



香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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Representations in Relation to the Amendments shown on the Chai Wan Outline Zoning Plan, Plan No. S/H20/20

The Real Estate Developers Association of Hong Kong (“REDA”)

1. Representor

- 1.1 This Representation is lodged on behalf of The Real Estate Developers Association of Hong Kong (REDA). It addresses the principles which have been applied in relation to the building height restrictions (BHRs), building gap restrictions and Non-building Areas (NBAs), plot ratio restrictions (PR) and other associated matters included as amendments in the Draft Chai Wan Outline Zoning Plan, Plan No. S/H20/20 (the OZP).

2. Representation in Opposition

- 2.1 This Representation relates to general matters applicable to a wide range of issues which arise because of the inclusion of the BHR, building gap restrictions, NBAs, PR and other restrictions in the amendments shown on the OZP. In other words, this representation objects to Amendment Items A & U1 – U5 on the Plan and (a), (b) and (c) of Amendments to the Notes of the Plan.
- 2.2 This submission is made in the broad interests of Hong Kong as a whole and in the interests of maintaining an efficient and sustainable urban development system.

3. Basis for this Representation

The reasons for this Representation are provided in the following paragraphs.

3.1 Building Height Restrictions Set Too Low

Lack of Flexibility for Innovative and Quality Design

- 3.1.1 REDA as a general principle opposes the setting of building height restrictions at levels which are so low as to unnecessarily constrain the provision of good quality development for the people of Hong Kong. This objective can only be achieved by providing flexibility for the design of developments which provide good internal space for people to live in and to work in, with sufficient internal headroom. There also needs to be flexibility for changing requirements over time and scope to meet changing market expectations.



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Objectives for Height Limits

3.1.2 It appears from paragraph 7.1 of the Explanatory Statement that the reasons for the imposing building height limits are:

- to provide better control on development intensity and building height of development/redevelopment;
- to prevent excessively tall or out-of-context buildings;
- to meet public aspirations for greater certainty and transparency in the statutory planning system.

3.1.3 No consideration, or inadequate consideration, has been given to building economics as well as the implications for the redevelopment of the area by the private sector. There also appears to be no consideration of the effect of the height controls on the form of new buildings. The imposition of low height limits has a direct negative impact on the provision of space around buildings, as it forces them to become lower and bulkier, and with a greater site coverage. The consequences include lowering property values and reducing air ventilation at the street level.

3.1.4 It is considered that most of these objectives for the building height restrictions can be achieved with slightly relaxed height limits, imposed at a level which generally permits a more reasonable form of development while meeting the objectives mentioned in the Explanatory Statement.

Control of out-of-context Tall Buildings

3.1.5 The recent public concern regarding “out-of-context tall buildings” appears to be basically about developments in the order of 60 storeys or taller in prominent positions. High-rise developments in the order of 40 storeys have been in place in various parts of Hong Kong for years and they are more acceptable to the public.

3.1.6 The adoption of building height restrictions of only 100mPD, 120mPD and 140mPD over most of the area is considered very restrictive. This will adversely affect the redevelopment and urban renewal process being undertaken by the private sector and further aggravate the impact on the urban environment. A general increase in the height bands by 20m each would better provide for good urban design, allow more space around buildings, allow for more permeable buildings at the lower levels, and achieve the height restriction objective of not allowing “excessively tall and out of context buildings”.



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Building Heights and Air Ventilation

- 3.1.7 The Urban Design Appraisal enclosed with the MPC Paper identified that the subject OZP area does not fall within the 'view fan' of any of the seven strategic vantage points (VPs) set out in the Urban Design Guidelines of HKPSG. Therefore four local VPs are taken into consideration for assessing the visual impacts of the proposed amendments while the Appraisal has been used as a basis to set the BHR of the area. A general misconception is that tall buildings block air ventilation. However, the focus for improved air ventilation at street level should be in identifying means for creating space around buildings at street level in critical locations. This would appear to be contrary to the imposition of low building height limits as this tends to force developments down into a solid mass of building to accommodate the permitted amount of development, rather than encouraging the creation of space around buildings at street level.

