



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 Kwai Chung Outline Zoning Plan, Plan No. S/KC/26

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

1. Representor

- 1.1 This Representation is lodged on behalf of The Real Estate Developers Association of Hong Kong (REDH). It addresses the principles which have been applied in relation to the building height restrictions (BHRs), Non-building Areas (NBAs), building gap (BG) requirements and other associated matters included as amendments in the Draft Kwai Chung Outline Zoning Plan, Plan No. S/KC/26 (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 BHRs, BG requirements, NBAs and other restrictions in the amendments shown on the OZP. More specifically, this representation objects to Amendment Items A, B1 to B12 on the Plan and (a) to (e), and (j) of Amendments to the Notes of the Plan. In addition, an objection in principle is made to the amendments included within Amendment Items C1- C16, D1 – D10, H1 – H4 relating to Other Specified Uses and G/IC zones where individual BHRs relating to the existing building height have been imposed rather than broad BHRs relating to adjacent zones.
- 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. Recent High Court Judgment related to Kai Tak Mansion

3.1 Relevance to this Representation

- 3.1.1 Before providing the basis of this Representation, three recent High Court cases all related to Kai Tak Mansion (KTM) are presented first. These High Court cases *Oriental Generation Limited (Oriental) v. Town Planning Board (TPB or the Board)*, HCAL 62/2011, HCAL 109/2011 and HCAL 34/2012, with judgment made on 11 May 2012 are of high relevance to this Representation as they are judicial reviews of 3 restrictions: BHR, NBA and BG requirement imposed on KTM which is located within the Ngau Tau Kok and Kowloon Bay Outline Zoning Plan (NOZP) area.



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- 3.1.2 The first two court cases were challenges to OZP 26 and 27 respectively; whereas the third one was a challenge to the TPB's decision not to relax the restrictions apart from raising the BHR to 130mPD. The judgment by the High Court is of fundamental significance in relation to the imposition of restrictions on OZP.

3.2 Background of the Court Cases

- 3.2.1 Oriental submitted building plans to the Building Authority on 30 September 2010 for redeveloping KTM to 2 towers of 203mPD. This plan was consistent with NOZP 25. On 19 November 2010, TPB gazetted NOZP 26 incorporating 3 restrictions, including BHR 110mPD, on the KTM site.
- 3.2.2 In early 2011, Oriental made representations to the Board for relaxation of the 3 restrictions. On 1 June 2011, the Board agreed to amend 110 to 130mPD, but not the other 2 restrictions. Such amendment was gazetted on 30 June 2011.
- 3.2.3 On 7 October 2011, the Board gazetted NOZP 27 which introduced amendments unrelated to the KTM site. The 3 restrictions imposed on the KTM are the same as those on NOZP 26.
- 3.2.4 Hearing of further representation on the BHR amendment related to KTM was made on 27 February 2012 and the Board decided to uphold the amendment to 130mPD. The Board wrote to the Oriental that "... *The relaxation of BHR from 110mPD to 130mPD is to accommodate the permissible GFA allowed on site, i.e. to include the slope area for GFA calculation...*"
- 3.2.5 The discussion at the Court was whether the 3 restrictions: BHR at 130mPD, BG of 20m and NBA of 10m are arbitrary. The judicial reviews succeed and the 3 restrictions are quashed.

3.3 Air Ventilation Assessment (AVA) and Restrictions

- 3.3.1 Air ventilation plays a significant role in imposition of restrictions. Planning Department had commissioned a consultancy to carry out an Air Ventilation Assessment (AVA) which was a qualitative evaluation of adverse air ventilation impacts. With regard to the KTM site, the Consultant compared the adverse impacts for 2 indicative schemes prepared by the Planning Department. The baseline option was a scheme having a plot ratio of 9 and a building height of 105mPD with neither NBA nor BG. The alternative option was a scheme with the same plot ratio and height, but with a 10m wide NBA



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along the northeastern and southeastern boundaries, and a BG of 20 m through the middle of the site.

