



# 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  
Ngau Tau Kok and Kowloon Bay Outline Zoning Plan, Plan No. S/K13/26  
-- 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) and other associated matters included as amendments in the Draft Ngau Tau Kok and Kowloon Bay Outline Zoning Plan, Plan No. S/K13/26 (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 BHR, building gap restrictions, NBAs and other restrictions in the amendments shown to the OZP. In other words, this representation objects to Amendment Items A, B1 – B5, C1 – C4 on the Plan and (a), (b), (f) and (g) of Amendments to the Notes of the Plan.
- 2.2 This representation is made in the broad interests of Hong Kong as a whole including the interests of individual property owners. It is REDA's views that any planning changes should enhance the economic growth of Hong Kong, maintain an efficient and sustainable urban development system, and respect the private property rights of individual property owners.

### **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 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 7.2 of the Explanatory Statement that the reasons for the imposing of 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 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 It is 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 while achieving 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 acceptable to the public.
- 3.1.6 The OZP generally allows for an absolute height of only about 80m to about 100m for many of the residential sites. The absolute heights are equivalent to about 25 to 32 storeys. It is considered that the height restrictions have been set unreasonably low, lower than what is necessary to address the public concern.

### *Preservation of Ridgelines and Stepped Building Heights*

- 3.1.7 The Urban Design Guidelines Study has identified four key vantage points on the Hong Kong Island. The Hong Kong Convention and Exhibition Centre (HKCEC) and the Quarry Bay Park are the most relevant ones for visual impact considerations in this Outline Zoning Plan. The previous Planning Department study on visual impact used as a basis to set the BHRs for the Kowloon Bay



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Business Area had accepted BHRs of 120mPD to 140mPD for much of the OU(B) zone in the Kowloon Bay Business Area (KBBA).

- 3.1.8 It is therefore illogical to adopt a descending BHR profile to the east, from the 120mPD along Wai Yip Street, and to disallow continued increase in BHRs across Telford Gardens, across Kwun Tong Road and Ngau Tau Kok Road. The whole of this central area should have increased BHRs ranging from 140mPD to 150mPD to maintain the rising profile of building heights, while still protecting the ridgelines from the recognized viewpoints.
- 3.1.9 The Planning Department appear to have arbitrarily adopted other “view corridors” such as from a footbridge near Choi Ying Place, and used this as a reason for reducing BHRs. There is no particular reason why this footbridge or the other viewpoints should be selected as they have no significant characteristics which make them more important than any other place for creating view corridors. These have not been established after public consultation and should not be given any significance.

### *Building Height and Air Ventilation*

- 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 at a level which is too low therefore creates a solid wall effect closer to ground level.

### *Need for Reasonable Building Height*

- 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 new BHRs stipulated on the Outline Zoning Plan are generally too low.
- 3.1.12 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. In this respect a more reasonable approach has been taken in the previous exercise for establishing the BHRs for the OU(B) in the KBBA where 120 – 170mPD BHRs were imposed.



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3.1.13 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 and the quality of life of the users of the development.

3.1.14 It would also appear that the result of the BHR imposition in that the private land in the vicinity of Kwun Tong Road, i.e. in the 'valley' created by the approach outlined in paragraph 3.1.7 above, is that the private land has been provided with much more restrictive BHRs than the public housing sites in the Area. The assumptions regarding the floor-to-floor heights and plot ratios used in determining the BHRs on public and private land should be provided.

### 3.2 No Public Consultation

3.2.1 The BHRs, 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 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.

3.2.2 This is strongly contrasted with the approach taken in 2004 when a "Study of Building Height Restrictions for Kwun Tong and Kowloon Bay Business Area" was undertaken and TPB Guidelines issued to propose a temporary arrangement during the processing of the proposed BHRs. It is strongly suggested that the Planning Department should have carried out a similar planning study 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.