Need for Reasonable Building Heights

- 3.1.8 The overall height profile of the Planning Area is formed mainly by the Residential, Business and Industrial zones with Open Space and G/IC zones as being used for visual relief and breathing space. However, the new BHRs stipulated on the OZP are generally too low.
- 3.1.9 Taking account of building economics, technology for construction, visual considerations, air ventilation and public aspirations, the height bands as introduced in the amendments for the development zones should be increased. Imposition of unreasonably low building height limit restrains the building bulk, making incorporation of innovative architectural design and void feature impossible. This directly affects streetscape, air ventilation at grade and the quality of life of the users of the development.
- 3.1.10 It would also appear that the result of the BHR imposition is that part of the private land at Chai Wan Industrial Centre and Minico Building sites (Amendment Item U4) and Chai Wan Flatted Factory site (Amendment Item U5) have been provided with much more restrictive BHRs than the public housing sites in the area covered by the same OZP.

Stepped Building Height Profile

- 3.1.11 According to the minutes of subject MPC meeting, it states that residential developments in Siu Sai Wan and Southern Foothill Area should have a general stepped height profile with lower development to the north of Siu Sai Wan Road and gradually increasing to the upper platform of Siu Sai Wan



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Estate. The adoption of BH height bands of 100mPD, 120mPD and 140mPD was considered appropriate to reflect the stepped height profile. However, such height bands only allow the maximum permissible gross floor area to be fitted into the building while provision and flexibility for sustainable and innovative design are missing.

- 3.1.12 Therefore a general increase of 20m to all existing BHRs on the OZP would allow more flexibility in design, possible compliance with the Sustainable Building Design (SBD) Guidelines and incorporation of green features suggested by the Joint Practice Notes (JPN). The difference in height would be insignificant in terms of visual impact and the stepped profile retained.

Heng Fa Chuen Area

- 3.1.13 Being at the waterfront on the northern Hong Kong Island, the Heng Fa Chuen area enjoys a prominent location facing the Lei Yue Mun Strait. The existing Heng Fa Chuen development is situated above the MTR depot and Heng Fa Chuen Station, and all fall within an area zoned "Other Specified Uses (Mass Transit Railway Comprehensive Development Area)" ("OU(MTRCDA)") with an existing building height between 57mPD and 65mPD. Under the current proposed amendments, the Heng Fa Chuen area has HRs of 70mPD and 90mPD respectively. REDA considers that the BHRs on this site are set much lower than other residential sites in the south on the same OZP with proposed BHRs of about 100mPD to 140mPD.
- 3.1.14 According to the Metro Committee Paper (MPC) Paper No. 1/12, it states that the imposition of BHR could generally maintain the existing medium-rise character. However, the proposed BHRs of 70mPD and 90mPD would only permit a small increase in the existing floor-to-floor height to a reasonable level (currently only 2.67m). Given the intention for a stepped height profile to be adopted along the waterfront area, it is unreasonable for the Heng Fa Chuen area to be limited to only 70mPD and 90mPD. The OZP generally allows for an absolute height of only about 65m to about 75m for the Heng Fa Chuen area. The absolute heights are equivalent to about 20 to 24 storeys. Building design and flexibility could not be allowed under such circumstances. With reference to the residential developments located to the south of the Chai Wan OZP, the BHRs of the residential developments at Siu Sai Wan are about 100mPD to 120mPD. Higher BHRs should be adopted in the Heng Fa Chuen area in order to promote a more spacious development form, more space around the buildings and decent stepped building height profile.
- 3.1.15 In addition, the Urban Design Appraisal identified a local VP viewing the Heng Fa Chuen area from Lei Yue Mun in Kowloon. Although the stepped



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height concept has been adopted with lower developments along the waterfront and gradation of height profile to echo the natural topography, the Air Ventilation Assessment (AVA) study attached to the MPC Paper have not identified the area being located along any of the air paths on the Chai Wan OZP (Plan 10 in the MPC Paper). No consideration has been made to the absence of air paths being identified in the AVA study towards the inner west at Chai Wan Au and the further Mount Parker as natural topography of the area, when imposing the BHR to the waterfront area. It is therefore illogical to retain Heng Fa Chuen as a medium-rise development cluster along the waterfront without providing adequate design flexibility by means of higher BHR.