- 3.3.2 The AVA concluded that the baseline option, in general, caused significant negative impact on air ventilation compared to the current situation with existing buildings on site. The alternative option provides better air ventilation to the vicinity than the baseline option.
- 3.3.3 The AVA also concluded that the 10m wide NBA along the southeastern boundary is insufficient to ventilate the area with south-westerlies, but will encourage downdraft to reach the ground level and ventilate the area with easterlies. The AVA recommends widening the BG to “*ideally 24 m to further improve the ventilation*”. The AVA proposed the BG be from a height of 13.6mPD.
- 3.3.4 The MPC Paper recommended that the BG be of 20m width and at 15BHR which was adopted by the TPB as amendments made to the Outline Zoning Plan.

3.4 Key Points of Consideration made by the High Court

Consideration related to Building Height Restriction

- 3.4.1 Both Oriental and TPB proceeded on the principle that the BHR should not affect an owner's property right to make full use of the entitled plot ratio and GFA permitted to a site by an OZP. Oriental argued that the 110mPD BHR should be raised to enable the proposed redevelopment of the KTM site to make use of the extra GFA contributed by the slope area. The Board accepted that the slope area contributed to GFA and agreed to amend the BHR from 110mPD to 130mPD. It took the view that the amendment would be enough to enable Oriental to fully utilize the extra GFA attributable to the slope.
- 3.4.2 In the further representation, Oriental disagreed that the 130mPD was enough to accommodate all the entitled GFA. Oriental noted that the KTM site needed to incorporate an EVA and a road setback which require at least 10m more of the BHR. Otherwise, the 130mPD would prevent Oriental from accommodating the GFA attributable to the EVA and the road setback, violating the accepted principle.
- 3.4.3 The Board was not persuaded. When the 110mPD BHR was originally planned, Planning Department had designed 2 indicative schemes, each of 105mPD to demonstrate that the 110mPD BHR would be enough to accommodate all the GFA of the KTM site.



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- 3.4.4 The indicative schemes had not taken account of the GFA from the slope area which was dealt with by the Board through increasing the BHR from 110mPD to 130mPD. However, the Board thought that the extra GFA arising from the EVA and road setback could be accommodated within the 5m which the indicative schemes did not use.
- 3.4.5 The evidence before Court was that an EVA and a road setback would entitle Oriental an extra GFA equivalent to about 3 storeys (i.e about 10m). There was some suggestion at the hearing that Oriental could accommodate the extra GFA by building bulkier blocks. But the practical feasibility, while maintaining the other NBA and PR restrictions, has not been demonstrated. The Board seemed to have assumed that the unused 5m in the indicative schemes was sufficient to cater for the GFA due to the EVA and the road setback.
- 3.4.6 The refusal of the Board to raise the BHR of the KTM site beyond 130mPD was considered as arbitrary and was therefore quashed.

Consideration related to Non-Building Area

- 3.4.7 The AVA compared 2 options with different NBAs, one with 3m NBA and a further gap of 2.3m and the other with 10m. No other options had been explored. The AVA concluded that both the 3m and 10m NBAs were insufficient to ventilate the surrounding area. But both were considered of “help to receive downdraft to ventilate the area with easterlies”. However, how much “help” is unknown as no attempt had been undertaken to quantify the “help”.
- 3.4.8 There can be many other possibilities of development options. However, these other possibilities had not been explored in the AVA. As stated in Para 70 of the Judgment:
- “it has consequently not been demonstrated that an NBA of 10m would provide significantly better ventilation when compared against (a) a gap of any particular width, (b) some other permeable structure, or (c) an NBA of lesser width.”*
- 3.4.9 There was little dispute on the NBA on the northeastern boundary as it was on a slope. Regarding the southeastern boundary, the Board appeared to have decided on a 10m NBA because that was the NBA of the alternative option assessed in the AVA, though the Board also had regard to enhancing visual impacts.



