

Table of Contents

	Page
Executive Summary	i
Chapter 1 Introduction	1
Chapter 2 Present Position	3
Chapter 3 New Direction	12
Chapter 4 One-stop Services for Building Owners	21
Chapter 5 Support Measures	24
A. Facilitating Management by Owners	24
B. Ensuring Sustained Contribution	25
C. Positive Recognition	27
D. Financial Assistance	27
E. Enforcement and Facilitation	28
F. Sustainability Considerations	30
Chapter 6 The Way Forward	32

Executive Summary

INTRODUCTION

The outbreak of Severe Acute Respiratory Syndrome (SARS) in early 2003 has heightened public concern at the possible dire consequences of building neglect. For many buildings, in order to prolong their useful life, enhance their value and, above all, improve the hygiene and living environment for their residents and their neighbours, they have to improve their present level of management and maintenance.

PRESENT POSITION

2. A cardinal principle in approaching building management and maintenance is that it is building owners' responsibility to ensure that their buildings are in good repair. The present weak building care culture has stemmed from a failure to accept this. The lack of expertise and means, absence of sustained effort and false hope for redevelopment have also contributed to building neglect.

3. Over the years, Government has sought to address the problem through statutory requirements, law enforcement, support for owners, education and publicity, and the urban renewal programme. Society invests hundreds of million of dollars in these efforts each year. However, success is limited. Dangerous or unauthorized building works continue to abound and pose danger to the public. Buildings without owners' corporations (OCs) and are not serviced by management firms number about 11,000. We need to identify an effective and sustainable solution to the problem.

NEW DIRECTION

4. Broadly, there are three options. The first is to continue with the existing efforts. This would, however, entail the continuation

and multiplication of the existing problems of urban decay, premature ageing of buildings and poor living environment.

5. The second option is to introduce a mandatory building safety inspection scheme requiring buildings of a certain age or above to inspect their buildings periodically and to carry out the necessary repairs to defects identified. This would enable the early identification and rectification of problems. However, an inspection scheme on its own is one-off in nature and is more geared towards cure than prevention. It may be more useful to integrate the need for regular inspections with the overall objective of promoting effective and sustained building maintenance. In any case, building owners, and not the tax-payer, should be responsible for the inspections.

6. The third option is integration of proper maintenance with effective management. Sustained effort in building management and maintenance not only allows for the early detection and rectification of problems and defects, but also prevents dilapidation. It will lead to long-term cost savings for the owners and value preservation and/or enhancement of an important asset. The residents and society will benefit from the improved environment and the reduced social and economic costs. Integrating proper building management and maintenance on a day-to-day basis, therefore, appears to be more attractive as the long-term solution. With the services provided by the private sector, the owners should be able to achieve this aim.

7. Before mapping out the implementation details, we would like to ascertain if the community is in general agreement with the third option. Specifically, we invite views on –

- (a) the principle that it is the owners' responsibility to ensure that their buildings are in good repair,

including the need to shoulder the attendant financial commitment;

- (b) the proposition that we should continue to put the focus on private sector efforts to facilitate the market's functioning, whilst ensuring safety standards through enforcement against non-compliance with statutory requirements; and
- (c) whether the thrust of arguments for integrating maintenance and management set out in paragraphs 3.11 to 3.14 is acceptable.

NEXT STEPS

8. We will be guided by responses to the above questions in taking the matter forward. The following are some possible areas that we may work on as our next steps.

9. Modern building management and maintenance requires much time, effort and expertise. This argues for the development of a multi-disciplinary industry capable of providing competitive long-term one-stop services that meet the different needs of different owners and different buildings. Possibilities include optimizing operating costs by including a number of neighbouring buildings under the same management and maintenance scheme, and providing all-inclusive agreements covering on-going management and long-term maintenance. We could encourage the industry to further develop along these lines.

10. Many buildings in poor maintenance have no formal management structure at all. We recognize that the formation of OCs should not be an end in itself. However, we could look into the role of OCs in the management of a building. We could also examine the

circumstances that call for mandatory management.

11. Owners' contribution to the requisite expenses is essential to the proper management and maintenance their buildings. We believe that direct Government intervention in collecting management expenses is not warranted. Nonetheless, we could consider whether the existing remedies available for the recovery of outstanding contributions should be strengthened and whether any new measures are required.

12. To give positive recognition to good management and maintenance, we will explore the possibility of devising a voluntary building classification scheme.

13. Since owners should be responsible for their buildings' upkeep, assistance involving public money should be reserved for the genuinely needy and truly deserving. The Buildings Department already operates a loan scheme to tide owners over if they have difficulty in meeting the costs for non-recurrent building maintenance works. We could consider extending the scheme from individual owners to OCs and topping up the fund as necessary. We could also consider whether and how further financial assistance should be provided to, say, elderly owners of dilapidated flats with little income. In addition, we could look into the need to provide guidelines for owners on building up a contingency fund to meet non-recurrent expenditure.

