

REVIEW OF APPLICATION NO. A/H5/414
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

**Proposed Minor Relaxation of Building Height Restriction for Permitted Flat Use
in “Residential (Group B)” Zone,
33 – 35 Kennedy Road, Wan Chai, Hong Kong**

1. Background

1.1 On 26.11.2020, the applicants, Board Profit Limited and Come First Limited represented by Masterplan Limited, sought planning permission for minor relaxation of building height restriction (BHR) from 120mPD to 129.95mPD (i.e. +9.95m or +8.29% in terms of mPD¹) for permitted flat use at the application site (the Site) under s.16 of the Town Planning Ordinance (the Ordinance). The Site falls mainly within an area zoned “Residential (Group B)” (“R(B)”) ² on the draft Wan Chai Outline Zoning Plan (OZP) No. S/H5/28 at the time of submission of the s.16 application and the approved Wan Chai OZP No. S/H5/29 currently in force (**Plan R-1**). According to the Notes of the OZP, while ‘Flat’ use is always permitted within the “R(B)” zone, minor relaxation of BHR may be considered by the Town Planning Board (the Board) on its individual merits.

1.2 On 13.8.2021, the Metro Planning Committee (MPC) of the Board decided to reject the application and the reason was:

the applicants failed to demonstrate strong planning and design merits to justify the proposed minor relaxation of BHR.

1.3 According to the applicants, the increase in building height (BH) is to accommodate all of the permissible gross floor area (GFA) whilst maintaining a floor-to-floor height of 3.15m for the typical floor. There will be two entrances for the proposed development; one will be located at the northeastern side of the Site which is the existing right-of-way (ROW) at +36.95mPD (LG 2/F of the proposed development) (Drawing A-2 of **Annex A**), and the other at the southwestern side of the Site which is accessible from Kennedy Road through the pedestrian stairway connected to Spring Garden Lane at +45.7mPD (G/F of the proposed development) (Drawing A-4 of **Annex A**). The topmost two floors (i.e. 24/F and 25/F) are having the setback terrace (Drawing A-8 of **Annex A**). Landscaping have been proposed at LG 2/F and G/F of the proposed development. Except one car parking space for the disabled, no internal transport facilities will be provided in the proposed development. As compared with the scheme in the s.16 planning application, additional greenery at LG 2/F is proposed. Also, it is proposed that there will be lighting on the staircase

¹ +11.97% in terms of absolute BH with the mean street level at 36.9mPD.

² A minor portion of the Site (i.e. about 29.3m²) falls within area shown as ‘Road’ which will be maintained as a right of way with no building structure. Hence, it will be treated as minor boundary adjustment of “R(B)” zone.

and ROW to help pedestrian and drivers; as well as new paving will be provided for the ROW.

1.4 For Members' reference, the following documents are attached:

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| (a) | MPC Paper No. A/H5/414B | (Annex A) |
| (b) | Extract of minutes of the MPC meeting held on 13.8.2021 | (Annex B) |
| (c) | Secretary of the Board's letter dated 27.8.2021 | (Annex C) |

2. Application for Review

On 16.9.2021, the applicants applied, under section 17(1) of the Ordinance, for a review of the MPC's decision to reject the application (**Annex D-1**). In support of the review, the applicants submitted written justifications on 9.11.2021 (**Annex D-2**) and further information (FI) dated 5.1.2022 providing responses to departmental comments, trees and planters location plan, revised master layout plan and floor plans (**Annex D-3**).

