

**Minutes of 1021st Meeting of the
Town Planning Board held on 12.10.2012**

Present

Permanent Secretary for Development
(Planning and Lands)

Mr. Thomas Chow

Chairman

Mr. Stanley Y.F. Wong

Vice-Chairman

Professor S.C. Wong

Mr. Timothy K.W. Ma

Professor K.C. Chau

Mr. Rock C.N. Chen

Mr. H.W. Cheung

Dr. Wilton W.T. Fok

Mr. Sunny L.K. Ho

Professor Eddie C.M. Hui

Mr. Dominic K.K. Lam

Dr. C.P. Lau

Mr. Patrick H.T. Lau

Ms. Julia M.K. Lau

Ms. Christina M. Lee

Mr. Maurice W. M. Lee

Mr. H.F. Leung

Mr. Clarence W.C. Leung

Mr. Laurence L.J. Li

Dr. W.K. Lo

Mr. Roger K.H. Luk

Miss Anita W.T. Ma

Mr. Stephen H.B. Yau

Dr. W.K. Yau

Principal Assistant Secretary (Transport)
Transport and Housing Bureau
Miss Winnie Wong

Assistant Director (2), Home Affairs Department
Mr. Eric Hui

Deputy Director of Environmental Protection
Mr. C.W. Tse

Deputy Director of Lands (General)
Mr. Jeff Lam

Director of Planning
Mr. Jimmy C.F. Leung

Deputy Director of Planning/District
Miss Ophelia Y.S. Wong

Secretary

Absent with Apologies

Professor Edwin H.W. Chan

Ms. Bonnie J.Y. Chan

Mr. Ivan C.S. Fu

Professor P.P. Ho

Mr. Lincoln L.H. Huang

Ms. Janice W.M. Lai

In Attendance

Assistant Director of Planning/Board

Ms. Christine K.C. Tse

Chief Town Planner/Town Planning Board

Miss H.Y. Chu (a.m.)

Mr. Edward W.M. Lo (p.m.)

Senior Town Planner/Town Planning Board

Ms. Donna Y.P. Tam (a.m.)

Ms. Caroline T.Y. Tang (p.m.)

Agenda Item 1

[Open meeting]

Confirmation of Minutes of the 1020th Meeting held on 28.9.2012

[The meeting was conducted in Cantonese.]

1. The minutes of the 1020th meeting held on 28.9.2012 were confirmed without amendments.

Agenda Item 2

Matters Arising

[The meeting was conducted in Cantonese.]

- (i) [Closed Meeting]

2. This item was recorded under confidential cover.

[Mr. H.F. Leung, Ms. Christina M. Lee, Mr. Clarence W.C. Leung and Dr. W.K. Lo arrived to join the meeting at this point.]

- (ii) Proposed amendment to the confirmed minutes of
the 1019th Town Planning Board meeting held on 14.9.2012

[Open Meeting]

3. The Secretary reported that the draft minutes of the 1019th meeting held on 14.9.2012 were confirmed without amendments by the Board on 28.9.2012. Upon further review, it was found that there was a typographical error in one of the reasons for not upholding Representation R3 (REDA) of the Tsuen Wan Outline Zoning Plan, as stated in paragraph 73(c) of the minutes, which read:

“there would not be adverse impacts on the development intensity permitted under the OZP and property value in general. For an existing building which

had already exceeded the BHRs, the rights of redeveloping the buildings to their existing heights would be respected on the OZP unless otherwise specified. The BHRs had struck a balance between public aspirations for a better living environment and private development rights;”

4. The Secretary said that the wording ‘and property value in general’ should be deleted. A copy of the proposed amendment to paragraph 73(c) of the confirmed minutes was tabled at the meeting for Members’ consideration. A revised letter would be issued to R3, and replacement pages for the minutes would be sent to other relevant parties for their record.

5. After deliberation, the Board agreed to the revised minutes.

Sai Kung & Islands District

Agenda Item 3

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/DPA/I-TOF/5

Proposed Columbarium in “Government, Institution or Community” zone

Lot No. 47 (part) in DD 313, 47 Wang Hang Village

Tai O, Lantau Island, New Territories

(TPB Paper No. 9200)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

6. The following representatives of the Planning Department (PlanD) and Transport Department (TD), and the applicant and his representatives were invited to the meeting at this point:

Mr. Ivan Chung

District Planning Officer/Sai Kung and
Islands (DPO/SKIs), PlanD

Mr. Isaac Lo	Senior Engineer/Islands (SE/Is), TD
Ms. K.W. Lo	Engineer/Islands (E/Is), TD
Mr. Ng Kan	Applicant
Mr. Wong Wah)
Mr. Ng Ho Yuen) Applicant's Representatives
Mr. Fan Mook Hay)

7. The Chairman extended a welcome and explained the procedures of the review hearing. The Chairman said that a letter from the Tai O Rural Committee which was dated 11.10.2012 and just submitted by the applicant was tabled at the meeting. He then invited DPO/SKIs to brief Members on the review application.

8. With the aid of a Powerpoint presentation, Mr. Ivan Chung, DPO/SKIs, made the following main points on the review application as detailed in the Paper:

- (a) the applicant sought planning permission for columbarium use at the application site zoned "Government, Institution or Community" ("G/IC") on the approved Tai O Fringe Development Permission Area (DPA) Plan No. DPA/I-TOF/2;
- (b) the application was rejected by the Rural and New Town Planning Committee on 30.3.2012 for the following reasons:
 - (i) the proposed columbarium did not comply with TPB Guidelines No. 16 for Application for Development/Redevelopment within "G/IC" Zone for Uses other than Government, Institution or Community (GIC) Uses under s.16 of the Town Planning Ordinance in that the applicant failed to demonstrate that the proposed columbarium was sustainable in terms of the capacities of existing and planned transport infrastructure of the area. There was no Traffic Impact

Assessment (TIA) in the submission to demonstrate that the proposed columbarium would have no adverse pedestrian and vehicular traffic impact on the surrounding area, particularly during the Ching Ming and Chung Yeung Festivals; and

- (ii) approval of the proposed development would set an undesirable precedent for similar applications within the “G/IC” zone on the DPA Plan. The cumulative impact of approving such similar applications would result in an adverse impact on the capacities of the existing and planned transport infrastructure of the area;
- (c) the applicant had submitted written submission in support of the review application and the major grounds were summarized below:
 - (i) at present, the ferry company and Lantau bus company had special measures to deal with visitors during the Ching Ming and Chung Yeung Festivals. As Tai O was a famous tourist destination, the responsible district council members would propose solutions to the relevant departments if traffic problems arose or people’s livelihood was affected;
 - (ii) most of the descendants would not choose to pay respects to their ancestors during peak periods. As there was chanting in the monastery every day, fewer descendants were paying their respects to their ancestors;
 - (iii) as the number of worshippers to the Monastery had never exceeded 100 persons at the highest peak during the Ching Ming Festival in the past three years, the traffic flow generated from the proposed columbarium would not be significant;
 - (iv) flow management or even prior appointment would be adopted for the sudden crowd growth in future; and

- (v) the site was easily accessible and traffic jam would not occur even during the Spring and Autumn grave-sweeping periods;
- (d) there was no previous application on the same site and there was no similar application for columbarium use within the “G/IC” zone;
- (e) departmental comments – the Commissioner for Transport (C for T) advised that the applicant was required to submit a TIA outlining the proposed traffic and transport arrangements to address the impact of the proposed columbarium on the existing network, particularly during special festive days such as Ching Ming and Chung Yeung Festivals. The pedestrian conditions and related crowd control arrangements should also be covered in the assessment. Other relevant departments had no objection to the application;
- (f) public comments - two public comments were received. They were from the Association for Tai O Environment and Development (ATOED) and the Green Lantau Association (GLA) which supported/had no objection to the application. ATOED considered that the proposed columbarium would change the local customs and burial traditions by reducing the number of local coffin burials. GLA requested for improvement of the toilet provision, incinerator facilities and perimeter fence within Lung Ngam Monastery should the application be approved;
- (g) PlanD’s views – PlanD did not support the review application based on the assessments set out in paragraph 7 of the Paper, which were summarized below:
 - (i) the proposed columbarium use was within an existing two-storey building in an existing religious institution, i.e. Lung Ngam Monastery. There was an existing two-storey columbarium building with 1,800 niches within the Monastery. To the north of

the Monastery were burial grounds for indigenous villagers and the Tai O Cemetery. Lung Tin Estate, a major residential development in Tai O and Wang Hang Village, the nearest village, were located about 300m to the west and 70m to the south respectively of the Monastery. The proposed columbarium use was considered not incompatible with the existing GIC facilities within the Monastery the surrounding areas;

- (ii) together with the proposed 1,600 niches in the subject application premises and the existing 1,800 niches in the two-storey columbarium building, the Monastery would accommodate a total of about 3,400 niches;
- (iii) Tai O Road was connected to South Lantau Road which was subject to Closed Road Permit system. There was only limited provision of public transport to Tai O area. The existing road networks, public transport provision and footpaths leading to the Monastery might not be able to accommodate the visitors/grave-sweepers to the Monastery during festive seasons. C for T advised that a TIA was required and commented that the traffic arrangement information submitted by the applicant had not included any survey data nor addressed the possible traffic impact on the existing vehicular and pedestrian conditions. The traffic arrangement information was considered insufficient to address the traffic concerns arising from the proposed columbarium and failed to demonstrate that the proposed columbarium would have no adverse traffic impact on the existing transport infrastructure and provision in the area;
- (iv) the application did not comply with TPB Guidelines No. 16 in that the applicant failed to demonstrate that the proposed columbarium was sustainable in terms of the capacity of the existing and planned transport infrastructure in the area;
- (v) approval of the proposed development would set an undesirable

precedent for similar applications within the “G/IC” zone on the DPA Plan. The cumulative impact of approving such similar applications would result in an adverse impact on the capacity of the existing and planned transport infrastructure in the area; and

- (vi) the granting of a conditional approval was considered inappropriate as there was no proper mechanism for the Board to ensure the fulfilment of the approval condition for TIA submission and implementation of mitigation measures, given that lease modification was not required for the proposed columbarium use at the subject site and control under the Buildings Ordinance was not applicable as the subject premises was an NTEH.

9. The Chairman then invited the applicant’s representatives to elaborate on the application.

10. Mr. Ng Ho Yuen made the following main points:

- (a) the proposed columbarium was part of the Lung Ngam Monastery constructed by the ancestors of Tai O residents in 1932 and the Monastery had a history of 80 years. The land was bought by the ancestors for building the Monastery;
- (b) within the Monastery, there was an existing columbarium building built in 1980. There were about 1,800 niches in the existing columbarium building and over 1,000 of them were sold and occupied. The proposed columbarium would be within an existing building built in 2000. Since the niches in this columbarium building were not occupied, the columbarium had been included in Part B of the list of private columbaria¹;

¹ The Government has proposed to introduce a licensing scheme to regulate private columbaria. Prior to the introduction of the licensing scheme, the Government has in the interim arranged to publish land/lease and town planning information on the private columbaria made known to the Lands Department (LandsD) and/or PlanD, to provide information to the public in a more systematic manner. Part A sets out the private columbaria compliant with the user restrictions in the land leases and the statutory town planning requirements and are not illegally occupying Government land, while Part B sets out other private columbaria made known to the LandsD and/or PlanD that do not fall under Part A.

- (c) traditionally, local residents in Tai O preferred burial than cremation. However, as there was frequent hill fire and that the cemetery was located uphill with difficult access, more elderly people in Tai O accepted cremation nowadays;
 - (d) the Monastery and the columbarium were part of the customs of the Tai O people. The niches were intended to be sold to Tai O people only;
 - (e) it was agreed by the relevant government departments that no business registration was required for the existing columbarium within the Monastery as it was not a business. No tax had to be paid for running the columbarium; and
 - (f) Mr. Lee Chi Fung, who was a District Council member, would help to resolve the traffic problem in the area, if required.
11. Mr. Wong Wah, representative of the applicant, made the following main points:
- (a) he was the administration manager of the New Lantao Bus Company Limited (New Lantao Bus);
 - (b) during the Ching Ming Festival in April 2012, additional bus services to and from Tai O were provided by the New Lantao Bus. The services involved 282 bus trips and deployment of more than 40 buses carrying 9,464 passengers altogether;
 - (c) although more niches would be provided in the proposed columbarium, the niches were to serve Tai O people only. As such, the increase in the provision of niches would not attract more people outside Tai O to visit the columbarium during Ching Ming and Chung Yeung Festivals;
 - (d) not all the descendants worshipped their ancestors during Ching Ming and Chung Yeung Festivals. Instead, they went worshipping on the Sundays

before and after the two festivals to avoid the peak time. As a Tai O resident, he himself and his family members did not worship their ancestors during the peak time at Ching Ming and Chung Yeung Festivals;

- (e) there had not been any problem arising from the operation of the existing columbarium within the Monastery; and
- (f) while some of the deceased were buried in the cemetery/burial ground, their ashes might be relocated to the columbarium after a few years.

12. The Chairman had the following questions for the applicant:

- (a) when did the existing columbarium start operation?
- (b) how many of the existing 1,800 niches were occupied and how many were vacant?
- (c) whether there was a quota or restriction for selling the 1,600 niches in the proposed columbarium to Tai O people only; and
- (d) the current population level of Tai O.

13. Mr. Ng Ho Yuen provided the following information:

- (a) the existing columbarium started operation in 1980 and had been operating for 32 years;
- (b) about 300 existing niches, out of the total 1,800 niches in the existing columbarium, were not yet occupied;
- (c) he had no information on the current population level of Tai O; and
- (d) the applicant had discussions with TD and it was considered by the applicant and TD that the proposed columbarium would not cause any

traffic problem as it would serve Tai O people only and would not be operated on a commercial basis. However, TD still required the submission of a TIA by the applicant. As the operators of the Monastery and the columbarium were very old and did not have the relevant knowledge, it was difficult for them to carry out a TIA.

14. Mr. Ivan Chung said that there were at present about 3,000 people living in Tai O, mostly in Lung Tin Estate, Lung Tin Court and the “Village Type Development” zones.

[Ms. Julia M.K. Lau arrived to join the meeting at this point.]

15. In response to the Chairman’s questions, Mr. Ng Ho Yuen said that if there was no change in the current practice adopted by the managers of the Monastery, the niches in the proposed columbarium would be sold to Tai O people only and not outsiders. Mr. Wong Wah said that Tai O people were mostly fishermen and farmers, who had their own traditions. They used to prefer burial and not many people chose cremation in the past. However, more and more old people in Tai O started to accept cremation in recent years and thus the demand for columbarium was rising.

16. In response to a Member’s questions on the scope and the standard of acceptance of the TIA, Mr. Isaac Lo, SE/Is, TD, said that objective traffic survey data and analysis were required to assess the potential traffic impact generated by the proposed development. As visitors would travel using different modes of transport to the proposed columbarium, the TIA should provide survey data on the existing traffic conditions, the estimated number of visitors to the proposed columbarium, the modal split of visitors trips, the public transport services and the road capacity, the width of footpath and the level of service, and the proposed traffic and transport arrangements to address the traffic impact of the proposed columbarium, especially the crowd control arrangements at festival time. Mr. Lo said that the Transport Planning and Design Manual (TPDM) had incorporated the standard and the relevant considerations for conducting a TIA.

17. Mr. Ng Ho Yuen and Mr. Wong Wah said that the number of visitors to the Monastery was only about 100 during peak time during the festival time. Mr. Wong said that while it was difficult to distinguish bus passengers who were visitors to the columbarium

from those visiting Tai O, it was estimated that about 80% of them were visitors to the columbarium during the Ching Ming and Chung Yeung Festivals. The visitors were Tai O people, though they might not be living in Tai O at present. About 3,000 Tai O people would come back to Tai O the night before Ching Ming Festival and go to worship their ancestors early next morning.

18. In response to a Member's question, Mr. Isaac Lo said that the traffic pattern and conditions in Tai O were different during Ching Ming and Chung Yeung Festivals and other festival time, like Chinese New Year. That was the reason why a TIA was required to assess the impact of the proposed columbarium on the traffic conditions in Tai O.

19. Mr. Wong Wah said that the number of bus passengers to Tai O was the greatest during Ching Ming Festival and the third day of the Chinese New Year. During the last National Day, 218 bus trips were operated to serve Tai O. However, during the last Ching Ming Festival, there were 282 bus trips. Mr. Wong also said that as visitors would not go to the columbarium all at the same time and additional buses would be deployed to serve the additional demand, the increase in the number of visitors would not create any traffic problem in the area.

20. In response to two Members' questions, Mr. Ng Ho Yuen said that the Monastery had no regulation or legal document prohibiting the sale of the niches to non-Tai O people. However, as the Monastery and the columbarium were part of the Tai O customs, it was expected that the niches would only be reserved for use by Tai O people. The managers of their clan were responsible for the sale of the niches and ensuring that the purchasers of the niches were Tai O people. If the niches were to be sold to outsiders, it would become a business and a business registration would be required. However, that was not the current arrangement and no tax had to be paid by the existing columbarium. Mr. Ng said that the 300 remaining niches were not sold because they were in poorer locations. Regarding the proposed columbarium under application, the building had already existed but the niches were not occupied. That columbarium had been included in Part B of the list of private columbaria and planning permission was required.

[Dr. C.P. Lau arrived to join the meeting at this point.]

21. In response to two Members' questions, Mr. Ng Ho Yuen said that he had no information on the space available in the burial ground in Tai O. Even though space was available in the burial ground, some elderly people preferred cremation and there was a demand for columbarium in the area.

22. Mr. Fan Mook Hay, one of the managers of the Monastery, said that the niches were sold only when there were needs from local people and they would be sold progressively to ensure that there would be funding for maintenance. He intended to sell the niches in the new columbarium building (i.e. the subject of the current application) after the niches in the existing columbarium building were all sold. Mr. Fan said that many Tai O people had moved away from Tai O. If those people wanted to purchase the niches in the columbarium, they would be asked to confirm whether they or their family previously had lived in Tai O.

23. In response to a Member's question on whether assistance could be offered to the applicant in undertaking a TIA, Mr. Isaac Lo said that TD had discussed previously with the applicant and provided advice on the survey data required for assessing the traffic implication of the proposed development. However, the applicant did not submit the required TIA. While TD was not in a position to advise or assist the applicant to identify a traffic consultant to undertake the TIA, the relevant professional institutes/associations would have the list of consultants which would provide such service.

24. In response to the Chairman's question on whether TD would liaise with the ferry and bus companies to provide additional services to address increase in traffic during festival days or when there were other special events in Tai O, Mr. Isaac Lo replied in the affirmative.

25. As the applicant and his representatives had no further comment to make and Members had no further questions, the Chairman informed the applicant and his representatives that the hearing procedures for the review had been completed and the Board would further deliberate on the application in their absence and inform the applicant of the Board's decision in due course. The Chairman thanked the applicant and his representatives and the representatives of PlanD and TD for attending the meeting. They all left the meeting at this point.

Deliberation Session

26. The Chairman noted that there was no public objection against the proposed columbarium use. The main issue would be whether the proposed columbarium would generate unacceptable adverse traffic impact on the area and whether mitigation measures could be provided to address the traffic problem, if required.

27. Some Members had the following views on the application:

- (a) the subject site was suitable for columbarium use;
- (b) it was noted that Tai O could only be accessible by ferries/buses/private cars with closed road permit, and people arriving Tai O would have to walk a distance to reach Lung Ngam Monastery. Those had posed constraints and restricted the number of people visiting the columbarium. The capacities of ferry and bus services would limit the number of visitors to the area;
- (c) the proposed columbarium would help address the local demand. The number of niches to be provided was not considered substantial. If the columbarium was to be provided in other areas, they might generate traffic problem in those areas;
- (d) as claimed by the bus company representative, Tai O people who had moved out to live in other areas knew the way to avoid peak time by going back to Tai O the night before and visiting the columbarium the next morning. As such, no substantial traffic problem in Tai O was envisaged during the Ching Ming or Chung Yeung Festivals;
- (e) the proposed columbarium under application was in fact built in 2000, but was not occupied. The submission of the planning application was a response to the intended licensing control on private columbaria;

- (f) since Tai O was a tourist spot, it was difficult to distinguish traffic generated by tourists or visitors to the columbarium; and
- (g) as the applicant's representative from the bus company had provided some data on the traffic condition during the Ching Ming Festival and that the number of niches to be provided was small, TIA might not be strictly required to support the subject application.

28. A Member said that the application should be supported as it was intended to serve only the people in Tai O. This Member asked if the application could be approved subject to a condition that the niches be restricted for use by Tai O people only. In response, the Chairman said that the suggested condition would be difficult to enforce.

29. Noting that the columbarium under application was already built in 2000, but not occupied, a Member said that there was sympathetic consideration to the subject application. However, that Member did not agree to approve the application in the absence of a TIA to demonstrate no adverse traffic impact as this might create an undesirable precedent for other similar applications to follow. The applicant should be requested to follow the proper procedure to provide sufficient information to prove his case.

30. The Secretary clarified that the columbarium under application was not an existing use as the niches were not yet occupied before the first gazetting of the draft Tai O Fringe DPA Plan in 2010. Any material change of such use or an intensification of the use would require planning permission from the Board. The Secretary said that as advised by DPO/SKIs, the proposed columbarium was considered compatible with the surrounding uses. However, the applicant had not provided a TIA to demonstrate that no adverse traffic impact would be caused by the proposed columbarium. Members might wish to consider if the information provided by the applicant's representative, who was a manager of the bus company, was adequate in addressing the concern on the potential traffic impact generated by the proposed columbarium, even without the submission of a TIA.

31. A Member said that the information provided by the applicant's representative on provision of bus services to the area was not adequate to address the concern on potential traffic impact when the columbarium was in use and a TIA would be necessary.

32. Another Member considered that the subject application was a unique case as Tai O was a popular tourist spot that attracted a lot of visitors. Comparing with the number of tourists/visitors visiting Tai O, the traffic impact generated by visitors to the proposed columbarium was not considered significant.

33. Mr. Jimmy Leung, Director of Planning, said that the whole Tai O area was subject to the Closed Road Permit system and visitors had to rely on public transport to enter the area. As there were only a few “G/IC” sites in the area, the approval of the subject application might not set an undesirable precedent.

34. A Member said that the proposed columbarium with the provision of 1,600 niches was not a small-scale facility. This Member did not agree that the application could be approved without the support of a TIA as this was not in line with the Board’s practice in considering similar applications. This Member also considered that a TIA would help the applicant to review the traffic condition in the area and to adopt measures to mitigate any potential traffic problem.

35. A Member noted that TD would provide comment on the case based on the TIA submitted by the applicant. This Member asked if the Board could approve the case if Members considered that the applicant’s submitted information was satisfactory. In response, the Chairman said that as a TIA had not been undertaken, there was no basis and data for TD to review the traffic condition in the area and provide advice to the Board. If the Board considered that there were adequate justifications to support the case, the Board could exercise its discretion to approve the application.

36. The Vice-chairman said that Members might consider whether the information provided by the applicant’s representative from the bus company would be sufficient so that a formal TIA would not be necessary. The Board might consider if the subject application was a unique case which could be approved under its own circumstances so that its approval would not set an undesirable precedent for similar applications.

