



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 Cheung Sha Wan Outline Zoning Plan, Plan No. S/K5/26 -- The Real Estate Developers Association of Hong Kong ("RED A")

1. Representer

- 1.1 This Representation is lodged on behalf of The Real Estate Developers Association of Hong Kong (RED A). It addresses the principles which have been applied in relation to the building height restrictions, gross floor area (GFA) restrictions, setback requirements and Non-building Areas (NBAs) and other associated matters included as amendments in the Draft Cheung Sha Wan Outline Zoning Plan, Plan No. S/K5/26 (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 height limits, NBAs and other restrictions in the amendments shown on the OZP. In other words, this representation objects to ALL Items except for Item G shown on the Plan and on opposition to items (a), (b), (d), (e) and (f) 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 RED A as a general principle opposes to 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 work in, with sufficient internal



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headroom. There also needs to be flexibility for changing requirements over time and scope to meet changing market expectations.

Objectives for Height Limits

- 3.1.2 It appears from paragraph 7 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;
 - to prevent out-of-context tall buildings;
 - to preserve views to ridgeline;
 - to avoid creating an unpleasant townscape which may obstruct air circulation; and
 - to meet public aspirations for greater certainty and transparency in the statutory planning system.
- 3.1.3 No 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. The consequences include lowering property values and reducing air ventilation at street level.
- 3.1.4 Imposition of building height restrictions is considered as an inappropriate means of controlling development intensity. It is also considered that most of the objectives for the building height restrictions can be achieved with height limits imposed at a level which generally permits a more reasonable form of development.

Height Restrictions set too Low to Respect Property Rights

- 3.1.5 The Town Planning Board has indicated that the building height restrictions have been set at a height to respect existing development rights. However, under the Notes to the Outline Zoning Plan the approach taken is that, for OU(B) and its subzones as an example, the maximum development is restricted to a plot ratio of 12 or the existing plot ratio, whichever is the greater. There are many buildings within the Planning Area where the existing plot ratio is 15 or even greater. It would appear as if the building height restrictions have been set so low that they would not allow for the existing GFA to be achieved in a new building. By taking this approach the new building height restrictions are effectively acting as a



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“down-zoning” and are depriving existing land owners of their redevelopment potential. This is a serious concern to property owners. The building height restrictions must be raised to ensure that existing development rights can be achieved under the Building Ordinance controls.

- 3.1.6 It would appear that all building height restrictions should be increased to ensure that existing development rights of a plot ratio 15 or greater can be achieved.

Control of out-of-context Tall Buildings

- 3.1.7 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 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 generally acceptable to the public.

- 3.1.8 The OZP generally allows for an absolute height of only about 75m to 95m for many of the residential sites. The absolute heights are equivalent to about 25 to 32 storeys. As for the industrial/business area, an absolute height of only about 115 to 125m is allowed for, equivalent to about 28 to 31 storeys. It is considered that the building height restrictions have been set unreasonably low, lower than what is necessary to address the public concern.

Preservation of Ridgelines from Key Vantage Points

- 3.1.9 The Urban Design Guidelines Study has identified four key vantage points on the Hong Kong Island. Hong Kong Convention and Exhibition Centre (HKCEC) and Sun Yat Sen Memorial Park (SYSMP) are the more relevant for Cheung Sha Wan for visual impact considerations. The Cheung Sha Wan Planning Area is located in inland area. Most, if not all, of the area are screened by the very tall buildings on the high-rise node at West Kowloon when viewed from the HKCEC. Significant portion of the industrial/business area is also screened by the four recently completed high-rise residential developments located to the south of Lai Chi Kok Road when viewed from SYSMP. These developments are of heights in the order of about 50-storeys. It is considered that the height restrictions of the sites of the Planning Area can be increased by 20m to 40m.

Building Height and Air Ventilation



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- 3.1.10 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 rather than encouraging the creation of space around buildings at street level. The imposition of the height limit therefore creates a solid wall effect closer to ground level.

Need for Reasonable Building Heights

- 3.1.11 The overall height profile of the Planning Area is formed mainly by the Residential and Business zones with Open Space and G/IC zones as visual relief and breathing space. However, the height restriction stipulated for the Business zone and some of the Residential zones are too low.
- 3.1.12 Taking into account the building economics, technology for construction, visual considerations, air ventilation and public aspirations, the height bands for the development zones should be increased.
- 3.1.13 Imposition of unreasonably low building height limit restrains the building bulk, making incorporation of any innovative architectural designs impossible. This directly affects streetscape, air ventilation and the life quality of the users of the development.

