COLLECTIVE REDEVELOPMENT

The invention relates to collective redevelopment of property as a means of property enhancement.

As many old properties have not been built to maximise the allowable limit under the law, resulting in under-use of the land space on which they have been built, it has become possible and profitable for owners units in such properties to agree to sell together all their units to a developer. Such a sale enjoys a premium in the sale price of the units over and above the price at which an individual sale of a unit could fetch. Such sales are known as "en bloc" sales.

Since the late 1990s, especially after 1998, when legislation was introduced to allow for en bloc sales where owners of less 100%, but more than 80%, of the share values agree to the en bloc sales, a fair number of en bloc sales have taken place.

However, there are many problems which have prevented en bloc sales for cash from succeeding. The present invention seeks to address these problems, and provides solutions to them, with the view of enhancing the probabilities of the success of en bloc transactions.

One problem is the long timeline for the owners to be paid the proceeds of the sale. En bloc sales first require the agreement of the owners of 80% of the share values. This itself takes a long time. (The current law prescribes a maximum period of 12 months from the date of the first signature to the date of the signature by the 80th percentile owner.) After the agreement of the owners of 80% of the share values has been obtained, it can take up to another 12 months to file the required application to the Strata Titles Board (STB) for an STB order. An STB order must be obtained to compel any owners who are not in agreement to sell their units. Obtaining the STB order takes 4-7 months and upon obtaining the STB order the transaction may take a further three months to complete before the payments are finally made.

Another problem is that during the long timeline when owners have yet to be paid, they perceive that the property market may be on an upward trend, so that by the time they are paid the proceeds of the en bloc sale, the prices of the replacement properties may have increased.

Especially in the case of owners who own prime land, the perception is that

by the time they are paid the proceeds of their en bloc sale, the prices of replacement may have gone beyond their reach. Therefore, they may have to downgrade their homes or investments to a less desirable or less prime area. This problem has been exacerbated by the government relaxing the rules regulating the ownership of residential properties in Singapore, such that a foreigner may own any residential property in Singapore, with the exception only of 'landed properties', that is, properties the ownership of which involve title to a piece of land, which is not shared with any other co-owners as a matter of law. These measures are aimed at making the Singapore property market more attractive to high nett worth individuals.

The result of these measures is that land situated in prime areas, especially in and around Orchard Road, has appreciated in value substantially. Owners of such land are reluctant to sell it even at prices which are considered good in the current market condition. The reason is that the owners perceive that such land is cannot be replaced, and once sold, they may not be able to buy it again in the future.

In an en bloc sale for cash, because of third party costs it is impossible for an owner to buy an equivalent replacement unit in the redevelopment on the same site with the money that he would be paid. The third party costs are deducted from the gross development value (GDV).

These reasons mean that there is often an insurmountable difference between the owners' reserve price and the bid price and in some cases the owners are not prepared to sell at all. As a result, there is often no way of proceeding with en bloc sales for cash in these situations.

A further problem is that developers who buy such en bloc sites usually have to pay a substantial sum of money for the land on completion. This means that they have to procure a substantial loan to fund the purchase, as well as to procure a large sum of money as equity. As a result, only the developers who have access to substantial equity and loans are able to buy such sites, leading to less competition, and thereby lesser purchase prices being offered for such sites, especially large sites in prime areas. If the price of land were to depreciate, this would mean a corresponding depreciation of their land purchase prices, without a corresponding decrease in their debt or interest burden. The debt of course remains at the same amount unless repaid, and developers would not be able to repay the debt unless they are able to sell the

redevelopment.

The present invention is set out in the claims. The invention addresses the problems as discussed above, as illustrated by the following examples. Accordingly the invention comprises a tool which can be used in trade and commerce and which indeed will promote and benefit trade and commerce, in particular in relation to property development.

The invention applies to a situation where a group of two or more owners of units in a property where each unit has its own separate title wish to redevelop the property. The property may be a multi-storey building, consisting of flats or commercial units with separate subsidiary strata certificates of title comprised in a strata titled plan or separate subsidiary certificates of title, or separate long leases.

In such a development, at least some of the various owners of the units agree with a developer to redevelop their site (a 'collective redevelopment scheme' (CR)).

Under the agreement, each of the owners is entitled to a new unit or units in the new redevelopment. The owners are able to sell their respective entitlements to the new units, or to deal with them as they think appropriate. The developer is entitled to some of the new units in the redevelopment, as consideration for undertaking and bearing the costs of carrying out the redevelopment. Under the CR, the owners are not selling their land. Instead as landowners, they invite developers to build on it.

If any owners do not agree with this exchange, a 'mixed en bloc' arrangement may be used, where the owners not in agreement are given a cash out option. This requires the agreement of 80% of the owners, as in traditional en bloc methods.

