

TOWN PLANNING APPEAL NO. 13 OF 2006

and

TOWN PLANNING APPEAL NO. 5 OF 2008

IN THE MATTER of the

Town Planning Ordinance (Cap. 131)

and

IN THE MATTER of an Appeal under

Section 17B by

Appellant (represented by Mr. Anthony Ismail and Mr. Abraham Chan instructed by Mayer Brown JSM for the Appellant)

Respondent (represented by Mr. Nicholas Cooney SC instructed by Secretary for Justice on fiat for the Respondent)

Name of the Appellant : AGP (Shatin) Limited

Town Planning Appeal Board:

Ms Teresa CHENG Yeuk-wah, BBS, SC, JP (Chairman)

Mr CHAN Chung (Member)

Mr Johnny FEE Chung-ming (Member)

Mr TSANG Man-biu (Member)

Mr WONG Lok-tak (Member)

**SUPPLEMENTAL DECISION PURSUANT TO
THE APPEAL BOARD PANEL (TOWN PLANNING)'S DECISION**

1. The Appeal Board Panel (Town Planning) (the Panel) rendered the Decision on this matter on 5 October 2010.

2. The Appellant by its Solicitors' letter dated 20 October 2010 requested that a formal approval letter setting out the approval conditions that it has accepted be issued. It stated in the letter:

“The Appellant therefore wishes to clarify that it is willing to accept the conditions of approval which were suggested in each of the TPB Papers prepared for the s.17 review hearing for each of the applications, namely the conditions set out in:

- *sub-paragraphs 6.4(a) to 6.4(h) in TPB Paper No. 7559, together with proposed wording for the four-year validity period as suggested in the paragraph above sub-paragraph 6.4(a); and*

- *sub-paragraphs 8.2(a) to 8.2(g) under “Approval Conditions” in TPB Paper No. 8142, together with proposed wording for the four-year validity period as suggested in the paragraph above sub-paragraph 8.2(a).*

We should be grateful for the Appeal Board Panel (Town Planning) to issue letters formally confirming the grant of permission for each application from the date of the Decision for four years, subject to the conditions referred to above.”

3. The Department of Justice (DoJ) on behalf of the Respondent replied on 11 November 2010 stating:

“our client has no comment on the request that the Appeal Board issue a letter to confirm the grant of the permission for each section 16 application from the date of the Decision of the Appeal Board (“the Decision”) for 4 years, subject to the conditions referred to in the said letter of the Appellant’s solicitors dated 20 October 2010”

4. The Panel concludes that it will accede to the request but takes the view that a Supplemental Decision should be rendered as opposed to a letter for each s.16 application.

5. The Panel informed the parties of this view in a letter dated 14 January 2011 inviting the parties to comment.

6. The DoJ replied on 27 January 2011 stating:

“Referring to paragraph 4 of your said letter concerning the Appeal Board’s view on the procedure, we consider that the Supplemental Decision, if any, should be issued without the word “Consent”.

As for paragraph 6 of the Draft (Consent) Supplemental Decision, the Respondent has no comment. As for paragraph 7 thereof, the Respondent’s proposed wordings as to the advisory comment are attached hereto.”

7. The Appellant by its Solicitors’ letter dated 24 February 2011 replied that:

“The Appellant confirms that it does not have any comment on both the Appeal Board’s and DoJ’s suggestions on the procedure and the proposed Supplemental Decision.

The Appellant also confirms that it has no comment on the proposed wordings attached to both the Appeal Board’s letter dated 14 January 2011 and the DoJ’s letter dated 27 January 2011. ”

8. In the premises, pursuant to the Decision issued on 5 October 2010, the Panel makes the following supplemental decision:

For TPA No. 13 of 2006 (TPB Application No. A/ST/630)

The permission is subject to the following conditions and shall be valid until 5 October 2014; and after the said date, the permission shall cease to have effect unless before the said date either the development hereby permitted is commenced or the permission is renewed:

- (a) the submission and implementation of a revised Master Layout Plan to incorporate where appropriate the approval conditions as stated in paragraphs (b) to (h) to the satisfaction of the Director of Planning or of the Town Planning Board;
- (b) the submission and implementation of a Landscape Master Plan to the satisfaction of the Director of Planning or of the Town Planning Board;
- (c) the submission of a revised Environmental Impact Assessment Report and implementation of mitigation measures (including setback) to the satisfaction of the Director of Environmental Protection or of the Town Planning Board;
- (d) the submission of a revised traffic impact assessment study, the design and provision of vehicular access, car parking spaces, loading/unloading/lay-by facilities and pedestrian circulation system to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (e) the design and provision of public transport interchange (PTI) and mini PTI to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (f) the submission of a Drainage Impact Assessment and the implementation of flood mitigation measures/provision of drainage

facilities identified therein to the satisfaction of the Director of Drainage Services or of the Town Planning Board;

- (g) the design and provision of a kindergarten, a primary school and a secondary school to the satisfaction of the Secretary for Education or of the Town Planning Board; and
- (h) the provision of emergency access and fire services installations to the satisfaction of the Director of Fire Services or of the Town Planning Board.

