

BUILDINGS DEPARTMENT'S ACTIONS ON UNAUTHORISED BUILDING WORKS

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1. With the exception of minor works carried out under the Buildings Department (BD)'s Minor Works Control System and exempted works, building works without the BD's approval and consent are unauthorised building works (UBWs). UBWs may pose structural and fire-safety risks to building users and members of the public. They may also cause hygiene problems and environmental nuisance. As of October 2014, 732 staff of three divisions and one section of the BD were responsible for UBW and building safety/maintenance work. The BD identifies UBWs mainly through related reports from the public and the media, and referrals from other Government departments (known as UBW public reports), and clearance operations conducted on target buildings or a group of buildings (known as large-scale operations — LSOs).

2. Since 1975, with a view to removing risk to public safety and curbing UBWs within the resources available, the Government has adopted a policy under which enforcement actions would be taken on certain types of UBWs (known as “actionable UBWs”) and those on the remaining UBWs would be deferred (known as “non-actionable UBWs”). For an actionable UBW, the BD may issue a removal order requiring the owner concerned to remove the UBW within a specified period (normally 60 days) and register the order at the Land Registry (LR). If the required rectification works have not been carried out within the specified period stated under the removal order, the BD may carry out or cause to be carried out the removal works, or instigate prosecution actions against the building owners. For a non-actionable UBW, the BD may issue a warning notice notifying the owner concerned to remove the UBW, and the notice shall be registered at the LR if the owner has not complied with it within the specified period.

3. From 2001 to 2014, the number of public reports had almost tripled from 13,817 to 41,146. In the light of the increasing public concerns over the UBW problem, the Audit Commission (Audit) has recently conducted a review of the BD's actions on UBWs.

Implementation of Government policies on unauthorised building works

4. Under the UBW policy adopted by the Government in 2001, there were seven types of actionable UBWs, namely (a) UBWs constituting obvious or imminent danger to life or property; (b) new UBWs; (c) UBWs erected in or on buildings, on rooftops and podiums, and in yards and lanes constituting a serious hazard or a serious environmental nuisance; (d) major individual UBWs; (e) UBWs erected in or on individual buildings having extensive UBWs; (f) UBWs identified in buildings or groups of buildings targeted for LSOs or maintenance programmes; and (g) unauthorised alterations to or works in environmentally friendly features of a building for which exemption from calculation of gross floor area has been granted (paras. 2.3 and 2.4).

5. With effect from April 2011, the seven types of actionable UBWs have been expanded to include all UBWs erected on rooftops and podiums, and in yards and lanes of buildings even where these UBWs do not pose a serious hazard or environmental nuisance (known as rooftop-podium-lane UBWs) (para. 2.6).

6. A total of 405,261 UBWs had been removed from 2001 to 2010 (on average 40,526 UBWs removed a year) and 69,298 UBWs from 2011 to 2014 (on average 17,325 UBWs removed a year). In a stock-taking exercise conducted by the BD from May 2011 to December 2012, BD consultants found some 2,290,000 suspected UBWs, comprising 1,870,000 household minor works, 120,000 signboards and 300,000 other UBWs (paras. 2.9 to 2.11).

7. ***Number of actionable UBWs for planning enforcement actions not known.*** Notwithstanding that the Government has adopted a policy under which enforcement actions would be taken on actionable UBWs and such actions on non-actionable UBWs would be deferred, the BD has not taken action to ascertain the total number of actionable UBWs in existence, which might have adversely affected the BD's planning for enforcement actions on actionable UBWs. In this connection, the stock-taking exercise conducted in 2011 and 2012 did not categorise the 2,290,000 suspected UBWs found into actionable and non-actionable UBWs. Furthermore, the BD has not provided in its Controlling Officer's Reports a breakdown of the number of UBWs removed during a year into actionable and non-actionable ones, which might not be conducive to enhancing public

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accountability and transparency of the BD's effectiveness in tackling the UBW problem (paras. 2.14 and 2.17).