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- 3.4.10 The Court considered that the AVA was the major factor of deliberation of the Board. It was doubtful that the Board would have the same conclusion as it did, if it had appreciated that AVA was inadequate in justifying the 10m NBA from an air ventilation perspective. The Court concluded that the decision to impose the 10m NBA as arbitrary and the Board's reliance on the AVA in support of the NBA imposed seems unwarranted.

Consideration related to Building Gap Requirement

- 3.4.11 The 20m wide BG suffers similar deficiency as the NBA. The AVA had not explored and compared the beneficial effects of other gaps or other permeable structures. It only compared the baseline option (with a slanted central gap of 5.3m) against the alternative option (a straight-oriented central gap of 20m). The AVA recommended a straight-oriented central gap of 24m. No quantification of the effects of a 20m or 24 m gap appeared to have been attempted by the AVA.
- 3.4.12 There was insufficient evidence for the Board to decide that 20m gap was an appropriate conclusion. The Court considered that the 20m gap as arbitrary and should be quashed.

Use of Minor Relaxation Clause

- 3.4.13 In paragraph 87 of the Judgment, the Court endorsed the principle that the relevant restrictions imposed on a site shall be justified on their own merits rather than by reference to the possibility of relaxation in specified cases by way of an application under Section 16 of the Town Planning Ordinance.

3.5 Implications of the Judgment

- 3.5.1 From the key points of considerations made by the Court, it can be concluded that practical feasibility should be ensured in imposing BHRs on sites so that the entitled GFA can be accommodated. The AVA which only compared 2 scenarios does not provide robust justifications for the imposition of NBAs and BGs. Proper attention should be given to establishing restrictions on the basis of cogent evidence that the restrictions can be reasonably regarded as necessary for achieving a particular planning objective and the proportional impact on property rights needs to be considered. Reliance cannot be placed on the minor relaxation process under Section 16 as an alternative to establishing restrictions which have a rational justification.



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- 3.5.2 The Judgment was handed down after the amendments were gazetted to the Kwai Chung Outline Zoning Plan. The restrictions imposed on the Kwai Chung Outline Zoning Plan, and the processes used in deriving these restrictions, needs to be completely reviewed in the light of the Judgment and significant changes made.

4. Basis for this Representation

Regarding the Kwai Chung OZP, it appears that the BHRs are imposed based on Urban Design Appraisal undertaken by the Planning Department, whereas the NBAs and BGs are based on an AVA for the Kwai Chung Planning Area conducted by consultants. While the above Judgment related to site-specific restrictions, this Representation relates to the general issues applicable to the whole planning area, though some specific sites are discussed in more detail. The reasons for the Representation are provided in the following paragraphs, with reference to the KTM Judgment, where appropriate.

4.1 Building Height Restrictions Set Too Low

Twin Town Nodes and Stepped Building Height Profile

- 4.1.1 The Urban Design Appraisal attached to MPC Paper No. 6/121 (the MPC Paper) has listed out lengthy urban design principles and concept to guide the height profile of the Planning Area. To describe the height profile that has been adopted in setting the BHRs on the OZP in a simple way: twin nodes around the two MTR stations at the town centre; stepped heights for the hilly area; and generally relatively low BHRs based on existing building heights for the waterfront area.

- 4.1.2 Due to steep topography, the BHRs appear quite generous at first sight. However, taking consideration of the levels of the platform of the development sites and the fact that many of the sites included cut slopes which pose constraints to the footprint of development, the absolute building heights that are allowed under the BHRs are very restrictive.

Lack of Flexibility for Innovative and Quality Design

- 4.1.3 REDA as a general principle opposes the setting of BHRs 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

¹ MPC Paper No. 6/12 is the Paper which discusses the Proposed Amendments to the Approved Kwai Chung Outline Zoning Plan No. S/KC/25



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providing flexibility for the design of developments which provide good internal space for people to live in and work in, with sufficient internal headroom. There also needs to be flexibility for changing requirements over time and scope to meet changing market expectations.

