

**Extract from the minutes of meeting between  
Legislative Council Members and Councillors of Heung Yee Kuk  
on 2 March 2004**

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**I. Town Planning (Amendment) Bill 2003 (in particular the part on the liability of managers of "tso/tong" in relation to unauthorized developments)**

3. Mr KAN Chung-nin pointed out that under the Town Planning (Amendment) Bill 2003, the managers of "tso/tong" would be regarded as land owners and were liable to offences in relation to unauthorized developments. Mr KAN said that the proposal, which was made on the basis of the ruling of the Court of Appeal on a planning enforcement case [The Attorney General v. Lam Mei Chai] in 1996, would have great impact on the New Territories where a lot of properties belonged to "tso/tong". Mr KAN considered the proposal not fair to these managers as they were appointed by the Home Affairs Bureau (HAB) to manage the "tso/tong" affairs without pay. If these managers were to be liable to offences, nobody would volunteer to take up the posts.

4. Mr KAN Chung-nin further pointed out that under the Building Management Ordinance (Cap. 344), only the owners and the management companies concerned, and not the mortgagees (such as banks), would be held liable for unauthorized developments in the buildings concerned. Based on the same rationale, managers of "tso/tong" should not be held liable for unauthorized developments in "tso/tong" property. Mr KAN considered that "tso/tong" instead of its manager should be held liable, or the law should be amended to provide for the incorporation for "tso/tong" so that its manager would assume legal responsibilities in relation to its property. Mr KAN urged the Bills Committee on Town Planning (Amendment) Bill 2003 to request the Administration to delete from the Bill all clauses relating to the proposed liability of managers of "tso/tong".

5. Mr MAN Fu-wan said that in a recent consultation paper, HAB had proposed to add an express provision to the Building Management Ordinance to specify that individual members of the management committee (MC) of an owners' corporation (OC) would not be held personally liable for any collective decision made by the OC solely on the ground that they were members of the MC. He queried why managers of "tso/tong" were held liable under the Bill.

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6. Mr MAN Fu-wan further said that he was a manager of "tso/tong", and his role was to act as an agent to collect rent and manage the property of "tso/tong". The rent collected was for the maintenance and management of "tso/tong" property, and the manager did not obtain any advantages from his voluntary service. Mr CHUNG Wai-ping added that all members of the clans were well aware of the role of "tso/tong" managers.

7. Mr IP Wai-cheung pointed out that "tso/tong" manager had very limited power and he did not have full control of the property of "tso/tong". Approval from all the land owners concerned had to be obtained for the sale of such property.

8. Ms CHAN Ka-mun said that the Bill provided that the consent of the land owner should be obtained, or the owner notified, if the applicant for amendment of statutory plan and planning permission was not the owner of the site concerned. However, this requirement did not apply to cases where amendments to plan, which might have long-term effects, were introduced by the Government. Ms CHAN considered that the arrangement was not fair and the Government should also abide by such requirement.

9. Mr KAN Chung-nin shared the views of Ms CHAN Ka-mun. He added that land owners should have the right to appeal if an application with long term planning effect had not been brought to their attention.

10. Ms CHAN Ka-mun further said that the Bill proposed that a person was required to discontinue with an unauthorized development when a notice was served by the Director of Planning. Ms CHAN suggested that since the person might apply for permission to continue with the development, a grace period should be provided for, pending the decision of the Town Planning Board on his application. Ms CHAN further suggested that in cases where the sites had become irrecoverable, the Administration could impose fines as an alternative action to deal with the unauthorized developments, instead of demanding for the reinstatement of the land.

11. The Convenor said that the Bill was being scrutinized by a Bills Committee of which Mr Andrew WONG and Dr TANG Siu-tong were members. She pointed out that the Bills Committee had considered the views put forward by Heung Yee Kuk earlier.

12. Dr TANG Siu-tong said that the Bills Committee would discuss the proposal relating to the liability of managers of "tso/tong" at its meetings in early March 2004. The Convenor suggested that the Bills Committee should notify Heung Yee Kuk when the proposal was discussed.

13. Mr Andrew WONG said that he agreed with Councillors of Heung Yee

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Kuk that managers of "tso/tong" should not be held liable for unauthorized developments. He further said that he had discussed with the Administration informally, and was given to understand that all clauses relating to liability of "tso/tong" managers might be deleted from the Bill subject to the agreement of the Bills Committee. He also suggested that Heung Yee Kuk could provide a paper on the proposals in paragraphs 8 to 10 above to the Bills Committee for consideration.

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14. The Convenor suggested that the views and suggestions from Councillors of Heung Yee Kuk should be referred to the Bills Committee for consideration and follow-up. Members agreed.

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