

**IN THE TOWN PLANNING APPEAL BOARD**

TOWN PLANNING APPEAL NO. 5 OF 2021 (5/2021)

BETWEEN

Gig Lok Monastery

Appellant

and

Town Planning Board

Respondent

Appeal Board: Mr. CHUA Guan-hock, S.C., J.P. (Chairman)

Mr. HUI Chun-sing, Thomas (Member)

Ms. LAM King-sze, Cissy (Member)

Ms. NGAI Yuet-ping (Member)

Professor TSE Kam-tim (Member)

In Attendance: Ms. Ivy LI (Secretary)

Representation: Mr. Anthony Ismail,  
Counsel for the Appellant,  
instructed by Mayer Brown

Ms. Ebony Ling,  
Counsel for the Respondent,  
instructed by the Department of Justice

Dates of Hearing: 6, 7 and 12 October 2022

Date of Decision: 29 September 2023

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**DECISION**

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## **A. Introduction**

1. The Appellant Gig Lok Monastery (“GLM”) appeals against the decision of the Town Planning Board (the “TPB”) on review (the “s.17 Review”) under *s.17 Town Planning Ordinance*, Cap. 131 (the “TPO”) made on 7 May 2021 (the “Decision”). The Decision was communicated by the TPB’s letter dated 25 May 2021 (the “TPB’s Decision Letter”) to the Appellant’s consultants, Toco Planning Consultants Ltd. (“Toco”) after a hearing by the TPB on 7 May 2021 at the TPB’s 1245<sup>th</sup> meeting (the “TPB Meeting”). The Appellant was informed that after consideration of the Appellant’s review submission, the TPB decided to refuse the Appellant’s application (Application No. A/TM/530) (the “Application”) for planning permission under *s.16 TPO* for columbarium use in a “Government, Institution or Community” Zone (the “G/IC” zone) in Approved Tuen Mun Outline Zoning Plan No. S/TM/35 (the “Approved OZP”) at Lot 2011 (Part) in D.D. 132, Tuen On Lane, Tuen Fu Road, Fu Tei, Tuen Mun (the “Site”), for these reasons:-

- “(a) the proposed development is *not in line* with *Town Planning Board Guidelines No. 16* in that the columbarium use is *in close proximity* to the residential developments and sharing the *same access road* with the adjoining residential development, and is *considered not compatible* with the surrounding areas in land use terms; and
- (b) approval of the application would set an undesirable precedent for other applications of similar circumstances. The cumulative effect of approving such applications *would cause nuisances* to the residential neighbourhood.” (emphasis added)

## **B. The Facts**

### **B1. The parties**

2. The Appellant is a charitable institution under *s.88 Inland Revenue Ordinance*, Cap. 112.
3. The Respondent TPB has two main functions under the *TPO*. First, “with a view to the promotion of the health, safety, convenience and general welfare of the community”, the TPB “shall undertake the systematic preparation of draft plans for the lay-out of such areas of Hong Kong as the Chief Executive may direct, as well as for the types of building suitable for erection therein”; and “draft development permission area plans of such areas of Hong Kong as the Chief Executive may direct” (*s.3*, “the plan making function”).

Second, the TPB may grant permission for planning approval subject to “the extent shown or provided for or specified in the plan”, and consider on review its decision (*s.16, s.17*).

## B2. Agreed facts

4. The parties agreed certain facts which are set out in the Agreed Statement of Facts dated 15 September 2022 which we set out below with minor differences indicated in red or blue text: (red or blue where the Appellant and Respondent respectively do not agree).

### **“A) The Appellant and the Site**

1. The Appellant, Gig Lok Monastery, is a religious institution established in 1955 at the site in Lot 2011 (Part) D.D. 132, Tuen On Lane, Tuen Fu Road, Fu Tei, Tuen Mun (“**the Site**”) [B4/11a/963, 968].
2. The Site is about 1,665m<sup>2</sup> in area [B4/11a/963] and is located within a “Government, Institution or Community” Zone (the “**G/IC**” zone”) in the Approved Tuen Mun Outline Zoning Plan No. S/TM/35 (“the **Approved OZP**”) [A/1a/001]. The Site is also situated in the Planning Area No. 52 or Area 52 in the Approved OZP [A/1a/001], the size of which is not given in the Approved OZP, the Notes and Explanatory Statement.
3. Under the Notes of the Approved OZP, a “Religious Institution” is in Column 1, “Uses always permitted”. “Columbarium” falls within Column 2, “Uses that may be permitted with or without conditions on application to the Town Planning Board” [A/1b/039]. Apart from the Approved OZP, there are other “G/IC” zones in **other outline zoning plans** in which “Columbarium” use is not permitted either under Column 1 or Column 2.
4. **Religious and columbarium services have existed at the Site before the gazettal of the Draft Tuen Mun Outline Zoning Plan No. LTM/2 in 1983 [C2/19b/1582]; [WS-4/6k/702-722].**
5. The key details regarding the Site relied on (but not agreed) by the respective parties are as stated in §§6-10 of the Witness Statement of Master Bei Yao (Lam Tin Cheung) [WS-1/1/003-004 (Chinese); WS-1/1/012-014 (English)] and §3 of the Witness Statement of Mak Weng Yip, Alexander [WS-4/6/650-651] as clarified at §§9-12 & §14 of the Reply Witness Statement of Chan Tat Choi, Ted [WS-3/5/457-458)].

### **B) The Private Columbarium Ordinance**

6. On 30 June 2017, the Private Columbarium Ordinance (Cap. 630) (“the **PCO**”), which regulates the operation of private columbaria, came into effect (App Aut 1#2).
7. **The Appellant’s columbarium on the Site is a “pre-cut-off columbarium”,** which, under section 2 of the PCO (App Aut 1#2) is a columbarium that was in operation, and in which ashes were interred in niches, immediately before the “cut-off time” i.e. 8 a.m. on 18 June 2014 [B4/11a/970].

8. Under the PCO, the Appellant's existing columbarium on the Site needs to be regularized in order to continue to operate and planning permission by the Town Planning Board ("**the TPB**") is a requirement for licence application under the PCO (see §83(b) [C3/21/2013]; §93(a) [C3/21/2021] and §102 [C3/21/2026] of the minutes ("**the TPB Meeting Minutes**") of the 1245<sup>th</sup> Meeting of the TPB held on 7 May 2021 ("**the TPB Meeting**").
9. On 22 November 2017, the Government announced two policy initiatives to address the land premium and Traffic Impact Assessment ("**the TIA**") issues of pre-cut-off columbaria seeking a licence [B1/3c/171-173]. For the policy initiative relating to TIA, the Government decided to use an empirical evidence approach as the basis for assessing traffic impacts in processing the licence application from a pre-cut-off columbarium whose operation only involves the number of niches sold before 30 July 2017 [B4/11a/970].

### **C) The Planning Application and the Planning Review Application**

10. On 27 July 2018, the Appellant, through its planning consultants, Toco Planning Consultants Ltd. ("**Toco**"), submitted an application for planning permission for columbarium use ("**the Planning Application**") on the Site under s.16(1) of the Town Planning Ordinance ("**TPO**") [B1/3a-3g/124-315]. The Planning Application was assigned Application No. A/TM/530.
11. Planning permission is required because there is a material change in use; **although there is evidence of some columbarium use that was ancillary to the Appellant before the Site was rezoned to "G/IC" in 1994**, there is no evidence that the columbarium with 1,567 niches was an existing use of the Site when it was so re-zoned (see paragraph (3)(a) of the Notes of the Approved OZP [A/1b/003]); and the columbarium with 1,567 niches is also not ancillary to the Appellant which is a "Religious Institution" use under Column 1: see paragraphs 89 and 106 of the TPB Meeting Minutes [C/21/2017-2018&2029] and paragraph 11 of the Notes of the Approved OZP [A/1b/005) which states that "*Unless otherwise specified...all uses directly related and ancillary to the permitted uses and developments within the same zone are always permitted and no separate permission is required.*": see §48 of the Witness Statement of Chan Tat Choi, Ted [WS-2/4/122].
12. The Rural and New Town Planning Committee of the TPB ("**the RNTPC**") considered the Planning Application at the 639<sup>th</sup> Meeting of the RNTPC held on 29 November 2019 ("**the RNTPC Meeting**") [B5/12/1151-1160] and decided to refuse the Planning Application at the RNTPC Meeting ("**the RNTPC Decision**") [B5/13/1161-1162] for the following 2 reasons:

*"(a) the proposed development is not in line with TPB Guidelines No. 16 in that the columbarium use, is in close proximity to the residential developments and sharing the same access road with the adjoining residential development, and is not compatible with the surrounding areas in land use terms; and*

*(b) approval of the application would set an undesirable precedent for other similar applications within the "Government, Institution or Community" zone. The cumulative effect of approving such applications would cause nuisances to the residential neighbourhood."*

13. On 13 December 2019, the Secretary of the TPB wrote to Toco informing them of the RNTPC Decision [B5/13/1161-1162).
14. By a letter received by the TPB on 24 December 2019, Toco requested on behalf of the Appellant a review of the RNTPC Decision under s.17(1) of the TPO (App Aut 1#1) (“**the Planning Review Application**”) [C1/14/1163).
15. The TPB considered the Planning Review Application at the TPB Meeting [C3/21/2004-2030] and decided, by a majority of the members, to refuse the Planning Application in the Planning Review Application (see §105 of the TPB Meeting Minutes [C3/21/2028]).
16. On 25 May 2021, the Secretary of the TPB wrote to Toco informing them that the TPB decided on review to refuse the Planning Application at the TPB Meeting (“**the TPB Decision**”) [C3/22/2031-2032] for the following 2 reasons:
  - “(a) the proposed development is not in line with Town Planning Board Guidelines No. 16 in that the columbarium use is in close proximity to the residential developments and sharing the same access road with the adjoining residential development, and is considered not compatible with the surrounding areas in land use terms; and*
  - “(b) approval of the application would set an undesirable precedent for other applications of similar circumstances. The cumulative effect of approving such applications would cause nuisances to the residential neighbourhood”.*
17. On 23 July 2021, the Appellant’s solicitors, Mayer Brown, lodged a notice of appeal against the TPB’s Decision [D/23/2033-2042] under s.17B(l) of the TPO (App Aut 1#1).

