

**Minutes of 1016<sup>th</sup> Meeting of the  
Town Planning Board held on 27.7.2012**

**Present**

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

Chairman

Mr. Stanley Y.F. Wong

Vice-chairman

Mr. Timothy K.W. Ma

Ms. Bonnie J.Y. Chan

Professor K.C. Chau

Mr. Rock C.N. Chen

Mr. H.W. Cheung

Dr. Wilton W.T. Fok

Mr. Ivan C.S. Fu

Mr. Sunny L.K. Ho

Professor P.P. Ho

Professor Eddie C.M. Hui

Dr. C.P. Lau

Mr. Patrick H.T. Lau

Ms. Julia M.K. Lau

Ms. Christina M.S. Lee

Mr. Maurice W.M. Lee

Mr. H.F. Leung

Mr. Clarence W.C. Leung

Dr. W.K. Lo

Mr. Roger K.H. Luk

Mr. Stephen H.B. Yau

Dr. W.K. Yau

Deputy Director of Environmental Protection  
Mr. Benny Wong

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

Director of Lands  
Mr. C.H. Wong

Director of Planning  
Mr. Jimmy Leung

Deputy Director of Planning/District  
Ms. Phyllis C.M. Li

Secretary

**Absent with Apologies**

Professor S.C. Wong

Professor Edwin H.W. Chan

Mr. Lincoln L.H. Huang

Ms. Janice W.M. Lai

Mr. Dominic K.K. Lam

Mr. Laurence L.J. Li

Ms. Anita W.T. Ma

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

**In Attendance**

Assistant Director of Planning/Board  
Ms. Christine K.C. Tse

Chief Town Planner/Town Planning Board  
Mr. Edward W.M. Lo

Senior Town Planner/Town Planning Board  
Mr. Raymond H.F. Au

**Agenda Item 1**

[Open Meeting]

**Confirmation of Minutes of the 1015<sup>th</sup> Meeting held on 13.7.2012**

[The meeting was conducted in Cantonese.]

1. The minutes of the 1015<sup>th</sup> Meeting held on 13.7.2012 were confirmed without amendments.

**Agenda Item 2**

[Open Meeting]

**Matters Arising**

[The meeting was conducted in Cantonese.]

2. There were no matters arising.

**Hong Kong District**

**Agenda Item 3**

[Open Meeting (Presentation and Question Session only)]

Consideration of Representations and Comment to  
the Draft Chai Wan Outline Zoning Plan No. S/H20/20  
(TPB Paper No. 9143)

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[The hearing was conducted in Cantonese and English.]

**R1 to R284 and C1**

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

- |                   |   |
|-------------------|---|
| Mr. Sunny L.K. Ho | - jointly owned a flat and a car park with his spouse in Heng Fa Chuen  |
| Mr. Ivan C.S. Fu  | - had business dealings with several developers which had nominated representatives in the Executive Committee of the Real Estate Developers Association of Hong Kong (REDA)(R1)          |
| Professor P.P. Ho | - employee of the Chinese University of Hong Kong, which was the consultant for undertaking the Air Ventilation Assessment (AVA) for the review of the Chai Wan Outline Zoning Plan (OZP) |

4. The Chairman said that REDA (R1) had submitted representation to the draft Chai Wan OZP No. S/H20/20 and Heng Fa Chuen was a subject of representation. Members agreed that Mr. Sunny Ho's interests were direct and hence he should be invited to withdraw from the meeting temporarily for this item. As the membership of REDA (R1) was very wide and Mr. Ivan Fu had no involvement in R1's submission, Members agreed that Mr. Fu could stay in the meeting. Members also noted that Professor Ho had no involvement in the AVA and agreed that he could stay in the meeting.

[Mr. Sunny L.K. Ho left the meeting temporarily at this point.]

#### Presentation and Question Session

5. The Chairman said that sufficient notice had been given to invite the other representers to attend the hearing, but they had either indicated not to attend the hearing or made no reply. As sufficient notice had been given to the representers, Members agreed to proceed with the hearing in their absence.

6. The following representatives of the Planning Department (PlanD) and representers, commenter and their representatives were invited to the meeting at this point:

Ms. Kitty Lam - Senior Town Planner/Hong Kong (STP/HK),  
PlanD

Mr. Lawrence Chau - STP/Urban Design (STP/UD), PlanD

Miss Anny Tang - Town Planner/Hong Kong (TP/HK), PlanD

Mr. David Ng - Engineer/Cross-boundary Infrastructure and  
Development (E/CID), PlanD

R1 – REDA

Mr. Ian Brownlee ]  
Mr. Benson Poon ] Representer's Representative  
Ms. Chloe Ballantine ]

R2 and C1 –Tse Kwok Wai

Mr. Tse Kwok Wai - Representer and Commenter

R3 – Tong Wai Yuen

Mr. Tong Wai Yuen - Representer

R5 – Lee Chun Keung

R66 - Tong Shui Fun

Mr. Lee Chun Keung - Representer and Representative of R66

R72 – Lai Ka Bo

Ms. Lai Ka Bo - Representer

R96 – Lee Chi Keung

Mr. Lee Chi Keung - Representer

R181 – Tso Yiu Tung

Mr. Tso Yiu Tung - Representer

R233 – Ma Chun Sing, Allen

Mr. Ma Chun Sing, Allen - Representer

R283 – SMC Investments Ltd.

Mr. Yung Kwok Kee, Billy ]

Mr. Fong Chau Nam, Albert ]

Mr. Wong Kin Yip, Jazz ]

Ms. Susan Yip ] Representer's Representative

Mr. Chan Chun Ming ]

Mr. Law Ka Yin ]

Mr. Victor Lam ]

7. The Chairman extended a welcome and explained the procedures of the hearing. He then invited STP/HK, PlanD to brief Members on the background to the representations.

8. Members noted that the following documents were tabled at the meeting:

- (a) supplementary information from R1 on the recent High Court judgment related to Kai Tak Mansion and an alternative proposal for general relaxation of building height restrictions (BHRs) by 20m as of right in the OZP upon compliance of the requirements of the Sustainable Building Design (SBD) Guidelines under the 'Practice Notes for Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers' (PNAP) Nos. APP-151 and APP-152 issued by the Buildings Department (BD)('R1's alternative proposal'); and
- (b) nine standard letters from Shell Electric Holdings Limited, Eltee Enterprise Limited, and a group of people affected by the draft Chai Wan OZP No. S/H20/20 respectively supporting R283 to urge the Board to

withhold the imposition of plot ratio (PR) and BH restrictions of 12 and 120mPD respectively on the “Other Specified Uses” annotated “Business” (“OU(Business)”) zone on the OZP.

9. With the aid of a Powerpoint presentation, Ms. Kitty Lam made the following main points as detailed in the Paper:

#### Background

- (a) on 20.1.2012, the draft Chai Wan OZP No. S/H20/20, incorporating amendments mainly relating to three aspects, i.e. the imposition of BHRs for various zones, the imposition of PR/gross floor area (GFA) restrictions for the “Industrial” (“I”), “OU(Business)”, “Comprehensive Development Area (1)” (“CDA(1)”) and “OU” annotated “Mass Transit Railway Comprehensive Development Area” (“OU(MTRCDA)”) zones, and other zoning amendments, was exhibited for public inspection under section 7 of the Town Planning Ordinance (TPO). During the exhibition periods, a total of 284 representations and 1 comment were received;

#### Air Ventilation Assessment

- (b) prior to the formulation of BHRs, an Air Ventilation Assessment (AVA) by Expert Evaluation (EE) of the area had been undertaken to provide an assessment of the existing wind environment within the Chai Wan area and a qualitative evaluation of the likely impact of the developments having regard to the BHRs on the pedestrian wind environment, including identification of areas of concern and recommendations on possible measures to address the potential problems. According to the AVA, the annual prevailing wind of the area came from the north-east and east, whereas the summer prevailing wind was mainly from the south-west, south, south-east to east. Valley winds from the southerly quarters ran through the mountain passes of Mount Collinson and Pottinger Peak, and penetrated through the valleys into the area. To

facilitate air ventilation along the major air paths identified in the AVA which were in the southwest-north and the northeast-southwest directions, three non-building areas (NBAs) in Hing Man Estate, Hong Man Street and Tsui Wan Estate as well as two building gaps in Chui Hang Street and Lee Chung Street had been designated on the draft OZP;

### Public Consultation

- (c) after the exhibition of the draft Chai Wan OZP No. S/H20/20, the Eastern District Council (EDC) was consulted twice on the proposed amendments in March 2012. A local consultation forum was also held in March 2012. The views expressed at these meetings and PlanD's responses had been summarised in paragraph 2.3 of the Paper. The major views were as follows:

#### *EDC*

- (i) the BHR for Heng Fa Chuen area should be reduced to lower than 50m;
- (ii) a BHR of 140mPD for the existing 193mPD tall Island Resort would affect the redevelopment potential of the site and the provision of a waterfront promenade;

[Professor K.C. Chau arrived to join the meeting at this point.]

- (iii) a BHR of 25mPD with existing PR or PR of 6 for the ex-China Motor Bus depot site should be imposed because a PR of 12 and BHR of 140mPD for the site would result in bulky building and create a wall effect;
- (iv) a BHR of 120mPD for the Chai Wan Flatted Factory site was excessive and would result in wall building and worsen the conflicts between pedestrian and vehicles;

- (v) PR restriction of 12 for the “I” and “OU(Business)” zones would further increase density and traffic in the area and should be reduced;

*Local Forum*

- (vi) objected to the redevelopment of Chai Wan Flatted Factory with a BHR of 120mPD; and
- (vii) the flatted factory which was a landmark with historical value should be retained and preserved;

Representations and Comment

- (d) a total of 284 representations were received. Amongst the representations, 283 representations were mainly related to the imposition of BHRs. R1, submitted by REDA, opposed the BH and PR/GFA restrictions, and NBA and building gap requirements in general. R2 to R282 (submitted by Eastern District Councillor, Association of Chai Wan, New Jade Garden Owners’ Committee, the residents of New Jade Garden and members of the public) all opposed the BHR of the Chai Wan Flatted Factory site while most of them also proposed to preserve the building. R283, submitted by the owner of Shell Industrial Building, opposed the BHR of 120mPD and PR restriction of 12 for the “OU(Business)” zone. The remaining representation, R284, provided comments on the Explanatory Statement (ES) of the OZP;
- (e) C1 (submitted by a resident of New Jade Garden) objected to R1’s proposed amendments to relax the BH and PR restrictions, and to delete all NBA and building gap requirements. It supported R4 to R282 in respect of preserving the Chai Wan Flatted Factory with the existing BH;

[Mr. Patrick H.T. Lau arrived to join the meeting at this point.]

Grounds of Representations and Representers' Proposals

- (f) the main grounds of representations and their proposals were summarised in paragraph 4.3 of the Paper and highlighted below:

*Adverse Representations for More Lenient BHRs (R1 and R283)*

- (i) the BHRs of 100mPD, 120mPD and 140mPD were very restrictive and would adversely affect the private redevelopment and urban renewal process (R1);
- (ii) the Chai Wan area did not fall within the 'view fan' of all the seven strategic vantage points as identified in the Urban Design Guidelines (UDG) (R1);
- (iii) the imposition of unreasonably low BHRs would restrain building bulk and design flexibility, and constrain good development, thus directly affecting streetscape and air ventilation at grade (R1);
- (iv) BHRs, NBAs as well as building gaps were restrictions that did not take into account the SBD Guidelines. A general across-the-board increase in BHRs instead would facilitate compliance with the SBD Guidelines (R1);

*Representers' Proposals (Put forth by R1 and R283)*

- (v) R1 proposed a general increase of BHRs by 20m to provide design flexibility for innovative design and built form and yet achieving stepped BHs;
- (vi) R283 proposed to remove the BHR from the "OU(Business)"

zone along Lee Chung Street;

*Adverse Representations on PR/GFA Restrictions (R1 and R283)*

- (vii) the imposition of PR/GFA restrictions would diminish private property rights and discourage redevelopment incentives, and should not be introduced unless there were overriding matters of public interests (R1 and R283);

[Dr. W.K. Lo arrived to join the meeting at this point.]

