

**For discussion on
26 August 2011**

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

SUBCOMMITTEE ON BUILDING SAFETY AND RELATED ISSUES

**Buildings Department's Initial Response to the
Findings of the Coroner's Inquest on the
Building Collapse Incident at Ma Tau Wai Road**

INTRODUCTION

A Coroner's Inquest was held on 8-16 August 2011 to look into the cause of death of four persons in the building collapse incident at 45J Ma Tau Wai Road on 29 January 2010. The Coroner delivered his findings on 16 August 2011. This paper sets out Buildings Department (BD)'s initial response to them.

THE CORONER'S FINDINGS

2. During the Coroner's Inquest, the owners of the building at 45J Ma Tau Wai Road (the Building), the contractor hired to carry out repair works and removal of unauthorised building works at the time when the Building collapsed, staff members of the BD who handled the case in relation to the Building, as well as three expert witnesses, including one Senior Structural Engineer of BD, amongst other witnesses, were called and examined. The Coroner delivered his findings on 16 August 2011. He found that the death of the four persons was caused by accident and that no person should be held criminally liable for their death. In addition, the Coroner made a number of observations about the incident. The major observations of the Coroner^{Note} related to BD are summarised below –

- a) the Building should have been declared as dangerous by BD two months

^{Note} As the official transcript of the Coroner's findings is yet to be available, the summary of observations is based on the notes prepared by BD staff present at the courtroom.

before the collapse;

- b) the BD staff who handled the case went into routine and might have made incorrect judgment after the inspection;
- c) as the owners usually would not comply with the Advisory Letter (AL) issued by BD, it is not necessary to issue such AL for buildings that have imminent risk or danger. BD should issue repair order immediately and monitor any commencement of removal/completion every two weeks. The period for compliance of such repair orders should also be shortened; and
- d) for cases of emergencies related to buildings, and non-emergency reports on dilapidation of buildings, the inspection should be carried out jointly by a Building Surveyor (BS) and a Structural Engineer (SE).

FOLLOW-UP ACTION CONCERNING THE INCIDENT

3. The Government attaches great importance to building safety. The tragic building collapse incident at Ma Tau Wai Road set off the alarm for the Government and the whole community to take more determined action to arrest the problem of building decay. Immediately after the building collapse incident, the Government launched a special operation to inspect about 4,000 buildings that were aged 50 or above. Details of the follow-up action were set out in a paper entitled “Building Safety Concerns and Enhancement Measures Related to the Ma Tau Wai Collapse Incident” (CB(1)1685/09-10(01) discussed at the Subcommittee’s meeting in April 2010). In the 2010-11 Policy Address, the Chief Executive announced that the Government would adopt a new, multi-pronged approach to enhance building safety in Hong Kong, covering four major areas: (a) legislation; (b) enforcement; (c) support and assistance to building owners; and (d) publicity and public education. Details about the new package of measures were set out in Development Bureau’s Legislative Council (LegCo) Brief entitled “Measures to Enhance Building Safety in Hong Kong” (File Ref: DEVB(PL-CR)12/2010) issued in October 2010 and discussed at this Subcommittee in January 2011. Subsequent to the issue of the LegCo Brief, the Development Bureau has submitted a total of four papers on building safety issues to the Panel and this Subcommittee for discussion. A total of 16 questions raised by Members have also been answered at the Council’s sittings.

BD's INITIAL RESPONSE TO THE OBSERVATIONS OF THE CORONER

4. The BD issued a press release on 16 August 2011 in response to the Coroner's findings. A copy is at Annex A. BD respects the Coroner's findings and would seriously consider the Coroner's recommendations. BD's initial response to the Coroner's observations is set out in the ensuing paragraphs.

