

## Chapter 3

### **Buildings Department's efforts to tackle the unauthorised building works problem**

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Audit conducted a review to examine the Buildings Department (BD)'s efforts in tackling the unauthorised building works (UBW) problem and to ascertain whether there were areas for improvement.

#### **BD's achievements in removing UBW**

2. The Committee noted from paragraphs 1.6 and 1.7 of the Audit Report that, in April 2001, the Executive Council (ExCo) endorsed a comprehensive strategy for building safety and timely maintenance (the 2001 Strategy) to tackle, among other things, the UBW problem. To implement the 2001 Strategy, the BD had been allocated \$167 million in 2001-02 for additional staff and to pay for outsourcing some of its work to the private sector. The annual provision allocated to the BD for this purpose was \$205 million from 2002-03 onwards.

3. Paragraphs 2.4 and 2.5 mentioned that under the 2001 Strategy, the BD expected to remove between 150,000 and 300,000 UBW within five to seven years. Audit estimated that the BD would be able to remove 208,550 UBW in the seven years from 2001 to 2007. While this would exceed the lower end of the BD's expectation, it still fell short by nearly one-third of the upper-end expectation of removing 300,000 UBW.

4. The Committee considered that the BD was expected to implement the 2001 Strategy as a matter of urgency to protect life and property when it was allocated the large amount of additional resources. However, it appeared to the Committee that the BD had not fully achieved the targets set under the strategy. It queried why the BD had not met the upper-end expectation of removing 300,000 UBW by 2007.

5. **Mr Marco WU, Director of Buildings**, explained that:

- the range of 150,000 to 300,000 UBW to be removed by 2007 was only an estimate based on the number of buildings targeted for clearance operations. This was because the number of UBW that existed in a building and the number of those that could be removed were not certain until the BD conducted operation on the target building. Hence, the 2001 Strategy paper specified such a large range of between 150,000 and 300,000 UBW. In fact, the BD's targets were to conduct blitz operations (i.e. large-scale clearance operations) on 900 buildings in 2001, and 1,000 buildings in 2002 and thereafter; and

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- the BD estimated in 2001 that there were about 800,000 UBW in Hong Kong. It aimed to remove 150,000 to 300,000 UBW, instead of all the 800,000 UBW, in five to seven years. As pointed out by Audit, the BD should be able to remove about 200,000 UBW by 2007. In the coming years, the BD would continue to work towards meeting the target number of buildings each year. More UBW would be removed if more were identified during the operations. The BD also agreed to Audit's suggestion of conducting more blitz operations where resources permitted.

6. In the light of the Director of Buildings' reply, the Committee asked:

- about the number of buildings that had UBW when the BD sought resources for implementing the 2001 Strategy; and
- the actual numbers of buildings on which blitz operations had been conducted in each of the years since the implementation of the 2001 Strategy, and whether the target of conducting operations on 1,000 buildings a year had been achieved.

7. The **Director of Buildings** and **Mr CHEUNG Hau-wai, Deputy Director of Buildings**, said that when the BD applied for resources, the objectives included improving the safety conditions and outlook of buildings from 20 to 40 years old by removing the UBW found in these buildings, clearing illegal rooftop structures (IRS), and controlling signboards. Regarding the removal of UBW, the target was set at 1,000 buildings a year. While it was expected that the BD would be able to clear about 200,000 UBW found in the buildings by 2007, it would still strive to meet the upper-end expectation of removing 300,000 UBW by then.

8. In his letter of 23 December 2003, in *Appendix 28*, the **Director of Buildings** advised that the numbers of buildings on which blitz operations had been conducted in each of the years since the implementation of the 2001 Strategy were 1,571, 1,759 and 1,000 for 2001, 2002 and 2003 respectively. The BD had achieved all the targets of conducting blitz operations i.e. conducting operations on 900 buildings in 2001 and 1,000 buildings per year since 2002.

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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9. As the number of buildings that were 20 to 40 years old would increase every year, the Committee asked whether the BD would consider enlisting the assistance of the Urban Renewal Authority or the Hong Kong Housing Society in removing UBW, with a view to expediting the progress of removing UBW in Hong Kong and meeting the upper-end target of removing 300,000 UBW by 2007.

10. **Mr Michael SUEN Ming-yeung, Secretary for Housing, Planning and Lands,** and the **Director of Buildings** responded that:

- in the past few years, the BD had already engaged contractors to perform those duties that preceded the issuance of statutory removal orders, including site inspection and drafting of orders. The BD would consider whether there were other duties that could be handled by other organisations. However, statutory power could not be transferred. The follow-up work after the issuance of removal orders, such as taking actions against the owners for non-compliance with the orders, involved the exercise of statutory power and had to be undertaken by civil servants; and
- to deal with the increase in old buildings and related problems, the Administration would conduct a public consultation exercise shortly with a view to engaging the community in discussions about the appropriate approach to tackling the building neglect problem and promoting the idea that it was the owners' responsibility to keep their buildings in good repair. The Administration hoped to educate the owners about their responsibility to remove UBW voluntarily without being compelled by removal orders. This would be a long-term solution to the problem.

