

TOWN PLANNING APPEAL NO. 5 OF 2009

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. Charles
Wong of Messrs. Lo, Wong & Tsui,
Solicitors & Notaries for the Appellant)

Respondent (represented by Ms. Vickie
Man, Government Counsel of the
Department of Justice for the
Respondent)

Name of the Appellant : Gold Asset Development Limited

Date of Hearing: 19 May 2010

Date of Decision: 28 October 2010

Town Planning Appeal Board:

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

Dr. Eugene CHAN Kin-keung (Member)

Mr. Paul LAM Ting-kwok (Member)

Mr. Derek Emory YEUNG Ting-lap (Member)

Mr. Stephen YIP Chun-nam, MH, JP (Member)

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DECISION

BACKGROUND

1. The site in dispute (the “Site”) is of about 1.079.6 m². It comprises four private lots, namely, Lots 999 S.E., 1001 S.A RP, 1002 S.A RP and 1327 RP in D.D. 115 and adjoining government land in Au Tau, Nam Sang Wai, Yuen Long. Of the Site, Gold Asset Development Limited (the Appellant) holds about 917.5 m² (about 85% of the Site) whereas about 162.1 m² is held by the Government (about 15% of the Site).
2. The Site falls largely within an area zoned “Undetermined” (“U”), with part of it shown as ‘Road’, on the approved Nam Sang Wai Outline Zoning Plan No. S/YL-NSW/8 (“OZP 8”).
3. On 18 April 2008, the Appellant submitted a planning application (No. A/YL-NSW/182) under section 16 of the Town Planning Ordinance (“TPO”) and proposed a petrol filling station (PFS) on a permanent basis.
4. Prior to the present appeal, there were two PFS applications in relation to part of the Site. One was lodged by a different applicant in or around August 1994 (Application No. A/YL-NSW/1) (the “Rejected Application”) and the other was lodged by the Appellant in or around February 1997 (Application No. A/YL-NSW/17) (the “1997 Application”).

(a) The Rejected Application (Application No. A/YL-NSW/1)

5. In or around August 1994, a different applicant had submitted an application for a proposed PFS on a permanent basis on a site of about 3,614 m² (covering part of the Site and some additional land to the west of the Site). The application site also fell within an area zoned “U” on the then prevailing draft Nam Sang Wai OZP No. S/YL-NSW/1 (“OZP 1”).
6. On 5 August 1994, the application was rejected by the Rural and New Town Planning Committee (“RNTPC”) of the Town Planning Board (TPB) for the following reasons:
 - (1) the application site fell within an area zoned “U” to cater for a possible railway proposal through the area as suggested in a Railway Development Study. Approval of the application prior to the finalization of the Study would jeopardize the future planning of the area; and
 - (2) there was insufficient information in the submission to demonstrate that the vehicular access arrangement would not cause disruption or hazard to the through traffic on Castle Peak Road.
7. The applicant did not lodge any review application or appeal subsequent to the rejection by the TPB.

(b) The 1997 Application (Application No. A/YL-NSW/17)

8. In or around October 1996, the Appellant applied to the TPB and proposed a PFS on a permanent basis on a site of about 3,285 m², which covered part of the Site and additional land to the west of the Site. Similar to the Rejected Application, the application site fell within an area zoned “U” on OZP 1. The application was to be considered by the RNTPC on 14 February 1997.
9. On 14 February 1997, the RNTPC decided to approve the application with conditions on a temporary basis. By a letter dated 20 March 1997, TPB approved the application on a temporary basis for a period of four years up to 14 February 2001. The relevant parts of the letter are given below:

“I refer to your application of 8.10.1996 and am pleased to inform you that at its meeting on 14.2.1997, the Town Planning Board (the Board) approved your application for permission under section 16 of the Town Planning Ordinance on a temporary basis for a period of four years up to 14.2.2001, on the terms of the application as submitted to the Board and subject to the following conditions :

- (a) the submission and implementation of landscaping proposals within 2 years from the date of planning approval to the satisfaction of the Director of Planning*