14. On Government's part, we will continue to support and facilitate proper building management and maintenance through providing a conducive environment, including the necessary legislative framework, for both the owners and the industry to work together. We will enforce the law and promote owners' awareness. In addition, we will ensure a holistic approach to and consistency in policy making. We

will also fully enlist the help of the District Councils, and make good use of the expertise and resources of non-Government bodies such as the Hong Kong Housing Society and the Urban Renewal Authority in taking our work forward.

THE WAY FORWARD

15. We welcome views on this document. The details for sending in views are set out on the inside cover.

Chapter 1

INTRODUCTION

1.1 The right to acquire, dispose of and inherit property is fundamental to the workings of Hong Kong. One of the important, if not the most important, manifestations of this principle is ownership of land property. In 2002, ownership of premises accounted for 13% of Hong Kong's Gross Domestic Product.

1.2 For many people, their most important asset is their self-occupied property. In Hong Kong, home ownership usually takes the form of co-ownership of shares in a multi-storey building with others (tenancy in common). An owner is entitled to exclusive possession of his flat in the building plus joint possession of the common areas of the building with the other owners. While the concept of exclusive possession is quite readily understood, that of joint possession is not. Awareness and acceptance of one's responsibility for the maintenance of the common areas of one's building are woefully lacking in many cases. This has given rise to poor building management, which in turn has contributed to inadequate or ineffective maintenance. As at August 2003, of the 38,400 private multi-storey buildings in Hong Kong, about 11,000 have no owners' corporations (OCs) and are not serviced by management firms¹.

1.3 The outbreak of Severe Acute Respiratory Syndrome (SARS) in early 2003 has highlighted concern at the possible dire consequences of building neglect. In the aftermath of the SARS outbreak, there has been much discussion on ways to enhance the level of building management

¹ Source: "Database of Private Buildings in Hong Kong" compiled by the Home Affairs Department.

and maintenance. Different professional bodies and other interest groups have made various suggestions.

1.4 We are encouraged by increasing public recognition of the importance of building management and maintenance. There is a community consensus that the present level of management and maintenance for many existing buildings requires improvement. The key lies in creating a win-win situation for all – property owners, occupants, neighbours and society, thereby –

- (a) prolonging the useful life of buildings;
- (b) preserving and enhancing property values;
- (c) improving hygiene and the living environment;
- (d) arresting urban decay and improving our cityscape;
and
- (e) reducing the need for statutory enforcement.

1.5 Modern multi-storey building management and maintenance involves a number of issues ranging from basic cleansing and security services to electrical/fire safety precautions to third party liability. In discharging their responsibilities, the owners require support from professionals. In this consultation document, we will outline some broad directions as to how to bring the owners and the industry together to achieve a better living environment for all.

Chapter 2

PRESENT POSITION

Current Problems

2.1 At present, the building care culture in the community is weak. Although the SARS outbreak has heightened public attention on the subject, acceptance of building owners' responsibility for ensuring that their buildings (as opposed to their individual units) are in good repair is far from universal. Other reasons for the building neglect problem include the following –

- (a) lack of expertise – modern multi-storey building management and maintenance requires considerable professional input. The owners may lack adequate expertise or knowledge in discharging their duties on their own;
- (b) one-off action – many owners do not appreciate that their responsibility goes far beyond arranging one-off inspections at periodic intervals. It requires long-term vigilance and commitment;
- (c) false hope for redevelopment – since old buildings normally do not command a good price, some owners may consider it a waste of resources to invest in their proper management and maintenance. These owners may erroneously assume that building neglect will result in faster redevelopment offers from developers or the Urban Renewal Authority (URA);
- (d) lack of means – some owners may have genuine

difficulties in meeting the costs of proper building management and maintenance. They may fail to set aside the costs for non-recurrent building repair works, and have difficulty in meeting them when the need arises; and

- (e) piecemeal approach – a holistic approach to the building management and maintenance problem has yet to be developed.

Efforts So Far

2.2 Over the years, Government has put in place a framework to address the building neglect problem through statutory requirements, law enforcement, support for owners, education and publicity, and the urban renewal programme. These efforts are outlined below.

2.3 The efforts of the Secretary for Home Affairs, through the Home Affairs Department (HAD), to facilitate private building management consist of the following –

- (a) HAD provides assistance to building owners in the formation and operation of OCs in accordance with the Building Management Ordinance (BMO) (Cap 344). At present, the BMO provides the legal framework for OCs, including their formation, meeting procedures, powers and duties. Specifically, it places on the OC the duty to maintain the common parts and the property of the OC in a state of good and serviceable repair and clean condition. It is not mandatory to form OCs, however. In general, an OC may be formed following the passing of a resolution of the owners of not less than 30% of the shares in the

building at an owners' meeting to appoint a management committee². The BMO also provides for the mandatory management of buildings under specified circumstances.