### **Extent of compliance with section 24 orders and complaint cases**

11. The Committee understood from paragraph 3.1 of the Audit Report that, having identified a UBW that required enforcement action, the BD might issue a statutory order under section 24 of the Buildings Ordinance (section 24 order) requiring the owner to remove the UBW within a specified period (usually within 60 days). The Committee was concerned that, as revealed in paragraph 3.3 of the Audit Report, the section 24 orders only had an overall compliance rate of 57%, ranging from 74% for orders issued in 2000 to 32% for those issued in 2002. Moreover, Audit's analysis of 18,300 outstanding section 24 orders indicated that 11,500 (or 62%) had been issued more than 16 months ago, including 1,590 (or 8%) that had been issued more than seven years ago (paragraph 3.5). The Committee asked about the actions taken by the BD to clear the large number of long outstanding section 24 orders.

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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12. The **Director of Buildings** stated that:

- it was natural that the compliance rates of the section 24 orders issued in the earlier years were higher than those issued in recent years. Owners needed time to remove their UBW and comply with the orders. Nevertheless, the senior management of the BD was concerned about the substantial backlog of outstanding section 24 orders, particularly those that were issued long ago. Regarding the orders issued more recently, such as those in 2001 and 2002, the BD was rather confident that, given time, most of the owners would comply with them; and
- the BD had set up a dedicated team in July 2000 for the purpose of clearing the backlog, but the pace was still less than satisfactory. This was because some cases were complicated and required more time to settle. The BD would have to consider other ways to deal with the problem. It would also consider allocating more resources internally to clear the backlog.

13. The **Secretary for Housing, Planning and Lands** supplemented that:

- within the resources available to him, he would have to determine the amount of resources allocated to the various departments under his purview. Given the current stringent financial situation, there were no new resources. Even existing resources might have to be cut. While he would certainly give top priority to cases that directly affected life and safety, other cases would inevitably be accorded a lower priority; and
- it was undeniable that the BD's performance in enforcing the removal of UBW was unsatisfactory. The compliance rate of only 32% in 2002 was too low. The Administration would suitably allocate more resources to this task. However, whereas the Administration would try its best to improve the compliance rate, there was no guarantee that 100% of the orders issued would be complied with.

14. On the duties of the dedicated team, the **Acting Director of Buildings** informed the Committee, in his letter of 2 January 2004 in *Appendix 29*, that:

- in July 2000, the BD set up a dedicated Backlog Team to clear outstanding orders issued before 1996. In May 2002, this dedicated team also took up the task of clearing the outstanding orders issued before 3 July 2000, except those orders issued under large scale operations such as Blitz UBW Clearance operation. The latter was being followed up by other district teams;

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- the duties of the Backlog Team included screening case files, carrying out site inspections, recommending and following up with necessary enforcement actions, attending meetings with the public arising from the clearance of the backlog orders; and
- when the backlog orders had been discharged, the Backlog Team would also update the information in the Buildings Condition Information System (BCIS) in respect of the backlog orders.

15. Referring to the Secretary for Housing, Planning and Lands' statement that the Administration would accord top priority to cases affecting life and safety but lower priority to other cases, the Committee wondered whether the BD would stop following up those outstanding section 24 orders that did not cause immediate danger to life and safety and, if so, whether the law allowed the BD to prioritise the removal of UBW on such a basis.

16. The **Secretary for Housing, Planning and Lands** and the **Director of Buildings** clarified that:

- the BD would definitely take action to ensure that all section 24 orders that had been issued were complied with. The BD was also making special efforts to clear the backlog of orders that had been outstanding for a long time. Since its establishment in July 2000, the Backlog Team had reduced the backlog from 3,400 to about 1,400 cases;
- the law empowered the BD to take enforcement actions against UBW by issuing section 24 orders, but did not specify the kind of UBW that deserved priority action. Regarding new cases, the BD would have to prioritise its work having regard to the resources available. In fact, the BD's approach was in line with the revised enforcement policy against UBW as set out in the 2001 Strategy. Under the Strategy, the BD was to re-focus priorities in taking enforcement actions against UBW. Resources were directed to the removal of the following seven categories of items:
  - (a) items constituting obvious or imminent danger to life or property;
  - (b) new items;
  - (c) items in or on buildings, on podiums and rooftops, in yards and lanes constituting a serious hazard or a serious environmental nuisance, as determined by the Building Authority;

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- (d) major individual items;
  - (e) items in or on individual buildings with extensive UBW;
  - (f) items identified in buildings or groups of buildings targeted for large-scale operations or maintenance programmes; and
  - (g) unauthorised alteration to or works in environmentally friendly features of a building for which exemption from calculation of gross floor area has been granted by the Building Authority; and
- the Administration adopted a two-pronged strategy with a view to tackling the UBW problem at source. On one hand, the BD took enforcement action against UBW. On the other hand, it hoped that the public would accept that it was their responsibility to maintain their buildings in good condition, thereby curbing the emergence of new UBW.