Where there will be material enhancement in a redevelopment over and above the current built up area of the development, the developer may offer to the owners areas which are in excess of the current areas of the units. This excess means profit to the owners. The excess may be paid in the form of cash, in lieu of the additional areas.

Further, enhancement may be 'created' where none would otherwise exist. In multi-storey developments, there are situations where the existing developments have utilized the full, or nearly the full, extent of the development potential of the land. In other words, the existing developments have already maximized the plot ratio of the

land as allowed by the authorities.

In these situations, there is no 'enhancement' to speak of for collective sale purposes, and owners would not be able to enjoy any enhancement in a collective sale for cash. Therefore current market practice is to leave these sites out for collective sale purposes.

However, under the collective redevelopment scheme, the owners may agree to be allocated an area in their new units which is less than the current areas of their old units, and agree to allocate the difference in the areas of the new units and the old units to the developer. In this way, the difference becomes the 'enhancement' needed to cover the costs and profit margin of the developer, thus making the scheme commercially viable to the developer.

Although the new units which the owners receive in such situations are smaller than that of their old units, the value of their new units is generally much higher than their old units and they can fetch higher rentals.

The application of the scheme to a multi-storey development with separate ownerships involves the application of the relevant laws relating to strata titles or leases to the flats, distinguished from the ownership of landed properties which are usually comprised in single titles and ownership.

Section 84A of the Land Titles (Strata) Act (LTSA) (Cap 158) governs the situation where there is 80% or more consensus amongst the owners, but less than 100% agreement to the redevelopment scheme.

In the latter situation, the owners who disagree to the scheme and are given a cash out option are 'the minority owners'.

Applying the language of section 84A, the majority owners (i.e. the owners who agree to the scheme) are paid for their old flats or units 'in kind', whereas, the minority owners are paid for their units 'in cash'.

The detailed and precise terms of the agreement between the owners and the developer depend on negotiation, usually after competitive bids have been made by the prospective developers. The agreement may be such that the owners are not required to pay any costs of the redevelopment.

Once the owners agree, or over 80% agree, tenders are invited from prospective developers to redevelop the property. The parameters within which the

developers may be asked to compete for the redevelopment may be as follows:

(1) The minimum unit entitlement of each owner in the next development in exchange for the present strata title areas would be prescribed. The tenderers will compete to allocate larger areas of entitlement.

(2) If there is not 100% agreement, the minimum amount of the cashout value is to be stated. A developer, in order to clinch the deal, may be prepared to offer a higher cashout value.

(3) The minimum building costs per square foot would be prescribed in order to ensure quality construction.

(4) A minimum circulation area would be prescribed to ensure a spacious development, as opposed to a cramped one.

(5) The minimum common facilities, such as, a swimming pool and tennis courts, would be prescribed.

(6) A configuration of the new units in the redevelopment would be prescribed, such as, the minimum number of bedrooms in a unit, and the minimum area of each unit, in the development.

(7) Rent subsidies or other deals for accommodation of the owners whilst development is in progress.

Under the CR scheme the chances of a successful deal being achieved are enhanced because of keen competition amongst developers for performing the CR. This is due to the cost advantaged discussed below. Furthermore, even if there is no deal possible, then less energy and efforts would have been expended to procure the 80% consensus and to find a bidder than with traditional en bloc sales for cash.

Conventionally the agent firstly uses the residual land value method discussed below to calculate a reserve price, as discussed above, then tries to procure 80% consensus (required under the current law) amongst the owners. If such consensus is achieved, then the agent invites for tender. Therefore, if either the 80% consensus is not achieved, or if there is no bid price which reaches the reserve price, the deal fails, after a great amount of energy and efforts.

In contrast, with CR, the owners may give a mandate to seek expressions of interest (EOI) from the developers. Under the CR, all that is needed to proceed is a mandate from a small number of owners. This mandate is then used to procure the EOI. A number of developers, for example three, may be selected and they then pitch for the redevelopment directly to the owners, competing against each other in the deal they will give the owners. After the EOI, the selected developer may negotiate directly with the owners.

In this way, the process may be started before the agreement of 80% of the owners has been achieved. The EOIs from the developers may then persuade enough owners to agree to achieve at least the 80% agreement required. If enough agreement is not achieved at this stage, the selected developer may persuade enough owners to agree. Owners are more likely to be persuaded of the merits of the scheme by developers, who back up their commitment with funds, than they are by, for example, consultants advising on the merits of the scheme.

If there is 100% agreement, then there is no need to transfer the land to the developer, thereby saving the stamp duty on the transfer of the land. If the land is not transferred to the developer, then the owners do not risk losing their land if the developer is to become insolvent, or where the developer's mortgagee forecloses on the land. This has happened in a number of cases in Singapore, involving 'landed property'.