37. To conclude, the Chairman said that, although the number of niches to be provided was not substantial and the area was only accessible by public transport or private

cars with permit, it was considered more appropriate to consider the application with the support of a TIA so that the traffic impact generated by the proposed columbarium in the area and the mitigation measures could be properly addressed. Although the applicant's representative had provided some information on the bus services, the applicant had not provided information such as the estimated number of visitors by different modes of transport, the capacity of the ferry services, roads and footpath, and the proposed traffic and transport arrangements, especially the crowd control arrangements during the Ching Ming and Chung Yeung Festivals. In this regard, the Board might defer consideration of the application and ask relevant government departments to render assistance to the applicant on the preparation of a TIA. The TIA might not have to be full fledged given the circumstances of the case. Members agreed.

38. After further deliberation, the Board decided to defer a decision on the application pending the submission of a TIA by the applicant to support the application.

Agenda Item 4

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/I-TCTC/42

Proposed Eating Place in "Open Space" zone,

G/F, Block 2, Wong Nai Uk, Lots No. 2259 to 2261

in D.D. 3 Tung Chung and adjoining Government Land,

Tung Chung, Lantau Island

(TPB Paper No. 9201)

[The meeting was conducted in Cantonese.]

Presentation and Question Session

39. The following representative of the Planning Department (PlanD) and the applicant and his representative were invited to the meeting at this point:

Mr. Ivan Chung

District Planning Officer/Sai Kung and
Islands (DPO/SKIs)

Mr. Wong Shue Yau Applicant
Ms. Chiu Chung Ying Yvonne Applicant's Representative

40. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited DPO/SKIs to brief Members on the review application.

41. With the aid of a Powerpoint presentation, Mr. Ivan Chung, DPO/SKIs, made the following main points on the review as detailed in the Paper:

- (a) the applicant sought planning permission for eating place use within an area zoned "Open Space" ("O") on the approved Tung Chung Town Centre Area Outline Zoning Plan (OZP) No. S/I-TCTC/18;
- (b) the application was rejected by the RNTPC on 6.7.2012 for the following reasons:
 - the eating place was not in line with the planning intention of the "O" zone which was to provide a town park for the Tung Chung new town; and
 - the eating place would create noise nuisance to the area and the surroundings. The applicant had not provided any information or details on how the noise nuisance could be mitigated;
- (c) the applicant had submitted written submission in support of the review application which included the following proposed means and measures to mitigate the noise nuisance:
 - to restrict business hours at the outdoor area to 11p.m.;
 - to control the source of noise such as TV & speakers during operation;
 - to reduce outdoor dining tables; and
 - to adopt sound absorbing/damping materials and design in the eating place such as installing double-pane windows;

- (d) the applicant also indicated that:
- noting that the Tung Chung New Town Extension Study would be completed in mid-2014, a shorter approval period from the Board was acceptable; and
 - the applied use would not affect the adjoining village house No. 3 and its passageway;
- (e) previous applications - part of the site was the subject of a previous planning application No. A/I-TCTC/40 for proposed eating place of 54m² approved with conditions on a temporary basis for 3 years by the RNTPC on 23.12.2010 based on the consideration that the Director of Leisure and Cultural Services (DLCS) had no programme to develop the town park, and the proposed eating place was small in scale and would unlikely cause any adverse traffic, environmental and infrastructural impacts on the locality. The planning permission was revoked on 23.12.2011 due to non-compliance with approval conditions regarding the submission and implementation of fire services installations and sewer connection proposals;
- (f) there were four similar applications for eating place use within the “O” zone on the OZP:
- (i) application No. A/I-TCTC/25 submitted by DLCS to develop a restaurant in the district open space at Tung Chung Waterfront Road was approved on 24.9.2004;
 - (ii) application No. A/I-TCTC/30 for a proposed eating place (restaurant) on the ground floor of a village house at Wong Nai Uk Village was approved on a temporary basis for a period of 3 years on 15.9.2006 which lapsed on 15.9.2009;

- (iii) application No. A/I-TCTC/38 for an eating place on the ground floor of a village house at Wong Nai Uk Village was approved on a temporary basis for a period of 3 years on 12.2.2010. It was revoked on 12.8.2010 due to non-compliance with the approval condition regarding the submission of fire services installations; and
- (iv) the applicant of A/I-TCTC/38 submitted another application (No. A/I-TCTC/39) for continuing the operation of the eating place at the same premises, which was approved on a temporary basis for a period of 3 years on 10.12.2010;
- (g) departmental comments - the Director of Environmental Protection (DEP) had no objection to the review application given that the applicant committed to implement noise mitigation measures as indicated in the supplementary information to minimise environmental nuisance. DLCS had no comment on the application and advised that there was no programme for the development of the proposed town park. Project Manager (Hong Kong Island and Islands), Civil Engineering and Development Department (CEDD) advised that the planning of Area 29 would be reviewed under the Tung Chung New Town Extension Study which was commissioned jointly by CEDD and PlanD in January 2012 for completion in mid 2014, and that a short-term approval until mid 2014 was recommended to be given and subject to review on further extension;
- (h) public comments - two public comments were received. The comments were submitted by Tam Yiu-chung Office enquiring about the Board's rejection reasons of the s.16 application and noise mitigation measures and a member of general public raising concerns about the application procedure to notify land owner and would raise objection if the applied use affected the passageway of the adjoining village house No. 3;
- (i) PlanD's views – PlanD had no objection to the review application on a temporary basis, based on the assessments set out in paragraph 7 of the Paper, which were summarized below:

- (i) to address the concerns of the RNTPC that eating place was not in line with the planning intention of the “O” zone and would create noise nuisance to the surroundings, the applicant had submitted supplementary information proposing noise mitigation measures including restricting business hours at the outdoor area up to 11p.m., controlling the source of noise during operation, reducing outdoor dining tables, and adopting sound absorbing/damping materials and design to reduce the noise impact on the surrounding areas. The applicant had also indicated that he would accept approval of the application on a temporary basis;
- (ii) the proposed eating place fell within an area zoned “O” on the OZP, the intention of which was to provide a town park for the Tung Chung new town. DLCS had, however, advised that there was no programme to develop the town park. Wong Nai Uk Village fell within the study area of the Tung Chung New Town Extension Study which was commissioned jointly by the CEDD and PlanD in January 2012 for completion in mid 2014. CEDD had no objection to the approval of the application on a temporary basis until mid 2014 subject to further review of the programme of the Study. Approval of the application on a temporary basis would not jeopardize the long-term planning intention of the “O” zone and the Study;
- (iii) DEP had no objection to the review application given that the applicant committed to implement noise mitigation measures as indicated in the supplementary information to minimise environmental nuisance. In this regard, approval conditions were suggested to restrict the operation hours from 7a.m. to 11p.m., as proposed by the applicant, and to require the submission and implementation of the noise mitigation measures and proposal to the satisfaction of DEP. Non-compliance with approval conditions would result in revocation of planning permission. A shorter approval period of one year was also recommended to monitor any

noise nuisance to the surrounding areas;

- (iv) the previous planning application (No. A/I-TCTC/40) was revoked due to failure to comply with approval conditions regarding the submission and implementation of fire services installations and sewer connection proposals. In support of the subject application, the applicant had included fire services installations and drainage proposals. The Director of Fire Services and Chief Engineer/Hong Kong & Island, Drainage Services Department had no objection to the application; and
- (v) there were similar applications within the same “O” zone and the proposed eating place was considered not incompatible with the surrounding village houses, the ground floor of which had been used as eating place. There were unlikely any adverse traffic, infrastructural and other environmental impacts on the locality. No objection/adverse comment had been received from the relevant government department.

42. The Chairman then invited the applicant to elaborate on the application.

43. Mr. Wong Shue Yau made the following main points:

- (a) planning permission was previously granted for the same use for three years in 2011. However, the planning permission was revoked due to non-compliance with approval conditions. The approval conditions were not fulfilled as it had taken a long time for him to rent the premises from the Tso Tong and to undertake internal fitting works;
- (b) to address the Board’s concerns, a number of measures were proposed including restricting business hours at the outdoor area to 11:00 p.m. and reducing the number of outdoor dining tables;
- (c) fire services installations and drainage proposals had been submitted;

- (d) the Food and Environmental Hygiene Department had no objection to the application for a food licence for the subject eating place. The issuance of the licence was withheld pending the granting of a planning permission; and
- (e) the subject eating place provided services and working opportunities for the local people.

44. As the applicant and his representative had no further comment to make and Members had no further questions, the Chairman informed the applicant and his representative that the hearing procedures for the review had been completed and the Board would further deliberate on the application in their absence and inform the applicant of the Board's decision in due course. The Chairman thanked the applicant and his representative and DPO/SKIs for attending the meeting. They all left the meeting at this point.

Deliberation Session

45. The Chairman said that as there was no programme to develop the town park and the future land uses of the area were subject to a study by the CEDD, approval of the application on a temporary basis would not jeopardize the long-term planning intention of the "O" zone. Noting that DEP had no objection to the review application, the application could be approved for one year subject to the submission and implementation of the noise mitigation measures and proposal to monitor any noise nuisance to the surrounding areas. Members agreed.

46. After further deliberation, the Board decided to approve the application on review on a temporary basis for a period of 1 year until 12.10.2013, on the terms of the application as submitted to the Town Planning Board and subject to the following conditions:

- (a) no night time operation, between 11:00p.m. to 7:00a.m. daily, as proposed by the applicant, was allowed on the site during the planning approval period;

- (b) the submission of fire services installations proposal within 3 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 12.1.2013;
- (c) in relation to (b) above, the implementation of fire services installations proposal within 6 months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 12.4.2013;
- (d) the submission of sewer connection proposal from the site to the public sewerage system within 3 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 12.1.2013;
- (e) in relation to (d) above, the implementation of sewer connection proposal from the site to the public sewerage system within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 12.4.2013;
- (f) the submission of noise mitigation measures proposal within 3 months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 12.1.2013;
- (g) in relation to (f) above, the implementation of noise mitigation measures proposal within 6 months from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board by 12.4.2013;
- (h) if the above planning condition (a) was not complied with during the planning approval period, the approval hereby given should cease to have effect and should be revoked immediately without further notice; and
- (i) if any of the above conditions (b), (c), (d), (e), (f) or (g) was not complied with by the specified date, the approval hereby given should cease to have effect and should on the same date be revoked without further notice.

47. The Board also agreed to advise the applicant on the following:
- (a) prior planning permission should have been obtained before continuing the applied use at the site;
 - (b) a temporary planning approval for one year up to 12.10.2013 was granted so as to monitor the development and any noise nuisance to the surrounding areas;
 - (c) shorter compliance periods were imposed in order to monitor the progress of compliance of conditions;
 - (d) should the planning permission be revoked due to non-compliance with the approval conditions again, sympathetic consideration would not be given by the Town Planning Board to any further application for the same use;
 - (e) to resolve any land issues relating to the development with the concerned owner of the application site;
 - (f) to note the District Lands Officer/Islands, Lands Department's comments that the existing buildings within these two lots had been rebuilt without the approval of Island District Lands Office (IsDLO). The applicant was required to apply for an Outside Seating Accommodation of food premises from Food and Environmental Hygiene Development instead of a Short Term Tenancy from IsDLO;
 - (g) to note the Chief Town Planner/Urban Design and Landscape, Planning Department's comments that there was equipment stored at the trunk base of a mature tree adjacent to the west of the site. The heavy loading of storage might cause adverse impact to the health of the tree. The equipment stored here was recommended to be kept clear a minimum 1m from the tree trunk;

- (h) to note the Director of Environmental Protection's comments that the applicant was advised to comply with the various Environmental Pollution Control Ordinances including Water Pollution Control Ordinance and Air Pollution Control Ordinance;
- (i) to note the Chief Building Surveyor/New Territories East 1 & Licensing, Building Department's comments that if the existing structures were erected on leased land without approval of the Buildings Department (BD), they were unauthorized building works under the Buildings Ordinance (BO) and should not be designated for any approved use under application. Before any new building works were to be carried out on the site, prior approval and consent of the Buildings Authority (BA) should be obtained, otherwise they were unauthorized building works. An AP should be appointed as the co-ordinator for the proposed building works in accordance with the BO. For unauthorized building works erected on leased land, enforcement action might be taken by the BA to effect their removal in accordance with BD's enforcement policy against unauthorized building works as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing works or unauthorized building works on the site under the BO. If the proposed use under application was subject to the issue of a licence, the applicant should be reminded that any existing structures on the site intended to be used for such purposes were required to comply with the building safety and other relevant requirements as might be imposed by the Licensing Authority;
- (j) to note the Director of Fire Services' comments that detailed fire safety requirements would be formulated upon receipt of referral from the Licensing Authority regarding the food license application; and
- (k) to note the Chief Engineer/Hong Kong and Islands, Drainage Services Department's (DSD) comments that the applicant was required to submit the proposed sewer connection details including the longitudinal section of manholes and pipelines, all ground levels, invert levels, disconnecting tap

invert level and pipe material for approval. The applicant/lot owner should design, construct and maintain a sewerage and drainage system to DSD's satisfaction at his own cost. Foul water generated from the eating place should be controlled properly by the applicant/lot owner to avoid flowing into the nearby surface u-channels creating odour, hygiene and pollution nuisance.

[Mr. Clarence W.C. Leung, Dr. W.K. Lo, Professor Eddie C.M. Hui and Mr. Eric Hui left the meeting at this point.]

Tsuen Wan & West Kowloon District

Agenda Item 5

[Open Meeting (Presentation and Question Sessions only)]

Consideration of Representations and Comments to
the Draft Kwai Chung Outline Zoning Plan No. S/KC/26

(TPB Papers No. 9203)

[The hearing was conducted in Cantonese.]

Group 2 (R2 and R10 to R13)

48. The following Members had declared interests in this item:

- | | |
|-------------------------|--|
| Mr. Clarence W.C. Leung | owned an office in Kwai Chung |
| Ms. Janice W.M. Lai | spouse owned a unit in Wonderland Villas,
representation site of R12 |
| Mr. Ivan C.S. Fu | had current business dealings with
Hutchison Whampoa (Hutchison), parent
company of R11 and C1 |

Mr. Patrick H.T. Lau had current business dealings with Kenneth To & Associates Ltd., which was the consultant of R10 and with Cheung Kong (Holdings) Ltd., parent company of Hutchison (owner of Omaha Investment Ltd. (C1)) and R11

Professor P.P. Ho had current business dealings with Cheung Kong (Holdings) Ltd., parent company of Hutchison (owner of Omaha Investment Ltd. (C1)) and R11

Mr. Dominic K.K. Lam had current business dealings with Kenneth To & Associates Ltd, which was the consultant of R10

49. As the office owned by Mr. Clarence W.C. Leung was not the subject of representations (R10 to R13) and that the representation R2 was related to BHR in general, Members agreed that the interest of Mr. Leung was indirect. Members noted that Mr. Leung had already left the meeting.

50. As the unit owned by the spouse of Ms. Janice W.M. Lai was the subject of representation R12, Members agreed that the interest Ms. Lai was direct. Members noted that Ms. Lai had tendered an apology for not being able to attend the meeting.

51. Members agreed that the interests of Mr. Ivan C.S. Fu, Mr. Patrick H.T. Lau and Professor P.P. Ho were direct and substantial as they had current business dealings with the parent company of C1 and R11. Members noted that Mr. Ivan C.S. Fu and Professor P.P. Ho had tendered apologies for not being able to attend the meeting. Mr. Patrick H.T. Lau left the meeting temporarily at this point.

52. As Mr. Mr. Dominic K.K. Lam's business dealings with the consultant of R10 were not related to the subject representations, Members agreed that the interest of Mr. Lam was indirect and he should be allowed to stay in the meeting for the item.

Ms. Veronica Luk) Commenter's Representatives
Ms. Linda Chan)

55. The Chairman extended a welcome and explained the procedures of the hearing. He then invited PlanD to brief Members on the background to the representations.

56. With the aid of a Powerpoint presentation, Ms. M.L. Leung, STP/SD, made the following main points as detailed in the Paper:

- (a) on 20.4.2012, the draft Kwai Chung Outline Zoning Plan (OZP) No. S/KC/26 incorporating amendments mainly to impose building height restrictions (BHRs) on various development zones; to designate non-building areas (NBAs) and building gaps in various zones; and other zoning amendments was exhibited for public inspection under s.5 of the Town Planning Ordinance (the Ordinance). During the exhibition period, 13 representations and 1,925 valid comments were received;
- (b) R2 and R10 to R13 and C1 were related to BHRs, NBAs and building gaps on various development zones;

Representations and Comment

- (c) R2 submitted by REDA opposed the BH, NBA and building gap restrictions in general;
- (d) R10 to R12 submitted by Campell Group (Holdings) Limited, Lynnore Limited and a private individual respectively requested for a more relaxed BHR or removal of BHR at their sites in "Other Specified Uses" ("OU") annotated "Business", "Industrial" ("I") and "Residential (Group B) 2" ("R(B)2") zones respectively;
- (e) R13 submitted by Chow Yick-hay (a Kwai Tsing District Council (KTDC) member) objected to the rationalization of the land allocation boundary of Yuet Lai Court and requested that the original "Government, Institution or

Community” (“G/IC”) zone should be retained for community facilities;

- (f) C1 supported R2’s proposed blanket relaxation of BHR for all development zones;

Grounds of Representation R2

- (g) the main grounds of R2 and representer’s proposals were summarized in paragraph 4.3 of the Paper and highlighted below:

More Lenient BHRs

- (i) the recent public concern regarding “out-of-context tall buildings” basically appeared to be 60 storeys or taller in prominent waterfront location. High-rise developments with 35-40 storeys had been in various parts of Hong Kong for years and were more acceptable to the public. The BHRs imposed on most of the Kwai Chung area were very restrictive. This would adversely affect the redevelopment and urban renewal process being undertaken by the private sector. The objectives for the BHR could be achieved with slightly increased height limits;
- (ii) imposition of unreasonably low BH limit restrained the building bulk and design flexibility for innovative architectural design, and unnecessarily constrained the provision of good quality development, which directly affected streetscape, air ventilation at grade and quality of life. The low height limits also had a direct negative impact on the provision of space around the buildings, i.e. lower and bulkier buildings with greater site coverage, which would result in reduction in property values and air ventilation at street level;
- (iii) the arbitrary approach of establishing BHRs for “G/IC” and “OU” zones based on existing building height regardless of development rights of landowners and without consistency of approach to BHRs

on adjacent zones was inconsistent with broad-brush planning;

Proposal

- (iv) R2 proposed to increase all BHRs by 20m to provide a significant degree of design flexibility while achieving the general objectives of twin city nodes and stepped BHs, without out-of-context buildings. It might facilitate better air ventilation and more interesting skyline as well as encourage innovative design and built form with opportunities for provision of GIC facilities and ground floor open space for public enjoyment;

NBAs and Building Gaps

- (v) NBA and building gap requirements were not appropriate for the scale and generality of broad-brush plans and were inconsistent with the Ordinance in relation to the content and application of statutory plans. The Board should make use of zonings permitted by the Ordinance, such as “Open Space” (“O”) and ‘Road’, if some form of gap or space was required for air ventilation and essential in public interest, and should resume the land with compensation to landowners;
- (vi) the term ‘NBA’ was liable to cause uncertainty and confusion as the same term was used with specific meaning in the lease. There was also implication of ‘NBA’ under the Buildings Ordinance (BO), particularly on site coverage (SC) and plot ratio (PR) calculations;
- (vii) NBAs and building gaps would affect property rights. There was no provision for compensation for the loss or limitation of ownership rights of private owners due to imposition of restrictions on air ventilation grounds;

Proposals

- (viii) R2 proposed to delete the requirements of NBAs and building gaps.

If it was necessary to provide gaps after considering a quantitative assessment, a more suitable zoning such as “O” should be used for clear demarcation, clarification and resumption for public purpose;

- (ix) minor relaxation of all restrictions should be considered based on ‘individual merits’ instead of ‘under exceptional circumstances’, and the wording should be amended;

Sustainable Building Design (SBD) Guidelines

- (x) the BHRs were set too low that the SBD Guidelines were difficult to implement. The BHRs discouraged provision of sky gardens and podium gardens (requiring a headroom of not less than 4.5m) promoted in the Joint Practice Note (JPN) No. 1 - Green and Innovative Buildings. These desirable features should be able to be accommodated within the BHRs without the need to submit a minor relaxation application;
- (xi) in setting the BHRs, NBAs and building gaps, no consideration had been given to the need for future developments to comply with the SBD Guidelines. The new OZP provisions and the SBD Guidelines achieved the same objectives and they unnecessarily duplicated and conflicted with each other. A general increase to all BHRs would allow possible compliance with the SBD Guidelines and incorporation of green features suggested by the JPN;
- (xii) the AVA should include an assessment on the possible impact of the SBD Guidelines on the redevelopment of the area as the impact of the new form of development might make air ventilation provisions under the OZP redundant. Provision of air paths would more appropriately be catered for under the SBD regime;

Judicial Reviews in respect of Kai Tak Mansion site

(xiii) from the key points of the considerations made by the Court of First Instance (CFI) on the three judicial reviews (JRs) in respect of the Kai Tak Mansion site, it could be concluded that practical feasibility should be ensured in imposing BHRs so that the entitled GFA could be accommodated. Restrictions should be established on the basis of cogent evidence that they were necessary for achieving a particular planning objective and the proportional impact on property rights needed to be considered. Minor relaxation under s.16 of the Ordinance should not be relied on as an alternative to establishing restrictions;

(xiv) no alternative BHR profiles had been considered and no alternative planning scenarios were explored in the AVA. The qualitative and subjective nature of the Expert Evaluation (EE) stage of AVA was inadequate for the establishment of NBAs and building gaps at specific sites. It was necessary to carry out additional quantitative studies if there was concern on ventilation at specific location;

Proposal

(xv) R2 proposed to completely review the whole basis on which the restrictions under the OZP were established by taking into account the Court's judgment regarding the three JRs on the Kai Tak Mansion site. The BHRs, NBAs and building gaps should be withdrawn or revised on a more reasonable basis;

Public Consultation

(xvi) there had been no prior public consultation, which gave no opportunity for the public, including the development and logistics industries, to be informed of the justification or the need of the restrictions, and explanation of particular BHRs, NBAs and building gaps. There was also no visual impact analysis to indicate the vision for the long-term development of the area. The development needs and future land requirement of the logistics industry had not

been seriously studied;

- (xvii) PlanD should have carried out a planning study and public engagement process for the proposed amendments and presented to the public the visual impact assessment and diagrams in order that owners, stakeholders and the public could be informed of the implications of the amendments. Consultation with KTDC and the public after the amendments were gazetted was not an effective means of informing public of reasons for the amendments;

Responses to grounds of representation and representer's proposals

- (h) the responses to the main grounds of R2 and the proposals were stated in paragraph 4.4 of the Paper and highlighted below:

More Lenient BHRs

- (i) BH control was an important part of urban design and town planning. The goal of BHR was to provide an overall height profile to achieve a cityscape which was acceptable to the Hong Kong people at large. The BHR was imposed to meet the public aspiration for a better living environment and hence was for the public good and the public interest. In formulating the BHRs, due regard had been given to various factors, including topography, site formation level, existing BH profile, local characteristics, the waterfront and foothill setting, land uses, local wind environment and measures suggested for air ventilation improvement, the BHR under the lease, permissible development intensity under the OZP, compatibility with the surrounding areas and stepped BH concept. An Urban Design Appraisal for the area had been conducted and the broad urban design principles set out in the Urban Design Guidelines had also been taken into consideration. The BHRs adopted in this OZP were based on reasonable assumptions, having regard to the development intensity permissible under the OZP, without precluding the

possibility for incorporating building design measures to achieve good quality developments;

