

Meeting re-scheduled for  
25.2.2022

# **TOWN PLANNING BOARD**

**TPB Paper No. 10800**

**For Consideration by  
The Town Planning Board on 21.1.2022**

**DRAFT KWAI CHUNG OUTLINE ZONING PLAN NO. S/KC/26**

**RE-CONSIDERATION OF REPRESENTATION NO. TPB/R/S/KC/26-R9  
AND THE RELATED COMMENTS NO. TPB/R/S/KC/26-C1758 TO C1926**

**DRAFT KWAI CHUNG OUTLINE ZONING PLAN NO. S/KC/26**

**RE-CONSIDERATION OF REPRESENTATION NO. TPB/R/S/KC/26-R9  
SUBMITTED BY TUNG CHUN COMPANY LIMITED  
AND THE RELATED COMMENTS NO. TPB/R/S/KC/26-C1758 TO C1926**

<b>Subject of Representation (Amendment Item)</b>	<b>Representer</b>	<b>Commenters</b>
Amendment Item A for Kwai Chung Town Lot No. 432 (KCTL 432) – Oppose the stipulation of maximum building height restriction (BHR) at 120mPD for the subject “Comprehensive Development Area” (“CDA”) zone	R9: Tung Chun Company Limited (Tung Chun)	<u>Support</u> C1758 – C1926  <u>Support (including comments on Supplementary Information (SI) submitted by R9)</u> C1786, C1787, C1788, C1828, C1832, C1839, C1840, C1875, C1882, C1903, C1905 and C1921

Note: **R9**’s submissions in 2012 and SI in 2019 as well as submissions by the commenters on **R9**’s submission and SI are at the Town Planning Board’s website [https://www.info.gov.hk/tpb/en/whats\\_new/Website\\_S\\_KC\\_26.html](https://www.info.gov.hk/tpb/en/whats_new/Website_S_KC_26.html) for public viewing. A set of hard copy is deposited at the Town Planning Board’s Secretariat for Members’ inspection, and is also available for public inspection at the Planning Enquiry Counters of the Planning Department in North Point and Sha Tin. The name of the commenters, the SI in 2019 and comments on SI are at **Annexes II, III** and **IV** respectively.

## **1. Introduction**

This Paper is to provide the Town Planning Board (the Board) with information for re-consideration of Tung Chun’s representation (**R9**) on the draft Kwai Chung Outline Zoning Plan (OZP) No. S/KC/26 and the related comments. The representer and commenters have been invited to attend the meeting in accordance with section 6B(3) of the Town Planning Ordinance (the Ordinance).

## **2. Background**

2.1 The subject representation site (the Site) is located at 1-7 Cheung Wing Road, Kwai Chung (KCTL 432) at the fringe of an industrial area (**Plan H-1**). Tung Chun is the lot owner. The Site is currently occupied by a soy sauce factory (**Plans H-2** and **H-3b**). It was rezoned from an area mainly zoned as “Industrial” with a minor portion of area shown as “Road” to “CDA”

in 1992 without development restrictions on plot ratio (PR) and building height (BH). The planning intention of “CDA” zone for the Site is for comprehensive development/redevelopment of the area for residential and/or commercial uses with provision of open space and other supporting facilities. The zoning is to facilitate appropriate planning control over the development mix, scale, design and layout of development, taking account of the environmental, traffic, infrastructure and other constraints. In 2003, a maximum total PR of 6.36 was imposed for the subject “CDA” zone to reflect the PR as approved under Application No. A/KC/241 by the Metro Planning Committee (the Committee) of the Board in March 2000 (paragraph 3.2 refers).

- 2.2 To provide better planning control to prevent excessively tall or out-of-context buildings, a comprehensive review was conducted for the whole Kwai Chung Planning Area (the Area) in 2012 (2012 Review) with a view to incorporating BHR on the relevant OZP. On 20.4.2012, the draft Kwai Chung OZP No. S/KC/26 (OZP 26), which incorporated amendments including the imposition of BHR on various development zones and stipulation of non-building area/building gaps as well as other rezoning proposals to reflect the existing uses/planned developments in the Area, was exhibited for public inspection under section 5 of the Ordinance. A BHR of 120mPD was imposed on the Site while the maximum total PR of 6.36 previously imposed on the Site remains the same.
- 2.3 During the exhibition of the subject OZP, Tung Chun submitted a representation (i.e. **R9**) opposing the BHR imposed on the Site, and proposed to remove the BHR of 120mPD or increase the BHR to 169mPD to reflect the BH of the aforesaid approved Application No. A/KC/241, of which approval of the General Building Plans (GBPs) had also been obtained on 20.2.2003. A total of 169 related comments (i.e. C1758 - C1926) supporting **R9** were received. After hearing **R9** and the related comments on 12.10.2012, the Board decided<sup>1</sup> not to propose amendment to the OZP to meet **R9**.
- 2.4 On 9.5.2014, 13.6.2014 and 19.1.2018, the draft Kwai Chung OZP Nos. S/KC/27 (OZP 27), S/KC/28 (OZP 28) and S/KC/29 (OZP 29)<sup>2</sup> were exhibited respectively under section 7 of the Ordinance. The amendments introduced to OZP 27, OZP 28 and OZP 29 are not related to the Site, and the zoning and development restrictions in relation to the Site are the same as those on OZP 26.
- 2.5 On 11.1.2013, 8.8.2014 and 23.2.2018, Tung Chun lodged three judicial review (JR) applications against the respective decisions of the Board (i) not to meet **R9**; (ii) to gazette OZP 27 and OZP 28 with the same BHR on the Site; and (iii) to gazette OZP 29 with the same BHR on the Site. The Court of First Instance (CFI) heard the three JRs together in March 2018. As per the CFI’s order handed down on 28.6.2018 for the first JR, the decision of the Board on 12.10.2012 not to propose amendment to the OZP to meet **R9** was quashed and **R9** had to be remitted to the Board for fresh consideration. As revealed in the judgement,

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<sup>1</sup> The relevant minutes of the Board’s meeting held on 12.10.2012 are at the Board’s website [https://www.info.gov.hk/tpb/en/whats\\_new/Website\\_S\\_KC\\_26.html](https://www.info.gov.hk/tpb/en/whats_new/Website_S_KC_26.html)

<sup>2</sup> The Board heard the representations on OZP 27, OZP 28 and OZP 29 on 12.6.2015, 10.7.2015 and 13.7.2018 respectively and decided not to propose amendment to the OZP to meet the representations.

the CFI ruled against two of the Board's reasons<sup>3</sup> for not upholding **R9**'s representation. For the second and third JRs, the CFI ordered on 3.1.2019 that the Board shall not submit OZP 26 to OZP 29 to the Chief Executive in Council (CE in C) until after the re-consideration of **R9**. On 31.1.2019, Tung Chun lodged Appeals against the CFI's orders for the JRs, seeking to quash the BHR of the Site and the Board's decisions to gazette OZP 27 to OZP 29 insofar as they contained the same BHR.