(a) The Building should have been declared as dangerous before its collapse

5. During the Coroner's Inquest, different views were expressed among the expert witnesses on whether the capacity of the collapsed columns was capable of sustaining the loads from the Building at all critical stages. This reflects that it is difficult to arrive at a definitive view about whether a building has already reached the critical stage of collapse. The existing manual and instructions in BD provide staff in BD with guidelines regarding the matters that they should pay attention to during inspection in determining whether a building has imminent danger and hence warrants immediate action. BD will take the opportunity of the Coroner's observation in this case to conduct a comprehensive review (the Review) of the building safety enforcement manual and instructions to ensure that they are clear and can cater for the needs of present-day circumstances. BD will take into full account the Coroner's recommendations in conducting the Review.

(b) How the BD officers had handled the case

6. BD has conducted an initial review on the handling of the case by its officers. From BD's records of relevant inspection reports, it is found that the observations of the officers concerned were based on the observation of the nature, extent and severity of defects from the inspection of all external elevations and common parts of the whole building and the inside of some individual premises where access could be gained at the time of inspection. During the inspection in November 2009, the structural elements including certain columns and beams at the ground floor and cockloft were inspected. The inspecting officers have properly documented in the reports with photos and descriptions. After the inspection in November 2009, the inspecting officer decided that a repair order should be served, and had sent an advisory letter to

the owner in the first instance immediately after the inspection.

7. Notwithstanding the above initial findings, in response to the Coroner's observations on how the relevant officers had conducted their work in this case, BD is carrying out a comprehensive assessment of the performance of the officers concerned in handling the reports on dilapidation of the Building at the material time.

(c) The issuance of advisory letters before statutory orders

8. It is the basic responsibility of owners to upkeep the safety of their buildings and, for this purpose, to carry out regular inspection and timely maintenance and repair of their buildings. The issue of advisory letters, with or without the service of a statutory investigation/repair order, is an established practice in BD. This practice serves to remind the owners of their due responsibility for their properties when BD identifies defects in their buildings in the course of inspection.

9. As statutory orders are legal documents, BD has to exercise due care in issuing them and time is required for checking building ownership and preparing the statutory orders for issue. Because of this, under the existing practice, in cases where BD decides to issue a statutory repair order, an advisory letter will be sent to the owners in the first instance to alert them of the dilapidated condition of their buildings, notify them that a statutory order will be served shortly and advise them to start the arrangement for the repair works earliest possible. A flow chart illustrating the procedure of BD in dealing with building defects or dangerous building is at **Annex B**.

10. BD has established practice prescribed in manual and relevant instructions on the procedure of enforcement actions for building safety. The issue of advisory letters is not on the critical path of the progress of repair and should not prejudice the programme of repair, as long as the owners are willing to fulfill their responsibilities.

11. The existing manual and instructions in BD provides guidelines to staff in BD for control of building safety. In the Review mentioned in paragraph 5 above, BD will look into the existing procedure for follow-up action in respect of the enforcement actions.

(d) Joint inspection of BS and SE

12. Both the BS and SE are competent building professionals with the required professional qualifications and experience. There are established guidelines on cross discipline internal consultation on building safety related duties, which include consultation on structural building matters. The guidelines stipulate when and how consultation should be sought and provided.

13. The first inspecting officer, regardless of his discipline, bears the full responsibility and is fully accountable for his decision as a professional and an officer of BD in discharging his duties. When an officer considers the assessment of a building safety problem is beyond his expertise, he is required to seek assistance. The established mechanism can ensure that assistance could be provided in time and consultation is operated on a need basis according to professional judgment. Depending on the nature and degree of building defects identified in the building, the officer may also consider whether an Investigation Order should be issued under the Buildings Ordinance to require the owner to appoint an Authorized Person and, where necessary, a Registered Structural Engineer to act as his structural consultant, to conduct a detailed investigation on the building.

14. The suggestion of always requiring a joint inspection team in every case of a certain category of dangerous building reports may not be an efficient and effective way in deploying resources, and may also defy the abovementioned principle of accountability that all professionals are duty-bound to abide by. The suggestion may also inadvertently give rise to dereliction of duties of the first inspecting officer. BD's preliminary view is that the existing practice is appropriate. Despite that, BD will keep an open mind and cover this in its Review.