- (viii) the only significant reason for imposing a maximum PR 12 was traffic impact but there was no adequate information on other options to address the problem other than imposing a PR reduction of 12 (R1);
- (ix) there was a proposed elevated road linking Wan Tsui Road and Island Eastern Corridor on the OZP but the positive impact of the implementation of this elevated road had not been taken into account in the traffic assessment (R1);

[Mr. Clarence W.C. Leung arrived to join the meeting at this point.]

- (x) R283 had previously submitted a planning application for a proposed hotel development with a PR of 15 at 12 Lee Chung Street. Although the application was rejected by the Board, the relevant government departments including PlanD, Transport Department (TD), Hong Kong Police Force and Environmental Protection Department had no objection to the application (R283);

*Representers' Proposals (Put forth by R1 and R283)*

- (xi) to change the PR restriction of 12 on the "I" and "OU(Business)"

zones to PR 15 (R1);

- (xii) to remove the PR restriction from the “OU(Business)” zone along Lee Chung Street (R283);

***Adverse Representation on NBAs and Building Gap Requirements (R1)***

- (xiii) there was a lack of legal basis and justifications for the imposition of NBA and building gap requirements;

[Ms. Bonnie J.Y. Chan arrived to join the meeting at this point.]

- (xiv) the NBAs and building gaps were imposed on private properties without any form of compensation for loss of property rights. The AVA was inadequate to justify the NBA imposition;

- (xv) the setback requirement was not appropriate for the broad-brush OZP;

***Representers' Proposals (Put forth by R1)***

- (xvi) to delete NBA, building gap and setback requirements, and minor relaxation of all restrictions be considered on individual merits;

***Adverse Representation on Public Consultation (R1)***

- (xvii) there had been no public consultation prior to the exhibition of the draft OZP, which gave no opportunity for the public including the development industry to be informed of the justifications or the need of the restrictions;

***Adverse Representations Relating to Specific Sites***

*Heng Fa Chuen Area (“OU(MTRCDA)”, BHRs of 70mPD and 90mPD, maximum GFA of 425,000m<sup>2</sup> for residential use and 26,750m<sup>2</sup> for commercial use) (R1)*

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(xviii) the BHRs of 70mPD and 90mPD were much lower than the heights of the other residential sites in the south (i.e. about 100mPD to 140mPD);

(xix) the area was not located along any air paths identified in the AVA;

*Representer’s Proposals (Put forth by R1)*

(xx) to increase the BHRs by 30m to 100mPD and 120mPD to allow better building design and achieve compatibility with the BH profile of the residential developments at Siu Sai Wan;

*Chai Wan Industrial Centre and Minico Building (“OU(Business)”, BHR of 120mPD with a 15m wide building gap above 23mPD (about 15m above ground level) between two buildings) (R1)*

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(xxi) the BHR of 23mPD imposed in part of these sites was more restrictive than the public housing sites;

*Chai Wan Flatted Factory (“CDA”, BHR of 120mPD with a 5m wide setback requirement above 21mPD (about 15m above ground level) for part of the zone along Chui Hang Street) (R1 to R282)*

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(xxii) the BHR of 21mPD imposed in part of the sites was more restrictive than the public housing sites (R1);

(xxiii) the site was not suitable for high-rise residential development from environmental, visual and air ventilation considerations. It should be preserved from the cultural point of view (R3, R4, R5

and R282);

*Representers' Proposals (Put forth by R2, R4, R5 to R282)*

(xxiv) a BHR of 21mPD should be imposed on the whole site (R2) and the existing factory building should be preserved and revitalised (R5 to R282);

(xxv) to redevelop the site for cultural creative use (R4)/transport interchange with government complex cum cultural and recreation centre (R279 and R280)/private office/commercial, hostel and Government office/public library uses (R281); and

*Towngas Chai Wan Offtake Station ("Government, Institution or Community" ("G/IC"), BHR of 1 storey) (R284)*

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(xxvi) to add "gas offtake station at Ka Yip Street and Sheung On Street" in paragraph 8.4.2 of the ES;

PlanD's Responses to Representations and Representers' Proposals

(g) the main responses to the general grounds of representation and their proposals as well as to the grounds of representation relating to specific sites and their proposals were summarised in paragraphs 4.4 and 4.5 of the Paper respectively and were highlighted below:

***Adverse Representations for More Lenient BHRs***

(i) apart from air ventilation consideration, the BHRs had been formulated based on an overall BH concept and other considerations including the existing BH profile, topography, site formation level, local characteristics, the waterfront and foothill setting, compatibility with surrounding areas, land uses, stepped BH concept and permissible development intensity

under the OZP, etc. as well as by making reference to an Urban Design Appraisal conducted for the area and the broad urban design principles set out in the UDG in the Hong Kong Planning Standards and Guidelines (HKPSG);

- (ii) the BHRs were drawn up to provide better planning control on the BH of development/redevelopment to prevent out-of-context developments which would have negative impacts on the visual quality of the area and would violate the stepped BH concept. The concentration of tall buildings in the area would also create canyon effect and adversely affect the local air ventilation at pedestrian level as well as that in the neighbouring districts. The BHRs provided a stepped BH profile appropriate to the local setting and were sufficient to accommodate the development intensity permitted under the OZP;
- (iii) taking into account the site level, topography and compatibility with the surrounding areas, among other factors, a stepped BH concept with lower developments along the waterfront and gradually increasing to the uphill areas had been adopted. The stepped BH concept was also applied horizontally along the waterfront with a BHR of 70mPD in the north-west gradually increasing to 140mPD at Island Resort in the south-east, taking into account the existing building profile and development potential of the development. The stepped BH profile was intended to prevent the proliferation of excessively tall or out-of-context buildings and to secure a compatible and organised cityscape that would echo the natural topographical setting;
- (iv) four local vantage points which were accessible by and popular to the public (i.e., two at Chai Wan Au, one at Lei Yue Mun and one at Hong Kong Trail) had been identified to assess the visual impacts of the BHRs in an objective manner. The view from

the local vantage points, the local character and the waterfront setting should be respected;

- (v) the BHRs per se would not result in bulkier buildings or wall effect affecting air ventilation. It would avoid out-of-context design, preserve local character and regulate the BH profile of the built environment;
- (vi) in the course of BH review, an assessment was conducted to ensure that development intensity permitted under the OZP could generally be accommodated under BHRs. Flexibility was allowed in designing the shape and form of the buildings and the BHRs did not preclude the incorporation of innovative architectural design;
- (vii) whether a building was bulky or massive would depend on many factors rather than BH alone. The provision of better designed buildings was not guaranteed by relaxing the BHRs as there was a tendency to maximise floor-to-floor height, podium coverage and building frontage with good views;
- (viii) there was provision in the OZP for application for minor relaxation of BHRs to cater for development/redevelopment with planning and design merits on individual basis;
- (ix) the SBD Guidelines and the OZP restrictions served different purposes and were under two separate development control regimes. The SBD Guidelines were sustainable building design measures which the Building Authority (BA) would take into account as a prerequisite for granting GFA concession/exemption for new building developments upon application with no reference to specific district characteristics and site circumstances, whilst the OZP restrictions were statutory planning control based on assessment of characteristics

and planning circumstances of individual district;

- (x) the compliance with the SBD Guidelines involved detailed and site-specific building design matters which could only be firmed up after a detailed building scheme had been drawn up. In the absence of concrete building schemes, it was neither possible nor appropriate in the OZP review stage to determine how the SBD Guidelines would impact on the building development and design on individual sites. Without any detailed scheme, there was no basis to allege that the BH and other restrictions would conflict with the SBD Guidelines;
- (xi) reasonable assumptions on floor-to-floor height and provision of basement car park had been generally adopted in the formulation of the BHRs. Should there be any site-specific circumstances, there was provision for application for minor relaxation of the BHRs under the OZP to cater for development/redevelopment with planning and design merits, which might include schemes with the incorporation of SBD features;
- (xii) R1's proposal for a general increase of 20m in BH would significantly increase the overall BH profile in the neighbourhood, create canyon effect, reduce the visible areas of the mountain backdrop and the waterbody of the harbour as well as adversely affect the local character and cityscape;
- (xiii) R283's proposal was not supported since the existing industrial area in Chai Wan West was undergoing transformation and there had been some building plan submissions for the development of excessively tall buildings contravening the overall BH concept. There was thus a need to formulate BHRs to ensure that the transformation would not bring about negative impacts on the visual and environmental quality of the area;

***Adverse Representations on PR/GFA Restrictions***

- (xiv) the objective of imposing PR/GFA restrictions was to provide better planning control on the development intensity upon development/redevelopment;
- (xv) all the “I” sites were already subject to BH and/or PR restrictions under lease. As stipulated in the Notes of the OZP, redevelopment to the existing PR would be allowed even with the imposition of a PR restriction of 12 for these “I” sites, and hence private development rights would not be adversely affected;
- (xvi) for the “OU(Business)” zone, about half of the sites had an existing PR of over 12, for which redevelopment up to the existing PR would be allowed even with the PR control. Besides, some of the sites which were subject to BHRs under lease had indirectly restricted the development intensity. For the sites which were not subject to BH or PR restrictions under lease, a PR of 12 would still provide sufficient incentives for redevelopment given that the “OU(Business)” zone represented an upzoning of the industrial lots to facilitate transformation from industrial to office/business use, as compared to their lease entitlement with uses mainly restricted to industrial and/or godown purposes only. It was considered that the PR restriction of 12 would not unduly affect private development rights, redevelopment incentives and economic activities;
- (xvii) there was a provision in the OZP for minor relaxation of the PR restrictions to cater for development/redevelopment with planning and design merits on individual basis;
- (xviii) the PR of 12 for the “I” and “OU(Business)” zones was appropriate. In formulating the PR restrictions, thorough

examination of the existing building profile including PR/GFA, building age and BH, lease entitlements, redevelopment potential and development constraints in the area had been carried out. Due regard had been given to the HKPSG and the findings of the traffic assessment;

- (xix) the traffic implications of two development scenarios, i.e. PR 12 and 15, for the “I” and “OU(Business)” sites on the OZP, had been assessed in the traffic assessment, which concluded that even under the PR 12 scenario, road improvement schemes and traffic management measures might be necessary to alleviate the traffic impact. The additional traffic generated from the PR 15 scenario would be substantial and might cause very severe traffic congestion problem in the Chai Wan area, particularly in the local road network;
- (xx) according to the Commissioner for Transport (C for T), there was no implementation programme for the proposed elevated road linking Wan Tsui Road and Island Eastern Corridor, and hence it had not been included in the traffic assessment;
- (xxi) regarding the planning application for hotel development previously submitted by R283, TD’s comments and no in-principle objection to the application were based on the consideration of one single hotel development at the site with a PR 15. It should not be applicable to the consideration of relaxation of PR for the entire area. In fact, this hotel application was rejected by the Metro Planning Committee (MPC) of the Board for the reasons that PR 15 was excessive and that the cumulative impacts of approving such similar applications for redevelopment of industrial sites would have adverse traffic, visual and environmental impacts on the area;
- (xxii) EDC Members had expressed grave concerns on the traffic

congestion problem in Chai Wan during the EDC meetings and asked for more stringent PR control than PR 12 for the “I” and “OU(Business)” zones;

***Adverse Representation on NBA and Building Gap Requirements***

- (xxiii) the Board was given comprehensive powers to control development in Hong Kong under sections 3 and 4 of the TPO. The designation of NBAs and building gaps on OZPs with necessary and sufficient planning justifications would be part of the planning control within the Board’s power;
- (xxiv) designation of NBAs and building gaps on OZPs could serve a positive planning purpose such as the improvement of air ventilation. The purpose of designating NBAs and building gaps on the Chai Wan OZP was to facilitate air ventilation along the major air paths. The NBAs also served as visual corridors to enhance the visual permeability of the development clusters and visual quality of the sites and their surrounding areas;
- (xxv) although there should be no building structure above ground within NBAs, development was permitted below ground and in other parts of the development site;
- (xxvi) 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 BHRs on the pedestrian wind environment, including identifying areas of concern and recommending possible measures to address the potential problems. Apart from the AVA, the land uses and development/redevelopment potential of the affected sites had been fully taken into account in the designation of NBAs and building gaps such that the permitted development intensity of the concerned sites would not be adversely affected. It was

considered to be an appropriate approach for the designation of building gaps;

