LC Paper No. CB(1)844/00-01(01)

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8 March 2001

The Task Force on Building Safety
& Preventive Maintenance
21/F, Murray Building
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Attn: AS(B)4 - Mr Au Wing Hung

Dear Sir

**Building Safety & Timely Maintenance**
**(including comments on "unauthorised" building works)**

Reference our recent communications, I write to thank you for the opportunity of commenting on the above subject.

I attended in the Public Gallery of LegCo on 8 January 2001 when the initiatives of the Task Force were discussed by the Works, Land and Planning Panel.

From the introductory remarks made by government officials, and the various queries raised by legislators it appears that there are still numerous "grey areas" of concern, in particular the difficulty of implementing the government initiatives without excessively interfering with proprietary rights of owners. I would therefore like to offer a number of observations based on some 30 years experience as a professional surveyor in Hong Kong; these observations are set out in the attached Annex A.

The problems facing the Task Force are extremely complex, having evolved over several decades. These historic influences are summarized at para 1 of Annex A.

The difficulties of existing homeowners in older buildings should not be ignored. Over many years, thousands of homeowners have purchased their flats in the second hand market, frequently unaware of the extent of "unauthorized" works carried out by previous owners - see para 2 of Annex A.

Consequently, it is not unreasonable to ask government to include a large degree of fairness and reasonableness when determining the over-riding policy objective for solving this Territory wide problem. In this context, the Task Force initiatives are not entirely clear on what is the overriding policy objective and seem to have used a piece-meal approach (para 3 of Annex A refers).

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For example, the Task Force has suggested a very positive proposal relating to "minor works" and "minor works contractors" but has made no provision for other situations not classed as "minor". The Task Force has also highlighted the urgency and seriousness of "single staircase buildings"; surprisingly, however, there is no reference to the ExCo policy approved in 1968 and again codified in 1975(*) which established the criteria for regularising existing and new roof-garden structures (including penthouse).

This piecemeal approach would inevitably create anomalies and inconsistencies. In an attempt to clarify this concern, paras 5, 6 and 7 of Annex A address the fundamental difference between single staircase buildings, and those rooftop structures which are within the ExCo policy; and also the difference between "minor works" and other types of structures.

In general terms the Task Force appears to be have adopted an administrative test ie. "If building plans were not originally submitted, there is a breach of the Building (Administration) Regulations, therefore the structure is unauthorized/illegal, therefore it should be demolished."

This is administratively simple and convenient but makes no allowance for the historical influences which have created this community wide problem.

Given the history and complexity of today's problem, a more justifiable and realistic test is to determine whether the structure meets the technical requirements of the Building Regulations (other than the Building (Administration) Regulations). If it does, or can be made to do so, there is a case for tolerating the structure. This was the mechanism on which the 1968/1975 ExCo policy was implemented.

I hope the attached comments may prove useful.

Best Regards

T. Farnworth

Trevor Farnworth
/bk

cc Chairman of LegCo Panel

*Note*: (*) Codified by Government Secretariat & PWD in 1975

## 1. Historic Influences

1.1 For several decades, government has been aware of and tolerated through non-enforcement the growth of "unauthorized" works and structures on buildings throughout the Territory.

1.2 During these years, there have been long periods of severe shortage of homes for the general population and government's efforts have inevitably concentrated on the priority of encouraging and processing new development. Monitoring buildings already in existence received low priority.

1.3 A further contributory factor has been the primitive nature of the property management industry (until recent years). In earlier years, "Old Style" management companies, looked after buildings in multi-ownership. These companies relied on 'caretakers', and operated on shoestring budgets with minimum maintenance. Site staff generally did not have the technical or management skills necessary to monitor or supervise decoration contractors appointed by the individual flat owners in buildings, especially at the time when the occupation certificate was issued, and every purchaser was fitting out and decorating, with numerous different contractors on site.

1.4 The reliance on decoration contractors, largely unregulated, was itself an engine out of control. Government had no guidelines for the lay-person (owners) on what structures or alterations would fall within the exemption provisions of the Buildings Ordinance; and the statutory procedures for minor alterations involving the use of AP's was both too time consuming and too costly for many homeowners, who therefore relied on decoration contractors. These contractors working on small profit margins wanted to be in and out of the building as quickly as possible and were often uncontrollable by building staff of that era.

1.5 As a result of these and other historic events, there is a now a widespread community problem. The older the building, the greater the problem is likely to be. It is a community problem with significant social and economic consequences which cannot be resolved simply by adopting a narrow administrative viewpoint under the Buildings Ordinance, and retroactive enforcement.