- (b) A support structure has been put in place in HAD to enhance its provision of building management services. The Department has expanded the 15 Building Management Coordination Teams established since 1985 into 18 District Building Management Liaison Teams (DBMLTs) at present. The DBMLTs are responsible for assisting owners in the formation of OCs, offering advice on the daily operation of OCs, advising OCs/owners on matters concerning building management and maintenance, and providing assistance in activities on building safety improvement initiated by relevant Government departments.
- (c) Since 1998, HAD has set up four Building Management Resource Centres (BMRCs) in Kowloon (Yaumatei), Hong Kong Island (Central), New Territories West (Tsuen Wan) and New Territories East (Shatin) respectively. The BMRCs provide advice, information and support services to the public on building management, and line up professional bodies which provide free consultation services to the public at the Centres.

² In case where the support of owners of not less than 30% of the shares cannot be obtained, the BMO also provides for the formation of an OC with the support of owners of 20% or 10% of the shares after application to the Secretary for Home Affairs or the Lands Tribunal as appropriate.

- (d) To enhance public awareness of fire safety in multi-storey buildings, District Fire Safety Committees have been set up in all districts since March 1998 with the assistance of District Offices. Various publicity and education campaigns are organized every year, including fire drills, fire prevention talks and visits to fire stations.
- (e) Education and publicity campaigns on building management and maintenance are organized from time to time by HAD and its District Offices to promote effective building management in the form of training courses, seminars, talks, workshops and roving exhibitions.

2.4 In parallel, the efforts of the Secretary for Housing, Planning and Lands, mainly through the Buildings Department (BD), have hitherto been geared towards ensuring building safety and the enforcement of the Buildings Ordinance (Cap 123), as follows –

- (a) BD is empowered under the Buildings Ordinance to take enforcement action against non-compliance with the Ordinance. In the past few years, BD has stepped up significantly its enforcement action against building defects and unauthorized building works (UBWs). From 1998 to 2002, the number of statutory orders issued in the course of the year to rectify building (including drainage) defects and to remove UBWs increased more than ten-fold, from 4,300 to 54,600.
- (b) BD operates the Building Safety Loan Scheme

(BSLS). The \$700 million scheme provides loans to private building owners for carrying out works to improve the safety of their buildings. The works eligible for loans under the scheme include those normally associated with building maintenance, e.g. improvement of structural aspects, improvement of fire safety, removal of unauthorized buildings works, and improvement of electrical, lift and drainage services. Loans are provided at a low interest rate on the principle of “no gain, no loss” to Government. In some cases, for example, where the owner is an elder receiving Comprehensive Social Security Assistance or Normal Old Age Allowance, an interest-free loan may be applied for. From its launching in July 2001 to September 2003, the scheme granted loans totaling \$171 million, covering nearly 5,600 applicants and 1,000 buildings.

- (c) Launched on a pilot basis since November 2000, the Coordinated Maintenance of Buildings Scheme (CMBS) seeks to increase owners’ awareness of the importance of maintaining their buildings and to encourage them to organize themselves to shoulder the responsibility in this regard. Under the scheme, BD takes the lead in organizing joint inspections of target buildings with five other departments, with a view to advising owners of the maintenance and repair works required. So far, the pilot scheme has covered 550 buildings³.

³ The number of target CMBS buildings is 150, 200 and 200 for the years 2000, 2001 and 2002 respectively.

- (d) BD also undertakes various educational and publicity efforts to promote building safety and timely maintenance, through seminars, announcements of public interest, roadshows, school quizzes etc.

2.5 To enhance owners' knowledge in managing and maintaining their own buildings, BD and HAD have issued various publications, including –

- (a) Codes of Practice issued under the BMO on the procurement of supplies, goods and services required by an OC and the standards and practices of management and safety that an OC should observe;
- (b) various pamphlets and guidelines on building works such as “Guidelines for the Removal of Typical Unauthorized Building Works and General Maintenance of External Walls”;
- (c) various pamphlets on the formation and operation of OCs such as “Building Management”, “How to Form an OC”, and “Clean and Effective Building Management – A Guide on Financial Management for OCs”;
- (d) a series of publicity videos on the subject available for loan to the public free of charge; and
- (e) a Building Maintenance Guidebook which seeks to provide building owners with essential information on building maintenance matters such as common building defects and building services installations (electrical, fire service, lift and water supply

installations), and project planning for repair and maintenance works.

2.6 On the urban renewal front, the URA was set up in May 2001 to undertake the redevelopment of dilapidated buildings, rehabilitation of buildings to improve the built environment and preservation of buildings of historical, cultural or architectural merit. By December 2003, the URA has launched 13 redevelopment projects⁴ in addition to continuing the ten on-going redevelopment projects inherited from the former Land Development Corporation. It has also started some rehabilitation and revitalization programmes in an area-based manner to rejuvenate wider areas.

2.7 Indeed, society has invested considerable resources in the above efforts. For example, in 2002-03 –

- BD spent \$44 million on CMBS covering the 550 target buildings;
- HAD spent \$94 million on promoting building management; and
- the URA used \$862 million on acquisition and related work.

During the same period –

- of the 200 target CMBS buildings commenced in 2001, only some 20% commenced their building improvement works and one had completed such works⁵;

⁴ Two of these projects has been undertaken in association with the Hong Kong Housing Society.