The Appellant is also advised of the following:

- (a) the approved Master Layout Plan, together with the set of approval conditions, will be certified by the Chairman of the Town Planning Board and deposited in the Land Registry in accordance with section 4A(3) of the Town Planning Ordinance. Efforts should be made to incorporate the relevant approval conditions into a revised Master Layout Plan for deposition in the Land Registry as soon as possible;
- (b) the approval of the application does not imply that the gross floor area exemption and/or bonus plot ratio included in the application will be granted by the Building Authority. The Appellant should approach the Buildings Department direct to obtain the necessary approval;
- (c) to resolve any land issue relating to the development with other concerned owner(s) of the application site;
- (d) to consult the Director of Lands on the land grant application;
- (e) to consult the Director of Fire Services on the detailed fire services requirements to be formulated at formal general building plans submission stage;
- (f) to consult the Director of Water Supplies on the provision of a waterworks reserve with 2m from the centre line of the existing water

mains and salt water mains at the bus terminus in order to prevent any interruption to their operation and maintenance;

- (g) the application site is within the dam break flood plain of Lower Shing Mun Dam of Lower Shing Mun Reservoir. The Appellant is advisable to carry out an assessment of the impacts of the proposed development on dam break and make his own provisions. The Appellant is advised to consult the Reservoir Safety Section of Water Supplies Department in this regard;
- (h) to liaise with the Assistant Commissioner for Transport/New Territories, Transport Department to resolve the questions of the land status, management and maintenance responsibility of the proposed PTIs, the proposed footbridge and roundabout at Lok King Street, and the access arrangement for the commercial carpark and loading/unloading area at Level 1; and
- (i) to liaise with the Director of Planning to work out measures to be adopted to minimize the adverse impact of the “wall effect” created by the proposed development.

For TPA No. 5 of 2008 (TPB Application No. A/ST/658)

The permission is subject to the following conditions and shall be valid until 5 October 2014; and after the said date, the permission shall cease to have effect unless before the said date the development hereby permitted is commenced or the permission is renewed:

- (a) the submission and implementation of a revised Master Layout Plan to incorporate where appropriate the approval conditions as stated in paragraphs (b) to (g) to the satisfaction of the Director of Planning or of the Town Planning Board;
- (b) the submission and implementation of a Landscape Master Plan to the satisfaction of the Director of Planning or of the Town Planning Board;

- (c) the submission of a revised Environmental Impact Assessment Report and implementation of mitigation measures to the satisfaction of the Director of Environmental Protection or of the Town Planning Board;
- (d) the submission of a revised Traffic Impact Assessment Study, the design and provision of vehicular access, car parking spaces, loading/unloading/lay-by facilities and pedestrian circulation system to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (e) the design and provision of PTI and mini-transport interchange (MTI) to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (f) the design and provision of a kindergarten to the satisfaction of the Secretary for Education or of the Town Planning Board; and
- (g) the provision of fire services installations to the satisfaction of the Director of Fire Services or of the Town Planning Board.

The Appellant is also advised of the following:

- (a) the approved Master Layout Plan, together with the set of approval conditions, will be certified by the Chairman of the Town Planning Board and deposited in the Land Registry in accordance with section 4A(3) of the Town Planning Ordinance. Efforts should be made to incorporate the relevant approval conditions into a revised Master Layout Plan for deposition in the Land Registry as soon as possible;
- (b) the approval of the application does not imply that the gross floor area exemption included in the application will be granted by the Building Authority. The Appellant should approach the Buildings Department direct to obtain the necessary approval;
- (c) to consult the Director of Lands on the land exchange application;

- (d) to resolve any land issue relating to the development with other concerned owner(s) of the application site;
- (e) to consult the Director of Fire Services on the detailed fire service requirements to be formulated at formal general building plans submission stage;
- (f) to consult the Director of Water Supplies on the provision of a waterworks reserve with 2m from the centre line of the existing water mains and salt water mains at the bus terminus in order to prevent any interruption to their operation and maintenance;
- (g) the application site is within the dam break flood plain of Lower Shing Mun Dam of Lower Shing Mun Reservoir. The Appellant is advisable to carry out an assessment of the impacts of the proposed development on dam break and make his own provisions. The Appellant is advised to consult the Reservoir Safety Section of Water Supplies Department in this regard;
- (h) part of the proposed works under the Water Supplies Department's Rehabilitation and Replacement Works Stage 3 fall within the application site. Coordination between the Appellant and the Water Supplies Department's project consultant is required to resolve the project interface problems. The Appellant is also advised to liaise with the Consultant Management Division of the Water Supplies Department for deletion of affected water mains from the Water Supplies Department's project;
- (i) to meet with the Sha Tin District Council, in consultation with the Sha Tin District Office, to explain the development proposal/Master Layout Plan; and
- (j) to liaise with the Director of Planning to work out measures to be adopted to minimize the advise impact of the "wall effect" created by the proposed development.

Ms Teresa CHENG Yeuk-wah, BBS, SC, JP
(Chairman)

Mr CHAN Chung
(Member)

Mr Johnny FEE Chung-ming
(Member)

Mr WONG Lok-tak
(Member)

Mr TSANG Man-biu
(Member)

Dated the 29 day of March 2011.