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**Panel on Development**  
**Subcommittee on Building Safety and Related Issues**

**Meeting on 8 December 2011**

**Updated background brief on unauthorized building works in  
New Territories exempted houses**

**Purpose**

This paper provides background information on the Administration's policy and measures in combating unauthorized building works ("UBWs") in the New Territories exempted houses ("NTEHs"). It also provides a summary of major views and concerns expressed by Members on related issues.

**Background**

Small House Policy and NTEHs

2. Introduced in 1972, the Small House Policy allows an indigenous male villager aged 18 or above and is descended through the male line from a resident in 1898 of a recognized village, an entitlement to one concessionary grant during his lifetime to build one small house within a 300 feet distance surrounding a recognized village. These New Territories small houses and redeveloped village houses are generally referred to as NTEHs. They are exempted from certain provisions of the Buildings Ordinance ("BO") (Cap. 123). According to the Administration, as at

31 March 2011, the Lands Department ("LandsD") has granted approval for a total of 36 094 NT small houses<sup>1</sup>.

### Regulation and control of NTEHs

3. According to the Administration, the building of NTEHs is subject to different regulatory and control regimes. Enacted in 1955, BO provided for the planning, design and construction of buildings and associated works. Until the Buildings Ordinance (Application to the New Territories) Ordinance (then Cap. 322) came into force on 1 January 1961, buildings in the NT were not subject to the control of the then BO. On 16 October 1987, the Building Ordinance (Application to the New Territories) Ordinance was repealed and replaced by the existing Buildings Ordinance (Application to the New Territories) ("BO (Application to the New Territories) Ordinance") (Cap. 121). Both the then Cap. 322 and the existing Cap. 121 provided exemption for buildings, which meet the specific criteria from the requirement under BO, to submit plans for approval by the Building Authority ("BA"), to obtain BA's consent for commencement of the building works, to obtain occupation permits from BA before occupation, and to comply with the regulations made under BO.

4. Under the present legislation, NTEHs may not exceed three storeys or be a height of more than 8.23 metres (27 feet) and their roofed-over area generally should not exceed 65.03 square metres (700 square feet)<sup>2</sup>.

5. Notwithstanding the above exemptions, as far as control of UBWs is concerned, NTEHs are subject to the regulation of BO<sup>3</sup>. Accordingly, the Buildings Department ("BD") may issue a statutory order under section 24 of BO requiring the property owners to remove the illegal structure in NTEH within a specific period, failing which the UBW may be

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<sup>1</sup> See the Administration's reply to a council question raised by Hon LEE Wing-tat on 18 May 2011. It should be noted that NTEHs may not necessary be small houses. There are many house lots in NT which were not granted under Small House Policy. Examples include "old schedule" house lots and the many "new grant" house lots granted after 1905 (the block lease). Owners of these lots can claim exemption status by building houses in compliance with the provision of Cap 121.

<sup>2</sup> Details on the Small House Policy and the application procedures are found in LandsD's webpage at <http://landsd.gov.hk/en/legco/house.htm>

<sup>3</sup> According to the Administration, under the Buildings Ordinance (Cap. 123), all building works (except a small number of exempted works and those designated as minor works under the Minor Works Control System) require BA's prior approval of plans and consent for commencement before such works can be carried out. Otherwise those works will become UBWs. All UBWs are liable to be demolished. Under Cap. 123, any person intending to carry out building works (new building works or alterations and additions works) is required to appoint an authorized person, and where necessary, a registered structural engineer, to prepare plans for the approval of the Buildings Department ("BD"). Consent from BD is required for commencing the building works. A registered contractor should also be employed to carry out the approved works. Certain minor building works which do not involve the structure of a building may be carried out without prior approval from the Government.

demolished by BD at owner's expense. Non-compliance with a removal order is an offence under section 40(1)(B) of BO. LandsD may take lease enforcement action against UBWs in NTEHs if they constitute a contravention of the lease conditions. As land administrator, LandsD has the power to demolish UBWs under sections 12 and 13 of the Lands (Miscellaneous Provisions) Ordinance (Cap. 28), and to re-enter the land and cancel the lease under section 4 of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126)<sup>4</sup>.

### **UBW problems in NTEHs**

6. According to the Administration, NTEHs are scattered over an extensive area in the New Territories. While the Administration has not conducted a detailed survey on UBWs in NTEHs, from its observation, the numbers of UBWs are estimated to be in the tens of thousands and are widely found among village houses in certain New Territories districts. UBWs in NTEHs may appear in different forms and sizes. Their loading on building structure and the impact they have on building safety vary. The common forms of UBWs include enclosed rooftops, balconies and canopies, external window grilles, anti-burglary grilles and metal gates, retractable canvas, and ground level and rooftop extensions. UBWs in NTEHs also include structures in blatant contravention of the height and area restriction or even the entire additional floors<sup>5</sup>.