Objectives for Height Limits

4.1.4 It appears from paragraph 7.1 of the Explanatory Statement that the reasons for 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; and
- to meet public aspirations for greater certainty and transparency in the statutory planning system.

4.1.5 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, or on the economic implications of imposing the restrictions. 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.

4.1.6 It is considered that most of these objectives for the BHRs 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

4.1.7 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 waterfront locations. High-rise developments in the order of 35-40 storeys have been in place in various parts of Hong Kong for years and they are generally acceptable to the public.

4.1.8 The BHRs imposed over most of the area are 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 BHR by 20m each would better



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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”. It is noted that no alternative conceptual BHR profiles or level of restriction were presented to or discussed by the MPC. This is considered a major deficiency in the process of arriving at the gazetted restrictions and needs to be completely reconsidered in the light of the KTM Judgment. No, or inadequate, consideration, has been given to the benefits or other-ways of adopting of a slightly higher BHR profile. The ‘balancing’ and ‘proportionality’ considerations arising from the KTM Judgment need to be properly exercised.

Building Heights and Air Ventilation

- 4.1.9 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 BHRs 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

- 4.1.10 The overall height profile of the Planning Area is formed mainly by the Residential, Commercial, Business and Industrial zones with Open Space and G/IC zones being used for visual relief and breathing space. However, the new BHRs stipulated on the OZP are generally too low.
- 4.1.11 Taking account of building economics, technology for construction, visual considerations, air ventilation and public aspirations, the BHRs introduced in the amendments for the development zones should be increased. Imposition of unreasonably low BHR 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.
- 4.1.12 It is considered that such BHRs 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.
- 4.1.13 Therefore, a general increase of 20m to all existing BHRs on the OZP is suggested. This would allow more flexibility in design, possible compliance



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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.

4.2 Non-Building Areas and Building Gaps

- 4.2.1 The AVA study conducted for the Kwai Chung Planning Area has been used as a basis for the designation of NBAs and BGs. A total of more than ten NBAs and four BGs are introduced to the OZP for air ventilation purposes under the proposed amendments.

Methodology of the AVA

- 4.2.2 The methodology of the AVA involves qualitative assessment to the existing situation and the initial planned scenario to identify the good features and problem areas in respect of the air ventilation perspective. Mitigation direction and measures are proposed to the initial planned scenario, and some sites are recommended for further quantitative AVA.
- 4.2.3 It is clear that the AVA has only looked into 2 scenarios and proposed a number of NBAs and BGs with specific parameters such as width of gap above certain height and at specific locations. It has neither explored other alternative planning scenarios nor conducted quantitative assessment regarding effect of the proposed NBAs and BGs against those of many other possibilities. As such, relying on this AVA to justify the NBAs and BGs imposed on the OZP suffers similar deficiency as those imposed on the KTM site.
- 4.2.4 The qualitative and subjective nature of the “EE” stage of the AVA study process has been shown by the KTM case to be inadequate for the establishment of detailed NBA and BG requirements on specific sites. If, based on the “EE” process, the Town Planning Board is concerned with ventilation in specific locations, it is therefore necessary for the Board to carry out additional “Detailed Studies” to determine the necessity for any restrictions. This should be based on quantitative studies using computer modelling or wind tunnel testing, carried out in accordance with the “Technical Guide for Air Ventilation Assessment for Developments in Hong Kong” so as to actually see if there is a sufficient public benefit to justify the controls, and to determine the actual dimensions of the restriction. This additional step in the AVA study process is necessary to satisfy the KTM need for cogent information to provide a rational justification for any restrictions. Only with the consideration of detailed information and detailed consideration of options can an NBA, BG or BHR be justified.



