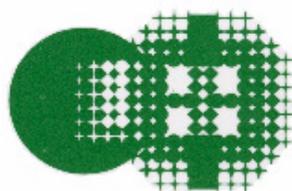


DIRECT INVESTIGATION REPORT

**ENFORCEMENT AGAINST
UNAUTHORISED BUILDING WORKS
IN NEW TERRITORIES EXEMPTED HOUSES**

MARCH 2011



**Office of The Ombudsman
Hong Kong**

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EXECUTIVE SUMMARY

Direct Investigation Enforcement against Unauthorised Building Works in New Territories Exempted Houses

Ambit of Investigation

This direct investigation serves to examine:

- (a) the effectiveness of the current enforcement regime in stopping the proliferation of unauthorised building works (“UBW”)¹ in New Territories Exempted Houses² (“NTEHs”); and
- (b) any necessary improvement to the enforcement regime.

Statutory Powers of Departments Concerned

2. Both the Buildings Department (“BD”) and the Lands Department (“Lands D”) may take enforcement action against UBW in NTEHs.

3. BD may issue a statutory order under section 24 of the Buildings Ordinance, Cap. 123, (“BO”), requiring the property owner to remove any illegal or dangerous structure within a specified period, failing which the UBW may be demolished by BD at the owner’s expense. Non-compliance with a removal order is an offence under section 40(1)(B) of the BO, with the offender liable to imprisonment and fines.

4. Lands D may take lease enforcement action against UBW if they constitute a contravention of the lease conditions. As land administrator, Lands D

¹ *Unauthorised building works are building works that have not been approved by the Buildings Department or the Lands Department.*

² *New Territories Exempted Houses are houses built on land granted under the New Territories Small House Policy to male indigenous villagers, or houses built outside the scope of the New Territories Small House Policy by indigenous or non-indigenous villagers, in accordance with the specifications of an New Territories Exempted House.*

has the powers to demolish UBW 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.

Enforcement Policy

5. In 2001, a Working Group comprising the then Planning, Environment and Lands Bureau (“PELB”), BD, Lands D and Planning Department (“Plan D”) decided to adopt a strategy of prioritisation of enforcement actions, in respect of all buildings in Hong Kong, by prescribing that BD should take priority action against, *inter alia*, “new” UBW, i.e. UBW completed within 12 months, and UBW constituting obvious or imminent danger to life or property.

6. In 2002, the Working Group revised the policy such that for NTEHs, BD will take enforcement action only against UBW in progress (“WIP”) and UBW constituting obvious or imminent danger. Unlike other buildings, no enforcement action is to be taken by BD against “new” UBW in NTEHs. Lands D will accord high priority of lease enforcement action only to cases of blatant breach, such as erection of an over-sized NTEH.

7. In 2006, the Development Bureau (“DevB”) (the successor of PELB), BD, Lands D and Plan D decided that an item of unauthorised building works-in-progress should not be considered WIP if it is “practically completed”, i.e. if the construction of the concrete framework of the structure or the cover of the stairhood of the building has been completed. The WIP status of a structure is determined upon the site situation reported at the date of first detection.

8. Pursuant to this definition, UBW under construction in NTEHs with their main structures already completed will not be classified as WIP and will not be subject to immediate enforcement action by BD. We dub the above “the WIP Policy”.

Work Practices

Detection and Referral

9. BD will consider the need for taking action upon receipt of a complaint on WIP. For referrals from Lands D, the related land information (e.g. land status plans, lot particulars, ownership records) and photographs showing the site and its surrounding area are accompanied as far as possible.

Site Inspection and Report

10. BD will arrange for one of its consultants to conduct a site inspection within 48 hours of receipt of the complaint. The consultant will submit an inspection report to BD afterwards for consideration as to whether and what enforcement action should be taken.

Removal Order

11. If BD confirms the case to be WIP, it will issue a “cease work advisory letter” and a removal order to the lot owner concerned demanding him to cease work and remove the UBW respectively. If the owner does not remove the UBW, BD will consider prosecution.

12. A removal order requires the owner to remove the UBW within a specific period of time, which varies from 30 days to a few months. BD will arrange inspection to check compliance. Extension may be allowed.

Lease Enforcement Action

13. Lands D usually accords low priority to dealing with UBW in NTEHs. Upon receipt of a complaint on UBW, Lands D will inspect the premises to ascertain if a breach of the lease conditions is involved. If so, Lands D will issue a warning letter requiring the breach to be purged within a specified period. If the breach persists, Lands D may take further lease enforcement action, including registering the warning letter in the Land Registry against the title of the property.

Overall Monitoring

14. According to Lands D, as at February 2004, there were around 13,000 UBW in NTEHs which constituted contravention of the lease conditions. A visual survey conducted by Lands D in 2004/05 confirmed that the problem of UBW in NTEHs was serious. However, since then, neither Lands D nor BD has conducted any further survey or study to size up the problem.

Observations

15. Our investigation, including study of cases, has revealed that despite the Administration's commitment to enhance enforcement against UBW in NTEHs, there remain obvious deficiencies in the current enforcement system.

Questionable Efficiency and Effectiveness

16. Statistics on the enforcement actions taken by BD and Lands D between 2007 and 2010 have raised doubts on the efficiency and effectiveness of the system:

- (a) of the 2,400 WIP cases received by BD, 1,492 (62%) were not subject to enforcement action. Of those 1,492 cases, 931 (62%) were due to "WIP practically completed" or "no works under construction" – to some extent, a reflection of BD's restrictive enforcement criteria and action threshold.
- (b) Only 755 (31%) of the 2,400 cases received by BD were confirmed to be WIP cases and, therefore, subject to enforcement action. Despite BD's issuance of removal orders in 721 of those cases, as at 25 February 2011, only 285 cases (40%) have been resolved; the UBW in the remaining 436 cases (60%) have not been removed.
- (c) Of the 129 removal orders issued in as early as 2007, 57 (44%) have remained outstanding as at 25 February 2011. The corresponding figures for 2008, 2009 and 2010 are equally unimpressive.

- (d) Only 118 (5%) of the 2,161 cases handled by Lands D have yielded positive result (UBW purged). Of the rest, warning letters have been issued and registered in the Land Registry in 1,147 cases (53%). Action remain outstanding for 888 cases (41%). No re-entry of land or cancellation of lease has been invoked.

17. The slow rate of enforcement of removal orders by BD and the mere registration of warning letters in the Land Registry by Lands D is highly unsatisfactory, especially in the light of the increase in the number of complaints against UBW in NTEHs (49% increase from 2007 to 2010).

Narrow Opportunity for Enforcement

18. The current enforcement regime for UBW in NTEHs gives priority of enforcement only to (a) WIP and (b) UBW constituting obvious or imminent danger to life or property. UBW, which are not under construction or dangerous, are not actionable under the regime.

19. Structures that are simple and fast to build could easily escape enforcement. If an inspection of WIP is not made during the brief spell of construction, no enforcement action will be taken against them. If the owner refuses the authorities entry for inspection and collection of evidence during the construction period, he stands a high chance of having no enforcement action taken against his UBW thereafter.

Defying Common Sense and Logic

20. In many of the cases studied, the circumstantial evidence for substantiating the WIP status of UBW, such as the presence of building materials or workmen or the self-admission to WIP status by the owner, were available to BD. Yet, BD did not classify them as WIP on the grounds that the main structures of the UBW had been completed. BD's decisions, though technically defensible by reference to the definition of WIP, clearly defy common sense and logic and are certainly not in line with the Administration's commitment to curb the proliferation of UBW in NTEHs.

Inequity between NTEHs and Other Buildings

21. For buildings other than NTEHs, BD gives high priority of enforcement to tackling “new” UBW. The present restrictive WIP Policy for UBW in NTEHs is, therefore, inconsistent with the general approach. It unnecessarily imposes an obstacle in enforcement action against “new” UBW in NTEHs, causes inequity between NTEHs and other buildings, and gives a signal that owners of NTEHs are privileged.

Inconsistent Application of Action Criteria

22. As indicated by the cases studied, the definition of WIP is capable of being interpreted loosely and differently by BD and Lands D staff. Lands D may refer cases of WIP with circumstantial evidence and photographs to BD in the belief that they are actionable, only to be told that the works have been “practically completed”. In some cases, Lands D may not agree with BD’s judgment. At times, the rationale behind BD’s own decision in different cases cannot be reconciled.

23. Such inconsistencies result in a waste of time and efforts in referrals and abortive visits, as well as unfairness in enforcement action.

Delay

24. We notice that delays in action have been caused by the spending of excessive time on ascertaining the status of WIP or simply tardiness on the part of the departments.

25. Under Lands D’s operational guidelines, in referring a suspected WIP case to BD, staff are required to provide land information and circumstantial evidence, such as photographs, so as to avoid abortive visits by BD. However, since time is of the essence in stopping WIP cases, we consider that Lands D staff should promptly refer cases of suspected WIP to BD. Circumstantial evidence not readily available could be collected and provided later.

Lack of Recourse against Owners’ Stalling Tactics

26. Some owners of UBW adopt stalling tactics by refusing BD or Lands D entry for inspection or arguing at length about the completion date of the UBW to

prove that the UBW should not be subject to immediate enforcement action.

27. We find that such stalling tactics are fuelled by the lack of decisive action on the part of the Administration. Pending the strengthening of their power of entry, DevB should review the departments' action criteria for referring cases of WIP and initiating enforcement action. DevB should also explore alternative methods of collecting evidence such as resorting to technological devices or soliciting the assistance of complainants or nearby residents.

Improper Keeping of File Records

28. The inspection reports prepared by BD's consultants provide first-hand information about UBW in NTEHs. However, as our study of the cases reveals, BD may deviate from the assessments and recommendations of its consultants, without providing the reasons or justifications for its deviation in the case files or to the consultants. This does not help to ensure that BD's decisions are well-grounded and consistent, nor does this facilitate the consultants' understanding of BD's thinking and requirements.