- or of the Town Planning Board;*
- (b) the provision of a 3m high solid boundary wall within 2 years from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board;*
 - (c) the provision of drainage facilities within 2 years from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board;*
 - (d) the provision of oil interceptors within 2 years from the date of planning approval to the satisfaction of the Director of Environmental Protection or of the Town Planning Board;*
 - (e) the submission and implementation of a vehicular ingress/egress arrangement and the reinstatement of a footpath and cycle track located outside the application site within 2 years from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board; and*
 - (f) the permission shall cease to have effect on 14.2.1999 unless prior to the said date either the development hereby permitted is commenced or the permission is renewed.”*

10. The Appellant was not satisfied with the s.16 application result. In or around June 1997, the Appellant submitted a section 17 review application for a permanent approval. The review application was to

be considered by the TPB in the TPB meeting on 27 June 1997. As stated in the meeting minutes of the same date, TPB decided to approve the application upon review.

11. By a letter dated 7 August 1997, the TPB decided on review to approve the application with conditions on a permanent basis (the “1997 Approval”). The relevant parts of the letter are given below:

“I refer to your attendance at the Town Planning Board Meeting held on 27.6.1997.

After giving full consideration to your submission and to your written statement, the Town Planning Board (the Board) decided on review to approve your application on the terms of the application submitted to the Board and subject to the following conditions :-

- (a) the submission and implementation of landscaping proposals to the satisfaction of the Director of Planning or of the Town Planning Board;*
- (b) the provision of a 3-metre high solid boundary wall to the satisfaction of the Director of Environmental Protection or of the Town Planning Board;*
- (c) the provision of drainage services to the satisfaction of the Director of Drainage Services or of the Town Planning Board;*
- (d) the provision of oil interceptors to the satisfaction of the*

Director of Environmental Protection or of the Town Planning Board;

- (e) the submission and implementation of a vehicular ingress/egress arrangement and the reinstatement of a footpath and cycle-track located outside the application site to the satisfaction of the Commissioner for Transport or of the Town Planning Board; and*
- (f) the permission shall cease to have effect on 27.6.1999 unless prior to the said date either the development hereby permitted is commenced or this permission is renewed.*

The approval is granted on the basis of the following undertaking to the Town Planning Board, as confirmed by you :

- (a) You will not object to the Floodway project when it is gazetted;*
- (b) You will cease operation of the petrol filling station and demolish it, for a period of one and a half years or a longer period if required, to make way for the Floodway project when construction takes place and will not demand any compensation;*
- (c) You will bear the full costs of design and construction of the deck-over area of the application site as well as the area outside it; and*
- (d) You will surrender an easement to Government to facilitate free access by the staff of the Drainage*

Services Department to the part of the application site on the deck at all times to carry out maintenance and inspection works of the Floodway whereas the underpart of the deck will be wholly surrendered to the Government."

12. It should be noted that the undertaking, including item (b) in the undertaking (*[the Appellant] will cease operation of the petrol filling station and demolish it, for a period of one and a half years or a longer period if required, to make way for the Floodway project when construction takes place and will not demand any compensation"*) stated above was provided voluntarily by the Appellant at that time. The same has been recorded in the minutes of the TPB meeting on 27 June 1997 and the letter dated 7 August 1997.
13. Further, it should be noted that, on 30 September 1998, building plans for the proposed PFS in relation to the 1997 Approval were approved by the relevant department. The PFS had also been built but it was never put in operation.
14. In or around 2002, in compliance with item (b) of the undertaking above, the western portion of the Site was resumed by the Government to make way for the Floodway project. The structures erected at the PFS were demolished accordingly.

(c) The Subject Application

15. On 18 April 2008, the Appellant submitted another planning application and proposed a PFS on the Site. The application was to be considered by the RNTPC of the TPB in a meeting on 7 November 2008 and the RNTPC decided to approve the application on a temporary basis.
16. By a letter dated 21 November 2008, the TPB approved the application on a temporary basis for a period of 5 years up to 7 November 2013 with conditions. The relevant parts of the letter are given below:

"I refer to my letter to you dated 23.9.2008.

