

地鐵公司的信頭
Letterhead of MTR Corporation

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10th March 2000

By fax (2572 6546) and by post

Mr Peter P T Cheung, JP
Deputy Secretary for Home Affairs
Government Secretariat
Home Affairs Bureau
31/F, Southorn Centre
130 Hennessy Road
Wanchai
Hong Kong

Dear Mr Cheung,

Bills Committee on Building Management (Amendment) Bill 2000

We are writing to follow up on our oral representation made at the Bills Committee on 9 March 2000 setting out our views on Clause 3(b) of the Bill.

All along, we fully support the spirit of the amendment to facilitate the formation of Owners Corporation which aims to improve day-to-day management of completed buildings. The amendment, however, does not appear to have addressed the complex issues arising from large, comprehensively planned and phased developments which are under construction.

The formation of an Owners Corporation during the construction period of these large scale developments will enable a small minority group of owners (10%) to make decisions which are binding on the whole lot. Implications are that management decisions could be made that conflict with use of development common areas (such as internal road, drains, sewage treatment facilities, parks), development programme and the implementation of planning and lease requirements etc.

This will stifle the fulfilment of the vision and development objectives of the large estate being developed in phases. In any case, being minority (10%) of owners, their views will not represent those of the majority (90%) of owners who are yet to move in phases as the development progresses.

You have raised in paragraph 27 of your paper to the Bills Committee dated March 2000 that MTRC as developer and the majority shareholder could use its voting right to vote down decisions made by the Owners' Corporation to safeguard its own interest. We would be most reluctant to adopt this approach as this could lead to conflict and confrontation between the Owners' Corporation and the MTRC, let alone the time wasted by all parties in organising meetings and deliberations at meetings.

I refer to paragraph 28 of the Housing Bureau's suggestion as contained in the paper dated March 2000, that specific wording should be written into the DMC such that prior to completion of a phased development, Owners' Corporations cannot interfere with development common areas. The main weakness in this suggestion is that this wording would have no statutory effect. Furthermore, such wording may not gain the approval from Lands Department.

At the end of the meeting, you raised the point that the right of MTRC as developer in subsequent phases of development including development common areas would in no case be affected by the decisions of the minority owners as they have no such jurisdiction within the confine of the existing Ordinance.

The advice we received from our legal advisers is that common parts do not include any building that have not been constructed, but they do include the land on which the uncompleted parts of the building are to be constructed. As long as the completed parts of the building include any area for the common use and benefit of all the owners of the entire building has been completed (e.g. access roads, gardens), the Owners' Corporation will immediately have management control.

All our large developments including Tseung Kwan O Area 86 are designed and implemented in a comprehensive and cohesive manner. Elements common to the development and part of which to be completed in first development phase include internal roads and footpaths; communal utilities and services under internal roads; centralized club houses; GIC facilities; pedestrian circulation network and landscape deck.

You will appreciate the potential conflict and tension that might arise if 10% of the first phase owners are able to take over the management of the development common areas and take their narrow interest on the matter in arriving at management decisions. Concrete examples given above show that our concern in the matter is genuine and not unreal.

Therefore, to safeguard the interests of large scale developments, estates under construction and planned to be completed in phases and by different developers should not be allowed to have Owners' Corporations formed at too early a stage. However, we are satisfied with the alternative proposal as contained in Paragraph 28 of the Housing Bureau's March 2000 paper so long as the full intention can be reflected in words into the Amendment Bill.

We would appreciate if we could make an appointment to see you to explain the situation more fully to you.

Yours sincerely

Thomas Ho
Property Director

cc The Honourable Chan Kam-lam, Chairman of Bills Committee
 Miss Flora Tai Clerk to Bills Committee