

IN THE TOWN PLANNING APPEAL BOARD

TOWN PLANNING APPEAL NO. 5 OF 2022

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Between

LEMGO ESTATES LIMITED

*Appellant*

and

TOWN PLANNING BOARD

*Respondent*

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Appeal Board:	Mr. YAN Mang-ye, John, S.C., J.P.	(Chairman)
	Mr. CHAN Bo-ching	(Member)
	Mr. LAU Hing-tat, Patrick, J.P.	(Member)
	Mr. PONG Yiu-po, Daniel	(Member)
	Mr. WONG Ling-sun, Vincent, J.P.	(Member)
In Attendance:	Ms. Ivy LI	(Secretary)
Representation:	Mr. LIT Ying-cheung, Edward, Representative for the Appellant	
	Ms. Deanna LAW, Counsel for the Respondent instructed by the Department of Justice	
Dates of Hearing:	2 and 16 November 2023	
Date of Decision:	3 May 2024	

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## DECISION

1. This is an appeal brought by Lemgo Estates Limited (“**Appellant**”) pursuant to section 17B of the Town Planning Ordinance (Cap. 131) (“**TPO**”) against the decision of the Town Planning Board (“**TPB**”) made on 2 September 2022 (“**Decision**”) rejecting the Appellant’s application for a review of the decision of the Rural and New Town Planning Committee (“**RNTPC**”) refusing the Appellant’s application under section 16 of the TPO for planning permission for a temporary warehouse for storage of construction materials for a period of three years and filling of land on a site (“**the Appeal Site**”) within an area zoned “Green Belt” (“**GB**”) in the then draft Lau Fau Shan and Tsim Bei Tsui Outline Zoning Plan No. S/YL-LFS/10 (“**Draft OZP**”) in Application No. A/YL-LFS/411 (“**the Application**”).
2. On 12 April 2022, the Chief Executive in Council approved the Draft OZP which was subsequently renumbered as S/YL-LFS/11 (“**OZP**”). The zoning of the Appeal Site on the OZP remained as “GB”.
3. The Draft OZP was the one that was in force at the time of the rejection of the section 16 application and the OZP was the one that was in force at the time of the rejection of the Appellant’s review application.

## **BACKGROUND**

### **The Appeal Site**

4. The Appeal Site has an area of about 5,706m<sup>2</sup> abutting Deep Bay Road. The private lands are Old Schedule Agricultural Lots held under the Block Government Lease. The remaining land is Government Land (about 1,250m<sup>2</sup> equivalent to 21.9% of site area). The entire Appeal Site has been concrete-paved. Except for an open-sided canopy (Structure No. 3), all the structures under application have already been erected. The Appeal Site is currently used as a warehouse. The Appellant has not shown that such use is with valid planning permission.
5. On the contrary, according to records from the Lands Department, the Appeal Site had previously been erected with structures pursuant to approval granted under Modification of Tenancy/Letter of Approval No.

MNT 19865 dated 18 October 1972 (“**MNT/L 19865**”) for the erection and maintenance of agricultural structures including pigsties, chicken sheds and an agricultural store and for maintenance of private residential, porch and watchmen shed; Letter of Approval No. MT/LM 11688 granted in November 1982 (“**MT/LM 11688**”) for agricultural store, pigsty and porch and Squatter Control Record for private residential, pigsty, porch, agricultural storage, water tank, watchmen shed and commercial storeroom.