- (xxvii) the provision for application for minor relaxation of the BHR under the OZP could cater for schemes with planning and design merits including those which would provide greater separation between buildings in the detailed design of a development/redevelopment;

***Adverse Representation on Public Consultation***

- (xxviii) proposed amendments involving BHRs would not be released to the public prior to gazetting as premature release of such information might prompt an acceleration of submission of building plans for tall buildings which contravened the overall BH concept, hence defeating the purpose of imposing the BHRs;
- (xxix) the statutory exhibition of the OZP itself was a public consultation process. Briefings on the OZP amendments to EDC and to local residents in a local consultation forum had been carried out during the exhibition period;
- (xxx) all the relevant documents had been made available for public inspection;

***Adverse Representations Relating to Specific Sites***

***Heng Fa Chuen Area***

- (xxxi) the site was located right on the waterfront and, according to UDG, lower developments of appropriate scale should be located on the waterfront. The BHRs for the Heng Fa Chuen area were consistent with the BHR of the “G/IC(2)” sites at Chong Fu Road to its southeast. A stepped BH concept with

lower developments along the waterfront and graduation of height profile in the inland and uphill areas was adopted. The BHRs were commensurate with the waterfront location and would achieve a clear stepped height profile;

- (xxxii) the proposal to increase the BHRs for the Heng Fa Chuen area would jeopardise the integrity of the overall stepped BH concept, reduce the visible areas of the mountain backdrop and the waterbody of the harbour from the local vantage points and adversely affect the local character and cityscape;
- (xxxiii) reasonable floor-to-floor height had been allowed for future redevelopment to meet modern day standard and to provide extra design flexibility;
- (xxxiv) in the formulation of BHRs, a number of relevant factors including recommendations of AVA, the existing BH profile, topography, local characteristics, compatibility with surrounding areas, land uses, stepped BH concept, permissible development intensity under the OZP, and urban design considerations etc., had been taken into account;
- (xxxv) the only site having a BHR of 140mPD along the waterfront was Island Resort with an existing BH of 193mPD, which was considered excessive and out-of-context in the waterfront setting. Balancing the urban design principle for waterfront areas against the existing development intensity, a maximum BH of 140mPD lower than its existing BH was imposed for Island Resort. As such, Island Resort was not a good example that could be applicable to Heng Fa Chuen. Hence, R1's proposal to increase the BHRs of the area by 30m to 100mPD and 120mPD was considered not appropriate;

Chai Wan Industrial Centre and Minico Building

(xxxvi) majority of the two sites were subject to a BHR of 120mPD, whilst the BHR of 23mPD on part of the sites was intended to provide a 15m-wide building gap based on the findings of the AVA to facilitate air ventilation along the street and to complement the local character and BH profile of the area;

Chai Wan Flatted Factory

(xxxvii) on R1's representation, majority of the site was subject to a BHR of 120mPD, whilst the BHR of 21mPD at the fringe of the site was to function as a building gap to facilitate air ventilation along a wider air corridor;

(xxxviii) on R3, R4, R5 and R282's representations, the Housing Authority (HA) considered that the site should be retained for public housing development in view of the acute shortage of land supply for public housing. The Housing Department (HD) was exploring various options for the site including wholesale redevelopment or alteration of the existing buildings for public housing use. As the future development of the site was still under review, the stipulated BHR of 120mPD was only the maximum height to provide flexibility to cater for future planning and development needs. The future redevelopment would be controlled under the "CDA" zoning of the site in that a Master Layout Plan (MLP) and various technical assessments were required to be submitted to the Board for consideration. Hence, the Board would have the opportunity to scrutinise the development parameters as well as detailed design and layout of the future development;

(xxxix) Chai Wan Flatted Factory was neither an existing nor proposed historic building. The Antiquities Advisory Board (AAB)

would conduct an evaluation of a new list of historic items, including Chai Wan Flatted Factory, after completing the current assessment of the 1,444 historic buildings. Furthermore, the Director of Housing had agreed to consult the EDC and to respect the recommendations of the AAB in formulating the future development proposal;

- (xl) based on the above considerations, the proposals of R2 and R5 to R282 to stipulate a BHR of 21mPD or existing BH as well as to preserve the factory building; and the proposals of R4, R279 to R281 to redevelop the site for cultural creative use/transport interchange with government complex cum cultural and recreation centre/private office/commercial, hostel and government office/public library uses were not supported; and

Towngas Chai Wan Offtake Station

- (xli) the ES served to reflect the planning intentions and objectives of the various land-use zonings on the OZP. The gas offtake station was regarded as 'Public Utility Installation' use which was always permitted under the Notes of the OZP. Listing out of all existing facilities including the gas offtake station into the ES was considered not necessary. R284's proposal was therefore not supported;

Responses to Comment (C1)

- (h) responses to R1, R4 to R282 above were also applicable; and

PlanD's Views

- (i) PlanD did not support R1 to R284 and considered that they should not be upheld for the reasons as set out in paragraph 7.1 of the Paper.

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

#### R1 – REDA

11. With the aid of a Powerpoint presentation, Mr. Ian Brownlee, the representative of R1, made the following main points:

- (a) R1 was concerned about the impact of the zoning amendments on the development system as a whole. Other than this representation, R1 had previously made representations on other OZPs, so as to urge that Hong Kong could maintain an efficient, fair and sustainable urban development system. All representations including the subject representation were related to matters of principle and in particular, the desire to see an improved and sustainable built environment, and the need to protect the property rights of individual property owners;
- (b) R1 had applied to the High Court for a judicial review (JR) of decisions of the Board in relation to four other OZPs and the case was scheduled for hearing by court in 2013. Many of the problems that R1 had identified in relation to other OZPs had been repeated in the proposed amendments to the Chai Wan OZP;

#### *Implications of Kai Tak Mansion Judgement*

- (c) in the High Court judgment on the 3 JRs regarding the Kai Tak Mansion site (*Oriental Generation Limited v Town Planning Board, HCAL 62/2011, 109/2011 and 34/2012*), the Court ruled against the Board and questioned the whole basis on which the BH, NBA and building gap restrictions were imposed as detailed in the document tabled by R1. The key points of consideration made by the Court in the subject JRs were:
  - (i) practical feasibility should be ensured in imposing BHRs on sites so that the entitled GFA could be accommodated;

- (ii) the AVA which only compared 2 scenarios did not provide robust justifications for the imposition of NBAs and building gaps;
  - (iii) proper attention should be given to establishing restrictions on the basis of cogent evidence that the restrictions could be reasonably regarded as necessary for achieving a particular planning objective;
  - (iv) the proportional impact on property rights should be considered; and
  - (v) reliance could not be placed on the minor relaxation process as an alternative to establishing appropriate restrictions;
- (d) unless the Kai Tak Mansion judgment was overruled by a higher court, it would be the law which the Board should follow. However, the TPB Paper in consideration of representations and comment on the draft Chai Wan OZP did not respond to the implications of the Kai Tak Mansion judgment;
- (e) since the imposition of restrictions on the Chai Wan OZP had not been made in accordance with the requirements of the Court, these restrictions were inappropriate and should be removed, or significantly modified. R1 also proposed to adjourn the representation hearing so that the Board could obtain legal advice to deliberate the implications of the Kai Tak Mansion judgment on the proposed amendments to the draft Chai Wan OZP and to allow time for consideration of R1's alternative proposal;

*AVA to Justify Building Gaps, Building Setbacks and NBAs*

- (f) the EE approach to AVA was inadequate for the establishment of specific detailed development restrictions on an OZP. The main reasons were summarised below:

- (i) the proposed NBA was a major restriction on the private development rights without compensation;
  - (ii) the AVA was inadequate to justify the extent of the proposed imposition;
  - (iii) no information was included in the AVA to justify the extent of intrusion into private property right;
  - (iv) no critical assessment had been undertaken to show that such proposals were essential for the public good, and no alternative and no compensation for the loss of property right had been considered; and
  - (v) the proposal went beyond the scope that TPO allowed.
- (g) no cogent evidence in relation to R1's representation had been presented to the Board. No response was given to the matters raised by R1 including the need for a critical assessment, no other alternative was provided and no systematic process was undertaken to justify the proportional impact on private land-holdings;

*PR Restriction of "I" and "OU(Business)" Zones*

- (h) there were no overriding matters of public interests to justify the down-zoning of lots with unrestricted leases which would result in the private rights being diminished;
- (i) no quantification of the 'massive infrastructure' and the extent of land resumption required and no information on the improvements to the junctions were given in the traffic assessment to enable a reasonable decision to be made by the Board. The lack of a balancing process also applied to the consideration of proposed amendments to the draft OZP by the MPC of the Board in that information on the alternative, other

than PR restrictions, to address the traffic congestion problem as highlighted in P.10 of R1's written representation (Annex III-1 of TPB Paper) had been omitted;

- (j) the affected landowners would be compensated for loss of property rights for any land taken for a road improvement project for the public good. For the same public good on traffic consideration, the Board had down-zoned the land of the affected landowners and effectively deprived them of their property rights, instead of providing compensation to them as in road improvement projects;
- (k) other planning matters relating to job opportunities and economic activities referred to in R1's written representation were not properly addressed;
- (l) there was no justification and assessment provided to the Board to illustrate the extent of the improvements required for the PR 15 scenario. The proposed elevated road linking Wan Chui Road and Island Eastern Corridor which was shown on the OZP was a good alternative to resolving the traffic problem. However, in conducting the traffic assessment, the benefit of implementing the proposed elevated road as an alternative for improving traffic flows had been ignored;
- (m) the Board should ensure that all reasonable alternatives had been considered when dealing with negative impact on private property rights. The down-zoning of "I" and "OU(Business)" zones should be removed as it had not been justified;

*Approach to SBD Guidelines*

- (n) SBD Guidelines were relevant and should be encouraged by the Board when preparing amendments in relation to imposition of BH and other restrictions on OZPs;

- (o) SBD Guidelines were being included as a requirement under new leases or modified leases, and this would progressively affect development or redevelopment in areas such as Chai Wan;
- (p) an inconsistent approach to SBD Guidelines had been adopted by PlanD in the preparation of amendments to the Chai Wan OZP. On the one hand, PlanD argued that the SBD Guidelines were not relevant, whilst on the other hand, SBD Guidelines had been taken into account during the formulation of BHRs in relation to the Island Resort site, by assuming basement car park in the future development. The responses provided by PlanD in the TPB Paper had also indicated that basement car park was assumed in the formulation of BHRs to reflect the incentive provided under SBD Guidelines;

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

- (q) the use of minor relaxation clause to cater for the compliance with SBD Guidelines was contrary to the Kai Tak Mansion judgment where the Court had confirmed that the controls had to be justified on rational and cogent evidence;

*Assumptions for BHRs*

- (r) not all the relevant information and assumptions considered and referred to by PlanD in formulating the BHRs had been provided to the public or the Board. Hence, it could not be ascertained whether cogent and accurate information had been used in making a recommendation on the BHRs;
- (s) R1 had proposed a modest increase in the BHR by 20m generally so as to encourage better design and in particular the incorporation of the SBD Guidelines requirements. In terms of visual impact, the proposed increase was quite reasonable given that the same stepped BH profile concept could be maintained;

*R1's Alternative Proposal of General Relaxation of BHRs*

- (t) the Board should build in more flexibility for achieving good building design within the development control framework. The Joint Practice Notes (JPNs) and SBD Guidelines which were important positive features of the system were not taken into account by the Board; and
- (u) R1's alternative proposal regarding general relaxation of BHR by 20m as detailed in the tabled document was based on a similar approach used by the Board in the context of encouraging site amalgamation in other OZPs. The alternative proposal basically adopted an approach by adding a clause into the Notes of OZP which referred to the compliance with the SBD Guidelines as a specific reason for permitting an increase in BHR by 20m as of right to allow design flexibility and for better urban design. In that way, the SBD administrative provision thus became a statutory provision.