### **The Ombudsman's report and the Administration's response**

7. On 19 April 2011, The Ombudsman released a report on "Direct Investigation into Enforcement against Unauthorized Building Works in New Territories Exempted Houses"<sup>6</sup>. The report reveals that under the Administration's current selective enforcement regime, enforcement action is taken essentially only against UBWs in progress ("WIP") in NTEHs. WIPs found to have been practically completed or newly built UBWs will not be enforced upon. The Ombudsman considers that the selective enforcement regime and narrow action threshold is ineffective in stopping the proliferation of UBWs in NTEHs. The Ombudsman also found that enforcement is inconsistently carried out, the problem lacks monitoring and

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<sup>4</sup> Please refer to the Ombudsman's report of 19 April 2011 at [http://www.ombudsman.gov.hk/ombudsnews/ombe\\_1\\_1112.pdf](http://www.ombudsman.gov.hk/ombudsnews/ombe_1_1112.pdf)

<sup>5</sup> Please refer to the Administration's reply to Hon LEE Wing-tat's question on 18 May 2011 at <http://www.info.gov.hk/gia/general/201105/18/P201105180264.htm>

<sup>6</sup> The Ombudsman has issued its first and second direct investigation reports on UBWs in NTEHs in 1996 and 2004 respectively.

there is disparity of treatment for UBWs in NTEHs and those in other buildings, giving a signal to the public that NTEHs are privileged. The Ombudsman has put forward to the Administration a number of recommendations for making improvement in the enforcement regime. The details are given in **Appendix I**.

8. The Administration responded to the Ombudsman's report on the same day and undertook to actively follow up on The Ombudsman's recommendations. While the Administration recognized that there was room for improvement in the enforcement strategy against UBWs in NTEHs, it explained that these houses were different from ordinary buildings regulated by BO. They were constructed to relevant standards for NTEHs, and were of small scale and relatively low risk in terms of building safety. The Administration would review the existing procedures to enhance the effectiveness of enforcement against WIP<sup>7</sup>.

9. According to the Administration, in 2006, the Heung Yee Kuk set up the Working Group on Rationalization of Unauthorized Building Works in New Territories Village Houses with the then Housing, Planning and Lands Bureau to handle UBWs in New Territories. After the establishment of the Development Bureau in 2007, the matter has been escalated to the Secretary for Development -- Heung Yee Kuk Liaison Committee (which is chaired by the Secretary for Development). The Administration aims to ensure building safety and draw up a practicable scheme for regulation of different categories of UBWs in NTEHs in a pragmatic manner.

### **Major views and concerns expressed by Members**

10. Shortly after the building collapse incident on Ma Tau Wai Road in late January 2010, the Panel on Development ("the Panel") set up the Subcommittee on Building Safety and Related Issues ("the Building Safety Subcommittee") to examine issues including, building inspection and maintenance, supervision of building maintenance, enforcement and penalties against unauthorized alteration works, etc. On 23 February 2010, the Administration briefed the Panel on the enforcement actions taken against UBWs, and also sought the Panel's views on the future policy direction to address the problem. On 13 January 2011, the Administration briefed the Building Safety Subcommittee on the multi-pronged measures

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<sup>7</sup> Please refer to the Administration's press release of 19 April 2011 at [http://www.devb.gov.hk/en/publications\\_and\\_press\\_releases/press/index\\_id\\_6535.html](http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6535.html)

to enhance building safety in Hong Kong. The views expressed by members in these two meetings are summed up in **Appendix II**.

11. The Panel discussed with the Administration the control of UBWs under BO at the special meeting on 20 June 2011. Members expressed a number of concerns including the lack of control on building works relating to sub-divided units, re-housing arrangements for affected tenants in illegal rooftop structures, and enforcement action on UBWs in particular the issuance and follow up of statutory removal orders on UBWs. Members stressed the need for the Administration to develop a comprehensive policy to tackle UBWs at all fronts, to strengthen public education clarifying UBWs subject to demolition and the responsibility of building owners to remove UBWs, and to improve co-ordination among relevant departments in resolving building maintenance and management problems. They also suggested the Administration to set up a high-level cross bureaux and departments task force to tackle the various problems.

#### Discussion at Panel meeting on 28 June 2011

12. On 28 June 2011, the Administration consulted the Panel on the proposal to step up enforcement actions against UBWs in NTEHs. Members were informed that in view of the current regulatory regime, actual situation on ground, views of different parties and past experience in tackling UBWs in urban areas, the Administration proposed to adopt a pragmatic approach in dealing with UBWs in NT village houses through categorization of enforcement in line with four guiding principles:

- (a) safeguarding building and public safety;
- (b) acting in accordance with the law;
- (c) categorization for control and management; and
- (d) prioritization for progressive enforcement.

13. Under the Administration's proposal, BD would maintain the existing practice to accord priority to tackle UBWs in NTEHs which posed obvious hazards or imminent danger to life or property and UBWs under construction or newly completed. For UBWs which were not posing imminent danger but constituting serious contravention of the law and imposing higher potential risks, the Administration would take proactive enforcement action against them. For other UBWs constituting less serious contravention of the law and imposing lower potential risks, BD

would introduce a registration scheme to collect more information on them. The Department would categorize the UBWs and conduct objective risk assessment, and formulate progressive enforcement plans in a systematic manner.

*Proposed arrangement on enforcement against UBWs in NT village houses*

14. Most members supported the Administration's proposal to step up enforcement actions against UBWs in NT village houses, and encouraged the Administration to liaise closely with HYK, relevant rural committees and village representatives to minimize resistance from indigenous villagers.

15. Some members held that that Article 40 of the Basic Law protected the lawful traditional rights and interests of indigenous villagers of NT, and was the basis for different treatment for NT village houses. Given that most UBW were structurally safe, the Administration should exercise discretion in dealing with UBWs in NT village houses. A member requested the Administration to consider the possibility of granting amnesty for justified cases having genuine difficulties. The Administration was urged to adopt a realistic and sympathetic approach in tackling UBWs found in houses built on old schedule lots, and to take note of the complicated situations on ground as village houses found at the same location could be subject to regulation of different policies or legislations.

