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Paper for the House Committee meeting on 23 April 2021

**Report of the Subcommittee on Proposed Resolution under Section 2(3)
of the Buildings Ordinance (Cap. 123)**

Purpose

This paper reports on the deliberations of the Subcommittee on Proposed Resolution under Section 2(3) of the Buildings Ordinance (Cap. 123) ("the Subcommittee").

Background

2. The Minor Works Control System ("MWCS"), regulated by the Building (Minor Works) Regulation (Cap. 123N) ("B(MW)R"), came into operation on 31 December 2010. It provides an alternative for building owners to carry out small-scale building works in a lawful, simple, safe and convenient way, without the need to obtain prior approval of plans and consent to the commencement of such works from the Building Authority ("BA").

3. In addition, MWCS provides a validation scheme for certain minor amenity features out of the list of minor works items covered in MWCS. These minor amenity features include unauthorized supporting frames or structures for air-conditioning units, water cooling towers and any associated air ducts, as well as drying racks and canopies. After validation, the said unauthorized building works ("UBWs") meeting the descriptions and requirements prescribed under Schedule 3 to B(MW)R and erected before the commencement of MWCS on 31 December 2010 will not be served a demolition order under section 24 or a warning notice under section 24C of the Buildings Ordinance (Cap. 123) ("BO"). While the legal status of such features remains to be unauthorized, the validation scheme seeks to allow the

continued use of such lower risk features after safety inspection and necessary strengthening by a prescribed building professional ("PBP")¹ or a prescribed registered contractor ("PRC")² so as to meet the genuine needs of building occupants, minimize the burden of owners or occupants in seeking rectification and avoid wastage. In September 2013, the validation scheme was extended to cover existing unauthorized signboards erected before 2 September 2013 and meeting the prescribed descriptions and requirements.

4. In September 2020, B(MW)R was amended by the Building (Minor Works) (Amendment) Regulation 2020 (L.N. 60 of 2020) ("B(MW)(A)R 2020") to extend the coverage of MWCS. The amended B(MW)R came into operation on 1 September 2020.

The proposed resolution

5. The Secretary for Development ("SDEV") has given notice to move a motion at the Legislative Council ("LegCo") meeting of 24 March 2021 under section 2(3) of BO. The proposed resolution seeks to amend Schedule 8 to BO to designate an additional 11 types of existing unauthorized minor amenity features as prescribed building or building works ("PBWs") so that such PBWs could be retained for continued use under the validation scheme.

6. The 11 types of PBWs proposed to be added to Schedule 8 to BO³ are among the items set out in the list of minor works under Part 3 of Schedule 1 to B(MW)R. These proposed 11 types of PBWs are as follows:

- (a) supporting structure for a building services installation, or metal casing for such an installation, of a prescribed type;
- (b) supporting structure for a radio base station of a prescribed type;
- (c) supporting frame for an air-conditioning unit, or for a light fitting, of a prescribed type;
- (d) solid fence wall of a prescribed type;
- (e) mesh fence or metal railing of a prescribed type;

¹ PBP includes authorized person or registered inspector and, where applicable, registered structural engineer and registered geotechnical engineer.

² PRC includes registered general building contractor, registered specialist contractor registered to conduct a certain category of specialized works, as well as registered minor works contractor registered to conduct certain class/type/item of minor works.

³ At present, only one type of PBW (i.e. signboard of a kind prescribed under section 38(1)(ke)(ic) of BO) is designated in Schedule 8 to BO.

- (f) pole of a prescribed type;
- (g) metal gate of a prescribed type;
- (h) canopy of a prescribed type;
- (i) retractable awning of a prescribed type;
- (j) trellis of a prescribed type; and
- (k) metal ventilation duct or any associated supporting frame of a prescribed type.

7. The effect of the proposed resolution, if passed, is that enforcement action by the issue of a demolition order or warning notice under sections 24 and 24C of BO respectively will not be taken by BA against the proposed 11 types of PBWs (upon validation) if they were completed or carried out before a date, and subject to compliance with certain descriptions and requirements. According to the Administration, the descriptions and requirements will be prescribed in the Building (Minor Works) (Amendment) Regulation 2021 ("B(MW)(A)R 2021") to be tabled in LegCo for negative vetting after the passage of the proposed resolution, and the date will be set on 1 September 2020 to align with the commencement of the operation of B(MW)(A)R 2020.

