

DISCOVERY BAY HILLGROVE VILLAGE OWNERS' COMMITTEE

Minutes of Meeting No 4 2015-2016

held on 23 March 2016, 8:30 pm in Discovery Bay Office Centre

(preceded by Renovation Working Group Meeting)

Present:

Mr Edwin Rainbow	(ER)	Chairperson
Ms Janice Fung	(JF)	Vice Chairperson
Ms Alice Li	(AL)	Member
Mr Chung Kwok Wah	(CKW)	Member
Mr Edmund Fan	(EF)	Member
Mr Fok Chau Lun	(FCL)	Member
Ms Kimberly Keng	(KK)	Member
Ms Lo Yuk Shan	(LYS)	Member
Mr Michael McGuire	(MM)	Member
Ms Nikki Wepener	(NW)	Member (left early before vote on the resolution)
Mr John Antweiller	(JA)	Member
Mr Nigel JH Reid	(NR)	Member

City Management (present for the RWG -withdrew before the VOC began)

Mr G H Koo	(GH)	Manager – Estate, City Management (CM)
Mr Sam Lo	(SL)	Manager – Contracts, CM
Ms Debbie Lau	(DL)	Assistant Officer – Estate, CM
Ms Ricky Kong	(RK)	Assistant Officer – Estate, CM

Absent with Apologies:

Ms Christine Law	(CL)	Member
Fine Faith Limited	(FF)	Member
Mr Reynolds Martin Charles	(RMC)	Member
Mr Martyn Keen	(MK)	Member

In Attendance (present for the RWG)

Ms Chiu Kit Yee		
Mr Charles Hung	(CH)	Ho & Partners Architects Engineers & Development Consultants Limited (HPA)
Ms Cecilia Wong	(GT)	HPA

1. Confirmation of Previous Meeting Minutes

No minutes from previous meetings were available for signing

- 2. Resolution** “To agree on the need to obtain legal opinion on the calculation of interest on overdue amounts receivable and their collection under Discovery Bay Deed of Mutual Covenant (“DMC”) and release the necessary funds”. This item was covered after item 3

ER read the resolution

1. CM takes our money to go (Please translate for Alice -it is important. Alice
 2. we have a large outstanding debtor, and the DMC gives us the right to collect the money
 3. I sense that CM are trying to break down the DMC . It is important that this is not allowed to happen
 4. Final reason. We have to charge the interest and it is clear in the DMC that it is compound interest
- and then sought agreement on the reasons for doing this

Nigel Let me tell you what the brief will be

We have no right to take X when we should have charged a greater amount Y

Nigel read from the DMC

ER we feel that the village should pay it although we will ask the COC. There is a

It could be turned down at COC level.

Lets do this resolution

Did Alice understand ? yes

ER repeated the resolution

Proposed M Mg

Seconded J Antweiler

100% FOR NIL AGANST NIL ABSTAIN

3. Mr. Andrew Burns invited to make a presentation on apparent Misallocated Undivided Shares

and answer questions pertaining to its possible effect for Hillgrove

Mr. Burn's powerpoint presentation is attached and forms part of the minutes for this meeting,. These are the main points and comments associated with the slides arising from questions from the Hillgrove VOC:

LAND GRANT 1976 – MASTER PLAN

DB is unlike any other development - there is no lease for the DB development - it is a land grant issued in 1976 with a number of conditions.

In the case of a lease the maximum development is described in the lease.

In the case of Discovery Bay there is a Master Plan, which forms part of the Land Grant. There is a maximum but defined by a Master Plan, and the Master Plan can be changed. The master plan outlines areas for residential, commercial XXXXXXXX, but allows considerable flexibility as to what can built, or not, within these XXXX

When a DMC is signed under a lease, what is or will be developed is already defined.

In Discovery Bay the developer can build within the Master Plan but if the developer wishes to change or extend the development go to Government it has to go to Government to ask to change the Master Plan. This is what is currently happening for 6f and 10b, the developments at the Plaza and next to the or even ask to extend the development.