3. Justifications from the Applicants

The justifications put forth by the applicants in support of the review application are detailed in the applicants' submissions at **Annexes D-2 and D-3** and summarised as follows:

- (a) The Site constraints were not fully understood and the planning and design merits provided by the proposed development were not fully considered by the MPC. The proposed development has complied with the criteria stated in the Explanatory Statement of the OZP for applying for a minor BHR relaxation. There is no statement which requires any design benefit to be only a public benefit. The setbacks, repaving of the ROW, preservation of four trees, provision of green space, and lighting on the staircase and ROW are planning and design merits of the proposed development.
- (b) BHR should be derived on a broad basis with generally stepped building height bands reflecting the natural profile of the landforms. The BHR should not prevent the achievement of the permitted amount of development unnecessarily nor prevent the achievement of good quality of development and the minor relaxation clause is included to provide incentive for achieving good design.
- (c) The development site consists of two small lots which are amalgamated to provide a better form of building design. The shape and size of the lots are constrained by the fact that this and the adjacent lots are small lots. By amalgamating these two small lots into one development site could achieve a more comprehensive and more modern form of development.
- (d) The ROW benefits the neighbourhood in terms of allowing light penetration, ventilation and wind flows in the vicinity. It is considered that the provision of the ROW in conjunction with the BHR of 120mPD restrict the development.
- (e) Setback at podium level provides better visual permeability and separation to the pedestrian level of Kennedy Road. The proposed relaxation of BHR will unlikely induce significant adverse visual impact to the surrounding area.

- (f) The 3.15m floor-to-floor height is a norm for a typical residential floor and ample natural light and ventilation is paramount for residences. This is a design merit which should be encouraged to meet the needs for better quality housing and ventilation in the post-Covid era.
- (g) The history of the general building plans (GBPs) submissions illustrate that the ROW and BHR restrict the achievement of full development rights permitted on the Site. Minor relaxation of the BHR is the only means to ensure the full permitted plot ratio can be achieved while constructing a residential building of modern standards with a floor-to-floor height of 3.15m.
- (h) The heavily vegetated nature of Kennedy Road will be retained for the public's enjoyment and the proposed landscaping treatment is practicable to mitigate any impacts on the landscape resources.

4. The Section 16 Application

The Site and its Surrounding Areas (Plans R-1 and R-2 and Site Photos on Plans R-3 to R-5)

- 4.1 The situation of the Site and its surrounding area at the time of the consideration of the s.16 application by the MPC were described in paragraph 7 of **Annex A**. There has been no major material changes of the situations since then, except two trees grown on the affected retaining wall within the Site were felled by the applicants due to strengthening works of the existing retaining wall at the southeastern periphery of the Site.
- 4.2 The Site is located to the north of Kennedy Road and situated on a building platform at +36.9mPD (about) and is currently vacant. The Site can be accessed from Kennedy Road and by a pedestrian stairway to the west of the Site connecting Kennedy Road and Spring Garden Lane (**Plan R-2**).
- 4.3 The surrounding areas have the following characteristics:
 - (a) predominantly medium-density residential area with Government, institution and community (GIC) uses, including the Hong Kong Tang King Po College (+68.7mPD), the Church of Christ in China Wanchai Church (+32.2mPD) and Wanchai Church Kindergarten (+32.7mPD) to its west and northwest;
 - (b) to its immediate north and west are residential developments namely Phoenix Court (+71.4mPD) and Wing Way Court (+143.1mPD) respectively;
 - (c) to its south and further southeast across Kennedy Road on the approved Mid-levels East OZP, are residential developments namely Amber Garden (+152.9mPD and +153.2mPD) and Bamboo Grove (ranging from +160.1mPD to +181.2mPD); and
 - (d) to its further northeast and northwest down to the Queen's Road East are commercial developments namely Wu Chung House (+137.5mPD) and Hopewell Centre (+220.2mPD).

Planning Intention

- 4.4 There has been no change to the planning intention of the “R(B)” zone that it is primarily for medium-density residential developments where commercial uses serving the residential neighbourhood may be permitted on application to the Board.
- 4.5 According to the Explanatory Statement of the OZP, to provide incentive for developments/ redevelopments with planning and design merits and to cater for circumstances with specific site constraints, minor relaxation of BHR under s.16 of the Ordinance will be considered on its own merits and the relevant criteria for consideration of such application are as follows:
- (a) amalgamating smaller sites for achieving better urban design and local area improvements;
 - (b) accommodating the bonus PR granted under the Buildings Ordinance (BO) in relation to surrender/dedication of land/area for use as a public passage/street widening;
 - (c) providing better streetscape/good quality street level public urban space;
 - (d) providing separation between buildings to enhance air and visual permeability;
 - (e) accommodating building design to address specific site constraints in achieving the permissible PR under the OZP; and
 - (f) other factors such as need for tree preservation, innovative building design and planning merits that would bring about improvements to townscape and amenity of the locality and would not cause adverse landscape and visual impacts.

