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Attn: AS(B)4 - Mr Au Wing Hung

Dear Mr Au

**Task Force Initiative
Proposed Conveyancing Law & Proprietary Law Amendments**

I refer to the SCMP article attached at Annex I. If this proposal is correctly reported, it raises serious questions of principle relating to the alteration of conveyancing law and proprietary rights.

What is the objective?

If the objective is to ensure that such "rooftop structures" are not sold separately from the flat immediately below, that is a reasonable proposal. If, however, the objective is to ensure that the flat immediately below should not be permitted to be sold with "rooftop structures" in existence, then three major issues arise:-

- I. Discrimination
- II. Identification & Uncertainty
- III. Definition

I. Discrimination

It would be clearly discriminatory to introduce a legislative amendment which prejudices one category of property, when there is a massive array of structures in existence on different types of property, many of which are equally if not more dangerous to the public, than "rooftop structures".

- a) Why therefore are homeowners being discriminated against compared with commercial property owners who, for example, have massive neon signs overhanging streets?
- b) Why are top floor owners being discriminated against, when other flats have other major structures over hanging streets, or interfering with lightwells etc.
- c) What are the special and extraordinary characteristics of "rooftop structures" which justify such draconian and prejudicial amendments, targeting top floor flats?

II. Identification & Uncertainty

1. The Task Force has identified one extreme category of "rooftop structures" - predominantly single staircase buildings. Such structures are presumably so dangerous (in terms of either structure, sanitation, or fire hazard) that some form of severe action is necessary.
2. However, there are two other classifications of "rooftop structures" which do not fall within the above extreme category
 - a) structures for which ExCo have previously formulated a policy for regularising. The Task Force does not appear to have researched the fundamentals behind this policy which would be of considerable assistance in dealing with existing structures generally. I would urge the Task Force to research the background and detail of this policy and inform legislators of the rationale behind it and the category of structure to which it applies. The history of this policy was summarised in appendices to a 1976 Lands Department Instruction (No. II/13?). From that document, the Task Force would be in a position to trace the history of the Secretariat/PWD Conference meetings, and the original ExCo Paper, which originated the policy and which took account of Building, Land & Planning issues.

- b) Other rooftop structures which are so innocuous that the Government has tolerated them. These include for example fencing, lighting, canvas sun covers, planters, rooftop cupboard/furniture for roof garden purpose together with clothes drying facilities and similar. I would urge the task force to identify and publicise a list of such structures which government would allow under the exemption provisions of the Buildings Ordinance - with the intention of allowing some concessions to encourage rooftop owners to beautify their rooftops (similar to the "balcony/green building" proposals).
3. It would be quite wrong to use one extreme category of structure to justify draconian legislative changes which could be used indiscriminately against other categories. The fact that the Task Force has previously used the expression "blitzing" is an indication that indiscriminate uses would occur.

III. Definitions

- a) How are the definitions in law to be established to ensure that only the extreme category of structure is affected? How are categories 2(a) & (b) to be protected? How is "illegal" to be defined?
- b) If "safety" is the justification for proposing such drastic legislative amendments, the identified structures must surely have been examined by government under the technical regulations of the Buildings Ordinance (ie. The Technical Test under the Ordinance). In that event, government would be saying *"we are stopping you from selling your flat because structures exist, which are so grossly in breach of the technical regulations that structural safety, sanitary requirements and/or fire safety are comprised"*

- c) Nevertheless, there are many other structures which would also fail the Technical Test. Why has only one classification been selected for legislative amendment under conveyancing law?
- d) If on the other hand, the Task Force proposes to adopt the "Administrative Test" under the Buildings Ordinance, then the government is in effect saying *we are stopping you selling your flat, not because these structures are necessarily dangerous, but because (eg. 35 years ago) you or your predecessors in Title did not submit a plan.* It would be quite ridiculous to use this argument as a justification to introduce such draconian amendments to the law.

I would respectfully suggest that the proposed conveyancing law amendment should be withdrawn.

In your letter of 14 March 2001, you mentioned other presentation papers which were issued before 8th January. I would be grateful to receive a copy if these are available for public comment. In a recent inspections of old buildings for rental dispute purposes, I became aware of the massive hardship likely to be caused if a "blitzing" approach was adopted in these old buildings.

Yours sincerely



T Farnworth
/bk

✓ cc Dr The Honourable Tang Sin-Tong, JP - Chairman - LegCo Panel on Planning, Lands & Works (Fax: 2869 6794)

Annex I

S.C.M.P. April 2000

Sale of illegal structure roofs may be outlawed

Building works over a five to seven-year period.

In a submission to legislators yesterday, the Planning and Lands Bureau said it would endorse a strategy for building safety and fire risk management.

The proposed law amendments also suggest property owners should produce declarations that their flats carry no illegal structures before they can be sold. A proposal to require owners to appoint professionals to certify flats had been dropped to minimise costs.

Legislative Council member Albert Chan said he criticised the proposals, saying it should be the Building Department's responsibility to remove illegal structures.

They should not put the burden on the flat owners in old buildings as they are usually the elderly who are not familiar with the law," he said.

Owners of tenancy areas with illegal structures would commit an offence if they used the properties, under a government proposal.

Structural and estate agents participating in such transactions would also have criminal liability, according to proposed amendments to the Conveyancing and Property Ordinance.

The package of proposals also suggests requiring two existing units to form a \$700 million loan fund, extended to new safety and maintenance of private buildings. Owners occupying land also would be given more flexible repayment terms.

The Government has been under criticism for failing to tackle the problem of old buildings. It aims to redevelop 150,000 to 300,000 unsanctioned