

N.T. Concern Group: Positional Paper on the Legitimization of Unauthorized Building Works in New Territories Exempt Houses

Background:

On November 26 in 2011, the Hong Kong Government announced its revised enforcement policy against unauthorized building works (UBW) in New Territories Exempt Houses (NTEH), which are also known as Village Houses. The new implementation included the introduction of a “voluntary reporting scheme” on unauthorized building structures. The announcement of this new policy fuelled discussions and speculations in society, and also aroused extensive discontent amongst the New Territories residents. The New Territories Heung Yee Kuk, which should be a bridge of communication between the residents and the Government bodies, failed to speak up and swayed often in their positions regarding this matter. Many New Territories residents felt frustrated and disappointed by such ineffective representation.

It was against such a backdrop that the New Territories Concern Group was formed. On September 30 of 2012, the N.T. Concern Group was established with the aim of creating dialogue between different sectors of community and those who are affected by the Government’s policies. It aspires to be a voice for the people of the New Territories by conveying their views and suggestions to the Hong Kong Government, so that their traditional and lawful rights would be protected. In relation to the aforementioned policy, the N.T. Concern Group hopes to bring about the legalization of minor UBWs that do not seriously contravene the law or pose any imminent danger to life or property. On October 25 of 2012, the N.T. Concern Group applied to be registered as a formal society by the Hong Kong Police Force.

UBW Voluntary Reporting Scheme – Response by New Territories Residents:

There are tens of thousands of New Territories Village Houses in Hong Kong. Yet only a minute number of these occupants participated in the Government’s voluntary reporting scheme when it was implemented. According to statistics, there were only around 800 reports by September 4 in 2012.¹ According to a Government press

¹ <<800 村屋申報僭建 月底期限不延長>>，明報，二零一二年九月七日

release made on September 26, 2012:²

“There is an average of about 20 reports weekly between the commencement of the Scheme on April 1 and August 24.”

Although the Government later claimed that there had been a “sharp increase” in report numbers between August 25 and September 25 to an average of 900 reports weekly, the truth was that near the end of September, the Buildings Department had only received around 4,500 reports – estimated to be a third of the total amount.³ Therefore, the Department accepted the suggestion of Heung Yee Kuk Chairman Mr. Lau Wong-Fat, and on September 26 of 2012, the Government extended the reporting period to December 31 of the same year. “The Administration believes that due to better understanding of the Scheme, the residents in New Territories (NT) village houses have become more enthusiastic about reporting their UBWs and the Government should facilitate this process.”⁴ As of September 28 of 2012, the Buildings Department received approximately 7,300 reports under the new policy.⁵

In relation to the voluntary reporting scheme, the Government should know that, in reality, the response of the New Territories residents lack any sort of enthusiasm. The N.T. Concern Group feels that the Government has misunderstood the matter on three points:

- (1) The Government and the relevant authorities have misjudged the abilities of the New Territories residents to understand the nature of the voluntary reporting scheme; or that the passage of time would allow them to develop a deeper understanding of the matter.
- (2) The Government and the relevant authorities harbor the misconception that the extension of the reporting timeframe would provide the New Territories residents with an opportunity to develop an understanding of the scheme; or that they would actively participate once they have understood its nature and purpose.
- (3) The Government and the relevant authorities are mistaken if they expect the reporting scheme to address the problem of UBWs in the New Territories in its entirety.

The reality, as gather by the N.T. Concern Group through dialogue with various sectors of the community (especially from New Territories residents), appears to be:

² <http://www.info.gov.hk/gia/general/201209/26/P201209260515.htm>

³ 《村屋僭建申報延至年底》，星島日報，二零一二年九月二十七日。

⁴ 政府新聞公報，二零一二年九月二十六日，見註解 2。

⁵ <<新界村屋僭建 7300 份申報>>，香港商報，二零一二年九月三十日

- (1) The residents of the New Territories generally lack knowledge in the law and other professional areas. They are unable to understand the relevant legislation or to differentiate UBWs from legal building structures. In this, the Government has failed to provide any form of practical assistance, and many residents have been lodging reports without the requisite understanding. Many residents feel as though the Government wants them to incriminate themselves by admitting to UBWs on their property, and that the Government may even convict them through this reporting scheme. The Government's actions in this regard appear to be universally unjust and of bad government.
- (2) Many residents of the New Territories feel that the guidelines on the reporting scheme are generally unclear and vague. They are unable to fully comprehend its contents. Yet the Government has failed to explain the scheme in further detail, or to address the residents' concerns regarding the benefits and detriments that would be brought about by the scheme. Instead, the Government has blindly pushed for the residents to declare their properties.
- (3) Many residents of the New Territories find it unfair that they must shoulder the substantial costs of appointing qualified personnel to verify the safety of the UBWs, especially given that the subject structures may still be subject to demolition after the 5-year grace period ends – the Government's lack of clear policy direction in this matter is confusing.
- (4) Many residents of the New Territories feel exasperated and powerless in the face of the Government's continual failure to implement long-term and sustainable policies.

Thus, the N.T. Concern Group feels that the community at large (especially the New Territories residents) lacks the requisite understanding of this policy. Coupled with the fact that the reporting scheme is only a temporary measure that does not address the fundamental aspects of the UBW problem, even if the Building Department were to extend the reporting deadline indefinitely, participation from New Territories residents would still be in the minority.

