

IN THE TOWN PLANNING APPEAL BOARD

Town Planning Appeal No. 5 of 2005

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BETWEEN

INTERNATIONAL TRADER LIMITED      Appellant

and

THE TOWN PLANNING BOARD      Respondent

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Appeal Board : Mr. Patrick FUNG Pak-tung, SC (Chairman)

Mr. Paul Yung Pui-yip (Member)

Professor Fong Wang-fun (Member)

Mr. Richard Ho Kam-wing (Member)

Mr. Paul Chan Kam-cheung (Member)

Date of Decision : 25 February 2008

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## D E C I S I O N

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1. The Town Planning Appeal No. 9 of 2004 and Appeal No. 5 of 2005 were first heard before an Appeal Board comprising of Mr. Ronny Wong SC as the Chairman and Professor Lee Ngok, Dr. Gary William John Ades, Ms. Sylvia Siu Wing Yee and Mr. Yip Chung Yin as its members ("the original Appeal Board").
2. By a majority decision of the original Appeal Board, Town Planning Appeal Case No.9 of 2004 and Appeal Case No.5 of 2005 were dismissed.
3. The Appellant brought judicial review proceedings in HCAL No.13 of 2007 in respect of the majority decision of the original Appeal Board.
4. The Appellant's motion for judicial review was allowed by Mr. Justice A Cheung and the decisions of the original Appeal Board dated 12th December 2006 dismissing the Applicant's appeals in Town Planning Appeal Case No.9 of 2004 and Appeal Case No.5 of 2005 were quashed.
5. Mr. Justice A Cheung also made an order of mandamus in HCAL 13 of 2007 in the following terms:

"The Respondent do and is hereby commanded to allow the Applicant's appeal in Town Planning Appeal Case No.5 of 2005 to the extent of granting relaxation in terms of "Option 6a" of the development proposals as referred to in the Respondent's decision dated 12th December 2006."
6. Doubts arose as to whether the original Appeal Board, as

Respondent in HCAL 13 of 2007, was capable of carrying out the order of mandamus as its Chairman Mr. Ronny Wong SC and two of its members Professor Lee Ngok and Mr. Yip Chung Yin have since retired as members of the Town Planning Appeal Board Panel.

7. By a judgment of Mr Justice A. Cheung made on 1st February 2008, the Learned Judge clarified that his order of mandamus dated 15th November 2007:
  - (i) was granted on the basis that a new Town Planning Appeal Board would be constituted or appointed to determine the outstanding appeal in Town Planning Appeal No. 5 of 2005 following the quashing of the decisions of the original Appeal Board; and
  - (ii) was intended to be complied with by the new Appeal Board seized of the determination of the outstanding appeal.
8. On 6th February 2008, this Appeal Board was constituted by nomination of the Chairman of the Appeal Board Panel (Town Planning) for the purpose of determining the outstanding appeal in Town Planning Appeal No. 5 of 2005 and in the light of the Learned Judge's clarification referred to in paragraph 7 above.
9. Accordingly this Appeal Board, being seized of Town Planning Appeal No. 5 of 2005, hereby orders that the appeal be allowed to the extent of granting relaxation in terms of "Option 6a" of the development proposals referred to in the original Appeal Board's decision dated 12th December 2006.

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Patrick FUNG Pak-tung, SC  
(Chairman)

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Mr. Paul Yung Pui-yip  
(Member)

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Professor Fong Wang-fun  
(Member)

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Mr. Richard Ho Kam-wing  
(Member)

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Mr. Paul Chan Kam-cheung  
(Member)