⁵ So far, a total of \$103 million has been devoted to providing advice to owners of the 550 target CMBS buildings. Among these buildings, about 32% have commenced their building improvement works and about 10% have completed such works.

- the number of OCs formed is 300; and
- the number of property interests acquired by the URA is 457.

2.8 In the meantime, the number of complaints or reports about dangerous or unauthorized building works continues to be high –

<u>Year</u>	<u>Number</u>
2000	20,400
2001	20,000
2002	21,000

People continue to be injured or killed in incidents of falling building parts –

<u>Year</u>	<u>Injuries</u>	<u>Deaths</u>
2000	32	0
2001	17	1
2002	17	2

At the current rate, even if discounting new buildings to be put up in future, it would take –

- more than 60 years for CMBS to cover all the 11,000 buildings currently without an OC and not serviced by a management firm; and
- more than 18 years for HAD to help the 11,000 buildings currently without an OC and not serviced by a management firm to form OCs⁶.

⁶ The assumptions are that 300 OCs will be formed each year, and that each OC will cover two buildings. These assumptions have not taken into account increased problems associated with the formation of OCs in old tenement buildings.

We need to seriously consider whether the return to our efforts is proportionate and the strategy sustainable.

2.9 In the wake of the SARS outbreak, the public has rightly demanded a safer and more hygienic living environment. It is amply clear that we need to identify an effective and sustainable solution to the long standing building neglect problem.

Chapter 3

NEW DIRECTION

3.1 To facilitate an informed discussion on how best to tackle the building neglect problem having regard to the associated social and economic costs, this chapter sets out the broad principles, the available options and their relative merits.

Principles

3.2 As with other forms of property ownership, it is the owners' responsibility to ensure that their buildings are in good repair. The owners must accept that they have an indisputable and continuing responsibility for the upkeep of their own buildings, including the need to shoulder the attendant financial implications. This principle is upheld in various jurisdictions such as Australia and Singapore. This should continue to be observed.

3.3 Modern building management and maintenance requires considerable professional input from different disciplines. Typically the owners of well managed and maintained buildings in Hong Kong have to take care of their buildings with the help of professional building managers. This clearly demonstrates that provision of the required services by the private sector is conducive to owners achieving proper building management and maintenance. We should continue to put the focus on private sector efforts and help to facilitate the market's functioning, whilst ensuring safety standards through enforcement against non-compliance with statutory requirements.

Options

Maintaining the Status Quo

3.4 This option involves continuing with the existing efforts as set out in paragraphs 2.3-2.6. Its pros and cons are as follows.

	<u>Cons</u>
<ul style="list-style-type: none">- As the present position, it requires little adjustment.- Owners who are not keen on or unable to afford proper maintenance do not have to shoulder any additional expenses.	<ul style="list-style-type: none">- The existing problems, e.g. premature ageing of building, unsatisfactory hygiene conditions and poor living environment, will continue and multiply.- As urban decay grows, society has to pay an increasingly high price in terms of statutory enforcement, cleansing and related social problems.

3.5 In the aftermath of the SARS outbreak, there is a growing consensus among the public that the present position requires improvement. This seems to immediately make maintaining the status quo a non-option. We have also noted in Chapter 2 that the current framework has limited success. Prima facie, therefore, this option does not seem to be attractive.

Mandatory Inspection

3.6 Since the SARS outbreak, some parties have suggested that

Government revive its previous proposal of a mandatory building safety inspection scheme (BSIS). The BSIS proposal was first put forward for public consultation in August to October 1997. The proposal envisaged mandating the owners of domestic buildings aged 20 years or above to inspect their buildings every seven years and to carry out the repairs identified to be necessary from the inspection.

3.7 During the public consultation, there was much debate on who should be responsible for the building inspections. The former Provisional Legislative Council passed a motion in November 1997 urging Government to be responsible for the inspections and to establish a building maintenance fund to provide assistance to building owners having difficulty meeting the repair costs. Government's view was that private building owners should be responsible for maintaining their own properties, including any periodic inspections to ascertain the condition of the buildings. It would be wrong to ask the tax-payer to subsidize building owners in this regard. In the absence of a general consensus, the BSIS proposal was not further pursued at the time.

3.8 Mandating the periodic inspection of buildings of or above a specified age has the following pros and cons.

	<u>Cons</u>
- Regular inspections may identify problems before they become serious. A mandatory inspection scheme would provide a regular mechanism for buildings to be inspected. The owners would then be able	- Prevention is better than cure. The first step in preventing building dilapidation is good maintenance. If mandatory inspection is confined to buildings of a certain age and above, the lead-up period may