Discovery bay is a single lot [lot 385]. Big lots are not unusual . example : Coastal Skyline , Caribbean Coast etc They are under a lease and DMC knows the what is, or will, be developed.

DEED OF MUTUAL COVENANT - DMC 1982

First owners entered into a DMC. Subsequent owners assumed the responsibility.

The parties hereto have agreed to enter into this Deed for the purpose of making provisions for the management, maintenance, insuring and servicing of the Lot, the City, and the Village, and its equipment, services and apparatus and for the purpose of defining and regulating the rights, interests and obligations of the Owners in respect of the Lot and the building and to provide for a due proportion of the common expenses of the Lot and the City to be borne by the Owners.*

* The parties are the developer HKR, the Manager, the Owners

The Principal DMC and the sub DMC's for the villages can be found at www.dbconfidential.com

DEFINITION OF MANAGEMENT UNIT

Expenses shared on the basis of Management Units = MU

The Management Unit is defined in the principal DMC :

“Every 10 sq.m. of a unit, whether commercial or residential, forms a Management Unit...”

GBA – GROSS BUILDING AREA
GBA unique to Discovery Bay

GBA is defined in the DMC

GFA – GROSS FLOOR AREA
GFA is the norm for HK

The GFA is defined in the Building (Planning) Regulations

Both GBA and GFA

- are based on size (outside wall to outside wall including common area)
- the wording in both definitions is almost identical

However only GFA disregards service areas, so when there is a service area, the GFA will be smaller than the GBA

MANAGEMENT UNITS ALLOCATED TO THE AUBERGE

6

On the Auberge project :

the MU have been allocated based on GFA, as if a GFA is the same as GBA

The disregarded area = the understated GBA = 985 sq ft = 96 under allocated MU

Confirmation

The Authorized Person, employed by HKR, found an area of 25,883.911*sq ft + 2588 MU

MU quoted in a budget 1 March 2013 + 2600 MU

The areas denoted as service facilities have been subtracted from the total area of the AUBERGE in the calculation made and signed by the Authorized [AP]

It seems that the understated GBA (HENCE MU) value was missed by :

- a solicitor, who swore on oath that everything was correct (for resale documents)
- the AP, who understated the GBA, and consequently the MU for the AUBERGE
- CM, who failed to protect the interests of owners
- CM, who apparently continues to defend the interests of the developer

Observations

The government department involved [LACO] relies on the AP for approvals

The Auditor [KPMG]

There are possibly similar misstatements connected with Chianti, Amalfi, Positano, and the Plaza residential units.

To calculate an allocation based on GFA, as if a GFA is the same as GBA would normally to be seen as professional misconduct

To say the GBA and the GFA are the same, or to overlook it, is to say black is white.

Government records show the GFA with disregarded area - 25,883.911sqf

CITY MANAGEMENT COUNTER ARGUMENTS AND RESPONSES

In various communications CM is defending its position in various ways:

Neither the AUBERGE* nor the commercial units are residential village so the GBA from the DMC does not apply.

The GBA is only one reference, but not the sole reference (Vincent Chua, Director of DBMSL [CM])

(* The hotel has a vote on the COC and uses it often on matters concerning finance)

The hotel has no obligation to contribute anything to the City Fund.

The hotel only contributes management fees** to the City Fund as a matter of fairness to the other Owners.

(** CM presumably issues a bill to the AUBERGE based on MU ?)

CM's whole purpose is to uphold the DMC **for all owners**

CM has an obligation collect Management fees from all occupiers

"Every 10 sqm is a management unit [MU] ". Nothing in a building is disregarded

I think it is important that in the future things have

Cm followed what had been approved by the LACO. but LACO does not

Auditor not us but we will gave you something

(flexible system - flexible on where (and to some extent what) not flexible on the 560,000 sq meters + reserve on the full extent

UndividedShares

- 7 – The Lot has been divided into 250,000 Undivided Shares
- 8 – These shares have been allocated to specific uses
- 9 – Only Reserve Undivided Shares have no specific use
- 10 – Development is limited by the available Undivided Shares of a given use

WE are paying for them. We are subsidising. No deductions have been made on Beach or Headlands . These villages are paying on GBA.

