

**Minutes of 1004<sup>th</sup> Meeting of the  
Town Planning Board held on 3.2.2012**

**Present**

Permanent Secretary for Development  
(Planning and Lands)  
Mr. Thomas Chow

Chairman

Mr. Stanley Y.F. Wong

Vice-Chairman

Mr. K.Y. Leung

Mr. Walter K.L. Chan

Mr. B.W. Chan

Ms. Maggie M.K. Chan

Mr. Raymond Y.M. Chan

Mr. Felix W. Fong

Professor Paul K.S. Lam

Professor Edwin H.W. Chan

Mr. Rock C.N. Chen

Mr. Maurice W.M. Lee

Mr. Timothy K.W. Ma

Professor P.P. Ho

Professor Eddie C.M. Hui

Dr. C.P. Lau

Mr. Clarence W.C. Leung

Mr. Laurence L.J. Li

Dr. W.K. Lo

Mr. Roger K.H. Luk

Ms. Anita W.T. Ma

Professor S.C. Wong

Ms. Pansy L.P. Yau

Dr. W.K. Yau

Director of Lands  
Miss Annie K.L. Tam

Deputy Director of Environmental Protection  
Mr. Benny Y.K. Wong

Assistant Director (2), Home Affairs Department  
Mr. Eric K.S. Hui

Principal Assistant Secretary (Transport)  
Transport and Housing Bureau  
Mr. Fletch W.W. Chan

Director of Planning  
Mr. Jimmy C.F. Leung

Deputy Director of Planning/District  
Miss Ophelia Y.S. Wong

Secretary

**Absent with Apologies**

Ms. Anna S.Y. Kwong

Mr. Y.K. Cheng

Dr. James C.W. Lau

Dr. Winnie S.M. Tang

Ms. Julia M.K. Lau

Mr. Stephen M.W. Yip

**In Attendance**

Assistant Director of Planning/ Board  
Mr. C.T. Ling

Chief Town Planner/Town Planning Board  
Ms. Christine K.C. Tse (a.m.)  
Ms. Maggie M.Y. Chin (p.m.)

Senior Town Planner/Town Planning Board  
Mr. J.J. Austin (a.m.)  
Ms. Johanna W.Y. Cheng (p.m.)

**Agenda Item 1**

[Open Meeting]

Confirmation of Minutes of the 1002<sup>nd</sup> Meeting held on 13.1.2012 and the 1003<sup>rd</sup> Meeting held on 17.1.2012

[The meeting was conducted in Cantonese.]

1. The minutes of the 1002<sup>nd</sup> meeting held on 13.1.2012 and the 1003<sup>rd</sup> meeting held on 17.1.2012 were confirmed without amendments.

**Agenda Item 2**

[Open Meeting]

Matters Arising

[The meeting was conducted in Cantonese.]

(i) New Town Planning Appeal Received

Town Planning Appeal No. 1 of 2012

Temporary Open Storage of New and Scrap Stainless Steel

for a Period of 3 Years in “Agriculture” zone,

Lots 758 S.B RP (Part) and 767 S.B (Part) in D.D. 46

and Adjoining Government Land, Sha Tau Kok Road, Fanling

(Application No. A/NE-MUP/63)

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2. The Secretary reported that an appeal was received by the Appeal Board Panel (Town Planning) on 20.1.2012 against the decision of the Town Planning Board (the Board) to reject on review an application (No. A/NE-MUP/63) for a temporary open storage of new and scrap stainless steel for a period of 3 years at a site zoned “Agriculture” (“AGR”) on the approved Man Uk Pin Outline Zoning Plan No. S/NE-MUP/11. The application was rejected by the Board for the following reasons:

- (a) the development under application was not in line with the planning intention of the “AGR” zone for the area which was primarily intended to retain and

safeguard good agricultural land/farm/fishponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There was no strong planning justification in the submission for a departure from the planning intention, even on a temporary basis;

- (b) the development under application did not comply with Town Planning Board Guidelines No. 13E for Application for Open Storage and Port Back-up Uses in that no previous planning approval had been granted to the application site and there were local objections to the application;
- (c) the development under application was not compatible with land uses of the surrounding areas which were largely rural and agricultural in character; and
- (d) the approval of the application would set an undesirable precedent for similar applications within the “AGR” zone, the cumulative impact of approving similar applications would result in a general degradation of the environment in the area.

3. The hearing date of the appeal had not yet been fixed. Members agreed that the Secretary would act on behalf of the Board in dealing with the appeal in the usual manner.

(ii) Withdrawal of Application for Review

Review of Application No. A/TM-LTY Y/222

Temporary Private Vehicle Park (Private Cars Only) for a Period of 1 Year in “Village Type Development” zone, Lots 647 S.A, 647 S.B, 647 S.C, 647 S.D, 647 S.E, 647 S.F, 647 S.G, 647 S.H, 647 RP, 648 S.A, 648 S.B, 648 S.C and 648 RP in D.D. 130, Lam Tei, Tuen Mun, New Territories

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4. The Secretary reported that the review of application No. A/TM-LTY Y/222, which was originally scheduled for consideration at this meeting, had been withdrawn by the applicant after the issue of the relevant TPB Paper.

**Agenda Item 3**

[Open Meeting]

Public Consultation on Licensing Scheme for Private Columbaria

**(TPB Paper No. 9003)**

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[The meeting was conducted in Cantonese.]

Presentation Session

5. Professor S.C. Wong declared an interest on this item as one of the government representatives making the presentation was his sibling. Members agreed that as the item did not require a decision of the Board, Professor Wong could stay in the meeting and participate in the discussion.

6. The following representatives of the Food and Health Bureau (FHB) were invited to the meeting at this point:

Ms. Kitty Choi	Deputy Secretary for Food and Health (Food)1, FHB
Miss Diane Wong	Principal Assistant Secretary (Food) 2, FHB

7. The Chairman extended a welcome and invited the representatives of FHB to brief Members on the public consultation on the proposed licensing scheme for private columbaria issued by the Government in December 2011.

[Mr. Laurence L.J. Li and Mr. Raymond Y.M. Chan arrived to join the meeting at this point.]

8. With the aid of a powerpoint presentation, Ms. Kitty Choi presented the proposals as detailed in the Paper and made the following main points:

- (a) in July 2010, the FHB published a consultation document on review of columbarium policy and the Board was briefed on 20.8.2010. The Legislative Council Panel on Food Safety and Environmental Hygiene was briefed in April 2011 on the outcome of the public consultation and

some preliminary proposals for a licensing scheme to enhance regulation of private columbaria. FHB undertook to put forward more detailed proposals on the licensing scheme and the second public consultation was launched on 13.12.2011;

#### Present Position

- (b) according to the most up-to-date “Information on Private Columbaria” (the Information) published by the Development Bureau on 30.12.2011, there were 32 private columbaria in Part A of the Information, i.e. private columbaria that were compliant with user restrictions in the land leases and the statutory town planning requirements, and were not illegally occupying government land, and 53 private columbaria in Part B of the Information, i.e. other private columbaria that did not fall under Part A;
- (c) over the second half of 2011, FHB and the Food and Environmental Hygiene Department (FEHD) had visited 53 private columbaria that were listed in the “Information on Private Columbaria” to understand their current operation;

#### Four Main Considerations of the Proposals

- (d) public views obtained from the first public consultation exercise showed strong support for a licensing scheme for private columbaria. However, views on the scope and intensity of regulation under the licensing scheme and the arrangements for pre-existing columbaria were diverse;
- (e) to facilitate a focused discussion of the subject and to balance the interests of different stakeholders, FHB had adopted four main factors for consideration as follows:
  - (i) the proposed licensing scheme should be a robust but pragmatic way forward;

- (ii) the proposals should respect arrangements that were already made under traditional customs and measures which might upset the resting place of the deceased should not be contemplated lightly;
- (iii) the proposals should have due regard to the living and suitable management measures that should be put in place to take into account the concerns of the residents living near to columbaria; and
- (iv) the proposals should allow sustainable development of the trade;

[Mr. Stanley Y.F. Wong arrived to join the meeting at this point.]

#### Proposed Licensing Scheme for Private Columbaria

- (f) it was proposed to introduce a statutory licensing scheme under a new piece of legislation to be entitled the Private Columbaria Ordinance;
- (g) a statutory Private Columbaria Licensing Board (the Licensing Board) would be set up as the licensing authority. The Licensing Board would comprise officials and non-officials and would be appointed by the Secretary for Food and Health. The Food and Environmental Hygiene Department (FEHD) would be the executive arm and enforcement agency of the Licensing Board;
- (h) a private columbarium would be defined as any place which offered to store human cremains, but which was not built and/or operated/maintained by the Government. This would include any columbarium that was in existence before the enactment date of the new legislation, and those run by charitable organisations as well as religious institutions (e.g. temples and monasteries). The keeping of cremains of a limited number of deceased family members at home would not normally be covered by the definition;
- (i) a licence would be valid for 5 years, subject to renewal;



- (j) any application for a licence for private columbaria had to meet the following requirements:
  - (i) for new columbaria which came into being after the commencement of the licensing scheme, the operator would be required to operate on self-owned premises to ensure long-term occupation of the premises to safeguard the interests of consumers. For pre-existing private columbaria which did not run on self-owned premises, the operator would be required to prove that he had the right to continue to use the premises for at least five more years;
  - (ii) the premises for operation as a private columbarium should comply with all statutory and government requirements such as those relating to town planning, building safety, fire safety, environmental hygiene and environmental protection;
  - (iii) the premises for operation as a private columbarium should be permitted under the land lease conditions and there should be no illegal occupation of government land; and
  - (iv) the operator would be required to submit to the Licensing Board a management plan covering admission control, traffic and public transport arrangements and crowd management arrangements;

[Ms. Maggie M.K. Chan arrived to join the meeting at this point.]

- (k) it was proposed that the licensee had to comply with the following core licensing conditions:
  - (i) no variation to the number and location of niches as approved by the Licensing Board unless agreed by the Licensing Board. A site plan showing the detailed location of niches was required;

- (ii) no change of licensee unless agreed by the Licensing Board;
  - (iii) no subletting or assignment of premises designated in the licence. Relocation to new premises would entail a fresh licence application;
  - (iv) mandatorily entering into contract with consumers covering special provisions, e.g. purpose of the various charges, arrangement in case of cessation of business and sale arrangement of niches to dedicated nominees;
  - (v) the licensee had to exert all reasonable effort to handle cremains deposited with them upon cessation of business. Failure to do so would constitute a breach of licensing condition, and would be an imprisonable offence;
  - (vi) the licensee had to keep a register of all the niches and relevant buyers for inspection by enforcement officers;
  - (vii) adherence to the management plan submitted as part of the licence application;
  - (viii) the setting up of a maintenance fund comprising an initial deposit by the licensee plus a specified percentage of the proceeds from subsequent sale of each niche. The fund would be exclusively for the care and maintenance of the columbarium; and
  - (ix) the submission of a biennial report to certify building safety;
- (1) in considering a licence application, the Licensing Board would have to be satisfied that granting the licence would not be contrary to public interest. The public interest considerations would include the overall supply of columbarium niches in the territory, views from residents or district bodies, as well as the interest of patrons of pre-existing columbaria;

[Mr. Rock C.N. Chen arrived to join the meeting at this point.]

Proposed Exemption from the Licensing Scheme

- (m) it was proposed that private columbaria in private cemeteries specified in Schedule 5 to the Public Health and Municipal Services Ordinance (Cap. 132) should be automatically exempted from the Licensing Scheme;
- (n) undertakers of burials intending to seek exemption from the Licensing Scheme would need to submit an application to the Licensing Board for exemption. As undertakers of burials were already regulated under the Undertakers of Burials Regulation (Cap. 132CB), and the storage of remains in their premises was of a temporary nature, the Licensing Board could grant exemption subject to conditions such as prohibition of the burning of joss paper offerings or ancestor worshipping on the pavement, the carrying out of management or mitigation measures prescribed by the Licensing Board, etc.;
- (o) the proposed exemption for undertakers of burials was considered necessary as a short term measure to tackle the shortage of columbarium niches in the public sector. With the provision of 40,000 to 50,000 niches by FEHD by 2013, the existing backlog of about 16,000 bags of remains temporarily stored in the premises of undertakers of burials would be resolved;
- (p) during the first public consultation, views had been expressed that a pragmatic way to deal with the legacy of certain pre-existing private columbaria was called for. In order not to upset the final resting place of the deceased, and to lessen possible social disruption likely to be generated by enforcement actions, it was suggested that authorities should be empowered to exercise discretion towards certain columbaria that had been in existence for a long time and to exempt them from the licensing scheme;

- (q) the Government was open-minded about the proposal and would invite views from the public on the categories of private columbaria to be exempted as well as the relevant criteria to be adopted. Nevertheless, under no circumstances should private columbaria which posed obvious or imminent danger in terms of building and fire safety be exempted. It was also proposed that the licensing authority could impose conditions on the exemption, including requiring the columbaria to contain their operation and to freeze the number and sale of niches;

Temporary Suspension from the Licensing Scheme

- (r) it was proposed that temporary suspension from liability could be granted to non-exempted pre-existing private columbaria which did not comply with the current statutory and government requirements. This would allow the operator to continue maintaining the operation of the columbarium (for niches already sold but not to sell new/unoccupied niches) while working to regularise its irregularities with a view to securing compliance with the licensing requirements which it was in breach of;
- (s) the Licensing Board would give consideration to the following when assessing an application for temporary suspension from liability:
- (i) the private columbarium concerned was established before the commencement of the licensing scheme;
  - (ii) the applicant could prove that he/she had the right to use the premises/site; and
  - (iii) the private columbarium did not pose obvious or imminent danger in terms of building and fire safety;
- (t) the Licensing Board could impose conditions when granting temporary suspension from liability including the requirement that the columbarium

operators should take effective remedial actions for the effective management of the relevant facilities and for mitigating nuisances to the neighbouring community and that the private columbaria should freeze the number and sale of niches;

- (u) an operator given temporary suspension from liability to operate a private columbarium was still in breach of the licensing requirements;
- (v) the scheme of temporary suspension from liability was only a transitional measure to be phased out at an appropriate time, taking into account the shortage of columbarium niches in general in the market;

#### Transition, Appeals, Sanction

- (w) it was proposed that the licensing scheme should commence upon the gazettal of the new legislation, with a transition period of 18 months from the commencement of the new legislation to allow time for the pre-existing columbaria to apply for a licence/exemption/temporary suspension from liability as appropriate;
- (x) any aggrieved applicant could appeal to the Municipal Services Appeal Board against the decision of the Licensing Board. For sanctions, it would be an offence to operate a private columbarium without a licence or exemption and the operator would be liable to ascending daily fines and/or imprisonment; and

#### Timetable

- (y) the public consultation for the licensing scheme would last until 30.3.2012. The aim was to finalise the legislative proposals and to introduce the Bill into the Legislative Council in the fourth quarter of 2013.

[Ms. Anita W.T. Ma left the meeting temporarily at this point.]

## Discussion Session

9. Four Members raised the following questions and comments:
- (a) whether the licensee should be restricted to a person and not a registered company so as to ensure that the licensee would be personally liable for any breach of the licensing conditions;
  - (b) whether a time limit would be imposed for those private columbaria applying for exemption from the licensing scheme in order to ensure the continued maintenance of these private columbaria;
  - (c) noting a recent corruption case involving a Member of the Board of Management of the Chinese Permanent Cemeteries (BMCPC), the managerial problems of the columbarium operators would also need to be addressed;
  - (d) while legislative control on private columbaria was supported, there would likely be strong public reaction to the legislation as both the patrons of private columbaria and the residents in the vicinity would be affected;
  - (e) on the ownership of the premises occupied by private columbaria, if the premises were held by registered companies, the problem of corporate governance might arise;
  - (f) whether the licensing authority would have enforcement powers;
  - (g) the public consultation document should clearly explain the relationship between an application for a licence and a planning application;
  - (h) the licensing authority should operate in an open and transparent manner and the public should be given the opportunity to express their views on

applications for licences;

- (i) whether the transition period of 18 months was adequate and what the operators of private columbaria could do if they needed more time to address departmental comments. Moreover, consultation with the District Council might be necessary;
- (j) how an application for regularisation would be regarded as bona fide; and
- (k) how the licensing authority would consider the licensing application of those private columbaria that had been in existence for a long time but had attracted serious complaints. The licensing authority should require the operator to consult the public and conduct mediation with the stakeholders before submitting planning applications to the Board for consideration. The Board should not be a forum to resolve conflict between the operator and the public.

[Ms. Anita W.T. Ma arrived to join the meeting at this point.]

10. In response to Members' questions raised above, Ms. Kitty Choi made the following points:

- (a) as the operators of many private columbaria were registered companies, it was considered inappropriate to bar registered companies from being licence holders. Nevertheless, FHB would make reference to other similar legislation in drawing up the sanctions against breach of licensing conditions by registered companies;
- (b) when granting exemptions for pre-existing private columbaria, the licensing authority could impose conditions on the operator which might include the continued maintenance of the columbaria, the submission of a management plan, crowd control measures, etc;
- (c) the legislation would provide the licensing authority with enforcement

powers and FEHD would be the enforcement agent serving the licensing authority;

- (d) on the relationship between a licence application and a planning application, it was clearly stated in the public consultation document that any application for a licence under the licensing scheme would need to comply with the lease and all statutory requirements including the Town Planning Ordinance. It was clear that the need to comply with the Town Planning Ordinance was a pre-requisite for licence application;
- (e) there would be provision for public participation on application for a licence which would be published for public comments. The Administration was aware of the difficulty to balance the interests of different parties as private columbaria were often seen as bad neighbours. The consideration of application for licensing would have to take into account the overall situation including the demand and supply of niches in the territory, views from residents or district bodies, and the interests of patrons of pre-existing columbaria; and
- (f) the transition period was the time between the gazettal of the new legislation and the date when the new legislation was enacted. Eighteen months should be sufficient for an operator to obtain the licence. For those private columbaria that would need additional time to comply with all statutory and government requirements, the operators could apply to the licensing authority for temporary suspension from liability. The time period allowed for the temporary suspension from liability would be determined by the licensing authority on a case by case basis.

11. In response to a Member's follow-up question regarding licences held by registered companies, Ms. Kitty Choi said that only very few Ordinances had strict controls on the change of shareholders of registered companies and this aspect should be carefully considered. Nevertheless, FHB would consider the suggestion in the drafting of the new legislation. In response to the same Member's further enquiry, Ms. Choi said that in order to guarantee the long term commitment of the licence holder, a new licence would be



required for any change in the licensee.

12. Regarding the corruption case mentioned by a Member (para. 9(c) above), Mr. Eric K.S. Hui clarified that the corruption case involved an employee of the joint secretariat which served the BMCPC, the Chinese Temples Committee and a few other charities at that time. The corruption case did not involve any Members on the Board of the BMCPC. After the incident, an independent secretariat was established to serve the BMCPC.

[Mr. Benny Y.K. Wong left the meeting temporarily at this point.]

13. Members continued and raised the following questions and comments:

- (a) whether there was information on the number of private columbaria that were currently in existence;
- (b) if the licence of a private columbarium was suspended by the licensing authority, it would inevitably affect the patrons who had bought niches from the columbarium. Whether there was a mechanism to prepare for the eventuality that the columbarium had closed down and how to handle the cremains affected;
- (c) noting that 24 proposed public columbarium sites had been identified, more information on these sites should be provided to the Board;
- (d) how the licensing authority would deal with the private columbaria which had been in existence for a long time within old tenement buildings;
- (e) noting that private columbaria applying for exemption or temporary suspended from liability had to freeze the sale of niches, these columbaria might run into financial difficulties causing the cessation of business;
- (f) would columbaria applying for exemption from the licensing scheme be required to meet certain standards and and subject to conditions. Who would be responsible to ensure that those columbaria met the required

standard?

- (g) noting that the operators of pre-existing private columbaria which were not located at self-owned premises were required to prove that they had the right to continue to use the premises for at least 5 years, what was the basis for setting the requirement to 5 years?
- (h) regarding the proposal to exempt from the licensing scheme pre-existing private columbaria that were in existence for a long time, a Member agreed that a pragmatic way to deal with the legacy problem was required. However, under no circumstances should private columbaria which posed danger in terms of building and fire safety be exempted from the licensing scheme;
- (i) would FHB consider to provide a one-stop shop service for the operators as many government departments would need to be consulted in the licence application process, some of which might overlap with planning application process? There was concern that there might be duplication of the requirements from government departments and the need for public consultation;

[Mr. Benny Y.K. Wong returned to join the meeting at this point.]

- (j) the licensing scheme for private columbaria was similar to the licensing scheme for the residential care home for the elderly implemented by the Government a few years ago. There would certainly be operators that failed to obtain a licence and were forced out of business. The Government should consider how that should be handled;
- (k) undertakers of burials should also be covered by the licensing scheme in order to ensure that those undertakers were properly regulated. A comprehensive plan to regulate the business relating to funeral related facilities was required;

- (l) the licensing authority should set up a web portal to provide information to the public on which private columbaria had obtained licences, which had been exempted from the licensing scheme and which had been temporarily suspended from liability;
- (m) in considering the renewal of licences, the licensing authority should also take into account the number of complaints relating to that particular private columbarium during the licensing period;
- (n) given the Chinese culture, most niches were occupied on a permanent basis and the number of niches required would continue to grow at an exponential rate. This would become a long term problem;

[Ms. Maggie M.K. Chan left the meeting at this point.]

- (o) whilst it was a pragmatic way to advocate the regularisation of pre-existing private columbaria, it was difficult to overcome local objections for new columbarium. The public would demand a long-term strategy from the Government for the development of columbarium to address the growing demand for niches;
- (p) a Member was concerned that the mode of operation of private columbaria was not sustainable as they had to rely on contributions from patrons and one-off payments for niches which were not regular income. In this respect, the proposal of a maintenance fund was supported but the contribution of 15% from the sales proceeds of niches might not be adequate to support this mode of operation in the long run. The introduction of the licensing scheme would mean that the Government had to bear the moral responsibility over the operation of private columbaria. In this connection, the Government should consider charging a fee from the licensee to reduce its financial risk;
- (q) the Government could consider collecting a levy for the sale of niches, with a higher amount for private columbaria and a lower amount for

public columbaria, for the setting up of a fund to deal with the problems arising from the cessation of business of private columbaria;

[Mr. Felix W. Fong arrived to join the meeting at this point.]