Lack of Monitoring

29. We are disappointed that DevB and the departments do not systematically collect and monitor statistics on UBW in NTEHs. We consider that in the absence of such statistical data, it is difficult, if not impossible to assess accurately the effectiveness of the enforcement regime for UBW in NTEHs.

Feasibility of Expanding the Coverage of Enforcement

30. DevB and BD have expressed difficulties in expanding the scope of enforcement action to cover "new" UBW in NTEHs:

- (a) Unlike other buildings covered by the BO, NTEHs do not have detailed building plans or subsequent building plans for alteration and addition works. This makes it difficult to ascertain the "unauthorised" status of structure.

- (b) There is often an absence of evidence to prove that the UBW were “new”, i.e. newly completed within the past 12 months.
- (c) Expansion of the coverage of enforcement action may not be cost-effective. Public expectation has to be carefully balanced and managed.

31. Our response is as follows:

- (a) The difficulties in proving the “unauthorised” status of UBW in NTEHs do not apply to every case. For typical NTEHs³, the dimensions are clearly specified and BD can readily recognise whether the NTEH carries UBW. For non-typical NTEHs⁴, the absence of detailed building plans may pose difficulties for BD in determining the “unauthorised” status of a structure. If that is indeed the case, BD may eventually have to drop the charge against the owner. However, that is an operational problem which may arise in WIP, as well as in “new” UBW cases. We see no grounds why this problem should be taken as a reason not to expand the scope of enforcement action to cover “new” UBW in NTEHs.
- (b) DevB and BD have set too high a standard of proof for themselves for establishing the “new” status of UBW. Before issuing a removal order, BD should, of course, exercise due diligence to ascertain the “new” status of the UBW. This may be done, for example, by questioning the owner and his neighbours and examining the structure concerned. After issuing the order, the onus is on the owner to adduce sufficient evidence to prove that the UBW is not “new” and,

³ *The specifications on the dimensions of an NTEH are stipulated under the Buildings Ordinance (Application to the New Territories) Ordinance, Cap. 121.*

⁴ *NTEHs built before 1 January 1961 were not subject to the control of the BO at the time of their construction and, therefore, the specifications on the dimensions of NTEHs later imposed under Buildings Ordinance (Application to the New Territories) Ordinance.*

therefore, should not be subject to immediate enforcement action by BD under the Department's prioritisation policy. That should not be too much of a burden on the owner.

- (c) We are not asking BD to do the impossible. We are merely suggesting that it should not make it a policy or a norm not to take enforcement action against "new" UBW in NTEHs. The Department should deal with such cases in line with its policy for all other buildings. The public at large would welcome consistent and non-discriminatory handling of UBW cases and appreciate the practical difficulties involved.

Conclusion and Recommendations

32. Government has sworn its determination to tackle UBW on a sweeping scale, but UBW in NTEHs are exempted under the WIP Policy without sound justifications being proffered. Numerous cases of "new" UBW in NTEHs have, as a result, escaped enforcement action and the situation will persist unless positive changes are made.

33. In this light, The Ombudsman recommends that:

- (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 Lands D 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 Lands D streamline the departments' procedures for more efficient operation;

- (d) BD and Lands D 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
- (f) DevB, in association with BD and Lands D, expeditiously size up the problem of UBW in NTEHs, with a view to objectively assessing the effectiveness of its enforcement regime.

Office of The Ombudsman
April 2011

LEGEND OF ABBREVIATIONS

BA	Building Authority
BD	Buildings Department
BO	Buildings Ordinance
BO(ATNT)O	Buildings Ordinance (Application to the New Territories) Ordinance
C of E	Certificate of Exemption
DevB	Development Bureau
DLO	District Lands Office
DO	District Office
DT	District Team
GR(RVR)O	Government Rights (Re-entry and Vesting Remedies) Ordinance
HPLB	Housing, Planning and Lands Bureau
JET	Joint Enforcement Team
L(MP)O	Lands (Miscellaneous Provisions) Ordinance
Lands D	Lands Department
LET	Lease Enforcement Team
NT	New Territories
NTEH	New Territories Exempted House
NTSH Policy	New Territories Small House Policy
PELB	Planning, Environment and Lands Bureau
Plan D	Planning Department
SAU	Special Action Unit
UBW	Unauthorised Building Works
WIP	Unauthorised Building Works-in-progress

1

INTRODUCTION

BACKGROUND

1.1 The Ombudsman has for years been receiving complaints against the Buildings Department (“BD”) and the Lands Department (“Lands D”) about ineffective or inefficient enforcement action against unauthorised building works (“UBW”) in New Territories Exempted Houses (“NTEHs”).

1.2 Enforcement action against UBW in NTEHs was the subject of two previous direct investigations conducted by this Office⁵. Upon their conclusion, we made recommendations to the Administration for improvement (**Annexes A and B**). We have been monitoring the progress of implementation of our recommendations.

1.3 The current strategy of enforcement action against UBW was introduced by the Administration in 2001 having regard to the limited resources of the enforcement departments. That strategy, as modified and applied to UBW in NTEHs with the aim of stopping their proliferation, prescribes that immediate enforcement action is to be taken in respect of unauthorised building works-in-progress (“WIP”) in NTEHs, or those posing obvious or imminent danger to life or property to the public.

1.4 Concerned whether this enforcement regime has been effective in stopping new UBW in NTEHs, this Office decided to conduct a direct investigation under section 7(1)(a)(ii) of The Ombudsman Ordinance, Cap. 397. We informed BD and Lands D of our decision on 8 July 2009.

⁵ 1996 – “*Unauthorised Building Works in New Territories Exempted Houses*”
2004 – “*Enforcement Action on Unauthorised Building Works in New Territories Exempted Houses*”

SCOPE OF INVESTIGATION

1.5 Through the investigation, we hope to determine:

- (a) the effectiveness of enforcement action, under the current policy of prioritised actions against WIP and UBW posing obvious or imminent danger to life or property, in stopping the proliferation of UBW in NTEHs; and
- (b) any necessary improvement to the existing enforcement regime against UBW in NTEHs.

METHODOLOGY

1.6 We sought information from BD, Lands D and the Development Bureau (“DevB”). We studied departmental circulars and guidelines, more than 180 case files, statistical data and relevant Legislative Council papers. We had meetings with BD.

1.7 On 4 and 8 March 2011, we sent our Draft Investigation Report to the Director of Buildings, Director of Lands and Secretary for Development for comments. Having duly considered and incorporated their views, we issued this Final Report on 31 March 2011.

2

STATUTORY POWERS AND ENFORCEMENT POLICIES

UBW IN NTEHs

2.1 The Buildings Ordinance, Cap. 123, (“BO”) stipulates that physical alterations and additions to existing private buildings, involving the structure of the buildings, must be coordinated and supervised by an authorised person (“AP”) approved by BD and carried out according to the building standards under the BO and its subsidiary regulations. Works that fail to comply with such stipulations are regarded as UBW.

2.2 An NTEH is any building whose building works⁶ are exempted from the BO by virtue of the Buildings Ordinance (Application to the New Territories) Ordinance, Cap. 121, (“BO(ATNT)O”). Such exemptions are granted by way of Certificates of Exemption (“Cs of E”) issued by Lands D⁷. Lands D will not issue

⁶ *Building works, according to section 2 of the BO, include any kind of building construction, site formation works, ground investigation in the scheduled areas, foundation works, repairs, demolition, alteration, addition and every kind of building operation, and drainage works.*

⁷ *Once Cs of E from Lands D have been obtained, the following requirements under the BO will be exempted by virtue of section 7(1) of the BO(ATNT)O –*

- *the need to appoint an AP or a registered structural engineer (section 4);*
- *the need to appoint a registered contractor (section 9);*
- *the need to appoint prescribed registered contractors for minor works (section 9AA);*
- *the approval and consent required for the commencement of buildings works from the Building Authority (section 14);*
- *the need to apply to the Building Authority for an Occupation Permit (section 21);*
- *the approval and consent required for carrying out drainage works from the Building Authority (section 28);*
- *the need for prior approval to construct access to a street (section 30); and*
- *the need to comply with all standards in relation to the design, planning and construction of buildings (regulations made under the BO).*

Cs of E to an NTEH if it has UBW.

2.3 In general, NTEHs cover two types of buildings in the New Territories (“NT”):

- (a) small houses built on land granted under the New Territories Small House Policy (“NTSH Policy”)⁸ to male indigenous villagers in accordance with the specifications of an NTEH; and
- (b) houses built outside the scope of the NTSH Policy by indigenous or non-indigenous villagers on “old schedule house lots” or “new grant house lots” granted after 1905 and in accordance with the specifications of an NTEH.

2.4 UBW in NTEHs have been a longstanding problem. Common UBW found in NTEHs include additional storeys, additional or enclosed balconies, structures, canopies or frameworks on roofs, projecting canopies, flower racks or pergolas.

LEGAL FRAMEWORK OF ENFORCEMENT ACTION

2.5 Both BD and Lands D may take enforcement action against UBW in NTEHs in accordance with their respective statutory authorities and legal rights.

BD

2.6 BD is concerned with control over and enforcement against UBW and has responsibility under the BO to tackle UBW in private buildings. Section 24 of the Ordinance empowers BD to issue statutory orders requiring property owners to remove any illegal or dangerous structure within a specified period, failing which the UBW may be demolished by BD at the owners’ expense. Non-compliance with a removal order is an offence under section 40(1)(BA), with the offender liable to one year’s imprisonment, a principal fine of \$200,000 plus a daily fine of \$20,000. BD may also break into any premises or enter upon any land for the purpose of checking

⁸ *The NTSH Policy was introduced in 1972, under which every indigenous villager as defined is entitled to apply to build a small house on private land, or on Government land, at a concessionary premium, within the village environ of a recognised village. Provided that the small house conforms to certain criteria, the owner is exempted from the need to submit formal building plans to BD.*

for compliance with a removal order under section 22 of the BO. This power is sparingly used.