2. Existing Homeowners

2.1 During these several decades many homeowners have purchased their flats in the secondary market frequently unaware of the alterations which were carried out by previous owners. Many thousands of flats have changed hands during this period, some of them have been bought and sold several times.

2.2 In such cases, existing homeowners have not acted unlawfully. They purchased their homes in accordance with prevailing laws and government policies.

2.3 It is of course, easy to criticize with hindsight and say that such purchasers acted foolishly or naively. However, it should be borne in mind that the desperate shortage of flats over many years created a situation where families buying in the secondary market, had no choice but to buy immediately or lose the opportunity of buying the unit. Government's land supply was rarely adequate to meet demand and contributed to the shortage of housing.

2.4 In these circumstances, it is not unreasonable to suggest that a generally sympathetic government policy aimed at regularizing many of these building alterations/structures (eg. by offering "waivers") is required, provided of course that structural safety can be achieved. Wholesale demolition of such structures would create massive disruption to many families, and would be seen as an attempt to "re-write" Hong Kong's history.

2.5 The secondary market has suffered drastically since the 1998 economic downturn. Many owners have lost financially having purchased their homes at high prices prior to the downturn. These homeowners in the older buildings are not generally wealthy and may still be struggling with mortgages. It would be extremely harsh to make such homeowners retroactively responsible for reinstatement, if other solutions (eg. 2.4) can be found. They should not be blamed for the events of history.

3. Overriding Policy Objective

3.1 It is easy to take an administrative view ie. to argue that the structures are "unauthorized" and therefore should be demolished. However, government has played a major historic role in allowing this complex problem to develop, and any retro-active application of the Buildings Ordinance would create social and economic disruption for many families in the territory.

3.2 A substantial degree of "reasonableness and fairness" should be adopted when determining the fundamental and overriding objective of the Task Force; and two questions need to be asked:-

a) Is the overriding objective of government to ensure building safety (structural/fire hazard etc) and maintenance of buildings? (In that case there are many types of structures which are safe or can be made safe notwithstanding that they were erected without going through the plan submission process). OR

b) Is the overriding objective of government to "turn the clock back" by dismantling all structures which have not been through the building plan submission process? (This would be a narrow administrative approach to a widespread community problem which now has far reaching social and economic consequences; outside the scope of the Buildings Ordinance).

3.3.1 Policy objective (a) and policy objective (b) are separate and distinctive. Policy objective (a) would reduce the overall demolition work throughout the Territory, and accordingly reduce the total disruption within the community. Policy objective (b) implies wholesale demolitions throughout the Territory.

3.3.2 Policy objective (a) has a yardstick for determining which structures shall stay and which structures shall be demolished - namely is the structure safe or can it be made safe? It is a yardstick which the public can understand.

3.3.3 Policy objective (b) has no recognizable yardstick for determining which structure can stay and which structure shall be demolished. For example, compare an unauthorized commercial neon sign projecting over a public street, with unauthorized windows enclosing a residential flat balcony. If the neon sign is permitted to remain but the windows are to be demolished, what criteria separate the two? There is no yardstick for the public to comprehend. Neither structure has been through the plan approval process.

3.3.4 Some form of criteria approved at ExCo/LegCo level is required to indicate which structures shall stay and which remain –in the same way that ExCo approved a policy and criteria for regularizing roof structures and penthouse.

4. <u>Roof-garden Structures (incl penthouse)</u>

4.1 In March 1968, ExCo examined the question of use of privately owned rooftops and approved a policy to govern the better use and regularizing of such rooftops including "penthouses". This policy was again examined and codified in Mid 1975.

4.2 The policy originated when a number of existing cases were discovered. The rooftops had been converted into roof gardens for use with the flat immediately below and various "unauthorized" structures had been erected including staircase access from the flat below leading into a penthouse with direct access into the roof-garden areas which had been fenced and laid out with garden planters sunshades, garden furniture etc.

4.3 The approved policy determined that such structures would be permitted to remain and new cases would also be allowed subject to various criteria:-

i) The rooftop was in the same ownership as the flat immediately below.

ii) Access to the penthouse would be by a staircase from the flat immediately below, so that the penthouse would only be used by the owner of that flat.

iii) A document be registered against title to ensure that the roof was not sold or leased separately, the purpose being to avoid increasing the population density or separating ownership.

iv) For existing "unauthorized" structures, a formal submission would not be required under the Building (Administration) Regulations, but an AP should provide an informal plan and satisfy the Building Authority on other technical aspects of the Ordinance.

v) Government would adopt a flexible approach for such structure.

Where such uses were found to be contrary to lease conditions, a modification premium would be assessed.

