

TOWN PLANNING BOARD

TPB Paper No. 10575
For Consideration by the
Town Planning Board on 27.9.2019

DRAFT NGAU TAU KOK AND
KOWLOON BAY OUTLINE ZONING PLAN NO. S/K13/26
RECONSIDERATION OF REPRESENTATION NO. 2

DRAFT NGAU TAU KOK & KOWLOON BAY OUTLINE ZONING PLAN NO. S/K13/26

RECONSIDERATION OF REPRESENTATION NO. 2

Subject of Representation	Representer	Commenter
Oppose Various Amendment Items in General		
<u>Oppose</u> the building height restrictions (BHRs) and the requirements of non-building area (NBAs) and building gaps (BGs) under Amendment Items A to C4 and Items (a), (b), (f) and (g) to the Notes of the OZP	R2 The Real Estate Developers Association of Hong Kong (REDA)	Nil

Note: Soft copy of submissions made by **R2** are sent to Town Planning Board (TPB) members via electronic means at **Annexes IIIa to IIId** (for TPB Members only); and are also available for public inspection at TPB's website at https://www.info.gov.hk/tpb/en/Website_S_K13_26_R2_ENG.html and the Planning Enquiry Counters of the Planning Department in North Point and Sha Tin. A set of hard copy is deposited at the TPB Secretariat for Members' inspection.

1. Introduction

- 1.1 This paper is to provide the Town Planning Board (the Board) with information for the reconsideration of Representation No. 2 (**R2**) to the draft Ngau Tau Kok and Kowloon Bay Outline Zoning Plan (OZP) No. S/K13/26 (the subject OZP) which was exhibited for public inspection on 19.11.2010 under section 5 of the Town Planning Ordinance (the Ordinance).
- 1.2 The hearing is for reconsideration of the representation pursuant to the Court of First Instance (CFI)'s ruling on the judicial review (JR) lodged by REDA against the Board's decisions on **R2**. REDA¹ has been invited to make submissions of supplementary information (SI) and attend this meeting for reconsideration of **R2**.

2. Background

- 2.1 During the public inspection period of the subject OZP, REDA submitted **R2** opposing the BHRs for all residential and Government, institution or community ("G/IC")² zones outside Kowloon Bay Business Area (KBBA)³ and all NBA and BG

¹ There is no comment related to R2.

² The "G/IC" sites provide spatial and visual relief amidst the densely built environment; and the BHRs may be reviewed on a case-by-case basis when there are known committed redevelopment proposal with policy support.

³ BHRs were imposed on sites within KBBA in 2005.

requirements in various zones. On 27.5.2011, the Board considered **R2** and decided not to uphold **R2**.

- 2.2 A JR was lodged by REDA on 25.7.2011 against the decisions of the Board not to propose amendments to the subject OZP and three other OZPs⁴ in accordance with its representations. On 3.2.2015, the CFI allowed the JR by REDA and ordered that the Board's decisions on REDA's representations in respect of the four OZPs be quashed and that the decisions be remitted to the Board for reconsideration⁵.
- 2.3 Pursuant to the Court's order on REDA's JR, the development restrictions of the OZP were reviewed by the Planning Department (PlanD) to take into account the implications of Sustainable Building Design Guidelines (SBDG), changes in planning environment within the planning scheme area of the OZP (the Area) and the adjoining Kai Tak Development (KTD) area. An updated air ventilation assessment (AVA) by expert evaluation was completed in 2019 (AVA 2019). The findings of the review presented in TPB Paper Nos. 10397 and 10515 (the Review) were noted by the Board on 9.3.2018 and 25.1.2019 respectively as the basis for inviting REDA to this meeting for reconsideration of **R2**. A period of two months was allowed for REDA to submit supplementary information (SI) in response to both TPB Paper Nos. 10397 and 10515 before rehearing **R2**. On 25.5.2018 and 18.4.2019, REDA submitted SIs (**Annexes IIIc and IIId**).

3. **The Representation**

Subject of Representation

- 3.1 **R2** submitted by REDA opposes Amendment Items A to C4 to the OZP and Items (a), (b), (f) and (g) of amendments to the Notes of the OZP regarding the imposition of BHRs on the residential and "G/IC" sites outside KBBA and the designation of NBAs and BGs in various zones (**Plans H-1 and H-2 and Annexes IIIa to IIId**).
- 3.2 A consolidated summary⁶ of **R2**'s submissions is at **Annexes VIa to VIc** and highlighted below.

Grounds of Representation

BHRs

Flexibility for quality design and impact on streetscape and air ventilation

- 3.3 BHRs are too stringent and might unnecessarily constrain the provision of quality design and environment. The unreasonably low BHR results in bulkier buildings,

⁴ The three other OZPs are the Wan Chai, Mong Kok and Yau Ma Tei OZPs.

⁵ REDA's JR was allowed on the grounds of specific procedural unfairness, the Board's failure to make sufficient inquiries in relation to REDA's representations including the effect of the Sustainable Building Design Guidelines, air ventilation and building height profile; and the Board taking minor relaxation into account in not upholding the representations.

⁶ The summary is based on Annex VI in the TPB Paper No. 8820 for consideration of representations in Group 1 prepared in 2011 with updating to take account of the major new points raised in the documents tabled by REDA at the TPB meeting on 27.5.2011 and SIs submitted by REDA dated 25.5.2018 and 18.4.2019.

creates solid wall effect closer to ground level, makes innovative architectural design and void feature impossible and directly affects streetscape, air ventilation and the quality of life of the users of the development.

- 3.4 The BHRs are more than ‘reasonably necessary’, this can be revealed in the assumption in deriving the restrictions. The Review assumed a theoretical maximum site coverage of the tower based on an assumed building bulk. This may not be the case if a more interesting building profile, such as diminishing area on upper floors, is to be pursued.

Reasonable height limits

- 3.5 The objectives for BHRs as stated in paragraph 7.2 of the Explanatory Statement (ES) can be achieved with height limits imposed at a level which permits a more reasonable form of development.
- 3.6 The public concern appears to be about developments in the order of 60 storeys or taller in prominent positions. High-rise developments of around 40 storeys are acceptable to the public. The general BHRs of about 80m to 100m for many residential sites in the Area, which are equivalent to about 25 to 32 storeys, are lower than what is necessary to address the public concern.
- 3.7 The BHRs are set too low and has not taken into account the new measures on SBDG, which results in a general down-zoning of development potential, loss of development right and property value.