- (r) to overcome the requirement to freeze the sales of new or unoccupied niches, some columbarium operators might sell a large number of niches to a shell company before applying for exemption or temporary suspension from liability. The company could then sell the niches out to individual consumers. The Government should consider how the loophole could be plugged; and
- (s) for licences held by registered companies, FHB could make reference to the regulatory regime for stock brokers where registered companies were required to identify a “responsible officer” and a new licence would be required when there were changes to the “responsible officer” concerned. Otherwise, the directors of the registered companies would be required under the law to be personally liable for any offence prescribed under the licence.

14. Ms. Kitty Choi made the following responses to Members’ questions and comments:

- (a) the suggestion of specifying a “responsible officer” for licences held by registered companies would be taken into consideration;
- (b) concerning Members’ views on Government’s moral responsibilities, the disposal of cremains from private columbaria that had ceased operation and the charging of a fee, the current proposals would require, as a licensing condition, the licensee to enter into contract with its consumers which covered, inter alia, the arrangements in handling the niches in case of cessation of business. Any breaching of licensing conditions would be an offence, where the operator would be liable to imprisonment. The purpose of this requirement was to make use of contract law to deal with

the problems arising from the cessation of business. It was not the legislative intent to require the Government to bear the responsibility as a result of the cessation of business of private columbaria. However, as a last resort, the proposed licensing scheme would empower FEHD to dispose of the human cremains deposited in a private columbarium, under exceptional circumstances, in the manner as FEHD considered fit;

- (c) FHB would examine the licence application procedures from the business facilitation perspective. As the Secretariat of the Licensing Board, FEHD would liaise with the relevant government departments to avoid duplication in the application process;
- (d) regarding the number of private columbaria currently in existence, based on the “Information on Private Columbaria” published by the Development Bureau, there were 32 private columbaria in Part A and 53 private columbaria in Part B of the Information list. The list was not exhaustive and as part of the current public consultation exercise, the public was asked to provide information on any other private columbaria that they were aware of;
- (e) concerning the criteria for exempting certain pre-existing private columbaria from the licensing scheme, the Government would like to invite views from the public. In view of the sensitivity of the exemption criteria, it would only be announced when the new legislation was introduced;
- (f) on the provision of public columbarium, 24 sites had been identified by PlanD as suitable for columbarium development and public consultation on these sites was currently in progress. The site at Wong Tai Sin was currently under construction and about 1,800 niches would be available by July 2012. About 40,000 niches would also be available at a site in Wo Hop Shek by July 2012. In the longer term, 200,000 niches would be available at Saddle Ridge by 2023 and another 110,000 niches would be available at Tsang Tsui, Tuen Mun by 2017;

- (g) some of the 24 sites would need to be rezoned or would require planning permission. The Board would be consulted at an appropriate time;
- (h) while the licensing authority would require the operators of new columbaria which came into being after the commencement of the licensing scheme to operate on self-owned premises, the operators of those pre-existing private columbaria, which were not located at self-owned premises would be required to prove that they had the right to continue to use the premises for at least 5 years. The 5-year requirement was to align with the validity period of the licence, which was 5 years;
- (i) it should be noted that even without the licensing scheme, private columbarium operators seldom closed down. Of the 53 private columbaria that FHB and FEHD had visited, some had continued to operate without earning a profit as the provision of the service was a kind of blessed service;
- (j) it was not possible for the licensing scheme to be foolproof. Consumers had the responsibility to make their own choice in selecting a private columbarium and to bear the consequences of their choice;
- (k) the licensing authority would be very careful in considering applications for exemption from the licensing scheme. Any pre-existing private columbaria which did not meet building safety and fire safety requirements would not be granted exemptions. However, the Government was open-minded on criteria other than building and fire safety, such as the length of time that the private columbarium had been in existence, etc that should be adopted in considering exemptions;
- (l) while agreeing to the suggestion that a comprehensive plan to regulate the funeral related facilities should be considered, the introduction of the licensing scheme for private columbaria would be a first step in addressing the imminent problem;

- (m) the suggestion of setting up a web portal to disseminate information on the licensing status of private columbaria would be taken up;
- (n) it was agreed that the existing practice where niches were occupied on a permanent basis was not sustainable, given that there was an average of 50,000 deaths each year. Alternative options such as limiting the use of niches to 30 years, or usage be subject to the payment of management fee, were strongly objected by the general public. A change in the mentality of the public would be required such that the demand for niches would decrease;
- (o) the proposal to require a deposit of 15% of the sales proceeds as a maintenance fund was taken from the experience of overseas practices and the operators would be consulted on the proposal in due course. As for the suggestion to increase the percentage of the deposit from the operators, this would likely result in an increase in the price of niches as operators would pass the burden onto the consumers. A careful balance would need to be taken;
- (p) under the licensing scheme, the operators should sell niches to patrons with a dedicated nominee specified for each niche. This measure would avoid the situation where a large number of niches were sold to a shell company to bypass the freezing requirement for the sales of new or unoccupied niches for cases subject to exemption or to temporary suspension from liability; and
- (q) on the suggestion to set up a fund to deal with the cessation of business so as to reduce the burden on the Government, it would not be in line with the overall intention which was to encourage the continued operation of private columbaria in a regulated environment. The licensing scheme had introduced the use of private contract to regulate private columbarium operators. It was the intention at this stage to require the good operators to compensate the loss brought about by the poor operators.





Mr. Alex Lio	)	
Mr. Edmond Shin	)	Applicant's representatives
Ms. Michelle Chung	)	
Ms. Gladys Ng	)	
Mr. Roger Nissim	)	

18. The Chairman extended a welcome and explained the procedures of the review hearing. He then invited Mr. C.K. Soh to brief Members on the background of the application.

19. With the aid of a powerpoint presentation, Mr. C.K. Soh made the following main points as detailed in the Paper:

- (a) the applicant sought planning permission for a proposed flat and shop and services (retail shop) development at the application site which was zoned "Commercial" ("C") on the Yau Ma Tei Outline Zoning Plan (OZP);
- (b) the application was rejected by the Metro Planning Committee (MPC) on 21.10.2011 and the reasons were:
  - (i) the proposed residential development was not in line with the planning intention of the "C" zone which was intended primarily for commercial development; and
  - (ii) the approval of the application would set an undesirable precedent for other similar applications in the area;
- (c) no further justifications in support of the review were submitted by the applicant;
- (d) departmental comments – the departmental comments were summarized in paragraph 5 of the Paper. The District Lands Officer/Kowloon West, Lands Department (DLO/KW, LandsD) commented that the lease was restricted to non-industrial purposes and the proposal did not conflict with

the lease conditions. The Chief Building Surveyor/Kowloon, Buildings Department (CBS/K, BD) noted that a building plan submission for a 29-storey hotel building at the application site was approved on 7.12.2010. The Director of Fire Services (DFS) commented that the arrangement of vehicular access should comply with the Code of Practice for Means of Access for Firefighting and Rescue. The Director of Environmental Protection (DEP) noted that the sewerage impact assessment report was acceptable and the road traffic noise compliance rate was in line with the requirements of the Hong Kong Planning Standards and Guidelines (HKPSG). The industrial noise assessment also indicated that the proposed development would not be subject to adverse industrial impact. The Chief Town Planner/Urban Design and Landscape (CTP/UD&L) of PlanD commented that planting along the parapet fronting Portland Street should be considered and a condition requiring the submission and implementation of a landscape proposal was recommended;

- (e) public comments – one public comment was received from the Owners Corporation of an adjoining building objecting to the proposed car park and shop and services uses at the basement and ground floor levels on traffic grounds and on the various environmental impacts arising from the proposed development including possible noise, air, sewerage and glare impacts; and

[Mr. Walter K.L. Chan and Dr. W.K. Lo returned to join the meeting at this point.]

- (f) PlanD's views – PlanD did not support the application based on the assessment as stated in paragraph 7 of the Paper, which were summarized below:
  - (i) no further justifications were submitted by the applicant and there was no change in the planning circumstances since the section 16 application was rejected by MPC;
  - (ii) the site was located within an area of Yau Ma Tei with a mixture

of residential, hotel and office developments and commercial uses with shops and restaurants on the lower floors. The proposed residential development with shops on the lower floors was not incompatible with developments in its surroundings;

- (iii) the areas in Mong Kok and Yau Ma Tei areas along Nathan Road were zoned “C” for commercial developments which was a main commercial spine fulfilling the need for commercial expansion in the main urban area;
- (iv) the proposed residential development with limited commercial floor space was not in line with the planning intention; and
- (v) since there was no similar application approved in the Yau Ma Tei area, the approval of the application would set an undesirable precedent for similar applications.

20. The Chairman then invited the applicant’s representatives to elaborate on the application.

21. With the aid of a powerpoint presentation, Mr. Kenneth To made the following main points:

- (a) other than PlanD, no government department raised objection to the application. As no technical problems were cited by the government departments, he did not understand why the approval of the application would set an undesirable precedent;
- (b) in 1993, the site was rezoned from “Commercial/Residential” (“C/R”) to “C” after taking into account the recommendations of the Kowloon Density Study (KDS). According to the study, all sites zoned “C/R” should be rezoned to either “C” or “Residential (Group A)” (“R(A)”) to improve planning certainty and facilitate a more accurate assessment of the future demand for traffic and infrastructural facilities. As a result,

the area to the east of Portland Street was rezoned to “C” (with maximum plot ratio of 12) while the area to the west of the street was rezoned to “R(A)” (with maximum plot ratio of 9);

- (c) even though a commercial development would achieve a higher plot ratio of 12, the applicant considered that a predominantly residential development was more suitable for the site, with a resultant plot ratio of only 8.4;
- (d) the area surrounding the application site along Portland Street had a mixed-use character, comprising predominantly composite buildings. Only a few pure commercial buildings had been developed in this part of Portland Street, notwithstanding the rezoning of the area to “C” since 1993. There was an ‘organic’ growth of mixed use developments along Portland street by themselves;
- (e) the issue of mixed use development was re-examined in the MetroPlan Review Study (2003). According to the study, mixed uses could promote a livelier ambience as compared with areas with homogeneous uses. Moreover, residential and office uses were complementary to each other in terms of their demands on the transport system, i.e. their different trip generation pattern helped balance the direction of traffic flows at peak hours. As a result of the study, a new zoning was introduced, i.e. “Other Specified uses” annotated “Mixed Use” to cater for the trend of mixed uses developments;

[Mr. Clarence W.C. Leung returned to join the meeting at this point.]

- (f) given that Portland Street was a relatively narrow street of 9m wide, there was doubt if it should act as a dividing line between commercial development on the east side and residential development on the west. It was considered more desirable from the urban design and air ventilation aspects to develop the site into a predominantly residential building which would have a less bulky form than a commercial development;

- (g) the proposal would not set an undesirable precedent as there was only a limited number of sites along Portland Street that would be suitable for residential development. Those sites facing the main road were subject to severe traffic noise and air nuisance while those at corner locations with high pedestrian flow were more likely to be developed for commercial use;
- (h) the section 16 planning application system would help promote mixed uses and avoid the need for site specific zoning on the OZPs. By rigidly confining the use of the site to the planning intention of the “C” zone, it would defeat the purpose of the section 16 application system which was to allow for flexibility;

[Professor Edwin H.W. Chan arrived to join the meeting at this point.]

- (i) comparing the size of land sale sites for commercial use which had a site area of at least 2,500m<sup>2</sup>, the application site had a site area of only 375m<sup>2</sup> which was too small for commercial use;
- (j) Nathan Road was the commercial spine in this part of Kowloon, not Portland Street. Although the site was located within a street block with one side facing onto Nathan Road, the application site itself only faced onto Portland Street; and

[Miss Annie K.L. Tam arrived to join the meeting at this point.]

- (k) the approval of the application would not reduce the supply of commercial floor space as there were a lot of supply coming on stream from the Energizing Kowloon East proposals, rezoning of sites from “Industry” to “Other Specified Uses” annotated “Business” (“OU(B)”) and the redevelopment or conversion of industrial buildings for commercial use.

22. Mr. Roger Nissim made the following main points:

- (a) when the site was first zoned “C” on the OZP back in 1993, there was a legitimate concern about the availability of land suitable for commercial development away from Central. As time progressed, the need for the application site to be zoned “C” had been superseded;
- (b) since 2001, with the introduction of the “OU(B)” zoning covering about 580 industrial buildings, the change of use from industrial to office/commercial was permitted. This had resulted in a surge in the change of use of old industrial buildings, providing a large pool of decentralized office space;

[Mr. B.W. Chan left the meeting temporarily at this point.]

- (c) the original concern on the shortage of space for commercial development was resolved by government policy that encouraged the private sector to provide commercial space in areas such as Kowloon Bay and Kwun Tong where many industrial buildings had been replaced by modern Grade A offices;
- (d) making reference to the 2012-13 Budget Speech, the Government policy was to maintain a stable and sufficient supply of business sites. In 2011-12, 320,000m<sup>2</sup> of commercial floor space was provided by land sales and another 410,000m<sup>2</sup> of industrial floor space was released for commercial use through redevelopment or wholesale conversion of industrial buildings. There were also plans to develop Kowloon East into another major business district with office floor space to be increased from the current 1.4 million m<sup>2</sup> to 5.4 million m<sup>2</sup>. In this respect, a large amount of land for commercial use would be available such that the loss of the small-sized application site for commercial use was relatively insignificant; and
- (e) unless the application site could be connected to another site with a frontage onto the commercial spine of Nathan Road, the site would not be

suitable for commercial use and would unlikely be so developed.

[Ms. Anita Ma left the meeting at this point.]

23. A Member said that although the site might not be suitable for development into Grade A offices, there were demand for Grade B or Grade C offices, some of which were found at Portland Street. In response, Mr. Roger Nissim said that the size of the site, which was only about 375m<sup>2</sup>, was too small for a commercial development. In general, a floor plate of 1,000m<sup>2</sup> to 2,000m<sup>2</sup> was required for a commercial development to be efficient from the internal design point of view as adequate space needed to provided for the lift core, staircases and other building services.

24. In response to the Vice-Chairman's enquiry on the proposed plot ratio of the development, Mr. Kenneth To clarified that the plot ratio of the proposed development was 8.4, as stated in the TPB paper.

[Mr. B.W. Chan returned to join the meeting at this point.]

25. A Member enquired about the planning merits that could be achieved by developing the site into residential use. In response, Mr. Kenneth To said that a mixed use development in this location was desirable and the Board should allow an organic growth of mixed use buildings along Portland Street instead of adhering rigidly to the land use zoning delineation with one side of Portland Street for commercial use and the other side for residential use. Moreover, as the application site was located in the middle of that section of Portland Street away from the road junction, it was not subject to adverse traffic noise impact and was suitable for residential development. He also indicated that the plot ratio of the residential development was only 8.4 which would result in a less massive built form than that of a commercial development with a maximum plot ratio of 12. Besides, a wall effect would be created along the eastern side of Portland Street if all lots, including the application site, were developed for commercial use. By granting approval for a residential development on the eastern side of Portland Street, some variation in the street frontage would be introduced and the urban landscape and air ventilation along Portland Street would be improved.

26. As the applicant's representatives had no further comment to make and Members had no further question to raise, the Chairman informed them that the hearing procedures for the review had been completed and the Board would further deliberate on the application in their absence and inform the applicant of the Board's decision in due course. The Chairman thanked the applicant's representatives and PlanD's representative for attending the meeting. They left the meeting at this point.

#### Deliberation Session

27. The Chairman said that the application site was too small for a commercial development with an efficient design. The proposed residential development would to some extent help to alleviate the current shortage in housing supply.

28. A Member agreed that the site was too small for an office development. As it appeared that the potential to amalgamate the neighbouring lots for redevelopment was small, that Member considered that the application could be approved.

29. While agreeing that the size of the site was not ideal for an office development, a Member considered that it was also too small for residential use, noting the relatively small size of the flats proposed. Besides, that Member did not agree that all office developments required a large floor plate as there was also demand for Grade C office space by small and medium-sized enterprises which normally needed offices that were small in size. The consideration should be on whether the planning intention of the "C" zone should be applicable for the whole street block or should only be restricted to the side facing Nathan Road.

30. Another Member had no preference on either commercial or residential use at the application site as the surrounding area was a vibrant and mixed use area.

[Mr. Maurice W.M. Lee arrived to join the meeting at this point.]

31. A Member considered that as the "C" zone covered the street blocks on both sides of Nathan Road, the planning intention was to allow the gradual extension of the Nathan Road commercial spine onto Portland Street. In this respect, approving the



application would set an undesirable precedent as the residential development would become an obstacle for the future extension of the commercial activities.

32. A Member said that the application should be considered based on the merits of the scheme. Although the applicant claimed that the residential development would bring about air ventilation and visual benefits, these merits would unlikely be realised as the existing developments on the other side of the street block facing Nathan Road had already blocked the views and air flow to the application site. That Member considered that the applicant had not provided strong justification to support the application.

33. In view of the current shortage of housing supply, a Member was sympathetic to the application in considering that the proposed development had provided small flats that were properly designed despite the small size of the site. As Yau Ma Tei was an area of mixed uses, greater flexibility in terms of land use should be permitted. Regarding the possible precedent effect, the same Member considered that as no similar applications had been submitted in the past, it was unlikely that many cases would follow if the subject application was approved.

34. A Member said that the planning intention to designate the area as “C” zone in 1993 was clear and if the planning intention was considered to be out-of-date, the Board should review the planning intention, including whether the current zoning was too rigid and whether greater flexibility should be incorporated, before giving consideration to the planning application.

35. The Chairman said that although the planning intention of the site was for commercial development, ‘Flat’ was a use under Column 2 of the Notes which meant that residential developments might be permitted on application to the Board. The Secretary supplemented that the KDS had already indicated that the area on both sides of Nathan Road was intended for commercial development while the inner area was for residential use. ‘Flat’ was a Column 2 use under “C” zone where residential development might be permitted on application to the Board based on individual merits of each case. The Secretary pointed out that for the subject application, some Members considered that the proposed development would increase the supply of small size flats. However, it was also noted that residential development had never been approved on either side of Nathan Road

while some proposals for commercial development within the “R(A)” zone in the vicinity had been approved. The Board should consider whether planning permission for a residential development along Portland Street, away from Nathan Road, should be granted.

36. A Member said that the application should be supported as it would enhance the mixed use characteristics of the area. The application site was suitable for residential use as it was located at the part of Portland Street which was relatively quiet and less commercialized.

[Professor P.P. Ho left the meeting at this point.]

37. A Member was concerned about the precedent effect if the application was approved. The Member did not support the application as the applicant failed to demonstrate the planning merits of the proposal.

38. A Member said that as there was a back lane between the application site and the site fronting onto Nathan Road, there was little opportunity for the two sites to be amalgamated. That Member also said that the part of Portland Street where the application site was located, unlike the area near Langham Place, was more residential in nature.

39. A Member said that it would be better for the Board to review the overall planning intention of the area, in particular whether a mixed use zoning was more appropriate rather than considering the current application as a test case. Another Member agreed and said that the overall planning intention of the area should be reviewed as it was uncertain whether more office space or residential flats should be planned for in the area.

40. A Member commented that since ‘Flat’ was a Column 2 use under the Notes of “C” zone and the residential development would not cause any problems, the application should be approved. That Member considered that the application site was not suitable for office development.

41. Another Member, however, considered that given the small size of the site, only a limited number of flats would be produced and the design would unlikely be desirable. In this respect, that Member considered that it would be more appropriate to retain the site

for commercial development.

[Mr. Eddie K.S. Hui left the meeting at this point.]

42. A Member noted that no government department had any objection to the proposed development. That Member considered that approval of the application would unlikely cause any precedent effect as other sites along Portland Street might not be suitable for residential use in view of their potential traffic noise problem. The same Member considered that the application could be supported.

43. A Member said that if the current application was approved based on its merits, it could become a precedent for other similar applications. Two other Members agreed that the application should be supported as the proposed residential development was in response to the community aspiration for housing supply and concerned government departments had no objection to the application.

44. Another Member, however, said that the Board should be careful on the setting of undesirable precedent and should be convinced that the granting of approval to the current application would not result in a change in the land use for the whole area. For the subject application, the chance of setting an undesirable precedent was small in view of its special circumstances including its location in the middle and not the corner of the street block, and the presence of a back lane which lowered the chance of amalgamation with the adjoining sites.

45. Mr. Jimmy C.F. Leung said that the current application would unlikely set an undesirable precedent as most of the planning applications in this area were for commercial developments within the “R(A)” zone rather than residential development within the “C” zone because of the lower plot ratio for residential developments. He also said that the presence of a service lane would not become an obstacle for the amalgamation of sites as the service lane could be diverted. The low chance of site amalgamation for this case would probably be due to the relatively new developments surrounding the application site.

46. The Chairman concluded that the majority of Members considered that the application should be supported as ‘Flat’ was a Column 2 use under the “C” zone and

residential development was not in contravention with the planning intention of the “C” zone but each application would be considered by the Board based on its individual merits. Members generally considered that the residential development would unlikely affect the supply of commercial floor space, but could increase the supply of small-sized flats and the approval of the application would not set an undesirable precedent as each case would be considered based on its individual merits and taking into account of comments from concerned government departments.

47. Miss Annie K.L. Tam said that if the application was approved, Members should take note of the fact that the applicant was not required to seek lease modification to implement the proposed residential development and hence the approval conditions could not be stipulated in the lease.

48. After further deliberation, the Board decided to approve the application on review, on the terms as submitted to the Town Planning Board. The permission should be valid until 3.2.2016 and, after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the following conditions:

- (a) the submission and implementation of a landscape proposal to the satisfaction of the Director of Planning or of the Town Planning Board; and
- (b) the provision of fire service installations and water supplies for fire fighting to the satisfaction of the Director of Fire Services or of the Town Planning Board.

49. The Board also agreed to advise the applicant of the following:

- (a) the approval of the application did not imply that any proposal on building design elements to fulfil the requirements under the Sustainable Building Design Guidelines, and any proposal on bonus plot ratio and/or gross floor area (GFA) concession for the proposed development would be approved/granted by the Building Authority.

The applicant should approach the Buildings Department direct to obtain the necessary approval. If the building design elements and the GFA concession were not approved/granted by the Building Authority and major changes to the current scheme were required, a fresh planning application to the Board might be required;

- (b) to note the Director of Fire Services' comments that the arrangement of emergency vehicular access should comply with Part VI of the Code of Practice for Means of Access for Fire Fighting and Rescue; and
- (c) to note the Chief Engineer/Railway Development 2-2, Railway Development Office, Highways Department's comments that the proposed development fell within the railway protection boundary for existing railway line. The applicant should consult MTRCL on full details of the development and to comply with their requirements with respect to the operation, maintenance and safety of the railway line.