- 3.1.16 The imposition of the height limit at a level which is too low therefore creates a solid wall effect closer to ground level. Therefore the "OU(MTRCDA)" should have increased BHRs ranging from 100mPD to 120mPD to allow better building designs and compatibility with the building height profile of the residential developments at Siu Sai Wan, while without affecting any of the identified air paths in the subject AVA study.

3.2 Non-Building Areas

- 3.2.1 The AVA study has been used as a basis for the designation of NBAs, building gaps and setbacks. A number of NBAs are introduced to the OZP for air ventilation purposes under the proposed amendments. Sections 3 and 4 of the Town Planning Ordinance provide that:

(a) the Town Planning Board (TPB), in the exercise of its duty to prepare draft plans for the "future lay-out" of such existing and potential urban areas as the Chief Executive may direct, may make provision only by way of those matters specifically mentioned in section 4(1); and

(b) the TPB may also prepare plans "for the types of building suitable for erection therein" pursuant to section 3(1).

- 3.2.2 NBAs do not appear to fall into either category. They are not included as the "lay-out" of an area in section 4(1). Nor can they fall into the "types of building" category in section 3(1) since by definition what is being provided for in NBAs is no building at all. It is therefore difficult to see what statutory basis there is for them.

- 3.2.3 The objective of ensuring "gaps" between buildings in appropriate places can be achieved within the existing framework of section 4(1) pursuant to which the TPB may make provision for (inter alia) open spaces, parks, and streets.



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There therefore appears to be no justification for an additional category of NBA.

3.2.4 Further, it is arguable that the term "NBA" is liable to cause uncertainty and confusion:

(a) as the same term is used with very specific meaning in the context of lease provisions; and

(b) the implication of "NBA" under the Buildings Ordinance, in particular on site coverage and plot ratio calculations, is unclear.

3.2.5 The proposed NBA on this OZP (Amendment Item U3) is a major imposition on the development rights of private landowners without any form of compensation. The AVA assessment carried out for the review of the OZP is inadequate to justify the extent of imposition that is proposed. No information was included in the AVA to justify the extent of intrusion into private property rights that is proposed. For example there is no indication of the extent of adverse impact of the existing situation, or the extent of improvement that would be obtained, by the imposition of the NBA restriction through the Fortune Factory Building, Sze Hing Loong Industrial Building, Sunrise Industrial Building and Shing King Industrial Building at Hong Man Street. No critical assessment has been undertaken to show that such proposals are essential for the public good, and no alternatives have been considered, and no consideration of compensation for loss of property rights has been considered. The proposal goes well beyond the scope that the Town Planning Ordinance allows.

3.2.6 The Board should make use of the zonings permitted by the Town Planning Ordinance if it is convinced that the use of some form of gap or space is required for essential air ventilation. For example, Amendment Item U1 relates to an extensive vegetated slope at Hing Wah (II) Estate which could be zoned as "Green Belt" ("GB") if it is not to be built on, or "Open Space" ("O") in which the "GB" zone is abutting the NBA. Similarly, the NBA proposed by Amendment Item U3 could be zoned as "O" to allow linear open space on the roadside if it is absolutely essential in the public interest, and resumed with compensation paid to the land owners.

3.3 Building Gaps and Setbacks

Imposing Setbacks violate the Intention of Outline Zoning Plans



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- 3.3.1 REDA is opposed to requirements for setbacks on the OZPs as this is not appropriate for the scale and generality of what are intended to be broad brush plans determining types of buildings and permitted uses. REDA considers the use of the OZP for this purpose is going well beyond the intention of town planning, as provisions for road widening are covered by other ordinances such as the Buildings Ordinance and the Roads (Works Use and Compensation) Ordinance. These other ordinances provide means for compensating private land owners for the loss of their land for a public purpose. The use of the OZP for these proposes is considered wrong and may be subject to legal challenge.