R2 and C1 – Tse Kwok Wai

12. Mr. Tse Kwok Wai, an estate manager of New Jade Garden, made the following main points:

*Chai Wan Flatted Factory Site*

- (a) a long-time resident in Chai Wan approached R2 in great sorrow after the HA announced its plan to demolish the historical Chai Wan Flatted Factory;
- (b) R2 had suffered from health problem since he had been working in Chai Wan due to the bad air quality caused by heavy traffic flows around the Chai Wan Flatted Factory. If a tall building of 120mPD was to be erected at the Chai Wan Flatted Factory site, air ventilation would be adversely affected and the air quality of the area would be worsened. R2 opposed the BHR of 120mPD for this site;

*Proposed General Increase in BHRs by R1*

- (c) R2 considered that R1's proposal to increase the overall BHRs of Chai Wan by 20m would destroy the stepped BH concept and affect the ridgeline as viewed from the other side of Victoria Harbour; and
- (d) noting that all the amendments to the OZP were recommended to be maintained in the TPB Paper, it appeared that PlanD had not listened to the views expressed in the representations.

R3 – Tong Wai Yuen

13. Mr. Tong Wai Yuen made the following main points:

*Chai Wan Flatted Factory Site*

- (a) Chai Wan Flatted Factory provided employment opportunities for the Chai Wan residents in the 1950s particularly for those living in public housing estates. During its heyday, the factory was the centre of Chai Wan district. It was part of the collective memory of residents of Chai Wan. It also represented the spirit of Chai Wan residents to regenerate through one's own effort;

[Dr. W.K. Lo left the meeting temporarily at this point.]

- (b) the design of the factory building was unique in that it was the only remaining H-shape factory building in Hong Kong;
- (c) the residents of Chai Wan had all along proposed to re-use the factory building for other purposes such as creative industry for the benefit of young people, although such proposal had not been voiced out until the HA announced its intention to redevelop the building on the site;

- (d) the “CDA” zoning and the imposition of BHR of 120mPD for the site would not be conducive to the preservation of the building in accordance with the aspirations of Chai Wan residents. R3 therefore opposed the BHR of the site and proposed to preserve the factory building; and
- (e) the Law Uk Folk Museum nearby was a good example of adaptive re-use of historic building for exhibition of the history and culture of Chai Wan residents. The Chai Wan Flatted Factory should similarly be preserved for exhibition of the progress of industrial development in Chai Wan in the early years.

R5 – Lee Chun Keung

R66 - Tong Shui Fun

14. Mr. Lee Chun Keung, an Eastern District Councillor, made the following main points:

*Chai Wan Flatted Factory Site*

- (a) R5 had taken the responsibility to voice out the views of Chai Wan residents on their behalf. Within a short period of 2 hours, over 400 signatures opposing the BHR of 120mPD for the Chai Wan Flatted Factory site had been collected by R5;
- (b) the Chai Wan Flatted Factory was a testimony of the early years of Chai Wan. It was a vivid reflection of the spirit of Chai Wan and was an important asset and collective memory of Chai Wan people. Many local residents advocated for the preservation of the Chai Wan Flatted Factory to showcase their community spirit and collective memory;

[Dr. W.K. Lo returned to join the meeting at this point.]

- (c) the imposition of BHR of 120mPD for the Chai Wan Flatted Factory site would allow redevelopment to high-rise and high density development, hence increasing the local population, impairing air ventilation,

worsening the traffic and air quality in the area, and creating wall effect. An example nearby was the E-Trade Plaza at Lee Chung Street, which was a bulky and massive development causing glare and light pollution which affected the residents in the surrounding area; and

- (d) the Chai Wan residents were previously misled in the development process of the Youth Square project. That site was originally proposed for use as a community centre, but was subsequently developed into a massive building with a hotel, a youth centre and an outdoor performance venue. The curtain wall of the building had generated light and noise pollution, and the performance activities at the outdoor performance venue had also caused nuisance to the local residents. The bad experience should not be repeated in the case of Chai Wan Flatted Factory.

[Dr. W.K. Lo left the meeting temporarily at this point.]

#### R181 – Tso Yiu Tung

15. Mr. Tso Yiu Tung, a member of the Chai Wan Area Committee, made the following main points:

##### *Chai Wan Flatted Factory Site*

- (a) R181 proposed to preserve the Chai Wan Platted Factory, which had a historical and landmark status in the mind of Chai Wan residents comparable to the status of Queen's Pier to the Hong Kong people;
- (b) Chai Wan was special in that it was a very tightly knitted community. The factory played an essential role in the development process of Chai Wan in the past and was a collective memory of the Chai Wan residents;
- (c) the factory building was structurally sound. It should be preserved and revitalised for other suitable uses to provide opportunities for the young people in Chai Wan as it did for the young people in the 1950s. Owing

to the high rental charge, the Youth Square was not affordable to the young people in Chai Wan to achieve its intended purpose;

- (d) other suitable sites could be identified for housing development; and
- (e) there were many overseas examples of preserving historic buildings for beneficial uses. Hong Kong should make reference to those examples for the preservation of the local culture and collective memory.

R233 – Ma Chun Sing, Allen

16. Mr. Ma Chun Sing, Allen, made the following main points:

*Chai Wan Flatted Factory Site*

- (a) R233 shared the views concerning the preservation of the Chai Wan Flatted Factory expressed by other representers during the hearing;
- (b) the Chai Wan Flatted Factory had given him fond memories of Chai Wan and was a milestone of industrial development in Hong Kong; and
- (c) there were very few places in Hong Kong where collective memory could be preserved. It would be preferable to have a landmark building in each district to preserve its collective memory. The factory building should be revitalised to a museum to showcase the development of Chai Wan.

R283 – SMC Investments Ltd.

17. Mr. Yung Kwok Kee, Billy, said that the Board should give a response to R1's earlier request for adjournment of the hearing so that the Board could seek legal advice on the implication of the Kai Tak Mansion judgment. In response, the Chairman explained again the procedure of the representation hearing and said that legal advice on the implications of the Kai Tak Mansion judgment had previously been sought and the matter had been considered by the Board. Both parties of the JRs had lodged appeals against the judgment of the Court. The Board considered that adjourning the hearing as suggested by

the representative of R1 was not necessary.

18. Mr. Wong Kin Yip, Jazz, made the following main points:

*PR Restriction of "OU(Business)" Zone*

- (a) R283 represented 5 affected properties in the "OU(Business)" zone, including Shell Industrial Building, Kantone Centre, Eltee Building, Johnson Building and Minico Building, in opposing the imposition of BHR of 120mPD and PR of 12 on those sites;
- (b) most of their objection reasons had already been expressed by R1 in the hearing;
- (c) he was confused by the figures in Table 1 in Annex Ic of the TPB Paper (Traffic Assessment) which indicated that the total office GFA upon redevelopment under the two scenarios of PR 12 and 15 respectively at about 189,000m<sup>2</sup> and 399,000m<sup>2</sup> would be less than the total GFA of the existing 37 "OU(Business)" sites at about 472,000m<sup>2</sup>;
- (d) in assessing the traffic flows, the traffic assessment had only taken into account the changes in GFA without considering other relevant factors such as the capacity of the MTR and the possible traffic improvements brought about by the proposed elevated road mentioned by R1 and other feasible road improvement measures. Information in 2010 revealed that the highest utilisation rate amongst all MTR stations along the Island Line during peak hours was only 69%. The Chai Wan MTR Station, being the terminal station of the Island Line, had a lower utilisation rate and was not too busy outside the peak hours. The traffic assessment was therefore incomprehensive and technically not adequate to address the problem satisfactorily;
- (e) it was clearly the intention of the Government to increase land supply. Some Legislative Council members had already suggested increasing

land supply through transformation of industrial buildings, and there were suggestions in newspapers that the PR for residential developments in urban areas could be increased;

- (f) the reduction in PR from 15 to 12 would significantly reduce the incentive to redevelop the existing industrial buildings in the subject “OU(Business)” area due to the inflated capital cost and other financial considerations. This would jeopardise the private redevelopment initiative, and the industrial buildings would become dilapidated. That would not be beneficial to the community;
- (g) from the perspective of private developers, the mechanism for minor relaxation clause of BH and PR restrictions on application to the Board would create uncertainties to their investment decisions; and
- (h) R283’s proposal was to revert to the previous situation where no BH and PR restrictions were imposed on the “OU(Business)” zoning so as to allow landowners to redevelop to their existing development rights.

19. Mr. Yung Kwok Kee, Billy, said that the responses of PlanD to the representations were subjective and not justified. He said that the proposed reduction in PR from 15 to 12 was a passive measure to alleviate the traffic problem. On the contrary, the Government should act proactively to improve the traffic situation, say by early implementation of the proposed elevated road between Wan Chui Road and Island Eastern Corridor, instead of accepting that there was no implementation programme for the elevated road in the traffic assessment.

20. In response, the Chairman said that the Board was empowered to prepare town plans to guide and control land uses in Hong Kong, taking account of all relevant planning considerations including the traffic impact. However, the implementation of specific transport project was not under the jurisdiction of the Board.

21. As the presentation from PlanD’s representative, the representers, their representatives and the commenter had been completed, the Chairman invited questions

from Members.

[Dr. W.K. Lo returned to join the meeting at this point.]

*BHR and SBD Guidelines*

22. Regarding R1's alternative proposal to increase the BHRs by 20m across the whole area subject to compliance with the SBD Guidelines requirements, the Chairman asked whether the GFA concession obtained as a result of such compliance could only be accommodated by increasing the BH. Mr. Ian Brownlee said that given the low BHRs of 60mPD to 100mPD for some of the sites, the provision of setbacks and building gaps within a development might not be achievable. He said that R1's alternative proposal would be a more facilitating mechanism that would encourage sustainable building design while at the same time control could be maintained under the Buildings Ordinance (BO). The mechanism of minor relaxation of BHR on application to the Board for compliance with the SBD Guidelines was seen by developers as creating uncertainties in the development process. If R1's alternative proposal was adopted, developers would be encouraged to follow the SBD Guidelines in all development/redevelopment schemes. Mr. Brownlee continued to say that the principle adopted in the alternative proposal was similar to the two-tier BHR mechanism adopted in the Mong Kok OZP, where a higher BHR was allowed for sites exceeding 400m<sup>2</sup> so as to encourage site amalgamation for better building design. Hence, R1's alternative proposal should be accepted for urban design improvement by encouraging the compliance of SBD Guidelines requirements.

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

[Dr. W.K. Lo left the meeting at this point.]

[Dr. Wilton W.T. Fok left the meeting temporarily at this point.]

23. A Member asked R1 whether any assessment had been undertaken to support the proposed general increase of BHRs by 20m. Mr. Ian Brownlee said that assessment had been carried out which showed that an increase in BHRs by 20m, i.e. about 6 storeys, could provide flexibility for compliance with the SBD Guidelines requirements. Mr.

Brownlee said that R1 had previously presented such information to the Board during the representation hearings of other OZPs.

24. In response to the enquiry of a Member, Mr. Ian Brownlee said that according to R1's alternative proposal, the approving authority regarding the compliance of SBD Guidelines requirements was the BA and R1 accepted that the decision of BA was final.

25. A Member asked R1 whether any visual impact assessment had been conducted for the proposed general relaxation of BHRs by 20m. Mr. Ian Brownlee responded that visual impact was a subjective matter; and since the proposed increase in BH would only be in the order of about 6 storeys, such an increase in the context of buildings at an average height of 25 to 30 storeys would not be regarded as excessive and should be acceptable in the Hong Kong context. The Member said that Mr. Brownlee's explanation on visual impact assessment seemed to be different from the normal and conventional approach of visual impact assessments.