The Subcommittee

8. At the meeting of the House Committee on 12 March 2021, Members agreed to form a subcommittee to study the proposed resolution. At the request of the House Committee, SDEV has withdrawn the notice for moving the motion as mentioned in paragraph 5 above in order to allow time for the Subcommittee to study the proposed resolution.

9. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon CHAN Han-pan, the Subcommittee has held one meeting with the Administration to scrutinize the proposed resolution and has invited written views from the public.⁴

Deliberations of the Subcommittee

10. Members of the Subcommittee generally welcome the proposed resolution which seeks to amend Schedule 8 to BO to extend the coverage of the validation scheme under MWCS by including the proposed 11 additional

⁴ A written submission has been received from the Chairman of the Wan Chai District Council ([LC Paper No. CB \(1\)759/20-21\(01\)](#)) (Chinese version only).

types of minor amenity features with a view to meeting the genuine needs of building owners and occupants. In the course of deliberations, the Subcommittee has examined issues including the specifications of the proposed PBWs for incorporation into Schedule 8 to BO; further extension of the coverage of the validation scheme to include more minor amenity features; approvals required for carrying out the proposed PBWs; and the handling of unauthorized extensions of squatter structures. The Subcommittee's deliberations are set out in the ensuing paragraphs.

Specifications of the proposed prescribed building or building works

11. Members note that upon the passage of the proposed resolution, a separate amendment regulation (i.e. B(MW)(A)R 2021) will be tabled in LegCo to amend section 62A of B(MW)R and prescribe the specifications of the 11 additional types of PBWs in Schedule 3 to B(MW)R. Members have sought details of the specifications of certain proposed PBWs items, including solid fence wall and mesh fence or metal railing. Members have also enquired about the time frame of the relevant legislative exercise.

12. The Administration has advised that it plans to table the aforesaid amendment regulation in LegCo for negative vetting within the 2020-2021 legislative session tentatively. The proposed 11 additional types of PBWs are among the latest list of minor works items by virtue of B(MW)R as amended by B(MW)(A)R 2020 in September 2020, and the specifications of these PBWs will largely correspond to the standards of the relevant items as set out in the amended B(MW)R. Take solid fence wall as an example, the maximum height is 3 metres ("m") if erected on-grade and 1.1 m if erected on roof, whereas the maximum thickness is 100 millimetres. As regards mesh fence, the maximum height is 5 m if erected on-grade and 2.5 m if erected on roof. The Administration has taken into account the genuine needs of building occupants and implications of these PBWs on the structural safety of buildings when setting the relevant standards.

Extending the coverage of the validation scheme

13. Members generally agree that the proposed designation of an additional 11 types of unauthorized minor amenity features as PBWs under the validation scheme would be able to meet the genuine needs of building occupants and avoid wastage. In this connection, the Chairman urges the Administration to consider incorporating more commonly used minor amenity features into the validation scheme to enable more building owners or occupants to benefit from the scheme. He also suggests that the Administration should consider allowing building owners to seek permission from BA on a case-by-case basis

for the continued use of certain unauthorized features commonly used in buildings but not covered in the validation scheme (e.g. water tanks) after undergoing safety inspection and necessary strengthening by a PBP or a PRC to obviate the need for building owners to demolish such unauthorized features in the first place and then seek approval from BA for their reconstruction afterwards, which is a wastage of resources.

14. The Administration has explained that in considering whether certain minor amenity features should be included in the validation scheme, the Buildings Department has all along adopted a risk-based approach pursuant to which the risks of the relevant features posed to the safety of buildings and occupants would be duly considered. With the commencement of B(MW)(A)R 2020 in September 2020, the number of minor works items covered in MWCS has increased from 126 to 187, including more types of minor amenity features. The 11 additional types of unauthorized minor amenity features proposed to be included in the validation scheme are low-risk features that could meet the genuine needs of building occupants. The Administration assures members that in accordance with the risk-based approach, it will review the list of minor amenity features under the validation scheme from time to time to see if more items could be incorporated into the scheme, having regard to the needs of building owners and occupants as well as the risks of the relevant features posed to the structural safety of the buildings.