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Imposition of NBAs and BGs based on AVA

- 4.2.5 It is noted that the proposed NBAs and BGs all follow the recommendations of the AVA except for an existing playground site located to the west of Greenknoll Court. The AVA proposes the playground to be a NBA, but Amendment Item F8 proposes to change the zoning from "Industrial" to "Open Space". Such amendment reflects the existing use and is in line with the AVA recommendation. To use the 'open space' zoning to define public open space which also has an air ventilation purpose is considered the correct approach rather than the use of poorly justified NBA's and BG's.

Spot Building Heights and Improper Zoning

- 4.2.6 REDA opposes the requirement for NBAs and BGs on the OZP 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. The approach is inconsistent with good town planning practice and could be considered inconsistent with the Town Planning Ordinance (TPO) in relation to the content and application of statutory plans.
- 4.2.7 Further, it is considered that NBA and BG are not proper zonings. The Board should make use of the zonings permitted by the TPO if it is convinced that the use of some form of gap or space is required for essential air ventilation. The proposed NBAs and BGs can be zoned as "Open Space" ("O") or "Road" if it is absolutely essential in the public interest, and resumed with compensation paid to the land owners.
- 4.2.8 The arbitrary approach of establishing BHRs for G/IC and OU zones based on existing building heights, regardless of the development rights of the land owners, and without consistency of approach to BHRs on other adjacent zones, is also inconsistent with broad brush planning. In terms of the KTM judgement a more rational approach needs to be applied when establishing these BHRs, particularly as many of these sites are intended to provide facilities for the benefit of the community.

NBAs Cause Confusion

- 4.2.9 Further, the term "NBA" is liable to cause uncertainty and confusion. The same term is used with very specific meaning in the context of lease provisions; and there is also implication of "NBA" under the Buildings Ordinance, in particular on site coverage and plot ratio calculations.



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SBD Guidelines more Appropriate for Determining Air Ventilation

- 4.2.10 The SBD Guidelines have a much more advanced and flexible approach to providing space around and through buildings than the incorrect use of building gaps on OZP. Provision of air paths would be more appropriately catered for under the SBD regime. Therefore, the proposed building gaps should be removed.

No Provision for Compensation of Loss of Property Right for Air Ventilation Reasons

- 4.2.11 It is clear from Paragraphs 7.11 to 7.13 that the NBAs and BGs are imposed for air ventilation reasons. These restrictions would affect property rights. Many of these NBAs and BGs cover private sites. REDA is concerned about the property rights of private owners, as there is no provision for the loss, or limitation, of their ownership rights to be compensated for on air ventilation grounds.
- 4.2.12 As stated in Para 4.2.4, the imposition of NBAs and GBs are based on the AVA, the methodology of which lacks robust justifications for its recommendations. There is no indication that alternatives have been considered and those proposed are the only solution. Therefore, all NBAs and BGs should be removed particularly those affecting private sites.

4.3 Application of Sustainable Building Design Guidelines (SBD Guidelines)

- 4.3.1 The SBD Guidelines have identified 3 key building design elements: building separation, building set back and site coverage of greenery. The objectives of putting forward the SBD Guidelines are to achieve better air ventilation, enhance the environmental quality of our living space, particularly at pedestrian level, provide more greenery and mitigate the heat island effect. However, REDA considers that BHRs imposed on the OZP are set so low that the SBD Guidelines are difficult to be implemented.
- 4.3.2 Under the Joint Practice Note (JPN) 1 regarding Green and Innovative Buildings, sky gardens and podium gardens are encouraged. However, the JPN requires that the provision of sky garden should be subject to there being no contravention to restrictions on building height on the OZP, otherwise Section 16 application for minor relaxation for the height restriction is needed. In view of the generally very low height restrictions being set on the OZP, the restrictions in effect discourage such desirable green features which require a high headroom of not less than 4.5m.