[Dr. Wilton W.T. Fok returned to join the meeting at this point.]

26. The Chairman asked whether R1 was adopting a double standard as on the one hand, R1 demanded cogent evidence from PlanD to justify the development restrictions imposed on individual sites, while on the other hand, R1's proposal for general BH relaxation of 20m was general and broad-brush without any detailed assessment. Mr. Ian Brownlee said that the proposed general relaxation of BHRs had been presented to the Board in about 8 previous occasions, and R1 had been trying to explain the proposal to the Board. On the other hand, since additional information submitted by the representers would not be accepted after the expiry of the statutory exhibition period of the draft OZP, R1's alternative proposal could only be tabled at this hearing. R1 therefore requested the Board to adjourn the hearing to allow time for further discussion with PlanD on R1's alternative proposal.

27. In response to the enquiry of the Chairman, Mr. Ian Brownlee said that R1's proposals were not intended to absorb the GFA concessions obtained under the SBD Guidelines but to facilitate the provision of setbacks at ground level, sky gardens, greening and building gaps, which would not be achievable without relaxing the current BHRs.

28. The Chairman asked the representatives of PlanD whether the SBD Guidelines had been taken into account during the formulation of BHRs of the OZP. In response, Ms. Kitty Lam, STP/HK, said that whether the SBD Guidelines could be complied with would depend on detailed site-specific building schemes at individual sites to be drawn up by developers. Therefore, PlanD could not take that into account during the formulation of BHRs of the OZP. However, a minor relaxation clause had been provided under the OZP so that minor relaxation to cater for SBD features could be considered on application to the Board.

29. In response to the Chairman's question, Ms. Kitty Lam said that in the formulation of BHRs, an assessment had been conducted to ensure that the development intensity as permitted under the OZP could generally be accommodated under the BHRs imposed. The assessment also took into account other considerations such as the development restrictions under lease, the requirements under B(P)R, the assumption of a floor-to-floor height of 3.15m for residential development, and the assumption on provision of basement car park. The formulation of BHRs had not taken into account the GFA concession scheme which was not mandatory.

30. In response to a Member's enquiry regarding the relationship between the BHR and the provision of minor relaxation clause on the OZP, Ms. Kitty Lam said that the BHRs were imposed to allow better planning control on the overall BH profile and to avoid out-of-context buildings, and the minor relaxation clause was intended to provide flexibility, rather than being an obstacle as alleged by R1. Minor relaxation of the BHR might be approved by the Board based on the merits of individual case. In response to the enquiry of the Chairman, Ms. Lam supplemented that the minor relaxation clause was applicable to all planning restrictions on the OZP including BH, PR and NBAs. The criteria for consideration of application for minor relaxation included the provision of innovative building design, separation between buildings, better streetscape and good quality street level public urban space. An innovative scheme would be duly considered by the Board on individual merits in accordance with such criteria through the planning permission system. Ms. Lam said that R1's alternative proposal was not acceptable since the Board would not be able to ensure that the SBD Guidelines would be followed as that was not mandatory requirements.

[Mr. Eric Hui left the meeting temporarily at this point.]

*Cogent Evidence*

31. The Chairman asked the representatives of PlanD whether there was cogent evidence in the OZP review to justify the imposition of planning restrictions. In response, Ms. Kitty Lam, STP/HK, said that in formulating the planning restrictions, a number of factors including the existing BH profile, topography, site formation level, local characteristics, the waterfront and foothill setting, compatibility with the surrounding areas, land uses, stepped BH concept, lease entitlement including PR/GFA and BH restrictions, permissible development intensity under the OZP and urban design considerations, etc. had been taken into account. Assumptions such as the type of development, the location of plant rooms at basement level, basement car park and reasonable floor-to-floor height had been adopted. Ms. Lam said that apart from the above, in the formulation of PR restrictions for the “T” and “OU(Business)” zones, due regard had been given to the PR recommended for business areas in the metro area under the HKPSG and the findings of the traffic assessment. According to the traffic assessment conducted for the areas zoned “T” and “OU(Business)” on the Chai Wan OZP, the additional traffic generated from the redevelopment of “T” and “OU(Business)” sites to the maximum permissible PR of 15 under the Building (Planning) Regulations (B(P)R) would be substantial and might cause very severe traffic congestion problem. The assessment showed that even under the PR 12 scenario, traffic management measures and road improvement schemes might be required to cater for the future redevelopments in the “T” and “OU(Business)” zones.

32. By referring to the AVA Report attached as Annex Ib of the TPB Paper, Mr. Lawrence Chau, STP/UD, said that the determination of location and width of the proposed NBAs and building gaps (i.e. 20m to 30m compared to the width of building frontages of 100m to 150m) were justified on scientific grounds and objective technical assessments, making reference to the air paths identified in the AVA.

33. Mr. Ian Brownlee said that the assumptions adopted and the relevant information considered for each individual site should be provided to the Board and the representers. PlanD’s responses to the representations in the TPB Paper could not be

regarded as cogent evidence. Mr. Brownlee also said that the point on the reduction of incentive for redevelopment after the imposition of PR restriction on the “OU(Business)” zone was made on the basis that the sites involved were already zoned “OU(Business)” in the previous OZP, and PlanD’s responses were not supported by calculations and valuation figures. Regarding the AVA, Mr. Brownlee said that the generalised EE approach was no longer adequate and could not be considered as cogent evidence under the principles as set out in the Kai Tak Mansion judgment. For the purpose of imposition of planning restrictions on the OZP, a more detailed assessment involving the generation of alternatives and the corresponding costs and benefits should be carried out for individual sites.

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

#### *Public Interest and Private Development Right*

34. A Member asked what R1 would consider as matters of overriding public interest that would justify the zoning amendment which would reduce private development rights from the perspective of a developer. Mr. Ian Brownlee said that the building of public road or footpath widening projects were examples of such overriding public interest. Before the implementation of such projects, there would be a process involving identification and assessment of the public benefits of the improvement projects as compared with other alternatives. There would also be proper consideration of justifications for land resumption and compensation for the affected landowners. Mr. Brownlee said that based on the principles laid down in the Kai Tak Mansion judgment, the overall costs and benefits of the imposition of PR restrictions and its alternative proposals, such as early implementation of the proposed elevated road, should be examined prior to considering a measure that would infringe upon private development rights. However, in the current case situation, there was no clear assessment of the public benefits and no justifications had been provided for the proposed PR restriction on the “OU(Business)” zone. The same Member asked what R1 would consider as overriding public interest that would justify an increase in private development rights. In response, Mr. Brownlee said that an increase in flat supply to address the current housing problem would be a matter of overriding public interest.

35. A Member asked R1 what would be the definition of public benefit from the perspective of a developer. Mr. Ian Brownlee responded that public benefit could clearly be demonstrated in projects such as public open space development, which involved the consideration of public need, rezoning of land to “Open Space” (“O”) use, and resumption of land for the purpose. Mr. Brownlee said that if it was the intention to reduce the overall development density of a district, the “O” and “G/IC” sites in the district should be maintained; and if space had to be provided around buildings, it would be more proper to rezone the area as “O”. Mr. Brownlee said that the main concern of R1 was the infringement upon private development rights for the purpose of achieving public benefit, which had not been clearly justified in context of the Chai Wan OZP. Mr. Brownlee considered that the SBD Guidelines were a more suitable means to achieve the public benefit of improving urban environment as private development rights would not be affected by the application of such guidelines and in fact incentives would be given for compliance with the guidelines.

36. Noting from the representations that there had been different expectations on what constitute a good built environment, a Member asked the representers representing the interests of local residents whether the proposed general increase in BHR by R1 was acceptable. The same Member asked R1 whether there would be any compromising proposal in the light of the community’s aspiration to reduce building bulk and densities. Mr. Tong Wai Yuen (R3) said that in the absence of detailed information on the corresponding development intensities and increase in number of units and population, he was unable to assess R1’s proposal on the general increase in BHR by 20m. Mr. Tong opined that the preservation of the Chai Wan Flatted Factory should not be mixed up with the developments on other sites. Mr. Ian Brownlee (R1) said that in order to improve permeability and air ventilation, a proper relationship between BH and PR should be drawn. Taller buildings would be able to provide more space between buildings or at the ground level and hence if the BHR was relaxed, there would be more flexibility to provide better design. Mr. Brownlee also said that R1’s proposals were not for the benefit of specific private developers, but for a better built environment where the general public would benefit.

37. Regarding the representers' proposal to preserve the Chai Wan Flatted Factory, a Member asked whether the intention of the local residents was to retain the factory building for industrial use or conversion of the factory building to other beneficial uses. Mr. Tong Wai Yuen (R3) said that since the industrial sector had been in decline, it would not be practical to maintain the building for industrial use, and thus revitalisation of the preserved building for other uses was acceptable to Chai Wan residents. In this regard, Mr. Tong said that there had been a suggestion from the Chai Wan Kai Fong Association to convert the factory building into a youth development centre. Other options could also be taken into consideration, including exhibition centre, information technology centre, government and non-governmental organisations (NGOs) offices.

38. Mr. Lee Chun Keung (R5) supplemented that the future use of the Chai Wan Flatted Factory had been discussed at the EDC and a motion was passed requesting the Government to preserve the flatted factory for creative industries and NGO uses.

39. The Chairman asked the representatives of PlanD whether the Antiquities and Monument Office (AMO) had any plan or programme to grade the Chai Wan Flatted Factory. Ms. Kitty Lam said that according to AMO, there was no plan to grade the Chai Wan Flatted Factory at this stage, and thus it would be premature to determine whether the factory building should be preserved as a heritage. Ms. Lam said that the future use of this site should better be determined after the historic building assessment and the HD's assessment on the future use of the site including public housing use.

#### *Traffic Assessment*

40. A Member said that according to the traffic assessment, the local road junctions in the areas zoned "I" and "OU" were already very congested. This Member asked whether the traffic assessment had taken into account the likely improvement to the areas brought about by the early implementation of the proposed elevated road connecting Wan Chui Road and Island Eastern Corridor. Ms. Kitty Lam said that as C for T advised that there was no implementation programme for the proposed elevated road, it had not been included in the traffic assessment. The Chairman asked whether there would be improvement to the local traffic conditions had the proposed elevated road been included in the traffic assessment. Ms. Kitty Lam responded that since the proposed elevated road

had not been taken into account in the traffic assessment, its impact on the local traffic conditions could not be ascertained at this stage. According to the traffic assessment, the additional traffic generated from the redevelopment of the areas under the PR 15 scenario would be very substantial and would likely cause severe traffic congestion problem.

41. Mr. Lee Chun Keung (R5) pointed out that the MTR Chai Wan station, though having an utilisation rate lower than 69%, was already very busy as it was a terminal station on the MTR Island Line. Mr. Lee said that the daily pedestrian flow coming in and out of the MTR Chai Wan Station was estimated at over 250,000 persons.

42. The Chairman asked PlanD about the established practice in assessing the impact of transport infrastructures including those not programmed for implementation. Ms. Kitty Lam responded that normally a traffic assessment would take into account infrastructural projects with implementation programme, and hence the proposed elevated road between Wan Chui Road and Island Eastern Corridor, which did not have an implementation programme, had not been considered. She said that the proposed elevated road was also not taken into account in the traffic impact assessment submitted under a section 16 planning application for hotel development within the subject “OU(Business)” zone.