6. However, as revealed in aerial photographs (Plans AP-3d to AP-3j attached to the Witness Statement of CHIU Chi Yeung, Eric (“**Chiu’s WS**”), the Appeal Site had been cleared, re-formed and erected with structures in around 2013 to 2014. Plans AP-3j (taken on 18 August 1990) and AP-3i (taken on 28 April 1992) further show that between the dates of those two plans, vegetation on a large area of land comprising both land within and to the west of the Appeal Site had been removed. Plans AP-3f (taken on 21 June 2013) to AP-3d (taken on 14 November 2014) also show that between the dates of those plans, further vegetation had been cleared from the Appeal Site, in particular, to create access to Deep Bay Road and that by the date of Plan AP-3d, a large structure had been constructed in the large area of land within and to the west of the Appeal Site which had been cleared of vegetation.
7. According to the Lands Department, as the area covered by the above permits had been altered and extended and their uses had been changed, and the original surveyed structures at the Appeal Site were no longer in existence, the permits and squatter control record were cancelled/deleted in 2021 and 2017 respectively. In particular, by letter dated 4 February 2021, the District Lands Office, Yuen Long, had given notice that as a Notice of Termination of MNT/L 19865 and MT/LM 11688 issued on 29 June 2020 had expired on 27 July 2020 but recent site inspections had revealed that breaches of the licence conditions thereunder had not been rectified, necessary action would continue to be taken regarding the termination of the licences.
8. The Appeal Site is mainly surrounded by woodland/shrubland intermixed with graves, warehouses, ruins, a trailer park and a village house. The nearby warehouses and trailer park are suspected unauthorised developments subject to planning enforcement action. To the north of the appeal site are woodland and warehouses. To the east are woodland intermixed with graves and ruins. To the south and south-east are woodland/grassland, a New Territories Exempted House permitted by Building Licence No. 319, a pond and ruins. To the west and south-west

are shrubland, vacant land, a warehouse and a trailer park. To the further west across Deep Bay Road are shrubland intermixed with graves falling within the open “Coastal Protection Area” zone.

## **The Application**

9. The Application was submitted to the RNTPC for consideration on 10 December 2021. The RNTPC decided to reject the Application for the following reasons (“**the RNTPC’s Decision**”) :-
  - (a) The applied development was not in line with the planning intention of the “GB” zone, which was primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl, as well as to provide passive recreational outlets. There was a general presumption against development within this zone. There was no strong planning justification in the submission for a departure from the planning intention;
  - (b) The applied development was not in line with the Town Planning Board Guidelines for ‘Application for Development within the Green Belt zone under Section 16 of the Town Planning Ordinance’ in that the applicant failed to demonstrate that the applied development would not have significant adverse environmental and landscape impacts on the surrounding areas; and
  - (c) Approval of the application would set an undesirable precedent for similar applications for warehouse use within the “GB” zone. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.

## **Application for Review of the RNTPC’s Decision**

10. On 12 January 2022, the Appellant applied for a review of the RNTPC’s Decision (“**the Review Application**”). By its Decision dated 2 September 2022, the TPB decided to reject the Review Application for the same reasons as those given by the RNTPC.

## The Present Appeal

11. By Notice of Appeal dated 22 November 2022, the Appellant lodged an appeal against the Decision. The Grounds of Appeal given in the Notice of Appeal (“**the Grounds of Appeal**”) can be summarized as follows :-
- (a) The landscape and ecological value of the Appeal Site when compared to other parts of the “GB” zone are not significant (“**Ground of Appeal (a)**”);
  - (b) The Application would not set an unfavourable precedent (“**Ground of Appeal (b)**”);
  - (c) No adverse comment from the Transport Department and the Highways Department (“**Ground of Appeal (c)**”);
  - (d) Minimal environmental impact on the surrounding area (“**Ground of Appeal (d)**”);
  - (e) Suitable land for open storages and warehouses become rare due to land resumption for New Development Area development (“**Ground of Appeal (e)**”); and
  - (f) The Application is not incompatible with the surrounding area as there are a number of warehouses and open storages along Deep Bay Road (“**Ground of Appeal (f)**”).

## APPLICABLE LEGAL PRINCIPLES

12. Counsel for the TPB submitted, relying on *Town Planning Appeal No. 15 of 2011* (unrep, 27 Feb 2014) §§18-26, that the applicable legal principles relevant to this appeal can be summarized as follows :-
- (a) In considering an appeal against the decision of the TPB, this Appeal Board must exercise an independent planning judgment and is entitled to disagree with the TPB. This Appeal Board can substitute its own decision for that of the TPB even if the TPB had not strictly committed any error on the materials before it, as the hearing before this Appeal Board would normally be much fuller and more substantial than a review hearing under section 17 of the TPO.