After giving consideration to your application, the Town Planning Board (TPB) approved your application for permission under section 16 of the Town Planning Ordinance on the terms of the application as submitted to the TPB. The permission is subject to the following conditions and shall be valid on a temporary basis for a period of 5 years until 7.11.2013 :

- (a) the submission of a tree survey report within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the TPB by 7.5.2009;*
- (b) the submission of landscape proposals including tree*

- preservation scheme for the site within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the TPB by 7.5.2009;*
- (c) in relation to (b) above, the implementation of landscape proposals including tree preservation scheme within 9 months from the date of planning approval to the satisfaction of the Director of planning or of the TPB by 7.8.2009;*
- (d) the provision of a 3m-high solid boundary wall, as proposed by you, within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the TPB by 7.5.2009;*
- (e) the submission of drainage proposal within 6 months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the TPB by 7.5.2009;*
- (f) in relation to (e) above, the provision of drainage facilities proposed within 9 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the TPB by 7.8.2009;*
- (g) the submission of a design of the affected footpath and cycle track outside the application site, as proposed by you, within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the TPB by 7.5.2009;*
- (h) in relation to (g) above, the re-provision of the affected footpath and cycle track outside the application site, as*

- proposed by you, within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the TPB by 7.8.2009;*
- (i) the submission of run-in proposal within 6 months from the date of planning approval to the satisfaction of the Director of Highways or of the TPB by 7.5.2009;*
- (j) in relation to (i) above, the implementation of the accepted run-in proposal within 9 months from the date of planning approval to the satisfaction of the Director of Highways or of the TPB by 7.8.2009;*
- (k) the reinstatement of the existing affected landscaped areas established under the Yuen Long Bypass Floodway project within 9 months from the date of planning approval to the satisfaction of the Director of Leisure and Cultural Services or of the TPB by 7.8.2009; and*
- (l) if any of the above planning conditions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) or (k) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.”*

17. The Appellant was not satisfied with the s.16 application result. On 9 December 2008, the Appellant submitted a section 17 review application. It was to be considered by the TPB in the TPB meeting on 6 March 2009 in which the Planning Department had produced the TPB Paper No. 8304 for the Board's consideration.

18. Notwithstanding the Planning Department did not support the review application for extension of the approval period and the time limit for fulfillment of planning conditions, TPB, after further deliberation in the meeting on 6 March 2009, decided to approve the application on review on a temporary basis for an extended period with conditions.
19. By a letter dated 20 March 2009, TPB approved the application on a temporary basis for a period of 10 years up to 6 March 2019 with conditions. The relevant parts of the letter are given below:

“I refer to your attendance at the Town Planning Board (TPB) meeting held on 6.3.2009.

After giving consideration to your review submission, the TPB decided on review to approve the application on the terms of the application as submitted to the TPB. The permission is subject to the following conditions and shall be valid on a temporary basis for a period of 10 years until 6.3.2019:

- (a) the submission of a tree survey report within 12 months from the date of planning approval to the satisfaction of the Director of Planning or of the TPB by 6.3.2010;*
- (b) the submission of landscape proposals including tree preservation scheme for the site within 12 months from the date of planning approval to the satisfaction of the Director of Planning or of the TPB by 6.3.2010;*
- (c) in relation to (b) above, the implementation of landscape*

- proposals including tree preservation scheme within 15 months from the date of the planning approval to the satisfaction of the Director of Planning or of the TPB by 6.6.2010;*
- (d) the provision of a 3m-high solid boundary wall, as proposed by you, within 12 months from the date of planning approval to the satisfaction of the Director of Planning or of the TPB by 6.3.2010;*
 - (e) the submission of drainage proposal within 12 months from the date of the planning approval to the satisfaction of the Director of Drainage Services or of the TPB by 6.3.2010;*
 - (f) in relation to (e) above, the provision of drainage facilities proposed within 15 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the TPB by 6.6.2010;*
 - (g) the submission of a design of the affected footpath and cycle track outside the application site, as proposed by you, within 12 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the TPB by 6.3.2010;*
 - (h) in relation to (g) above, the re-provision of the affected footpath and cycle track outside the application site, as proposed by you, within 15 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the TPB by 6.6.2010;*
 - (i) the submission of run-in proposal within 12 months from*

the date of planning approval to the satisfaction of the Director of Highways or of the TPB by 6.3.2010;

(j) in relation to (i) above, the implementation of the run-in proposal within 15 months from the date of planning approval to the satisfaction of the Director of Highways or of the TPB by 6.6.2010;

(k) the reinstatement of the existing affected landscaped areas established under the Yuen Long Bypass Floodway project within 15 months from the date of planning approval to the satisfaction of the Director of Leisure and Cultural Services or of the TPB by 6.6.2010;and

(l) if any of the above planning conditions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) or (k) is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.”