Lands D

2.7 As the dimensions and some other specifications of an NTEH are stipulated in the lease of the NTEH, Lands D may take lease enforcement action pursuant to the lease against such UBW if they constitute a contravention of the lease conditions. A lease is a contract between the owner of the property as lessee and Lands D as representative of the landlord (lessor). Litigation for breach of lease conditions is adjudicated under land law.

2.8 On the other hand, as land administrator, Lands D has the powers under section 12 and 13 of the Lands (Miscellaneous Provisions) Ordinance, Cap. 28, (“L(MP)O”) to demolish UBW and to enter premises for inspection. Lands D also has the powers to re-enter land and cancel the lease under section 4 of the Government Rights (Re-entry and Vesting Remedies) Ordinance, Cap. 126, (“GR(RVR)O”). Lands D has used such powers sparingly, having regard to legal implications and the competing demands on its resources.

2.9 As a general practice, upon receipt of a complaint of UBW, Lands D will inspect the premises concerned to ascertain if breach of lease conditions is involved. If so, Lands D will issue a warning letter requiring the breach to be purged within a specified period. If the breach persists, Lands D may take further lease enforcement action, including registering the warning letter at the Land Registry against the title of the property. This might warn prospective purchasers and alert mortgagees, if any, thereby adversely affecting the marketability of the property.

ADMINISTRATIVE POLICY ON ENFORCEMENT

2.10 UBW in NTEHs are subject to an enforcement regime different from that for all other types of buildings. The current policy on enforcement action against UBW in NTEHs was shaped by the decision of a working group on UBW (“the Working Group”) formed in 2000.

General Policy for Enforcement against UBW

2.11 The Working Group comprised the then Planning, Environment and Lands Bureau (“PELB”), BD, Lands D and Planning Department (“Plan D”). After public consultation⁹ on key building safety issues, PELB, on the advice of the Working Group, published in April 2001 a booklet entitled “For a Culture of Building Care” to introduce a comprehensive strategy for building safety and timely maintenance, including action against UBW. Among other things, the Administration decided to adopt a revised enforcement policy (“the 2001 Policy”) in tackling the problem of UBW (**Annex C**).

2.12 In consideration of the complexity and magnitude of the territory-wide issue of UBW, the 2001 Policy adopted a strategy of prioritisation by prescribing that BD should take priority action against, *inter alia*, the following types of UBW:

- (a) items constituting obvious or imminent danger to life or property; or
- (b) new items, i.e. UBW completed within 12 months, irrespective of the date of completion of the building where they have been carried out.

2.13 This strategy of prioritisation was meant to apply to enforcement action in respect of all buildings in Hong Kong.

Specific Policy for UBW in NTEHs

2.14 In 2002, the Working Group prescribed the following specific enforcement policy for UBW in NTEHs:

- (a) **BD** to take priority action against WIP, or UBW that pose a structural danger and may impair the safety of life and property; and

⁹ Consultation was held with the Legislative Council, the Land and Building Advisory Committee, all 18 District Councils, numerous professional and representative bodies and owners' corporations.

(b) **Lands D**

- (i) to take priority lease enforcement action against UBW constituting a blatant breach of the lease;
- (ii) to temporarily waive the right to take action against UBW constituting a minor breach, subject to payment of a penalty premium; and
- (iii) to take lease enforcement action against other UBW constituting a breach of the lease according to its action programmes, which will eventually cover all villages.

2.15 Pursuant to this policy, BD will take enforcement action only against UBW in NTEHs that are under construction, or constitute obvious danger. Unlike other buildings, no enforcement action is taken by BD against “new” UBW in NTEHs (**para. 2.12(b)**). In this investigation report, this specific policy of prioritised enforcement action against WIP in NTEHs is dubbed “the WIP Policy”.

2.16 Lands D has since modified its priorities for enforcement against lease breaches in NTEHs in view of the WIP Policy. Blatant breach, such as erection of an NTEH on “old schedule agricultural lot” without the prior approval of Lands D or erection of an over-sized NTEH, are classified under high priority. Cases in connection with lease enforcement programmes¹⁰ conducted by District Lands Offices (“DLOs”) are of medium priority. All other cases are accorded low priority.

Definition of WIP

2.17 The definition of WIP and the related inspection procedures were agreed by DevB, BD, Lands D and Plan D in 2006. An item of unauthorised building works-in-progress will not be considered a WIP if it is “practically completed”, i.e. if the construction of the concrete framework of the structure and the cover of the stairhood of the building has been completed, upon first detection. The WIP status of a structure is determined upon the site situation reported at the date of

¹⁰ *Lease enforcement programmes are enforcement actions targeted at selected areas of a district and are scheduled in the light of the specific local situation, the seriousness of the UBW problem and the staff resources available. Lands D cannot provide the number of targeted NTEHs and enforcement actions taken against NTEHs under the programmes because lease enforcement programmes are not targeted specifically at NTEHs.*

first detection. BD will take appropriate enforcement action against the UBW if they are classified as WIP, even if the UBW later become a completed structure.

2.18 UBW under construction but with their main structures already completed will not be classified as WIP and will not be subject to immediate enforcement action by BD under the WIP Policy.

Announcement of the WIP Policy

2.19 Unlike the general policy for enforcement against UBW, no public announcement has been made by the Administration about the contents of and the rationale behind the WIP Policy.

3

MAGNITUDE OF PROBLEM

NUMBER OF UBW IN NTEHS

3.1 According to Lands D, as at February 2004, there were around 13,000 UBW in NTEHS which constituted contravention of the lease conditions. A visual survey conducted by Lands D between November 2004 and March 2005 confirmed that the problem of UBW in NTEHS was serious. Since then, neither Lands D nor BD has conducted any further survey or study to size up the problem. As a result, they cannot provide an estimated figure of UBW in NTEHS.

3.2 DevB believes that there has been no material change in the number of UBW in NTEHS, because the number of alleged WIP cases and confirmed WIP cases has remained constant during the period from 2007 to 2010 (**Table 2**).

COMPLAINTS

3.3 A total of 9,608 complaints about UBW in NTEHS were received by BD and Lands D between 2007 and 2010 (**Table 1**). Of these, 77% (7,447 complaints) fell under the purview of BD: 33% (3,215 complaints) concerning WIP and 44% (4,232 complaints) concerning the safety of existing UBW. No enforcement action was taken in respect of any of the 4,232 complaints about the safety of existing UBW because no genuine safety risks had been found.

**Table 1: Complaints about UBW
in NTEHs received by BD and Lands D between 2007 and 2010**

Year	Total number of complaints received by BD and Lands D (a) = (b)+(c)+(d)	Complaints received by BD		Complaints received by Lands D (d)
		Complaints regarding safety of existing UBW (b)	Complaints regarding WIP (c)	
2007	1,983	944	498 (419)	541
2008	2,335	1,112	713 (524)	510
2009	2,335	1,005	782 (570)	548
2010	2,955	1,171	1,222 (887)	562
Total	9,608	4,232 (44%)	3,215 (2,400) (33%)	2,161 (23%)

() Figures in brackets denote the number of “net complaints” after deducting repeated complaints. BD’s statistics on enforcement action is calculated on the basis of “net complaints”, which is referred to as “cases” in the ensuing paragraphs.

ENFORCEMENT ACTION BY BD

3.4 Of the 2,400 WIP cases against UBW in NTEHs received by BD between 2007 and 2010, 755 (31%) were confirmed by BD to be actionable WIP cases (**Table 2**). Advisory letters issued to the owners have resulted in the voluntary removal of UBW in 34 cases (5%). Removal orders were issued in respect of the remaining 721 cases (95%). In response, the removal orders in 285 of such cases (40% of 721) have been discharged. As at 25 February 2011, the UBW in the remaining 436 cases (60% of 721) have remained intact and not removed.

Table 2: Cases of WIP handled by BD and outcomes of complaints

Year	Cases of WIP received	Cases not subject to action under BO (% of (a))	Confirmed WIP cases (% of (a))	Advisory letters issued	Voluntary removal of UBW by owners upon receipt of BD's advisory letters (% of (d))	Removal orders issued (% of (d))	Removal orders discharged (as at 25 Feb 11) (% of (f))
	(a)	(b)	(c) = (a) – (b)	(d)	(e)	(f)	(g)
2007	419	283	136	136	7	129	72
2008	524	298	226	226	6	220	104
2009	570	408	162	162	7	155	74
2010	887	503	231	231	14	217	35
Total	2,400	1,645* (69%) (1,492 (62%), excluding the 153 cases)	755 (31%)	755	34 (5%)	721 (95%)	285 (40%)

*This figure includes 153 cases which were being processed as at 25 February 2011.

3.5 Among the 2,400 cases of WIP received by BD between 2007 and 2010, there were 1,492 cases (62%) which were classified as not subject to enforcement action under the BO (**Table 3**). The reasons were:

- (a) the WIP were considered “practically completed”, or no works under construction were noted (931 cases or 62% of 1,492 cases);
- (b) the WIP could be tolerated for various reasons (425 cases or 29% of 1,492 cases); and
- (c) the building works were on Government land and were, therefore, referred to Lands D for land control action (136 cases or 9% of 1,492 cases).

**Table 3: WIP cases received in 2007-2010
not subject to further action under BO**

“No further action” cases	Year				Total (a) + (b) + (c) + (d)
	2007 (a)	2008 (b)	2009 (c)	2010 (d)	
WIP “practically completed”, or no works under construction noted	167	203	248	313	931 (62%)
UBW could be tolerated:					
- for grant of retrospective Certificates of Exemption	56	42	71	119	288 (20%)
- as repair of existing UBW	32	24	52	29	137 (9%)
Building works on Government land (referred to Lands D for action)	28	29	37	42	136 (9%) (Table 5)
Total	283	298	408	503	1,492 (100%)

ENFORCEMENT ACTION BY LANDS D

3.6 Lands D takes enforcement action against UBW in accordance with its action priority. Among the 2,161 cases handled by Lands D between 2007 and 2010 (Table 1), the UBW were purged in respect of 118 cases (5%). 888 cases (41%) were being processed and no action was considered necessary for 8 other cases (1%). For the remaining 1,147 cases (53%), Lands D took enforcement actions by issuing advisory and warning letters and registering warning letters in the Land Registry. The table below (Table 4) shows the breakdown of action taken by Lands D.