17. The Committee noted Audit's recommendation in paragraph 3.7(e) of the Audit Report that the Director of Buildings should provide the public with information on the extent of compliance with section 24 orders and ageing analyses of outstanding cases. The Committee also noted that some BD officers had expressed concern about their capacity to cope with additional work. The Committee asked whether the BD accepted Audit's recommendation, which could enhance the transparency of the BD's performance and help to solicit BD staff's support in meeting the department's performance targets.

18. The **Director of Buildings** responded at the hearing, and the **Acting Director of Buildings** stated in his letter of 2 January 2004, that:

- to address the concern of staff about their workload, the BD would provide more training to ensure that they understood the nature of and the procedure involved in their work. He would also make better deployment of resources and discuss with BD staff the appropriate prioritisation of their work;
- the BD proposed to set additional performance targets for the clearance of outstanding section 24 orders, details of which were given in Annex II of the letter of 2 January 2004; and
- the BD also intended to provide the public with information on the extent of compliance with section 24 orders, the ageing analyses of the outstanding orders and the BD's additional performance targets for the clearance of outstanding orders in its website starting from 1 April 2004.

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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19. Turning to the UBW cases arising from complaints, the Committee noted that the BD had introduced the BCIS, which was a major computer system, in mid-2002 at a cost of \$20 million. Its objective was to maintain a database of the conditions of all existing private buildings in Hong Kong, which would provide an effective means of recording, processing and retrieving details of complaints, referrals, planned surveys, statutory orders and works orders.

20. Audit's analysis of the BCIS data revealed, however, that, as at July 2003, only 31,200 complaint cases (or 83%) of the 37,570 cases received by the BD in 2001 and 2002 had an "initial action date" (e.g. the date of initial screening) recorded in the BCIS, which indicated that action had been initiated. The remaining 6,370 cases (or 17%) had no such data recorded in the BCIS. Of the 31,200 complaint cases with an "initial action date", Audit's analysis of the BCIS data revealed that, as at July 2003, in 2,270 cases (or 7%), no site inspections had been carried out, although the case screening (i.e. the initial action) had taken place more than four months earlier. In 1,660 cases (or 5%), section 24 orders had not been issued, although the site inspections had been carried out more than four months earlier. Hence, there could have been delays in the BD's follow-up action in these cases.

21. Against the above background, the Committee asked:

- whether the BD had taken remedial measures in respect of the 17% of cases with no records of the "initial action date" in the BCIS, and when the relevant data would be entered into the BCIS;
- why no site inspections were carried out months after case screening had been performed and no section 24 orders were issued months after the site inspections, and whether these were due to the shortage of manpower;
- how the BD would prevent the recurrence of similar delays in future; and
- why the BD had not made good use of the BCIS.

22. The **Director of Buildings** advised, at the public hearing and in his letter of 23 December 2003, that:

- with reference to the complaint cases in the BCIS without the "initial action date", the BD would deploy additional resources with a view to entering all relevant data into the BCIS by March 2004 and completing all outstanding "initial actions" by June 2004;

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- the reason for the delay in taking follow-up actions on the cases was a lack of resources, as the same group of BD staff had to deal with both complaint cases and large-scale operations. To avoid undue slippage in its enforcement action, the BD had put in place a procedure to monitor the progress of follow-up action at both district supervisory and management level. The former would monitor the progress of every case in detail and the latter would monitor the overall progress of all cases with the help of the BCIS; and
- the BCIS had just been put to use at the beginning of 2003. Before the launching of the BCIS, the BD had stored the information in other ways and in other computer systems. The information was now being transferred to the BCIS and the BD would make good use of the system.

### **Blitz operations**

23. According to paragraphs 5.12 to 5.15 of the Audit Report, due to unsatisfactory performance of the contractors, BD staff had to spend a lot of time and effort on supervising outsourced blitz operations, rendering them less cost-effective than those conducted in-house. The average operating cost of the outsourced operations for each building was \$42,000, \$4,000 (or 10%) higher than the average cost for each building (i.e. \$38,000) in in-house operations. This was mainly due to the high supervision costs incurred, which accounted for \$24,000 (or 57%) of the operating cost per building of the outsourced operations. In view of the audit findings, the Committee enquired:

- about the reasons for the high supervision costs;
- whether the BD had selected the relatively more complicated cases for outsourcing while retaining the simpler ones for in-house operations; and
- how the BD would reduce the supervision costs.

