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18th March 2015

STRENGTHENING AUSTRALIA'S FOREIGN INVESTMENT FRAMEWORK OPTIONS PAPER FEBRUARY 2015

This submission follows my submission to the initial Enquiry and the additional information sent direct to the Chair following the Enquiry's closing date.

This submission and the previous correspondence are based on a residential area of Sydney, NSW, of high amenity, which has experienced and continues to experience a high level of activity of overseas money - be it for commercial sites, existing homes/sites and apartment blocks. The great majority of the many apartment blocks already constructed have been built especially for overseas interests.

It is widely recognised that the many and prestigious schools, both in the public and private sector in this area provide an added attraction to a culture that values an Australian education. This area is on a similar time zone to Asia for easier communication as some families live here with the bread winner remaining in Asia making periodic visits to the Sydney based family. This is relevant as the income is continuing to be derived from a more favourable tax system than the Australia tax system.

My vested interest lies in the worry of wondering if my children will be able to afford a home in which to raise a family.

This submission will respond to some of the questions posed in the Options Paper (the Paper).

However, there are statements and assumptions in the supporting material within the Paper that are arguable and therefore require comment/feedback and addressing -see page 2.

THE OVERALL SITUATION – A CRISIS

► **Crisis Point for residential real estate:**

The former NSW Governor Dame Marie Bashir was reported in the Sydney Morning Herald (Wednesday March 11 2015 pages 1 & 7) as speaking at an International Women's Day event in Sydney that *the destruction of farmland is a "**crisis**" that must stop, adding I have never been so emphatic or political in my life."* Dame Marie's fears about *foreign ownership of Australian land* are reported as bringing out her "nasty side". (Emphasis added).

Taking the area in which I live as an example, I submit that the issue of foreign ownership of residential land is also at a crisis point, as the impacts of selling off Australian residential land to overseas money are wide-ranging, far reaching, virtually impossible to reverse and have many strong negative impacts on Australians and this country. Further, adding to the crisis, the influx of overseas money is predicted to rapidly increase.

It is long overdue to combat the negative impacts. Accordingly, Australia Foreign Investment Framework needs to be strengthened considerably, without fear or favour. The action needs to be swift, precise, effective, loophole-proof and all encompassing.

> **Agent 1** Sydney's North Shore Feb 2015: "49% of my sales last year have been to "Asians." They will not be beaten at an auction." (in other words – there is always more money to outbid other would- be buyers.)
>
> **Agent 2** Sydney's North Shore March 2015: "The last ten homes we have sold were to "Asians" who have purchased without emotion."
>
> **Agent 3** Sydney's North Shore March 2015; The unsuccessful local aspiring home owners are disheartened as they are outbid time and time again . Our son (who has been unsuccessful in a purchasing a home) has now moved to Perth.
>
> **Agent 4** Sydney's North 2014: The "Asians" put money on the table and say *that is what I will pay for the property* – i.e. it does not need to go to the planned auction, trying to cut out other would-be buyers.

- It is not a level playing field as the money earned in Australia under this country's tax system is unable to compete in purchasing property against money earned under a more friendly tax system of another country.

- It is not a level playing field trying to compete with dirty money being laundered through land and home purchases in Australia as reported in the special investigation article in *AFR Weekend 25/26 October 2014* headlined on the front page and reported upon on pages 14 and 15. After the heading *Dirty Money Next Door* the sub heading reads *"Australia is a popular hiding place for corrupt Chinese officials to hide their money"*

  http://www.afr.com/p/special_reports/opportunityasia/how_chinese_fortunes_are_hidden_EQ7mBdl8pJh7Hy3q9aw6qO

- **The offshore money secures the property by outbidding the local money.**

STRENGTHENING AUSTRALIA'S FOREIGN INVESTMENT FRAMEWORK OPTIONS PAPER February 2015

COMMENTS ON SUPPORTING MATERIAL IN THE PAPER.

► Arguable assumptions are made in the supporting material of the Paper.