- 2.6 To follow up on the CFI's order handed down on 28.6.2018, the Board was briefed on the Planning Department (PlanD)'s review of the BHRs on the Site and within the OZP on 14.12.2018 (2018 Review). TPB Paper No.10507 for the 2018 Review and the relevant minutes are available at the Board's website at [https://www.info.gov.hk/tpb/en/whats\\_new/Website\\_S\\_KC\\_26.html](https://www.info.gov.hk/tpb/en/whats_new/Website_S_KC_26.html) for public viewing. The Board noted the findings of the review that the BHR stipulated for the Site could be maintained having regard to the latest circumstances and updated planning assessments, in particular the need for consideration of the requirements of Sustainable Building Design Guidelines (SBDG) at that time; and agreed to invite Tung Chun and related commenters to a meeting for re-consideration of **R9** and allow a period of two months for Tung Chun to submit SI to the Board, if any, prior to the re-consideration, and three weeks for the related commenters to provide comments on the SI, if any.
- 2.7 Following the Board's decision, on 2.1.2019, the Secretariat issued an invitation letter to Tung Chun inviting the submission of SI in two months for re-consideration of **R9**. With its request to extend the deadline of SI submission agreed by the Board, Tung Chun submitted SI to the Board on 31.5.2019 (2019 Submission). However, on the same day, Tung Chun also sought the Board's consent for interim stay of the re-consideration of **R9** pending the determination of its Appeals previously filed on 31.1.2019 against the CFI's orders on its JRs. The Board agreed to Tung Chun's proposal for the said interim stay. On 5.7.2019, the CFI granted the stay order.
- 2.8 On 27.5.2021, the Court of Appeal (CA) handed down judgement dismissing Tung Chun's Appeals<sup>4</sup>. On 3.9.2021, noting Tung Chun's Appeals have been determined, the Board agreed to resume the re-consideration of **R9**. On 24.9.2021, the Secretariat wrote to Tung Chun, informing the Board's decision to resume the remaining procedures for reconsideration of **R9**, having considered the latest development. On 30.9.2021, the Secretariat invited the related commenters to provide comments on **R9**'s SI. Twelve commenters (i.e. C1786, C1787, C1788, C1828, C1832, C1839, C1840, C1875, C1882, C1903, C1905 and C1921) had submitted comments on **R9**'s SI to the Board. On 17.12.2021,

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<sup>3</sup> In respect of the Board's reasons for not upholding **R9**, the CFI ruled against the Board that : (a) it was ultra vires for the Board to have stated in the Decision Letter that the Applicant could proceed with the building development in accordance with the approved building plans, which should be a matter of the Building Authority's discretion; and (b) the Board had taken into account irrelevant consideration, i.e. the possibility of minor relaxation of the BHR under section 16 of the Ordinance, in reaching its decision. Besides, the CFI also found that the Board's decision was tainted by procedural unfairness as two Members left the meeting for a period of time while the Applicant's representatives were making submissions to the Board, but took part in the subsequent deliberation. There was no evidence to show that they had familiarised themselves with the oral representations made by the Applicant's representative during their absence at the hearing meeting.

<sup>4</sup> The key findings of the CA include: (a) the Board's own policy is affirmed that it can make amendments to statutory plans that render existing development proposals non-compliant with the latest zoning restrictions. An approved development scheme under s.16 would not create legitimate expectation in freezing all further planning restrictions in future over the Site; (b) the Board must be accorded a wide margin of discretion in its exercise of planning judgment. No *Wednesbury* unreasonableness is found in the imposition of the BHR on the Site and the Board's consideration of the related urban design appraisal; and (c) regarding the applicant's challenge in respect of property right, the CFI was correct in adopting the "manifestly without reasonable foundation" test to assess whether the BHR is a proportionate means of achieving the planning objective. Generally speaking, a measure will only be manifestly without reasonable foundation if it is exceptionally unreasonable.

the Secretariat invited Tung Chun and related commenters to this meeting convened for re-consideration of **R9** under section 6B of the Ordinance.