[Mr. K.Y. Leung and Ms. Pansy L.P. Yau left the meeting at this point.]

[Mr. Timothy K.W. Ma left the meeting temporarily at this point.]

### **Agenda Item 5**

[Open Meeting]

Request for Deferral for Review of Application No. A/K13/276

Proposed Religious Institution (Temple) in "Green Belt" zone, 3 Shun Lee Tsuen Road (KX 2171) and adjoining Government land, Kwun Tong, Kowloon

**(TPB Paper No. 9000)**

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[The hearing was conducted in Cantonese.]

50. The following Members had declared interests on the item:

Ms. Maggie M.K. Chan - had current business dealings with the

applicant.

Mr. Raymond Y.M. Chan - had current business dealings with Swire Properties Ltd. (one of the applicant's consultants, Oriental Landscapes Ltd., being a subsidiary of Swire Properties Ltd.).

51. Members noted that Ms. Maggie M.K. Chan had left the meeting. As the item was for the deferral of the consideration of the application, Members agreed that Mr. Raymond Y.M. Chan could stay at the meeting.

52. The Secretary reported that on 12.1.2012, the applicant wrote to the Secretary of the Board and requested the Board to defer making a decision on the review application for two months in order to allow time for discussion with government departments to address their concerns.

53. Members noted that the justifications for deferment met the criteria set out in Town Planning Board Guidelines No. 33 in that the applicant needed more time to resolve the technical issues with relevant government departments, the deferment period was not indefinite, and that the deferment would not affect the interests of other relevant parties.

54. After deliberation, the Board agreed to defer consideration of the application as requested by the applicant pending the submission of further information from the applicant. The Board agreed that the application should be submitted to the Board for consideration within three months upon receipt of the further submission from the applicant. The Board also agreed to advise the applicant that two months were allowed for the preparation of the submission of further information and no further deferment would be granted unless under very special circumstances.

## **Agenda Item 6**

[Open Meeting]

Request for Deferral for Review of Application No. A/YL-PS/350

Temporary Open Storage and Workshop (Dismantling and Storage of Reusable/Disused

Computers) for a Period of 3 Years in “Green Belt” and “Undetermined” zones, Lots 3246(part), 3247(part), 3248(part), 3249(part), 3251(part), 3252(part), 3335(part), 3336(part), 3337(part), 3338(part) and 3339(part) in D.D.124, Tin Sam, Hung Shui Kiu, Yuen Long, New Territories

**(TPB Paper No. 9002)**

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[The hearing was conducted in Cantonese.]

55. The Secretary reported that on 13.1.2012, the applicant wrote to the Secretary of the Board and requested the Board to defer making a decision on the review application for two months in order to allow time for him to prepare further information including responses to local objections.

56. Members noted that the justifications for deferment met the criteria set out in Town Planning Board Guidelines No. 33 in that the applicant needed more time to prepare documentation for the review, the deferment period was not indefinite, and that the deferment would not affect the interests of other relevant parties.

57. After deliberation, the Board agreed to defer consideration of the application as requested by the applicant pending the submission of further information from the applicant. The Board agreed that the application should be submitted to the Board for consideration within three months upon receipt of the further submission from the applicant. The Board also agreed to advise the applicant that two months were allowed for the preparation of the submission of further information and no further deferment would be granted unless under very special circumstances.

[Mr. Raymond Y.M. Chan and Mr. Benny Y.K. Wong left the meeting at this point.]

**Agenda Items 7 to 11**

[Open Meeting (Presentation and Question Session only)]

Consideration of Representations to the Draft Kennedy Town & Mount Davis Outline Zoning Plan No. S/H1/19, the Draft Chai Wan Outline Zoning Plan No. S/H20/18, the Draft South West Kowloon Outline Zoning Plan No. S/K20/26, the Draft Fanling/Sheung

Shui Outline Zoning Plan No. S/FSS/15 and the Draft Ping Shan Outline Zoning Plan No. S/YL-PS/13

**(TPB Paper No. 9004)**

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[The hearing was conducted in Cantonese.]

Presentation and Question Session

58. The following Member had declared interests on these items:

Mr. Laurence L.J. Li - owned a property at Smithfield Road,  
Kennedy Town

59. Members noted that Mr. Laurence L.J. Li had already left the meeting.

60. The Chairman said that sufficient notice had been given to invite the representers to attend the hearing, but they had either indicated not to attend the hearing or made no reply. As sufficient notice had been given to the representers, Members agreed to proceed with the hearing in their absence.

61. The following representatives from the Planning Department (PlanD) were invited to the meeting at this point:

Ms. Maggie M.Y. Chin Chief Town Planner/Town Planning Board ,PlanD  
Ms. Donna Y.P. Tam Senior Town Planner/Town Planning Board,  
PlanD

62. The Chairman extended a welcome and invited the representatives of PlanD to brief Members on the representations.

63. With the aid of a Powerpoint presentation, Ms. Donna Tam made the following main points as detailed in the Paper:

Background



- (a) on 30.6.2011, the draft Chai Wan OZP No. S/H20/18 and the draft Fanling/Sheung Shui OZP No. S/FSS/15 were exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance) while the draft Kennedy Town & Mount Davis OZP No. S/H1/19, the draft South West Kowloon OZP No. S/K20/26, the draft Sha Tin OZP No. S/ST/25 and the draft Ping Shan OZP No. S/YL-PS/13 were exhibited for public inspection under section 7 of the Ordinance;
- (b) the amendments incorporated in the OZPs were related to the revision to the Notes for the “Industrial” (“I”) zone of the OZPs by adding, where appropriate, the uses of “Eating Place” (not elsewhere specified), “Institutional Use (not elsewhere specified)”, “Public Clinic” and “Training Centre” under Column 2 of the user schedule to increase flexibility for changes of uses in wholesale conversion of existing industrial building);
- (c) during the two-month exhibition period, two representations were received in respect of the draft Kennedy Town & Mount Davis OZP, five representations were received in respect of the draft Chai Wan OZP and one representation was received in respect of each of the other four OZPs. On 16.9.2011 and 23.9.2011, the representations received were published for public comments and in the first three weeks of the publication periods, one comment was received in respect of the representation to the draft South West Kowloon OZP. On 5.12.2011, the representer withdrew the representation in respect of the draft Sha Tin OZP;
- (d) on 23.12.2011, the Board decided that representations R2 (part) and R3 (part) and representations R4 and R5 to the draft Chai Wan OZP commenting on the preservation of the Chai Wan Factory Estate were invalid as they were not related to the amendments incorporated in the Notes of the OZP concerned. The Board also decided that comment C1 in respect of the representation to the draft South West Kowloon OZP was also invalid as it was concerned with the future land use and planning of the reclaimed land within the planning scheme boundary and was not

related to the amendments incorporated in the Notes of the OZP concerned. Moreover, the Board decided that the valid representations R1 and R2 in respect of the draft Kennedy Town & Mount Davis OZP, representation R1 and the remaining parts of representations R2 and R3 in respect of the draft Chai Wan OZP, and representation R1 in respect of the draft South West Kowloon OZP, the draft Fanling/Sheung Shui OZP and the draft Ping Shan OZP, should be heard collectively by the Board in view of the similar nature of the representations;

### The Representations

- (e) representations R1 and R2 in respect of the draft Kennedy Town & Mount Davis OZP were submitted by Designing Hong Kong Limited (DHKL) and an individual respectively. While R1 supported the revision to the Notes of the “I” zone, R2 opposed the revision;
- (f) representations R1, R2 (part) and R3 (part) in respect of the draft Chai Wan OZP were submitted by DHKL, an individual and Mr. Lui Chi Man (a former District Councillor) respectively. While R1 and R2 (part) supported the revision to the Notes of the “I” zone, R3 (part) opposed the revision;
- (g) representation R1 in respect of the draft South West Kowloon OZP, the draft Fanling/Sheung Shui OZP and the draft Ping Shan OZP was submitted by DHKL, supporting the revision to the Notes of the “I” zone;

### Grounds of Representation

#### *Representation R1 in respect of all the five OZPs*

- (h) the representer (DHKL) supported the revision to the Notes for the “I” zone and urged the Board and related departments to review the number and distribution of arts, culture, entertainment, events uses and the related and supporting services in industrial buildings and to consider the impact of the concerned amendments on these uses;

*Representation R2 in respect of the draft Kennedy Town & Mount Davis OZP*

- (i) the representer opposed to the revision to the Notes for the “I” zone and considered that if the ‘Eating Place (not elsewhere specified)’, ‘Institutional Use (not elsewhere specified)’, ‘Public Clinic’ and ‘Training Centre’ uses were required, the concerned “I” sites should be changed to government use;

*Representation R2(part) in respect of the draft Chai Wan OZP*

- (j) the representer supported the revision to the Notes for the “I” zone without giving any reason;

*Representation R3(part) in respect of the draft Chai Wan OZP*

- (k) the representer opposed to the revision to the Notes for the “I” zone without giving any reason;

Representers’ proposals

- (l) none of the representers proposed any amendment to the five OZPs;

Responses to Grounds of Representation

*Representation R1 in respect of all the five OZPs*

- (m) R1’s support to the revision to the Notes of the “I” zone was noted;
- (n) regarding the representer’s concerns on the arts, culture, entertainment, events uses and the related and supporting services in industrial buildings, the Secretary for Home Affairs (SHA) advised that in 2010, the Hong Kong Arts Development Council (HKADC) had conducted the “Survey on the Current Status of Industrial Buildings for Arts Activities and Future Demand” (the Survey). Besides assessing the number and distribution of arts and cultural activities in industrial buildings, the Survey had also examined the status of arts practitioners/groups currently housed in industrial buildings, the potential demand and the relevant

considerations on using industrial building space. The Survey had also looked into the difficulties and constraints faced by the arts occupants;

- (o) SHA was of the view that some members of the arts sector would likely have concerns over the resultant rent hike for industrial premises that might affect existing arts practitioners in industrial premises. To address such concerns, it was advisable to have greater flexibility in the use of industrial buildings under wholesale conversion which might facilitate the legitimate use of industrial premises for arts and cultural activities. In this respect, the amendments to the Notes would increase the flexibility for change of uses in wholesale conversion of existing industrial building;

*Representation R2 in respect of the draft Kennedy Town & Mount Davis OZP*

- (p) on the representers' point that the "I" sites should be changed to government use if the revisions to the Notes were required, it should be noted that the current revision to the Notes for the "I" zone was to increase the flexibility for change of uses in wholesale conversion of existing industrial buildings by way of obtaining planning permission from the Board. The current amendment related only to the Notes of the OZP and would not affect the zoning of the concerned "I" sites;

*Representation R2 (part) in respect of the draft Chai Wan OZP*

- (q) the representer's support to the revision to the Notes for the "I" zone was noted; and

*Representation R3 (part) in respect of the draft Chai Wan OZP*

- (r) it was noted that the representer opposed to the revision to the Notes for the "I" zone without giving any reason.

64. Noting that some art groups were holding concerts in industrial premises, a Member enquired whether the current amendments would facilitate such activities. In response, Ms. Donna Tam said that as 'Place of Recreation, Sports or Culture' was already a Column 2 use under the "I" zone, the art groups could always submit a planning application for art or cultural activities in industrial buildings even before the current amendments were

in place. Miss Annie K.L. Tam said that although the art groups could submit applications for holding concerts in industrial buildings, the Director of Fire Services would often object to such applications due to fire safety concerns.

65. In response to a Member's enquiry on the number of applications received under the revitalisation of industrial buildings policy and their locational distribution, Miss Annie K.L. Tam said that 40 applications for the redevelopment or wholesale conversion of industrial buildings had been approved by LandsD and 60 applications were under processing. She did not have information on the location of the applications in hand, but she would provide the information to the Secretariat after the meeting, if necessary.

66. As Members had no more questions to raise, the Chairman thanked the representatives of PlanD for attending the hearing. They left the meeting at this point.

[Mr. Felix W. Fong left the meeting at this point.]

### Deliberation Session

67. A Member commented that when the results of the "Survey on the Current Status of Industrial Buildings for Arts Activities and Future Demand" were being considered by the HKADC, Members of the HKADC generally did not support the policy to revitalise industrial buildings. According to the Survey, art practitioners/groups were housed in industrial premises due to the relatively cheap rental. Even though some of the art studios in industrial buildings were provided with self-contained toilets and were likely being used illegally for residential purposes, their existence should be tolerated. That Member said that since the announcement of the policy to revitalise industrial buildings, some of the art practitioners/groups were forced out of the industrial premises because of the rental hike. The same Member considered that industrial premises were suitable for use of art studios as they might need a high headroom or involve the handling of dangerous goods in their production process. The Government should reconsider the type of uses that should be permitted within industrial buildings with a view to catering for the needs of the art practitioners/groups. That Member also considered that the term "industrial" used in the lease which was still defined as the manufacture of goods, was out-of-date as it would not be able to cater for the more modern forms of manufacturing, such as the manufacturing

of music.

68. The Secretary said that the Board had been updating the uses permitted under the “Industrial” zone from time to time in the last 20 years to cater for the changing needs of the industry, such as the inclusion of information technology and telecommunications industries and office for design and media production.

69. In response to the Member’s further enquiry about the definition of “industrial”, Miss Annie K.L. Tam explained that there was a need to differentiate between the planning regime and the regime under the lease. While the “Industrial” zoning under the planning regime could be updated to cater for changes in the needs of the industry, the user term specified under the lease could not be changed as that was part of the contract signed at the time when the lease was executed. In this respect, any change to the use of an industrial building to non-industrial use would need to go through a lease modification process or by way of a waiver.

70. A Member said that it would be onerous for any art practitioner or his/her landlord to first seek planning permission from the Board and then lease modification or waiver from LandsD. The Secretary clarified that any person could submit a planning application and there was one case in Fo Tan where an application had been submitted for the wholesale conversion of an industrial building into a centre for art and cultural activities.

[Mr. Timothy K.W. Ma returned to join the meeting at this point.]

71. Mr. Jimmy C.F. Leung said that uses such as ‘Broadcasting, Television and/or Film Studio’, ‘Place of Entertainment’, ‘Place of Recreation, Sports or Culture’ and ‘Private Club’ were already provided under Column 2 of the Notes of the “Industrial” zone. In this respect, there was a channel for art practitioners to apply for planning permission for carrying out art and cultural activities within industrial buildings.

72. The Chairman concluded the discussion and noted that Members generally agreed to note the supporting views submitted by R1 in respect of all the five OZPs and those submitted by R2 (part) in respect of the Chai Wan OZP. Members also agreed not to uphold representation R2 in respect of the Kennedy Town & Mount Davis OZP and

representation R3 (part) in respect of the Chai Wan OZP.

### **Draft Chai Wan OZP**

#### Representation No. R1 and R2 (part)

73. After further deliberation, the Board noted the supportive views of representations R1 and R2 (part).

#### Representation No. R3

74. After further deliberation, the Board decided not to uphold representation R3 (part) for the following reason that there was no reason given in substantiating the representer's opposition to the revision to the Notes for the "Industrial" zone.

### **Draft Kennedy Town & Mount Davis OZP**

#### Representation No. R1

75. After further deliberation, the Board noted the supportive views of representation R1.

#### Representation No. R2

76. After further deliberation, the Board decided not to uphold representation R2 for the following reason that the amendment to the Notes for the "Industrial" ("I") zone of the OZP was to increase the flexibility for change of uses in wholesale conversion of existing industrial buildings, subject to planning permission. The current amendment related only to the Notes of the OZP without affecting the zoning of the concerned "I" sites.

### **Draft Fanling/Sheung Shui OZP**

### **Draft Ping Shan OZP and**

### **Draft South West Kowloon OZP**

#### Representation No. R1

77. After further deliberation, the Board noted the supportive views of representation R1.

[Miss Annie K.L. Tam left the meeting at this point.]

78. As per the Chairman's suggestion, Members proceeded to consider Agenda Items 13 to 18 on procedural related matters before the lunch break.

### **Agenda Item 13**

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Further Representations to the Draft Tseung Kwan O Outline Zoning Plan No. S/TKO/19

#### **(TPB Paper No. 9006)**

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[The meeting was conducted in Cantonese.]

79. The following Members had declared interests on this item:

Mr. Benny Y.K. Wong - the proposed SENTLF extension project was  
(as Deputy Director of under the purview of the Environmental  
Environmental Protection) Protection Department.

Mr. Fletch W.W. Chan - being an alternate Member of the Board of  
(as the Principal Assistant Directors of MTRCL which was one of the  
Secretary (Transport)) representers (R2475).

Mr. Felix W. Fong ) had current business dealings with Cheung  
Professor P.P. Ho ) Kong (Holdings) Ltd./Hutchison Whampao  
Ltd. (CKH/HWL) who was a joint venture  
partner with MTR Corporation Ltd.  
(MTRCL) for the LOHAS Park development  
in the vicinity of the proposed South East  
New Territories Landfill (SENTLF)

80. Members noted that Mr. Fletch W.W. Chan had not yet arrived to join the meeting and Mr. Benny Y.K. Wong, Mr. Felix W. Fong and Professor P.P. Ho had already



left the meeting.

81. The Secretary briefly introduced the Paper. Further to the hearing of the representations and comments in respect of the Tseung Kwan O OZP No. S/TKO/18 relating to the SENTLF extension proposal, the proposed amendments to the OZP in respect of the revised proposal for the SENTLF Extension were gazetted under section 6C(2) of the Ordinance on 16.12.2011. Two further representations were received from two Sai Kung District Councillors – Mr. Cheung Kwok Keung (who also submitted representation No. R2444) and Mr. Chau Yin Ming (who also submitted representation No. R2458). The two further representations were submitted by the same original representers, and the Board had decided to make the proposed amendments after giving consideration to their representations. In accordance with section 6D(3)(b) of the Ordinance, the further representations should be regarded as invalid and should be treated as not having been made.

82. After deliberation, the Board agreed that the further representations received were invalid and should be treated as not having been made. As the further representations were invalid, no meeting for consideration of the further representations would be required.

#### **Agenda Item 14**

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations and Comments to the Draft Tai Po Outline Zoning Plan No. S/TP/23

#### **(TPB Paper No. 9008)**

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[The meeting was conducted in Cantonese.]

83. The following Members had declared interests on this item:

Mr. Stanley Y.F. Wong - co-owned with his spouse a flat and two car parks in Tai Po

Dr. W.K. Yau - owned some properties and land in Tai Po

Dr. W.K. Lo

- owned properties in Tai Po

84. As the item was procedural in nature and no deliberation was required, Members agreed that the above Members could stay at the meeting.

85. The Secretary briefly introduced the Paper. On 12.8.2011, the draft Tai Po Outline Zoning Plan No. S/TP/23 was exhibited for public inspection under section 7 of the Town Planning Ordinance. During the 2-month exhibition period, 879 representations were received. On 11.11.2011, the representations were published and, in the first three weeks of the publication period, 3 public comments were received. As the representations were mainly related to the rezoning of a site in Area 6 to the east of Classical Gardens II from “Government, Institution or Community” to “Residential (Group B)” which had attracted wide local interests, it was suggested that the representations should be heard by the full Board and the hearing should be held collectively in one group.

86. The Secretary also reported that representation R879 supported the imposition of the building height restriction of 55m in Tai Po Hui. As the representation was not related to any amendment made to the OZP, it should be regarded as invalid and should be treated as not having been made.

87. After deliberation, the Board agreed to the proposed hearing arrangement for the consideration of representations and comments as detailed in paragraph 3 of the Paper. The Board also agreed that representation R879 supporting the building height restriction in Tai Po Hui was invalid and should be treated as not having been made.

### **Agenda Item 15**

[Open Meeting]

Information Note and Hearing Arrangement for Consideration of Representations and Comments to the Draft Luk Wu and Keung Shan Development Permission Area Plan No. DPA/I-LWKS/1

**(TPB Paper No. 9007)**

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[The meeting was conducted in Cantonese.]

88. The Secretary briefly introduced the Paper. On 2.9.2011, the draft Luk Wu and Keung Shan Development Permission Area (DPA) Plan No. DPA/I-LWKS/1 was exhibited for public inspection under section 5 of the Town Planning Ordinance. During the 2-month exhibition period, 451 representations were received. On 25.11.2011, the representations were published for public comments and, in the first three weeks of the publication period, 3 public comments were received. As the DPA Plan had attracted much public and local interests, it was recommended that the representations and comments should be heard collectively in one group by the full Board.

89. After deliberation, the Board agreed to the proposed hearing arrangement for the consideration of representations and comments as detailed in paragraph 2 of the Paper.

#### **Agenda Item 16**

[Open Meeting]

Submission of the Draft Shek Kwu Chau Outline Zoning Plan No. S/I-SKC/1A to the Chief Executive in Council for Approval Under Section 8 of the Town Planning Ordinance

#### **(TPB Paper No. 9012)**

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[The meeting was conducted in Cantonese.]

90. The following Members had declared interests in the item as the representations in respect of the draft OZP were mainly related to the proposed Integrated Waste Management Facilities (IWMF) at Shek Kwu Chau:

Mr. Benny Y.K. Wong (as Deputy Director of Environmental Protection)	-	the proposed IWMF was under the purview of the Environmental Protection Department
Professor Paul Lam	)	being members of the Advisory Council on the
Dr. W.K. Lo	)	Environment (ACE) which had endorsed the
Ms. L.P. Yau	)	Environmental Impact Assessment (EIA) report

Dr. W.K. Yau ) for the proposed IW MF

91. As the item was procedural in nature and no deliberation was required, Members agreed that the above Members could stay at the meeting.

92. The Secretary briefly introduced the Paper. On 29.4.2011, the draft Shek Kwu Chau OZP No. S/I-SKC/1 was exhibited for public inspection under section 5 of the Ordinance. During the 2-month exhibition period, 33 representations were received. On 15.7.2011, the representations were published for public comments and, in the first three weeks of the publication period, four comments were received.

93. On 17.1.2012, after giving consideration to the representations, the Board decided not to propose any amendments to the draft OZP to meet the representations. As the plan-making process had been completed, the draft Shek Kwu Chau OZP was ready for submission to the Chief Executive in Council (CE in C) for approval.

