

2005年2月3日與立法會議員會面

各立法會議員：

愉景灣公契

本人希望藉此機會，向各位議員反映愉景灣公契的問題。

事實上，本人自1999年3月4日起，曾多次致函不同政府部門，促使其關注上述問題(請參閱附件)。本人再三向有關部門反映愉景灣的管理問題，並指出問題源於公契的不平等條款。可是，儘管愉景灣居民一直受到不公平的待遇，但相關政府部門(即地政總署及民政事務總署)的回覆往往教人失望。

本人謹在此列舉一些公契內的不合理條款：

“就有關任何前述事項，根據公契及分契條款之下所達成的經理人的條例及決議，對目前所有業主均具約束力。”(第四條B第3條款)

“所有在會議中通過的決議對所有業主均具約束力，但此等決議對經理人不具約束力。”(第七條第9條款)

(這是中文譯本，一切內容皆以英文版本為準。)

此外，由於發展商及其附屬公司持有的不可分割業權份數約77%，業主只佔約23%，因此居民要成立業主立案法團，可謂困難之極。

在管理費方面，業主所支付的比例高達99%，而發展商及其附屬公司只分擔約1%。雙方的繳款數目，與所佔的不可分割業權份數絕不成正比，情況極不合理。

爲了將來在愉景灣置業的業主著想，當局實有必要盡快糾正此一不公平情況。檢討有關地產發展商與小業主關係的法例，尤其是關於公契條款的法例，可謂刻不容緩。因此，《建築物管理條例第334章》有進一步修訂的需要，以讓公契內容可作出修訂，從而解決現時愉景灣所面對的困局。

Meeting with Legislative Council Members on 3 February 2005

1 February 2005

Dear LegCo Members,

Principal Deed of Mutual Covenant (DMC) of Discovery Bay (DB)

I would like to take this opportunity to bring to your attention the captioned issue.

In fact, I have brought the matter to various government departments' attention on numerous occasions starting from 4 March 1999 (please see attachment). I repeatedly reflected the irregularities in the management of DB, primarily due to the unfair terms of the DMC. The related departments, namely Lands Department and Home Affairs Department, however, have given a rather disappointing response, despite the fact that all owners at DB have been suffering all these years.

I hereby provide you with some of the unreasonable terms of the DMC:

"All acts and decisions of the Manager arrived at in accordance with the provisions of this Deed of Mutual Covenant and any Sub-Deeds of Mutual Covenant in respect of any of the matters aforesaid shall be binding in all respects on all the Owners for the time being." (Section IV, Subsection B, Clause 3)

"All resolutions passed at such Meetings shall be binding on all Owners but such resolutions are not binding on the Manager." (Clause 9, Section VII)

In addition, it is extremely difficult, if not impossible, to form owners' corporation as the developer together with its subsidiaries holds more than 77% of the undivided shares while residential owners have only about 23%.

As regards the contribution to the management fee, the owners pay about 99% of the total management fee while the developer and its subsidiaries only 1.4%. This disproportionate contribution contrasts strikingly with the uneven distribution of the



愉景灣城市業主委員會
Discovery Bay City Owners Committee

City Management Office, Discovery Bay, Lantau Island, Hong Kong.
Tel.: 2987 7641 Fax.: 2987 8192

4 March, 1999

Ms. M. C. Chung
District Lands Officer
District Lands Office, Islands
19th Floor, Harbour Building
38 Pier Road, Central
Hong Kong

C O P Y

Dear Ms. Chung

Re: Discovery Bay City R.P. of Lot No. 385 in D.D. 352 and Extension

We understand that Hong Kong Resort Limited is now in the process of negotiating with the Government of The Hong Kong Special Administration Region the land premium of Yi Pak.

We also realize that there are clauses in the existing Principal Deed of Mutual Covenant registered at your office under Memorial No. 112018 which are in conflict with the spirit of the Building Management Ordinance, Chapter 344.

We would be grateful for your view on the following points:

1. Whether the existing Principal Deed of Mutual Covenant applies to the new extension, i.e. Yi Pak? If this is the case, what will be the position if there are conflicts between the provisions of the said Deed and those of the said Ordinance? Will the existing Deed be amended to make it in line with the spirit of the Building Management Ordinance? If the existing Deed is not so amended, would you enlighten us why it is fair to apply the Deed to new owners despite the existence of the Building Management Ordinance.
2. If a new Principal Deed of Mutual Covenant is required for Yi Pak, should it follow the spirit of the Building Management Ordinance?
3. In a completely new development, will you register a Deed of Mutual Covenant with provisions that are in conflict with the spirit of the Building Management Ordinance?

We look forward to receiving your reply soon.

Yours sincerely

Amy Yung
Chairman, City Owners Committee
Discovery Bay

c.c. Mr. C.D.B. Williams, Assistant Director, Home Affairs Department

Correspondences to Various Government Departments on the Principal Deed of Mutual Covenant (DMC) of Discovery Bay (DB)

Date	Department	Particulars
4 Mar 1999	District Lands Office, Islands	To solicit views on the applications of the DMC and Building Management Ordinance (BMO)
1 Apr 1999	District Officer - Islands	To complain against the unfair terms of the DMC
17 May 1999	District Lands Office, Islands	To illustrate of the unfair terms of the DMC
2 Mar 2000	Secretary for Home Affairs	To complain against the Chairman of City Owners' Committee
30 Aug 2000	1. Chief Secretary for Administration 2. Secretary for Home Affairs 3. Director of Lands 4. Director of Water Supplies 5. Assistant Secretary (Technical Services)	To elaborate on the unfair terms of the DMC
22 Sep 2000	Secretary for Home Affairs	To seek advice on a dispute between the Manager of DB and a Village Owners' Committee (VOC)
17 Nov 2000	Home Affairs Department	To reflect the difficulty of forming an owners' corporation under the DMC
8 Jan 2001	Secretary for Home Affairs	To urge the department to exercise powers authorized by the BMO
27 Dec 2000	Secretary for Planning & Lands	To suggest to amend the BMO and have a new DMC for future development at DB
6 Feb 2001	1. Secretary for Planning & Lands 2. Secretary for Home Affairs	To reiterate the unfair terms of the DMC
25 May 2001	Secretary for Planning & Lands	To reiterate the difficulties under the DMC and request for an active role
25 May 2001	Home Affairs Bureau	To request adopting a positive attitude