[Extract of TPAB's decision dated 14.11.2017]

Town Planning Appeal No. 6 of 2015
(Application No. A/YL-NSW/204)

L. CONCLUSION

52. We accordingly allow the appeal and grant the planning permission sought.

53. The permission should be valid until 4 years from the date of this Decision, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed.

a) Approval Conditions

i) the submission of an updated TIA report within 6 months from the date of this Decision to the satisfaction of all relevant government departments and parties affected, including but not limited to TD, the Police, Planning Department, POH, HA and TPB;

ii) the maximum number of niches within the Appeal Site should not exceed 20,000;

iii) no furnace and no burning of ritual papers and joss sticks are allowed within the Appeal Site;

iv) the implementation of the traffic improvement schemes, as proposed by the Appellant, prior to the commencement of operation of the columbarium to the satisfaction of the C for T, the C of P or of the TPB;

v) the submission of an implementation programme with phasing proposals (with niche sales not exceeding 3,000 niches per year) to tie in with the completion of the traffic improvement measures and the submission of a traffic review report at the end of each phase, as proposed by the Appellant, to the satisfaction of the C for T, the C of P or of the TPB;

vi) the Appellant shall not proceed to the niche sales in the next phase unless the traffic management measures, as proposed by the Appellant, have been implemented to the satisfaction of the C for T, the C of P or of the TPB;

vii) the in-situ preservation of Pun Uk in its entirely, including the feng shui pond in front of Pun Uk, as proposed by the Appellant, to the satisfaction of the Director of Leisure and Cultural Services or of the TPB;

viii) the submission and implementation of conservation management plan ("**CMP**"), prior to the commencement of any building works on the Appeal Site to the satisfaction of the Director of Leisure and Cultural Services or of the TPB;

ix) the submission of a revised Environmental Assessment within 6 months from the date of this Decision to the satisfaction of the Director of Environmental Protection or of the TPB;

x) the submission of a revised Ecological Impact Assessment ("**EcoIA**") within 6 months from the date of this Decision to the satisfaction of the Director of Agriculture, Fisheries and Conservation or of the TPB;

xi) in relation to x) above, the implementation of mitigation measures identified in the EcoIA prior to the commencement of operation of the columbarium (including sale/allocation of niches of any purpose and conducting any memorial ceremony at the site) to the satisfaction of the Director of Agriculture, Fisheries and Conservation or of the TPB;

xii) the submission of a revised Landscape Master Plan ("**LMP**") including tree preservation scheme within 6 months from the date of this Decision to the satisfaction of the Director of Planning or of the TPB;

xiii) in relation to xii) above, the implementation of a revised LMP including tree preservation scheme prior to the commencement of operation of the columbarium (including sale/allocation of niches of any purpose and conducting any memorial ceremony at the site) to the satisfaction of the Director of Planning or of the TPB;

xiv) the submission of a revised Visual Impact Assessment ("**VIA**") within 6 months from the date of this Decision to the satisfaction of the Director of Planning or of the TPB;

xv) in relation to xiv) above, the implementation of mitigation measures identified in the VIA prior to the commencement of operation of the columbarium (including sale/allocation of niches of any purpose and conducting any memorial ceremony at the Appeal Site) to the satisfaction of the Director of Planning or of the TPB;

xvi) the submission of drainage proposal within 6 months from the date of this Decision to the satisfaction of the Director of Drainage Services or of the TPB;

xvii) in relation to xvi) above, the implementation of drainage proposal prior to the commencement of operation of the columbarium (including sale/allocation of niches of any purpose and conducting any memorial ceremony at the site) to the satisfaction of the Director of Drainage Services or of the TPB;

xviii) the submission of emergency vehicular access ("**EVA**"), water supply for fire fighting and fire services installations ("**FSIs**") within 6 months from the date of this Decision prior to the commencement of operation of the columbarium to the satisfaction of the Director of Fire Services or of the TPB;

xix) in relation to xviii) above, the provision of EVA, water supply for the fire fighting and FSIs proposed prior to the commencement of operation of the columbarium (including sale/allocation of niches of any purpose and conducting any memorial ceremony at the Appeal Site) to the satisfaction of the Director of Fire Services or of the TPB;

xx) if any of the above planning conditions i), ii), iii), iv), vi), vii), ix), x), xii), xiv), xvi), xviii) or xix) is not complied with, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice; and

xxi) if any of the above planning conditions i), ix), x), xii), xiv), xvi) or xviii) 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.

xxii) the planning permission and the conditions attached thereto ("**the Conditions**") for the proposed development was undertaken and should continue to have effect as long as the completed development or any part of it was in existence and the Conditions were fully complied with.

