

**Minutes of 984th Meeting of the
Town Planning Board held on 27.5.2011 and 1.6.2011**

Present

Mr. Stanley Y.F Wong Vice-Chairman

Mr. K.Y. Leung

Mr. Walter K.L. Chan

Mr. B.W. Chan

Ms. Maggie M.K. Chan

Mr. Felix W. Fong

Ms. Anna S.Y. Kwong

Professor Paul K.S. Lam

Professor Edwin H.W. Chan

Mr. Rock C.N. Chen

Mr. Timothy K.W. Ma

Dr. Winnie S.M. Tang

Professor Eddie C.M. Hui

Dr. C.P. Lau

Mr. Clarence W.C. Leung

Mr. Laurence L.J. Li

Mr. Roger K.H. Luk

Ms. Anita W.T. Ma

Professor S.C. Wong

Dr. W.K. Yau

Director of Lands
Miss Annie K.L. Tam

Deputy Director of Environmental Protection
Mr Benny Y.K. Wong

Assistant Director (2), Home Affairs Department
Mrs. Ann Ho

Principal Assistant Secretary (Transport)
Transport and Housing Bureau
Ms. Elsa H.K. Cheuk

Director of Planning
Miss Ophelia Y.S. Wong (on 27.5.2011)

Deputy Director of Planning/District
Mr. T.K. Lee (on 27.5.2011)
Miss Ophelia Y.S. Wong (on 1.6.2011)

Secretary

Absent with Apologies

Mr. Raymond Y.M. Chan

Mr. Y.K. Cheng

Dr. James C.W. Lau

Mr. Maurice W.M. Lee

Professor P.P. Ho

Ms. Julia M.K. Lau

Dr. W.K. Lo

Ms. Pansy L.P. Yau

Mr. Stephen M.W. Yip

Permanent Secretary for Development
(Planning and Lands)
Mr. Thomas Chow

In Attendance

Assistant Director of Planning/ Board
Mr. C.T. Ling

Chief Town Planner/Town Planning Board
Ms. Christine K.C. Tse (a.m.)
Ms. Donna Y.P. Tam (p.m.)

Senior Town Planner/Town Planning Board
Mr. J.J. Austin (a.m.)
Ms. Johanna W.Y. Cheng (p.m.)

Agenda Item 1

[Open Meeting]

Confirmation of Minutes of the 983rd Meeting held on 13.5.2011

[The meeting was conducted in Cantonese.]

1. The minutes of the 983rd meeting held on 13.5.2011 were confirmed without amendments.

Agenda Item 2

[Open Meeting]

Matters Arising

[The meeting was conducted in Cantonese.]

(i) **Town Planning Appeal Decision Received**

Town Planning Appeal No. 13 of 2010

Proposed Minor Relaxation of Building Height and Plot Ratio Restrictions
for an Ancillary Green House on the Roof of Block C

in “Residential (Group C)” zone, Parisian, 8 Stanley Mound Road, Stanley

2. The Secretary reported that the appeal was lodged by the Appellant on 2.9.2010 against the decision of the Town Planning Board (the Board) not to approve on review an application (No. A/H19/61) for the proposed minor relaxation of building height and plot ratio (PR) restrictions for an ancillary green house on the roof of Block C, Parisian, 8 Stanley Mound Road, Stanley. The appeal site was zoned “Residential (Group C)” (“R(C)”) on the approved Stanley Outline Zoning Plan (OZP) No. S/H19/10.

3. The appeal was heard on 31.3.2011 and dismissed on 29.4.2011 by the Town Planning Appeal Board (TPAB) mainly on the following grounds:

- (a) the existing development of 4 domestic storeys above a carport podium and a PR of 2.0106 had already enjoyed an advantage which it would not have

been able to enjoy under the current OZP restrictions (i.e. 3 storeys in addition to 1 storey of carport and a PR of 0.75). In this respect, the development was already “excessive” and the degree of the “minor relaxation” applied for should be viewed in such context;

- (b) the TPAB did not think that the proposed relaxation was “minor” as the proposed greenhouse had a gross floor area (GFA) of 25.335m² and a height of about 2.517m. Together with the three existing staircases of a total GFA of 31.717m², the resultant GFA increase would be 57.052m²;
- (c) the TPAB was of the view that the design of the proposed greenhouse was quite standard and certainly could not be classified as one of the “imaginative designs which overcome the need for stilting or allow for the conservation of environmentally important natural features or mature vegetation” as stipulated in paragraph 7.3.3 of the Explanatory Statement (ES) of the OZP under the provision for minor relaxation of development restrictions of the “R(C)” zone;
- (d) the TPAB was not convinced that the need for protecting the plants grown by the Appellant was all that great. The existing vegetation on the roof was quite lush and green. If there were some particular species which needed extra protection, the Appellant should consider growing other species which needed less protection;
- (e) taking into account the local objections by the neighbours in the vicinity (12 objections out of a total of 13 public comments), the TPAB believed that the proposed greenhouse would obstruct the views of the neighbours; and
- (f) the Appellant might face difficulty from other co-owners who had property rights in the existing development regarding their PR entitlements and excessive PR considerations. In this regard, the appeal, if allowed, might affect the rights of the other co-owners in the development.

4. Regarding the second rejection reason put forward by the Board, i.e. the approval would set an undesirable precedent, the TPAB, without deciding on the point, had

reservation as to the soundness of such a reason, given that paragraph 7.3.3 of the ES of the OZP stated that each proposal was to be considered strictly on its own merit.

(ii) Abandonment of Town Planning Appeal

Town Planning Appeal No. 4 of 2011 (4/11)

Proposed 'House' in "Green Belt" zone

Lot No. 1052 s.A in D.D. 217, Ta Ho Tun, Sai Kung

(Application No. A/SK-HH/48)

5. The Secretary reported that an appeal had been abandoned by the appellant on his own accord. Town Planning Appeal No. 4/11 was received by the Town Planning Appeal Board (TPAB) on 12.4.2011 against the decision of the Town Planning Board on 21.1.2011 to reject on review an application (No. A/SK-HH/48) for a proposed 'House' within the "Green Belt" zone on the approved Hebe Haven Outline Zoning Plan No. S/SK-HH/6. It was abandoned by the appellant on 17.5.2011. On 23.5.2011, the TPAB formally confirmed that the appeal was abandoned in accordance with Regulation 7(1) of the Town Planning (Appeals) Regulations.

Appeal Statistics

6. The Secretary reported that as at 27.5.2011, 21 cases were yet to be heard by the TPAB. Details of the appeal statistics were as follows:

Allowed	:	27
Dismissed	:	117
Abandoned/Withdrawn/Invalid	:	149
Yet to be Heard	:	21
Decision Outstanding	:	3
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Total	:	317

Agenda Item 3

[Open Meeting (Presentation and Question Session Only)]

Review of Application No. A/YL-KTS/521

Temporary Warehouse for Storage of Exhibition Materials for a Period of 3 Years in “Agriculture” zone, Lots 118 RP (Part), 120 (Part), 121 (Part) and 122 (Part) in D.D. 113 and Adjoining Government Land, Pat Heung, Yuen Long

(TPB Paper No. 8825)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

7. The following representative of Planning Department (PlanD) and the applicant’s representatives were invited to the meeting at this point.

Ms. Amy Cheung	District Planning Officer/Tuen Mun and Yuen Long, PlanD
Mr. Raymond Leung)
Ms. Fung Ka Wun) Applicant’s representatives
Mr. Lam Tim Kit)

8. The Vice-Chairman extended a welcome and explained the procedures of the review hearing. He then invited Ms. Amy Cheung to brief Members on the background of the application.

9. With the aid of a Powerpoint presentation, Ms. Cheung did so as detailed in the Paper and made the following main points:

- (a) the applicant sought planning permission for temporary warehouse for storage of exhibition materials for a period of 3 years at the application site which was zoned “Agriculture” (“AGR”) on the Kam Tin South Outline Zoning Plan (OZP);
- (b) the application was rejected by the Rural and New Town Planning

Committee (RNTPC) on 28.1.2011 and the reasons were:

- (i) the development was not in line with the planning intention of the “AGR” zone which was to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification had been given in the submission to justify for a departure from the planning intention, even on a temporary basis;
 - (ii) the development was not compatible with the surrounding areas which were predominantly rural in character;
 - (iii) the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas; and
 - (iv) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area;
- (c) the application site was subject to planning enforcement action against unauthorised storage and workshop uses at the site. An Enforcement Notice (EN) was issued to the concerned parties on 28.10.2010. As the unauthorised development had not been discontinued after the expiry of the EN, the recipients of the EN were subject to prosecution action;
- (d) the applicant had not submitted any written representation in support of the review application;
- (e) departmental comments – the departmental comments were summarised in paragraph 4 of the Paper. The Director of Environmental Protection

(DEP) did not support the application as there were sensitive uses, i.e. existing residential dwellings/structures to the immediate west and in the vicinity of the site and environmental nuisance was expected. The Director of Agriculture, Fisheries and Conservation (DAFC) had reservation on the application from the agricultural point of view. Although the site was surrounded by vacant land, temporary structures and abandoned farmland, it had a good transportation access and had potential for rehabilitation for agricultural uses such as a plant nursery or a farm with greenhouse. The Chief Town Planner/Urban Design & Landscape of Planning Department (CTP/UD&L, PlanD) objected to the application as the proposed use involved storage of exhibition materials which was not related to agriculture. If the application was approved, it would set an undesirable precedent for similar applications of storage use in the area. The cumulative impact of storage uses in the area would lead to further disintegration of the “AGR” zone and intensify development in the wooded area, thus degrading the existing landscape quality. The Chief Engineer/Mainland North of Drainage Services Department (CE/MN, DSD) commented that the requirements on the submission of drainage proposal and implementation of drainage facilities should be incorporated as approval conditions should planning permission be granted. The other departments either had no adverse comments or raised other technical comments;

- (f) public comments – during the statutory publication period of the review application, one public comment was received objecting to the application on the grounds that the proposed use was a blight on the environment and that it was not in line with the planning intention of the “AGR” zoning of the area; and
- (g) PlanD’s view – PlanD did not support the application based on the assessment in paragraph 6 of the Paper. The proposed temporary warehouse for storage of exhibition materials was not in line with the planning intention of the “AGR” zone. In this regard, DAFC had reservation on the application as the site had good transportation access and had potential for rehabilitation for agricultural use such as plant

nursery or a farm with greenhouse. Besides, the site was not compatible with the surrounding area which was predominantly rural in character. Moreover, the applicant had failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas. DEP and CTP/UD&L, PlanD had adverse comments on the application while CE/MN, DSD requested the submission of a drainage proposal and implementation of drainage facilities for the development should the application be approved. As no similar approval had been granted in the area, approval of the application would set an undesirable precedent.

10. The Vice-Chairman then invited the applicant's representatives to elaborate on the application. With the aid of a Powerpoint presentation, Mr. Raymond Leung made the following main points:

- (a) the proposal was only for the temporary use of the site for storage purposes. The site would be covered and would generate very little activity;
- (b) as the site had already been used for open storage for some time, the potential for agricultural rehabilitation was quite limited. DAFC only had reservations on and no objection to the proposal and suggested that the site was suitable for nursery gardening or greenhouse farming. It was questionable whether the site could be rehabilitated for agricultural use;
- (c) the immediate surroundings of the application site were either vacant land or had been converted to open storage uses, demonstrating that the demand for agricultural use in the area was low;
- (d) the proposal was only for the storage of exhibition materials which would not generate any noise nuisance or cause any visual intrusion or adverse impacts on the environment. DSD had no in-principle objection to the proposal and the impact on the local traffic situation was minor. Should the proposal generate any adverse environmental, landscape and drainage

impacts, the applicant was willing to carry out the necessary mitigation measures and such requirements could be stipulated as approval conditions to the planning permission;

- (e) although there were two houses in the vicinity, they were currently uninhabited and were only used for storage purposes. Hence, DEP's objection on the grounds of environmental nuisance was not sound; and
- (f) most of the government departments had no comments or objection to the proposal. The District Officer/Yuen Long only relayed the objection raised by Designing Hong Kong and did not indicate any local objections to the proposal.

[Dr. Winnie S.M. Tang left the meeting temporarily at this point.]

11. In response to a Member's enquiry, Ms. Amy Cheung said that the site had been used for storage of exhibition materials for only a short period of time as it had previously been used for processing organic fertilizers. The EN for the current unauthorized development was issued in August 2010. The same Member asked whether the proposed development would be relocated after the planning permission, if granted, lapsed in 3 years' time. In response, Mr. Raymond Leung said that as the proposed use under application was only temporary in nature, it could be terminated and moved out very quickly. He pointed out that the previous use of the site, which was for the processing of organic fertilizers, had been relocated.

12. In response to a Member's enquiry on how long the two houses in the vicinity had been vacant, Ms. Amy Cheung said that according to a recent site visit, the two houses were old village houses and there were signs that the two houses were inhabited and not vacant. Mr. Leung, however, said that the two houses were only occupied by temporary workers and not residents.

13. The same Member asked whether enforcement action had been taken against the unauthorized open storage developments in the area. Ms. Amy Cheung said that ENs would be issued against the unauthorized developments and upon gathering enough evidence, prosecution action would be taken against the concerned parties.

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

[Dr. Winnie S.M. Tang returned to join the meeting at this point.]

Deliberation Session

15. A Member said that no additional information was provided by the applicant to justify the application. Another Member said that the proposed use should not be supported as there was concern from DEP on the environmental nuisance that might affect the two existing houses in the vicinity. The two houses, though currently uninhabited, could be inhabited again.

16. A Member noted that the applicant had formed and developed the site without first obtaining planning permission, thus creating a *fait accompli*. That Member said that the Board had the duty to make it clear that such application would not be supported unless with very strong justifications. The same Member added that the justifications provided by the applicant were weak. The Vice-Chairman agreed and said that the planning intention of the "AGR" zone but not the existing state of the formed land should be taken into consideration.

17. The Vice-Chairman concluded that Members generally considered that the application should not be approved as it was not in line with the planning intention of the "AGR" zone and it was not compatible with the surroundings which was rural in character. Moreover, the applicant had failed to demonstrate that the proposed development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas.

18. After further deliberation, the Board decided to reject the application on review. Members then went through the reasons for rejection as stated in paragraph 7.1 of the Paper and considered that they were appropriate. The reasons were:

- (a) the development was not in line with the planning intention of the “AGR” which was to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It was also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. No strong planning justification had been given in the submission to justify for a departure from the planning intention, even on a temporary basis;
- (b) the development was not compatible with the surrounding areas which were predominantly rural in character;
- (c) the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

Agenda Items 4 and 5

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL-KTS/522

Temporary Open Storage of Used Vehicles and Vehicle Parts for a Period of 3 Years in “Agriculture” zone, Lots 1011 (Part), 1012 (Part), 1013 (Part), 1014 (Part), 1015 S.A, 1015 S.B (Part), 1015 RP (Part), 1016 (Part) and 1018 (Part) in D.D. 113 and Adjoining Government Land, Pat Heung, Yuen Long

(TPB Paper No. 8826)

Review of Application No. A/YL-KTS/523

Temporary Open Storage of Construction Materials (H-Shaped Iron) with Ancillary Workshop for a Period of 3 Years in “Agriculture” and “Village Type Development” zones,

Lots 1016 (Part), 1017 (Part), 1029 (Part), 1030 (Part), 1031 (Part), 1032 (Part), 1033, 1034 (Part) and 1035 (Part) in D.D. 113, Pat Heung, Yuen Long

(TPB Paper No. 8827)

[The hearing was conducted in Cantonese.]

19. As the two review applications were similar in nature and the application sites were close to one another and within the same “Agriculture” (“AGR”) zone, Members agreed to consider the applications together.

Presentation and Question Session

20. The following representative of Planning Department (PlanD) and the applicant’s representatives were invited to the meeting at this point.

Ms. Amy Cheung	District Planning Officer/Tuen Mun and Yuen Long, PlanD
Mr. Raymond Leung)
Ms. Fung Ka Wun) Applicant’s representatives
Mr. Lam Tim Kit)

21. The Vice-Chairman extended a welcome and explained the procedures of the review hearing. He then invited Ms. Amy Cheung to brief Members on the background of the two applications.

22. With the aid of a Powerpoint presentation, Ms. Cheung did so as detailed in the Papers and made the following main points:

- (a) application No. A/YL-KTS/522 was for temporary open storage of used vehicles and vehicle parts for a period of 3 years at the application site which was zoned “Agriculture” (“AGR”) on the Kam Tin South Outline Zoning Plan (OZP). Application No. A/YL-KTS/523 was for temporary open storage of construction materials (H-shaped iron) with ancillary workshop for a period of 3 years at the application site which was zoned “AGR” (95%) and “Village Type Development” (V”) (5%) on same OZP;

(b) application No. A/YL-KTS/522 was rejected by the Rural and New Town Planning Committee (RNTPC) on 28.1.2011 and the reasons were:

(i) the development was not in line with the planning intention of the “AGR” zone which was to retain and safeguard good agricultural land for agricultural purposes. This zone was also intended to retain fallow arable land with good potential for rehabilitation. No strong planning justification had been given in the submission for a departure from the planning intention, even on a temporary basis;

(ii) the application did not comply with the Town Planning Board Guidelines No. 13E (TPB PG-No. 13E) in that the development was not compatible with the surrounding land uses which were predominantly rural in character with a mixture of cultivated and fallow agricultural land, vacant/unused land and open storage yards; there was no previous approval granted at the site and there were adverse departmental comments and public objection against the application;

(iii) the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas; and

(iv) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area;

(c) application No. A/YL-KTS/523 was rejected by RNTPC on 18.2.2011 and the reasons were:

(i) the development was not in line with the planning intention of the “AGR” zone which was to retain and safeguard good agricultural land for agricultural purposes. This zone was also intended to retain

fallow arable land with good potential for rehabilitation. It was also not in line with the planning intention of the “V” zone which was to reflect the existing recognized and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects. No strong planning justification had been given in the submission for a departure from the planning intentions, even on a temporary basis;

- (ii) the application did not comply with the TPB Guidelines No. 13E in that the development was not compatible with the surrounding land uses which were predominantly rural in character; there was no previous approval granted at the site and there were adverse departmental comments and public objections against the application;
 - (iii) the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas; and
 - (iv) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” and “V” zones. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area;
- (d) the two application sites were subject to planning enforcement action against unauthorised storage/workshop uses. Two Enforcement Notices (EN) were issued to the concerned parties for the site of application No. A/YL-KTS/522 on 27.10.2010 and one EN was issued for the site of application No. A/YL-KTS/523 on 27.7.2010. As the unauthorised developments on the two sites had not been discontinued after the expiry of the ENs, the recipients of the ENs were subject to prosecution action;
- (e) the applicant had not submitted any written representation in support of the two review applications;

- (f) departmental comments – the departmental comments were summarised in paragraph 4 of the Papers. The Director of Agriculture, Fisheries and Conservation (DAFC) did not support the two applications from the agricultural point of view as there were active agricultural activities nearby and the sites had potential for agricultural rehabilitation. The Director of Environmental Protection (DEP) did not support the two applications as sensitive receivers, i.e. existing residential structures, were located along the access road (i.e. Kam Ho Road) to the sites and in the vicinity and environmental nuisance was expected. Chief Town Planner/Urban Design & Landscape (CTP/UD&L) of PlanD objected to the two applications as the proposed uses were considered not compatible with the existing rural village and farm landscape in the vicinity. Moreover, the landscape treatment in the submitted landscape proposals was inadequate to address the potential adverse landscape impact. The Chief Engineer/Mainland North of Drainage Services Department (CE/MN, DSD) commented that the requirements on the submission of drainage proposal and implementation of drainage facilities should be incorporated as approval conditions should planning permission be granted. The other departments either had no adverse comments or raised other technical comments;
- (g) public comments – during the statutory publication period of the review applications, two public comments were received from the village representative of Ma On Kong Tsuen and Designing Hong Kong Limited for each application. They objected to the applications on the grounds that the proposed uses were not in line with the planning intention of the “AGR” zone and TPB-PG No. 13E, the proposed uses were blights on the environment and were not compatible with the surroundings; and
- (h) PlanD’s view – PlanD did not support the two applications based on the assessment in paragraph 6 of the Papers. The proposed developments were not in line with the planning intention of the “AGR” and “V” zones. Moreover, DAFC did not support the applications from the agricultural point of view as there were active agricultural activities in the nearby areas and the two sites had high potential for agricultural rehabilitation.

The proposed developments were not in line with the TPB-PG No. 13E in that there was no previous approval granted at the sites and there were adverse departmental comments from DAFC, DEP and CTP/UD&L, PlanD as well as public objections against the applications. The proposed developments were not compatible with the surrounding land uses which were predominantly rural in character. Although a similar application No. A/YL-KTS/494 was approved with conditions by the RNTPC on 25.6.2010, it was the subject of a previous approval and the concerned use was different.

23. The Vice-Chairman then invited the applicant's representatives to elaborate on the two applications. With the aid of a power presentation, Mr. Raymond Leung made the following main points:

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

- (a) the site of application No. A/YL-KTS/523 had been used as a works area for the West Rail for 3 years and, after that, the site had not been used for agricultural purposes. The site had not been reinstated to a state that was suitable for agricultural use, and with the change in character of the site and its surroundings, the current "AGR" zone was no longer appropriate;
- (b) for the site of application No. A/YL-KTS/522, the villagers considered that since the adjoining areas had been used as a works area for the West Rail, the application site was suitable for open storage and other similar uses and should not be confined to agricultural use;
- (c) it was unfair to have allowed the Government to use the surrounding sites as works areas and not to allow the villagers to use the application sites for storage purposes. The two sites were located in a transition area between the West Rail Maintenance Centre in the east and scattered pieces of agricultural land in the west. In this respect, the use of the two application sites for open storage purposes was considered appropriate;
- (d) when the application sites were used as works area for the West Rail,

mitigation measures were introduced to minimize possible adverse impacts. Should the current applications generate any adverse environmental, landscape and drainage impacts, the applicant was willing to carry out the necessary mitigation measures and these could be stipulated as approval conditions to the planning permission;

- (e) by using the surrounding sites as works areas for the West Rail, the Government had already set a precedent for changing the use of the area. It would be unfair to claim that proposed open storage uses at the applications sites would set an undesirable precedent for similar uses;
- (f) except for DEP and DAFC, most of the relevant government departments had no comments on or objection to the proposal. As the sites were no longer suitable for agricultural use, the Board should consider allowing the proposed temporary open storage use to meet the needs of the villagers before any alternative use could be identified; and
- (g) there were only two local objections to the two applications.

24. The Vice-Chairman asked DPO/TMYL to explain the change of the application sites in recent years. Ms. Amy Cheung said that the application site of A/YL/-KTS/523 and a small part of the application site of A/YL-KTS/522 had been used as works area for the construction of the West Rail from 1999 to 2003. As shown in Plan R-5 of TPB Paper 8826 and Plan R-5 of TPB Paper 8827, the two sites had been reinstated with some planting in April 2005. However, by late 2005 (Plan R-6 of TPB Paper 8826), the site of application No. A/YL-KTS/522 had been cleared and formed. In December 2006 (Plan R-6 of TPB paper 8827), the site of application No. A/YL-KTS/523 was still well-vegetated. However, by November 2007 (Plan R-7 of TPB Paper 8827), the site was also cleared and paved.

25. As the applicant's representatives had no further comment to make and Members had no further question to raise, the Vice-Chairman informed them that the hearing procedures for the review had been completed and the Board would further deliberate on the two applications in their absence and inform them of the Board's decision in due course. The Vice-Chairman thanked the applicant's representatives and PlanD's

representative for attending the meeting. They left the meeting at this point.

Deliberation Session

26. A Member noted that the application sites had been formed and used for open storage purpose without first obtaining planning permission and thus had created a *fait accompli*. The Board should make it clear that such applications would not be supported.

27. A Member noted that Plans R-4 to R-7 of the Papers had clearly shown that the sites had been reinstated after being used as works areas for the West Rail but they were subsequently cleared and developed without planning permission. There was no justification to support the applications.

28. In response to a Member's question on the government policy on agricultural rehabilitation, Miss Ophelia Y.S. Wong said that on land zoned for "Agriculture" use, DAFC would advise whether there was potential for agricultural rehabilitation, taking into account the situation of the site and its surroundings. AFCD had also offered to help farmers to carry out agricultural activities or rehabilitation. A Member pointed out that the two sites under concern had been used for agricultural purposes before 1998 as this Member had dealt with objections from the farmers during the Objection Hearing procedures for the West Rail. At that time, the works area was used as plant nursery for the railway project. That Member agreed that the application sites had potential for agricultural rehabilitation.

29. A Member said that DAFC should make known to the public that open storage and other similar uses would not be supported on areas with potential for agricultural rehabilitation.

30. Noting the applicant's claim that the site was no longer suitable for farming, a Member said that according to DAFC, the site could be rehabilitated for agricultural purposes such as nursery gardening and greenhouse farming. The same Member was concerned that enforcement action had not been taken even though the unauthorized developments had taken place in 2007. In response, Miss Ophelia Wong said that two Enforcement Notices had already been issued and upon collecting sufficient evidence, prosecution action against the concerned parties would be taken.

31. The Vice-Chairman concluded that Members generally considered that the two applications should not be approved as they were not in line with the planning intention of the “AGR” zone and “V” zone. Moreover, the proposed uses were not compatible with the surrounding areas which were rural in character and the applicant had failed to demonstrate that the proposed developments would not generate adverse environmental, landscape and drainage impacts on the surrounding areas.

32. After further deliberation, the Board decided to reject the two applications on review. Members then went through the reasons for rejection as stated in paragraph 7.1 of the Papers and considered that they were appropriate. The reasons for rejection for application No. A/YL-KTS/522 were:

- (a) the development was not in line with the planning intention of the “AGR” zone which was to retain and safeguard good agricultural land for agricultural purposes. This zone was also intended to retain fallow arable land with good potential for rehabilitation. No strong planning justification had been given in the submission for a departure from the planning intention, even on a temporary basis;
- (b) the application did not comply with the Town Planning Board Guidelines No. 13E (TPB PG-No. 13E) in that the development was not compatible with the surrounding land uses which were predominantly rural in character with a mixture of cultivated and fallow agricultural land and vacant/unused land, as well as a large woodland zoned “Conservation Area” and the Tai Lam Country Park located to its further south, there was no previous approval granted at the site, and there were adverse departmental comments and public objections against the application;
- (c) the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” zone.

The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

33. The reasons for rejection for application No. A/YL-KTS/523 were:

- (a) the development was not in line with the planning intention of the “Agriculture” (“AGR”) zone which was to retain and safeguard good agricultural land for agricultural purposes. This zone was also intended to retain fallow arable land with good potential for rehabilitation. It was also not in line with the planning intention of the “Village Type Development” (“V”) zone which was to reflect the existing recognized and other villages, and to provide land considered suitable for village expansion and re-provisioning of village houses affected by Government projects. No strong planning justification had been given in the submission for a departure from the planning intentions, even on a temporary basis;
- (b) the application did not comply with the Town Planning Board Guidelines No. 13E (TPB PG-No. 13E) in that the development was not compatible with the surrounding land uses which were predominantly rural in character, there was no previous approval granted at the site and there were adverse departmental comments and public objections against the application;
- (c) the applicant failed to demonstrate that the development would not generate adverse environmental, landscape and drainage impacts on the surrounding areas; and
- (d) the approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications within the “AGR” and “V” zones. The cumulative effect of approving such applications would result in a general degradation of the rural environment of the area.

[Dr. C.P. Lau, Ms. Anita W.T. Ma and Dr. W.K. Yau left the meeting temporarily at this point.]

[Mrs. Ann Ho left the meeting at this point.]

Agenda Item 6

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/SK-PK/183

Proposed 2-Storey House (New Territories Exempted House) in “Residential (Group D)” zone, Lot No. 1030 in D.D. 221, Kap Pin Long New Village, Sai Kung

(TPB Paper No. 8829)

[The hearing was conducted in Cantonese.]

Presentation and Question Session

34. The following representative of Planning Department (PlanD) and the applicant’s representatives were invited to the meeting at this point.

Mr. Ivan Chung	District Planning Officer/Sai Kung & Islands, PlanD
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Mr. Tsang Ka Kau) Applicant’s representatives
Ms. Lei Ka Ying)

35. The Vice-Chairman extended a welcome and explained the procedures of the review hearing. He then invited Mr. Ivan Chung to brief Members on the background of the application.

36. With the aid of a Powerpoint presentation, Mr. Chung did so as detailed in the Paper and made the following main points:

- (a) the applicant sought planning permission for a proposed 2-storey New Territories Exempted House (NTEH) development at a plot ratio of 0.2 and a building height of 6 metres at the application site which was zoned “Residential (Group D)” (“R(D)”) on the Pak Kong and Sha Kok Mei

Outline Zoning Plan (OZP);

- (b) the application was rejected by the Rural and New Town Planning Committee (RNTPC) on 18.2.2011 and the reasons were:
 - (i) the proposed development was not in line with the planning intention of the “Residential (Group D)” zone which was for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings, and the provision of low-rise and low-density residential developments subject to planning permission from the Board. The current application development could not be processed as a New Territories Exempted House; and
 - (ii) the applicant failed to demonstrate that the proposed development and the realigned footpath would not have an adverse landscape impact on the surrounding areas;
- (c) the applicant had not submitted any written representation in support of the review application;
- (d) departmental comments – the departmental comments were summarised in paragraph 4 of the Paper. The District Lands Officer/Sai Kung, Lands Department (DLO/SK, LandsD) did not support the application. He advised that as a general principle, land transactions permitting developments of NTEHs should be confined to those processed under the Small House Policy. As the site fell outside any village ‘environs’ (‘VE’) or “Village Type Development” (“V”) zone, the proposed NTEH would not be considered by his office under the prevailing land policy. Moreover, the proposed re-aligned footpath fell on Government land and issues concerning the land grant and construction and maintenance of the proposed footpath were yet to be resolved. Chief Town Planner/Urban Design & Landscape (CTP/UD&L) of PlanD had reservations on the application as there was insufficient information to demonstrate that the proposed development would not impose adverse impact on the existing

landscape resources of the area. There were a number of semi-mature trees which might be affected by the proposed development but the applicant did not submit any tree survey or landscape proposal. The other departments either had no adverse comments or raised other technical comments;

- (e) public comments – during the first three weeks of the statutory publication period of the review application, two public comments were received objecting to the proposed development as it would block the only access to the lower part of Kap Pin Long New Village. They considered that another vehicle access point or a pedestrian footpath should be provided; and

- (f) PlanD's view – PlanD did not support the application based on the assessment as detailed in paragraph 6 of the Paper. Although the proposed development of a 2-storey NTEH at a plot ratio of 0.2 and building height of 6 metres conformed with the development restrictions specified under the “R(D)” zone, the proposed development could not be considered as an improvement and upgrading of existing temporary structures within the rural area as the site was currently vacant. In this respect, it was not in line with the planning intention of the “R(D)” zone. Moreover, the application was not supported by DLO/SK, LandsD as the proposed NTEH development would not be considered by his office under the prevailing land policy. Besides, CTP/UD&L had reservations on the application as there was insufficient information to demonstrate that the proposed development would not impose adverse impact on the existing landscape resources of the area. There was also concern that the footpath realignment proposal would involve issues which were not yet addressed in the current submission.

37. The Vice-Chairman then invited the applicant's representatives to elaborate on the application. With the aid of a Powerpoint presentation and a plan, Mr. Tsang Ka Kau made the following main points:

- (a) the proposed development was in line with the planning intention for the

“R(D)” zone which was also intended for low-rise, low-density developments. Many other housing development on private land in “R(D)” zone built in accordance with the specified development parameters were permitted;

- (b) the proposed development was for a 2-storey house (6m) at a plot ratio of 0.2 and a site coverage of 15.3%, which were in line with the development parameters specified in the Notes for the “R(D)” zone;
- (c) the applicant had submitted two previous applications for minor relaxation of the plot ratio and building height restrictions for a standard 700 sq ft NTEH but both were rejected. The applicant was advised to follow the development parameters specified under the “R(D)” zone. There was reasonable expectation that a house within the specified development parameters under the “R(D)” zone would be permitted;
- (d) as shown in Plan R-2, the location of the proposed house would not affect the existing footpath. Notwithstanding this, the applicant was prepared to re-align the footpath with a width of 1.6 metres at the request of the villagers. The re-aligned footpath would link up with the existing footpath to the north;
- (e) the proposed house only covered a small part of the site and it would not affect the trees which were at the periphery of the site. Moreover, no boundary walls would be erected so that the trees would not be affected. As there was already plenty of vegetation surrounding the site, there was little need for additional planting within the site. Nevertheless, the applicant would submit a landscape proposal if it was required as an approval condition;
- (f) the site was currently paved and was used by the local villagers as a parking area without the agreement of the applicant who owned the land;
- (g) DLO/SK’s comment was unfair and misleading. On the one hand, DLO/SK said that the proposed house fell within the prescribed

dimensions for an NTEH under the Buildings Ordinance (Cap. 121) but, on the other hand, DLO/SK said that the proposed NTEH development could not be processed under the Small House Policy. However, the applicant noted that there was no mention of Small House Policy under the Buildings Ordinance (Cap. 121). It was unfair to require the applicant to submit building plans to Buildings Department (BD) for the development of a house which complied with the NTEH dimensions;

- (h) making reference to a plan showing the existing village houses in the surrounding areas, the applicant pointed out that there were over 150 village houses within the “R(D)” zone which were redeveloped in the 1960s and 1970s from temporary structures into NTEHs of 700 sq. ft. These NTEHs were permitted even though they were not within any ‘VE’ of recognized villages or within the “V” zone. There were also many other smaller houses of about 300 to 500 sq. ft in the area;

[Miss Annie K.L. Tam arrived to join the meeting at this point.]