Even if the land has to be transferred, in a mixed en bloc, the owners agreeing to the exchange may have their land protected, by requiring the developer to declare a trust. The developer holds the owners' rights to their new units under trust to the owners. The trust may be registered by way of caveats. This prevents the land from falling into the hands of creditors if the developer collapses financially. Further, the developer would be acting in breach of trust if it were to mortgage the land rights to a bank and the bank, having been notified of the beneficial rights of the owners in their units, would then be a guilty party to a breach of trust. The bank would then be unable to enforce its mortgagee's rights to the owners' units.

The scheme enables the saving of various third party costs which would be incurred in a collective sale for cash under section 84A. These costs have the effect of reducing the 'residual land value' of the site. The saving of these costs mean that there

is more value to be shared amongst the developer and the owners.

The costs which may be saved include:

(a) interest costs on the costs of purchasing the land by the developer in a collective sale for cash. The developer need not source for loans to purchase the land, typically about 80% of the land purchase costs. It also saves on the interest on the loan, which under this scenario is not needed. It also saves having to procure 20% of the purchase costs, which would usually be required by the bankers, before any loan is extended to him in the purchase. This resolves cash flow substantially for the developer.

(b) Stamp duty (if there is 100% agreement)

(c) Marketing costs of the redevelopment. As the developer need only market for sale his share of the newly redeveloped units, it should not be able to charge marketing costs of the entire redeveloped units as a negative item on the residual land value calculation.

(d) If the developer is the contractor which builds the redevelopment, it can manage the construction costs. Indeed, it would already make a profit in the construction of the project. It can take into account the profit he would make in the construction.

In the residual land value (RSL) calculation conventionally used to calculate a reserve price for selling, the efficiency of the redevelopment is usually pegged at less than 100%, when in fact the efficiency is usually more than 100%, after taking into account the 'bonus gross floor area (GFA)', which could be used to build balconies, ledges for air-conditioners, bay windows and planter boxes. By 'bonus GFA' is meant the additional gross floor area of the redevelopment of the land which the developer is allowed to build, over and on top of the area arrived at by using the formula of (area of land times the plot ratio).

The RSL reduces the value of the land because the 'third party costs' are all passed on to the owners, thereby effectively reducing the value of their land. Further, if the owners sell their land in a collective sale for cash, the 'bonus GFA' is not credited to the value of the land.

Under the CR, because of the savings and the bonus GFA, the value of the owners' new units is substantially higher than the cash amount they would receive in a en bloc sale for cash. The savings and bonus GFA are passed onto the owners. Thus, there are three levels of values for an owner of an existing unit:

(a) the value of a sale of the old unit for cash on an individual basis;

(b) the value of an old unit in the development if sold on a collective basis;

(c) the value of the sale of the entitlement to a new unit(s) at the same realizable price as used in the residual land value calculation.

Of the three, (b) is higher than (a), and (c) is the highest, if the same realizable value is used for the computation of (c) as used in the calculation of the residual land value.

The scheme also allows existing encumbrances on the owners' old units to 'cross over' to the owners' entitlements to the new units. The traditional method of assigning the entitlements under contract is applied, coupled to a mortgage in escrow, as the 'temporary' security pending the issue of the title to the new units.

From a developer's point of view CR is preferable because they do not have to pay substantial upfront land costs, and they have in effect, sold the redevelopments in part in the form of the units to be allocated to the owners.

The developer's cost in a CR may be limited to the construction costs and the 'soft costs', e.g. the architect's and professional fees. These costs can be as low as Singapore $300 per square foot of the new area.

An example of the application of the scheme is where the original developer retains more than 20% of the development, thereby making its agreement to any en bloc transaction necessary. The developer may not agree to any en bloc transaction which would render it liable to income tax for the enhancement in the value of its more than 20%. For example, the developer may not agree for any cash sale for its more than 20% for the reason that it would then be liable for tax for the profit that it makes on the sale. By undertaking a CR for the development, the developer is entitled to a part of the redevelopment and the enhanced value of its new units would not render it liable for tax.

It will be seen, therefore, that the invention both identifies problems associated with existing arrangements of an en bloc sale for cash only and provides

solutions to those problems. Although the situation is discussed with particular reference to Singapore, it will be seen that it is applicable to any situation in which a plurality of owners of a property of any type require a level of certainty in relation to their entitlement following an enhancement of that property. In states other than Singapore, similar considerations will arise where there is equivalent or similar legislation and it will be seen that the methods and calculations outlined above will be appropriate for any such set of circumstances.

CLAIMS

1. A method of apportioning enhanced units of a property comprising a plurality of units to be enhanced, each unit having a separate title, the method comprising the steps of:

allocating a title holder of each unit, for at least some of the units, at least one enhanced unit; and

allocating a developer who will carry out the enhancement of the units at least one enhanced unit.

2. A method according to claim 1, wherein at least one of the enhanced units is allocated to the title holder of every unit.