View corridors and stepped BHs

- 3.8 The Hong Kong Convention and Exhibition Centre (HKCEC) and the Quarry Bay Park are the most relevant key vantage points for visual impact considerations in this OZP. The local vantage points such as the footbridge near Choi Ying Place should not be adopted as they have no significant characteristics and have not been established after public consultation.
- 3.9 It is illogical to adopt a descending BH profile from KBBA of 120mPD along Wai Yip Street to the east and to disallow continued increase in BHRs across Telford Gardens, across Kwun Tong Road and Ngau Tau Kok Road. The whole of this central area should have increased BHRs ranging from 140mPD to 150mPD to maintain the rising profile of building heights while still protecting the ridgelines from the recognized vantage points.

Telford Gardens and Telford Plaza

- 3.10 Telford Gardens/Kowloon Bay MTR Station is an existing focal point of the whole planning area. The BHR of the site should be set at 120mPD to 150mPD to create a stepping up profile from the waterfront/KBBA, instead of forming a valley at the site. If so, the number of towers would be reduced by half and more space would be created without the need to impose the BGs at BHR of 22mPD.

BHRs for private housing

- 3.11 Different standards were applied for private housing and public housing in the imposition of BHRs. As noted in Plan H-4 of TPB Paper No. 8820, Tak Bo Garden is at a spot height of 23mPD and the two public housing estates on the other side of Choi Ha Road are at the levels of 19.6mPD and 22.5mPD. However, the BHR for Tak Bo Garden is 120mPD which is lower than the BHR of 140mPD for the two public housing estates.

NBAs and BGs

Restrictions beyond the intention of the Town Planning Ordinance and Spot Zoning

- 3.12 The imposition of different BHRs within the same sites through NBAs and BGs constitutes a form of ‘spot zoning’, which is too restrictive, inappropriate and unlawful. Sections 3 and 4 of the Ordinance do not provide for imposition of NBA. It also violates the broad principle of planning indicated in paragraph 3.2 of the ES that the object of the OZP is to indicate only the broad principles of development.
- 3.13 The Ordinance does not provide means for compensating private land owners for the loss of land for setback⁷ for a public purpose. There is no justification as to why NBAs and BGs are essential within the OZP or why it must be at a specified width/level/location. The unclear justifications for the imposition of NBAs and BGs would render unnecessary complications related to compensating private land owner for loss of land for public purpose under Buildings Ordinance (BO) and the Roads (Works, Use and Compensation) Ordinance.
- 3.14 NBAs should be provided by suitable zoning such as “Open Space” (“O”) zone for parks or area shown as road under the OZP, there is no justification for imposition of NBA.

Imposition of NBA and BG requirements

- 3.15 The AVAs conducted in 2010 (AVA 2010) and AVA 2019 are inadequate to justify the extent of development restrictions and no information was included to justify the extent of intrusion into private property rights. There is neither critical assessment nor alternative option considered in the AVAs. The NBA and BG restrictions were not backed up by cogent evidence and are arbitrary including:
- (a) 3m-wide NBAs on both sides of Wang Chiu Road and Wang Kwong Road - the NBAs are not justified as Wang Chiu Road and Wang Kwong Road are the widest roads in KBBA and they are already serving as breezeways.
 - (b) 15m-wide BG at BHR of 22mPD within Mega Box (Enterprise Square V) site, from Lam Fung Street to Sheung Yee Road - the AVA 2010 has only considered the site occupying a waterfront location and that the present slab-type development does not facilitate air ventilation. It has totally ignored the fact that both to the north and to the west of the site are big open spaces; and the site is fronting Wang Chiu Road which is one of the widest roads in KBBA. The two big open spaces and the wide road can allow good air penetration into the

⁷ There are no setback requirements under the subject OZP.

Kowloon Bay inner area. If the open spaces and the wide road to the immediate vicinity of the site had been taken into account, the need for the stringent restrictions imposed on the site would be substantially reduced. The individual site context was not taken into account. The AVA 2019 justifies the 15m-wide BG at BHR of 22mPD by providing a simple figure showing the flow of wind and states that there would be a wake area in the leeward side. The expert only focuses on the blockage of wind by the slab building but has ignored the wind that could flow through adjacent space.

- (c) 15m-wide/16m-wide BGs at BHR of 22mPD from Lam Hing Street to Sheung Yuet Road - the BGs have duplicated the function of other breezeways running parallel or nearby. There is no justification on the difference between 15m-wide and 16m-wide BGs.
- (d) Two 22m-wide (running east-west) and one 15m-wide (running north-south) BGs at BHR of 22mPD at Telford Gardens and Telford Plaza site - there is no justification on whether it is 'more than necessary' to impose wider 22m-wide BGs instead of 15m-wide BGs as the general width of effective air path is 15m.

Effective road spacing for air ventilation

- 3.16 Both the Causeway Bay and Wan Chai AVAs provide a general effective road spacing of 15m-width and state that this aligns with similar requirements under the SBDG. However, the NBA/BG proposed under AVA 2010 is significantly wider and self-evidently ignores the SBDG, which the Board now accepts as an essential consideration as directed by the court judgment. This AVA proposes NBAs not at the narrow roads, but at the widest roads.