1. INTRODUCTION Page 1

There are assumptions in the Introduction that are arguable and need to be reconsidered in considering strengthening actions:

Introduction Point 1

It is arguable to always assume, as is stated in first dot point, ***that foreign investment improves consumer choice;*** and it is arguable to state that it ***promotes healthy competition.***

> In our area, under successive NSW Governments' and bureaucracies' urban densification policies for Sydney, a **massive proliferation of apartment blocks** developed for overseas investors has occurred**.** Very few, if any, villas, townhouses, smaller houses – real housing choice – have been constructed. This foreign investment has **not improved *consumer choice.***
>
> Neither is this foreign investment healthy ***competition.*** There was little evidence of the apartments ever been marketed in Australia with the apartments sold off the plan to foreign investors. **There was no opportunity for competition, let alone *healthy competition*.**
>
> The urban densification polices, therefore, have been more about providing opportunities for land banking for overseas money than about providing housing choice for consumers.

Given the arguable nature of the above assertions in the Introduction the basic premise on which foreign investment is invited needs to be reviewed and addressed.

Introduction Point 3

This Point acknowledges there is *"**growing*** community concerns around residential real estate in recent years, especially in the context of rising house prices in major cities."

Effective, loophole-proof action must therefore be taken *urgently*, to meet this issue

2. AUSTRALIA'S FOREIGN INVESTMENT REVIEW FRAME WORK PAGE 3

(*Emphases added*)

► **Considering foreign investment proposals; acknowledging the importance of proposals not being contrary to the "national interest".** It is noted in:

- Point 10: "that the Foreign Investment Review Framework consists of the *Foreign Acquisition and Takeovers Act 1975* (the Act), its associated Regulations, and Australian Foreign Investment Policy (the Policy) and that this framework allows the Government to review foreign investment proposal on a case by case basis to ensure they are **not contrary to the Australian national interest** ."

- Point 11: that the "Act allows the Treasurer to block a foreign investment proposal found to **be contrary to the national interest,** or impose conditions on an investment to **address national interest** concerns."

- Point 13: that "the Foreign Investment Review Board (FIRB), a non statutory advisory body, is responsible for examining proposals and advising on the **national interest implications** of investment proposals."

- Point 14 the Paper advises "the **national interest,** and hence what would be contrary to it, is **not defined** in the Act."

Query: Is it satisfactory, in the circumstances, not to have "national interest" defined?

National interest implies "Australia-ism" -our Australian culture and identity. It is not in the **national interest** to lose it to Asian - led property investment as a recent example in the "Business Spectator" reports below:

Asian investors are transforming Melbourne's CBD

16 *MAR | 8:25 AM | ROBERT GOTTLIEBSEN*
*Asia*n-led property investment in Melbourne's apartment sector could see the city become the next Hong Kong.

In the absence of a definition of national interest, the Options Paper advises that the Policy outlines the factors that are typically considered when assessing foreign investment proposal in any sector. These include:

- **Competition**,
- **Impact on the economy**
- **Impact on the community.**

These factors need to be fully addressed if the Foreign Investment Framework is to be strengthened in the "national interest" as it is obvious that the "national interest" has *not* been considered as evidenced by the following.

- **Competition: Unfair**

  It is not in the national interest if foreign money and investment is creating a greater competitive market for available property. It is an almost inescapable consequence that prices in the market will rise as a result of that competition – across the housing spectrum. The impact of rising prices is not restricted to young home buyers. **Increasing the supply is not the complete answer as overseas money will simply buy more.**

  Unfair competition currently exists because it is offshore money amassed under a more friendly tax system versus money earned under Australia's more heavily taxed system.

  Unfair competition exists when the overseas money could be coming from the rivers of laundered "dirty money."

  Unfair competition exists when overseas money arrives here by other "un-chartered" means.

  Unfair competition exists when overseas money finds a way to invest by working with family and friends in Australia- in some cases **to buy unlimited number of dwellings.**

  > See article on page 9 "**Asked how they are getting around the rules, the agent said they respond 'you don't have to worry about that.'"**
  >
  > See article on page 11"**They come in weekly with literally suitcases with a $1 million, $2 million in cash," the agent told Greenwood, who had the agent's identity checked, but not revealed on air.**
  >
  > **"The one thing they say is we don't need a bank, we can settle in two weeks."**
  >
  > **Asked whether they were buying new or established homes the agent said: "Anything."**

- **Impact on the Community: Negative**

  It is not in the national interest if the community is being adversely impacted as outlined in the following:

Community forced to relocate:
Families hoping to buy in the area where they grew up, have their roots and family support (as happened prior to the competitive impact and onslaught of overseas money) are now no longer able to do so even at the modest home level (later to upsize) as they are unable to compete with the offshore money. Now they are being beaten even at this entry point. The forced dislocation with its attendant negative factors e.g. separation from supporting family is not in the national interest.