Approvals required for carrying out the proposed prescribed building or building works

15. Noting that the proposed extended validation scheme will cover 11 additional types of unauthorized minor amenity features that were completed or carried out before 1 September 2020, members have enquired whether simplified procedures would be introduced for building owners to carry out building works relating to these 11 types of minor amenity features after 1 September 2020.

16. The Administration has explained that the present amendment concerns validation and continued use of the proposed 11 types of amenity features that were completed or carried out before 1 September 2020. With the commencement of B(MW)(A)R 2020 on 1 September 2020, PBPs or PRCs can carry out the works relating to the said 11 types of amenity features pursuant to the simplified requirements under MWCS whereby the PBPs or PRCs concerned are no longer required to submit plans to and seek prior approval from BA before carrying out the relevant works. They are only required to submit a Notice of Commencement to BA before commencement

of works (if applicable) and a Certificate of Completion upon completion of works.

Unauthorized extensions of squatter structures

17. Some members (including the Chairman and Mr Steven HO) have expressed concern about the way in which the Lands Department ("LandsD") deals with unauthorized extensions (e.g. canopies and flower racks) of squatter structures and agricultural structures.⁵ According to the prevailing squatter control policy of LandsD, the entire squatter structure would need to be demolished should any unauthorized extensions be found. LandsD also takes quite a long time to process the applications submitted by squatter occupants for carrying out minor building works or erecting extensions for their squatter structures. To address the genuine needs of squatter occupants, these members suggest that LandsD should consider introducing a streamlined control system similar to MWCS to allow PBPs or PRCs to carry out small-scale building works for and to validate the minor amenity features of squatter structures to ensure their safety. These members are of the view that notwithstanding that the squatter structures are unauthorized, LandsD should consider rationalizing the squatter control policy, taking into consideration that there are currently about 200 000 squatter structures and quite a number of occupants will remain residing in these structures in the next decade or so. They urge the Administration to consider reviewing the outdated squatter control regime, as well as the internal work flow and procedures of LandsD in respect of squatter control.

18. The Administration has advised that squatter structures are outside the control of BO. They are unauthorized in nature but are tolerated on a temporary basis under prevailing squatter control policy of LandsD. The Administration has undertaken to relay members' views to LandsD for consideration.

⁵ Squatter structures generally refer to structures illegally occupying government land or erected on private agricultural land in breach of lease conditions. The Government conducted a territory-wide Squatter Control Survey in 1982 to record the locations, dimensions (i.e. length, width and height), building materials and uses of the squatter structures. Such records formed the basis for squatter control. (Source: Administration's reply to LegCo Question No. 8 on "[Squatter structures and agricultural structures](#)" at the Council meeting of 4 November 2020)

Recommendation

19. The Subcommittee has completed scrutiny of the proposed resolution. The Subcommittee supports the proposed resolution and notes that SDEV will give fresh notice for moving the motion to seek LegCo's approval of the proposed resolution at the Council meeting of 12 May 2021. The Subcommittee will not propose any amendments to the proposed resolution.

Advice sought

20. Members are invited to note the deliberations of the Subcommittee as set out above.

Council Business Division 1
Legislative Council Secretariat
21 April 2021

Appendix

Subcommittee on Proposed Resolution under Section 2(3) of the Buildings Ordinance (Cap. 123)

Membership list

Chairman Hon CHAN Han-pan, BBS, JP

Members Hon Abraham SHEK Lai-him, GBS, JP
Hon Steven HO Chun-yin, BBS
Dr Hon Junius HO Kwan-yiu, JP
Hon Wilson OR Chong-shing, MH
Hon CHEUNG Kwok-kwan, JP
Hon LAU Kwok-fan, MH

(Total : 7 members)

Clerk Ms Connie HO

Legal Adviser Ms Vanessa CHENG