



# 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 Mong Kok Outline Zoning Plan, Plan No. S/K3/28 -- The Real Estate Developers Association of Hong Kong ("RED A")**

#### **1. Representor**

- 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 for various development zones, designation of Non-building Area (NBA), building gaps and building setback requirements, and other associated matters included as amendments in the Draft Mong Kok Outline Zoning Plan, Plan No. S/K3/28 (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, NBA and other restrictions in the amendments shown on the OZP. In other words, this representation objects to Items A to E, J1 and J2, K and L shown on the Plan. The representation also objects to (a), (b), (d) and (e) of the 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, fair and sustainable urban development system.

#### **3. No Public Consultation**

- 3.1 The building height restrictions, NBA, building gaps as well as building 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 imposed have been adopted. There has been no visual impact analysis made available to the public prior to the gazettal of the new OZP which indicates what the vision is for the long term development of the Planning Area.



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- 3.2 It is strongly suggested that the Planning Department should carry out a detailed planning study for the Mong Kok Planning Area including the historical and planning context of the district, the existing and projected population of the district, the livelihood and working environment of the residents and workers, the connectivity and linkages with the adjacent Planning Areas, the commuting/traveling pattern of residents, workers and visitors, the characteristics and potential of the local economy, as well as the pros and cons of impositions of BHR, NBA and building setbacks, and what the impacts are, etc. Instead of focusing mainly on the visual and/or urban design considerations, what is more important is for the PlanD to present to the public in the consultation a more comprehensive study and necessary information, in order that owners, stakeholders and the public, can be informed of the implication of the height restrictions and other amendments prior to the gazettal of the new plan. The public could then submit their comments as appropriate. This should be done before the formal statutory processes are commenced, and before the restrictions are given legal effect.
- 3.3 Consultation of the Yau Tsim Mong 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. Land Use Review**
- 4.1 There is an acute shorting of open space in the Mong Kok Planning Area. The OZP mainly comprises of "Residential Group (A)" and "Commercial" zones with a mixture of commercial/residential uses and activities with large number of visitors/shoppers throughout day and night times. The pedestrian environment is most of the time congested. Opportunity should be sought to increase the open space serving the needs of local residents and the general public. Taller buildings with smaller footprints would allow more ground floor space and better air ventilation and wind flow at lower levels. Contrary to the urban renewal efforts of improving the local environment and increase of open space, the imposition of Building Height Restrictions (BHRs) will not result in what the Air Ventilation Assessment (AVA) intended to improve in terms of air penetration and visual permeability upon redevelopment. BHRs will bring unnecessary constraints to development and redevelopment rather than guide future development/ redevelopment.
- 4.2 In the land use review, opportunity should also be taken to integrate and enhance the accessibility between Mong Kok/Yau Ma Tei hinterland area and Tai Kok Tsui/newer residential development to its west and southwest which



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are currently separated by transport infrastructure such as Lin Cheung Road and West Kowloon Highway. There is a chance to improve accessibility and bring people to the waterfront to share the use of open space.

### 5. Basis for this Representation

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

#### 5.1 Building Height Restrictions Set Too Low

##### *Lack of Flexibility for Innovative and Quality Design*

5.1.1 Mong Kok is a unique area of Hong Kong. It is one of the oldest urban areas in the Territory with predominately low to medium-rise residential buildings, and many of those were built in the immediate post-war period. The Ground Floor and some lower level units have been mixed with retails and 2<sup>nd</sup> floor shops and gradually grew and transformed into precincts of different characters. Mong Kok is a popular and busy district for local and overseas visitors of various kinds. Mong Kok enjoys the ease of accessibility provided by MTR stations (Yau Ma Tei, Mong Kok and Mong Kok East). It is subject to redevelopment pressure with recent commercial/office/hotel development as new icon of the area. Langham Place above MTR station upon redevelopment has become the landmark building, its open space and G/IC facilities being a successful showcase and should be recognized.

5.1.2 REDA as a general principle is opposed to the setting of building height restrictions at levels which are so low as to unnecessarily constrain the provision of good quality building 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 headroom. There also needs to be flexibility for changing requirements over time and scope to meet changing market expectations. The adoption of building height restrictions of only 60mPD, 80mPD and 100mPD 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.