Community stressful impacts spreading:
Those who are able to purchase a home are invariably helped monetarily by parents (grand parents) thereby placing an extra stressful burden on the older generations' diminishing incomes.

With both parents invariably working in an effort to raise enough money to compete (unfairly with off shore money) there are increased demands for limited but expensive child care facilities or again, grand parents are recruited to child mind or finance child minding. This equates to added community stress.

Community suffer Loss of Sense of Place
The off -shore money influx of apartment buildings accommodating the overseas investors has bulldozed the valued and valuable character and heritage values of the area that existed prior to that influx. (Developer's names can be provided.) Change is acceptable, but not the rapid, extreme, destructive changes experienced with this onslaught. The community's Sense of Place has not been respected. Character and heritage homes (and gardens) which could have been conserved or adaptively reused are now no longer. Loss of Sense of Place is a recognised stress.

Point 15 Refers to additional **national interest** factors namely "biodiversity" and "employment and prosperity in Australian local and regional communities" that are typically considered when considering foreign investment proposals in agriculture**.** I submit that these issues are not limited to agricultural land and should also be included in assessing residential land impacts**:**

Biodiversity
Loss of biodiversity is occurring in my residential area where the established, nationally significant, mature tree canopy (including endangered species), wildlife habitats and corridors linking surrounding national parks have been bulldozed to make way for apartment blocks sold off the plan to overseas investors.

Employment and prosperity in Australia's local and regional communities
Town (and country) people are unable to prosper if they are forever chasing the ever increasing house prices elevated by the overseas competition.

Forced relocation (as described above on page 5) requires quitting previous employment and seeking new employment with attendant disruption to lives and employment. Enforced re- starting is not conducive to secure employment and ongoing prosperity.

2.1 FOREIGN INVESTMENT IN RESIDENTIAL REAL ESTATE

Point 20 states that the "Government policy is that foreign investment in residential real estate should increase Australia's housing stock." **The question has to be asked… For whom?**

- Increasing housing stock for my area with the proliferation of nearly seven thousand apartments to date, with more to come, has been more about increasing housing stock for overseas investors to buy more property– not about providing increased housing stock for the Australian community.

  Most of the apartments in the completed buildings are already owned by overseas money, having been bought off- the- plan. Many of the apartments remain empty.

- It has become apparent that free standing houses, having been purchased by overseas money also remain empty, unused. With this scenario the overseas investment in residential real estate is actually **reducing available housing stock**.

3 PROPOSED RESIDENTIAL REAL ESTATE REFORMS
3.1 NEW COMPLIANCE AND ENFORCEMENT AREA IN THE AUSTRALIAN TAXATION OFFICE.

1. a Yes, a new compliance and enforcement area is required to address concerns with foreign investment framework compliance. The Australian Taxation Office may be the best organisation to deal with the crisis. There should be a network of organisations working with and supporting the Taxation Office e.g. The Federal Police, the Immigration Department, Real Estate Institute of Australia and the FIRB.

2. .a Yes, the Treasurer and the ATO should have the authority as set out on page 8. They should be afforded all necessary records and data.

   b. The new compliance and enforcement area should be funded through the introduction of application fees on foreign investors. Funding could also come from real estate agents. Real estate agents are actively marketing to overseas money and making large profits from high sales.

c. Yes, there is a need for effective scrutiny. The integrity/ reliability of the system is of paramount importance -it should not be compromised for "speed" or "streamlining."

4. PENALTY REGIME

5. INTRODUCING FEES ON FOREIGN INVESTMENT APPLICATIONS

I will not comment on the individual penalties as set out in the tables on pages 9, 10, and 11, or answer all questions separately other than to submit in answer to the questions and the tables that penalties, be they monetary, civil or criminal, must be of a magnitude and of a kind that it is a REAL penalty, a REAL deterrent, not just "as part of doing business."

The press reports on the significant amounts above the reserve price being achieved in the selling of property. For example:

> "Mr McGrath points to the recent sale of an Eastwood house (Sydney) for $1 million over the $1.35 million reserve. The $2.385 million result followed competitive bidding by 16 registered bidders, all of Asian background." (Excerpt from article printed below on page 13).