- (b) The TPB’s independent planning judgement (as with this Appeal Board’s discretion) to grant planning permission must be exercised within the parameters of the relevant approved plan:
- (i) In *Henderson Real Estate Agency Ltd v Lo Chai Wan* [1997] HKLRD 258, the Privy Council held that under section 16(4) of the TPO, the TPB may grant planning permission “only to the extent shown and provided for or specified in the plan” (at 261E-F).
  - (ii) In *International Trader Ltd v Town Planning Appeal Board* [2009] 3 HKLRD 339, the Court of Appeal considered the wording of section 13 of the TPO, which provides that “Approved plans shall be used by all public officers and bodies as standards for guidance in the exercise of any powers vested in them”, and held that the effect of section 13 is to “impose on all public officers and all public bodies the statutory duty to have reference to approved plans as the recognised measure by which they are to be guided; that is, directed, in the exercise of their powers.”
  - (iii) It is the duty of the TPB (and hence this Appeal Board) to see that the relevant town plan is faithfully implemented.
  - (iv) The TPB and this Appeal Board have no authority to deviate from the plan “however compelling other material considerations to the contrary might be”.
  - (v) Planning permission can only be granted for a development which is in line with the planning intention.
- (c) The OZP and the Notes are material documents to which this Appeal Board is bound to have regard to in exercising its independent judgment and, indeed, they are the “most material documents”. Whilst the Explanatory Statement (“ES”) is expressly stated not to be part of the plan, they are material considerations that this Appeal Board must have proper regard to. Similarly, the guidelines promulgated by the TPB are also material considerations to be taken into account. See *Henderson Real Estate Agency Ltd v Lo Chai Wan*, *ibid.* at 267A-C and *Hong Kong Resort Ltd v Town Planning Board* [2021] HKCA 1313 at §31.
- (d) It is relevant to consider whether the proposed development would result in an additional gain to the community. Conversely, if the proposed development is likely to have adverse impacts on the

vicinity, the applicant has to satisfy the TPB that it is able to take adequate preventive or mitigation measures to mitigate such impacts.

- (e) In determining the merits of an appeal, this Appeal Board should have regard to the principle of consistency, always bearing in mind that its decision in granting or refusal to grant planning permission would become a precedent for similar applications in the future.
- (f) There is a clear distinction in principle between the grant of planning permission and its implementation.
- (g) The burden is on the Appellant to demonstrate to this Appeal Board that the TPB's decision was wrong and should be reversed or varied. It is also incumbent upon the Appellant to satisfy this Appeal Board that the Application is in line with the planning intention of the "GB" zone and that there is sufficient justification to warrant this Appeal Board granting planning permission for it.

13. Counsel for the TPB further submitted that the following principles are also applicable :-

- (a) The starting point is that the provisions within the same document, and other relevant documents (such as the OZP and its Notes, the Explanatory Statement and the TPB guidelines), must be read together harmoniously and consistently rather than discordantly. It is only if the TPB or this Appeal Board cannot give a harmonious and congruous reading and there is an actual inconsistency should there arise any question of whether one clause or one document prevails. See *Ko Hon Yue v Chiu Pik Yuk* (2012) 15 HKCFAR 72 at §54.
- (b) Where a guideline has been introduced, there may be good reason for departing from it but the repository of a power is not at liberty to ignore, depart from or qualify the content of the provisions without cogent reasons. See *Capital Rich Development Ltd v Town Planning Board* [2007] 2 HKLRD 155 at §81(5) and *Shiu Wing Steel Ltd v Director of Environmental Protection & Airport Authority (No.2)* (2006) 9 HKCFAR 478 at 497.

14. The above principles are well established and we unhesitatingly accept them as being correct and applicable. Nor has the Appellant disputed the correctness thereof.