5.1.3 However, there is no clearly expressed concept of the objectives that are intended to be achieved through the establishment of the height limits and no discussion of alternative measures had taken place which may have achieved the objectives. This is particularly relevant given the development history and pattern of the Mong Kok Planning Area and its importance as a commercial and entertainment district. It would appear that the objective has been to limit



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new buildings to about 22 to 33 storeys which is considered too low given the character of Mong Kok and the interesting mix of taller buildings that are already in existence.

- 5.1.4 The building height restrictions are generally set so low that they are predominantly related to the heights of existing older buildings and to limit building heights in this manner will further aggravate the impact on the urban environment. A general increase in the height bands by, say 20m to 40m to permit buildings of around 40 storeys, 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”.
- 5.1.5 Height restrictions which are set too low will tend to result in all new developments built to the maximum allowable height resulting in a flat profile making downwashes insignificant and will result in larger and bulkier buildings in the areas where air ventilation improvement is considered desirable.

### *Not Respecting Property Right*

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

### *Need for Reasonable Building Height*

- 5.1.7 In short, there is a need to ensure that buildings are not restricted to unreasonably low heights as these will result in bulky buildings forming walls of development which block air flows, light and views. Buildings which are taller and more slender provide these features by allowing the creation of space around the buildings near ground level and in the air. The approach



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taken in establishing the BHRs should allow various urban and built forms to be further consolidated along the designated maximum permissible building heights. The approach taken to set the height restrictions at such low levels is considered unnecessary if a more reasonable approach to urban design had been adopted.

### 5.2 Non-Building Area

5.2.1 The AVA study has been used as a basis for the designation of NBAs, building gaps and setback. 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).

5.2.2 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.

5.2.3 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. It therefore appears that there is justification for an additional category of NBA.

5.2.4 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.





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5.2.5 As mentioned above it is considered that there is inadequate justification in the AVA for the NBAs to be included on the OZP and their introduction significantly impinges on private development rights.

### 5.3 Building Gaps and Set-backs

5.3.1 REDA is opposed to the provision of requirements for set-backs 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 considers that 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 purposes is considered wrong and may be subject to legal challenge.

5.3.2 Furthermore, the Outline Zoning Plan does not justify the set backs and building gaps in terms of providing public passage, but in terms of providing "air paths" through these roads" (Explanatory Statement paragraph 7.7). There is no legal recognition of the provision of set-backs for "air paths" as being a public purpose for which private land could be taken. It is therefore considered inappropriate to provide Building Gaps and Set-Backs on the OZP and this may be subject to legal challenge.

5.3.3 There is also no statement in the Notes or Explanatory Statement indicating that the private land taken for set-backs or air ventilation purposes is for public passage and that it may be considered by the Building Authority for bonus gross floor area in accordance with normal practice.

5.3.4 The combined effect of these set-back requirements is the taking away of private land without compensation or resumption and without adequate grounds for justifying them as a recognized public purpose. In these circumstances REDA requests that all set-back requirements be removed from the Outline Zoning Plan.

5.3.5 It is also clear that the approach is inconsistent in that the provision of some set-back areas has been provided along side footpaths which are adequate to meet the HKPSG requirements for footpath widths and/or are adequate to accommodate pedestrian flows. There is also scope to use traffic management and pedestrian priority areas to make best use of the public street before applying a generalized and unjustified system of set-backs on a statutory plan in this way.



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### 5.4 Spot Building Height Restrictions Inconsistent with the Town Planning Ordinance

#### 5.4.1 REDA objects to the way in which the BHRs have been introduced to Mong Kok OZP:

- (a) while broad height bands are a permissible form of planning control in appropriate situation, it is much more desirable to have a variety of building heights in places such as Mong Kok, to achieve an interesting urban-scape and to accommodate different types of uses and take into account the characteristics of the area;
- (b) the "spot" BHRs imposed on some sites such as Langham Place are overly restrictive, preventing creativity or innovative building design and limits the ability of the industry to respond to a changing market. They unreasonably confine the form of any future building to the form of the existing building forever.
- (c) excessively low "Spot" building height restrictions will discourage private sector initiative to undertake urban renewal projects in the area.

#### 5.4.2 REDA is of the view that "Spot" building height restrictions are not permitted under the TPO, for the following reasons -

- (a) Specific BHRs on individual sites constitutes a form of "spot zoning", which is not permitted by sections 3 and 4 of the Town Planning Ordinance which requires a "broad brush" approach, as is emphasized by the title "Outline Zoning Plan".
- (b) Sections 3 and 4 of the TPO as mentioned in paragraph 5.2.1 above limit the planning actions of the TPB to types of buildings and exclude detailed matters such as "Spot" building height restrictions.