20. On 15 May 2009, the Appellant filed a Notice of Appeal against TPB's rejection. This appeal forms the subject matter of the present hearing.

PLANNING INTENTION

21. It is common ground that the planning intention is to be ascertained from a proper construction of the OZP (OZP 8 in this case) including the Notes which form part of the OZP and the Explanatory Statement for the OZP (which does not form part of the plan).

22. It should be noted that, although the Explanatory Statement is expressly stated not to be part of the approved plan for the purposes of the TPO, it cannot be disregarded because it is a material consideration although the Board and the Appeal Board is not bound to follow it : **Henderson Real Estate Agency Ltd v Lo Chai Wan** [1997] HKLRD 258 at page 267, lines A – E.
23. It is not disputed that, according to the Notes to the OZP 8, planning permission is required for the proposed PFS and the exemptions from applications in paragraph 8 and 11(a) in the said Notes are not applicable to this case.
24. The planning intention of the “U” zoning is described in paragraph 9.8 of the Explanatory Statement annexed to OZP 8. Paragraph 9.8 states that:

“9.8 Undetermined (“U”) (Total Area : 46.40 ha.)

9.8.1 Three areas to the north of Pok Oi Hospital are zoned “U” as they are subject to impacts from the existing major roads like Castle Peak Road, Yuen Long Highway, Tsing Long Highway, West Rail as well as the Yuen Long Bypass Floodway (YLBF) currently under construction. At present, these areas mainly consist of squatters and small stone houses and fish ponds. The areas are located in close

proximity to the Yuen Long New Town and within a transitional location between the urban and rural areas. Development within the areas has to be comprehensively planned as piecemeal development or redevelopment would have the effect of degrading the environment and thus jeopardizing the long-term planning intention of the areas. While the alignments of West Rail and YLBF have been fixed, the areas zoned “U” are subject to future land use review.

- 9.8.2 *Under the “U” zone, any private developments or redevelopments require planning permission from the Board so as to ensure that the environment would not be adversely affected and that infrastructure, GIC facilities, open space are adequately provided. The proposed development should also take into account the West Rail and the YLBF. To realize a built-form which represents a transition from the Yuen Long New Town to the rural area, the development intensity should take into account the urban type developments immediately to the west of the “U” zone and the rural characteristics of the area to its north.”*

SUMMARY OF PARTIES' SUBMISSIONS

25. By this appeal, the Appellant challenges the temporary basis of the approval given and seeks permanent approval for the proposed PFS on the following three grounds:

- (1) TPB fails to act consistently;
- (2) The Appellant has a legitimate expectation that TPB would grant permanent approval as it did in 1997; and
- (3) The ground of temporary approval is unreasonable.

26. We note that the Appellant's all three grounds of appeal, in essence, hinge on the 1997 Approval in which details of the said Approval have already been given above and will not be repeated here.

27. The Appellant contended that, given the 1997 Approval was intended to be permanent (they argued that the approval is still effective even after the demolition of the PFS in 2002), accordingly,

- (1) a fresh application for planning permission was not necessary,
or
- (2) alternatively, even if it were required, that the TPB should have acted consistently and reasonably and granted permanent approval as it did in 1997.

28. In response, the Respondent contended that the Appellant's submissions are fallacious given that:

- (1) The 1997 Approval has lapsed pursuant to the OZP 8; and
- (2) The subject Application, being a fresh application, shall be considered on its own merits with reference to the prevailing planning circumstances.

29. In the premises, whether the appeal should be allowed turns on (1) whether a fresh application is necessary and (2) the planning circumstances in light of the planning intention to OZP 8. We shall deal with these issues in details below.