b) Additional Conditions

i) The Appeal Site involves various private lots in D.D. 115 which are of agricultural or building status held under Block Government Lease or Tai Po New Grant, and adjoining GL. The Appellant will need to apply to Lands Department ("**LandsD**") for a land exchange. It is noted that the Appellant has included a land exchange to effect the Proposed Development. Such application will be considered by LandsD acting in the capacity as a landlord at its sole discretion and there is no guarantee that the land exchange, including the granting of additional GL, for the Proposed Development will be approved. In the event that land exchange is approved, it would be subject to such terms and conditions, including, among other things, the payment of premium and administrative fee, as may be imposed by LandsD at its sole discretion. The actual site area and building entitlement of the private lots involved would be subject to verification at the land exchange stage if any land exchange is applied for by the Appellant to LandsD. For the proposed traffic improvement proposals, unless the proposed works are contingent upon the Proposed Development, any of the proposed road works should not be incorporated as part of the terms and conditions of any land exchange proposal, if applied for. LandsD will consider the land exchange application, if received, in the landlord capacity at his

sole discretion and there is no guarantee that the land exchange will be approved. As regards the proposed traffic management schemes, including the management of vehicular and pedestrian traffic flow, and administrative measures, e.g. House rules, pre-sale arrangement and sale conditions, they should be enforced by the relevant departments and would not be incorporated as part of the terms and conditions of any land exchange proposal, if applied for the approved by LandsD acting in the landlord capacity at its sole discretion. Lots 880 s.A and 880 s.B in D.D. 115 will become land-locked if the proposed redevelopment is pursued. It is noted that the Appellant has proposed that a right of way ("**ROW**") will be reserved for the two lots in the land exchange stage. According to the relevant deposit plan, Pun Uk, being a Grade 1 historic building, is located within the Appeal Site. He does not consider the costs or expense for preservation and revitalization of Pun Uk, which is proposed to be converted into a cultural museum, will be regarded as premium deductible for any future land grant or regrant is applied for and approval by LandsD acting in the landlord capacity at its sole discretion. The Appeal Site falls partly within the West Rail Protection Boundary. The Appellant has in its submission dated 6 June 2014 that the proposed road widening works would not encroach onto Lot Nos. 888 RP and 892 in D.D. 115. The Appellant also confirmed that Lot No. 889 RP and 891 RP in D.D. 115 are under his ownership. Nevertheless, LandsD is not prepared to recommend invoking the relevant Ordinance for the resumption of any private lots for implementation of the Proposed Development.

ii) The Appellant should step up environmental hygiene measures in the day-to-day operation to the satisfaction of the Director of Food, Environment and Hygiene given that the proposed development is nearby POH.

iii) Since Siu Sheung Road after widening by the Appellant will only serve the Proposed Development and local villagers, Highways Department is not/shall not be responsible for maintaining Siu Sheung Road and the said road should be maintained by the Appellant to the satisfaction of the Highways Department. Further, the proposed works fall within the West Rail Railway Protection Boundary, MTRCL should be consulted prior to commencement of works.

iv) The Appellant should preserve Pun Uk in-situ in its entirely, including the fengshui pond in front of Pun Uk. The fenghsui pond, including its location, shape and size, is an integral part of Pun Uk and should be preserved. The Appellant should submit a CMP after obtaining the approval for the planning application. The CMP should state clearly any possible risks to Pun Uk as a result of the works proposed to be carried out, the risk mitigation measures to be implemented during the works period, as well as the management plan and protective measures for preserving Pun Uk after completion of the works. The CMP should be agreed with the Commissioner for Heritage's Office ("**CHO**") and of the Development Bureau Antiquities & Monuments Office ("**AMO**") prior to the commencement of works, the design of all proposed structures in the vicinity of Pun Uk should be compatible with the historic Pun Uk. The detailed design, including the colour scheme and building materials, is to be agreed with the departments concerned, including the CHO and AMO. There should be a reasonable degree of public access to Pun Uk with detailed arrangement of the public visits, including the frequency of the visits, to the satisfaction of CHO. The structural integrity of Pun Uk should not be compromised by the proposed excavation and construction works, and necessary precautionary measures should be drawn up. For the proposed cultural museum, some works will have to be done to meet relevant statutory

requirements, such as provision of barrier free access, FSIs and means of escape, etc. The Appellant should be advised to address these issues fully in the CMP and seek AMO's comments in an early stage. As mentioned in the report that Pun Uk is already in a dilapidated state which requires urgent restoration, the Appellant should conduct urgent repairs to prevent further deterioration.

v) Detailed fire safety requirements shall be formulated upon receipt of formal submission of general building plans and referral from relevant licensing authority to the satisfaction of the Director of Fire Services.