Lack of Legal Basis for Building Gaps and Setbacks for Air Paths

- 3.3.2 In addition, there is no legal recognition of the provision of building gaps for “air paths” as being a public purpose for which private land could be taken. It is therefore considered inappropriate for the TPB to include these on the OZP and to be a matter outside the provisions of the Town Planning Ordinance.

Inadequate Justifications provided in Explanatory Statement for Setback Requirement

- 3.3.3 The justifications stated in the Explanatory Statement for providing setbacks for the “OU(B)” and “CDA” zones are confusing. The paragraphs 7.8, 7.11 & 7.12 of the Explanatory Statement of the OZP, indicate varying building gaps and setbacks with no justification as to why they are essential, why they must be the specified width, and why they must be at 21mPD and 23mPD respectively. There is no justification as to how wide the proposed air paths should be in order to allow better and adequate air ventilation.
- 3.3.4 The unclear justifications for the setback requirements would render unnecessary complications related to compensating private land owners for the loss of their land ownership rights for a public purpose, either under the Buildings Ordinance or the Roads (Works Use and Compensation) Ordinance. In these circumstances, REDA requests that all setback requirements be removed from the OZP.

3.4 Application of Sustainable Building Design Guidelines (SBD Guidelines)

- 3.4.1 REDA is concerned that in setting the BHR, the Building Gaps and NBA there has been no account taken of the need for future developments to comply with the SBD Guidelines. The SBD Guidelines are progressively becoming an integral part of the building development process in Hong Kong and are becoming a requirement under new leases. They are promoted by the government to achieve the same objectives as the NBA and other provisions



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on the OZP and they unnecessarily duplicate and conflict with the new provisions on the OZP. There has been no serious attempt to allow for the incorporation of the SBD requirements when preparing BHR. There is an indication of confusion amongst MPC Members on how to deal with this situation.

3.4.2 The members at the MPC meeting had a discussion on the redevelopment potential and restrictions of Island Resort located at Siu Sai Wan as the site has been imposed with a BHR of 140mPD on the OZP with an existing building height of 193mPD. (This BHR is unrealistic and futile in any event and is unlikely to ever be achieved within a reasonable planning time-frame). The discussion was about whether the proposed 140mPD BHR on the site would hinder its redevelopment potential in future while meeting the SBD Guidelines at the same time. According to the minutes of the meeting, the Secretary of the TPB supplemented to the discussion that *"measures under SBD Guidelines and OZP restrictions on BHRs and building gaps were under two different regimes. It was technically difficult to take into account the impact of SBD Guidelines... in the absence of detailed development proposal. SBD Guidelines would most likely meet the planning objectives for granting minor relaxation of BH restrictions"*. Such comments were inconsistent with Planning Department (PlanD)'s view that *"future redevelopment was expected to comply with the SBD Guidelines due to the GFA concessions involved, and such compliance would achieve satisfactory air ventilation performance at the same time"*. Without detailed study, assumptions have also been made to the development details for the site with basement carpark option and a floor-to-floor height of 3.15m.

3.4.3 These contradictory comments have neglected the fact that in reality, almost all developments nowadays aim to comply with the SBD Guidelines for energy efficiency better design and better air ventilation performance. REDA considers such comments from the TPB unreasonable as on one hand, SBD Guidelines are of a different regime and should not be considered when imposing BHRs on site while in reality most developments are likely to be required to comply with such guidelines. Such comments also delay the development progress by forcing the landowners to go through Section 16 application process for minor relaxation of BHR in order to comply with the SBD Guidelines, yet this is something which should be encouraged as of right.

