, who have adequate experience and are recommended by the Registration Committee are allowed to perform the duties and functions of AP and RSE.	
1.2	Register of registered geotechnical engineers (RGE) (Proposed)	- The register of RGE is currently not provided for in BO.	<i>We propose to introduce the statutory requirement for appointment of RGE to undertake the investigation, design and supervision of geotechnical works. RGEs would also be subject to prosecution or disciplinary actions similar to those for AP and RSE.</i>

1.3	<p><u>BO s 8, 8A, 8B, 8C</u></p> <p>Register of registered contractors (RGBC/RSC)</p>	<p><u>RGBC and RSC to be registered</u></p> <p>The BA shall keep a register of RGBC and registers of RSC who are qualified to perform the duties of an RGBC or RSC respectively in accordance with the BO.</p> <p>-</p> <p><u>Control</u></p> <p>An RGBC or RSC would not be included in a register unless he himself or persons representing the body corporate have the prescribed qualifications, competence and experience in performing the duties and functions of an RGBC or RSC under the BO and are recommended by the Contractors Registration Committee for inclusion into the respective register. This is to ensure that only qualified persons are allowed to perform the duties and functions of contractors.</p>	<p><i>We propose to revise the registration period.</i></p>
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2 PROSECUTION			
	<u>Provision</u>	<u>Details</u>	<u>Proposed Changes</u>
2.1	<u>BO s 40(1)</u>	- Fine/Imprisonment imposed for contravention of section 14(1) or 21(1) in relation to commencement of or carrying out building works without having first obtained the approval and consent from the BA, or occupying a new building without having first obtained an occupation permit or temporary occupation permit from the BA.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>
2.2	<u>BO s 40(1A)</u>	- Fine/Imprisonment imposed for contravention of section 22(2)(a), 24B(14) or 27(5)(a) in relation to denying the BA access to inspect building works or entering premises subject to closure order without the BA's permission.	<i>No change proposed.</i>
2.3	<u>BO s 40(1B)(a)</u>	- Fine/Imprisonment imposed for contravention of s. 30(1) or 31(1) in relation to carrying out works for the construction, formation, laying out, or alteration of any means of access or opening to or from any street without first obtaining the consent from BA, or for erecting any works over streets.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>

2.4	<u>BO s 40(1E)</u>	- Fine/Imprisonment imposed for contravention of s. 24B(6) for carrying out works other than the demolition or alteration works stated in the notice of Application for Priority Demolition Order issued by the BA.	<i>No change proposed.</i>
2.5	<u>BO s 40(2)</u>	- Fine/Imprisonment imposed for contravention of s. 25(1) or 42 in relation to failure to give notice to the BA of any material change in use of building or contravening any condition of exemption.	<i>No change proposed.</i>
2.6	<u>BO s 40(2A)</u>	- Fine/Imprisonment imposed for contravention by any person, including AP, RSE, RGBC or RSC, who permits the use of defective material, etc or diverges or deviates in a material way from any work shown in an approved plan, or knowingly misrepresents a material fact in plan, certificate, form, etc.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>
2.7	<u>BO s 40(2AA)</u>	- Fine/Imprisonment imposed for contravention of section 4(3)(b) by any AP, RSE, or 9(5)(b) or (6)(b) by any RGBC or RSC in failure to notify BA of any contravention of the regulations which are to their knowledge, resulting from carrying out of building works according to approved plans.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>

2.8	<u>BO s 40(2AB)</u>	- Fine/Imprisonment imposed for contravention of any condition imposed, for failing to comply with the requirement of order issued under s.17(1) in respect of building works other than those listed in s.40(2AC) below.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>
2.9	<u>BO s 40(2AC)</u>	- Fine/Imprisonment imposed on any person, in relation to site formation works, piling works, excavation works or foundation works, who fails to comply with the condition imposed under item 7 in the table to section 17(1) in respect of measures to prevent collapse.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>
2.10	<u>BO s 40(2B)</u>	- Fine/Imprisonment imposed on any person carrying out or permitting the carrying out of building works in such manner that it causes or is likely to cause injury to any person or damage to any property.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>
2.11	<u>BO s 40(2C)</u>	- Fine/Imprisonment imposed on any person who, without reasonable excuse, fails to comply with an order served on him under section 24A requiring dangerous works to be ceased or remedied.	<i>Propose to increase the maximum fines taking into account the inflation factor.</i>
2.12	<u>BO s 40(2D)</u>	- Fine/Imprisonment imposed on any person who knowingly misrepresents a material fact in any report submitted to the BA under section 27C(2)(c) on investigation of water pipes, drains or sewers laid in slopes.	<i>No change proposed.</i>

2.13	<u>B(DW)R s 13</u> Offence and penalties for demolition works	<p>Fine/Imprisonment imposed on:</p> <ul style="list-style-type: none"> (1) an AP who contravenes regulation 3(1). (i.e., failing to disconnect all attached building services installations and fittings before the commencement of demolition works); (2) an RGBC or RSC who contravenes regulation 3(2). (i.e., failing to provide precautionary measures such as fans, sealing all sewer and drainage connexions, and removing all glazed sashes and doors from the building before the commencement of demolition works); (3) an RGBC or RSC who contravenes regulation 6(a), (i.e., failing to provide precautions to prevent fire or explosion, etc.) or regulation 8(2); or (4) an RGBC or RSC, or any person directly concerned with the demolition works in the event of a contravention of regulation 4(1) (provision of shoring), 4A (sequence of carrying out demolition works), 5 (electric cables, etc. not to remain charged), 6(b) (protection of openings from danger), 7 (provisions in relation to shuts for removal of materials, etc), 8(1) or (3) (demolition works to be carried out under supervision of technically competent person), 9(1) or (3) (certain operations to be carried out only under competent supervision), 10 (floors, etc. not to be overloaded), 11 (precautions to be taken in relation to cutting of steelwork, etc.) or 12 (precautions to be taken in removing framing). 	<i>No change proposed.</i>
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3 <u>DISCIPLINARY ACTIONS</u>		
	<u>Provision</u>	<u>Details</u>
3.1	<u>BO s 7</u> Disciplinary proceedings for AP and RSE	<p>The BA may bring to the notice of a disciplinary board for the consideration of imposing sanctions, such as temporary or permanent removal of the name from respective register or reprimand and fine or publishing the findings in the gazette as appropriate, where an AP or RSE:-</p> <ul style="list-style-type: none"> (a) has been convicted by any court of an offence related to carrying out his professional duties; (b) has been negligent or has misconducted himself in a professional way; (c) has permitted a material deviation from a supervision plan for which he is responsible without reasonable cause; or (d) has drawn up, or repeatedly drawn up, a supervision plan that does not comply with the material requirements of the BO.
3.2	<u>BO s 13</u> Disciplinary proceedings for Registered Contractors	<p>The BA may bring to the notice of a disciplinary board for the consideration of imposing sanctions, such as temporary or permanent removal of the name from respective registers or fine or reprimand and publishing the findings in the gazette as appropriate, where an RGBC or RSC:-</p> <ul style="list-style-type: none"> (a) has been convicted by any court of an offence relating to building works or street works; (b) has been negligent or has misconducted himself in building works or street works; (c) has deviated in a material manner from a supervision plan without reasonable cause; or (d) has drawn up, or repeatedly drawn up, a supervision plan that does not comply with the material requirements of the BO.