Table 4: Enforcement actions taken on complaint cases in respect of UBW in NTEHs handled by Lands D between 2007 and 2010 (Position as at 10 March 2011)

	2007	2008	2009	2010	Total
Breach purged	34	33	33	18	118 (5%)
Preliminary advisory letters issued, or warning letters issued and registered in Land Registry	344	263	253	287	1,147 (53%)
Pending further action	160	211	260	257	888 (41%)
No action is required	3	3	2	0	8 (1%)
Total	541	510	548	562	2,161

3.7 Of the 136 cases of UBW on Government land referred to Lands D by BD between 2007 and 2010 (**Table 3**), the UBW concerned were cleared in respect of 39 cases (29%). 44 cases (32%) were not regarded as building works constituting unlawful occupation of Government land. For the remaining 53 cases (39%), land control action was in progress or pending.

Table 5: Cases referred to and handled by Lands D in 2007 – 2010 (Position as at 10 March 2010)

Category	Number of cases*
Building works cleared	39 (29%)
Cases not regarded as building works unlawfully occupying Government land	44 (32%)
Action pending	53 (39%)
Total	136

* No overlap with Table 4

4

WORK PRACTICES AND EXPANSION OF COVERAGE

4.1 Enforcement action against UBW in NTEHs is taken essentially upon reports from BD, Lands D, Plan D or other Government departments or complaints by the public. Depending on the nature and status of the UBW as reported, BD or Lands D may conduct initial inquiries into the cases.

WORK PRACTICES OF BD

4.2 BD has devised sets of procedures for the detection, referral, inspection of and enforcement action against UBW in NTEHs. The general framework of the procedures is set out below.

Detection and Referral

4.3 WIP reports or complaints are received by BD for consideration of taking enforcement action under the BO. For referrals by Lands D, the related land information (e.g. land status plans, lot particulars, ownership records) and photographs showing the site and its surrounding area are accompanied as far as possible.

Provision of Land Information

4.4 BD relies heavily on the land information provided by Lands D, usually in the form of a standard proforma (**Annex D**), to determine whether the reported works are UBW (i.e. whether the building works are on private land and whether they are or will be covered by valid Cs of E under the BO(ATNT)O). If Lands D advises in the affirmative, BD will either drop the case or ask the owner to apply to Lands D as appropriate.

4.5 To expedite enforcement action, a Joint Enforcement Team (“JET”) was formed in 2006, headed by Assistant Directors of BD, Lands D and Plan D, to facilitate inter-departmental communication and coordination. JET coordinates the efforts of the departments in tackling irregularities including determination of WIP and provides the forum for the three departments to consider appropriate arrangements in handling more difficult cases. JET allows BD officers access to an electronic system established in Lands D, called the Geospatial Information Hub, to enable convenient retrieval of land status plans. Each DLO has nominated contact persons for handling BD’s enquiries on WIP cases.

Site Inspection and Report

4.6 On receipt of a referral of WIP case, BD will arrange for one of its consultants to conduct a site inspection within 48 hours. For cases referred by Lands D, BD should send an interim reply to Lands D, informing it of the progress of the investigation within one month from the date of receipt of the referral. The Special Action Unit (“SAU”) of BD, comprising engineers and surveyors, is responsible for handling WIP cases and for supervising the work of its consultants. The consultants are paid on a lump sum basis for the duties carried out in assigned districts as instructed by BD during the contract period ranging from a few months to two years.

4.7 The consultant will write a report on its inspection for submission to SAU. In the report (proforma at **Annex E**), the consultant will enter his observations pertaining to:

- (a) the nature, dimensions, location, state of construction and materials of the UBW;

- (b) other circumstantial evidence, such as the presence of workmen, owner's name and contact number;
- (c) the type of UBW (e.g. "WIP", "Repair to Existing UBW", "Existing UBW" or "New UBW"); and
- (d) a recommendation as to whether an advisory letter or a removal order should be issued.

4.8 The consultant uses the same set of briefing materials for NTEHs as that for other buildings. In the briefing materials, there is no specific definition of WIP, i.e. building works that are in progress and have not been practically completed, and there is no mentioning that BD will not take priority enforcement action on WIP that have been practically completed or on newly completed UBWs.

4.9 On the basis of the consultant's report, the case officer in SAU, at Building Surveyor or Structural Engineer level, will recommend whether and what enforcement action should be taken to the supervising Senior Building Surveyor or Senior Structural Engineer for decision.

Removal Order

4.10 If, on consideration of the consultant's report and available information and evidence, BD does not regard the case as WIP, BD will inform Lands D of its decision and ask Lands D to consider taking appropriate enforcement action in accordance with the lease enforcement priorities or district lease enforcement programme as Lands D deems appropriate. If BD confirms the case to be WIP, BD will issue a "Cease Work Advisory Letter" and a Removal Order to the lot owner concerned, demanding him to cease work and remove the UBW respectively. If the owner does not remove the UBW, BD will consider prosecution.

4.11 A removal order requires the owner to remove the UBW within a certain period of time. Based on the deadline set in the order, BD will arrange inspection of the premises to check compliance. In general, the timeframe may vary from 30 days to a few months, depending on the scale and complexity of the works required to be done and other conditions specified in the order. Extension may be considered on a discretionary basis.

4.12 Shown below (**Table 6**) are the outcomes of the 721 removal orders issued by BD against WIP between 2007 and 2010.

Table 6: Outcome of 721 removal orders issued against WIP between 2007 and 2010 and the position of the outstanding 436 orders as at 25 February 2011

Outcomes and Current Position		Year of WIP complaints received				Total (i) + (ii) + (iii)+(iv)
		2007 (i)	2008 (ii)	2009 (iii)	2010 (iv)	
No. of orders issued (a)		129	220	155	217	721
No. of orders discharged (b)		72	104	74	35	285
No. of orders under appeal (c)		6	15	7	22	50
No. of orders in default by owners and prosecution proceedings being taken	Summons laid (d1)	23	36	22	7	88
	Summons being laid (d2)	18	48	27	19	112
No. of orders for which rectification action being taken by owners (e)		10	17	25	134	186
No. of outstanding orders (c) + (d1) + (d2) + (e) (% of (a))		57 (44%)	116 (53%)	81 (52%)	182 (84%)	436 (60%)

Appeal

4.13 An owner may appeal in writing against a removal order within 21 days of the order. Appeals are heard and determined by the Appeal Tribunal as appointed by the Chief Executive.

4.14 In making a decision, the Appeal Tribunal takes into account whether the action of BD conforms to its policy statement that only WIP and UBW of safety concern are subject to priority enforcement action. The Appeal Tribunal may make an order confirming, varying or reversing the decision that is appealed against, or substituting it with such other decision or make such other order as it thinks fit under section 50 of the BO.

4.15 Once an appeal has been made, the removal order will be suspended until a decision is made by the Appeal Tribunal. Some owners may use this as a

tactic to delay BD's enforcement action. Nevertheless, the appellant may have to pay the costs of the appeal if the Appeal Tribunal decides that the appeal is made without a good cause.

4.16 In most appeal cases, the reasons given are that the UBW or WIP are repairs to existing UBW or requisite for safety reasons. Some appellants claim that the issuance of a removal order to them is not fair because similar UBW can be found in the same area. Others claim that they did not know that they are required to apply to BD for approval before commencing the works. Statistics on the number and outcomes of appeals made during the past three years are set out below:

Table 7: Number and outcomes of appeals against removal orders for demolition of UBW in NTEHs received between 2008 and 2010 (position as at 15 February 2011)

	2008	2009	2010
No. of appeals received	31	44	33
- withdrawn by appellants	10	18	5
- time-barred	0	2	5
- decisions upheld	4	3	1
- decisions quashed or changed	0	0	0
- decisions pending	17	21	22

4.17 No decision of BD in respect of removal orders has been quashed or changed during the past three years.

WORK PRACTICES OF LANDS D

4.18 Lands D mainly acts upon enquiries, complaints and referrals. In view of the vast land covered by leases, Lands D does not conduct regular inspections of all the leased land and the buildings thereon. Lands D accords priority to dealing with the misuse of residential premises for dangerous or obnoxious activities. UBW in NTEHs which are in contravention of the leases are mostly of low priority. If a breach of lease conditions is established, Lands D will consider if rectification through waiver, lease modification or retrospective issue of Cs of E are appropriate. If not, Lands D will, having regard to legal advice, take appropriate lease enforcement

actions at different stages. Normally, Lands D will issue a warning letter to the lessee concerned requesting rectification of the breach within a specified period. If the irregularity persists, Lands D may register the warning letter in the Land Registry.

EXPANDING THE COVERAGE OF ENFORCEMENT ACTION

4.19 Early in our direct investigation of 2004, we recommended that BD and Lands D expand the scope of their enforcement action to cover “new” UBW in NTEHs, i.e. UBW completed within 12 months as at the date of receipt of report by BD, so as to bring enforcement against UBW in NTEHs in line with enforcement against UBW in other buildings.

4.20 DevB, in consultation with BD and Lands D, reviewed the recommendation in 2005 and reported that the prevailing policy had been effective in curbing the emergence of UBW in NTEHs.

4.21 In the course of this new investigation, we requested DevB and BD to reconsider the recommendation. Both expressed reservations on account of the following practical difficulties:

Difficult to prove “unauthorised” status

- (a) Unlike other buildings covered by the BO, NTEHs do not have detailed building plans¹¹ or subsequent building plans for alteration and addition works. It is also not uncommon that the record plans of NTEHs are only in simple sketchy form and not up-to-date even if they are available. The lack of detailed building plans in the case of NTEHs makes it difficult to ascertain the “unauthorised” status of a structure.