vi) If the Appeal Site does not abut on a specified street having a width of not less than 4.5m, the development intensity including the height of a building, the maximum site coverage ("**SC**") and maximum plot ratio ("**PR**") permitted for such a building shall be determined by the BA under Building (Planning) Regulations ("**B(P)R**") 19(3) at building plan submission stage. It appears that there is a land-locked site within the Appeal Site. If affirmative, ROW to the land-locked site should be provided within the application site and the area of such ROW should be deducted from the site area for the purpose of PR and SC calculation under Buildings Ordinance. In accordance with the Government's committed policy to implement building design to foster a quality and sustainable built environment, the sustainable building design ("**SBD**") requirements (including building separation, building setback and greenery coverage) should be included, where possible. Based on the information provided in the CPRS, it is not sure if the SBD requirements will be fully complied with. The Appellant should provide more details in the later stage, should the application be approved by the TPB. The Appellant should observe the design requirements for columbarium facilities stipulated in PNAP APP-154. The provisions of

means of escape, means of access and fire resisting construction should comply with the B(P)R 41(1), B(P)R 41A-41C, Building (Construction) Regulation 90 and the prescriptive requirements under the Code of Practice for Fire Safety in Buildings 2011 ("**FS Code**"), especially for the two basement floors and Pun Uk which will be used as a cultural museum. The Appeal Site should be provided with an EVA in accordance with B(P)R 41D and Section 6 of Part D of the FS Code. Access and facilities for persons with a disability (including but not limited to initial access, barrier free access route, accessible unisex toilet, etc.) should be provided in accordance with B(P)R 72 and Design Manual Barrier Free Access 2008. Detailed comments on compliance with the Building Ordinance would be given by the Chief Building Surveyor/Hong Kong East and Heritage Section, Buildings Department ("**BD**") upon formal building plans submission.

vii) The Appellant should submit the proposed works to BD for approval as required under the provisions of the Buildings Ordinance.

viii) On the aspects of electricity safety, the Appellant shall approach the electricity supplier for the requisition of cable plans to find out whether there is any underground cable (and/or overhead line) within or in the vicinity of the Appeal Site. Based on the cable plans obtained, if there is underground cable (and/or overhead line) within or in the vicinity of the Appeal Site, the Appellant shall carry out the following measures: Prior to establishing any structure within the Appeal Site, the Appellant and/or its contractors shall liaise with the electricity supplier and, if necessary, as the electricity supplier to divert the underground cable (an/or overhead line) away from the vicinity of the proposed structure. The "Code of Practice on Working near Electricity Supply Lines" established under the Electricity Supply Lines (Protection) Regulation

shall be observed by the Appellant and its contractors when carrying out works in the vicinity of the electricity supply lines. As regards town gas safety, there is a high pressure town gas pipeline running along Castle Peak Road – Yuen Long. Based on the proposed layouts and the Visit-by-Appointment System to limit the number of visitors as set out in the CPRS. The Appellant should maintain liaison/coordination with the Hong Kong and China Gas Company Limited in respect of the exact location of existing or planned gas pipe routes/gas installations in the vicinity of the proposed works area and the minimum set back distance away from the gas pipes/gas installations if any excavation works are required during the design and construction stages of the development. The Appellant shall also note the requirements of the Electrical and Mechanical Services Department's Code of Practice on Avoiding Danger from Gas Pipes.

ix) The Appellant shall liaise with the local residents to address their concerns on the Proposed Development.

54. On the issue of costs, the Appeal Board notes the normal rule under section 17B(8)(c) of the Town Planning Ordinance that there should not be an award of costs in favour of the "successful party" save in exceptional circumstances: *Town Planning Appeal No. 10 of 2010.*

55. At this stage, we see no exceptional circumstances which justify any award of costs in this appeal. The Appeal Board makes an order *nisi* that there be no order as to costs. Should any party seek to vary the order *nisi*, the Appeal Board gives the following directions: (1) the party seeking to vary the order *nisi* should within 7 calendar days from receipt of this Decision serve and file its submissions setting out the order it seeks and the reasons therefor; (2) the other party may within 7 calendar days upon receipt of the same, and if it wishes to, file and serve its

response; and (3) the applying party may within 5 calendar days upon receipt of the response file its reply.

56. The Appeal Board wishes to express our wholehearted thanks to both counsels and the parties' legal teams for their very helpful and able assistance.

(Signed)

Mr. YEUNG Ming-tai
(Chairman)

(Signed)

Ms. CHAN Pui-ying
(Member)

(Signed)

Miss Julia LAU Pui-g
(Member)

(Signed)

Mr. TSE Chi-ming
(Member)

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Ir. Dr. Paul TSUI Hon-yan
(Member)