94. After deliberation, the Board agreed:

- (a) that the draft Shek Kwu Chau OZP No. S/I-SKC/1A together with its Notes at Annex A and Annex B of the Paper were suitable for submission under section 8 of the Ordinance to the CE in C for approval;
- (b) to endorse the updated Explanatory Statement (ES) for the draft Shek Kwu Chau OZP No. S/I-SKC/1A at Annex C of the Paper as an expression of the planning intention and objectives of the Board for various land-use zones on the draft OZP and issued under the name of the Board; and
- (c) that the updated ES for the draft Shek Kwu Chau OZP No. S/I-SKC/1A was suitable for submission to CE in C together with the draft OZP.

**Agenda Item 17**

[Closed Meeting]

95. This item was recorded under confidential cover.

**Agenda Item 18**

[Closed Meeting]

96. This item was recorded under confidential cover.

97. The meeting was adjourned for lunch break at 12:40 p.m.

98. The meeting was resumed at 2:30 p.m.

99. The following Members and the Secretary were present in the afternoon session:

Mr. Thomas Chow

Chairman

Mr. Stanley Wong

Vice-chairman

Mr. K.Y. Leung

Mr. Felix W. Fong

Professor Edwin H.W. Chan

Mr. Timothy K.W. Ma

Professor P.P. Ho

Mr. Clarence W.C. Leung

Mr. Roger K.H. Luk

Deputy Director of Environmental Protection

Mr. Benny Y.K. Wong

Principal Assistant Secretary (Transport)

Mr. Fletch W.W. Chan

Director of Lands

Miss Annie K.L. Tam

Director of Planning

Mr. Jimmy C.F. Leung

## **Agenda Item 12**

[Open Meeting (Presentation and Question Session only)]

Consideration of Further Representations to the Draft Ngau Tau Kok and Kowloon Bay  
Outline Zoning Plan No. S/K13/26  
(TPB Papers 8932)

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[The hearing was conducted in Cantonese.]

### **Presentation and Question Session**

100. The following Members had declared interests on the item:

- |                       |  |
|-----------------------|--|
| Mr. K.Y. Leung        | - senior programme director, University of Hong Kong (HKU) SPACE   |
| Dr. James C.W. Lau    | - adjunct professor of HKU, Department of Civil Engineering  |
| Prof. Edwin H.W. Chan | - visiting lecturer / teaching and external examiner to HKU and SPACE  |
| Professor S.C. Wong   | - professor, Department of Civil Engineering, HKU & External Examiner, HKU SPACE<br>- had business dealings with Ove Arup and Partners Hong Kong Ltd. who represented R6 |

101. Members noted that Dr. James C.W. Lau had tendered apologies for not being able to attend the meeting and Professor S.C. Wong had left the meeting. Members agreed that the other Members who had declared interest due to their affiliation with the HKU were indirect and should be allowed to stay in the meeting, as they were not associated with the Department of Architecture and Department of Mechanical Engineering of HKU who were consultants of R6.

102. As sufficient notice had been given to the further representers and related representers and commenter to invite them to attend the meeting, Members agreed to proceed with the hearing of the further representations in the absence of the other further

representers and related representers who had indicated that they would not attend or had made no reply.

103. The following government representatives, the further representers, related representers and commenter and their representatives were invited to the meeting at this point:

Mr. Eric Yue	District Planning Officer/Kowloon, Planning Department (DPO/K, PlanD)
Mr. Richard Siu	Senior Town Planner/Kowloon, PlanD
Dr. Conn Yuen	PlanD's Air Ventilation Assessment Consultant, (CO <sub>2</sub> nnsulting Ltd.)

F2 – Li Kit Yin, Kitty (Kwun Tong Mid Area Committee member)

Ms. Li Kit Yin, Kitty	Further Representer
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F3 – Lam Man Fai Wong Tai Sin District Councillor

Mr. Lam Man Fai	-	Further Representer
Ms. Audrey Eu	)	
Mr. David Yeung	)	Representative
Mr. Calvin Chiu	)	

R6 - Oriental Generation Ltd.

Mr. Jacky Wong	-	Representer
Ms. Alice Wong	]	Representative
Ms. Bowie Wong	]	
Ms. Audrey Eu	]	
Mr. Jonathan Lee	]	
Mr. Philip Wong	]	
Prof. Stephen S.Y. Lau	]	
Dr. Zhiwen Luo	]	
Mr. Ibanez Gutierrez, Ricardo	]	



Andres

Mr. Ivan Lam	]
Mr. Clarence C.T. Chan	]
Ms. Yeung Wing Shan, Theresa	]
Ms. Kan Ka Lo, Carol	]
Ms. Leung Ming Yan, Natalie	]
Mr. Leung Yin Cheung, Barton	]
Mr. Tsoi Chi Yin	]

R7 - Harmonizing Committee for the Joint Property Sale of Kai Tak Mansion

Blocks One to Four

Mr. Chung Siu Kong	Representer
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R1051 – Lu Wai Yiu, Adrian

Mr. Lu Wai Yiu, Adrian	Representer
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R1306 - Ngau Chi Wan Village Society Limited

Mr. Cheung Ling Chung	Representer
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R1307 - The Resident Union of Ping Shek Estate

Mr. Ho Kwok Yin	Representer
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R1308 – Choi Hung Estate Social Service Association

Ms. Yip Man Fong	Representer
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R1313 – Tse Kam Wing

Tse Kam Wing	Representer
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C1 - Chan Pak Li

Dr. Chan Pak Li	Commenter
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104. The Chairman extended a welcome and explained the procedures of the hearing. He then invited Mr. Richard Siu to brief Members on the further representations.

105. With the aid of a powerpoint presentation, Mr. Richard Siu made the following main points as detailed in the TPB paper:

Background

- (a) on 19.11.2010, the draft Ngau Tau Kok and Kowloon Bay Outline Zoning Plan (OZP) No. S/K13/26, incorporating amendments mainly to impose building height restrictions (BHRs) on various development zones outside Kowloon Bay Business Area; to designate non-building areas (NBA) and building gaps in various zones; and to rezone a number of sites was exhibited for public inspection under section 5 of the Town Planning Ordinance (the Ordinance). Upon expiry of the statutory exhibition periods of the OZP and the representations, a total of 1,313 representations and one comment were received. However, nine persons subsequently wrote to the Board indicating that they had not submitted the representations;
- (b) after giving consideration to the representations and the comment on 27.5.2011 and 1.6.2011, the Town Planning Board (the Board) decided to partially meet one representation (R4) in relation to the “OU” annotated “Mass Transit Railway Depot with Commercial and Residential Development Above” and 1,299 valid representations (R6 to R169, R171 to R238, R240 to R283, R285 to R302, R304 to R552, R554 to R856, R858 to R980, R982 to R986, R988 to R1093, R1095 to R1313) in relation to the “Residential (Group A)” zone (“R(A)”) zone of the Kai Tak Mansion Site (the Site) and did not uphold the remaining representations;
- (c) on 30.6.2011, the proposed amendments, including revision to paragraph (1) of the Remarks of the Notes for the “OU” annotated “Mass Transit Railway Depot with Commercial and Residential Development Above” zone to indicate that the maximum gross floor area shall not exceed the figures stipulated in the Notes or the gross

floor area of the existing building, whichever is the greater; and revision to the maximum BHR stipulated for Kai Tak Mansion from 110mPD to 130mPD, were published;

- (d) upon expiry of the 3-week publication period of the proposed amendments, a total of 286 further representations were received. All further representations opposed amending the BHR of the Site from 110mPD to 130mPD and the majority (F3 to F152 and F154 to F286) proposed that the BHR should be further relaxed. However, one person (F153) subsequently wrote to the Board indicating that he had not submitted the further representation;
- (e) on 26.8.2011, the Board decided to hear the further representations without resorting to the appointment of a Representation Hearing Committee, and that no hearing of further representation would be conducted for the further representation in relation to the “OU” annotated “Mass Transit Railway Depot with Commercial and Residential Development Above” zone as no adverse further representation had been received;
- (f) in the meantime, the Metro Planning Committee (MPC) of the Board had agreed to incorporate some technical amendments to rezone three sites along Tai Yip Street and Wai Yip Street from areas shown as ‘Road’ to “OU” annotated “Business” zone and a site along Choi Hei Road from “R(A)” to “Open Space” (“O”) to reflect as-built conditions and the lot boundaries. On 14.10.2011, the draft Ngau Tau Kok and Kowloon Bay OZP No. S/K13/27 (OZP No. S/K13/27), incorporating the technical amendments, was exhibited for public inspection under section 7 of the Ordinance;
- (g) there were three judicial reviews pertaining to the draft OZP :
  - (i) HCAL 58/2011 - the Real Estate Developers’ Association of Hong Kong (REDA), representation No. 2 (R2), filed a judicial review on 25.7.2011 against the Board’s decision of not

upholding its representations in respect of four OZPs including the Ngau Tau Kok and Kowloon Bay OZP No. S/K13/26;

- (ii) HCAL 62/2011 - the Oriental Generation Limited (OGL), representation No. 6 (R6), filed a judicial review on 5.8.2011 against the Board's decision of not fully meeting its representation in respect of the draft Ngau Tau Kok and Kowloon Bay OZP No. S/K13/26 (OZP No. S/K13/26); and
- (iii) HCAL 109/2011 - OGL filed another judicial review on 31.12.2011 against the Board's decision to gazette the draft Ngau Tau Kok and Kowloon Bay OZP No. S/K13/27 (OZP No. S/K13/27) that had inherited identical restrictions in relation to the Site as introduced by OZP No. S/K13/26;
- (iv) the Court granted leave to HCAL 58/2011, HCAL 62/2011 and HCAL 109/2011 on 27.7.2011, 8.8.2011 and 3.1.2012, respectively. The applicants of the judicial review had sought and the Court had ordered by consent interim stay of the submission of the OZP No. S/K13/26 and OZP No. S/K13/27 to the Chief Executive in Council pending the final determination of the judicial review proceedings;
- (h) the subject of the further representation hearing was only about the proposed amendment to the BHR of the Site from 110mPD to 130mPD. Other development restrictions on the Site had been fully deliberated at the representation hearing;

#### Planning Considerations and Assessments

##### *Subject Site and its Surrounding Areas*

- (i) the Site was zoned "R(A)" on OZP No. S/K13/26 and subject to a maximum PR of 9 for a building that was partly domestic and partly

non-domestic, of which the domestic PR should not exceed 7.5. A maximum BHR of 110mPD was originally imposed on the Site. Two 10m-wide NBAs were designated along the north-eastern and south-eastern site boundaries and a 20m-wide building gap was designated in the middle of the Site with a BHR of 15mPD;

- (j) the Site had a total area of about 5,707m<sup>2</sup> and was occupied by an old private residential development with building age of about 50 years. The Site was located at 53 to 55 Kwun Tong Road, about 350m to the south-east of the Mass Transit Railway (MTR) Choi Hung Station. The development comprised four 7-storey residential blocks (about 27.7mPD at main roof level) with retail shops, workshops and vacant premises on ground floors;
- (k) Kai Tak Mansion was located in the Ngau Tau Kok and Jordan Valley sub-area to the east of Kwun Tong Road. The proposed building height profile for the residential developments to the east of Kwun Tong Road mainly followed the topography by stepping up gradually eastward and northward towards Jordan Valley and the foothill of Kowloon Peak with planned BHRs ranging from 60mPD to 180mPD taking into account the site formation level uphill;
- (l) the Site was located at a site level of about 5mPD and was situated within a unique low-rise cluster. The Site was surrounded by mainly low-rise developments including historic buildings, open spaces and a school;
- (m) to the immediate north and north-east of the Site were the 2-storey Grade 1 historic building cluster of the ex-Royal Air Force (ex-RAF) Officers' Quarters Compound, which comprised two buildings and some structures at a site level of 27.7mPD and separated from the site by a 10m-wide slope within the Site. A large open space, Ping Shek Playground, and a "Green Belt" ("GB") area were located further north-east of the Site. To its immediate south-east was the 8-storey

St. Joseph's Anglo-Chinese Primary School with an existing building separation from Kai Tak Mansion by about 6m. To its north-west were a local open space, Kwun Tong Road Children's Playground, and the 1-storey Sam Shan Kwok Wong Temple which was a Grade 3 historic building. To its west across Kwun Tong Road were another 2-storey Grade 1 historic building, the ex-RAF Headquarters Building, a proposed district open space and Kai Yip Estate (existing building height at 59.6mPD);

*Building Height Review*

- (n) in conducting the building height review for the Ngau Tau Kok and Kowloon Bay Area (the Area), PlanD had taken into account a host of relevant planning considerations, including the existing topography, site formation levels, the local character, existing townscape and building height profile, the local wind environment, the compatibility in terms of building height with the surrounding areas including the building heights of the adjoining Ngau Chi Wan, Kai Tak and Kwun Tong OZPs, the need to balance between public aspirations for a better living environment and private development rights, the stepped building height concept, permissible development intensity under the OZP, recommendations of the AVA Study, and urban design principles in the Urban Design Guidelines in Chapter 11 of the Hong Kong Planning Standards and Guidelines (HKPSG);
- (o) the Area in general fell within the view fans of the vantage points at Quarry Bay Park and the new wing of the Hong Kong Convention and Exhibition Centre (HKCEC) (both being vantage points identified for ridgeline protection in the Urban Design Guidelines in the HKPSG). The building height profile of the Area had taken into account the urban design guidelines for preservation of a 20% building-free zone of the ridgelines of Kowloon Peak when viewed from both vantage points;
- (p) the BHR for the Site was formulated, amongst other things, on the

basis of urban design and visual considerations. The BHR of 110mPD for the Site was formulated with regard to a number of visual and urban design considerations, such as the proposed building height should be compatible with the character of the neighbourhood and the proposed building height of developments should provide a compatible setting for the historic buildings to avoid overshadowing and dwarfing effects on the heritage features;

*Air Ventilation Assessment prepared by Planning Department*

- (q) an air ventilation assessment (AVA) by Expert Evaluation was conducted for the Area as part of the OZP review (PlanD's AVA study). The Site was identified as an area of concern in the said AVA study. Notwithstanding the presence of some open spaces and the "GB" area, the lower building height of the existing Kai Tak Mansion, and that the Site and its surrounding areas currently enjoyed good air ventilation brought about by the prevailing north-eastern annual wind and prevailing south-western summer wind; redevelopment of the Site up to the proposed BHR of 110mPD might block the prevailing wind and had adverse impact on the air ventilation of the ex-RAF Officers' Quarters Compound site at its rear and other low-rise neighbours;
  
- (r) two redevelopment options were formulated by PlanD in order to assess the air ventilation impact:
  - (i) a baseline option with a building height of 105mPD, a 3m-wide separation from the adjoining school, a 10m-wide separation from the ex-RAF Officers' Quarters Compound which was occupied by a slope and a gap of 5.3m between the building blocks; and
  - (ii) an alternative option with a building height of 105mPD, two 10m-wide NBAs along the north-eastern and south-eastern

boundaries serving as buffers from the adjoining historic buildings and school, and a building gap of 20m above the podium at 13.6mPD in the central part of the Site;

- (s) PlanD's AVA study pointed out that:
  - (i) for the baseline option, the large-scale podium would reduce the downdraft attributed by the residential tower. That would minimize the ventilation on Kwun Tong Road and would not allow south-westerlies to reach the ex-RAF Officers' Quarters Compound. As a result, the ex-RAF Officers' Quarters Compound and part of the adjoining open space and school would lie in the wake region of the development with no or little air movement. In general, the baseline option caused significant negative impact on air ventilation as compared to the existing scenario; and
  - (ii) for the alternative option, it would provide better air ventilation to the vicinity compared to the baseline option. The NBA adjacent to the school would encourage downdraft to reach the ground level and ventilate the area with easterlies. The 20m-wide building gap at 13.6mPD would encourage the south-westerlies and north-easterlies to permeate, and the AVA Study recommended widening of the building gap to 24m ideally to further improve the ventilation;

#### The Proposed Amendment of the BHR on the Site

- (t) in considering the relevant representations and comment in respect of the Site at its meetings on 27.5.2011 and 1.6.2011, the Board noted that the Director of Lands had advised that the slope area in the north-east of the Site could be included for gross floor area (GFA) calculation as the leases governing the Site did not contain any GFA



and NBA restrictions and it appeared that the slope could be included for GFA calculation under the leases;

- (u) in order to accommodate the additional GFA arising from the slope area, i.e. about 8,280m<sup>2</sup>, the Board proposed to relax the BHR of the Site (with site formation level of 4.6mPD) from 110mPD to 130mPD;
- (v) taking into account that the area in the immediate vicinity of the Site was subject to BHRs of 80mPD and 100mPD (with site formation levels at 4.8mPD to 10mPD), and the area further uphill such as Choi Tak Estate was subject to BHRs of 160mPD and 170mPD (with site formation levels at 40mPD to 60mPD), the Board considered that increasing the BHR of the Site to 130mPD would still be broadly in line with the stepped building height profile;

#### Further Representations

##### F1

- (w) F1 opposed the relaxation of the BHR of the Site from 110mPD to 130mPD for the reason that the existing BHR of 110mPD was already higher than those of most neighbouring sites, which were 80mPD or 100mPD;

##### F2

- (x) F2 supported the proposed amendment in relation to the “Other Specified Uses” annotated “Mass Transit Railway Depot with Commercial and Residential Development Above” zone;
- (y) F2 also opposed the proposed amendment to the BHR of the Site from 110mPD to 130mPD as no justification was provided for the

proposed amendment to the BHR. F2 had not specified whether the BHR should be relaxed or more restrictive;

### F3

- (z) F3 opposed the proposed amendment to the BHR of the Site from 110mPD to 130mPD and proposed the BHR to be further relaxed. The major grounds of further representation and proposal of F3 were summarised in paragraphs 2.7 and 2.8 of the TPB Paper and highlighted below:

#### *Grounds on Air Ventilation*

- (i) the amendment of the BHR from 110mPD to 130mPD could not improve the air ventilation in the district and could not provide flexibility to owners and investors for redevelopment of the Site to be compatible with the local cultural character and the historic context of the Site;
- (ii) F3's AVA consultant - Environ Hong Kong Limited had submitted an Expert Opinion on AVA (at Enclosure IV(c) of the TPB Paper) and had the following views:
- the Site was not of regional importance in terms of air ventilation performance. South-westerlies were considered less important in this area. There were existing open space and Government, institution or community (GIC) sites for penetration of south-westerlies. It was considered not necessary to designate any measure within the Site to improve air ventilation performance;
  - it was not justifiable to arbitrarily improve air ventilation for one site in sacrifice of another site without any overriding public interest;

- it was not usual to impose the strict controls on a site of limited size without achieving a purpose to benefit the public;
  - it was not considered appropriate to make any conclusion that a specific width of building gap was ‘ideal’ without supporting information (e.g. parametric analysis by quantitative AVA); and
  - there were various other options to improve the air ventilation performance (e.g. a 2-tower scheme presented in the AVA report submitted by R6). It was pre-mature to specify building gap and NBA in the draft OZP without consideration of other improvement measures;
- (iii) since the 20m-wide building gap designated on the Site was not a major breezeway as recorded in paragraph 258 of the minutes of the Board’s meeting on 27.5.2011, it was doubtful if the building gap was essential and would improve the district air ventilation;

*Others Grounds of Further Representation*

- (iv) there was ample distance between neighbouring estates and the Site. High-rise residential building would not block sunlight penetration. Excessive restriction on the building height of the Site would force the redevelopment to be bulkier, adversely affecting wind penetration in the area and creating visual obstruction;
- (v) the proposed redevelopment of Kai Tak Mansion would provide opportunity for the provision of footbridge connection to link up MTR Choi Hung Station with the

historic cluster in the area and connect to the future Kai Tak development. R6's proposed Arc de Triumph's twin tower with a void between the two towers would provide a visual relief between the redevelopment and the historic building at the back, enhance the visual quality of the historic building and provide opportunity for revitalizing the historic cluster; and

- (vi) the BHR of 100mPD for most buildings in the area would lead to monotonous building clusters, a lack of visual diversity and confinement of redevelopments to be of residential nature. While concurring with the Board's view that distinct architectural design should not be dictated by the Board, architects should be provided with flexibility to design with excellence. The BHR of the Site should be further relaxed to allow more flexibility for redevelopment of the Site and thereby benefiting the wider community;

*F3's Proposal*

- (vii) F3 requested for further relaxation of the BHR and building gap requirement on the Site to provide more design flexibility but had not specified how much the respective restrictions should be relaxed;

F4 to F152 and F154 to F286

- (aa) F4 to F152 and F154 to F286 opposed the proposed amendment to the BHR of the Site from 110mPD to 130mPD. The major grounds and proposals of those further representations were summarised in paragraphs 2.9 to 2.11 of the TPB Paper and highlighted below:

*Grounds of Further Representations*

- (i) the BHR of 130mPD could not provide design flexibility for the redevelopment to be compatible with the surrounding area and to preserve the historic clusters. In spite of the Government's good intention, the BHR should respect practical development needs and constraints. Otherwise, it would result in incompatible building cluster. BHR of 130mPD for Kai Tak Mansion could not help preserve the historic cluster near the Site. Further relaxation of BHR should be considered to provide greater design flexibility (F4 to F69)
- (ii) redevelopment of Kai Tak Mansion was inevitable as it was in a dilapidated condition. The redevelopment would provide opportunity for visual connections and pedestrian connectivity of the two ex-RAF historic buildings currently blocked by Kai Tak Mansion, thereby enhancing the historic value of the historic cluster (F4);
- (iii) the general BHR of about 100mPD for most buildings in the Area created monotonous rather than diverse building cluster and skyline. The BHR would confine redevelopments to be of residential nature, and that would adversely affect the overall development and living condition of the community. The BHR should be further relaxed to allow design flexibility so that the redevelopment would provide greening and open space for the community and set a benchmark for urban redevelopment (F70 to F151);
- (iv) the BHR of 130mPD for the Site was unreasonable. Public housing such as the Lower Ngau Tau Kok Estate in Ngau Tau

Kok and Yau Lai Estate in Yau Tong were up to 40-storey high. The BHR of 130mPD was more restrictive and much lower than the BHR of the public housing estates. The Board should further relax the BHR of the Site (F152 and F154 to F206);

- (v) slim and high-rise buildings would not create wall effect. Redevelopment of Kai Tak Mansion up to a building height of 200m would not block the sunlight and wind penetration to surrounding residences. On the contrary, bulky and low-rise development would block air ventilation. The BHR should be further relaxed so as not to impede the redevelopment of Kai Tak Mansion by small and medium-sized developers (F207-F234);
  