24. The **Secretary for Housing, Planning and Lands** and the **Director of Buildings** explained that:

- the above cost comparison between in-house blitz operations and outsourced operations was made by the BD after the first batch of blitz operations had been outsourced. Delays had occurred as some contractors were not experienced in handling the blitz operations and some were not familiar with the BD's requirements. On some occasions, the survey reports, information or photographs submitted by the contractors were incomplete or of poor quality, and had to be returned for amendments;



## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- with the experience gained from the first batch of the outsourced contracts and the implementation of the measures proposed by the BD to address the problem of high supervision costs (set out in Table 9 in paragraph 5.14 of the Audit Report) in the new batch of outsourced contracts, the BD was confident that supervision costs could be reduced. However, the extent of reduction had yet to be ascertained after the new batch of contracts had been implemented for a period of time; and
- the BD had not outsourced the cases on a selective basis and had contracted out as many operations as possible.

25. The Committee enquired whether it was possible to reduce the costs incurred in supervising the blitz contractors by further outsourcing the supervisory work involved. The **Director of Buildings** said at the public hearing, and the **Acting Director of Buildings** supplemented in his letter of 2 January 2004, that:

- the costs of law enforcement work had been included in the “supervision costs” in the Audit Report. To outsource law enforcement work as a means to lower the “supervision costs” would necessitate amendments to existing legislation;
- section 2(2) of the Buildings Ordinance (BO) stated that “the duties imposed on and the powers granted to the Building Authority under this Ordinance may be carried out and exercised by an officer of any Department of the Government specified in the Fourth Schedule who is authorized by the Director of Buildings either generally or particularly and subject to his instructions.” A private contractor was not a public officer of any of the departments specified in the Fourth Schedule. He could not exercise such powers; and
- if the BD were to empower the private contractor to carry out law enforcement work, such as issuing statutory orders and accepting the discharge of orders, legislative amendment would be necessary. Such legislative amendment involving the principal ordinance would require submission of a bill to the Legislative Council. However, this would involve a major policy change in law enforcement and would need to be carefully examined as regards its implications.

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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26. In response to the Committee's invitation, the **Director of Audit** offered his comments on the matter. He advised, in his letter of 27 January 2004 in *Appendix 30*, that:

- outsourcing the supervisory work was in principle worth pursuing. In the light of the audit findings and the Director of Buildings' remarks at the public hearing and his reply of 2 January 2004, it would appear that:
  - (a) the BD could reduce its supervision costs by implementing Audit's recommendations mentioned in paragraph 5.16(c), (d) and (e) of the Audit Report. The Director of Buildings was taking action to implement the recommendations;
  - (b) administratively, outsourcing the supervisory work would create another layer of contractors between the BD and the blitz contractors. Contract administration work of the BD would likely increase in terms of both volume and complexity; and
  - (c) at present, certain statutory duties and powers (e.g. the issuing of statutory orders) could not be exercised by the blitz contractors. Until legislative amendments were enacted, the statutory duties and powers would have to be excluded from the scope of any outsourced supervisory work; and
- generally speaking, outsourcing had been widely used by public organisations to enhance cost-effectiveness. On the other hand, outsourcing the supervisory work involved in blitz operations was a fairly complicated issue that required a thorough feasibility study and a policy change before implementation.

27. Paragraph 5.17 of the Audit Report mentioned that, in response to Audit's observation that the 2001 outsourced blitz operations had fallen behind schedule, the Director of Buildings had said that the original target dates set for completing the key stages might have been too optimistic. The BD had revised the target completion dates for the new batches of outsourced contracts. It would also require the new contractors to engage staff who had at least three years' experience in this type of work. The Committee asked:

- how the revised target completion dates compared to the original ones; and
- whether the new requirement for experienced staff had led to higher contract prices.

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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28. In his letter of 23 December 2003, the **Director of Buildings** provided a comparison of the revised target completion dates of key stages for the new batch of outsourced contracts under the Blitz UBW Clearance (BUC) 2003 and the original ones under BUC 2001. He also said at the public hearing and in his letter that:

- in the past, the BD had specified in the contracts the qualifications required of the staff engaged by the blitz contractors for filling certain ranks or posts, although the years of experience required were not spelt out. With the experience gained from the contracts under BUC 2001, the BD found that the experience of the contractors' staff was very important; and
- the requirement for experienced staff had been introduced in the new batch of outsourced contracts of BUC 2003. The average contract price per building for outsourced contracts under BUC 2001 and BUC 2003 were \$17,438 and \$17,578 respectively. As many other factors, such as market conditions and the complexity of the jobs in individual contracts e.g. number of UBWs identified and to be removed in the target building, might affect the contract prices, it was difficult to determine whether the new requirement for experienced staff had led to higher contract prices.