This example is an indication of the amount of money available and therefore an indicator for the high level of monetary penalties required to be a real deterrent.

With an illegal transaction a real deterrent would be to impose a Criminal Penalty, and that Criminal Penalty to apply to all parties associated with the illegal transaction.

Another penalty, that could be considered, if applicable, is to place limits on visa/citizenship of the offending parties.

The issue of illegal transactions is to be well known, care should be taken in considering leniency where "a foreign investor voluntarily comes forward" page 11. Little/zero tolerance should be afforded to illegal activity.

Page 12 Question 4 Yes the new penalty regimes should be extended to business, commercial real estate and agricultural applications. There should be no exceptions.

Answers to other questions are provided by commentators in the reprinted articles on pages 9 to 15.

6 ADVANCED OFF- THE- PLAN CERTIFICATES

6 a Yes, penalties should be introduced for developers that fail to comply with obligations to market domestically.

- They should show evidence of advertisements in the Australian press in English (not just their language press) and not just on their website.
- Advertising in Australia should only be done in the national language of this country– English.
- Promotional for- sale seminars and their like held in Australia should only be conducted in English.

The level of penalty should be high/severe for developers that fail to comply with obligations to market domestically because it is a lucrative business given the proliferation of new apartment blocks built for overseas investors in my area.

AUSTRALIA'S FOREIGN INVESTMENT REVIEW FRAME WORK SEEKS

ALTERNATIVE APPROACHES posed on pages 7, 8, 11, 16, 17, 21, 24, 25, 26, 27, & 28.

- **The below SELECTED ARTICLES are reprinted to:**
  - provide information/opinions on the issue of overseas investments
  - further indicate the crisis facing this country; and to
  - provide some suggestions to alternative approaches in answer to the questions raised in the Paper.

In those articles a few points have been emphasised but they are submitted as a whole to generate some Recommendations for Alternative Approaches.

For example:

- It is noted in the following article (page 12) that:

  "James Sialepis, national director of sales for Meriton, said 15 per cent of all sales in projects such as VSQ North and EON in Zetland were going to **mainland Chinese investors who face tough property investment restrictions in their own country**."

Recommendation: Australia should place tough property investment restrictions on the Chinese investor in Australia. Not to do so, is to not protect the national interest of Australia and Australians.

SELECTED ARTICLES

► Property Investor 5 March 2015

“Mark Mendel, CEO of iBuyNew, the largest facilitated market place for off the plan buyers in Australia, believes **we should double stamp duty for foreign buyers.**

The potential revenue increase should be used to reduce stamp duty for first home buyers (FHBs).

… “The application fee for foreign buyers does not go far enough in my opinion" said Mendel.

"We should look to double stamp duty for foreign property buyers and use this increased revenue to reduce stamp duty for first home buyers.”

“The current overreaction from many in the industry that the proposed application fee will affect foreign ownership of property in Australia is grossly misstated.

“From my experience, the motivation for overseas investors to buy property in Australia is to move funds into a politically stable economy. **(**Emphasis added)

"An additional application fee does not change this.”

iBuyNew has sold over 400 properties worth over $170 million since launching and has over 1,500 apartments available.

► Property Investor 5 March 2015

"Have you ever seen a $1 million in cash," a Sydney estate agent asked the quite surprised 2GB Money News broadcaster Ross Greenwood on his show last night.

"I can't think that I have," was Greenwood's reply.

"It's intoxicating, you can't keep your eye off it" the undisclosed agent advised.

The claim coincided with the unveiling of a federal government FIRB property buying consultation paper, with proposed measures designed to restore confidence in a foreign investment review system that had not prosecuted anyone for breaching the rules since 2006

The agent said he came from an undisclosed suburb heavily populated by people of Chinese origin and also a destination for Chinese investors. Property Observer gathers it may be riverfront inner west Sydney.

"They come in weekly with literally suitcases with a $1 million, $2 million in cash," the agent told Greenwood, who had the agent's identity checked, but not revealed on air.

"The one thing they say is we don't need a bank, we can settle in two weeks."

Asked whether they were buying new or established homes the agent said: "Anything."

"It is happy days for me as I am an agent, but for my kids, your kids and the listener's kids, they have no hope."