### 3.3 Non-Building Areas

3.3.1 NBAs are extensively introduced throughout the Outline Zoning Plan 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



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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. There 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.

3.3.5 The proposed NBAs on this OZP are a major deprivation of 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 centre of Enterprise Square V/Mega Box, or through Kai Tak Mansions. 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 owners for the loss of their property rights has been considered. These proposals go way beyond the scope that the Town Planning Ordinance allows.

3.3.6 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 B4 relates to an extensive vegetated slope at Ping Shek Estate which should be zoned as "Green





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Belt” if it is not to be built on, or “Open Space”. Both zones are abutting the NBA. The same applies to B5 near Shun Chi Court. Similarly, the NBA proposed by Amendment Item C1 should be zoned as “Open Space” if it is absolutely essential in the public interest, and resumed with compensation paid to the land owners. This would then be the same situation as that for the existing linear park zoned “O” and located to the east between Kai Cheung Road and Sheung Yuet Road.

### 3.4 Building Gaps and Setbacks

#### *Imposing Setbacks violates the Intention of Outline Zoning Plans*

- 3.4.1 REDA is opposed to 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 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 proposes is considered wrong and may be subject to legal challenge.

#### *Lack of Legal Basis for Setbacks for Air Paths*

- 3.4.2 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 for the Board 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*

- 3.4.3 The justifications stated in the Explanatory Statement for providing setbacks for the “OU(B)”, “G1IC(4)” and other zones are confusing. The sub-paragraphs of paragraphs 8.6 of the Explanatory Statement of the Outline Zoning Plan, indicate varying building gaps and set-backs with no justification as to why they are essential, why they must be the specified width, and why some must be at ground level and others can be at 22mPD. There is no justification as to why there should be an additional set-back along some of the widest streets in the KBBA namely Wang Kwong Road and Wang Chiu Road. This imposition is considered to be unreasonable as the streets are already sufficiently wide to provide adequate space for vehicles, pedestrian and need not be wider for air ventilation.



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- 3.4.4 The unclear justifications for the setback requirements would render unnecessary complication related to compensating private land owners for the loss of their land for a public purpose under the Buildings Ordinance and the Roads (Works Use and Compensation) Ordinance. In these circumstances, REDA requests that all setback requirements be removed from the Outline Zoning Plan.

### 3.5 Spot Zoning Approach Inconsistent with the Town Planning Ordinance

- 3.5.1 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 adopted has been unnecessarily restrictive and too detailed.

- 3.5.2 This can be seen in the designation of NBAs and setback requirements in a number of sites as detailed above, and also violates the broad principles of statutory town planning. The imposition of different BHRs within the same site, such as the imposition of 22mPD within sites in the OU(B) zones which have a general height of 140mPD, is an example of how this should not be applied.

- 3.5.3 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.

## 4. Proposals to Meet the Representation

### *Building Height Restrictions*

- 4.1 The Building Height Restrictions 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 previously established BHRs on the OU(B) zones in KBBA, and the general background of development on the slopes to the east, a general increase in the BHRs of 20m to 40m is appropriate and they should be amended accordingly.

### *Removal of Spot Zoning through NBAs and Building Gaps*

- 4.2 The Board should adopt a more rational and generalized approach to the zoning by deleting "Spot Building Height Restrictions" which adversely affect development rights and building potential.



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### *Deletion of Non Building Areas*

- 4.3 The legal basis for the imposition of the NBAs and the technical justification for them is questionable. It is proposed that the requirement for the NBAs be deleted completely. Should the Board consider it necessary to provide gaps, a more suitable zoning such as "Open Space" should be used so that compensation is provided to the affected land owners. However, should 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 Setbacks*

- 4.4 All setbacks should be deleted from the Outline Zoning Plan.

## **5. Conclusion**

- 5.1 The building height restrictions, NBAs 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. .
- 5.2 The proposed amendments on the Ngau Tau Kok and Kowloon Bay 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, high quality form of urban development for the Planning Area.