Inconsistent with New Measures for Quality and Sustainable Buildings

- 3.1.14 The Government has recently announced revisions to Joint Practice Notes, new Practice Notes to be issued by the Building Authority and amendments to existing Practice Notes (the Practice Note System). These are to come into effect on the 1 April 2010. While the draft Practice Notes are now being examined by REDA it would appear as if the objectives and provisions to be included in the OZP by these amendments are directly in conflict with the provisions to be implemented through the Practice Notes on the 1 April 2010. In particular,
- the requirements for building separation duplicate the amendments relating to NBAs and building set-backs proposed in the OZP.
 - the building height restrictions have been set so low that the permitted GFA cannot be achieved for the redevelopment of sites in compliance with the new Practice Notes.



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3.1.15 The introduction of these new measures through the Practice Note System on a detailed basis is a further reason why the introduction of low building height restrictions, NBAs and Building Gap/Building Setbacks in the Statutory Planning system is inappropriate and contrary to the “broad-brush” nature of the process prescribed in the Town Planning Ordinance.

3.1.16 REDA is concerned that the duplications and conflicts between the measures being introduced by the Town Planning Board in the amendments to this and other Outline Zoning Plans, and the changes introduced through the Practice Note System, are unnecessarily complicating the development and approval process in Hong Kong. Together these measures will result in buildings of a poorer quality, delays in implementation and urban renewal, and will not necessarily result in desirable improvements to the urban environment.

3.2 No Public Consultation

3.2.1 The building height and GFA restrictions, NBAs as well as 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 informed as to the justification for 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 and/or GFA restrictions imposed 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.

3.2.2 It is strongly suggested that the Planning Department should carry out planning study for the Planning Area as in the case of Wong Chuk Hang and Kowloon Bay Business Districts. The Department should present the public with the visual impact assessment and diagrams for consultation, in order that owners, stakeholders and the public, can be informed of the implication of the height restrictions and other amendments and submit their comments as appropriate.

3.3 Non-Building Area

3.3.1 A NBA is introduced along the eastern boundary of Lai On Estate and Yee Ching Court for air ventilation purposes under the proposed amendments. Sections 3 and 4 of the Town Planning Ordinance provide that:



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(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).

3.3.2 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.

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

3.3.4 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.

3.4 Spot Zoning Approach Inconsistent with the Town Planning Ordinance

3.4.1 The Explanatory Statement in paragraph 3.2 indicates that "*The Plan is to illustrate the broad principles of development and to provide guidelines for more detailed planning within the Planning Scheme Area*". The principle of establishing broad statutory zones with similar characteristics has been largely abandoned in relation to the OZP. The approach has been to be unnecessarily restrictive, and to impose height and GFA limits to the existing development in a very restrictive manner.



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- 3.4.2 This can be seen in Amendment Items B1, B2, B3, D1, D2, D3, D4 and (b) etc., where an enormous number of sub-areas with their own individual restrictions have been proposed. The designation of NBAs and setback requirements in a number of sites as listed in Items J, (e) and (f) also violates the broad principles of planning.
- 3.4.3 The approach is inconsistent with good town planning practice and could be considered inconsistent with the Town Planning Ordinance in relation to the content and application of statutory plans. The points made in paragraph 3.3.1 above are also relevant to the spot zoning approach.
- 3.4.4 The provision in the amendments for different building height restrictions to apply to different sites in the same zone could also be considered a form of 'spot zoning'. In the R(E)1 and R(E)2 zones a greater height is permitted for sites with an area of 400 square metres or more, while a lower height is permitted on smaller sites. In terms of the reasons given for having building height restrictions this differentiation is both unnecessary and inequitable. Should the general area justify a certain building height restriction of say 120mPD then a lower height restriction should not apply to smaller sites.

3.5 Building Gaps and Setbacks

Imposing Setbacks violates the Intention of Outline Zoning Plans

- 3.5.1 REDA oppose to the provision of requirements for setbacks on the Outline Zoning Plans 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 consider the use of the Outline Zoning Plan for this purpose is going way 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 Outline Zoning Plan for these proposes is considered wrong and may be subject to legal challenge.

Lack of Legal Basis for Setbacks for Air Paths

- 3.5.2 In addition, there is no legal recognition of the provision of setbacks for "air paths" as being a public purpose for which private land could be taken. It is therefore considered inappropriate and may be subject to legal challenge.



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Confusing Justifications provided in Explanatory Statement for Setback Requirement

- 3.5.3 The justifications stated in the Explanatory Statement for providing setbacks for the “OU(B)”, “C(4)” and “G/IC(4)” zones are confusing. As seen from the following paragraphs of the Explanatory Statement of the Outline Zoning Plan, the setback requirements for the C(4) and G/IC(4) zones are for air ventilation purposes:

“To facilitate air ventilation of the Cheung Sha Wan Industrial/Business Area, a minimum building setback of 3.5m from the lot boundary abutting Cheung Shun Street shall be provided within the “C(4)” sub-area to improve the east-west air/wind path.”, -- Para 8.1.7

“In order to enhance the local air ventilation performance, a minimum building setback of 3.5m from the lot boundary abutting Castle Peak Road shall be provided within the “G/IC(4)” zone”, -- Para 8.6.8

- 3.5.4 However, the setback requirements for the “Other Specified Uses (Business)” (“OU(B)”) zones seem to serve dual purposes: road widening and air ventilation as seen from the following paragraphs.