- (i) since the area was zoned “R(D)”, only seven to eight planning applications for ‘house’ developments had been submitted and very few were approved. Members might consider why such development was not allowed;
- (j) the application site was owned by the applicant who wanted to build a small house for her family’s needs. She did not understand why big developers were allowed to build large developments in other areas in the New Territories but she was not allowed to use her land which was zoned “R(D)” for a house development; and
- (k) there was very little private land left in the village. Approval of the proposed development would allow more efficient use of the scarce land resources. The proposal would also help create construction jobs and increase land revenue as premium would need to be paid for the land exchange.

[Mr. Felix W. Fong left the meeting temporarily at this point.]

38. In response to a Member's enquiry, Mr. Ivan Chung said that the current application was for an NTEH development and not a Small House development. The same Member asked about the difference between the current application and application No. A/SK-PK/158 which was dismissed by the Town Planning Appeal Board (TPAB). Mr. Chung said that the current application was for an NTEH with a plot ratio of 0.2 and site coverage of 15.3% while the application that was dismissed by TPAB involved an NTEH at a plot ratio of 0.36 and a site coverage of 17.9%. Miss Ophelia Y.S. Wong asked DPO/SKIs to explain the detailed decision of the TPAB. Mr. Ivan Chung said that the decision of the TPAB covered three major aspects. TPAB considered that the applicant had not provided sufficient justifications in terms of the provision of innovative design to support the application for minor relaxation. TPAB also considered that there was not sufficient information to demonstrate that the proposal would comply with the planning intention of the "R(D)" zone to improve and upgrade the existing temporary structures within the rural area. TPAB also considered that the applicant had not made a convincing case to support the application for minor relaxation based on compassionate grounds.

[Mr. Benny Y.K. Wong left the meeting temporarily at this point.]

39. Miss Ophelia Y.S. Wong supplemented that the TPAB also made two points which were relevant to the current application. As stated in paragraph 15 of the decision of the appeal, the TPAB did not agree that the proposed development was a desirable development in the "R(D)" zone. The TPAB also noted that the Town Planning Board had consistently followed a policy of not allowing the "R(D)" zone to be used as if it were a zone intended to promote new private housing as the planning intention was for improving and upgrading the area. Mr. Tsang Ka Kau, however, did not agree and said that the TPAB disapproved the application because the TPAB did not accept the applicant's claim on compassionate grounds and the design of the proposed development was not good enough. To address the concerns of the TPAB, the applicant's current proposal of a 2-storey house (6m) with a plot ratio of 0.2 was in line with the restrictions set out in the Notes of the "R(D)" zone. He considered that the TPAB did not dispute that the planning intention of the "R(D)" zone was for low-rise and low-density developments.

40. Mr. Tsang supplemented that the planning intention of the "R(D)" zone was to

improve and upgrade the existing structures within the zone or for low-rise and low-density residential developments. The proposed development which complied with the restriction of the “R(D)” zone had no adverse implications on the surroundings and should not be rejected. The Vice-Chairman said that the planning intention of the “R(D)” zone was for improvement of the rural areas through redevelopment of existing structures and the requirement for low-rise and low-density development was one of the considerations.

41. A Member enquired about the status of the village houses in the surrounding area. In response, Mr. Ivan Chung said that those village houses were developments that were already in existence when the first statutory plan covering the area (the Sha Kok Mei Interim Development Permission Area Plan No. IDPA/SK-SKM/1) was gazetted in 1990. Since the publication of the first statutory plan, no planning application for village house development in the “R(D)” zone had been approved. Mr. Tsang Ka Kau reiterated that the village house developments in the area should be governed by the Buildings Ordinance (Cap. 121) as an NTEH.

42. In response to a Member’s enquiry, Mr. Ivan Chung said that though the plot ratio and the building height of the proposed house complied with the restrictions set out in the Notes of the “R(D)” zone, planning permission from the Board was still required as it was not for redevelopment or modification to an existing house. As regards the same Member’s question on the difference between an NTEH and a ‘house’ development, Mr. Chung explained that an NTEH had a defined dimension and was processed by LandsD. There was no need to submit building plans to BD for approval. A Member, however, noted that DLO/SK had already stated that the NTEH application would not be processed under the prevailing land policy. In response, Mr. Chung said that as the proposal for an NTEH came from the applicant, PlanD could only process the application as an NTEH. Mr. Tsang Ka Kau said that the Board should only consider the application from the planning perspective and should not be affected by the land policy. Once planning permission was obtained, the applicant would follow up with DLO/SK on the application for NTEH.

43. A Member enquired how long had the applicant owned the site. Mr. Tsang Ka Kau said that he did not have the exact information in hand but according to his knowledge, the applicant had obtained the site from her mother as a gift for several years.

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

[Mr. B.W. Chan arrived to join the meeting at this point.]

Deliberation Session

45. The Vice-Chairman noted that the planning intention of the "R(D)" zone was primarily for the improvement and upgrading of existing temporary structures through redevelopment into permanent buildings. Out of 11 previous applications in the "R(D)" zone, only 3 applications which involved the redevelopment of existing houses were approved while the remaining 8 applications had been rejected.

46. At the request of the Vice-Chairman, Miss Annie K.L. Tam explained that under Part I of the Schedule of the Buildings Ordinance (Application to the New Territories) (Cap. 121), the dimensions of an NTEH were defined and there was no need for the owners to submit building plans to BD for approval. Under the Ordinance, the Director of Lands was empowered to process and approve NTEH applications. The applicant would still have to meet the prescribed requirements and submit technical information and assessments to LandsD, even though submission of building plans was not required. As the lot under application was an agricultural lot, the applicant would need to apply for land exchange for a house development. As a general principle, such applications for land exchange would not normally be approved unless the application was for the construction of a Small House. As the application site fell outside both the 'VE' and "V" zone, the NTEH development would not normally be considered under the prevailing land policy. Having said that, the Director of Lands had the discretion as the landlord to approve or not to approve such applications. Nevertheless, Members might wish to consider whether the decision of the Director of Lands should be taken into account in assessing the planning application.

47. In response to a Member's enquiry on the planning intention of the "R(D)" zoning, Miss Ophelia Y.S. Wong said that "R(D)" zone mainly covered land in the rural

areas with scattered village houses and temporary structures with the planning intention to improve the area through redevelopment. The planning intention of “R(D)” zone had two limbs, one for improvement and upgrading of existing temporary structures through redevelopment into permanent buildings and the other for low-rise, low-density residential development. Any development would be subject to a maximum plot ratio of 0.2 and a maximum building height of 2 storeys (6m) which was not for NTEH.

48. A Member enquired whether the applicant would need to pay land premium to modify the lease if the application was approved by the Board. In response, Miss Annie K.L. Tam said that as the site was an old schedule agricultural lot, the applicant would need to apply to LandsD to modify the lease before any building could be developed. Under the prevailing land policy, an NTEH would not normally be permitted on agricultural lots unless it was a Small House development. It should be noted that the current application was for an NTEH and not a Small House. As pointed out by the applicant, how the NTEH application would be considered by LandsD was not a matter for the Board but a matter between the applicant and LandsD.

[Dr. Winnie S.M. Tang left the meeting at this point.]

49. Noting the planning intention of the “R(D)” zone was to bring about an improvement to the rural area through redevelopment/development, a Member considered that rejection reason (b) in the TPB Paper would need to be strengthened as the applicant should demonstrate the planning merits brought about by the proposed development in improving the area, instead of just demonstrating that there was no adverse landscape impact.

50. While noting that the applicant had applied for an NTEH development within the “R(D)” zone, a Member commented that the specified dimensions of an NTEH development under the Buildings Ordinance were larger than the maximum permitted under this “R(D)” zone. This Member considered that the application was not in line with the planning intention of the “R(D)” zone for low-rise and low-density development and should be rejected.

51. A Member enquired whether large-scale developments would be allowed in “R(D)” zone. In response, Miss Ophelia Y.S. Wong said that any proposed development

within the “R(D)” zone which did not involve upgrading and redevelopment of an existing structure would be required to submit a proper layout of the proposal illustrating how the various technical requirements were met. She drew Members’ attention to the decision of the TPAB which was not only about the plot ratio and site coverage. The TPAB decision explicitly stated that the site was not ideally suited for a residential development and that the proposed development was not a desirable development in the “R(D)” zone. On the other hand, Members might wish to note that for an NTEH development, there was no need to comply with certain requirements such as the provision of EVA, as normally required in building plan submissions to BD. In response to the same Member’s further enquiry, Miss Ophelia Y.S. Wong said that the planning intention for low-rise, low-density residential development in “R(D)” zone was spelt out in the Explanatory Statement (ES) of the OZP.

[Professor Eddie C.M. Hui arrived to join the meeting at this point.]

52. A Member considered that the two limbs of the planning intention of “R(D)” zone should not be considered separately as the proposed development had to be low-rise and low-density and at the same time involved redevelopment of existing structures for improvement and upgrading of the rural area. In response to the Vice-Chairman’s enquiry, Miss Ophelia Y.S. Wong said that redevelopment, alteration and addition or modification to an existing house was a Column 1 use while any other house development was a Column 2 use. In this regard, the two limbs of the planning intention of “R(D)” zone should be considered separately.

[Mr. B.W. Chan left the meeting temporarily at this point.]

53. In response to a Member’s enquiry, Miss Ophelia Y.S. Wong said that the requirement for low-rise, low-density developments in the “R(D)” zone to provide improvements to the area was also set out in the ES of the OZP. Making reference to the ES on “R(D)” zone, she said that new replacement houses were required to be provided with water supply and connections for sewage disposal and sites should be connected to sewage treatment facilities. Moreover, for safety and hygienic purpose, fire hydrants and refuse collection points should be provided. She considered that the same requirements should be applicable to new developments.

54. A Member commented that even for a proposed development which complied

with development restrictions stipulated under the “R(D)” zone, the applicant had to demonstrate in the planning application how the proposed development would help improve or upgrade the area. Referring to the subject application, as the applicant had not demonstrated how the proposed development would bring about any improvements to the area, there was no justification to approve the application. Three other Members shared the same view. A Member also commented that the application site was undesirable for the proposed development.

[Mr. Felix W. Fong returned to join the meeting at this point.]

55. The Vice-Chairman concluded that Members generally considered that the application could not be supported as the applicant did not provide sufficient information to demonstrate that the proposal would bring about improvements to the area. The applicant also failed to demonstrate that the proposed realigned footpath would not have adverse landscape impact on the surrounding areas. Members then went through the reasons for rejecting the application as stated in paragraph 7.1 of the Paper and agreed that they should be suitably amended to reflect Members’ views as expressed at the meeting.

56. After further deliberation, the Board decided to reject the application on review and the reasons were as follows:

- (a) the proposed development was not in line with the planning intention of the “Residential (Group D)” zone which was for improvement and upgrading of existing temporary structures within the rural areas through redevelopment of existing temporary structures into permanent buildings, and for low-rise and low-density residential developments subject to planning permission from the Board. The current application did not provide sufficient information to demonstrate that the proposed development would bring about improvement to the rural areas; and
- (b) the applicant failed to demonstrate that the proposed development and the realigned footpath would not have an adverse landscape impact on the surrounding areas.

[Ms. Maggie M.K. Chan, Ms. Elsa H.K. Cheuk, and Mr. Rock C.N. Chen left the meeting at

this point.]

[Mr. Roger K.H. Luk left the meeting temporarily at this point.]

[Dr. C.P. Lau, Ms. Anita W.T. Ma and Dr. W.K. Yau returned to join the meeting at this point.]

Agenda Item 7

[Open Meeting (Presentation and Question Session only)]

Consideration of Representations and Comment to the Draft Ngau Tau Kok and Kowloon Bay Outline Zoning Plan No. S/K13/26

(TPB Papers No. 8820 to 8822)

[The hearing was conducted in English and Cantonese.]

Group 1 - Representations No. R2 to R4

(TPB Paper No. 8820)

57. The following Members declared interests on this item:

- | | |
|-----------------------|---|
| Mr. Roger K.H. Luk | - being a Member of the Board of Directors of Octopus Card Ltd. in which MTRCL, one of the representers (R4), was a major shareholder. |
| Mr. K.Y. Leung | - had represented his professional institute to make a submission to LegCo on the choice of location of the Express Rail Link Terminus and was an employee of the HKU SPACE (Tertiary Education Institution) with a campus in the area. |
| Mr. Raymond Y.M. Chan | - being the convenor of the Railway Objections Hearing Panel for the Guangzhou – Hong Kong Express Rail Link and MTRCL (R4) was the operator of the Hong Kong section. |
| Professor S.C. Wong | - being the external examiner for HKU SPACE with a campus in the area. |

- Dr. James C.W. Lau - being an Adjunct Professor of HKU
- Professor Paul K.S. Lam - being an Honorary Professor of HKU
- Professor Edwin H.W. Chan - being a Visiting Lecturer and external examiner to HKU and HKU SPACE.
- Ms. Elsa H.K. Cheuk - being an alternate Member of the Board of the MTRCL, one of the representers (R4).
- Ms. Anna S.Y. Kwong - being an expert witness for MTRCL on another case.

58. Members noted that Mr. Roger K.H. Luk and Ms. Elsa H.K. Cheuk had already left the meeting while Mr. Raymond Y.M. Chan and Dr. James C.W. Lau had tendered their apologies for not attending the meeting. Members also agreed that the interests of Mr. K.Y. Leung, Professor S.C. Wong, Professor Paul K.S. Lam, Professor Edwin H.W. Chan and Ms Anna S.Y. Kwong were indirect and remote and that they should be allowed to stay in the meeting.

Presentation and Question Session

59. The following representatives from the Planning Department and the representers were invited to the meeting at this point:

Planning Department (PlanD)

- Mr. Eric Yue District Planning Officer/Kowloon, PlanD
- Mr. Richard Siu Senior Town Planner/Kowloon (4)
- Dr. Conn Yuen AVA Consultants for PlanD

R2 (The Real Estate Developers Association of Hong Kong)

- Mr. Ian Brownlee - Representer's representative

R3 (Folabs Limited and Monfat Limited)

- Mr. Ian Brownlee) Representer's representatives
- Ms. Wendy Lee)

R4 (MTR Corporation Ltd.)

Mr. Anthony Ismail)
Ms. Lilian Chiang) Repesenter’s representatives
Mr. Steve Yiu)
Ms. Linda Li)

60. The Vice-Chairman extended a welcome and explained the procedures of the hearing. He then invited the representatives of PlanD to brief Members on the representations.

61. With the aid of a Powerpoint presentation, Mr. Eric Yue made the following main points as detailed in the Paper:

- (a) the draft Ngau Tau Kok and Kowloon Bay Outline Zoning Plan (OZP) incorporating mainly amendments to impose building height restrictions (BHRs) on various development zones outside the Kowloon Bay Business Area (KBBA), to designate non-building areas (NBAs) and require building gaps in various zones and to propose other zoning amendments was exhibited for public inspection on 19.11.2010 under section 5 of the Town Planning Ordinance (the Ordinance);
- (b) the background of the amendments to the draft OZP was set out in paragraph 3 of the Paper. In order to provide better planning control on the building height (BH) upon development/redevelopment and to meet public aspirations for greater certainty and transparency in the statutory system, appropriate BHRs were incorporated into the OZP. The principles adopted in determining the BHRs included preserving the views to the ridgelines of Lion Rock, Tsz Wan Shan and Kowloon Peak, respecting the natural topography of the area, creating BH diversity, taking into account compatibility with the local character, providing a compatible setting for historical buildings, preserving/creating visual relief, breezeways and local view corridors, and preserving the open vistas from Clear Water Bay Road. Ten height bands ranging from 15mPD to 180mPD were proposed for the various zones. An Air Ventilation Assessment (AVA) by Expert Evaluation was undertaken to assess the likely impact of the proposed BHs of the development sites on

the pedestrian wind environment. According to the AVA, the prevailing wind of the Area came from the east in winter and from the east and south in summer. The AVA recommended that the urban linear parks and open space should be maintained and practical setback from the roads and building gaps should be introduced within KBBA to improve the permeability of sea breeze towards Kowloon Bay and the overall air ventilation in KBBA.

- (c) during the 2-month statutory publication period, a total of 1,313 representations were received. On 28.1.2011, the representations were published for public inspection and in the first three weeks of the publication period, one public comment was received. Subsequently, 10 representations indicated that they did not submit the representations. The records of these representations had been taken out from the register and the total number of valid representations was 1,303. On 8.4.2011, the Board decided to consider the representations in three groups. This TPB Paper covered 3 representations (Group 1) which were mainly related to the imposition of BHRs, NBAs and building gap requirements on various development zones and to other zoning amendments;
- (d) an overview of the representations:
 - (i) R2 was submitted by The Real Estate Developers Association of Hong Kong (REDA) and it opposed the BHRs, NBAs and building gap requirements for all residential and GIC sites outside the KBBA;
 - (ii) R3 was submitted by the two owners of Amoy Industrial Centre (Folabs Limited and Monofat Limited) and it opposed the BHR for the “R(A)” site at 7 Ngau Tau Kok Road; and
 - (iii) R4 was submitted by the MTR Corporation Limited (MTRCL) and it opposed the rezoning, BHRs and building gaps at the Telford Gardens site zoned “Other Specified Uses” annotated “Mass Transit Railway Depot with Commercial and Residential Development Above” (“OU(MTR Depot with Commercial and Residential

Development Above)”) and at the Kowloon Bay MTR Station site zoned “Other Specified Uses” annotated “Railway” (“OU(Railway)”);

(e) the grounds of representations and the representer’s proposals were summarized as follows:

(i) Representation R2

Grounds of Representation

BHRs

- a. the BHRs were set at levels which were so low that they had unnecessarily constrained the provision of good quality development. Flexibility should be provided with sufficient internal headroom for the design of developments with good internal space;
- b. no consideration was given to building economics, implications for redevelopment of the area, effect of the BHRs on the form of new buildings, and the negative impact on the provision of space around buildings;
- c. the BHRs would discourage innovative architectural design and made it impossible to add void features into the design. The BHRs would adversely affect streetscape, air ventilation and the quality of life of the users of the development;
- d. the objectives of imposing BHRs could still be achieved with height limits set at a level that would allow more reasonable forms of development;
- e. the public concern on “out-of-context” buildings mainly referred to developments that were 60 storeys or more in height at prominent locations. High-rise developments of around 40 storeys were acceptable to the public. The proposed BHRs of

about 80m to 100m would result in buildings of 25 to 32 storeys which were unreasonably low;

- f. The Hong Kong Convention and Exhibition Centre (HKCEC) and the Quarry Bay Park should be taken as the key vantage points for visual impact considerations and other 'view corridors' such as the footbridge near Choi Ying Place should not be adopted as these vantage points had not gone through the public consultation process;
- g. as BHRs of 120mPD and 140mPD were already adopted in KBBA, it was illogical to adopt a descending BHR profile to the east and to disallow the continued increase in BHRs from the KBBA across Telford Gardens, Kwun Tong Road and Ngau Tau Kok Road;
- h. the BHRs imposed on private land in the vicinity of Kwun Tong Road was more restrictive than those imposed on the public housing sites in the area;

NBAs

- i. the imposition of NBAs on individual sites for air ventilation purposes was not permitted under sections 3 and 4 of the Ordinance as no buildings were provided within NBAs;
- j. gaps between buildings could be achieved by the provision of open space, parks and streets. There was no justification for an additional category of NBA;
- k. the AVA was inadequate to justify the extent of NBAs imposed and there was no information to justify the extent of intrusion into private property rights. There was no assessment to show that the NBAs were essential for the public good, other alternatives were not considered and compensation to owners for the loss of property rights was not considered. The

proposed NBAs had gone beyond the scope of the Ordinance;

Building Gaps and Setbacks

- l. setback requirements on the OZP were not appropriate for the scale and generality of broad brush plans. There was no legal recognition of the provision of setbacks for 'air paths' as being a public purpose for which private land could be taken;
- m. the OZP was not an appropriate statutory framework for the implementation of building setbacks and building gaps as provision for road widening was covered by other Ordinances;
- n. there were no justifications as to why the setbacks for the various zones were essential, why they must be at the specified width, and why some must be provided at ground level while others could be provided at 22mPD. There was also no justification for providing additional setbacks along the widest streets in KBBA;
- o. the unclear justifications would cause unnecessary complications related to compensation under the Buildings Ordinance and the Roads Ordinance;

Spot Zoning Approach

- p. the imposition of BHRs, NBAs and building gaps on individual sites constituted a form of 'spot' zoning which was too restrictive, inappropriate and unlawful. They were not permitted under sections 3 and 4 of the Ordinance and violated the principle that the object of the OZP was to indicate only the broad principles of development;

Public Consultation

- q. the BHRs, NBAs and setback requirements were imposed on the OZP without prior public consultation. There was no opportunity for the public and the developers to be informed of

the justifications or the need for the restrictions, and no visual impact assessment was available to the public; and

- r. the approach adopted for the OZP was in contrast with that taken for the KBBA when TPB Guidelines were issued to propose temporary arrangements for the processing of the proposed BHRs;

Representer's Proposals

- s. BHRs must be reviewed to make better use of the air space and to free up the lower level space for better air ventilation and street environment;
- t. a more rational and generalised approach to the zoning should be adopted by deleting "Spot BHRs" which adversely affected development rights and building potential;
- u. the BHRs for the central part of the OZP should be increased to 140mPD to 150mPD to maintain the rising profile of building heights (BHs), while still protecting the ridgelines from the recognized viewpoints;
- v. given the established BHRs on KBBA and the general background of development on the slopes to the east, a general increase in the BHRs of 20m to 40m was appropriate;
- w. to delete the NBA requirement from the OZP and alternative zonings, such as "Open Space" ("O") should be used to provide desired gaps. The words "exceptional circumstances" in respect of applications for minor relaxation of NBA requirements should be deleted from the relevant Notes; and
- x. to delete all setbacks from the OZP;

(ii) Representation R3

Grounds of Representation

General

- a. there was no prior public consultation or engagement and no explanation was given to land owners and the public on the need for the BHRs and why the particular BHRs were adopted. There was no urban design study or visual impact analysis to indicate the Government's vision for long term development of the Area;
- b. a reasonable BH was required to allow flexibility for the design of future redevelopment and for changing requirements over time and scope to meet market expectations;
- c. there was a need to ensure that buildings were not restricted to unreasonably low heights which would result in bulky buildings forming walls of development that blocked air flows, light and views. Taller and more slender buildings would allow more space at ground level, thus enhancing the surrounding urban environment;

Specific

- d. the BHR of 120mPD on the site was too low, given that the public housing estates were nearly 140mPD and there was a hilly topography in the area;
- e. the BHR for the site and the adjoining residential development would not enhance the visual impact of the surrounding area significantly. Instead, the BHR would generate monotonous flat roofs for all developments in the area upon redevelopment;
- f. the BHR for the site would not bring about significant positive air ventilation impacts to the area due to the abundance of open space, green belt and low-rise G/IC developments in the

surrounding and the downhill valley wind was already blocked by Tak Bo Garden. As the wind corridors were mainly along the roads, the imposition of BHR would bring no real benefits. Also, the site itself had no significant air ventilation impacts to the area;

- g. the BHR for the site would create ‘wall effect’ blocking most of the views of Tak Bo Garden and Jade Field Garden; and
- h. the lease of the site was an old lease with no restrictions on the use, the BH and the development potential of the site. The imposition of the BHR of 120mPD would reduce the property value and unjustly encroach on the property rights of the owner;

Representer’s Proposal

- i. the BHR for the whole of the “R(A)” zone should be revised to 140mPD or the BHR for the site should be revised to 140mPD or such other height greater than 120mPD;

(iii) Representation R4

Grounds of Representation

- a. there was no restriction on the non-domestic GFA or commercial GFA under the lease for Telford Gardens and the Kowloon Bay MTR Station. The new zonings of “OU(MTR Depot with Commercial and Residential Development Above)” and “OU(Railway)” would impose land use and/or GFA restrictions on the future development of the site. These restrictions would render the Government in breach of its agreement and covenants with MTRCL and adversely affect the rights and entitlements of MTRCL;
- b. the developments on the site were already controlled by means of Master Plan under the land grants. The GFA restrictions

under the OZP were not necessary;

- c. with the completion of the Kai Tak Environmentally Friendly Transport System (EFTS) and the Kowloon Bay Elevated Walkway System, Kowloon Bay MTR Station would be a key interchange and important link for the new district pedestrian walkway system. The new zonings would not be able to meet the future needs and the demand for additional covered walkways, lifts and commercial facilities;
- d. taller buildings should be placed at commercial centres, transport hubs or district focal points with graduation in BH profile from the high density core to the fringe. Given the planned height profile of 120mPD for “OU(Business)” sites and up to 170mPD for the strategic commercial sites, the BH of 170mPD for the office towers at the district focal point of Telford Plaza would be more reasonable and appropriate;
- e. other than the railway tracks and some existing buildings, the remaining part of the depot was incorrectly shown on the OZP as vacant land without any structure. As workshops and engineering structures needed to be erected at the railway depot from time to time, the BHRs imposed would adversely affect the normal operation of the railway;
- f. the building gap of 22mPD in the southern part of the “OU(Mass Transit Railway Depot with Commercial and Residential Development Above)” would conflict with the existing retail footbridge (roof level of about 27.4mPD). Though the existing buildings would not be affected, the retail footbridge served an important transport function and should not be removed as there was no feasible alternative; and
- g. the new set of Notes for the “OU(Mass Transit Railway Depot with Commercial and Residential Development Above)” zone

which incorporated new non-domestic GFA restrictions was unreasonable and unfair to MTRCL as it would take away the existing development rights and deprive MTRCL of the ability to provide extra facilities to respond to the site's enhanced hub functions;

Representer's Proposal

- h. to properly reflect the existing retail footbridge at the proposed building gap;
 - i. to allow a BH of 170mPD for the office towers at Telford Plaza;
 - j. to reflect the existing depot structures within the "OU(Railway)" zone and to delete the BHRs on the open area of the depot; and
 - k. to amend the Notes of the "OU(Mass Transit Railway Depot with Commercial and Residential Development Above)" zone by deleting the non-domestic GFA restriction;
- (f) the Government's responses to the grounds of representations and the representer's proposals were summarized as follows:

(i) Responses to Representation R2

BHRs

- a. the purpose of imposing BHRs in the Area was to provide better planning control on the building height 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 building height profile of the Area. In formulating the BHRs for the Area, all

relevant factors including the Urban Design Guidelines, existing topography, stepped building height concept, local characteristics, existing building height profile, site formation level and site constraints, the zoned land uses of the site concerned, development potential, the wind performance of the existing condition and the recommendations of the AVA Study, had been taken into consideration. The BHRs had struck a balance between public aspirations for a better living environment and private development potential;

- b. the BHRs were formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development potential permissible under the OZP. Piecemeal relaxation of BHRs for individual sites was not supported as it would jeopardise the coherence of the stepped building height profile and would result in proliferation of excessively high developments;
- c. the BHRs would not necessarily result in larger building bulk and walls of development as the bulkiness of a building depended on many factors other than BH alone. Moreover, a relaxed BHR would not guarantee the provision of more air flow, light and view;
- d. the BHRs did not preclude the incorporation of innovative architectural features and landscape treatment of a development proposal. To cater for site specific circumstances and schemes with planning and design merits, there was provision for application for minor relaxation of BHRs under the OZP. Each application would be considered by the Board on its individual merits;
- e. whether a development was out-of-context needed to be considered with reference to the characteristics of the surrounding area. The claim that BH of 40 storeys were

readily and widely accepted was not proven;

- f. according to the Urban Design Guidelines, the number of view access should be maximized to strengthen visual permeability in the dense built form. The proposed local view corridor would help to preserve the vista to Lion Rock;
- g. the BH profile in the Area was to step down gradually from the KBBA to the medium-rise residential developments including Kai Yip Estate. Across Kwun Tong Road, the BH profile for the residential developments mainly followed the natural topography ascending towards the Kowloon Peak;
- h. taking into account the different site level, the absolute BHs of the public housing developments were similar to or more stringent than that permitted for private residential developments;

'Spot' Zoning, NBA, Building Gap and Setback Requirements

- i. sections 3 and 4 of the Town Planning Ordinance (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. The Board should have the power to impose BHRs, NBA and building gap requirements on the OZP if there were necessary and sufficient planning justifications to do so;
- j. the designation of NBA and building gap requirements on the OZP could serve a positive planning purpose with positive planning benefits by improving air ventilation, visual permeability and the pedestrian environment. Given that the designation of NBA and building gap was fully justified, it had legal basis to form part of the planning control of the Board;

- k. the relaxation of the NBA and building gap requirement would affect the effectiveness of their planning intention. The wording ‘exceptional circumstances’ was included in the minor relaxation clause to cater for the situation that only in some exceptional cases under which the requirement could not be met due to site constraints but the planning objectives would be achieved in other forms;
- l. the provision of setbacks under the Buildings Ordinance and the OZP requirement on NBAs and building gaps were under two separate regimes. They were complementary, rather than duplicating each other. The OZP requirements were determined based on specific district circumstances while the Buildings Ordinance was applicable to all building developments with no reference to specific district characteristics;

Public Consultation

- m. the 2-month statutory exhibition period and provision for representations and comments formed part of the current 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 BHRs, NBA and building gap requirements on the OZP, including the AVA Report and visual analysis, was available for public inspection;
- n. when the BHR for KBBA and Kwun Tong Business Area (KTBA) was first proposed in 2004, most of the sites within the area were subject to the Airport Height Restrictions/BHRs under leases and a surge of building plan submissions to establish “fait accompli” was unlikely. It was therefore considered that public consultation prior to the gazetting could be conducted to gauge the public views on such translation of

BHR onto relevant OZPs. The TPB Guidelines for Interim BH Control in KBBA and KTBA was issued in 2004 for planning control purposes pending the results of the public consultation on imposing BHRs in KBBA and KTBA;

Responses to Representer's Proposals

- o. it was important to keep the integrity of the BH profile and the designated NBAs/building gaps in order to maintain and improve the visual quality of the townscape and permeability of the district;

- p. amending the BHRs for the central part of the OZP to a range of 140mPD to 150mPD would result in an awkward downward and upward BH profile and would adversely affect the overall visual quality of the townscape;

- q. as an "O" zone and an NBA served different functions, the proposal to rezone all NBAs to "O" would adversely affect the development intensity of sites in the area; and

- r. it was necessary to retain the wording "under exceptional circumstances" in order to give a clear message of the firm planning intention and that the NBA, building gap and setback requirements could only be relaxed with very strong justifications and under exceptional circumstances;

(ii) **Responses to Representation R3**

General

- a. the 2-month statutory exhibition period and provision for representations and comments formed part of the current 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 BHRs, NBA and building gap requirements on the OZP, including the AVA Report and visual analysis, was available for public inspection;

- b. the BHRs did not preclude the incorporation of green features, innovative architectural features and a reasonable floor-to-floor height for the development/redevelopment. Besides, to cater for site specific circumstances and schemes with planning and design merits, there was provision for application for minor relaxation of BHRs under the OZP. Each application would be considered by the Board on its individual merits;
- c. the BHRs would not necessarily result in larger building bulk and walls of development as the bulkiness of a building depended on many factors other than BH alone. Moreover, a relaxed BHR would not guarantee the provision of more air flow, light and view;

Specific

- d. taking into account the different site level, the absolute BHs of the public housing developments were similar to or more stringent than that permitted for private residential developments;
- e. the BHR for the representation site and the adjoining residential developments allowed a stepped building height profile in the Area gradually descending from the Jordan Valley towards Ngau Tau Kok Road, which was considered desirable from urban design point of view and could help optimise the wind performance;
- f. there was a need to strike a balance between public interest and private development right. The BHRs were formulated on the basis of reasonable assumptions that development potential permissible under the OZP could be accommodated.

Moreover, the lease was one of the considerations in formulating the BHRs;

Responses to Representer's Proposals

- g. the proposed BH of 140mPD for the whole "R(A)" zone would adversely affect the stepped height concept for the area; and
- h. the proposed BH of 140mPD at the representation site would adversely affect the integrity of the height band of 120mPD ;

(iii) **Responses to Representation R4**

- a. the new zonings of "OU(MTR Depot with Commercial and Residential Development above)" and "OU(Railway)" were to better reflect the planning intention of the residential/commercial development on top of Kowloon Bay MTR depot and the railway station and facilities, and the optimal development pattern and long term planning intention as set out on the Master Plans under the lease, which were agreed among various departments;
- b. the current BHR for the office towers was required to ensure a smooth transition of the building height profile from the high-rise business node within KBBA stepping down gradually to the medium-rise residential development in the northern and eastern fringes;
- c. specific BHRs had already been imposed on the Kowloon Bay MTR Station and the existing buildings which were ancillary to the railway operation. The BHRs on the open depot area were to ensure that only low-rise ancillary structures were allowed in the open depot area. Should there be a need for a relaxation of BHRs of the ancillary structures, there were provisions for application for minor relaxation of the BHR under s.16 or amendments to OZP under s.12A of the Town

Planning Ordinance;

- d. the requirement of building gaps was to reflect the findings and recommendations of the AVA Study and was to be taken into account upon future redevelopment of Telford Gardens and Telford Plaza. The existing building/structure was not required to conform to the OZP until it was redeveloped;

Responses to Representer's Proposals

- e. only a portion of the existing retail footbridge fell within the demarcated building gap running in north-south direction and it would not be affected until it was redeveloped;
- f. the proposed BH of 170mPD for the office towers was not in line with the intention of maintaining a smooth transition of the BH profile from the business node within KBBA to gradually step down to the medium rise residential development in the north and east;
- g. the BHRs for the "OU(Railway)" zone were to ensure that only low-rise ancillary structures were allowed in the open depot area. Provision for application for minor relaxation of the BHR was already available; and
- h. the non-domestic GFA restriction in the Notes was in line with the approved Master Plans required under the land grants. The remaining non-domestic GFA that was not yet developed should be sufficient to cater for the future needs of MTRCL.

[Ms. Anna S.Y. Kwong left the meeting temporarily at this point.]