### **3. The Representation Site and its Surrounding Areas (Plans H-1 to H4b)**

- 3.1 The Site with an area of about 12,340m<sup>2</sup> is located on the western fringe of an established industrial area in Kwai Chung, with Tai Yuen Street to its east, Kwok Shui Road to its south, Cheung Wing Road to its west and an industrial building to its north<sup>5</sup>. The Site is currently occupied by a low-rise (1 to 3-storey) industrial plant operated as a soy sauce factory. It is accessible via Kwok Shui Road. To its north, east and southeast are industrial/business buildings under “Other Specified Uses” annotated “Business” (“OU(B)”) zone subject to a BHR of 130mPD. Further south beyond Kwok Shui Road is a knoll zoned “Open Space” (“O”) which was proposed to be rezoned to “Other Specified Uses” annotated “Buildings with Historical and Architectural Interests Preserved for Social Welfare Facility Use” (see paragraph 3.6 below). Further northwest and west beyond Cheung Wing Road are within the Tsuen Wan OZP where include another established industrial/business area zoned “OU(B)” subject to a BHR of 120mPD, another area zoned “O” which is not yet implemented and Yau Ma Hom Resite Village under “Village Type Development” (“V”) zone.
- 3.2 The Site is the subject of six planning applications, all submitted by Tung Chun/its representatives. Applications No. A/KC/97, A/KC/127 and A/KC/197 were made in 1991 to 1996 for industrial development. Application No. A/KC/241 for a proposed hotel (95.5mPD) and service apartment (169mPD) development with commercial/retail facilities at a PR of 6.36 was approved with conditions by the Committee on 17.3.2000 (the 169mPD Scheme). Application No. A/KC/298 was for the minor amendment to Application No. A/KC/241, which was approved by the Director of Planning under the delegated authority of the Board on 19.1.2005 with the same conditions. The GBPs for the proposed hotel, service apartment with commercial/retail facilities were first approved by the Building Authority (BA) on 20.2.2003 and the last GBP amendment were approved on 31.1.2007. With the GBPs approved within the validity period of the planning permission, the proposed development was deemed commenced according to the Town Planning Board Guidelines No. 35C. The latest Application No. A/KC/444 for a proposed comprehensive development for flat, eating place, shop and services and office uses with minor relaxation of BHR from 120mPD to 145mPD (of a PR of 6.36), was approved with conditions by the Committee upon further consideration on 22.3.2019 (the 145mPD Scheme). The permission for this application remains valid until 22.3.2023. No GBPs for the latest approved scheme have been received so far.
- 3.3 The Site is covered by the lease of KCTL 432, which was granted in exchange for the surrender of two old lots formerly known as KCTL 8 and KCTL 10 on 27.10.1990 to facilitate an industrial/godown development. Under the lease, the user is restricted to

<sup>5</sup> Taking account of the topography, local character, land uses, existing building heights and street patterns, the Kwai Chung Area can be divided into 6 sub-areas (**Plans H-4a and H-4b**) according to the 2012 Review. The Site is located within the Eastern Sub-area (**Plan H-6**), which is situated at ascending terrain overlooking the Central Sub-area. The proposed height bands in this sub-area seek to respond to the upwardly sloping foothill. For the gently rising land bounded by Castle Peak Road/Cheung Wing Road and Wo Yi Hop Road, a BHR of 120mPD is proposed for both the private residential developments in “Residential (Group A)” (“R(A)”) zone and the subject “CDA” zone, a BHR of 130mPD for the industrial/business development under “OU” annotated “Business” (“OU(B)”) zone and a BHR of 190mPD for The Apex under “C(2)” zone. Rings of progressively increasing height bands of 150mPD, 160mPD, 170mPD, 180mPD, 190mPD, 200mPD, 210mPD and 220mPD corresponding to the contours are assigned to the residential developments on steeper topography to the east of Wo Yi Hop Road (**Plan H-6**).

industrial/godown development excluding offensive trades, and there is no PR/GFA/BH restriction. The lot owner is also required under lease to, at his own expense, lay, form, surface, provide and construct Road 27E, which is a road reserve linking Tai Yuen Street and Cheung Wing Road within a government land to the northeast of the Site (**Plan H-2**), and redeliver possession of Road 27E to the Government in 24 months from the agreement of Conditions of Exchange for KCTL 432 executed on 27.10.1990<sup>6</sup>. District Lands Officer/Tsuen Wan & Kwai Tsing, Lands Department (DLO/TW&KT) recently advises that so far, the lot owner has not applied for lease modification to permit the proposed developments under Application Nos. A/KC/241 nor A/KC/444.

- 3.4 Since the aforesaid briefing to the Board on 14.12.2018 regarding the 2018 Review as mentioned in paragraph 2.6 above, no further amendment has been made to the OZP. As at 24.12.2021, 11 s.16 applications in the Eastern Sub-area (including the abovementioned A/KC/444 submitted for the Site itself by Tung Chun) were submitted to the Board after that briefing. Among these applications, seven were approved and four deferred; and two s.16 applications (i.e. No. A/KC/444 and 466) involved minor relaxation of BH as stipulated under the OZP, both of which were approved. Application No. A/KC/466 was related to the permitted data centre (BH from 130mPD to 146.5mPD) at Lam Tin Street under the '2018 Policy Initiative of Revitalization of Industrial Buildings' (**Plan H-6**). Application No. A/KC/444 at the Site itself, i.e. the 145mPD Scheme as mentioned in paragraph 3.2 above, was approved with conditions on 22.3.2019 upon further consideration.
- 3.5 Both Applications Nos. A/KC/444 and 466 were approved based on their individual merits and after consideration of the relevant criteria for such relaxation and the technical assessments on various aspects. While the site for the latter application is about 300m from the Site, their approvals should not have implications on the planning circumstances nor involve change in the overall building height profile for the local area where the Site is located.
- 3.6 Apart from the above applications, there is also a s.12A application (No. Y/KC/15) at the ex-Salvation Army Kwai Chung Girls' Home to the immediate south of the Site submitted to the Board after the briefing, which was also approved. It involves the proposed rezoning from "Open Space" to "Other Specified Uses" annotated "Building with Historical and Architectural Interests Preserved for Social Welfare Uses" to facilitate the 'Residential Care Home for the Elderly' development. The indicative scheme comprised development with BH of about 44.91mPD on a platform of about 32.3mPD, which is well below that of the 120mPD BHR stipulated for the Site. This application should not have implications on the planning circumstances of the Site.

#### **4. The Representation and Comments on Representation**

- 4.1 Tung Chun's representation (i.e. **R9**) submitted on 20.6.2012 (2012 Submission) is at the Board's website [https://www.info.gov.hk/tpb/en/whats\\_new/Website\\_S\\_KC\\_26.html](https://www.info.gov.hk/tpb/en/whats_new/Website_S_KC_26.html). An Environmental Assessment 1998 and Visual Assessment 2011 were also included in the submission. **R9** opposed the stipulation of BHR of 120mPD on the Site, and set out proposals to remove the BHR of 120mPD or increase the BHR to 169mPD under Application No. A/KC/241 to reflect the BH of the planning permission granted in 2000 of which GBPs

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<sup>6</sup> According to Buildings Department (BD), the plans for street works (retaining wall) involving construction of Road 27E was approved on 31.7.1996 and consent for commencement of works was granted on 2.9.1996. DLO/TW&KT advised that the Road 27E has not been completed and KCTL 432 is still under the owner's possession while the lot owner has not applied for lease modification to permit the user of KCTL 432 for the approved schemes under Application Nos. A/KC/241 and A/KC/444 respectively.

had been approved (see paragraph 3.2 above). The submission also set out reasons for the representation (see paragraph 4.3 below).