## RELEVANT PLANS & GUIDELINES

15. As noted above, the relevant governing plans are the Draft OZP and the OZP which are in all material respects identical.
16. Under both the Draft OZP and the OZP,
  - (a) In the Schedule of Uses under the Notes, the Planning Intention of the GB zone is stated to be *“primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within this zone.”*
  - (b) The Remarks immediately below the paragraph setting out the Planning Intention of the GB zone (**“the Remarks”**) state that :

*“Any filling of land/pond or excavation of land, including that to effect a change of use to any of those specified in Columns 1 and 2 above or the uses or developments always permitted under the covering Notes (except public works co-ordinated or implemented by Government, and maintenance, repair or rebuilding works) shall not be undertaken or continued on or after the date of the first publication in the Gazette of the notice of the interim development permission area plan without the permission of from the Town Planning Board under section 16 of the Town Planning Ordinance.”*
  - (c) In §9.10.4 of the Explanatory Statement, it is stated that

*“As filling of land/pond or excavation of land may cause adverse drainage impacts on the adjacent areas and adverse impacts on the natural environment, permission from the Board is required for such activities.”*
  - (d) §(3) of the Notes states that

*“No action is required to make the use of any land or building, which was in existence immediately before the first publication in the Gazette of the notice of the interim development permission area plan conform to this Plan, provided such use has continued since it came into existence. Any material change of such use or any other development (except minor alteration*



*and/or modification to the development of the land or building in respect of such use which is always permitted) must be always permitted in terms of the Plan, or in accordance with a permission granted by the Town Planning Board.”*

- (e) §(11)(b) of the Notes states that (subject to exceptions which are not applicable to the Application) *“temporary use or development of any land or building not exceeding a period of three years requires permission from the Town Planning Board”*.
17. The Lau Fau Shan and Tsim Bei Tsui Interim Development Permission Area Plan gazetted on 17 August 1990 (“**the IDPAL**”) is the relevant *“interim development permission area plan”* referred to in the Remarks and §(3) of the Notes. That date is significant as Plan AP-3j referred to in Paragraph 6 hereinabove was taken on 18 August 1990 one day after the IDPAL was gazetted.
18. In July 1991, the TPB promulgated the “Town Planning Board Guidelines for Application for Development within the Green Belt Zone under Section 16 of the Town Planning Ordinance” (“**TPB PG-No.10**”).
19. §1.1 of TPB PG-No.10 reiterated that *“The planning intention of the Green Belt (“GB”) zone is primarily to promote the conservation of the natural environment and to safeguard it from encroachment by urban-type developments”*.
20. The Main Planning Criteria set out in TPB PG-No.10 which are relevant to the Application and this Appeal are as follows:
- (a) *“There is a general presumption against development (other than redevelopment) in a “GB” zone. In general, the Board will only be prepared to approve applications for development in the context of requests to rezone to an appropriate use.”* (Criterion 2(a))
- (b) *“An application for new development in a “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds. The scale and intensity of the proposed development including the plot ratio, site coverage and building height should be compatible with the character of surrounding areas.”* (Criterion 2(b))
- (c) *“The design and layout of any proposed development should be compatible with the surrounding area. The development should*

*not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment.” (Criterion 2(g))*

- (d) *“The vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features.” (Criterion 2(h))*
- (e) *“The proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, road and water supply. It should not adversely affect drainage or aggravate flooding in the area.” (Criterion 2(i))*
- (f) *“The proposed development should not be susceptible to adverse environmental effects from pollution sources nearby such as traffic noise, unless adequate mitigating measures are provided, and it should not itself be the source of pollution.” (Criterion 2(l))*
- (g) *“Any proposed development on a slope or hillside should not adversely affect slope stability.” (Criterion 2(m))*

21. As to the meaning of “development”, we accept the submissions of counsel for the TPB that :-

- (a) Pursuant to section 1A of the TPO, “*development (發展) means carrying out building, engineering, mining or other operations in, on, over or under land, or making a material change in the use of land or buildings*”; and
- (b) The definition of development is understood to have two limbs: (1) operations; and (2) material change of use : *Halsbury’s Laws of Hong Kong (2<sup>nd</sup> edn) [385.242]*, citing *R v Way Luck Industrial Ltd [1995] 2 HKC 290 (see 293B-C)*.