Proportionality analysis

- 3.17 The Court of Final Appeal (CFA) at the JR case of Hysan Group Companies (Hysan) held that proportionality analysis⁸ should follow a progressive, four-step assessment. The NBA and BG requirements are imposed only with reference to Steps (1) and (2), i.e. restrictions pursue a legitimate aim and are connected to the legitimate aim. With the examples mentioned in the above paragraphs, it is evident that they fail Step (3), that is, the Board has not made any attempt at all to consider 'whether the measure is no more than necessary for that purpose'.
- 3.18 There is also no evidence that the imposition of the planning restrictions on the Mega Box site has undertaken the four-step proportionality analysis. A 3m-wide NBA and a 15m-wide BG at BHR of 22mPD are imposed along the lot boundary abutting Wang Chiu Road and through the centre of the site respectively. These two requirements

⁸ The CFA held that where it is factually established that planning restrictions imposed by the Board encroach upon a landowner's property rights, the extent, if any, of the encroaching measure's validity is determined by a four-step proportionality analysis of asking (1) whether the intrusive measure pursues a legitimate aim; (2) if so, whether it is rationally connected with advancing that aim; (3) whether the measure is no more than necessary for that purpose; and, where an encroaching measure has passed the first three steps, a fourth step asking (4) whether a reasonable balance has been struck between the societal benefits of the encroachment and the inroads made into the constitutionally protected rights of individual, asking in particular whether the pursuit of the societal interest results in an unacceptable harsh burden on the individual.

are very restrictive. The Board has not made any attempt at all to assess the burden of the combined effect of the restrictions to the owner of the Mega Box site. Not only does the imposition of restrictions fails Step (3), it also fails Step (4) of the assessment, that is, a fair balance has not been struck between the rights of the individual and the interests of the community.

Comparison of alternative options in the AVAs

- 3.19 With regard to the Oriental Generation Limited (OGL) JRs court judgments for the former Kai Tak Mansion (KTM) site, it is evident that the AVA methodology adopted for this OZP has fundamental problems. The OGL JRs court judgments made the point that no alternative options for the former KTM site were explored in the 2010 AVA study for improving air ventilation impacts, nor did it explain why the stipulated NBA is an optimum or appropriate way of addressing ventilation impacts⁹. The situation for most of the other sites within the OZP is even worse as no similar comparison of an option with a base case was done.
- 3.20 The 2010 AVA study was considered too general to justify the proposed restrictions. At the hearing held in 2011, **R2** pointed out that there was nothing in the 2010 AVA report to justify that the proposed restrictions were essential or necessary. There was inadequate information to enable the Board to critically assess whether the proposed restrictions such as those imposed on the Mega Box site and former KTM site were essential. The 2010 AVA report was only a generalized expression of opinion based on generalized information. No explanation or information had been provided to assess the benefits brought about by the proposed restrictions in relation to the impact on private property rights. Due to the change in planning circumstances (impact of SBDG, rezoning of sites within the Area, increase in development intensity and BHRs in the KTD area), the 2010 AVA study is outdated to back up the development restrictions.
- 3.21 The methodology of the AVA 2019 is fundamentally flawed and does not comply with the court judgment. No alternative options of the planning restrictions as suggested by REDA have been explored. The AVA 2019 should have assessed the wind performance of the option with more relaxed BHRs for Telford Gardens and Telford Plaza, such as 100mPD and 120mPD.

Others

Impact of SBDG

- 3.22 The Board and the PlanD had not made any attempt to take account of the impact of the SBDG provisions when preparing the OZP development controls, and no attempt had been made to ascertain the extent to which the two regimes may interface with or duplicate each other, or what their combined impact might be on land owners' development rights. OZPs are not the appropriate mechanism for imposing detailed development controls on building environment. The BO is the more appropriate means for imposing such controls.

⁹ The development restrictions for the former KTM site has been reviewed taking into account the court judgments on the related JRs and the proposed amendments, including deletion of the NBA and BG and amendment of BHR, were gazetted under S/K13/29 on 13.4.2017.

Plan Making Function and Minor Relaxation

- 3.23 The Board must be careful not to place any substantive reliance on the possibility of minor relaxation, and must instead ensure that the BHR in the draft OZP is adequate on its own merits.

Managing the Town Planning Board Hearing

- 3.24 The manner in which the Board was managing representation hearings was contrary to the principle of providing the public with a full and fair hearing e.g. TPB members sat for long hours, such as more than 12 hours continuously on the day when the Sai Ying Pun and Sheung Wan OZP representations were heard in 2010. This does not give confidence that the representations were properly considered.

Representer's Proposals

BHRs

- 3.25 Given the established BHRs on KBBA, and the general background of development on the slopes to the east, a general increase in the BHRs of 20m to 40m in the subject OZP is appropriate.
- 3.26 The BHRs for Telford Gardens should be revised from 60/100mPD to 100/120mPD.

NBAs and BGs

- 3.27 To delete all NBA and BG requirements from the OZP and alternative zonings, such as "O" or area shown as 'Road' should be used to provide desired gaps or space for air ventilation purpose.
- 3.28 Should any of the NBA and BG requirements be retained, the words "under exceptional circumstances" should be removed from the relevant Notes to the zones so that a relaxation can be considered in future for each restriction on its own merits.

4. Planning Considerations and Assessments

- 4.1 The rationales for stipulation of the development restrictions on the OZP as detailed in TPB Paper No. 8820 for consideration of **R2** on 27.5.2011 and the Review conducted pursuant to the Court's ruling mentioned in Section 2 above are summarised in **Annex VII**. The responses to the representer's grounds and proposals are set out below and details are in **Annex IV**.

Responses to Grounds of Representations and Proposals

BHRs

Flexibility for quality design and impact on streetscape and air ventilation

- 4.2 Building design is determined by the interplay of a host of factors such as PR, site

coverage, BH, design and disposition of buildings, topography and geometry of the site. The control or reduction in BH does not necessarily result in larger building bulk. In considering the building bulk, apart from the size and volume of a building, reference should also be made to the following:

- (a) the shape and form of building, including any podium, balcony, bay window, architectural feature and stepped height profile;
- (b) the disposition of building in relation to the boundary of the site and the adjacent buildings, including setback at both ground and upper levels; and
- (c) the location of the building in relation to the characteristics of the surrounding area, including surrounding buildings, open areas, natural topography, ridgeline, main street and pedestrian circulation pattern, view corridor and breezeway.