- 4.2 Tung Chun submitted SI on 31.5.2019 (i.e. 2019 Submission) with the covering letter replaced by the one dated 4.6.2019 is attached at **Annex III**. It remained to oppose the stipulation of BHR of 120mPD on the Site but refined the proposal to increase the BHR of the Site to 145mPD to reflect the BH of the 145mPD Scheme under Application No. A/KC/444 approved on 22.3.2019 (see paragraph 3.2 above). It has pointed out that although the reasons set out in its 2012 Submission were related to the original proposal for no BHR or for an alternative of 169mPD, they remained relevant to the refined proposal at 145mPD. 2019 Submission also set out further reasons for representation and the refined proposal.
- 4.3 The major grounds of **R9** set out in 2012 Submission, the additional points raised in the last hearing held on 12.10.2012, and those in 2019 Submission; as well as PlanD's responses formulated in consultation with relevant government departments, are summarised below :

#### Grounds of Representation

##### 4.3.1 *Development Rights*

	Major Grounds
(1)	<p>The redevelopment of the Site to non-industrial uses was encouraged by the Government to phase out industrial uses. GBPs according to the 169mPD Scheme under the approved Application No. A/KC/241 had been approved by the BA since 2002 and the latest one was approved in 2007. The 169mPD Scheme was feasible and implementable, and had addressed the environmental constraints of the industrial setting of the Site. The approved scheme and the formation and construction of Road 27E (including 'Street Works (Retaining Wall)' and 458 piles) had already been commenced.</p> <p>There is no demonstration that the PR of 6.36 under the 169mPD Scheme could be achieved under the BHR of 120mPD, which was unfair to <b>R9</b> who had incurred substantial cost on the construction of piles and approval of GBPs and had a legitimate expectation and right to redevelop the Site to the PR and BH under the 169mPD Scheme. There was no ground to disregard the planning and buildings approval of the Site.</p> <p>Given the site constraints and the need for providing the setback and buffer zone for mitigating the traffic noise/industrial noise for the 169mPD Scheme, the Site was unable to accommodate all the service apartment and hotel blocks at a PR of 6.36 and a BH of 120mPD, which can also comply with the requirements under the Buildings Ordinance and SBDG.</p> <p>In the SI, <b>R9</b> further proposed that the BH of 145mPD based on the 145mPD Scheme under Application No. A/KC/444, would set a benchmark for consideration of future application at the Site. Such BH satisfies the overall context of the East Sub-area and the principal objectives of BHR review conducted in 2018 Review in achieving good air ventilation and visual amenity, complying with the requirements on road traffic noise and air emissions, suitably relating to the topography/local character/BH profile/local wind environment and striking the balance between public aspirations for better living environment and private development potential.</p>



	The Application No. A/KC/444 approved by the Board is very relevant to the Board's re-consideration of the BHR for the Site, and would not reduce the Board's control over any development at the "CDA" Site. <b>R9</b> also had a legitimate expectation and right to redevelop the Site to the PR and BH under the 145mPD Scheme.
	<b>Proposal</b>
(2)	<b>R9</b> proposed to increase the BHR of the Site to 145mPD as that approved by the Board under Application No. A/KC/444. <b>R9</b> also indicated in 2019 Submission that based on legal advice (without any waiver of privilege), it reserves its right to revert to the original 2012 proposal for 169mPD in case the Board decides to retain 120mPD BHR at the Site.
	<b>Responses</b>
	<p>The purpose of imposing BHRs in the Area is to provide better planning control on BH upon development/redevelopment to prevent excessively tall or out-of-context buildings, to instigate control on the overall BH profile of the Area<sup>7</sup>, to provide a clear planning intention on the BH profile at an early stage of planning process, and to meet public aspirations for greater certainty and transparency in the statutory planning system subject to public scrutiny so as to achieve a desirable BH profile for the Area (<b>Plan H-5</b>).</p> <p>The 2018 Review by PlanD re-established that the BHR of 120mPD for the Site has taken into account the relevant factors, including the Urban Design Guidelines (UDG), Urban Design Appraisal (UDA) for the Area, existing topography, stepped BH concept, local characteristics, existing BH profile, site formation level and site constraints, the zoned land uses of the sites, compatibility with the surrounding developments, development potential, the wind performance of the existing condition and the recommendations of the Air Ventilation Assessment Expert Evaluation (AVA (EE)). The BHRs as stipulated on respective zones for the Area, among other requirements, should generally be able to accommodate the PR/GFA permitted under the OZP without compromising the development potential after taking into account the SBDG requirements<sup>8</sup>, the non-building areas (NBAs)/building gaps (BGs) requirements, the findings of updated technical assessments and relevant planning considerations (paragraph 4.3 of the OZP Review Paper No. TPB Paper No. 10507 refers).</p>

<sup>7</sup> According to "MPC Paper No. 6/12 - Proposed Amendments to the draft Kwai Ching OZP No. S/KC/25" and the 2018 Review Paper at [https://www.info.gov.hk/tpb/en/whats\\_new/Website\\_S\\_KC\\_26.html](https://www.info.gov.hk/tpb/en/whats_new/Website_S_KC_26.html), when formulating the BHRs for individual sites in the Area, all relevant factors including the Urban Design Guidelines (UDG), Urban Design Appraisal (UDA) for the Area and etc., have been taken into consideration. Among others, the broad urban design principles set out in the UDG include: (a) a stepped BH concept that respects the natural topographic profile should be adopted; (b) excessively tall buildings should be avoided in the waterfront area in order to preserve the sea breezes to the inland and views to the greenery hillsides; (c) the BH profile should be sympathetic and compatible in scale and proportion with the topographical and landscape setting.

