

Response by Hillgrove Chairman to “Memorandum for City Owners’ Committee”  
prepared by external lawyers and presented in F.K Wong COC Paper no. 701-23

Clause 6 of the General Code of Conduct issued by the Property Management Services Authority states:

**A licensee should avoid conflict of interests with the licensee's clients. In the event of possible or potential conflict of interests (whether pecuniary or beneficial interest), a licensee must as soon as reasonably practicable disclose to the licensee's clients in detail such interests.**

There are several important take-aways that we can draw from this clause:

1. Conflicts of interest may arise between any licensee (ie, **DBSML and all PMPs employed by DBSML**) and any of CM’s clients (ie, any owner).
2. Conflicts of interest may be pecuniary or beneficial in nature.
3. The declaration shall not only cover actual conflicts of interest, but possible or potential conflicts of interest as well.
4. The declaration must be made to all of CM’s clients, not only to the COC.
5. The declaration must be in detail.
6. The declaration must be made as soon as reasonably practicable (ie, without delay).

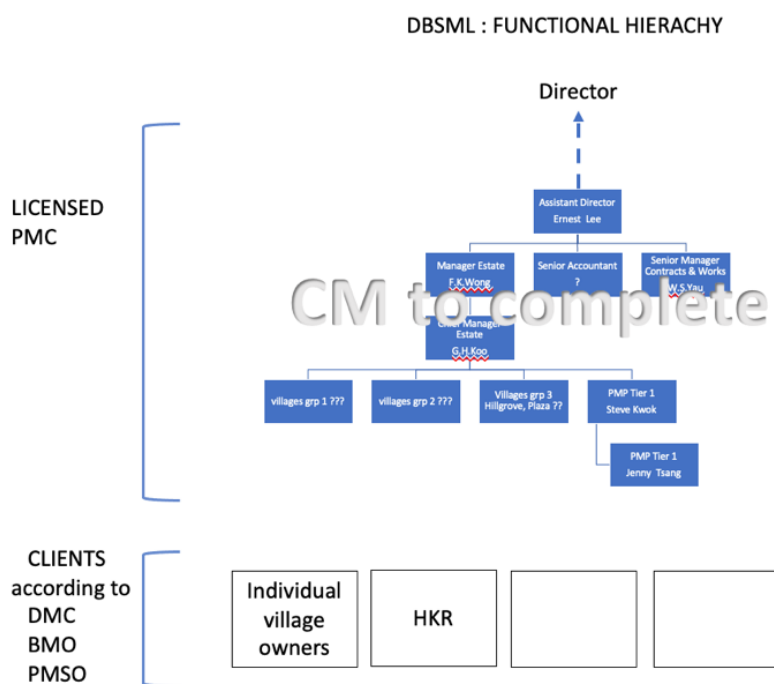
The Paper no. 701-23 is wholly unfit for purpose, as it fails to address any of the six points above. A pro-active policy that addresses how CM **and its PMPs** will comply with Clause 6 of the General Code of Conduct is needed.

In addition, for members’ consideration, I have highlighted inadequacies in the statements included in Paper No. 701-23.

	SOURCE :FROM FKW BRIEF TO LAWYER	COMMENT
i.	Pursuant to Clause 9 of Section VII of the Principal Deed, all the <b>decisions of COC shall be binding on all owners but not DBSML.</b>	Clause 9 of Section VII of the PDMC uses the word <b>resolution</b> not decision. A resolution must be included in the agenda of the meeting, issued at least 7 days in advance of a meeting. A decision has no such requirement, and hence is not binding on the owners. The word “decision” is incorrect.
ii.	DBSML acts as a consultative party of the Government, SAR, for issues relating to the management of Discovery Bay, some of which might involve the interest of HKR as the developer of the same;	“Management” is defined in the PDMC to mean “All duties and obligations to be performed and observed by the manager pursuant to the Conditions and/or this Deed and/or any Sub-Deed of Mutual Covenant entered into pursuant to the provisions herein contained.” Section II of the PDMC deals with the further development of the Lot. The manager has no role in such further development. In the past, CM PMPs have commented on Town Planning Board consultations that deal with the further development of the Lot. This is beyond the duties of the manager specified in the PDMC. Please clarify how such commentaries by CM PMPs are compatible with the manager’s duties under the PDMC, and whether CM PMPs should declare a conflict of interest when commenting on government consultations.
iii.	HKR/HKRI have all along been providing DBSML with various paid administrative services in relation to management of Discovery Bay;	Specify all such services. If personnel services, legal services and other services that may involve conflicts of interest are provided, the actual and potential areas of conflict must be identified. For example, goals, KPIs and incentives included in personnel contracts and evaluations in any way handled or maintained by HKR must be declared <b>by each PMP</b> in case there is any potential conflict of interest; legal advice obtained through HKR must include a declaration of potential conflict of interest.
iv.	DBSML is the lawful attorney for each owner of Discovery Bay and undertakes the proper management of the entire Discovery Bay for the common benefit of all owners; and	<b>General Clause A.1 of Section 4 states</b> The management of the City shall be undertaken by the Manager throughout the term of the lease agreed to be granted by the Conditions from the date of issue of the first Occupation Permit for any part of the City and each Owner hereby appoints the Manager irrevocably as Attorney to enforce the provisions of this Deed and any Sub-Deed of Mutual Covenant and each Owner hereby covenants not to enforce the terms of this Deed and any Sub-Deed of Mutual Covenant otherwise than through the Manager.
v.	All acts and decisions of DBSML arrived at in accordance with provisions of the DMC shall be binding in all respects on all owners	However Clause 3 of Section IV says  The Manager shall be bound by and shall observe and perform all of the conditions, duties and obligations herein and in any Sub-Deed of Mutual Covenant provided and shall have all of the rights and privileges herein or therein granted to the Manager.  Over the past decade, court cases involving CM have shown definitively that the manager does not have the sole right to decide the interpretation of the PDMC. Hence, CM cannot on its own decide that any decision it makes is binding on all owners. The statements at (iv) and (v) are thus without force and are irrelevant to a declaration of interest.

COC Paper No. 701-23 included a chart of the relationship between DBSML and HKR/HKRI companies. A simple listing of the ownership structure of the HKRI Group is wholly inadequate for the purposes of Clause 6 of the General Code of Conduct.

Under the General Code of Conduct, CM PMPs are also required to declare their individual potential conflicts of interest. In order to understand the potential conflicts of interest of CM PMPs, a detailed chart of the reporting structure for CM PMPs is required, including any and all reporting to any officer of HKR/HKRI, whether directly or indirectly.



I trust that the COC members will give due consideration to the points made above in a spirit of transparency and teamwork and that parties in Discovery Bay can collectively benefit from partnership rather than conflict

Ed Rainbow

Chairman Hillgrove Village Owners Committee