

**The New Territories Ordinance
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Introduction

Hong Kong to-day is at an important crossroad. A crucial decision has to be made whether to adopt the Lantau Tomorrow Reclamation Project (“the Project”) now being proposed by the Hong Kong Government (“the Government”) or to properly develop the New Territories (“NT”). A careful scrutiny of the relative merits and demerits of the two proposals is vital in order to come to a wise decision as it will have tremendous impact on the environmental, social and economic development of Hong Kong over the rest of this Twenty-first Century.

Historical Background

Hong Kong Island and the Kowloon Peninsular were ceded to Britain in perpetuity respectively in 1841 and 1860. But Britain acquired control of the NT in 1898 as part of the Colony of Hong Kong only by means of a 99 years lease which would expire on 30th June 1997. Britain’s control over the NT was severely limited by the terms of the lease and by its not having sovereign powers but only as a lessee. Therefore the administration of the NT was completely different from the rest of the Colony of Hong Kong.

After Britain assumed control, the NT was divided into 477 Demarcation Districts each of which was issued with a Block Crown Lease for 75 years from 1st July 1898 with a right of renewal for a further 24 years less the last three days. These Block Crown Leases prohibited the erection or construction of any building or structure of any description on the many lots of land which were described as agricultural or garden land without the approval of the Government. Thus in one stroke the Government took away the development rights of the NT land-owners.

Land Resources

90% of Hong Kong’s land resources is in the NT which has an area of about 1,000 sq. kilometers being ten times the total area of Hong Kong Island and Kowloon combined. The extensive land resources there are seriously under-utilised despite the shortage of land for much needed urban development. Only 14% of the land has been used

for the development of eight major new towns, 44% has been set aside for country parks and about 17% has been used for various purposes including low density housing development leaving almost one-quarter (250 sq. km) of the NT still available for more intensive urban development.

The under-development of the NT is mainly due to the New Territories Ordinance and the land policy adopted by the Government to control its development.

The New Territories Ordinance (“the NT Ordinance”)

The NT Ordinance was enacted in 1910 with 44 Sections. Over the years 25 sections have been repealed, but up to now the most important sections continue in effect.

Sections 3 to 6 and Section 9 still empower the Government to administer the NT despite the expiry of the NT lease in 1997.

Section 7 empowers the Chief Executive to exempt certain lands in the NT from the Ordinance, in particular, where the lease of the land has been surrendered by the owner to the Government and a new Government lease has been issued.

Section 8 declares all land in the NT to have been the property of the Government as from 23rd July 1900 and the occupation of such land to be unlawful unless the occupier can demonstrate a legal right to do so.

Section 12 confers jurisdiction over NT land upon the District Court and the High Court.

Section 13 confers power on the District Court and the High Court to recognize and enforce any Chinese custom or customary right affecting such land.

Section 15 gives recognition to the holding of NT land in the name of a clan, family or t’ong and its representation by a “manager” in its administration.

The legal and political effect of the NT Ordinance is to create a different class of land in the NT the ownership of which confers a land title with legal rights different from the ownership of land in Hong Kong Island and Kowloon.

NT Indigenous Inhabitants

The situation was made more complicated when the Government decided in 1972 by way of concession to adopt a “Small Village House Policy”. By this policy, special rights to erect a small house within the village environs were given to indigenous villagers who were the original inhabitants of the NT and to their male descendants.

Such special rights of indigenous inhabitants have received official recognition by Article 40 of The Basic Law as follows:-

“ Article 40 ”

The lawful traditional rights and interests of the indigenous inhabitants of the “New Territories” shall be protected by the Hong Kong Special Administrative Region.

Two Classes of Land & Two Peoples

So as a result of the above, a strange situation has developed that in a small place like Hong Kong, different legal rights are conferred upon two different classes of land and upon two different classes of people.

New Territories Land Administration

The effect of the NT Ordinance, in particular as provided by Section 7 (2) and (3), is that NT Land can only be developed if a new Government Lease is granted, normally after the original owner surrenders to the Government his title to the land. This procedure requires the original owner to pay to the Government a premium equivalent to the difference in land value between the use permitted under the existing lease and the use and development rights permitted under the new lease. The original value of the land which could only be used only for agriculture, garden or open storage will be minimal, amounting to only a small fraction of the value of the same land re-granted as building land under the new lease.

This has become the bone of contention. The original owners refuse to accept only a paltry amount for the same land when the Government receives a premium many times the amount they could receive.

This unfairness made the villagers reluctant to part with their lands. So it is due to the implementation of the NT Ordinance by the Government in the above manner that has impeded the proper development of the NT.

NT versus Reclamation

The government's Lantau Tomorrow Project to reclaim 1,700 hectares off East Lantau at a cost of \$500 billion is entirely misconceived. It will cause tremendous environmental damage. The engineering works and provision of the necessary infrastructure will be so expensive that it may exhaust Hong Kong's fiscal reserves of One Trillion Dollars. Consequently the land produced and the housing erected thereon will be prohibitively expensive and unaffordable. It will not solve Hong Kong's need for land because within the next few decades, Hong Kong's population will grow to ten million people. Reclamation cannot create enough land to meet such increase in population. Only by wisely developing the NT can Hong Kong solve the land shortage problem.

1984 Joint Declaration

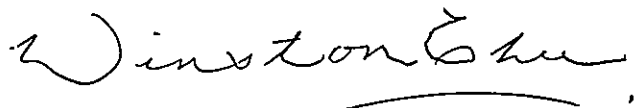
It has been thirty-five years since 1984 when the Joint Declaration was signed between China and the United Kingdom. This constituted the New Territories politically an integral part of the Hong Kong Special Administrative Region. Furthermore, twenty-two years have past since the hand-over to China on 1st July 1997. Yet the land administration of the New Territories still remains legally and politically separate and distinct from the rest of the HKSAR.

It is now high time to examine whether all the land in the HKSAR including the New Territories should become legally and administratively the same as any other part of the HKSAR as envisaged by the Joint Declaration. The entire 1,000 sq.km. of the NT will then become available for development. This will solve the problem of vast areas of the New Territories being degraded or left vacant whereas the community is suffering from a low living standard as a result of expensive and crowded accommodation due to a lack of land for development.

The Way Forward

- A. **Comprehensive Review** - The Government should immediately conduct a comprehensive review of the obstacles which prevent the proper development of the extensive land resources in the NT. It should examine how to offer fair treatment to the original land owners so that they will receive a fair value for their land. A high level commission should be established to undertake this comprehensive review with the objective of freeing the vast areas of NT land for proper urban development.
- B. **Strategic Plan** - A strategic plan covering the whole of the NT should be urgently drawn up for its comprehensive development to replace the present haphazard and sporadic development. Such strategic plan should protect sensitive areas such as Country Parks and places of scenic beauty and cultural and scientific interests. It should also ensure a proper plot ratio such that the development would neither be too dense nor so sparse as to waste precious land resources. The strategic plan should therefore be sensitive and sensible in its approach.
- C. **NT Development Authority** - A NT Development Authority similar to the Urban Renewal Authority should be established to facilitate the development of the NT.
- D. **One Place, One Class of Land, One People** - The Government must repeal the remaining sections of the NT Ordinance such that Hong Kong will become a place with only one class of land and one class of people.

It will take a strong political will for the Government to pursue the above. But there is no alternative because the NT offers the only future for Hong Kong's proper urban development.



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