4.4 Unfortunately, this policy and criteria has never been notified to the lay-public. If it had been, many of the structures which are now worrying the Buildings Authority would no doubt have been regularized over the intervening period. From memory the then existing penthouse structure/on which the policy was determined did not exceed 25% - 35% of the roof-space.

4.5 Privately owned roof-tops are frequently visible from surrounding locations and nearby buildings. A policy of encouraging the use as roof gardens in accordance with the ExCo policy could provide improvement to the general environment.

4.6 In some respects this policy was similar to the recent Buildings Authority initiatives for encouraging more greenery within buildings.

5. <u>Single Staircase Buildings</u> (fire -hazard structures)

a) The seriousness of this problem cannot be underestimated. There is a fire-trap potential to occupants of the building who cannot escape to the roof in case of fire. Action is required. However, the seriousness of this special problem, should not be confused with other type of roof structures which would fall within the approved ExCo policy referred at Para 4.

b) In the interest of clarification, it is useful to examine certain historical aspects of the single staircase buildings:-

i) Government sold land at full market value, and the developer originally sold the flats at best value in the market. As a consequence the majority of top floor flats in the Territory have been sold together with the roof top itself. Purchasers have paid a higher value because of the ownership of the roof.

ii) There is generally no proprietary obligation on the roof top owners to allow other owners to use the roof (eg. As an escape route). For this purpose, government has historically relied on the provisions of the Buildings Ordinance.

iii) The question which needs to be asked, therefore, is "what would the Building Authority have permitted to be erected at roof level if the owner had submitted building plans", eg:-

1/ There is an inherent right for the owner to fence off the roof for privacy and security reasons. A fire-crash door would solve the emergency situation of fire escape and there are precedent cases where such escape doors have been used.

2/ It is possible that the owner could also erect for example a storeroom provided that he left sufficient open area to act as an assembly area in case of fire. If there are two flats, the assembly area may be shared between them.

iv) The purpose of asking this question is to clarify whether the wholesale demolition at roof level is now proposed simply because the plan approval process was not followed and/or whether the technical requirements of the Buildings Ordinance have been so grossly exceeded that total demolition is required.

v) The social aspects of these problems are compounded in those cases where the rooftop structures have been sold separately from the flat below. Hopefully such cases would be few in number.

c) Obviously the single staircase building is a unique and specialized problem. Unfortunately the Task Force appear to have adopted the urgency of this specialized problem as a general yardstick for "blitzing" all roof top structures throughout the Territory, and is either unaware of or has disregarded the 1968/1975 ExCo policy which was based on more rationalized criteria.

6. Minor Works and Minor Works Contractor

a) The creation of a category of "minor works" and "minor works contractors" is a very positive step, since the procedurally cumbersome and costly AP approval process of the existing Ordinance have historically influenced the lay-person to rely on "decoration contractors". However, there is a problem of definition.

b) There are in existence a massive array of structures all of which may be regarded as "unauthorized" or "illegal" simply because they were not processed through the building plan submission system.

c) The creation of a rigid "minor works" definition into the ordinance would retroactively make legal " minor works" which had previously been illegal (provided they are made safe structurally).

d) What happens to those existing structures which are not within the "minor works" definition? Does the owner have a right to apply for classification as "minor" or to apply under the exemption provisions of the ordinance? Or is it intended that any structures outside the "minor works" definition will be demolished?

e) The example previously used at para 3.3.3 illustrates the danger of anomalies - ie. Compare an unauthorized commercial neon sign over a public street with the unauthorized erecting of windows to enclose a residential balcony. If the neon signs (some of which are massive) are classified as "minor", will the residential window also be classified as "minor". If neither are classified as "minor" what is the criteria which determine the neon sign is to remain, but the windows are to be demolished? (It is assumed that government does not intend to remove all the "unauthorized" commercial advertising signs throughout the Territory).

f) In summary, the proposal for a minor works category is a positive step forward, especially for the future. It does, however, leave unresolved the problem of introducing fair and reasonable solutions for those other structures ( "non-minor") which are capable of being made safe and which are not grossly in excess of the technical provisions of the Ordinance. (The methodology at para 4.3(iv) could be considered).

g) A cohesive set of solutions covering the whole spectrum of structures is preferable to a piecemeal approach.

h) " Unauthorised works" are not necessarily dangerous and "authorized works" are not necessarily safe (eg. approved windows may fall out if old or badly fixed).

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Footnote

The observations on Annex A have not included comments on the Voluntary Scheme (BSIS) and the difficulties of Owners Incorporated in the operation of this scheme.