62. The Vice-Chairman then invited the representatives of the representers to elaborate on the representations.

63. Mr. Ian Brownlee tabled a document with two letters and, with the aid of some plans and photos, made the following main points:

- (a) REDA was concerned about the impact of the zoning amendments on private property rights. Any planning changes should enhance economic growth, maintain an efficient and sustainable urban development system and protect private ownership;
- (b) although it was desirable to impose BHRs to protect important visual landmarks and provide certainty to landowners and the public, the BHR must be set at a reasonable level. The BHRs applied to the subject OZP were unreasonably low, with no consideration given to building economics or design, impact on property values and impact on urban renewal;

[Professor Edwin H.W. Chan arrived to join the meeting at this point.]

- (c) the BHR of 60mPD for Telford Gardens only reflected the existing BH of the development. As Telford Gardens/Kowloon Bay MTR Station was an existing focal point in the whole area, the BHR for this site should be set at 120mPD to 150mPD and the BH profile should be stepped up from the KBBA to this focal point. The number of domestic towers on the Telford Gardens site could be reduced by half with a BHR of 120mPD and more space would be created without the need to impose the 22mPD building gaps;
- (d) the overall BH concept had relied too heavily on the existing BH of the developments and no alternative concepts had been presented to the MPC or to the public. An alternative BH concept was to step up the BHR at Telford Gardens to 120mPD and across the other side of Kwun Tong Road to 140mPD, so as to increase the BHR to follow the ascending topography;
- (e) the BHRs were set at a very low level and had not taken into account the new measures on Sustainable Building Design (SBD) introduced by

Buildings Department (BD);

- (f) referring to the tabled documents (REDA's letter dated 7.3.2011 and TPB Secretary's reply dated 9.5.2011), REDA had in their letter requested the Board to re-assess all the existing OZPs as the form of controls proposed was no longer necessary with the issue of the SBD Practice Notes. The combined effect of BHRs which were set at too low a level and the SBD requirements on development sites was a general down-zoning of the development potential, a loss of development rights, a loss of property value, and would result in a lower quality urban environment;
- (g) although REDA suggested conducting a detailed review with the relevant professional institutes with a view to reaching a consensus on the desirable design criteria and to assess the impact of the SBD requirements, the Board made no response to REDA's proposal in their reply to REDA dated 9.5.2011;
- (h) different standards were applied for private housing and public housing in the formulation of BHRs. Referring to Plan H-4, it was noted that Tak Bo Garden was at a site level of 23mPD and the two public housing estates on the other side of Choi Ha Road was at the level of 19.6mPD and 22.5mPD. However, the BHR for Tak Bo Garden was 120mPD which was lower than the BHR of 140mPD for the two public housing estates;

[Mr. Walter K.L. Chan left the meeting at this point.]

- (i) the Board should carry out a critical assessment on whether the AVA proposals were essential, and critically assess the justifications for the extent of the proposals. Similar to zoning amendments for open space or road widening which would require the resumption of private land, very strong justifications should be provided before the AVA proposals were incorporated into the OZP as they would significantly affect private property rights;

- (j) according to the AVA proposals, a 15m building gap at 22mPD was proposed to cut through the middle of the MegaBox site. Noting that there was open space on the west and north of MegaBox, the necessity of the proposed building gap was doubtful. The restrictions would deter the future redevelopment of the site;
- (k) the proposed 3m building setbacks along Wang Chiu Road and Wang Kwong Road were not justified as these two roads, being the widest roads in KBBA, were already serving as breezeways. The series of 15m wide building gaps at 22mPD level were also not essential as they had duplicated the function of other breezeways running parallel or nearby;
- (l) in the AVA report, the proposals on setbacks and building gaps were only regarded as desirable and not something essential. The linear open space zone on the eastern part of KBBA was a proper way to ensure air ventilation in the area; and
- (m) the BHRs proposed for Kai Tak Mansion were unnecessary as redevelopment of the site would not cause any adverse impact to its surroundings which were mainly open space and G/IC uses. The imposition of the NBAs and the 20m-wide building gap would severely constrain any redevelopment proposal. There were inadequate justifications to impose the planning controls which had severely affected private property rights and the opportunity for urban renewal by the private sector.

[Professor Paul K.S. Lam left the meeting at this point.]

Representation No. R3

64. Mr. Ian Brownlee tabled a document showing two proposed schemes at different BHRs and, with the aid of a Powerpoint presentation, made the following main points:

- (a) the existing building was the last industrial building in the area and the owners had been preparing for the redevelopment of the site. There was

no restriction in the lease on the use and the building height. The imposition of the BHR at 120mPD had adversely affected the development rights of the owners;

- (b) the BHR of 120mPD would leave no room for design flexibility and would result in a low and bulky building similar in height to the existing buildings surrounding the site. It was unfair as even the public housing sites along Choi Ha Road were allowed a higher BHR than the representation site;
- (c) three possible redevelopment scenarios were submitted in the representation and supplementary information on sectional drawings and schematic layouts for these schemes were tabled for Members' consideration;
- (d) to comply with a BHR of 120mPD, two towers would be necessary to achieve the permitted plot ratio, with a resultant site coverage of 33% and that would result in bulky buildings filling up the existing gaps and creating a wall effect along Ngau Tau Kok Road. By increasing the BHR to 140mPD, the site could be redeveloped into one tower at a site coverage of 25%, creating more space and openness around the building;
- (e) the proposed relaxation of BHR to 140mPD only meant that the site would have the same BHR as the public housing estates on the eastern side of Choi Ha Road. The stepped building height profile would still be maintained and that would not cause any air ventilation problems; and
- (f) the provision for application for minor relaxation of BHR should not be taken as a mechanism to compensate for the inadequacy in the plan-making process. On the other hand, an application for minor relaxation of BHR would be subject to objections from the neighbouring developments. In addition, the proposed 20m increase in BH would be more than 10% of the original BHR which might have exceeded the extent of minor relaxation.

Representation No. R4

65. Mr. Anthony Ismail tabled a document entitled “Extract of Documents” and an extract of the minutes of the TPB meeting dated 16.1.2009 and, with the aid of a Powerpoint presentation, made the following main points:

- (a) Telford Gardens and Telford Plaza were together a comprehensive development with residential buildings, office buildings and a large shopping centre above Kowloon Bay Station which was a major transport hub. The daily pedestrian flow through the development complex was about 300,000 persons;
- (b) MTRCL agreed with the submissions of representations R2 and R3 and considered that the BHR and the designation of NBAs imposed on the representation site were unreasonable and not justified;
- (c) the imposition of a non-domestic GFA restriction up to 177,031m² for the site would adversely affect the ability of the site to meet market and operational needs as a regional hub and was not in the interest of the community;
- (d) according to the lease, which included NKIL 5744 and NKIL 6201, the development should be built in accordance with the Master Plan;
- (e) objections were raised as the development right under NKIL 5744 had been prejudiced. While the lease for NKIL 5744 imposed no restrictions on non-domestic GFA, the imposition of non-domestic GFA restrictions on the site would infringe the private property right under the lease. Referring to the extract of the TPB minutes that was tabled, protection of development right was one of the key considerations of the Board and had been an established practice of the Board. It was also noted from the the Court of Appeal’s decision on Capital Rich v. TPB that the accrued rights of a site should be recognized;
- (f) the OZP restrictions would frustrate MTRCL’s proposal to improve the pedestrian facilities (including a lift for the disabled, escalators, improved

staircases and alterations to the shopping centre) to connect with the Kowloon Bay Elevated Walkway System which would link up the various commercial buildings in KBBA with the MTR Kowloon Bay Station and would bring about a sharp increase in pedestrian flow into Telford Plaza;

- (g) other improvement projects affected by the zoning amendment included connections to the future Ngau Tau Kok housing development and new cultural centre and connections to the future Kai Tak Environmentally Friendly Transport System;
- (h) the new pedestrian facilities and changes to the shopping centre would account for a non-domestic GFA of about 20,000m². As the actual non-domestic GFA had already exceeded the maximum limit of 177,031m² imposed on the OZP, the upgrading works would require planning permission and would face uncertainties and delay. The GFA of 20,000m² had exceeded 10% of the maximum limit and hence might not be able to be covered under section 16 planning applications;
- (i) since the lease conditions had already required the prior approval of the Director of Lands for any amendments to the Master Plan for the two lots, the existing control mechanism under the lease was sufficient and effective and the additional OZP restrictions were unnecessary. The Board should adopt the general planning principle that planning conditions should not be imposed on a “belt and braces” basis;
- (j) the non-domestic GFA restrictions served no useful planning purpose as the site was already built and the planning rationale for imposing the restrictions were not given. On the other hand, the restrictions would delay and impede the implementation of improvements to pedestrian facilities that were beneficial to the community;
- (k) the non-domestic GFA restrictions amounted to spot-zoning which was not consistent with the “broad brush” approach provided under the Ordinance. According to the Ordinance, the Board should prepare draft plans with broad zonings to guide development. However, for the

subject OZP, the planning controls proposed for specific sites only served to reflect the existing development parameters of the sites. This was contrary to the decision of the Court of Appeal on Attorney General v. C.C. Tse (Estate) Ltd. (1982), where the judge considered that “the Ordinance was meant to give guidance only of the “broad brush” kind, not to deal with fine particulars of this nature”. By the same token, sections 3(1) and 4(1) of the Ordinance should only be applied to general areas rather than to specific sites;

- (l) the claim by PlanD that the new zoning and restrictions were to reflect the Master Plans under the lease were incorrect. On the Master Plan for NKIL 5744, there were no restrictions on non-domestic GFA. On the Master Plan for NKIL 6201 and 5744 (part), while there was a maximum non-domestic GFA of 71,736m² for NKIL 6201, the total non-domestic GFA for NKIL 5744 (part) was only used to demonstrate that the change in non-domestic GFA complied with the maximum GFA as permitted under the Building (Planning) Regulations. That figure was descriptive in nature and not restrictive. As the lease for NKIL 5744 was unrestricted, it did not make sense that the Master Plan would restrict the non-domestic GFA;

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

- (m) there was a dispute of fact on the non-domestic GFA actually in existence on the site. BD advised that the total non-domestic GFA in existence was 168,531m² and with the maximum non-domestic GFA of 177,031m² under the OZP, PlanD considered that the remaining 8,500m² GFA could be used to improve the pedestrian facilities and meet future needs. However, according to MTRCL’s records (page 25 of the tabled document), the total non-domestic GFA in existence was 177,784m², which had exceeded the OZP restrictions by 753m²;
- (n) the discrepancy in the figures could be due to building alterations that had resulted in a higher non-domestic GFA approved over the years not taken into account by BD, or the exclusion of the GFA of a secondary school

from the calculation of non-domestic GFA. If the discrepancy was due to the school, the Notes of the OZP could be amended to expressly state that the GFA for the school should be disregarded; and

[Dr. W.K. Yau and Professor Eddie C.M. Hui left the meeting at this point.]

- (o) the Board should reverse the zoning of the representation site to the previous zoning or make appropriate changes to the zoning to address the concerns of MTRCL.

66. As the presentations from the representers' representatives had been completed, the Vice-Chairman invited questions from Members.

[Mr. K.Y. Leung left the meeting temporarily at this point.]

67. In response to a Member's enquiry on the need for the proposed building gap imposed on the MegaBox site, Mr. Eric Yue said that the building gap at 22mPD was proposed based on the recommendations of the AVA to provide a north-south corridor through the site to enable southerly winds to pass through the site to reach the planned open space to the north of MegaBox. Dr. Conn Yuen supplemented that as the whole KBBA extended across a width of 450 metres to 700 metres, several breezeways would need to be created within the KBBA to enable the southerly and south-westerly winds to pass through the area and reach the sites to the further north. Although the existing roads and the linear open space within the KBBA had already served the breezeway function, it was still necessary to impose setback requirements to widen the air corridor along some of the breezeways in order to improve air flow. As MegaBox was located at the mouth of one of the breezeways, a north-south corridor to allow winds to pass through the MegaBox site was necessary.

68. Mr. Ian Brownlee reiterated that there was nothing in the AVA report to justify that the proposed restrictions were essential or necessary. REDA's position was that there was inadequate information in the Expert Evaluation to enable the Board to critically assess whether the proposed restrictions such as those imposed on MegaBox and Kai Tak Mansion were essential. The Expert Evaluation was only a generalized expression of opinion based on generalized information. No explanation or information had been provided to assess

the benefits brought about by the proposed restrictions in relation to the impact on private property right. The proposed setback and NBA requirements might be something nice to have, but there were no justifications to prove that they were essential.

69. In response to the same Member's enquiry on the dispute of fact on the existing non-domestic GFA at representation site R4, Mr. Eric Yue said that the non-domestic GFA of 177,031m² stipulated on the OZP was derived from the sum of the non-domestic GFA permitted in the approved Master Plan for NKIL 5744 and the non-domestic GFA permitted under the lease for NKIL 6201. Nevertheless, Chief Building Surveyor/Kowloon of Buildings Department (CBS/K, BD) advised that according to the latest approved building plans for the representation site, the total non-domestic GFA was 168,531m². Comparing with the OZP restriction of 177,031m², MTRCL could still add 8,500m² of non-domestic GFA to the development. PlanD did not have information on how the non-domestic GFA of 177,784m² as claimed by MTRCL was derived.

70. Referring to page 32 of the document tabled by representation R4 concerning the Court of Appeal case of Attorney General v. C.C. Tse (Estate) Ltd, the same Member noted that the statement quoted by Mr. Ismail in his presentation that "the Ordinance was meant to give guidance only of the "broad brush" kind" was not the opinion of the judge but the submission made by the counsel for one of the parties. In response, Mr. Anthony Ismail confirmed that the statement was from the submission made by the counsel for the appellant but the judge's view in the following sentence implied that the submission of the counsel was accepted by the judge.

71. The same Member noted that one of the lease conditions required that the development must be in line with the Master Plan. This Member asked Mr. Ismail why he considered that the Master Plan was only descriptive and could not be read as imposing a maximum non-domestic GFA on the site. In response, Mr. Anthony Ismail referred to the approved Master Plan for Telford Gardens NKIL 5744 (page 10 and 11 of the tabled document) and pointed out that the permitted GFA shown was only for domestic GFA and there was no restriction on non-domestic GFA. As for the Master Plan of NKIL 6201 and NKIL 5744 (part) which was for the Telford Gardens Extension (page 15 of the tabled document), the total non-domestic GFA was presented as 105,294.32m² < 1,454,257.50m², which meant to demonstrate the calculation that the non-domestic GFA was less than the maximum permitted under the Building (Planning) Regulations. In this respect, the

non-domestic GFA included in the Master Plan was only descriptive rather than restrictive. Mr. Steve Yiu supplemented that the non-domestic GFA of 105,294.32m² was related to NKIL 5744 (part) while the non-domestic GFA for NKIL 6201 was 71,736m², which was within the limit permitted under the lease and the maximum GFA under the Building (Planning) Regulations.

72. Referring to page 17 of the document tabled by R4, Miss Annie K.L. Tam asked if the representer was aware that that the secondary school was only granted under a temporary waiver. In response, Mr. Anthony Ismail said that they were aware that the secondary school with a non-domestic GFA of 8,320.08m² was granted under a temporary waiver and he suspected that this might be the cause of the discrepancy between MTRCL's and PlanD's figure on the total non-domestic GFA.

73. As the representatives of the representers had finished their presentation and Members had no more questions to raise, the Vice-Chairman said that the hearing procedures had been completed, the Board would deliberate on the representations in their absence and would inform them of the Board's decision in due course. The Vice-Chairman thanked the representatives of the representers and the PlanD representatives for attending the hearing. They all left the meeting at this point.

Deliberation Session

74. On the representation submitted by R2 concerning the justifications for the BHRs, necessity of the NBAs, building gaps and setbacks, the lack of prior public consultation and the point about 'spot' zoning, the Vice-Chairman noted that most of these issues had already been deliberated in the context of other OZPs where BHRs were imposed. Miss Ophelia Y.S. Wong said that the new points that had been raised by R2 in this representation included whether the BHR for Telford Gardens, which was based on the existing building heights, was too restrictive given its function as a main transport hub in the area, whether the AVA in the form of an Expert Evaluation had provided adequate justifications for imposing the planning restrictions in the area, and whether the public benefit brought about by the proposed NBAs, building gaps and setback requirements could justify the impact on private property rights.

75. Regarding representation R2's proposal to relax the BHR of Telford Gardens to

120mPD, Miss Ophelia Y.S. Wong had doubts on whether there was any real prospect for redevelopment of the site, even if the proposal was acceded to. Assuming the site would be redeveloped in future was not a realistic assumption to adopt in devising the planned building height profile for the area. She said that the BHR was determined based on the Master Plans for the development, which were vetted by and acceptable to all concerned departments as the optimal development at the site for the future. A Member agreed that there was little prospect for Telford Gardens to be redeveloped and considered the BHRs were reasonable. Miss Wong said that MTRCL did not raise objection to the BHR of Telford Gardens.

76. The Vice-Chairman appreciated the holistic approach adopted by the AVA in assessing the wind environment not only for a single building or just KBBA, but the entire OZP area. In this respect, there were adequate justifications to support the requirements in the draft OZP. A Member considered that it would be impractical to require every point of the proposed restrictions to be fully justified. Another Member said that the imposition of planning restrictions for a wider public interest would inevitably create some impact on private property rights. A Member said that should representer R2 disagree with the proposed requirements, they should conduct their own AVA to substantiate their argument.

77. Turning to representation R3, the Vice-Chairman said that although the representer had asked for a relaxation of the BHR by 20 metres, he did not consider the request justified as the representer did acknowledge that they had no difficulty to redevelop the site at the existing BHR and that the proposed relaxation would only allow a more slender design.

78. On representation R4, Miss Annie K.L. Tam explained that there was already control on the development of the site under the lease. According to the lease conditions, the site was governed by Master Plans and any change to the Master Plans would require the prior approval of the Director of Lands (D of Lands). D of Lands had the discretion to approve or not to approve a change to the Master Plan and PlanD would be consulted in the process. With the stipulation of the non-domestic GFA on the OZP, the D of Lands would be unable to approve any change in the Master Plans that would exceed the OZP restrictions, even for changes processed under temporary waiver.

79. Miss Ophelia Y.S. Wong said that the lease control and the plan-making process

were two separate matters. The lease was a private contract between the Government and the leasee, while the plan-making process involved a statutory process of public consultation for any amendments made to the OZP. MTRCL's proposal to remove the non-domestic GFA restrictions was not commensurate with their stated need to provide pedestrian facilities and would result in forgoing statutory controls on the provision of commercial facilities at the representation site, especially when there was no restriction on the non-domestic GFA under the lease of the depot. As to the claim of 20,000m² GFA for the new pedestrian facilities and changes to the shopping centre, she said that MTRCL did not provide any substantiation on why such a large amount of GFA was required. She agreed that the existing GFA of the development on the site was uncertain at this stage as the figures provided by BD and MTRCL were different.

80. A Member asked whether the purpose of incorporating the non-domestic GFA restriction was only to reflect the existing development on the site. In response, Miss Ophelia Y.S. Wong said that when the Master Plan of the development at the representation site was submitted, it was supported by various technical assessments and was considered acceptable by relevant government departments. This reflected that the existing development was an optimal development that met the long term planning intention of the site. In this respect, the non-domestic GFA restriction imposed on the OZP were not merely to reflect the existing development on the site. If the non-domestic GFA restriction was not imposed on the OZP, there would be no statutory planning control on additional commercial development. In addition, the public would not have the chance to make any comments on the increase in GFA on the site under the Town Planning Ordinance. The same Member was concerned that the non-domestic GFA restriction might be too restrictive if it would affect the additional pedestrian facilities which were provided for the interest of the general public.

81. Another Member considered it appropriate to incorporate the non-domestic GFA restriction on the OZP to reflect that the existing development which had been proved to be optimal when it was approved. If additional pedestrian facilities were needed in future, the MTRCL could always apply to the Board to relax the GFA restrictions and there was no reason why the Board would disapprove the application if it was demonstrated that there were planning merits in doing so. The public would also have the chance to give views on the proposal through the statutory planning procedures. This would avoid the criticism of collusion between the Government and MTRCL. The Vice-Chairman also

agreed to impose the non-domestic GFA restriction on the OZP so as to ensure proper planning control on the future development of the site.

[Mr. Benny Y.K. Wong returned to join the meeting at this point.]

82. A Member enquired whether the Notes of the OZP could exempt the provision of pedestrian facilities from obtaining planning permission from the Board. In response, Miss Ophelia Y.S. Wong said that while pedestrian facilities were always permitted under the “OU(MTR Depot with Commercial and Residential Development Above)” zoning at the representation site, planning permission would be required if the additional GFA generated by the pedestrian facilities would result in the maximum GFA permitted under the OZP to be exceeded. If Members considered it appropriate, the Notes of the OZP could be amended to specify clearly that the GFA for pedestrian walkway could be exempted.

83. A Member said that it was not clear whether the pedestrian facilities as claimed by MTRCL would include commercial facilities. This Member considered that the MTRCL should be required to go through the statutory planning procedures if the additional pedestrian facilities exceeded the GFA restrictions on the OZP. There was no reason for the Board to reject such an application if the pedestrian facilities were beneficial to the public. Two other Members shared the same view.

84. A Member considered that the amount of non-domestic GFA of the existing development would need to be verified as the GFA restriction on the OZP should be a reflection of the existing GFA on the site. Miss Ophelia Y.S. Wong said that to ensure that there would be no loss in existing GFA upon redevelopment, the Notes of the OZP could be amended as “No new development, or addition, alteration and/or modification to or redevelopment of an existing building shall result in a total development and/or redevelopment in excess of a maximum domestic gross floor area of 278,703m², a maximum non-domestic gross floor area of 177,031m² and the maximum building height, in terms of metres above Principal Datum (mPD), as stipulated on the Plan, or the **gross floor area and** height of the existing building, whichever is the greater”. Apart from that, Members might wish to decide if it was necessary to clarify the accuracy of the non-domestic GFA of the existing development. After some discussions, Members agreed that the actual non-domestic GFA figure, after clarifying with BD, should be included as the maximum non-domestic GFA on the OZP.

85. The Vice-Chairman then concluded the discussion and re-capitulated the various issues raised by the representers. Members agreed that the representations made by R2 on the BHRs, NBAs, building gaps and building setback requirements should not be upheld as the proposed planning controls incorporated on the OZP were justified. Members also agreed that the representation submitted by R3 should not be upheld as the proposed BHR of 140mPD for the representation site would adversely affect the integrity of the stepped height concept for the area and the integrity of the height band at 120mPD. Members also agreed that the representation of R4 concerning the BH of the retail footbridge, the proposed relaxation of the office tower to 170mPD and the proposal to delete the BHRs on the open area of the depot should not be upheld. Members also agreed to partially uphold representation R4 by adding the clause “or the existing gross floor area, whichever is greater” to the Remarks (1) of the Notes of the OZP for the “OU(MTR Depot with Commercial and Residential Development Above)” zone.

86. Members then went through the suggested reasons for not upholding the representations as detailed in paragraph 6 and Annex VI of the Paper and considered that they were appropriate.

[Mr. B.W. Chan returned to join the meeting at this point.]

Representation No. R2

87. After further deliberation, the Board decided not to uphold the representation for the following reasons:

BHRs

- (a) the purpose of imposing building height restrictions (BHRs) in the Area was to provide better planning control on the building height 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 building height profile of the Area. In formulating the BHRs for the Area, all relevant factors including the Urban Design Guidelines, existing topography, stepped building height concept, local characteristics, existing building height profile, site formation level and site constraints,

the zoned land uses of the site concerned, development potential, the wind performance of the existing condition and the recommendations of the AVA Study, had been taken into consideration. The BHRs had struck a balance between public aspirations for a better living environment and private development potential;

- (b) the BHRs were formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development potential permissible under the OZP. Piecemeal relaxation of BHRs for individual sites was not supported as it would jeopardise the coherence of the stepped building height profile and would result in proliferation of excessively high developments, which was not in line with the intended planning control;
- (c) the BHRs did not necessarily result in larger building bulk. Whether a building was bulky or massive depended on many factors other than BH alone. Given the tendency to maximise the best view in certain direction and to capitalise on the land value of lower floors, a development with more lenient building height control might be even taller and bulkier;
- (d) to cater for site specific circumstances and schemes with planning and design merits, there was provision for application for minor relaxation of BHRs under the OZP. Each application would be considered by the Board on its individual merits;

NBA, Building Gap and Setback Requirements

- (e) sections 3 and 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. The Board should have the power to impose BHRs on individual sites or for such areas within the boundaries of the OZP under sections 3 and 4 of the Ordinance if there were necessary and sufficient planning justifications;
- (f) designation of non-building area (NBA) and building gap requirements on the OZP could serve a positive planning purpose and had positive planning

benefits by improving air ventilation, visual permeability and the pedestrian environment. Given that the designation of NBA was fully justified, it had legal basis to form part of the planning control of the Board;

- (g) the relaxation of the NBA and building gap requirement would affect the effectiveness of their planning intention. The wording ‘exceptional circumstances’ was included in the minor relaxation clause requirement to cater for the situation that only in some exceptional cases under which the requirement could not be met due to site constraints but the planning objectives would be achieved in other forms;
- (h) the requirements under the Buildings Ordinance and the OZP on NBAs and building gaps were under two separate regimes. They were complementary, rather than duplicating each other.

Public Consultation

- (i) subsequent to the completion of the Study “Urban Design Guidelines for Hong Kong” setting out the broad urban design guidelines in 2003, the BH proposals were firstly translated onto OZP restrictions in KBBA and Kwun Tong Business Area (KTBA) in 2004. As most of the sites within the business areas were subject to the Airport Height Restrictions/ BHRs under leases and a surge of building plan submissions to establish “fait accompli” was unlikely, it was considered that public consultation prior to the gazetting could be conducted to gauge the public views on such translation of BHR onto relevant OZPs. The TPB Guidelines for Interim BH Control in KBBA and KTBA was issued in 2004 for planning control purposes pending on the results of the public consultation on imposing BHRs in KBBA and KTBA; and
- (j) the 2-month statutory exhibition period and provision for representations and comments formed part of the current 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 BHRs, NBA and building gap

requirements on the OZP including the AVA Report and visual analysis, were available for public inspection.

Representation No. R3

88. After further deliberation, the Board decided not to uphold the representation for the following reasons:

- (a) the purpose of imposing building height restrictions (BHRs) in the Area was to provide better planning control on the building height 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 building height profile of the Area. In formulating the BHRs for the Area, all relevant factors including the Urban Design Guidelines, existing topography, stepped building height concept, local characteristics, existing building height profile, site formation level and site constraints, the zoned land uses of the site concerned, development potential, the wind performance of the existing condition and the recommendations of the AVA, had been taken into consideration. The BHRs had struck a balance between public aspirations for a better living environment and private development potential;
- (b) the BHRs were formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development potential permissible under the OZP. Piecemeal relaxation of BHRs for individual sites was not supported as it would jeopardise the coherence of the stepped building height profile and would result in proliferation of excessively high developments, which was not in line with the intended planning control;
- (c) the BHRs did not necessarily result in larger building bulk. Whether a building was bulky or massive depended on many factors other than BH alone. Given the tendency to maximise the best view in certain direction and to capitalise on the land value of lower floors, a development with more lenient building height control might be even taller and bulkier;

- (d) the BHR for the representation site and the adjoining residential developments allowed a stepped building height profile in the Area gradually descending from the Jordan Valley towards Ngau Tau Kok Road, which was considered desirable from urban design point of view and could help optimise the wind performance;
- (e) there was a need to strike a balance between public interest and private development right. The stipulation of BHRs on the OZP was to achieve a good urban design. It was an effective measure to regulate the development profile of the built environment. In addition, the BHRs were formulated on the basis of reasonable assumptions that development potential permissible under the OZP could be accommodated; and
- (f) to cater for 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 based on the set of criteria set out in the ES of the OZP.

Representation No. R4

89. After further deliberation, the Board decided to partially uphold the representation by adding a clause to ensure that there would be no loss in existing GFA upon redevelopment in Remarks (1) of the Notes for the “Other Specified Uses” annotated “Mass Transit Railway Depot with Commercial and Residential Development Above”. The Board also decided not to uphold the remaining parts of the representation for the following reasons:

- (a) the new zonings of “Other Specified Uses” annotated “Mass Transit Railway Depot with Commercial and Residential Development Above” and “Other Specified Uses” annotated “Railway” were to better reflect the planning intention of the residential/commercial development on top of Kowloon Bay MTR depot and the railway station and facilities, and the optimal development pattern and long term planning intention as set out on the Master Plans under the lease, which were agreed among various departments;

- (b) the Kowloon Bay MTR Station and the Telford Plaza were situated in the transitional area between the business node at Kowloon Bay Business Area (KBBA) to its west and the medium to high-rise residential areas to its east across Kwun Tong Road. The current building height restriction (BHR) for the office towers was required to ensure a smooth transition of the building height profile from the high-rise business node within KBBA stepping down gradually to the medium-rise residential development in the northern and eastern fringes;
- (c) specific BHRs had already been imposed on the Kowloon Bay MTR Station and the existing buildings which were ancillary to the railway operation. The BHRs on the open depot area were to ensure that only low-rise ancillary structures were allowed in the open depot area. Should there be a need for a relaxation of BHRs of the ancillary structures, there were provisions for application for minor relaxation of the BHR under s.16 or amendments to OZP under s.12A of the Town Planning Ordinance. Each application would be considered by the Board on individual merits; and
- (d) the requirements of building gaps were to reflect the findings and recommendations of the AVA Study and to be taken into account upon future redevelopment. It was noted that only a portion of the existing retail footbridge fell within the demarcated building gap running in north-south direction. However, the existing building/structure was not required to conform to the OZP until it was redeveloped. As such, the existing retail footbridge would not be affected and there was no strong reason to reflect this on the OZP. Should there be a need for a relaxation of the building gaps in future redevelopment, there were provisions for application for minor relaxation of the building gaps under s.16 or amendments to OZP under s.12A of the Ordinance. Each application would be considered by the Board on individual merits.

[Open Meeting (Presentation and Question Session only)]

Review of “Green Belt” Zoning for Area West of Tung Tsz Road in Draft Tai Po Outline Zoning Plan No. S/TP/22

(TPB Paper No. 8834)

[The hearing was conducted in Cantonese.]

90. As the items for the morning session had overrun, Members agreed that this item be rescheduled for consideration in the afternoon.

91. The meeting was adjourned for a break at 2:45 p.m.

92. The meeting was resumed at 3:15 p.m.

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

Mr. Stanley Wong Vice-chairman

Mr. K.Y. Leung

Ms. Anna S.Y. Kwong

Professor Edwin H.W. Chan

Dr. C.P. Lau

Mr. Laurence L.J. Li

Mr. Roger K.H. Luk

Ms. Anita W.T. Ma

Professor S.C. Wong

Deputy Director of Environmental Protection

Mr. Benny Wong

Director of Lands

Miss Annie Tam

Director of Planning (on 27.5.2011)

Miss Ophelia Wong

Agenda Item 9

[Open Meeting]

Further Consideration of Representations and Comment

Draft Tai Po Outline Zoning Plan No. S/TP/22

(TPB Paper No. 8823)

[The hearing was conducted in English and Cantonese.]

Representations R7 to R12 and Comment C2

Presentation and Question Session

94. The following Members had declared interests on the item:

Mr. Stanley Y.F. Wong - co-owned with his spouse a flat and
(the Vice-chairman) two car parks in Tai Po

Dr. W.K. Yau - owned some properties and land in
Tai Po and being the Chairman of
the Management Committee of the
Tai Po Environmental Association
which managed the Fung Yuen
Butterfly Reserve and Education
Centre

Dr. W.K. Lo - owned properties in Tai Po

Mr. Laurence L.J. Li - worked in the same Chamber as Mr.
Ruy Barretto S.C. (R7)

95. Members noted that the interest of the Vice-chairman was indirect and remote as his property would not be affected by the subject representations being further considered at the meeting and agreed that he should be allowed to stay in the meeting. Members noted that Dr. W.K. Yau had left the meeting and Dr. W.K. Lo had tendered apologies for not being able to attend the meeting. Members also agreed that as the

interest of Mr. Laurence L.J. Li was direct, he should be invited to leave the meeting for this item.

[Mr. Laurence L.J. Li left the meeting temporarily at this point.]

96. As sufficient notice had been given to the representers and commenter to invite them to attend the meeting, Members agreed to proceed with the hearing of the representations in the absence of the other representers and commenter who had indicated that they would not attend or had made no reply.

97. The following government representatives and representers were invited to the meeting at this point:

Mr. W.K. Hui - District Planning Officer/Shatin, Tai Po and North District (DPO/STN), Planning Department (PlanD)

Ms. Lisa Cheng - Senior Town Planner/Tai Po (STP/TP), PlanD

Mr. Tony Chan - Nature Conservation Officer (Tai Po), Agriculture, Fisheries and Conservation Department (AFCD)

R7 – Ruy Barretto S.C.

Mr. Ruy Barretto S.C. - Representer

R10 – King Tak Wai, David

Mr. King Tak Wai, David - Representer

R12 – Koon E Le, Teresa

Ms. Koon E Le, Teresa - Representer

98. The Vice-chairman extended a welcome and explained the procedures of the hearing. He then invited DPO/STN to brief Members on the representations.

