

7 January 2022

By Email

The Secretary
Town Planning Board
15th Floor, North Point Government Offices
333 Java Road, North Point
Hong Kong

Dear Sirs,

Re: Safeguarding the Integrity of Public Consultations of the Town Planning Board
Application No Y/I-DB/2 (the “Application”)
Further Information Received on 28/10/2021

I write in respect of the formal public consultation exercise on the above-captioned Application and further information, which ran from 12 November 2021 to 3 December 2021.

According to the Town Planning Board’s (the “Board”) website, a total of 2389 public comments on the Application were received during the consultation period. I have reviewed all comments.

As a result of my review, I find it necessary to confirm that the Secretariat has sufficient safeguards in place to ensure that the public-consultation process is not corrupted in any way. I raise this concern having noted the Secretariat’s submission to the Board in respect of the meeting of the Rural and New Town Planning Committee (“RNTPC”) held on 23 June 2017 (when the Board decided to reject the Application), and the subsequent judgment of the Court of Appeal overturning the Board’s decision (CACV 432/2020).

RNTPC Meeting of 23 June 2017

My concerns may be encapsulated by quoting from the presentation made by the Applicant’s consultant at the RNTPC meeting of 23 June 2017:

Local Consultation

(e) the applicant was the sole owner of Discovery Bay. Although it was not a statutory requirement to consult residents of Discovery Bay, the applicant had maintained close communications with all residents in liaison groups, briefing sessions, owners’ committee meetings, annual general meetings as well as the passenger liaison group, etc. Besides, leaflets and feature stories were distributed and enquiry hotline was available. The proposal was explained to the residents and concerns of the residents were addressed and thus, over 70% of the public comments supported the application.

Several statements recorded in the above paragraph are factually incorrect. Specifically, the Applicant is not the sole owner of Discovery Bay. The ownership of Discovery Bay is subject to a deed of mutual covenant dated 30 September 1982. There are over 8,500 assigns of the Applicant; all are co-owners of the Lot. (Separately, in my comment #6488, I have highlighted how the deed of mutual covenant restricts the Applicant's right to carry out development on the Lot.)

As such, the Applicant has a statutory duty under the Town Planning Ordinance to notify and seek the approval of the co-owners, subject to the guidance provided in TPB PG-NO. 31A, "Town Planning Board Guidelines on Satisfying the 'Owner's Consent/Notification' Requirements under Sections 12A and 16 of the Town Planning Ordinance".

Even though many public comments submitted to the Secretariat prior to the RNTPC meeting of 23 June 2017 highlighted the true nature of the ownership of Discovery Bay, these comments were not brought to the attention of the Board and the untrue statements made by the Applicant's representative were incorporated into the minutes of the meeting without opposition. These untrue statements were carried forward during the court proceedings in respect of CACV 432/2020, and are now part of the official court record. Who knows what further harm will result from the failure of the Secretariat to properly reflect the content of public comments to the Board?

Manipulation of the Public Consultation

The above quote from the minutes of the RNTPC meeting of 23 June 2017 also shows the importance that the Applicant attaches to the number of submissions made in favour of its application, stating that "over 70% of the public comments supported the application".

Having reviewed the submissions made during the 12 November to 3 December 2021 consultation round, I find reason to believe that the vast majority of submissions in support of the Application have been organised by persons working in concert. Comment #6713 through #8550, or 1838 comments in total, were submitted in bulk in person on 3 December 2021. This represents 77% of all comments received during the consultation. Many of these 1838 comments, all of which support the application, draw from a limited number of set responses and bear incomplete names and contact information. It is not recorded who delivered this set of 1838 comments to the Town Planning Board. Further, almost all other comments in support of the application that were submitted to the Secretariat draw from the same limited set of responses. The similarity of the comments is ample evidence that these submissions were coordinated.

I am not in a position to determine whether the individual commentators, many with single names (Ms. Chu; Mr. Wong; David; or John), are real people.

However, I can count the number of comments that were made by persons claiming to be a “shop operator in Discovery Bay” (in English). There are at least 76 identical comments containing this phrase. From the Applicant’s website, we find that there are presently 64 shops in Discovery Bay. There cannot be 76 shop operators for 64 shops; hence, something is amiss. It shall be noted that all shop premises in Discovery Bay are owned by the Applicant and managed by a subsidiary of the Applicant.

In light of the above, I would be grateful for clarification of the following points:

- 1) The procedures that the Secretariat has put in place to ensure that all public comments are made by real persons.
- 2) The procedures that the Secretariat has put in place to record the name, identity, affiliation and interest of persons who make bulk submissions of comments to the Secretariat, and any obligation that the Secretariat imposes upon these persons to certify the identity of the individual commentators.
- 3) The procedures that the Secretariat has put in place to identify public comments that are organised, arranged or made by an applicant; by surrogates working on behalf of an applicant; or by persons under the influence of an applicant (such as employees, contractors, tenants, etc.) in order to inflate the number of comments in support of an application.
- 4) In light of the decision of the Court of Appeal in CACV 432/2020, of the procedures that the Secretariat has put in place to ensure that only relevant comments and no irrelevant comments are referenced by the Secretariat in the meeting papers that the Secretariat prepares for the Board.

Given that the Application is tentatively scheduled to be heard at the meeting of the RNTPC on 14 January 2022, I would be grateful for the Secretariat’s prompt reply.

Allow me to thank you in advance for your kind assistance.

Yours faithfully,

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