16. The Administration assured members that it would adopt a pragmatic approach to deal with UBWs through systematic categorization and prioritization of enforcement actions. Financial and re-housing assistance would be offered to affected owners/residents, wherever necessary. It also appealed to members, HYK and indigenous villagers for supporting the proposed arrangement of enforcement against UBW in NT village houses. To this end, the Administration would meet with the relevant stakeholders to work out implementation details. The proposed arrangement would not require enactment of new legislation. The Administration aimed to work out implementation details and resource requirements in summer 2011 and launch the new arrangements within the current term of office.

*The proposed registration scheme*

17. Some members expressed reservation about the setting up of a registration scheme for certain UBWs found in NT village houses, as the scheme might become a *de facto* amnesty. Further, unlike the

enforcement regime against UBWs in urban areas under which BD would register the removal notice on the concerned UBW with the Land Registry ("LR"), the proposed registration scheme in NT would rely on the cooperation of owners to register their UBWs with BD. The proposed scheme was hence against the principle of fairness. They believed that the Administration should have a well-thought plan for initiating enforcement actions against unregistered UBWs, and set a deadline for the removal of "registered" UBWs.

18. The Administration reiterated that in order to contain the proliferation of UBW in village houses, the Administration had focused enforcement on UBW posing imminent danger and those caught in the process of construction. Through internal redeployment, BD was now able to extend the scope of its enforcement actions. Accordingly, enforcement actions targeting at UBW in NT village houses constituting obvious hazard or imminent danger to life and property, UBW under construction or newly completed and those were in serious contravention of the law would be stepped up. The proposed registration scheme was not an amnesty; it would provide useful data and statistics on existing UBWs and enable the Administration to conduct risk assessment, so as to formulate plans for the removal of the "registered" UBWs. In view of the unlawful status of the registered UBWs, the Administration confirmed that it would not offer any undertaking for withholding enforcement action.

19. Some members expressed concern about unfair treatment of UBWs found in urban areas and those found in NT village houses as building owners of NT village houses were allowed to retain their UBW for an indefinite period of time through a registration scheme. They were worried that the registration scheme would send a wrong message to owners that the Administration would tolerate UBWs instead of taking enforcement actions in compliance with existing legislation. There would be stronger resistance from NT village house owners when the Administration announced the deadline for removing the "registered" UBWs.

20. The Administration reiterated the need to recognize the reality of the presence of two different regulatory regimes, different designs of the buildings and their relative impact on safety; and hence the different starting points for action. In order to prevent the proliferation of UBWs in a last minute rush prior to the new arrangement, the Administration would enhance enforcement actions against new UBWs and UBWs in progress and, if necessary, arrange for the taking of aerial photos to establish a baseline for future reference. Given the complexity of the issues involved,

it was envisaged that the Administration would need time to formulate a comprehensive work plan and devise a realistic time-table for dealing with UBWs in NT village houses.

21. For the sake of fairness, some members were of the view that the Administration should register all UBWs in NT village houses with LR and promulgate a clear time-table for their removal. In response, the Administration explained that at present BD would register a removal order on UBW in a NT village house at LR if the order was not complied with by a specified deadline. As regards the suggestion to register all "registered UBWs" in village houses at LR, it was necessary to consider the possible drawbacks; for instance, owners of village houses might choose not to come forward to register their UBWs with the Administration.

*Village houses on old schedule lots*

22. Some members criticized the Administration for using 1 January 1961, the date on which BO (Application to NT) Ordinance came into effect, as the date for enforcing the regulation on village houses built on old schedule lots, fearing that the Administration's enforcement actions against NT village houses, in particular, those built in old schedule lots, would meet with very strong opposition from the villagers. They urged the Administration to discuss with HYK with a view to working out a feasible solution which was legal, reasonable and sympathizing the feelings of NT villagers. Further, the Administration should conduct an in-depth study on the situations of owners/tenants of village houses on old schedule lots, such as the number and their financial positions, and consider allowing owners/residents to retain the unauthorized structures through payment of premiums.

23. A member pointed out that the main problem at present was related to village houses built on old schedule lots, which had a long history dating back to the Sung Dynasty. As a rather unfair arrangement, the Block Government Lease of 1905 turned indigenous villagers from land owners to tenants. He stressed that village houses on old schedule lots were not subject to any building restrictions. The Administration's inaction over a long period of time had constituted a "silent consent" for such village houses. It would be unfair for the Administration to step up enforcement actions against NT village houses placing the blame entirely on NT villagers. Due to the growth in population over the years, there was pressing need for the Administration to address the housing needs of indigenous villagers. Pending clarification on legal issues relating to

restrictions on buildings on old schedule lots, the Administration should withhold enforcement actions against UBWs in NT village houses.