K do the clubs

(on completed buidlings)Government does not approve allocation, takes no responsibility and does not guarantee the calculations.

Implications in the accounts audited by KPMG - Note there is an allegation that the accounts may not be free from material misstatement, whether due to fraud or error.

(Note13) in the Audited Accounts is There . Currently denied in a letter from Vincent Chua 26 January 2016

Existing uses being changed

You do not own the land under your building - your shares are in the lot as a whole

In the past it was difficult to know if the shares had been allocated properly How do you know how many units are allocated to We get a number from HKR.

The Auberge. I new

The share regime in DB is flexible - the allocation is not fixed - only to uses...Reserve undivided shares can only be allocated when the others are used up

So residential when they run out they can only plunder any reserve shares that are left over.

You own the land in the plot but not the land under the building . You own the building

The under allocated undivided - under allocate shares amount to Mldvales and Neo Horizons combined

ACCOUNTS AND AUDITS

The overall contribution to the City Fund is correct, however should the arguments above be sustained, the AUBERGE (and other developments, such as Amalfi, Positano) does not contribute its full share to the City Fund, due to the understated GBA.

Past errors will be complex to correct, however the proper balancing of contributions to the City Fund should be relatively easy to calculate and should be put into effect as soon as possible.

After this possibility came to light there are, or are likely to be, consequences

a number of things a number a things KPMG will have something to say
Material misstatement in an Audited Account is a serious offence.

Note 13

Right now we do not have an auditor

WE have only one response - only one reply to the tender.
We are covered by the framework

JA rebalancing
Auditor has to come up with a fair opinion

Auditor KPMG required the Developer a note 13 . State the method of allocating shares CM are responsible for Auditors have a boilerplate - pushing responsibility to the Mistatements etc

K. - we absorb carparks and retained area ? What HKR does is licence the retained area for their enjoyment at your expense . This is
Will you ever go back to get it. Fund accounts - we are not Company Accounts we are

EFFECT SPECIFIC TO HILLGROVE

Understated MU in the case of the AUBERGE (and possibly other areas), will have effects on

other villages.

The understated MU translates into lower contributions to the City Fund which are made up for by overpayments from certain villages to restore the balance.

The full extent of understated MU remains to be calculated assuming the problem extends beyond the AUBERGE.

Considering the Auberge and Hillgrove Village participation in the annual city expense of 46,000,000 HKD, it appears that Hillgrove is currently over contributing by around 75,000 HKD per year. This goes back to the opening of the AUBERGE (2005) are consequences of the their hearts. Hillgrove - Garden Area is retained area. It is not common area. HKR continues to own it.

Rough calculation for all of the villages . City expenses 46,000,000

EF ? city expenses 46,000,000 shared to go to CM account. Estimate for Hillgrove 75,000 over the years since 2012

Last year audited accounts = 46.000.000 shared by all villages - under allocation not huge in the overall scheme

ER your village about 130,000

OTHER NOTES

Maria Lam the section - LACO - correct allocation can not be guaranteed by LACO >> authorised person

AP Peter Cheung

HKR has allocated retained area shares form greendale to Sienna 2A > Someone was not looking and Government accepted

When a building is sold in its completed state, no approval necessary from LACO ***
LACO approval is necessary to sell off the plan.

*** were they trying to legitimize what they knew they were doing ?

Peninsula

NR

Some villages have underpaid

AOB

Unable to Develop the Tennis Club Lawn

Since it is late I will not read out what I think is our position on the new Developments - I will circulate my notes and let me have your comments. I will send my proposed letter Consolidated from my notes at the last VOC

18,000 to 29,700 ? In theory 61% increase in traffic

Cost of sewage system if we are not careful we will pay for it

K The more I hear the more I want to leave this space