#### **D) The Relevant TPB’s Guidelines**

18. It is agreed that TPB Guidelines No. 16 for “Application for Development/ Redevelopment within “Government, Institution or Community” zone for uses other than Government, Institution or Community uses under Section 16 of the Town Planning Ordinance” (“**TPB Guidelines 16**”) [A/2/115-118] are relevant to the Planning Application.

#### **E) Public Comments**

19. During the statutory publication periods for the Planning Application, a total of 93,984 public comments were received. Amongst the public comments received, 52,803 (about 56%) supported the Planning Application and 41,155 (about 44%) objected (see §12.11 of the RNTPC Paper No. A/TM/530C [B4/11a/992]).
20. During the statutory public inspection periods for the Planning Review Application, a total of 110,543 public comments were received. Amongst the public comments received, 70,798 (64%) supported the Planning Application and 39,736 (36%) objected or expressed concern (see §6.1 and §6.2 of the TPB Paper No. 10738 [C2/19b/1595]).”

### B3. The Site and Zoning

5.

- (1) The Appellant is the sole owner of the Site as private land, adjacent Government land having been taken back on about 31 October 2015.
- (2) As to the Site's zoning history, this is referred to in the TPB's Witness Statement of Mr Alexander Mak Weng Yip at §§7.5 to 7.7 as follows:-
  - (a) It was first zoned as "Undetermined" ("U") on the draft TM OZP No. LTM/2 gazetted on **29 July 1983**.
  - (b) On **14 October 1993**, the then Development Progress Committee (now known as the Committee on Planning and Land Development) approved the adopted Tuen Mun Area 52 layout plan No. L/TM 52/1. According to that layout plan, the Site was an area designated for "Institution and Community" ("IC").
  - (c) The draft TM OZP No. S/TM/8 was gazetted on **22 April 1994** and the Site was rezoned from "U" to "**G/IC**".

Thus, the zoning has changed from time to time.

- (3) The Site and surrounding areas are summarised in the Appellant's Lam Tin Cheung's Witness Statement (at §13):-
  - "a) to the immediate north and immediate east is the existing medium-rise residential development known as Parkland Villas comprising nine residential blocks. The Appellant and Parkland Villas share the same access road (i.e. Tuen On Lane) and their entrances are at the same cul-de-sac. Prior to the development of Parkland Villas, the Appellant had its own access road (at approximately the current location of Tuen On Lane). However, this access road was replaced by Tuen On lane due to the development of Parkland Villas and Tuen On Lane has now become an access road for both Parkland Villas and the Appellant. I understand that Mr Chan Tat Choi ("**Mr Chan Tat Choi**") of Toco Planning Consultants Limited ("**Toco**"), who is the planning consultant engaged by the Appellant, and Mr Chin Kim Meng ("**Mr Chin Kim Meng**") of CKM Asia Limited, who is the traffic consultant engaged by the Appellant, will explain this in further detail in their witness statements. To the further north are Ecclesia Theological College and Hing Tak School. Lingnan University is to the further east across Castle Peak Road – Lingnan Section [**C/19c/1614&1616**];
  - b) to the immediate south and west are clusters of structures for residential and storage uses and vacant land and existing religious institutions including Ching Leung Nunnery [**C/19c/1614&1616**];
  - c) to the further south is Tuen Mun Water Treatment Works [**C/19c/1611**]; and
  - d) to the further southwest are Brilliant Garden (the existing residential buildings), Tuen Fu Road Disciplined Services Quarters and the Tuen Mun North Offtake and Piggling Station. To the further northwest are Fu Tei Fire Station, Tuen Fu



Road Community Garden, Napa Valley and Siu Hong West Rail Station  
[C/19c/1614&1616].”

In short, the land uses in the surrounding areas are many and varied.

B4. The objective facts, contemporaneous documents, and inherent probabilities

6. We have carefully considered the objective facts, contemporaneous documents, and the inherent probabilities to see whether and to what extent, these support or undermine, either side’s case. For context, we have considered all documents and events in chronological order in the Agreed Chronology, while there are some differences between the parties (words below in red or blue are not agreed by the Appellant and Respondent respectively). The following contemporaneous documents and events are highlighted including from various Annexes to witness statements and exhibits produced at the hearing:-

6.1 In 1955, the late Master Zhi Fan **allegedly** established the Appellant.

6.2 1 March 1966: this is the date of the first officially recorded niche of the Appellant as reported to Food and Environmental Hygiene Department (“**FEHD**”) during their visit to the Appellant on 30 June 2014.

**FEHD is not in a position to confirm the time of interment of the allegedly first interred niche, and has never made any confirmation as to the time of interment in respect of any niche in the Appeal Site.**

6.3 18 June 2014: the date of the “cut-off time”, i.e. “8 a.m. on 18 June 2014” in relation to a “pre-cut-off columbarium” as defined under *s.2 PCO*.

6.4 10 November 2015: Letter from the Tuen Mun District Lands Office to the Appellant confirming the return of all unleased Government land which had previously been occupied by the Appellant.

6.5 On 30 June 2017, the *PCO* came into effect.

6.6 22 November 2017: the HKSAR Government approved the Policy Initiatives relating to land premium and traffic impact assessment of pre-cut-off columbaria.

The Government’s Press Release “Policy Initiatives for Pre-cut-off Columbaria” is important, and we highlight these extracts:

“A government spokesman said, ‘We need to resolve properly the historic problems which have accumulated over the years. Quite a number of people had purchased niches from these columbaria or even interred the ashes of their deceased relatives therein *before they knew that the Government would introduce a regulatory regime*. Given this, *we need to adopt a pragmatic and sensitive approach* towards the consumers who have purchased these niches, and the dedicated persons, *to minimise their losses and any social disruption arising from massive displacement of interred ashes*.”

In contemplating these policy initiatives, the Government mainly takes into account *the overall interests of the community* so as to *avoid affecting the descendants*, in particular *their wish not to disturb the interred ashes of the deceased as far as practicable*.”

It continued:-

“The Government has studied this issue in depth and has the following three observations. Firstly, the columbaria concerned are not *brand-new planned establishments* but have *already been in existence and operation* in the community for a long time. Secondly, the traffic and pedestrian flow problem mainly surface *during the grave sweeping seasons* (Ching Ming Festival and Chung Yeung Festival) and the situation outside the grave-sweeping seasons is *usually not a major concern*. Thirdly, an applicant for a licence *would have to submit a management plan covering the traffic and crowd control measures* for prior approval by the Licensing Board, and is *required to comply with the licensing conditions* relating to the traffic and pedestrian flow management measures imposed by the Board.

According to on-site observation, traffic and pedestrian flow management arrangements are already implemented by the Government departments in some of the areas where a number of columbaria are located together. The Government departments concerned have prepared contingency plans in areas with needs to cater for ad hoc situations. The Government has also noticed that some columbaria also *actively make some traffic arrangements during Ching Ming Festival and Chung Yeung Festival*, such as providing dedicated coaches to pick up and drop off gravesweepers. If only niches sold as at June 30, 2017 of pre-cut-off columbaria are counted, the traffic level in those areas during the peak hours is, overall speaking, *still at an acceptable level*.” (emphasis added)

We consider later the significance of Government own position and reasons stated in the Press Release.

- 6.7 On 23 February 2018, the Appellant’s planning consultants, Toco submitted on the Appellant’s behalf applications to the Private Columbarium Licensing Board (“**the PCLB**”) for specified instruments (“**the SI Applications**”) under the PCO for the pre-cut off columbarium at the Appellant.

6.8 On 27 July 2018, Toco submitted on the Appellant's behalf Planning Application No. A/TM/530 under *s.16(1) TPO* to the TPB ("**s.16 Application**") to regularise the existing columbarium. **The application was allegedly received by the TPB on 3 August 2018.** The TPB's receipt stamp on Toco's cover letter for the s.16 Application was marked "RECEIVED 27 JUL 2018 Town Planning Board".

On 3 August 2018, Toco wrote to the TPB clarifying that the Site of the s.16 Application was confined to within the G/IC Zone.

6.9 On 21 September 2018, the RNTPC decided to defer its decision on the s.16 Application for two months pending submission of further information by the Appellant to address the concerns of various Government departments received on 28 August 2018 and 30 August 2018.

6.10 On 20 November 2018, Toco submitted Further Information (I) to the TPB to address the concerns of various Government departments on the s.16 Application.

6.11 On 28 November 2018, Toco wrote to the TPB clarifying the Appellant's response to public comment no. 8661 in Further Information (I) that the total number of niches at the Appellant has not increased since **2010**.

6.12 On 18 March 2019, Toco submitted Further Information (II) to the TPB to address the concerns of various Government departments on the s.16 Application.