Previous Application

- 4.6 The Site is not the subject of any previous application.

Similar Application

- 4.7 There is no similar application for minor relaxation of BHR within “R(B)” zone within the Wan Chai OZP.

5. Comments from Relevant Government Departments

- 5.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 9 of **Annex A**.
- 5.2 For the review application, the following government departments have been further consulted and their comments are summarised as follows:

Land Administration

5.2.1 Comments of the District Lands Officer/Hong Kong East, Lands Department (DLO/HKE, LandsD):

- (a) Noting that the applicants' FI dated 9.11.2021 (**Annex D-2**), particularly the ROW area can count for the calculation of permitted GFA from a lease point of view, does not accurately reflect LandsD's comment for the private ROW as stated in paragraph 9.1.1(b) of the MPC Paper (**Annex A**) which is "given there is no GFA restriction under the lease for the lots, he has no comment on its inclusion in GFA calculation from lease point of view".
- (b) The Site comprises IL 1923 S.C ss.1 and IL 1923 S.C ss.2 (the Lots). The Government lease for IL 1923 governing the Lots is for a term of 75 years from 6.8.1912 renewable for 75 years which permit the Lots for development of European type and design subject to the standard non-offensive trade clause and rate and range clause. He has no objection to the proposed residential development under the planning application provided always of course that the proposed redevelopment is approved by the Building Authority (BA) under the provisions of the BO. The applicants are not required to seek a lease modification from LandsD to implement the proposal. Therefore, any planning conditions, if imposed by the Board, cannot be written into the lease through lease modification.
- (c) The "Existing Right of Way" as shown on the Master Layout Plan is covered by a Deed of Covenant and Mutual Grant of Rights of Way (Deed of ROW) registered in the Land Registry under Memorial No. 198862 dated 29.6.1955. The said Deed of ROW is a private agreement made between owners of various private lots without government involvement. The applicants should liaise with the concerned private lots owners to sort out any issue relating to the concerned right of way to facilitate the proposed development. Given there is no GFA restriction under the lease for the Lots, he has no comment on its inclusion in GFA calculation from lease point of view.
- (d) The applicants should ensure that the site area is consistent with the relevant land documents and no encroachment on government land.
- (e) There is no tree preservation clause in the Government Lease for IL 1923 governing the Lots.

Traffic

5.2.2 Comments of the Commissioner for Transport (C for T):

- (a) Objects to the application.
- (b) The trip generation and attraction of the proposed development presented by the applicant is noted. However, the trip generation and attraction cannot be considered as negligible.

- (c) The loading/unloading demand of the proposed development will not be eliminated by not providing parking spaces within the Site, and therefore the adverse traffic impact and road safety hazard due to stopping/ parking of vehicles on the ROW and Kennedy Road due to the proposed development may arise in such case. The applicants did not provide any further information in the applicant's FI dated 5.1.2022 (**Annex D-3**) to justify for not providing any parking spaces and loading/unloading facilities within the Site.
- (d) The applicants mentioned in the FI dated 5.1.2022 (**Annex D-3**) that the ROW under the applicant's ownership cannot be widened. The applicants should provide justification on this matter, explore possible improvement/traffic management measures on the ROW under the applicants' ownership, and confirm if the width of the ROW will be further reduced with the proposed greenery as indicated on Figure 8 of the applicants' FI dated 9.11.2021 (**Annex D-2**).
- (e) Technical comments on the application are detailed at **Annex E**.
- (f) Should the application be approved, the following condition is required:

the submission of a revised traffic assessment, and the implementation of the mitigation measures, if any, identified in the revised traffic assessment, to the satisfaction of the C for T or of the Board.