<sup>8</sup> With the assumed parameters as set out in Annex C3 of 2018 Review Paper No. TPB Paper No. 10507 at [https://www.info.gov.hk/tpb/en/whats\\_new/Website\\_S\\_KC\\_26.html](https://www.info.gov.hk/tpb/en/whats_new/Website_S_KC_26.html) (including site classification, and corresponding site coverage under Building (Planning) Regulations, GFA concession, podium height and floor-to-floor height), the BHR of 120mPD should be able to accommodate the maximum total PR of 6.36 permissible under the OZP with the scope for redevelopment for a typical composite (i.e. the lower portion for non-residential use and upper portion for residential use), pure domestic or pure non-domestic development within the "CDA" zone based on the site formation levels of the Site, which can satisfy the SBDG requirements and respect the surrounding context.



	<p>Regarding <b>R9</b>'s proposal to relax the BHR by referring to the approved applications, it should be noted that in considering Applications No. A/KC/241 and A/KC/444 for the Site submitted by the representer <b>R9</b>, the Committee of the Board had taken into account the individual planning and design merits pertaining to the specific proposed development scheme corresponding to specific proposed relaxed BH as submitted by the applicant. The applications were considered on case-by-case basis based on specific set of proposed parameters including BH/PR, scheme specific layout and design measures, and relevant planning considerations, among others. The 145mPD Scheme with a relaxed BH was pertaining to specific design measures, including a central landscaped space, permeable podium design, building setback and separation. The relaxed BH of an approved planning application should not be taken as the reference for BH control to allow all developments to achieve such BH. It is considered that neither 169mPD nor 145mPD under a particular approved scheme should be incorporated in the OZP as the optimal BH profile for the Area. Relaxation of the BHR would not be permitted without demonstration of the individual merits, including that on planning and design aspects, under the planning application mechanism.</p> <p>The imposed BHR of 120mPD is not overly restrictive and it is considered that a BHR of 120mPD would be more appropriate for the Site to be congruous with the overall BH profile exemplifying the natural valley-like topography. <b>R9</b>'s proposal of either relaxing the BHR of the Site to 169mPD or 145mPD on the OZP direct would affect the integrity of the BH bands of the Eastern Sub-area and jeopardise the coherency of the stepped BH profile for BH control. While the approved schemes under Application Nos. A/KC/214 and A/KC/444 can be proceeded accordingly under the planning regime, the BHR of 120mPD would not affect the development right of the Site.</p> <p>Since 2012, in general there is no change of planning circumstances which have implications on the intended BH profile for the Site. No amendment in relation to the Site and Eastern Sub-area have been made to the OZP Nos. 27, 28 and 29 which were subsequently gazetted. There were two planning applications for minor relaxation for BHR within the Eastern Sub-area approved (including Application No. A/KC/444 for the Site) since 2012 which have not yet been implemented<sup>9</sup>, while their approval were based on their individual merits, the consideration of relevant criteria for such relaxation and the technical assessments on various aspects. These approved applications for individual sites would not result in a change of the overall BH profile for the Area nor the local area where the Site is located.</p>
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<sup>9</sup> The first planning application (No. A/KC/444) is for the proposed comprehensive flat, eating place, shop and services and office development with minor relaxation of BHR from 120mPD to 145mPD at the Site itself submitted by Tung Chun. The second application (No. A/KC/466) is for minor relaxation of BHR from 130mPD to 146.5mPD for the permitted data centre at 2-16 Lam Tin Street under the '2018 Policy Initiative of Revitalization of Industrial Building. The application site is about 300m away from the Site.

	According to the CA’s judgment, the CA did not consider the legitimate expectation contended for by <b>R9</b> to be well-founded <sup>10</sup> . Notwithstanding this, according to the TPB Guidelines No. 35C, the approved scheme under Application No. A/KC/241 has deemed commenced after GBPs are approved by the BA (see paragraph 3.2 above).
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#### 4.3.2 *Sufficient Control under “CDA” Zone*

Major Grounds
The “CDA” zoning is already subject to holistic and comprehensive Master Layout Plan (MLP) control, including BH considerations. The piecemeal imposition of BHR without having due regard to factors considered in the MLP submission defeats the intention of the “CDA” zone for a comprehensive development scheme.
Responses
The 120mPD BHR under the OZP has provided a clear planning intention and guidance for the “CDA” development in respect of the permissible BH at an early stage of the planning process. It allows the restriction to be more transparent and open to public scrutiny, ensuring that all stakeholders have the opportunity to express their views on the BHR in the statutory plan-making process, and allowing proposed development without compromising its comprehensiveness. Similar to other development sites, it is necessary to impose BHR for the Site, which forms part of the overall BH profile for the Area.

#### 4.3.3 *Inconsistent Treatment*

Major Grounds
There is no reason why the BHR of the Site is different from that of its immediate vicinity, i.e. “OU(B)” sites (BHR of 130mPD) and The Apex (BHR of 190mPD to reflect the as-built development) ( <b>Plan H-1</b> ). The Site should be allowed to the BH under the approved GBPs. There were inconsistent treatments as there were variations in BHs in the locality. The proposal by comparison was not excessively tall or out of context.
Responses
The “OU(B)” sites are intended for industrial/ business development with a PR of 9.5. The imposition of 130mPD BHR for these sites within this height band forms part and parcel of a stepping-up height profile ranging from 105, 120, 130 to 170mPD from Kwai Chung Road, Castle Peak Road, to Wo Yi Hop Road rising uphill to Shek Yam East Estate ( <b>Plan H-6</b> ).
The imposition of BHR of 190mPD on “C(2)” zone for The Apex <sup>11</sup> ( <b>Plan H-1</b> ) has taken into account a number of factors, including its planning intention for high-density

<sup>10</sup> According to the CA’s judgement, (i) **R9** has not been able to identify any clear or unambiguous representation made by the Board/Government that there would be no BHR at the Site; (ii) the Board may make amendments to its statutory plans in a manner which renders existing development proposals non-compliant with the latest zoning restrictions; (iii) it is entirely unthinkable to argue that the Board’s approval of a scheme amounts to an agreement to bind itself to a particular set of planning restrictions in *perpetuity*, bearing in mind that urban planning necessarily involves the constant adaptation of existing plans to meet changing societal needs and conditions; and (iv) the Court does not see how the Board’s designation of the Site as a “CDA” gives rise to a legitimate expectation that the Board shall not impose any zoning restrictions on the Site. All the Notes of the OZP say is that the applicant must go through the master layout plan process when seeking approval for the dimensions of the buildings which it proposes to erect. They do not purport to restrict the Board’s powers to impose BHRs via other means.