On 3 May 2019, Toco submitted Further Information (III) to the TPB to address the concerns of various Government departments concerning the s.16 Application.

On 17 June 2019, Toco submitted Further Information (IV) to the TPB to address the concerns of various Government departments relating to the s.16 Application.

6.13 On 20 September 2019, Toco submitted the Revised Management Plan to the PCLB for the SI Applications under the *PCO*.

6.14 On 22 November 2019, the Hong Kong Police Force ("**the Police**") commented that it considered the Appellant's Revised Management Plan to the PCLB for the SI Applications to be acceptable.

In November 2019, the Planning Department (“**the Plan D**”) prepared RNTPC Paper No. A/TM/530C (“**RNTPC Paper**”) for RNTPC’s consideration at its meeting on 29 November 2019, recording inter alia (1) The Police’s comment that given both GLM and Parkland Villas share the same access road at Tuen On Lane and their entrances are close to each other, the visitors to GLM and residents of Parkland Villas would have to use the same road. Further, large amount of visitors during the Ching Ming and Chung Yeung Festivals would be anticipated. The above may cause nuisance to the residents to a certain extent, and (2) Transport Department’s comment that it has no in principle objection to the planning application subject to approval of Traffic and Crowd Management Plan by the PCLB.

The RNTPC Paper for its meeting on **29 November 2019** is important, especially at §10.1.1(d) on comments of the Director of Food and Environment Hygiene (“**DFEH**”):

“On-site inspection to the private columbarium named GLM has been conducted by staff to the Private Columbaria Affairs Office (PCAO) and the proposed niche information in respect of the licence and temporary suspension of liability (TSOL) covering only *niches already sold before 30.6.2017* was verified. It was *confirmed* that the *total number of niches already sold before 30.6.2017 (i.e. 1,567 no. of niches)* for the licence application *conforms to that proposed by the applicant in this planning application* (No. A/TM/530).” (emphasis added)

6.15 On 29 November 2019, the RNTPC rejected the s.16 Application at its 639<sup>th</sup> Meeting.

6.16 On 13 December 2019, the TPB wrote to Toco stating the RNTPC’s reasons for refusing the s.16 Application (“**the RNTPC Decision**”).

On 24 December 2019, Toco wrote on the Appellant’s behalf to the TPB requesting a review of the RNTPC Decision under *s.17(1) TPO* (“**s.17 Review Application**”).

6.17 On 7 April 2020, Toco submitted the Planning Review Statement in support of the s.17 Review Application to the TPB.

6.18 In May 2021, the Plan D prepared TPB Paper No. 10738 (“**the TPB Paper**”) for the TPB’s consideration at the TPB meeting on 7 May 2021, where it was recorded (at §5.3) that “for the review application, the following Government department [i.e. the Police] has no further comment and maintains his previous comments on the

application”. The Police’s previous comment recorded in the RNTPC Paper was that given both GLM and Parkland Villas share the same access road at Tuen On Lane and their entrances are close to each other, the visitors to GLM and residents of Parkland Villas would have to use the same road. Further, large amount of visitors during the Ching Ming and Chung Yeung Festivals would be anticipated. The above may cause nuisance to the residents to a certain extent.

6.19 On 7 May 2021, the TPB rejected the s.17 Review Application at its 1245<sup>th</sup> Meeting also attended by the Appellant’s representatives.

On 25 May 2021, the TPB wrote to Toco stating the TPB’s Decision and reasons for refusing the s.17 Review Application.

6.20 On 23 July 2021, a Notice of Appeal was lodged by Mayer Brown, the Appellant’s solicitors, against the Decision under *s.17B(1) TPO*.

7. It is apparent from the contemporaneous documents and evidence above, and having heard all witnesses and evaluated all relevant evidence, we find on the balance of probabilities, without deciding the question for the PCLB whether an appropriate licence or authorisation should be granted to the Appellant:-

- (1) The Planning Application and appeal is for planning permission to allow an existing columbarium on the Site to continue to operate. It has been in operation for several years, without record of complaints. The fact the columbarium is existing is important because the practical consequences of the TPB’s Decision either way, should be carefully evaluated.
- (2) The existing columbarium is a “*Pre-cut-off columbarium*”, i.e., a columbarium that was in operation, and in which ashes were interred in niches, immediately before the “*cut-off time*” of 8 a.m. on 18 June 2014 under *s.2 PCO*.
- (3) The existing columbarium needs to be *regularized* to continue to operate: see §102 of the TPB Meeting Minutes on **7 May 2021**:-

“The Chairperson recapitulated that the review application was for the existing columbarium use in GLM, involving *only the niches sold before the ‘pre-cut-off’ date under the PCO*. The applicant sought the *Board’s permission which*

*was a requirement for their licence application under PCO to facilitate the continuous operation of the columbarium...*” (emphasis added)

- (4) The existing columbarium consists of a total of 1,567 niches sold (and not to be transferred or resold), the subject of the application and appeal.
8. As the Appeal Board as stated and should be apparent to the parties, planning appeals often involve issues of public interest, so the Appeal Board is more likely to be assisted by submissions advanced on a fair and objective basis, without being partisan. Unfortunately in some instances, the TPB’s submissions were not fairly advanced on an objective basis. We trust that the TPB will take note for future cases and hearings.

B5. The factual and expert witnesses

9. The Appellant called four witnesses:-

- (1) LAM Tin Cheung, i.e. Master Bei Yao as the Appellant’s Director, Buddhist Monk, and GLM’s Abbot. His evidence concerned the Site’s ownership and the Appellant’s history and purposes.
- (2) YIP Lai Yin (“**Ms Yip**”), another Director of the Appellant. Her evidence concerned compliance with TPB Guidelines 16.
- (3) CHIN Kim Meng (“**Mr Chin**”), the Appellant’s expert witness and consultant on traffic and transportation matters. He is a director of CKM Asia Limited and his evidence concerned traffic matters for the application and the columbarium.
- (4) CHAN Tat Choi Ted (“**Mr Chan**”), Toco’s Managing Director. Mr Chan is a registered professional Town Planner and full member of the Hong Kong Institute of Planners. His evidence concerned town planning aspects of the application.
10. We note that Mr Chin has some 35 years of traffic planning experience and expertise. The TPB did not call any traffic expert nor adduce expert evidence on such matters. We have carefully assessed Mr Chin’s evidence with the benefit of cross examination and questions from this Appeal Board. We find him a credible witness whose evidence we accept on the balance of probabilities.

11. The TPB called one witness, Mak Weng Yip Alexander (“**Mr Mak**”), Senior Town Planner/Tuen Mun 2 of the Tuen Mun and Yuen Long West District Planning Office of the Plan D since August 2019. He was the TPB’s representative at the important TPB’s meeting on 7 May 2021.

**C. TPB’s decisions and reasons**

12. The TPB’s letter of 25 May 2021 gave reasons for rejecting the application as set out at paragraph 1 above.

13. Unlike the TPB’s arguments, these reasons do not mention:-

(1) The Hong Kong Planning Standards and Guidelines (“**HKPSG**”) and the columbaria as a “sensitive community facilities”.

(2) Concern that property values at Parkland Villas may be devalued, and psychological discomfort and unease of any resident in Parkland Villas by living in the vicinity of ashes of deceased persons in the columbaria.

(3) The columbarium is not a “pre-cut-off” columbarium under the *PCO*, or the application did not establish the 1,567 niches contended for.

(4) The scale, size, and density of the residential development at Parkland Villas.

(5) The application for planning approval involved any insurmountable or unacceptable impact on the local community.

14. As the Appeal Board said in Town Planning Appeal No. 1 of 2017 concerning the Nam Sang Wai litigation (“**the NSW Decision**”) at §34(1):-

“The TPB should provide at least the main reasons to ensure the Appeal Board and all parties are “*fully and fairly informed* of the grounds of appeal”: *Rule 3(1)(f) Town Planning (Appeal) Regulations* (emphasis added) – which grounds would flow from the TPB’s reasons.”

We consider later the significance of the omission of the alleged further reasons at paragraph 13 above from the TPB’s Decision.

## **D. Issues**

15. In essence and in logical order, three main issues arise:-

- (1) What is the planning intention of the Approved OZP in zoning the Site as “G/IC”?
- (2) Whether the existing columbarium conforms with the planning intention, and TPB Guidelines 16, having regard to the TPB’s reasons, especially as set out at paragraph 1 above?
- (3) Would planning approval cause nuisances to the residential neighbourhood?

16. At the hearing, the TPB’s Counsel Ms Ling made clear that the TPB did not pursue the argument that approval would set an undesirable precedent. As such, it is unnecessary to deal with that argument.

## **E. TPO and TPB Guidelines – ascertaining the planning intention**

### **E1. TPO**

17. The key *TPO* provisions on appeal are:-

**“s.13. Approved plans to serve as standards.** Approved plans shall be used by all public officers and bodies *as standards for guidance* in the exercise of any powers vested in them” (emphasis added).

**“s.16(4) Applications for permission in respect of plans is ...** The Board may grant permission under subsection (3) *only to the extent shown or provided for or specified* in the plan” (emphasis added).

18. As to *s.13 TPO*, in *International Trader Limited v Town Planning Appeal Board* [2009] 3 HKLRD 339 (C.A.) Hartmann JA (as he then was) said at §31:-

“As to use of the word “standards”, read in context, these ‘standards’ constitute appropriate criteria or recognized measures which are to be used as ‘guidance’ for public officers and bodies; that is, *to direct them as to the discharge of their duties*. The effect of the section, therefore, is to impose on all public officers and all public bodies *the statutory duty to have reference to approved plans as the recognized measure by which they are to be guided; that is, directed, in the exercise of their powers*” (emphasis added).