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- 4.3.3 It is considered that the height restrictions should be reviewed and relaxed so that a holistic consideration of the regulations and practice notes issued by relevant Government departments can be taken account of. The desirable features should be encouraged and should be able to be accommodated within the height restrictions stipulated on the OZP without the need to submit Section 16 application for minor relaxation.
- 4.3.4 REDA is concerned that in setting the BHR, BGs and NBA, no consideration has been given to the need for future developments to comply with the SBD Guidelines. The SBD Guidelines are progressively becoming integral parts 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 BGs on the OZP and they unnecessarily duplicate and conflict with the new provisions on the OZP. There has been no obvious attempt to allow for the incorporation of the SBD requirements when proposing BHRs, NBAs or BGs. The SBD Guidelines are relevant matters for the Board to consider and should no longer be ignored. They also provide a means for establishing a performance based approach for the consideration of building permeability and set backs.
- 4.3.5 An assessment should be made of the possible impact of the SBD Guidelines on the redevelopment of Kwai Chung as part of the AVA process. The likely impact of the new form of development that is likely to eventuate may make the need for any AV provisions on the Outline Zoning Plan redundant. This should be considered as an alternative as a result of the KTM case.

4.4 No Public Consultation

- 4.4.1 The BHRs, NBAs and BGs, have been imposed on the OZP without any prior public consultation. There has been no opportunity for the public, including the development industry and the logistics industry, to be informed as to 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 BHRs, NBAs, BGs 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. There is also no evidence that the Planning Department has seriously studied the development needs and future land requirement of the logistics industry.
- 4.4.2 It is strongly suggested that 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,



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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 Kwai Tsing 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.

5 Proposals to Meet the Representation

General

Total Review Based on Kai Tak Mansions Judgment

- 5.1 The KTM Judgment has set a new context for the whole process of determining BH, BG and NBAs. REDA acknowledges that the current proposals on the Kwai Chung Outline Zoning Plan were gazetted before the Judgment was handed down. It is therefore necessary, in response to this Representation, that the TPB completely review the whole basis on which the restrictions have been established on the Kwai Chung Outline Zoning Plan. This review should be carried out in a systematic manner and relate to the specific conclusions arising from the Judgment. Where the basis for the establishment of the restrictions is completely inadequate, and REDA considers this to apply to all of the BHRs BG and NBAs on the Outline Zoning Plan, then they should be withdrawn or revised on a more reasonable basis.

Detail

Building Height Restrictions

- 5.2 A modest general increase of all BHRs by 20m would provide a significant degree of design flexibility while achieving the general objectives of twin city nodes and stepped building heights, and no out-of-context tall buildings. 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. The more generous building height 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 would not reach these maximum building heights due to plot ratio restriction, thus resulting in variety and interest.



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- 5.3 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 as well as to take account of specific site characteristics, functions and constraints. In doing so the impact of the SBD Guidelines should be considered in detail so as to establish a rational basis for the BHRs.

Deletion of Non Building Areas and Building Gaps

- 5.4 There is inadequate technical justification for the imposition of the NBAs and BGs. It is proposed that the requirement for the NBAs and BGs to be deleted completely. Should the Board consider it necessary to provide gaps after considering a quantitative assessment of their need and of options, then a more suitable zoning such as "Open Space" should be used for clear demarcation and clarification and resumed for public purpose.

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.

6. Conclusion

- 6.1 The KTM Judgment means that the TPB has to adopt a different approach to the consideration of this Representation than previous Representations by REDA to previous Outline Zoning Plans. The legal context has been more clearly defined and this means that a comprehensive reconsideration of the proposed amendments must be made taking this new context into account. Changes must be made to the OZP.
- 6.2 The BHRs, NBAs and BGs 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.
- 6.3 There are insufficient technical justifications for imposing NBAs and BGs on the specific locations. These somewhat arbitrary restrictions/requirements affect the property rights of the buildings concerned. This approach is fundamentally against the broad zoning approach which is consistent with treating private property rights in a generalized, fair and consistent manner.



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- 6.4 The proposed amendments to the Kwai Chung 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 Kwai Chung.

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June 2012