Landscape

5.2.3 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) It is noted that additional landscape treatment has been proposed in the applicants' FI dated 9.11.2021 (**Annex D-2**), and information regarding the proposed new tree and landscaping within "Landscape Area A" and "Landscape Area B" have been provided in the FI dated 5.1.2022 (**Annex D-3**). However, no information on the proposed greenery at the existing sunken area of the Site is provided.
- ~~(a) — It is noted that the two trees (T01 and T02) (Tree Location Plan in Appendix 1e of Annex A) within the Site were felled, she maintains her previous views on the s.16 application, in particular comments on the landscaping treatment, in which it is unclear that whether new trees would be planted in the proposed planters as the location of new tree planting is not indicated in Planter Location Plan (Drawing A-9 of Annex A). Furthermore, no information such as but not limited to proposed plant species, planting spacing and soil depth of the proposed planters etc. is provided.~~
- ~~(b) — In view of (b) above, the practicability of proposed landscaping treatment to mitigate the impact on the landscape resources cannot be reasonably ascertained.~~

- ~~(b)(d)~~—The applicants are reminded to approach relevant authority/government department(s) direct to obtain necessary approval for any proposed tree preservation/removal scheme if necessary.

Building Matters

5.2.4 Comments of the Chief Building Surveyor/Hong Kong East and Heritage (CBS/HKE&H), BD:

- (a) No comment on the application under the BO.
- (b) Detailed comments on compliance with the BO will be given upon formal building plans submission.

Other

5.2.5 Comments of Commissioner of Police (C of P):

- (a) No specific comment from Wan Chai Police District.
- (b) It is reminded that the developer should take note of any requirement to notify/apply permit from relevant departments in respect of any possible road works, loading/unloading on the street, etc.

5.3 The following government departments have no further comments on the review application and maintain their previous views on the s.16 application as stated in paragraph 9.1 of the MPC paper on **Annex A**. Their advisory comments, if any, are in Appendix III of **Annex A** and recapped in **Annex G**.

- (a) Executive Secretary of Antiquities and Monuments, Development Bureau;
- (b) CTP/UD&L, PlanD;
- (c) Chief Architect/Central Management Division 2, Architectural Services Department (CA/CMD2, ArchSD);
- (d) Director of Environmental Protection (DEP);
- (e) Chief Engineer/Hong Kong & Islands, Drainage Services Department (CE/HK&I, DSD);
- (f) Chief Highway Engineer/Hong Kong, Highways Department (CHE/HK, HyD);
- (g) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (h) Chief Engineer/Construction, Water Supplies Department;
- (i) Director of Fire Services;
- (j) Director of Electrical and Mechanical Services; and
- (k) District Officer (Wan Chai), Home Affairs Department.

6. Public Comments Received during Statutory Publication Periods

- 6.1 On 24.9.2021 and 19.11.2021, the review application and FI were published for public inspection. During the first three weeks of the statutory public inspection periods, a total of 112 public comments were received, including 1 support comment

from local resident (**Annex F1**), and 111 objecting comments from a member of the Wan Chai District Council, the Incorporated Owners of Bamboo Grove and Amber Garden, the Kennedy Road Protection Group, local residents and members of the public (samples at **Annex F2**). A full set of the public comments received is deposited at the Town Planning Board Secretariat for Members' reference. The major grounds of the public comments are summarised as follows:

Supporting views (I) (**Annex F1**)

- (a) the proposed relaxation of BHR is minor in nature and will improve the living standard of the surrounding neighbourhood; and
- (b) in view of the small scale of the proposed development and the existing ROW as site constraint, limited carparking spaces could be provided within the Site. C for T should not object to the application on the grounds of provision of carparking spaces within the Site which is unrelated to the minor relaxation of BHR;

Objecting views (III) (**Annex F2**)

