



THE HONG KONG INSTITUTE OF
SURVEYORS

Your Ref: ICI/3/9

20 March 2006

Mr. Justice Barry Mortimer, GBS, NPJ
Chairman
Independent Committee of Inquiry on the
Sai Wan Ho Development on Inland Lot No. 8955
Room 1711, 17/F, Murray Building
Garden Road
Hong Kong

By Fax & Post
2186 8301

Dear Mr. Mortimer,

**Re : Independent Committee of Inquiry on the Sai Wan Ho Development
on Inland Lot No. 8955**

In response to your letter dated 25 February 2006, requesting for our Institute to provide suggestions upon the ways in which the roles of government departments involved in the planning, sale and control of the development of government land may be improved, I would like to express on behalf of the Hong Kong Institute of Surveyors our views as follows:

History & Established Practice

The Government controls over lands and buildings development on aspects concerning planning, land administration, Government's financial interests (premiums), safety, health, maintenance and environment. They are administered by various departments as follows:

- 1) Planning – Planning Department
- 2) Land administration and Government's financial interests (premiums) – Lands Department
- 3) Safety and Health – Buildings Department and Fire Services Department
- 4) Building maintenance – Buildings Department and Home Affairs Department
- 5) Environment – Planning Department, Buildings Department and Environmental Protection Department

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The relevant visions and missions of the Buildings Department (the "BD"), the Lands Department and the Planning Department are attached at Appendix A for your information. This division of roles and responsibilities has formed the hierarchy of the land and building development control in Hong Kong for the past decades. You may note that the responsibilities of the relevant departments have been well defined and the main responsibilities of the BD are to set and enforce safety, health and environmental standards for private buildings.

The above practices have been adopted and accepted by the public and the industry including developers and professionals for years. Also, the associated statutory powers of the relevant authorities have been clearly stipulated under legislations. However, after the Sai Wan Ho Development incident, it seems that the Public Account Committee of the Legislative Council interprets that, in exercising the power under the Buildings Ordinance (the "BO"), the Building Authority (the "BA") should consider almost everything on building design and development and may refuse building plans on grounds other than those stipulated under Section 16 of the Buildings Ordinance, for example, by reasons of public interest. In turn, the authorized officers in BD can, on behalf of the BA, reject plans or proposals on aspects other than his original jurisdictions on safety, health, maintenance and environment.

Side Effects of the Change of the Usual Practice

The change of the usual practices may duplicate hurdles for the same aspect such as planning and land administration. This may cause the following side effects:

- 1) Conflict of opinions / approval status given by different departments will confuse the public.
- 2) Double handling of the same aspect by various departments may waste the government's resources, which is against public interest.
- 3) Overlapped duties may blur the responsibilities amongst different government departments.
- 4) Repeated hurdles will cause unnecessary delay to land or building development.



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- 5) Some discretion decisions concern only minor issues such as new materials which have not been described in the BO may attract objection easily as officers are expected to be reluctant to accept any deviation from the text. Besides, other documents issued by the BA such as, Code of Practice, Practice Notes and Guidelines may also subject to similar challenge for improper exercising of discretion.

Regarding the discretion exercised by general BD officers, we doubt whether the Practice Notes especially for PNAP30, PNAP68 and PNAP70 (copies are attached at Appendix B for easy reference) could be applied when public interest is also taken into consideration.

Besides, it is interesting to note that according to Section 14(2) of the BO (a copy of which is attached at Appendix C for easy reference), which is subject to Section 28B(4), neither the approval of any plans nor the consent to the commencement of any building works or street works shall be deemed:-

- a) to confer any title to land;
- b) to act as a waiver of any term in any lease or licence; or
- c) to grant any exemption from or to permit any contravention of any of the provisions of this Ordinance or of any other enactment.

Therefore, we consider that the BA is not empowered to disapprove proposal of building works for above matters based on the above-mentioned.

Suggestion

- 1) To avoid unnecessary delay to development and fully utilize the Government's resources, we opine that the previous usual practice as afore-mentioned should be maintained.
- 2) Besides, the grounds for refusal of approval or consent have already been clearly stated in Section 16 of the BO. This section may be properly expanded to cover other grounds if so desired.
- 3) We believe that with the clear roles and responsibilities assigned to the concerned departments, they may better perform their functions within their respective aspect of control.



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- 4) The BA and BD's officers did make due consideration on public interest when considering various discretions under the provisions of the BO. As long as they continue to exercise their discretionary power with due reference to safety, health and hygiene as well as public interest, they have already been exercising their discretionary power properly.

We are willing to provide to you with an oral presentation so that we can give more examples to illustrate the various levels of discretionary powers under the BO and some recent submissions that were affected by the recent change in the said usual practice. Please feel free to contact our Senior Vice President, Mr. Raymond Chan at 2722 7270 for arrangement of the oral presentation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Wong Chung Hang', is written over a horizontal line.

Wong Chung Hang
President

Encl. (Appendices A, B, C)