- (ii) the BHRs were drawn up to provide better planning control on the BH of development/redevelopment as there was a tendency to develop out-of-context high-rise buildings in the area with many old buildings ripe for redevelopment. These high-rise developments were not in keeping with the development in the locality, creating negative impacts on the visual quality of the area, and violating the stepped height concept. The concentration of tall buildings in the area would also create canyon effect and adversely affect the local air ventilation at pedestrian level as well as that in the neighbouring districts. The BHRs provided a stepped BH profile appropriate to the local setting;
- (iii) as a general principle, existing/committed development with a height exceeding the relevant BHR would not be affected even with the stipulation of BHRs;
- (iv) whether a development was “out-of-context” was not considered solely on the absolute BH or the number of storeys, but with reference to the local character and site context, i.e. the characteristics of the neighbourhood;
- (v) in terms of redevelopment potential, in formulating the BHRs, it had been ensured that the development sites would generally be able to accommodate the development intensity as permitted under the OZP. The BHRs had provided reasonable scope for redevelopment while avoiding out-of-context buildings. The imposition of BHRs would not undermine the development potential of the site as permitted under the OZP, and hence would not jeopardise the redevelopment and urban renewal process. Flexibility was allowed in designing the shape and form of the buildings and the BHRs did not preclude the incorporation of innovative architectural design and sustainable

features;

- (vi) the BHRs *per se* would not result in bulkier buildings or wall effect affecting air ventilation. On the contrary, with reasonable height control, it would avoid out-of-context design, preserve the local character and regulate height profile of the built environment. Given the tendency to maximise views on the upper floors and to capitalize on land values at the lower floors through provision of commercial podium with full site coverage up to the level of 15m as permissible under Building (Planning) Regulations (B(P)R), a development with no BH control could give the same bulkiness at pedestrian level and thereby create similar air ventilation impact on pedestrian environment when compared to a development with BH control;
- (vii) the need to cater for greater design flexibility had to be balanced against the community aspirations for a better living environment with more optimal building developments. Besides, there was provision for application for minor relaxation of the BHRs under the OZP to cater for development/redevelopment with planning and design merits;
- (viii) s.3 and s.4 of the Ordinance and the scheme of the legislation were intended to give the Board comprehensive powers to control development in any part of Hong Kong. In the five recent JR applications against the Board's decisions of not upholding the representations in respect of the Draft Central District OZP (HCAL 23/2011 and 52/2011), Draft Ngau Tau Kok and Kowloon Bay OZP (HCAL 62/2011, 109/2011 and 34/2012), Draft Mong Kok OZP (HCAL 59/2011), Draft Causeway Bay OZP (HCAL 38/2011) and Draft Wan Chai OZP (HCAL 57/2011), the decisions of the High Court had confirmed that the Board had the power under the Ordinance to impose BHRs, NBAs and building gaps on particular sites. Given the wide coverage of the area that comprised areas

with varying characteristics including different topography and that there were different planning intentions/objectives to achieve, different restrictions for different sub-areas under the same broad zone were necessary;

- (ix) “G/IC” and “OU” sites (except “OU(B)” zone) were planned for a wide range of uses of different nature and scale and should be considered on a case-by-case basis in determining their development scale and intensity, having regard to the requirements, functions and nature of different GIC and OU facilities. Given that the “G/IC” and “OU” (except “OU(B)”) sites served the dual functions of providing community facilities as well as serving as visual relief and breathing spaces in the congested built-up areas, the practice of the Board was to reflect the height of the existing buildings or known/committed proposal for these sites so that their existing functions could be maintained, with allowance to meet the minimum height requirement for designated GIC or OU facilities;
- (x) the imposition of BHR for other development zones, e.g. “R(A)”, “C”, “I” and “OU(B)” zones, had taken into account a number of factors, including their planning intentions for high-density residential, commercial and industrial developments and their permitted plot ratios (PRs) stipulated in the Notes;
- (xi) R2’s proposal to increase all BHRs by 20m was not substantiated by any planning justifications and assessments. There was no basis to say that the public concern for out-of-context tall buildings meant development of 60 storeys or more;
- (xii) the Chief Town Planner/Urban Design & Landscape (CTP/UD&L) advised that in general, the BHRs were formulated based on reasonable assumptions, having regard to the development intensity permissible under the OZP, without precluding the possibility for incorporating building design measures to achieve good quality

developments. The AVA Consultant also advised that a higher BH did not guarantee better building permeability and proper building gaps to align with wind direction, and thus might result in higher height/width (H/W) ratio and more severe street canyon effect;

- (xiii) should there be functional/operational need and/or planning/design merits which could justify development to exceed the BHR, it could be considered individually by way of application for minor relaxation of the BHR. Each case would be considered by the Board on its own merits;

NBAs and Building Gaps

- (xiv) NBAs and building gaps imposed under the OZP were mainly based on the recommendations of the AVA, and taking into consideration site constraints and impacts on development/redevelopment potential. The NBAs and building gaps were essential planning requirements which would improve the air ventilation in the area to meet the public aspiration for a better living environment and hence for the public interest and public good;
- (xv) recent court's decision on JR cases had confirmed that the Board had the power under the Ordinance to impose BHRs, NBAs or building gaps on particular sites. From the planning perspective, designation of NBAs and building gaps could serve a positive planning purpose and might have other positive planning benefits. Provided that the Board had the necessary and sufficient planning justifications, such designation could be a part of the planning control within the Board's power. The imposition of NBA and building gap was considered justified and was an essential planning requirement as it could serve to improve air ventilation at the pedestrian environment and visual permeability in the area. Deleting the NBA and building gap requirements would defeat the purpose of creating and/or improving potential/ existing air path;

- (xvi) the areas designated as ‘NBAs’ were clearly marked and shown on the OZP, stipulated in the Notes and shown on Figure 1 of the Explanatory Statement (ES) of the OZP. There should be no building structure above ground, but development was permitted below ground. The objectives of the NBAs were described in paragraphs 7.11 and 7.12 of the ES. The designation of an area as NBA would not preclude the area from site coverage and plot ratio calculation;
- (xvii) the areas designated for NBAs and buildings gaps were to serve as or to enhance the function of existing wind corridors for the good of the district. These areas were relatively small in relation to the sites concerned and the requirements should not adversely affect the development intensity of the concerned sites. On the other hand, “O” zone and ‘Road’ were designated for specific planning purposes and different planning needs, which were different from NBAs or building gaps;
- (xviii) deleting the NBA and building gap requirements as suggested by R2 would compromise the planning objective to improve air ventilation and visual permeability in the area and was not supported;
- (xix) minor relaxation clause of NBA requirements should only cater for certain exceptional cases under which the NBA could not be provided as specified but alternative could be made so that the planning objectives could still be achieved in other form;

SBD Guidelines

- (xx) the SBD Guidelines and the OZP restrictions were under two separate regimes, i.e. the building and town planning regimes, although they were complementary with each other. The SBD Guidelines and JPN, which were administrative measures and were

complied on a voluntary basis for the granting of GFA concession/the exemption from GFA calculation under the Buildings Ordinance (BO), were generally applicable to all building developments with no reference to specific district characteristics and site circumstances. On the other hand, the OZP restrictions were statutory planning control to achieve planning objectives specific to the district;

(xxi) streets, open spaces, air paths and major building gaps were important measures to allow air to flow freely through the city, or from one end of a street all the way to the other end. It was important to incorporate the necessary inter-connectivity among them under the OZP through the designation of NBAs and building gaps at strategic locations. The SBD Guidelines focused on how air ventilation might be permeated through a building site so that better dispersion and air mixing could be achieved between the streets on both sides of the site. Building porosity allowed air ventilation to 'filter through the building sites' better. SBD Guidelines alone could not address the urban air ventilation problem;

(xxii) the compliance with the SBD Guidelines involved detailed building design matters, e.g. calculation of the projected façade length of building and the separation distance and permeability of buildings, which could only be firmed up after a detailed building scheme had been drawn up by the architects. In the absence of concrete building schemes, it would not be possible for PlanD at the OZP review stage to determine how the SBD Guidelines would impact on the building development and design at individual sites;

(xxiii) SBD Guidelines concerned matters of detailed building design for a specific site and there were infinite varieties of feasible design which a developer might wish to put up on a given site to qualify for concessions within the SBD Guidelines. However, planning involved looking at a district in a broad-brush way and determining

what restrictions should be imposed for the betterment of the district as a whole. Recently, in its judgment of the Hysan Group JR, the CFI upheld the Board's decision not to take into account SBD Guidelines in deciding whether to impose restrictions on the OZP;

Judicial reviews in respect of Kai Tak Mansion site

(xxiv) the CFI judgment was now subject to appeals by both the Board and the Applicant (Oriental Generation Ltd). The Board did not agree that the restrictions (BHR, NBA and building gap) imposed on the Kai Tak Mansion site were arbitrary;

(xxv) the development restrictions imposed in the Kwai Chung OZP were derived based on sound planning principles, urban design considerations, reasonable planning assumptions and other relevant planning considerations, in order to achieve the planning objectives set out for the area. An assessment was conducted in the course of BH review to ensure that development intensity permitted under the OZP could generally be accommodated under BHRs. The BHRs, NBAs and building gaps served to achieve a good urban form and improve air ventilation of the area, and were for the public good and in the interests of the community;

(xxvi) a host of relevant factors such as the topography, foothill and waterfront setting, existing BH, recommendations of the Urban Design Appraisal, relationship with adjoining districts, etc., had been considered in drawing up the stepped height profile for the district. NBA and building gap restrictions were imposed, based on the recommendations of the AVA, and each of them served a particular purpose to mitigate the identified problems and to improve the air ventilation of the district. The minor relaxation clause for BHR was to allow design flexibility to cater for individual site circumstances and constraints and also to provide incentives for development/redevelopment with design merits/planning gains.

Each application for minor relaxation would be considered by the Board based on the criteria set out in the ES;

(xxvii) the designation of the restrictions under the OZP was to facilitate local air ventilation. Air ventilation was subject to a combination of factors, including site topography, man-made and natural settings, built form and disposition, building height and bulk, wind/view corridors as well as prevailing wind directions. In designating NBAs and building gaps, the above considerations as well as land uses and development/redevelopment potential of the affected sites had been duly taken into account;

(xxviii) detailed quantitative studies required precise 3-D model for individual developments and could be employed to fine-tune building design by providing quantitative data to evaluate the minor difference between design options at detailed design stage;

Public Consultation

(xxix) it was an established practice that proposed amendments involving BHRs should not be released to public prior to gazetting. The reason was that premature release of such information before exhibition of the amendments might prompt an acceleration of submission of building plans by developers to establish *fait accompli*, hence defeating the purpose of imposing BHRs;

(xxx) the rationales for the BHRs as well as NBAs and building gap requirements had been set out clearly in MPC Paper No. 6/12, the AVA report, the Urban Design Appraisal and the ES of the OZP, which were considered by the MPC on 30.3.2012. All these documents were available to the public. Photomontages showing the visual impacts of the proposed BHRs with views from local vantage points were included in the MPC Paper;

(xxxix) amendments to the OZP were exhibited for public inspection for a period of two months in accordance with the provisions of the Ordinance. The exhibition process itself was a public consultation and any person could submit representations and comments on the draft OZP. During the exhibition period, PlanD also provided briefing on the OZP amendments to KTDC. The two-month statutory exhibition period was considered adequate for consultation with the public, while maintaining the efficiency of the process;

Grounds of Representation R10

- (i) the representation site was about 2,573m² in area and occupied by a 9-storey industrial building (the Gold Peak Building) with a height of 47.5mPD and a PR of 7.47. It was located on the northern fringe of the business/industrial area on Tai Lin Pai Road zoned “OU(B)”. In general, BHRs of 105mPD, 120mPD and 135mPD were imposed on this area to create a stepped-up BH profile from Kwai Chung Road to Castle Peak Road, taking into account the rising nature of the land, planning intention, existing BHs, etc. The Gold Peak Building site together with other existing industrial buildings on the north, west and south fell within the 105mPD height band;

- (j) the main grounds of R10 and representer’s proposals were summarized in paragraph 4.5.2 of the Paper and highlighted below:
 - (i) the BHR of 105mPD halted R10’s proposed hotel development in support of the Policy Address to revitalise vacant and under-utilised industrial buildings. Imposition of BHR should not jeopardise the planning intention of “OU(B)” zone to encourage phasing out of polluting industrial uses, and as a catalyst for increasing land supply for hotel development outside traditional tourist nodes;

 - (ii) limiting future development to existing BH did not provide

redevelopment incentive to modern commercial/business premises at a PR of 9.5 and was in conflict with the concept of ‘forward-looking planning’;

- (iii) the BHR of 105mPD did not improve air ventilation or alleviate the air ventilation concern of the Tai Lin Pai business/industrial area identified in the AVA (i.e. long and continuous building clusters restrict east-west wind flow), but encouraged a ‘shoe-box’ design with low BH, large footprint and limited setback and/or space for greenery at street level, resulting in ‘walled’ building which was the leading factor of poor air ventilation. A bulky building adversely affected street environment and obstructed natural ventilation at street/ lower level;
- (iv) there would be an over 1.2km-long strip of “OU(B)” zone with a uniform height of 105mPD (except Kowloon Commerce Centre) along Kwai Chung Road upon redevelopment. The monotonous BH did not give rise to a visually interesting urban townscape and would result in a dull and boring business cluster, which was not in line with the Urban Design Guidelines. In micro-scale, the ‘walled effect’ due to the higher SC of shorter building would reduce local view corridors. The BHR did not allow scope for design innovation and visual permeability at lower levels to meet the recommendations in the HKPSG;
- (v) the BHR did not allow scope/design flexibility for a hotel with modern standard. High SC was visually unfavourable for R10’s proposed hotel development, as the guestrooms would be closely facing the adjacent visually unattractive industrial buildings;
- (vi) R10 proposed to delete the BHR for the site or relax the BHR to not less than 135mPD in order to provide redevelopment incentive and design flexibility to facilitate air flow;

Responses to grounds of representation and representer's proposals

- (k) the responses to main grounds of R10 and the proposals were highlighted below:
- (i) the BHRs were formulated based on reasonable assumptions and flexibility was allowed in the shape and form of the buildings. Whether a development would be pursued was a commercial decision taking into account a host of factors, e.g. prevailing economic circumstances, market conditions, type of uses, etc. instead of the BHR alone. Even if the BHRs to a certain extent might reduce the number of possible development options, this did not necessarily amount to a material impact on the redevelopment incentive. The need to cater for greater design flexibility and redevelopment incentives had to be balanced against the community aspirations for a better living environment with more compatible building developments;
 - (ii) as the existing PR of Gold Peak Building was 7.47, the permissible PR of 9.5 of the "OU(B)" zone had provided redevelopment incentive for the site. Most buildings in the "OU(B)" zone along Kwai Chung Road under the BH band of 105mPD were around 35 to 70m in height (equivalent to about 40 to 80mPD) (including the Gold Peak Building which was about 37.6m high (or 47.5mPD)). The BHR had provided adequate allowance to accommodate the redevelopment permissible under the OZP while maintaining an overall congruous BH profile;
 - (iii) BHR by itself would not necessarily result in bulky building affecting street environment, air ventilation or reducing view corridor. Whether the guestrooms in R10's hotel proposal would closely face adjacent industrial buildings was a matter of building design, and the formulation of BHR already allowed flexibility in the form and shape of buildings. Given that different sites had

different configurations, disposition, topographic conditions and constraints, not all the sites would build up to the maximum BHs permissible under the OZP. Opportunity for BH variations within a height band was also allowed through the planning system for minor relaxation of BHRs to allow for design flexibility and encourage design amenities based on individual merits, including design merits, visual permeability and air ventilation as well as other relevant considerations including site conditions and constraints;

- (iv) BHR was to achieve an optimal height profile for the district. The AVA Consultant advised that the BHR of 105mPD at the Gold Peak Building Site would unlikely obstruct wind flow, and the existing openness to the south and southwest of the site offered by the east-west aligned footpath together with the low-rise Kwai Wing Road Cooked Food Hawker Bazaar and open car parks allowed east-west wind penetration. Better air ventilation was not guaranteed by a more relaxed BHR or deletion of BHR;
- (v) proposed development with planning and design merits (e.g. setback to allow for more public space at street level and greenery as claimed by R10) could be pursued by way of application for minor relaxation of the BHR. The criteria for considering such application were clearly set out in the ES of the OZP;

Proposal

- (vi) CTP/UD&L advised that there was no strong evidence to justify R10's proposal to uplift the BHR to not less than 135mPD from the urban design perspective, and the AVA Consultant advised that there was no information to demonstrate that R10's proposal could perform better from the air ventilation standpoint;
- (vii) the deletion of the BHR for the site would jeopardise the coherency of the stepped BH profile;

Grounds of R11

- (l) the representation site was about 4,418m² in area, accommodating Watson Centre with an existing BH of 102.8mPD (22 storeys) and was located in the midst of the industrial area on Tai Lin Pai Road under “T” zone. In general, the wider business/industrial area was subject to BHRs of 105mPD, 120mPD and 135mPD to create a stepped-up BH profile from Kwai Chung Road to Castle Peak Road, taking into account the rising nature of the land, planning intention, existing BHs, etc. The Watson Centre Site fell within the height band of 120mPD;

- (m) the main grounds of R11 and representer’s proposals were summarized in paragraph 4.5.3 of the Paper and highlighted below:
 - (i) R11 was pursuing the redevelopment of the site into a data centre. The BHR did not take into account the redevelopment of the site into modern industrial building under its entitled PR of 14.211. Given the entitled PR and the typical minimum floor-to-floor height of 4.2m, the BH would be at least 142.9mPD;

 - (ii) a proposed BH of 142.9mPD at the site would not produce excessively tall or out-of-context building given that the BHR in the immediate “T” zone was 135mPD. A relaxation of maximum height promoted good urban design. The proposed BH of 142.9mPD would not undermine the stepped height profile given the topography and the height bands of 150mPD for Greenknoll Court and 180mPD for Shek Lei Estate. It would also not affect the vista to the ridgeline of Golden Hill which peaked at 369mPD;

 - (iii) building footprint should be reduced to improve streetscape and air movement. The BH of 142.9mPD represented a 22.9m increase beyond the 120mPD BHR (+19.1%). This was not achievable through the application of minor relaxation of BHR;

- (iv) the BHR of 120mPD disadvantaged the Watson Centre site as it allowed other sites to enjoy a potentially higher floor-to-floor height upon redevelopment, which were located at a lower elevation (e.g. Effort Industrial Building at a site level of 8.2mPD) when compared with the Watson Centre site (site level of 16.8mPD);
- (v) noting the NBA designated on the OZP would create an air path from Kwai Chung Road to Tai Lin Pai Road and continued to Kung Yip Street where the Watson Centre site was located, a responsive design upon redevelopment of the site with smaller building footprint and larger open area at ground level would further enhance local air movement and improve pedestrian environment, as well as improve air circulation in the 'problem area' at Tai Lin Pai Road business/industrial cluster;
- (vi) R11 proposed to increase the BHR of the Watson Centre site to at least 142.9mPD;

Responses to grounds of representation and representer's proposals

- (n) the responses to main grounds of R11 and the proposals were highlighted below:
 - (i) in formulating the BHRs, it had been ensured that the development sites would generally be able to accommodate the development intensity as permitted under the OZP. Basic information such as site area, site level, maximum site coverage under the BO as well as some assumptions on the redevelopment scheme, including the type of redevelopment (e.g. residential, commercial and industrial), the provision of car park and loading/unloading facilities and utilities at basement level, reasonable floor-to-floor height and possible GFA concession under the BO, had been taken into

account. A BHR of 120mPD could broadly accommodate the development intensity permitted under the OZP. A proper balance had been struck between public aspirations for a better living environment and private development rights;

- (ii) BHR served the planning purposes of achieving a good urban form with an optimal BH profile and improving the air condition. The achievement of these purposes was for public good and in the wider interests of the community. Even if there was some impact on development rights, such impact should not be able to outweigh the important planning purposes served by the OZP. Should future development to exceed the BHR be justified, the proposal could be pursued by way of application for minor relaxation of the BHR to the Board;
- (iii) BHR by itself would not necessarily result in bulky building and reduce ground level space for streetscape and air ventilation improvement. There was no direct causal relationship between relaxation of BHR and good urban design. Whether a proposed development would promote good urban design should be considered on its own merits. R11 had not provided a redevelopment scheme to substantiate the need for a BH of 142.9mPD, or such BH would promote good urban design;
- (iv) the BHR was a broad height band representing the predominant BH of the buildings upon redevelopment under this height band, instead of an individual site. Imposition of specific BHs within the BH band would affect the integrity of the concerned "OU(B)" zone. Since the industrial area was on a sloping land gradually rising from Tai Lin Pai Road to Kung Yip Street, the height available for above-ground development on each site varied. Planning applications for minor relaxation of BHR would cater for site-specific circumstances;

- (v) Greenknoll Court (BHRs of 150mPD) and Shek Lei Estate (BHR of 180mPD) to the further east of the Tai Lin Pai Road business/ industrial area were situated at an upper foothill setting. Their BHRs had taken into account the much higher platforms of 52mPD and 82mPD respectively and should not be used as reference for the BHR of the Watson Centre site;
- (vi) Kung Yip Street on which the Watson Centre site abutted was 15m wide and considered beneficial for wind penetration. The AVA Consultant advised that a smaller building footprint at the Watson Centre site as proposed by R11 would only bring piecemeal setback and would not result in a wider through air path along the full length of Kung Yip Street to alleviate the air ventilation problem at the long business/industrial building cluster on Tai Lin Pai Road. Nevertheless, the BHR imposed on the Watson Centre Site had scope to enhance the local air ventilation and improve pedestrian environment as flexibility in the shape and form of buildings was allowed in formulating the BHR. Development proposal with any planning and design merits could be pursued by way of application for minor relaxation of the BHR;

Proposal

- (vii) CTP/UD&L advised that piecemeal uplifting of BH of individual site was not supported in general so as to maintain the integrity of the overall BH concept. Moreover, no information had been submitted by R11 to demonstrate that the proposal would not have adverse impacts on the urban design, visual amenity and air ventilation;

Grounds of R12

- (o) Wonderland Villas was a private residential development completed in 1984 to 1987, with a total domestic GFA of 139,860m² on the 6.3ha “R(B)2” zone (equivalent to a domestic PR of about 2.19) and a total

non-domestic GFA of 11,000m² on the 0.9ha “C(1)” zone. Four height bands of 260mPD, 275mPD, 290mPD and 275mPD (from south to north) were imposed on the subject “R(B)2” zone;

(p) the main grounds of R12 and the representer’s proposals were summarized in paragraph 4.5.4 of the Paper and highlighted below:

(i) the BHR of 290mPD imposed on “R(B)2” zone of Wonderland Villas was not supported. A higher BHR for the “R(B)2” zone would allow Wonderland Villas to serve as an illuminated landmark of Victoria Harbour. It would also be fair to the existing property owners;

(ii) R11 proposed that the maximum BHR for the “R(B)2” zone should be set at the height of the existing tallest building of Wonderland Villas (i.e. Block 12 with an existing BH of 339mPD) or at least 360mPD;

(q) the responses to main grounds of R12 and the proposals were highlighted below:

(i) Wonderland Villas was built in the 1980s and the stepped BH design respecting the ridgeline bore its architectural merits. However, public perception on visual impact of out-of-context buildings had changed over years and there was a growing concern on continuous building blocks without separations causing ‘walled’ developments. There was also an increasing public aspiration to preserve natural features, including ridgeline, mountainous backdrop, etc. While quality building design was welcome, landmark buildings were not necessarily tall buildings, particularly as Wonderland Villas was located on top of a ridge which could be seen from all directions;

(ii) taking into account relevant considerations including the urban

fringe character of the area, the high elevation, the sloping topography, the upland setting, the stepped height concept and the elongated site configuration, the four height bands of 260mPD, 275mPD, 290mPD and 275mPD for the “R(B)2” zone were adopted so as to allow BH variation having regard to the natural topography as well as to contain the visual impact upon redevelopment at this visually prominent location. The BHRs had ensured that the permissible GFA under the OZP could be accommodated. Imposition of BHRs on the “R(B)2” zone was intended to avoid out-of-context buildings. There was no change to the permitted GFA stipulated in the Notes for the “R(B)2” zone and would not result in a decrease in development intensity, hence would not jeopardise the owner’s right in redevelopment;

- (iii) the MPC had considered R12’s proposal to take the height of the existing tallest building as the BHR for Wonderland Villas. Having due regard to the desirable BH variation and the unique setting of the Wonderland Villas site, it was considered that a BHR equivalent to the existing tallest building (i.e. 339mPD) of the development for the “R(B)2” zone would not be appropriate as developers would likely redevelop the entire site to the highest height limit, resulting in a monotonous built form. The stepped BHRs of 260mPD, 275mPD, 290mPD and 275mPD with provision for redevelopment to existing BHs would be the most applicable BH control on Wonderland Villas. Given the visual prominence of the location, new development/redevelopment at the “R(B)2” zone would also require planning permission from the Board with the support of a layout plan and relevant information including a visual impact assessment;
- (iv) CTP/UD&L advised that given the existing building heights of Wonderland Villa ranging from 264mPD to 339mPD, the proposed uniform BHR of 339mPD or 360mPD would probably intensify the visual impact induced by the development;

Grounds of R13

- (r) the representation site consisted of two narrow strips of land on the northern and eastern edges of Yuet Lai Court, comprising land allocated to Yuet Lai Court and Lai Cho Road (part). The northern strip was about 446m² in area and the eastern strip was about 1,207m²;
- (s) the main grounds of R13 and representer's proposal were summarized in paragraph 4.5.5 of the Paper and highlighted below:
 - (i) the amendment to rezone the two strips of land to "R(A)" would lead to congested buildings and busy traffic;
 - (ii) R13 proposed that the land could be developed for community use;
- (t) the responses to main grounds of R13 and the proposal were highlighted below:
 - (i) the amendment intended to rationalise the lot boundary of Yuet Lai Court by rezoning the representation site from "G/IC" to "R(A)". Given the nature of the rezoning, there was no increase in development density and traffic;
 - (ii) the representation site comprised two separate elongated strips of steep slopes and public road (Lai Cho Road (part)), and did not produce meaningful area for community development; and

PlanD's Views

- (u) the representations R2 and R10 to R13 should not be upheld for the reasons set out in paragraph 7.2 of the Paper.