<p>to rectify defects identified in the inspections.</p> <ul style="list-style-type: none"> - As new buildings usually have fewer problems, it might be more economical to concentrate the effort on older buildings. - Some believe that, by keeping a fairly long interval between inspections, the financial burden on the owners will be more manageable. The owners at the time will shoulder the expenses when they arise, and it will not be necessary for all owners to contribute to the expenses on a regular basis. 	<p>provide a big window for building disrepair and premature ageing to set in.</p> <ul style="list-style-type: none"> - By its nature, any inspection is one-off, focusing on the identification and rectification of defects. This passive approach is not conducive to encouraging building care. - Carrying out an inspection once in a long while, for example, the seven years suggested previously, might not fit in with the life cycle of the various items that have to be inspected. Even for the same items, the inspection need may vary among buildings. - One inspection in a long while could lead to complacency between two inspections. This goes against the need for continued vigilance in ensuring that a building is in good repair.
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	<ul style="list-style-type: none"> - The need to keep the cost to a manageable level means that any single inspection will have to be limited in scope. Even then, “bunching” the work will almost inevitably lead to a relatively high financial burden for those owners who have not set aside the necessary funds.
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3.9 There is no dispute that building inspection plays a useful role in ensuring better building care. However, it is part and parcel of overall building maintenance, and should not be an end in itself. Suggestions for Government to shoulder the cost of building inspections of a mandatory scheme pinpoint the failure to grasp this fundamental point. They reflect a belief that inspections are distinct from maintenance, and that the two may be dealt with separately. This belief is misguided. If the community accepts that it is the owners’ responsibility to maintain their buildings, it is only logical that these owners should pay for the requisite inspections in order to properly discharge their responsibility. Government, therefore, remains of the view that the owners should be responsible for maintaining their buildings, including the necessary inspections.

3.10 A mandatory inspection scheme is not without problems – its one-off nature, its emphasis on cure instead of prevention, and its “one size fits all” approach. Since the option is likely to lead to issues of principle and implementation, it is doubtful if it should be pursued on its own. Instead, it may be more useful to consider how to integrate the

need for regular inspections with the overall objective of promoting effective and sustained building maintenance.

Integrating Proper Maintenance and Management

3.11 The need to maintain a building is a constant one – it exists as long as the building stands. If it is accepted that reliance on temporary or one-off efforts does not fit in with the long-term commitment required, proper and sustained management and maintenance would appear preferable. Some, therefore, favour the option of requiring a minimum level of management for all buildings as the long-term solution to the building care problem.

3.12 The option of requiring all buildings to be properly managed and maintained has the following pros and cons.

	<u>Cons</u>
<ul style="list-style-type: none"> - Sustained effort in building management and maintenance prevents dilapidation, prolongs useful building life and allows for the early detection and rectification of problems and defects. - Good maintenance reduces the need for and frequency of costly rectification works, thus translating into long-term cost savings for the owners. It also contributes towards 	<ul style="list-style-type: none"> - There are owners who are not keen on or unable to afford proper management and maintenance. They may see the need for compulsory management as an unnecessary or unacceptable financial burden. - Some believe that it should be up to the owners concerned to decide how best to manage their own properties.

<p>preserving the property value for the owners.</p> <ul style="list-style-type: none"> - The cost of management and maintenance is spread out over time, and is more predictable than would be the case with haphazard maintenance and remedial works. - Residents enjoy clean and safe living conditions. - Society benefits from the reduced need to take statutory enforcement action and the improved environment overall. 	<ul style="list-style-type: none"> - To some owners, e.g. those hoping for redevelopment and owners of vacant/tenanted flats, investing in the proper management and maintenance of these properties appears to be an unnecessary cost.
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3.13 The arguments against this option should be seen in perspective. For example, the hope for redevelopment is in many cases both impractical and unrealistic. Redevelopment before time carries significant social, environmental and economic costs to society. Where the development potential of the site has been fully utilized, redevelopment offers little financial incentive. The question is how to balance society's larger interest against individual owners' unwillingness to act. The community has to decide whether to allow a vicious circle of building neglect to set in and to shoulder the resultant costs, financial or otherwise.

3.14 Prima facie, the arguments for the option of proper

maintenance and management seem to be much more solid and persuasive. Quality building care demands on-going efforts on a long-term basis. Good maintenance brings about the benefits envisaged in para. 1.4. With the various legal responsibilities and implications involved, modern maintenance requires much expertise and sustained input. This points to the need for proper building management and maintenance on a day-to-day basis.

The Community's Preference

3.15 Some might ask whether it is too idealistic to aim for proper building management and maintenance when some buildings are deteriorating fast. Would it not be simpler and more effective to fix the immediate problems by, for example, just taking enforcement action? Safety remains Government's top priority. The much stepped up enforcement against dangerous/unauthorized building works in the past few years demonstrates our resolve in this regard. We will continue to vigorously enforce the safety requirements, for example, those under the Buildings Ordinance and the Lifts and Escalators (Safety) Ordinance (Cap 327). We will require building owners to rectify unauthorized/dangerous works as well as works that pose an environmental or health hazard. Where necessary, we will undertake the rectification works in the first instance to ensure public safety and health and recover the cost from the owners thereafter. This does not, however, detract from the need to find a sustainable long-term strategy to address the weak building care culture. If anything, it highlights the importance of establishing such a strategy.