24. The Administration explained that BO (Application to NT) Ordinance, which came into effect on 1 January 1961, covered all building works carried out in NT after that date. The ordinance had clearly prescribed the exemption for village houses which met the stated specifications, and was applicable to all village houses including those built on old schedule lots. As a matter of fact, the Administration had been taking enforcement actions against UBWs in village houses over the years. In order to be exempted from the regulation of BO, NTEHs were required to be built in compliance with the specifications in terms of height and area as specified under BO (Application to NT) Ordinance. Those exceeding the prescribed limits would not be eligible for the exemption and would be subject to BO. Between 2007 and 2010, LandsD received a total of 2 161 complaints about NTEHs breaching the lease conditions. As at March 2011, the lot-owners concerned had purged the breaches involved in 118 of such complaints. The Administration had issued warning letters to the owners involved in 1 147 of such complaints and registered the letters at LR. Action to handle 888 of the complaints was in progress while no action was required of the eight remaining complaints. These figures included both houses granted under Small House Policy and others on old schedule lots. Although the Administration did not subscribe to HYK's view on village houses built on old schedule lots, it would respect its decision to clarify legal issues relating to the matter with the court. The Administration would act in accordance with the law, and follow the established procedures in dealing with the matter.

#### *Redevelopment of NT village houses*

25. Some members opined that the Administration should allow owners of Small Houses to pay a land premium for turning existing additional floors into legal premises, or building new floors to meet their housing needs. There were also views that the Administration should support and facilitate the redevelopment of village houses.

26. On the suggestion to consider applications from indigenous villagers to increase the height or redevelop their village houses, the Administration advised that such applications had to be considered on a case-by-case basis and would depend on the circumstances of individual cases, including the lease conditions of the relevant lots, planning parameters in the relevant Outline Zoning Plans and the views of the Town Planning Board.

### Other views

27. Members generally believed that adequate resources should be deployed to establish a comprehensive data base on UBWs in NT village houses, and the Administration should employ more staff to cope with the increasing workload generated for the relevant departments. To monitor the progress of the proposed arrangement on enforcement against UBW in NT village houses and the proposed registration scheme, they requested the Administration to make regular progress report on the matter.

28. The Administration advised that it would consider the views and suggestions made by members. It would also study the feasibility of the proposal to register all UBW in NT village houses with LR. The Administration would set a time limit for the registration of UBW constituting less serious contravention of the law and imposing lower potential risks. It would also formulate manpower plans to cope with additional workload arising from various new tasks related to the UBW problem in NT village houses. The Administration hoped that enhanced public education and following up on complaints from the public would alleviate the UBW problem and enable more effective enforcement actions. The Administration would meet with HYK to discuss the details of the proposed arrangement on enforcement against UBW and the proposed registration scheme. The discussion would help map out the implementation details of the new arrangements and the scheme. It would revert to members later in the year.

### Council questions

29. LegCo Members have raised questions on different aspects of UBWs over the years. The more recent ones include questions raised by Hon LEE Wing-tat and Hon WONG Yuk-man (which related to UBWs in village houses in New Territories), Hon LEUNG Kwok-hung and Hon Paul TSE Wai-chun (which related to UBW problems in general) at the Council meetings of 18 May, 1 June, 8 June and 15 June 2011. For members' easy reference, the questions raised by Hon LEE Wing-tat and Hon WONG Yuk-man and the Administration's replies are attached in **Appendix III**.

### **Latest Position**

30. On 28 November 2011, hundreds of indigenous villages gathered outside the HYK building in Sha Tin, in protest against the Administration's

plan to step up enforcement actions against UBWs in NT village houses. According to the news reports, the indigenous villagers would use delaying tactics in dealing with UBWs in NT village houses. Press release of the Administration dated 28 November 2011 revealed that the Administration's enforcement policy had taken into account the current regulatory regime, actual situation on ground and views of various parties. In parallel with a series of publicity campaigns on building safety, the Administration had started a new publicity campaign entitled "Village Houses without UBWs put your mind at ease" on 18 November 2011, which aimed to promote awareness of building safety amongst villagers and owners of village houses and strengthening their knowledge about illegal structures and UBWs. While the Administration would enhance enforcement against UBWs which constituted blatant contravention of the law and impose higher potential risks of public and building safety, it would adopt a more lenient approach for UBWs of a less serious nature by implementing a UBWs reporting scheme and a regular inspection scheme to ensure the structural safety of the buildings<sup>8</sup>.

31. The Building Safety Subcommittee will discuss UBWs in NTEHs at the meeting 8 December 2011.

### **Relevant papers**

32. A list of the relevant papers with their hyperlinks is in **Appendix IV**.

Council Business Division 1  
Legislative Council Secretariat  
7 December 2011

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<sup>8</sup> Please see the Administration's press release of 28 November 2011 at <http://www.devb.gov.hk/filemanager/template/common/images/spacer.gif>

## Appendix I

### **Recommendations of the Ombudsman's report on enforcement against unauthorized building works in New Territories Exempted Houses**

- (a) the Administration scrap the WIP Policy altogether to bring effective enforcement action against UBW in NTEHs in a manner that is fair and consistent compared to that against other buildings;
- (b) BD and LandsD align the departments' understanding and practices and set up a database of cases on which enforcement action has or has not been taken;
- (c) BD and LandsD streamline the departments' procedures for more efficient operation;
- (d) BD and LandsD explore alternative methods of collecting evidence such as resorting to technological devices or soliciting the assistance of complainants or nearby residents;
- (e) BD record its decisions on UBW cases and the rationale behind them and make them known to its consultants; and

Development Bureau, in association with BD and LandsD, expeditiously size up the problem of UBW in NTEHs, with a view to objectively assessing the effectiveness of its enforcement regime.