3. A method according to claim 1 or claim 2, further comprising the step of allocating a title holder of at least one of the units a cash payment amount for that unit.

4. A method according to claim 3, wherein the title holder of at least one of the units is allocated a cash payment amount addition to at least one enhanced unit.

5. A method according to claim 3, wherein the title holder of at least one of the units is allocated a cash payment amount instead of at least one enhanced unit.

6. A method according to any preceding claim, wherein the at least one enhanced unit is allocated to the developer as consideration for the developer enhancing the plurality of units.

7. A method according to any preceding claim, wherein the property is a multi-storey property.

8. A method according to any preceding claim, wherein the separate titles include separate subsidiary strata certificates comprised by a strata titled plan,

separate subsidiary certificates of title or separate long leases.

9. A method according to any preceding claim, wherein at least one of the title holders is allocated at least one enhanced unit with an area larger than the area of the corresponding unit to be enhanced.

10. A method according to any preceding claim, wherein a total area of the at least one enhanced unit allocated to at least one of the title holders is larger than a total area of the units of that title holder to be enhanced.

11. A method according to any preceding claim, wherein at least one of the title holders is allocated at least one enhanced unit with an area smaller than the area of the corresponding unit to be enhanced.

12. A property development scheme for a property comprising a plurality of units, each unit having a separate title, in which enhanced units of the developed property are apportioned by allocating a developer at least one enhanced unit and each title holder of a unit either at least one enhanced unit or a payment amount for that unit.

13. A scheme according to claim 12, wherein a title holder who agrees to the development is allocated at least one enhanced unit and a title holder who does not agree to the development is allocated a payment amount.

14. A scheme according to claim 12 or claim 13, wherein the title holders are not required to pay the costs of the development.

15. A scheme according to any of claims 12 to 14, in which at least some of the title holders ask for at least one expression of interest from at least one developer.

16. A scheme according to claim 15, wherein the at least one expression of interest is used to persuade at least some of the title holders to agree to the scheme.

17. A scheme according to any of claims 12 to 16, in which developers compete with each other in giving at least one proposal for the scheme to at least some of the title holders.

18. A scheme according to any of claims 15 to 17, wherein the at least one developer pitches directly to at least some of the title holders.

19. A scheme according to any of claims 12 to 18, wherein at least one of the enhanced units is allocated to the title holder of every unit.

20. A scheme according to any of claims 12 to 19, wherein a chosen developer persuades at least some of the title holders to agree to the scheme.

21. A scheme according to any of claims 12 to 20, wherein a title holder of at least one of the units is allocated a cash payment amount for that unit.

22. A scheme according to claim 21, wherein the title holder of at least one of the units is allocated a cash payment amount addition to at least one enhanced unit.

23. A scheme according to claim 21, wherein the title holder of at least one of the units is allocated a cash payment amount instead of at least one enhanced unit.

24. A scheme according to any of claims 12 to 23, wherein the at least one enhanced unit is allocated to the developer as consideration for the developer enhancing the plurality of units.

25. A scheme according to any of claims 12 to 24, wherein the property is a multi-storey property.

26. A scheme according to any of claims 12 to 25, wherein the separate titles include separate subsidiary strata certificates comprised by a strata titled plan, separate subsidiary certificates of title or separate long leases.

27. A scheme according to any of claims 12 to 26, wherein at least one of the title holders is allocated at least one enhanced unit with an area larger than the area of the corresponding unit to be enhanced.

28. A scheme according to any of claims 12 to 27, wherein a total area of the at least one enhanced unit allocated to at least one of the title holders is larger than a total area of the units of that title holder to be enhanced.

29. A scheme according to any of claims 12 to 28, wherein at least one of the title holders is allocated at least one enhanced unit with an area smaller than the area of the corresponding unit to be enhanced.

30. A scheme according to any of claims 12 to 29, wherein if there is less than 100 % agreement to the scheme by the title holders, the developer is required to hold any land transferred to the developer in trust.

31. A method of obtaining agreement to a property development scheme of at least 80% of title holders of units in a property, the method comprising the steps of:

asking for at least one expression of interest from at least one developer;

persuading at least some of the title holders to agree to the scheme by means of the at least one expression of interest.

32. A method according to claim 31, further comprising the step of choosing a developer to perform the scheme.

33. A method according to claim 32, further comprising the step of the chosen developer persuading at least some of the title holders to agree to the scheme.

34. An invitation to tender for enhancement of an existing property comprising a plurality of units to be enhanced, each unit having a separate title, the invitation to tender stipulating an allocation of at least one enhanced units to a developer which

will carry out the enhancement of the units.

35. An invitation to tender according to claim 34, the invitation to tender further stipulating that if less than 100% of title holders of the property agreement to the enhancement, any land transferred to the developer is held in trust by the developer.