#### 5.4.3 A "broad-brush" approach may have been applied through the imposition of broad height bands in some parts of the Plan, but there are many sites where this approach has not been applied. Such "spot" building height restrictions are therefore inappropriate and unlawful, and should be withdrawn.

#### 5.4.4 There is no indication that in formulating the building height restrictions any consideration has been given to the economic impact of these restrictions and on the objective of maintaining Hong Kong as a major international financial centre.



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- 5.4.5 The Explanatory Statement in paragraph 3 indicates that “The Plan is to illustrate the broad principles of development within the Area”. The principle of establishing broad statutory controls with similar characteristics has not been consistently followed in relation to the OZP. The approach has been to be unnecessarily restrictive, and to impose height limits to some of the existing developments in a very restrictive manner.
- 5.4.6 This can be seen in Amendment Item A where different building height restrictions have been imposed on some sites to constrain development to the existing form of the building. This applies in the C zones and in the G/IC zones.

### 6. Proposals to Meet the Representation

#### *Forward Planning Approach*

- 6.1 There are successful examples of redevelopment serving to bring in new economic/commercial activities into the area. A few higher buildings would not be visually incompatible and out of context. The approach of good planning should be to adopt new ideas and allow innovative and attractive developments that can trigger off local economy improvements and improve the image of the district rather than maintaining the 1960s / 70s streetscape for the whole district. A comprehensive land use review with a forward looking approach is thus necessary.

#### *Building Height Restrictions*

- 6.2 It would appear that the building height restrictions have been set too low to allow for the existing development rights to be achieved on redevelopment. All building height restrictions should be reviewed and increased to ensure that existing development rights of plot ratio 15 or greater can be achieved and more innovative and more sustainable building design can be created. They should also provide for a consolidation of the commercial office/hotel/entertainment nodes identified in Mong Kok as important urban design features. A modest increase of the building heights by 20 to 40 metres would provide a significant degree of design flexibility while achieving the general objectives of stepped building heights and protection of important views. Height restrictions set at these levels will also result in developments of varied heights which may facilitate better air ventilation and downwashes, and a more interesting skyline. 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. A more generous BHR of up to 120mPD





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to 200mPD would encourage innovative design and built form, with opportunities for provisions of G/IC facilities and ground floor open space for the enjoyment of local community and visitors. Many developments would not reach these maximum building heights, resulting in variety and interest.

### *Relaxation Scheme*

- 6.3 A relaxation or incentive scheme should be introduced to encourage amalgamation of small sites for development/redevelopment of quality and well-designed commercial/office buildings at suitable locations so as to improve visual and air permeability, streetscape and pedestrian environment. A relaxation clause in respect of the building height restrictions should be incorporated into the Notes for the Commercial 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 1,500 square metres 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 "C" zone, so as to provide an incentive for innovative design and improvement to the general urban environment.

### *Provision for Dedication of Land*

- 6.4 A standard clause allowing for permitted plot ratio to be exceeded as defined in Building (Planning) Regulation ("B(P)R") 22(1) or (2) which allows for additional GFA for the area dedicated for public passage, etc. should be included for all relevant development zones, as in most other Outline Zoning Plans.

### *Deletion of Non Building Areas*

- 6.5 The legal basis for the imposition of the NBAs is questionable. The technical basis for the AVA carried out to justify the NBAs is also questionable. It is proposed that the requirement for NBAs be deleted and more suitable zoning such as "Open Space" and "Road" be used to provide the desired gaps. The words "exceptional circumstances" should be removed from the relevant Notes to the "C", "R(A)" and "G/IC" zones should it be decided to retain the NBAs.

### *Deletion of Set Backs*

- 6.6 All set-backs should be deleted from the Outline Zoning Plan.

### *The wording of the Minor Relaxation Clause should be Amended*



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- 6.7 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.

### 7. Conclusion

- 7.1 The building height restrictions imposed on the OZP go way 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 fundamentally broad zoning approach which is consistent with treating private property rights in a generalised, fair and consistent manner should be retained. The imposition of set-backs and non-building areas on private land without compensation is considered an improper use of the Town Planning Ordinance.
- 7.2 The proposed amendments to the Mong Kok Outline Zoning Plan are considered an unreasonable restriction 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 Mong Kok.