

**Submission of the Hong Kong Institute of Surveyors to
LegCo Panel on Planning, Lands and Works**

New control measures for New Territories exempted houses

The Director of Buildings (D of B) announced the new Guidelines to Apply for Certificates of Exemption (C of E) in the Construction of New Territories Exempted Houses (NTEH) and stipulated that those Guidelines would take immediate effect on 8 May 1999. However these Guidelines were, and still are, not readily available, which makes it very difficult for any affected person to understand the requirements, let alone to comply with them.

The Hong Kong Institute of Surveyors (HKIS) is of the view that a grace period must be allowed for the implementation of any new guidelines.

The control mechanism and construction standards of NTEH under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) have hitherto followed the principles of the Buildings Ordinance (Cap. 123) but adopting a much-relaxed approach because of the simple nature of construction. Hence standards of structural stability and fire safety, as well as planning and health standards of NTEH are a lot less stringent than those buildings complying fully with the Buildings Ordinance.

Now that the D of B chose to address the aspect of structural stability alone because of the collapse of a balcony at Swallow Garden in Fanling last December, the other aspects which are vital to health and safety as well will be ignored, at least for the time being. This is far from being comprehensive and there is certainly a need for overall review as there is latent inferiority and hazards in many NTEH.

For the sake of public safety and in the public interest, the HKIS is of the view that the control mechanism and construction standards, as well as planning and safety standards, of NTEH should be comprehensively reviewed.

The cause to the investigation was the collapse of a balcony, or a cantilevered structure, the construction of which was not originally envisaged in NTEH when the relevant Ordinance (Cap. 322) was first introduced in 1960. Balconies were, for unknown reasons, introduced in the amending Ordinance (Cap. 121) in 1987. It is noted that in the urban areas, since 1974, no further balcony or verandah was allowed to project over a street. On the contrary, many balconies of NTEH project over streets or government land outside lot boundaries. These balconies pose not only a structural hazard but also a health and fire hazard as they obstruct the clear width of streets and decrease the minimum fire separation between buildings. There is no reason why balconies should continue to exist in NTEH. If balconies were disallowed, any possible further similar collapses would be eliminated. This will also help improve the overall safety of NTEH. Henceforth there will be no need to introduce any new control measures, the prevailing control being sufficient.

The HKIS is of the view that a quick and simple solution is to disallow further balconies and canopies in NTEH, by amending the relevant Ordinance, and the status quo of the prevailing control can be maintained.

As submitted by the Planning, Environment and Lands Bureau, the new control measures to ensure the structural safety of NTEH was formulated “in consultation with the concerned parties, including the Hong Kong Institution of Engineers and the Heung Yee Kuk. This was a deliberate ignorance of the views expressed by the Hong Kong Institute of Surveyors (HKIS) among other concerned parties including the Hong Kong Institute of Architects (HKIA), the Real Estate Developers Association (REDA) and the Hong Kong Construction Association (HKCA). It is discriminating and contrary to the principle of equal opportunities particularly when members of both HKIS and HKIA are qualified to become authorized persons (AP) under the Buildings Ordinance.

The Buildings Ordinance provides for a system of supervision of building works by the AP and registered structural engineers (RSE). If supervision is required for the construction of NTEH, it is only logical to extend the same system. It is discriminating and ultra vires to ignore AP who are qualified to take full charge of similar simple structures by virtue of Building (Administration) Regulation 12. It is also ultra vires to include any other persons who are not statutorily recognized for the purpose, however competent they may be. The inclusion of registered professional engineers (RPE) at the expense of AP sets a very dangerous precedent. This has no legal basis and any such deviation from established policy could easily demolish the backbone of the existing building control system.

The HKIS is of the view that any enhanced control of NTEH must be within the purview of the Buildings Ordinance. If additional monitoring is required, it must be by AP and RSE registered under the Buildings Ordinance. The exemption from section 4 of the Buildings Ordinance (Cap. 123) as provided for in section 7 of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) need to be modified.

The new control measures require the supervisors to certify satisfactory completion but not the man on the job to do so. They only help to identify the scapegoats - the supervisors - for any faulty construction but do not identify the culprit - the contractor - who creates such faulty construction. This is contrary to the spirit of the Buildings Ordinance. If certification is required, it can only be given by those who are qualified and statutorily liable for such certification.

The HKIS is of the view that if certification is required, the works must be carried out by a registered building contractor (RBC) and supervised by an AP or RSE, and the certification must be given by the RBC and the supervising AP or RSE.

Furthermore NTEH developments are not in keeping with the overall urbanization of the territory of Hong Kong, particularly when there is less and less substantial differences between the New Territories with the rest of the territory. The merits of the unlimited increase of NTEH are doubtful. On the other hand, if a simplified control system could be allowed for NTEH in the New Territories, it should be allowable for similar minor structures in the urban areas.

The HKIS is of the view that there is a need for overall review of the NTEH policy vis-a-vis minor works policy.