- (a) the applicants have not submitted any documents or assessments to substantiate or justify their review application. The terrace setback at 24/F and 25/F as claimed by the applicants as a planning merit is not justified;
- (b) the proposed development will obstruct the view of neighbouring residential buildings and lower the living standards of residents living in the surrounding community;
- (c) the proposed BH is not justified, too excessive and will create a wall effect joining with the Hopewell Centre and Wu Chung Centre. It will cause adverse air ventilation impacts, and limit sunlight penetration;
- (d) the Building Appeal Tribunal case quoted by the applicants is irrelevant to the present s.17 review application as the traffic condition was different from the present traffic condition;
- (e) there is already a set of approved GBPs which allow the applicants to accommodate all of the permissible GFA;
- (f) the ROW is a private agreement made between owners of various private lots without government involvement;
- (g) the proposed development will generate adverse traffic impact and overload the nearby traffic network as it will increase traffic flow; and
- (h) it is unacceptable to remove two big and healthy trees for retaining wall upgrading works.

- 6.2 At the stage of s.16 application, a total of 195 public comments were received including 5 supporting the application, 189 objecting to the application (of which 24 comments were submitted in 1 standard proforma) and 1 providing views on the

application. Their major views are summarised in paragraph 10 of **Annex A** with samples of public comments at Appendices IIa to IId of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application is for a review of the MPC's decision on 13.8.2021 to reject the s.16 application for minor relaxation of BHR for the permitted flat use. The rejection reason was that the applicants failed to demonstrate strong planning and design merits to justify the proposed minor relaxation of BHR. The applicants consider that the reason for rejection to be inadequately justified (**Annex D-1**). In support of the review application, the applicants have put forward justifications as detailed in paragraph 3 above. As compared with the scheme in the s.16 planning application, additional greenery at LG 2/F is proposed (**Drawing R-1**). Also, it is proposed that there will be lighting on the staircase and ROW to help pedestrians and drivers; as well as new paving will be provided for the ROW.
- 7.2 The applicants claimed that the Site is constrained by the ROW for the adjacent Wing Way Court, which has taken up about 49.9% of the site area. However, as stated in paragraph 11 of Annex A, a set of GBPs for residential development with a PR of 7.999 and a BH of about 120mPD was approved by BA at the Site in 2018. The main differences between the two schemes are the two additional residential floors (23/F and 24/F with floor-to-floor height of 3.5m) and the increase in floor-to-floor height by 0.15m for each typical residential floor (from 3m to 3.15m). No justification is provided for the two additional residential floors in the s.16 application and the review application. As such, it is considered that there is insufficient planning and design merits to justify the two additional residential floors.
- 7.3 The applicants also argues that the proposed floor-to-floor height of 3.15m for typical residential floors is for allowing sufficient natural light and air ventilation, and would help to ensure the minimum standard for modern healthy residential buildings is met. The applicants claimed that the Practice Note for Authorised Persons, Registered Structural Engineers and Registered Geotechnical Engineers APP-5 (PNAP APP-5) by BD indicates that a floor-to-floor height of 3.15m is within the range that government departments accept, however, it has been clearly stated in the said PNAP APP-5 that "the minimum height of rooms for habitation or office for health reason is 2.5m". The set of GBPs approved by BA at the Site in 2018 was for a proposed residential development with a floor-to-floor height of 3m which has a difference of 0.5m from the minimum height of rooms for habitation as stated in the PNAP APP-5.
- 7.4 In regard to the applicants claimed that the ROW provides planning merit which allow light penetration, air ventilation and wind flows to the surrounding properties, it is considered that this ROW is a private agreement made between owners of various private lots without government involvement. Under this Deed of ROW, the applicants have to provide the ROW for the access of the concerned private lots owners. According to the applicants, the voluntary setback is at podium level (Figure 7 of **Annex D-2**) and it would reduce the building mass at the level facing Kennedy Road and improve ventilation. Notwithstanding, it is noted that the voluntary setback is separated from the pedestrian walkway of Kennedy Road by a strip of government land. Thus, the voluntary setback would not be accessible either by the residents nor the general public. In terms of greenery provision, the applicants proposed to provide

additional greenery at LG 2/F compared to the s.16 application stage (**Drawing R-1**). However, CTP/UD&L, PlanD comments that no detail on landscaping at the existing sunken area is provided.