<sup>11</sup> An existing hotel/service apartment development completed in 2007 under an approved planning application.

commercial development, its permitted development intensity stipulated in the OZP, and the predominant height of existing buildings, etc.

#### 4.3.4 *Urban Design and Air Ventilation Considerations*

##### **Major Grounds**

The BHR of the Site is arbitrarily imposed without considering the site context, the nature of existing facilities/ uses, the local setting, future needs and other relevant matters. There is no attempt to demonstrate the feasibility of other possible BH control or evaluate and compare the merits of different schemes of varying restrictions.

The Urban Design Appraisal (UDA) did not demonstrate that a higher BHR violates the urban design principles adopted in formulating the BHRs. **R9**'s visual impact assessment (Appendix 6 of **R9**'s submission at the Board's website [https://www.info.gov.hk/tpb/en/whats\\_new/Website\\_S\\_KC\\_26.html](https://www.info.gov.hk/tpb/en/whats_new/Website_S_KC_26.html)) demonstrated that a development of about 170mPD is not considered to be significant, and would be compatible with its urban visual context. The **R9**'s refined proposal of 145mPD would not detrimentally punctuate the intended skyline and would suitably relate to the surrounding developments within the "OU(B)" zone.

Imposition of BHR on the Site would cause adverse visual impact on the surroundings because a lower BH would result in bulkier development. The BHR neither contributes to improve to the coherency of the overall BH profile, nor achieves particular urban design benefit given the Site is located in the inland and blocked by many buildings. A relaxed BH can encourage greater design innovation and visual permeability at lower levels. Besides, the BHR has limited the ability to provide greening due to higher site coverage and reduced flexibility.

On the air ventilation aspect, the Site is not within the breezeways or air path and the BHR does not have correlation to the overall air ventilation performance in the Area.

##### **Responses**

The objective of PlanD's UDA is to assess the visual impacts of the BHRs in the Area, examine whether they are acceptable from urban design/visual perspectives and visualise the future visual context upon imposition of the BHRs. The UDA is not supposed to, and not practicable to, exhaust all possible BHR options. According to the CFI's judgement, although the UDA does not contain a specific visual assessment of the Site by reference to different possible BHRs, the main objective of the UDA is to analyse the key spatial and visual attributes that define and shape the Area, provide principles and considerations for guiding the formulation of BHRs from urban design perspectives, and assess the visual impacts of the proposed BHRs. The purpose of the UDA is not to micro-analyse each and every site within the Area and determine the visual impact of different possible BHRs at each and every such site.

Given the tendency to maximise views on upper floors, a development with no BH control may in general result in tall buildings. Building design is determined by the interplay of various factors such as PR, SC, BH, design and disposition of building, etc. BHRs *per se* would not impose undue constraint on the design flexibility of future redevelopments. The BHRs formulated based on reasonable assumptions allow flexibility for building design, and do not preclude the incorporation of innovative architectural design and good design features under the SBDG, including building separation, building setback, greening, etc.

The AVA (EE) has reviewed the overall air ventilation performance of the Area, and its findings are drawn up on the basis of the overall BHR profile in the Area, which includes the BHR of 120mPD at the Site, although it is not within any breezeway/air path (**Plan H-7**). The 2018 OZP Review indicates that the assessment of 2012 AVA (EE), undertaken on the basis of northeasterly/southeasterly annual prevailing wind and southeasterly summer prevailing wind, and its recommendations on the proposed mitigation measures, are still valid.

The 145mPD Scheme under Application No. A/KC/444 has demonstrated the possibility to derive a scheme-based proposal with a relaxed BH and specific design measures, including a central landscaped space, permeable podium design, building setback and separation. Yet, it does not imply that 145mPD should be taken as the reference for BH control to allow all developments to achieve such building height.

#### 4.3.5 *Redevelopment Incentive*

##### **Major Grounds**

Redevelopment at the Site is much easier than sites of fragmented ownership and complicated tenure structure. The redevelopment will act as a catalyst to spearhead the redevelopment of existing industrial buildings in the Area and stimulate renewal in a comprehensive and coordinated manner.

The 169mPD Scheme under Application No. A/KC/241 will bring about improvement on various aspects including landscape, visual, air ventilation, environment and local economy. The BHR of 120mPD will frustrate the redevelopment at the Site in bringing local enhancements, and restrict the building design and leave little room to improve the pedestrian environment given the approved scheme would include the proposed widening of footpath.

##### **Responses**

The BHRs were formulated based on reasonable assumptions and flexibility was allowed in the shape and form of the buildings. Whether a development would be pursued is a commercial decision taking into account a host of factors, e.g. prevailing economic circumstances, market conditions, type of uses, etc. instead of the BHR alone. Even if the BHR to a certain extent reduce the number of possible development options, this does not necessarily amount to a material impact on the redevelopment incentive. Besides, the need to cater for greater design flexibility and redevelopment incentives have to be balanced against the community aspirations for a better living environment with more compatible building developments.

#### 4.3.6 *Implementation of Public Road Works*

##### **Major Grounds**

**R9** agreed to take up the formation and construction of Road 27E and returned the private possession of this piece of land to the Government when the Site was allowed to be redeveloped to a PR of 15 for factory godown use under Applications Nos. A/KC/127 and 197. Subsequently, **R9** agreed to proceed with the road construction works under Application No. A/KC/241 with a BH of 169mPD. The imposition of BHR on the Site has severely damaged the partnership between the Government and the representer.

<b>Responses</b>	
The construction of Road 27E is a clear requirement under the lease. BD advised that the plans for street works (retaining wall) involving construction of Road 27E was approved on 31.7.1996 and consent for commencement of works was granted on 2.9.1996, while DLO/TW&KT advised that the road construction has not been completed and the concerned land is still under the owner's possession. Besides, no redevelopment within KCTL 432 has taken place under the New Grant nor the formation of the Green Area in the lot owner's possession has been completed. In any event, the implementation of Road 27E would have no implication nor bearing on the BH issue.	