3.5 No Public Consultation

3.5.1 The BHRs, NBAs as well as building gaps and setback requirements, have been imposed on the OZP without any prior public consultation. There has been no opportunity for the public, including the development industry, to be



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informed of the justification or the need of the restrictions. There has also been no explanation given to the public as to the reasons why the particular height limits, NBAs, setback requirements have been adopted. There has been no visual impact analysis made available to the public which indicates what the vision is for the long term development of the Planning Area.

- 3.5.2 It is strongly suggested that the Planning Department should have carried out a planning study and public engagement process for the current proposed amendments. The Department should have presented the public with the visual impact assessment and diagrams for consultation, in order that owners, stakeholders and the general public, could be informed of the implications of the AVA, the height restrictions and the other amendments. Options should have been provided for discussion. The public could have submitted their comments before the restrictions became statutory controls. Consultation of the Eastern District Council and the public after the amendments have been gazetted is not a genuine consultation and is not an effective means of informing the concerned public as to the reasons for the proposed amendments.

4. Down Zoning of Industrial and OU(B) Zones from Plot Ratio 15 to Plot Ratio 12

- 4.1 Amendment to the Notes of the Plan “(b)” imposes plot ratio restrictions in the “Industrial” and “OU(Business)” zones, and other zones. This is objected to by REDA as a matter of principle.
- 4.2 Many of the lots involved are unrestricted under the lease and have the right to achieve the maximum plot ratio permitted under the Building (Planning) Regulations, and this is usually a plot ratio of 15. Under the previous Chai Wan Outline Zoning Plan there was no plot ratio restriction applicable to these zones. The imposition of this new restriction therefore has a significant negative impact on the ownership rights of the affected land owners.
- 4.3 REDA is of the view that retrospective application of plot ratio restrictions should not be introduced as a matter of principle. If they are introduced, there needs to be an over-riding matter of public interest that requires that the private property rights be diminished. In this case there is no great matter of public importance that will be served by imposing this control.
- 4.4 In the MPC Paper reference is made to the “need” for these controls in paragraph 12. Information was provided to the MPC which showed that there would be a large number of sites adversely affected, while some which have existing height restrictions in the lease would not be affected. The concerns of



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REDA relate to those sites which were clearly identified as likely to be adversely affected by the proposed PR of 12.

4.5 A Traffic Assessment was carried out and looked at the likely impact of various development densities in the various areas. This study showed that :-

- the existing major road corridors connecting Chai Wan with other districts would be able to accommodate the additional traffic if the PR was at 15.
- Local road improvements and traffic management measures would be required irrespective of whether the PR 12 control was introduced or not;
- Only one junction was shown to be significantly affected and this was the IEC/Chai Wan Road/Wan Tsui Road roundabout.

4.6 It is apparent from the MPC Paper that the only significant reason for imposing the PR 12 restriction arose from the traffic study. However, no information was provided to the MPC as to what other options were available to address the potential congestion at the one affected junction other than imposing a PR 12. The only reference is in the conclusion, paragraph 5.1.1

“However, the additional traffic generated from the redevelopment of Areas 1 and 2 to a PR of 15 would be very substantial and may cause severe traffic congestion on a district-wide level that may require massive road improvements works and land resumption. Therefore, it is recommended from a traffic engineering point of view that the redevelopment of Areas 1 and 2 should be considered for a PR of 12.”

4.7 The justification for the PR of 12 is inadequate. The Planning Department has quickly proposed the implementation of the restriction without doing an adequate balancing process as to whether it was essential for the PR 12 to be imposed. It has too quickly proposed the most onerous measure on the private land owner by reducing development rights. It should have provided the MPC with at least the following information:-

- What would the impact be if the PR 12 was imposed only in Area 1 where most of the lots already complied with the restriction and therefore there would be minimal impact on property rights. Area 2 could remain with a PR of 15;
- Rather than just stating that there may be a need for “massive road improvements works”, a clear indication and quantification of these works should have been given, so that the MPC would have a concrete reference rather than an emotively worded statement;