## **MERITS OF THE PRESENT APPEAL**

22. In the Appellant’s Opening Submissions, the Appellant did not seek to address its Grounds of Appeal as such but instead put forward 10 “justifications to appeal” under paragraphs numbered (a) to (j), some of

which overlapped with the Grounds of Appeal. We shall consider the Grounds of Appeal and these “justifications to appeal”.

### **Justification to Appeal (a) – “Existing use”**

23. The Appellant contends that the structures on the Appeal Site existed since the 1990s and the proposed use of the Appeal Site for which permission is sought under the Application should be regarded as “existing use” because the structures and use existed before the IDPAL.
24. For the reasons set out below, we see no merit in the Appellant’s contentions and readily reject them.
25. As noted above, according to §(3) of the Notes, no action was required to make the use of any land or building which was in existence immediately before the gazettal of the IDPAL conform to the Draft OZP/OZP, “*provided such use has continued since it came into existence*”. However, “*any material change of such use or any other development must be always permitted in terms of the [OZP] or in accordance with a permission granted by the [TPB]*”.
26. We accept the submissions of counsel for the TPB that the wording of §(3) of the Notes suggests that the burden is on the Appellant to adduce sufficient evidence to prove that (1) the alleged existing use had been in existence immediately before the gazettal of the IDPAL (on 17 August 1990), and (2) that such use has continued since the gazettal of the IDPAL.
27. However, even on the Appellant’s own (latest) position, the Appellant is merely claiming that it “*had already carried out pig farming cum storage construction material business at the application site since 90s*” (emphasis added). The Appellant has, however, adduced no evidence at all to prove the actual use of the Appeal Site and/or the structures on the Appeal Site immediately before 17 August 1990.
28. Conversely, by reason of what this Appeal Board has already discussed in Paragraphs 6 and 7 hereinabove, the use of the Appeal Site for which the Appellant is now seeking permission under the Application had been commenced and undertaken by the Appellant after the gazettal of the IDPAL, is in breach of MNT/L 19865 and MT/LM 11688 and is without proper planning permission as provided for under §(3) of the Notes.

### **Justification to Appeal (b) – Not a “new development”**

29. For the reasons set out in Paragraphs 21 and 25 to 28 hereinabove, we reject the Appellant’s Justification to Appeal (b).

### **Justification to Appeal (c) & Ground of Appeal (a)**

30. The Appellant contends that the landscape and ecological value of the Appeal Site are not significant when compared to other parts of the “GB” zone *“as there is currently no tree and vegetation within the [Appeal Site] as well as the nearby area so it would not involve any clearance of the existing natural vegetation, affect existing natural landscape, or cause any visual impact on the surrounding environment”*.
31. Plan AP-3j (taken on the day immediately following the gazettal of the IDPAL) shows that whilst part of the Appeal Site had been formed and erected with structures, the western and northern portions (about 875m<sup>2</sup> or 15.3%) as well as other (albeit small) parts of the Appeal Site were still covered by vegetation. Further, as this Appeal Board has noted in Paragraph 6 hereinabove, between the dates of Plan AP-3j and Plan AP-3i (taken on 28 April 1992), vegetation on a large area of land comprising both land within and to the west of the Appeal Site had been removed. Additionally, Plans AP-3f (taken on 21 June 2013) to AP-3d (taken on 14 November 2014) show that between the dates of those plans, further vegetation had been cleared from the Appeal Site, in particular, to create access to Deep Bay Road.
32. Thus that *“there is currently no tree and vegetation within the [Appeal Site]”* is due to the Appellant’s previous actions for which it had not obtained permission from the TPB and which were also in breach of MNT/L 19865 and MT/LM 11688.
33. Indeed, the Chief Town Planner/Urban Design and Landscape of the Planning Department has expressed reservations on the Application as she is of the view that the Appellant’s previous actions had had significant *landscape* impact (see RNTPC Paper No. A/YL-LFS/411 at §10.1.5 & TPB Paper No. 10863 at §5.3.1).
34. We unhesitatingly reject the Appellant’s Justification to Appeal (c) and Ground of Appeal (a). To accept the Appellant’s contentions would be tantamount to our endorsing the Appellant’s previous unpermitted