- (vi) large developers monopolised the real estate market. Middle-income Hong Kong citizens were unable to purchase apartments and ineligible for public housing. Introducing more small and medium-sized developers to the market, especially if they would not build walled buildings, would lower the market price of apartments and allow middle income group to purchase their own flats. Adjoining a hill slope, the Kai Tak Mansion redevelopment would not create wall effect. BHR of 130mPD would increase the developer's cost of redevelopment, which in turn would adversely affect the price of individual flats. The BHR should therefore be further relaxed (F235 to F286);

*Further Representatives' Proposal*

- (vii) F4 to F152 and F154 to F286 requested for further relaxation of BHR of the Site. However, they had not specified how much the BHR should be relaxed;

PlanD's Responses to the Grounds and Proposals of the Further Representations

F1 and F2 (part)

*Responses to Grounds and Proposals*

- (bb) PlanD's responses to the grounds of F1 and F2 (part) were summarised in paragraphs 3.14 to 3.16 of the TPB Paper and highlighted below:
- (i) the BHR for the Site had taken into account the maximum permissible plot ratio (PR) and the proposed development restrictions of the Site;
  - (ii) the relaxation of BHR for the Site from 110mPD to 130mPD was to accommodate the additional GFA permissible arising from the inclusion of the slope area at the back of Kai Tak Mansion for PR calculation; and
  - (iii) the Board considered that the BHR of 130mPD for Kai Tak Mansion would be compatible with the planned building height profile for the Area, avoid developments with excessive height while accommodating the development intensity of individual sites permitted under the OZP;

F3 to F152 and F154 to F286

*Responses to Grounds of Further Representations*

- (cc) PlanD's responses to the grounds of F3 to F152 and F154 to F286 were summarised in paragraphs 3.17 to 3.34 of the TPB Paper and

highlighted below:

*Adverse Effects of Excessive Restriction on Building Height (F3 and F207 to F286)*

- (i) BHRs per se would not necessarily result in bulkier or walled buildings affecting air ventilation. The BHRs were formulated based on reasonable assumptions and flexibility was allowed in the shape and form of the buildings;
- (ii) building design was determined by the interplay of a host of factors such as PR, site coverage, building height, design and disposition of buildings and the geometry of the Site. The BHR would not necessarily result in large building bulk;
- (iii) the assumption that BHR would compress a building and hence increase its bulkiness without attempting for a change in design was only quoting an extreme case. Given the general tendency to maximise the best views in certain direction and at higher floors as well as higher storey height, any proposal for very tall building could give the same or greater bulkiness at pedestrian level when compared to a development with BHR, in addition to the imposing effects on pedestrians;
- (iv) the building height of 203mPD for the Site as proposed by R6 was considered excessive and out-of-context. The Chief Town Planner/Urban Design and Landscape (CTP/UD&L), PlanD commented that the overall building height of 203mPD, through adoption of two towers and a void podium deck design, was incompatible with the building height of the surrounding developments, the building height profile and the façade of about 198m tall and over 80m wide would be very imposing and create overshadowing and dwarfing effects on the adjacent low-rise buildings, in particular the adjoining



heritage features;

- (v) there was provision for application for minor relaxation of the BHRs under the OZP to cater for development/redevelopment with planning and design merits. The criteria for consideration of such applications, as stated in paragraph 7.13 of the Explanatory Statement, included the provision of innovative building design, separation between buildings, better streetscape and good quality street level public urban space. Any innovative scheme with planning and design merits would be duly considered by the Board in accordance with such criteria. Further relaxation of the BHR needed to be fully justified and demonstrated by a scheme to be considered by the Board;

*Grounds on Air Ventilation Aspect (F3)*

- (vi) the BHR for the Site was formulated, amongst other things, on the basis of urban design and visual considerations. Air ventilation was merely one of the considerations. The maximum BHR of 110mPD was imposed so as to minimize overshadowing/ dwarfing effect of the proposed high-rise development on the adjoining low-rise buildings, as well as to maintain compatibility of the overall building height profile in the surrounding area. The subsequent relaxation of BHR from 110mPD to 130mPD was to accommodate the additional GFA permissible arising from the inclusion of the slope at the back of Kai Tak Mansion for PR calculation;
- (vii) PlanD, in consultation with the AVA consultant, had the following responses to the Expert Opinion on AVA submitted by F3 (at Enclosure IV(c) of the TPB Paper):
- it had been identified in PlanD's AVA study that

breezeways permeated from Kai Yip Estate in the south-westerlies and pass through both sides of the Site which were open space and low-rise GIC facilities and continued from the ex-RAF Officers' Quarters Compound behind to further north-east. South-westerlies were summer prevailing winds and were not less important. Suitable mitigation measures should be adopted to ensure that the south-westerlies would not be affected by the future redevelopment of the Site;

- PlanD's AVA study had assessed the likely micro wind environment in the vicinity of the Site, and stated that the Hong Kong Baptist University Academy of Visual Arts (the ex-RAF Officers' Quarters Compound) would lie in the wake (i.e. area with no or little air movement) of Kai Tak Mansion with diminished air ventilation if no NBA or building gap were imposed on the Site. According to PlanD's AVA consultant, F3's Expert Opinion also shared the same view in section 4.2 of their report that there would be significant negative ventilation impact in the immediate downwind location of the Site. Part of the Kwun Tong Road Children's Playground and St. Joseph's Anglo-Chinese Primary School, which were located in the immediate downwind location of the Site, would also lie in the area with little air movement;
- in the formulation of the restrictions for the Site, PlanD had taken account of relevant planning considerations. An assessment was conducted by PlanD to ascertain the impact of the BHRs on the development intensity as permitted under the OZP. The restrictions for the Site

were intended to achieve an optimal building height profile and enhance the visual quality and air ventilation environment of the Site and its surrounding areas. The restrictions were for the public good and in the interest of the community;

- the 20m-wide building gap was proposed with due regard to the site conditions, topography, local wind environment, impact on the permitted development intensity of the Site and the need to minimise the visual obstruction of the view to and from the ex-RAF Officers' Quarters Compound. The building gap ran in the north-east / south-west directions in alignment with the prevailing wind direction and was generally parallel to the south-eastern and north-western boundaries of the Site to minimise the impact on the disposition of the building blocks over the podium. There could be many possible schemes and PlanD's notional scheme was by no means exhaustive, but any development / redevelopment with a greater mass would adversely impact the wind regime of the surroundings compared to the existing scenario;
- PlanD's AVA consultant advised that the AVA prepared by R6's consultant was a brief exploratory exercise and had not followed the Technical Circular on AVA Guidelines (HPLB Technical Circular No. 1/06 and ETWB Technical Circular No. 1/06) laid down by the Hong Kong Government (AVA Guidelines). The results and conclusions from R6's AVA report as mentioned in F3's Expert Opinion could not be relied on and the results were insufficient to support the proposed high-rise twin tower of up to 203mPD;

*Opportunity for Provision of Physical and Visual Linkages in the Redevelopment (F3, F4 to F152 and F154 to F286)*

- (viii) there was no detailed proposal on how to link up the three historic buildings with MTR Choi Hung Station and the Kai Tak development in the further representations. A relaxed BHR would not guarantee the provision of wider building gap (visual linkage) and physical linkages to the adjacent heritage features;
- (ix) the NBAs and building gap stipulated for the Site would provide a more open vista when viewed from the ex-RAF Officers' Quarters Compound, allow for a more permeable built form as seen from Kwun Tong Road and serve the purpose for air ventilation. The building gap and NBAs requirements were stipulated to open up views to and from the adjacent historic buildings and to avoid development with typical long continuous façade at the Site;

*Monotonous Building Clusters (F3 and F70 to F151)*

- (x) the claim that most buildings were of BHR of 100mPD was not correct. An optimal stepped building height profile ranging from 60mPD to 120mPD along Kwun Tong Road, which respected the unique low-rise and historic setting of the Site and minimized the visual impact on the surrounding area, was adopted in the OZP. It would not lead to monotonous building clusters;
- (xi) whether there would be visual diversity depended on design excellence of individual buildings taking account of the development parameters provided for each site, which had considered the adjoining and wider area context and public

expectations;

- (xii) to allow for design flexibility and to provide incentive for development/redevelopments with planning and design merits, minor relaxation of the BHRs might be considered by the Board based on individual merits of the development proposal. Minor relaxation provision had made allowance for the adjustment of the height as well as the alignment, width and/or design of the building gap;

*Architectural / Design Flexibility (F4 to F69)*

- (xiii) restrictions for the Site were to serve planning purposes of achieving a good urban form, respecting the unique historic and low-rise setting of the Site, and addressing the possible adverse visual and air ventilation impacts on the surrounding historic buildings, open spaces and school;
- (xiv) slimmer buildings through more relaxed BHRs should not be the sole consideration for design flexibility and for development of quality buildings. Instead, CTP/UD&L, PlanD advised that design flexibility could be achieved by innovative architectural design and landscape treatment of a development proposal;
- (xv) the BHR could accommodate the permissible development intensity of the Site stipulated on OZP and allow a broad stepped building height profile for the Area. Further substantial increase in building height as proposed by some further representers would undermine the integrity of the building height profile and would not be appropriate in the local context;
- (xvi) there was provision for application for minor relaxation of the

BHRs under the OZP to cater for development/redevelopment with planning and design merits;

*Further relaxation of BHR for greening and open space purposes (F70 to F151)*

- (xvii) the BHRs did not preclude the incorporation of green features or open space, innovative architectural features and a reasonable floor-to-floor height for development/redevelopment;

*Comparison with Public Housing Developments (F152 and F154 to F206)*

- (xviii) the absolute building heights of the public housing estates near the Site ranged from about 110m to 130m. The Lower Ngau Tau Kok Estate comprised three building height bands of 100mPD, 120mPD and 140mPD on a site formation level of about 4.8mPD to reflect the committed public housing development. The Site, which would be redeveloped as private housing, was of a BHR of 130mPD at a site formation level of about 4.6mPD and was broadly in line with the absolute building height of these public housing estates;

*Responses to Further Representers' Proposal (F3 to F152 and F154 to F286)*

- (dd) in view of the above considerations, the further representers' proposal for further relaxation of the BHR was not supported for the following reasons:
  - (i) the BHR of 130mPD was formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development intensity permissible under the OZP;
  - (ii) the relaxation of the BHR of the Site from 110mPD to

130mPD would still be broadly in line with the stepped building height profile;

- (iii) the proposal for further relaxation of the BHR should be justified by a scheme on design and planning merits. In the absence of a scheme from the further representers to demonstrate that it would not undermine the integrity of the building profile and create 'out-of-context' buildings, it was not desirable to further relax the BHR, in particular that the further representers had not specified to what extent the BHR should be further relaxed; and
  
- (iv) the building gap and NBA restrictions were not the subject of the proposed amendments to the draft OZP No. S/K13/26 arising from consideration of representations and comment. The imposition of BHR, NBAs and building gap requirements had struck a balance between public aspirations for a better living environment and private development right;

#### PlanD's Views

- (ee) to note the support of R2 (part);
  
- (ff) not to uphold F1, F2 (part), F3 to F152 and F154 to F286;

#### Follow-up Action

- (gg) should the Board decide to amend the Plan by the proposed amendments or the proposed amendments as further varied during the meeting, such amendments shall take immediate effect. Relevant government departments would be informed of the decision of the Board and would adopt the confirmed amendments to process any relevant submissions to be made to the Government; and

- (hh) the confirmed amendments shall be made available for public inspection until the Chief Executive in Council had made a decision in respect of the draft plan in question under section 9 of the Ordinance.

106. The Chairman then invited the further representers, the representers and commenter and their representatives to elaborate on the further representations.

[Mr. Clarence W.C. Leung returned to join the meeting at this point.]

F2 (Part) - Li Kit Yin, Kitty (Kwun Tong Mid Area Committee member)

(Ms. Li Kit Yin, Kitty)

107. Ms. Li Kit Yin, Kitty made the following made points:

- (a) the Board did not have sufficient justifications to relax the BHR on the Site;
- (b) according to paragraph 3.11 of the TPB Paper, the slope at the north-eastern perimeter was included as part of the Site under the lease but the lease had not stipulated any maximum GFA, PR, site coverage or NBA restrictions. The Director of Lands advised that it appeared that the slope area could be included for GFA calculation under the lease. The use of the word “appeared” was ambiguous and it meant that whether the slope area could be included for GFA calculation was uncertain. Hence, the Board had made its decision to relax the BHR on an uncertain assumption that the slope area could be included for GFA calculation. The Board should seek further clarification from the relevant authority on this uncertain assumption before deciding on the BHR;
- (c) as the slope area was accountable for an additional GFA of some 8,000m<sup>2</sup>, the original flat owners in Kai Tak Mansion should be compensated more as they had in the past paid for maintenance of the slope;



- (d) it should be clarified whether the developer or the future owners of flats in the redevelopment would bear the responsibility for future maintenance of the slope; and
- (e) she did not support the relaxation of the BHR due to the uncertainties she mentioned in her presentation.

F3 – Lam Man Fai (Wong Tai Sin District Councillor)

Mr. Lam Man Fai

Ms. Audrey Eu (representative)

Mr. Calvin Chiu (representative)

108. Mr. Lam Man Fai said that he had requested the Board to defer the further representation hearing which was originally scheduled in December 2011 as he was confused about the implications of the gazettal of OZP No. S/K13/27 on the further representation, which he submitted in respect of the proposed amendment to the BHR of the Site under OZP No. S/K13/26. He thanked the Board for acceding to his deferral request so that he had sufficient time to seek legal advice on the matter. He then invited Ms. Audrey Eu to make a presentation on the legal matters.

109. With the aid of a powerpoint presentation, Ms. Audrey Eu made the following main points:

- (a) she was representing Mr. Lam Man Fai to speak at the further representation hearing. She was also the legal representative of Oriental Generation Limited (OGL) (R6) for the two judicial reviews on the Site (HCAL 62/2011 and HCAL 109/2011);
- (b) whilst the further representation was mainly related to the proposed amendment to the BHR, the Board also needed to consider the other two restrictions, namely building gap and NBA requirements, as the three restrictions were inter-related;

- (c) her presentation would not be about whether OGL's proposed building height of 203mPD was right or not. She would present her views about the original BHR of 110mPD and the proposed BHR of 130mPD imposed on the Site as well as whether there should be any BHR on the Site given that there were the building gap and NBAs requirements;
- (d) she gave a brief background covering the following key matters:
  - (i) on 19.11.2010, OZP No. S/K13/26 was gazetted with three restrictions on the Site;
  - (ii) on 1.6.2011, after considering the more than 1,000 representations relating to the Site, the Board decided to propose amendment to the BHR of the Site from 110mPD to 130mPD. That proposed amendment was related to OZP No. S/K13/26;
  - (iii) on 14.10.2011, OZP No. S/K13/27 was gazetted with the original three restrictions (i.e. BHR of 110mPD, 20m building gap and two 10m-NBA at the north-eastern and south-eastern site boundaries) as shown on OZP No. S/K13/26. As the amendments incorporated in OZP No. S/K13/27 did not involve the Site, OGL and other persons having concerns about the Site could not submit any representations. The OZP No. S/K13/26 was currently in limbo. Mr. Lam Man Fai had written to the Board to request for an explanation about the gazettal of OZP No. S/K13/27 and how it would affect the further representation he submitted in respect of the proposed amendment to OZP No. S/K13/26, but there was no reply from the Board; and
  - (iv) the Board would decide whether to confirm or amend the BHR of 130mPD on the Site in respect of OZP No. S/K13/26 at the further representation hearing;

*Procedural Impropriety – Futile Hearing*

- (e) the further representation hearing held on the day was about OZP No. S/K13/26. However, it was clear from legal point of view that once OZP No. S/K13/27 was gazetted on 14.10.2011, it had become the law under the Ordinance;
- (f) she made a brief account of the Head Step case (Head Step Limited v Building Authority - CACV 131/1995). The owner of a site submitted several general building plans (GBP) which were rejected by the Building Authority. When the fourth GBP was being considered by the Building Authority, a new OZP was gazetted which amended the maximum PR restriction on the site from 15 to 12. The fourth GBP was rejected on the ground that the PR of 12 on the new OZP had to be complied with. The owner of that site lodged a judicial review on the ground that the fourth GBP was only a re-submission plan which was identical or similar to the GBPs previously submitted and the maximum PR of 15 permitted on the earlier version of that OZP should be followed. The Court of Appeal ruled that the fourth GBP could not be considered to be same as the previously submitted GBPs and that it should be considered based on the prevailing law. The Court decided that the new OZP that stipulated a maximum PR of 12 on that site was the prevailing law;
- (g) the Board had to follow the law. Since OZP No. S/K13/27 became the law, the legal status of OZP No. S/K13/26 was unclear. Similarly, it was unclear how the Board could still hold the further representation hearing in respect of OZP No. S/K13/26. The hearing was futile;
- (h) Mr. Lam Man Fai (F3) had written to the Board to seek clarification on why the Board had gazetted OZP No. S/K13/27 prior to holding the further representation hearing for OZP No. S/K13/26 and requested for a deferral of the further representation hearing. Mr. Lam got no reply from the Board;

- (i) notwithstanding, the legal representative of OGL (R6) had also written to the Board to seek clarification on similar matter about the effect of the gazettal of OZP No. S/K13/27 and had sought deferral of the further representation hearing. In the Board's replies, it was explained that the confirmed amendment regarding the BHR on the Site would take immediate effect on the day when the Board made a decision on the further representation under section 6H of the Ordinance. The confirmed amendments would be incorporated into the next version of the OZP;
- (j) section 6H of the Ordinance only dealt with OZP No. S/K13/26 and not OZP No. S/K13/27. However, according to the Ordinance, OZP No. S/K13/27 had replaced OZP No. S/K13/26 and became the law, and the BHR on the Site shown on OZP No. S/K13/27 was 110mPD and not 130mPD. F3 and others having concerns about the Site could not make a representation about the restrictions of the Site as shown on OZP No. S/K13/27, because the subject amendments were not related to the Site. The restrictions that should be applicable to the Site were unclear;
- (k) the Ordinance did not direct the Board as to how it could incorporate the confirmed amendment for an earlier OZP, as would be decided at the further representation hearing, into the next OZP. Even if the Board could incorporate the confirmed amendment for an earlier OZP into the next OZP, the Ordinance did not direct when the next OZP would be gazetted. Even if the Board gazetted the next OZP, there was no guarantee that the confirmed amendment for the Site would be adopted;
- (l) the Board had not clarified which section of the Ordinance would allow it to make the confirmed amendment for an earlier OZP immediately effective when the next OZP had been gazetted. This was not a matter of what the Board would do but what the provisions under the Ordinance were. Section 7 of the Ordinance only allowed the Board to make amendments to a draft plan. However, OZP No. S/K13/27 was gazetted

in the form of a new draft plan and not in the form of a schedule of amendment attached to No. S/K13/26. She reiterated that the planning proceedings in respect of the Site were in limbo;

- (m) it was unfair to all attendees as the further representation hearing was about OZP No. S/K13/26 but OZP No. S/K13/27 had already become the law. There was no legal obligation nor guarantee as to when the Board would gazette the next OZP and how the restrictions on the Site would be handled;
- (n) it was unsure how the further representation hearing in respect of OZP No. S/K13/26 could continue to be held after OZP No. S/K13/27 was gazetted. The Ordinance did not make provision as to how the confirmed amendment as decided at the further representation hearing could become effective under OZP No. S/K13/27;
- (o) two judicial reviews were lodged in respect of the Site (HCAL 62/2011 and HCAL 109/2011). The legal matters regarding the gazettal of OZP No. S/K13/27 was the subject of HCAL 109/2011. The Court had granted leave to both judicial reviews and this meant that the grounds for judicial reviews constituted arguable cases and there were chances for the OGL to succeed in the judicial reviews;

*Procedural Impropriety – Apparent Bias and Conflict*

- (p) the Board should conduct the representation hearing following basic principles of fairness. There was concern that the Board comprised many official Members, including representatives from PlanD. The representatives of DPO/K made the presentations but their superiors were Members of the Board;
- (q) with the aid of a powerpoint slide showing the organisation chart of PlanD, it was pointed out that both Miss Ophelia Wong (Deputy Director of Planning / District, PlanD) and Mr. T.K. Lee (Assistant Director of

Planning/Metro, PlanD) were present at the representation hearing held on 27.5.2011. Hence, whilst Mr. Eric Yue (DPO/K, PlanD) was PlanD's representative at the meeting, his superiors were involved in making the final decision. That constituted a major concern on fairness;

- (r) at the deliberation session of the representation hearing, Miss Ophelia Wong had expressed many views and answered many questions from Members. Paragraph references from the minutes of the representation hearing were listed on the powerpoint slide to demonstrate this point (the paragraphs listed were 172, 215, 224, 227-230, 234, 238, 242-243 and 245-246);
- (s) the representers were not present at the deliberation session when Miss Ophelia Wong answered Members' questions. That was a case of apparent bias. For justice seen to be done, Members should have asked the questions during the question and answer session so as to provide the representers with an opportunity to respond to the questions;
- (t) for this further representation hearing, it was hoped that Members' questions would be asked and answered in the presence of the attendees during the question and answer session;

[Mr. K.Y. Leung returned to join the meeting at this point.]