3.16 Before mapping out the implementation details, we would like to ascertain if the community is in general agreement that integrating proper maintenance and management should be the long-term solution to the building neglect problem. For the purpose, we invite views on –

- (a) the principles set out in paras. 3.2 and 3.3, i.e.,
 - (i) that it is the owners' responsibility to ensure that their buildings are in good repair, including the need to shoulder the attendant financial commitment;
 - (ii) that we should continue to put the focus on private sector efforts to facilitate the market's functioning, whilst ensuring safety standards through enforcement against non-compliance with statutory requirements; and
- (b) whether the thrust of the arguments for integrating proper maintenance and management option set out in paras. 3.11 to 3.14 is acceptable.

3.17 We will be guided by responses to the above questions in taking the matter forward. Chapters 4 and 5 set out some possible areas that we will work on as our next steps.

Chapter 4

ONE-STOP SERVICES FOR BUILDING OWNERS

4.1 Modern building management and maintenance is not an amateurish pursuit. Even for building owners who readily accept their responsibilities, going about the task could be daunting. For example, management of a project for rectifying building defects involves myriad tasks, from preparation of tender documents and negotiation with prospective contractors, to taking out suitable insurance and checking of completed works against specifications etc. The recruitment and management of staff for security, cleansing and other services requires sufficient knowledge of the relevant labour laws. How to cover the collective liability of the owners is another example of the professional input required. All this requires time, effort and expertise.

4.2 It follows that it would make much difference if the owners are able to access and call on the relevant expertise without having to go through the hassle of contacting various different firms and contractors to deal with the many different aspects of building management and maintenance. This also underlines the need for establishing a long-term instead of an ad hoc relationship between the owners and building management and maintenance professionals. By pulling together the necessary legal, architectural, surveying, management and other related expertise, the industry should be able to provide quality and efficient service to building owners. This does not mean that a management office for a single building or a housing estate should necessarily have a lawyer, an architect, a surveyor et al on site. Rather, it should be able to call on such service if and when required.

4.3 The idea of a multi-disciplinary building management

industry is not entirely new. Indeed, some professional building management firms already have such capability. Many buildings that are currently well managed and maintained use the services of these firms. There is, however, scope for further development. An all-round building management and maintenance industry should be capable of providing competitive long-term one-stop services, from building-related legal advice to day-to-day management to project supervision, that meet the different needs of different owners and different buildings.

4.4 We could encourage the industry to fully tap the potential business opportunity by working out creative solutions to provide the services that the owners need. In addition to transcending traditional boundaries, the industry could allow for increased flexibility in its workings to cater for the different needs of different owners. Some possibilities are, for example –

- (a) achieving economies of scale and optimizing operating costs by offering “bulk purchase” arrangements for different blocks on the same street or in the immediate vicinity joining the same management and maintenance scheme; and
- (b) providing all-inclusive agreements covering on-going management and long-term maintenance, including the drawing up of regular maintenance schedules having regard to the condition of the building, and either undertaking or arranging for and supervising the necessary works.

4.5 Naturally, building owners would like to have quality management and maintenance services at reasonable costs. We believe that ultimately market forces will bring this about.

4.6 The development of an integrated building management and maintenance industry, and the provision of one-stop services should provide a more conducive environment for owners to access the necessary services for looking after their buildings properly. This would create a win-win situation for owners and the industry alike.

Chapter 5

SUPPORT MEASURES

5.1 A number of support measures could be pursued to complement the integration of maintenance and management proposal. They are outlined below.

A. Facilitating Management by Owners

5.2 Many owners readily accept their responsibility, including the attendant financial commitment, for proper building management and maintenance. However, in some cases they may be too busy or not well equipped enough to organize themselves to appoint a manager. In other cases, especially in old buildings, the owners' effort to better manage and maintain their properties is also frustrated by the lack of a basic management structure. The problem is further compounded by uncooperative owners and untraceable owners. We could explore how best to help the owners overcome these problems.

5.3 Given that many buildings in poor maintenance have no formal management structure at all, some parties have suggested making the formation of OCs a mandatory requirement for all buildings with multiple ownership. The concept of mandating the formation of an owners' body is not new. In some overseas jurisdictions, an owners' body is compulsory for buildings with multiple ownership. For example, under the Strata Schemes Management Act of New South Wales, Australia, on the registration of a strata plan for a strata scheme, an owners' corporation for the scheme is formed with the principal responsibility of managing the scheme and all owners automatically become members of the corporation.

5.4 However, we recognize that an OC in itself is not a guarantee of good management and maintenance. There are indeed examples of rivalry among different groups of owners within an OC adversely affecting the management of the buildings in question. There are also many buildings without OCs that are nonetheless well managed and maintained, e.g. some large private housing estates. Prima facie, the formation of an OC should not be an end in itself. However, we could look into the role of OCs in the management of a building. We could also examine the need to clearly define the circumstances under which mandatory building management provisions should apply⁷.

B. Ensuring Sustained Contribution

5.5 A perennial challenge to sustained quality management and maintenance is how to ensure that the majority of cooperating owners will not be frustrated or taken unfair advantage of by those who fail to pay their share of the requisite expenses, including the remuneration of the manager.