¹¹ *Showing details of the building, including dimensions, layout, height, construction materials and fire safety specifications.*

- (b) For NTEHs built before 1 January 1961¹², their dimensions may differ significantly from those of typical NTEHs¹³. As a result, even if there are obvious signs of unauthorised works in those buildings, in the absence of proper and clear building plans, BD would have difficulties in ascertaining whether the works are indeed UBW.
- (c) For NTEHs built on or after 1 January 1961, as they are subject to the control of the BO, BD will adopt the dimensional criteria set out in the BO(ATNT)O in determining whether there are any UBW. Yet, in the absence of detailed building plans, BD may still be unable to delineate and confirm the exact dimensions of the parent NTEH and the structure and dimensions of the suspected UBW for the issue of a removal order. The parent NTEH may differ in dimensions from typical NTEHs, due to different background in land grant, construction and exemption status under the BO(ATNT)O. For example, its roofed-over area may be smaller than 65.03 m² or 700 ft². Besides, any suspected UBW may include repairs to or renovation of the parent NTEH, or partial reconstruction of existing UBW. These are not actionable UBW, because the construction of the parent NTEH is exempted works under the BO(ATNT)O and

¹² *NTEHs built before 1 January 1961 were not subject to the control of the BO and, therefore, the specifications on their dimensions, at the time of their construction.*

¹³ *The specifications on the dimensions of an NTEH are stipulated under the BO(ATNT)O. Generally speaking, the restrictions on dimensions depend on the type and usage of the buildings:*

(a) ***New Building for Non-industrial or Community Use***

- (i) *not more than 3 storeys and of a height not more than 8.23 m (27 ft) and with a roofed-over area not exceeding 65.03 m² (700 ft²) and accords with the specified thickness of the load-bearing walls; or*
- (ii) *of a height of not more than 7.62 m with a roofed-over area not exceeding 92.90 m² where the building complies with approved plans, or with a roofed-over area not exceeding 65.03 m² (700 ft²).*

(b) ***Building for Agricultural Use***

single storey and of a height not more than 4.57 m.

(c) ***Replacement Building***

have a roofed-over area of not more than 37.16 m² and be of a height not more than 5.18 m

works relating to the existing UBW are tolerated under BD's prevailing enforcement policy.

Difficult to prove “new” status

- (d) Even with enough evidence to show that certain works are UBW, there is often an absence of evidence to prove that the UBW were “new”, i.e. newly completed within the past 12 months. The burden is on BD to prove that the UBW were built within the past 12 months. Failure to provide the proof would result in the Appeal Tribunal dismissing the case.
- (e) For other buildings, BD may have already developed a database of records and photographs. These are usually collected through large-scale operations, previous investigation into complaint cases and regular patrols. They can be used to prove completion of UBW within the past 12 months. NTEHs, on the other hand, do not normally have such records and photographs because NTEHs are not subject to large-scale operations and regular patrols. However, in the event that there is sufficient evidence to prove the “new” status of UBW (e.g. from previous investigation or enforcement action), BD will take action against them, even though that would be, strictly speaking, against the WIP Policy.
- (f) For other buildings, it is easier for BD to collect evidence to prove completion of UBW within the past 12 months, because BD could observe the premises concerned from neighbouring buildings or obtain information from management offices. NTEHs, on the other hand, are scattered, have fewer neighbouring buildings and no management office, and are often shielded by vegetation.

Low Chance of Success

- (g) Expansion of coverage as recommended may entail a disproportionate amount of resources and efforts to be spent on ascertaining the “new” status of UBW, when the success rate in

enforcement may continue to be low. Public expectation has to be carefully balanced and managed.

4.22 Our response to the above is set out in Chapter 6.

5

CASE STUDIES

5.1 The following cases help to illustrate the types of problems associated with the interpretation and application of the WIP Policy and the coordination between BD and Lands D.

CASE 1: Swimming Pool

5.2 On 23 October 2008, Mr R complained with photographs to BD and DLO about the illegal enclosure of the balcony and rooftop structures at an NTEH. SAU of BD and DLO visited the site on 5 and 11 November 2008 respectively but failed to gain entry into the premises. SAU determined from the photographs provided by Mr R that the UBW had been completed and hence were not WIP. It referred the case to the District Team (“DT”) of BD, which is responsible for handling complaints from the structural safety angle.

5.3 When DT inspected the site on 10 November 2008, workers were observed. DT, therefore, referred the case back to SAU on 24 November 2008. Maintaining that the UBW had been completed, SAU referred the case to DLO one month later.

5.4 On 17 November 2008, Mr R further complained to DLO about a swimming pool in the NTEH, with a photograph showing the pool and some construction materials. However, DLO could not verify the situation on the basis of the photograph provided by Mr R. DLO did not refer the complaint to SAU. DLO’s subsequent explanation was that it had yet to find out what was on the ground. Instead, DLO continued to attempt to access the premises. In the following seven months, DLO tried unsuccessfully to enter the premises four times. The owner could

not be reached and the occupant refused their entry despite DLO's issuance of a formal letter to the owner to request entry for inspection.

5.5 The complaint about the pool being built did not reach BD until Mr R protested to Lands D on 29 April 2009 about the handling of his complaint. Lands D referred the case to BD, stating that the swimming pool was still being built when Mr R lodged his complaint about the swimming pool in November 2008. BD could not gain access into the premises, which were enclosed by a fence wall.

5.6 When BD and DLO were finally allowed to enter the site for inspection on 15 May 2009, construction of the pool had been completed.

5.7 BD decided that the case was not WIP, hence inactionable, under the WIP Policy, as construction of the swimming pool had been completed at the time of inspection. Having reviewed the inspection records and the aerial photographs taken on 27 July 2008 and 10 December 2008, BD decided that there was no direct evidence that the swimming pool was WIP in October 2008 when Mr R first lodged his complaint with BD.

5.8 DLO did not consider the swimming pool a high priority item insofar as lease enforcement action was concerned and decided to register the warning letter against the title of the property in the Land Registry in accordance with the departmental practice.

CASE 2: High Walls

5.9 On 29 March 2007, a District Office ("DO") of the Home Affairs Department referred to BD a complaint from a villager about high walls being constructed to fence off his NTEH. He suspected that the height of the walls exceeded 1.8 m, i.e. the permissible height level.

5.10 After inspection, BD's consultant reported that the UBW were "WIP" and "New UBW (actionable)" and that the lowest and highest heights of the walls were 2.5 m and 3.1 m. Four workers were seen on the site. The consultant recommended that BD issue a removal order. Photographs showing the construction materials and the brick walls without plaster and paint were taken.

5.11 After receipt of the related land information from DLO on 3 May 2007, BD wrote to DLO on 14th of the month to seek further clarification whether the walls strode over both private land and Government land and request the survey plan showing the dimensions of the UBW and its relationship with the lots boundary for necessary joint enforcement action by BD and DLO. After two months and a reminder, BD received the survey plan from the District Survey Office of the Lands D on 12 July 2007.

5.12 BD wrote to DLO on 27 July 2007, stating that as the works had practically been completed according to its consultant's inspection on 30 March 2007, it would take no enforcement action and the case would be referred to DLO.

5.13 DLO was bewildered by BD's decision as the latter appeared to have been following up the case for the previous four months.

5.14 In response, BD requested its consultant to re-inspect the site. The walls were found to have been covered with plaster and paint. The consultant reaffirmed the earlier reported measurements of the walls and at the same time left an advisory letter at the NTEH requesting the owner to cease the works as "BD has observed WIP" on the premises. BD took no immediate action because it considered that, at the time the consultant first inspected the premises, construction works of the perimeter fence walls had been completed and hence the walls fell within the definition of "practically completed" (**para. 2.17**).

5.15 DLO did not consider the item a contravention of the lease conditions. No further action was taken on the walls by BD or DLO.

CASE 3: Roof Structure A

5.16 A DLO noticed suspected illegal works on the roof of an NTEH and referred the case to BD on 8 March 2007. DLO advised that the UBW were unauthorised development on a building lot, without approval from DLO and the requisite Cs of E under BO(ATNT)O. Relevant land status plan and photographs showing scaffoldings were attached.

5.17 BD's consultant tried to inspect the premises the next day, but could not gain entry. In his report to BD on 15 March 2007, the consultant stated that the

structure was new UBW and two workmen were found on site. The works were found to have been completed with no imminent danger. The dimensions of the structure were reported to be 4 m x 12 m x 2.9 m. Photographs taken from the street level showed a brick structure built on the rooftop and scaffoldings erected against the top-level external walls. Because the passageway between the subject building and the adjacent buildings was very narrow, the consultant could only have a limited view from the street level. The consultant posted an advisory letter outside the premises on the same day.

5.18 Three and a half months lapsed. On 6 July 2007, BD wrote to request the same officer in the DLO (who had referred the case to BD) to provide the supplementary land information as set out in the proforma. DLO provided the requested information on 23 July 2007.

5.19 Another three and a half months passed. BD wrote on 13 November 2007 to request DLO to resend the photographs because those faxed in March were illegible. DLO resent the photographs on 3 December 2007.

5.20 On 12 December 2007, BD informed DLO in a proforma letter that the case was not regarded as WIP and BD will not take immediate enforcement action against it. BD considered the structure to fall within the definition of “practically completed” (**para. 2.17**), because when the consultant inspected the premises, construction of the structure appeared to have been completed though bamboo scaffolding was still found at the external wall of the NTEH. The case was referred back to Lands D.

CASE 4: Roof Structure B

5.21 A Mr D complained to BD about suspected illegal construction on the roof of a three-storey NTEH.

5.22 After inspection, BD’s consultant reported that a structure was being erected on the main roof but there was no one on the premises. The consultant could not enter the premises, but had taken photographs from the ground level outside the NTEH and attached them to the report. The dimensions of the structure were also estimated. The consultant considered the structure to be WIP and recommended that BD serve a removal order under section 24(1). An advisory letter was posted outside

the premises.