*Ultra Vires*

- (u) whilst the Board could impose BHRs on OZPs, if the imposition of development restrictions resulted in controls that exceeded what was empowered in the Ordinance, it would be *ultra vires*. This was one of the grounds of the judicial review lodged;
- (v) under the preamble, section 3(1)(a) and section 4 of the Ordinance, the Board's main control and considerations should be in the layout of areas and the types of buildings. The controls empowered to the Board and

the Building Authority under the relevant ordinances were clearly different. The Board was empowered under the Ordinance to consider broadbrush planning matters whereas the site-specific building design matters should be under the control of the Building Authority. That was supported by previous court rulings (the gist of the rulings of the *Crozet Ltd. v Attorney-General* [1973-76] HKC97 at 100E-F and *Wing On Company Limited v Building Authority* (CACV 168/1996) were shown on the powerpoint slide);

- (w) if the developer had to comply with the three OZP restrictions stipulated on the Site as well as all Building Regulations (such as prescribed windows and emergency vehicular access (EVA) requirements) and road setback requirements, there was no other alternative but to adopt a scheme with four bulky towers and a congested layout as that shown in the alternative option in Figure 33 of PlanD's AVA Study report (PlanD's alternative option). The alternative option was not a broadbrush schematic design but was a rather concrete proposal;
- (x) in PlanD's presentation at the meeting, Mr. Richard Siu (STP/K) had said that there could be innovative design by providing greening in the redevelopment. However, greening and provision of architectural features were not equivalent to allowing innovative building design;
- (y) from a building control perspective, the Building Authority had the power to refuse GBP with excessively tall buildings under section 16(1)(g) of the Buildings Ordinance. Hence, from a planning perspective, the Board should not impose such restrictions on the Site to the effect of dictating its design to a 4-tower scheme with bulky blocks and a congested layout. According to the advice of OGL's architect, even adopting the congested layout as shown in PlanD's alternative option, it was not possible to accommodate the permissible GFA under the OZP. Hence, imposition of the three restrictions on the Site were *ultra vires* as they dictated the building design and there was no scope to alter the positioning, configuration and number of towers. For example,

under the three restrictions, it was not possible for the developer to build a 2-tower scheme that had their main façades facing Kwun Tong Road and views to the harbour. The three restrictions dictated a 4-tower scheme as per that shown in PlanD's alternative option;

- (z) one of the planning considerations for imposing the development restrictions was to allow pedestrians on Kwun Tong Road to have views of the historic buildings to the east of the Site. However, with four towers built on a commercial podium, the historic buildings could only be seen at a specific location through the long and narrow building gap between the towers. The building gap imposed on the Site would not achieve the purpose for improving visual permeability to the historic buildings. As an alternative, requirements in the form of a permeability index to be stipulated in the Notes of the OZP might provide more design flexibility;
- (aa) Buildings Department had other guidelines on how to improve air ventilation. For example, the guidelines promulgated by the Buildings Department in 2011 only required a 7.5m setback from the site boundary. However, the OZP restrictions required 10m-wide NBAs along two boundaries of the Site. Furthermore, there was no similar requirement for the provision of NBA on the adjacent sites. That was very unfair to the owner of the Site. Other than stipulating NBAs, there were other means to achieve the air ventilation purpose and the project proponent should be allowed to provide their justifications at a later stage. For example, for GBP submissions, traffic impact assessments could be submitted by the project proponents to justify their proposed transport proposals; and
- (bb) there were better ways to achieve the planning purposes on the Site. The Board should not impose all three restrictions on the Site which stifled any design flexibility. For example, if the BHR restriction was removed and only the NBA and building gap requirements were retained, there would be much more design flexibility such as enabling a 2-tower



scheme. From air ventilation and visual permeability perspectives, a 2-tower scheme with taller and slimmer buildings would be better than a 4-tower scheme with lower and bulkier buildings.

110. Mr. Lam Man Fai made the following main points:

- (a) he opposed the amended BHR of 130mPD as it would not allow for better design;
- (b) there were important historic buildings in the vicinity of the Site, namely the ex-RAF Officers' Quarters Compound to the east and the Sam Shan Kwok Wong Temple to the north-west of the Site. It was currently difficult for the public to access these two historic buildings. Pedestrians along Kwun Tong Road currently could not see the ex-RAF Officers' Quarters Compound. The redevelopment on the Site created opportunities to provide physical and visual linkages to the nearby ex-RAF Officers' Quarters Compound;
- (c) the proposed BHR of 130mPD on the Site could not achieve better visual permeability to the historic buildings. It would result in four towers on the Site and the ex-RAF Officers' Quarters Compound would only be visible from a narrow gap between the towers. There were many other methods to achieve the planning objectives/intentions. If only two towers were built, the ex-RAF Officers' Quarters Compound would be more visible. Alternatively, a void similar to the design of the HSBC Building in Central might be considered to enhance visual permeability. A pedestrian linkage connecting the commercial podium of the redevelopment on the Site and the platform of the ex-RAF Officers' Quarters Compound could be built to improve pedestrian accessibility to the historic buildings;

[Ms. Annie K.L. Tam left the meeting temporarily and Mr. Roger K.H. Luk returned to join the meeting at this point.]

- (d) a landmark redevelopment on the Site could create synergy and attract more visitors to the area and the surrounding historic buildings; and
- (e) in the Kai Tak Development, two commercial towers with BHR of 175mPD were proposed to the south of The Latitude. The Wong Tai Sin District Council objected to the two commercial towers as they would block the views of The Latitude. A revised proposal to combine the floor space for the two towers into one taller tower was being studied. The revised proposal would reduce the visual impact on residents in The Latitude and improve air ventilation. The revised BHR for the single tower would likely be over 200mPD. Similar principle could be applied to the Site to allow for the building of two taller towers rather than four lower towers.

[Mr. Timothy K.W. Ma left the meeting temporarily at this point.]

111. With the aid of a powerpoint presentation, Mr. Calvin Chiu, the AVA consultant of F3, made the following main points:

- (a) he would further respond to PlanD's responses to the Expert Opinion on AVA submitted by F3 (their Expert Opinion). Their Expert Opinion was at Enclosure IV(c) of the TPB Paper and PlanD's responses were in paragraphs (d)(i) to (v) at Enclosure V of the TPB Paper;

*Paragraph (d)(i) in Enclosure V of the TPB Paper*

- (b) their Expert Opinion considered that the Site was not of regional importance in air ventilation terms and that south-westerlies were considered less important in the area. Hence, it was not necessary to designate any air ventilation improvement measures within the Site. PlanD's response was that breezeways permeated from Kai Yip Estate in the south-westerlies and passed through both sides of Kai Tak Mansion which were open space and low-rise GIC facilities and continued from

the ex-RAF Officer's Quarters Compound behind to further north-east. South-westerlies were summer prevailing winds and were not less important;

- (c) F3's further response was that even with buildings on the Site, south-westerlies could still pass through the surrounding open space and low-rise GIC facilities to areas in the north-east. Hence, it was doubtful that improvement measures were required on the Site. Moreover, south-westerlies were already blocked by Kai Yip Estate and Richland Gardens, and south-westerlies were not important for the local wind environment near the Site. To enhance the penetration of south-westerlies, proposals to improve permeability at the Kai Yip Estate would be more reasonable than imposing restrictions on the Site;

*Paragraph (d)(ii) in Enclosure V of the TPB Paper*

- (d) their Expert Opinion considered that it was not justifiable to arbitrarily improve air ventilation for one site in sacrifice of another without any overriding public interest. PlanD's response indicated that the NBA and building gap restrictions would reduce air ventilation impacts on the Kwun Tong Road Children's Playground and St. Joseph's Anglo-Chinese Primary School. Hence, the restrictions were for the public good and in the interests of the community;
- (e) F3's further response was that the Site was not important for the penetration of south-westerlies to the Kwun Tong Road Children's Playground (which was located to the north-west of the Site) and the St. Joseph's Anglo-Chinese Primary School (which was located to the south-east of the Site). Moreover, according to PlanD's AVA study, the NBA and building gap on the Site were solely for mitigating adverse air ventilation impacts on the Hong Kong Baptist University Academy of Visual Arts (the ex-RAF Officers' Quarters Compound) and not for mitigating adverse air ventilation impacts on the playground and the school. PlanD's response was inconsistent with the recommendations

of PlanD's AVA study;

*Paragraph (d)(iii) in Enclosure V of the TPB Paper*

- (f) their Expert Opinion doubted whether it was worthwhile to impose such strict development controls on the Site of small size given that those development controls could not benefit the public. PlanD's response was that the restrictions on the Site were intended to achieve an optimal building height profile and enhance the visual quality and air ventilation environment of the Site and its surrounding areas. F3's further response was that the development controls could not benefit the public, especially in air ventilation terms;

[Mr. Fletch W.W. Chan left the meeting temporarily at this point.]

*Paragraph (d)(iv) in Enclosure V of TPB Paper*

- (g) their Expert Opinion considered that there was no explanation to justify the exact dimensions of the NBA (10m) and building gap (20m). F3's further response was that the Building Department's Sustainable Building Design Guidelines (SBD Guidelines) (PNAP APP-152) had set out a dimension of 7.5m for setback requirements and other minimum requirements to be achieved for building setback (paragraphs 5(b) and 13 of the SBD Guidelines were highlighted on the powerpoint slide). In comparison, the width of the building gap and NBA stipulated on the Site were arbitrary and there was no explanation or support from the technical assessment as to how the dimensions were determined;

*Paragraph (d)(v) in Enclosure V of TPB Paper*

- (h) their Expert Opinion considered that there were many different ways to achieve a better air ventilation performance on the Site. He further made reference to HKU's air ventilation study prepared for R6 to assess the air ventilation impacts of a development scheme at 203mPD (which

was attached to F3's further representation and was at Enclosure IV(c) of the TPB Paper). He agreed with the conclusion of HKU's air ventilation study that the 203mPD scheme with two taller and slimmer towers would perform better in air ventilation terms and would reduce blockage of air ventilation to Kwun Tong Road; and

- (i) if the purpose was to benefit surrounding areas as mentioned in PlanD's response (i.e. the site occupied by the Hong Kong Baptist University Academy of Visual Arts, the Kwun Tong Road Children's Playground and the St. Joseph's Anglo-Chinese Primary School), then the proposed redevelopment on the Site should adopt a highly permeable design to reduce the blockage of wind in the south-westerly, north-westerly as well as south-easterly directions. A development with two towers with smaller building footprint and with setback from the site boundaries was a good design direction for facilitating wind penetration in all directions. A design similar to the HSBC Building in Central with a large gap at ground level could also facilitate wind penetration.

112. Mr. Lam Man Fai concluded that from a legal perspective, the development restrictions on the Site should allow scope for design flexibility. From air ventilation perspective, the redevelopment should adopt a more permeable design with taller and slimmer buildings. Adopting similar BHRs for sites in the area would lead to wall effect. The Site had special characteristics of being in close proximity to a number of historic buildings, and permitting a landmark building on the Site could create synergy for regeneration of the surrounding historic buildings. He indicated support for R6's development scheme at 203mPD.

113. With regard to the point raised in F3's presentation that the Board had not provided replies to Mr. Lam Man Fai's earlier letters dated 23.11.2011 and 1.12.2011, the Chairman said that the Board had replied on 28.11.2011 and 9.12.2011 respectively. As Mr. Lam Man Fai indicated that he had not received those letters, copies of the Board's letters were provided to him for record.

R6 - Oriental Generation Ltd. (OGL)

Mr. Ivan Lam (representative)

Professor Stephen Lau (representative)

Mr. Ibanez Gutierrez, Ricardo Andres (representative)

114. With the aid of a powerpoint point presentation, Mr. Ivan Lam made the following main points:

- (a) he would explain in his presentation why the BHR of 130mPD should be further relaxed;

*Public Views in the Representations and Further Representations*

- (b) 1,304 valid representations were received during the publication of OZP No. S/K13/26. Those representations were received from different parties, including residents living in the area, residents living in Kai Tak Mansion, the Harmonising Committee for the Joint Property Sale of Kai Tak Mansion Blocks 1 to 4, Concern Group on Winding-up Order of Kai Tak Mansion (Block 3), The Resident Union of Ping Shek Estate, Choi Hung Estate Social Service Association, Tse Wan Shan (East) Community Services Centre, Manager of Sam Shan Kwok Wong Temple, Ngau Chi Wan Village Society Limited and Lutheran Philip House. 99.62% of the representations opposed the BHRs on the Site, 79.98% of the representations opposed the BHRs as well as the NBAs and 20m-building gap requirements, and 72.7% of the representations proposed that development control on the Site could be exercised through the Buildings Ordinance;
- (c) 286 further representations were received during the publication of the the proposed amendments to the BHR of the Site from 110mPD to 130mPD. Those further representations were received from a number of parties, including residents living in the area, Wong Tai Sin District Councillor, Ngau Chi Wan Shop Owners' & Traders' Association, North

District Councillor, Yung Shing Tenants Association, 雙鳳街街市枱商協會, Hong Kong Vegetable Union and Healthy & Vital Association of North District. 99.3% of the further representations considered that the BHR on the Site should be further relaxed. The grounds of the further representations were relaxing the BHR was to facilitate the provision of more greening and open space, there would be wall effect affecting residents in Ping Shek Estate if the BHR was not further relaxed, and relaxation of BHR would allow more design flexibility;

*BHR Insufficient to Accommodate Permissible GFA*

- (d) the increase in BHR from 110mPD to 130mPD was only for accommodating the additional GFA arising from including the slope area for PR calculation. The GFA from the slope area would be accountable for an additional six storeys, which was equivalent to a building height of around 20mPD;
- (e) there were requirements for provision of an EVA and road setback at Kwun Tong Road on the Site. The area required for the EVA and road setback overlapped with the building footprint of some towers in PlanD's alternative option. Hence, the original floor space shown in PlanD's alternative option would need to be displaced to upper floors and that would require taller building height. It was estimated that three additional floors would be required to accommodate such displaced GFA. The calculations and assumptions were summarised in the table below and the following paragraph; and

	Slope area	EVA	Road Setback
GFA	8,280m <sup>2</sup>	3,044m <sup>2</sup>	1,320m <sup>2</sup>
Additional Floors (about)	6	2	1
Additional building height (about)	20m	10m	

- (f) the assumptions and calculations were explained as follows:
- (i) the number of additional floors required – calculated by dividing the relevant GFA by the total building footprint area (estimated to be 1,582m<sup>2</sup>) of the four towers in PlanD's alternative option;
  - (ii) the additional building height required – calculated by multiplying the additional floors required by the floor-to-floor height of 3.15m;
  - (iii) the relevant GFA in PlanD's alternative option that would be displaced due to the EVA – calculated by multiplying the width of the additional setback (1.8m) from the north-eastern site boundary required due to the EVA, by the length of the 'buildable' Site i.e. length of the Site (91.25m) minus two 10m-NBA on the north-western and south-eastern site boundaries and the 20m building gap (91.25m – 10m – 10m – 20m = 51.25m), by the number of domestic floors in the redevelopment (33 storeys); and
  - (iv) the relevant GFA in PlanD's alternative option that would be displaced due to the road setback requirement – calculated by multiplying the area required for road widening (40m<sup>2</sup>) and the number of domestic floors in the redevelopment (33 storeys)

[Mr. Fletch W.W. Chan returned the join the meeting at this point.]

#### *Stepped Building Height Concept*

115. With the aid of a powerpoint presentation, Mr. Ibanez Gutierrez, Ricardo Andres made the following main points:

- (a) he was responsible for preparing the visual impact assessment for R6's scheme. He considered that the stepped building height concept, which



was mentioned by PlanD in their responses to the further representations in the TPB Paper, was unclear and inconsistently applied;

- (b) according to the Urban Design Guidelines in the HKPSG, a stepped building height profile was to vary the building height profile so that lower buildings were located at the waterfront and taller buildings were located inland near the mountains. The purposes of stepped building height profile was to establish visual corridors and air ventilation / wind corridors to encourage wind to penetrate through the urban fabric;
- (c) with the aid of Plan 11 (of the MPC Paper No. 25/10), it was explained that the proposed stepped building height profile did not comply with the principles in the HKPSG. There were high-rise buildings near the waterfront which blocked wind penetration and visual corridors. There were also medium and high-rise buildings in the surrounding of the Site. Hence, it was not clear how the stepped building height profile for the OZP was established and how the HKPSG had been complied with;
- (d) photos of Richard Gardens, 8 Clear Water Bay Road and some public housing estates in the area were shown to demonstrate that the proposed progressive stepped building height profile as annotated by the arrows on Plan 11 was not visible in the Area. The building heights of the existing buildings did not comply with the stepped building height profile and the area was dominated by strong building masses and strong walls of buildings; and
- (e) photomontages showing views from the new wing of the HKCEC and Quarry Bay Park were shown to demonstrate that the proposed redevelopment on the Site was lower than some of the existing buildings, especially the excessively tall Harbourfront Landmark at the waterfront as viewed from the new wing of HKCEC. It was also explained that as seen from the new wing of HKCEC and the Quarry Bay Park, the proposed redevelopment on the Site up to 203mPD would be below the 20% building free zone for protection of the views of the Lion Rock and

Kowloon Peak ridgelines.

[Ms. Annie K.L. Tam returned to join the meeting at this point.]

*Air Ventilation Assessment*

116. With the aid of a powerpoint presentation, Professor Stephen Lau made the following main points:

- (a) reference was made to the Government's AVA Guidelines. It was stated in the AVA Guidelines that "Quasi-government organisations and the private sector are also encouraged to apply AVA to their projects on voluntary and need basis" (paragraph 5 of AVA Guidelines) and "There is no internationally recognised guideline or standard for using CFD [Computational Fluid Dynamics] in outdoor urban scale studies" (paragraph 17 of AVA Guidelines). Hence, they were not required to follow the AVA Guidelines when preparing their AVA and that the AVA Guidelines also recognised that there was no single method to conduct AVA. He believed that the findings would be the same even though they had used different AVA methodologies;
- (b) R6's AVA was prepared with reference to the AIJ Guidelines used in Japan (AIG guidelines for practical applications of CFD to pedestrian wind environment around buildings) and the French guidelines (Recommendations on the use of CFD in wind engineering. COST Action C14). The AIJ Guidelines were important bases for the formulation of the AVA Guidelines being used by the Government. The French scientist, who developed the French Guidelines, was the first person to recommend using computer simulation for outdoor urban studies; and
- (c) the assessment results of R6's AVA showed that the proposed redevelopment scheme with two slimmer towers and more gaps at the podium level was more permeable and better in air ventilation terms

compared with PlanD's alternative option with four towers. The assessment results for wind coming from different directions (i.e. diagonal or parallel to the Site) similarly showed that R6's scheme performed better in air ventilation terms.

117. With the aid of a powerpoint presentation, Mr. Ivan Lam continued with his earlier presentation and made the following main points:

*The Redevelopment under the OZP Restrictions*

- (a) the redevelopment on the Site would need to comply with a number of Building Regulations. Those were site coverage and PR restrictions for a Class A site under Building (Planning) Regulations (B(P)R) Schedule 1; provision of EVA under Code of Practice for the Provision of Means of Access for Firefighting and Rescue Purposes; and requirements for prescribed windows under the B(P)R;
- (b) he had explained in the earlier part of the presentation that due to the EVA and road setback requirements, about 4,364m<sup>2</sup> of GFA in PlanD's alternative option had to be displaced and about three additional floors would be required to accommodate that displaced GFA. The displaced GFA had to be relocated to upper floors of the redevelopment as the building footprint under PlanD's alternative option could not be further increased. PlanD's alternative option had adopted a site coverage of 32%, which was close to the maximum site coverage of 33% for domestic buildings permitted under the (B(P)R) Schedule 1. Furthermore, due to the prescribed window requirements under B(P)R, it was not possible to increase the building footprint of the towers shown in PlanD's alternative option by reducing the building separation distances any further;
- (c) the inclusion of the slope area for PR calculation would result in a total domestic GFA for the Site of about 51,421.86 m<sup>2</sup> [including a 20% GFA concession]. PlanD's proposed BHR of 130mPD would allow the

domestic towers to be about 33 storeys tall, therefore the required building footprint area would be around 1,600m<sup>2</sup> [calculated by dividing the domestic GFA (51,421m<sup>2</sup>) by the number of domestic floors (33)] and that would already amount to a site coverage of about 32%;

- (d) given the restrictions on the OZP and the requirements of the Building Regulations, there was little flexibility on the disposition of a total building footprint area of 1,600m<sup>2</sup> for the domestic towers on the Site. With the aid of a section drawing, the prescribed window requirements under the B(P)R were explained. To comply with the prescribed window requirements for a 33-storey domestic tower (around 104m tall), the towers would need to be set back from the site boundaries on three sides by 17.4m. No setback would be required on the side facing Kwun Tong Road, which would also be used as EVA. Due to the prescribed window requirements, prescribed windows in the redevelopment could not face onto the 20m-building gap designated in the middle of the Site. Hence, the above setback areas and the building gap would become 'non-buildable' areas;
  
- (e) a plan showing the 'non-buildable' areas as explained in the preceding paragraph and the residual 'buildable' areas was shown. It was said that only two 'buildable' area of 800m<sup>2</sup> each would be delineated after excluding those 'non-buildable' areas explained in the above paragraph. The total area of the two 'buildable' areas would be similar to the minimum building footprint of 1,600m<sup>2</sup> required under the proposed BHR of 130mPD (as explained in paragraph 116(c) above). The two 'buildable' areas would be deep and narrow. The redevelopment on the Site could not have its main façade facing Kwun Tong Road or the harbour. Instead, the buildings would have to face onto the common site boundaries (i.e. the adjacent sites), which was undesirable as the flats might eventually be facing blank walls of any future redevelopments on the adjacent sites. The redevelopment would comprise two building masses with overlooking flats. Hence, the controls under the BHR of 130mPD, the two NBAs and 20m-building gap requirements as well as

prescribed window requirements would result in no flexibility in the form and disposition of buildings;

*Another Development Form following SBD Guidelines*

- (f) the Building Department's SBD Guidelines (PNAP APP-152) set out some sustainable building design principles that had to be followed as pre-requisites for claiming GFA concession. Another alternative development form was presented making reference to the SBD Guidelines (PNAP APP-152). Following the SBD guidelines on building separation requirements, setbacks of 7.5m would be provided from the north-west and south-east boundaries and an intervening space of 15m would be provided in the middle of the Site. A plan was used to show the two 'buildable' areas that could be delineated after incorporation of the building separation requirements under the SBD Guidelines. The two 'buildable' areas would be larger in area and the length of the 'buildable' area facing Kwun Tong Road / the north-eastern site boundary would be around 30m (as compared to only 18.5m for the development scheme following the OZP restrictions);
- (g) with the new configuration and larger size of the two 'buildable' areas delineated on the Site, the prescribed windows of the buildings could be designed to mostly face Kwun Tong Road / the north-eastern site boundary. As the two 'buildable' areas were larger as compared to the layout following the OZP restrictions, there was scope to provide wider gaps between buildings and to fulfil the prescribed window requirements;
- (h) according to the B(P)R, the depth of a domestic flat should not be more than 9m from a prescribed window. On this basis, a layout was shown of a development with four portions - each portion was 30m in length (i.e. length of the 'buildable' area facing Kwun Tong Road / the north-eastern site boundary) and 9m in depth (maximum depth of domestic flats). Hence, each portion had an area of 270m<sup>2</sup>. The overall building footprint under this layout amounted to a total area of 1,080m<sup>2</sup>

[calculated by multiplying the area of each portion (270m<sup>2</sup>) by the number of portions (4)]. The resultant site coverage was around 22.5% and that was considered to be more desirable for the residential redevelopment. To accommodate the permissible domestic GFA of 42,850m<sup>2</sup> [not including GFA concession] and assuming a site coverage of around 22.5%, the building height of the domestic tower would need to be around 40 storeys. It should be noted that flats would normally be designed to be less than 9m in depth, hence 40 storeys was only the minimum building height requirement; and

- (i) a scheme with 40 domestic storeys was similar to R6's scheme presented at the representation hearing, which had 45 domestic storeys as it had included a refuge floor and some floors to accommodate the GFA concession. The previous scheme had adopted a floor-to-floor height of 3.3m which could be adjusted.