- 4.3 As such, whether a building is considered bulky depends on many considerations other than BH alone. The assumption that BH control will compress a building and hence increase its bulkiness without attempting for a change in design is only quoting an extreme case. A development without BH control can also give the same bulkiness at pedestrian level, for example, by designing a podium of 100% site coverage up to 15m permissible under Building (Planning) Regulations (B(P)R) in order to capitalise values of ground level space.
- 4.4 To follow up on the Court's ruling, a review of the BHRs and other development restrictions taking into account the implications of SBDG has been conducted. The findings of the Review were presented to and noted by the Board on 9.3.2018 and 25.1.2019. The Review confirmed that the BHRs as well as the NBA and BG requirements can accommodate the development intensities permitted under the OZP even after taking into account SBDG requirements.
- 4.5 All assumptions adopted for the Review are included in Annex C2 of TPB Paper No. 10397 (see **Annex VIb**). Similar assumptions were adopted for the review of the Wan Chai, Causeway Bay and Mong Kok OZPs. It illustrates that permissible PR/GFA, taking into account SBDG requirements, can be accommodated with the BHRs as well as NBA and BG requirements. Amongst all assumptions, the assumptions on GFA concessions¹⁰ (20% for residential and composite commercial/residential and 25% for commercial developments respectively) as well as the BHRs have generally made sufficient allowance to accommodate permissible GFA and allow certain design flexibility for incorporation of various design elements including SBDG.

¹⁰ The GFA concession assumptions have taken into account (i) the average disregarded GFA (plant rooms, etc. other than car parks for domestic/composite buildings in Residential Zones 1, 2 and 3 of 9%, 10% and 11% respectively and for non-domestic buildings of 15% under the "Sample Study on GFA Concessions Granted to Buildings" conducted by a Government inter-departmental working group led by the Buildings Department in 2006; and (ii) the overall cap of 10% GFA concession for total amount of GFA concession for green/amenity features and non-mandatory/non-essential plant rooms and services as specified under BD's APP-151 on Building Design to Foster a Quality and Sustainable Built Environment. Roof-top structures accommodating GFA exempted facilities (such as water tank or lift machine room) and occupying not more than 50% of the area of the floor below will not be counted as a storey.

Reasonable height limits

- 4.6 Apart from air ventilation consideration and protection of ridgelines of Lion Rock, Tsz Wan Shan and Kowloon Peak, the BHRs have been formulated based on an overall BH concept and other relevant considerations including the existing BH profile, natural topography, local area context and characteristics, the BH of the developments in the adjoining planning areas as well as visual compatibility of building masses in the wider setting. Allowing high-rise development of 40 storeys categorically across the entire planning area as proposed by **R2** without having regard to the said factors would undermine the overall urban design concept. A balance has been struck between public aspirations for a better living environment (i.e. cityscape in urban design terms) and private development rights (i.e. permissible PR).
- 4.7 As illustrated in the TPB Paper No. 10397 (see **Annexes VIb and VIc**), the Review which has adopted reasonable assumptions on built form has confirmed that the BHRs as well as the NBA and BG requirements can accommodate the development intensities permitted under the OZP even after taking into account SBDG requirements. There is no issue of downzoning of development potential, as claimed by R2, which has been demonstrated in the TPB Paper No. 10397.

View corridors and stepped BH (Plan H-4d)

- 4.8 According to the Urban Design Guidelines in Chapter 11 of the Hong Kong Planning Standards and Guidelines (HKPSG), views to special landmarks and features (such as ridgelines, water body, countryside and other natural features) should be functionally protected so as to avoid finger or broken views and additional view access should also be maximized to strengthen visual permeability in the dense city form. In Kowloon, the HKPSG indicate that visual access to Lion Rock and major ridgelines from vantage points including: the HKCEC and Quarry Bay Park should be enhanced to avoid losing these features which form ‘the image of Hong Kong’¹¹.
- 4.9 The current BH profile is intended to create a discernible townscape for the KBBA with a BHR of 170mPD imposed for “Commercial” (“C”) and “Other Specified Uses” annotated “Business” (“OU(B)”) zones in the southern part as a business node where some new developments have been completed and agglomerated to form a critical mass as an identifiable area node, and stepping down to three lower height bands of 100mPD, 120mPD and 140mPD in the northern and eastern parts. With a smooth transition of BH profile from the KBBA, the business node steps down gradually to the medium-rise residential developments including Kai Yip Estate, Richland Gardens and Telford Gardens along Kwun Tong Road. Across Kwun Tong Road further east, the BH profile for the residential developments mainly follows the natural topography stepping up gradually eastward and northward towards Jordan Valley and the foothill of Kowloon Peak generally following the natural topography. Thus, the BH profile in the Area including the KBBA is considered logical and desirable from urban design point of view (**Plan H-4d**).

¹¹ When reviewing the development restrictions for the former KTM site at Kwun Tong Road incorporated under OZP No. S/K13/29 in 2017, the local viewpoint from the footbridge near Choi Ying Place for preservation of views to Lion Rock was only adopted as one of the many local viewpoints in the visual appraisal and this vantage point has not been adopted for the current analysis.

Telford Gardens and Telford Plaza (Plans H-8a to H-8b)

- 4.10 Regarding the Telford Gardens and Telford Plaza site above the Kowloon Bay MTR Station and MTR depot, it is zoned “OU” annotated “Mass Transit Railway Depot with Commercial and Residential Development above” with a sizable area more than 10ha, spanning a width of 230m and length of about 500m (even excluding the commercial/office development of Telford Plaza). It is subject to domestic and non-domestic GFAs of 278,703m² and 177,031m²¹² respectively. The northern portion of the “OU” zone, occupied by Telford Gardens, is subject to BHRs of 60mPD and 100mPD, these BHRs are about 10m above the BH of the existing residential buildings. The south-eastern portion of the “OU” zone, occupied by commercial/office development of Telford Plaza, is subject to BHR of 100mPD which reflects the height of the existing building.
- 4.11 Given the large size of the site, it is necessary to stipulate BGs above the depot level to enhance air ventilation of the area. The three BGs are important for linking the surrounding roads to form air paths to achieve the intended air ventilation performance of district significance apart from improving the building permeability within Telford Gardens and Telford Plaza. The 22mPD for the BG reflects the height of the existing MTR depot.
- 4.12 Due to the specific uses that need to be accommodated on this sizable site including a railway depot and a public transport interchange, drawing up an indicative redevelopment scheme for BH review taking into account SBDG at this stage may be highly arbitrary. For any future redevelopment of this site¹³, it may be difficult to meet the prescriptive SBDG requirements due to the need to accommodate the said special functional requirements. A performance-based design alternative approach with support of a quantitative AVA will likely be required as indicated in paragraph 12 and Appendix E of APP-152 on SBDG. Nevertheless, based on the assumptions on built forms adopted for the Review as mentioned in paragraph 4.5 above (see **Annex VIb**), the existing BHRs and BGs will allow achieving the permissible GFA with sufficient design flexibility. There is no basis to arbitrarily adopt a much higher BHR of 120mPD and 150mPD as proposed by **R2** to accommodate the permissible GFA under the OZP.