99. With the aid of a powerpoint presentation, Ms. Lisa Cheng, STP/TP, made the following main points as detailed in the paper:

- (a) on 25.2.2011, the Town Planning Board (the Board) considered the 13 representations and 3 comments in respect of the draft Tai Po OZP No. S/TP/22. After consideration, the Board decided to defer a decision on R7 to R12 in respect of the “Green Belt” (“GB”) zone in Area 10 near Constellation Cove. These representations were further considered at this meeting;

R7’s Proposals

- (b) R7 was submitted by Mr. Ruy Baretto S.C. who supported in general the rezoning of the slopes in Area 10 to the west of Tai Po Kau Headland from “Recreation Priority Area” (“RPA”) to “GB”. However, R7 considered that two pieces of slopes (‘Area A’ and ‘Area B’) adjoining the adjacent “CA” zone should be rezoned to “Conservation Area” (“CA”) so as to widen the “CA” corridor for wildlife to achieve ecological connectivity. Besides, the “GB” zone in Area 10 should be designated as NBA. The proposed NBA would exclude Lot 197 in D.D. 35 (representation site of R8 to R12) which should be rezoned to “Residential (Group C)” (“R(C)”) to reflect the existing house use;
- (c) at the hearing on 25.2.2011, R7 had presented an ecological study report undertaken in 2006 (“the 2006 study report”) in support of his representation for Members’ consideration. The Board decided to defer a decision on R7’s representation pending further advice from AFCD on R7’s submission on the ecological value of area concerned;

R8 to R12’s Proposals

- (d) R8 to R12 were submitted by five members of the public opposing the rezoning of Lot 197 in D.D. 35 from “RPA” to “GB”. The

representers considered that the “GB” zoning would affect the owners’ right for rebuilding the two existing houses on the site. R10 to R12 proposed that Lot 197 in D.D. 35 should remain zoned “RPA”;

- (e) at the hearing on 25.2.2011, R12 proposed to rezone the site to “R(C)” to reflect the existing houses on the site and protect owners’ right to redevelop the site. The Board decided to defer a decision on R8 to R12 pending a review of all the house lots within the area to investigate whether there were suitable lots that might be rezoned to “R(C)” to reflect the existing uses;

Comment C1

- (f) C1, submitted by Designing Hong Kong Ltd., supported R7’s proposal to rezone the slopes to “CA” but opposed R10 to R12’s proposals to retain the “RPA” zoning;

Assessment on R7’s Proposals

- (g) rezoning of Areas A and B to “CA” was the subject of the rezoning proposal and representations considered and rejected by the Board between 2006 to 2008. A summary of the proposals, dates and decisions of the Board were in paragraph 3.3 of the paper;
- (h) on R7’s proposal to rezone Areas A and B within the “GB” of Area 10 to “CA”, DAFC advised that though some native and mature trees could be found in the southern part of Area A and the eastern part of Area B, the other parts of the subject areas were rather disturbed in the forms of village houses, temporary structures, graves and orchards. Areas A and B gradually degraded towards the west of the Tai Po Kau Headland and no mature tree or plant species of conservation interest could be found in the disturbed areas. He therefore did not support R7’s proposal to rezone Areas A and B to “CA” as comparing with other “CA” zones, these areas were less ecologically significant;

- (i) DAFC was consulted on the study report on the ecological assessment for the area as presented by R7 at the hearing on 25.2.2011. DAFC pointed out that much of the ecological information used in the report and findings had been based on casual observation and informal records over several decades. In general, the report contained some historic, landscape, cultural and ecological information on the Tai Po Kau Headland areas as a whole. The report did not provide supporting information specific to the proposed “CA” zoning for the subject Areas A and B;
- (j) in view of DAFC’s advice, “GB” zoning was considered appropriate for Areas A and B and R7’s proposal to rezone the subject areas to “CA” was not supported by PlanD;

Review on the Zoning of House Lots

- (k) the subject “GB” zone in Area 10 comprised mainly Government land covering vegetated slopes with some temporary structures. There were 32 private lots which were primarily restricted to agricultural use under the lease and only 5 of them had building status for New Territories Exempted Houses (NTEHs);
- (l) four lots (i.e. Lots 197, 336, 337 and 344 in D.D. 35) were scattered with small buildable portions ranging from about 47m² to 121.4m². The existing houses on these lots were mainly NTEHs not served by standard roads and the surrounding area was covered with vegetation. The Tai Po OZP was a small-scale plan (1:7500) and it is the practice of the Board to give a specific residential zoning to residential clusters or sizable residential buildings but not for sporadic small building lots within a wider “GB” zone. It was considered that the proposed “R(C)” zoning was not justified for the sporadic lots in question and the “GB” zoning with planning intention to preserve the landscape character of the wider area was more appropriate;

- (m) for TPTL 180, it had a lot size of about 1,000m² and had direct access from Tai Po Road. The site was subject of a planning application No. A/TP/247 for proposed residential development for one 2-storey house approved by the Board on 17.12.1999 and extension of planning permission approved on 6.12.2002. Considering the nature of the development and the size of the lot, there was scope to rezone the subject lot to “R(C)” in the future. However, as the development had not been completed, it was considered more appropriate to retain the “GB” zoning of the site for the time being to retain the existing control until all the approval conditions had been fulfilled;

PlanD's Views

- (n) R7: not to uphold the representation for the reasons as stated in paragraph 7.2 of the paper; and
- (o) R8 to R12: to partially meet the representations by amending the Notes of the “GB” zone to allow any rebuilding of NTEH or replacement of an existing domestic building by a NTEH without the need to obtain permission from the Board.

100. The Vice-chairman then invited the representers to elaborate on their representations. Members noted that a paper submitted by R7 to the Board on 25.2.2011, four letters of 23.3.2011, 11.5.2011, 20.5.2011 and 24.5.2011 submitted by R7 and the Secretary's replies to R7 of 19.5.2011 and 23.5.2011 were tabled at the meeting.

R7 (Ruy Barretto S.C.)

101. Mr. Ruy Barretto S.C. said that in his letter of 20.5.2011 to the Board, he had requested for detailed comments from AFCD on his submission. However, so far, he had not received any new or detailed comments from AFCD, apart from those included in the subject TPB paper. The Vice-chairman replied that representative of AFCD would provide comment and advice on the representations at this meeting.

102. With the aid of some plans and photos, Mr. Ruy Barretto S.C. made the following main points:

New Policy on Conservation

- (a) the Year 2011 was declared as the International Year of Forests. This year, China would apply the Convention on Biological Diversity to Hong Kong. Together with the Chief Executive's Policy Address, there would be a new policy for conservation in Hong Kong. The Board should take the chance to improve conservation by amending the subject OZP;

Objection to Deferral

- (b) the Board's decision to defer a decision on the representation on 25.2.2011 pending further advice from AFCD was not in line with its Guidelines on Hearing of Representations/Further Representations, in that the Board did not seek consent from the concerned representers on the deferral, there was no strong reason for deferral and the deferral was longer than four weeks;
- (c) it was wrong to state in the minutes of the Board's meeting on 25.2.2011 that R7 had only submitted his 2006 study report to the Board at that meeting and DAFC did not have the chance to study the report and offered his comments. As set out in R7's letter of 23.3.2011, the 2006 study report had been submitted to the Board in the rezoning application (No. Y/TP/2) in 2006 and referenced in R7's representation of 16.11.2010. AFCD should have previous chances to study the report;
- (d) even after deferral, AFCD had not provided substantial or detailed comment on the ecological value of the area. AFCD's comments included in the subject TPB paper were just similar to that included in

TPB paper No. 8743 for consideration of Board on 25.2.2011;

- (e) the Board should be impartial in making its decision taking into account all evidence including that provided by the representer. It was wrong for the Board to rely on expert advice from government departments on technical issues which was not reliable;

Previous Board's Decisions

- (f) the Board should consider the merits and evidence of the subject representation afresh. The previous decisions in rejecting the proposal to rezone Areas A and B (i.e. the representation site) to "CA" in the rezoning application and the representations in 2006 and 2008 respectively, should not imply that the subject representation should be rejected by the Board again. The previous rejection reason based on fragmentation by roads, railway and housing developments applied only to the eastern side of the Tai Po Kau Headland but not the subject representation site located at the western side, partly covered with dense native trees;
- (g) the Board had rezoned the inter-tidal ponds to "CA" in May 2008 in view of their specific ecological value and the presence of egrets in the area. The same consideration should apply to the current representation in respect of the need to protect the forest and the streams which flowed into these ponds;
- (h) there was gradual improvement to the conservation of the area with the rezoning of some parts of the "RPA" to "GB" in the current OZP. The Board should consider creating more "CA" zones following the 4th principle for Conservation under the Hong Kong Planning Standards and Guidelines (HKPSG), i.e. to create where possible new conservation zones in compensation for areas of conservation value which were lost to development;

[Anita W.T. Ma left the meeting at this point.]

Ecological Value of Wildlife Corridors

- (i) the 2006 study report showed that the Tai Po Kau Headland as a whole was exceptionally biodiverse and was the richest conservation area in Hong Kong. There was a huge biodiversity of species of plants, reptiles, birds, mammals and insects. Many species were rare and of conservation concern. They required an ecological corridor linking them to the Pai Mun Shan conservation area and Tai Po Kau Nature Reserve e.g. photos of a pair of Masked Palm Civets in the forest near the edge of the corridor areas was tabled at the meeting;
- (j) Areas A and B (the representation site) performed their function of buffer zones and wildlife corridors as highlighted in the 2006 study report. The majority of the areas was of high landscape quality and occupied by dense, native and mature forest with only some disturbed parts. Wildlife corridors had a specific value and ecological function as an ecological linkage. AFCD should not look at the representation site in isolation from the whole Headland area;
- (k) the existing ecological linkages in the representation site were narrow and inadequate and hence should be widened and protected by a “CA” zoning to facilitate safe movement of wildlife. Conservation was not about protecting only the best pristine forest but to ensure the survival of species, habitats and their ecological functions. Natural processes required a wildlife corridor for survival and movement between conservation areas. A precautionary conservation approach should be adopted to safeguard the natural processes by rezoning the representation site as “CA”. Government could more easily take action against illegal works and tree damage within “CA” zone;

The 2006 Study Report

- (l) the representer did not agree to the criticism in the TPB paper that the findings of the 2006 study report were based on casual observation and informal records over decades. The 2006 study report was compiled from formal and systematic studies and surveys of birds, plants, reptiles and insects as well as formal opinions based on data and inspection written by leading experts in these fields. They exceeded the quality and quantity in Environmental Impact Assessment (EIA) reports. The study was highly authoritative and supported by renowned professors, experts and authorities in the fields and 13 environmental non-government organisations; and

Planning Intention of “GB” and “CA” Zones

- (m) the planning intentions of “GB” and “CA” zones were different in that the former did not explicitly provide for protection while the latter had the objective to protect and retain the existing natural landscape and ecological features for conservation purpose. Hence, the “GB” zoning was not adequate and the “CA” zoning was more appropriate for the representation site of high landscape quality and ecological values. The Board should apply the 1st principle of Conservation under the HKPSG, i.e. to retain significant landscapes and ecological attributes and heritage features as conservation zones.

R10 (King Tak Wai, David)

103. Mr. King Tak Wai, David made the following main points:

- (a) he objected to the rezoning of Lot 197 in D.D. 35 to “GB” as it would affect the owners’ right for rebuilding. The site was about 483m² in area and currently occupied by two houses with existing GFA of about 400m² and a PR of about 1. In view of the old age of the houses, the owners were considering to redevelop the two houses into one single

house with the existing building bulk and intensity and proposed to rezone the site to “R(C)”;

- (b) he did not agree with PlanD’s response in paragraph 6.2 of the paper that the OZP was a small-scale plan (1:7,500) and that it was not the practice of the Board to give a specific residential zoning to small building lots within a wider “GB” zone. The subject lot of about 500m² was not small and it was unfair not to reflect its existing use on the OZP. Besides, it was not uncommon that individual zonings were given to small lots in the urban area under the urban OZPs. There should not be differential treatment between the urban and the rural OZPs under the same Town Planning Ordinance (the Ordinance);
- (c) the representer welcomed PlanD’s proposed amendments to the OZP to permit as of right any rebuilding of NTEH or replacement of an existing domestic building by a NTEH within the “GB” zone. Nevertheless, such amendments could not cater for the owners’ need for redeveloping the existing two houses into one single house which was not a NTEH under the definition as stated in the Covering Notes of the OZP. Hence, rezoning of the site to “R(C)” with a PR restriction of 1 would be more appropriate for the subject lot; and
- (d) the representer supported R7’s proposal to rezone Areas A and B to “CA” provided that the owners’ right of using the existing road access in Area B would be maintained.

R12 (Koon E Le, Teresa)

104. Ms. Koon E Le, Teresa said that she objected to the rezoning of Lot 197 in D.D. 35 to “GB” which affected her plan to redevelop the existing two old houses into one single house. She proposed to rezone the subject lot to “R(C)” and also supported R7’s proposal.

105. As the representers had completed their presentations, the Vice-chairman

invited questions from Members.

Zoning for the House Lots

106. A Member asked DPO/STN about the difference between the proposed amendments to the Notes of the “GB” zone by PlanD in paragraph 6.3 of the paper and the proposed “R(C)” zoning for the house lot by the representers. Referring to paragraphs 6.1 and 6.2 of the paper, Mr. W.K. Hui, DPO/STN, said that PlanD had undertaken a review on the zoning of the private lots in the subject “GB” zone in Area 10 and considered that the “GB” zoning was more appropriate for the area. He said that the five private lots with building status under the lease were scattered within the subject “GB” zone. It was the practice of the Board to give a specific residential zoning to residential clusters or sizable groups of residential buildings but not for sporadic small building lots within a wider “GB” zone. Moreover, these five private lots were subject to restrictions for NTEHs under lease which were quite different from those for the “R(C)” zone on the OZP (ranging from PR 0.4 to 1.5). While building plans were required to be submitted for residential development within a “R(C)” zone, building works for NTEHs were exempted by a certificate of exemption under the Buildings Ordinance (Application to the New Territories) Ordinance. In this regard, taking into account the lease and building status of the private lots, PlanD considered that the proposed “R(C)” zoning was not justifiable for the sporadic lots in question but proposed to amend the Notes for the “GB” zone to allow any rebuilding of NTEH or replacement of an existing domestic building by a NTEH without the need to obtain permission from the Board. On this point, Mr. King Tak Wai, David (R10) said that while Lot 197 in D.D. 35 was currently subject to a restriction of two buildings under lease, the owners would apply for lease modification from Lands Department (LandsD) for rebuilding into one single house.

Ecological Value of Areas A and B

107. The Vice-chairman said that on 25.2.2011, the Board decided to defer a decision on R7 pending AFCD’s further advice on the representer’s submission on the ecological value of the area concerned and that R7 had requested detailed comment from AFCD on his submission. He therefore asked the representative of AFCD to provide his detailed comment and advice on this aspect. Mr. Tony Chan of AFCD said that AFCD

had carefully examined R7's proposal including the study report submitted at the hearing on 25.2.2011 and also undertaken site inspections in Areas A and B. He said that while R7's study report covered the whole Tai Po Kau Headland area and Pai Mun Shan including Areas A and B, it did not specifically focus on Areas A and B. By presenting some plans and photos, Mr. Chan went on to explain the ecological value of Areas A and B. He said that Area A near the railway was mainly occupied by orchards and shrublands with trees of about 10m. As the trees were of common species, the ecological habitat there was not of very high ecological value. For Area B near Tai Po Road, it was occupied by orchards, graves, some temporary domestic structures and temples. Though there were some mature trees of about 20m near Lookout Link, the whole Area B was not that ecologically significant. In sum, he did not consider that the rezoning of Areas A and B to "CA" was appropriate as there was no special ecological habitat. The "GB" zoning was already appropriate for the ecological corridor for wildlife in the area.

108. A Member asked about the difference in character between the adjacent "CA" zone and the subject site. Mr. Tony Chan advised that the area covered by the existing "CA" zone in the upper hill area was free from human disturbance e.g. away from graves and orchards and the forest there was more continuous than Areas A and B.

109. Mr. Ruy Barretto S.C. (R7) said that the information and photos presented by AFCD at the meeting should be included in the paper and provided to the representers for verification prior to the meeting. He perceived that the photos presented by AFCD were taken in areas next to the village which were subject to more human disturbance and on a walking path located outside the representation site.

110. On the ecological value of the area, Mr. Ruy Barretto S.C. (R7) said that even though Areas A and B were not fully occupied by mature trees and forest, the existing vegetation and orchards there were important to act as ecological linkages and corridors for wildlife. The 2006 study report submitted by R7 covered not only the Tai Po Kau Headland but also Areas A and B. The proposed "CA" zone was intended not only to conserve Areas A and B but the whole Tai Po Kau Headland area by ensuring a proper ecological connectivity through these corridors. Besides, the existing stream leading from Pai Mun Shan to the ponds which were important feeding place for egrets should also be zoned "CA". The Board should seize the opportunity to protect the representation site

of high quality landscape and ecological value.

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

Deliberation Session

R7

112. A Member noted that the whole headland area adjacent to Areas A and B were covered by "CA" zoning and asked why the remaining strips of land in Areas A and B were not rezoned from GB" to "CA" for the sake of completeness. Ms. Ophelia Wong, D of Plan, said that there were different planning intentions for a "CA" zone and a "GB" zone in terms of level of protection for natural environment. The "CA" zone was intended to protect and retain the existing natural landscape and ecological features for conservation purpose and would be designated for areas with special natural or ecological features based on the expert advice of AFCD. To protect these special features, there was a general presumption against development in this zone. For "GB" zone, the planning intention was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was also a general presumption against development within this zone. However, certain kinds of developments might be permitted upon planning application if they were justified on strong planning grounds. The Vice-chairman said that the criteria for assessing the ecological value should be similar in designating "GB" and "CA" zones on all OZPs.

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

113. A Member considered that there was insufficient information to justify the rezoning of Areas A and B to "CA". Taking into account AFCD's latest advice, this

Member supported PlanD's assessment to retain the "GB" zoning for the area and said that the Board might consider rezoning the area to "CA" in future if there was any new evidence on the ecological value of the area.

114. A Member appreciated R7's concern on the need for ecological protection of the area but considered it more appropriate for the Board to take into account the professional advice from AFCD. This Member said that the decision of the representations was deferred at the last hearing pending AFCD's further advice on R7's study report. In view of AFCD's latest assessment on R7's proposal, this Member did not support R7's proposal to rezone Areas A and B to "CA". Other Members agreed. Members then went through the reasons for not upholding the representations as detailed in section 7.2 of the paper and agreed that they should be suitably amended.

R8 to R12

115. Members noted PlanD's review on the zoning of house lots in the "GB" zone in Area 10 and agreed that the proposed "R(C)" zoning was not justified for the sporadic lots and the "GB" zoning was more appropriate. Member also agreed to the proposed amendments to the Notes of the "GB" zone to allow any rebuilding of NTEH or replacement of an existing domestic building by a NTEH without the need to obtain planning permission as shown in Annex III of the paper, so as to address the concerns of the representers on rebuilding the existing NTEHs within the "GB" zone.

Representation No. R7

116. After further deliberation, the Board decided not to uphold R7 for the following reasons:

- (a) the "GB" zoning for Areas A and B was considered appropriate to retain their landscape character forming part of the slopes in Area 10 to the west of Tai Po Kau Headland; and
- (b) there was insufficient justification and evidence to support the proposal to rezone Areas A and B to "CA". As comparing with other "CA"

zones, these areas were less ecologically significant.

Representation Nos. R8 to R12

117. After further deliberation, the Board decided to partially uphold R8 to R12 by amending the Notes of the “GB” zone to allow any rebuilding of NTEH or replacement of an existing domestic building by a NTEH without the need to obtain permission from the Board as detailed in Annex III of the paper. The schedule of use for the “Green Belt” zone was to be amended as follows:

- (a) “House (rebuilding of New Territories Exempted House or replacement of existing domestic building by New Territories Exempted House only” was added as a Column 1 use; and
- (b) “House” in Column 2 was revised to “House (not elsewhere specified)” .

118. The Board decided not to uphold the remaining part of R8 to R12 for the following reason:

- the “GB” zoning was considered appropriate to retain the landscape character of the slopes in Area 10 to the west of Tai Po Kau Headland.

[Ms. Anna S.Y. Kwong returned to join the meeting at this point.]

Agenda Item 10

[Open Meeting (Presentation and Question Session only)]

Consideration of Representations and Comment to the Draft Ngau Tau Kok and Kowloon Bay Outline Zoning Plan No. S/K13/26
(TPB Papers 8822 and 8821)

[The hearing was conducted in Cantonese.]

Group 3: R6 to R1313

(TPB Paper No. 8822)

Presentation and Question Session

119. The following Members had declared interests on the item:

- | | |
|-----------------------|--|
| Mr. K.Y. Leung | - senior programme director, HKU SPACE |
| Dr. James C.W. Lau | - adjunct professor of HKU, Department of Civil Engineering |
| Prof. Edwin H.W. Chan | - visiting lecturer / teaching and external examiner to HKU and SPACE |
| Prof. S.C. Wong | - professor, Department of Civil Engineering, HKU & External Examiner, HKU SPACE
- had business dealings with Ove Arup and Partners Hong Kong Ltd. who represented R6 |

120. Members agreed that the Members who had declared interest due to their affiliation with the University of Hong Kong (HKU) were indirect and should be allowed to stay in the meeting, as they were not associated with the Department of Architecture and Department of Mechanical Engineering of HKU who were consultants of R6. Members also agreed that Prof. S.C. Wong's interest with Ove Arup and Partners Hong Kong Ltd. was indirect and remote and should be allowed to stay in the meeting.

121. As sufficient notice had been given to the representers and commenter to invite them to attend the meeting, Members agreed to proceed with the hearing of the representations in the absence of the other representers who had indicated that they would not attend or had made no reply.

122. The following Government representatives, the representer, the representers' representatives and commenter were invited to the meeting at this point:

Mr. Eric Yue	District Planning Officer/Kowloon, Planning Department (PlanD)
Mr. Richard Siu	Senior Town Planner/Kowloon, PlanD
Dr. Conn Yuen	Air Ventilation Assessment (AVA) Consultant, (CO ₂ nsulting Ltd.)

R6 - Oriental Generation Ltd.

Mr. Jacky Wong]	Representer's Representatives
Ms. Alice Wong]	
Prof. Stephen S.Y. Lau]	
Dr. Zhiwen Luo]	
Mr. Ibanez Gutierrez, Ricardo Andres]	
Mr. Zhang Zhidong]	
Ms. Joyce Tam]	
Mr. Ivan Lam]	
Mr. Clarence C.T. Chan]	
Ms. Yeung Wing Shan, Theresa]	
Ms. Karmin Tong]	
Ms. Kan Chung Sze, Sincere]	
Ms. Kan Ka Lo, Carol]	
Mr. Ng Pak Fung]	
Mr. Eric Yeung]	

R7 - Harmonizing Committee for the Joint Property Sale of Kai Tak Mansion
Blocks One to Four

Mr. Chung Siu Kong		Representer
Mr. Tsoi Chi Yin]	Representer's Representatives
Mr. Chan Kwok Wai]	
Mr. Wong Kwok Chun]	
Mr. Law Kai Fai]	

Mr. Ng Chi Wai]
Ms. Sharon Tsang]
Mr. Chris Tang]

R8 - Wong Kwok Wing

Mr. Wong Kwok Wing Representer

R22 - Siu Shi Wang

Siu Shi Wang Representer

R59 - Lau Kam Tim

Lau Kam Tin Representer

R99 - Lo Yee Kwei

Ms. Lo Yee Kwei Representer

R143 – Ho Chi Hung & Fan Oi King

Ms. Fan Oi King Representer

R146 - Chan Kam Mui

Ms. Chan Kam Mui Representer

R189 - Yiu Kam Wing

Mr. Yiu Kam Wing Representer

Hon. Leung Yiu Chung Representer's Representative

R207 - Diu Wai Yin

Ms. Diu Wai Yin Representer

Ms. Chen Shou Chu Representer's Representative

R304 - Chow Sau Yung

Ms. Chow Sau Yung Representer

Ms. Fan Hon Keung Representer's Representative

Plan (OZP) No. S/K13/26 incorporating amendments mainly to impose building height restrictions (BHRs) on various development zones outside of the Kowloon Bay Business Area (KBBA); to designate non-building areas (NBAs) and building gaps in various zones; and other zoning amendments was exhibited for public inspection under section 5 of the Ordinance. Upon expiry of the 2-month exhibition period on 19.1.2011, a total of 1,313 representations were received. On 28.1.2011, all the representations were published for public comments for three weeks until 18.2.2011 and one comment was received. However, 10 representers subsequently wrote to the Board indicating that they had not submitted the representations;

- (b) R6 to R1313 were related to the amendments to the Kai Tak Mansion site (the site). The site had an area of about 5,707m². It was an old private residential development with building age of about 50 years and located at 53 Kwun Tong Road, about 350m to the southeast of the MTR Choi Hung Station. It comprised four 7-storey residential blocks (about 27mPD at main roof level) with retail shops and workshops on ground floors. The site was surrounded by 3 historic buildings (namely the Grade I historic buildings of ex-Royal Air Force (RAF) Officers' Quarters Compound, the Grade 3 historic building of Sam Shan Kwok Wong Temple and the Grade I historic building of ex-RAF Headquarters Building), a school, 2 open spaces and 2 medium-rise public housing estates of Ping Shek and Kai Yip Estates respectively. The site consisted of four lots and the lease conditions restricted the height of any part of any message(s)/tenement(s) at the lots shall not exceed the level of the lawn of the ex-RAF quarters at the rear of the said premises (i.e. about 27.7mPD). However, there was no maximum gross floor area (GFA)/plot ratio (PR)/site coverage (SC) control under the leases;
- (c) Kai Tak Mansion was zoned "Residential (Group A)" ("R(A)") on the OZP and subjected to a maximum PR of 9 for a building that was partly domestic and partly non-domestic, of which the domestic part should

not exceed 7.5. A BHR of 110mPD was imposed for the site. Two 10m-wide NBAs along the north-eastern and south-eastern lot boundaries were designated and a 20m-wide strip of land in the middle of the lot was also demarcated as a building gap where no building should exceed a maximum BH of 15mPD;

R6

- (d) R6 opposed the BHRs, NBAs and building gaps of the Kai Tak Mansion site. The major grounds of representation were summarized in paragraph 2.2.1 of the paper and highlighted below:

Discriminatory and Unreasonable BHR

- (i) the overly restrictive control of the base scheme proposed by PlanD was counter-productive due to the increase in site coverage and would result in a development contrary to urban design objectives, diminished architectural design opportunity for innovative building and design improvement measures, less visual permeability to the Grade I historic building at its back, weaker performance in dispersing air pollutants and air flow, less diversity in building mass/form with less interesting BH profile, reduced daylight onto the podium roof of the site, adverse impacts on landscape provision and a prejudicial effect on environmental sustainability;
- (ii) the BHR imposed on the Kai Tak Mansion site was discriminatory and unreasonable. Much relaxed BHR of 180mPD was imposed for the 8 Clear Water Bay Road site, located only some 200m to the north of Kai Tak Mansion and 160mPD to 170mPD for the Choi Tak Estate, located some 200m to the east, both zoned “R(A)” . Besides, the “Open Space” (“O”) and “Government, Institution or Community” (“G/IC”) zones could also serve as important visual relief and

breathing space for the densely built residential developments in the surrounding area;

PlanD's Base Scheme based on Wrong Assumptions

- (iii) the base scheme proposed by PlanD had seriously underestimated the GFA requirement and was based on wrong assumptions. It had neglected the slope area for GFA calculation, the need for fire safety provisions i.e. a 6m setback of the non-domestic podium for EVA purpose, as well as the road setback requirements;
- (iv) Towers 1, 2 and 4 had to be setback to allow for the said requirements and thus PlanD's base scheme was unable to achieve the permissible development intensity of the site with a maximum PR of 9, of which the domestic PR should not exceed 7.5;
- (v) the slope area was excluded from the PR calculation for reason that it was in accordance with paragraph 3.3 of the Explanatory Statement (ES) attached to the OZP. It should be noted that the requirement in the ES was applicable only to those areas that carried no development right under the lease. The slope area within the various lots comprising Kai Tak Mansion were all PR and SC accountable under the leases;
- (vi) the GFA generated from the slope area might have to be assigned vertically and thus adding to the BH of PlanD's base scheme. The additional GFA and BH would far exceed the BHR of 110mPD and could not be considered as a minor relaxation of the BHR under section 16 of the Ordinance;

Legitimate Expectations

- (vii) the OZP restrictions should respect the legitimate expectations of residents and developers for future redevelopment of the Kai Tak Mansion site. Building plans were submitted in September 2010 based on the previous OZP without BHR, NBA or building gap restrictions, and the BHs of nearby residential developments (184.3mPD of 8 Clear Water Bay Road and 160mPD to 170mPD of Choi Tak Estate). The representer thus had a legitimate expectation for redevelopment up to the BH permitted as-of-right in the former OZP, which was the basis for the General Building Plan (GBP) submission;
- (viii) private property right should be fully respected in Hong Kong, in accordance with Article 105 of the Basic Law;

Uniqueness of the Site

- (ix) the OZP restrictions disregarded the uniqueness of the site. Consideration should be given to integrate the design of the site with the Grade I historic building of the ex-RAF Officers' Quarters Compound at its back to achieve visual and functional integration;
- (x) the 10m NBA adjoining the school was excessive, arbitrary and unnecessary. The ES of the OZP stated that the 10m NBA adjoining the school was to provide sufficient buffer to St. Joseph's Anglo-Chinese School. The part of the school site fronting Kwun Tong Road was designated as NBA under the lease and would not be affected by future development of the site. In fact, the school's main façade was facing south-west with the orientation towards their own NBA at Kwun Tong Road. The NBA was intended to be the width of a vehicular access only, which needed a width far less than 10m wide. It

was proposed that the NBA requirement for the non-domestic portion of the proposed redevelopment along the south-eastern boundary (i.e. the site's frontage abutting the school's open space) should be revised to 4.5m wide to allow for natural ventilation and site visual permeability from the school's open space;

- (xi) the BHR hindered building design to enhance visual amenity. R6's Visual Impact Assessment (VIA) and air ventilation study concluded that the PlanD's base scheme would only have very limited visual viewing angles towards the Grade I historic building at the rear and thus did not provide a proper 'visual and spatial relief';
- (xii) according to the Urban Design Guidelines (UDG), building permeability should be seen as a key factor for promoting air ventilation. Ventilation to the more immediate residential neighbourhoods would be improved with the provision of breezeways through the site. The large site coverage under PlanD's base scheme would not allow space between buildings for the free flow of air to enhance air permeability. It would block views from the opposite side of Kwun Tong Road towards the Grade I historic building and the green backdrop of the Ping Shek Playground;

Visual Amenity and Greening Opportunities

- (xiii) the site was located inland and could hardly be seen from the two public vantage points at the new wing of the Hong Kong Convention and Exhibition Centre and Quarry Bay Park;
- (xiv) there was a local view corridor towards the Lion Rock from the view point at the pedestrian footbridge near Choi Ying Place. PlanD's base scheme with a larger SC would block this

mountainous vista. R6's scheme would better achieve the planning intention by opening up more of the view towards Lion Rock along the local view corridor;

- (xv) the BHR limited opportunities to achieve the Government's greening policy and measures to foster a quality and sustainable built environment. R6's scheme would provide more daylight all-year-round and offered more opportunities for planting of vegetations within the site; and

Private Initiated Urban Development

- (xvi) the amendments to the OZP delayed a private initiated urban redevelopment project. The site, with majority ownership that would be acquired by the developer through the joint sale agreement, large size of the site, good location, good configuration and readiness for implementation, offered opportunities for redevelopment and acted as a catalyst to redevelopment of old and dilapidated residential buildings as well as providing physical and environmental 'facelift' in the area;

(e) R6 proposed to:

- (i) retain the 10m-wide NBA along the north-eastern lot boundary;
- (ii) add a 15m-wide strip of land to the said NBA where no building should exceed the BH of 20mPD;
- (iii) add the requirement to allow permeability of no less than 60% along the south-western frontage of the lot boundary at the level between 20mPD and 35mPD;
- (iv) revise the building gap requirement to require the provision of a

void of no less than 1,000m² on the building façade with a minimum width of 10m-wide above the level of 35mPD;

- (v) revise the BHR to 203mPD; and
 - (vi) revise the NBA requirement for the non-domestic portion of the proposed development along the south-eastern boundary to 4.5m wide;
- (f) PlanD's responses to the representation and the representer's proposals were summarized in paragraphs 4.4.1 and 4.5.1 of the paper and highlighted as follows:

Discriminatory and Unreasonable BHR

- (i) the BHR, NBAs and building gap for the Kai Tak Mansion site were considered necessary and appropriate. Flexibility for reasonable innovation in building designs and improvement had been allowed. The restrictions were based on the findings of the AVA Study and the resultant development was able to accommodate the PR of 9 for the "R(A)" site whilst commensurate with the BH concept and profile of the area, as well as taken into consideration the impact on visual aspects on the surrounding area due to the redevelopment. The BHRs had taken into account the proposed BH profile for the residential developments east of Kwun Tong Road which mainly followed the topography by stepping up gradually eastward towards the Jordan Valley with no intrusion of the Jordan Valley ridgeline. Kwun Tong District Council (KTDC) had been consulted and considered that the BHRs for buildings along Kwun Tong Road should be strictly implemented to improve residents' living conditions and the BHR for Kai Tak Mansion and buildings in its vicinity should be lowered;

- (ii) Choi Tak Estate and 8 Clear Water Bay Road with higher BHRs quoted by R6 were different from Kai Tak Mansion in context and site formation level. Choi Tak Estate comprised two platforms with site formation levels at 41mPD and 60.5mPD respectively. The BHR of 160mPD and 170mPD for the two platforms would allow an absolute BH of 119m and 109.5m respectively. On the other hand, the site formation level of Kai Tak Mansion was about 5mPD, the BHR of 110mPD would allow an absolute BH of 105m which was similar to that of Choi Tak Estate. The development of 8 Clear Water Bay Road at 184mPD was to reflect the approved planning scheme (No. A/K13/160). The development was subject to a special building design as it had to accommodate a park and ride facility which had 4 levels of podium public car park built on top of two levels of public transport interchange, resulting in a podium height at 43.9mPD;
- (iii) depending on the design, an excessively tall building deviating from the BH profile and concept for the area surrounding Kai Tak Mansion would render the “O” site, i.e. the Ping Shek Playground in the further northeast; and the “G/IC” sites such as the Sam Shan Kwok Wong Temple in the northwest, the primary school in the southeast and the Grade I historic building of the ex-RAF Officers’ Quarters Compound in the immediate northeast being subjected to adverse air-ventilation, visual and daylight penetration impacts, in particular, if the redevelopment would be tall and wide. The BHR of 110mPD for the Kai Tak Mansion site with NBAs and building gap enabled provision of vertical and horizontal space and was considered reasonable;
- (iv) there were provisions in the Notes of the “R(A)” zone for planning application for minor relaxation of BHR, NBAs and building gap restrictions. The OZP therefore allowed flexibility for buildings with architectural merits;