8. ***Illegal rooftop structures on 33 single-staircase buildings not yet removed.*** Rooftop is the fire refuge area for residents, and illegal rooftop structures, especially those erected on single-staircase buildings, would obstruct the fire escape route and pose serious fire-safety risk to the occupants. In April 2001, the Development Bureau (DEVB) informed the Legislative Council (LegCo) that the BD would clear all 12,000 illegal rooftop structures on the 4,500 single-staircase buildings by 2007. However, Audit noted that, as of January 2015, illegal rooftop structures erected on 33 single-staircase buildings had not yet been removed (para. 2.22).

Handling of public reports

9. ***Long time taken in issuing removal orders on actionable UBWs.*** According to BD guidelines, BD officers should issue a removal order on a confirmed actionable UBW (other than a rooftop-podium-lane UBW) within 180 days after conducting an inspection. However, Audit examination revealed that, as of October 2014, the BD had not issued removal orders on UBWs relating to 4,522 public reports where BD inspections had been conducted for more than six months to five years (paras. 3.4 and 3.5).

10. ***Long time taken in issuing removal orders on rooftop-podium-lane UBWs.*** Audit examination revealed that, as of October 2014, of the 25,313 public reports on rooftop-podium-lane UBWs (see para. 5) received from April 2011 to October 2014, only 3,357 (13%) of such public reports had been dealt with (such as by issuing removal orders, placing related buildings in target building lists for conducting LSOs, or the UBWs had been voluntarily removed by the owners). Of the remaining 21,956 (25,313 less 3,357) public reports, as of October 2014, 17,862 (81%) reports had been awaiting enforcement actions for 10 months to 3.5 years (para. 3.12).

11. ***Long time taken in registering warning notices at LR.*** Under the Buildings Ordinance (Cap. 123), the BD shall cause a non-compliant warning notice to be registered at the LR. According to the BD, it would refer a non-compliant warning notice to the LR for registration within four months from the date of

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issuance. However, Audit examination revealed that, as of October 2014, 147 non-compliant warning notices, which had been issued for more than 4 months to 9 years, had not been referred to the LR for registration. Audit also noted that, as of October 2014, 985 non-compliant warning notices referred back from the LR (such as notices having incorrect information) had not been forwarded again to the LR for registration (paras. 3.16 to 3.18).

Actions through large-scale operations

12. According to the DEVB, LSOs are more effective than handling individual public reports separately as more actionable UBWs would be cleared in one go. For each LSO on a type of UBWs, the BD specifies a number of target buildings for taking action (para. 4.2).

13. *Significant slippages in completing LSOs on rooftop-podium-lane UBWs.* From 2010 to 2014, the BD had conducted 6 LSOs on rooftop-podium-lane UBWs covering a total of 2,337 target buildings. Of the 6 LSOs, 1 was carried out by BD in-house officers and 5 by engaging 39 consultancies at a total cost of \$35.6 million. Notwithstanding that 4 of the 6 LSOs were targeted for completion from July 2011 to January 2014, as of October 2014, actions on all the buildings covered under 2 LSOs, and on more than half of the buildings covered under each of the remaining 2 LSOs, had not been completed (paras. 4.3 to 4.6).

14. *Payments prematurely made to consultants before completion of work.* According to BD consultancy agreement, upon satisfactory completion of work, the BD shall issue a completion letter and make the final payment. However, Audit examination revealed that the BD had made final payments to two consultancies before satisfactory completion of all work and issuance of completion letters (paras. 4.11 and 4.13).

15. *Significant slippages in completing LSOs on sub-divided flats (SDFs).* The Transport and Housing Bureau informed LegCo in December 2014 that the BD would continue to step up efforts to eradicate sub-divided units in industrial buildings and take enforcement actions against building and fire-safety irregularities of sub-divided units in residential and composite buildings. From 2011 to 2014, the BD had conducted 7 LSOs on SDFs covering a total of 1,092 target buildings. Of the 7 LSOs, 5 were conducted by BD in-house officers and 2 by engaging

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10 consultancies at a total cost of \$12.4 million. Notwithstanding that 4 of the 7 LSOs were targeted for completion from January 2012 to June 2014, as of October 2014, actions on more than half of the buildings covered under each of the 4 LSOs (all conducted by BD in-house officers) had not been completed (paras. 4.20 to 4.22 and 4.27).