destruction of vegetation on the Appeal Site and on a large area of land adjacent to the Appeal Site as noted in Paragraph 6 hereinabove (which was clearly against the planning intention of the “GB” zone). This cannot be correct, in particular because it will encourage similar wrongful actions in the area, the cumulative impact of which would result in further degradation of the landscape character and quality of the surrounding environment and undermine the planning intention of the “GB” zone.

**Justification to Appeal (d) & Ground of Appeal (b) : The Application would not set an unfavourable precedent**

35. For the reasons set out in Paragraphs 25 to 28 and 30 to 34 hereinabove, we reject the Appellant’s Justification to Appeal (d) and Ground of Appeal (b).

**Justification to Appeal (e) : No adverse comment from some government departments**

36. In the light of Criteria 2(a) and 2(b) of the Main Planning Criteria set out in TPB PG-No.10, it is incumbent on the Appellant to demonstrate that there are exceptional circumstances and strong planning grounds warranting departure from the general presumption against development in the “GB” zone. The Appellant has failed to point to any such exceptional circumstances or strong planning grounds. We are of the view that the mere fact that there is no objection from certain government departments cannot be regarded as an exceptional circumstance or a strong planning ground to warrant a departure from the planning intention of the “GB” zone. We reject this Justification to Appeal.

**Justification to Appeal (f) & Ground of Appeal (d) : Minimal environmental impact on the surrounding area**

37. The Appellant selectively seeks to rely on one comment of the Director of Environmental Protection that “*there is no substantiated environmental complaint pertaining to the [Appeal Site] received in the past 3 years*” (see RNTPC Paper No. A/YL-LFS/411 at §10.1.4(b) & TPB Paper No. 10863 at §5.2.1(b)) but chooses to ignore the comment of the Director of Environmental Protection that he does not support the Application as the applied use involves heavy vehicles and environmental

nuisances are expected (see RNTPC Paper No. A/YL-LFS/411 at §10.1.4(a) & TPB Paper No. 10863 at §5.2.1(a)).

38. The Appellant however claims in its Opening Submissions that “*there will only be two trips of vehicles below 5.5 tonnes entering/leaving the [Appeal Site] each day (from Monday to Saturday)*”. Even taking this into account, we are not satisfied that the Appellant has demonstrated that there are exceptional circumstances and strong planning grounds warranting departure from the general presumption against development in the “GB” zone. We reject this Ground of Appeal and this Justification to Appeal.

**Justification to Appeal (g) & Ground of Appeal (f) : Not incompatible with the surrounding area as there are a number of warehouses and open storages along Deep Bay Road**

39. This ground overlaps to a certain degree with Ground of Appeal (a).
40. The Appeal Site is situated in an area rural in character and predominated by woodland. As can be seen from Plan AP-3j (taken on 18 August 1990), the Appeal Site and its immediate environs were rural in character and predominantly covered by vegetation. Further, both the Appeal Site and the large plot of land located to the south-west of the Appeal Site (“**the South West Plot**”) appeared then to be used for agriculture. In this regard, it is important to note that “Agricultural use” is one of the uses always permitted in the “GB” zone. Whilst Plan AP-3g (taken on 12 July 2007) and Plan AP-3f (taken on 21 June 2013) show that the use of the South West Plot had gradually been changed and, by 21 June 2013, had been paved over and apparently non-agricultural structures built thereon, and the Appeal Site had undergone the changes adumbrated in Paragraph 6 hereinabove over the years, Plans AP-1, AP-3a and AP-3b show that the Appeal Site and the South West Plot only form a relatively small part of a much larger area which is generally covered by greenery and which all fall under the “GB” zone.
41. Although there are warehouses, recycling yard and a vehicle park in the vicinity of the Appeal Site, they are suspected unauthorized developments subject to planning enforcement actions (see TPB Paper No. 10863 at §7.8). They should not have existed in the first place.