- 4.4 169 related comments (i.e. C1758 to C1926) supporting **R9** were received upon the publication of **R9**. The list of commenters is at **Annex II**. As indicated in paragraph 2.8 above, the related commenters were subsequently invited to provide comments on **R9**'s SI at **Annex III**. Twelve of the related commenters (i.e. C1786, C1787, C1788, C1828, C1832, C1839, C1840, C1875, C1882, C1903, C1905 and C1921) submitted comments to the Board. Their submissions are attached at **Annex IV**.
- 4.5 The major grounds of the commenters (including the additional points raised in the last hearing held on 12.10.2012) and commenters on **R9**'s SI; and PlanD's responses formulated in consultation with relevant government departments, are summarised below :

#### 4.5.1. *Land Utilisation*

<b>Major Grounds</b>	
Restricting the BH is a waste of the limited land resource, causing lower development opportunities, less economic benefit and higher property price. The abandoned industrial buildings could be better utilised for more affordable residential development and commercial/business developments.	C1758 - C1926
<b>Responses</b>	
Responses in paragraph 4.3.1 above are relevant. The formulation of BHR has ensured that the development site would generally be able to accommodate the development intensity as permitted on the OZP. As such, the BHR imposed on the Site would not affect land utilisation.	

#### 4.5.2. *Reduced Redevelopment Incentive and Local Improvement*

<b>Major Grounds</b>	
The imposition of BHR would further reduce redevelopment incentive of old/vacant industrial buildings, hinder revitalization/improvement of the Area. The BHR is also not in line with the Government policy to revitalise industrial buildings.	C1758 - C1926
<b>Responses</b>	
Responses in paragraph 4.3.5 above are relevant.	

#### 4.5.3. *Exploit Development Rights*

<b>Major Grounds</b>	
The imposition of BHR on the Site is unfair to the lot owner by exploiting the development rights. It disregards the Government's agreement with the representer, introduces restrictions and reduces development scale at the Site without sound justification. The difference between the BHs of 169mPD and 120mPD is small and the 169mPD Scheme would not create significant adverse impact on the local environment, as proved by <b>R9</b> 's submission. Some of the BHRs in urban areas such as Kwun Tong and Kowloon Bay had been relaxed by the Government to facilitate commercial and office development, which similar redevelopment approach should be applicable to Kwai Chung.	C1758 - C1926
<b>Responses</b>	
Responses in paragraph 4.3.1 above are relevant. Regarding the BHRs in other urban areas, there are different planning history, site setting and planning context for different areas and hence their development approaches should not be directly compared.	

#### 4.5.4. *Urban Design Considerations*

<b>Major Grounds</b>	
A lower BH does not always mean better urban design, visual quality and air ventilation performance. The visual impact of a development also depends on site coverage, building separation and façade treatment, and an overall assessment of building design would be required to prevent 'walled' buildings. The Site is not located in a sensitive area and the necessity of the BHR at the Site is doubtful. The BHR of 120mPD is imposed thoughtlessly, only with reference to the BHRs of nearby sites. Removal of the BHR of the Site will allow more design flexibility to respond to air ventilation and visual concerns.	C1758 - C1926
<b>Responses</b>	
Responses in paragraph 4.3.4 are relevant. BHRs do not preclude the incorporation of innovative architectural design and flexibility has been allowed for designing the shape/form of developments. Besides, a host of relevant factors has been taken into account apart from the making reference to BHRs of the nearby "OU(B)" zone.	

#### 4.5.5. *Sufficient Control under CDA Zoning*

<b>Major Grounds</b>	
Development in "CDA" zone is already subject to stringent control by the Board through submission of MLP which includes BH consideration.	C1758 - C1926
<b>Responses</b>	
Responses in paragraph 4.3.2 above are relevant.	

#### 4.5.6. *Lack of Public Consultation*

<b>Major Grounds</b>	
The BHR of the Site was imposed without consultation and neglect the aspirations of the public and nearby residents for an improvement to the local environment through redevelopment. It was doubtful whether the public consultation was conducted properly and if there was community consensus on the change of BHR on the Site.	C1758 - C1926
<b>Responses</b>	
The public was consulted on the OZP amendments in accordance with the exhibition and representations/comments process under the Ordinance. The draft Kwai Chung OZP No. S/KC/26 incorporating the OZP amendments was exhibited for public inspection on 20.4.2012 under section 5 of the Ordinance. All representers and commenters were invited to attend the Board's hearing meeting held in October 2012. Following the established practice in processing OZP amendments related to imposition of BHR, PlanD had provided briefing on the OZP amendments to Kwai Tsing District Council during the exhibition period on 20.6.2012 after the gazettal of the amendments. Any premature release of information before exhibition of the amendments might prompt an acceleration of submission of building plans by developers to establish fait accompli, hence defeating the purpose of imposing the BHRs.	

#### 4.5.7. *Enhancement of Development Intensity*

<b>Major Grounds</b>	
Enhancement of development intensity to increase flat supply has been very common in past ten years like Kai Tak, Hung Shui Kiu, Kwu Tung North/ Fanling North New Development Areas. To meet the acute demand for housing, individual sites for both private and public housing developments flat production have been increased under various OZP rezoning exercises.	C1786, C1787, C1788, C1828, C1832, C1839, C1840, C1875, C1882, C1903, C1905 and C1921
<b>Responses</b>	
The BH Review does not involve the change of PR for the Site. Again, there are different planning history, site setting and planning context for different areas, and hence their development approaches should not be directly compared.	

#### 4.5.8. *BH of 120mPD too overly restrictive for the Site*

<b>Major Grounds</b>	
The building height of 145mPD is considered compatible with various developments in the vicinity. The BHR of 120mPD has been demonstrated to be overly restrictive for the Site with a PR of 6.36.	C1786, C1787, C1788, C1828, C1832, C1839, C1840, C1875, C1882, C1903, C1905 and C1921
The BH should be suitably increased to 145mPD as that for the 145mPD Scheme since it would not result in excessively tall/out-of-context development/adverse visual impacts; maintain the design merits of the approved MLP; comply with SBDG; in line with the previous Committee's decision; which is also demonstrated to be technically feasible on air ventilation, visual amenity, traffic aspects, etc.	