57. The Chairman then invited the representers and commenter's representatives to elaborate on their representations and comment.

[Mr. Maurice W.M. Lee arrived to join the meeting at this point.]

R2 (REDA)

58. Mr. Ian Brownlee made the following main points:

- (a) REDA was very concerned about the impact of the zoning amendments on the development system as a whole. The measures adopted by the Board would result in poor quality built environment. It was REDA's desire to see an improved sustainable built environment, and there was a need to protect the rights of developers and individual property owners;

High Court Judgment

- (b) PlanD's responses relating to the Kai Tak Mansion judgment were noted, but REDA did not accept the points made as there were three principles that were relevant to any situation:
 - (i) proper attention should be given to establishing restrictions on the basis of cogent evidence that the restrictions could be reasonably regarded as necessary for achieving a particular planning objective;
 - (ii) the proportional impact on property rights needed to be considered in a structural and systematic manner;
 - (iii) reliance could not be placed on the application for minor relaxation under s.16 as an alternative to establishing restrictions which had a rational justification. However, throughout the TPB Paper, reference was made to the provision for minor relaxation in many instances, rather than properly addressing the points made in the representation;

- (c) these principles had not been applied in a consistent and logical manner in the Kwai Chung OZP, and REDA considered that the Board should re-consider the restrictions which had been imposed;
- (d) it was stated in the Paper that REDA did not made adequate submission in relation to the proposals submitted in response to the OZP restrictions. However, REDA and other members of the public did not have the information and resources to look at all details about the restrictions imposed on the OZP. The onus was on the PlanD and the Board to give serious consideration to the points raised, provide adequate justification for the restrictions imposed, and provide cogent reasons as to why, after serious consideration and relevant technical analysis, a proposal from the representers should or should not be accepted, in whole or in part. However, PlanD did not provide additional assessment to respond to the genuine points made by the representers. There was no informal public consultation and the only process for public input was through this representation process;

AVA, NBAs and Building Gaps

- (e) REDA had consistently argued that the EE approach to AVA was an inadequate basis for the establishment of specific detailed restrictions on an OZP. The AVA EE approach was only adequate for identifying broad problem areas. If there was a need to impose measures to address these problem areas, it was necessary for the Board to have more detailed information, such as CFD modelling, which allowed consideration of options, the actual degree of benefit to be obtained and the proportional impact on private property rights. This had not been carried out in the Kwai Chung OZP. As such, the NBA and building gap requirements had not been adequately addressed;
- (f) there were not many identified problem areas in Kwai Chung and it would be relatively easy for PlanD to carry out a suitable level of study on those that directly affected private property. By not doing so, members of the public were not provided with adequate information to understand the need

and benefit of the proposed restrictions. The onus was on PlanD to provide the required detailed cogent information and to justify the controls. The detailed studies and justifications were not provided as in the Kai Tak Mansion case.

- (g) the discussion in the AVA report on NBAs and building gaps was a jumble of arbitrariness and guess-work. There was not one calculation which indicated the benefits of the proposed restrictions and whether alternative width or alignment of the NBAs and building gaps would perform better or worse. Given the problems and inadequacies in the EE methodology, it was unsuitable to use it for fixing NBA and building gap requirements. The EE approach was regarded as educated guess-work. CFD analysis should be properly undertaken to justify the restrictions imposed;
- (h) only photographs and plans were provided in the Paper to show the NBAs and building gaps and there were no technical justifications provided. The restrictions were imposed arbitrarily;
- (i) REDA did not agree to PlanD's responses (paragraph 4.4.4 on pages 22 to 23 of the Paper) on the following aspects:
 - (i) while PlanD said that detailed studies could be employed to fine tune building design, REDA considered that detailed studies should be used to fine tune the controls which were going to affect building design;
 - (ii) while PlanD stated that it was not possible to prepare detailed schemes for every site in Kwai Chung, REDA only proposed to look at those areas where a NBA or building gap was proposed;
 - (iii) while PlanD considered that AVA EE was cost effective, REDA considered that it was not an acceptable reason as CFD was becoming widely used and cheaper; and Plan D had consultants who could do the modelling;

- (iv) if quantitative analysis was undertaken and it was concluded that the AVA EE analysis was not correct, the restrictions should not be imposed;

SBD Guidelines

- (j) the SBD Guidelines were relevant matter that the Board should take into account when considering amendments to the OZP to impose BH and other restrictions. It was noted that PlanD and the Board required compliance with the SBD Guidelines when specific project was being considered. The requirements included in the planning brief for the Staunton Street URA scheme recently approved by the Board was an example of that requirement;

- (k) REDA proposed that a re-assessment of the BHRs and other restrictions be undertaken, taking into account the SBD Guidelines. REDA did not agree to PlanD's responses (paragraph 4.4.3 on page 21 of the Paper) on the following aspects:
 - (i) PlanD had not undertaken any assessment, but just argued that it would not be possible for PlanD to determine the impact of SBD Guidelines in the OZP review stage;

 - (ii) the argument that SBD requirements were only related to building porosity between streets was wrong as SBD Guidelines also required setbacks and reduced podia. The interaction between the SBD requirements and the OZP restrictions should be studied at general level, not detailed building level;

 - (iii) REDA did not expect PlanD to do detailed designs for all sites. REDA had offered a discussion with Plan D on a technical basis to achieve a better understanding, but the offer had not been accepted;

 - (iv) PlanD was consistently fixing BHRs at the lowest level to achieve

the permitted GFA. However, as demonstrated in the Watson Centre and the Gold Peak Building cases being considered at this meeting, the assumptions for a maximum site coverage of 100%, a 3-storey podium and a 60% site coverage for towers were out-of-date. These assumed building designs could not generally be achieved under the SBD Guidelines as the podium coverage must be reduced;

(v) the intention to encourage permeable podia and wider gaps between buildings for better ventilation as stated in paragraph 7.8 of the ES of the OZP could not be achieved as the BHRs were set so low that it would result in maximum site coverage and no permeability; and

(l) a minimum flexibility had been allowed under the BHRs. If the BHs were to be relaxed by about 20m, they would help achieve a better building design.

R10 (Campell Group (Holdings) Limited)

59. Mr. Alvin Yau made the following main points:

- (a) the representer was the owner of Gold Peak Building and the site was subject to a BHR of 105mPD. R10 requested that the BHR should be increased to 135mPD;
- (b) while the area was zoned "OU(B)" on the OZP with the planning intention for redevelopment to commercial and hotel uses, it was still predominately for industrial use. Taking into account the high construction cost and premium involved for redevelopment, sufficient incentive should be provided and a feasible redevelopment scheme should be allowed;
- (c) the representer intended to redevelop the site for hotel use and submitted a planning application in May 2011 for hotel use at the site with BH at

150mPD. To address comments of PlanD, the BH was reduced to 135mPD. The application was subsequently withdrawn as a BHR at 105mPD was imposed on the site before the application was considered by the Board. The BHR at 105mPD had seriously affected the incentive for redeveloping the site for hotel use;

- (d) upon further study, it was found that if the site was restricted to a BH of 105mPD, only 26 storeys could be accommodated. The BHR at 105mPD would also constrain the design of the proposed hotel and half of the guestrooms would be facing closely the adjacent visually unattractive industrial buildings;
- (e) the BHRs were just freezing developments to their existing BHs. However, it was considered that planning should be “forward-looking” and new commercial developments should not be forced to follow the heights of the existing industrial developments; and
- (f) the assumptions on site coverage adopted by PlanD was outdated. While the floor plate of lower floors would be relatively large to provide more floor spaces for shops, the upper floors would have a smaller floor plate in order to allow more light penetration. Moreover, a taller building would allow the provision of more hotel rooms.

60. With the aid of a Powerpoint presentation, Miss Doris Lee made the following main points:

- (a) even if a higher BH was allowed, with the SBD Guidelines in force, developer could no longer take the advantage of concessionary floor areas and increase the bulk of the building;
- (b) it was not a correct assumption that the site coverage would be maximized in all developments. On the contrary, a smaller floor plate was more preferred to improve penetration of light;

- (c) building design under BHs of 150mPD, 135mPD and 105mPD had been worked out. As demonstrated by the layout design of the development under the three respective BHs, the site coverage/floor plate and façade length of the building block with a BH at 105mPD would be the greatest; and
- (d) as the area was subject to summer prevailing wind mainly from the southeast to southwest, the increase in façade length as a result of the reduced BH at 105mPD would block the wind blowing into the area.

61. Mr. Alvin Yau supplemented that R10 proposed to increase the BHR of the site to 135mPD. However, if the Board considered not appropriate to have piecemeal relaxation of BHR, a general relaxation of the BHR for the whole area under the same height band to 135mPD was also supported.

[Mr. H.F. Leung left the meeting at this point.]

R11 (Laynmore Limited)

C1 (Omaha Investment Limited)

62. With the aid of a Powerpoint presentation, Miss Veronica Luk made the following main points:

- (a) the BHR of 120mPD for the representation site (Watson Centre) was considered as unreasonable, unfair and arbitrary, and had infringed the owner's property right;
- (b) while PlanD indicated that the stepped height profile in the area was adopted taking into account the topography of the sites, the BHR of 120mPD of the representation site failed to take into account its existing site topography. According to the building plans for the Watson Centre approved in 1981, the mean site formation level of the site was 17.63mPD. Other buildings within the same height band had a lower site formation level. For instance, the site formation level of the Effort Industrial

Building was 8.8mPD. It was unreasonable that developments on different levels were grouped under one height band;

- (c) less design flexibility was therefore allowed for the Watson Centre site with a higher site formation level. As indicated in Table 2 of the TPB Paper, a flexibility of only 0.2m in BH was allowed with the BHR of 120mPD. This indicated that the BHR was adopted arbitrarily. Minor relaxation of BHR should not be relied on to achieve design flexibility;
- (d) the GFA entitlement of the site could not be achieved because of the wrong assumptions adopted by PlanD in calculating the development parameters of the site in the following aspects:
 - (i) the existing car parking area should not be deducted in devising the existing GFA for future redevelopment. According to the approved building plans, the existing building had a GFA of 62,811m², which was equivalent to a PR of 14.211. There was no differentiation between industrial use and car parking use in the GFA calculation under the approved building plans. There was no legal basis to determine the PR of the existing building in such a way. However, it was agreed that the area of E&M facilities should be deducted and the resultant PR of the existing building would be 14.12;
 - (ii) the site formation level of the representation site should be 17.6mPD, instead of 16.8mPD as adopted by PlanD. The wrong site formation level adopted had already invalidated the BHR imposed on the site;
 - (iii) the assumed floor-to-floor height of 4.0m had not taken into account the floor height required for a data centre. As data centre was a column one use under the "T" zone, the representer, whose parent company had major business on telecommunications services, intended to redevelop the site into a data centre. A data

centre would require a minimum floor-to-floor height of 4.2m and the proposed redevelopment for a data centre would result in a BH of 141.8mPD;

- (iv) it was wrong to assume that the future development would have a site coverage of 100% with a 15m podium. As Kwai Chung Road fell within an important air path and NBAs were imposed in the area, a responsive design with no podium upon redevelopment would help increase permeability, facilitate air movement and allow ground level landscaping;
- (e) the representer had worked out a redevelopment scheme with a no podium design at a PR of 14.211. The resultant BH would be 142.9mPD (28 storeys). This demonstrated that the BHR of 120mPD imposed on the site could not accommodate the GFA entitlement of the site. The proposed redevelopment with a BH of 142.9mPD would not affect the stepped height profile or result in out-of-context development in the area, as the site was located adjacent to the height bands of 135mPD and 150mPD. It would also not breach the ridgeline;
- (f) the BHR imposed on the site was contrary to the High Court judgment in that imposition of development restrictions must be determined practically so that the GFA entitlement of the site could be accommodated; and
- (g) it was therefore proposed that the BHR of the site should be revised to at least 140mPD, which was 20m above the current BHR.

63. Mr. Phil Black supplemented that PlanD's calculation on redevelopment parameters should be accurate to justify the BHRs imposed. With the aid of a drawing on the calculation of the existing PR of R11's site, Mr. Black said that it was unreasonable to ignore the car parking area from the calculation of the existing PR and adopt a wrong site formation level in the calculation. Noting the response from PlanD that redevelopment requiring a higher BH could be submitted for consideration by the Board under the minor relaxation mechanism, it was proposed that remarks should be added to the Notes as follows:

“minor relaxation in height may be granted under application if demonstrated that the scheme respects the OZP intention and does not adversely affect air ventilation and wider interest of the community.”

64. As the representers and commenter’s representatives had finished their presentations, the Chairman invited questions from Members.

65. On the request from the Chairman, Mr. Wilson Chan, DPO/TWK, provided the following information in response to the comments made by R11’s representatives on PlanD’s assumptions in calculating the development parameters of the R11’s site (Watson Centre):

- (a) the site formation level adopted was a broad-brush assumption making reference to the level of Kung Yip Street, which was 16.8mPD, and the average formation level of the Watson Centre site as shown on the approved building plans, which was from 54 ft to 57.5 ft (about 16.46mPD to 17.5mPD, with an average at 16.98mPD);
- (b) according to the building plans approved in 1981, the approved GFA of the building was 62,811m² (i.e. PR of 14.211), which included car parks, E&M and some minor features that were usually non-accountable in GFA calculation. In calculating the existing PR, the GFA that had to be exempted and were non-accountable under the extant regulations should be discounted in order to avoid double calculation in GFA concessions. For the subject site, a GFA concession of 25% had already been assumed in addition to the existing PR;
- (c) it was not possible to take into account all possible options in terms of the future use and design in working out a possible development scenario when the BHRs were formulated. A 4.0m floor-to-floor height was a general assumption. If the developer intended to develop the site as a data centre and a high floor-to-floor height was required for operational need, an application for minor relaxation of the BHR could be submitted to the

Board for consideration; and

- (d) the subject site was not located at major air path as identified under the AVA and the 100% podium site coverage was only an assumption made in working out development option under the BHR. It was not practical to exhaust all options on different assumptions on site coverage for a specific type of development. The BHR imposed on the subject site was in accordance with the stepped BH concept and the increase in BHR for the site to 135mPD would affect the integrity of the BH band concept.

66. Mr. Phil Black said that PlanD should rely on the site formation level shown on the approved building plans.

67. In response to the Chairman's question, Mr. Alvin Yau said that there was no approved scheme for R10's site. Planning application for redevelopment of the site for hotel use was previously submitted, but was withdrawn before it was considered by the Board. However, building plans submission had not been made as a BHR of 105mPD was subsequently imposed on the site. Ms. Veronica Luk said that data centre was a column 1 use under the "I" zone, but no building plan approval had been obtained for the proposed data centre development at the site of R11.

68. In response to a Member's question, Ms. Doris Lee said that the permissible GFA could be accommodated with the BHR of 105mPD on the site. However, as compared with a scheme made under a higher BHR, the site coverage and façade length of the building block under a BHR of 105mPD would be greater, which would affect air ventilation and was not for public good. A higher BHR would allow greater flexibility for a better layout design. She did not understand why a BHR of 105mPD was considered not appropriate for the site.

69. In response to the Chairman's enquiry, Ms. Doris Lee said that the previously submitted planning application was withdrawn because the representer wanted to study the implication of the BHR imposed on the site. Mr. Alvin Yau said that the representer intended to develop a hotel with a BH of 135mPD. It was doubtful if the Board would approve a planning application under the minor relaxation clause when the BH of the

proposed scheme exceeded the BHR by 30m. The Chairman said that the Board had not adopted a definition for “minor” in considering application for minor relaxation. Each case would be considered on its own merits.

70. In response to a Member’s question on the implication of relaxing the BHRs of the representation sites, Mr. Wilson Chan said that piecemeal uplifting of BHR of individual sites would affect the integrity of the overall BH concept and stepped height profile. Mr. Calvin Chiu, AVA Consultant, said that uplifting of the BHR of individual sites would not affect air ventilation of the general area, if the sites were not on the breezeway. However, further study would be required if the BH of the whole height band was to be uplifted.

71. In response to a Member’s questions on air ventilation, Mr. Calvin Chiu said that the performance in terms of air ventilation would be better for an air path of 16m wide than two separate air paths each of 8m wide, because the building façade would create friction to air flow and there were four building facades for two air paths, instead of two for a single air path. Air flow would also be affected by topography. The urban environment in Hong Kong was very congested and developments with large podium would affect air ventilation at pedestrian level because of friction at the ground surface. As the area to the southwest of Kwai Chung was mainly occupied by container terminals with no high-rise developments, the Kwai Chung area would receive more wind from the southwest than from the southeast in the summer months.

72. In response to a Member’s question, Mr. Wilson Chan said that though the calculation shown in Table 2 of the TPB Paper had indicated only 0.2m flexibility in BH with the BHR of 120mPD for R11’s site, PlanD had made adequate allowance in the calculation by adopting a GFA concession of 25%.

73. Mr. Ian Brownlee said that the representations of R10 and R11 reinforced REDA’s concerns that in formulation of BHR, no account had been taken on the building economics as well as the implications for the redevelopment of the area by the private sector. There was concern that the BHRs were set at the lowest level to accommodate the permitted GFA. The assumption adopted by PlanD was not realistic and it was believed that the problem encountered by R10 and R11 was also encountered by other sites within the general area with the restrictive BHRs. With the new requirements under the SBD Guidelines,

design flexibility and good building design could be achieved by relaxing the BHRs by 20m. These should not be granted subject to the submission of a scheme for the Board's consideration under the minor relaxation clause.

74. Mr. Phil Black said that having noted the proposal of R2's representative at the meeting, he would like to amend his proposed addition to the Remarks to the Notes to include a cap at 20% for any increase in BH to exceed the BHR so as to allow a good and sensible redevelopment scheme. Mr. Black suggested that as some of the sites had an existing PR greater than the maximum PR permissible under the OZP, a sensitivity test under the AVA could be undertaken to assess the impact of the developments, which were to be redeveloped to an intensity up to their existing PR.

75. As Members had no further question to raise, the Chairman said that the hearing procedures had been completed and the Board would deliberate on the representations in the absence of the representers and commenter's representatives. They would be informed of the Board's decision in due course. The Chairman thanked the representers and commenter's representatives and PlanD's representatives and AVA Consultant for attending the hearing. They all left the meeting at this point.

[Mr. Rock C.N. Chen and Mr. Maurice W.M. Lee left the meeting at this point.]

Deliberation Session

76. Members noted that the general points raised by R2 (REDA) had all been previously deliberated thoroughly by the Board. There were no additional points that warranted a re-consideration. Regarding the concern on the need to take SBD requirements into account in drawing up BHRs in the plan-making process, Members were fully aware that the requirements were administrative measures for compliance on a voluntary basis for the granting of GFA concessions. If the BHRs were relaxed to cater for compliance of SBD requirements, there would be no guarantee that the requirements would be met as developers could choose not to apply for GFA concessions to avoid having to meet the SBD requirements. Moreover, in recommending BHRs for the OZP area, it would not be practical or possible to work out all possible development scenarios. The Board had all along followed statutory and established consultation procedures in making amendments to

the OZPs to incorporate development restrictions including BHRs. Regarding R2's proposal to have a blanket increase of the BHRs by 20m, the presenter's representative did not put forward any strong justification and assessments to support the proposal. It was noted that reasonable assumptions had been used in formulating the BHRs, which had taken into account of all relevant factors including the Urban Design Guidelines, the Urban Design Appraisal for the area, the existing topography, stepped height concept, local characteristics, existing BH profile, site formation level and site constraints, the zoned land uses, compatibility with surrounding developments, development potential, the wind performance of the existing condition and the recommendations of the AVA. The BHRs were to provide better planning control on the BH upon development/redevelopment and to meet public aspirations for greater certainty and transparency in the statutory planning system, to prevent excessively tall or out-of-context buildings, and to instigate control on the overall BH profile of the area. To cater for site-specific circumstances and schemes with planning and design merits, there was a provision for application for minor relaxation of BHRs under the OZP. The Board had no definition on "minor" in considering application for minor relaxation. What constituted "minor" was dependent on context, circumstances and impact. Each application would be considered on its individual merits.