Asked how they are getting around the rules, the agent said they respond 'you don't have to worry about that.'

One buyer told him the cash came from camper van trailer factory back in China, when his questioning met his curiosity and obligations regarding excessive cash transactions.

Ross Greenwood wondered how the money gets through Australian customs.

First of all they don't have the manpower nor the most important criteria – the data.

Let's be honest here, the Abbott government decided to announce their 'ferocious' crackdown on foreign buyers simply to distract attention from its decision to back-flip on the Medicare co-payments, and what a smoke screen this proved to be.

Naturally, this was all tied into Foreign Investment Review Board (FIRB) statistics where it was revealed to The House of Representatives Standing Committee on Economics that in the first nine months of 2014 foreign investment had surged 44%. One would seriously have to ask the question is there a hotter real estate market in the world at the moment than Sydney?

For the federal government to forensically investigate all the property transactions and we are talking about millions and millions of transactions the answer is simple – no chance. In 2013-14 alone NSW recorded 860,000 property transactions.

So front and centre we have a $39 million Point Piper mansion that must now find a new buyer within the next 90 days. Well didn't the media fall for that bait hook, line and sinker. I'm happy to bet that this property will not be offered for sale, rather the present owners will simply transfer the property into another name. At the heart of the problem is that Joe Hockey is totally wrong when he claims that: "Under the *Foreign Acquisitions and Takeover Act 1975,* foreign investors must notify the treasurer through the Foreign Investment Review Board before purchasing residential real estate."

Sorry to tell you Joe, but foreign buyers have found much better ways to acquire residential real estate and yes, thanks to your crackdown, you're about to find out just how. Although I am sure that there will be many cases of foreign buyers who have simply disregarded FIRB regulations and purchased properties without application.

The much preferred method that foreign buyers have pursued is to simply transfer funds to their newly appointed "trustee" who has Australian residency, and they then legally purchase a property. When it suits the foreign buyer they apply for Australian residency and once this is granted they then apply the *Duties Act 1997* – Sect 18 which applies to "no double duty". Given that they can prove that they actually provided all the funds to acquire the property to their appointed "trustee" they then pay a duty of $50 to have the property transferred into their name. So you see there is absolutely no need to advise the FIRB given this is totally legal in NSW – so Joe Hockey should be looking at all the legally available loopholes first.

At last count the treasurer's FIRB consisted of just 10 staff, so given the recent announcements we may assume that this department has been increased tenfold so that they can energetically confront these serious concerns. In all probability this too will be placed in the too hard Canberra basket, although **I believe everyone would agree that this is a serious problem that requires urgent attention.**

The reality of the matter is that the FIRB is, as I have said on many occasions now, "hopeless'' given they don't even know where to start to take control of **this crisis.** For most obvious reasons the **states and territories won't exactly be energetically offering assistance given they are only concerned about protecting their "rivers of gold", otherwise known as stamp duty.**

The only way that the federal government can get to the bottom of these foreign acquisitions is to somehow get hold of the stamp duty records – which won't happen anytime soon.

Like a bull at a gate Joe Hockey has opened up his very own house of worms without even realising **the sheer magnitude of the job at hand**. From past experience we all know only too well what happens next, don't we.

Nothing happening here folks, move along, we have everything under control. Next question?"   (Emphasis added)

► Chinese investors buy up Sydney homes

- by: *By Jane Hansen* From: *The Daily Telegraph* March 18, 2013 9:23AM
- http://www.adelaidenow.com.au/realestate/buying/chinese-investors-buy-up-sydney-homes/story-fndbmulp-1226599607346

CHINESE investors inundating the local real estate market with billions of dollars are artificially inflating the price of apartments bought off the plan, analysts have warned.
As many as one in six off-the-plan apartments in Sydney are snapped up by mainland Chinese investors.

Michael Yardney from Metropole Property Strategists said local buyers may be caught out paying too much.

"Overseas investors are pushing up prices for off-the-plan properties. If they weren't making these sales, they would not be able to get the project off the ground. But on completion, the apartments are worth 7 to 12 per cent less than what the contract price was," he said.

According to the Foreign Investment Review Board's 2012 annual report there were 10,118 approvals in the real estate sector, double that of 2008. Residential real estate investment was worth $19.7 billion, with the US and China leading the way.