### **Summary of the views and concerns expressed by members of Panel on Development on 23 February 2011 and the Subcommittee on Building Safety and Related Issues on 13 January 2011**

#### Panel meeting on 23 February 2010

Some members expressed concerns about the many management and hygiene problems associated with UBWs and BD's slow action in tackling UBWs, as well as the lack of assistance to building owners in clearing UBWs. These members also raised concerns about the professional competence of contract staff engaged by BD in assessing risks of UBWs and that BD staff were not provided with adequate equipment for undertaking inspection of old buildings.

2. The Administration advised that BD would review its staffing provision for enforcement actions against UBWs. As a multi-discipline department, BD required its staff to perform tasks related to building safety and maintenance and would not compromise on the professional quality of staff. As for clearance of UBWs, the Administration advised that while BD would provide assistance to owners upon request, owners were expected to coordinate clearance exercises among themselves.

#### Subcommittee meeting on 13 January 2011

3. On 13 January 2011, the Administration briefed the Building Safety Subcommittee on the multi-pronged measures to enhance building safety in Hong Kong. Some Subcommittee members considered that the Administration should accord high priority to tackle problems of UBWs, water seepage, and subdivided building units. However, members also cautioned that a tough approach against UBWs might lead to undesirable repercussion in the community, the Administration should therefore be flexible with its enforcement actions. There was a suggestion that the Administration might consider registering UBWs which had been in existence for a long period of time subject to certification of their structural safety. In fairness to all building owners, BD should adopt a unique arrangement giving owners same period of time to clear their UBWs. In response to these suggestions, the Administration pointed out that when a stringent enforcement policy was in place, it would not be appropriate for

individual officers of BD to exercise discretions deviating from the established policy in clearing UBWs.

4. Some Subcommittee members suggested the Administration enlist the support of legal professionals to deal with legal issues relating to UBWs. The Administration advised that it would strive to bring in adequate legal professionals in enhancing enforcement actions arising from UBWs.

5. Some Subcommittee members supported the proposal to set up a control regime to regulate signboards. The Administration advised that smaller signboards would be dealt with by the Minor Works Control System. Larger signboards would continue to require BD's prior approval before erection.

6. On the concern about adequate resources for BD to undertake increased workload arising from the control of UBWs, the Administration advised that BD would undergo a major reorganization and strengthen staffing support to cope with increased workload arising from new measures to enhance building safety.

**Question raised by the Hon LEE Wing-tat in the Legislative Council  
on 18 May 2011**

**Question**

It has been learnt that the Government has been reviewing the New Territories "small house policy" for a long time, but no announcement has been made yet; recently, the Office of The Ombudsman published a report criticising that the authorities have been ineffective in clearing the unauthorised building works (UBW) in village houses in the New Territories, including small houses. In this connection, will the Government inform this Council:

- (a) whether the authorities have compiled statistics on or estimated the present situation of the UBW problem of village houses in the New Territories, including small houses and ancestral homes; if they have, of the number of village houses in various districts which have unauthorised rooftop glass houses, enclosed balconies, additional storeys up to 4 or 5 storeys and unauthorised rooftop accommodation, broken down by type of UBW; and how the authorities will handle the problem, as well as whether they will impose regulation according to the types of UBW;
- (b) whether it knows, in each of the recognised villages under the existing "small house policy", the respective numbers of indigenous villagers aged 18 or above who are eligible but still have not applied for small house grant, or whose applications have not yet been approved at present; of the land area within the respective villages at present and, among which, the vacant land area that can be used for building small houses; whether the respective areas of the villages concerned can be extended to increase the land available for building small houses; if they can be extended, of the land area that can be extended; whether it has assessed the impact of such policy on the UBW problem of village houses in the New Territories; and
- (c) whether it has assessed if the long-standing protection under the exemption under the Buildings Ordinance (Application to the New Territories) Ordinance has affected the Government's handling of the UBW problem of village houses; whether the authorities have set up a "rationalisation working group" to handle the UBW problem of

village houses at present; if they have, when the working group commenced work and when the relevant work will be completed, as well as whether the authorities will consult the public on the recommendations of the working group; whether the working group will propose exemption measures to allow the existence of UBW in village houses; if it will, whether it has assessed if this will result in two sets of policies or legislation in Hong Kong for handling UBW, such that the urban area and rural area are regulated by different statutes; and of the time for the authorities to complete the review on the "small house policy", and whether the review will cover recommendations relating to the standard and the UBW problem of small houses?

### **Reply**

The issue of unauthorised building works (UBW) in village houses in the New Territories (NT) has recently been a matter of public interest. I am grateful to the Hon Lee Wing-tat for asking the oral question today. This gives me the opportunity to explain the Government's views and to dispel some of misconceptions on the subject. As I mentioned at the meeting of the Panel on Development (the Panel) last week, I would, at the Panel meeting in June, present a comprehensive update on the progress of our work and seek feedback from Members. In view of the limited time for oral questions, I shall be happy to incorporate further information in the Panel paper in case there are questions from Members that may remain unanswered today.

Village houses in the NT have a long history. The control for these houses has all along been different from that for buildings in urban areas. In other words, while they are all "buildings", they are subject to different regulatory and control regimes.

The Buildings Ordinance (Cap. 123) which provides for the planning, design and construction of buildings and associated works, was enacted in 1955. Its origin can be traced back to the Buildings Ordinance in 1889 (No 15 of 1889). However, until the Buildings Ordinance (Application to the New Territories) Ordinance (then Cap. 322) came into force on January 1, 1961, buildings in the NT were not subject to control of the then existing Buildings Ordinance.