R1051 – Lu Wai Yin, Adrian

Mr. Lu Wai Yin, Adrian

118. Mr. Lu Wai Yin, Adrian made the following main points:

- (a) he had doubts about the gazettal of OZP No. S/K13/27 before the further representation hearing in respect of the proposed amendment to OZP No. S/K13/26 was held. There had not been any explanation and it was unclear whether the further representation hearing held on the day would be futile. It was unclear whether the Government had used its power to gazette OZP No. S/K13/27 so that they could suppress the objecting views;
- (b) OGL bought the Site to develop a private housing project, it was unclear why the building height of public housing estates should be used as the standard for imposing the BHR on the Site;
- (c) it was unclear whether the development restrictions on the Site were

imposed to achieve any public purpose as claimed, such as protection of views of the Lion Rock or other ridgelines or the restrictions were imposed because the Government had a pre-determined stance about the redevelopment on the Site;

- (d) should OGL have known about the development restrictions on the Site, they might not have proceeded with the acquisition of Kai Tak Mansion;
- (e) at the representation hearing, the deliberation session was held in closed meeting and a lot of the discussion was held in the absence of the representers. This was not a transparent process; and
- (f) he asked the Board to be fair to OGL. Although he was not clear whether the proposed building height of 203mPD was right or wrong, he opined that the Government should have exercised its power for development control with more caution. He reiterated that he was not convinced that the development restrictions imposed on the Site was for wider public interests. He challenged why the Government had used public rental housing building height standard for private housing development site.

R1306 – Ngau Chi Wan Village Society Limited

Mr. Cheung Ling Chung

119. Mr. Cheung Ling Chung made the following main points:

- (a) the Site was located to the south-east of Ngau Chi Wan Village and they were concerned about possible air ventilation impacts from the redevelopment on the Site;
- (b) building two towers rather than the four towers proposed by PlanD would have less impact on the wind environment of Ngau Chi Wan Village; and
- (c) taller buildings should be built on the Site and there should be no more

than two towers. This would allow wind to penetrate and maintain good air quality in Ngau Chi Wan Village.

R1307 - The Resident Union of Ping Shek Estate

Mr. Ho Kwok Yin

120. Mr. Ho Kwok Yin made the following main points:

- (a) he represented The Resident Union of Ping Shek Estate. Ping Shek Estate was a public housing estate with five 28-storey and two 7-storey buildings. The Site was located to the south-east of the Ping Shek Estate;
- (b) the existing 7-storey buildings on the Site did not have any impact on Ping Shek Estate. If the Site was to be redeveloped into four towers with 30 odd domestic floors, it would block all southerly wind to Ping Shek Estate as well as obstruct their views; and
- (c) the views of residents in Ping Shek Estate was that the Government should resume the Site for low-density development. If that was not possible, residents of Ping Shek Estate would prefer two tall buildings rather than four bulky towers to be built on the Site.

R1308 – Choi Hung Estate Social Service Association

Ms. Yip Man Fong

121. Members noted the speaking notes tabled by R1308. Ms. Yip Man Fong made the following main points:

- (a) she represented the Choi Hung Estate Social Service Association;
- (b) their Association opposed the development restrictions, namely, the BHR, NBA and building gap requirements imposed on the Site as they would lead to a redevelopment with four bulky towers. It was rare for the



Board to impose three restrictions on a small site, that would seriously constrain its design flexibility;

- (c) Choi Hung Estate, comprising eight 20-storey and three 7-storey blocks, was located to the north-east of the Site. A bulky walled-like redevelopment on the Site would affect the air quality of Choi Hung Estate;
- (d) the buildings in the redevelopment on the Site should be tall and slim. OGL's development scheme at 203mPD was feasible and it would improve air permeability as well as allow more space for the provision of greening and recreational facilities; and
- (e) their Association supported the redevelopment on the Site as a natural process of urban regeneration. It would also be in line with the Government's policy initiative to revitalise Kowloon East. The redevelopment on the Site could become a landmark development. She urged the Board to respect OGL's development right and to listen to the views of residents living in the area.

[Mr. Fletch W.W. Chan left the meeting temporarily at this point.]

R1313 – Tse Kam Wing

Mr. Tse Kam Wing

122. Mr. Tse Kam Wing made the following main points:

- (a) currently Hong Kong lacked major tourist attractions. The redevelopment on the Site should be taken as an opportunity to develop an additional tourist attraction for Hong Kong. The historic resources in the area, namely the Sam Sham Kwok Wong Temple, the ex-RAF Officers' Quarters Compound and the Lung Tsun Bridge remnants at Kai Tak, could be regenerated through re-packaging them into a heritage trail. The heritage trail could link up with the MTR

Choi Hung Station, Richland Gardens and the Kai Tak Development. Linkages in the form of subways, cycle tracks and monorail as well as the use of electric cars could be considered;

- (b) there should not be BHR on the Site so that a larger variety of uses might be accommodated to benefit the public. For example, the Site had good views of Victoria Harbour, a taller portion of the redevelopment could be built as a hotel. A museum could also be accommodated within the redevelopment for public benefit;
- (c) the Government could consider developing more tourist attractions in the area. The Government could resume the Site to build a museum. Alternatively, the Government could develop the vacant land adjacent to Richland Gardens into a museum or flea market as another tourist attraction. The tourist attractions could be linked up by footbridges. A sightseeing lift could be built on the Site within the area designated for the building gap as a tourist attraction. The appearance of the East Kowloon area should be further developed by planning more lighting and / or advertising signs on buildings in the area; and
- (d) he quoted the example of some buildings of the Polytechnic University of Hong Kong, namely the Hong Kong Community College (West Kowloon Campus) and Hotel Icon, and said that large voids could be designed to allow air ventilation through tall buildings. The Board could impose similar requirement for a large void to be provided at the redevelopment on the Site.

C1 – Chan Pak Li (Kwun Tong District Councillor)

Dr. Chan Pak Li

123. Dr. Chan Pak Li made the following main points:

- (a) he was a Kwun Tong District Councillor and his views were similar to those presented by Mr. Ho Kwok Yin (R1307). Having considered the

opinions of the air ventilation experts presented at the meeting, he agreed that a tall and slim development, rather than a low and bulky development, would have less impact on surrounding residents; and

- (b) he also agreed with the view of Mr. Tse Kam Wing (R1313) that the Site could be redeveloped into a tourist attraction. In the Kwun Tong District Council meeting held on 2.2.2012, the Kai Tak Office provided a briefing on a proposed environment friendly monorail system that would link up the Cruise Terminal at Kai Tak with the hinterland areas, such as Richland Gardens and areas near Ping Shek Estate. Hence, the area in the vicinity of the Site would be accessible to many tourists in future. There should be more consideration of how the Site could be redeveloped into a tourist attraction. Allowing a taller building height could provide more flexibility for the future redevelopment.

R7 – Chung Siu Kong (Harmonizing Committee for the Joint Property Sale of Kai Tak Mansion Blocks One to Four)

Mr. Chung Siu Kong

124. Mr. Chung Siu Kong made the following main points:

- (a) he was the Chairman of the Harmonizing Committee for the Joint Property Sale of Kai Tak Mansion Blocks One to Four and he represented many residents. He had lived in Kai Tak Mansion for 50 years and had strong affiliation with the place. Many residents opposed the three restrictions imposed on the Site and had wanted to come to the meeting, but he asked them not to as he did not want them to get irritated by the meeting proceedings during Chinese New Year;
- (b) referring to paragraph 3.11 of the TPB Paper [which indicated that “The Director of Lands advised that it appeared that the slope area could be included for GFA calculation under the lease”], he agreed with F2 that the use of the word “appeared” was ambiguous and the Board should have tried to find out the facts before making a decision. On

the other hand, if it was because the PlanD had made an error in the calculation of the BHR, then they should have admitted their mistake instead of using an ambiguous reason to justify relaxation of the BHR of the Site to 130mPD;

- (c) F2 had raised the point about the responsibility for maintenance of the slope area. He said that the current residents had the responsibility and had borne the cost of maintaining the slope;
- (d) the PlanD had previously used the protection of views of Lion Rock ridgeline to justify the BHR on the Site. PlanD was currently using the so-called stepped building height profile and protection of the Kowloon ridgeline as justifications for the amended BHR. As R6's consultant had pointed out, the theoretical principle of stepped building height could not be seen in reality;
- (e) he agreed with F3 that it was not possible to only discuss the BHR at the meeting as the other two restrictions (NBA and building gap) were inter-related;
- (f) he said that it was unclear why OZP No. S/K13/27 was suddenly gazetted. He also commented about the rigid meeting procedures of the Board, especially that the attendees were not allowed to ask questions and that the Board was not accountable to the public as the deliberation session was held in a closed meeting. He opined that it was not acceptable that the attendees were not allowed to review the minutes before they were confirmed by the Board. He said that it was not acceptable that the minutes in Chinese were only made available on the Board's website two months after the meeting;
- (g) although the current residents would move out, the residents supported the Site to be redeveloped into a landmark building. He opined that it would have been better if there were Members on the Board with artistic background. Other than those principles for protection of

ridgelines or stepped building height profile, it should be noted that disorderly developments could also have its own beauty;

- (h) one of the purposes of stipulating a building gap was to open up the views to the historic buildings so that more people would know about them. The historic buildings included the ex-RAF Officers' Quarters Compound that was currently occupied by the Hong Kong Baptist University Academy of Visual Arts, the ex-RAF Headquarters Building currently occupied by Caritas Family Crisis Support Centre and the Sam Shan Kwok Wong Temple. However, he was sure that whilst people might know the existing uses occupying the historic buildings, not many people had knowledge about the particular historic buildings;
- (i) the existing uses accommodated within the historic buildings were not permanent, the Hong Kong Baptist University Academy of Visual Arts and Caritas Family Crisis Support Centre were on tenancy agreements and might eventually move out of the historic buildings. He said that the ex-RAF Officers' Quarters Compound had previously been left vacant for a few years. The Sam Shan Kwok Wong Temple was only a Grade 3 historic building which was very dilapidated with some illegal structures. Hence, he said that it was unreasonable for controls to be imposed on a permanent redevelopment on the Site to protect the changing uses in the historic buildings. Furthermore, it would be difficult to have views of the ex-RAF Officers' Quarters Compound through the narrow building gap as proposed on the Site. The Government should have a more realistic assessment of whether the building gap could be utilised for people to appreciate the historic buildings;
- (j) it was indicated in the TPB Paper that some further representers opposed the BHR of 130mPD but did not propose the extent to which the BHR should be relaxed. That was not a reason for not further amending the BHR. He could have suggested 300m as a proposal, but that might not be constructive;

- (k) the public views reflected that more than 70% of residents supported the 203mPD scheme;
- (l) OGL had commissioned many consultants with different expertise to present the case to the Board. PlanD's AVA consultant's recommendations should not prevail over the expert opinions and technical assessments prepared by OGL's consultant team;

[Mr. Timothy K.W. Ma returned to join the meeting at this point.]

- (m) the Secretary for Development had recently said that there were some new developers interested to participate in real estate developments in Hong Kong and the Government would try to split up large sites into smaller ones. That would allow more competition and opportunities for small and medium-sized developers to participate in the real estate market so that there would be a larger variety of developments;
- (n) there should be a restructuring of the Board as the inter-twined relationships between the Board and PlanD were currently too complex for the public to understand. He quoted the fortune stick drawn by Mr. Lau Wong Fat during the Chinese New Year and opined that the Government should stop making decisions that would cause hassles to the public; and
- (o) the gazettal of OZP No. S/K13/26 had caused a lot of delay to the redevelopment on the Site. He also opined that the gazettal of the OZPs affecting the Site could eventually be proven legally improper. He urged the Board to carefully consider the appropriate development restrictions for the Site.

[Mr. Fletch W.W. Chan returned to join the meeting at this point.]

125. As the presentations from the further representers, representers and commenter

and their representatives had been completed, the Chairman invited questions from Members.

### Air Ventilation Aspects

126. A Member asked PlanD's AVA consultant to provide her views on the air ventilation matters raised by the attendees, in particular the claim that building two taller and slimmer towers would be better than building four lower and bulkier towers on the Site in air ventilation terms. Dr. Conn Yuen made the following main points:

- (a) she clarified that the baseline option and alternative option for the Site that were tested in PlanD's AVA study were not prepared by herself. Instead, she was tasked to assess and compare the air ventilation performance of the two options;
- (b) the existing Kai Tak Mansion was only about 28mPD tall. A redevelopment which was much taller, bulkier and at a higher development intensity would inevitably create adverse air ventilation impact. It was therefore necessary to propose appropriate mitigation measures;
- (c) PlanD's AVA study included an assessment of the macro wind environment of the Ngau Tau Kok and Kowloon Bay Area as well as assessment of the wind environment of some specific sites that might have an impact on the micro and macro wind environment;
- (d) residents of Kai Tak Mansion currently enjoyed fairly good air ventilation because of the openness of the Site. It was not correct to simply say that south-westerlies was unimportant because of the housing estates located to the south-west of the Site and the south-westerlies were blocked. The existence of a large open area opposite the Site (Kai Yip and around) helped with the mobility of wind through the Site and to areas beyond. This point was also independently verified by F3's AVA consultant in his further representation. It was important to recognise

that wind would go from both directions – from the south-west to north-east in the summer and from the opposite direction (from north-east to south-west) in the rest of the year. North-easterlies was the prevailing annual wind in Hong Kong;

- (e) the expert opinion of F3's AVA consultant was that there would be significant reduction in wind immediately downstream of the redevelopment. However, the definition of 'immediate' in the context of wind environment was not confined to the adjacent areas. The wind blockage area would depend on the bulk, height and width of the buildings to be redeveloped on the Site. If 200m-tall buildings with significant frontage were to be built, it would create a wake area (i.e. area with little wind movement) some 10 times more than the height of the building. This was equivalent to two kilometres, and not just immediately behind the development. The proposed redevelopment would clearly create adverse air ventilation impact; and
- (f) there could always be a scenario of building excessively tall or slim buildings, however any proposal would inevitably benefit some areas and worsen other areas in air ventilation terms. Hence, the question of whether two or four towers would be better in air ventilation terms could not be answered in isolation of other considerations. In formulating the development restrictions on the Site, PlanD had taken the AVA recommendations as well as a host of other considerations into account. The development restrictions on the Site were not imposed purely relying on the AVA study.

Gazettal of OZPs No. S/K13/26 and 27

127. The Vice-chairman asked DPO/K to explain the procedures for gazettal of the two OZPs No. S/K13/26 and No. S/K13/27 and to clarify the relevant doubts raised by the attendees in their presentations.

128. Mr. Eric C.K. Yue (DPO/K) said that OZP No. S/K13/26 was gazetted on



19.11.2010 under section 5 of the Ordinance, and that OZP mainly involved incorporation of BHRs on various zones. The representation hearing held in May / June 2011 and the further representation hearing held on the day were in respect of OZP No. S/K13/26. OZP No. S/K13/27 was gazetted under section 7 of the Ordinance. Section 7 of the Ordinance allowed the Board to make amendments to a draft plan at any time after the exhibition of a draft plan under section 5 and before its approval by the Chief Executive in Council. It was clearly stated in the Ordinance that a gazettal under section 7 was made without prejudice to section 6 of the Ordinance [that concerned the Board's consideration of representations, comments and further representations].

129. Mr. Jonathan Lee said that he was one of the Counsels representing OGL in the judicial reviews. He pointed out that according to the previous Court of Appeal judgement as explained by Ms. Audrey Eu in her presentation, OZP No. S/K13/27 had replaced OZP No. S/K13/26, and OZP No. S/K13/26 no longer had any legal effect. Furthermore, one of the grounds of the judicial review (HCAL 109/2011) was that section 7 of the Ordinance did not empower the Board to gazette a new plan (i.e. OZP No. S/K13/27). The Board could only introduce amendments to an existing plan (i.e. OZP No. S/K13/26) under section 7 by attaching a Schedule of Amendments to OZP No. S/K13/26. On the contrary, section 12 of the Ordinance specifically empowered the Board to gazette a new draft plan and this was the manner in which OZP No. S/K13/26 was gazetted. Hence, OZP No. S/K13/27 was *ultra vires* and would be challenged in the judicial review (HCAL 109/2011) to which the Court had granted leave.

130. The Chairman said that the further representation hearing being held was in respect of OZP No. S/K13/26. The matters relating to the two OZPs No. S/K13/26 and 27 were subject of on-going judicial review proceedings. The legal advice obtained by the Board was that there was nothing in the court order granting leave to HCAL 109/2011 that suggested that the Board could not proceed with the hearing of the further representations in respect of OZP No. S/K13/26. Hence, the Board proceeded with holding the further representation hearing. The legal points raised by Mr. Jonathan Lee were not subject of the further representation hearing.

## R6's Schemes

### *Building Height*

131. The Vice-chairman said that whilst two taller and slimmer buildings might be better in air ventilation terms, it was obvious that the visual impacts of a redevelopment at 203mPD (such as shown in Plan FH-5 of the TPB Paper) would be significantly different from a redevelopment at 130mPD. He pointed out that R6's scheme at 203mPD had assumed a 15m tall podium as well as lobby and clubhouse floors totalling 30m, and those two elements already amounted to 45m. In those regards, he asked Mr. Ivan Lam to explain whether the building height of 203mPD was really necessary and whether there was scope for reduction.

132. With the aid of a section drawing of a redevelopment scheme at about 180mPD, Mr. Ivan Lam explained their assumptions on the building height used as shown in the table below:

Floor Uses	No. of Storeys
Residential floors (for accommodating permissible domestic PR of 7.5)	40
Refuge floor (required for buildings over 40 storeys under Building Regulations)	1
GFA concession (maximum 10% under SBD Guidelines (PNAP APP-152))	4
Transfer plate	1
Recreational facilities / clubhouse floor	1
Above podium void	1
Non-domestic portion	3

133. Mr. Ivan Lam continued to explain the difference between the 180mPD scheme just presented and the 203mPD scheme previously presented at the representation hearing. The 203mPD scheme had incorporated a large void space beneath the transfer plate to allow a visual corridor to the historic buildings at the ex-RAF Officers' Quarters

Compound that were situated on a platform at 27.6mPD. Whether the void space should be retained could be further considered. The 203mPD scheme had also assumed a floor-to-floor height of 3.3m and the 180mPD scheme had adopted PlanD's usual assumption of floor-to-floor height of 3.15m. Hence, the building height required for the redevelopment would be in a range from 180mPD to 203mPD.

134. Mr. Eric C.K. Yue opined that a building at 203mPD on the Site would not be compatible with the stepped building height profile. The BHR of 110mPD / 130mPD would be more compatible with the overall stepped building height profile, where the Ping Shek Estate to the north was subject to BHRs of 80mPD and 100mPD and the area occupied by Choi Tak Estate in the east was subject to BHRs of 160mPD and 170mPD.

#### *GFA Concession*

135. The Chairman said that the assumed GFA concession was only a design intent rather than a requirement. In response, Mr. Ivan Lam said that their design would be able to satisfy the SBD Guidelines. For example, they would propose to build underground car park which was a pre-requisite for claiming GFA concession under the SBD Guidelines but there was no such requirement for underground car park under the "R(A)" zoning. The maximum 10% GFA concession permissible in accordance with the SBD Guidelines should be included in the calculation of the required building height. The Chairman said that the development restrictions under the "R(A)" zone of the OZP should not be mixed up with the requirements for claiming GFA concession under the SBD guidelines. Moreover, he was not sure if Mr. Ivan Lam was correct that in the SBD Guidelines, "R(A)" zones were treated differently in terms of underground car park provision for seeking GFA concession.

136. In response to a Member's question, Mr. Ivan Lam said that green features that could be used to claim GFA concession included balconies or the use of pre-fabricated materials. The floor space arising from GFA concession, although not calculated towards the maximum permissible PR, would directly contribute to additional building bulk. Hence, it was necessary to assume extra floors to accommodate the floor space arising from GFA concession. This Member asked further why the consultant had assumed that all floor space arising from GFA concession should be provided in the upper floors and

therefore required a taller building. For example, green features such as balconies would be linked to flats on the same floor and would not be located on upper floors. In response, Mr. Ivan Lam said that when they calculated the absolute building separation required, the building façade was taken to include all protruding building features.

#### *Site Coverage*

137. A Member said that R6 had indicated that under a BHR of 130mPD, the domestic site coverage would be around 32%. He asked to what extent the domestic site coverage could be reduced under a proposed building height of 203mPD. Mr. Ivan Lam said that according to their calculation, the domestic site coverage could be reduced by about one-third to 22.5%.

#### *Podium*

138. A Member said that whilst there might be merits in having a large void in the residential portion of R6's scheme (as shown in Plan FH-6 of the TPB Paper), there would still be visual impact from the podium. This Member asked whether a no-podium design was feasible. Mr. Ivan Lam said that under the OZP, the Site was subject to a maximum PR of 9 and the domestic PR was capped at 7.5. Any 'un-built' non-domestic PR could not be converted into domestic PR. Hence, if the developer was to build up to the maximum PR of 9, a commercial podium had to be built. Mr. Ivan Lam also said that in PlanD's alternative option, the commercial podium was assumed to have differing heights, i.e. about 15mPD in the central portion and not more than 20mPD on the two sides. The visual impact of the commercial podium could be mitigated in similar manner by lowering of the height of some portions of the podium.

#### *The Development Proposal*

139. A Member asked whether the scheme presented at the hearing was only a conceptual scheme or would be more or less the confirmed development proposal which would be submitted to the Government. Mr. Ivan Lam explained that OGL submitted a set of GBP to the Building Authority in September 2010, and during the statutory period for the Building Authority to consider the GBP, the Board gazetted OZP No. S/K13/26.

Therefore, the Building Authority rejected the GBP and one of the reasons was that the submitted GBP contravened OZP No. S/K13/26. The section drawings shown in the presentation were based on the rejected GBP, which was prepared based on the development restrictions on the Site before the gazettal of OZP No. S/K13/26. The proposal was for two towers with main facades either facing Kwun Tong Road or the ex-RAF Officers' Quarters Compound. In the 180mPD scheme presented, the floor-to-floor height was reduced from 3.3m (as previously proposed in the rejected GBP) to 3.15m and the upper portion joining up the two towers (as previously proposed in the rejected GBP) was deleted.