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- On the Outline Zoning Plan there is a proposed elevated road shown linking Wan Tsui Road and the Island Eastern Corridor and that has not yet been constructed. It appears as if no consideration has been given to the impact of the implementation of this elevated road shown on the Outline Zoning Plan when conducting the traffic study. This is a major omission, when something proposed by the Town Planning Board on its plan over the junction identified as the one major problem is not even considered or presented to the MPC;
 - If land is to be resumed to implement a road improvement scheme then in principle that would be preferable, as the affected land owner would be compensated for the loss of property rights for any land taken for a public project such as a flyover. By taking the alternative of down-zoning other land, the Board has effectively excluded the affected land owners from being able to obtain any form of compensation.
- 4.8 No consideration has been given to other important planning matters arising from the reduction in PR, such as the reduction in potential job opportunities, reduction in potential expansion of economic activities, the potential role of this OU(B) zone to provide back office services for CBD uses, the potential of the area to develop as an incubator for new and different forms of economic activity encouraged under the OU(B) zoning, and the provision of jobs in this allocation balancing the need to commute to the CBD and elsewhere.
- 4.9 There is inadequate justification to down-zone these areas, and particularly those zoned OU(B), to a PR of 12. This should be reconsidered with provision of the necessary additional information by Planning Department as referred to above, so as to enable the Board to take a balanced view using all the relevant information.
- 5. Proposals to Meet the Representation**
- Building Height Restrictions*
- 5.1 A modest increase of all BHRs by 20m would provide a significant degree of design flexibility while achieving the general objectives of stepped building heights. Height restrictions set at the increased levels would also result in developments of varied heights which may facilitate better air ventilation and a more interesting skyline. A more generous building height bands of 120mPD, 140mPD and 160mPD would encourage innovative design and built form, with opportunities for provision of GIC facilities and ground floor open space for the enjoyment of local community and visitors. Many developments



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would not reach these maximum building heights due to plot ratio restriction, thus resulting in variety and interest.

- 5.2 The BHRs must be reviewed to make better use of the air space to accommodate floor space and to free up the lower level space for better air ventilation and street environment. Given the building height profile of the residential developments at Siu Sai Wan, a general increase in the BHRs of 30m to 100mPD and 120mPD respectively at the Heng Fa Chuen area is appropriate and they should be amended accordingly.

Deletion of Non Building Areas

- 5.3 The legal basis for the imposition of the NBAs and the technical justification for them are questionable. It is proposed that the requirement for the NBAs to be deleted completely. Should the Board consider it necessary to provide gaps, a more suitable zoning such as "Open Space" should be used for clear demarcation. Should however the NBAs be retained, the words "under exceptional circumstances" should be removed from the Notes to the relevant zones so that a relaxation can be decided on its own merits.

Deletion of Building Gaps and Setbacks

- 5.4 All building gaps and setbacks should be deleted from the OZP.

The wording of the Minor Relaxation Clause should be Amended

- 5.5 Minor relaxation of all restrictions or requirements should be considered based on "individual merits" instead of "under exceptional circumstances". The wording should be amended accordingly.

Plot Ratio Restriction Reviewed and Revised

- 5.6 The plot ratio restriction of 12 on the "I" and "OU(B)" zones cannot be supported by the information provided and should be changed to PR 15.

6. Conclusion

- 6.1 The building height restrictions, NBAs and building gaps and set-back requirements imposed on the OZP go much further than is necessary to achieve the stated objectives in the Explanatory Statement. The BHRs are generally set so low as to stifle good design and achievement of a good quality of urban environment. The fundamentally broad zoning approach which is consistent with treating private property rights in a generalized, fair and



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consistent manner should be retained. The imposition of building gaps on private land without compensation is considered an improper use of the Town Planning Ordinance.

- 6.2 The proposed amendments to the Chai Wan OZP impose unreasonable restrictions on the use and development of private land and should be seriously reconsidered. The proposed controls will not result in a long term, high quality form of urban development for Chai Wan.

The Real Estate Developers Association of Hong Kong
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