The Buildings Ordinance (Application to the New Territories) Ordinance was repealed and replaced by the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) on October 16, 1987. Both

ordinances provided exemption for buildings which met the specified criteria from the requirement under the Buildings Ordinance to submit plans for approval by the Building Authority (BA) or to obtain the BA's consent for the commencement of the building works. They may be occupied without having to obtain occupation permits from the BA. They are also exempted from the regulations made under the Buildings Ordinance.

These houses, which are exempted from certain provisions of the Building Ordinance, are what we refer to as New Territories Exempted Houses (NTEHs). Under present legislation, NTEHs may not exceed three storeys or be of a height of more than 8.23 metres (27 feet) and their roofed-over area generally should not exceed 65.03 square metres (700 square feet). These NTEHs include both New Territories small houses (NTSHs) and, in general, redeveloped village houses.

My reply to the three-part question is as follows:

- (a) Since the large number of NTEHs are scattered over an extensive area in the NT, we have not conducted a detailed survey on the UBW in these houses. However, from our observation, UBW are widely found among village houses in certain NT districts. The total is estimated to be in the tens of thousands. Their numbers also differ among districts, with the problem being more serious in Yuen Long.

UBW come in many different forms and sizes. Their loading on building structure and the impact they have on the building safety vary. Generally speaking, the common forms of UBW include enclosed rooftops, balconies and canopies, external window grilles, anti-burglary grilles and metal gates, retractable canvas, and ground level and rooftop extensions. They also include structures which are in blatant contravention of the height and area restriction or even entire additional storeys.

On the question of dealing with these UBW, The Ombudsman pointed out in an earlier direct investigation report (published in 2004) that, in view of the large number of UBW in NTEHs, the problem could not be completely resolved in the foreseeable future given the limited resources. Thus, The Ombudsman proposed that Government should consider a two-pronged strategy: on the one hand, "to develop a realistic enforcement policy for containment of UBW in NTEHs" to avoid further aggravation of the problem; and on the other hand, to explore ways for "rationalisation of existing

UBWs that are safe, not serious and thus tolerable". I have to use quotations because there were some recent queries about the term "rationalisation" and I would like to point out the source of "rationalisation" here.

The Administration has adopted and actively pursued The Ombudsman's recommendations. To curb the proliferation of new UBW, the Buildings Department (BD) and the Lands Department (LandsD) have continued to step up enforcement of the relevant legislation and the lease condition, specifically targeting new UBW in progress (WIP). Subject to the availability of sufficient evidence, they would also take enforcement action against new UBW already completed. In light of the recommendation in the direct investigation report published by The Ombudsman last month, we are reviewing existing procedures and strategies to enhance enforcement effectiveness. Specifically on the area for improvement as identified by the report, BD will broaden the definition of WIP to plug a loophole in enforcement. The BD will shortly issue clear guidelines to its staff concerned.

In order to address the issue of existing UBW, the then Housing, Planning and Lands Bureau set up a "Working Group on Rationalisation of Unauthorised Building Works in New Territories Village Houses" (Working Group) in 2006, with representatives of the Bureau, the departments concerned and representatives of the Heung Yee Kuk. The task of the Working Group was to devise, on the basis of The Ombudsman's recommendation and the over-riding objective of ensuring public safety, a practical rationalisation plan which would be acceptable to the public while taking into account the principles of legality, reasonableness and compassion. The Working Group has developed a proposed preliminary directional framework on the handling of existing UBW, but the legal issues involved and the implementation arrangement would require further discussion and examination. Since the establishment of the Development Bureau in 2007, we have escalated the issues to the SDEV-HYK Liaison Committee which I chair personally, for discussion and exchange of views from time to time. Broadly speaking, our aim is to ensure building safety and, taking reference from The Ombudsman's recommendation for a "rationalisation scheme", draw up a practicable scheme for the regulation of different categories of UBW in NTEHs in a pragmatic manner.

- (b) Under the Small House Policy (SHP), a male person over 18 years old who is descended through the male line from a resident in 1898 of a recognised village in the NT in Hong Kong may apply to the authority for building a small house on a suitable lot once in their lifetime.

From the commencement of the SHP in December 1972 until March 31, 2011, the Lands Department (LandsD) granted approval for a total of 36 094 small houses. Currently, 9 947 applications are still being processed.

LandsD has not compiled statistics on or estimated the existing number of indigenous villagers in recognised villages, who are 18 years or above and are eligible but have not applied for a small house grant. It is because the number will change with the birth, growth and passing away of the indigenous villagers. Besides, whether or not an indigenous villager would apply for a small house grant is a matter for individual according to his own circumstances and wishes. Not all eligible indigenous villagers aged 18 years or above will submit an application.

The construction of small houses is in general restricted to inside the "village environs". There are 642 recognised villages approved by the LandsD. "Village environs" refers to a 300 feet distance surrounding a recognised village. Eligible indigenous villagers may apply for small house building within such an area.

Furthermore, with the application of the Town Planning Ordinance to the New Territories, some areas in the NT have been zoned for village-type development. Permission from the Town Planning Board (TPB) is required where the site proposed for building a small house is located inside the "village environs" but lies outside a village-type development area. Consideration will also be given to the application if the site concerned lies outside the "village environs" but is located within a village-type development area, provided that the village-type development area concerned surrounds or overlaps with the "village environs".