BHRs for private housing (Plan H-4d)

- 4.13 On the OZP in the vicinity of Kwun Tong Road, the public housing developments have height bands ranging from 80mPD to 170mPD and the private residential developments with height bands of 120mPD and 140mPD. It is because those public housing development sites are located at higher site levels ranging from 20mPD to 60mPD such as Choi Ying Estate and Choi Tak Estate while the private residential developments such as Amoy Garden and Tak Bo Garden are on site levels of about 5mPD (the 23mPD as referred by **R2** is actually the spot height for the podium deck at 5/F of Tak Bo Garden). The absolute BHs of the public housing developments are

¹² Telford Gardens and Telford Plaza developments are covered by NKIL 5744 and NKIL 6201 with total site area of about 16 ha.

¹³ Redevelopment of Telford Gardens and Telford Plaza will also be governed by existing development restrictions on the Master Layout Plan of the lease.

similar to or even more stringent than the private residential developments (**Plan H-4d**).

NBAs and Building Gaps

Restrictions beyond the intention of the Town Planning Ordinance and Spot Zoning

- 4.14 As regards **R2**'s grounds of representation against the spot zoning approach, the Court has already held that the Board has power to impose BHRs and NBA or BG requirements as a matter of vires¹⁴. The requirements of NBAs and BGs under the OZP are determined based on their wider district significance (detailed in paragraphs 4.17 to 4.20).
- 4.15 Regarding compensating private land owners, in general, proposals involving dedication of land for public passage and surrender of land for street widening would be entitled to bonus GFA under B(P)R, and any such claim would be duly considered by the Building Authority (BA) under the BO. The NBA and BG requirements on the OZP mainly for air ventilation purpose do not take away land from private land owners per se nor require dedication of land for public passage.
- 4.16 The "O" zoning as proposed by **R2** and NBA serve different functions. "O" zone is intended to provide open space for public enjoyment and normally would be excluded from development site for PR calculation. Its implementation may involve land resumption. NBA forms part of the building design to free up ground floor space for air ventilation purpose, and the development intensity of the sites would not be affected by the NBAs. Should these areas be rezoned to "O", the development potential of the concerned site would be affected.

Imposition of NBA and BG requirements

- 4.17 The objective of the NBA and BG requirements is generally to enhance air ventilation with district significance and would also improve pedestrian walking environment and local amenity. The NBA and BG requirements to improve air ventilation are set out in paragraph 8.6 of the ES. The imposition of these restrictions depends on different site context, site configuration and building disposition. The areas designated as NBA are clearly marked and shown in the OZP where no building structure above ground is allowed except for landscape feature, boundary fence/boundary wall that is designed to allow high porosity and minor structure of footbridge connection or covered walkway. However, taking into account the practical constraint in existing development pattern and development right, BGs where no building structure shall exceed the BHRs generally above podium, were imposed in certain localities.
- 4.18 The NBA and BG requirements are supported by AVAs carried out in accordance with the Technical Circular on AVAs promulgated by the Government (AVA 2010 in Annex D of TPB Paper No. 10397 and AVA 2019 in Annex C in TPB Paper No. 10515). The AVAs have assessed the existing wind environment in the Area and made a qualitative evaluation of the likely impact of the developments in accordance with BHRs on the pedestrian wind environment, including identification of areas of

¹⁴ The appeal cases are CACV 232 & 233/2012 (Hysan versus TPB) and CACV 127 & 129/2012 (OGL versus TPB).

concern and recommending possible measures to address the potential problems. The AVA 2019 was mainly to verify whether the NBAs and BGs recommended by the AVA 2010 are still valid given changing planning conditions since 2010, including impact of SBDG, rezoning of sites within the planning area, increase in development intensity and BHRs in KTD area.

4.19 As revealed in the AVAs, air ventilation is subject to a combination of factors like topography, urban morphology and wind environment/major ventilation paths, etc. For better air ventilation, breezeways along major prevailing wind directions and air paths intersecting the breezeways should be provided. In addition to the creation/maintenance of breezeways in forms of major open ways, such as principal roads, inter-linked open spaces, amenity areas, and low-rise building corridors, through the high-density/high-rise urban form, stipulation of NBAs and BGs on OZP is effective means to improve the air ventilation. Justifications for the specific NBA and BG requirements including, linking up these areas and widening of air space along roads, connection of major roads and minor roads to form air paths/major breezeways of district significance, improving air ventilation and providing pleasant pedestrian environment, are clearly set out in the AVAs and summarised in paragraphs 3-6 of **Annex VII**.

4.20 The AVA 2019 has clearly pointed out that while SBDG at the site design stage could help improve the localised wind environment at site level and for the immediate surroundings, they would not serve as effective alternative to NBAs and BGs stipulated to enhance air ventilation at district level. The Review has also confirmed that the NBA and BG requirements together with the BHRs can accommodate the development intensities permitted under the OZP after taking into account the SBDG (Annex C3 of TPB Paper No. 10397 at **Annex VIb**). The responses to the representer's specific concerns on individual NBAs and BGs in KBBA are highlighted below:

(a) 3m-wide NBAs on both sides of Wang Chui Road and Wang Kwong Road (**Plans H-7a to H-7c**)

Wang Chiu Road and Wang Kwong Road are in the centre of the area with high ground coverage ratio and building volume ratio. The lots zoned "OU(B)" and "C" along these two roads are subject to tall BHRs (120mPD, 140mPD and 170mPD) and characterized by wide lot frontage. Whilst 15m may be adopted as a minimum width of effective air paths under constrained site conditions, the AVA 2019 reconfirms the requirement to increase the effective road spacing to about 30m to enhance the effectiveness of the breezeways along these two major north-south running major roads of about 500m to 800m long facilitating wind penetration inland¹⁵. The widened breezeways as a result of the NBAs designated at the two subject roads can aid the lateral flow induced by corner eddies to enter into the east-west oriented street canyons. Given the generally larger lot size along these major roads (average size of about 0.4ha and minimum site depth of about 40m), the NBA requirement would not unreasonably affect the development potential of individual development sites. For example, the

¹⁵ The sections of Wang Kwong Road and Wang Chiu Road within KBBA measure 500m and 800m respectively. These two roads extend further northward beyond KBBA and are two major roads in the locality.

commercial development at Kingston International Centre (NKIL 6312) abutting Wang Chiu Road was recently completed with provision of NBA in accordance with the OZP restrictions.