Base Scheme based on Wrong Assumptions

- (v) PlanD's base scheme was conceptual and indicative for air ventilation assessment purpose. It was intended to demonstrate the relationship between the proposed development intensity and the possible resultant built form and BH, as well as the possible effects of the NBAs and building gap. There could be many different building designs for the redevelopment of Kai Tak Mansion. PlanD's calculations showed that Kai Tak Mansion with the BHR, NBAs and building gap could accommodate the PR of 9 in a site area excluding the slope area and providing for road setback along Kwun Tong Road, as well as provision of an EVA surrounding the site. The exclusion of the slope from the PR calculation was in accordance with Chapter 2 Residential Densities of the Hong Kong Planning Standards and Guidelines (HKPSG) and paragraph 3.3 of the ES. Should the site be subjected to special constraints that limited its ability for redevelopment up to PR 9, the applicant could apply with full justifications for minor relaxation of BHR and other restrictions or submit a s.12A application for amendments to the OZP;
- (vi) the site was currently subjected to a BHR under the lease that "no part of any building to be erected on the lot shall exceed the level of the lawn of the ex-RAF Quarters at the rear of the site" (i.e. about 27.7mPD). There were no specified maximum GFA, PR or SC restrictions under the leases. According to PlanD's available building information, the existing total GFA of Kai Tak Mansion was about 17,687m² (domestic GFA of 17,314m² and non-domestic GFA of 373m²) and the estimated PR was about 3.7 (excluding the slope area). With the modern building code and given the BHR of about 27.7mPD under the leases, redevelopment potential of the lot in accordance with the

current leases would be lower than the existing PR of 3.7 (excluding the slope area) or even lowered to 3.1 if the slope area was included in the PR calculation, and much lower than the maximum PR of 9 permitted under the OZP;

- (vii) PlanD's base scheme was based on the prevailing planning standards and requirements. It should be noted that to effect the BHR of 110mPD and PR of 9 allowed for the site under the OZP, lease modification was required. It was considered that the imposition of BHR, the demarcation of NBAs and building gap etc. should be incorporated into the lease conditions during lease modification;

- (viii) regarding the slope area, it had been clearly stated in the HKPSG and the ES of the OZP that the slope area should not be GFA accountable. According to paragraph 2.1 of Chapter 2 Residential Densities of HKPSG, PR was defined as the ratio between the GFA (GFA as defined under the Building (Planning) Regulations (B(P)R)) of a building and the area of the site on which it was erected (i.e. the net site area) and the net site area did not include any slopes. In addition, paragraph 3.3 of the ES for the OZP stated that the OZP was to show board land use zonings. There would be situations in which strips of land not intended for building development purposes and carried no development right under the lease, such as the areas restricted for ... slope maintenance..., were included in the residential zones. The general principle was that such areas should not be taken into account in PR and SC calculations". As such, it was considered that the slope area should not be GFA accountable and such requirement would be incorporated in the lease during the lease modification stage;

- (ix) regarding the requirements for providing the road setback along Kwun Tong Road and the EVA surrounding the site, it should

be noted that PlanD's indicative conceptual base scheme had a BH of 105mPD and had not yet reached the maximum BHR of 110mPD under the OZP. As such, there was room for accommodating different building and fire safety requirements. It was estimated that after taking into account the setback and EVA, the BH would be about 109mPD in achieving the maximum PR under the OZP. However, to cater for site-specific circumstances and schemes with planning and design merits, there was provision for application for minor relaxation of BHR, NBAs and building gap under the OZP. Each application would be considered by the Board on its individual merits based on the set of criteria set out in the ES of the OZP;

Legitimate Expectations

- (x) one of the principles for the overall BH of the Area was that the development right as permitted under the OZP should be respected. The imposition of BHRs did not affect the maximum PR or GFA permitted under the OZP. Besides, it should be noted that the Kai Tak Mansion was subject to very stringent height restriction under the leases (i.e. about 27.7mPD, which was the existing BH). The 110mPD BHR for the site on the OZP was more lenient than the BHR under the lease. In this regard, the BHR would not deprive owners' existing development right;

- (xi) the existing tall buildings in the Ngau Tau Kok area (i.e. Choi Tak Estate) surrounding Kai Tak Mansion were of similar absolute height. As for 8 Clear Water Bay Road, the BHR was to reflect the existing BH which was based on the approved planning application (No. A/K13/160) for a special park and ride cum residential development scheme;

- (xii) it should be noted that the conditions in the leases for the Kai Tak Mansion site were drawn up about 50 years ago, which might not be able to reflect the latest circumstances and planning intention of the Area. The stipulation of BHRs, NBA and building gap in the OZP had taken into account the UDG and the AVA Study. The UDG had been drawn up with extensive public consultation and had the support of the public. The restrictions on the OZP would need to be observed in any lease modification for the site;

- (xiii) according to legal advice, the absence of any previous planning restrictions and the height of the residential developments nearby did not seem sufficient to give rise to a legitimate expectation that a site could not be subjected to any restrictions in future or that any height to be allowed must be similar to those of the surrounding buildings. Further, there seemed no basis to suggest that, on the basis of legitimate expectation, the Building Authority (BA) should disregard the draft OZP in considering the building plans as the BA was under an obligation to consider the plans submitted according to the law applicable at the date when he performed the statutory duty and, under section 16(1)(d) of the Buildings Ordinance, the BA might refuse approval where the carrying out of the building works would contravene any approved or draft plan prepared under the Town Planning Ordinance;

- (xiv) with regard to R6's claim for protection under Basic Law Article 105 in respect of the right of property redevelopment potential, there were reasonable arguments that the imposition of the restrictions under the draft OZP would be consistent with Basic Law Articles 6 and 105 because the restrictions would unlikely amount to deprivation under Basic Law Article 105 or disproportionate interference with the property of the representer concerned;

- (xv) the protection of property rights under Articles 6 and 105 of the Basic Law would unlikely cover the protection of “a right in public law”, that was, in the context of the present case, the right to have the relevant building plans considered by the BA according to law;

Uniqueness of the Site

- (xvi) the OZP restrictions had taken into account the location and site context of individual sites and their vicinity. In formulating the BHR, NBAs and building gap restrictions for the Kai Tak Mansion site, the intention was to open up the views towards the Grade I historic buildings at the back, i.e. the ex-RAF Officers’ Quarters Compound and views from the other side of Kwun Tong Road. It was also the planning intention to create a compatible setting for the historic and low to medium-rise buildings in the area, including the Grade I historic building, temple and the adjoining school, as well as those of medium height at Ping Shek Estate to the further north and Kai Yip Estate to the further west (both with BHRs at 80mPD and 100mPD). Other factors taken into consideration included the air-ventilation obstruction on the adjoining developments, the overshadowing and dwarfing effects on the surrounding and the historic building in particular. In this regard, AMO considered the restrictions to be an improvement that the Grade I historic building would be more visible to the public at street level;
- (xvii) the Grade I historic building was unique in that it formed part of the wider cluster of heritage features in the vicinity of the Kai Tak Mansion site, which included the ex-RAF Officers’ Quarters Compound, ex-RAF Headquarters Building on the other side of Kwun Tong Road and Sam Shan Kwok Wong Temple. The former two historic buildings could be regarded as important

remains of the history of the ex-RAF base in Kai Tak, while the latter formed part of the culture of the local community;

- (xviii) the 10m NBAs in the north-eastern and south-eastern boundaries were to create a buffer from the Grade I historic building and school building respectively. Though the lease governing the school site had specified a NBA at the Kwun Tong Road frontage, the 10m NBAs would be necessary both to avoid air-ventilation and visual obstruction due to the redevelopment of Kai Tak Mansion that might result in a wall of building adjoining the school, create overshadowing and dwarfing effects to the existing condition. Upon redevelopment of the school in future, the NBA in the lease might not be retained;
- (xix) PlanD's AVA consultant advised that the AVA report submitted by R6 was a brief exploratory exercise, and had not followed the Technical Circular No. 1/06 for AVA issued jointly by the then Housing, Planning and Lands Bureau and Environment, Transport and Works Bureau;

Visual Amenity and Greening Opportunities

- (xx) apart from the protection of ridgeline and view from new wing of the Hong Kong Convention and Exhibition Centre and Quarry Bay Park, the BHRs had been formulated based on an overall BH concept and other relevant considerations, including the existing BH profile, topography, site formation level, local characteristics, the foothill setting, compatibility with the surrounding areas, predominant land uses and development intensity, air ventilation consideration and visual impact. In line with the UDGs, a stepped height concept progressively ascending from the low site formation level of Kwun Tong Road uphill to Jordan Valley ridgeline had in general been

adopted. For the Kai Tak Mansion and other development sites along Kwun Tong Road with lower formation level, a similar absolute BH in meters but lower overall mPD had been adopted to maintain a stepped BH profile. A balance had been struck between public aspirations for a better living environment and private development right;

- (xxi) the BHRs were drawn up to provide better planning control on the BH of development/redevelopment as there was a tendency to develop high-rise buildings in the Area to maximise view. These high-rise developments were out-of-context in the locality and had negative impacts on the visual quality of the Area, which also violated the stepped BH profile and views to ridgelines and mountain backdrops from major local view points;
- (xxii) with the adoption of two towers and void podium deck design, R6's scheme could allow better visual permeability from certain viewing points. However, the BH of 203mPD would neither be compatible with the surrounding BHs nor the overall BH profile. The two high-rise towers of 203mPD were considered out-of-context for the view towards Lion Rock along the local view corridor at the pedestrian footbridge near Choi Ying Estate. While slimmer building might allow visual permeability, there should always be a balance between BH and mass in relation to the surrounding context and the overall BH profile. The surrounding area along Kwun Tong Road comprised buildings up to 80mPD or 100mPD (such as Ping Shek Estate with absolute BH of 73.4m/90.1m and Kai Yip Estate with absolute BH of 74.9m/94.9m), or the less than 40mPD GIC buildings including the adjoining schools and the Grade I historic building at the back as well as Kai Tak Mansion itself. Further uphill was the recently completed development of Choi Tak Estate of up to 154mPD or 174mPD (absolute BH of 109.5m/119m);

- (xxiii) deletion or piecemeal increase of BHRs for individual sites as proposed by R6 would undermine the integrity of the height band and jeopardise the coherency of the stepped BH profile which could result in proliferation of high-rise developments;
- (xxiv) greening ratio for individual sites was not merely dependent on SC but on design of the scheme and site characteristics. A balance should be struck between BH, mass and greening ratio. A mere achievement of lower SC and higher ratio of at-grade greening at the expense of an out-of-context tall building was not acceptable;

Private Initiated Urban Redevelopment

- (xxv) the amendments to the OZP mainly involved the incorporation of BHRs, which were intended to avoid developments/redevelopment with excessive BH. In formulating the BHRs for the Kai Tak Mansion site, it had been made sure that upon incorporation of the restrictions, the site would be able to accommodate the development intensity as permitted on the OZP;
- (xxvi) the BHRs had provided reasonable scope for redevelopment while avoiding out-of-context buildings. The imposition of BHRs would not result in a decrease in the development intensity permitted on the OZP, and hence would not jeopardise the incentive for private redevelopment. The BHRs had struck a balance between community aspiration for a better living environment and private development right;

[Dr. C.P. Lau left the meeting at this point.]

R6's Proposals

(xxvii) the Chief Architect/ASC, Architectural Services Department (CA/ASC, ArchSD) advised that judging from the information and photomontages provided by R6, it appeared that the towers of the proposed scheme would be higher than the existing residential and low-rise buildings in its immediate surroundings. The provision of 35m high clubhouse floors of the proposed scheme should be justified. Architectural refinement might be considered to mitigate the visual impact of 35m high column clusters supporting the two towers. In addition, the bridge connecting the clubhouses might obstruct the visibility towards the Grade I historic building and might be reviewed. Justifications might be required for the 3.3m high residential floor-to-floor height;

(xxviii) according to Chief Town Planner / Urban Design and Landscape (CTP/UD&L), the BH of 203mPD would neither be compatible with the surrounding BH nor the overall BH profile. The façade of about 198m tall and over 80m wide would be very imposing and its overshadowing and dwarfing effect on the adjacent low-rise buildings, in particular the heritage features, would be substantial. According to the visual illustrations provided by R6, despite the relatively slimmer building shape which might have relatively less physical blockage of view, the two towers of 203mPD was considered out-of-context for the view towards Lion Rock along the local view corridor from the pedestrian footbridge near Choi Ying Place. While slimmer building might allow visual permeability, there should always be a balance between BH and mass in relation to the surrounding context and the overall BH profile; and

(xxix) CTP/UD&L considered the column clusters supporting the 2 residential towers and clubhouse would lift up the overall BH of

the redevelopment by an additional 35m, which was considered unnecessary and excessive, resulting in the incompatible and out-of-context BH, and imposing facade with overshadowing and dwarfing effects. Such design should be justified and the bridge connecting the clubhouses might obstruct the visibility towards the historic building;

R7 to R1313

- (g) R7 to R1313 opposed the BHR, NBAs and building gap restrictions or the BHR only. The major grounds of representations were summarized in paragraph 2.2.2 of the paper and highlighted as follows:

Town Planning Board and Government Decisions

- (i) the power of the Board was excessive and non-transparent. The decisions of the Board were unreasonable, depriving residents' property right and resulting in unfair treatment with favouritism towards other developers. There was no proper guidance or reason for the development restrictions. The Board should provide detailed visual impacts report;
- (ii) the residents had paid effort to reach the consensus for joint sale agreement with the developer (R6). The Government should be sympathetic to the residents and residents' interests should be respected. The Government should have taken into consideration whether the building was under acquisition. Lease provisions should be respected;
- (iii) the urban redevelopment policy was confusing. No support had been given to the owners on the redevelopment. The development restrictions, which were not necessary, had deprived the residents' redevelopment right;

- (iv) restrictions were not set during the five years when the building was put up for tender but stipulated only after the developer had purchased the Kai Tak Mansion site. No public consultation was conducted and no strong justifications and detailed study were provided. It was mere illogical planning based on imagination and was against public interests;
- (v) a balance should be struck between redevelopment and preservation of historic building. Old and new buildings, high-rise and low-rise buildings should be allowed to co-exist;

Legitimate Expectations

- (vi) negotiation with the developers started in March 2010 and agreement on sale and purchase was completed on 15.7.2010. The developer had paid 10% down-payment and submitted GBP on 30.9.2010 under the control of the previous OZP. The submitted GBP had reflected the legitimate expectations of the residents and the developer. The sudden gazettal of the draft OZP with statutory effect was unreasonable and might lead to withdrawal of the developer from the redevelopment;

View Corridor and Wrong BHR

- (vii) Kai Tak Airport had been relocated and the area was not adjoining the harbour-front but by the side of a hill slope. Thus, there was no strong justification for BHR. The Government should fully utilize land resources and allow redevelopment of Kai Tak Mansion into high-rise buildings;
- (viii) the view corridor towards Lion Rock would not be adversely affected regardless of whether Kai Tak Mansion was redeveloped or not. The importance of the local view corridor was a subjective matter. Nobody would look at Lion Rock

from this narrow view corridor. It was merely a pedestrian path leading to the MTR station. Preservation of this view corridor was not justified;

- (ix) it was unfair that public housing estate could breach the ridgeline of Lion Rock but redevelopment on the Kai Tak Mansion site could not. Kai Tak Mansion was surrounded by wall-type buildings such as Kai Yip Estate, Ping Shek Estate, Choi Ying Estate, Choi Tak Estate, Richland Gardens, Tak Bo Garden and 8 Clear Water Bay Road. These wall-type buildings up to 180mPD in the surroundings had breached the ridgeline of Lion Rock and created adverse air ventilation, light penetration and visual impacts. Whereas redevelopment at the Kai Tak Mansion site would not affect views of the Lion Rock ridgeline nor result in any adverse impacts;

Air-Ventilation, NBAs and Building Gap

- (x) the BHR, NBAs and building gap restrictions were excessive, deprived redevelopment potential, confined design flexibility and violated the leases governing the lots which allowed full utilisation of the lots. They also deprived the right for in-situ redevelopment of Blocks 2 and 3. There was ample air-ventilation and setting an NBA at the slope area was not conducive to redevelopment;
- (xi) no justification for opening up the vista towards the Grade I historic building at the back which was a mundane white building. The building was not open to public and no adverse impact would arise. The Grade I historic building should be relocated elsewhere similar to the treatment of Murray Building in Stanley so that it would not affect the redevelopment of Kai Tak Mansion. In fact, the building should be demolished as it was a colonial building;

- (xii) the Grade I historic building had already been affected by the existing Kai Tak Mansion. Redevelopment of Kai Tak Mansion with a sizeable area of about 6,000m² as a landmark would be compatible with the surrounding development with no additional impact. Development of high-rise buildings would not necessarily result in wall-type buildings and might allow air-ventilation in the area. Such buildings would not block the local view corridor towards Lion Rock from the footbridge near Choi Ying Place;

Living Conditions and Costs of Restoration

- (xiii) there was a need to improve the living conditions of Kai Tak Mansion residents, especially the elderly and those with chronic illness. The 50-year old building had no lift and was in dilapidated condition. The cost of renovation and insurance was high and reinstating the slope at the back was very costly. Acquisition by a developer would improve residents' living conditions. It was difficult to obtain consent from 80% of the residents and it was now opportune time for redevelopment of Kai Tak Mansion. Redevelopment would improve the general environment;

Consent to Sale and Down-Payment

- (xiv) residents had obtained 10% down-payment from the developer. The development restrictions might adversely affect the redevelopment viability and lead to withdrawal of the developer. There might be a need to return the down-payment by the residents which would adversely affect residents' family budget and slow down redevelopment pace. This was unfair to individual property owners. Some residents had already used the sum for purchasing a new apartment with modern facilities

and for renovation of the new apartment. The development potential valuation report submitted by R7 indicated that the development restrictions would reduce property value;

- (xv) Block 3 of Kai Tak Mansion was the subject of a court order requiring the winding up of the Incorporated Owners of Kai Tak Mansion (Block 3). The inability to complete the property title transaction would result in severe financial loss to the owners;

Housing Needs

- (xvi) housing was a daily necessity. Hong Kong was in need of housing supply. The Government should fully utilise land resources and allow high-rise buildings on the Kai Tak Mansion site for supply of small size apartments; and

Revitalisation of Surrounding Area

- (xvii) East Kowloon should be revitalized as there was a lack of open space and other supporting facilities and infrastructure. Besides, the number of residents would be increased if developments could be built taller. The redevelopment would create synergy effects with and be beneficial to the historic buildings in the area. Redevelopment of Kai Tak Mansion would not adversely affect Sam Shan Kwok Wong Temple. Redevelopment potential of the district should not be adversely affected;
- (h) the proposals of representation Nos. R7 to R1313 were:
 - (i) not to impose the amendments to the OZP (R7-R16, R18-R28, R30-R35, R37-R73, R75-R219, R221-R292, R294-R370, R372-R544, R546-R819, R821-R830, R832-R1049, and R1058-R1063);

- (ii) to exercise development control through section 16(1)(g) of the Buildings Ordinance (R7-R16, R18-R28, R30-R35, R37-R73, R75-R219, R221-R292, R294-R370, R372-R544, R546-R819, R821-R830, R832-R1050);
 - (iii) to revise the BHR for Kai Tak Mansion up to 160 - 180mPD (R17) or 180mPD (R1043);
 - (iv) to revise the BHR to add an additional 28 storeys or more for the Kai Tak Mansion site (R74);
 - (v) to delete the BHR on the Kai Tak Mansion site (R1066-R1308);
and
 - (vi) to open up the ground floor of the site for public use and reduce the floor area for those floors above 110mPD (R1313);
- (i) PlanD's responses to the grounds of representations and the representers' proposals were summarized in paragraphs 4.4.2 and 4.5.2 to 4.5.5 and highlighted as follows:

Town Planning Board and Government Decisions

- (i) the representers' views on the decisions of the Board and proposals of PlanD were noted. However, with the BHR, NBAs and building gap restrictions imposed on the site, a PR of 9 as stipulated on the OZP for the "R(A)" zone could still be accommodated. The BHR was commensurate with the stepped BH profile in the wider area and had struck a balance between public aspirations and the private owners' entitlement;
- (ii) it was an established practice that proposed amendments involving BHR should not be released to public prior to

gazetting to prevent premature release of information before exhibition of the amendments which might prompt an acceleration of submission of building plans by developers to establish 'fait accompli', hence defeating the purpose of imposing the BHR. 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 to seek representations and comments on the draft OZP. During the exhibition period, PlanD also provided briefings on the OZP amendments to the KTDC. The 2-month statutory exhibition period was considered adequate for consultation with the public, while maintaining the efficiency of the process;

- (iii) a balance had been struck between public aspiration for a better living environment and private development right when determining the development restrictions;

Legitimate Expectations

- (iv) same responses as stated in paragraphs 124 (f) (x) to (xv) above;

View Corridor and Wrong BHR

- (v) according to the UDG in Chapter 11 of the HKPSG, the views to special landmarks and features (such as ridgelines, water body, countryside and other natural features) should be functionally protected so as to avoid broken views and additional view access should also be maximised to strengthen visual permeability in the dense city form. The visual access to Lion Rock and major ridgelines should be enhanced to avoid losing these features which formed 'the image of Hong Kong';
- (vi) in addition to the view corridors towards the Kowloon ridgelines,

such as Lion Rock, Tsz Wan Shan and Kowloon Peak, from the established vantage points at Hong Kong Island, suitable viewing points and local view corridors in a more local context had been considered on a case-by-case basis. To identify a specific viewing point, there were 3 main considerations as recommended in the Study on Urban Design Guidelines for Hong Kong: the viewing location should be important either by public consensus or as demonstrated by public attendance; the object of the view should be intrinsically important; and it was important to have a view from the viewpoint to the object. Accordingly, a local view corridor towards Lion Rock from publicly accessible places, viewing from the footbridge near Choi Ying Place, had been identified for the Ngau Tau Kok & Kowloon Bay area, so as to preserve the panoramic views and natural backdrop of the metropolitan part of the city;

- (vii) the local view corridor opened up the mountainous vista of the Lion Rock in the north. When reviewing the overall BH profile as stipulated on the statutory plans for the districts and determining the BHs for specific developments/redevelopments falling within the local view corridor, due respect had been given to preserving the natural setting of the Lion Rock and the views to it from the identified viewing points as far as possible;
- (viii) local view corridor was only one of the considerations in setting the BHRs, NBAs and building gap. Other rationales had also been adopted for the development restrictions, such as keeping a stepped BH profile in the area, compatibility with the surrounding buildings, including the Grade I historic building at the back and the school in the southeast as well as the need to maintain the air-ventilation in the area upon redevelopment;

Air Ventilation, NBAs and Building Gap

- (ix) the AVA by expert evaluation, which was particularly useful for a large area, was considered an appropriate approach for overall review of BH for the Area. The AVA had been carried out in accordance with the Technical Circular on AVAs promulgated by the Government. The AVA had assessed the existing wind environment in the Area and made a qualitative evaluation of the likely impact of the developments in accordance with stipulated BHRs on the pedestrian wind environment, including identification of areas of concern and recommending possible measures to address the potential problems. Justifications for the specific NBAs and building gap requirement were clearly set out in the AVA report and the relevant MPC paper;

- (x) the CTP/UD&L considered that heritage features provided important landmarks in the city and effort should be made to create a suitable setting for the heritage features. According to the UDG, BH of neighbouring developments should respect and be lowered towards the heritage features and the scale and proportion of the new development should also be compatible with the features in order to create a harmonious setting. Taking into consideration the development rights and potential of the subject site, the BHR of 110mPD was intended to minimise overshadowing and dwarfing effect of the proposed high-rise development on the adjoining low-rise buildings, in particular the Grade I historic building of the ex-RAF Officers' Quarters and Compound;

- (xi) the NBAs served to provide sufficient buffers for the neighbouring Grade I historic building and the school. These NBAs, as supported by the AVA Study, would encourage the downdraft of wind and minimize adverse air ventilation impact on the surrounding low-rise buildings. They were also useful

in reducing the possible wall effect;

- (xii) the building gap would encourage the prevailing winds to permeate, reduce the adverse visual impact on the sensitive receivers at ex-RAF Officers' Quarters Compound and partially open up the visibility of the Grade I historic building to the public at street level;

Living conditions and costs of renovation; Consent to Sale and Down-Payment; Housing Needs; and Revitalisation of the Surrounding Area

- (xiii) in formulating the BHR, NBAs and building gap for the Kai Tak Mansion site, it had been ensured that upon incorporation of the restrictions, the development site would be able to accommodate the development intensity as permitted under the OZP. The BHR had provided reasonable scope for redevelopment while avoiding out-of-context buildings. The imposition of BHRs would not result in a decrease in the development intensity permitted under the previous OZP, and hence would not jeopardise the incentive for private redevelopment. The BHR had struck a balance between community aspiration for a better living environment and private development right;
- (xiv) the condition survey report and the diagnostic structural survey report submitted by R7 had been referred to the Buildings Department for consideration of any follow up action that might be necessary under s.26 of the Buildings Ordinance regarding dangerous buildings. Regarding the development potential valuation report submitted by R7, the District Lands Officer/Kowloon East advised that he had reservation on the report's estimated land premium of \$2,300M for the 203mPD redevelopment and the \$1,403M land premium assuming the 110mPD BHR. Assessment and difference in land value

would be subjected to finalisation of the redevelopment proposal and payment of land premium to the Government;

R7 to R1313's Proposals

- (xv) the amendment items on BHR, NBAs and building gap for Kai Tak Mansion were necessary in statutory land use planning control to allow effective air-ventilation in the surrounding area as recommended in the AVA Study, maintaining the stepped BH profile in the area, opening up a vista towards the Grade I historic building at the back and keeping a buffer with this historic building and the adjoining school. As such, the development restrictions on the Kai Tak Mansion site were appropriate;
- (xvi) regarding the proposal to control through s.16(1)(g) of the Buildings Ordinance, i.e. grounds on which approval or consent might be refused for reasons that the carrying out of the building works shown thereon would result in a building differing in height, design, type or intended use from buildings in the immediate neighbourhood or previously existing on the same site, it should be noted that the Buildings Ordinance and the Town Planning Ordinance were two separate regimes governing different aspects. It was not appropriate to exercise BHR, NBAs and building gap control through s.16(1)(g) of the Buildings Ordinance;
- (xvii) any uplifting of the BHR or removal of the NBAs/building gap should be supported by strong justifications. No justifications and illustrations had been provided to substantiate the proposals of increasing the BHR up to 180mPD (R17 and R1043) and to add at least 28 additional storeys (about 88m, taking 3.15m as the floor-to-floor height) (R74);

- (xviii) any uplifting of the BHR, though with an addition of a ground floor open space area (R1313), should be subjected to adequate justifications and illustrations. The amendments on BHR, NBAs and building gap were necessary to be stipulated as a whole to maintain the stepped height profile in the area, opening up a vista towards the Grade I historic building at the back and keeping a buffer with this historic building and the adjoining school; and

- (xix) a slimmer building might provide a wider view corridor towards Lion Rock but would undermine the planning intention for a stepped BH profile and compatibility with surrounding areas. While opening up the ground floor for public use (R1313) might have merits, it would have implication on the BH if the development intensity remained unchanged and might lead to adverse air ventilation;

CI

- (j) C1 supported R7 on grounds that:
 - (i) the 50-year old Kai Tak Mansion was dilapidated and in need of restoration. Consent to sale from 82% owners had been obtained and most of them had received down-payment. BHR, NBAs and building gap restrictions would adversely affect the developer's intention to acquire Kai Tak Mansion, which in turn would affect owners' family budget;

 - (ii) the site was easily accessible and was suitable for residential use. If it could not be redeveloped now, it might take a long time before another redevelopment opportunity arose, thus wasting precious land resources; and

 - (iii) the BH control should be reconsidered so that the site could be

redeveloped as a whole with due regard to conservation;

- (k) PlanD's responses to C1's proposal was that it was the intention for the "R(A)" zone of Kai Tak Mansion to be redeveloped as a whole. Given the tendency to maximize the best view with taller buildings, and at the same time to capitalize the land value of the lower floors by designing a 100% site coverage commercial podium under B(P)R to 15m, a development without the BHR, NBAs and building gap restrictions would be bulkier and would adversely affect the Grade I historic building at the back of the Kai Tak Mansion site and the adjoining school; and

PlanD's Views

- (l) R6 to R1313 should not be upheld.

[Mr. K.Y. Leung returned to join the meeting at this point.]

125. The Vice-chairman then invited the representers, the representers' representatives and commenter to elaborate on their representations and comment.

R1307 - The Resident Union of Ping Shek Estate Mr. Ho Kwok Yin (Chairman)

126. Mr. Ho Kwok Yin made the following main points:

- (a) The Resident Union of Ping Shek Estate represented over 13,000 residents in Ping Shek Estate;
- (b) they supported redevelopment on the Kai Tak Mansion site into a landmark building. The redevelopment could create synergy with the heritage resources being preserved. The redevelopment would revitalise the local economy of the Ping Shek Estate, Kai Yip Estate, Richland Gardens and the Kowloon Bay areas;

- (c) the Sam Shan Kwok Wong Temple should be developed into another temple attraction like the Wong Tai Sin Temple. That would help to relieve pressure on the busy Wong Tai Sin Temple and create another local attraction;
- (d) other than some basic planning considerations such as daylight, air ventilation, visual amenity and traffic issues, there should not be BHR on the site;
- (e) they supported the preservation of heritage resources in the local community. The Sam Shan Kwok Wong Temple, the ex-RAF Officers' Quarters Compound and the ex-RAF Headquarters Building (Caritas Family Crisis Support Centre) should be preserved and revitalised into an attractive heritage link for the district; and
- (f) the Board was urged to take an open and active role in facilitating the Kai Tak Mansion redevelopment and to help the residents.

R189 – Yiu Kan Wing

(Hon. Leung Yiu Chung)

127. The Hon. Leung Yiu Chung made the following main points:

- (a) Kai Tak Mansion was old and dilapidated with a building age of almost 50 years. Residents wanted to move out and improve their living conditions. It was necessary to ensure the timely redevelopment of the old buildings to avoid the reoccurrence of the Ma Tau Wai building collapse incident;
- (b) the joint sale agreement for redevelopment of Kai Tak Mansion was signed by residents in July 2010. It was the legitimate expectation of both the residents and developers that redevelopment on the site could proceed on the basis of the restrictions under the approved OZP No.

S/K13/25 valid at the time, i.e. with no BHR;

- (c) it was not reasonable to amend the OZP to incorporate new restrictions with no prior consultation. The public should be notified of any up-coming proposed amendments to OZPs. For instance, Government had announced the effective date of the new practice notes on sustainable building design in advance such that developers could have enough time to understand and familiarise with the new requirements. The proposed increase in first registration tax for private cars and Government's consideration of exempting transactions made before the budget speech were examples of advance notice of new government policies;
- (d) the legal advice quoted by PlanD that the absence of any previous restrictions was insufficient to give rise to a legitimate expectation and that the imposition of restrictions under the OZP would be consistent with the Basic Law were not supported by any reasons; and
- (e) in light of the above, the Board was urged to uphold the representations.

[Mr. Benny Wong left the meeting at this point.]

R610 – Law Fuk Wah

(Hon. Wong Sing Chi)

128. The Hon. Wong Sing Chi made the following main points:

- (a) PlanD had explained that higher BHRs were imposed for sites at higher site levels, such as 8 Clear Water Bay Road and Choi Tak Estate. However, it was difficult to understand why site levels should have a bearing on the BHRs i.e. why sites at lower site levels had to be subjected to lower BHRs;
- (b) he had lived in Kowloon City for more than 50 years and he opined that there were open views of Lion Rock elsewhere within Kowloon City.

Hence, the imposition of BHR for the subject site in order to retain the view of Lion Rock from one single point (i.e. at the footbridge near Choi Ying Place) was not justified;

- (c) there was no conflict between preservation of historic buildings and their co-existence with new high-rise developments, such as the example of Haw Par Mansion and the Legend at Tai Hang Drive;
- (d) it appeared that PlanD's base scheme proposed at 110mPD would create more adverse air ventilation impacts at the pedestrian level than R6's scheme. The developer's scheme might not perform as well for air ventilation at a higher level, but air ventilation at a high level should be less of a concern;
- (e) PlanD considered that the developer's redevelopment scheme would create wall-effect. However, it was noted that similar high-rise developments such as Manhattan Hill and the Liberte housing cluster in West Kowloon and The Lily at Repulse Bay had previously been allowed by PlanD. The rejection of the proposed redevelopment on the Kai Tak Mansion site whilst approving those other high-rise developments carried out by big developers gave an impression that big developers were being favoured;
- (f) the residents in Kai Tak Mansion only wished to improve their living environment. The representer, who was his teacher, was old and sick and would suffer great financial loss if the developer withdrew the joint sale agreement because of the imposition of the new restrictions in the OZP; and
- (g) the Board was urged to consider the representations in a fair and reasonable manner and to take into account the compassionate grounds of the representers.

C1 – Dr. Chan Pak Li

(Kwun Tong District Councillor)

129. Dr. Chan Pak Li made the following main points:

- (a) the result of the questionnaire survey conducted to collect views from residents of Ping Shek Estate about the Kai Tak Mansion redevelopment was tabled for Members' information;
- (b) Kai Tak Mansion had a building age of more than 50 years and was in dilapidated conditions. The Ma Tau Wai building collapse incident had aroused concerns on building safety. Residents wished to move out and improve their living environment;
- (c) the joint sale of the Kai Tak Mansion had been negotiated over a long time and the residents and developer had spent lots of time and efforts. As the amendments to the OZP were contrary to the legitimate expectation of the residents, the strong reaction of residents was understandable. The Board should consider whether the sudden imposition of development restrictions on the Kai Tak Mansion site was fair to the residents;
- (d) views from residents of Ping Shek Estate about the proposed Kai Tak Mansion redevelopment was collected by way of the questionnaire as tabled. The residents that would be most affected by the redevelopment, (about 600 flats) were surveyed. The results showed that most respondents preferred the developer's tall and slim scheme over PlanD's base scheme (which was lower but more bulky). The respondents of the survey considered that PlanD's base scheme would cause more obstruction to residents' views and would create more adverse air ventilation impacts. Proceeding on the basis of PlanD's base scheme would be contrary to the wishes of the Ping Shek Estate residents; and

- (e) he did not agree with the statement in the paper which stated that the KTDC had no objection to the proposed amendments and requested for lowering the BHR for the Kai Tak Mansion site. This statement was misleading as the KTDC only noted the proposed amendments to the OZP and no formal motion was passed by the KTDC to support or object to the proposed amendments during the meeting.