FINDINGS

(a) Whether a fresh application is necessary

30. The Appellant, relying on item (b) under the undertaking as stated in the 1997 Approval, argued that the said Approval evidently intends to be effective even after the demolition of the PFS built under the 1997 approved scheme. Item (b) of the undertaking is repeated below:

“You will cease operation of the petrol filling station and demolish it, for a period of one and a half years or a longer period if required, to make way for the Floodway project when construction takes place and will not demand any compensation;”

31. The Respondent disagreed. They submitted that the 1997 Approval

had already lapsed according to paragraph 6 of the Notes to the OZP 8 due to the fact that the PFS approved by the TPB in 1997 had already been built. Paragraph 6 of the Notes provides:

“(6) Except as otherwise specified by the Town Planning Board, when a use or material change of use is effected or a development or redevelopment is undertaken, as always permitted in terms of the Plan or in accordance with a permission granted by the Town Planning Board, all permissions granted by the Town Planning Board in respect of the site of the use or material change of use or development or redevelopment shall lapse.”

32. In response, insofar as Paragraph 6 of the Notes is concerned, the Appellant submitted it is not applicable in the subject Application with reasons being that:

- (1) No paragraph similar to Paragraph 6 of the Notes to the OZP 8 can be found in the Notes to the OZP 1; and
- (2) The 1997 Approval was made under the OZP 1, accordingly, Notes to OZP 8 should not apply to the 1997 Approval.

33. We are in favour of the Respondent's submission. Plainly, we consider that Paragraph 6 of the Notes to the OZP 8 is applicable to the subject Application. Further, as a matter of fact, a PFS has been built under the 1997 Approval, accordingly, a direct application of the said paragraph would mean that the 1997 Approval has already

lapsed and a fresh application is necessary.

34. We note that the Respondent had also submitted that, in any event, the proposal under the subject Application is materially different from that approved in 1997. As such, a fresh application is necessary which is to be considered on its own merits with reference to the prevailing circumstances.

35. Since we have found that a fresh application is required by virtue of Paragraph 6 of the Notes, we do not have to make any finding on this. Nonetheless, for completeness, we consider the subject Application is materially different from the 1997 Application which would also mean that a fresh application is necessary. The differences will be further discussed in the following given that the Appellant argued that it was not so and thus being in line with the Planning Intention.

36. In the premises, a fresh application is necessary.

(b) Planning Intention and the prevailing planning circumstances

37. It is not disputed that in considering any application, regards must be made to the Planning Intention (see above) and the prevailing planning circumstances.

38. The Appellant submitted that the subject Application is clearly consistent with the Planning Intention given that:

- (1) The explanatory statements in OZP 1 and OZP 8 are almost identical, expressing the same intention and requirement; and
- (2) The scale of the PFS in the subject Application is smaller and the impact (if any) on future planning for the area is smaller, even if there were any worry of incompatibility with the future planning for the area.

Accordingly, as TPB had in 1997 granted permanent approval in respect of the 1997 Application, the TPB could not have justifiably or reasonably granted temporary approval in respect of the subject Application.

39. The relevant parts of the Planning Intention in the Explanatory Statement to OZP 1 and details of the proposed PFS under the subject Application and that under the 1997 Approval are given below:

Planning Intention under the Explanatory Statement to OZP 1

“8.11 Undetermined (U) (Total Area: 57.07 ha)

8.11.1 An area to the north of Pok Oi Hospital is zoned “U” as there is a possible railway proposal which would run through the area as recommended by the Railway Development Study. At present, this area mainly consists of squatters and small stone houses and a large

amount of fish ponds. In view of its proximity to a proposed “CDA” site designated on the draft Yuen Long Town Outline Zoning Plan No. S/YL/1 immediately to the west of Pok Oi Hospital and its transitional location between urban and rural area, any development have to be comprehensively planned. This is because piecemeal developments/redevelopments would have the effect of degrading the environment and thus jeopardizing the overall planning intention of sustaining Mai Po Nature Reserve. In view of the above, it is proposed that the area be zoned “U” pending finalization of the Study and the preparation of layout plan to guide development/redevelopment in an orderly manner.