Responses
Responses in paragraph 4.3.1 above are relevant.

## 5. **Departmental Circulation**

The following government departments have been consulted and their responses have been incorporated in the above paragraphs, where appropriate:

- (a) Chief Architect/Central Management Division 2, Architectural Services Department (CA/CMD2, ArchSD);
- (b) Chief Building Surveyor/New Territories West (CBS/NTW, BD);
- (c) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD);
- (d) Chief Engineer/Mainland South, Drainage Services Department (CE/MS, DSD);
- (e) Chief Highway Engineer/NT West, Highways Department (CHE/NTW, HyD);
- (f) Chief Town Planner/Urban Design & Landscape, PlanD;
- (g) Commissioner of Police (C of P);
- (h) Commissioner for Transport (C for T);
- (i) Director of Environment Protection (DEP);
- (j) Director of Fire Services (D of FS);
- (k) District Officer (Kwai Tsing), Home Affairs Department (DO(K&T), HAD);
- (l) DLO/TW&KT; and
- (m) Project Manager (West), Civil Engineering and Development Department (PM(W), CEDD).

## 6. **Planning Department's Views**

Based on the assessments in **paragraph 4** above, and for the following reasons, PlanD does not support **R9** and considers that the draft OZP should not be amended to meet the representation:

- (a) The Building Height Restriction (BHR) for the representation site is formulated on the basis of reasonable assumptions with allowance for design flexibility to accommodate development intensity with incorporation of Sustainable Building Design Guidelines (SBDG) permissible under the Kwai Chung Outline Zoning Plan (OZP). It would not affect the development intensity of the site permitted under the OZP and the development right. Better designed and sustainable buildings are not guaranteed with more relaxed building height (BH) control.
- (b) Imposition of BHR of 120mPD for the site as well as BHRs for other relevant sites within the OZP is to avoid excessively tall and out-of-context buildings which would adversely affect the overall valley-like and foothill setting of the Area. It helps maintain the integrity of the stepped height concept. Deletion of BHR or relaxation of BHR to 145mPD or 169mPD at the site would jeopardise the integrity of the overall stepped BH concept and result in a development out of context with the surrounding area. There is no strong justification for supporting the proposal to relax the BHR of the site to 145mPD and 169mPD as that approved by the the Metro Planning Committee (the Committee) of the Town Planning Board (the Board) under Applications No. A/KC/444 and A/KC/241.

- (c) The stipulation of BHR of 120mPD at the site on the OZP is to provide a clear planning intention in respect of the permissible BH at an early stage of the planning process, allowing the restriction to be more transparent and open to public scrutiny. The 120mPD BHR still allows a development to be pursued at the site with sufficient design flexibility.
- (d) In considering Applications No. A/KC/241 and A/KC/444 for the site submitted by the representer **R9**, the Committee of the Board had taken into account its own planning and design merits in approving the scheme-based planning applications with the specific proposed BH. Relaxation of the BHR would not be permitted without demonstration of the individual merits, including that on planning and design aspects, under the planning application mechanism.
- (e) Building design is determined by the interplay of various factors such as plot ratio, site coverage, BH, design and disposition of building, etc. BHRs *per se* would not result in bulkier buildings and impose undue constraint on the design flexibility of future redevelopments. The BHR for the site allows flexibility in designing the buildings and do not preclude the incorporation of SBDG, green features and innovative architectural design to promote a good building design.
- (f) Whether a development would be pursued is a commercial decision taking into account a host of factors, instead of the BHR alone. The need to cater for greater design flexibility and redevelopment incentives has to be balanced against the community aspirations for a better living environment with more compatible building developments.

## **7. Submission to the Chief Executive in Council**

- 7.1 In accordance with section 8 of the Ordinance, the Board shall submit the draft OZP, together with a schedule of the representations (if any), the comments on representations (if any), the further representations (if any) and the amendments made by the Board (if any), to the Chief Executive in Council (CE in C) for approval within nine months of the expiration of the plan-exhibition period. It has already been over nine years since the gazettal of S/KC/26 in April 2012.
- 7.2 For submission to the CE in C, the draft OZP has been renumbered as S/KC/29A. Opportunity has been taken to update the ES to reflect the latest position of the OZP. Upon the approval of the draft OZP No. S/KC/29A by the CE in C, the OZP will be renumbered as S/KC/30.

## **8. Decision Sought**

- 8.1 The Board is invited to give consideration to the Representation No. 9 and related comments No. C1758 to C1926 taking into account the points raised in the hearing sessions, and decide whether to propose/not to propose any amendment to the OZP to meet/partially meet the representation.
- 8.2 Should the Board decide that no amendment should be made to the draft OZP to meet the representation, Members are also invited to agree that the draft OZP (amended by the proposed amendments on OZP 26 to OZP 29) together with its respective Notes and updated

Explanatory Statement, are suitable for submission under section 8 of the Ordinance to the CE in C for approval.

**9. Attachments**

<b>Annex Ia</b>	Draft Kwai Chung Outline Zoning Plan No. S/KC/26 (reduced size)
<b>Annex Ib</b>	Schedule of Amendments of the Draft Kwai Chung Outline Zoning Plan No. S/KC/26
<b>Annex II</b>	List of Commenters Related to Representation No. R9
<b>Annex III</b>	Supplementary Information Submitted by Representation No. R9
<b>Annex IV</b>	Comments of Related Commenters on Supplementary Information
<b>Plan H-1</b>	Location Plan
<b>Plan H-2</b>	Site Plan
<b>Plan H-3a</b>	Site Context
<b>Plan H-3b</b>	Site Photo
<b>Plan H-4a</b>	Sub-areas of Kwai Chung Planning Scheme Area
<b>Plan H-4b</b>	Aerial Overview of Kwai Chung and Surrounding Area
<b>Plan H-5</b>	The Site and the Building Height Profile
<b>Plan H-6</b>	Building Height Profile of the Eastern Sub-area
<b>Plan H-7</b>	Existing Air Path Network

**PLANNING DEPARTMENT  
JANUARY 2022**