WAY FORWARD

15. As aforementioned, BD will conduct a comprehensive assessment of the performance of the officers concerned in handling the reports related to the Building as well as a comprehensive review on the building safety enforcement procedures and practices. The Review will provide an opportunity for BD to identify room for improvement in the existing guidelines as well as procedure for inspection and enforcement action to further enhance the building safety in

Hong Kong.

16. The findings of the Coroner have revealed once again that to enhance building safety in Hong Kong, vigorous enforcement action of BD alone is not adequate. We cannot emphasise enough that it is the basic responsibility of owners to upkeep the safety of their buildings and, for this purpose, to carry out regular inspection and timely maintenance and repair of their buildings. BD's inspection of buildings is for the purpose of monitoring if the owners have properly discharged their responsibility to ensure building and public safety, and should not be taken as a substitute for the owners' responsibility. To this end, we are glad that the LegCo has passed the enabling legislation for introducing the mandatory building and window inspection schemes. The Administration will continue to pursue the multi-pronged approach to ensure building safety, including promoting greater community awareness and instilling a culture among building owners to keep their buildings safe.

**Buildings Department
Development Bureau
August 2011**

Press Releases

BD responds to Coroner's verdict

The Coroner's Court today (August 16) returned the verdict on the death of four people during the collapse of a building at 45J Ma Tau Wai Road in January last year. The Buildings Department (BD) conveys its deepest condolences again to the relatives of the victims. The department respects the verdict and will seriously consider the recommendations in the verdict.

"We have always attached great importance to building safety. Both our building surveyors and structural engineers are competent professionals with the required professional qualifications and ample experience. They will continue to enhance building safety in Hong Kong with unfailing efforts," the BD spokesman stressed.

"It is the owners' basic responsibility, which they cannot shirk, to maintain the safety of their properties. We call on them to regularly inspect and repair their buildings to ensure their safety and stability. This would also reduce maintenance costs in the long run. Property owners should comply with the repair or removal orders issued by the BD as early as possible. They should engage registered professionals and registered contractors to carry out the necessary works to ensure building safety," the spokesman added.

The spokesman said that when conducting an inspection according to the established procedures, in addition to inspecting the structural members such as columns and beams, the BD staff would inspect other conditions and defects of the building. They would also follow up on the case in accordance with their professional judgment, the relevant enforcement policy and the provisions of the Buildings Ordinance. This includes the issuance of advisory letters and repair orders. The BD would actively follow up on these orders and make sure that the respective property owners would repair their buildings properly.

To further enhance building safety in Hong Kong in the long run, the Administration has, last October, announced plans to adopt a package of new measures in a multi-pronged approach. The measures cover four major aspects: legislation, enforcement, support and assistance to owners, and publicity and public education.