77. The Vice-chairman noted that private property owners and developers had raised objections and concerns on the BHRs on the grounds that the BHRs had posed constraints on future development/redevelopments of their sites. However, as shown in the cases previously considered by the Board, developers tended to develop their schemes up to the maximum level as permitted under the OZP. If a higher BHR, say an increase of 20m as proposed by R2, was imposed to allow more flexibility, it was likely that future development would be built up to the maximum BH, but that might not necessarily reduce coverage at ground level or result in better building design. As such, he considered that the present system of requiring submission of a scheme with planning and design merits to justify a higher BH appropriate. The Chairman agreed that developers should be encouraged to propose innovative schemes with planning and design merits through the planning application system.

78. The Secretary said that BHRs were imposed under a height band concept and stepped height profile. The provision of minor relaxation was to cater for cases with planning and design merits as well as the specific circumstances of the sites concerned. The

criteria for consideration of applications for minor relaxation were stated in the ES of the OZP and impact on air ventilation was not the only consideration. The minor relaxation clause was positively constructed to encourage innovative scheme with planning and design merits for consideration of the Board. The Remarks proposed by the representative of R11, on the other hand, were negatively constructed upon which BHR would be relaxed if it could be demonstrated that no adverse impacts would be generated. The Chairman said that the Board should consider whether the provision for minor relaxation would provide enough flexibility, as the criteria for consideration of application for minor relaxation had covered various aspects, and not only on air ventilation. In addition, “wider interest of the community” was difficult to be defined. The proposed Remarks by R11’s representative should not be adopted.

79. A Member said that the term “minor” might give an impression to developers that an increase in BHR over a certain percentage could not be regarded as “minor” and could not be considered under the “minor relaxation” provision.

80. While noting that there was no definition on “minor”, a Member considered that the proposal to delete the word “minor” was not appropriate as developers would then be free to ask for any extent of relaxation and there would be no reference for the Board to consider the extent of the relaxation. This Member also considered that the Remarks proposed by the representative of R11 not acceptable as that carried a connotation that there was a legitimate expectation for a relaxation of the BHR. In addition, PlanD had already provided information and justifications on how the BHRs were formulated in the TPB Paper. The BHRs were formulated having regard to the interest of the general public. If individual developers had difficulties in meeting the BHR imposed, the provision for minor relaxation was a mechanism which allowed the Board to consider schemes submitted by individual developers, who should be responsible for justifying their schemes with planning and design merits. Members also noted that should a major BHR adjustment be justified, suitable OZP changes could be initiated under the statutory planning mechanism.

81. A Member said that the imposition of BHRs was for public interests and the formulation of the BHR was in accordance with the rationale and principles adopted by the Board. Representers had raised concerns that the BHRs would pose difficulty on compliance with the SBD requirements, and on sites with specific constraints and uses with

specific floor-to-floor height. Given that the BHRs were formulated based on reasonable assumptions taking into account all relevant considerations and the rationale and justifications were clearly explained in the plan-making process, developers had the duty to comply with the restrictions. Should the developers choose to incorporate SBD requirements in their proposal and there was difficulty to do so under the BHR imposed, there was a mechanism for them to apply for minor relaxation of the BHR. In this regard, a blanket increase in BHRs as proposed by representers was considered not acceptable.

82. A Member considered that the rationale behind the formulation of the BHRs and the relevant considerations taken were clearly presented in the TPB Paper and by PlanD during the meeting and were well justified. It should be the responsibility of the developer to put forward their schemes and justify them with planning and design merits should a relaxation of BHR be required.

83. Another Member noted that in calculating the maximum development intensity of the representation sites, an adequate allowance of 25% GFA concession had already been adopted and there should be enough flexibility to accommodate a development under the BHR. The representers had not provided sufficient reasons to justify any increase in BHR. This Member also considered that under the provision for minor relaxation, a greater extent of relaxation could be considered when there were sufficient planning and design merits and to cater for site-specific circumstances.

84. A Member noted that the road abutting R11's site was 15m wide and as such the SBD requirements were not necessarily applicable to the site. On R11, this Member asked whether PlanD's assumption that the floor areas of the car park should be discounted from the existing PR was realistic as those floor spaces had been included in the total GFA in the approved building plans. Another Member, however, noted that Table 2 of the TPB Paper was intended to provide a possible development option for R11's site under the BHR imposed and by including an assumption of 25% GFA concessions, adequate allowance should have been made in the calculation. In any event, what was at issue was an appropriate height profile for the area. Individual site characteristics could be dealt with through minor relaxation of BHR at the stage of s.16 application.

85. The Chairman summarized Members' views that the general points raised by R2 should not be upheld as the BHRs, NBAs and building gaps imposed on the OZP were formulated based on reasonable grounds, considerations and assessments. Regarding R10 and R11, it was considered that the BHRs were imposed after taking into account all relevant considerations and assessments. PlanD had provided clear information and calculations, including an adequate allowance of 25% GFA concessions, on each representation sites which demonstrated that the BHRs imposed could accommodate the development intensity as permitted under the OZP. The representers had not submitted any scheme or technical assessments to justify the proposed increase in BHR. In addition, there was provision for application for minor relaxation of BHR to cater for situation where there was a need for specific schemes to exceed the BHRs such as requirement for higher floor-to-floor height to meet operational requirements for uses such as data centre as proposed by R11, or to cater for site-specific circumstances such as constraints imposed by site formation level as suggested in R10's case. For major changes to BHR, the present statutory planning system would provide an avenue.

86. Mr. Jeff Lam advised that although data centre was a column one use always permitted under the Notes of the "I" zone covering the site of R11, lease modification was required for a proposed data centre development at the site. The developer had not yet submitted any application for lease modification for the proposed data centre use.

87. Regarding R12, the Chairman said that the BH bands for the "R(B)2" zone covering the representer's site was formulated taking into account all relevant factors including its unique site characteristics and the existing BHs. Adopting a BHR equivalent to the existing tallest building at 339mPD of the development would result in a monotonous built form for the entire site. The Notes also provided for redevelopment up to the existing height, despite the height bands.

88. Regarding R13, Members noted that the amendment was to rationalize the existing lot boundary and the representation site did not produce any meaningful area for community development as suggested by the representer.

89. In response to a Member's question, the Secretary provided the following information regarding R2's claims with respect to the JR in respect of the Kai Tak Mansion

site:

- (a) the concerned principles from the CFI judgment on the Kai Tak Mansion case were:
- the BHR should not prevent a developer from making full use of plot ratio and gross floor area available to a site;
 - the relevant restrictions had to be justified on their own merits, rather than by reference to the possibility of relaxation in specific cases under s. 16 of the Ordinance;
 - any development restrictions imposed must be backed up by cogent evidence that the measures could reasonably be regarded as necessary for achieving a particular planning objective; and
 - the Board could not impose restrictions arbitrarily, but must have a rational justification for the measures implemented;
- (b) as indicated in the TPB Paper and discussed above, the development restrictions imposed in the Kwai Chung OZP were not arbitrary, but were derived based on sound planning principles, urban design considerations, reasonable planning assumptions and other relevant planning considerations, in order to achieve the planning objectives set out for the area. An assessment was conducted in the course of the BH review to ensure that development intensity permitted under the OZP could generally be accommodated under BHRs. The BHRs, NBAs and building gaps served to achieve a good urban form and improve air ventilation of the area, and were for the public good and in the interests of the community. It was notable that in the BH review, including the AVA, it was not supposed to, and was not practical to, exhaust all possible BHR options. The justifications for these restrictions were discussed in relevant MPC Paper on the proposed amendments to the OZP. A fair balance had been struck between a better living environment and private development rights; and

- (c) the Board did not rely on the possibility of minor relaxation as a justification for the restrictions imposed on the OZP. The BHRs were drawn up on their own right. The minor relaxation clause for BHR was to allow design flexibility to cater for individual site circumstances and constraints and also to provide incentives for development/redevelopment with design merits/ planning gains. Each application for minor relaxation would be considered by the Board based on the criteria set out in paragraph 7.9 of the ES of the OZP. Should major changes to the BHRs be justified, the statutory planning system already provided an avenue.

90. After further deliberation, Members agreed that R2 and R10 to R13 should not be upheld. Members then went through the reasons for not upholding the representations as stated in paragraph 7.2 of the Paper and agreed that they were appropriate.

Representation R2

91. After further deliberation, the Board decided not to uphold the Representation R2 for the following reasons:

- (a) the purpose of imposing BHRs in the Area was to provide better planning control on the BH upon development/redevelopment and to meet public aspirations for greater certainty and transparency in the statutory planning system, to prevent excessively tall or out-of-context buildings, and to instigate control on the overall BH profile of the Area. In formulating the BHRs for the Area, all relevant factors including the Urban Design Guidelines, the Urban Design Appraisal for the Area, existing topography, stepped BH concept, local characteristics, existing BH profile, site formation level and site constraints, the zoned land uses, compatibility with surrounding developments, development potential, the wind performance of the existing condition and the recommendations of the AVA EE, had been taken into consideration;

- (b) sections 3 and 4 of the Town Planning Ordinance and the scheme of the legislation were intended to give the Board comprehensive powers to control development in any part of Hong Kong. The Board had the power to impose BHRs on individual sites or for such areas within the boundaries of the OZP where there were necessary and sufficient planning justifications;
- (c) there would not be adverse impacts on the development intensity permitted under the OZP. For an existing building which had already exceeded the BHRs, the rights of redeveloping the buildings to their existing heights would be respected under the OZP unless otherwise specified. The BHRs had struck a balance between public aspirations for a better living environment and private development rights;
- (d) the BHRs were formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development intensity permissible under the OZP. The BHRs would not result in larger building bulk. On the other hand, better designed and sustainable buildings were not guaranteed with more relaxed BH control;
- (e) apart from providing GIC and OU facilities, “G/IC” and “OU” (except “OU(B)”) sites in the built-up urban area also served as breathing space as well as spatial and visual relief. Their BHRs should be contained to ensure good air ventilation. The development scale and intensity of “G/IC” and “OU” (except “OU(B)”) sites should be considered on a case-by-case basis, having regard to the requirements, functions and nature of different GIC and OU facilities. The adjacent “R(A)”, “C”, “I” and “OU(B)” zones were different from the “G/IC” and other “OU” zones in terms of land use and development intensity. Hence, the BHRs of the “R(A)”, “C”, “I” and “OU(B)” zones should not be taken as a reference;
- (f) to cater for site-specific circumstances and schemes with planning and design merits, there was provision for application for minor relaxation of the BHRs under the OZP. Each application would be considered by the

Board on its individual merits;

- (g) blanket relaxation of the BHRs by 20m was not supported as it would significantly increase the overall BH profile in the neighbourhood, create canyon effect and adversely affect the local character and cityscape, which was not in line with the intended planning control. Moreover, there was no supporting basis for a blanket increase of 20m in the BHR;
- (h) pursuant to sections 3 and 4 of the Town Planning Ordinance, the Board had power to impose NBAs and building gaps for individual sites or areas within the boundaries of the OZP with necessary and sufficient justifications. Designation of NBAs and building gaps requirements under the OZP could serve a positive planning purpose and had positive planning benefits by improving air ventilation at the pedestrian environment and visual permeability. It had a legal basis as it would form part of the planning control of the Board, which had the necessary and sufficient justifications. Designation of NBAs and building gaps would not adversely affect the development intensity of the affected sites under the OZP. Deleting these requirements would compromise the planning intention to improve air ventilation and visual permeability in the area and was not supported. “O” zone and ‘Road’ were designated for specific planning purposes and different planning needs, which were different from NBAs or building gaps;
- (i) as the NBAs had been designated with due considerations given to site conditions and other relevant factors, minor relaxation clause of NBAs requirements should only be allowed for exceptional circumstances to cater for exceptional cases under which the NBAs could not be provided due to special circumstances and alternatives to achieve the planning objectives could be considered on individual merits;
- (j) the measures on SBD Guidelines/JPN and the OZP restrictions were under two separate development control regimes, although they were complementary with each other. The SBD Guidelines and JPN were

administrative measures for compliance on a voluntary basis for the granting of GFA concession, without reference to specific district characteristics. OZP restrictions were statutory planning control to achieve planning objectives specific to the district;

- (k) it should be noted that the development restrictions imposed in the Kwai Chung OZP were derived based on sound planning principles, urban design considerations, reasonable planning assumptions and other relevant planning considerations, in order to achieve the planning objectives set out for the Area. The Board did not agree that the restrictions (BHR, NBA and building gap) imposed on the Kai Tak Mansion site were arbitrary; and
- (l) the two-month statutory exhibition period and provision for representations and comments formed part of the public consultation process. Any premature release of information before exhibition of the amendments to the OZP might prompt an acceleration of submission of building plans, thus nullifying the effectiveness of imposing the BHRs. All information supporting the BHR, NBA and building gap requirements under the OZP including the AVA EE Report and Urban Design Appraisal, was available for public inspection.

Representation R10

92. After further deliberation, the Board decided not to uphold the Representation R10 for the following reasons:

- (a) the purpose of imposing BHRs in the Area was to provide better planning control on the BH upon development/redevelopment and to meet public aspirations for greater certainty and transparency in the statutory planning system, to prevent excessively tall or out-of-context buildings, and to instigate control on the overall BH profile of the Area. In formulating the BHRs for the Area, all relevant factors including the Urban Design Guidelines, the Urban Design Appraisal for the Area, existing topography, stepped BH concept, local characteristics, existing BH profile, site

formation level and site constraints, the zoned land uses of the site concerned, compatibility with surrounding developments, development potential, the wind performance of the existing condition and the recommendations of the AVA EE, had been taken into consideration;

- (b) whether a development would be pursued was a commercial decision taking into account a host of factors, instead of the BHR alone. Even if the BHR to a certain extent might reduce the number of possible development options, this did not necessarily amount to a material impact on the redevelopment incentive. The need to cater for greater design flexibility and redevelopment incentives had to be balanced against the community aspirations for a better living environment with more compatible building developments;
- (c) BHR was to achieve an optimal height profile for the district. It was not agreed that a BHR of 105mPD would result in a shoebox-like low building, obstructing air ventilation at street level. The BHR was formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development intensity permissible under the OZP. The BHR would not result in larger building bulk or monotonous townscape. On the other hand, better designed and sustainable buildings were not guaranteed with more relaxed BH control;
- (d) the proposed relaxation of BH from 105mPD to 135mPD was not supported as there was no sufficient information to demonstrate no adverse impacts on urban design and air ventilation. Deletion of BHR for the site as proposed by R10 was not supported as it would jeopardise the integrity of the stepped BH concept and result in incompatible development; and
- (e) to cater for site-specific circumstances and schemes with planning and design merits, there was provision for application for minor relaxation of the BHRs under the OZP. Each application would be considered by the Board on its individual merits.

Representation R11

93. After further deliberation, the Board decided not to uphold the Representation R11 for the following reasons:

- (a) the purpose of imposing BHRs in the Area was to provide better planning control on the BH upon development/redevelopment and to meet public aspirations for greater certainty and transparency in the statutory planning system, to prevent excessively tall or out-of-context buildings, and to instigate control on the overall BH profile of the Area. In formulating the BHRs for the Area, all relevant factors including the Urban Design Guidelines, the Urban Design Appraisal for the Area, existing topography, stepped BH concept, local characteristics, existing BH profile, site formation level and site constraints, the zoned land uses of the site concerned, compatibility with surrounding developments, development potential, the wind performance of the existing condition and the recommendations of the AVA EE, had been taken into consideration;
- (b) the BHR of 120mPD could accommodate the development intensity permitted under the OZP. The BHRs had struck a balance between public aspirations for a better living environment and private development rights;
- (c) the BHR was formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development intensity permissible under the OZP. The BHR would not result in larger building bulk. On the other hand, better designed and sustainable buildings were not guaranteed with more relaxed BH control;
- (d) relaxation of BHR to at least 142.9mPD at the representation site would jeopardise the integrity of the stepped BH concept and result in incompatible development;
- (e) a smaller building footprint at the representation site as proposed by the representer would only bring piecemeal setback and would not result in a

wider through air path along the full length of Kung Yip Street to alleviate the air ventilation problem. The BHR imposed on the site had scope to enhance the local air ventilation and improve pedestrian environment as flexibility in the shape and form of buildings was allowed in formulating the BHR; and

- (f) to cater for site-specific circumstances and schemes with planning and design merits, there was provision for application for minor relaxation of the BHRs under the OZP. Each application would be considered by the Board on its individual merits.

Representation R12

94. After further deliberation, the Board decided not to uphold the Representation R12 for the following reasons:

- (a) the purpose of imposing BHRs in the Area was to provide better planning control on the BH upon development/redevelopment and to meet public aspirations for greater certainty and transparency in the statutory planning system, to prevent excessively tall or out-of-context buildings, and to instigate control on the overall BH profile of the Area. In formulating the BHRs for the Area, all relevant factors including the Urban Design Guidelines, the Urban Design Appraisal for the Area, existing topography, stepped BH concept, local characteristics, existing BH profile, site formation level and site constraints, the zoned land uses of the site concerned, compatibility with surrounding developments, development potential, the wind performance of the existing condition and the recommendations of the AVA EE, had been taken into consideration;
- (b) relaxation of BHRs to the height of the existing tallest building of Wonderland Villas or at least 360mPD for the “R(B)2” zone would defeat the intention of preserving the building height variation to create visual interest;

- (c) public perception on visual impact of out-of-context buildings had changed over years and there was a growing concern on continuous building blocks without separations causing ‘walled’ developments. There was also an increasing public aspiration to preserve natural features, including ridgeline, mountainous backdrop, etc. While quality building design was welcome, it should be pointed out that landmark buildings were not necessarily tall buildings, particularly as Wonderland Villas was located on top of a ridge which could be seen from all directions;
- (d) there would not be adverse impacts on the development intensity permitted under the OZP. The BHRs had struck a balance between public aspirations for a better living environment and private development rights; and
- (e) imposing BHRs on the “R(B)2” zone was intended to avoid out-of-context buildings. There was no change to the permitted GFA stipulated in the Notes for the “R(B)2” zone and would not result in a decrease in development intensity, hence would not jeopardise the owner’s right in redevelopment. In any event, the Notes of the OZP provided for redevelopment up to the existing height, despite the height bands.

Representation R13

95. After further deliberation, the Board decided not to uphold the Representation R13 for the following reason:

amendment Item K6 intended to rationalise the lot boundary of Yuet Lai Court. There was no implication on the existing development density and traffic condition. The area and configuration of the site did not provide meaningful area for community development.

96. The meeting was adjourned for lunch break at 1:30p.m.

97. The meeting was resumed at 2:30 p.m.

98. The following Members and the Secretary were present in the afternoon session:

Mr. Thomas Chow Chairman

Mr. Stanley Y.F. Wong Vice-chairman

Professor S.C. Wong

Mr. Timothy K.W. Ma

Professor K.C. Chau

Mr. H.W. Cheung

Mr. Sunny L.K. Ho

Mr. Dominic K.K. Lam

Dr. C.P. Lau

Ms. Julia M.K. Lau

Mr. Laurence L.J. Li

Mr. Roger K.H. Luk

Ms. Anita W.T. Ma

Dr. W.K. Yau

Principal Assistant Secretary (Transport)
Transport and Housing Bureau
Miss Winnie Wong

Deputy Director of Environmental Protection
Mr. C.W. Tse

Director of Planning
Mr. Jimmy Leung

Tsuen Wan and West Kowloon District

Agenda Item 6

[Open Meeting (Presentation and Question Session only)]

Consideration of Representations and Comments to the
Draft Kwai Chung Outline Zoning Plan No. S/KC/26
(TPB Paper No. 9202)

[The hearing was conducted in Cantonese.]

Hearing of Group 1 (Representation No. 1)

99. The Secretary said that Mr. Clarence W.C. Leung had declared an interest in this item as he owned an office in Kwai Chung. Members noted that Mr. Leung had indicated that he would not attend the afternoon session of the meeting.

Presentation and Question Session

100. The Chairman said that sufficient notice had been given to invite the representer to attend the hearing, but its representative had indicated not to attend the hearing. As sufficient notice had been given to the representer, Members agreed to proceed with the hearing in the absence of its representative.

101. The following representatives of the Planning Department (PlanD) and the consultant of the Air Ventilation Assessment (AVA) were invited to the meeting at this point:

- | | | |
|-----------------|---|---|
| Mr. Wilson Chan | - | District Planning Officer/Tsuen Wan & West Kowloon (DPO/TWK), PlanD |
| Ms. M.L. Leung | - | Senior Town Planner/Special Duties (STP/SD), PlanD |

Ms. Ivy Wong - Town Planner/Special Duties, PlanD

Mr. Calvin Chiu - AVA Consultant

102. The Chairman extended a welcome and invited the representatives of PlanD to brief Members on the background of the representation.