5.23 Having received the report, BD issued a removal order demanding the owner to remove the UBW within 30 days.

5.24 Two months afterwards, the consultant re-inspected the site for compliance. Noting that the UBW had not been removed, BD prosecuted the owner under section 40(1)(B) of the BO. The owner was eventually fined for HK\$8,000.

CASE 5: Single-storey House

5.25 The Squatter Control Unit of Lands D first noticed a single-storey house under construction and referred the case to BD with photographs.

5.26 After inspection, BD's consultant reported that the house was newly built. Construction materials including bricks and floor tiles were found on site, though no workman was spotted. The consultant posted an advisory letter on site and recommended that BD issue a removal order under section 24(1) of the BO.

5.27 Meanwhile, Lands D advised that the subject lot is an agricultural lot where no structure should be erected without approval from Lands D. No approval had been given by Lands D by way of Cs of E or as short-term tenancy or short-term waiver. Neither would Cs of E be retrospectively granted.

5.28 On receipt of the consultant's advisory letter, the owner of the house called BD, claiming that the construction works had been suspended for two to three months due to his financial problems.

5.29 BD decided not to take immediate enforcement action because the case should not be classified as WIP. BD explained that when the consultant inspected the premises, construction of the single-storey structure had been completed with all the associated doors, metal gates, windows, anti-burglary devices and electricity meters, etc already installed. BD considered that the building had been completed and no construction activity was noted at the time of inspection.

CASE 6: Kitchen

5.30 A DLO noticed a small kitchen being built of timber and referred the case to BD, with photographs showing workmen and building materials.

5.31 The next day, BD's consultant visited the site and took photographs. The kitchen had been completed but was still without plaster and paint and an adjacent brick wall was under construction.

5.32 BD decided not to take action on the grounds that when the consultant inspected the premises, the UBW in question, i.e. the kitchen, had been completed and its condition was the same as that shown on the photographs provided by the DLO.

6

OBSERVATIONS

GENERAL OBSERVATIONS

6.1 The statistics on the enforcement actions taken by BD and Lands D have raised doubts on the effectiveness and efficiency of the current enforcement regime against UBW in NTEHs.

6.2 Between 2007 and 2010, 7,447 (77%) of the 9,608 complaints against UBW in NTEHs received by the Administration were handled by BD; the remaining 2,161 (23%) were handled by Lands D (**Table 1**).

6.3 Of the 2,400 WIP cases received by BD between 2007 and 2010, 1,492 (62%) were not subject to enforcement action (**Table 2**). Of those 1,492 cases, 931 (62%) were due to “WIP practically completed” or “no works under construction” (**Table 3**) – to some extent, a reflection of BD’s restrictive enforcement criteria and action threshold.

6.4 Only 755 (31%) of the 2,400 cases received by BD between 2007 and 2010 were confirmed to be WIP cases and, therefore, subject to enforcement action (**Table 2**). Despite BD’s issuance of removal orders in 721 of those cases, as at 25 February 2011, only 285 cases (40%) have been resolved; the UBW in the remaining 436 cases (60%) have not been removed (**Table 2**).

6.5 Of the 129 removal orders issued in as early as 2007, 57 (44%) have remained outstanding as at 25 February 2011 (**Table 6**). The corresponding figures for 2008, 2009 and 2010 are equally unimpressive (**Table 6**).

6.6 As for enforcement action taken by Lands D, only 118 (5%) of the 2,161 cases handled by the Department between 2007 and 2010 have yielded positive result (UBW purged) (**Table 4**). Of the rest, warning letters have been issued and registered in the Land Registry in 1,147 cases (53%). Action remain outstanding for 888 cases (41%). No re-entry of land or cancellation of lease has been invoked by Lands D during the period.

6.7 The slow rate of enforcement of removal orders by BD and the mere registration of warning letters in the Land Registry by Lands D is highly unsatisfactory, especially in the light of the increase in the number of complaints against UBW in NTEHs (49% increase from 2007 to 2010, **Table 1**). This suggests that the current enforcement regime has much room for improvement in its effectiveness and efficiency in curbing the proliferation of UBW in NTEHs.

DEFICIENCIES IN THE WIP POLICY

Narrow Opportunity for Enforcement

6.8 The current enforcement regime for UBW in NTEHs gives priority of enforcement only to (a) WIP and (b) UBW constituting obvious or imminent danger to life or property (**para. 2.14(a)**). UBW, which are not under construction or dangerous, are not actionable under the WIP Policy (**para. 2.15**). Exception to this is when there is sufficient evidence (e.g. from previous investigation or enforcement action) to prove the “new” status of the UBW (**para. 4.21(e)**).

6.9 According to the cases studied, those structures that are simple and fast to build could easily escape enforcement. Take the case of “High Walls” (**Case 2, paras. 5.9 – 5.15**) as an example, construction of a brick wall can be completed quickly. If an inspection is not made during the brief spell of its construction, which entails the laying of bricks up to a height of over 1.8 m, no enforcement action will be taken against the wall because it is considered a “non-WIP” item (**para. 2.14(a)**). Even if the construction is caught at a time when the plaster and paint is being laid, no enforcement will be taken because the wall is considered to have been “practically completed” (**para. 2.17**). If the owner refuses entry for inspection by the authorities during the construction period, he stands a good chance of avoiding any enforcement action against his UBW thereafter (**Case 1, paras. 5.2 – 5.8**). The WIP Policy, as it presently stands, allows a very narrow time gap for enforcement action.

6.10 The susceptibility to evasion by owners under this narrow opportunity for enforcement action imposed by the WIP Policy has called into question its effectiveness in stopping the proliferation of UBW in NTEHs.

Result Defying Common Sense and Logic

6.11 In many cases, such as “Swimming Pool” (**Case 1, paras. 5.2 – 5.8**), “High Walls” (**Case 2, paras. 5.9 – 5.15**), “Single-storey House” (**Case 5, paras. 5.25 – 5.29**) and “Kitchen” (**Case 6, paras. 5.30 – 5.32**), the circumstantial evidence for substantiating the WIP status of UBW, such as the presence of building materials or workmen or the self-admission to WIP status by the owner, were available to BD. Yet, BD did not classify them as WIP on the grounds that the structures of the UBW had been “practically completed”.

6.12 BD’s decisions, though technically defensible by reference to the definition of WIP endorsed by the Working Group (**para. 2.17**), clearly defy common sense and logic and are certainly not in line with DevB’s commitment to stopping new UBW or the proliferation of UBW in NTEHs. But for the very restrictive approach of the WIP Policy, those UBW would have been removed by BD.

Inequity between NTEHs and Other Buildings

6.13 For buildings other than NTEHs, BD gives high priority of enforcement to tackling “new” UBW, i.e. those completed within 12 months (**para. 2.12(b)**). The present restrictive WIP Policy for UBW in NTEHs is, therefore, inconsistent with the general approach.

6.14 We recognise that BD may have practical difficulties in verifying the “new” status of UBW in NTEHs in some cases. We also acknowledge that there may well be more NTEHs, as compared to other types of buildings, which are short of records to help verify the “new” status of UBW. However, these should not be taken as a reason for making it a norm to withhold enforcement action against “new” UBW in NTEHs.

6.15 As it stands, the WIP Policy unnecessarily imposes an obstacle in enforcement action against “new” UBW in NTEHs, causes inequity between NTEHs and other buildings, and gives a signal that owners of NTEHs are privileged.

Inconsistent Application of Action Criteria

6.16 The cases studied show that the definition of WIP is capable of being interpreted loosely and differently by BD and Lands D staff (**Cases 1, 2, 5 and 6**). As it happens, Lands D may refer cases of WIP with circumstantial evidence and photographs to BD in the belief that they are actionable, only to be told that the works in question have been “practically completed”. In some cases, Lands D may not agree with BD’s judgment. In the case of “High Walls” (**Case 2, paras. 5.9 – 5.15**), for example, DLO actually queried why BD had classified the UBW as “practically completed” and not WIP.

6.17 In the case of “Roof Structure A” (**Case 3, paras. 5.16 – 5.20**), the BD officer refused to take action on the grounds that the UBW had been “practically completed”. However, in the case of “Roof Structure B” (**Case 4, paras. 5.21 – 5.24**), which was almost identical to Case 3, the BD officer initiated action against the owner, securing a conviction and removal of the UBW. The rationale behind the decisions in the two cases cannot be reconciled.

6.18 The lack of a clear definition of WIP could be exploited easily by those who are less conscientious in taking prompt action. BD and Lands D should align their understanding and practices *vis-à-vis* the definition of “practically completed”, in order to avoid wasting time and efforts in referrals and abortive visits. To facilitate common understanding and to ensure fairness, the two departments should consider setting up a database containing information of cases, including photographs, on which enforcement action has or has not been taken. This database will help ensure consistency and fairness in enforcement action.

DEFICIENCIES IN EXECUTION

Delay

6.19 We notice that delays in action have been caused by the spending of excessive time on ascertaining the status of WIP or simply tardiness on the part of the departments.

6.20 Under Lands D’s operational guidelines, in referring a suspected WIP case to BD, staff are required to provide land information and circumstantial evidence,

such as photographs showing the surroundings of the WIP in question. The object is to avoid abortive visits by BD. However, given that time is of the essence in stopping WIP cases, Lands D should weigh the need for gathering comprehensive evidence before referral against the need for urgent action.

6.21 In the case of “Swimming Pool” (**Case 1, paras. 5.2 – 5.8**), for example, Lands D should have referred the complaint about the swimming pool to BD as soon as possible, instead of making repeated but futile attempts to enter the premises to gather evidence. In the cases of “High Walls” (**Case 2, paras. 5.9 – 5.15**), and “Roof Structure A” (**Case 3, paras. 5.16 – 5.20**), BD and Lands D had taken inordinately long time for processing, including months to verify the land status or to provide information or plans.

6.22 BD and Lands D staff should be mindful that delay in action may render a case of WIP not enforceable under the current enforcement policy.

6.23 Lands D staff should promptly refer cases of suspected WIP to BD. Circumstantial evidence that is not readily available could be collected and provided later.