5.6 At present, how management expenses may be recovered depends on the terms of the Deed of Mutual Covenant (DMC)⁸ and whether an OC has been formed. The existing remedies available are summarized at the Annex. Despite the remedies already available, however, the combination of absentee ownership and demographics in old buildings, especially tenement buildings, has raised concerns at whether management expenses may be collected to sustain long-term management.

Annex

⁷ The BMO at present provides for the possibility of subjecting a building to mandatory management. The Authority (currently the Secretary for Home Affairs) and the Lands Tribunal are empowered to order a management committee, the forerunner and/or the executive arm of an OC, to appoint a building management agent if there is a danger or risk of danger to the occupiers or owners of the building. The provisions, however, have never been invoked.

⁸ A DMC is a document registered in the Land Registry which defines the rights, interests and obligations of owners among themselves, as well as the role of the building manager, as appropriate.

5.7 There have been suggestions for Government to play a more active role in collecting management expenses. Such suggestions include, for example –

- (a) Government could pay the management firms first and recover the management expenses from the owners later through, say, adding the expenses to the rates; and
- (b) Government could levy each property transaction to build up a fund to pay management firms that have difficulty in collecting the management expenses from the owners.

5.8 Our initial view is that direct Government intervention in essentially private disputes is not warranted. Owners have an indisputable responsibility for managing their buildings, and they should pay their share of the management expenses set according to the governing DMC. It would be wrong in principle for Government to enforce private contracts by collecting the management expenses on behalf of OCs or managers. It would also be wrong to require owners of other buildings to shoulder the costs for non-paying owners of a building. In addition, it would require the setting up of a large bureaucratic machinery to collect and disburse the money given the many different management fees applicable to different buildings and units and changes in fee levels.

5.9 Nonetheless, we agree that we could consider whether the existing remedies available for the recovery of outstanding contributions from individual owners should be strengthened and whether any new measures are required. The aim is to promote owners facilitation whilst ensuring that the measures are proportionate.

C. Positive Recognition

5.10 Good building management and maintenance should be rewarded. To encourage the owners to take up their responsibility, there are suggestions that we could consider introducing a voluntary classification of buildings system. In this connection, BD has commissioned a consultancy study on a broad framework of building classification assessment criteria and scoring system. Apart from drawing up the criteria for assessing the state of maintenance and standard of management of buildings, the consultancy has looked into the mechanism for handling any complaints from building owners arising from the assessment process, and the operation and financing of an independent agency to run the scheme. The consultancy is nearing its completion. We will study the recommendations in consultation with the academic institutions and the industry in the first instance, and explore the possibility of devising a voluntary classification scheme run by the non-Government sector.

D. Financial Assistance

5.11 Some owners fail to set aside the costs for non-recurrent building maintenance works, and have difficulty in meeting them when the need arises. For the purpose of tiding them over, BD already operates the BSLS. We could review the BSLS to ensure its continued effectiveness. For example, at present, the scheme is only open to individual flat owners. There have been suggestions that an OC should be empowered to borrow from the scheme on behalf of owners in order not to hold up the necessary repairs to the whole building. Indeed, this is one of the proposals set out in HAD's consultation paper issued in May 2003 on amendments to the BMO. We could also keep the size of the scheme under review and consider the need for topping up the fund should it approach full commitment.

5.12 Given the core principle that the owners should be responsible for their buildings' upkeep, we should approach other forms of financial assistance with extreme care. Any further assistance should be reserved for the genuinely needy and truly deserving, and hence subject to rigorous means testing. For example, one group who may require such special consideration is elderly owners of dilapidated flats with little income. We could consider whether and how assistance should be provided.

5.13 It is a good practice for owners to plan ahead and set aside financial resources for non-recurrent maintenance. The BMO currently provides that an OC shall establish and maintain a general fund to defray the cost of the exercise of its powers and the performance of its duties and to pay for other outgoings in relation to any maintenance or repair work. The BMO also provides that an OC may establish and maintain a contingency fund to provide for any expenditure of an unexpected or urgent nature. In addition, under the Seventh Schedule of the BMO, the manager of a building with a DMC shall establish and maintain a special fund to provide for expenditure of a kind not expected by him to be incurred annually. If there is an OC, the OC shall determine by a resolution of the owners the amount to be contributed to the special fund by the owners in any financial year and the time when those contributions shall be payable. The increased financial discipline should help alleviate the impact of any major works that may be required. We could look into the need to provide guidelines on the size of the fund and how it should be built up.

E. Enforcement and Facilitation

5.14 Government will continue to support and facilitate proper building management and maintenance by –

- (a) ensuring that the necessary legislative framework is in

place;

- (b) providing a conducive environment for both the owners and the industry to work together;
- (c) promoting the owners' awareness and undertaking education and publicity;
- (d) enforcing the law; and
- (e) ensuring a holistic and coordinated approach throughout Government.