#### *PR Restrictions of “I” and “OU(Business)” Zones*

43. Regarding some representations against the deprivation of their claimed property right, the Chairman asked the representatives of PlanD what the permitted development intensity upon redevelopment for existing buildings would be and what the basis of assuming the development rights of private landowners was. In response, Ms. Kitty Lam, STP/HK, said that there was no PR restriction on the “OU(Business)” zone under the previous Chai Wan OZP. Under such circumstances, the PR of the development would be governed by the B(P)R. PR 15, which was the maximum PR permitted under the (B(P)R), was used as an alternative for comparison purpose. She said that all the “I” sites were subject to PR and/or BH restrictions under lease. Coupled with the fact that there was provision in the Notes of the OZP to allow redevelopment up to the existing PRs, the private development rights of these sites would not be adversely affected. As for the “OU(Business)” zone, redevelopment to the existing PR would also be allowed

even with the PR control of 12 under the OZP. In fact, some of the sites were already subject to BHRs under lease which had indirectly restricted the development intensity. For those sites which were not subject to any BH or PR restrictions under lease, a PR of 12 would still provide sufficient incentives for redevelopment given that the “OU(Business)” zone was an upzoning of industrial lots which were restricted by their lease to industrial and/or godown purposes only. Ms. Lam said that there was also provision in the OZP to allow application for minor relaxation of the BH and PR restrictions based on individual merits.

44. Mr. Yung Kwok Kee, Billy (R283), said that it was obvious that the reduction of PR from 15 to 12 would have significant impact on property values. He urged the Board to take proactive action to improve the traffic conditions in the area rather than acting passively by restricting the PRs of private development, in the light of the current situation of acute shortage in land supply. Mr. Wong Kin Yip, Jazz (R283), supplemented that two proposals for redeveloping the Shell Industrial Building were rejected, including a section 16 planning application for a proposed hotel development at a PR of 15 rejected by the Board on the grounds of undesirable precedent, and a building plan submission for a proposed office development rejected by BD on the grounds of contravening the OZP. Mr. Wong said that the proposed redevelopment of industrial buildings was intended to benefit the community and should not be discouraged. The imposition of PR restriction of 12 on the subject site had made the redevelopment of the industrial building no longer profitable. This had discouraged the private sector from undertaking redevelopment of industrial buildings, which ultimately were left in poor or even dilapidated conditions.

[Mr. Eric Hui returned to join the meeting at this point.]

45. Noting that the 5 sites along Lee Chung Street were existing industrial buildings previously upzoned from “I” to “OU(Business)”, a Member asked R1 and R283 why they considered that there were insufficient incentives for redevelopment of the existing buildings upon imposition of PR restriction of 12 on the “OU(Business)” zone. Mr. Yung Kwok Kee, Billy (R283), said that PR 15 was the permitted PR on the “OU(Business)” prior to the imposition of PR restriction of 12 on the OZP and the nearby E-Trade Plaza had been built to that development intensity. The reduction of the PR from

15 to 12 had therefore deprived landowners of their development rights, which was not in line with the community's aspiration for increasing land supply. Mr. Wong Kin Yip, Jazz (R283), supplemented that although there was some incentive for redevelopment of industrial buildings as a result of the previous rezoning from "I" to "OU(Business)", such marginal benefit had diminished with the imposition of PR 12, after discounting all the relevant financial considerations including premium payable and development costs.

[Professor P.P. Ho and Mr. Eric Hui left the meeting at this point.]

46. With regard to the matters of lease right and the land use planning control, Members noted that the TPO and the lease were two separate regimes. In planning for an area, the Board had to balance different expectations and aspirations of the community for achieving public good, amongst which optimisation of the use of land resources was only one of the considerations. Maximisation of profit, however, was not a relevant planning consideration.

[Mr. Ivan C.S. Fu and Mr. Maurice W.M. Lee left the meeting at this point.]

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

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

[Dr. C.P. Lau and Mr. Roger K.H. Luk left the meeting temporarily at this point]

#### Deliberation Session

48. Members noted that the request of R1 to adjourn the representation hearing on grounds of the legal implications of the Kai Tak Mansion judgment on the representation hearing was not justified. Legal advice on the implications of the Kai Tak Mansion

judgment had been sought and the matter had been considered by the Board. As per the Board's decision, appeal against the court's decision on the JRs had been lodged by the Board. Accordingly, there was no justification for the Board to entertain the request of R1 to adjourn the meeting.

49. Mr. Jimmy Leung said that as a general principle and in the light of the Kai Tak Mansion judgment, the Board would have to be satisfied that there were reasonable and sufficient justifications as well as objective assessments to support the imposition of planning restrictions on the Chai Wan OZP.

50. A Member said that town planning was a balancing exercise. On the point of arbitrariness as raised in the Kai Tak Mansion judgment, this Member considered that the responses provided by the PlanD were well justified and should not be regarded as arbitrary.

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

#### *Public Interest and Private Development Right*

52. The Vice-chairman said that in formulating the BHRs and other planning restrictions on the Chai Wan OZP, a balance had been struck between private development rights and various planning considerations, including traffic, environment, and preservation, etc. and in the public interest. That was no different from those of the other OZP review exercises. The Board should therefore firmly follow its established principle to prepare plans based on reasonable justifications and objective assessments as for all other OZPs. In this regard, he noted that PlanD had carried out detailed work and the BH/PR restrictions of the each lot within the concerned "I" and "OU(Business)" zones had been provided in the TPB Paper for Members' consideration. The Vice-chairman further said that should it be established that the BHR could not be sufficient to accommodate the permissible PR under the OZP, there was provision for minor relaxation of planning restrictions on the OZP and the Board would consider each application based on the its merits. He did not see any reason for a departure from the Board's established practice

and principle, and suggested not to uphold the representations.

[Mr. Roger K.H. Luk returned to join the meeting at this point.]

53. A Member said that the Board had to ensure a fair and objective consideration and work for public interests. The impact on the profit of private landowners was not a relevant planning consideration.

*BHR and SBD Guidelines*

54. A Member pointed out that R1's arguments had been repeated many times in the representations to other OZPs and did not relate entirely to the local circumstances of each district. This Member considered that minor relaxation of BHRs should be considered based on the planning and design merits of individual cases and the representer R1 did not provide solid justification for adopting the blanket approach to increase the BHR by 20m. That Member also considered that the assessments conducted by PlanD were comprehensive and professional. The profit or loss of landowners was not a relevant planning consideration.

55. A Member expressed reservation on whether small site would be able to comply with the SBD Guidelines requirements under the BHRs imposed and whether the minor relaxation clause could provide the flexibility. In response, the Chairman said that the compliance of SBD Guidelines was only on a voluntary basis. Developers could make use of the minor relaxation mechanism, which applied to restrictions on BH, PR and NBA, and the planning merits of each case could be considered by the Board. There were examples of minor relaxation applications in the past which were approved by the Board. The Chairman agreed with the Member that R1's proposal to relax the BHRs generally by 20m was not justified and the proposal did not take into account the difference in size and location of the individual sites. He considered that R1's proposal, if allowed, might not necessarily achieve better urban design and air ventilation improvement as it would be up to individual developers of the different sites to decide whether to follow the SBD standards.

56. A Member said that the two-tier BHR mechanism adopted in the Mong Kok

OZP to encourage site amalgamation was clear. However, the GFA concession scheme was not mandatory and it would not be appropriate to incorporate the SBD Guidelines as requirements in the Notes of the OZP as proposed by R1.

[Ms. Bonnie J.Y. Chan left the meeting at this point.]

57. A Member said that the SBD Guidelines were generally applicable to all building developments with no reference to specific district characteristics and planning considerations, and their compliance was on a voluntary basis. There was no relationship between the OZP and the SBD Guidelines. As long as the OZP restrictions were supported by sound and good justifications, and flexibility was allowed through the provision of minor relaxation of the planning restrictions, this Member considered it inappropriate to delete or modify the planning restrictions on OZPs to cater for the situation where a developer might follow the SBD Guidelines. This Member agreed not to uphold the representations.

58. Another Member considered that BD was the appropriate body in administering the SBD Guidelines.

*PR Restriction of “I” and “OU(Business)” Zones*

59. A Member said that there was no PR restriction on the “I” and “OU(Business)” zones in the previous Chai Wan OZP, and the PR of 15 was not stipulated under the OZP. The TPO had empowered the Board, with good justifications and grounds, to impose PR restrictions on OZPs. Noting that the PR imposed was supported by technical assessments and studies, this Member considered that the PR of 12 imposed on the “I” and “OU(Business)” zones was appropriate.

[Mr. Clarence W.C. Leung left the meeting at this point.]

60. A Member said that the development potential under the “OU(Business)” zoning had not been fully utilised as the existing industrial buildings there were not yet redeveloped. The reduction in profit as claimed by the representers should not be a relevant consideration of the Board. The Board had good justifications to impose PR

restrictions on the OZP under the TPO.

61. A Member said that when R283's planning application for hotel use with a PR of 15 was considered by MPC, there was different opinion in minority against the MPC's decision to reject the application on the ground of undesirable precedent given that the technical requirements had been fulfilled. The Member said that PR 15 was only the maximum permissible PR under B(P)R which might not be achievable on all sites. The Member supported the imposition of PR 12 on the "OU(Business)" and "I" zones.

#### *Traffic Assessment*

62. A Member noted that two development scenarios had been identified and considered in the traffic assessment and there would be traffic congestion problems in the local road network even under the PR 12 scenario. The Member considered that the implementation of the elevated road linking Wan Chui Road and Island Eastern Corridor might not solve the traffic problem on local road network. It would be inappropriate for the Board to consider relaxing the planning restrictions based on a proposed road that did not have an implementation programme. The same Member further said that there was a mechanism to review and amend the planning restrictions on OZPs by the Board to cater for future changes in planning circumstances.

63. Another Member said that the Board should keep abreast of the changing transport policy. For instance, the Siu Sai Wan area was currently served by a large number of bus routes, resulting in very congested local traffic due to too many buses around the area. If there was opportunity for an extension of the MTR to Siu Sai Wan in future, its possible implications on the local traffic conditions should be taken into account in the review of development restrictions in OZPs. However, the Board could only consider the prevailing circumstances.

#### *AVA*

64. A Member considered that the approach adopted by the AVA was appropriate for assessing the air ventilation impact of the OZP restrictions.

65. The Secretary drew Members' attention to the fact that the proposed width of the building gaps was formulated based on the width of the streets along the same path in order to preserve the air paths and to improve air ventilation.

*Chai Wan Flatted Factory*

66. A Member enquired whether the BHR of the Chai Wan Flatted Factory site should be reconsidered given that its future use was uncertain at this stage and there were a number of options promoting to revitalise the building for other uses.

67. Members noted that the future use of the Chai Wan Flatted Factory could not be decided at this stage as the historic building assessment had yet to be conducted. Since the site was zoned "CDA" on the OZP, any future development would require planning permission from the Board and hence the Board would have the opportunity to scrutinise the land uses and development parameters of the future development and therefore the planning parameters that were based on the current circumstances would be appropriate.

*Others*

68. Noting that all the representations were not upheld as recommended by PlanD, a Member asked if the Board had to accept PlanD's view. In response, the Chairman said that the Board had the duty to make its own decisions in an objective and impartial manner, having considered all the relevant circumstances and information presented by PlanD and all other stakeholders including the representers and commenter. He said that there were cases where the Board held a different view from that of PlanD.

[Mr. Rock C.N. Chan left the meeting at this point.]

69. Regarding R284's representation, the Chairman said that the ES served to reflect the planning intentions and objectives of the various land-use zonings on the OZP. It only listed out the major existing facilities and was not exhaustive. It would therefore not be necessary nor practically possible to include all the existing facilities including the gas offtake station into the ES. Members agreed.

[Dr. Wilton W.T. Fok left the meeting at this point.]