We are bound by and will apply *International Trader*.



E2. TPB Guidelines 16

19. We consider below TPB Guidelines 16, the January 1999 version.

E3. Approach to interpretation

20. It is trite that a key distinction is drawn between an OZP and its notes on the one hand, and an OZPs' Explanatory Statement and TPB Guidelines on the other: see *Henderson Real Estate Agency Ltd* [1997] HKLRD 258 where the Privy Council advised (at 266A, 267A-C):-

- (1) The Appeal Board's function is to exercise independent planning judgment;
- (2) The Appeal Board is entitled to disagree with the TPB;
- (3) The plan and the Notes attached to the plan prepared by the TPB in its plan making capacity are material documents which are binding as "the most material documents in the case";
- (4) The Explanatory Statement is a material consideration which the Appeal Board must take into account but is not bound to follow;
- (5) Guidelines prepared by the TPB are a material consideration which the Appeal Board must take into account but is not bound to follow; and
- (6) A misunderstanding of the planning intention is an error of law.

21. A question of interpretation is a question of law, with only one correct answer. There are many well-known factors or criteria in interpreting a statute or legal document:

- (1) the actual words used and their ordinary and natural meaning, construed objectively;
- (2) the context of the document, read as a whole;
- (3) context and purpose in the first instance and not only if there is some ambiguity;
- (4) the relevant background; and
- (5) common sense.

We will apply all these factors and criteria.

E4. Interpretation of planning documents

22. At the same time, the approach to interpreting planning documents is not identical to interpreting a statute. The Notes and Explanatory Statement should be approached in a practical, down to earth way, and in a broader and untechnical sense – rather than a strict, overly technical, or literalistic approach. See *HK Resort Company Limited v TPB* [2021] HKCA 1313 per Kwan VP in giving the Court of Appeal’s judgment at §21:-

“Instead, the court should evaluate the merits in a broad manner, and be *vigilant against excessive legalism creeping in* as a planning decision is not akin to an adjudication made by a court and *planning policies do not normally require intricate discussion of their meaning*” (emphasis added).

We respectfully agree and will apply these principles.

23. Two points are noted at this stage on the factors or criteria above:-
- (1) The key factors appear to be purpose and context, as with most statutory construction, rather than a legislative approach. The relevant background is also important.
  - (2) As the Courts have made clear, the approach to interpreting planning documents is practical, rather than strict, or overly legislative or literalistic.

**F. Preliminary points**

F1. Consistency and fairness

24. There is no dispute that the TPB as a public body has a duty to act fairly and reasonably.
25. It is trite that consistency is a cardinal principle of good administration as similar cases should be treated in a similar way. As to fair administration concerning planning approval, we have considered *Ynys Mon Isle of Anglesey Borough Council v Secretary of State for Wales* [1984] J.P.L 646, where Woolf J (as he then was) said at p647 (1):-

“... the proper application of planning policy required that it should be fairly administered. In fairly administering planning policy, there would be situations where it would be proper to take into account the fact that a particular site had a planning history requiring the grant of planning permission to achieve fairness where all other things were equal.”

26. Consistency and fairness are linked concerning Government's Policy initiatives for pre-cut-off columbaria, referred to in the Press Release dated 22 November 2017 (paragraph 6.6 above):-

(1) Government's purpose was to take into account the "overall interests of the community"; to minimise losses and "any social disruption"; and "to avoid affecting the descendants in particular their wish not to disturb the interred ashes of the deceased as far as practicable".

(2) On how such aims would be achieved, this included reference to the fact that niches were purchased and ashes interred *before* members of the public *knew* that Government would introduce a regulatory regime in the PCO, which came into effect on **30 June 2017**, and was not retrospective.

Thus, Government's approach was evidently pragmatic and sensitive, rather than strict, over legalistic, or literalistic.

(3) Therefore, it is unattractive and against common sense, for Government departments to take positions which are uncoordinated, and inconsistent with Government or other departments. And which fail to have regard to and apply the principle of consistency, as a cardinal principle of good administration. There is *no* good reason (and none is given) why Government should say one thing on the same subject matter (policy and approach to pre-cut-off columbaria), while the TPB should say another on the same subject except to contend the former is "irrelevant".

## **G. General approach to town planning appeals and permission**

### G1. Onus of proof and TPAB's role

27. As to onus of proof and the TPAB's role, we respectfully set out the NSW Decision (at §§61, 62):-

"61. As to onus of proof, an appellant has the burden of showing on a balance of probabilities, that an appeal should be allowed and there are no good reasons for refusing planning permission.

62. As to the Appeal Board ("TPAB's") role:

- (1) The TPAB's role is to exercise independent planning judgment within the parameters of the approved plan. The Appeal Board is not bound by the TPB's decision, and an appeal is a *de novo* hearing.
- (2) It may substitute its own decision for that of the TPB even if the TPB did not strictly commit an error on the material before it. Hearings before the Appeal Board are normally much fuller and more substantial than before the TPB of a review under *s.17 TPO*.
- (3) The TPAB's role is not limited to those on judicial review as it is concerned with the merits. Moreover, the TPAB should:-
  - (a) ask itself the right and relevant questions and take reasonable steps to acquaint itself with the relevant information to enable it to answer them correctly;
  - (b) take into account all relevant considerations and ignore irrelevant ones;
  - (c) decide whether a proposed development is desirable in the public interest, within the parameters of the relevant plan: see *British Railways Board v Secretary of State for the Environment* [1994] J.P.L. 32, per Lord Keith (at p. 133):

“The function of the planning authority was to decide *whether or not the proposed development was desirable in the public interest.*” (emphasis added).

- (4) On appeal, an Appellant does not strictly need to show planning benefit, as opposed to lack of planning harm in view of relevant planning policies and material considerations, compared to nothing being done in the circumstances: see *R. (On the application of Mount Cook Land Ltd) v Westminster CC* [2004] 2 P and CR 405 (C.A.), per Auld LJ at [38]:-

“The Council had an obligation to consider Redevo's application on its own merits, having regard to national and local planning policies and any other material considerations, and to grant it *unless it considered the proposal would cause planning harm in the light of such policies and/or considerations.*” (emphasis added)”

We will apply these principles.

## G2. Matters for planning judgment

28. We adopt the NSW Decision at §63:-

“As the Privy Council held in *Henderson Real Estate* (above), *matters for planning judgment are for the Appeal Board* and not the court which should not interfere (at 267H).” (emphasis added)

29. In *South Buckinghamshire DC v Porter* [2003] 2 A.C. 558 [HL] Lord Clyde said at §68 on matters of planning judgment:-

“The factors which require to be considered in the making of a planning judgment are potentially *many and varied*. They include matters relating to the economic and *social needs of the locality*, the *interests of the public* and of the individual members of it who live there, the preservation of the environment and the *protection of amenity*” (emphasis added).

And at §69:-

“Planning Authorities will in particular *require to consider the human factor*. In *Westminster City Council v Great Portland Estates plc* [1985] AC 661, 670 Lord Scarman observed “Personal circumstances of an occupier, *personal hardship*, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control”. Certainly in the enforcement of planning control *these personal and human factors must be taken into account*” (emphasis added).

We respectfully agree, and will seek to apply the principles above.

### G3. Material considerations

30. Whether a particular matter is material is a matter of law for the Court. But it is entirely for the decision-maker to attribute to the relevant considerations such *weight* as he thinks fit, and the Courts will *not* interfere unless one has acted unreasonably in the *Wednesbury* sense: *Tesco Stores Ltd v. Secretary of State* [1995] 1 WLR 759 *per* Lords Keith and Hoffmann (at 764G-H, 780F-G).

31. We respectfully adopt the NSW Decision at §§65.1 to 65.3:-

“65.1. TPB Guidelines: it is common ground these should be followed, unless there is good or cogent reason.

65.2. Distinction between plan making, and planning permission: this well-established distinction appears in the cases. On appeal, the Appeal Board is concerned with the latter situation only.

65.3 Distinction between granting planning permission, and its implementation: this distinction is well established. See *British Railways Board v. The Secretary of State for the Environment* [1994] J.P.L. 32 (HL) at (p.38):

“... there was *no absolute rule that the existence of difficulties, even if apparently insuperable, had to necessarily lead to refusal of planning permission for a desirable development.* A would-be developer might be faced with *difficulties of many kinds* ... If he considered that it was in his interests to secure planning permission notwithstanding the existence of such difficulties, it was not for the planning authority to refuse it simply on their view of how serious the difficulties were” (emphasis added).”

32. These principles are important - it is trite that the Appeal Board should take into account and weigh up, all relevant matters, and ignore irrelevant matters. We consider questions of relevance and weight later.

#### G4. Other regulatory regimes

33. The TPB argues that the Appellant’s application to the PCLB under the PCO is “irrelevant”. However with respect, that argument is simplistic and wrong.
34. The correct position on the Appeal Board’s approach to other regulatory regimes is set out in the NSW Decision at §§67(1), 67(2):-

“67(1) First, planning authorities are entitled to rely on the operation of other statutory controls “with a reasonable degree of competence on the part of the responsible authority”. A planning authority should consider the likely significant effects, rather than every conceivable effect, as mistakes may occur in any system of detailed controls: *R v. Rochdale Metropolitan Borough Council, ex parte Milne* [2001] Env. L.R. 406 at [128] per Sullivan J:-

“In assessing the likely significant environmental effects of a project the authors of the environmental statement and the local planning authority are *entitled to rely on the operation of those controls with a reasonable degree of competence on the part of the responsible authority.* ... Mistakes may occur in any system of detailed controls, but one is identifying and mitigating the “likely significant effects”, not every conceivable effect, however minor or unlikely, of a major project” (emphasis added).