103. With the aid of a Powerpoint presentation, Ms. M.L. Leung, STP/SD, made the following main points as detailed in the Paper:

Background

- (a) on 20.4.2012, the draft Kwai Chung Outline Zoning Plan (OZP) No. S/KC/26, incorporating various amendments including imposition of building height restrictions (BHRs) on various development zones, designation of non-building areas (NBAs) and building gaps in various zones and other zoning amendments, was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance);
- (b) during the two-month exhibition period, 13 representations were received. On 29.6.2012, the representations were published for public comments for three weeks, and 1,925 comments were received;

The Representation

- (c) amongst the 13 representations, R1 was submitted by the CLP Power Hong Kong Limited (CLP Power) opposing the imposition of BHRs on four electricity substation (ESS) sites, namely Tai Lin Pai Road ESS, Kwai Shing Wai ESS, Kwai Fuk Road ESS and Ha Kwai Chung ESS which were zoned "Government, Institution or Community" ("G/IC") or "G/IC(1)" on the OZP. The Ha Kwai Chung ESS site was imposed with a BHR of 3 storeys while the other three ESS sites were imposed with a BHR of 2 storeys. No comment was received in relation to R1;

Considerations for Formulating the BHRs for “G/IC” Zone

- (d) the four ESS sites comprised low-rise buildings. As the Area had been developed, the “G/IC” sites, apart from providing the necessary GIC facilities to serve the community or for specific purposes, served to provide breathing space and visual relief;
- (e) the AVA Study had recommended maintaining the existing BH profile of the low-rise buildings in “G/IC” zones for enhancing the air ventilation performance of the Area;
- (f) in formulating the BHRs for the developed “G/IC” sites, consideration had also been given to the nature of the existing facilities/uses on the sites, the existing development intensity and their respective as-built conditions, the height restrictions on the land allocation/lease, any known development/redevelopment proposals and the need to meet the functional and operational requirements in terms of height for the designated government, institution and community (GIC) facilities;
- (g) in general, the BHR for low-rise developments on “G/IC” sites with a height of not more than 13 storeys was specified in terms of number of storeys (excluding basement floor(s)) so as to allow more design flexibility, in particular for GIC facilities with specific functional requirements;
- (h) if there was a need for higher BH when a specific development/redevelopment proposal was available in future, an application for the relaxation of the BHR could be made to the Town Planning Board (the Board) through the planning application or plan amendment procedures. Such application would be considered based on individual merits;
- (i) the BHRs for the four ESS sites under representation were to reflect their respective existing BHs;

Grounds of Representation

- (j) the main grounds of representation were summarised in paragraph 4.3 of the Paper and highlighted below:

Negligible Effect on Planning Intention

- (i) given the scale and nature of ESSs, any incremental visual or airflow impacts could be considered as negligible. The application of BHR to the ESS sites had deprived R1 of its development right with minimal, if not none, effect on the planning intention;

Against the Public Interests

Scarce Land Resources

- (ii) imposition of BH controls on ESS sites would restrict their upgrading/redevelopment potential, resulting in the need for relocating the existing ESS to a larger site or identifying additional sites for new ESSs so as to cater for the surging electricity demand in future. Such approach was not making the best use of the scarce land resources and contradicted the intention to encourage upgrading/redevelopment of the existing ESSs to meet growing electricity demand in the urban area instead of searching for a new ESS site;

Insecure Electricity Supply

- (iii) it would be difficult to identify new suitable sites for ESSs in the urban area as they were often seen as “not-favoured” neighbouring use. Even if a site was made available, the delay caused by the relocation or the public consultation process would put the security and reliability of electricity supply to the area at risk;

Design Inflexibility for Future Modification/Development Plans

Design Inflexibility

- (iv) imposition of BHRs in terms of number of storeys would hinder design flexibility because the site coverage of most of the existing ESSs, in particular those small-sized sites, were fully utilised and enhancement to ESS buildings might require the addition of extra building storey(s) to accommodate the plants and equipments;

Ineffective Relaxation Instrument

- (v) although application for minor relaxation of BHRs might be considered by the Board, there was no clear definition on the extent of 'minor' that could be allowed. The process would involve considerable uncertainty and longer timeframe. All these would affect the provision of efficient, safe, reliable and timely electricity supply;

Infringement on Existing Development Rights

- (vi) the imposition of BHRs was virtually another way of depriving R1's development right given that BH was one of the elements in determining the development intensity of a site. The existing development intensity of ESS sites, which was based on operational need, might not reflect their maximum development potential permitted under lease conditions; and

Visual Compatibility with Adjacent Development

- (vii) the design of an ESS had considered the surrounding environment and endeavoured to integrate it with its surrounding neighbourhood. Greening initiatives, environmental design guidelines and policies aiming at reducing environmental impact had been developed by R1. No adverse visual impact had been

caused by the ESSs;

Representer's Proposals

- (k) R1 proposed to relax the BHRs for all the four ESS sites under representation to not more than 8 storeys to be in line with the number of storeys for "G/IC" zone in the vicinity;

PlanD's Responses to Grounds of Representation

- (l) the responses to the grounds of representation were summarised in paragraph 5.3 of the Paper and highlighted below:

Negligible Effect on Planning Intention

- (i) the primary planning intention of "G/IC" zone was to provide GIC facilities to serve the needs of the local residents and/or wider district, region or the territory, which would have particular functional and operational requirements;
- (ii) the formulation of BHRs for the "G/IC" zone had taken into account the as-built conditions of the respective sites, the need to meet the functional and operational requirements of the facilities as well as any known or committed development/redevelopment proposals;
- (iii) "G/IC" sites serving as visual relief and breathing space to the densely built-up area was an established principle that had been generally adopted in the formulation of BHRs in all OZPs. Such intention was in line with the Hong Kong Planning Standards and Guidelines and the Town Planning Board Guidelines No. 16 for 'Application for Development/ Redevelopment within "G/IC" zone for Uses other than GIC Uses', and supported by the recommendations of the Urban Design Appraisal and the AVA

Study. For an area characterised by high-density developments like Kwai Chung, these breathing space and visual/spatial relief were much needed;

- (iv) any proposed relaxation of BHR should be justified by functional and operational requirements in the first place. The impacts arising from the relaxation, be they negligible (as claimed by R1) or significant, should not come before the functional and operational requirements when considering a proposed increase in BHR. There was no detailed information in R1's submission to justify the proposed height due to functional or operational requirements;

Against the Public Interests

Scarce Land Resources

- (v) the imposition of BHRs was a response to public aspirations for a better living environment as low-rise "G/IC" sites could serve as important visual relief, breathing space and air paths within the built environment;
- (vi) it was necessary to strike a careful balance between efficient use of land to provide utility/community facilities and confine the as-built situation of the "G/IC" sites for visual relief and breathing space;
- (vii) in determining the BHR for the ESS sites, consideration had been given to the existing BH, nature of the existing uses, the height restriction under lease, development/redevelopment proposals, local setting, air ventilation, urban design considerations and other relevant factors;

- (viii) no sufficient and justifiable information had been provided by R1 to demonstrate that there were upgrading/redevelopment proposals for the ESS sites requiring the relaxation of BHRs for the “G/IC” sites in terms of operational and functional needs;

Insecure Electricity Supply

- (ix) the Director of Electrical and Mechanical Services (DEMS) advised that in the approved CLP Power’s Development Plan, apart from the minor reinforcement project for Tai Lin Pai Road ESS to be completed in 2014 without any change in BH, there was no on-going redevelopment/expansion project for other ESS sites;
- (x) should there be a need for additional ESS sites to meet functional and operational needs, alternative sites would be identified through the established practice and procedure for site search for GIC use;
- (xi) alternatively, redevelopment/expansion proposals of the existing ESSs could be submitted to the Board under section 16 of the Ordinance for minor relaxation of the restrictions or under section 12A of the Ordinance for amendments to the OZP;

Design Inflexibility for Future Modification/Development Plans

Design Inflexibility

- (xii) redevelopment of ESSs usually required approval from the relevant bureaux and departments. DEMS advised that while only Tai Lin Pai Road ESS had an on-going minor reinforcement project which would not affect the height of the existing building, they had not received any proposal for redevelopment for the other three ESSs;

- (xiii) in the absence of any redevelopment proposal to demonstrate the need to relax the BHRs to meet the functional and operational requirements, there was no justification to relax the BHRs at this stage;
- (xiv) should there be a need to relax the BHRs in the future, the public should have the opportunity to comment on the proposal through either the OZP amendment or the planning application procedure;

Ineffective Relaxation Instrument

- (xv) under the OZP, development/redevelopment of the concerned ESS sites should not exceed the BHRs or their existing BHs, whichever was the greater. Should more floor space be required, consideration could be given to placing equipment underground as basement levels were disregarded in the determination of BH;
- (xvi) for planning application on relaxation of the BHRs, paragraph 7.9 of the Explanatory Statement of the OZP had clearly set out the relevant criteria to be considered by the Board in determining the planning and design merits. While there was no predetermined level of relaxation that would be allowed, reference would normally be made by the Board to the criteria set out in the Explanatory Statement and the impacts of the relaxation on the surrounding areas;

Infringement of Existing Development Rights

- (xvii) private development right was only one of the considerations in determining the BHRs for ESS sites. The BHR was formulated in a comprehensive manner, including the need to balance between community aspiration for a better living environment and private development right, the function of “G/IC” sites as visual relief, breathing space and air paths within the built-up

environment and existing BH profile, etc;

- (xviii) “G/IC” zone was planned for a wide range of uses (e.g. schools, community centre, market, government office, ESS, religious institutions, etc.) serving the needs of the community. The utilisation of each “G/IC” site should be considered on a case-by-case basis, according to the requirements, functions, nature and scale of individual schemes as well as the location of the sites;
- (xix) the BHR for the ESS sites had already respected the as-built situation to confine their existing low-rise profile compatible with the surrounding area; and the OZP did not impose any plot ratio/gross floor area/site coverage restrictions on the ESS sites;

Visual Compatibility with Adjacent Developments

- (xx) “G/IC” sites functioned as visual relief as well as breathing space in the dense built-up area. Compatibility in BH with the surrounding developments should not be the sole consideration in varying the BHRs. Any variation of BHRs should be fully justified on functional or operational needs, and considered on a case-by-case basis; and
- (xxi) to ensure that the scale of ESS would not be excessive, justifications on functional or operational needs should be provided to substantiate the proposed revision of BHRs;

PlanD’s Responses to Representer’s Proposals

- (m) the responses to the representer’s proposals were summarised in paragraph 5.4 of the Paper and highlighted below:

- (i) compatibility in terms of height with the surroundings should not be the sole consideration to justify a significant increase in BHR. GIC facilities in the Area were subject to different BHRs. It should be noted that the BHR of 8 storeys for the “G/IC” zone to the south of the Kwai Shing Wai ESS was for school developments. There was no “G/IC” zone with BHR up to 8 storeys near the Tai Lin Pai Road ESS and Ha Kwai Chung ESS but the “G/IC” zone for cooked food markets, refuse collection point and latrine in the vicinity were all subject to a BHR of 1 storey. No “G/IC” zone was found in close proximity to Kwai Fuk Road ESS. In view of the above, R1’s justification to relax the BHRs to 8 storeys to be in line with that of the “G/IC” zones in the vicinity was not substantiated;
- (ii) the Chief Town Planner/Urban Design and Landscape, PlanD considered that R1’s proposed BHRs of 8 storeys for the ESS sites were unusually high. Moreover, there was no detailed information in R1’s submission to justify the proposed height due to functional or operational requirements;
- (iii) DEMS had not received any redevelopment proposal in respect of the concerned ESS sites (except the reinforcement project of Tai Lin Pai Road ESS which did not involve a change in existing BH); and
- (iv) should R1 had any concrete development proposals for the ESS sites in the future, which might require a higher BH for functional and operational reasons, an application could be submitted to the Board for minor relaxation of the BHR or amendments could be made to the OZP to facilitate the proposed development;

Public Consultation

- (n) the proposed amendments to the OZP were presented to the Kwai Tsing

District Council (KTDC) on 20.6.2012. While some KTDC Members welcomed the imposition of BHRs on the OZP as a measure to improve air ventilation and control out-of-context developments, others were concerned that the BHRs would impede future development and compromise housing supply of the Area. No concern had been raised in respect of the BHRs imposed on the ESS sites under representation; and

PlanD's Views

- (o) PlanD did not support R1 and considered that the OZP should not be amended to meet the representation for the reasons as set out in paragraph 7.1 of the Paper.

104. As Members had no question to raise, the Chairman thanked the representatives of PlanD and the AVA Consultant for attending the hearing. They all left the meeting at this point.

Deliberation Session

105. Members noted that the imposition of BHRs for the four ESS sites followed the established principles and practice of imposition of BHRs for "G/IC" sites to give due consideration to the nature and as-built conditions of the ESSs unless the concerned ESS had an expansion plan/redevelopment proposal. The BHRs in terms of number of storeys allowed design flexibility in meeting the operational and functional needs. While the imposition of BHRs would also take into account any committed or proposed developments, DEMS had not received any redevelopment proposals in respect of the ESSs sites, other than the minor reinforcement project without any change in BH for Tai Lin Pai Road ESS. From urban design perspective, the low-rise "G/IC" sites were intended to serve as breathing space and visual relief in the built-up environment particularly in the densely populated Kwai Chung area. In this regard, the imposition of BHRs to reflect the nature and as-built situation of the existing ESSs was considered appropriate. Should more floor space be required in future, consideration could be given to placing equipment underground instead of going higher. Besides, as there was

provision for planning application for minor relaxation of BHRs for “G/IC” zone under the OZP, the Board would consider each application based on individual merits. In view of the above reasons, Members agreed that R1 should not be upheld.

106. After deliberation, Members agreed not to uphold Representation No. R1. Members then went through the reasons for not upholding the representation as stated in paragraph 7.1 of the Paper and considered that they were appropriate.

Representation No. R1

107. After further deliberation, the Board decided not to uphold Representation No. R1 for the following reasons:

- (a) apart from providing government, institution and community (GIC) facilities, “Government, Institution or Community” (“G/IC”) sites in the built-up urban area also served as breathing space as well as visual relief. Their building heights should be contained to ensure good air ventilation as recommended in the Air Ventilation Assessment by Expert Evaluation. The development scale and intensity of “G/IC” sites should be considered on a case-by-case basis, having regard to the requirements, functions and nature of different GIC facilities. There was no strong justification to support the proposed variation of building height restriction (BHR) for the electricity substation (ESS) sites;
- (b) the proposed relaxation of BHR to 8 storeys to tie in with the permitted number of storeys for “G/IC” zone in the vicinity was not justified. No evidence had been provided to demonstrate that a BH of 8 storeys was required to meet the functional and operational needs of the subject ESS sites; and
- (c) there was provision under the Town Planning Ordinance (the Ordinance) for planning application for minor relaxation of BHR under section 16 or for amendments to the Outline Zoning Plan under section 12A of the Ordinance.

Agenda Item 7

[Open Meeting (Presentation and Question Session only)]

Consideration of Representations and Comments to the
Draft Kwai Chung Outline Zoning Plan No. S/KC/26
(TPB Paper No. 9206)

[The hearing was conducted in Cantonese and English.]

Hearing of Group 4 (Representation No. 9 and Comments No. C1758 to C1926)

108. The following Members had declared interests in this item:

Professor S.C. Wong]	had business dealings with Ove Arup &
Mr. Ivan C.S. Fu]	Partners Hong Kong Ltd. which was the
Mr. Dominic K.K. Lam]	consultant of the representer, Tung Chun
Mr. Patrick H.T. Lau]	Company Limited (R9)
Ms. Janice W.M. Lai	-	her spouse owned a flat in Wonderland Villas
Mr. Clarence W.C. Leung	-	owned an office in Kwai Chung

109. Members noted that Mr. Ivan C.S. Fu, Mr. Patrick H.T. Lau and Ms. Janice W.M. Lai had tendered apologies for being unable to attend the meeting while Mr. Clarence W.C. Leung had indicated that he would not attend the afternoon session of the meeting. Members also noted that Professor S.C. Wong and Mr. Dominic K.K. Lam had no involvement in R9's submission and considered that their interests declared were indirect. Members agreed that they could stay in the meeting and participate in the discussion.

Presentation and Question Session

110. The Chairman said that sufficient notice had been given to invite the other commenters to attend the hearing, but they had either indicated not to attend the hearing or made no reply. As sufficient notice had been given to the commenters, Members agreed

to proceed with the hearing in their absence.

111. The following representatives of the Planning Department (PlanD), the consultant of the Air Ventilation Assessment (AVA), representer's representatives, commenters and their representatives were invited to the meeting at this point:

- | | | |
|-----------------|---|---|
| Mr. Wilson Chan | - | District Planning Officer/Tsuen Wan & West Kowloon (DPO/TWK), PlanD |
| Ms. M.L. Leung | - | Senior Town Planner/Special Duties (STP/SD), PlanD |
| Ms. Ivy Wong | - | Town Planner/Special Duties, PlanD |
| Mr. Calvin Chiu | - | AVA Consultant |

R9 – Tung Chun Company Ltd.

- | | | |
|----------------------|---|-------------------------------|
| Mr. Jimmy Wong |] | |
| Ms. Theresa Yeung |] | |
| Mr. Christopher Foot |] | |
| Mr. Simon Leung |] | |
| Mr. Terence Hui |] | Representer's Representatives |
| Ms. Natalie Leung |] | |
| Ms. Shirley Chan |] | |
| Ms. Cheng Chung Yi |] | |
| Ms. Jane Fung |] | |

C1785 – Yeung Ying Kit

- | | |
|--------------------|-----------|
| Mr. Yeung Ying Kit | Commenter |
|--------------------|-----------|

C1822 – Lam Wai Kit

- | | |
|-----------------|-----------|
| Mr. Lam Wai Kit | Commenter |
|-----------------|-----------|

Background

- (a) on 20.4.2012, the draft Kwai Chung Outline Zoning Plan (OZP) No. S/KC/26, incorporating various amendments including imposition of building height restrictions (BHRs) on various development zones, designation of non-building areas (NBAs) and building gaps in various zones and other zoning amendments, was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance);
- (b) during the two-month exhibition period, 13 representations were received. On 29.6.2012, the representations were published for public comments for three weeks, and 1,925 comments were received;

The Representation and Comments

- (c) amongst the 13 representations, R9 was submitted by the Tung Chun Company Limited opposing the BHR of 120mPD imposed on the Tung Chun (Soy & Canning) Company site at Cheung Wing Road, Kwai Chung (the representation site), i.e. Kwai Chung Town Lot 432 (KCTL 432), (under Amendment Item A) which was zoned “Comprehensive Development Area” (“CDA”) on the OZP;
- (d) a total of 169 comments (i.e. C1758 to C1926) relating to R9 were received. All comments were submitted by individuals who supported the objection raised by R9 and supported its proposals to remove, reconsider or relax the BHR for the representation site;

Considerations for Formulating the BHRs for the Area

- (a) in conducting the BH review for the Kwai Chung Area (the Area), relevant planning considerations had been taken into account, including the topography, foothill setting, waterfront setting, site levels, local character, existing predominant land use and BH profile, areas of local attractions or historic significance, BHRs under the lease and the

compatibility in terms of BH with the surrounding areas, the local wind environment and measures suggested for ventilation improvements, the need to balance between public aspirations for a better living environment and private development potential, stepped BH concept, permissible development intensity under the OZP, and the broad urban design principles set out in the Urban Design Guidelines in Chapter 11 of the Hong Kong Planning Standards and Guidelines (HKPSG);

- (b) topographically, the Kwai Ching Area was a southwest-facing valley defined by the foothills of Golden Hill to the east, the outcrop at Kwai Shing to the northwest and the water body of the Rambler Channel to the southwest;
- (c) a stepped height concept was generally adopted to exemplify the valley-like terrain, with lower height bands in the central urban core and gradually increasing height bands towards the foothill of Golden Hill on the east and the knoll at Kwai Shing on the west. Developments near the MTR Kwai Fong and Kwai Hing stations were assigned with higher height bands to reinforce the nodal developments around the stations. The BH bands helped preserve views to the ridgelines and achieve a stepped height profile for visual permeability and wind penetration and circulation. The height profile was sympathetic and compatible in scale and proportion with the surrounding developments. The BH bands ensured that the urban design principles would not be negated while still optimising the development intensity as permitted under the current OZP;
- (d) in order to improve the air ventilation of the Area, NBAs and building gaps were also designated at appropriate locations;

The Representation Site

- (e) the representation site, having an area of about 12,340m², was located on the fringe of an established industrial area in Kwai Chung and was

bounded by Cheung Wing Road in the west, Kwok Shui Road in the south, Tai Yuen Street in the east and a proposed Road 27E in the north. The representation site was occupied by some low-rise (1 to 3-storey) structures/buildings of a soy sauce factory of the Tung Chun (Soy & Canning) Company. To its north, east and southeast were industrial/business buildings under the “Other Specified Uses” annotated “Business” (“OU(B)”) zone subject to a BHR of 130mPD. To its south was a knoll zoned “Open Space”. To its east across Cheung Wing Road was an industrial/commercial area under “OU(B)” zone subject to a BHR of 120mPD, which fell within the draft Tsuen Wan OZP No. S/TW/29;

- (f) the representation site was zoned “CDA” intended primarily for a comprehensive development subject to a maximum PR of 6.36 and a maximum BH of 120mPD. A Master Layout Plan (MLP) should be submitted to the Town Planning Board (the Board) for approval;

- (g) the site was the subject of five previous planning applications (No. A/KC/97, 127, 197, 241 and 298). Noteworthy was Application No. A/KC/241 for a comprehensive development of hotel (95.5mPD), service apartment (169mPD) and commercial uses at a PR of 6.36 which had been approved with conditions by the Board on 17.3.2000 (the approved scheme). The approved PR 6.36 had subsequently been incorporated in the “CDA” zone on the draft Kwai Chung OZP No. S/KC/20 on 26.9.2003. As a relevant set of General Building Plans (GBPs) had been approved by the Building Authority (BA) on 20.2.2003, the proposed development was deemed commenced according to Town Planning Board Guidelines No. 35B. The last set of GBPs had been approved by the BA on 31.1.2007. The Chief Building Surveyor/New Territories West of Buildings Department (CBS/NTW, BD) advised that as two years had lapsed since the last building plan approval, consent application might be refused under s.16(3)(d) of the Buildings Ordinance (BO) noting that certain provisions of the BO and allied regulations had been revised (e.g. Barrier Free Code 2008) since the last approval;

- (h) two applications (No. A/KC/241-1 for amendment to the approved scheme under Application No. A/KC/241 and No. A/KC/369 for a proposed hotel cum residential development with a BH of 120/139/148mPD) were submitted in 2011 and subsequently withdrawn in January 2012 on the applicant's own accord;

Reasons for Imposing a BHR of 120mPD

- (i) despite the fact that the 169mPD at the representation site was once approved under a planning application in 2000, there had been growing public concerns over the undesirable impact of out-of-context buildings. To respect the ascending topography from Castle Peak Road in the south to Kwok Shui Road and Wo Yi Hop Road in the north, BHRs of 105mPD, 120mPD and 130mPD were assigned to the business/ industrial areas on both sides of Cheung Wing Road. The BH of 169mPD was considered out of scale in the above context. Having regard to the BH profile of the neighbouring Tsuen Wan, the site's setting and the planning intention of the site, it was considered that a BHR of 120mPD thereat would be more appropriate to be congruous with the overall BH profile;

Grounds of Representation

- (j) the main grounds of representation were summarised in paragraph 4.3 of the Paper and highlighted below:

Development Rights

- (i) the representation site had been approved for a comprehensive hotel and service apartment development at a PR of 6.36 and a BH of 169mPD by the Board in 2000, with GBPs approved by the BA in 2002 (with the last GBPs approved in 2007) [According to BD's information, the GBPs were firstly approved in 2003].

The approved scheme and the formation and construction of Road 27E had already been commenced. There was no demonstration that the PR of 6.36 could be achieved under the BHR of 120mPD, which was unfair to R9 who had incurred substantial costs in obtaining building plan approvals and commencing the construction works and had a legitimate expectation and right to redevelop the site to the PR and BH under the approved scheme;

Sufficient Control under “CDA” Zone

- (ii) the “CDA” zoning of the representation site was already subject to holistic and comprehensive Master Layout Plan (MLP) control, including BH. Piecemeal imposition of BHR without having due regard to factors considered in the MLP submission would defeat the intention of the “CDA” zone for a comprehensive development scheme;

Inconsistent Treatment

- (iii) there was no reason why the BHR of the representation site was different from those of its immediate vicinity, i.e. “OU(B)” sites (BHR of 130mPD) and The Apex (BHR of 190mPD);

Urban Design and Air Ventilation Considerations

- (iv) the BHR of the representation site was arbitrarily imposed without considering the site context, the nature of existing facilities/uses, the local setting, future needs and other relevant matters. There was no demonstration of other possible BH control and merits of different schemes of varying restrictions, or that a higher BHR at the representation site would violate the urban design principles;

- (v) the BHR neither contributed to improve the coherency of the overall BH profile, nor achieved particular urban design benefits. Given that the representation site was located in the inland and blocked by many buildings, the visual impacts could hardly be seen from the public vantage points identified in the Urban Design Appraisal (UDA);
- (vi) according to the Visual Impact Assessment (VIA) submitted by R9, a development of 170mPD at the representation site would not generate significant visual impact;
- (vii) in order to achieve the same PR, a larger site coverage (SC) would be resulted from a reduced BH from 169mPD to 120mPD, leaving little space between buildings and hence blocking the view corridor, creating a constricted environment and limiting the space for greening;
- (viii) the representation site was neither within the breezeways nor the air paths and the BHR did not have correlation to the overall air ventilation performance in the area;

Redevelopment Incentive

- (ix) the redevelopment at the representation site would act as a catalyst to spearhead the removal of existing industrial buildings in the area and stimulate further redevelopment/renewal in a comprehensive and coordinated manner; and
- (x) the approved scheme would bring landscape/visual improvement through landscape treatment and podium garden and pool; air/environmental improvement as there would be no emission of pollutants from the soy sauce factory; and local economic improvement as more jobs for the locals would be provided by the commercial and hotel development of the approved scheme.