- (b) 15m-wide BG at BHR of 22mPD and 3m-wide NBA at Mega Box site (**Plans H-7a and H-7d**)
- (i) The NBA (along Wang Chiu Road) forms part of the major breezeway mentioned in paragraph (a) above. The BG serves to form a wind corridor mainly for incoming southerly winds to connect through the “O” zone (Zero Carbon Building site) to Wang Kwun Road further north. The BHR of 22mPD for the BG (which tallies with the BHR of other BGs in KBBA) and its width are to make allowance for podium development for commercial use with room for site design flexibility. The site is the second largest “OU(B)” site (about 1.2ha) in KBBA and has long frontal length (about 120m between Sheung Yee Road and Wang Chiu Road). It is pointed out in the AVA 2019 that without providing this 15m-wide BG, the development in the subject site is likely to create some wake areas under prevailing southerly wind on the leeward side north of the site. In general, the depth of the possible wake area could be at least the height or the width of the frontal area of the building. The open space or pedestrian environment in the immediate north of the site would be adversely affected. The proposed BG in the middle of the subject site could minimize the wake area by reducing the width of the frontal area of the building.
- (ii) This sizable site with long road frontages coupled with the three sites to the immediate and further east of Wang Chiu Road permitted to be built up to 170mPD would create deep street canyon not favourable for wind penetration from the south. Hence, the NBA would enhance the major north-south air path along Wang Chiu Road while the BG would minimise the wake area for southerly wind affecting users of the open space and pedestrians in the north. With a BHR of 170mPD, there is reasonable allowance for design flexibility to achieve the permissible PR of 12 under the OZP even with the NBA and BG requirements (based on the assumptions adopted in the Review, the minimum BH required for a commercial building at 12 PR is 95m for a Class C site, i.e. 100mPD given a site level of around 5mPD).
- (iii) Even with the three restrictions on the site i.e. BHR of 170mPD, 3m-wide NBA along Wang Chiu Road and the 15m-wide BG, the permissible PR of 12 could be achieved with room for some design flexibility. However, having considered R2’s ground in its SI on 18.4.2019 that the big open spaces to the north and west of the Mega Box site and Wang Chiu Road could also allow good air penetration in the locality; that the alignment of the BG through the middle of the site would create considerable design constraints; and that alternative permeable building design measures under SBDG would serve similar localized air ventilation purpose that would help reduce the wake area for the southerly wind affecting users of the open space and pedestrians in the north; it is considered acceptable to delete the BG requirement for the Mega Box site as proposed by **R2**. However, the

NBA along Wang Chiu Road which is integral to a major air path of district significance should be retained.

- (c) 15m-wide/16m-wide BGs at BHR of 22mPD from Sheung Yuet Road to Lam Hing Street (**Plans H-7a and H-7e**)

The series of BGs form a network of ventilation corridors/air paths. It serves a specific purpose and is not duplicating other breezeways nearby. While 15m may be regarded as the minimum width for an effective air path, a small portion abutting the “O” zone was 16m-wide to align with the boundary of the private lot thereat. The BHR and widths for the BGs are to make allowance for podium development for commercial use with room for site design flexibility. Due to the larger size of the three sites (about 0.5ha to 2.1ha) with long road frontages (60m to 170m) on three/four sides, the BG requirements for the three sites, and the additional NBA requirement for one of the sites which is the largest “OU(B)” site in KBBA currently used as a bus depot abutting Wang Kwong Road is reasonable from planning perspective and with BHR of 140mPD, they would not affect achievement of permissible PR under the OZP. The 22mPD for the BG reflects the height of the existing bus depot on the largest “OU(B)” zone along this corridor.

- (d) Two 22m-wide (running east-west) and one 15m-wide (running north-south) BGs at BHR of 22mPD at Telford Gardens and Telford Plaza (**Plans H-8a to H-8b**)

As mentioned in paragraphs 4.10 to 4.12 above, the three BGs are important for linking the surrounding roads to form air paths to achieve the intended air ventilation performance of district significance apart from improving the building permeability within Telford Gardens and Telford Plaza. The proposed widths of the three BGs generally take into account the widths of the adjoining roads/air paths (Wang Tai Road, Lam Wah Street, Sheung Yuet Road and Tai Yip Street) intervening with low-rise buildings and open spaces, and the BHR for the BGs makes allowance for podium height requirement for railway depot and commercial uses. As mentioned in paragraph 4.12 above, the existing BHRs and BGs will allow achieving the permissible GFA with sufficient design flexibility under the OZP.

Effective road spacing for air ventilation

- 4.21 It is indicated in both the Causeway Bay and Wan Chai AVAs that air paths should be as wide as possible and an effective air path should be at least 15m in width for wind penetration. Whilst 15m-width may be taken as a minimum under constrained site conditions, such as relatively small size and site depths in Causeway Bay and Wan Chai, the actual width of NBAs would need to take into account district circumstances as well as the district significance of the air paths. KBBA is characterized by high ground coverage ratio and building volume ratio. The wind condition is generally weak and needs to be improved with more effective air paths of district significance. The development sites in KBBA are generally less constrained in terms of lot size with wider frontal width and site depth. The BHRs of 120mPD, 140mPD and 170mPD (on a site level of around 5mPD) for the “OU(B)” and “C” sites allow sufficient room for design flexibility to accommodate permissible PR of 12. In

contrast, commercial sites with BHR of 135mPD (on a site level of around 4mPD) are to accommodate maximum PR of 15 in Causeway Bay and Wan Chai. The imposition of NBAs and BGs will not affect development potential of concerned sites in KBBA. Coupled with the generally large lot sizes in KBBA, developments may be prone to be more bulky and it is necessary to stipulate the NBA and BG requirements at their respective widths and locations as explained in paragraph 4.20 above so as to enhance the effectiveness of air ventilation and link up the air paths/major breezeways of district significance in the area. For air paths of district significance, more than 15m-width is reasonable necessary where there is relatively less constraints and justified on air ventilation ground. Hence, a reasonable balance has been struck on the private property right and the air ventilation improvement for the district.