- 67(2) Second, material considerations are not rendered immaterial by the existence of *another statutory control*. The extent that matters arise for consideration in the exercise of another control regime may be treated as exclusively for the other regime, depending on the circumstances: see *Lethem v Secretary of State for*

*Transport, Local Government and the Regions* [2003] 1P and CR 9 at [20] per George Bartlett Q.C.:-

“The essential point, in my judgment, is that a consideration that, in the absence of some other statutory control, would be a material consideration under s.70 is *not rendered immaterial by the existence of that other statutory control*. The extent to which, on application for planning permission, matters that would arise for consideration in the exercise of some other control regime should be treated by the planning authority in determining the application as ones exclusively for that other regime *must depend on the circumstances*” (emphasis added).”

Here, it is a question of evidence and fact, whether the columbaria were “pre-cut-off”; and how many niches (1,567 contended) were sold by **30 June 2017** when the *PCO* came into effect.

Indeed, the number of niches was expressly verified, and conforms to that in the planning application. These are not *exclusively* dealt with by the PCLB.

## **H. The planning intention**

### H1. The OZP

35. The OZP for the “G/IC” area states:-

“This Zone is intended primarily for the provision of Government, institution or community facilities *servicing the needs of the local residents and/or a wider district, region or the territory*. It is also intended to provide land for *uses directly related to or in support of the work of the Government, organizations providing social services to meet Community needs*, and other institutional establishments.” (emphasis added)

36. The Appellant argued that the planning intention under the OZP is clear:-

- (1) The first sentence above on the planning intention refers to Column 1 (“Uses always permitted”), i.e. “*primarily for the provision of [G/IC] facilities servicing the needs of the local residents and/or a wider district, ...*”). The second sentence refers to Column 2 (“Uses that may be permitted...”) – “to provide land for uses *directly related to or in support of the work of the ... organizations providing social services to meet community needs...*”. The Appellant comes clearly within the second sentence, and indeed the first sentence.

(2) As to context and timing, the Appellant was established in **1955** as a monastery. From **March 1966**, it provided some niches for funeral urns well before Parkland Villas was developed in **2000** – *three decades later*. And the roads and vicinity were different in **1959**, and **1991** – well before Tuen On Lane was built around **1998** which would also serve Parkland Villas.

37. The TPB's arguments on planning intention under the OZP included:-

(1) The Appellant's private columbaria did not meet any "needs" or "community needs" – as Government can and does provide public columbaria.

(2) It is necessary for the Appellant to establish that its proposal would have "no insurmountable or unacceptable impact on the local community" (Mr Mak's Statement §§7.4, 7.23).

38. With respect, we prefer the Appellant's arguments on planning intention, on the balance of probabilities. We would add:-

(1) The "G/IC" OZP under Column 2 includes several uses which are, or are capable of being G/IC uses. For instance, "Correctional Institution", "Crematorium", "Funeral Facility", and "Residential Institution". Indeed, the fact a particular use is in Column 2 does *not* necessarily mean it is not "G/IC" or incapable of being a "G/IC" use. In other OZPs, "columbarium" appears in Column 1 (Uses always permitted)". For instance, in the Ping Che and Ta Kwu Ling OZP "Columbarium" appears in Column 1 in the zone "G/IC (1)".

(2) The TPB's argument that a columbarium does not "meet community needs" is evidently wrong, and without common sense. It also assumes that *only Government* can and does provide such services, when this is plainly not so. In practice, the provision of columbaria is by Government, and private niches, in combination.

(3) The reference to a proposal having "no insurmountable or unacceptable impact" does not appear in the OZP, the Explanatory Statement ("ES"), nor in TPB Guidelines 16. Moreover, the Appeal Board in deciding whether to grant planning permission will have to weigh up and balance, many considerations, some competing. As Mr Mak accepted in evidence, the reference to such test was based on his *own* interpretation of



the *s.16 TPO* Approval Guidance Notes (at §28): where there is reference to whether any particular use or development may have implications on the environment, traffic, landscape, and so on. Moreover, such test is more appropriate on the question whether the planning intention should be amended: see *Hong Kong Resort Co Ltd v Town Planning Board* [2021] HKCA 1313 (at §25). With respect to Mr Mak, his test above has elided plan making with planning approval.

## H2. The ES

39. We highlight these paragraphs:-

- (1) §9.3 on “Residential (Group A)” (“R(A)”) with total area of 275.81 ha, “intended primarily for *high-density* residential developments” (emphasis added).
- (2) §9.4 on “Residential (Group B)” (“R(B)”) with total area of 140.80 ha “intended primarily for *medium-density* residential developments” (emphasis added). These include Parkland Villas and other developments (at §9.4.10).

We note the ES does *not* contain any provision whereby residential developments in Group B or elsewhere, have priority or precedence over the Appellant, or other specific uses in a G/IC zone in Columns 1 or 2.

- (3) §9.5 on “Residential (Group C)” (“R(C)”) with total area of 1.40 ha “intended primarily for *low-rise, low-density* residential developments” (emphasis added).
- (4) §9.6 on “Residential (Group E)” (“R(E)”) with total area of 2.42 ha “intended for Government quarters development with the provision of environmental mitigation measures”.
- (5) §9.9 on “Government, Institution or Community” (“G/IC”) with total area of 234.21 ha with major facilities including swimming pool complexes, universities, schools, monasteries in Area 31, and other facilities.

40. As stated, for the purposes of the *TPO*, the ES “shall not be deemed to constitute a part of the Plan”, but is a relevant consideration which we must take into account but are not bound to follow.

### H3. TPB Guidelines 16

41. These guidelines are not part of the planning intention but are relevant considerations which we must take into account, but are not bound to follow if there is good or cogent reason.

42. We highlight these provisions in TPB Guidelines 16, especially at §2.3 being “compatible in land-use terms” “with *the surrounding areas*” (emphasis added):-

(1) At §1.3:

“Use of “G/IC” sites for non-GIC uses which fall within Column 2 of the Notes for the “G/IC” zone may or may not be permitted with or without conditions on application to the [TPB] under section 16 of the [TPO]. The planning permission system will enable the Board to maintain adequate planning control over the use of “G/IC” sites and yet allow *sufficient flexibility* in accommodating the changing aspirations and requirements of the community, and sometimes to meet *demand for better utilization* of the site potential.” (emphasis added)

(2) At §1.5:

“As a general rule, for sites zoned “G/IC”, *a major portion* of the proposed development should be dedicated to *GIC and other public uses* including public open space. Otherwise, the proposed development is considered to constitute a significant departure from the planning intention of the “G/IC” zone and, unless with very strong justifications and under special circumstances, planning permission for such development would not be granted.” (emphasis added)

(3) At §2.3:

“The proposed development should be *compatible in land-use terms* with the *GIC uses* on the site, if any, *and with the surrounding areas*. (emphasis added)

(4) At §2.6:

“The proposed development should be sustainable in terms of the capacities of existing and planned infrastructure such as drainage, sewerage, *roads*, water supply and utilities in the locality and its surrounding areas.” (emphasis added)

(5) At §2.13:

“All other statutory or non-statutory requirements of relevant Government departments should be met.”

43. A key question under TPB Guidelines 16 is whether a proposed development is “compatible in land-use terms ... with the surrounding areas”. In *Project Venture*

*Developments v Pittwater Council* [2005] 141 LGERA 80, Roseth SC in the Land and Environment Court of New South Wales said on the meaning of “compatible” (at §22):

“22. *There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*” (emphasis added)

44. Here, as a matter of construction, the focus is on compatibility in land use “with the *surrounding areas*” in the plural, not the singular or a specific use or development only. It follows as a matter of construction, that if one focuses on one area only, or only one use, that is not the correct interpretation.

While the TPB argued that *Project Venture* is not in point, the test in *Project Venture* is highly persuasive and appears correct.

Further, while the TPB focused on the size, scale, and density of Parkland Villas, we leave aside for the moment that this was not a reason given in the TPB’s Decision. Usually when considering planning approval, one would consider such matters in the context of *the proposed development* – rather than a nearby or adjacent completed development such as Parkland Villas in this case.

## **I. Whether the application accords with planning intention, and TPB Guidelines 16**

### **11. The planning intention**

45. The TPB argued that the existing columbaria did not serve “the *needs of the local residents and/or a wider district*” (emphasis added) and were not a use “*directly related to or in support of the work*” of organizations providing social services to meet community needs” (emphasis added). Such arguments were not fairly raised in the TPB’s reasons and were afterthoughts. Moreover, we reject such arguments as devoid of merit.

Instead, the TPB’s reasons focused on TPB Guidelines 16, and compatibility with the surrounding area of Parkland Villas.

46. We find that the existing columbaria clearly satisfies at least the second sentence in the G/IC’s planning intention, and in any event as a matter of fact and degree, i.e. providing

land “for uses *directly related to or in support of the work* of the ... organizations providing social services to meet community needs” (emphasis added).

## 12. The ES

47. The ES is not binding but is a relevant consideration. It is noted:-

(1) Parkland Villas and Residential (Group B) does *not* have priority or precedence over the Column 2 uses in the “G/IC” zone.