R1039 – Tong Kam Yin

(Tse Wan Shan (East) Community Services Centre

130. Ms. Tong Kam Yin made the following main points:

- (a) they supported the Kai Tak Mansion redevelopment;
- (b) the information in paragraph 1.1 of the paper that some representers had written to the Board indicating that they did not submit the representations were unfounded and misleading. R994, R1029 and R1094 were submitted by members of the Centre. Ms. Chan Miu Fong (R1094) was sick and could not attend the meeting, but Ms. Kan Sau Yung (R944) and Ms. Chan Siu Hing (R1029) were present at the hearing and had confirmed that their representations were made voluntarily and had not informed the Board that they wished to cancel their representations. The Secretariat should not influence the Board by defaming the representers in such manner;
- (c) they supported the Kai Tak Mansion redevelopment which could create synergy with the adjoining heritage resources (including the Sam Shan Kwok Wong Temple, the ex-RAF Officers' Quarters Compound and the ex-RAF Headquarters Building (Caritas Family Crisis Support Centre)) being preserved. The redevelopment would revitalise the local economy of Ping Shek Estate, Kai Yip Estate, Richland Gardens and the Kowloon Bay area. The redevelopment would become a landmark and a new attraction point;
- (d) the Sam Shan Kwok Wong Temple, which had many worshippers,

should be revitalised to form another temple attraction similar to the Wong Tai Sin Temple. That would help relieve pressure on the busy Wong Tai Sin Temple and create another local attraction;

- (e) other than some basic planning considerations such as daylight, air ventilation, visual amenity and traffic issues, there should not be BHR on the site as it would affect the design flexibility for the redevelopment. High-rise buildings taller than 110mPD or even up to 180mPD were common in Kowloon and it was not fair to restrict the BH on the Kai Tak Mansion site;
- (f) the residents and developer had legitimate expectation that the GBP submitted in September 2010 would be approved based on the approved OZP No. S/K13/25 valid at the time. There was strong objection to the Board's decision to amend the OZP to impose new development restrictions without prior consultation with the residents. The BA should not reject the GBP based on the restrictions imposed in the new OZP; and
- (g) the Board was urged to take an open and active role in facilitating the redevelopment of the Kai Tak Mansion and to help the residents.

131. In response to Ms. Tong's remark, the Vice-chairman said that according to the statutory procedures, the Secretariat would invite all representers and commenter to attend the hearing. Upon receiving the invitation letters from the Secretariat, some representers attended the hearing, some decided not to attend. In addition, there were 10 persons who had informed the Board that they had not submitted the representations. Mr. Chung Siu Kong (R7) argued that not attending the hearing did not mean that the representers withdrew their representations. The Vice-chairman clarified that he did not mean to say that those who did not attend the hearing was considered as having withdrawn their representations. Mr. Chung Siu Kong continued to say that two of the representers (R994 and R1029) whose representations had been treated as not having been made by the Secretariat had in fact attended the hearing. He contested the Secretariat's claim that those two representers had indicated that they had not made the representations. He also

asked the Board to put on record that R614 had requested the Board to re-instate his representation. The Vice-chairman said that the Secretariat would provide further clarification after the representers' presentations.

R1308 – Choi Hung Estate Social Service Association

(Ms. Lui Lai Hing)

132. Ms. Lui Lai Hing made the following main points:

- (a) the Choi Hung Estate Social Service Association, established for more than 27 years, served Block 11 of Choi Hung Estate;
- (b) the Association supported the representations submitted by residents of Kai Tak Mansion against the development restrictions imposed on the site in the OZP;
- (c) they objected to paragraph 3.3.2 of the paper which stated that the KTDC was consulted and had no objection to the proposed amendments to the OZP and requested for lowering the BH for Kai Tak Mansion. That statement was incorrect as the minutes of the KTDC meeting recorded no formal motion passed by the KTDC to support the OZP amendments and to make the comment about lowering the BH for Kai Tak Mansion. Those were only views of one single DC councillor. PlanD's representative had not asked the KTDC during the meeting held on 4.1.2011 whether the DC supported the OZP amendments or not. The said statement in the paper would mislead the public and the Board;
- (d) they objected to the BHR on the site. Tall landmark buildings were welcomed as long as it was well designed; and
- (e) PlanD's act was distrustful and the Board should uphold the representations of the residents and the developer.

R1309 – Cheung Chi Ming

(Manager of Sam Shan Kwok Wong Temple)

133. Mr. Cheung Chi Ming made the following main points:

- (a) the Kai Tak Mansion redevelopment was beneficial to the temple as it would bring in more worshippers; and
- (b) they did not agree with PlanD's view that the Kai Tak Mansion redevelopment would have adverse impact on the temple or create dwarfing effect. They had not been consulted on the matter and PlanD's view did not represent the temple's view.

R1306 – Ngau Chi Wan Village Society Limited

(Mr. Wong Chai Kwok)

134. Mr. Wong Chai Kwok made the following main points:

- (a) they were an alliance representing the Ngau Chi Wan indigenous residents, Ngau Chi Wan Shop Owners' & Traders' Association, The Stall's Association of Ngau Chi Wan Market and the Hong Kong Public Market Hawkers Association;
- (b) he quoted Mrs. Rita Fan who said on 21.5.2011 that Government had to work for the people and find ways to help the needy and the small business enterprises, which would be the foundation for a stable society;
- (c) the Sam Shan Kwok Wong Temple was managed by the residents of Ngau Chi Wan. PlanD was worried that the high-rise buildings in the redevelopment would overshadow and had dwarfing effect on the temple. However, the temple was already being surrounded by tall buildings. The temple site was in fact below the road level. Any development in the area would be taller than the temple. They did not object to tall

buildings on the Kai Tak Mansion site as long as it was well designed;

- (d) the Sam Shan Kwok Wong Temple should be revitalised to form another temple attraction similar to the Wong Tai Sin Temple. That would help relieve pressure for the busy Wong Tai Sin Temple and would create another local attraction;
- (e) they supported to redevelop the Kai Tak Mansion into a landmark building in the area. The redevelopment would help revitalise the local economy of Ping Shek Estate, Kai Yip Estate and Richland Gardens areas;
- (f) other than some basic planning considerations such as daylight, air ventilation, visual amenity and traffic issues; there should not be BHR on the site as it would affect the design flexibility for the redevelopment. The redevelopment could be designed to create synergy with the heritage resources being preserved;
- (g) the gazetting of the OZP and rejection of the GBP had ruined the legitimate expectation of the Kai Tak Mansion residents, and would severely affect the residents. It was not reasonable that there was no consultation prior to gazettal of the OZP; and
- (h) the Board was urged to take an open and active role in facilitating the redevelopment and to help the residents.

R99 – Lo Yee Kwei

135. Ms. Lo Yee Kwei made the following main points:

- (a) she had lived in Kai Tak Mansion since 1965 and was reluctant to move out. However, she was old and could not walk up the stairs; and
- (b) the site was suitable for redevelopment into a landmark building with

special design. The Board should not constrain the redevelopment to a low and bulky one.

[Ms. Anna S.Y. Kwong left the meeting at this point.]

R6 – Oriental Generation Limited

136. Mr. Jacky Wong, the developer's representative, made the following main points:

- (a) although the legal advice in the paper stated was that the absence of any previous planning restrictions and the height of the residential developments nearby did not seem sufficient to give rise to a legitimate expectation. However, both the developer and residents and even the Government should have a legitimate expectation for redevelopment of the site. In any case, legitimate expectation was a matter to be ruled by the Court and not a matter to be decided by DoJ or the Board;
- (b) the developer and residents entered into the joint sale agreement on the basis of planning controls prior to gazettal of the OZP No. S/K13/26. It was rare to have three restrictions (BHR, NBA and setback requirements) imposed on one small site. PlanD's justifications for imposing the development controls were very weak. A scheme to be built according to the OZP restrictions would be worse than R6's scheme;
- (c) PlanD had presented very biased views in the paper and had used various tactics to defame the representers or mislead the Board. For example, the Secretariat claimed that 10 persons had indicated that they had not submitted the representations, but two of those representers had actually attended the hearing. Another example was to present in the paper that the KTDC had no objection to the OZP amendments, but in actual fact KTDC had not passed any motion to support or object to the OZP amendments;
- (d) the slope area within the site should be GFA accountable. The height

restriction related to the lawn at the ex-RAF Officer's Quarters Compound was no longer relevant as the RAF no longer existed. It was incorrect to say that a BHR of 27.7mPD existed under the lease; and

- (e) the Board was requested to note the above when considering the representation.

[Professor Edwin H.W. Chan left the meeting at this point.]

137. The consultant team made a presentation as follows:

Background

- (a) Ms. Theresa Yeung made the following main points:
 - (i) Kai Tak Mansion comprised four tenement blocks located on Kwun Tong Road with a building age of 49 years. There were 288 flats, 16 shops and 100 car parking spaces within the existing development. Kai Tak Mansion was in urgent need for redevelopment by private initiatives, as it was not included in under any Urban Renewal Authority's redevelopment project. There was a high percentage of elderly residents and they had strong desire to move out and improve their living environment;
 - (ii) the site was zoned "R(A)" and was intended for high-density residential developments. The site was surrounded by high-rise housing estates, 8 Clear Water Bay Road and Choi Tak Estate were all tall buildings with BHs up to 180mPD;
 - (iii) there had been several failed attempts for joint sale of the site since 2006. After the current developer (R6) signed the joint sale agreement with residents in July 2010, GBP was submitted to BA on 30.9.2010. On 19.11.2010, the draft OZP No. S/K13/26 was gazetted and three development restrictions

(BHR of 110mPD, a 20m wide building gap at 15mPD and two 10m-wide NBAs at the northeast and southeast of the site) were imposed. On 26.11.2010, the GBP was rejected by the BA; and

- (iv) according to the ES, the planning intention for stipulating the three development restrictions was to enhance air ventilation in the area and visual permeability to the Grade I historic building (ex-RAF Officers' Quarters Compound); and
- (b) Professor Stephen Lau said that the consultant team had undertaken air ventilation study and VIA basing on scientific methods to compare PlanD's base scheme and R6's scheme. R6's scheme, which was taller and slimmer, would perform better in both air ventilation and visual permeability aspects;

Permitted Plot Ratio Not Achievable

Lease Restrictions

- (c) Mr. Eric Yeung made the following main points:
 - (i) the site was held under New Kowloon Inland Lot (NKIL) No. 167 s.B, 167 R.P and NKIL 168 s.B, 168 R.P;
 - (ii) under the leases, there was no restriction on maximum GFA, PR or SC. There were also no slope maintenance and non-building area clauses under the leases. Hence, the slope area within the lot should be GFA accountable;
 - (iii) the height clause under the leases specified that any part of the development should not exceed the level of the lawn of the ex-RAF Officers' Quarters Compound. Since the RAF no longer existed, there should be no enforceable height restriction

under the leases. As such, it was not correct for PlanD to say that the BHR on the site under the lease was equivalent to 27.7mPD; and

- (iv) paragraph 3.3 of the ES of the OZP stated that land carrying no development right under the lease, such as areas restricted for slope maintenance, should not be taken into account in PR and SC calculations. Paragraph 3.3 of the ES was not applicable to the site as there was no clause under the leases restricting development within the slope area or requirement for maintenance of the slope.

[Miss Annie Tam returned to join the meeting at this point.]

Omissions in PlanD's Base Scheme

- (d) Ms. Theresa Yeung said that PlanD considered that a development at PR of 9 could be accommodated on the site under a BHR of 110mPD. However, PlanD's base scheme was based on the wrong assumption that the slope area should be excluded for GFA calculation and other omissions as summarised in the table below;

Omissions in PlanD's Base Scheme	Accountable GFA (m²) at PR of 9	Accountable BH no. of storeys / m⁽¹⁾	
Slope area <i>(919.7 m² in area)</i>	8,280	6.5 storeys	20.48m
EVA <i>(for the two towers abutting the slope)</i>	3,375	3.5 storeys	11.02m
Road setback <i>(along Kwun Tong Road)</i>	1,083		
Transfer Plate	-	1 storey	3m

Omissions in PlanD's Scheme	Accountable GFA (m²) at PR of 9	Accountable BH no. of storeys / m⁽¹⁾	
Total	12,738	11 storeys	34.5m

Note: ⁽¹⁾ Adopting PlanD's assumption of 3.15m per floor (except transfer plate assumed at 3m)

- (e) the above omissions would account for a total additional GFA of 12,738m² and an addition of 11 storeys (34.5m). Hence, on the basis of PlanD's four-tower base scheme at 104.5mPD, the BHR required to accommodate the development right of the site would be at least 139mPD. Such variation in BH would not be considered as minor relaxation permissible under a s.16 application. The Board was urged to amend the OZP in the plan-making process rather than asking the presenter to submit a s.12A application at a later stage;
- (f) PlanD had claimed that the BHR on the site was reasonable as compared to another public rental housing at Choi Tak Estate. However, the site was to be developed for private housing, a like-for-like comparison would be the 8 Clear Water Bay Road development where the absolute BH of the residential tower above the podium was 140.1m. That absolute BH (140.1m) was much taller than the absolute BH of 105.4m permissible on the site under the current BHR of 110mPD;
- (g) the above calculations were based on PlanD's four-tower base scheme. As the buildable area on the site would be limited after incorporating the building gap and NBA restrictions, a four-tower design with restricted BHR would result in a very congested design. She cited the example of the spread of SARs at Amoy Garden years ago and said that a quality living environment was only possible with a more spacious layout as proposed in R6's Scheme;
- (h) Mr. Jacky Wong said that the developer bought the site based on its registered site area. If the slope area, that was accountable for 8,280m²

GFA, was to be excluded from GFA calculation, the redevelopment project would no longer be profitable and they had to withdraw from the joint sale agreement;

Non-building Area

- (i) Ms. Theresa Yeung continued with the presentation. In respect of the NBA requirement along the southeastern boundary of the site, it was questioned why the NBA was not designated on the school site or at least shared between the Kai Tak Mansion and school sites;

R6's Scheme would Better Realise the Planning Intention

- (j) R6's scheme would better achieve the planning intentions as it would perform better in air ventilation and visual permeability aspects and would not be out-of-context as claimed by PlanD. It would be in line with the stepped BH concept and there would be no adverse impact on views towards Lion Rock along the local view corridor from the footbridge near Choi Ying Place;

Inaccuracies in the Photomontage

- (k) not sure about the meaning of 'out-of-context' until looking at the photomontage in Plan H-6 of the paper which was grossly inaccurate. By using the height of Ping Shek Estate at 80mPD as shown in the plan as a reference scale, in one of her powerpoint slide, Ms. Yeung said that the BH of R6's scheme (with a proposed BH of 203mPD) as shown on Plan H-6 was over 320mPD i.e. about four times the height of Ping Shek Estate. That might explain why PlanD had indicated that R6's scheme was 'out-of-context'. Moreover, the floors between the podium and the residential towers, which should be permeable, was shown as a solid mass in the photomontage;
- (l) despite the inaccuracies highlighted above, it was apparent that R6's

scheme was more effective in providing visual permeability to the Grade I historic building. Although government departments had raised concerns about the tall columns, those design features were necessary to achieve better visual permeability and air ventilation in their scheme;

- (m) the photomontage in Plan H-6 of the paper was a view taken from Kai Ning House. It was doubted why that viewpoint was chosen as it was not a publicly accessible view point. It was not a vantage point identified in the UDG nor the local view corridor taken at the footbridge near Choi Ying Place;

Stepped Building Height Profile in the Urban Design Guidelines

- (n) the stepped BH profile adopted for the OZP was to step up gradually eastward towards the Jordan Valley. However, according to the UDG, a stepped BH profile should step up gradually from the waterfront to the inland. The photomontage from the new wing of the Hong Kong Convention and Exhibition Centre (a vantage point identified in the UDG) showed that R6's scheme at 203mPD would be no taller than the other buildings in that context;

Visual Impact Assessment

- (o) Professor Stephen Lau made the following main points about the VIA they prepared and concluded that R6's scheme would not be 'out-of-context' and was better than PlanD's base scheme from visual perspective:
 - (i) the photomontage showing views from Quarry Bay Park and the new wing of the Hong Kong Convention and Exhibition Centre (both being vantage points identified in the UDG) showed that R6's scheme was in line with the principle to preserve 20% building free zone for the Lion Rock and Kowloon Peak ridgeline;

- (ii) the photomontage of the view from the local view corridor from the footbridge near Choi Ying Place showed that R6's scheme was more compatible with the BH profile in that visual context. It also showed that R6's scheme would obstruct about 68% less of the view of Lion Rock ridgeline compared to PlanD's base scheme; and
 - (iii) R6's two-tower scheme would enhance visual amenity by increasing the buffer distance (from 10m to 30m) between the Grade I historic building and the residential tower. It would be visually more permeable as seen from Kwun Tong Road and create less wall-effect when looking south from Ping Shek Estate;
- (p) Mr. Jacky Wong said that as shown in their photomontage of the view from the footbridge near Choi Ying Place, R6's scheme would allow preservation of the entire silhouette of the 'lion' in the Lion Rock ridgeline. However, PlanD's view would obstruct more of the ridgeline and the 'lion' silhouette was no longer discernible;

Air Ventilation Study

- (q) Professor Stephen Lau went on to make the following main points about the air ventilation study which was prepared using computational fluid dynamics (CFD) and had concluded that R6's scheme had better air ventilation performance compared with PlanD's base scheme:
- (i) R6's scheme was more permeable from air ventilation perspective as there were only two towers and the residential towers were elevated and supported by tall columns;
 - (ii) R6's scheme would obstruct less of the southeasterly wind;

- (iii) R6's scheme would result in higher wind speed in the surrounding areas under the prevailing wind (east-north-east) and summer wind (south-south-west) conditions;
- (iv) an AVA was also prepared following the guidelines in the Technical Circular on AVAs promulgated by Government. The findings also showed that R6's scheme achieved higher site spatial average velocity ratio (reflecting air ventilation performance on the site) and local spatial average velocity ratio (reflecting air ventilation performance in the surrounding areas) than PlanD's base scheme;

Meeting Public Aspirations

- (r) Ms. Theresa Yeung continued with the presentation and said that a balance had to be struck between the public aspirations for a better living environment and private development right. There was imminent need to redevelop Kai Tak Mansion by private initiatives. However, the new development restrictions on the Kai Tak Mansion site had greatly reduced the redevelopment value of the site. If the developer withdrew from the joint sale agreement, residents would not be able to proceed with the redevelopment on their own. The building conditions would deteriorate and the Ma Tau Wai building collapse incident might repeat on the site. The Board should recognise the strong residents' desire to move out and improve their living conditions and was urged to revise the development restrictions stipulated on the site; and

R6's Proposals

- (s) Mr. Ivan Lam gave details on R6's proposed amendments to the OZP as follows:
 - (i) to retain the 10m-wide NBA along the north-eastern lot boundary abutting the ex-RAF Officers' Quarters Compound;

- (ii) to add a 15m-wide strip of land to the said NBA where no building should exceed the BH of 20mPD. That would allow a wider gap between the ex-RAF Officers' Quarters Compound and the residential towers and would ensure more open views for the school in the southeast and the playground in the northwest. It would also allow views of the greening on the podium from the ex-RAF Officers' Quarters Compound;
- (iii) to revise the building gap requirement to require the provision of a void of no less than 1,000m² on the building façade with a minimum width of 10m-wide above the level of 35mPD. That would enhance air ventilation and visual permeability;
- (iv) to add the requirement to allow permeability of no less than 60% along the south-western frontage of the lot boundary at the level between 20mPD and 35mPD for the void podium deck area. The 15m void above the podium would help pollutant dispersion at Kwun Tong Road and open up views of the ex-RAF Officers' Quarters Compound from across Kwun Tong Road;
- (v) to revise the BHR for Kai Tak Mansion to 203mPD. A higher BHR was required for their proposed two-tower scheme. The VIA and air ventilation study had demonstrated that R6's two-tower scheme performed better than PlanD's four-tower base scheme in visual and air ventilation aspects. It would also allow more design flexibility to accommodate the road setback requirement along Kwun Tong Road; and
- (vi) to revise the NBA requirement for the non-domestic portion of the proposed development along the south-eastern

boundary of the Kai Tak Mansion site, abutting the school, to 4.5m wide. It was considered that this revision would not affect the school that was only 8-storey high and visual permeability would be provided at the void podium deck levels.

R535 – Kam Yuen

138. Ms. Kam Yuen made the following main points:

- (a) she had lived in Kai Tak Mansion for more than 40 years and was 80 odd years old. The flat she owned was her only asset;
- (b) the living conditions in Kai Tak Mansion were poor. There was no lift and it was difficult for old people like her to walk up and down the stairs. The hygiene was also poor with mice around the house; and
- (c) she only wished to improve her living conditions and urged the Board not to hinder the redevelopment or joint sale.

R8 – Wong Kwok Wing

(Concern group of winding-up order of Kai Tak Mansion (Block3))

139. Mr. Wong Kwok Wing made the following main points:

- (a) the purpose of his presentation was to explain the court order for winding-up of the Incorporated Owners of Kai Tak Mansion (Block 3) (the IO) and the financial difficulties of Block 3 owners / residents if the developer withdrew the joint sale agreement;
- (b) Mr. Wong gave a brief account of the winding-up of the IO:
 - (i) 1.6.2007 – the contractor applied to the Court to wind up the IO arising from unpaid renovation costs in the sum of \$154,924

which was subsequently repaid;

- (ii) 27.8.2008 – the Court granted order for the winding-up of the IO upon the contractor’s application for unpaid legal costs in the sum of \$70,124;
 - (iii) the Official Receiver was appointed as the liquidator, and the winding-up matter was taken up by a legal firm. The liquidator applied to the Court for establishment of a contingency fund for repayment of debts and to meet the costs and expenses of the liquidation. Each unit in Block 3 contributed \$30,000 to the contingency fund;
 - (iv) in the course of the title search for the joint sale, five flats were found to have been sold by the liquidator with no consent from the owners;
 - (v) a temporary IO was established and a legal representative was appointed to deal with staying of the winding-up order. Each flat paid \$70,000 again to the contingency fund; and
 - (vi) 21.3.2011 - the Court granted permanent stay for the winding-up order of the IO;
- (c) the winding-up order and the associated legal proceedings was a major financial burden for owners of Block 3. According to the joint sale agreement, the completion of sale for flats in Block 3 was contingent upon the staying of the winding-up order. The second payment to the contingency fund was deducted from the first instalment for the joint sale. If the developer withdrew the joint sale agreement, owners had to repay the instalments and this would drive some owners, especially the elderly and the low-income owners, into financial difficulties;
- (d) over 82% of the owners had entered into the joint sale agreement with the

developer and this was a result of many years of negotiation. If the developer withdrew the joint sale agreement due to the reduction in market value of the site arising from the new OZP restrictions, the possibilities of reaching a joint sale agreement with another developer would be slim. That would deprive the elderly owners of an opportunity to improve their living environment. The existing living conditions and facilities were very inconvenient for the elderly, as there was no lift and fire services installation. The site was not close to the MTR and there was no market and eating places nearby. The building was also under poor management. Furthermore, the 50-year old building would soon be subjected to another renovation order which would pose new financial burden on the owners; and

- (e) the Board was urged to propose suitable amendments to the OZP to enable completion of the joint sale.

R572 – Cheung Ying Lun

140. Mr. Cheung Ying Lun made the following main points:

- (a) he was one of the former owners of a flat in Block 3. His flat was sold by the liquidator without obtaining his consent. He did not understand why his flat could be sold by the liquidator without the title document of his flat which was kept by the IO's legal representative;
- (b) he was a creditor and had lent money to the IO and had de facto only owed the contingency fund a few hundred dollars. It was unbelievable that the liquidator could sold his flat for owing such a small sum of money. He also understood that the flat was sold at a price much lower than the acquisition price offered in the joint sale agreement;
- (c) the liquidator had sold five units in Block 3. The Official Receiver was not willing to offer help. The sale of his flat was currently under legal proceedings; and

- (d) if the developer withdraw from the joint sale agreement, it would put him in a very difficult financial situation.

R1050 – Chan Ka Wo

141. Mr. Chan Ka Wo made the following main points:

- (a) Kai Tak Mansion was under poor management. The car park of Kai Tak Mansion had been converted into industrial workshop uses. There were even gambling and other illegal activities. Theft, robbery and drug abuse were found in the Mansion. There were also lots of illegal structures on the roof that had caused fire in the past, but the Buildings Department were reluctant to take action;
- (b) there were many elderly residents living in Kai Tak Mansion. However, many of them had moved out because it was too difficult for them to walk up to their flats and accidents were not uncommon; and
- (c) the developer had indicated that they would withdraw the joint sale agreement if the Board continued to impose BHR on the site. He urged the Board to relax the BHR on compassionate grounds so as to facilitate the completion of the joint sale.

R207 – Diu Wai Yin

142. Ms. Diu Wai Yin made the following main points:

- (a) the Board was unfair to small developers. The site at 8 Clear Water Bay Road, which was built by a larger developer, was allowed to be built tall. However, the Board imposed stringent restrictions on the Kai Tak Mansion site as it was to be redeveloped by a small developer;
- (b) the Board had imposed a BHR which was only about half of the BH

proposed by the developer. That drastic reduction in the permissible height might lead the developer to withdraw the joint sale agreement;

- (c) the Kai Tak Mansion was in dilapidated state and if it was not redeveloped in time, the Ma Tau Wai building collapse incident might be repeated on the site; and
- (d) the owners had already received 20% downpayment from the developer and many of them had used the downpayment for buying a new flat or for other purposes. If the developer withdrew the joint sale agreement due to the OZP restrictions imposed, many owners would be driven into a difficult financial situation. The owners would fight for their rights and make their objections known to all relevant bodies and the media.

R823 – Silverford Company Limited

(Mr. Chan Chiu Ming)

143. Mr. Chan Chiu Ming made the following main points:

- (a) as noted from the paper, the imposition of the BHR was based on local considerations such as preservation of views to the Lion Rock ridgeline and enhancement of air ventilation. However, in imposing restrictions on the OZP, the Board should consider issues with wider implications, such as the existing densities of the area and the provision of community and social facilities; and
- (b) with regard to the comment that the proposed scheme was out-of-context, it was inevitable that redevelopments would have different built form and be taller than the old buildings in the vicinity as the area was previously subject to airport height restrictions. It was also unreasonable to adopt the BH of public housing estates as yardsticks for private redevelopments. The BHRs should be relaxed to give developers more incentive to carry out urban renewal on private initiatives.

R7 – Chung Siu Kong

(Chairman, Harmonizing Committee for the Joint Property Sale of Kai Tak Mansion Blocks One to Four)

144. Mr. Chung Siu Kong made the following main points:

- (a) R7 represented more than 1000 representers;
- (b) Kai Tak Mansion had a building age of 49 years, it comprised four tenement blocks with no lift. The site had an area of 61,497 ft². Photos of the dilapidated state of the existing buildings were shown;
- (c) since 2006, residents were approached by various developers / agents for joint sale of Kai Tak Mansion but those actions were not successful. The Harmonizing Committee was established in August 2007. In July 2010, a joint sale agreement was signed with the current developer (R6);
- (d) referring to the minutes of the Metro Planning Committee (MPC) held on 12.11.2010 about the rationale for stipulating the three development restrictions on the Kai Tak Mansion site, the following main points should be noted:
 - (i) it was recorded in the minutes that the proposed BHRs were to provide a compatible setting for the historic buildings in the area. R7 did not agree that creating an appropriate setting for the heritage buildings should have priority over allowing a redevelopment on the Kai Tak Mansion site;
 - (ii) it was indicated in the minutes that the local view corridor to the Lion Rock from the footbridge near Choi Ying Place was to be preserved as far as possible. However, the wordings used in the current paper had been revised to that the local view corridor to Lion Rock should be preserved, rather than preserved as far as possible;

- (iii) it was indicated in the minutes that the NBAs and building gap would help minimize adverse air ventilation impact on the neighbours. However, there were no sensitive neighbouring uses in the area. The ex-RAF Officers' Quarters Compound was occupied by the Hong Kong Baptist University Academy of Visual Arts which was a temporary tenant with no residents; and
- (iv) the minutes also stated that the building gap would partially open up the visibility of the ex-RAF Officers' Quarters Compound to the public at street level. It was doubted whether the general public was aware of the existence of this Grade I historic building;
- (e) there was objection to the BHR, NBA and building gap requirements stipulated on the site as the restrictions had deprived residents' development right. It was very rare for a small site to be subjected to three stringent development restrictions. It was considered that tall buildings would create less wall-effect than lower but more bulky buildings;
- (f) the local view corridor selected by PlanD for view of the Lion Rock ridgeline from the footbridge near Choi Ying Place was not worth preserving. The view from that location was dominated by Choi Tak Estate and the foreground was traversed by the MTRC railway track. Furthermore, view of the Lion Rock ridgeline was only available at one point on that footbridge. An alternative view corridor along Kwun Tong Road (as viewed from the footbridge linking Choi Shek Lane with areas to the south of Kwun Tong Road) would provide much better view of the Lion Rock ridgeline;
- (g) PlanD had only conducted very limited consultation on the OZP amendments and had tried to avoid contentious issues. It did not provide comprehensive information to those being consulted. In

responding to Mr. Chan Wah Yu (a KTDC member) who proposed to further reduce the BHR on the site during the briefing to the KTDC on 4.1.2011, PlanD's representative explained that the proposed BHR of 110mPD was already quite tight for achieving a development with PR of 9 on the site. It was however indicated in the paper that the proposed BHR was reasonable. Furthermore, the audio recording of the briefing showed that PlanD had not asked KTDC to indicate support or objection to the OZP amendments. Hence, it was inappropriate to conclude in paragraph 3.3.2 and Annex VIII of the paper that KTDC did not object to the proposed amendments to the OZP;

- (h) it was recorded in paragraph 3.4 of the MPC paper that there was an urgent need to incorporate appropriate BHR for the subject site on the OZP as there was a GBP submission for a proposed redevelopment with BH of 202.9mPD that was considered to be totally out-of-context. The need to reject the GBP was in fact the main reason for proposing BHRs on the OZP. However, that reason had not been recorded in the MPC minutes. Furthermore, the MPC paper was not available on the Board's website and there was no Chinese version of the paper;
- (i) the proposals put forward by PlanD were biased towards the preservation of heritage buildings, but ignored the needs of the community. However, the grounds for achieving compatibility with or visual permeability to the heritage buildings were unfounded. The Sam Shan Kwok Wong Temple was already located below the road level, redevelopment on the site would not create any incompatibility issues. As shown in the photos of the site, the proposed building gap would only allow for a very limited view of a small portion of the ex-RAF Officers' Quarters Compound both from within the site and across Kwun Tong Road. The ex-RAF Headquarters Building (currently occupied by the Caritas Family Crisis Support Centre) to the southwest of the site across Kwun Tong Road was also not compatible in the local context;

- (j) the Secretariat had intentionally classified Dr. Chan Pak Li (C1), a Kwun Tong District Councillor, as a commenter rather than a representer. It was suspected that the classification was made because Dr. Chan Pak Li's objection to the OZP amendments was contrary to the twisted conclusion on the briefing with KTDC in the paper. He showed Members two letters from Dr. Chan Pak Li, dated 10.1.2011 and 14.2.2011, which were obtained from the public enquiry counters of PlanD. The letter dated 10.1.2011 should have been treated as a representation as it was submitted before the expiry of the exhibition period of the OZP on 19.1.2011. However, the letter of 10.1.2011 from Dr. Chan Pak Li was ignored and he became commenter No. C1. It was also noted that the letter of 10.1.2011 had not been attached in the paper; and
- (k) PlanD's proposed amendments to the OZP had led to the current impasse in the joint sale of the Kai Tak Mansion. The joint sale of Kai Tak Mansion had been under negotiation for more than five years and there had been many hurdles during the process and many elderly people had died or fallen sick over these years. The preservation of the three heritage buildings and views of the Lion Rock ridgeline should not take priority at the expense of the rights of the owners. The representers asked for a fair treatment and that the Board should recognize the development potential of their properties.

R1053 – Lu Wai Yiu

145. Mr. Lu Wai Yiu made the following main points:

- (a) there was poor living condition in Kai Tak Mansion. There were many elderly living in Kai Tak Mansion and many of them were in frail conditions. The buildings had no lift and the elderly had great difficulties in walking up the stairs. There had been two break-ins in his own flat. The building was in dilapidated conditions and it might lead

to another Ma Tau Wai building collapse incident;

- (b) the imposition of BHR had severely impacted on their joint sale. PlanD had not provided strong justifications for imposing BHR. The planning authority was not established through election and did not have public support. However, the Board's power was excessive in deciding on matters having major impacts on the general welfare of the residents;
- (c) it was wrong for PlanD to say that the redevelopment on the Kai Tak Mansion site would affect the Sam Shan Kwok Wong Temple. The temple's representative had spoken at the hearing and confirmed that they had no objection to the redevelopment on the site;
- (d) although PlanD had placed great emphasis on preservation of the surrounding heritage buildings, the public was not allowed to enter the ex-RAF Officers' Quarters Compound to appreciate the preserved historic building;
- (e) it was unfair to the developer as they had spent lots of efforts to fulfil the planning requirements under the OZP. It was not agreed that BHR on the site should be referenced to the Ping Shek Estate which was built in the 60's; and
- (f) owners of Kai Tak Mansion only wished to improve their living conditions. The Board was urged to decide on the representations having regard to the real needs of the residents in Kai Tak Mansion. The representers would not preclude the possibility of lodging legal proceedings if the Board did not relax the BHR.