The BHR of 120mPD would frustrate the redevelopment at the representation site in bringing local enhancements;

Representer's Proposals

- (k) R9 proposed to remove the BHR from the representation site or to relax the BHR of the representation site from 120mPD to 169mPD;

PlanD's Responses to Grounds of Representation

- (l) the responses to the grounds of representation were summarised in paragraph 5.3 of the Paper and highlighted below:

Development Rights

- (i) in terms of the redevelopment potential, in formulating the BHRs, it had been ensured that the development site would generally be able to accommodate the development intensity as permitted under the OZP. The BHR of 120mPD was able to accommodate the maximum total PR of 6.36 permissible under the OZP while blending in well with the stepped BH profile of the whole area;
- (ii) R9 had in hand a set of approved building plans with a BH of 169mPD. However, it did not mean that 169mPD could meet the current public aspirations and should be incorporated in the OZP as the optimal BH profile for the Area. That said, it was the practice that development proposals which had already obtained building plan approval would not be affected by an amendment to the zoning restriction and subsequent amendments to the approved building plans would not need to conform to an extant statutory plan unless they involved a change of use, an increase in development intensity or substantial amendments. R9 could proceed with its building development in accordance with the approved building plans if he so wished;

- (iii) imposition of a BHR of 169mPD on the representation site would however affect the integrity of the BH bands and stood out of the adjoining height bands by 39m to 64m which was totally out-of-context with the surrounding developments;
- (iv) the construction of Road 27E was not at a stage as advanced as claimed by R9;

Sufficient Control under “CDA” Zone

- (v) the stipulation of BHR of 120mPD on the representation site could provide a clear planning intention and guidance for the “CDA” development in respect of the permissible BH at an early stage of the planning process. It allowed the restriction to be more transparent and open to public scrutiny, ensuring that all stakeholders had the opportunity to express their views on the BHR in the statutory plan-making process;
- (vi) the 120mPD BHR still allowed a comprehensive development to be pursued at the site without compromising its comprehensiveness;

Inconsistent Treatment

- (vii) the imposition of BHR of 130mPD on “OU(B)” sites and 190mPD on “Commercial (2)” (“C(2)”) zone of The Apex in the vicinity had taken into account a number of factors, including its planning intention for high-density industrial/ business developments, its permitted development intensity stipulated in the OZP, the predominant height of existing buildings, etc;
- (viii) the “OU(B)” sites were meant for industrial/business development with a PR of 9.5 and the 130mPD height band was part and parcel of a stepping-up height profile ranging from 105 –

120 – 130 – 170mPD from Kwai Chung Road – Castle Peak Road – Wo Yi Hop Road rising uphill to Shek Yam East Estate;

- (ix) the “C(2)” zone of The Apex was to reflect an existing hotel/service apartment development with a gross floor area (GFA) of about 74,340m² on a 0.78ha site (equivalent to a PR of about 9.5) which was completed in 2007 under an approved planning application. The BHRs of the “OU(B)” and “C(2)” zones were of different land use and development intensity from the subject “CDA” zone (PR 9.5 versus PR 6.36), and should not be taken as references;

Urban Design and Air Ventilation Considerations

- (x) the objective of UDA was to assess the visual impacts of the BHRs and to examine whether they were acceptable from urban design and visual perspectives, as well as to visualise the future visual context upon imposition of the BHRs. The UDA was not supposed to, and not practicable to, exhaust all possible BHR options;
- (xi) the VIA submitted by R9 had not demonstrated that the proposed architectural design and the claimed visual effect could not be achieved under the BHR on the OZP. As shown in the submitted photomontages, the claimed visual benefit was not significant to outweigh the impact of the increased BH on the local character and visual openness;
- (xii) given the tendency to maximise views on upper floors and to capitalise on land values at the lowest floors by designing a commercial podium of 100% SC up to 15m as permitted under the Building (Planning) Regulations (B(P)R), a development with no BH control would also result in high SC at pedestrian level. Moreover, in Application No. A/KC/241, the SC of the domestic

towers with BH of 169mPD was 18%, and there was ample room to reduce their BHs by increasing the SC over the podium;

- (xiii) although the representation site was not along any breezeway/air path, any increase in BHR would affect the building height-to-width-ratio and result in more adverse street canyon effect. In particular, Tai Yuen Street would be directly affected due to a higher BHR at the representation site. As such, the BHR at the site was related to the overall air ventilation performance; and

Redevelopment Incentive

- (xiv) whether a development would be pursued was a commercial decision taking into account a host of factors, e.g. prevailing economic circumstances, market conditions, type of uses, etc. instead of the BHR alone. Even if the BHR to a certain extent reduced the number of possible development options, this did not necessarily amount to a material impact on the redevelopment incentive. Also, the need to cater for greater design flexibility and redevelopment incentives had to be balanced against the community aspirations for a better living environment with more compatible building developments;

PlanD's Responses to Representer's Proposals

- (m) the Chief Town Planner/Urban Design and Landscape, PlanD considered that to maintain the integrity of the overall valley-like and stepped height concepts, piecemeal uplifting of BH of individual sites was not supported in general unless the alternative height profile being proposed could further improve the concepts. However, R9 failed to demonstrate that the proposed increase in BHR to 169mPD would present an improved stepped BH concept as compared to the BHR of 120mPD on the OZP. It was considered that a BHR of 120mPD would be more appropriate for the representation site to be congruous with the overall

BH profile exemplifying the natural valley-like topography;

- (n) as the proposed deletion of the BHR for the representation site would jeopardise the coherency of the stepped BH profile, R9's proposal was not supported;

PlanD's Responses to Ground of Comments and their Proposals

- (o) all the commenters (C1758 to C1926) supported the objection raised by R9 in respect of the BHR imposed on the representation site and some of them proposed to remove, reconsider or relax the BHR for the representation site. The grounds of comments and their proposals, which were similar to those raised by R9, were summarised in paragraphs 6.1 and 6.2 of the Paper. PlanD's responses to the grounds of comments and their proposals were stated in paragraph 6.3 of the Paper;

[Mr. C.W. Tse returned to join the meeting at this point.]

Public Consultation

- (p) the proposed amendments to the OZP were presented to the Kwai Tsing District Council (KTDC) on 20.6.2012. While some KTDC Members welcomed the imposition of BHRs on the OZP as a measure to improve air ventilation and control out-of-context developments, others were concerned that the BHRs would impede future development and compromise housing supply of the Area. No concern had been raised in respect of the BHR imposed on the representation site; and

PlanD's Views

- (q) PlanD did not support R9 and considered that the OZP should not be amended to meet the representation for the reasons as set out in paragraph 8.1 of the Paper.

114. The Chairman then invited the representatives of R9 to elaborate on the representation.

R9 (Tung Chun Company Limited)

115. With the aid of a Powerpoint presentation (an extract of which was tabled for Members' reference), two representatives of R9 made the following main points in turn:

Ms. Theresa Yeung (Representative of R9)

Background

- (a) the representation site was located within the Kwai Chung Industrial Area which was undergoing transformation. The site was occupied by a soy sauce factory of the Tung Chun (Soy & Canning) Company. The representer kick-started the transformation process on the site. A road, i.e. Road 27E, along the northern boundary of the existing industrial site was under construction and would be surrendered to the Government in compliance with an approval condition of a planning permission obtained in 2000 (Application No. A/KC/241);
- (b) the representation site had previously been zoned "Industrial" ("I") on the previous Kwai Chung OZP. A PR of 9.5 was imposed on the site in 1990. The site was rezoned to "CDA" under the previous Kwai Chung OZP No. S/KC/8 gazetted on 3.7.1992. There was no PR or BH restriction;
- (c) the representation site had been approved for a factory/godown development at a PR of 15 and a BH of 170mPD (Application No. A/KC/127) on 4.6.1993;

- (d) according to the Notes of the current OZP, the planning intention of the “CDA” zone was for comprehensive development/redevelopment of the area for residential and/or commercial uses with the provision of open space and other supporting facilities. The zoning was to facilitate appropriate planning control over the development mix, scale, design and layout of development, taking account of various environmental, traffic, infrastructure and other constraints. A MLP was required to be submitted to the Board for approval;
- (e) the rezoning of “I” sites for other uses was one of the measures under the 6-pronged approach adopted by the Government to ensure adequate land supply in a timely manner in order to meet the need of the growing population and economic development;

The Approved Scheme

- (f) on 17.3.2000, Application No. A/KC/241 for a comprehensive hotel and service apartment development at a PR of 6.36 and a BH of 169mPD at the representation site was approved by the Board (the approved scheme). Relevant government departments had no objection to or adverse comments on the application. A set of GBPs was approved by the BA in 2003. According to the Town Planning Guidelines No. 35B, the approved development was deemed commenced once the GBPs were approved. The construction of Road 27E had already commenced in compliance with an approval condition of the planning permission. A total of 458 piles for the formation of the road were completed. The applicant had honoured its commitment in the provision of Road 27E. The construction of Road 27E was also subject to a condition under the New Grant No. 6787;
- (g) the representation site had not been redeveloped according to the approved scheme mainly due to the outbreak of SARS in 2003 and the time required to explore better alternative design options to address the noise and air pollution problems of the site;

The Representation

- (h) in 2012, the Board imposed a BHR of 120mPD on the representation site. R9 did not understand why the approved 169mPD was not incorporated into the OZP and thus raised an objection to such an amendment and requested that the BHR be relaxed to 169mPD;

Grounds of Representation

Failure of the Board to Follow its Practice

- (i) a development of a BH of 169mPD at the representation site was approved by the Board in 2000, and a set of GBPs was approved by the BA. By imposing a BHR of 120mPD on the site in 2012, the Board had failed to follow its practice that development proposals which had already obtained building plans approval would not be affected by an amendment to the zoning restriction. Besides, the Board had also failed to show the changes in the past 12 years to justify such a drastic change in BHR;

“Out-of-Context” Not Proper Concern

- (j) If the development of BH at 169mPD was considered out-of-context by the Board, then the GBPs could be disapproved by the BA under s.16(1)(g) of the BO. CBS/NTW, BD advised that as two years had lapsed since the last building plan approval, consent application might be refused under s.16(3)(d) of the BO noting that certain provisions of the BO and allied regulations had been revised (e.g. Barrier Free Code 2008) since the last approval. It meant that the last GBPs approved in 2007 might no longer be valid. To erect any building, the proponent would need to submit further GBPs. If the proposal was considered out-of-context, the BA could disapprove such GBPs. The Board’s concern of having an out-of-context building was unfounded;

Legitimate Expectation

- (k) given the Board's approval of a BH of 169mPD, R9 had a legitimate expectation that a development at 169mPD could be materialised. They had incurred substantial costs in submitting MLPs and GBPs and carrying out the construction of Road 27E. It was unfair to impose a BHR of 120mPD on the representation site;

The 120mPD BHR could not accommodate the OZP Permissible PR 6.36

- (l) although PlanD claimed that 120mPD was able to accommodate a permissible PR of 6.36 at the representation site as shown in Table 1 of the Paper, the assumptions adopted in calculation were unrealistic on the following aspects so much so that the 120mPD BHR could not accommodate the permissible PR of 6.36:

Full Potential Not Achieved

- (i) the full development potential of the site could not be achieved. The total full site area was 13,350m², i.e. the private land owned by R9 within the "CDA" zone, but PlanD had only adopted a site area of 12,340m² in their calculation. With a larger site area of 13,350m², the total GFA should be 84,906m² instead of 78,482m² (i.e. an increase of 6,424m²) under a PR of 6.36 as permitted under the OZP;

Arbitrary Land Use Split

- (ii) the land use split between hotel and residential use as adopted by PlanD was arbitrary. According to the Notes of the OZP for "CDA" zone, there was no restriction on the split between residential and hotel land use;

Site Context and Building Regulations Not Considered

- (iii) the site was highly constrained by adverse traffic and environmental impacts. The environmental problems included the traffic noise and vehicular emission as the site was surrounded by three busy roads, in particular Cheung Wing Road, which was subject to high level of traffic noise and relatively high level of vehicular emission. Industrial noise was another problem as the site was subject to industrial noise sources in the north and east (i.e. cooling towers and ventilation exhausts at the roofs of nearby industrial buildings) and the industrial noise level was relatively high. In order to mitigate the noise impact, a 20m setback from the western site boundary along Cheung Wing Road to mitigate the traffic noise and a buffer zone at the southeastern corner of the site to mitigate the industrial noise were proposed in order to comply with HKPSG and EPD's requirements;
- (iv) taking into account the setback for traffic noise and the buffer zone for industrial noise, the developable site area would be about 50% of the total site area only;
- (v) according to the "Report on Area Assessment 2009 of Industrial Land in the Territory" prepared by PlanD, it was recommended that in view of its high percentage of GFA for industrial use (particularly warehouse/storage), the area could be retained as "OU(B)" to continue providing floor space for industrial use and giving opportunity for land use restructuring;
- (vi) by using a typical residential floor plate of 823m² (i.e. adopted from The Beaumont and Sorrento), it was found that given the site constraints, a site layout with three residential blocks and one hotel block at the representation site could comply with BO's requirements and Sustainable Building Design Guidelines (SBD Guidelines), but failed to comply with the noise standards.

Likewise, if the residential blocks were re-arranged to set back in order to comply with the noise standards, the site was unable to accommodate all the three residential blocks and one hotel block at a PR of 6.36 and a BH of 120mPD;

- (vii) alternatively, by adopting PlanD's assumptions involving two residential blocks and one hotel blocks assuming a typical residential floor plate of 685m² (with 20% GFA concession), a floor-to-floor height of 3.15m and other design parameters, the required BH for such a development to accommodate the permissible PR at 6.36 should be 160.9mPD. If the BH was reduced to 120mPD, then the achievable PR would be 5.01 only;

[Mr. Timothy K.W. Ma left the meeting temporarily at this point.]

- (viii) two notional schemes for a proposed residential with ancillary retail development were presented to demonstrate that the BHR 120mPD could not accommodate a PR of 6.36 at the representation site;
- (ix) in order to meet the prescribed windows requirements and 15m separation between blocks within 30m from the centreline of a street, a possible option was to arrange all the seven single-aspect residential blocks around the site, the so-called "Tulou" design. This "Tulou" design scheme would create a 'wall effect' and all the units had to face inward to avoid the noise. The building height-to-width ratio would be 1:2.5 (i.e. more effective than 1:3.0 as required under the Urban Design Guidelines) and the breezeway along Cheung Wing Road was acceptable. Even if such an undesirable scheme was adopted, the minimum BH of the proposed development should be at 157.75mPD in order to achieve a permissible PR at 6.36. If the BH was reduced to 120mPD, then the achievable PR would be 4.917 only;

- (x) a desirable scheme involving three residential blocks with a typical floor plate of 464m² (8 units, floor-to-floor height 3.15 and other design parameters) was proposed. The scheme could achieve a better layout and building disposition in terms of noise, lighting, ventilation and SBD Guidelines compliance (i.e. with outward facing units with noise mitigation measures and open view arrangements). The building height-to-width ratio would be 1:2.5 (i.e. more effective than 1:3.0 as required under the Urban Design Guidelines) and the breezeway along Cheung Wing Road was acceptable. Under this scheme, the required BH would be 173.15mPD in order to achieve a permissible PR at 6.36. If the BH was reduced to 120mPD, then the achievable PR would be 4.44 only;

[Mr. Timothy K.W. Ma returned to join the meeting at this point.]

Mean Street Level Disregarded

- (xi) the mean street level (15.7mPD) rather than the site formation level (13mPD) should be referred to in determining the BH. It should be calculated based on the lowest abutting street, i.e. Cheung Wing Road ($(13.1\text{mPD} + 18.3\text{mPD})/2 = 15.7\text{mPD}$) as shown in the approved GBPs; and
- (xii) to conclude, the BHR of 120mPD was not feasible on the site and could not accommodate the permissible PR of 6.36 on the OZP. In order to achieve a PR of 6.36, the minimum BH for a hotel cum residential with ancillary retail development should be 160.9mPD and the minimum BH for a residential with ancillary retail development should be 157.75mPD. There should be no dispute that the 169mPD could also accommodate a development with a PR of 6.36 as such a scheme had already been approved by the Board;

Sufficient Control under “CDA” Zone

- (m) given the BHR of 120mPD on the representation site was not feasible in accommodating the permissible PR of 6.36, the imposition of such a BHR for the “CDA” zone would defeat the planning intention. It would also duplicate the planning application procedures and consume the public time and resources;

Redevelopment Incentive

- (n) as compared to other industrial sites in the area which were mostly under multiple ownership, the chance of redevelopment of the representation site was higher as it was held by a single owner. If the representation site was redeveloped, the adverse impact generated by the three chimneys of the existing factory at the site would disappear. Besides, the project could act as a catalyst for the regeneration of the whole area;

Mr. Christopher Foot (Representative of R9)

Visual Impact

- (o) the representation site could only be viewed at locations in close proximity to it as it was bounded by existing high-rise buildings. The existing urban form and height of adjacent buildings/structures, e.g. the industrial buildings and flyovers, had restricted views from the main streets, in particular from the main view corridor (Kwai Chung Road), to the representation site;
- (p) imposition of BHR on the representation site would cause adverse visual impacts on the surroundings because a lower BH would result in bulkier development with a greater visual mass and a more significant visual impact for the majority of visually sensitive receivers (VSRs); reducing the BH would require a large number of residential towers to accommodate the permitted GFA; and increasing the number of towers would result in a less visually permeable development perpetuating the

wall effect and reducing the benefits of the proposed landscape treatment of the podium;

- (q) the stepped height profile concept was not applicable to the representation site. Based on the existing situation, it was evident that the stepped BH band did not exist. Development at the proposed BH could not be seen from the street level or from the majority of existing VSRs. The stepped BH was not a definitive contour. A subtle transition between the heights of adjacent buildings should be provided. The permissible height of the buildings should be determined by the actual site conditions which was not a pure planning exercise;
- (r) in a high-rise urban environment such as Hong Kong, the spatial quality of the view available to the public was determined by the building mass and permeability at the pedestrian level. The stepped BH concept was not apparent in those public views;
- (s) the photomontages showed that the visual impact of the BHR of 169mPD would not be significant. In view of the above, it was considered that a proposed development with 169mPD at the representation site would be compatible with its urban and visual context;

Ms. Theresa Yeung (Representative of R9)

Air Ventilation

- (t) the imposition of 120mPD for the representation site was arbitrary. Based on the findings of the AVA, the representation site was not within any of the breezeways/air paths identified; it did not fall within any problem areas identified; and air ventilation in the area was not an issue;

- (u) it was wrong to adopt a BH of 120mPD at the representation site in conducting the AVA as this was not a committed development. Unfortunately, an approved and committed scheme with 169mPD had not been assessed. In addition, the relative merits of different schemes of varying heights had not been evaluated/compared;

Representer's Proposals

- (v) R9 proposed to remove the BHR from the representation site or to relax the BHR of the representation site from 120mPD to 169mPD; and

Conclusion

- (w) the Board was requested to uphold the representation on the grounds that a BHR of 120mPD was unable to accommodate the permissible PR of 6.36 due to the site constraints; the approved BH of 169mPD should be respected as the approved scheme had already been commenced; the planning intention of the "CDA" zone should be respected; time and resources should not be wasted in processing the planning application; and urban redevelopment process could be expedited as redevelopment at the site could act as a catalyst for the regeneration of the Kwai Chung Industrial Area and bring about local improvement for the community at an early stage.

C1828 (Wong Ho Tung)

116. Mr. Ma Ka Ho, C1828's representative, said that he did not understand how the BHR was set for the representation site. He pointed out that some buildings of up to about 190mPD and 50 storeys were found in the vicinity. Nowadays, it was difficult for young people to buy their own flats, particularly in the urban areas. There should be more supply of housing units in Hong Kong. Moreover, the residential flats in the urban fringe areas like the representation site would be more affordable, and the flats in the rural areas were not too convenient due to the long travelling distance to the urban areas. In general, restricting the BH might result in a lower floor-to-floor height and hence degrading the

living quality.

C1829 (Li Yee Ling)

117. Mr. Cheung Cheuk Him, C1829's representative, said that, being a member of the post-1980's generation, he was concerned about housing supply and the quality of the living environment. He had doubt on whether the public consultation was conducted properly and whether there was community consensus for such a change in BHR from 169mPD to 120mPD for the representation site. While at the present moment, experts had advised that the imposition of BHR of 120mPD at the representation site was appropriate, it should be noted the BHR of 169mPD had also been considered acceptable in the past.

C1882 (Wong Chi Keung)

118. Mr. Wong Chi Keung, C1882, said that there was a shortage of land supply in Hong Kong and the Government had recently adopted the 6-pronged approach to increase the land supply in order to cope with the population growth. The measures included land use rezoning, redevelopment, land resumption, reclamation, rock cavern development, etc. It was noted that the BHRs in some urban areas such as Kwun Tong and Kowloon Bay had been relaxed to facilitate the commercial/office development. A similar approach was applicable to Kwai Chung as it was located at the fringe of the main urban area. The representation site could help provide flats at a cheaper price and at a relatively more convenient location than other areas in the New Territories. Mr. Wong was concerned that imposition of BHR on the representation site would increase the construction cost of the development and price of the flats and it was the general public who would ultimately suffer;

C1905 (Yuen Chi Lok)

119. Mr. Yuen Chi Lok, C1905, said that his points had already been presented by others and he had nothing to add.

120. As the presentation from the representatives of PlanD, representer's representatives, commenters and their representatives had been completed, the Chairman invited questions from Members.

121. The Chairman noted that the approved scheme with a BH of 169mPD was for a comprehensive hotel and service apartment development but not a residential development at the representation site. However, the site constraints mentioned by the representer's representatives at the hearing was largely related to the use of the representation site for residential development. The Chairman said that the design constraints/requirements for a residential and a hotel/service apartment development were quite different. Ms. Theresa Yeung said that according to the current practice, service apartment was no longer allowed. As such, the previously approved scheme for hotel and service apartment had to be replaced by a new scheme for hotel and residential use. Ms. Yeung further said that PlanD has also assumed a comprehensive development with hotel, residential and retail use at the representation site in their calculation as shown in Table 1 of the Paper. It should be noted that at the time when the hotel and service apartment scheme was approved in 2000, there were no SBD Guidelines and the market situation and government requirements were also different. In view of the changing circumstances, it was considered more appropriate to redevelop the site for residential use in response to the market situation.

122. Referring to the approved GBPs at Appendix III to Annex IV-1 of the Paper, a Member pointed out that the layout of the service apartment was similar to that of the hotel except that the unit size might be different. Mr. Simon Leung replied that there should be no major difference between a hotel and a service apartment in terms of floor layout. Mr. Leung further said that since 2005, service apartments were no longer allowed. In this regard, the representer intended to pursue a residential development at the site. In view of the site constraints, the developable site area, the lighting and ventilation requirements under BO, the noise problem and the SBD Guidelines, the site could not accommodate three residential blocks at a PR of 6.36 and a BH of 120mPD.