- 8.11.2 Under the “U” zone, any private developments or redevelopments are required to prepare master layout plans for approval of the Board to ensure that the environment would not be adversely affected and that infrastructure, G/IC, open spaces etc. are adequately provided. The master layout plans should also take into account the possible railway proposal as suggested by the Railway Development Study being finalized. To realize a built-form which represents a transition from Yuen Long Town to*

the rural area, the development intensity should take into account the urban type development immediately to the west of the “U” area and the rural characteristics of the area to its north.”

Table showing the proposed PFS under the subject Application and that under the 1997 Approval

	Previous Scheme (No. YL-NSW/17) (a)	Current Scheme (No. A/YL-NSW/182) (b)	Difference (b) – (a)
Site Area	3,285m ²	1,079.6m ²	-2,205.4m ²
Covered Area	77.57m ²	34.745m ²	-42.825m ²
Pumping Stations:			
Covered Area	66.96m ²	24.12m ²	-42.84m ²
Filling Points	10	4	-6
Design Capacity	16 vehicles (2 container vehicles and 14 private cars/trucks)	4 vehicles (1 heavy goods vehicle and 3 private cars)	-12 vehicles
Parking Spaces	--	3 private cars	+ 3 private cars

40. In response, the Respondent contended an approval period of 10 years was reasonable and justifiable. They said that TPB was fully aware of the 1997 Approval. Notwithstanding this, the TPB also noted the differences in the development scale, layout and parameters of the 1997 Application and the subject Application, and the Appellant’s interest in the proposed PFS. They submitted that, TPB, in light of all material considerations and the prevailing planning circumstances, including the comment from the Secretary for Food and Health, the close proximity of the Site to some sensitive uses

including Pok Oi Hospital and a hotel, and that the future use of the “U” zone was still being reviewed, the TPB decided that an approval period of 10 years would strike a reasonable balance.

41. It should be noted that, the TPB had put substantial weight to the comment from the Secretary for Food and Health, where they expressed their concerns on the close proximity of the Site to the Pok Oi Hospital (35m from the Site).
42. In determining this question, firstly, we agree with the Respondent’s submission that we have to consider this appeal on its own merits with reference to the prevailing circumstances.
43. We consider that the subject Application is quite different from the 1997 Application in terms of the scale, design and development parameters (see the table above).
44. Further, we also note there are substantial changes in the prevailing circumstances from that in 1997, in particular, the Pok Oi Hospital.
45. Insofar as the Hospital is concerned, we agree that granting a 50-year approval proposed by the Appellant will have serious adverse impacts on the operation of the Hospital and the health of the patients with the following reasons:
 - (1) The proposed PFS will be in close proximity to the Hospital (35m from the Site);
 - (2) The plans of 1997, 1999, 2002, 2003, 2004, and 2009 show the

changing size and scale of Pok Oi Hospital. In 1997, when the 1997 Application was approved, the scale of Pok Oi Hospital was smaller. It was 19,000m² only. In 2006, the scale of the Hospital has increased to 71,500m². This change in scale resulted in a corresponding increase of the number of beds from 350 to 622; and

- (3) More importantly, the impact would be perpetual if a permanent approval is granted.

46. In the premises, in light of all the other material considerations, particularly the changing circumstances, notwithstanding we consider the Planning Intentions under OZP 1 and OZP 8 are similar and that the development scale of the PFS under the subject Application is smaller, we agree that the TPB's decision is reasonable and being in line with the Planning Intention.

47. As to the Appellant's argument that the Appellant has a legitimate expectation that the TPB will grant a permission on terms similar to the 1997 Approval and that the TPB had failed to act fairly and reasonably by refusing to grant an approval on the same terms as it did in 1997, by reason of the aforesaid, these arguments are dismissed.

CONCLUSION

48. Accordingly, the Appellant's appeal should be dismissed.

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

Dr. Eugene CHAN Kin-keung
(Member)

Mr. Paul LAM Ting-kwok
(Member)

Mr. Derek Emory YEUNG Ting-lap
(Member)

Mr. Stephen YIP Chun-nam, MH, JP
(Member)