R304 – Chow Sau Yung

(Mr. Fan Hon Keung)

146. Mr. Fan Hon Keung made the following main points:

- (a) the residents of Kai Tak Mansion had been very disturbed and stressed out by the joint sale negotiations with different developers over the past few years;
- (b) it seemed quite obvious that the amendments to the OZP was to stop the approval of the GBP. It was suspected that the Government had been influenced by and acted biased towards some big developers; and
- (c) there was no strong reason to impose the planning restrictions on the site and there was professional negligence in this incident.

R432 –Ng Yi Bing

147. Ms. Ng Yi Bing made the following main points:

- (a) she had lived in Kai Tak Mansion for over 20 years. With the joint sale, she was expecting to improve her living condition;
- (b) the imposition of development restrictions on the site was not fair to the residents. The visual impacts, compatibility and air ventilation reasons given by PlanD were not their concerns; and
- (c) the Board should respect development right of residents' properties and their human right. The flat was their own private asset and was important for their well-being. It was sad to see that some elderly had already died in the process of the joint sale negotiation. The Board was urged to consider residents' distressed feelings and respond to their requests.

Clarifications on Queries Raised by Representers

148. As the presentations from the representers, representers' representatives and commenter had been completed, the Vice-chairman requested the Secretariat and DPO/K to clarify the following queries raised by some representers during the presentations before

inviting questions from Members:

- (a) how many of the representations had been treated as not having been made and how was that decided?
- (b) why the letter submitted by Dr. Chan Pak Li on 10.1.2011 was not included as a representation;
- (c) the consultation with KTDC; and
- (d) the photomontage shown in Plan H-6 of the paper.

Representations Treated As Not Having Been Made

149. Mr. C.T. Ling, Assistant Director / Town Planning Board said that upon expiry of the 2-month exhibition period for the OZP, that ended on 19.1.2010, a total of 1,313 representations were received. The representations were published for public comment for three weeks (from 28.1.2011 to 18.2.2011) and 1 comment was received. On 17.2.2011, the Secretariat sent out acknowledgement letters / e-mails to the representers. Five persons informed the Board that they had not submitted the representations. Two of those persons subsequently requested the Board to re-instate their representations (Nos. R614 and R994) and that was effected accordingly. On 27.4.2011, the Secretariat sent out letters informing the representers and commenter about the hearing arrangement. Seven other representers informed the Board that they had not submitted the representations. Hence, at different times during the processing of the representations, the total number of representations treated as not having been made was different. The most updated figure was that a total of ten representations were treated as not having been made and the details were included in Annex IV of the paper.

Commenter - Dr. Chan Pak Li

150. Mr. C.T. Ling explained that the Secretariat received two letters from Kwun Tong District Councillor, Dr. Chan Pak Li. The two letters dated 10.1.2011 and 14.2.2011 were received by the Secretariat on 2.2.2011 (the postal stamp on the envelope

was 1.2.2011) and 15.2.2011 (the postal stamp on the envelope was 14.2.2011) respectively. As the letters were received outside the statutory period for submitting representations, according to the Ordinance, the letters of Dr. Chan Pak Li could not be treated as a representation. However, as the letters were received within the period when the representations were published for public comments (i.e. between 28.1.2011 and 18.2.2011, and was after the exhibition period for receiving representations), Dr. Chan Pak Li's submission was treated as a comment and Dr. Chan Pak Li was treated as a commenter, not a representer.

Consultation with Kwun Tong District Council

151. Mr. Eric Yue said that Section 3 of the paper titled 'public consultation' was a standard paragraph included in all representation hearing papers to highlight the district council(s) and other bodies that were consulted about the amendments to the OZP. Paragraph 3.3.2 of the paper only highlighted the main points of discussion at the KDTC meeting held on 4.1.2011 and a full set of the minutes of that DC meeting was included in Annex VII of the paper. Hence, the views of KTDC had been fully reflected in the paper.

Photomontage Showing PlanD's Scheme and R6's Scheme (Plan H-6)

152. Mr. Eric Yue said that R6 considered that the photomontage in Plan H-6 of the paper was inaccurate as R6's scheme as shown would be over 320mPD i.e. four times the height of Ping Shek Estate at 80mPD. Mr. Eric Yue explained that since the photomontage was a perspective drawing, the 80mPD of Ping Shek Estate that was shown in the background at a further distance from the site would technically be shown lower than another 80mPD reference point shown in the foreground. The BH of R6's scheme as shown on Plan H-6 could be more reasonably referenced to PlanD's base scheme that were at similar depth in the perspective drawing. There was no major error in the height of R6's scheme in the photomontage. In response, Prof. Stephen Lau said that based on his expertise in teaching architectural studies, the correct heights of both schemes shown in the photomontage should be checked by redrawing the perspectives and the comparison of the two photomontages suggested by DPO/K was not reasonable.

153. A Member reminded the attendees that there should be mutual respect between

different parties and particularly the professional team, which should approach the matter in a reasonable, logical and professional manner. With regard to the queries raised by R6 on the photomontage, the Member said that the photomontage in Plan H-6 was only one of the many information put before the Board for its consideration of the representation and Members did not need to rely on the photomontage alone to understand the development scheme of R6. Whilst it might not be the best angle or the best illustration, there was no reason to doubt that PlanD had intentionally manipulated the photomontage.

Design Merits

154. A Member said that the six additional planning controls proposed by R6 would help the Board to consider the representation. He appreciated the representer's willingness to subject itself to additional planning controls in return for the proposed relaxation of the BHR. The Member however raised doubt as to whether it was appropriate for the Board to consider the design merits of the scheme as a reason to uphold the representation in the plan-making process. If so, how could the Board tackle the cumulative impacts of similar requests for relaxation of BHR on other sites within the area.

155. In response, Ms. Theresa Yeung said that R6's scheme would improve air ventilation and visual permeability to the surrounding heritage buildings. The six proposals for additional planning control were built upon the existing BHR and NBA and building gap requirements stipulated in the OZP. Mr. Ivan Lam said that the Kai Tak Mansion site was very unique in that it was in close vicinity to many heritage buildings and was surrounded by low-rise GIC developments. The uniqueness of the site warranted unique consideration of R6's representation and he believed that the consideration of R6's representation on individual merits would not have far-fetching implications for the plan-making process in general.

156. Mr. Ivan Lam went on to say that the proposed BH of R6's scheme at 203mPD would allow for a development with more distinct design merits. R6's scheme proposed to elevate the residential towers with supporting columns so as to create permeability above the podium. This would allow for visual permeability and compatibility with the surrounding heritage buildings and GIC developments. On the other hand, PlanD's base

scheme was incompatible with its surroundings and there was no permeable gap between the podium and the residential towers.

157. The same Member appreciated the representer's effort in incorporating features which might have design merits in their scheme. However, it was still doubted whether it would be appropriate for the Board to consider the details of any design merits in R6's scheme in the plan-making process. Furthermore, it was not possible for the Board to consider R6's proposed BHR of 203mPD in isolation from the other design elements and development restrictions proposed by R6. In response, Mr. Ivan Lam said that even if the Board could not decide on the BHR for the site at that meeting, he urged the Board to reach a consensus on the following matters, as a basis for future discussion with the Government:

- (a) whether the slope area carried any development right. As the slope area was about 16% of the site area, whether it could be counted for PR calculations would have a fundamental bearing on the BHR on the site;
- (b) whether there was a need to retain visual permeability to the ex-RAF Officers' Quarters Compound and enhance air ventilation performance which would have a bearing on the building gap and permeability ratio incorporated in R6's proposals; and
- (c) whether a two-tower or a four-tower design should be assumed. An EVA was required for a four-tower design. The larger site coverage would affect relocation of a bus stop and the provision of road setback along Kwun Tong Road. On the contrary, there was apparent benefit to have a two-tower design as detailed in the presentation.

158. Mr. Ivan Lam said that there would also be room to discuss on other matters having an effect on the BHR, such as the floor-to-floor height and the club house element.

Alleged Wrong Assumptions in PlanD's Base Scheme

159. A Member asked DPO/K to respond to R6's allegations about the wrong

assumptions adopted in PlanD's base scheme, that were, exclusion of the slope area for PR calculations and the non-provision of EVA, road setback and transfer plate requirements. Mr. Eric Yue said that PlanD's base scheme was conceptual and indicative for air ventilation testing purpose. PlanD had re-visited the conceptual scheme and considered that after taking into account the road setback and EVA requirements, the maximum PR permissible under the OZP was achievable with a BHR of 110mPD. However, the slope area had not been taken into account for PR calculation. The BHR of 110mPD would not be adequate to accommodate the additional GFA generated from the slope area if it was to be GFA accountable.

160. Mr. Jacky Wong said that the building gap and NBA requirements in the OZP could be accommodated in R6's scheme. It was considered that the BHR of 110mPD on the site was set solely because of the need to preserve the view towards the Lion Rock from a local view point and was not acceptable. Referring to Plan H-7 of the paper, Mr. Jacky Wong said that the bulky buildings in PlanD's base scheme would also intrude into the view of the Lion Rock ridgeline. That would already defeat PlanD's planning intention for stipulating BHR on the site.

Building Height Profile in the Area

161. A Member asked DPO/K to explain the BH profile in the vicinity of the site. Mr. Eric Yue said that R6's scheme might have shown improved visual permeability due to the use of tall columns to support the two residential towers. However, the proposed BH of 203mPD would not be compatible with the surrounding buildings nor the overall BH profile. With the aid of the OZP, DPO/K showed that Ping Shek Estate to the north and Kai Yip Estate to the south of the site were both subject to BHRs of 80mPD and 100mPD. For the Choi Tak Estate further uphill to east of the site, BHRs of 160mPD and 170mPD were stipulated due to the high site levels on two platforms at 41mPD and 60.5mPD respectively. The BHR of 184mPD for the 8 Clear Water Bay Road site was to reflect the planning scheme approved by the Board in 2004 (planning application No. A/K13/160). It was not an appropriate yardstick for formulation of BHR for the Kai Tak Mansion site because that development included a park and ride facility in four levels of car park podium built on top of two levels of public transport interchange, resulting in a high podium at 43.9mPD.

Slope Area

162. A Member asked R6 to advise what would be the resultant BH of the R6's scheme if the slope area was to be excluded for PR calculation. Mr. Ivan Lam said that PlanD had not clearly responded in the paper whether the slope should carry development right. He further said that the slope area was accountable for a GFA of 8,280m². It was estimated that the BH of R6's two-tower scheme would be reduced by about 24m if the GFA from the slope area was deducted. In response to the Vice-chairman, Mr. Ivan Lam said that details of the clubhouse including its GFA (currently 4 to 5% of the residential GFA) and floor-to-floor height (currently 4.5m to 5m) for the clubhouse floors could be adjusted if the Board considered them necessary.

163. Another Member asked DPO/K to respond to R6's claim that the slope area should be included for PR calculation. Mr. Eric Yue said that Chapter 2 of the HKPSG on Residential Densities stated that net site area for PR / GFA calculations did not include slopes. In addition, paragraph 3.3 of the ES of the OZP stated that land not intended for building development purposes and carry no development right under the lease, such as the areas restricted for slope maintenance, should not be taken into account in PR and SC calculations. It was therefore, considered that the slope area should not be included for PR calculation.

164. Mr. Eric Yeung clarified that under the leases of the site, there was no requirement on slope maintenance. The lease conditions did not include any clause which stated that the slope area should not be included for PR calculation. Hence, paragraph 3.3 of the ES was not applicable to the site.

165. Mr. Ivan Lam said that in his opinion, the BA and LandsD would allow the slope area to be included for PR calculation unless there were specific restrictions under the leases. He said that as there were extensive slope areas on Hong Kong Island, if DPO/K's view was to be taken as a normal practice then it would render much land on Hong Kong Island to be PR non-accountable.

Building Height Restriction under the Leases

166. A Member asked DPO/K to respond to R6's claim that the height restriction under the leases were no longer relevant. Mr. Eric Yue said that the site was currently subject to height restriction under the leases that the height of any part of the building on the lots should not exceed the level of the lawn at the ex-RAF Officers' Quarters Compound at the rear of the lots. According to survey data, the lawn area was at 27.7mPD. Redevelopment of the site to a higher BH would require modification of the height clause under the existing leases.

Creating Landmark

167. A Member asked whether the landmark referred to in R6's presentations was the proposed redevelopment on the site or the surrounding heritage buildings. Prof. Stephen Lau said that R6's scheme would be a landmark building. A taller but slimmer building would allow further setback of the north-eastern boundary of the site from the ex-RAF Officers' Quarters Compound and creation of a sizable podium open space that could be open for public use. Consideration could also be given to better design and utilization of the slope area, including the creation of terraced open space and pedestrian linkages to the ex-RAF Officers' Quarters Compound. Ms. Theresa Yeung added that the building design was aimed at enhancing connectivity and visual permeability to the heritage buildings in its vicinity.

Building Height Review

168. A Member asked when did PlanD start to review OZPs to incorporate BHRs. Mr. Eric Yue replied that BHRs had been incorporated in the Kowloon Bay and Kwun Tong Business Areas since 2005. Miss Ophelia Wong added that the Board had all along been incorporating BHRs in OZPs for low to medium-rise development areas. The Board had also incorporated BHRs in some higher density areas following the recommendations of the Study on Urban Design Guidelines for Hong Kong that was completed in 2003. The Chief Executive's Policy Address in 2007 included the policy directive for the Government to progressively review the OZP of various districts in a step-by-step manner, and where justified, revise relevant planning parameters to lower development intensity to address public aspiration for a better living environment.

169. In response to the Vice-chairman, Mr. Chung Siu Kong made the following main points:

- (a) the Secretariat's explanation about why Dr. Chan Pak Li was treated as a commenter rather than a representer was noted. However, he did not understand why there was no official chop indicating the date of receipt of Dr. Chan Pak Li's letter of 10.1.2011 when the letter was made available for public inspection;
- (b) PlanD should not have taken one DC councillor's i.e. Mr. Chan Wah Yu's, comment about reducing the BHR of Kai Tak Mansion made in the KTDC meeting held on 4.1.2011 as a collective view of KTDC. Instead, Mr. Chan Wah Yu's views should have been submitted as a representation;
- (c) the large number of representations submitted objecting to the development restrictions on the Kai Tak Mansion site demonstrated that the public support the Kai Tak Mansion redevelopment. The support of a KTDC district councillor, Dr. Chan Pak Li, also represented public views on the subject matter;
- (d) there was no strong justification to impose BHR based on a local view corridor. Such local view corridor had major impacts on development of surrounding sites, yet it was drawn up without any public consultation. In his opinion, the selected local view corridor from the footbridge near Choi Ying Place was not a pleasant view as it overlooked the MTRC rail track. It only provided view of the Lion Rock ridgeline at one point on the footbridge. It was inevitable that the context of the local view corridor would change over time, but the adverse impact on the redevelopment at the Kai Tak Mansion site would be irreversible for many years once the development was built;
- (e) it was not reasonable to protect the dilapidated heritage buildings at the

expense of the well-being of the residents; and

- (f) the BHR relating to the lawn at the ex-RAF Officers' Quarters Compound was no longer a relevant restriction and modification of this restriction could be dealt with during lease modification and was only a matter for premium negotiation. The fact that the Board had already zoned the site to "R(A)" with a maximum PR of 9 meant that the BH under the leases was not taken as a relevant planning consideration.

170. Mr. Jacky Wong made the following main points:

- (a) the height restriction relating to the height of the ex-RAF lawn under the leases could be amended during lease modification. That would be similar to the modification of BHRs stipulated in relation to airport height restrictions in other leases. He opined that DPO/K should not give views on lease restrictions or lease modification matters as those matters were within the purview of LandsD;
- (b) the height restriction under the existing leases should not be taken as a relevant consideration when deciding the BHR for the site. A development at PR of 9 could not be built within the height restriction under the existing leases. The BHR under the leases must have been disregarded as the site was already zoned "R(A)" with maximum PR of 9 under the previous version of the OZP No. S/K13/25 gazetted in 2006;
- (c) the BHR as shown on the OZP could be changed in future due to changing circumstances and the possibility of imposing BHR in the range of 200mPD in the surrounding area could not be precluded. Hence, the Board should consider R6's representation based on its individual merits. R6's scheme had already respected the BH profile in the area and the scheme had tried to fulfil the NBA and building gap requirements stipulated on the site albeit by alternative means; and
- (d) their proposed two-tower scheme would be better in achieving the

planning intention in terms of allowing better views to the ridgeline and enhancing air ventilation. The BHR of 203mPD proposed for their two-tower scheme was not unreasonable, as it was just about double the BH of 110mPD for PlanD's four-tower scheme.

171. In response to a Member's question, Dr. Chan Pak Li said that he was not present at the KTDC meeting held on 4.1.2011 when PlanD presented the OZP amendments.

172. As the representers, representers' representatives and commenter had finished their presentations and Members had no further question to raise, the Vice-chairman said that the hearing procedures had been completed and the Board would deliberate on the representations in their absence and would inform them of the its decision in due course. The Vice-chairman thanked them and the Government's representatives for attending the hearing. They all left the meeting at this point.

Deliberation

173. The Vice-chairman proposed to proceed with the subsequent agenda items and defer the deliberation to the end of the meeting. Members agreed.

Group 2: R1 and R5

(TPB Paper No. 8821)

Presentation and Question Session

174. As sufficient notice had been given to the representers to invite them to attend the meeting, Members agreed to proceed with the hearing of the representations in the absence of the representers who had indicated that they would not attend the hearing.

175. The following representatives from the Government were invited to the meeting at this point:

Mr. Eric Yue DPO/TWK, PlanD

Mr. Richard Siu Senior Town Planner / Kowloon, PlanD

176. The Vice-chairman extended a welcome and invited DPO/K to brief Members on the representations.

177. With the aid of a powerpoint presentation, Mr. Eric Yue made the following main points as detailed in the paper:

- (a) on 19.11.2010, the draft Ngau Tau Kok and Kowloon Bay OZP No. S/K3/26, incorporating amendments mainly to impose BHRs on various development zones outside the Kowloon Bay Business Area (KBBA) to designate NBAs in various zones and other zoning amendments was exhibited for public inspection under section 5 of the Ordinance. A total of 1313 representations and 1 comment were received after the statutory publication periods of the Plan and the representations. However, 10 persons subsequently wrote to the Board indicating that they did not submit the representations;
- (b) the two representations to be considered in Group 2 were submitted by a member of the public (R1) and CLP Power Hong Kong Ltd. (R5). There was no related comment in respect of these two representations;

Background

- (c) the BH review for the Area had taken into account relevant planning considerations and was based on the principles to preserve the Kowloon ridgelines, respect the natural topography, create BH diversity, be compatible with local character and setting for historic buildings, preserve / create visual relief, breezeways and local view corridors and preserve the open vista from Clear Water Bay Road;
- (d) taking account of the recommendations of the AVA Study, a number of

non-building areas and building gaps were stipulated on the OZP. That included the NBA requirement affecting the Wang Chin Street electricity substation (ESS);

Representation No. R1 - Lau Ting On

- (e) R1 supported rezoning of three sites (including the proposed Cross-District Cultural and Community Centre, ex-RAF Headquarters and Cheerful Court (a senior citizen residence) to “G/IC” and its sub-zones as the proposals served the needs of the community;

Representation No. R5 – CLP Power Hong Kong Ltd.

- (f) R5 opposed the BHR of 2 storeys for the Ngau Chi Wan ESS, Shun Lee Tsuen ESS and Hip Wo Street ESS zoned “G/IC” in the area. R5 also opposed the NBA requirement at the Wan Chin Street ESS zoned “G/IC(1)”;
- (g) the grounds of representations of R5 were summarized in paragraph 2.2.2 of the paper and highlighted as follows:
 - (i) the BHRs on ESSs would only bring about negligible impact on air ventilation. The BHRs and/or NBA restrictions would restrict the upgrading/redevelopment potential of the ESSs and was not making good use of land resources;
 - (ii) it would be very difficult to identify new suitable sites for ESS in urban area and the undue delay caused by relocation or public consultation would put the electricity supply security and reliability of the area at risk;
 - (iii) the BHRs would undermine the design flexibility of the ESSs especially since the site coverage of most existing ESS sites

were fully utilised. The BHRs in terms of number of storeys allowed no design flexibility;

- (iv) there was no clear definition of the extent of 'minor' under the provision of minor relaxation clause;
- (v) the BHRs and setback requirements would deprive R5's development right. The existing development intensity of ESSs which was based on operational need might not reflect the maximum development potential under lease;
- (vi) District Lands Officer/Kowloon East (DLO/KE), LandsD had removed the height restriction for Shun Lee Tsuen ESS under lease in 2010. For the Wang Chin Street ESS, the area designated as NBA on the OZP was an extension area granted by DLO/KE in 2004 that was entitled for constructing buildings above and land premium was charged. Imposition of BHR and NBA revealed inconsistent Government policy and caused confusion regarding Government's direction in development control;
- (vii) ESSs were designed to integrate into the neighbourhood. CLP had developed ESS greening initiatives, environmental design guidelines and policies aiming at reducing environmental impact. There was therefore no visual impact caused by these ESSs on the surrounding environment; and
- (viii) R5 proposed to (i) relax the BHRs for Ngau Chi Wan ESS, Shun Lee Tsuen ESS and Hip Wo Street ESS from 2 storeys to not more than 8 storeys; and (ii) remove the NBA of Wang Chin Street ESS;

- (h) PlanD's responses to R5's grounds of representations and proposals were summarized in paragraphs 4.4 and 4.5 of the paper and summarized as follows:

Negligible Effect on Planning Intention

- (i) "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;
- (ii) according to the AVA Study, the "G/IC" sites connected to or next to main air paths were particularly useful for air ventilation and should be maintained as low-rise developments. The NBA at the Wang Chin Street ESS could improve permeability of sea breeze towards Kowloon Bay, the effectiveness of major breezeways and the overall wind environment in KBBA. It was necessary to contain their existing BH and to allow for future NBA so as to provide visual relief and to ensure good air ventilation. Any higher BHR and removal of NBA restrictions of "G/IC" sites would lead to cumulative loss of visual relief and breathing space in the congested urban core as well as impact on sea breeze for KBBA;

Against the Public Interest

- (iii) the imposition of BHR and/or NBA was a response to public aspirations for a better living environment. A careful balance needed to be struck between efficient use of land and good urban design confining the as-built situation of the "G/IC" sites (unless to meet standard requirement or with known/agreed redevelopment proposals). 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 and urban design considerations and other relevant factors in determining the BHR and NBA for the ESS sites;

- (iv) the Director of Electrical and Mechanical Services (DEMS) advised that they had no record of on-going projects for ESSs in the approved CLP Development Plan. 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 uses. Alternatively, redevelopment proposals of the existing ESSs exceeding the BHR and NBA could be submitted to the Board under s.16 of the Ordinance for minor relaxation of the restrictions or under s.12A of the Ordinance for amendments to the OZP;

Design Flexibility for Future Modification / Development Plans

- (v) in the absence of any redevelopment proposal to demonstrate any expansion plan and hence the need to vary the BHR and NBA of the four ESSs to meet the operational requirements, the proposed variation in BHR and / or NBA restriction was not justified at the present stage. Should such need be established in the future, the public should be given an opportunity to comment on the proposal through the OZP amendment procedure or planning application system;
- (vi) building design was determined by the interplay of various factors such as plot ratio, site coverage, height, design and disposition of buildings. BHR alone would not impose undue constraint on the design flexibility of future redevelopments. Besides, BHR did not preclude the incorporation of green features and innovative architectural features to promote a good

building design. Should there be any planning and design merits for a development scheme to exceed the BHR, it should be considered under application for minor relaxation of the BHR. Each application would be considered by the Board on its individual merits and a set of criteria for consideration of such applications had been set out in the ES of the OZP. There was no pre-determined figure for the percentage of relaxation that could be allowed and would be determined by making reference to the impacts of the proposed relaxation on the surrounding area;

- (vii) if more floor space or higher BH was required, placing equipment underground could be considered and there was provision under the Ordinance to disregard basement levels in determining the maximum number of storeys. As the NBA for the Wang Chin Street ESS would serve as an important breezeway for KBBA, minor relaxation might be considered by the Board only under exceptional circumstances as stated in the Notes of “G/IC(1)” zone;

Infringement on Existing Development Rights

- (viii) the lease was only one of the considerations in determining the BHRs for the ESS sites. The BH profile of the OZP was formulated in a comprehensive manner, having struck a balance between community aspiration for a better living environment and private development rights. “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 locational context within which the site fell;

- (ix) the BHRs for the ESS sites had already respected the as-built and planned development and confined their existing low-rise profile. For the Wang Chin Street ESS, DLO/KE advised that the subject lot was governed by approved building plan (i.e. controlled drawings) and no amendment should be made to the controlled drawings except with prior consent of the D of Lands. Moreover, the NBA restriction for the Wang Chin Street ESS would need to be complied with only upon redevelopment. Since the OZP imposed no PR/GFA/site coverage restrictions on these four ESS sites, their existing development intensity had neither been affected nor taken away;

Visual Compatibility with Adjacent Developments

- (x) compatibility in BH with the surrounding developments should not be the sole consideration in varying the BHR and NBA. Any variation of the BHR and NBA should be fully justified on absolute functional or operational needs and considered on a case-by-case basis;
- (xi) no justifications on functional grounds or operational needs had been put forward for the proposed revision of BHR and NBA. The argument of 'no adverse visual impact' should not be taken as the sole consideration for revision of BHR and NBA;

Responses to R5's Proposals

- (xii) the existing BHR and development intensity for the three ESS sites could cater for the current functional requirements and operational needs. The existing BHRs should be maintained to ensure good air ventilation;
- (xiii) the existing relatively low-rise ESSs had provided breathing space as well as visual relief to the surrounding built-up area.

There were no design merits or strong planning justifications for varying the BHR from 2 storeys to 8 storeys;

- (xiv) the adoption of the NBA for Wang Chin Street ESS could serve as major breezeway towards KBBA. No planning justifications had been put forward for removing the NBA restriction;
- (xv) should there be any functional or operational needs for the subject developments to exceed the stipulated BHR and NBA, the representer might seek the Board's permission for minor relaxation of the restrictions; and

PlanD's View

- (i) support of R1 should be noted and R5 should not be upheld.

178. As Members had no further question to raise, the Vice-chairman thanked the Government's representatives for attending the hearing. They left the meeting at this point.

Deliberation

179. The Vice-chairman invited Members to consider the two representations. Members noted the supporting views of R1 and generally agreed that R5 should not be upheld for reasons summarized in the presentation.

Representation No. R1

180. After further deliberation, the Board noted the views of R1 in support of the amendments to the OZP.

Representation No. R5

181. After further deliberation, the Board decided not to uphold Representation No. R5. Members then went through the reasons for not upholding R5 as stated in paragraph 6.1 of the paper and considered that they should be suitably amended. The reasons were:

- (a) apart from providing GIC facilities, “G/IC” sites in the built-up urban area also served as breathing space as well as visual relief. Their BHs should be contained to ensure good air ventilation as recommended in the AVA Study. 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 G/IC facilities;
- (b) the adoption of NBA for the Wang Chin Street ESS site was to improve permeability of sea breeze towards Kowloon Bay, the effectiveness of major breezeways and the overall wind environment in KBBA. There were no strong planning justifications for removing the NBA restriction. There was provision under the Notes of the OZP for a minor relaxation of the NBA requirement; and
- (c) any variation in the BHRs must be justified by functional and operational needs with planning and design merits. There was provision under the Notes of the OZP for a minor relaxation of the BHRs or for amendments to the OZP under the Ordinance. In the absence of any redevelopment proposal, there was no strong justification to support the proposed variation of the BHRs for the 3 ESS sites.

Agenda Item 8

[Open Meeting]

Review of “Green Belt” Zoning for Area West of Tung Tsz Road

Draft Tai Po Outline Zoning Plan No. S/TP/22

(TPB Paper No. 8834)

[This meeting was conducted in Cantonese]

182. The following Members had declared interests on the item:

Mr. Stanley Y.F. Wong - co-owned with his spouse a flat and
(the Vice-chairman) two car parks in Tai Po

Dr. W.K. Yau - owned some properties and land in
Tai Po and being a Member of the
Tai Po District Council

Dr. W.K. Lo - owned properties in Tai Po

183. Members noted that the interests of the Vice-chairman was indirect and remote as his property was far from the Tung Tsz area. Members also noted that Dr. W.K. Yau had left the meeting and Dr. W.K. Lo had tendered apologies for not being able to attend the meeting.

184. The following government representatives were invited to the meeting at this point:

Mr. W.K. Hui - District Planning Officer/STN, PlanD

Ms. Lisa Cheng - Senior Town Planner/Tai Po (STP/TP), PlanD

185. The Vice-chairman extended a welcome and invited representatives of PlanD to brief Members on the paper.

186. With the aid of a powerpoint presentation, Ms. Lisa Cheng, STP/TP made the following main points as detailed in the paper:

- (a) the paper was to provide Members with the findings of a review of the “Green Belt” (“GB”) zoning for the area west of Tung Tsz Road on the draft Tai Po Outline Zoning Plan (OZP) No. S/TP/22;

Background

- (b) there were the following previous planning applications for Small House development within the subject “GB” zone:
- (i) 5 planning applications No. A/TP/189, A/TP/214, A/TP/261, A/TP/253, A/TP/406 and 1 rezoning application No. Z/TP/5 for Small House development on the western side of Tung Tsz Road were rejected by the Board under s.16 or upon review for reason of not being in line with the planning intention of the “GB” zone. Although the sites fell within the village ‘environ’ (“VE”) of Tung Tsz Village, they contravened the prevailing planning policy of the Board to confine village expansion to the east of Tung Tsz Road which had been taken as a good physical boundary between the “V” and “GB” zones to the west;
 - (ii) on 11.9.2009, planning application No. A/TP/417 for Small House development on the western side of Tung Tsz Road was approved by the Board upon review after considering the special circumstances of the case. The Board decided to give sympathetic consideration to the application noting that the application site was covered by MOT (Modification of Tenancy) granted by the LandsD in 1970 for a temporary structure for dwelling and kitchen, the applicant had lived on the site since the 1960’s, more than 50% of the application site was within the “VE” and there was insufficient land in the “V” zone to meet the Small House demand. The planning permission, which was valid until 11.9.2013, for the development of one Small House had not yet been executed by the applicant;
 - (iii) when considering planning application No. A/TP/417, Members asked PlanD to review whether the “GB” zoning covering the large car park area adjacent to the application site was still

appropriate; and

- (iv) pending the review, planning applications No. A/TP/482 and A/TP/491, each for a Small House development on two different sites located on the western side of Tung Tsz Road were deferred by the Committee on 28.1.2011 and 15.4.2011 respectively;

The Review

- (c) the planning intention of the “GB” zone was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There was a general presumption against development within this zone;

The “GB” Area under Review

- (d) the portion of the “GB” area west of Tung Tsz Road under review covered an area of about 1.65 ha bounded by Tung Tsz Road in the east, a catchwater and access road in the north, the Treasure Spot Palace in the west (which was a cluster of Small House development within the “V” zone of Tsiu Lam village) and a stream flowing across the “GB” area from west to east down Tung Tsz Road on the south. The area south of the stream was also zoned “GB” but not included in this review as the area mainly comprised Government land with densely vegetated hill slope between the Hong Kong Institute of Education and the Hong Kong Police Holiday Home;
- (e) the “GB” area under review had the following characteristics:
 - (i) it consisted of mainly privately owned agricultural lots on a sloping terrain with level differences ranging from about 22.2mPD along the northern boundary to about 15.1mPD along the stream to the south. There was an existing car park with an

area of 2,790m² constructed on a linear platform with retaining walls up to 5-metre high connecting the Treasure Spot Palace development with Tung Tsz Road;

- (ii) the area to the north of the car park comprised vegetated slopes and some cultivated plots. The area to the south of the car park was relatively bare with some weeds and dumping of waste materials;
- (iii) there was only one existing two-storey house located near Tung Tsz Road to the southeast of the car park within the "GB" area under review. The site was the subject of Application No. A/TP/417; and
- (iv) the Tung Tsz Scout Centre to the north extended to areas outside the Tai Po OZP; and Tung Tsz Village to the east was within the Ting Kok OZP;

The Car Park and Changes in the Surrounding "GB" Area

- (f) the aerial photos taken in 1994, 1995, 1997, 2004, 2005, 2006 and 2009 in Plans 4a to f and Plan 3 in the paper showed that major part of the subject "GB" area had remained green except for the part to the immediate north of the stream which had been degraded when the car park structure was constructed in around 2005. The house associated with application No. A/TP/417 already existed prior to 28.2.1980 when the first statutory plan covering the area was gazetted;
- (g) the car park was currently used by the residents of Treasure Spot Palace. District Lands Officer/Tai Po (DLO/TP), LandsD advised that Lot No. 101 S.B ss1, where the car park was located, was an Old Schedule Lot for "Agricultural Use". While there was no record of waiver or lease modification being granted for conversion to other uses, parking of vehicles on the lot did not constitute a breach of the lease conditions.