### **The Coordinated Maintenance of Buildings Scheme (CMBS)**

29. Paragraph 6.11 of the Audit Report stated that BD staff had expressed concern about the tight timeframe of the CMBS operations, and suggested that more time should be allowed for their completion. The Committee asked about the reasons for the staff's concern and whether they had been consulted when the CMBS was designed.

30. The **Secretary for Housing, Planning and Lands**, the **Director of Buildings** and the **Deputy Director of Buildings** replied that:

- unlike blitz operations, the CMBS aimed at promoting owners' awareness of their building maintenance responsibilities. Under the CMBS, the BD encouraged owners and owners' corporations (OCs) to voluntarily identify and carry out repairs considered necessary to improve the safety of their buildings. The BD did not have tight control of the progress of a CMBS operation because, very often, it had to allow more time for the owners to hold meetings, or for setting up OCs;

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- the CMBS was introduced as a pilot scheme. With the experience gained from the pilot scheme, BD staff found that the original timeframe for CMBS operations was too tight and should be adjusted. The BD had now allowed more time in individual cases for the owners to organise the necessary repair works, having regard to owners' willingness and readiness to organise themselves and carry out the works. In the long term, the BD would assess the effectiveness of the CMBS and decide whether it should be carried on or be shelved; and
- one of the objectives of the consultation document to be published was to stimulate public discussion of the issues involved in building management and maintenance. For example, the industry might provide one-stop services to owners through pulling together the necessary legal, surveying, architectural, management and other related expertise. Such private sector efforts would enable owners to better discharge their responsibilities for the upkeep of their buildings and the Government's effort and spending in this aspect could be reduced.

### **Illegal rooftop structures (IRS)**

31. According to paragraphs 7.2 to 7.9 of the Audit Report, under the 2001 Strategy, the Administration undertook to clear IRS on 4,500 single-staircase buildings within seven years. It was the BD's objective to remove, by 2007, all IRS that posed a serious fire risk from all single-staircase buildings. However, since 2001, the BD had identified additional single-staircase buildings with IRS posing a serious fire risk which were not included in the original list of 4,500 buildings.

32. The Committee was concerned that the BD's objective might not be achieved, unless it revisited on a regular basis the annual target for IRS clearance (presently 700 buildings a year), taking into account the number of newly identified single-staircase buildings with IRS posing a serious fire risk. The Committee therefore asked whether the BD:

- could meet its target of removing all IRS that posed a serious fire risk from all single-staircase buildings by 2007;
- had achieved its annual target of removing IRS on 700 single-staircase buildings in the past few years; and

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- would consider conducting a systematic survey of the single-staircase buildings in the territory, as recommended in paragraph 7.15(d) of the Audit Report.

33. The **Director of Buildings** responded that:

- the BD had made progress in removing IRS in the past three years. The numbers of single-staircase buildings with IRS removed in 2000, 2001, 2002 and 2003 (as at end of September) were 220, 402, 632 and 522 respectively. The BD was confident that it could meet the target of 700 buildings by the end of 2003. It would also try its best to remove IRS on more than 700 buildings annually in the next few years; and
- the current figure of 4,500 single-staircase buildings with IRS was based on the BD's survey in 1998. After conducting detailed inspections on those buildings since then, the BD found that there were other single-staircase buildings that were not included in the original figure. It also found that some buildings which were included in the original figure had in fact more than one staircase. The BD intended to conduct a detailed exercise in 2004 to verify the information in order to arrive at a more accurate figure.

34. The Committee further enquired:

- whether the BD would take any remedial measures to reduce the fire risk of single-staircase buildings, pending the completion of the verification exercise; and
- whether the Housing Authority's revised rehousing eligibility criteria for public rental housing had facilitated the clearance operations.

35. The **Director of Buildings** and the **Deputy Director of Buildings** informed the Committee that:

- the Administration had imposed restrictions on the design of single-staircase buildings in order to reduce the fire risk of such buildings. For instance, a single-staircase building could not have more than six levels. Moreover, the upper floors of such buildings could only be used for residential purpose while the ground floor could be used as shops or for other purposes; and

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- in December 2002, the Housing Authority had relaxed the requisite residence requirement for rehousing to public rental housing. In the past, the requirement was residence in the IRS on or before 1982. Under the new arrangements, families would be eligible for rehousing if they had resided in the affected IRS for two years. The relaxed residence requirement could facilitate the clearance operations.