The Problem is Only the Tip of the Iceberg

In fact, it appears that the Government has completely underestimated the seriousness of the problem of UBWs in the New Territories; or perhaps they are deliberately downplaying the severity of the issue. According to Government estimates, there are around 35,000 N.T. village houses which contain UBWs. However,

the total number of N.T. village houses in Hong Kong exceeds 130,000 blocks. Hypothetically, if each block houses three families, there are at least around 390,000 occupants in these NT village houses. The N.T. Concern Group believes that most of these occupants are in possession of property with so called “unauthorized building works”. As the Government’s official definition of UBW is vague and unclear, and the official list of “exempted structures” contains only 19 items, it may be assumed that virtually all N.T. occupant households will have the need to declare “UBWs”. This would result in an estimate of more than 200,000 UBW in the whole of Hong Kong.

Referring to UBW statistics for Hong Kong urban units – the Government had, in 2001, implemented a 10-year strategy for demolishing the said structures. To this date, however, there are only approximately 400,000 successful enforcements, whilst the other 400,000 cases are still pending to be processed. Given the UBW estimates of N.T. village houses (as detailed above), and adding to those urban units UBW which are still awaiting enforcement, there are possibly up to 600,000 UBW cases in Hong Kong that must be dealt with by the Government. Inevitably, the strategy of demolishing these UBW removals will require the devotion of an immense amount of public resources.

Proposal:

In Hong Kong, there are already many different types of housing estates in existence. If the Government has finally come to realize the importance in addressing the problem of UBW in New Territories Village Houses, why do they not stage a more comprehensive consultation process with those affected occupants, so as to develop a policy with a more complete solution and a clearer direction?

With this, the N.T. Concern Group would like to propose the following solutions:

- (1) Exemptions for minor-offence UBWs that were in existence before June 28, 2011:
When dealing with the issue of housing in the New Territories, the majority of past government policies have generally adopted an “exemptions” approach. Since the implementation of the “small house policy” in 1972, the Government has never enforced any relevant legal restrictions. The situation of housing in the New Territories has thus become one of “silent acknowledgement”, in which the residents are presumed to have relative freedom in the construction of various facilities and to undertake structural improvements out of necessity.

Thus, it has long been common practice for residents of New Territories to use their incomes and savings to construct certain facilities or to improve existing structures. Over time, they have become reliant on these facilities and structures, and it would be difficult for them to accept any sudden demolition – such a policy would deeply disturb the community. Thus, the N.T. Group would like to strongly urge the Government in adopting an exemption policy.

(2) Expand the “amenities” section of the current reporting scheme:

Due to the numerous features constructed by the New Territories residents within their village homes, the amenity features included in the current reporting scheme are insufficient to meet their needs. Thus the N.T. Concern Group urges the Government to expand the amenities category and include features such as rooftop structures and canopies which do not exceed half of the property rooftop area. In terms of what should be included within the said category, the Government should solicit opinions through a comprehensive public consultation.

(3) Amend section 14AA in the Buildings Ordinance (Cap. 123):

The most ideal solution would be to amend section 14AA of the Buildings Ordinance (Cap. 123). The provision could be expanded to include a wider range of minor works that do not require the approval and consent of the Building Authority. This would mean that that the Buildings (Minor Works) Regulation (Cap. 123N) must also be amended. An example of possible amendments has been drafted by the N.T. Concern Group and can be viewed in Annex 1.

(4) Begin extensive public consultation:

Aside from the above suggestions, the N.T. Concern Group proposes that the Government should begin an extensive consultation on the thoughts of the community in relation to this matter.

Liaising with Various Professional Organizations:

The N.T. Concern Group hopes to liaise with various professional groups and other recognized organizations to convey to them the benefits of amending the existing legislation. The first category of professional bodies to be contacted should include:

- (a) The Hong Kong Institute of Engineers
- (b) The Hong Kong Institute of Architects

(c) The Hong Kong Institute of Surveyors

Other professional bodies that should also be consulted include:

- (a) The Hong Kong Society of Accountants
- (b) The Law Society of Hong Kong
- (c) The Hong Kong Bar Association
- (d) The Hong Kong Association of Property Management Companies
- (e) The Hong Kong Legislative Council members, and various political parties

Conclusion:

The cautious and considerate handling of the aforementioned matter should be high on the Government's priority list. However, despite the urgency of the matter, the Government should not hastily implement some ill-thought-out policy without understanding the needs and concerns of the community. Such actions will only complicate matters further. The N.T. Concern Group hopes that the Government would partake in a rational discussion in order to tailor a long-term solution that is both reasonable and sustainable. At present, however, the N.T. Concern Group feels that the optimal solution remains in the amendment of existing legislation which would address the root of the issue. We hope that the Government seriously considers the proposal and does not disregard the opinions of the community.

The end-date (December 31, 2012) for the voluntary reporting scheme draws ever so near, and there will be much work to do in the future. Thus it is the hope of the N.T. Concern Group that we can converse with various professional bodies and convey to them the benefits of amending the law.

Our concern group welcomes dialogue with any government department, or with any other organizations or factions that are concerned with the issue of UBW in New Territories Exempt Houses (village houses). If necessary, interested parties can contact the Mr. Tang Yung Yiu (Ronnie), President of the N.T. Concern Group.

Society for the Promotion of Legalizing UBW in NTEH

Date: 20th November 2012

Annexed:

1. Suggested amendments to the Buildings (Minor Works) Regulation (Cap. 123N)