Proportionality analysis¹⁶

- 4.22 In Hysan's and OGL's final appeal, the CFA, having noted the developers' rights as owners of the sites that are obviously substantial and of high constitutional significance and the constitution and decision-making machinery of the Board, came to the conclusion that town planning restrictions, assuming them to be unassailable on traditional judicial review grounds, would in general only be susceptible to constitutional review if the Court is satisfied that they are manifestly without reasonable foundation.
- 4.23 As agreed by **R2**, the stipulation of BG and NBA requirements to enhance air paths of district significance are legitimate and rationally connected to the legitimate aim. The requirements were rationally formulated taking into account a host of factors, including the local conditions (e.g. existing road width, lot size and configuration), stipulated BHRs and plot ratios, air ventilation requirements, etc, hence the restrictions are not manifestly without reasonable grounds. It has also been demonstrated in the Review that the BHRs and NBA and BG requirements (only stipulated to enhance air ventilation of district significance) can accommodate permissible PR/GFA under the OZP taking into account the SBDG requirements and had allowed rooms for design flexibility. In this regard, it had struck a fair balance between the rights of the individual and the interests of the community. Nevertheless, it is considered acceptable to delete the BG requirement at the Mega Box site as mentioned in paragraph 4.20(b)(iii) above.

Comparison of alternative options in the AVAs

- 4.24 The methodology adopted in all AVAs for amendments to OZP is to assess the proposed restrictions formulated based on a number of considerations (site context/configuration, building height/disposition, etc.) as compared to the base case situation without the new restrictions. It is not practical to assess different options in a district wide AVA as there are infinite options and combinations for all restrictions covered under an OZP. Nonetheless, a prudent approach has been adopted by carrying out an updated AVA by expert evaluation, i.e. the AVA 2019, which has reconfirmed that the NBA and BG requirements are necessary and the width requirements are appropriate while providing reasonable allowance for design flexibility to achieve the permissible PR under the OZP. **R2** has not provided any technical assessments to support their

¹⁶ See footnote 8.

proposed amendments to the BHRs or proposed deletion of the NBA and BG requirements.

Others

Impact of SBDG

- 4.25 The Review has confirmed that the BHRs as well as the NBA and BG requirements can accommodate the development intensities permitted under the OZP even after taking into account SBDG requirements.
- 4.26 While SBDG mainly concerns detailed individual building design, OZP is to illustrate broad land use zonings and planning principles to guide development and redevelopments for the district stipulating restrictions on PR, BH, and/or site coverage where appropriate in order to control the development intensity having regard to the surrounding settings and other relevant planning considerations. In essence, OZP is more concerned with the general building bulk/mass, public space and major air path in a wider district context.

Plan making function and minor relaxation

- 4.27 The Review has confirmed that the development restrictions stipulated on the OZP would accommodate the PR/GFA permissible under the OZP, and it is not necessary to rely on minor relaxation applications to accommodate the PR/GFA permitted under the OZP. Thus, minor relaxation is not a justification for imposing the proposed planning restrictions in the OZP.

Managing the Town Planning Board hearing

- 4.28 In light of the specific procedural unfairness found in previous Court rulings, the Board has strengthened the procedures of representation hearing to prevent the recurrence of any such procedural unfairness including, for example, the duration of each hearing session will be well managed and that Members will have adequate time to digest and read the relevant materials before making decisions on representations.
- 4.29 For the current reconsideration of **R2**, the Board has provided two months for **R2** to submit SI in response to TPB Paper No. 10397. It has taken the suggestion in the SI submitted by **R2** on 28.5.2018 and agreed that updated technical assessment, including an updated AVA, would be conducted. The Board has further provided two months for **R2** to submit SI in response to TPB Paper No. 10515. The Board has provided more than one month notice for the rehearing and the paper was issued one week in advance of the rehearing meeting. The Board only noted TPB Papers No. 10397 and 10515 as the basis for inviting **R2** to the rehearing. The decision on **R2** will only be made after this rehearing.

Responses to Representer's Proposals

BHRs

- 4.30 The proposals for general increase of BHRs of 20m to 40m in the subject OZP are not supported having considered that the BHRs can accommodate the GFA/PR

permissible under the OZP and the stepped BH profile adopted within the three distinct areas on the OZP (paragraph 2 of **Annex VII** and **Plan H-3** refer). The responses to grounds relating to relaxation of BHRs for Telford Gardens in paragraphs 4.10 to 4.12 are relevant.

NBA and BG Requirements

- 4.31 The responses to grounds relating to stipulation of NBA and BG requirements in paragraphs 4.17 to 4.24 above are relevant.
- 4.32 The responses to grounds relating to BGs in Mega Box and Telford Gardens sites in paragraphs 4.20(b) and (d) above are relevant.
- 4.33 The proposal for deleting the NBA requirement and for designating alternative “O” zone to provide desired gaps and space for air ventilation purpose is not supported as they serve different purpose as responded to in paragraph 4.16 above.
- 4.34 The proposed deletion of the words “exceptional circumstances” in respect of applications for minor relaxation of NBA and BG requirements from the relevant Notes is also not acceptable as the cumulative relaxation of these requirements not under exceptional circumstances, under which the requirements cannot be met due to site constraints but the planning objectives would be achieved in other forms, would render the NBA and BG requirements ineffective.

5. Departmental Consultation

- 5.1 The submissions of **R2** made in 2010/2011 and the SIs submitted in respect of the Review have been circulated to the following Government bureau and departments for re-examination and comments received have been included in the above paragraphs.