123. The Chairman asked if the representer could develop to 169mPD if redevelopment would proceed with the proposed development according to the approved GBPs. Mr. Simon Leung answered in the affirmative.

124. In response to the comments from the representer's representatives, Mr. Wilson Chan, DPO/TWK, made the following main points:

- (a) in the imposition of BHRs on the OZP, consideration had been given to the wider context of the Kwai Chung Area, in addition to the conditions of the representation site itself, e.g. the transition of height profile from Tsuen Wan to Kwai Chung. To respect the ascending topography from Castle Peak Road in the south to Kwok Shui Road and Wo Yi Hop Road in the north, BHRs of 105mPD, 120mPD and 130mPD were assigned to the business/industrial areas on both sides of Cheung Wing Road;
- (b) prior to the imposition of statutory BH control under the OZP, some buildings in the vicinity of the representation site had been developed at a PR of 15 as permitted under B(P)R. If no BH control was imposed, there could be a proliferation of out-of-context buildings competing for better view and hence a degradation in the overall environment in terms of visual amenity and air ventilation;
- (c) the representation site was held under the Lease of KCTL 432 which was granted on 27.10.1990 in exchange for the surrender of two old lots formerly known as KCTL 8 and KCTL 10 to facilitate an industrial/godown development. A road reserve linking Tai Yuen Street and Cheung Wing Road, i.e. Road 27E, encroached on KCTL 10. Under the Lease of KCTL 432, the user was restricted to industrial/godown development excluding offensive trade, and the lot owner should be at his own costs to build the road and surrender it to the Government in 24 months. The site area of the representation site was 12,340m² under the lease. As advised by the District Lands Officer/Tsuen Wan and Kwai Tsing, the land on which Road 27E lay was still under the possession of the land owner and had not been returned to the Government. Since Road 27E would be a public road, it could not be included in the GFA/PR calculation of the representation site. As such, the site area should be 12,340m² instead of 13,350m² as claimed by the representer's representatives;

- (d) there should be scope and opportunity for many possible development options to achieve a PR of 6.36 at a site of about 1.2ha with a different mix of uses. In this regard, it was impractical and unnecessary for PlanD to exhaust all development options during the process of OZP review. As regards PlanD's calculation in Table 1 of the Paper, PlanD had made reference to the planning parameters including the land use split and podium size specified in the two planning applications submitted by the representer (i.e. Application No. A/KC/241 which was approved by the Board in 2000 and Application No. A/KC/369 which was submitted in 2011 but withdrawn in 2012);
- (e) while the representation site was subject to traffic and industrial noise, the incorporation of appropriate noise mitigation measures such as purpose-built noise barriers and self-protecting building design (e.g. use of podium) should be able to mitigate the noise problem. The huge setback to mitigate the noise impact as shown on the representer's notional schemes was not the only viable option. The representer's representatives might have presented the worst case scenario as such noise mitigation measures had not been adopted in their notional schemes;
- (f) since the representer's representatives claimed that the representation site was subject to severe noise impact, it was unreasonable for them to put all the residential blocks along the site boundary as shown in one of their notional schemes (the so-called "Tulou" scheme);
- (g) it was noted that the floor plates used in the notional schemes were standard typical ones. More creative design such as adoption of larger floor plates (say, 10 units per floor) warranted further exploration with a view to pursuing a tailor-made design to address the site constraints of the representation site; and
- (h) even if the mean street level (15.7mPD) instead of the site formation level (13mPD) should be adopted in determining the BH, a PR of 6.36

could still be achieved with a BH of 120mPD as demonstrated in PlanD's calculation in Table 1 of the Paper, given that the resultant BH band in PlanD's calculation was not yet up to the level of the BH.

125. In response, Ms. Theresa Yeung made the following main points:

- (a) it was a statement of fact that the site area was 12,340m² but the private land originally owned by the representer was 13,350m². Part of the site had been carved out and would be surrendered to the Government upon completion of the public road, Road 27E. The representer had no intention to ask for more GFA by including Road 27E into the development site for PR calculation; and
- (b) other than noise problems, the representation site was also faced with an air quality problem such that buffer distance for mitigating vehicular emission was recommended. The proposed development had to comply with all the prevailing government requirements including BO, HKPSG and SBD Guidelines.

126. To supplement, Mr. Terence Hui made the following main points:

- (a) the assumptions adopted by PlanD were not realistic as the development constraints of the representation site had largely not been taken into consideration;
- (b) even with the provision of a 20m setback from the western site boundary along Cheung Wing Road and the provision of a 15m high podium design, the proposed development was still required to adopt special layout design and building disposition as well as other noise mitigation measures for full noise compliance;
- (c) with the provision of a 20m setback from the western site boundary along Cheung Wing Road and a buffer zone at the southwestern corner of the site as suggested, only about 50% of the representation site could

be used for residential development;

- (d) the layout design of the notional scheme with all the residential blocks surrounding the site (i.e. the “Tulou” design) for noise compliance was undesirable as all the flats would have direct views towards each other. Under this option, the minimum BH to accommodate the permissible PR was 157.75mPD;
- (e) the floor plates (i.e. 232m² for four units per floor and 464m² for eight units per floor) were chosen in response to the market need for small flats. They could achieve an efficiency rate of over 85%. However, using larger floor plates might result in a lower efficiency rate. Moreover, in accordance with the SBD Guidelines, the façade length of the residential blocks at the representation site should not exceed 58m;
- (f) the construction of Road 27E encountered technical difficulties and thus it could not be completed earlier. The significant site level difference and requirement for extensive piling works were complicated, which involved time-consuming engineering works. The factory on site was still in operation and that had further complicated the construction works;
- (g) given that service apartment was no longer feasible and there was a shortage in housing supply, in particular, small flats, the representer was prepared to redevelop the representation site for residential use rather than hotel;
- (h) given that the approved scheme was for hotel and service apartment, a change of use from service apartment to hotel would be considered as a material change in planning terms and would not constitute a Class A or Class B amendment. Such a change of use would require a new s.16 application. For any new planning application, the BHR of 120mPD of the extant OZP needed to be complied with;

- (i) according to the approved GBPs, the façade length of the building would exceed that allowed under the SBD Guidelines. If implemented, it would not be good for the environment. An amendment to the block layout would require a new s.16 application; and
- (j) a “tall and thin” building might be better than a “low and fat” building.

127. Mr. Simon Leung said that the notional scheme with all the residential blocks arranged along the site boundary would cause significant adverse impact to the surroundings. The Chairman said that as a MLP submission was required for the representation site which was zoned “CDA”, such a design might not be considered as acceptable by the Board. The Chairman further said that the SBD Guidelines were not statutory requirements, and could be adopted by the developers on a voluntarily basis with GFA concession as incentive. If the developer chose not to claim GFA concession, then there was no need to comply with the SBD Guidelines insofar as building plan submissions were concerned;

128. In response to a Member’s question, Ms. Theresa Yeung confirmed that the site area should be 12,340m² and the area reserved for Road 27E would not be included in the GFA/PR calculation of the future development. The site area of 12,340m² was also adopted in their calculations/notional schemes. The Member pointed out that the representer could submit a planning application for minor relaxation of the BH, if required, for the consideration of the Board, when a concrete development scheme was available. In response, Ms. Yeung said that an increase in the BHR from 120mPD to 169mPD might not be considered as minor in nature and thus a planning application for minor relaxation of the BHR might not be applicable to this case.

129. A Member raised a question about the noise sources affecting the representation site and the statutory noise compliance levels. Mr. Terence Hui said that the representation site was subject to both traffic and industrial noise. The noise level facing Cheung Wing Road was 77dB(A) while the HKPSG and EDP’s acceptable noise level for residential use was 70dB(A). A buffer zone of 55dB(A) from industrial noise was also required. According to their understanding, both were statutory requirements. Mr. Simon Leung supplemented that the proposed setback and buffer zone for mitigating

traffic and industrial noise were suggested by their environmental consultant. The proposed setback at the western site boundary along Cheung Wing Road could only reduce the noise level by 4dB(A) and could not fully mitigate the noise impact to meet EDP's standard of 70dB(A). Even with the provision of setback/buffer zone, other noise mitigation measures would still be required in order to comply with EPD's requirements.

130. Referring to Slide 41 of the Powerpoint presentation presented by the representer's representative, the same Member further asked if a hotel could be located at the southeastern corner of the representation site to act as a noise screen in order to achieve the permissible PR 6.36 at a lower BH. Mr. Terence Hui responded that they did not propose a hotel at the southeastern corner because after trying more than twenty design options, they still could not work out a feasible scheme that could comply with the prescribed windows requirements. Ms. Theresa Yeung added that if a hotel was located there to mitigate the noise impact, then only two residential blocks could be accommodated at the representation site. To implement the proposal, a new planning application and a new set of building plans would be required for approval by the Board and the BA respectively.

131. Noting that some industrial buildings on Tai Yuen Street were used as warehouses/offices instead of industrial/manufacturing factories, a Member enquired if the industrial noise identified by the representer was mainly generated from the ventilation exhausts and cooling towers of the adjacent industrial buildings. Mr. Simon Leung said that the noise contours were prepared by their environmental consultant and the industrial noise identified might also be generated from the industrial operations in nearby industrial buildings.

132. In response to a Member's question about the on-going piling works conducted on site, Mr. Simon Leung said that the piling works were required for the construction of Road 27E due to the level difference within the site.

133. The Chairman requested for a response to a comment made by the representer's representative that the BH profile was an aerial view and could not be perceived by people at street level. Mr. Wilson Chan agreed that views to the representation site at street level were mostly blocked by tall buildings or flyovers.

However, the proposed development at the site might generate visual impact to the drivers on the flyovers. Mr. Chan, however, pointed out that the imposition of the BHR on the site had also taken into account a wider view – the stepped height profile from Tusen Wan to Kwai Chung, instead of merely focusing on the site context of the representation site.

134. Mr. Christopher Foot said that given the site and its visual context, the visual impact of a development at BH of 120mPD and 169mPD would not differ significantly. The stepped BH was not a definitive contour and the BH profile was not apparent at street level. It was more practical to assess visual impact at street level as the aerial view assessment on BH profile was not realistic to people at street level. Reducing the BH would result in bulkier development with a greater visual mass and a more significant visual impact when viewed at street level. From visual impact perspective, a taller but thinner development was considered more desirable.

135. As Members had no further question to raise, the Chairman said that the hearing procedures had been completed and the Board would deliberate on the representation in the absence of the representer's representatives, commenters and their representatives. They would be informed of the Board's decision in due course. The Chairman thanked the representer's representatives, commenters and their representatives, representatives of PlanD and the AVA Consultant for attending the hearing. They all left the meeting at this point.

[The meeting adjourned for a short break of 5 minutes.]

[Ms. Anita W.T. Ma arrived to join the meeting at this point.]

Deliberation Session

136. The Chairman invited Members to consider the representation taking into consideration all the written submissions and the oral representations and materials presented.

Development Rights

137. In response to the Vice-Chairman question, the Secretary said that a comprehensive hotel and service apartment development at a PR of 6.36 and BH of 169mPD at the representation site was approved by the Board (Application No. A/KC/241) on 17.3.2000 and subsequently a set of corresponding GBPs for the approved development scheme had also been approved by the BA on 20.2.2003 and last approved on 31.1.2007. The PR of 6.36 had been incorporated in the subject “CDA” zone of the OZP on 26.9.2003. In this regard, the approved development had already commenced from the planning point of view. PlanD therefore had no objection for the representer to implement the proposed development according to the approved GPBs. In the light of a change in government policy in respect of strata-title sale of service apartment development and the need to review the control mechanism for service apartment development, a new set of Town Planning Board Guidelines No. 2B for ‘Interim Planning Control on Service Apartment’ was published in June 2000. In order to provide clarity in land use terms, the Board had decided to delete the term ‘Service Apartment’ from the Notes of all statutory plans. According to the said Guidelines, planning applications approved prior to the promulgation of that set of Guidelines would not be affected. Such developments could proceed on the basis of the approved schemes, amendments which were in line with the planning considerations set out in the previous Town Planning Board Guidelines No. 2A would be considered as minor amendments and would be permitted. Major deviations from the approved schemes would require fresh application to the Board in accordance with the provision of the extant outline zoning plan. The Secretary continued and said that there were indeed two types of service apartments in the market. One was “hotel-like” service apartments which were developed as part of and/or operated within a hotel establishment while another was “flat-like” service apartments including those conventional residential flats with central services provided, which were targeted for long term tenancy. As far as the representation site was concerned, the representer could proceed with the hotel and service apartment development at a PR of 6.36 and a BH of 169mPD as approved by the Board in 2000 and the BA in 2007.

138. The Secretary explained that as the representation site was zoned “CDA”, a MLP submission was required. While the BHR of 120mPD was newly imposed on the subject “CDA” zone on 20.4.2012, the representer could either redevelop the site for the

approved hotel and service apartment development with a PR of 6.36 and a BH of 169mPD (as commenced development with GBPs approved in 2007) or pursue a new development proposal conforming to the development restrictions stipulated on the current OZP, i.e. a PR of 6.36 and a BH of 120mPD. It should be noted that the representation site was for industrial use under lease, and any change in use, say, hotel, service apartment or flats, would also require an application for lease modification.

139. The Secretary pointed out that regarding the calculation presented in Table 1 of the Paper, reference had been made to the hotel PR and the podium design as proposed in the two planning applications (No. A/KC/241 and 369) submitted by the representer. The calculation demonstrated that a PR of 6.36 could be accommodated within a BH of 120mPD.

140. The Secretary further clarified that the site area of the representation site was 12,340m² under the lease. The area reserved for the public road, i.e. Road 27E, could not be included in the GFA/PR calculation of the representation site.

Compliance with BHR

141. Noting that the representer had in hand a set of approved GBPs with a PR of 6.36 and a BH of 169mPD, a Member enquired if the BHR of 120mPD should be complied with for proposed amendments made to the approved GBPs by the representer. The Secretary said that the 169mPD was still applicable if the proposed amendments to the GBPs were minor in nature. However, if the proposed amendments involved a change of use, an increase in development intensity or substantial amendments to the approved GBPs, then they could not be considered as minor. Under such circumstances, the proposed development would be considered as a new proposal and would need to conform to the extant OZP and the BHR of 120mPD should be complied with. It should be noted that the permissible PR of 6.36 as stipulated in the extant OZP was the same as the PR of the approved scheme under Application No. A/KC/241.

Other Land Use Options

142. Upon the Chairman's invitation, Mr. C.W. Tse, Deputy Director of

Environmental Protection, advised that according to EPD's experience, for many other sites of similar size, noise and air pollution problems could be tackled through a combination of layout design and building disposition as well as adoption of noise mitigation measures. Indeed, based on the information provided by the representer, a comprehensive residential cum hotel development might be one of the possible development options, having regard to the site constraints. Hence, he believed that there should be scope and practicable options to address the environmental issues at the representation site.

143. A Member considered that it was the ultimate responsibility of the representer to formulate a development proposal which could comply with the planning requirements as well as other government requirements/regulations. The site was a difficult site with environmental problems so that the zoning of "CDA" was appropriate to ensure that the proposed development at the site could be under proper planning control over the development mix, scale, design and layout of development, taking account of environmental and other constraints.

144. A Member said that given the environmental constraints at the representation site, the site might not be suitable for residential development from the planning perspective. Given the uncertainty to resolve the environmental issues satisfactorily, there was no strong planning justification to develop the site primarily for residential use as advocated by the representer.

145. A Member held the view that the Board had no obligation to ensure that the land owner could maximise the development potential of his site. While the planning application and the GBPs for the hotel and service apartment development scheme at the representation site had been approved for many years, the proposed development had not yet been implemented by the representer. The Member pointed out that judging from the notional schemes presented by the representer's representatives at the meeting, the clear intention of the representer was to develop residential development at the representation site. All the notional schemes were prepared in this direction and the representer did not explore other more compatible land uses at the representation site. However, the representation site, being surrounded by three busy roads and located at an industrial area, was a difficult site and might not be suitable for residential development. Instead of

exploring other compatible land uses on the representation site, the representer asked for a relaxation of the BHR in order to facilitate a proposed residential development at the site to suit his commercial decision. In this regard, this Member considered that there was no strong planning justification to uphold the representation. The same view was shared by some other Members.

146. Members generally considered that if the representation site was not suitable for a predominately residential development due to the site constraints, then other more compatible land use options should be further explored. There was no planning justification to uphold the representation.

Conclusion

147. The Chairman summarised Members' views that the representer should be encouraged to derive a feasible scheme for a comprehensive development of mixed uses, e.g. residential cum hotel use, in order to address the traffic and industrial noise pollution at the representation site properly. In formulating the BHR, PlanD had already taken into account a whole set of factors such as the local context, existing BH, compatibility with the surrounding areas, air ventilation, public aspirations, private development potentials, stepped BH concept, permissible development intensity under the OZP and the Urban Design Guidelines. The imposition of BHR for the representation site was justified to avoid a proliferation of out-of-context development in the area. On the issue of development rights, the imposition of the BHR did not take away the development rights from the representer. Proposals with approved GBPs would not be affected by the proposed amendments to the OZP. As discussed, the representer could proceed with the approved hotel and service apartment scheme, with GBPs approved in 2007. Furthermore, as the representation site was zoned "CDA", it would be more appropriate for the representer to submit a MLP and, if necessary, apply for minor relaxation of the BHR as appropriate when a concrete development scheme was available at the MLP submission stage. Minor relaxation of BHR could then be considered by the Board on individual merits by making reference to the concrete proposed development scheme. In view of the above reasons, Members agreed that R9 should not be upheld.

148. After deliberation, Members agreed not to uphold Representation No. R9. Members then went through the reasons for not upholding the representation as stated in paragraph 8 of the Paper and considered that they were appropriate.

Representation No. R9

149. After further deliberation, the Board decided not to uphold Representation No. R9 for the following reasons:

- (a) the purpose of imposing building height restrictions (BHRs) in the Area was to provide better planning control on the BH upon development/redevelopment and to meet public aspirations for greater certainty and transparency in the statutory planning system, to prevent excessively tall or out-of-context buildings, and to instigate control on the overall BH profile of the Area. In formulating the BHRs for the Area, all relevant factors including the Urban Design Guidelines, the Urban Design Appraisal for the Area (UDA), existing topography, stepped BH concept, local characteristics, existing BH profile, site formation level and site constraints, the zoned land uses of the site concerned, compatibility with the surrounding developments, development potential, the wind performance of the existing condition and the recommendations of the Air Ventilation Assessment by Expert Evaluation, had been taken into consideration;
- (b) the BHR was formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development intensity permissible under the Kwai Chung Outline Zoning Plan (OZP). The proposed BHR would not affect the development intensity of the representation site permitted under the OZP and the incentive of redevelopment will not be jeopardised. Better designed and sustainable buildings were not guaranteed with more relaxed BH control;
- (c) for the public good and in the interest of the community, the imposition of BHR of 120mPD for the site was to avoid excessively tall and

out-of-context buildings which adversely affected the overall valley-like and foothill setting of the Area. It helped to maintain the integrity of the stepped height concept and was more appropriate for the site to be congruous with the overall BH profile exemplifying the natural valley-like topography. Deletion of BHR or relaxation of BHR to not less than 169mPD at the representation site would jeopardise the integrity of the stepped BH concept and result in a development out of context with the surrounding area;

- (d) development proposals which had already obtained building plan approval would not be affected by an amendment to the zoning restriction. Subsequent amendments to the approved building plans would not need to conform to an extant statutory plan unless they involved a change of use, an increase in development intensity or substantial amendments. The representer could proceed with the building development in accordance with the approved building plans;
- (e) the stipulation of BHR of 120mPD at the site on the OZP was to provide a clear planning intention in respect of the permissible BH at an early stage of the planning process, allowing the restriction to be more transparent and open to public scrutiny. The 120mPD BHR still allowed a comprehensive development to be pursued at the site without compromising its comprehensiveness;
- (f) the adjacent “Other Specified Uses” annotated “Business” (“OU(B)”) and “Commercial (2)” (“C(2)”) zones were different from the subject “Comprehensive Development Area” zone in terms of land use and development intensity. Hence, the BHRs of the “OU(B)” and “C(2)” zones should not be taken as a reference;
- (g) the objective of Planning Department’s UDA was to assess the visual impacts of the BHRs and to examine whether they were acceptable from urban design and visual perspectives, as well as to visualise the future visual context upon imposition of the BHRs. The UDA was not supposed to, and not practicable to, exhaust all possible BHR options;

- (h) the Visual Impact Assessment submitted by the representer had not demonstrated that the architectural design and the claimed visual effect could not be achieved with the BHR stipulated on the OZP. As shown in the photomontages, the claimed visual benefit was not significant to outweigh the impact of the increased building height on the local character and visual openness. The representer failed to demonstrate that the proposed relaxation of BHR to 169mPD would present an improved stepped building height concept as compared with the BHR of 120mPD on the OZP;

- (i) building design was determined by the interplay of various factors such as plot ratio, site coverage, BH, design and disposition of building, etc. BHRs per se would not result in bulkier buildings and impose undue constraint on the design flexibility of future redevelopments. The BHRs formulated based on reasonable assumptions allowed flexibility in designing the buildings and did not preclude the incorporation of green features and innovative architectural design to promote a good building design. Should there be any planning and design merits for a development scheme to exceed the BHR, it would be more appropriate to pursue the proposal by way of application for minor relaxation of the BHR; and

- (j) whether a development would be pursued would be a commercial decision taking into account a host of factors, instead of the BHR alone. Even if the BHR to a certain extent reduced the number of possible development options, this did not necessarily amount to a material impact on the redevelopment incentive. The need to cater for greater design flexibility and redevelopment incentives had to be balanced against the community aspirations for a better living environment with more compatible building developments.

Tuen Mun and Yuen Long District

Agenda Item 8

[Open Meeting (Presentation and Question Session only)]

Request for Deferral for Review of Application No. A/YL-TYST/574
Proposed Temporary Community Based Recyclable Collection Centre
(including Plastics, Paper and Metals) for a Period of 3 Years
in “Residential (Group D)” zone, Lots 1526 (Part), 1528 RP (Part),
1529 RP (Part), 1531 (Part), 1532 (Part) and 1533 (Part) in D.D. 121 and
Adjoining Government Land, Shan Ha Tsuen, Yuen Long, New Territories
(TPB Paper No. 9205)

[The meeting was conducted in Cantonese.]

150. The Secretary reported that this was the first request for deferral by the applicant for the review of application. On 12.9.2012, the applicant wrote to the Board and requested the Board to defer consideration of the application for a period of 2 months so as to allow sufficient time to address the reasons for rejection and departmental comments on the application, in particular the concerns related to the planning intention of the area and environmental aspects. The justifications for deferment met the criteria for deferment as set out in the Town Planning Board Guidelines on Deferment of Decision on Representations, Comments, Further Representations and Applications (TPB PG-No. 33).

151. After deliberation, the Board agreed to defer a decision on the review application as requested by the applicant pending the submission of further information by the applicant. The Board also agreed that the review application should be submitted for its consideration within 3 months upon receipt of the further submission from the applicant. The applicant should be advised that the Board had allowed a period of 2 months for preparation of submission of further information and no further deferment would be granted unless under very special circumstances.

Agenda Item 9

[Open Meeting]

Any Other Business

[The meeting was conducted in Cantonese.]

152. There being no other business, the meeting closed at 5:15 p.m.