Lack of Recourse against Stalling Tactics by Owners

6.24 We observe that some owners or occupants of premises with UBW adopt delay tactics in the hope of stalling enforcement action. Some do so successfully by refusing BD or Lands D entry into the premises for inspection. Some argue at length about the completion date of the UBW, trying to prove that the UBW should not be subject to immediate enforcement action.

6.25 We find that such protracted argument or verification work about the technicalities of UBW unnecessarily drain the precious resources of the departments concerned, especially since UBW are ultimately all subject to enforcement action under the BO. Besides, the lack of decisive action by the departments encourages stalling tactics. In the case of “Swimming Pool” (**Case 1, paras. 5.2 – 5.8**), despite the owner’s and tenant’s refusal to cooperate with Lands D’s requests for inspection, the Department did not take more rigorous action or refer the case to BD until six months later.

6.26 DevB has recently announced its commitment to strengthen enforcement action by amending the law relating to entry of premises for inspection of UBW¹⁴. This long-awaited initiative is applauded.

6.27 Until the power of entry is strengthened, DevB should review the departments' action criteria for referring cases of WIP and initiating enforcement action. DevB should also jointly explore alternative methods of collecting evidence such as resorting to technological devices or soliciting the assistance of complainants or even nearby residents, who usually have first-hand knowledge of the UBW, especially where the UBW adversely affect nearby buildings or the environment.

Improper Keeping of File Records

6.28 The inspection reports prepared by BD's consultants provide first-hand information about UBW in NTEHs. However, as in the case of "High Walls" (**Case 2, paras. 5.9 – 5.15**), BD may deviate from the assessments and recommendations of its consultants. BD does not provide the reasons or justifications for its deviation in the case files. Neither does it substantively explain its decisions to the consultants.

6.29 Even though BD has the discretion not to follow its consultants' recommendations, it should record its decisions with sufficient details and make them known to the consultants. This would ensure that BD's decisions are well-grounded and consistent, as well as enabling the consultants to understand BD's thinking and requirements.

Lack of Monitoring

6.30 We are disappointed that DevB and the departments do not systematically keep and monitor statistics on UBW in NTEHs (**para. 3.1**). We are surprised that DevB should even claim, in the absence of such vital information, that the current enforcement policy, narrowly focusing on WIP, is generally effective in curbing the emergence of new UBW in NTEHs (**para. 4.20**). We consider that in the absence of such statistical data, it is difficult, if not impossible to assess the effectiveness of the enforcement regime for UBW in NTEHs.

¹⁴ *The Secretary for Development told the Legislative Council Sub-committee on Building Safety on 13 January 2011 that the Government proposed to amend the Buildings Ordinance to empower the Buildings Department to seek court warrants and inspect flats suspected of carrying out illegal internal alterations, irrespective of whether the structures are on rooftops, podiums, yards or back lanes.*

6.31 The Administration should expeditiously size up the problem of UBW in NTEHs, with a view to objectively assessing the effectiveness of its current enforcement regime.

FEASIBILITY OF EXPANDING COVERAGE

6.32 Apparently, DevB and BD are keen to preserve the WIP Policy. They have explained at length the difficulties associated with establishing the “unauthorised” and “new” status of UBW in NTEHs and suggested that the scope of enforcement action should, therefore, not be expanded to cover “new” UBW in NTEHs for parity with other buildings (**para. 4.21**). Our response is as follows:

Difficult to prove “unauthorised” status

- (a) We consider that the practical difficulties in proving the “unauthorised” status of UBW in NTEHs do not apply to every case. For typical NTEHs, the dimensions are clearly specified. For a house that is confirmed to be a typical NTEH, BD can readily realise that the NTEH carries UBW if the footprint of the house is larger than 65.03 m² (700 ft²) or its height taller than 8.23 m (27 ft) (cf. **footnote 9**). For non-typical NTEHs, the absence of detailed building plans may pose difficulties for BD in determining the “unauthorised” status of a structure. If that is indeed the case, BD may eventually have to drop the charge against the owner. However, that is an operational problem which may arise in WIP and “new” UBW cases alike. We see no grounds why this problem should be taken as a reason not to expand the scope of enforcement action to cover “new” UBW in NTEHs.

Difficult to prove “new” status

- (b) DevB and BD are concerned that a removal order may be quashed by the Appeal Tribunal if BD does not have definitive proof of the “new” status, i.e. completed within the past 12 months, of the UBW.

- (c) We consider BD to have set too high a standard of proof for itself for establishing the “new” status of UBW. Before issuing a removal order, BD should, of course, exercise due diligence to ascertain the “new” status of the UBW. This may be done, for example, by questioning the owner and his neighbours and examining the structure concerned. After issuing the order, the onus is on the owner to adduce sufficient evidence to prove that the UBW is not “new” and, therefore, should not be subject to enforcement action by BD under the Department’s prioritisation policy. And that should not be too much of a burden on the owner.

Low Chance of Success

- (d) DevB and BD are also worried about the low chance of success of enforcement action against “new” UBW in NTEHs and the need to balance and manage public expectation.
- (e) However, we are not asking BD to do the impossible. We are merely suggesting that instead of making it a policy or a norm not to take enforcement action against “new” UBW in NTEHs, the Department should use its best endeavours to deal with such cases in line with its policy for all other buildings. Surely, the public at large would welcome consistent and non-discriminatory handling of UBW cases and appreciate the practical difficulties involved.

7

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

7.1 The above findings have called into question the effectiveness of the current enforcement regime in tackling UBW in NTEHs, in particular the WIP Policy, which was intended to nip the problem in the bud. One only gets the impression that Government is not serious about taking enforcement action against UBW in NTEHs.

7.2 Surely, there are resource constraints faced by BD and Lands D. We also recognise that some UBW are of a relatively minor nature, posing no risks to building safety. As we have stated in our two previous direct investigations, such minor UBW could be considered for rationalisation. Although DevB is said to be devising a rationalisation scheme¹⁵, there is no definite timeframe. Meanwhile, the proliferation of UBW in NTEHs persists.

7.3 During the past year, Government has sworn its determination to tackle UBW on a sweeping scale, but UBW in NTEHs are excepted without sound justifications being proffered. Clearly, numerous cases of “new” UBW in NTEHs have escaped enforcement action under the current enforcement regime, and the situation will persist unless positive changes are made.

¹⁵ For years, the Administration has been contemplating the implementation of a rationalisation scheme for UBW in NTEHs, whereby owners of UBW can apply to the authorities to join the scheme and a comprehensive record of the existing UBW that fall under the scope of the scheme will be established. Under the scheme, building facilities and UBW in NTEHs will be categorised. Depending on the nature of the works, action will be taken to rationalise them or enforcement actions taken against them. After the expiry of application deadline, UBW that are not included in the record of the rationalisation scheme, new or otherwise, will be gradually enforced against.

RECOMMENDATIONS

7.4 In the light of the above, The Ombudsman recommends that:

- (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 (**paras. 6.8 – 6.15; para. 6.32**);
- (b) BD and Lands D align the departments' understanding and practices, so as to avoid wasting time and efforts in referrals and abortive site visits, and set up a database containing information of cases, including photographs, on which enforcement action has or has not been taken (**para. 6.16 – 6.18**);
- (c) BD and Lands D streamline the departments' procedures for more efficient operation (**paras. 6.19 – 6.23**);
- (d) BD and Lands D explore alternative methods of collecting evidence such as resorting to technological devices or soliciting the assistance of complainants or even nearby residents (**para. 6.27**);
- (e) BD record its decisions on UBW cases and the rationale behind them and make them known to its consultants (**para. 6.29**); and
- (f) DevB, in association with BD and Lands D, expeditiously size up the problem of UBW in NTEHs, with a view to objectively assessing the effectiveness of its current enforcement regime (**para. 6.31**).

FINAL REMARKS

7.5 DevB, BD and Lands D have accepted the recommendations at (b), (c), (d) and (e) above.

7.6 On (a), DevB and BD remain reserved about expanding the scope of enforcement action to cover “new” UBW (i.e. completed within 12 months) in NTEHs, on account of the generic practical difficulties for BD (**para. 4.21**). BD merely agree to take action against those “new” UBW where there is sufficient evidence to prove their “new” status (e.g. from previous investigation or enforcement action).

7.7 While we recognise that there may be more difficulties associated with finding evidence for UBW in NTEHs compared to those in other buildings, we cannot accept that this should be a reason for making it a norm not to take enforcement action against “new” UBW in NTEHs. We note BD’s agreement, with DevB’s reassurance, that the Department will take action on those “new” UBW in NTEHs with sufficient evidence proving their “new” status. We have doubts whether this would be extensively carried out, since the cases in this report have shown that BD’s consultants and staff may not take enforcement action even if such evidence is available. We urge BD to use its best endeavours to take action on “new” UBW in NTEHs in line with its policy for all other buildings.

7.8 In response to our recommendation (f), DevB has indicated that it is mapping out the details of the rationalisation scheme and the records of the UBW to be rationalised under the scheme will be established upon its implementation. For new UBW not included in the scheme, enforcement action will be taken gradually.

7.9 We note that DevB has been silent about whether it will undertake to assess the effectiveness of the current enforcement regime against UBW in NTEHs by first finding out the number of such UBW. Without substantive data and analysis of the problem and a firm timetable for implementation of the rationalisation scheme, the Administration’s commitment to curb the proliferation of UBW in NTEHs would be construed as just paying lip service.