- 7.5 As discussed in paragraph 7.2 to 7.4 above, it is considered that there are insufficient planning and design merits to justify the minor relaxation of the BHR. Besides, given there is a set of approved GBPs which conforms with the BHR on the OZP, the applicants have yet to demonstrate that there is site constraint to justify the minor relaxation of the BHR. The application does not therefore meet the criteria for minor relaxation BHR as highlighted in paragraph 4.5 above.
- 7.6 Despite the main consideration of the application is whether sufficient planning and design merits are provided to justify the minor relaxation of the BHR, in terms of traffic matters, C for T maintains his views on objecting the application on the ground that the trip generation and attraction of the proposed development cannot be considered as negligible and the applicants fail to justify the nil provision of internal transport facilities (except one disabled car parking space) within the Site.
- 7.7 Other departments including CHE/HK, HyD, CBS/HKE&H, BD, CA/CMD2, ArchSD, DEP, CE/HK&I, DSD and H(GEO), CEDD maintain their views of having no adverse comments on the application. Should the application be approved by the Board, relevant approval conditions as suggested by C for T and DEP are recommended in paragraph 8.2 below.
- 7.8 While there is a public comment supporting the development proposal, the remaining comments raise concerns/objections over the living environment, air ventilation and traffic impacts as detailed in paragraph in 6.1 above. The planning considerations and assessments in paragraphs 7.2 to 7.7 above are relevant.

8. Planning Department's Views

- 8.1 Based on the assessment made in paragraph 7, having taken into account the public comments mentioned in paragraph 6, and given that there is no major changes in the planning circumstances since the consideration of the subject application by the MPC on 13.8.2021, the Planning Department maintains its previous view of not supporting the review application for the following reason:

the applicants fail to demonstrate strong planning and design merits to justify the proposed minor relaxation of BHR.

- 8.2 Alternatively, should the Board decide to approve the review application, it is suggested that the permission shall be valid until 21.1.2026, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the submission of a revised traffic assessment, and the implementation of the mitigation measures, if any, identified in the revised traffic assessment, to the

satisfaction of the Commissioner for Transport or of the Town Planning Board;

- (b) the submission of a Noise Impact Assessment (NIA) and implementation of the proposed noise mitigation measures identified in the NIA to the satisfaction of the Director of Environmental Protection or of the Town Planning Board;
- (c) the submission of a Sewerage Impact Assessment (SIA) to the satisfaction of the Director of Environmental Protection or of the Town Planning Board; and
- (d) in relation to (c) above, the implementation of local sewerage upgrading/sewerage connection works as identified in the SIA to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory clauses

The recommended advisory clauses are attached at **Annex G**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the MPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicants.
- 9.3 Alternatively, should the Board decide to approve the review application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.

10. Attachments

Annex A	MPC Paper No. A/H5/414B
Annex B	Extract of minutes of the MPC meeting held on 13.8.2021
Annex C	Secretary of the Board's letter dated 27.8.2021
Annex D1	Letter from the applicants' representative dated 16.9.2021 applying for a review of MPC's decision
Annex D2	FI dated 9.11.2021
Annex D3	FI dated 5.1.2022
Annex E	Detailed Comments from the Transport Department
Annexes F1 and F2	Public Comments
Annex G	Recommended Advisory Clauses
Drawing R-1	Master Layout Plan
Drawings R-2 and R-3	Floor Plans of G/F and LG 2/F
Drawing R-4	Trees and Planters Location Plan

Plan R-1	Location Plan
Plan R-2	Site Plan
Plans R-3 to R-5	Site Photos

**PLANNING DEPARTMENT
JANUARY 2022**