However, whether the structure was in contravention of the lease required further investigation;

- (h) such car park use in the “GB” zone would require planning permission from the Board under the Tai Po OZP. There was no record of planning permission granted for the car park. However, as the Tai Po OZP was not previously covered by a Development Permission Area (DPA) Plan, there was no provision for planning enforcement under the Ordinance and action against the non-conforming uses would rest on other authorities including Buildings Department and LandsD; and
- (i) the area to the north of the car park had remained basically unchanged with natural vegetation and agricultural uses. However, the area south of the car park had been subjected to periodic clearance of natural vegetation, dumping activities and unauthorized filling of land;

Demand and Supply of Small Houses for the “V” zone of Tung Tsz

- (j) Table 1 in the paper summarized demand and supply of Small Houses for the “V” zone of Tung Tsz. The number of outstanding Small House applications was now 25 and the 10-year Small House demand forecast for Tung Tsz had increased from a total of 100 to 180 between 1997 and 2011. Land available in Tung Tsz had decreased from 2.04 ha. to 1.24 ha. in the same period, which was inadequate to meet the 10-year Small House demand from Tung Tsz. However, land was still available to accommodate about 49 Small Houses;

Planning Considerations and Assessment

- (k) it was considered necessary to uphold the planning intention of the “GB” zone and the general presumption against development for the general area for the following reasons:
 - (i) the “GB” area under review was part and parcel of a continuous strip of greenery located between the natural slope of the Pat Sin

Leng to the north and the heavily wooded hill to the south with some very low-rise institutional uses like the Tung Tsz Scout Centre and the Hong Kong Police Holiday House in-between. The area had been subjected to clearance of vegetation from time to time and major changes occurred when the car park structure associated with Treasure Spot Palace was constructed in 2004 to 2006;

- (ii) despite the fact that the landscape character of the area had been degraded due to the unauthorized activities, the area still served an important function in defining the limits of urban growth. Efforts should be made to contain urban sprawl and the possible connotation of “destroy first and develop later” should be discouraged; and
 - (iii) more intensive development within this sloping terrain, which would likely involve extensive site formation works that caused adverse visual, landscape and drainage impacts on the surrounding areas, was far from desirable;
- (l) Small House development might be permitted in Area A as shown on Plan 1 of the paper subject to planning application and compliance with the ‘Interim Criteria for Assessing Planning Applications for NTEH/Small House Developments in the New Territories’ (‘Interim Criteria’) for the following reasons:
- (i) there was insufficient land within the “V” zone of Tung Tsz. The south-eastern portion of the “GB” area under review (Area A) on Plan 1 of the paper, which was relatively flat and within the ‘VE’ of Tung Tsz Village, might be considered for Small House development;
 - (ii) considering that the Small House development approved by the Board on review on 11.9.2009 (Application No. A/TP/417) was

located at the north-western edge of Area A, there might be scope for some additional Small House developments along the road without causing land use incompatibility or visual incongruity with the surrounding area; and

- (iii) relevant departments consulted had no objection or no comment on possible Small House developments within Area A. The area, with a size of 0.16 ha., might accommodate about 10 Small Houses which would help to alleviate some of the shortfall of “V” land in Tung Tsz Village. Application for Small House development within the area could continue to be processed by the Board having regard to the TPB Guidelines No. 10 (TPB-PG No. 10) for ‘Application for Development within “Green Belt” zone under section 16 of the Town Planning Ordinance’ as well as the ‘Interim Criteria’ and each case would be assessed on its merits;

- (m) the existing car park that transversed the “GB” area under review had adversely affected the amenity value of the area. While according to DLO/TP, LandsD, the parking of vehicles was not considered to constitute a breach of the lease conditions for the subject site, whether the car park structure was in contravention of the lease conditions required further investigation. Any land administration actions which might be taken against the car park would be kept in view, and if opportunity arose remedial measures should be taken to restore/enhance the landscape quality of the general area;

Recommendations

- (n) there was no obvious reason for changing the zoning and planning intention for the “GB” area under review;

- (o) Small House development might be permitted in Area A subject to compliance with the ‘Interim Criteria’; and

Advice Sought

- (p) Members were invited to note the findings of the review and endorse the recommended actions in paragraphs 186 (n) and (o) above.

187. In response to a Member's question, Ms. Lisa Cheng confirmed that Area A was within the 'VE'.

188. Members agreed to the recommendations to retain the "GB" zoning and its planning intention for the "GB" area under review. It was also agreed that Small House development might be permitted in Area A subject to compliance with the TPB-PG No. 10 and the 'Interim Criteria'.

189. The Vice-chairman thanked the Government's representatives for attending the hearing. They left the meeting at this point.

Agenda Item 11

[Open Meeting]

Request for Deferral for Review of Application No. A/H8/407

Proposed Minor Relaxation of Building Height Restriction for a Proposed Church Development in "Government, Institution and Community" zone, 11 Cheung Hong Street, North Point

(TPB Paper No. 8830)

[This meeting was conducted in Cantonese]

190. The Secretary reported that on 13.5.2011, the applicant's representative wrote to the Secretary of the Board requesting the Board to defer making a decision on the review application for one month to allow time for the applicant to prepare additional information on the technical issues in order to respond to the reasons for rejection. The justifications for deferment met the criteria set out in the Town Planning Board Guidelines No. 33 on 'Deferment of Decision on Representations, Comments, Further Representations

and Applications Made Under the Town Planning Ordinance' in that the applicant needed more time to prepare technical information to respond to the reasons for rejection, the deferment period was not indefinite and that the deferment would not affect the interest of other relevant parties.

191. After deliberation, the Board agreed to defer a decision on the review application as requested by the applicant. The Board also agreed that the review application should be submitted for its consideration within three months from the date of receipt of further submission from the applicant. The Board also agreed to advise the applicant that two months were allowed for preparation of further information and no further deferment would be granted unless under very special circumstances.

Agenda Item 12

[Open Meeting]

Application to the Chief Executive under Section 8(2) of the Town Planning Ordinance for Extension of Time Limit for Submission of the Five Closed Area Development Permission Area Plans to the Chief Executive in Council for Approval
(TPB Paper No. 8833)

[This meeting was conducted in Cantonese.]

192. As Heung Yee Kuk New Territories (HYKNT) had submitted comments in respect of the five subject Development Permission Area (DPA) Plans, the following Members declared interests on the item:

Mr Stephen Yip being an ex-officio Executive Councillor of HYKNT

Dr. W.K. Yau] being co-opted Councillors of HYKNT

Dr. C.P. Lau]

193. Members noted that Dr. W.K. Yau and Dr. C.P. Lau had left the meeting and Mr. Stephen Yip had tendered apologies for being not able to attend the meeting.

194. The Secretary reported that on 30.7.2010, the following draft DPA Plans were exhibited under section 5 of the Ordinance:

- (a) draft Sha Tau Kok DPA Plan No. DPA/NE-STK/1;
- (b) draft Lin Ma Hang DPA Plan No. DPA/NE-LMH/1;
- (c) draft Ta Kwu Ling North DPA Plan No. DPA/NE-TKLN/1;
- (d) draft Man Kam To DPA Plan No. DPA/NE-MKT/1; and
- (e) draft Ma Tso Lung and Hoo Hok Wai DPA Plan No. DPA/NE-MTL/1.

195. During the exhibition period of the draft DPA Plans and the publication period of the representations, 38 representations and 14 comments were received. In accordance with section 8(1) of the Ordinance, the Board should submit the draft DPA Plans to the CE in C for approval within 9 months after the expiration of the plan exhibition period (i.e. on or before 30.6.2011), or on application by the Board, for such further period, being not more than 6 months, as the CE might allow.

196. On 25.2.2011, the Board, having considered all the representations and comments to the DPA Plans, decided to defer the consideration of the representations and comments. PlanD was asked to further review the land use proposals, in particular on the “Village Type Development” (“V”) zones, taking into account the views of the representers and commenters and any other relevant planning considerations, such as the updated Small House demand. The Board also agreed that the revised proposals, if any, should be submitted to the Board for further consideration and all the concerned representers and commenters should be invited to attend the hearing to further consider the representations and comments.

197. PlanD had consulted the LandsD on the updated Small House demand. Taking into account the updated figures provided from the LandsD for the 17 recognized villages within the DPAs, the PlanD was reviewing the boundaries of the “V” zones with concerned departments. More time would be required for PlanD to consult the villagers on

the revised boundaries of the “V” zones and submit their feedbacks to the Board for further consideration, and for the Board to conduct further consideration of the representations and comments and hearing of the further representations (if any). Completion of these tasks would be outside the 9-month statutory time limit (i.e. 30.6.2011) for submission of the draft DPA Plans to the CE in C for approval.

198. There was a need to apply to the CE for an extension of the 9-month statutory time limit for the subject DPA Plans to incorporate the latest land use proposals for further consideration of the representations and comments and hearing of the further representations (if any) before submission to the CE in C for approval.

199. After deliberation, Members agreed that the CE’s agreement should be sought under section 8(2) of the Ordinance to extend the time limit for submission of the five DPA Plans to the CE in C for a further period of six months from 30.6.2011 to 30.12.2011.

Agenda Item 13

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations and Comments to the Draft South West Kowloon Outline Zoning Plan No. S/K20/25 (TPB Paper No. 8835)

[This meeting was conducted in Cantonese.]

200. The Secretary reported that on 21.1.2011, the draft South West Kowloon OZP No. S/K20/25, incorporating amendments to rezone two sites i.e. a waterfront site on Hoi Fai Road fronting the New Yau Ma Tei Typhoon Shelter and a site at the junction of Hoi Ting Road, Hoi Wang Road and Lai Cheung Road from “G/IC” to “Open Space” (“O”), was exhibited for public inspection under section 5 of the Ordinance. A total of 5 representations and 46 comments were received.

201. Since only 5 representations and 46 comments were received and majority of them were similar in nature concerning the waterfront site on Hoi Fai Road, it was considered more efficient for the full Board to hear the representations and comments

collectively in one group and there was no need to resort to the appointment of a Representation Hearing Committee (RHC).

202. After deliberation, the Board agreed that the representations and comments should be heard collectively in one group by the Board in the manner as proposed in paragraphs 2.1 and 2.2 of the paper.

Agenda Item 14

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Further Representations to the Draft Causeway Bay Outline Zoning Plan No. S/H6/15
(TPB Papers No. 8832)

[This meeting was conducted in Cantonese]

203. The following Members had declared interests on this item:

- | | | |
|--|---|---|
| Mr. Maurice W.M. Lee | - | owned properties in the Area |
| Mr. Roger K.H. Luk | - | his spouse owned a property in the Area |
| Mr. Jimmy Leung
<i>(Director of Planning)</i> | - | his mother owned a property in the Area |
| Ms. Annie Tam | - | owned property in Happy Valley that had views of the Area |
| Ms. Ophelia Wong
<i>(acting D of Plan)</i> | - | owned property in Happy Valley that had views of the Area |

204. Members noted that Mr. Maurice W.M. Lee and Mr. Jimmy Leung had tendered apologies for not being able to attend the meeting. As the item was procedural in nature and no deliberation was required, Members agreed that the other Members who had declared interests should be allowed to stay in the meeting.

205. The Secretary reported that on 17.9.2010, the draft Causeway Bay OZP No. S/H6/15 was exhibited for public inspection under section 5 of the Ordinance. A total of 165 valid representations and 5 valid comments were received.

206. On 11.3.2011, after giving consideration to the representations and comments, the Board decided to propose amendments to the OZP to meet one representation (i.e. R164) and partially meet 124 representations (i.e. R6 to R73, R75 to R117, R130, R132 to R139, R141, R143, R144 and R150) and not uphold the remaining representations.

207. On 1.4.2011, the proposed amendments were published under section 6C(2) of the Ordinance and 4 further representations were received. Further representation No. F1 was in respect of the proposed amendments to the BHR for the “Commercial” zones at Sunning Road and F2 to F4 were related to the proposed amendments at the Haven Street sites.

Invalid Representation (F4)

208. Under section 6D(1) of the Ordinance, any person, other than that who had made any representation or comment after consideration of which the proposed amendments were proposed under section 6B(8), might make further representation to the Board in respect of the proposed amendments within the relevant exhibition period. F4 was submitted by Lei Shun Court Joint Sale Committee, which submitted the original representation No. 137 and comment No. 2. The Board had proposed amendment to the OZP to partially meet R137 and other related representations. In view of the above, Members were invited to consider whether F4 should be considered as invalid.

209. After deliberation, Members agreed that F4 should be considered as invalid.

Hearing Arrangement

210. As the representations were considered by the full Board on 11.3.2011, it was considered more appropriate for the full Board to hear the further representations without resorting to the appointment of a RHC.

211. After deliberation, the Board agreed that the further representations should be heard collectively in one group by the Board in the manner as proposed in paragraphs 2.1 and 2.2 of the paper.

Agenda Item 15

[Open Meeting]

Any Other Business

[This meeting was conducted in Cantonese]

212. There being no other business, the meeting proceeded to deliberation of the representations under Group 3 of Agenda Item 10.

Agenda Item 10

[Closed Meeting (Deliberation only)]

Consideration of Representations and Comment to the Draft Ngau Tau Kok and Kowloon Bay Outline Zoning Plan No. S/K13/26
(TPB Papers No. 8822 and 8821)

[This item was conducted in Cantonese.]

Group 3: R6 to R1313

(TPB Paper No. 8822)

Deliberation

213. The Vice-chairman invited Members to consider the representations taking into consideration all the written submissions and the oral elaboration and clarifications presented at the meeting.

Development Right

214. The Vice-chairman said that the representers had taken development right as a major argument in their representations. Members had to consider what should be taken as the development right in the context of the subject representations, so as to provide the basis for consideration of whether the BHR, NBA and building gap requirements on the Kai Tak Mansion site were justified.

215. In response, Miss Ophelia Wong said that development right had different meaning under the planning, land and building regimes. In formulating BHRs in OZPs, development right would be taken as one of the considerations although it might not be an over-riding consideration. When stipulating BHRs in OZPs, one of the basic principle was that the BHR would be able to accommodate the permissible PR/GFA under the OZPs unless there were other more important planning considerations.

216. A Member said that it might not be appropriate to only make reference to the lease as the basis for deciding on the BHR in the OZP since the older leases were mostly unrestricted without any restriction on BH and GFA/PR.

Plot Ratio

217. Members noted that under the OZP, the Kai Tak Mansion site was zoned "R(A)" and was subject to a maximum PR of 9 for a building that was partly domestic and partly non-domestic, of which the domestic part should not exceed 7.5.

218. A Member said that the leases governing the site reflected the development restrictions some 50 years ago. Development intensity was governed by the then Volume Regulations rather than the PR restrictions used today. This Member and two other Members considered that it was appropriate to adopt a PR of 9 permissible under the OZP as the basis to consider the development right of the site. The Vice-chairman said that it was reasonable to assume that the PR of 9 was a legitimate expectation of the representers.

Building Height

219. A Member asked whether it was correct for the representers to claim that the height restriction in the leases (that was referenced to the height of the RAF lawn at around 27.7mPD) was not enforceable as the RAF no longer existed. Miss Annie Tam said that leases could include BHR with reference to nearby buildings, such as the subject provision in the leases for the Kai Tak Mansion site. However, it was reasonable for the developer to take the view that that LandsD would be willing to accept a modification to this height restriction clause subject to no major adverse comments from relevant government departments, including PlanD.

220. A Member said that the existing height restriction in the leases should have been related to operational needs of the RAF which might not be a relevant consideration for deciding on the BHR for the site.

221. Two other Members said that if it was agreed that the site was allowed for a development at PR of 9 for the purpose of considering the representations, it followed that 110mPD should be taken as the starting point in considering whether the BHR was adequate to accommodate the permissible PR.

Slope Area

222. A Member said that the crux of the matter was whether the slope (about 919.7m² in area according to R6) along the north-eastern boundary of the site should be included in the site area for PR calculation. If yes, the BHR of 110mPD needed to be relaxed.

223. Another Member asked whether the Board could rely on the HKPSG to decide that the slope should be excluded for PR calculation.

224. Miss Ophelia Wong said that according to the HKPSG (paragraph 2.1 of Chapter 2 on Residential Densities), slope area should be discounted from the site area for PR/GFA calculations. This was adopted as Government's policy when drawing up restrictions in new leases and would be the principle adopted by PlanD when providing

comments on modifications to existing leases. In addition, according to paragraph 3.3 of the ES, slope area that carry no development right under the lease, such as area restricted for slope maintenance, should not be taken into account for PR calculation. However, the leases governing the site were silent on whether the slope area could be taken into account for PR calculation.

225. The Vice-chairman and two other Members considered that whether the slope area could be counted for PR calculation would have a direct bearing on the redevelopment potential of the site. One of these Member also said that unless it was against the established Government policy or the lease restrictions, the slope area might be allowed to be included for PR calculation on sympathetic grounds.

226. Another Member however, said that although the slope area might be accountable for PR under the old leases, the site was still be subjected to the stringent height restriction up to the height of the ex-RAF Lawn which would, in effect, restrict the development potential of the site. Notwithstanding, this Member and two other Members said that whether the slope area should be counted for PR calculation had to be based on its entitlement under the leases and not a matter to be deliberated by the Board.

227. Miss Ophelia Wong said if the slope area carried development right, then it could be accountable for PR calculation according to the ES of the OZP. This should be taken into account in formulating the BHR for the site.

228. In response to a Member's question, Miss Annie Tam said that despite R6's claim that the height restriction under the leases was not enforceable as the RAF no longer existed, lease modification would still be required if the developer intended to pursue the proposed redevelopment with a BH of 203mPD. Miss Ophelia Wong said that in the event that lease modification might not be required, PlanD could still provide comment on the development intensity of the proposed development at the GBP stage. In such circumstances, PlanD would also seek clarification from LandsD on the entitlement under the leases.

229. A Member said that if the slope area was GFA accountable, how should the Board decide the appropriate BHR for the site such that the permissible GFA under the

OZP could be accommodated. Miss Ophelia Wong said that Members could make reference to the information in R6's presentation (subject to verification), which indicated that the GFA from the slope area would be equivalent to an addition of 6.5 storeys (about 20m) on PlanD's four-tower base scheme. Miss Wong said that R6 also stated in their presentation that PlanD's base scheme had to be increased to 140mPD if the EVA and road setback were to be provided. A Member said that relaxation of the BHR on the site to 130mPD might be acceptable in planning terms. Miss Wong however, said that a relaxation of the BHR to 130mPD to accommodate the GFA generated from the slope area or 140mPD as argued by R6 might not be able to totally satisfy the representers' requests as they mainly asked for no BHR or a much higher BHR of 203mPD for the site.

Compassionate Considerations

230. In response to a Member's question, Miss Ophelia Wong said that hardship or compassionate ground could be one of the planning considerations. A Member said that the compassionate ground related to the poor living conditions of the elderly and the dilapidated state of the existing buildings should be taken into consideration. However, the information about the financial difficulties of Block 3 owners due to previous winding-up court order was not a relevant consideration.

231. Whilst agreeing that compassionate ground should be considered, two Members said that there was no yardstick to gauge what would be the appropriate level of relaxation of the BHR in the subject case.

Design Merits and Landmark Building

232. A Member said that there might be design merits in R6's scheme, such as visual permeability to the ex-RAF Officers' Quarters Compound. However, in considering representations in the plan-making process, design merits of an indicative scheme for one specific site should not be given too much weight. This view was supported by another Member who considered that it was not appropriate for the Board to agree to relax the BHR on a site based on a particular development scheme, that was indicative in nature, during the representation consideration process without regard to the factors that had been adopted in formulating the BHR for the OZP.

233. The Vice-chairman said that R6 had claimed that their scheme at 203mPD performed better in air ventilation terms as compared to PlanD's base scheme. However, the Board had to consider whether R6's scheme at 203mPD was acceptable on all planning grounds. A Member said that a development with BH of 203mPD on the site was not acceptable in planning terms. This Member also noted that R6's AVA had not disputed the findings of the AVA prepared for PlanD. It only concluded that R6's scheme was better than PlanD's base scheme in terms of air ventilation.

234. Miss Ophelia Wong said that Members also needed to consider whether R6's scheme could be considered as a landmark building as claimed and whether a landmark building at this location needed to be at the proposed BH of 203mPD.

235. A Member said that R6's scheme at 203mPD was unlikely to be considered acceptable under a minor relaxation application. Another Member said that there was no apparent design merits in R6's scheme. On the contrary, the tall columns and the wall-effect of the residential towers would create adverse visual impacts. The same Member said that R6's scheme, which was based on the GBP submitted in 2010, might have included bonus and exempted GFAs that were not applicable under the new Sustainable Building Design Guidelines. The proposed BH of 203mPD was excessive and considered unacceptable.

236. This Member also said that the R6's proposed BHR and other additional planning control elements were inter-related. Should a BHR lower than 203mPD be adopted, the other design elements of R6 including additional NBA, permeability ratio and building gap requirements at lower levels of the development would have to be adjusted accordingly.

237. Another Member said that R7 had pointed out that the local view corridor from Choi Ying Place only provided for a restricted view of Lion Rock from one point on the footbridge. It appeared that the relevance of the local view corridor in respect of the BHR for the Kai Tak Mansion site could be reviewed.

238. In response to the Vice-chairman's question, Miss Ophelia Wong said that R6 had argued that their scheme was not out-of-context as a taller but slimmer built form would have less impact on views towards Lion Rock. However, PlanD's view was that the two high-rise towers at 203mPD would be out-of-context as it would be incompatible with the surrounding BHs and the overall building height profile. Furthermore, the proposed high-rise towers at 203mPD would have an adverse visual impact on the view towards the Lion Rock ridgeline as seen from the local view corridor. The higher BHRs quoted by R6 for the 8 Clear Water Bay Road site and Choi Tak Estate were different from Kai Tak Mansion in context and site formation level. She said that DPO/K had already explained that the BHR of 184mPD for the 8 Clear Water Bay Road site was to reflect a planning scheme approved by the Board. The site was at a higher site level and the podium of the development at 43.9mPD, included 4 levels of public car park for a park and ride facility built on top of two levels of public transport interchange. BHRs of 160mPD and 170mPD were stipulated for Choi Tak Estate as the site was on two platforms at 41mPD and 60.5mPD.

Non-building Area and Building Gap Requirements

Building Gap Requirement

239. A Member said that R6 and R7 considered that the 20m-wide building gap (at 15mPD) was too narrow and not effective to provide visual access to the ex-RAF Officers' Quarters Compound from within the site and at Kwun Tong Road. He asked if there was a need to review whether the building gap should be retained.

240. The Vice-chairman said that the building gap might not be very effective for providing views to the Grade I historic building. The case for retaining the building gap might be weakened if it was intended solely for providing a view corridor to the ex-RAF Officers' Quarters Compound. Removal of the building gap might provide more design flexibility.

241. A Member said whilst the building gap might not be effective for providing views to the ex-RAF Officers' Quarters Compound from the site or from Kwun Tong Road, it would provide a more open vista when viewed from the side of the historic building.

However, the Member shared the view of the Vice-chairman that the justification for provision of the building gap might be weakened if it only served the purpose of a visual corridor to the Grade I historic building. This Member noted that the building gap also served the purpose for air ventilation.

242. In response to the above Members' questions, Miss Ophelia Wong said that the building gap served the purpose of a visual corridor that also have air ventilation benefits. The AVA conducted by PlanD's consultant did not specifically recommend to provide a that building gap for air ventilation purpose for the wider area. It tested the air ventilation performance of two schemes on the site with different NBA and building gap restrictions and concluded the NBA and building gap restrictions as currently stipulated on the OZP performed better in air ventilation perspective. The building gap requirement could be reviewed if Members had reservation on effectiveness of the building gap as a view corridor. Furthermore, the Sam Shan Kwok Wong Temple to the northwest and the school to the southeast were both low-rise, those sites could facilitate air ventilation in the vicinity of the site.

Non-building Area at South-eastern Boundary

243. A Member said R6 had questioned why the NBA at the south-eastern boundary of the site, that was intended to provide a buffer from the St. Joseph's Anglo-Chinese Primary School, had to be designated within the Kai Tak Mansion site rather than on the school site or be shared between the two sites. Miss Ophelia Wong explained that the NBA was to provide a buffer area so that the redevelopment on the site would not be built too close to the school.

244. The Vice-chairman said the NBA at the south-eastern boundary of the site should be retained to provide a buffer from the school. Should the school redevelop in future, additional NBA could be considered on the school site to provide for a larger buffer. Members agreed.

Alleged Wrong Assumptions in PlanD's Base Scheme

245. In response to a Member's question about R6's allegation that PlanD's base

scheme was based on wrong assumptions (i.e. it had not taken into account the EVA, road setback and transfer plate requirements), Miss Ophelia Wong said that as explained by DPO/K, PlanD's base scheme was only an indicative conceptual scheme. There could be different building designs for the redevelopment on the site within the OZP restrictions. PlanD's base scheme was to demonstrate that a development with PR of 9 could be accommodated on the site under the BHR and NBA and building gap requirements. DPO/K had explained that the BHR of 110mPD would be adequate to accommodate the permissible PR of 9 after taking into account the road setback and EVA requirements. The Secretary added that there was also room to adjust the floor-to-floor height of some floors.

246. Miss Ophelia Wong said that PlanD's base scheme had however, not taken into account the slope area for PR calculation. The BHR of 110mPD would not be able to accommodate a development at PR of 9 if the slope area was to be included.

Adjournment of the Meeting

247. As it was already very late at night, the Vice-chairman proposed that the meeting should be adjourned. Members agreed.

248. The meeting was adjourned at 12:30 am on 28.5.2011 and would be resumed on 1.6.2011.

249. The meeting was resumed at 1:00 p.m. on 1.6.2011.

250. The following Members and the Secretary were present at the resumed meeting:

Mr. Stanley Wong

Vice-chairman

Mr. K.Y. Leung

Mr. Laurence L.J. Li

Mr. Roger K.H. Luk

Professor S.C. Wong

Director of Lands

Miss Annie Tam

Agenda Item 10

[Closed Meeting (Deliberation only)]

Consideration of Representations and Comment to the Draft Ngau Tau Kok and Kowloon Bay Outline Zoning Plan No. S/K13/26

[The item was conducted in Cantonese.]

Group 3: R6 to R1313

(TPB Paper No. 8822)

Deliberation

251. The Vice-chairman thanked all Members for attending the resumed meeting. Further to the discussion at the meeting held on 27.5.2011, he asked Members to consider a number of matters in deciding on the representations No. R6 to R1313. These matters included whether the slope area should be GFA accountable; whether the BHR should be relaxed and whether the building gap restrictions on the site needed to be amended.

Slope Area and BHR

252. The Vice-chairman said that at the deliberation on 27.5.2011, Members noted that whether the slope area should be included for GFA calculation would have bearing on the appropriate BHR for the site. He asked D of Lands to provide some advice in this regard. Ms. Annie Tam said that the leases governing the site did not contain any GFA and NBA restrictions. Hence, it appeared that the slope could be included for GFA calculation under the leases.

253. Noting DPO/K's advice in the meeting held on 27.5.2011 that the BHR had to be relaxed if the slope area was to be included for GFA calculation, the Vice-chairman asked Members to consider if the BHR for the site should be relaxed such that it could accommodate the GFA permissible under the OZP.

254. At the request of the Vice-chairman, the Secretary said that according to R6, the slope area would be accountable for a GFA of about 8,280m², but the exact area of the slope would be subjected to detailed survey. Based on the assumption of a 33.3% site coverage (i.e. the maximum site coverage for residential towers according to the B(P)R on the 'buildable' site area (i.e. excluding the slope area as it was unlikely that the slope would be removed), it was estimated that 5 to 6 additional floors would be required to accommodate the GFA generated from the slope area. Six additional floors would be equivalent to about 20m if a floor-to-floor height of 3.15m was assumed. Members might wish to consider if the BHR was to be relaxed from 110mPD to 130mPD to accommodate the extra GFA from the slope area.

255. As requested by the Vice-chairman, the Secretary recapped DPO/K's explanation made at the meeting on 27.5.2011 about the BH profile in the vicinity of the site. In general, the area in the immediate vicinity of Kai Tak Mansion site was subject to BHRs of 80mPD and 100mPD. The area further uphill, such as Choi Tak Estate, was subjected to BHRs of 160mPD and 170mPD. Hence, increasing the BHR on the site to 130mPD might not be unacceptable in the wider context and could still be considered in line with the stepped BH profile.

256. The Vice-chairman agreed that a BHR of 130mPD on the site would still be broadly in line with the stepped BH profile. Members also noted that the Kai Tak Mansion site was abutting low-rise uses such as a school, the ex-RAF Officers' Quarters Compound, an open space and a temple. Hence, even if the BHR on the site was to be amended, there was no need to amend the BHRs on other surrounding sites.

Building Gap Restriction

257. With regard to the building gap restriction, the Vice-chairman asked whether retention / removal of the building gap would affect the BHR. In response, the Secretary said that the building gap would affect the site layout and design flexibility. However, the building gap restriction would not have a direct implication on the BHR as the footprint of residential towers on the site was subjected to the maximum SC restriction under the B(P)R. The building gap requirement at 15mPD under the OZP would not

result in reduction of the footprint of the residential towers beyond the SC restriction permissible under the B(P)R. Hence, retention / removal of the building gap would have no direct implication on the BHR.

258. Regarding Members' concerns on whether the building gap was for visual or air ventilation purpose, the Secretary said that as indicated in the AVA report attached in Annex VI of the paper, the building gap on the Kai Tak Mansion site was not recommended as an essential breezeway for air ventilation of the area. The AVA tested two development options for the Kai Tak Mansion site with different building gap and NBA requirements, and concluded that the option with the building gap and NBA requirements as stipulated under the OZP performed better in terms of street level wind environment. Hence, the building gap on the Kai Tak Mansion site served more as a visual corridor which also had air ventilation benefits.

259. The Vice-chairman said that since the surrounding developments were mainly low-rise, it appeared that the building gap was not essential for air ventilation purpose. The Secretary said that Members should consider whether the building gap should be retained for the purpose of a visual corridor.

260. A Member said that the building gap requirement might provide the planning control needed to avoid a typical walled building with wide frontage on the site. Another Member said that the building gap could be justified even purely from visual perspective. It would allow for a more permeable built form as seen from Kwun Tong Road and would allow for a more open vista for the ex-RAF Officers' Quarters Compound looking westward. This was supported by another Member.

261. Another Member said that there was good justification to impose the building gap on the Kai Tak Mansion site as a planning control as the site was uniquely located abutting a Grade I historic building. The building gap should be retained for maintaining the visual quality for users of the ex-RAF Officers' Quarters Compound.

262. The same Member said that the developer could apply to the Board for minor relaxation of the building gap requirement if there was an innovative design scheme with design merits. In response to the Vice-chairman's question, the Secretary said that there was provision for minor relaxation of the building gap restriction under the "R(A)" zone covering the site. The minor relaxation provision had made allowance for the adjustment of the height as well as the alignment, width and /or design of the building gap. The Board had confirmed this principle during the consideration of the further representations in respect of the Tsim Sha Tsui OZP on 8.10.2010.

Creating Landmark

263. Further to Members' discussion on 27.5.2011 that a building with BH at 203mPD was not acceptable from a general planning perspective and on the point raised by many representers about building a landmark building at the site, a Member said that a tall building was not equivalent to a landmark building and there was no good planning reason to propose a landmark building on the Kai Tak Mansion site. This Member said that the indicative scheme of R6 did not have the design merits of a landmark building and the proposed BH of 203mPD was not appropriate in the local context. The Vice-chairman also agreed that an exceptionally tall landmark building was not appropriate at this location.

Legitimate Expectation

264. With regard to the representers' claim that there was legitimate expectation that there should not be BHR on the Kai Tak Mansion site, the Vice-chairman said that the Board was empowered under the Ordinance to impose BHRs in OZP for planning control and had all along incorporated BHRs on OZPs as appropriate. In addition, two Members said that given that the Board had progressively incorporated BHRs in OZPs in various districts in a comprehensive manner since 2007, the representers should be aware that BHRs would be incorporated on the OZP at some point in time.

265. The Secretary said that planning was primarily on matters of wider public interests and private transactions would not be taken into account in the statutory planning process. Noting the principle that BHR imposed on OZPs should be able to

accommodate the development potential permissible under the OZP, a Member said that a relaxation of the BHR capable of accommodating the permissible PR of 9 on the whole site (including the slope area) had already addressed the representers' claim on development right.

266. The Vice-chairman summarised Members' views that to address the concerns raised in representations No. R6 to R1313, the BHR of the site should be amended from 110mPD to 130mPD. Members also agreed that the two 10m-wide NBAs along north-eastern and south-eastern boundaries of the site and the building gap at 15mPD as stipulated on the OZP should be retained.

267. Members noted the clarifications made by the Secretariat and DPO/K on points raised by the representers at the meeting held on 27.5.2011 as detailed in paragraphs 148 to 152 above. Members also noted that as one of the representers (R1029) who had previously informed the Board that she had not submitted the representation had attended the hearing, it should be counted as a valid representation. Hence, for the records there should be a total of 9 invalid representations.

268. After further deliberation, Members agreed to partially uphold R6 to R1313 by amending the BHR of the "R(A)" zone covering the Kai Tak Mansion site from 110mPD to 130mPD. Members then went through the reasons for not upholding the remaining parts of the representations as detailed in section 6 of the paper and considered that they should be suitably amended.

Representation Nos. R6 to R1313

269. After further deliberation, the Board decided to partially meet the representations by relaxing the building height restriction on the Kai Tak Mansion site from 110mPD to 130mPD.

270. After further deliberation, the Board decided not to uphold the remaining part of the representations of R6 to R1313 for the following reasons:

- (a) BHRs were imposed in the Area 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 UDG, existing topography, stepped BH concept, local characteristics, existing BH profile, site formation level and site constraints, the zoned land uses of the site concerned, development intensity, the recommendations of the AVA, had been taken into consideration. The BHRs had struck a balance between public aspirations for a better living environment and private development right;
- (b) the BHRs were formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development intensity permissible under the OZP. Blanket relaxation of the BHRs was not supported as it would result in proliferation of high-rise developments, which was not in line with the intended planning control. Deletion of BHR for Kai Tak Mansion would jeopardize the coherency of the stepped BH profile and could result in proliferation of high-rise developments;
- (c) the BHR for Kai Tak Mansion was intended to avoid developments with excessive height, and the development intensity of individual sites permitted under the OZP would not be affected. Appropriate BHR should be imposed to avoid resulting in excessively tall and out-of-context buildings, which were not in line with public aspirations;
- (d) the NBAs and building gap for Kai Tak Mansion had taken into account the uniqueness of the site and the need for flexibility in

design. These restrictions were reasonable and had struck a balance between public interest and private development right. The proposed 10m wide NBAs at the north-eastern and south-eastern boundaries and the 20m wide building gap at 15mPD for Kai Tak Mansion were appropriate; 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 BHR(s), NBAs and building gap(s) under the OZP. Each application would be considered by the Board on its individual merits based on the set of criteria set out in the Explanatory Statement of the OZP.