70. The Chairman summed up by recapitulating the following key considerations of the representations, representers' proposal and comment:

- (a) the BHRs, PR restrictions, NBAs and building gaps, including those on the specific sites of Heng Fa Chuen, Chai Wan Industrial Centre, Minico Building and Chai Wan Flatted Factory, were formulated with good justifications based on relevant considerations, reasonable assumptions and objective studies including AVA and traffic assessment and were not arbitrary;
- (b) a stepped height concept was adopted to prevent excessively tall or out-of-context buildings. Four local vantage points had been identified to assess the visual impacts of the proposed BH profiles in an objective and conclusive manner;
- (c) the areas zoned "T" and "OU(Business)" were subject to traffic constraints. According to the traffic assessment conducted for the areas, a maximum PR of 12 for these two zones was appropriate in order to alleviate the potential traffic problems. The representers had not provided any information to rebut the findings of the traffic assessment;
- (d) there was a provision for application for minor relaxation of the planning restrictions under the OZP in order to cater for development/redevelopments with planning and design merits, e.g. to accommodate the SBD requirements, and to cater for circumstances with specific site constraints. Each application for minor relaxation would be considered by the Board on its individual merits;
- (e) blanket relaxation of the BHRs by 20m was not supported as it would significantly increase the overall BH profile in the neighbourhood, reduce the visible areas of the mountain backdrop and the waterbody of the harbour from the local vantage points and adversely affect the local

character and cityscape, which was not in line with the intended planning control. Moreover, a blanket 20m relaxation had no supporting basis;

- (f) the property value and the identity of property owners were not relevant considerations of the Board;
- (g) the future use of Chai Wan Flatted Factory had yet not been determined. The “CDA” zoning of the site with the requirement for MLP submission and the relevant technical assessments could provide an opportunity for the Board to consider the suitable land uses and development parameters of the site at the planning application stage; and
- (h) the ES served to reflect the planning intentions and objectives of the various land-use zonings on the OZP. It would not be necessary and it would not be possible to include all the existing facilities including the gas offtake station into the ES.

71. After deliberation, Members agreed not to uphold Representations No. R1 to R284. Members then went through the reasons for not upholding the representations as stated in paragraph 7.1 of the Paper and considered that they were appropriate.

#### Representation No. R1

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

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

concept, local characteristics, existing BH profile, site formation level, land uses, compatibility with surrounding developments, the wind performance of the existing condition and the recommendations of the air ventilation assessment (AVA), had been taken into consideration;

- (b) sections 3 and 4 of the Town Planning Ordinance and the scheme of the legislation were intended to give the Board comprehensive powers to control development in any part of Hong Kong. The Board had the power to impose BHRs on individual sites or for such areas within the boundaries of the Outline Zoning Plan (OZP) where there were necessary and sufficient planning justifications;
- (c) there would not be adverse impacts on the development intensity permitted under the OZP. For an existing building which had already exceeded the BHRs, the rights of redeveloping the buildings to their existing heights would be respected on the OZP unless otherwise specified. The BHRs had struck a balance between public aspirations for a better living environment and private development rights;
- (d) the BHRs were formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development intensity permissible under the OZP. The BHRs would not result in larger building bulk. On the other hand, better designed and sustainable buildings were not guaranteed with more relaxed BH control;
- (e) to cater for site-specific circumstances and schemes with planning and design merits, there was provision for application for minor relaxation of the BHRs under the OZP. Each application would be considered by the Board on its individual merits;
- (f) the measures on Sustainable Building Design (SBD) Guidelines/Joint Practice Notes (JPN) and the OZP restrictions were under two separate development control regimes, although they were complementary with each other. The SBD Guidelines and JPN were administrative

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

- (g) blanket relaxation of the BHRs by 20m was not supported as it would significantly increase the overall BH profile in the neighbourhood, create canyon effect, reduce the visible areas of the mountain backdrop and the waterbody of the harbour from the local vantage points and adversely affect the local character and cityscape, which was not in line with the intended planning control. Moreover, a blanket 20m relaxation had no supporting basis;
- (h) relaxation of the BHRs at the Heng Fa Chuen area would jeopardise the integrity of the stepped BH concept and result in out-of-context development on the waterfront, which was not in line with the intended planning control;
- (i) the plot ratio (PR)/gross floor area (GFA) restrictions were appropriate, taking into account all relevant factors including the Hong Kong Planning Standards and Guidelines, local characteristics, existing building profile, nature of the developments, redevelopment potential, lease entitlements and the findings of the traffic assessment upon striking a balance between public aspirations for a better living environment and private development rights;
- (j) the areas zoned “Industrial” and “Other Specified Uses” annotated “Business” were subject to traffic constraints. According to the traffic assessment conducted for the areas, a maximum PR of 12 for these two zones was appropriate in order to alleviate the potential traffic problems;
- (k) to cater for site-specific circumstances and schemes with planning and design merits, minor relaxation of PR/GFA restrictions might be considered by the Board through the planning permission system. Each proposal would be considered on its individual merits;

- (l) pursuant to sections 3 and 4 of the Town Planning Ordinance, the Board had power to impose non-building areas (NBAs) and building gaps for individual sites or areas within the boundaries of the OZP with necessary and sufficient justifications. Designation of NBAs and building gaps requirements on the OZP could serve a positive planning purpose and had positive planning benefits by improving air ventilation. Designation of NBAs and building gaps would not adversely affect the development potential of the affected sites;
- (m) as the NBAs and building gaps had been designated with due considerations given to site conditions and other relevant factors, minor relaxation clause of NBAs and building gaps requirements should only be allowed for exceptional circumstances to cater for exceptional cases under which the NBAs and building gaps could not be provided due to special circumstances and alternatives to achieve the planning objectives could be considered on individual merits; and
- (n) the two-month statutory exhibition period and provision for representations and comments formed part of the public consultation process. Any premature release of information before exhibition of the amendments to the OZP might prompt an acceleration of submission of building plans, thus nullifying the effectiveness of imposing the BHRs. All information supporting the BHR and building gap requirements on the OZP including the AVA Report and Urban Design Appraisal, was available for public inspection.

Representations No. R2 to R282

73. After further deliberation, the Board decided not to uphold Representations No. R2 to R282 for the following reason:

the Housing Department was exploring various options for the Chai Wan Flatted Factory site for public housing development. The “Comprehensive

Development Area” zoning of the site with the requirement for master layout plan submission and the relevant technical assessments could provide flexibility to cater for future planning and development needs while retaining sufficient planning control through the planning permission system. The building height restriction (BHR) for the site was formulated after striking a balance of relevant factors including housing provision, visual implications of redevelopment on the overall townscape, air ventilation and urban design context. The BHR indicated the maximum height only. Matters related to heritage preservation was outside the Board’s purview, while according to the Antiquities and Monuments Office, the Antiquities Advisory Board (AAB) would conduct evaluation on the Chai Wan Flatted Factory. The Director of Housing agreed to consult the Eastern District Council and to respect the recommendations of the AAB in formulating the development proposal.

Representation No. R283

74. After further deliberation, the Board decided not to uphold Representation No. R283 for the following reasons:

- (a) the purpose of imposing building height restrictions (BHRs) in the Area was to provide better planning control on the BH upon development/redevelopment and to meet public aspirations for greater certainty and transparency in the statutory planning system, to prevent excessively tall or out-of-context buildings, and to instigate control on the overall BH profile of the Area. In formulating the BHRs for the Area, all relevant factors including the Urban Design Guidelines, the Urban Design Appraisal for the Area, existing topography, stepped BH concept, local characteristics, existing BH profile, site formation level, land uses, compatibility with surrounding developments, the wind performance of the existing condition and the recommendations of the air ventilation assessment (AVA), had been taken into consideration;
- (b) there would not be adverse impacts on the development intensity permitted under the Outline Zoning Plan (OZP). For an existing

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

- (c) the BHRs were formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development intensity permissible under the OZP. The BHRs would not result in larger building bulk. On the other hand, better designed and sustainable buildings were not guaranteed with more relaxed BH control;
- (d) to cater for site-specific circumstances and schemes with planning and design merits, there was provision for application for minor relaxation of the BHRs under the OZP. Each application would be considered by the Board on its individual merits;
- (e) deletion of BHR on the “Other Specified Uses” annotated “Business” (“OU(Business)”) zone along Lee Chung Street would jeopardise the integrity of the stepped BH concept and result in proliferation of high-rise developments along Lee Chung Street, which might have adverse visual, environmental and traffic impacts. The BHR had provided reasonable scope for redevelopment;
- (f) the plot ratio (PR)/gross floor area (GFA) restrictions were appropriate, taking into account all relevant factors including the Hong Kong Planning Standards and Guidelines, local characteristics, existing building profile, nature of the developments, redevelopment potential, lease entitlements and the findings of the traffic assessment upon striking a balance between public aspirations for a better living environment and private development rights;
- (g) the areas zoned “Industrial” and “OU(Business)” were subject to traffic constraints. According to the traffic assessment conducted for the areas,

a maximum PR of 12 for these two zones was appropriate in order to alleviate the potential traffic problems;

- (h) the hotel application within the “OU(Business)” zone was rejected by the Metro Planning Committee on 22.7.2011 for the reason that the proposed PR of 15 was considered excessive, and the cumulative effect of approving such applications would have adverse traffic, visual and environmental impacts on the area; and
- (i) to cater for site-specific circumstances and schemes with planning and design merits, minor relaxation of PR/GFA restrictions might be considered by the Board through the planning permission system. Each proposal would be considered on its individual merits.

Representation No. R284

75. After further deliberation, the Board decided not to uphold Representation No. R284 for the following reason:

the Explanatory Statement (ES) served to reflect the planning intentions and objectives of the various land-use zonings on the Outline Zoning Plan. It would not be necessary and it would not be possible to include all the existing facilities including the gas offtake station into the ES.

**Tuen Mun and Yuen Long District**

**Agenda Item 4**

[Open Meeting (Presentation and Question Session only)]

Review of Application No. A/YL-PS/372

Temporary Public Vehicle Park for Private Cars, Light Goods Vehicles, Medium Goods Vehicles and Coaches (not exceeding 24 seaters)

for a Period of 3 Years in “Village Type Development” zone,

Lot 206 S.C (Part) in D.D. 122, Hang Mei Tsuen, Ping Shan, Yuen Long  
(TPB Paper No. 9146)

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[The meeting was conducted in Cantonese.]

[Mr. Sunny L.K. Ho and Dr. C.P. Lau returned to join the meeting at this point.]

[Ms. Christina M.S. Lee left the meeting at this point.]

### Presentation and Question Session

76. The Chairman informed the meeting that the applicant indicated that she would not attend the hearing. The following representative of the Government was invited to the meeting at this point:

Mr. W.W. Chan - District Planning Officer/Tuen Mun & Yuen Long  
(DPO/TMYL), Planning Department (PlanD)

77. The Chairman extended a welcome and then invited DPO/TMYL to brief Members on the review application.

78. With the aid of a Powerpoint presentation, Mr. W.W. Chan, DPO/TMYL, presented the review application and covered the following main points as detailed in the review paper:

- (a) the applicant sought planning permission for a temporary public vehicle park for private cars, light goods vehicles, medium goods vehicles and coaches (not exceeding 24 seaters) for a period of 3 years at the site zoned "Village Type Development" ("V") on the draft Ping Shan Outline Zoning Plan (OZP) No. S/YL-PS/13 at the time of s.16 application and also on the approved Ping Shan OZP No. S/YL-PS/14 currently in force;
- (b) the Rural and New Town Planning Committee (RNTPC) rejected the application on 24.2.2012 for the reasons that the proposed development

was not in line with the planning intention of the “V” zone, which was intended for Small House and residential developments, even on a temporary basis; and the proposed development which included the parking of medium goods vehicles and coaches and had to be accessed via a long stretch of local track passing through the “V” zone would generate environmental nuisance to the adjacent residential settlements as well as those along the access road;

- (c) the justifications put forth by the applicant in support of the review application were summarised in paragraph 3 of the review paper as follows:
- (i) the parking demand of the “V” zone was intense and the proposed vehicle park was primarily to serve the nearby villagers;
  - (ii) the site and the land to its south had been occupied by temporary parking of private cars, light goods vehicles, medium and heavy goods vehicles and coaches since 2006. No local objection and no environmental complaint regarding the site was received by the Environmental Protection Department in the past 3 years;
  - (iii) the applicant had proposed measures to minimise the nuisances created to the nearby residents and to improve the traffic safety, including the restriction of operation hours from 8:00a.m. to 7:00p.m., the erection of a 2.5m high solid boundary wall along the southwestern boundary, restriction of only private cars and light goods vehicles parked along the eastern site boundary, provision of proper landscaping along the site periphery, restriction on the traffic speed within the site as well as along the local track leading to the site; and
  - (iv) the applicant was willing to accept a temporary planning permission of a period of 12 months so that the Board could closely monitor the operation of the proposed development at the site;