### **Control of signboards**

36. The Committee understood from paragraphs 8.7 to 8.13 of the Audit Report that, according to the 2001 Strategy, the Administration undertook to introduce a signboard registration scheme in the 2001-02 legislative session. However, this scheme had not materialised as the Housing, Planning and Lands Bureau (HPLB) encountered difficulties in drawing up a feasible registration scheme. The HPLB considered that signboards were basically a type of building works and it was unnecessary to devise an entirely new control scheme to regulate them. It decided to subsume the control of signboards under the Buildings (Amendment) Bill 2003, which had been introduced into the Legislative Council in April 2003. The Bill provided for a new control scheme for minor works. The Committee asked:

- about the effectiveness of the new minor works control scheme in ensuring the safety of advertisement signboards, in the Administration's assessment; and
- as the new minor works control scheme lacked most of the key features of the signboard registration scheme, which formed part of the 2001 Strategy and had been approved by the ExCo, whether the HPLB had reported the change to the ExCo.

37. In response, the **Secretary for Housing, Planning and Lands**, the **Director of Buildings** and **Mr Parrish NG, Principal Assistant Secretary (Planning and Lands)**, stated that:

- the Administration considered that the degree of control on different kinds of building works should be commensurate with their nature, scale, complexity and degree of risk. Under the Buildings (Amendment) Bill 2003, minor works, including signboards and other minor building works, were classified into three categories with different submission and supervision requirements. Works on larger signboards were to be carried out under the supervision of authorised persons and registered structural engineers, and the relevant plans

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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and documents had to be submitted to the BD. Smaller signboards were to be erected by registered contractors. The Administration considered that the new minor works control scheme could achieve the objective of ensuring the safety of signboards;

- when the HPLB submitted the proposed Buildings (Amendment) Bill 2003 to the ExCo, it had explained to the ExCo its intention to subsume the control of advertisement signboards under the new minor works control scheme; and
- while the main features and implementation details of the new minor works control scheme were different from those of the proposed signboard registration scheme, they both aimed at ensuring the safety of signboards. The HPLB would carry out a post-implementation review of the new minor works control scheme to ascertain its effectiveness and report the results to the ExCo as appropriate.

### **The BD's prosecution policy and practice**

38. According to paragraphs 9.6 to 9.9 of the Audit Report, it was the BD's stated objective to use prosecutions as an effective deterrent and to enhance respect for the law and for the BD as law enforcement agent. Although the BD had more than doubled its prosecution efforts in recent years, the result (i.e. 476 prosecutions in 2002) had fallen short of the BD's pledge to initiate 2,000 prosecutions a year, a pledge that had been repeatedly made by the Director of Buildings. In addition, as at April 2003, 43,500 section 24 orders issued before 1 January 2003 were still outstanding. These included 11,500 orders (or 26%) that had been outstanding for more than 16 months. These figures suggested that, despite the BD's objectives, many building owners continued to flout the law by ignoring the section 24 orders.

39. Paragraph 9.10 further revealed that a possible reason for the small number of prosecution cases instigated was the case officers' reluctance to initiate prosecution action. They were concerned that prosecution action would increase their workload.

40. Against the above background, the Committee asked:

- whether and how the BD would step up its prosecution efforts so as to fulfill its pledge of instigating 2,000 prosecutions a year; and
- how the BD would address the case officers' concern.

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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41. The **Director of Buildings** responded that:

- he understood that the former Director of Buildings had said on various occasions that the BD was prepared to increase the number of prosecutions to 2,000 a year. He agreed that, given the large number of outstanding section 24 orders and the number of prosecutions instigated by the BD presently, the BD should step up its prosecution efforts in order to meet the target;
- he was confident that the BD could instigate 500 prosecutions in 2003 and 1,000 prosecutions in 2004. Additional resources would be deployed internally with a view to meeting the target of instigating 2,000 prosecutions in 2005; and
- the BD staff were concerned about the additional workload generated by prosecution action because they had to handle different tasks at the same time. The BD would suitably increase the resources for prosecution work and provide more training for staff.

42. Regarding the BD's prosecution practice, the Committee noted from paragraphs 9.4 and 9.5 of the Audit Report that the BD's case officers could exercise discretion on whether to recommend prosecution action for individual cases. Where prosecution action was recommended, the recommendation had to be approved by a BD directorate officer (D1), before the case was referred to the BD's Legal Section for prosecution. However, where no prosecution action was recommended, there was no procedure that required the case to be submitted to a directorate officer for agreement, and the reasons for not taking prosecution action did not have to be specified.

43. The Committee questioned whether the BD considered it appropriate to let relatively junior staff decide whether or not to recommend prosecution action for individual cases.

44. The **Director of Buildings** replied at the hearing, and the **Acting Director of Buildings** stated in his letter of 2 January 2004, that:

- with the aid of the BCIS, all overdue cases, irrespective of whether prosecution action had been recommended or not, could be monitored by the BD's management in future; and



## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- at district level, the chief professional officers (CPOs) and senior professional officers could generate from the BCIS, for monitoring purpose, various exception reports, which would include a list of long outstanding cases that had not been recommended for prosecution. Cases of undue delay would be brought up for discussion at the Progress Monitoring Subcommittee (PMS) meeting chaired by the CPOs. Difficult cases might be further reported to the top management level at the Progress Monitoring Committee (PMC) meeting. The PMC would monitor the overall progress of the BD's enforcement work and steer the direction in resolving difficult cases.