According to LandsD, the total area covered by the "village environs" and village-type development area and which may be used for the construction of small houses is estimated to be 4 960 hectares. Of this, an estimated 1 640 hectares is currently still available for application. Since the recognised villages represent those villages

which existed in 1898 and because the principle for delineation of the "village environs", i.e. a 300 feet distance surrounding a recognised village, has been firmly established with the Heung Yee Kuk, the question of extending the "village environs" to meet the demand for building small houses does not arise.

In the case of a small house proposed to be built outside the village-type development area, an application under section 16 of the Town Planning Ordinance has to be made to the TPB. Such applications will be considered on individual merits by the TPB, having regard to relevant TPB guidelines and other relevant factors (such as environment, transport and land use compatibility, etc.).

As the SHP and the question of UBW in village houses in the NT are two separate issues of different nature, I do not consider that the SHP would have an impact on the Administration's handling of UBW.

- (c) The exemption provided under the Buildings Ordinance (Application to the New Territories) Ordinance recognises the relative simplicity of the layout and design of NTEHs. This notwithstanding, LandsD may, upon issue of the Certificates of Exemption, impose conditions relating to safety aspects. In general, it requires the applicant to appoint a building contractor and a competent person to be responsible for the construction works. In addition, a Registered Structural Engineer or a Registered Professional Engineers should be appointed to supervise the construction of critical elements, including cantilevered balconies and canopies. The legislation and associated arrangement is compatible with the purpose of safeguarding building and public safety. It should not have any adverse effect on how the Administration would handle the UBW issue.

In part (a) of this reply, I have addressed the question regarding the work and progress of the Working Group. Specifically, despite inherent differences between the regulatory regime for NTEHs and that for other buildings which are subject to the Buildings Ordinance, our primary objective of ensuring building safety and safeguarding public interests applies equally to both. Our present policy direction is to adopt a two-pronged approach: curbing new UBW and properly tackling existing ones. In regard to curbing new UBW, notwithstanding the significant difficulties in investigation and proof, we have adopted the same approach as that for the urban areas and will endeavour to enhance enforcement effectiveness. As regards

existing UBW, we will also take reference from the strategy of phased implementation and prioritisation, which has been adopted in the urban areas for over a decade. In this context, we will strike at those UBW which are in serious breach of the rules and regulations, but will defer action on cases that are "safe, not serious" as suggested by The Ombudsman. We will further develop detailed proposals in this direction, with a view to early implementation. I shall also apprise the Panel of the details at a later stage and would welcome views from Members, the Heung Yee Kuk and the public.

On the Hon Mr LEE's question regarding the SHP review, the existing SHP has been in place for a substantive period of time. Any major change would raise complicated legal, land use and planning issues which require very careful and critical examination. Given the complexities involved, we do not have a specific time-table for the progress of the review.

**Question raised by the Hon WONG Yuk-man in the Legislative Council on 15 June 2011**

**Question**

In recent years, the Government has continued to clear unauthorised building works (UBW) in buildings in the urban area, while the UBW problem in village houses in the New Territories, which include small houses, has become increasingly serious. In this connection, will the Government inform this Council:

- (a) in each of the past three years, of the respective numbers and rates of increase/decrease of UBWs involving various kinds of buildings in the urban area and village houses in the New Territories;
- (b) in each of the past three years, of the respective numbers of removal orders issued and prosecutions made in respect of UBWs in village houses in the New Territories, as well as the total amount of fines imposed involving UBWs;
- (c) in each of the past three years, of the respective numbers of removal orders issued and prosecutions made in respect of UBWs in various kinds of buildings in the urban area, as well as the total amount of fines imposed involving UBWs; and

- (d) given that the Government has cleared a large number of UBWs in the urban area in recent years, whether it has any specific plan to implement measures to expedite handling of UBWs in village houses, with the aim of making the same progress as that in the urban area; if it has, of the details; if not, the reasons for that?

**Reply**

- (a) The Administration has not conducted any detailed surveys on the numbers of unauthorised building works (UBW) in the urban area and in the New Territories. It is therefore unable to provide the statistics requested.
- (b) The numbers of removal orders issued by the Buildings Department (BD) in respect of UBW in New Territories exempted houses (commonly known as "village houses"), the numbers of prosecution made in relation to non-compliance of such orders and the total amounts of fines imposed by the courts in each of the three years from 2008 to 2010 are listed below:

<u>Year</u>	<u>Number of removal orders</u>	<u>Number of prosecution cases</u>	<u>Total amount of fines (\$)</u>
2008	220	66	242,000
2009	155	132	476,000
2010	217	129	273,000

- (c) The numbers of removal orders issued by the BD in respect of UBWs in the urban area, the numbers of prosecution made in relation to non-compliance of such orders and the total amounts of fines imposed by the courts in each of the three years from 2008 to 2010 are listed below:

<u>Year</u>	<u>Number of removal orders</u>	<u>Number of prosecution cases</u>	<u>Total amount of fines (\$ million)</u>
2008	25,685	2,502	5.717
2009	24,689	2,399	5.847
2010	17,496	2,141	4.079

- (d) Village houses in the New Territories have a long history. The control over these houses has all along been different from that for buildings in the urban area. In other words, while they are all "buildings", they are subject to different regulatory and control regimes.

We adopt a two-pronged approach in tackling the problem of UBW in village houses. On the one hand, we have stepped up enforcement action to curb the proliferation of new UBW. At the same time, we are drawing up a proposal for handling existing UBW in a progressive and orderly manner, on the fundamental premise of ensuring building and public safety. We will shortly apprise the Legislative Council Panel on Development of the details of the proposal and seek Members' views.