5.15 Looking ahead, we will consider how to fully enlist the help of the District Councils and the relevant professional associations in promoting the benefits of proper building management and maintenance. We will also seek to optimize the use of the expertise and resources of non-Government bodies such as the Housing Society (HS) and the URA. In this connection, we are encouraged that the URA's recently launched pilot rehabilitation scheme has made some headway in showcasing the benefits of building maintenance through the concerted efforts of the owners concerned. Not only have the living conditions been improved, but also there have been reports of increased property value. On the part of the HS, it has had decades of experience in property management. Its experience, expertise and resources will be highly valuable in helping to establish a building care culture.

5.16 In the wake of the collapse of a property management firm in August 2003, there have been suggestions to tighten regulatory control of these firms. At the moment, the Housing Managers Registration Ordinance (Cap. 550) already provides for a registration system of professional managers and enables self-regulation by the profession.

Also, the members of the Hong Kong Association of Property Management Companies Limited (HKAPMC) cover some 85% of the properties in Hong Kong. HKAPMC has drawn up a Code of Conduct for its members. Government will carefully examine the need for a mandatory licensing/registration system and will look into ways for the relevant professional associations to promote best practices of their members. In the process, the likely impact of such a system on the cost of building management and its effectiveness in deterring defaulting firms will be looked into.

5.17 To ensure holistic policy making and consistency in approach, HPLB and the Home Affairs Bureau will liaise closely with each other in promoting building management and maintenance. We will also strengthen our effort to emphasize the importance of rehabilitation in the urban renewal programme to dovetail with the overall aim of promoting building care.

F. Sustainability Considerations

5.18 The proposal for enhanced building management and maintenance will help prolong the useful life of buildings and improve the quality of the living environment. This is compatible with the sustainability principle of providing a living environment which promotes and protects the health and safety of the public. The possible development of one-stop management and maintenance services, which would attract investment in the field, would also help increase job opportunities. The proposal may entail additional financial commitments on the part of building owners/tenants. We will listen to public views during the consultation before we develop the implementation details.

5.19 A more comprehensive sustainability assessment will be

carried out when we draw up the implementation details, taking into account comments received during the public consultation exercise.

Chapter 6

THE WAY FORWARD

6.1 Building neglect is a long standing and complex issue. Full discussion by society is required before a package of proposals may be adopted and further details developed. Even if a general consensus is reached on the way forward, in view of the large number of private buildings without any form of management now, the measures would need to be implemented by phases.

6.2 We welcome views from the public on this document before 15 April 2004. The details for sending in views are set out on the inside cover.

6.3 During the consultation period, we will explain our proposals and invite views from the Legislative Council and the District Councils. We will also arrange briefings and seminars for members of the public interested in the subject. In addition, we will discuss with representative associations of the relevant professions.

Existing Remedies to Recover Outstanding Contributions from Owners

Some DMCs empower the manager to register a charge against the property of the defaulting owner and sell his property. The BMO provides that if the debt is one owed under the DMC and where there is an OC, that registration and subsequent sale power is vested in the OC instead. Where there is such a DMC provision, the OC or manager will normally take the case to the Small Claims Tribunal (for claims of not more than \$50,000) or the District Court (for claims of not more than \$600,000) to establish the claim before proceeding with registration and sale. Where there is no such DMC provision, the OC or manager will normally approach the Small Claims Tribunal to establish the debt owed and then the Lands Tribunal to obtain clearance for registration and subsequent sale. This power of registration and sale could be a strong deterrent.

The BMO stipulates that the management expenses payable by an owner shall be a debt due from him to the OC. It also provides various means for recovering such expenses. First, if the owner is not occupying the flat, the OC may ask the occupier to pay, and the occupier may deduct the amount paid from the rent payable to the owner. Second, the amount may be treated as if it were rent payable to the OC as landlord of the owner's flat under Part III of the Landlord and Tenant (Consolidation) Ordinance. In other words, the OC may apply to the court for issuing a warrant of distress for the rent payable, i.e., seizing the owner's movable property to secure payment for the arrears. The application has to be supported by an affidavit in the prescribed form. Third, the registered mortgagee of the flat may pay the expenses and recover the payment through adding it to the principal sum due under the registered mortgage of the flat. More generally, where the Lands

Tribunal enters a judgment against a defaulting owner, various orders may be made to execute the judgment, e.g. a writ of fieri facias, garnishee proceedings, a charging order, the appointment of a receiver, an order of committal, a writ of sequestration and even an order of imprisonment.



“Building Management and Maintenance” Public Forums

We cordially invite you to attend the following public forums. Seats are on a first-come-first-serve basis.

		(II)	
Date	20 January 2004 (Tuesday)	Date	23 February 2004 (Monday)
Time	3:30 – 5:30 p.m.	Time	6:30 – 8:30 p.m.
Venue	Theatre, City Hall, Central	Venue	Hall, Henry G. Leong Yaumatei Community Centre

REPLY SLIP

I wish to attend ☐ the public forum (I).
☐ the public forum (II).

Signature: _____

Name: _____

Telephone no.: _____

Email address : _____

Date: _____

Please fax to 2845 3489 by the following dates

Public forum (I): 13 January 2004

Public forum (II): 16 February 2004