42. Whilst the Appellant claims that “*it could roughly be estimated that more than 30 numbers of warehouse and open storage use are falling within this ‘GB’ zone*”, no evidence as to this has been adduced by the Appellant.
43. In the circumstances, we are of the view that by nature, the proposed use of the Appeal Site for which the Appellant seeks planning permission is not compatible with the “GB” zone and the surrounding environment and we reject this Ground of Appeal and this Justification to Appeal.

**Justification to Appeal (h) : The old structures on the Appeal Site should not be regarded as unauthorized structures**

44. The Appellant contends that “*The old structures on the Appeal Site should not be regarded as unauthorized structures as they were covered by [MNT/L 19865 and MT/LM 11688] until 4.2.2021*”. This is wholly misconceived. As adumbrated in the Paragraphs 6 and 7 hereinabove, the Appeal Site had been cleared, re-formed and erected with structures in around 2013 and 2014. None of the structures now on the Appeal Site are the structures which had been authorised under MNT/L 19865 and MT/LM 11688. Indeed, the Notice of Termination of MNT/L 19865 and MT/LM 11688 had been issued on 29 June 2020 by reason of the Appellant’s breaches thereof and MNT/L 19865 and MT/LM 11688 had been terminated by reason of the Appellant’s failure to rectify such breaches. We unhesitatingly reject Justification to Appeal (h).

**Ground of Appeal (e) : Suitable land for open storages and warehouses become rare due to land resumption for New Development Area development**

45. Nothing in the Draft OZP or the OZP (including the Notes and Explanatory Statements thereto) suggests that shortage of suitable land for open storages and warehouses is a relevant planning consideration which can overcome the general presumption against development within the “GB” zone. Nor is there anything in the TPB PG-No.10 which suggests that such shortage constitutes exceptional circumstances or strong planning grounds warranting departure from the general presumption against development in the “GB” zone. We accordingly reject this Ground of Appeal.
46. Even if shortage of suitable land for open storages and warehouses is a relevant consideration, according to the Planning Department’s records,

since the rejection of the Application by the RNTPC, there have been three applications (Nos. A/YL-LFS/441, 455 and 478) approved with conditions by the RNTPC for new temporary warehouse at the “Recreation” zone of the OZP to the south of the subject “GB” zone in the same OZP. The Appellant has not demonstrated that it has tried to obtain permission for use of land for new temporary warehouse in the “Recreation” zone of the OZP. This further supports our decision to reject this Ground of Appeal.

**Justification to Appeal (i) : The 2021 Policy Address announced that the Tsim Bei Tsui, Lau Fau Shan and Pak Nai Areas were identified as part of the Northern Metropolis for development. The applied for warehouse use is of a temporary nature for a period of three years and may be revoked when there is any conflict with the future planning use**

47. We reject the Appellant’s contentions under this Justification to Appeal as the Appellant has failed to demonstrate that they are relevant planning considerations or that they constitute exceptional circumstances or strong planning grounds warranting departure from the general presumption against development in the “GB” zone.

**Justification to Appeal (j) : Due to the recent mass development/clearance in the New Territories, such as San Tin, Kwun Tong areas, there is acute shortage of land for logistics, transportation and storage of bulky construction materials in the New Territories**

48. For the same reasons that we rejected Ground of Appeal (e), we reject this Justification to Appeal.

## **CONCLUSION**

49. For all the above reasons, the Appellant’s appeal is dismissed.



(Signed)

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Mr. YAN Mang-ye, John, S.C., J.P.  
( Chairman )

(Signed)

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Mr. CHAN Bo-ching  
( Member )

(Signed)

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Mr. LAU Hing-tat, Patrick, J.P.  
( Member )

(Signed)

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Mr. PONG Yiu-po, Daniel  
( Member )

(Signed)

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Mr. WONG Ling-sun, Vincent, J.P.  
( Member )