### **Findings arising from Audit's case studies**

45. Referring to the results of the five case studies mentioned in paragraph 11.2 of the Audit Report, the Committee was concerned that there were instances where delays had occurred at various stages of the BD's enforcement process. The Committee enquired how the BD would prevent the recurrences of similar delays.

46. The **Deputy Director of Buildings** said that:

- in the past few years, the BD had focused its efforts on implementing the measures set out in the 2001 Strategy, including blitz operations, CMBS operations and the clearance of IRS. As resources were limited, there had been delays in the follow-up action on complaints; and
- to avoid undue slippage in its enforcement action, the BD had recently set up a system to monitor closely the progress of follow-up action at both operational and management level. Through the PMS and PMC, and with the help of the BCIS, the BD's management could closely monitor the progress of enforcement work.

47. In response to the Committee's request, the **Director of Buildings** provided, in his letter of 23 December 2003, a detailed account of the reasons for the delays in the five cases studied by Audit, the ranks of the BD officers who caused the delays, and the ranks of the supervisors of the officers concerned. The **Director of Buildings** further informed the Committee that, when seen in context, the delays in the five cases might be due to a number of common factors in addition to their individual circumstances and particular reasons. The common factors included:

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- there had been a significant increase in the workload and performance targets over the past few years. For example, the number of complaints attended to had increased from 8,300 cases in 1993 to 15,600 cases in 2002. The annual target of "UBWs removed and irregularities rectified" had doubled from 15,000 in 2001 to 30,000 from 2002 onwards;
- some major operations and key events might have interrupted the progress of individual cases during the material time as detailed below:
  - (a) a major internal re-organisation of the BD took place in July 2000. This re-organisation exercise enabled the BD to improve its overall efficiency in dealing with existing buildings, but inevitably caused some temporary disruptions to the BD's work when it was implemented; and
  - (b) a number of large-scale operations had been launched. Substantial resources had been drawn to these operations at various critical stages, such as the selection of target buildings, survey inspections, issuance of statutory orders and compliance inspections;
- to implement the 2001 Strategy, additional resources had been obtained which had partly been used to recruit new staff on a contract or temporary basis. As a result, over 540 new staff members had been recruited in 2001 and 2002. These new recruits had to spend some time at the beginning to familiarise themselves with the work procedures for carrying out enforcement against UBW; and
- before the launching of the BCIS in January 2003, the BD did not have a comprehensive progress monitoring system which could help the supervisory staff to monitor the progress of the follow-up action on individual cases.

48. As regards the present position of the five cases, the **Director of Buildings** advised, in the same letter, that:

- ***Case 1 – UBW on a building in Shamshuipo, Kowloon:*** The case officer re-inspected the site on 30 August 2003. The subject UBW had not yet been removed. A removal order was issued on 30 August 2003. The case officer conducted compliance inspection on 18 November 2003. The UBW was found removed;

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- ***Case 2 – UBW on a building in Tai Po, New Territories:*** The BD had initiated prosecution action against the owner of the subject UBW for non-compliance with the section 24 order. Summons was issued to the owner on 11 November 2003. First plea hearing was scheduled for 31 December 2003;
- ***Case 3 – IRS on a single-staircase building in Shamshuipo, Kowloon:*** The owner voluntarily removed the IRS on 13 October 2003 and the BD subsequently discharged the section 24 order;
- ***Case 4 – IRS on a single-staircase building in Mongkok, Kowloon:*** The subject IRS was voluntarily removed on 27 November 2003 and the section 24 order was subsequently discharged; and
- ***Case 5 – An abandoned signboard in Nathan Road, Kowloon:*** In September 2003, the consultant submitted the details of the abandoned signs. The BD served Dangerous Structure Removal Notices for the remaining abandoned signs on 5 September 2003. The BD instructed the government contractor on 22 September 2003 to remove all those abandoned signs in one go. The signboard in question was subsequently removed on 9 November 2003.