### Planning Controls

#### *Additional Remarks in Notes*

140. A Member asked how the Board could retain control to ensure that R6's proposed scheme (e.g. with a large void) could be realised to achieve the air ventilation and visual impacts as claimed. Mr. Ivan Lam said that the Board might add relevant remarks in the Notes. He said that the width of the NBA facing the St. Joseph's Anglo-Chinese Primary School should be reduced to 7.5m to correspond with the SBD Guidelines. To facilitate the flow of wind to the Grade 1 historic building at the ex-RAF Officers' Quarters Compound, a NBA was proposed to be designated for an area above the podium (say above 20m). For visual aspect, they had proposed to include a permeability index on the Site at the representation hearing. Such index would specify a minimum percentage of openness on the main building façade facing Kwun Tong Road, and would be applicable from the level of the podium (say 20m) to the level of the roof top of the ex-RAF Officers' Quarters Compound. Contrary to the three OZP restrictions, the proposed alternative controls he just mentioned would provide flexibility in the layout without compromising the permeability in visual and air ventilation terms.

141. In response, a Member asked whether visual permeability to the ex-RAF Officers' Quarters Compound as explained by R6 was a requirement under the lease or OZP. Mr. Eric C.K. Yue said that R6's specific proposal was not a requirement under the lease or OZP. The planning intention was to partially open up the view of the Grade 1 historic building to the north-east of the Site to the public at street level and that was one

of the reasons for stipulating the building gap requirement under the OZP.

*Four Towers versus Two Towers?*

142. The Chairman and another Member said that in the presentations, the attendees seemed to have considered that the only choice was between a 4-tower and a 2-tower scheme. They asked DPO/K to clarify in this regard. Mr. Eric C.K. Yue said that the 4-tower scheme in PlanD's alternative option was only a notional scheme. The number of towers to be built was not specified as a statutory requirement and would be decided by the project proponent. In response to the Chairman's further question, Mr. Eric C.K. Yue said that there was no requirement that the developer had to build according to the notional scheme of four towers under a BHR of 130mPD. Furthermore, there was provision for application for minor relaxation of the BHRs under the OZP to cater for schemes with planning and design merits.

143. With regard to the representer's claim that slimmer buildings was a better design, Mr. Eric C.K. Yue referred Members to paragraph 3.28 of the TPB Paper and said that the CTP/UD&L of PlanD considered that design flexibility could be achieved by innovative architectural design and landscape treatment of a development proposal and not purely by adopting a taller and slimmer building design.

*Provision for Minor Relaxation*

144. The Chairman asked R6 whether they had considered the minor relaxation provision under the OZP to cater for prescribed window requirements under the Building Regulations, if required. Mr. Eric C.K. Yue said that minor relaxation application would be considered on the merits of the case and there was no specification in the Notes which would preclude minor relaxation applications for the said purpose. Mr. Ivan Lam said they had already explained in the presentation that with the BHR of 130mPD and the need to meet the EVA and road setback requirements, there would be no design flexibility and it would result in an undesirable layout with buildings facing the common site boundaries as well as with overlooking flats. Even though a minor relaxation of the BHR could result in a layout with more separation distance from the common site boundaries, they would still need to pursue a 2-tower scheme. In response to the Chairman's further question, Mr.

Ivan Lam said that they had not considered the use of minor relaxation application to cater for the prescribed window requirements, but in any case the need to rely on minor relaxation to fulfil the prescribed window requirements would be too inflexible.

145. Ms. Theresa Yeung (R6) supplemented that they were aware of the minor relaxation provision under the OZP. However, there was no specification on the extent of relaxation permissible under a minor relaxation application. As a general practice, the Board would only allow relaxation of around 10% or in some special circumstances around 20%. In this regard, the Chairman clarified that the Board did not have a definition of what constituted 'minor' when considering minor relaxation applications. He stressed that the Board had flexibility to decide on minor relaxation applications based on the impact of relaxation and planning merits of individual cases.

*Assumptions Adopted in Establishing the BHR*

146. A Member asked DPO/K to explain how the BHR of 130mPD was derived. Mr. Eric C.K. Yue said that the relaxation of the BHR from 110mPD to 130mPD was to accommodate the additional permissible GFA arising from inclusion of the slope area for PR calculation. As the slope area was about 920m<sup>2</sup> in area and the maximum permissible PR on the Site was 9, the slope area would be accountable for a GFA of about 8,280m<sup>2</sup>, but the exact area of the slope would be subject to detailed survey. Based on the assumptions of 33% site coverage and a 3.15m floor-to-floor height, an additional 5 to 6 storeys or 20m would be required. Hence, the Board proposed to increase the BHR by 20m to 130mPD.

147. With regard to R6's claim that the original BHR of 110mPD was insufficient to accommodate the permissible GFA in view of the EVA and road setback requirements, Mr. Eric C.K. Yue said that those points were already discussed and deliberated at the representation hearing. He referred Members to paragraph 4.4.1(i) of the representation hearing paper in Enclosure I of the TPB Paper, which stated that PlanD's indicative scheme had a building height of 105mPD that had not reached the maximum BHR of 110mPD under the OZP. It was estimated that after taking into account the setback and EVA requirements, the building height would be about 110mPD. This point was discussed and deliberated at the representation hearing as recorded in paragraph 159 of the

minutes in Enclosure II of the TPB Paper.

148. Mr. Ivan Lam further responded that according to the MPC paper No. 25/10, the maximum permissible domestic GFA for the Site was 51,421.86m<sup>2</sup>, which had included the assumption of a 20% GFA concession. Based on that GFA and a four tower design, PlanD estimated that the building height of the redevelopment would be 104.5mPD, with 27 domestic floors. The difference between the notional building height of 104.5mPD and the BHR of 110mPD was only 5.5m, that height would allow less than 2 floors (assuming a 3.15m floor-to-floor height). However, he had explained in the presentation that at least three additional floors were required to accommodate the GFA arising from the EVA and road setback requirements. On this basis, he considered that the BHR of 130mPD would be insufficient to accommodate the permissible GFA on the Site.

149. The Chairman reiterated that PlanD's scheme was only a notional scheme and there should be alternative design to accommodate the permissible GFA under the OZP and the 10% maximum GFA concession that might be granted under the current SBD Guidelines. Mr. Ivan Lam said that he had explained in the presentation that the BHR of 130mPD would result in an undesirable and congested layout, with two long and narrow 'buildable' areas, which would have the main building facades facing the common site boundaries rather than Kwun Tong Road. He reiterated that the three development restrictions provided no design flexibility.

150. Mr. Jacky Wong (R6) said that they would have to comply with all three OZP restrictions in the GBP submission and there was no flexibility but to build four towers on the Site. The consultant team had already explained why a BHR of 130mPD was insufficient and their current estimation was that a building height ranging from 180mPD to 203mPD was more reasonable.

#### *BHR on the Site Compared to Public Housing Estates*

151. The Chairman asked Mr. Lu Wai Yiu, Adrian (R1501) to clarify the basis for him to say that the building height of public housing estates was used as the standard for imposing the BHR on the Site. In response, Mr. Lu said that it was based on a



powerpoint slide in PlanD's presentation. Mr. Eric C.K. Yue clarified that they had not used the building height of public housing estates as the basis for recommending the BHR for the Site. Some further representers had indicated in their written submissions that it was unreasonable for the BHR on the Site, which was for private housing, to be lower than the BHR for some public housing estates. In response, a powerpoint slide showing the BHRs of nearby public housing estates was used to show that the absolute building height of the redevelopment on the Site would be similar, rather than lower, than the nearby public housing estates. He said that some public housing estates, such as the Choi Tak Estate was located at a higher formation level and was subject to higher BHRs of 160mPD and 170mPD. However, the absolute building height of buildings on Choi Tak Estate was similar to other public housing estates.

### Visual Impacts

152. Mr. Jimmy C.F. Leung (D of Plan) referred to the extracts from the Visual Impact Assessment (VIA) of R6 at Drawings FH-1 and FH-2 of TPB Paper and said that those two drawings only showed the lower portion of R6's scheme. He asked whether there were other photos showing the entire building that might better assist the Board to appreciate the visual impact of R6's proposal. Ms. Theresa Yeung referred Members to page 40 of R6's VIA at Annex III of the TPB Paper, which showed photomontages of the view from PlanD's selected local vantage point at the Choi Ying Estate Pedestrian footbridge. The photomontages showed that PlanD's 110mPD scheme was more bulky and would block more of the view of Lion Rock backdrop as compared to R6's 203mPD scheme.

153. In response to Mr. Jimmy C.F. Leung's further question, Mr. Ibanez Gutierrez, Ricardo Andres explained that the photomontages at Drawings FH-1 and FH-2 of the TPB Paper were prepared using photos taken with normal standard lens (and not wide angle eye lens) to replicate the natural view and avoid distortion. It was not possible to show the entire building at 203mPD in a photo taken using normal standard lens at that viewing angle. The only way to see the entire building of 203mPD in photos taken using normal lens was for the photos to be taken further away from the Site (such as the one shown by Ms. Theresa Yeung). He opined that PlanD's photomontages, which seemed to have exaggerated the upper portion of the building, might be misleading.

154. Mr. Jimmy C.F. Leung reiterated that his question was only whether there was a photomontage that could show the entire building, which might better assist the Board to compare the visual impacts of PlanD's and R6's schemes. Ms. Theresa Yeung referred Members to two photomontages that were shown in pages 36 and 38 of R6's VIA, those photomontages showed the views from the new wing of the HKCEC and Quarry Bay Park. In those photomontages, PlanD's 110mPD schemes were not seen in the view and R6's 203mPD schemes were seen but would be well below the 20% building free zone for ridgeline protection recommended in the Urban Design Guidelines in HKPSG.

#### Other Matters

155. In response to a Member's question about the current status of the Kai Tak Mansion acquisition, Mr. Jacky Wong advised that the acquisition of Kai Tak Mansion was basically completed on 16.1.2012 with the exception of about 10% of the ownership still under negotiation.

156. The Chairman said that one of the grounds of some further representations was that the redevelopment on the Site could provide an opportunity to improve pedestrian accessibility such as provision of a footbridge system connecting places like, the MTR Choi Hung Station, the cluster of historic buildings in the area and the Kai Tak Development in future. He asked whether a building height of 203mPD was necessary to provide such a footbridge connection on the Site. Mr. Eric C.K. Yue said that increasing pedestrian accessibility was always supported but he opined that it needed not be directly related to relaxation of the BHR. On the contrary, Mr. Lam Man Fai said that the BHR would need to be relaxed to provide more scope for providing a footbridge connection on the Site. He said that the Board could stipulate conditions for the future developer to allow public access through such footbridge or podium of the redevelopment. He quoted a similar footbridge project at The Latitude.

[Professor P.P. Ho left the meeting at this point.]

157. As the further representers, representers, commenter and their representatives had finished their presentations and Members had no further question to raise, the

Chairman said that the hearing procedures had been completed and the Board would deliberate on the further representations in their absence and would inform them of its decision in due course. The Chairman thanked them and the Government's representatives for attending the hearing. They all left the meeting at this point.

### Deliberation

158. The Chairman invited Members to consider the further representations taking into consideration all the written submissions, the oral elaboration during the presentation session as well as the clarifications made at the question and answer session.

159. The Vice-chairman said that based on the written submission, presentations at the meeting and the responses during the question and answer session, he did not consider there to be any strong justification to accede to the request to further relax the BHR on the Site to 180mPD or 203mPD. It was obvious that there would still be scope to further reduce the building height. In this regard, he considered that the NBA and building gap requirements should be retained and the BHR should be amended to 130mPD. Any development schemes with planning merits could be submitted to the Board for consideration through a minor relaxation planning application. This was a better way to retain planning control on the future redevelopment on the Site.

160. Another Member said that the points raised in the written and oral submissions of the further representers, representers and commenter were noted. However, it was considered that the BHR of 130mPD, NBA and building gap requirements were appropriate for the Site as they were established based on a comprehensive planning analysis, supported by an AVA study and deliberated at the representation hearing. In the plan-making process, it was not appropriate for the Board to decide on the claimed merits of certain development details, such as number of towers and site coverage, based on the conceptual calculations presented provided that the Site could be developed to the intensity as permitted under the OZP. It would be more appropriate for the Board to consider the development details or design merits if planning permission for minor relaxation would be required. This Member elaborated that when the project proponent had a more detailed development proposal that might involve minor relaxation of the three OZP restrictions, such application could be submitted to the Board for consideration.

With regard to the attendee's claim that it was rare for the Board to impose three restrictions on the same site, this Member disagreed and said that there were definitely examples of other sites where the Board had imposed a number of development restrictions as circumstances required.

161. Another Member said that the points raised in the presentation and question and answer sessions were not convincing. For example, it was difficult to understand why a footbridge connection would necessitate a further relaxation of the BHR. The large void shown in R6's scheme was one of the reasons for the excessively tall building height proposed. However, the proposed void was not a statutory requirement and it was not convincing that the void was the only way to allow views to the historic buildings. As such, this Member considered that the proposed further relaxation of the BHR was unacceptable.

162. A Member said that the scheme presented by R6 was based on a set of rejected GBP, which was prepared at a time before the gazettal of OZP No. S/K13/26. Instead, the project proponent should have developed a scheme afresh with a more open mind about the design possibilities under the three restrictions. R6's presentation only focused on comparing their scheme with PlanD's notional scheme, however, there could be different design options that could be explored and PlanD's notional scheme was only one of them. Hence, based on the schematic calculation as presented, there was insufficient material for the Board to accept R6's claim that the BHR of 130mPD was not sufficient to accommodate the permissible PR.

163. Another Member said that he agreed with other Members that the attendees had not put forth sufficient justifications for the Board to further relax the BHR of 130mPD or relax the other two development restrictions. This Member considered that the BHR of 130mPD should be sufficient to accommodate the permissible GFA and there was the provision for minor relaxation under the Notes of the "R(A)" zone. This Member pointed out that some of the arguments put forth were not convincing. For example, it was argued that the building gap could not be used to comply with the prescribed window requirements. However, it was obvious from the section drawing shown that some setting back of the upper floors would have allowed the said prescribed window requirement to be complied with. Given that the Site was under a "R(A)" zoning,

should the Board relax the development restrictions at this stage, there was no means for the Board to exercise any planning control to ensure that the proposed development scheme with all the design and planning merits as claimed would materialise. There was a possibility that the relaxation of BHR would result in a tall wall-liked development rather than a tall and slim development as claimed. This Member also considered that it was more appropriate for any details about the development proposal to be considered by the Board through a minor relaxation planning application. The Secretary added that the minor relaxation provision was also applicable to relaxation of NBA and building gap requirements.

164. A Member agreed that detailed design should be considered at the planning application rather than plan-making stage. This Member also asked what the appropriate planning mechanism to control the detailed design elements as suggested by R6 would be. The Chairman asked what would be the difference in terms of the planning control through a minor relaxation planning application under a “R(A)” zone or say a master layout plan submission under a “Comprehensive Development Area” (“CDA”) zone. In response, the Secretary said that even though the Board had flexibility to decide on the extent of relaxation in minor relaxation applications, it was unlikely that the BHR could be relaxed from 130mPD to 203mPD under a minor relaxation application. The “R(A)” zone for the Site was intended for a development that was mainly residential in nature. If the Site was intended to achieve so many different objectives as claimed by R6 and the attendees, including development into a tourist attraction and providing pedestrian connection to the cluster of historic buildings in the area, the Site could be zoned “CDA” instead. Under a “CDA” zoning, the project proponent would be required to submit a planning application, with a master layout plan and relevant technical assessments, for the consideration of the Board. As there was a requirement for planning applications to be made to the Board, it was possible to only retain a BHR whilst taking away the NBA and building gap requirements. This might be less rigid and provide more flexibility whilst allowing the Board to retain its planning control.

165. In response to the Chairman and another Member’s question, the Secretary said that in terms of procedures, the Board was considering the further representations at the hearing and deciding whether the proposed amendment of the BHR to 130mPD should be confirmed or further varied. There was provision under the Ordinance for the Board to

further vary its proposed amendment to meet / partially meet the further representations. However, Members had to consider whether it was justified to vary the zoning of the Site at this stage as a way to respond to the further representers' grounds that the OZP restrictions were too restrictive and did not allow for any design flexibility.

166. The Vice-chairman said that despite the many seemingly ambitious objectives mentioned in the presentations, there was no binding commitment and it was likely the proposed redevelopment on the Site would be more akin to a "R(A)" development. The Vice-chairman said that it would be more appropriate to retain the "R(A)" zoning with the amended BHR of 130mPD and the same NBA and building gap requirements. Another Member agreed.

167. A Member said that he agreed with the Chairman that the legal points raised by the legal representatives of F3 should not be discussed in the further representation hearing as the legal points would be subject to the Court's ruling under the judicial review proceedings.

168. In response to a Member's question, the Secretary said that on the day of the representation hearing on 27.5.2011, she was acting as the D of Plan. Hence, she sat on the Board as a Member in the capacity of the D of Plan rather than the Secretary on that day. The Chairman said that according to previous legal advice obtained, there was no procedural unfairness for officials to perform their duties and roles in statutory bodies to which they were appointed. Hence, he did not agree with F3's legal representative's accusation that there was apparent bias because official members of PlanD was sitting on the Board and was allegedly involved in a lot of discussion at the deliberation session of the representation hearing.

169. A Member expressed disagreement to some of the allegations made by R7 about the Board's procedures. The Chairman said that the Board was obliged to follow established procedures in the conduct of its meeting, such as the way the question and answer and deliberation sessions were conducted. Otherwise, the Board would be prone to legal challenge.

170. After further deliberation, the Chairman concluded Members' agreement to

note the support of F2 (part) regarding the amendment to the Notes of the “OU” annotated “Mass Transit Railway Depot with Commercial and Residential Development Above” zone was noted.

171. After further deliberation, the Chairman concluded that Members generally agreed that the BHR of 130mPD should be confirmed and the BHR of the Site shown on the OZP should be amended accordingly. Members also agreed that the two 10m-NBAs and the 20m-building gap requirements should be retained. Members agreed not to uphold F1, F2(part) to F152 and F154 to F286. The Chairman summarised the main reasons for not upholding the further representations would be the relaxed BHR of 130mPD would be sufficient to accommodate the permissible GFA allowed on the Site; the amended BHR of 130mPD on the Site would still maintain a broad stepped building height profile for the Area; further relaxation of the BHR would undermine the integrity of the building height profile and could result in ‘out-of-context’ buildings; the BHR of the Site would not necessarily result in larger building bulk as the building form depended on the design; and the 4-tower scheme was only a notional scheme and there was flexibility to adopt alternative design. Members agreed.

#### Further Representation No. F2 (Part)

172. After further deliberation, the Board agreed to note the support of further representation No. F2 (part). The Board agreed that the Note for the “OU” annotated “Mass Transit Railway Depot with Commercial and Residential Development Above” zone should be amended to add the remarks to indicate that the maximum GFA shall not exceed the figures stipulated in the Notes or the GFA of the existing building, whichever was the greater.

#### Further Representation No. F1 and F2 (part)

173. After further deliberation, the Board decided not to uphold the further representation No. F1 and F2 (part). Members then went through the reason for not upholding the further representations as detailed in section 5 of the paper and considered that it was appropriate. The reason was:

- the building height restriction (BHR) of 130mPD for the Kai Tak Mansion site had taken into account the permissible development intensity of the Site, including the slope area at the back of the Kai Tak Mansion site. With the area along Kwun Tong Road subject to BHRs of 80mPD and 100mPD, the area further uphill subject to BHRs of 160mPD and 170mPD, the BHR for the Kai Tak Mansion site would still maintain a broad stepped height profile for the area.

#### Further Representation No. F3 to F152 and F154 to F286

174. After further deliberation, the Board decided not to uphold the further representations No. F3 to F152 and F154 to F286. Members then went through the reasons for not upholding the further representations as detailed in section 5 of the paper and considered that they should be suitably amended. The reasons were:

- (a) the original BHR of 110mPD for the Site was formulated based on a host of relevant planning, visual and urban design considerations. Air ventilation was only one of them. The relaxation of BHR from 110mPD to 130mPD was to accommodate the permissible GFA allowed on site, i.e. to include the slope area for GFA calculation. The BHR for the Kai Tak Mansion site would still maintain a broad stepped height profile for the area. Further relaxation of the BHR would undermine the integrity of the building height profile and create 'out-of-context' buildings not in line with public aspirations;
- (b) the BHRs for the Site would not necessarily result in larger building bulk and would allow flexibility in the shape and form of the buildings. The BHR of 130mPD did not preclude the incorporation of wider building gap within the Site, innovative architectural features and landscape treatment. Whilst a relaxed BHR would not guarantee the provision of wider building gaps, the non-building areas and building gap stipulated for the Kai Tak Mansion site would provide linkages to the adjacent heritage features by opening up wider views to and from these historic buildings, as well as avoiding development with typical long continuous façade; and



- (c) there was provision for application for minor relaxation of the BHRs, NBA and building gap requirements under the OZP to cater for schemes with planning and design merits. Each application would be considered by the Board on its individual merits based on the set of criteria set out in the Explanatory Statement of the OZP.

### **Agenda Item 19**

Any Other Business

[Open Meeting]

175. The Secretary reported that a letter from the Alliance for the Concern over Columbarium Policy (the Alliance) was received on 15.12.2011 and a reply was issued by the Secretariat on 20.1.2012. The two relevant letters were tabled for Members' information.

176. The Secretary said that the Alliance mainly commented that some operators of unauthorized columbarium developments had abused the planning application system by requesting the continued deferral of the consideration of their applications or by withdrawing the application and immediately re-submitting a similar application. The Secretariat had replied to the Alliance indicating that the Board would consider requests for deferral of planning applications based on the criteria set out in the 'Town Planning Board Guidelines on Deferment of Decision on Representations, Comments, Further Representations and Applications' (TPB PG-No. 33).

177. The Alliance also requested to have a meeting with the Chairman and Members of the Board to discuss the matter. The Secretary asked Members to consider the request for the meeting. A Member said that the Board had followed its established practice to consider all deferral requests for planning applications in accordance with TPB PG-No. 33. Hence, there was no need for a meeting with the Alliance to particularly discuss deferral of cases involving columbarium uses. Members agreed.

178. There being no other business, the meeting was closed at 7:00pm.