James Sialepis, national director of sales for Meriton, said 15 per cent of all sales in projects such as VSQ North and EON in Zetland were going to **mainland Chinese investors who face tough property investment restrictions in their own country**. He said Meriton used marketing companies in China.

"They are a mix of investors and families who purchase because their children are here to study," Mr Sialepis said.

"I don't think we're artificially inflating prices, 15 per cent is only a small percentage."
Ben Stewart from CBRE, which marketed the The Residence at Hyde Park, said one in 10 of those apartments were sold to Chinese investors.

"The Chinese see great growth and a stable economy, and the main drive is their kids who will study here," Mr Stewart said.

Frasers Property, which is developing the Central Park apartments on Broadway, confirmed the majority of their off-the-plan sales were to Asians.

Andrew Taylor runs the Shanghai-based real estate portal Juwai.com, which directly markets Australian property to Chinese investors. He said the current interest was "just the tip of the iceberg''.

"The real buying force are the upper middle class who earn around $100,000 combined.

"**They represent a huge market force and we predict 60 million buyers are about to hit the world,'' Mr Taylor said.**
With Australian homebuyers cautious, foreign buyers rule the market, according to Mr Taylor.

Michael Yang, the founder of GiFang.com, which means ``collect property" in Mandarin, **said Chinese investors could no longer buy a second property in China without incurring massive taxes.**

He said many Chinese investors also want to move here permanently. "I think migration is the No.1 factor to invest," Mr Yang said.

http://news.domain.com.au/domain/real-estate-news/the-art-of-selling-to-the-chinese-20130913-2tp9j.html

► "The Art of Selling to the Chinese" September 13, 2013 by Lucy Macken, Domain

Selling Sydney mansions to wealthy Chinese buyers involves much more than placing ads and hammering a sign into the lawn.
Monika Tu's property concierge service, Black Diamondz, shepherds buyers around the city, organising schools for their children, getting the phone connected, and showing buyers where to buy quality Australian art.

..Earlier this week Ms Tu was in Darwin, helping some of her clients buy pearls at the Paspaley pearl farm.

But on Friday she was visiting one of her clients, Jiefang (Fiona) Huang, who bought her $12.8 million mansion on Bay Street, Mosman, last year through Ms Tu and Richard Simeon of Richardson & Wrench Mosman.

…."I haven't seen the emergence of a major market like this in 30 years," Mr McGrath said. "In the last 12 months in particular there's an unprecedented surge of interest in our real estate from the Chinese."

…Mr McGrath points to the recent sale of an Eastwood house for $1 million over the $1.35 million reserve. The $2.385 million result followed competitive bidding by 16 registered bidders, all of Asian background.

Then there's the Point Piper waterfront trophy home sales earlier this year like Altona and the "Bang & Olufsen" house, which sold for $54 million and $33.5 million respectively to buyers from China.

The demand for property among Chinese buyers has intensified since the government launched the significant investor visa last November.

As of August, of the 305 applications to the Immigration Department for the visa, only 10 such "golden tickets" have been approved.

One of those visa-holders, Minqin Wang, of Shanxi province, became the first to buy a Sydney property last week, paying $8.5 million for a house in Vaucluse through Ms Tu and Marion Badenoch, of Richardson & Wrench Double Bay.

Businessman John McNiven's Vaucluse house sale was the highest result of 2011 when he sold his non-waterfront home for $21.5 million to the Yang family from Hong Kong, through Alison Coopes and Ms Tu.

"Monika's way of doing things is a little bit different," said Mr McNiven. "But at the end of the day Monika is very clever in that she makes both sides of the transaction feel like they are getting good value."

All the major real estate agencies are targeting Chinese buyers in various ways, with offices throughout Asia, translators, assistants fluent in Cantonese and Mandarin, advertising property on China's online property websites and more recently with McGrath's launch of a specialised China desk with a Chinese-speaking agent who works with the non-English-speaking buyers through the whole process.

…"As a starting point anything with a four in it isn't good, but with a number like 18 it'll get a much bigger percentage of potential buyers looking at it," Mr Simeon said.
Feng Shui master Gary Khor is currently working through his busiest spring in 30 years, suggesting modifications to improve a home's feng shui or remedies for problem areas in a home.

"More people realise that Chinese people won't touch a property if the feng shui is no good," he said.

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