“The entire Cheung Sha Wan Industrial/Business Area, bounded by Ching Cheung Road to the north, Yu Chau West Street and Wing Ming Street to the east, Lai Chi Kok Road to the south and Kom Tsun Street to the west, is zoned “OU(B)”.The setting back of buildings to cater for the future increase in traffic demand is also required.” -- Para 8.8.3

“To enhance air ventilation of the Cheung Sha Wan Industrial/Business Area, Castle Peak Road, Cheung Shun Street, Cheung Yue Street and Cheung Yee Street shall be widened. ...”, -- Para 8.8.4

- 3.5.5 The two pieces of land zoned “C(4)” and “G/IC(4)” lie within the Cheung Sha Wan Industrial/Business Area, and with adjacent to sites setback for dual purposes. It is unreasonable that they are required to be setback only for air ventilation reason, but not for road widening purpose.
- 3.5.6 The unclear justifications for the setback requirements would render unnecessary complication related to compensating private land owners for the loss of their land



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for a public purpose under the Buildings Ordinance and the Roads (Works Use and Compensation) Ordinance. In these circumstances, REDA request that all setback requirements be removed from the Outline Zoning Plan.

4. Proposals to Meet the Representation

Building Height Restrictions

- 4.1 The Building Height Restrictions must be reviewed to make 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 inland location of the Planning Area and the tall buildings nearer to the waterfront, a general increase of 20m to 40m of the set height restrictions to the development zones are considered appropriate. In addition, more relaxed height limits should be considered, for example, for sites at or near transport nodes to free up more ground level space for pedestrians. The conflict with the new Practice Note System must be resolved through changes to the Outline Zoning Plan.

Relaxation Scheme

- 4.2 A relaxation or incentive scheme should be considered to encourage amalgamation of small sites for development/redevelopment of quality and well-designed commercial/office buildings at suitable locations to improve visual and air permeability, streetscape and pedestrian environment to have more relaxed heights. Such scheme can be applicable to large sites, say not less than 1,500sqm, in "Commercial" zone, as well as "OU(B)" and its sub-zones.
- 4.3 A relaxation clause in respect of the building height restrictions should be incorporated into the Notes for the "Commercial" and "OU(B)" zones so that relaxation of building height restrictions may be considered by the Town Planning Board on application under Section 16 of the Town Planning Ordinance for sites with an area not less than 1,500sqm on individual merits. The Relaxation Scheme adopted by the Board in relation to the Tsim Sha Tsui Outline Zoning Plan should also be applicable to the "Commercial" and "OU(B)" and its sub-zones in Cheung Sha Wan Outline Zoning Plan so as to provide an incentive for innovative design and improvement to the general urban environment.

Removal of Spot Zoning



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- 4.4 The Board should adopt a more rational and generalized approach to the zoning by reviewing the numerous 'sub-areas' included in the "R(A)", "OU(B)", "Commercial" and "G/IC" zones and consolidating them into a small number of broader zones with similar controls on building height and development potential.

Deletion of Non Building Areas

- 4.5 The legal basis for the imposition of the NBA is questionable. It is proposed that the requirement for the NBA be deleted and more suitable zoning such as "Open Space" be used to provide the desired gaps. The words "under exceptional circumstances" should be removed from the Notes to the "R(A)" zone should it be decided to retain NBA. The conflict with the new Practice Note System must be resolved through changes to the Outline Zoning Plan.

Deletion of Setbacks

- 4.6 All setbacks should be deleted from the Outline Zoning Plan. The conflict with the new Practice Note System must be resolved through changes to the Outline Zoning Plan.

The Wording of the Minor Relaxation Clause should be Amended

- 4.7 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.

Different Building Height Restrictions for Different Sized Sites Should be Deleted

- 4.8 The provisions for lower heights for smaller sites in the R(E) zone should be deleted and all sites allowed the greater height.

5. Conclusion

- 5.1 The building height restrictions imposed on the OZP go much further than is necessary to achieve the stated objectives in the Explanatory Statement. Incentive should be provided to encourage good development design that benefits the public. The approach to the zoning by the introduction of numerous "sub-areas" is considered to be fundamentally against the broad zoning approach which is consistent with treating private property rights in a generalised, fair and consistent manner. Justification for setback requirements should be clarified in order not to



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jeopardize compensation for the loss of private land for public purpose under relevant ordinances.

- 5.2 The proposed amendments on the Cheung Sha Wan Outline Zoning Plan 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, better form of urban development for the Planning Area.