### **49. Conclusions and recommendations      The Committee:**

- considers that the Buildings Department (BD) was expected to implement the comprehensive strategy for building safety and timely maintenance as a matter of urgency to protect life and property when funds amounting to \$167 million in 2001-02 and \$205 million annually from 2002-03 onwards were allocated to it for implementing the strategy;
- concurs with the Secretary for Housing, Planning and Lands that the BD's performance in enforcing the removal of unauthorised building works has been unsatisfactory, particularly taking into account the large amount of additional funding allocated to the BD for this purpose;

### **Extent of compliance with section 24 orders and complaint cases**

- expresses serious dismay that the BD had failed to put to use the Buildings Condition Information System (BCIS), which was introduced at a cost of \$20 million, contributing to a backlog of outstanding section 24 orders;

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- expresses serious concern:
  - (a) about the large number of long outstanding section 24 orders and the delays in taking action to ensure that all such orders are complied with; and
  - (b) that follow-up action in some complaint cases had not been promptly taken or duly recorded;
- notes that:
  - (a) the BD has put in place a procedure to monitor the progress of follow-up action at both operational and management level. It has also set up a dedicated Backlog Team to clear the backlog of outstanding section 24 orders issued before 1996 and the team will update the data in respect of the backlog orders in the BCIS;
  - (b) regarding the complaints cases in the BCIS without the “initial action date”, the BD will deploy additional resources with a view to entering all relevant data into the BCIS by March 2004 and completing all outstanding “initial actions” by June 2004; and
  - (c) the BD will publish in its website information on the extent of compliance with section 24 orders, the ageing analyses of outstanding orders and its additional performance targets for the clearance of outstanding orders;

### **Blitz operations**

- expresses serious concern about the problems relating to the BD's blitz operations (i.e. programme slippage and high supervision costs);
- notes that the Director of Buildings is implementing Audit's recommendations mentioned in paragraph 5.16 of the Audit Report;

### **The Coordinated Maintenance of Buildings Scheme (CMBS)**

- expresses concern about the problems relating to the CMBS (i.e. programme slippage and late issuing of section 24 orders for buildings with Authorised Persons appointed to supervise repair works);

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- notes that:
  - (a) the BD has given more time in individual cases for the owners to organise the necessary repair works under the CMBS, having regard to owners' willingness and readiness to organise themselves and carry out the works. In the long term, the BD will assess the effectiveness of the CMBS and decide whether it should be carried on or be shelved; and
  - (b) the Director of Buildings is implementing Audit's recommendations mentioned in paragraph 6.17 of the Audit Report;

### **Illegal rooftop structures (IRS)**

- notes that it is the BD's objective to remove, by 2007, all IRS that pose a serious fire risk from all single-staircase buildings;
- expresses concern that this objective may not be achieved, unless the BD revisits on a regular basis the annual target for IRS clearance (presently 700 buildings a year), taking into account the number of newly identified single-staircase buildings with IRS posing a serious fire risk;
- notes that the Director of Buildings is implementing Audit's recommendations mentioned in paragraph 7.15 of the Audit Report;

### **Control of signboards**

- expresses concern that the new minor works control scheme lacks most of the key features of the registration scheme designed to ensure the safety of signboards;
- notes the assurance of the Secretary for Housing, Planning and Lands that:
  - (a) in subsuming the control of signboards under the new minor works control scheme, the Administration has not departed from the original primary objective of the registration scheme (i.e. to ensure safety of signboards); and
  - (b) he will carry out a post-implementation review of the new minor works control scheme to find out whether it meets the objective of the registration scheme, and report the results to the Executive Council as appropriate;

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- expresses concern that there was a significant discrepancy between the BD's computer and manual records on outstanding "Dangerous Structure Removal Notices", and that some of these Notices had been long outstanding;
- notes that the Director of Buildings is implementing Audit's recommendations mentioned in paragraph 8.21 of the Audit Report;

### **The BD's prosecution policy and practice**

- expresses serious dismay that, despite the large number of outstanding section 24 orders, the number of prosecutions instigated by the BD had fallen far short of the pledge of 2,000 prosecutions a year made by the Director of Buildings. There was still reluctance on the part of BD staff to initiate prosecution action;
- notes that the Director of Buildings:
  - (a) has undertaken to deploy additional resources with a view to instigating 1,000 prosecutions in 2004 and meeting the pledge of 2,000 prosecutions in 2005; and
  - (b) is implementing Audit's recommendations mentioned in paragraph 9.11 of the Audit Report;

### **Removal action by government term contractor**

- expresses concern that the BD seldom uses the government term contractor to enforce the large number of outstanding section 24 orders;
- notes that the Director of Buildings is implementing Audit's recommendations mentioned in paragraph 10.6 of the Audit Report;

### **Findings arising from Audit's case studies**

- expresses concern that:
  - (a) as shown by Audit's case studies, there are instances where delays have occurred at various stages of the BD's enforcement process; and
  - (b) important decisions leading to inaction (or deferment of action) were not made by BD officers of appropriate seniority;

## **Buildings Department's efforts to tackle the unauthorised building works problem**

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- notes that the Director of Buildings is implementing Audit's recommendations mentioned in paragraph 11.14 of the Audit Report; and

### **Follow-up actions**

- wishes to be kept informed of:
  - (a) any further developments and progress made in implementing the various Audit recommendations and improvement measures; and
  - (b) the result of the BD's assessment of the effectiveness of the CMBS and its decision on whether the CMBS should be carried on or be shelved.