(2) While Parkland Villas was built around **2000**, that development must be viewed in its proper context. On the evidence, columbaria use was *already* in existence from **March 1966** onwards, and by the time of the **1994 OZP** – some *28 years* later.

## 13. Relevance and weight

48. Before we deal with the TPB’s reasons, this Appeal Board must consider and weigh up, all relevant matters including in the detailed transcript (390 pages) provided after the hearing. If a particular point is not referred to, this does not mean that it has not been considered and evaluated.

For the avoidance of doubt, while all witnesses gave evidence honestly, where there was any conflict in their evidence, we prefer and accept the evidence of the Appellant’s witnesses as more consistent with the objective facts and evidence, and the contemporaneous documents and inherent probabilities.

49. The TPB argued repeatedly that certain matters referred to below (paragraph 51.2) were irrelevant. With respect, we are not persuaded by such arguments which are unduly technical and strict, and without taking a practical view of matters. Second, this Appeal Board was invited in effect, not to take into account nor weight up relevant matters for no good reason. This would lead to a real risk of error. We reject such invitation, even if well intended. Third, such arguments were regrettably, not fair and objective.

### *Appellant’s arguments*

50. The Appellant’s arguments on relevant matters included:-

50.1 Subject matter of appeal: this concerns *existing* columbaria and niches to be regularized, as a “pre-cut-off columbaria”, i.e., that was in operation, and in which ashes were interred in niches, immediately before the “cut-off time” of 8 a.m. on **18 June 2014**: see *s.2 PCO*. We are not concerned with a new or standalone columbarium. Regularization is necessary to enable the Appellant to apply for a license under the *PCO*. The columbaria is small scale (1,567 niches), and not large scale nor on government land.

50.2 Proper approach: this included dealing with the Appellant fairly, as part of good administration. While there is a regulatory regime under the *PCO*, planning approval is necessary if appropriate, as any decision by the PCLB is subject to the planning regime; the majority of public comments (64%) on the planning review application was in support, while the TPB highlighted only those objecting (36%); GLM has pursued the applications and appeal and incurred substantial time and expense by acting in a sense, on behalf of those persons and their families who paid for or have niches; the Government’s Policy initiative and Press Release (paragraph 6.6 above) are highly relevant as a matter of consistency and fairness, for good administration. Moreover, the Appellant made several planning applications, some withdrawn then scaled down to the current application; and the human factor is highly relevant as one is concerned with human ashes, which should be dealt with using empathy, and compassion.

50.3 Location: the TPB Meeting minutes made clear that some TPB members preferred the columbaria to be located elsewhere. It is trite that the same use on alternative sites is normally irrelevant: see *Joint Smart v TPB* [2021] 4 HKLRD 645 per Chow JA at §48.

Ashes were interred from March 1966, and the Appellant has returned any Government land used.

50.4 Consequences if planning approval granted or otherwise: while the columbarium and 1,567 niches involve the use of land:-

- (1) These are for the community’s benefit; some “G/IC” zones include columbarium use in Columns 1 and/or 2. As stated, in the Ping Che and Ta Kwu Ling OZP at zone G/IC (1) under Column 1 (not in excess of 6,776 niches) and Column 2 (not in excess of 12,848 niches). The former is *4.3 times* the 1,567 niches on this appeal.

A user in Column 2 does *not* necessarily mean such use is not, or incapable of being, a “G/IC” use; a columbarium use can be a planning gain as there is high demand (without going into questions of shortage): see *Joyous Cheer*, TPA No. 6 of 2015 where the Appeal Board said (at §47c):-

“the use of the Appeal Site as a columbarium is also a public gain since there is a *high demand for niches by the public*” (emphasis added).

- (2) Removing the niches would involve first, financial cost to the families involved as the cost of private columbaria can be high and varied – as common sense given lack of supply. Such cost would be higher than for public columbaria. Second, removal also involves emotional effect as a deceased’s ashes cannot rest in eternal peace.

*S.67 PCO* (general principles) makes clear that a person disposing of ashes in a columbarium “must do so having regard to the respect for, and the dignity of, the deceased persons concerned”. This is statutory recognition that empathy is required for a deceased’s ashes, and not that disposal must necessarily be ordered.

In essence, to disturb deceased persons’ niches because of alleged traffic concerns, is most unattractive, and highlights the TPB’s lack of empathy. If such ashes were relocated, planning considerations arise since this would involve the use of land elsewhere.

- (3) The niches on this appeal cannot be transferred, resold, or the subject of profit. The Appellant does not charge maintenance to those who have paid for such niches, and many such persons are without means. For instance, police officers who committed suicide, while some urns and niches were provided by the Appellant without charge.

50.5 Appellant's purposes: to act from moral duty, and conscience to act properly towards the deceased persons and their families.

*TPB's arguments*

51. The TPB's arguments included:-

51.1 Subject matter of appeal: the columbaria and niches were unauthorised "*all along*" and the Appellant cannot rely on the Appeal Board to "*purge its wrong*" from its own blame.

51.2 Proper approach: these matters are "irrelevant":-

(1) The existence of another regime because whether a columbaria is "pre-cut-off" is a "factual finding" for the PCLB. It is not for the Appeal Board to consider that the procedures under the *PCO* are "not sensitive enough" or "insufficient".

(2) Government's Policy Initiative and Press Release referred to earlier.

51.3 Consequences of approval or otherwise:-

(1) The unfortunate and inevitable "need to relocate the ashes" is from the Appellant's own fault and failure to obtain planning permission. These do not concern the use and development of land.

(2) The Appellant is the "only party to blame" for operating a columbarium without planning approval.

51.4 Relevant locations: the comments in the TPB's Meeting Minutes of 7 May 2021 (at §§105d, 108) that columbaria "should better be concentrated near Tsing Shan Tsuen" was "merely a comment in passing". It is also noted that the Site is smaller than the total land occupied by the Appellant before returning some Government land on about 30 October 2015.

*Weighing up the arguments – relevance and weight*

52. With respect, the Appellant's case on relevant matters is established, on the balance of probabilities. We would add:-

## 52.1 Subject matter of appeal:

- (1) The Site's zoning was initially "*Undetermined*" and subject to lease enforcement. Thus, it was unclear whether planning approval was necessary – especially if the columbarium was initially ancillary, as small scale. Moreover, *no* enforcement action was taken by any Government department nor the TPB against any columbaria on the Appellant's land. There is *no* suggestion nor evidence that the columbaria was secret, or concealed.
- (2) In fairness, the Appellant's position should be preserved if there is a reasonable prospect that the PCLB may grant a license or other approval. This appears to be the case for these "pre-cut-off" columbaria. The 3-year period under the *PCO* to regularize is in essence, a grace period. The *OZP* is not retrospective, and the Appellant's use of its land for a columbarium and niches was in effect tolerated, by Government departments and the TPB – which took no enforcement action.
- (3) As noted, it is unusual for the TPB to rely (and belatedly) on the size, scale and density of Parkland Villas – rather than specifically for the columbaria and niches on the Site. The 1,567 niches is in proper context, not large. On the evidence, there are columbaria with niches in the tens of thousands, or over 100,000.
- (4) Therefore, the TPB's arguments on lack of authority "all along", that the Appellant seeks to purge its wrong, and is the only one to blame are highly technical and partisan - especially when the Site was initially "Undetermined", and such use was tolerated. On the evidence, any use was initially small scale and ancillary - such that planning permission was unnecessary but such use increased over time, as a matter of fact and degree. Indeed, it was rightly accepted by the TPB's Counsel that any ancillary use was "not improper" (Transcript p359 C-D).

Therefore, the situation developed over time, from ancillary use to use requiring planning permission. The fact that planning permission became necessary does not connote nor constitute impropriety, misconduct, or moral blame.



## 52.2 Proper approach:

- (1) The proper approach when there is another regulatory regime is set out in the NSW Decision at §§67(1), 67(2) (paragraphs 33 and 34 above):-

Thus, the existence of another regulatory regime is not “irrelevant”. This Appeal Board is *not* delegating its decision to the PCLB, nor making the PCLB’s decision. Instead, the PCLB will decide for itself whether to grant a license, approval, or otherwise. As stated, the columbaria are “pre-cut-off” under *s.2 PCO* as a matter of fact, being “in operation, and in which niches were interred in ashes, immediately before the cut off time” of “8 a.m. on 18 June 2014” – 9 years ago. TPB’s argument to the contrary is unsupported, and contradicted by its own contemporaneous documents.

- (2) When considering public comments, one would usually consider the number in the majority, and minority, and give effect to the majority view. The TPB’s approach to give effect to the minority, and disregard the majority, is both unexplained and unfair.
- (3) Government’s Policy initiative and Press Release are hardly “irrelevant”. As consistency is a cardinal principle of good administration, a pragmatic and sensitive approach are appropriate. We regret that the TPB’s stance in this respect is neither consistent, nor co-ordinated. As the Appeal Board stated in the NSW Decision (at §48.1(1)), public bodies ought to deal straightforwardly, and consistently with the public. This would include of course, different Government departments, when dealing with the same subject matter. Unfortunately, the Appeal Board’s views have been ignored or not properly considered.
- (4) The Appellant’s approach was not to do nothing. If anything, it was over-ambitious in making several planning applications including on larger scale, which were scaled down.

As to the human factor, this is a matter to be weighed up, by the Appeal Board.