ACKNOWLEDGEMENT

7.10 The Ombudsman thanks DevB, BD and Lands D for their cooperation throughout this investigation.

Office of The Ombudsman

Ref. OMB/DI/203

31 March 2011

ANNEXES

Recommendations of the 1996 Direct Investigation Report

1. The Administration should review the priority accorded to the enforcement against UBW in NT in the light of circumstantial changes since 1975 to determine whether those UBW in NT not yet acted upon should continue to be tolerated.
2. Lands D should review its procedures for submitting recommendations on lease enforcement against UBW to the District Lands Officer or the District Lands Office Conference with a view to working out a uniform and consistent approach for all DLOs.
3. Lands D should conduct a sampling survey to assess the magnitude and seriousness of the problem of UBW in NTEHs in each district.
4. Based on the survey findings, Lands D and BD, in consultation with the Secretary for Planning, Environment and Lands, should formulate appropriate policies and procedures to tackle the problem.
5. Lands D and BD should then assess the resources required to effectively and efficiently carry out those policies and procedures.
6. Additional resources should be sought if the existing resources proved inadequate for enforcement against UBW in NTEHs, including Government contractors' actions.
7. Lands D should explore the feasibility of introducing an equitable penalty system, after consultation with relevant bodies in NT such as the District Boards, the Heung Yee Kuk and the Rural Committee. Lands D should also consult the Attorney General's Chambers on the need for corresponding legislative amendments.
8. Lands D should solicit the assistance of the District Boards, the Heung Yee Kuk and the Rural Committee in publicising Government's position on UBW in NTEHs.
9. Lands D should consistently apply the practice of registration of breaches against the property titles throughout the DLOs.

Recommendations of the 2004 Direct Investigation Report

1. The Administration should review the current enforcement strategy and develop a realistic policy for containment of UBW in NTEHs and stop their proliferation, taking reference from the strategy for tackling UBW in the urban area.
2. The Administration should explore the feasibility of rationalisation of existing UBW that are safe, not serious and therefore tolerable, subject to payment of a penalty.
3. The Administration should assess and monitor the situation regarding UBW in NTEHs through the regular use of aerial photographs.
4. The Administration should publicise widely such revised strategy for public awareness and proper understanding.
5. Lands D and BD should review the progress made under the current strategy and step up action against non-compliance with removal orders through prosecution.
6. Lands D and BD should explore the feasibility of expanding the current WIP operations to cover new UBW.
7. Lands D and BD should reconcile any differences in definitions and opinions between Lands D and BD and clarify their roles and responsibilities.
8. Lands D and BD should explore the possibility of establishing a joint Lands D and BD team to tackle WIP and new UBW in NTEHs.
9. Lands D and BD should develop a plan to tackle existing unauthorised four or five-storey houses to stop this violation of the law.
10. Lands D and BD should enlist Heung Yee Kuk's assistance in explaining and disseminating the Government stand to villagers, followed by firm and persistent enforcement action to deter further offence.
11. Lands D should review the current enforcement mechanism to eliminate inefficiencies and establish objectives and targets of achievements for DLOs and regularly appraise their performance.

12. Lands D should simplify work processes and streamline procedures, redeploying staff where appropriate, to optimise the use of limited resources.
13. Lands D should closely monitor enforcement action to ensure due completion, including re-entry where necessary and to suspend action only on good grounds.
14. Lands D should develop a plan for action against owners not purging UBW after registration of an advisory letter and those repeatedly breaching lease conditions and to recover for the costs of administration.
15. Lands D should train and guide frontline staff to instill greater confidence in exercising authority, e.g. joining entry into premises for inspection, dealing with confrontation and handling uncooperative owners.
16. Lands D should review the inconsistent practices among DLOs/NT and standardise their work processes and practices in lease enforcement as far as possible, given local differences.
17. Lands D should alert potential NTEH buyers to the risk of UBW by widely publicising the Department's pamphlets on the purchase of village houses and publicity media.
18. The Home Affairs Department should extend the coverage of random checks and work out a system with Lands D whereby DLOs/NT conduct a matching check on ownership of detected UBW to see if any of such owners are enjoying rates exemption and report findings to the Home Affairs Department for action.

Buildings Department – April 2001 Enforcement Policy Against UBWs

In view of the very large number of UBW in Hong Kong, the Buildings Department takes immediate enforcement action against all new UBW and other UBW which pose an obvious hazard to life or property. Priority is given to the removal of the following:

- (a) items constituting obvious or imminent danger to life or property;
- (b) new items, irrespective of the date of completion of the building where they have been carried out;
- (c) items in or on buildings, on podiums and rooftops, in yards and lanes (including unauthorised site formation works) constituting a serious hazard or a serious environmental nuisance, as determined by the Building Authority;
- (d) major individual items;
- (e) items in or on individual buildings with extensive UBW;
- (f) items identified in buildings or groups of buildings targeted for large-scale operations or maintenance programmes; and
- (g) unauthorised alterations to works in environmentally friendly features of a building (e.g. balconies, sky or podium gardens) for which exemption from calculation of gross floor area has been granted by the Building Authority.

**Standard Land Information to be provided by Lands D to BD
for UBW on NTEH cases**

1. Lands status details and restrictions on building development;
2. Advice on whether Certificates of Exemption, Short-Term Tenancy, Short-Term Waiver, licence or approval for the WIP has been granted;
3. Advice on whether the building works are exempted under the Building Ordinance (Application to the New Territories) Ordinance or not; and
4. Advice on whether any application for Certificates of Exemption or retrospective Certificate of Exemption has been submitted. If affirmative, the date and status of application should be provided.

**Inspection Report
Investigation & Removal of Works-In-Progress
Unauthorized Building Works (WIP-UBWs)
Agreement No.:**

Sequence No. : _____ Date & Time of Receipt of Complaint : ___ / ___ / ___ : ___ a.m./p.m.

BD File No. : BD EB Case ID : _____

Date & Time of Inspection : ___ / ___ / ___ : ___ a.m./p.m. Date & Time of Completion of Inspection : ___ / ___ / ___ : ___ a.m./p.m.

Name & Details of Complainant : _____

Address of WIP-UBWs : _____

Number of Storeys : _____ Number of Flats/Units : _____

Number of Staircases : _____ NTEH : Yes
 No

Use of Building : Commercial / Domestic Pre-war Building : Yes
 No

Name of Inspector(s) : _____

Post of Inspector(s) : _____ Contact of Inspector(s) : _____

▪ **Observation :**

1 Accuracy of Complaint Address :

Yes No (Correct Address: _____)

2. Further Clarification with Complainant:

Yes No Complainant did not leave contact number, no clarification could be made

If yes, please specify: _____

3. Type of Reported WIP :

WIP-UBWs Exempted Building Works No UBW found
 Repair to Existing UBW Drainage Works
 Existing UBW New UBW

4. Description of Complaint Structure:

Usage : Domestic Commercial Storage
 Amenity Others : _____

Extent : Approx. _____ (length) _____ (width) _____ (height)
m²; m X m X m

Location : Extended from _____ of the approved premises layout.

Inspection Report
Investigation & Removal of Works-In-Progress Unauthorized Building Works (WIP-UBWs)
Agreement No.: _____

Form/Materials of Construction :

- | | | | |
|--------------------------|---|--------------------------|-----------------|
| <input type="checkbox"/> | Horizontal Extension/Roof | _____ | |
| <input type="checkbox"/> | Vertical Extension/Floor | _____ | |
| <input type="checkbox"/> | Projection from External Wall/Enclosure Walls | _____ | |
| <input type="checkbox"/> | Demolition of Existing/Approved Structure | | |
| <input type="checkbox"/> | 1 Brickwork/Blockwork | <input type="checkbox"/> | 4 Metalwork |
| <input type="checkbox"/> | 2 Concrete Work | <input type="checkbox"/> | 5 Glazing Work |
| <input type="checkbox"/> | 3 Timber Work | <input type="checkbox"/> | 6 Drainage Work |

Others: _____

Additional description : _____

5. Presence of Foreman/Worker(s)/Technical Competent Person(s)(TCP)/Site Engineers :

Yes No If Yes, Total No. is _____

6. Information of Foreman/Worker(s)/TCP/Site Engineer(s):

(Use additional paper if required)

Name : _____

I.D. Number : _____

Name of Contracting Company : _____

7. Information of Authorized Person/ Registered Structural Engineer being appointed for the project:

Name : _____

I.D. Number : _____

Registration No.: _____

8. Information of Owner(s)/Occupant(s):

Name : _____

I.D. Number : _____

No person on the premises

Corresponding address of owner (If different from the WIP premises) _____

Others : _____

9. Has interview with the person-in-charge conducted on site:

Yes Please see questionnaire as attached.

No

10. Materials found on Site:

- | | | | | | |
|--------------------------|-------------|--------------------------|------------------------|--------------------------|-------------|
| <input type="checkbox"/> | Brick/Block | <input type="checkbox"/> | Cement | <input type="checkbox"/> | Sand |
| <input type="checkbox"/> | Steel Bar | <input type="checkbox"/> | Corrugated Metal Sheet | <input type="checkbox"/> | Metal Frame |
| <input type="checkbox"/> | Timber | <input type="checkbox"/> | Plastic Board | <input type="checkbox"/> | Paint |

Others: _____

Inspection Report
Investigation & Removal of Works-In-Progress Unauthorized Building Works (WIP-UBWs)
Agreement No.:

11. Findings of Inspection:

(a)

(b) Any obvious situation indicating:

(i) Structural danger

Yes

No

(ii) Obstruction to means of escape

Yes

No

(iii) Obstruction to the access for repair of utilities (i.e. gas, water and electricity, plant rooms and etc) of the building?

Yes

No

12. Availability of any approved plans on site:

Yes

File Reference:

Approval Date:

No

13. Conclusion & Recommendation:

Advisory Cease Works Letter (C-SL WP5a, Serial No. _____) posted by

Advisory (C-SL WP11, Serial No. _____) left by

_____ on _____ at _____
 (Name) (Date) (Time)

Further Action : Section 24(1) Order to be served.

BA instruction required.

Section 40(1) Prosecution to be instigated

No Cease Works Warning Letter posted because _____

Ground for recommending Section 24(1) Order _____

Reason(s) for not recommending Section 24(1) Order _____

14. Availability of Approved Record Plan at Report Stage:

Yes

No

We attach the record photos and plan(s) for reference and record.

Report prepared by : _____ (_____)
 (Name)

Report certified by : _____ (_____)
 (AP's Name)

*** E N D ***