- (a) Lands Unit, Development Bureau;
- (b) Planning Unit, Development Bureau;
- (c) Chief Town Planner/Urban Design and Landscape, PlanD;
- (d) District Lands Office/Kowloon East, Lands Department;
- (e) Chief Building Surveyor/Kowloon, Buildings Department;
- (f) Chief Highway Engineer/Kowloon, Highways Department (HyD);
- (g) Chief Engineer/Railway Development 2-2, Railway Development Office, HyD;
- (h) Director of Environmental Protection;
- (i) Director of Housing;
- (j) Commissioner for Transport;
- (k) Chief Engineer/Mainland South, Drainage Services Department;
- (l) Chief Engineer/Construction, Water Supplies Department;
- (m) Project Manager (Kowloon), Civil Engineering and Development Department;
- (n) Director of Fire Services;
- (o) Chief Architect/Central Management Division 2, Architectural Services Department;
- (p) Director of Electrical and Mechanical Services;
- (q) Director of Leisure and Cultural Services;

- (r) Antiquities and Monuments Office, Leisure & Cultural Services Department; and
- (s) District Officer (Kwun Tong), Home Affairs Department.

6. Planning Department's Views

- 6.1 Based on the assessments in paragraph 4 above, PlanD considers that the Plan should be amended to partially meet the representation by deleting the BG for "OU(B)2" zone shown in **Annex VIIIa** and amending the Notes of the "OU(B)2" zone by deleting Remarks (4) as indicated in **Annex VIIIb**. In tandem with the proposed amendments to the Plan, the Explanatory Statement should also be revised as proposed in **Annex VIIIc**.
- 6.2 The reasons for not upholding the remaining part of the representation are as below:
 - (a) the building height restrictions (BHRs) and non-building area (NBA)/building gap (BG) requirements are appropriate and had taken into account all relevant factors including the Urban Design Guidelines, existing topography, stepped building height (BH) concept, local characteristics, existing BH profile, site formation level and site constraints, the planned land uses, development potential, the wind performance of the existing condition and the recommendations of the air ventilation assessment (AVA) Study and sustainable building design guidelines (SBDG). The BHRs and NBA/BG requirements have struck a balance between public aspirations for a better living environment and private development right;
 - (b) the BHRs are formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development potential permissible under the outline zoning plan (OZP). The proposed overall relaxation of BHRs would jeopardise the coherence of the stepped BH profile and undermine the overall urban design concept;
 - (c) upon a review of the BHRs and NBA/BG requirements taking into account the implications of SBDG, it has been confirmed that the development restrictions can accommodate the development intensities permitted under the OZP even after taking into account SBDG requirements;
 - (d) the Board has power to impose BHRs and NBA/BG requirements as a matter of vires. Designation of BHRs and NBA/BG requirements on the OZP can serve a positive planning purpose and have positive planning benefits by improving air ventilation of district significance and the pedestrian environment;
 - (e) the cumulative relaxation of the NBA and BG requirements would affect the effectiveness of their planning intention. The wording 'exceptional circumstances' is included in the minor relaxation clause requirement to cater for the situation that only in some exceptional cases under which the requirement could not be met due to site constraints but the planning objectives would be achieved in other forms;

and

- (f) there is no strong justification for or technical assessments to substantiate **R2**'s proposed relaxation of BHRs and deletion of all NBA/BG requirements.

7. Decision Sought

The Board is invited to give consideration to **R2** and decide whether to propose/not to propose any amendment to the Plan to meet/partially meet the representation.

Attachments

Annex I	Draft Ngau Tau Kok & Kowloon Bay OZP No. S/K13/26
Annex II	Schedule of Amendments to the Approved Ngau Tau Kok & Kowloon Bay Outline Zoning Plan No. S/K13/26
Annex <u>III</u>	<u>Submissions of Representation No. R2</u> [TPB Members only - hard copy deposited at the TPB Secretariat for Members' inspection]
IIIa	Letter dated 19.1.2011
IIIb	SI-1 on 27.5.2011 (documents tabled in hearing meeting)
IIIc	SI-2 : Letter dated 25.5.2018 with attachments <ol style="list-style-type: none">1. Representation No. 2 dated 19.1.2011 (Annex IIIa above)2. TPB Paper No. 8820 considered at the Board's 984th meeting on 27.5.20113. Relevant extracts of Minutes of the Board's 984th meeting on 27.5.2011 and 1.6.20114. TPB Paper No. 10397 considered at the Board's 1166th meeting on 9.3.20185. Relevant extracts of Minutes of the Board's 1166th meeting on 9.3.20186. TPB Paper No. 10340 for the Causeway Bay draft OZP area7. TPB Paper No. 10415 for the Wan Chai draft OZP area
IIId	SI-3 : Letter dated 18.4.2019
Annex IV	Summary of the Representation No. R2 and PlanD's Responses
Annex V	Expert Evaluation on AVA Report of the Ngau Tau Kok & Kowloon Bay Area (2019)
Annex <u>VI</u>	<u>Extract of Annex C of TPB Paper No. 10397</u>
VIa	Implications of Sustainable Building Design Guidelines
VIb	Basic Assumptions and Implications of Sustainable Building Design Guidelines
VIc	Review of Development Restrictions on Ngau Tau Kok & Kowloon Bay OZP
Annex VII	Rationale of Development Restrictions
Annex <u>VIII</u>	<u>Amendments to partially meet the Representation No. R2</u>
VIIIa	Proposed Amendments to the Draft Ngau Tau Kok and Kowloon Bay OZP No. S/K13/29
VIIIb	Proposed Amendments to the Notes of the Draft Ngau Tau Kok and Kowloon Bay OZP No. S/K13/29
VIIIc	Proposed Amendments to the Explanatory Statement of the Draft Ngau Tau Kok and Kowloon Bay OZP No. S/K13/29
Plan H-1	Location Plan of Representation Sites
Plan H-2	Aerial Photo of Representation Sites
Plan H-3	Location Plan of Sub-areas in Ngau Tau Kok and Kowloon Bay Area
Plan H-4a	BHRs stipulated in 2005

Plan H-4b	BHRs stipulated in 2010
Plans H-4c	NBA and BG Requirements stipulated in 2010
Plan H-4d	Current Building Height Restrictions
Plan H-5	Wind Environment in Ngau Tau Kok & Kowloon Bay Planning Area
Plans H-6a to 6c	Photomontages
Plans H-7a to 7e	Site Plan and Site Photos - KBBA
Plans H-8a to H8b	Site Plan and Site Photos - Telford Gardens and Telford Plaza

SEPTEMBER 2019
PLANNING DEPARTMENT