## Unauthorized building works in NTEHs

### List of relevant papers

Council/Committee	Date of meeting	Paper
Panel on Development	23 February 2010	<p>Administration's paper on progress of enforcement action against unauthorized building works [LC Paper No. CB(1)1157/09-10(06)]  <a href="http://www.legco.gov.hk/yr09-10/english/panels/dev/papers/dev0223cb1-1157-6-e.pdf">http://www.legco.gov.hk/yr09-10/english/panels/dev/papers/dev0223cb1-1157-6-e.pdf</a></p> <p>Paper on unauthorized building works prepared by the Legislative Council Secretariat (Background brief) [LC Paper No. CB(1)1157/09-10(07)]  <a href="http://www.legco.gov.hk/yr09-10/english/panels/dev/papers/dev0223cb1-1157-7-e.pdf">http://www.legco.gov.hk/yr09-10/english/panels/dev/papers/dev0223cb1-1157-7-e.pdf</a></p> <p>Minutes of the meeting [LC Paper No. CB(1)1712/09-10]  <a href="http://www.legco.gov.hk/yr09-10/english/panels/dev/minutes/dev20100223.pdf">http://www.legco.gov.hk/yr09-10/english/panels/dev/minutes/dev20100223.pdf</a></p>
Council meeting	1 December 2010	<p>A written question raised by Ir Dr Hon Raymond HO on safety of buildings  <a href="http://www.info.gov.hk/gia/general/201012/01/P201012010238.htm">http://www.info.gov.hk/gia/general/201012/01/P201012010238.htm</a></p>
Subcommittee on Building Safety & Related Issues	13 January 2011	<p>Administration's paper on measures to enhance building safety in Hong Kong  <a href="http://www.legco.gov.hk/yr10-11/english/panels/dev/dev_bs/papers/dev_bs0113cb1-681-1-e.pdf">http://www.legco.gov.hk/yr10-11/english/panels/dev/dev_bs/papers/dev_bs0113cb1-681-1-e.pdf</a></p> <p>Minutes of the meeting  <a href="http://www.legco.gov.hk/yr10-11/english/panels/dev/dev_bs/minutes/bs20110113.pdf">http://www.legco.gov.hk/yr10-11/english/panels/dev/dev_bs/minutes/bs20110113.pdf</a></p>

Council/Committee	Date of meeting	Paper
Council meeting	18 May 2011	An oral question raised by Hon LEE Wing-tat on unauthorized building works in village houses in New Territories <a href="http://www.info.gov.hk/gia/general/201105/18/P201105180264.htm">http://www.info.gov.hk/gia/general/201105/18/P201105180264.htm</a>
Council meeting	1 June 2011	A written question raised by Hon LEUNG Kwok-hung on unauthorized building works <a href="http://www.info.gov.hk/gia/general/201106/01/P201106010211.htm">http://www.info.gov.hk/gia/general/201106/01/P201106010211.htm</a>
Council meeting	8 June 2011	An oral question raised by Hon Paul TSE Wai-chun on unauthorized building works <a href="http://www.info.gov.hk/gia/general/201106/08/P201106080210.htm">http://www.info.gov.hk/gia/general/201106/08/P201106080210.htm</a>
Council meeting	15 June 2011	A written question raised by Hon WONG Yuk-man on unauthorized building works <a href="http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6648.html">http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6648.html</a>
Panel on Development	28 June 2011	Administration's paper on enforcement against unauthorized building works in New Territories Exempted Houses [LC Paper No. CB(1)2530/10-11(05)] <a href="http://www.legco.gov.hk/yr10-11/english/panels/dev/papers/dev0628cb1-2530-5-e.pdf">http://www.legco.gov.hk/yr10-11/english/panels/dev/papers/dev0628cb1-2530-5-e.pdf</a>  Paper on unauthorized building works in New Territories Exempted Houses prepared by the Legislative Council Secretariat (Background brief) [LC Paper No. CB(1)2530/10-11(07)] <a href="http://www.legco.gov.hk/yr10-11/english/panels/dev/papers/dev0628cb1-2530-7-e.pdf">http://www.legco.gov.hk/yr10-11/english/panels/dev/papers/dev0628cb1-2530-7-e.pdf</a>

**Other relevant links --**

<b>Date</b>	<b>Details</b>
19 April 2011	Administration's press release on the Development Bureau's response to Ombudsman's direct investigation report on NTEHs <a href="http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6535.html">http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6535.html</a>
19 April 2011	The Ombudsman's report on Direct Investigation into Enforcement against UBWs in NT Exempted Houses <a href="http://www.ombudsman.gov.hk/ombudsnews/ombe_1_1112.pdf">http://www.ombudsman.gov.hk/ombudsnews/ombe_1_1112.pdf</a>
13 June 2011	Administration press release on Secretary for Development speaks on unauthorized building works in New Territories Exempted Houses <a href="http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6641.html">http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6641.html</a>
28 November 2011	Administration's press release on enforcement policy against unauthorized building works at New Territories village houses <a href="http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6897.html">http://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_6897.html</a>
—	Website of Lands Department on Small House Grant <a href="http://www.landsd.gov.hk/en/legco/house.htm#exnotes">http://www.landsd.gov.hk/en/legco/house.htm#exnotes</a>