

PPTY

BY FAX (28696794) AND BY POST

22 May 2004

Ms. Odelia Leung
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building,
8 Jackson Road,
Central, Hong Kong.

Dear Ms. Leung

**BUILDINGS (AMENDMENT) BILL 2003 - ISSUE AND REGISTRATION OF
WARNINGS NOTICES**

We have been consulted on the proposal for warning notices to be issued against minor unauthorized building works (“UBWs”) and registered in the Land Registry.

The Society’s Property Committee notes that such proposal was made given the recognition by the Administration that the Building Authority would not have the necessary resources to take enforcement action against minor UBWs but has grave concern that it will muddle up the Register and conveyancing practice on the one hand without being an effective enforcement measure on the other. In this connection, we attach our two letters dated 22 March and 21 May 2004 to the Housing, Planning & Lands Bureau, contents of which are self-explanatory, for your kind attention. We shall appreciate if you can please bring our concern to the attention of members of the Bills Committee.

Yours sincerely,

Christine W. S. Chu
Assistant Director of Practitioners Affairs

Encl.

PPTY

22 March 2004

BY FAX (28992916) AND BY POST

Ms. Olivia Nip
Secretary for Housing, Planning & Lands
Housing, Planning & Lands Bureau
Murray Building,
Garden Road,
Hong Kong.

Dear Ms. Nip,

BUILDINGS (AMENDMENT) BILL 2003

Further to my letter to you dated 23 February 2004, I am pleased to advise that the Property Committee has considered the proposal to issue and register warning notices for minor unauthorised building works (“UBW”).

The Committee does not think that the proposal will be an effective enforcement measure for minor UBW. As a matter of reality, it is quite clear that the Building Authority (“BA”) is subject to resources constraint and the fact of a warning notice being registered for certain UBW will only tantamount to confirmations by the BA that it will not be in a position to take enforcement action or enforcement action for such UBW will be of low priority. Given this understanding of the Government policy on the priority of enforcement, purchasers and mortgagees will take a commercial view and ignore the registered warning notices.

On the other hand, the effect of registration of warning notices could seriously affect conveyancing practice. These will be encumbrances on title and may be employed by purchasers to back out of otherwise binding transactions.

We note the Administration’s confirmation that the BA will lodge an appropriate Instrument of Satisfaction for registration after the contravention has been rectified. Given the effect of the proposal on conveyancing transactions and the speed of transactions in Hong Kong, it is of utmost importance that the BA should act promptly to inspect the relevant property once being notified of compliance to ensure the Instrument of Satisfaction will be speedily issued and registered. We have serious doubt as to whether the BA has the necessary resources to do so.

Unless the BA is going to take enforcement action against minor UBWs and have the necessary resources to ensure prompt registration of an Instrument of Satisfaction upon compliance, we do not think that the Government should just transfer the problem of minor UBWs on the Register. This will affect transactions unnecessarily, giving rise to

litigations and public complaints but without effectively resolving the minor UBWs problem. If this proposal is nevertheless to be adopted, there should be appropriate statutory provisions to ensure the BA will be liable for any mistaken registration of warning notices.

Yours sincerely,

Christine W. S. Chu
Assistant Director of Practitioners Affairs

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HPLB(B) 30/30/102

BY FAX (28992916) AND BY POST

21 May 2004

Ms Olivia Nip
Housing, Planning and Lands Bureau
Murray Building
Garden Road, Hong Kong

Dear Ms Nip,

BUILDINGS (AMENDMENT) BILL 2003 - ISSUE AND REGISTRATION OF WARNINGS NOTICES

Thank you for your letter dated 26 April 2004. Our Property Committee has further reviewed the warning notice proposal in the light of your reply and would reiterate its views as expressed in my earlier letter dated 22 March 2004.

Given the clear stance of the Building Authority that enforcement action will not be taken for the warning notices, it seems that warning notices will not affect title. The Administration also seems to share this view as it has specifically proposed to introduce a new section 24C(5) to “*deem*” warning notices to be instruments “*affecting*” land or premises for registration purpose. If warning notices do not affect title, its issuance or registration will not have any deterrent effect and the new mechanism will not provide an effective enforcement measure for minor UBWs, as we have said earlier.

The concern is, however, that registering the warning notices against the relevant properties could on the other hand lead to the possibility of purchasers using this as an excuse to back out of otherwise binding transactions. With the introduction of the new scheme, it is expected that a lot of properties will face registration of warning notices and if so, much litigation could ensue unnecessarily. We do not think this is a satisfactory arrangement.

We would reiterate our views that unless the BA is going to take enforcement action against minor UBWs and has the necessary resources to do so, the Government should not just transfer the problem of minor UBWs on the Land Register and give use to unnecessary litigations.

We feel the need to make our concerns known to the Bills Committee and shall accordingly be copying this letter and our 22 March 2004 letter for their attention.

Yours sincerely,

Christine W. S. Chu
Assistant Director of Practitioners Affairs

c.c.: Ms. Odelia Leung, clerk to the Bills Committee on Building (Amendment) Bill 2003
(Fax No.28696794)