- (d) the application site, with an area of about 2,845m<sup>2</sup>, was currently used for parking of private cars and lorries. The site was accessed via an informal track connecting Ping Ha Road and Ping Hing Lane. There were residential dwellings, including existing and proposed small houses, adjacent to the application site and along the access road;
- (e) departmental comments – the departmental comments were summarised in paragraph 5 of the review paper. The Director of Environmental Protection advised that as the proposed development would likely cause traffic of heavy vehicles, it was considered environmentally undesirable according to the latest “Code of Practice on Handling Environmental Aspects of Temporary Uses and Open Storage Sites” despite with the erection of a 2.5m high solid boundary wall along the southwestern boundary as proposed by the applicant; and there were sensitive uses in the vicinity of the site and/or access road and environmental nuisance was expected. Other government departments generally had no adverse comment on the review application;
- (f) public comment – no public comment was received during the statutory publication period of both the planning application and the review application;
- (g) PlanD’s views – PlanD did not support the review application based on the planning considerations and assessments as set out in paragraph 7 of the review paper and summarised below:
  - (i) as the proposed development would likely attract traffic of heavy vehicles, it was considered environmentally undesirable despite the erection of a 2.5m high solid boundary wall along the southwestern boundary as proposed by the applicant. There were sensitive uses in the vicinity of the site and/or access road and environmental nuisance was expected. The applicant failed to demonstrate that the development would not generate adverse environmental

impacts to adjacent residential settlements as well as those along the access road;

- (ii) the proposed development was not in line with the planning intention of the “V” zone, which was intended to reflect existing recognised and other villages, and to provide land considered suitable for village expansion and reprovisioning of village houses affected by Government projects;
- (iii) although a number of planning applications for temporary public vehicle parks in the same “V” zone were approved by the RNTPC since 1999, they were not the same as the current application. Most of these applications were located far away from the application site, located at the fringe of “V” zone and had more direct access onto a public road. Some approved applications were for temporary vehicle parks with no medium/heavy vehicles allowed and those approved applications allowed parking of coaches was due to their proximity to the Ping Shan Heritage Trail to meet the demand of tourists. Rejecting this application was therefore consistent with the RNTPC’s previous decisions; and
- (iv) although the applicant solicited the Board’s sympathetic consideration to allow a temporary planning permission for a period of 12 months, as the application involved parking of medium goods vehicles and coaches at the site, this would continue imposing environmental nuisance to the nearby residential dwellings for the said period.

79. As Members had no further question, the Chairman thanked the representative of the PlanD for attending the meeting. Mr. W.W. Chan left the meeting at this point.

#### Deliberation Session

80. Mr. Benny Wong, Deputy Director of Environmental Protection, pointed out

that if the proposed development only involved parking of private cars and light goods vehicles, it would be acceptable under the current guidelines of his department albeit there were residential dwellings in the surrounding. Therefore, if there were adequate control to ensure no heavy or medium goods vehicles to be parked in the site, his department would not object to the application on environmental grounds. However, he noted that heavy and medium goods vehicles were still parked on the application site according to recent site inspections. He also said that the proposed solid wall along the southwestern boundary of the site would not be effective in terms of alleviation of noise pollution since there were existing and proposed village houses on the eastern side of the application site.

81. By referring to the review paper and the submission of the applicant, the Secretary said that parking spaces for medium goods vehicles and coaches were proposed in the western part of the application site, while parking of private cars and light goods vehicles would be restricted to the eastern part.

82. A Member pointed out that many of the similar applications approved were located at the fringe of "V" zone which was more accessible to local residents. The application site was subject to enforcement action. It was noted in the photos attached to the review paper that some dangerous goods vehicles and heavy vehicles were parked on the application site. The Member said that the proposed development was incompatible with the "V" zone and the proposed vehicle park with 2.5m solid wall along the boundary of the application site was considered unacceptable from a planning point of view.

83. A Member said that according to the established practice, applications for parking of private cars for local residents were mostly acceptable within "V" zone. However, since the proposed development involved parking of medium goods vehicles and coaches which might not be serving the needs of local residents, sympathetic consideration should not be given to this application. The Chairman said that the medium goods vehicles might belong to the residents nearby. Members considered the presence of medium and heavy vehicles not compatible with the surrounding.

84. After discussion, the Chairman concluded by saying that from the planning point of view, the proposed development was not in line with the planning intention of the "V" zone and that medium goods vehicles and coaches other than private cars were

proposed to be parked on the site, which was environmentally undesirable.

85. After 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 review paper and considered that they were appropriate. The reasons were:

- (a) the proposed development was not in line with the planning intention of the “Village Type Development” (“V”) zone which was intended for Small Houses by indigenous villagers. No strong planning justifications had been given in the submission to justify a departure from the planning intention, even on a temporary basis; and
- (b) the proposed development which included the parking of medium goods vehicles and coaches and had to be accessed via a long stretch of local track passing through the “V” zone would generate environmental nuisance to the adjacent residential settlements as well as those along the access road.

### **Procedural**

#### **Agenda Item 5**

[Open Meeting]

Request for Deferral for Review of Application No. A/YL-HT/707

Proposed Filling of Pond for Permitted Agricultural Use in “Agriculture” zone,

Lot No. 399 RP (Part) in D.D. 128, Ha Tsuen, Yuen Long

(TPB Paper No. 9147)

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[The meeting was conducted in Cantonese.]

86. Ms. Janice W.M. Lai had declared interests in this item as her spouse was a shareholder of a company which owned 2 pieces of land in Ha Tsuen. Members noted that Ms. Lai had tendered apology for being unable to attend the meeting.

87. The Secretary reported that this was the third request for deferral by the applicant for the review of application. The Board previously agreed to defer consideration of the application as requested by the applicant pending the submission of further information on 29.4.2011 and 23.3.2012. On 26.8.2011, the Board also decided to defer a decision on the application pending the submission of further information from the applicant on the revised pond filling proposal. On 6.7.2012, the applicant wrote to the Secretary of the Board requesting the Board to defer making a decision on the review application for a period of 2 months in order to allow time to discuss with the Drainage Services Department (DSD) and prepare a revised drainage proposal in response to the DSD's comments. The justifications for deferment met the criteria for deferment as set out in the Town Planning Board Guidelines on Deferment of Decision on Representations, Comments, Further Representations and Applications (TPB PG-No. 33).

88. After deliberation, the Board agreed to defer a decision on the review application as requested by the applicant pending the submission of further information by the applicant. The Board also agreed that the review application should be submitted for its consideration within 3 months upon receipt of the further submission from the applicant. The applicant should be advised that the Board had allowed a period of 2 months for preparation of submission of further information. Since this was the third deferment, the applicant should be advised that the Board had allowed a total of 6 months of deferment including the previous one, and no further deferment would be granted unless under very special circumstances.

[Dr. W.K. Yau left the meeting at this point.]

### **Agenda Item 6**

[Open Meeting]

Draft Kwun Tong (South) Outline Zoning Plan No. S/K14S/17

Information Note and Hearing Arrangement for Consideration of Representations and Comments

(TPB Paper No. 9144)

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[The meeting was conducted in Cantonese.]

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

Mr. Timothy K.W. Ma ] owned a flat at Yuet Wah Street

Ms. Julia M.K. Lau ] owned 7 carparking spaces in Kwun Tong

90. As the item was procedural in nature, Members agreed that they could stay in the meeting.

91. The Secretary briefly introduced the Paper. On 23.3.2012, the draft Kwun Tong (South) Outline Zoning Plan No. S/K14S/17 was exhibited for public inspection under section 5 of the Town Planning Ordinance. During the two-month exhibition period, a total of four representations were received. On 1.6.2012, the representations were published for three weeks for public comments and two comments were received. As all the representations and comments received were similar in nature, i.e. relating to rezoning a site at Sau Ming Road from “Government, Institution or Community” to “Residential (Group A)2”, it was recommended that the representations should be heard by the full Board collectively in one group.

92. After deliberation, the Board agreed to the proposed hearing arrangement for the consideration of representations as detailed in paragraph 2 of the Paper.

### **Agenda Item 7**

[Open Meeting]

Submission of the Draft Yim Tin Tsai and Ma Shi Chau Development Permission Area Plan No. DPA/NE-YTT/1 under Section 8 of the Town Planning Ordinance to the Chief Executive in Council for Approval (TPB Paper No. 9149)

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[The meeting was conducted in Cantonese.]

93. The Secretary briefly introduced the Paper. On 2.9.2011, the draft Yim Tin Tsai and Ma Shi Chau Development Permission Area (DPA) Plan No. DPA/NE-YTT/1 was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). A total of 67 representations and 32 comments were received. After consideration of the representations and comments to the draft Yim Tin Tsai and Ma Shi Chau DPA Plan No. DPA/NE-YTT/1, the proposed amendments to partially uphold some representations by rezoning the land designated under “Residential (Group D)” (“R(D)”) zone to “Unspecified Use” area and deleting the Notes for the “R(D)” zone were published for public inspection under section 6C(2) of the Ordinance on 27.4.2012 for three weeks for further representation. A total of 150 further representations were received. Upon consideration of the 109 valid further representations on 13.7.2012, the Board decided to amend the draft DPA Plan by the proposed amendments.

94. As the plan-making process had been completed, the draft Yim Tin Tsai and Ma Shi Chau DPA Plan was ready for submission to the Chief Executive in Council (CE in C) for approval.

95. After deliberation, the Board:

- (a) agreed that the draft Yim Tin Tsai and Ma Shi Chau DPA Plan No. DPA/NE-YTT/1A and its Notes were suitable for submission under section 8 of the Ordinance to the CE in C for approval;
- (b) endorsed the updated Explanatory Statement (ES) for the draft Yim Tin Tsai and Ma Shi Chau DPA Plan No. DPA/NE-YTT/1A as an expression of the planning intention and objectives of the Board for the various land-use zonings on the draft DPA Plan and issued under the name of the Board; and
- (c) agreed that the updated ES was suitable for submission to the CE in C together with the draft DPA Plan.

### **Agenda Item 8**

[Closed Meeting.]

96. This item was recorded under confidential cover.

**Agenda Item 9**

[Open Meeting]

Any Other Business

[The meeting was conducted in Cantonese.]

Section 16A Application No. A/TM-LTYT/192-11

Application for Extension of Time for Compliance with Planning Conditions – Temporary Sales of Vehicles (Private Cars and Light Goods Vehicles) and Office for a Period of 3 years in “Village Type Development” Zone, Lot 3674 RP in D.D. 124, Lam Tei, Tuen Mun, New Territories

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97. The Secretary reported that an application for extension of time (EOT) for compliance with planning conditions (f), (g) and (h) under application No. A/TM-LTYT/192 was received on 26.7.2012 and the proforma was tabled at the meeting. The application was approved by the Rural and New Town Planning Committee on 4.12.2009 for temporary sales of vehicles (private cars and light goods vehicles) and office for a period of 3 years subject to approval conditions. Approval condition (f) was related to the implementation of drainage facilities within 6 months (extended to 32 months until 4.8.2012) whilst approval conditions (g) and (h) were related to the submission and implementation of proposals to demonstrate that the vehicular access would not affect the existing drainage channel alongside Castle Peak Road – Hung Shui Kiu Section within 3 and 6 months respectively (both extended to 32 months until 4.8.2012). The application for EOT for compliance with the conditions for a further 3 months until 4.11.2012 was received on 26.7.2012, which was only nine days before the deadline for compliance with conditions (f), (g) and (h) on 4.8.2012. According to the Town Planning Board Guidelines TPB PG-No. 34B, an application submitted less than 6 weeks before the expiry of the specified time limit might not be processed for consideration of the Board, despite the application was submitted before the expiry of the specified time limit. Hence, this EOT application would not be considered by the Board according to the TPB Guidelines.

98. There being no other business, the meeting closed at 1:10 p.m.