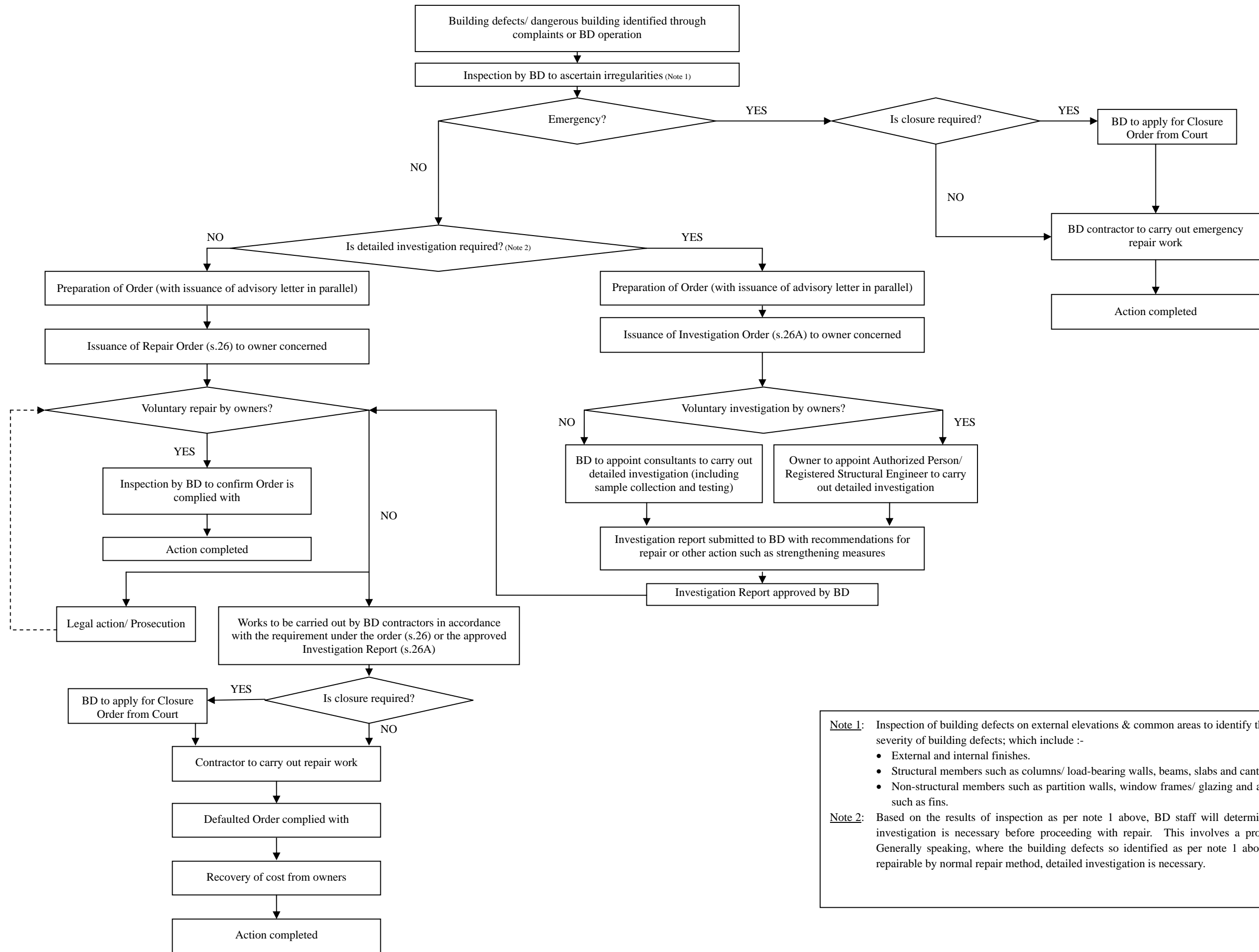
The BD has embarked on a number of large-scale operations starting in 2011-12, including the inspection of dilapidated buildings. The annual target of such inspections is 500 buildings. In addition, the Minor Works Control System (MWCS), which has come into operation since the end of last year, provides a lawful, simple, safe and convenient means for owners to carry out small-scale building works including common building repair works and removal works of unauthorised building structures. The BD will closely monitor the progress of the implementation of the MWCS. The Mandatory Building Inspection Scheme (MBIS), the legislation for which has been passed by the Legislative Council, would also help to ensure that owners of old buildings regularly inspect and repair their properties. The Administration is preparing the relevant subsidiary legislation, to be tabled at the Legislative Council for scrutiny shortly with a view to implementing the MBIS as soon as possible.

The BD will continue to promote the culture of building safety. This is to motivate owners to proactively maintain their properties, comply with the requirements of the law and engage qualified registered practitioners to conduct the necessary repair and maintenance works. Appropriate technical and financial assistance will also be provided to the property owners in need.

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Flowchart for Dealing with Building Defects/ Dangerous Buildings



Note 1: Inspection of building defects on external elevations & common areas to identify the nature, extent and severity of building defects; which include :-

- External and internal finishes.
- Structural members such as columns/ load-bearing walls, beams, slabs and cantilevered canopies.
- Non-structural members such as partition walls, window frames/ glazing and architectural features such as fins.

Note 2: Based on the results of inspection as per note 1 above, BD staff will determine whether detailed investigation is necessary before proceeding with repair. This involves a professional judgment. Generally speaking, where the building defects so identified as per note 1 above are NOT readily repairable by normal repair method, detailed investigation is necessary.