- ## 52.3 Location: on a fair reading of the TPB’s Meeting Minutes, although it was careful not to rely heavily or specifically on an alternative location, this appears to have been

a material factor in its decision – the columbaria were too close, i.e. “*in close proximity*” to the adjoining residential development. We are not persuaded that such comments were “merely in passing”. We should infer that the TPB (by majority) preferred columbaria and niches to be elsewhere, in public columbaria. We also note on the evidence that references to the Lotus Pagoda or Lotus Hall are not necessarily to a particular building, but where ashes were located.

52.4 Consequences of planning approval or otherwise:

- (1) On public benefit, we do not have to decide whether there is “a shortage” of columbaria and niches. Instead, demand for niches is obvious, from common sense – death is a certainty, and especially with Hong Kong’s ageing population, and population density. As stated, there are other columbaria with niches in the tens of thousands, or over 100,000 niches.
- (2) The TPB’s argument on “need to relocate the ashes” is circular; it assumes planning permission would be refused.

52.5 Appellant’s purposes: we accept the Appellant’s evidence stated earlier: these purposes are reasonable and in good faith, and commendable. We are not obliged to approach this appeal by ignoring matters of moral duty and conscience.

*Non-planning matters*

53. These are not relevant as non-planning matters:-

- (1) Any matters concerning a lease with the Lands Department, or lease premium – as separate matters which should be dealt with in due course concerning any use of land, even if planning permission is granted.
- (2) The TPB’s reasons do not concern environmental impact, or external lights at the Appellant which were removed in 2011.

*TPB’s reasons are key*

54. The TPB’s reasons from a public body are key, and impact on any grounds of appeal.

As noted at paragraph 13 above, many factors were belatedly relied on by the TPB, but not in its reasons. The Appeal Board would not usually be inclined to allow the TPB to rely on reasons which are not given, and do not arise from the reasons stated.

#### 14. TPB's reasons on TPB Guidelines 16

55. Next we consider the TPB's reasons:-

- (1) Close proximity to the residential developments;
- (2) Sharing same access road;
- (3) Alleged non-compatibility with surrounding areas in land use terms; and
- (4) Alleged nuisance to residential neighbourhood.

##### *(1) Close proximity to the residential developments*

56. The Appellant argued:-

- (1) First, it is not uncommon for columbaria to be *adjacent* or *close to* residential developments. At least three examples were given:-
  - (a) Sin Hing Tung – 28 meters away with 11,090 urns;
  - (b) Kun Chung Temple – 15 meters away with 11,000 niches and G/IC zone Column 2; and
  - (c) Po Fook Shan – 35 meters away and G/IC Column 1.

On Mr Chan's evidence, it is common for temples to be close to residential areas (Transcript p229D), and as ancestor worship is common in Chinese culture. In contrast, the Appellant's distance is further away – 50 to 140 meters from Parkland Villas.

- (2) Second, on timing and context, many columbaria existed *long before* later residential buildings close by or adjacent. Indeed, on Mr Chan's evidence it is common for columbaria to be in and part of a temple (Transcript p229D). In this instance, there was

a religious institution on the Site from **1955**, which started having urns with ashes within from **1966** – several decades before Parkland Villas was built in **2000**.

57. The TPB argued:-

- (1) Property values at Parkland Villas may be devalued by close proximity; and
- (2) Columbaria are “sensitive community facilities” under the HKPSG (Chapter 3) and should have buffer areas.

58. We prefer the Appellant’s arguments on the balance of probabilities, and would add:-

- (1) As to the TPB’s reliance on property values being affected:-
  - (a) This reason was *not* mentioned in the TPB’s reasons, and is an after-thought, and part of plan making. It is common and a fact of life, for residential properties to be close or adjacent to cemeteries. For instance, in Happy Valley and Pokfulam.
  - (b) There is *no* suggestion that the Appellant kept secret or concealed the fact it has columbaria (Transcript p123F-I).
  - (c) Alternatively, if property values are relevant to existing columbaria (as opposed to new columbaria), we would attach in the circumstances little weight.
- (2) As to sensitive community facilities:-
  - (a) Again, this is *not* mentioned in the TPB’s reasons, and was not pressed by the TPB.
  - (b) The HKPSG is not mentioned in the OZP, its Notes, or the ES. There is some reference to the HKPSG in TPB Guidelines 16 which focuses on guidelines published by the TPB, as opposed to the Plan D.
  - (c) We do not consider the columbarium is a sensitive community facility, under the HKPSG. This focuses on a mortuary, funeral depots, and funeral parlours – with dead bodies, which raise health and safety issues. In contrast, ashes in an urn pose no health and safety risks. In any event, even if the HKPSG applies (which we do not accept), there is a sufficient buffer by the trees, and the columbaria are enclosed within a building.

(2) *Sharing same access road*

59. The Appellant emphasised that this reason essentially concerns traffic, on a public (and not private) road. There is *no* TPB document or Guideline that columbaria should have a different access road, from a residential development. Moreover, there is *no* suggestion by the TPB that a revised traffic impact assessment should be an approval condition. Further:-

- (1) Relevant Government departments, i.e. the Police, and Transport Department with traffic expertise, considered that the revised management plan submitted to the PCLB was acceptable or with no in principle objection. There is *no* sufficient evidence or record of complaints concerning traffic congestion, nor as a result of the Appellant's columbaria operations or otherwise. As such, there was no significant traffic impact.
- (2) As Tuen On Lane is a public road, there is *no* indication in the OZP's planning intention of any priority given to Parkland Villas or any residential development, over the Appellant. On the evidence, even before any PCLB license, there has been sufficient and adequate traffic mitigation measures since at least **2015** – *8 years ago*.
- (3) As to timing and context, in **1959** there was a different unnamed road for access to the Appellant. By **1991**, Tsing Leung Lane was in existence, before Tuen On Lane in **1998** which also became the access road to Parkland Villas.
- (4) On frequency of visits, members of the public would visit the columbaria once or twice a year, primarily around Ching Ming and Chung Yeung Festivals – rather than daily, or regularly. Even during Ching Ming, say on 5 April 2018 (at 11-11:58 a.m.), Tuen On Lane was not busy.
- (5) Cause of congestion: on the Appellant's traffic expert Mr Chin's evidence, any congestion on Tuen On Lane was not caused by the Appellant's operations or the columbaria. Instead, any congestion was caused by school buses parked on Tuen On Lane in front of Parkland Villas, which would perform reverse movements in the cul-de-sac. These should have been done within Parkland Villas, which should have internal transport facilities on site.

60. The TPB's arguments included:-

- (1) Its objection was not to the same road *per se*, but Parkland Villas residents were “forced to use the same Tuen On Lane to enter and exit” (Transcript p88).
- (2) On frequency, several family members would come to the columbaria “several times a year”.
- (3) On the cause of any congestion, it relied on Mr Mak’s assertion of nuisance and blockage of Parkland Villas’ only vehicular entrance caused by columbarium use at the Site and the Appellant’s visitors.

61. With respect, the Appellant’s contentions are more convincing, on the balance of probabilities. Further:-

- (1) The fact the Police, and Transport Department, the responsible government departments for traffic, find the revised management plan acceptable or have no in principle objection, highlights that alleged traffic congestion has no significant impact. Thus, the TPB’s concern on traffic is unsupported by its factual evidence. It also called no expert evidence on traffic, such that Mr Chin’s evidence was uncontradicted. Moreover, the TPB’s reasons did not concern ancestor tablets, when on the evidence some 40 to 50% of the niches concerned persons who also had family members with ancestor tablets there.
- (2) In terms of plan making, Tuen On Lane serves not only Parkland Villas, but also the Appellant, and Ching Leung Nunnery. It is also indisputable that there are 3 pedestrian routes or footpaths which serve Parkland Villas and the Appellant, namely Castle Peak Road, Tuen Fu Road, and Tuen On Lane. Thus, it is inappropriate for the TPB to focus on vehicle traffic only, without properly considering pedestrian traffic as an alternative. For the latter, there is *no* suggestion nor evidence of congestion caused by such pedestrian traffic to and from the Appellant. We accept Mr Chin’s evidence in his Report (at §2.2):-

“Based on an interview survey on mode of transport used by visitors conducted at Gig Lok Monastery, *about 54% of the visitors visit Gig Lok Monastery by the MTR*, where the remaining 46% visit Gig Lok Monastery by *all other modes*, i.e. franchised *buses, green / red minibus, private cars, on foot* etc. Hence, it is expect some 54% of visitors will *continue to use the Existing Pedestrian Route*, and 46% of visitors will use the Alternative Pedestrian Route.” (emphasis added)

- (3) Timing and context are important: the TPB's arguments have not properly considered that we are *not* concerned with new columbaria, but existing columbaria in existence for many years, well before Parkland Villas.
- (4) Causation is important because on the evidence, traffic congestion (if any) in Tuen On Lane is substantially caused by those going to and from Parkland Villas, rather than to and from the Appellant. Insofar as the TPB argued that Parkland Villas residents are "forced to use the same Tuen On Lane", this mischaracterises the position which arises from plan making, that such properties should share the same access road.

*(3) Alleged non-compatibility with surrounding areas*

62. The Appellant argued that the only alleged non-compliance was with TPB Guidelines 16 (at §2.3), and one is concerned with the use and development of land as a planning matter. These points were emphasised:-

- (1) The TPB erred by departing from and qualifying its *own* TPB Guidelines 16 (at §2.3) which refers to compatibility with inter alia "... the surrounding areas", instead of a specific use or area such as Parkland Villas.
- (2) The TPB in its plan making function, decided in **1994** that uses in the "G/IC" zone were compatible with Residential Group B (medium density) including Parkland Villas, when these zones side by side were both rezoned.