Follow-up actions on removal orders

16. ***Removal orders not yet registered at LR.*** According to the DEVB and the BD, registration of UBW information at the LR would enhance consumer protection on prospective property buyers, who will become aware of the existence of UBWs in the related premises through conducting a land search at the LR. In this connection, a legal professional association had expressed its views to the LR that some removal orders had not been sent to the LR for registration. In April 2014, the DEVB informed LegCo that the BD did not keep statistics on the number of removal orders registered at the LR. In February 2015, Audit sample check of 30 removal orders issued in May 2013 revealed that 4 had not been registered at the LR. Audit noted that the BD did not keep records in its computer system on the majority of removal orders registered at the LR. Audit also noted that, of the 2,654 removal orders having records in the BD's computer system, 80% had been sent to the LR for registration more than one month to 8 years after their issuance (paras. 5.3 to 5.6 and 5.10).

17. ***Targets on clearing removal orders not met.*** The BD had set targets of clearing all removal orders issued in 2004 by March 2008, in 2005 by March 2009, in 2006 by March 2010, in 2007 by March 2011, in 2008 by March 2013 and in 2009 by March 2014. However, as of December 2014, 1% to 25% of the removal orders issued each year from 2004 to 2009 had not been cleared (para. 5.14).

System for supporting enforcement actions

18. ***Important information not provided by BD computer system.*** In 2002, the BD implemented a Building Condition Information System (BCIS) for recording, processing and retrieving details of complaints, referrals, planned surveys, statutory orders, works orders and consultancy assignments. However, Audit noted that some important information had not been input into or could not be provided by the BCIS (paras. 6.2 and 6.7).

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Way forward

19. Audit noted that, as of October 2014, there were 68,134 outstanding removal orders, of which 21% had been outstanding for more than 6 years to 10 years and 1% for more than 10 years to 30 years. Furthermore, the BD has yet to ascertain the number of actionable UBWs in existence on which removal orders have not been issued. Given that owners of a large number of UBWs have not taken UBW removal actions after registration of the removal orders at the LR, the title-encumbrance arrangement alone may not be sufficiently effective in inducing these owners to remove their UBWs (paras. 7.7 and 7.8).

20. According to the BD, prosecution actions are effective means to clear UBWs and it has set estimates of issuing 2,500 to 3,300 summonses a year on outstanding removal orders. Accordingly, for the outstanding removal orders, the BD would take a long time to issue summonses to all related owners (para. 7.10).

Audit recommendations

21. Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Director of Buildings should:

- (a) take actions to clear all illegal rooftop structures erected on single-staircase buildings as soon as possible (para. 2.23(c));
- (b) strengthen actions with a view to ensuring that removal orders are issued within BD time targets (para. 3.22(a));
- (c) formulate an action plan with timeframe for issuing removal orders on rooftop-podium-lane UBWs (para. 3.22(c));
- (d) take measures to ensure that all non-compliant warning notices are promptly referred to the LR for registration, and take prompt follow-up action on warning notices referred back from the LR (para. 3.22(d) and (e));

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- (e) **strengthen actions with a view to ensuring that LSOs are completed by the target completion dates (para. 4.16(b));**
- (f) **take measures to prevent making the final payment to consultants before satisfactory completion of all work (para. 4.16(d));**
- (g) **conduct a review of the outstanding removal orders to identify those that have not been registered at the LR and take remedial actions as soon as possible (para. 5.20(a));**
- (h) **strengthen actions with a view to meeting BD time targets on clearing outstanding removal orders issued in each of the previous years (para. 5.20(e));**
- (i) **in implementing the BCIS revamping project, take measures to provide functions in the system for monitoring the progress of actions taken on LSOs and outstanding removal orders (para. 6.17(a)); and**
- (j) **explore other effective means to induce the owners to remove their UBWs after issuing removal orders to them (para. 7.12).**

Response from the Government

22. The Secretary for Development and the Director of Buildings agree with the audit recommendations.