The TPB's functions are key as s.3(2) TPO (Functions of the Board) provides:

*"(2) In the course of preparation of the plans referred to in subsection (1), the **Board shall make such inquiries** and arrangements (including, if it thinks fit, the **taking of any census** of the occupants of any buildings or of the users of any thoroughfares or spaces) **as it may consider necessary for the preparation of such drafts.**" (emphasis added).*

Accordingly, it is reasonable to infer the TPB and the Plan D (who advises the TPB) did not consider it necessary to make inquiries concerning GLM and columbarium by the time of rezoning in **1994**. Alternatively, if enquires were made, these would have revealed that columbarium use existed at GLM.

- (3) The surrounding area and context are important: the area photos show greenery, and graves which are much closer to Parkland Villas, and in open view, rather than the

Appellant's columbaria which are enclosed and visually compatible. Even if there was any incompatibility as alleged (which is not accepted), the OZP's planning intention takes statutory precedence over TPB Guidelines 16 which can be departed from for good reason, which is the case for the reasons herein.

63. The TPB's arguments on alleged incompatibility included:-

- (1) The TPB's focus was not limited to Parkland Villas only, where there was a "very obvious" incompatibility given its size and scale.
- (2) As to alleged knowledge by the TPB, it is misconceived to suggest that the TPB should have known of columbarium use on the Site when rezoned to "G/IC" in 1994. In any event, the existence of such knowledge (which is denied) is neither here nor there. The Appellant would still have to apply for planning permission once the Site was rezoned to "G/IC".

64. With respect, we consider that the Appellant's arguments on alleged incompatibility are more persuasive, on the balance of probabilities. Further:-

- (1) The TPB has misconstrued and misapplied TPB's Guidelines 16 (at §2.3) which refers to compatibility in land use terms with "the surrounding areas" in the plural and not singular. These are clearly much wider than Parkland Villas. Notwithstanding the TPB's arguments, it is unclear what when land use it relies on apart from Parkland Villas. Indeed, the Appellant is well located, with good public transport links including by LRT and MTR. These are convenient for members of public to access the Appellant as part of the public interest.
- (2) As to plan making, the areas for both Parkland Villas and the Appellant were previously of "*undetermined use*". Such uses are compatible as a matter of plan making, with the locations adjacent or close by.
- (3) As to the TPB's role under s.3(2) TPO, as a matter of statutory construction, the TPB has a statutory duty to consider and make such enquiries "as it may consider necessary". There is *no* evidence of whether and what, enquiries were made or otherwise before the **1994** rezoning. And if enquiries were made, what was the outcome. Such information and evidence is within the TPB's exclusive knowledge. It could and should



have adduced such evidence before this Appeal Board, and its failure to do so does not assist its case.

On the evidence, in **1994** there were *already* some 30 to 40 bags of ashes in the Site's House 3. While the TPB's Mr Mak's evidence was that it was his usual practice to undertake a land use survey (Transcript p249), he accepted that he did not know if such a survey was done at that time (Transcript p253).

The fact there are several graves in the vicinity and right next to Parkland Villas, would indicate that this was an area where burial was not uncommon. As common sense, graves occupy more land and are more expensive than cremation which may well have put the TPB on enquiry. The visual impact of such graves is patent and clear – and one cannot exclude the possibility that there were also graves *below* where Parkland Villas now stands. We do not need to decide if Parkland Villas residents had actual or constructive notice of the existence of columbaria in the vicinity. There is *no* suggestion nor evidence that the columbaria were secret or concealed.

(4) *Alleged nuisance*

65. Again, this ground focuses on traffic. The TPB did not rely on nuisance as a matter of law.

66. The Appellant's arguments included:-

- (1) As stated, the Police and Transport Department with traffic management expertise, considered that the revised management plan for the PCLB was acceptable, or with no in principle objection. Again, there is *no* sufficient evidence or record of complaints concerning traffic congestion to and from the Appellant or its columbaria. Congestion (if any) has been minimal from **2015** even without a traffic control and management plan implemented – for *8 years*.
- (2) As to nuisance, no actual nuisance was alleged. On the evidence, any nuisance was minimal having regard to pedestrian flows directed, so as not to impede vehicle access.
- (3) If and insofar as columbarium use has been alleged to be an offensive trade, in *Uni-Creation Investments Ltd v Secretary for Justice* [2018] 2 HKC 531 at §§13, 39, the Court of Appeal held first, that columbarium use was not *per se* an offensive trade. Second, the Court observed that although some people have an aversion to living in

the vicinity of the dead, the court should adopt a flexible, relative approach and the answer to the question whether the operation of a columbarium was offensive to those in the locality could well change with time, depending on: (1) *how the columbarium was and would be operated*; and (2) *how the nature or character of the locality was or would become*.

Here, there is *no* suggestion nor evidence that the Appellant's operations are not properly managed.

67. The TPB's arguments included reliance on psychological discomfort and unease by persons living in the vicinity of the dead.

68. We accept the Appellant's contentions on the balance of probabilities. Further:-

(1) In weighing up the evidence, the two Government departments in charge of traffic matters consider that the revised traffic management plan is acceptable or have no in principle objection. Therefore, it is unclear why the TPB as a public body, should take a position that is neither consistent, nor coordinated. The TPB's concerns on traffic congestion as a result of the columbaria are unsupported, and exaggerated. Insofar as it relies on such concerns, these appear to be based on speculation, rather than evidence. And the TPB has adduced *no* expert evidence concerning traffic management.

(2) As to the belated reliance on psychological discomfort and unease, this is *not* referred to in the TPB's reasons. We would not usually be inclined to allow the TPB to raise a new argument. In any event, it is not uncommon for residential developments to be adjacent to, or in the vicinity of the dead in cemeteries, or columbaria. Further, Parkland Villas has several clan graves which are clearly visible, around its boundary. That should raise the obvious question whether there were also clan graves *under* Parkland Villas, rather than just outside. As stated, as Hong Kong is densely populated, it is quite common to have cemeteries side by side with residential developments. Moreover, there is *no* scientific evidence that columbaria or ashes have caused any particular psychological impact on residents at Parkland Villas or elsewhere, and at what distance(s).

*(5) Strong justification*

69. Each case depends on its own facts. In the unusual circumstances of this case, although unnecessary, we find for reasons above, as a matter of fact and evaluation, that there is a strong case for planning approval.

**J. Approval conditions**

70. The TPB Paper for the meeting on 7 May 2021 stated (at §8(2)) that should permission be granted, it was suggested that permission shall be valid until **7 May 2025**, i.e. 4 years after the TPB Meeting.

Given the time passing until the hearing in October 2022, and the subsequent time taken to deliver this Decision, there should be a 4-year period for the approval conditions referred to below from 29 September 2023 to **29 September 2027**.

The approval conditions were:-

*“Approval conditions*

- (a) the number of niches and ancestral tablets within the Site shall not exceed 1,567 and 1,089 respectively;
- (b) the submission and implementation of water supply for firefighting and fire services installations proposal to the satisfaction of the Director of Fire Services or of the Town Planning Board;
- (c) the submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (d) the submission and implementation of a landscape proposal to the satisfaction of Director of Planning or of the Town Planning Board.

*Advisory Clauses*

The recommended advisory clauses are at Annex K.”

71. It is noted that none of the Approval Conditions above concern traffic or traffic management, the TPB’s main concern on this appeal.

72. As to advisory clauses, these are set out at Bundle C3/19d/1963-68. The Appellant’s Counsel indicated that he had no problem with these.

## **K. Conclusion**

### Summary

73. We summarise our decision on the three main issues:-

- (1) The planning intention for the Site under the OZP is primarily to provide “G/IC” facilities “serving the *needs of the local residents and/or a wider district...*”, and providing land “for *uses directly related to or in support of the work of the ... organizations providing social services to meet community needs, ...*” (emphasis added).
- (2) The existing columbarium complies with the OZP’s planning intention, and of the Explanatory Statement, and there is no credible suggestion to the contrary. The columbarium also complies with *TPB Guidelines 16* (and specifically §2.3) properly interpreted and applied, namely it is compatible in land use terms with “*the surrounding areas*”, and not merely a specific use or area such as Parkland Villas.

None of the four reasons raised by the TPB (paragraph 55 above) are good reasons for refusing planning approval.

- (3) The cumulative effect of approval would not cause nuisances to the residential neighbourhood, whether traffic congestion as alleged or otherwise.

We respectfully agree with the views of the minority on the TPB.

### Order

74. We allow the appeal against the TPB’s majority decision on the approval conditions stated at paragraph 70 above, and with the advisory clauses referred to at paragraph 72 above.

75. While the usual costs order on planning appeals is no order as to costs, on the safe side, we direct the parties to exchange written skeleton submissions on costs within 21 days of this Decision.

General

76. We reiterate our gratitude to Counsel and both teams for their assistance. We apologise for the delay in rendering this Decision given the Chairman's commitments in long hearings and other work commitments.
77. We grant liberty to apply to the Town Planning Appeal Board for directions as to carrying the aforesaid conditions into effect.

(Signed)

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Mr. CHUA Guan-hock, S.C., J.P.  
(Chairman)

(Signed)

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Mr. HUI Chun-sing, Thomas  
(Member)

(Signed)

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Ms. LAM King-sze, Cissy  
(Member)

(Signed)

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Ms. NGAI Yuet-ping  
(Member)

(Signed)

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Professor TSE Kam-tim  
(Member)