

LAND ACQUISITION ACT

APPEALS BOARD

AB 2002.001

In the Matter of the Acquisition of Land at
Lots 364 and 365 of Mukim 25

Between

Beng Tiong Realty Pte Ltd

... Appellant

And

Collector of Land Revenue

... Respondent

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue of compensation in an amount of \$290 000 in respect of the land at Lots 364 and 365 of Mukim 25 be increased to \$570 000;

And

(2) That the Collector of Land Revenue pay to the appellant the amount of such increase together with interest at 6% per year from the date of taking possession;

And

(3) That the deposit paid by the appellant be paid out to the appellant;

And

(4) That there be no order as to costs.

BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

Appeal

(1) On 28 April 2001 ("acquisition date") a notification No 1156 was published in the *Gazette* under s 5 of the Land Acquisition Act ("s 5 declaration") declaring that the land at Lots 364 and 365 of Mukim 25 ("acquired land") was needed for a public purpose namely Proposed Kallang-Paya Lebar Expressway. The same notification was also published at the same time in the same *Gazette* declaring that the land at Lot 366-1 of Mukim 25 ("Lot 366-1") was needed for the same public purpose. The appellant was then the proprietor of the acquired land and also of Lot 366-1 in each case for an estate in fee simple and is a person interested.

(2) For the purpose of the inquiry held under s 10 the appellant submitted a claim to compensation of \$6 163 595.18 as to \$5 600 000 for market value of the acquired land and Lot 366-1 together and as to \$563 595.18 for certain losses and expenses. The respondent ("Collector") found that the market value of the acquired land as at the acquisition date was \$290 000 and on 27 November 2001 he made an award of compensation in that amount. The same day he also made an award of compensation in the amount of \$800 000 in respect of Lot 366-1.

(3) The appellant appeals against the award in respect of the acquired land. It also appeals against the award in respect of Lot 366-1 in AB 2002.003 and it was agreed between the parties that this appeal would be heard first and that the evidence in this appeal might be used in AB 2002.003 which would follow immediately after.

Acquired Land

(4) Lots 364 and 365 are trapezoidal plots bounded on the North by Lot 362-2, on the East by Lots 1183 and 366-1, on the South by Lot 1185 and on the West by Lot 3258. Lot 1185 is "L" shaped and is separated from Lot 366-1 by Lot 366-2. The two lots in the acquired land share a common boundary. The site areas of Lots 364 and 365 are 415.9sm and 434.1sm for a total of 850sm and the site area of Lot 366-1 is 350.6sm.

(5) The Certified Interpretation Plan ("CIP") dated 25 June 2001 in the appellant's bundle shows that Lot 3258 is State Land and all the other Lots by which the acquired land is bounded are privately owned. Lot 366-1 has direct access to Lorong 4 Geylang. The acquired land is land-locked but that part of Lot 3258 adjacent to Lot 365 which is sometimes incorrectly referred to as Lorong 2 Geylang was for some time in the past a carpark with direct access to Geylang Road and from the photographs in the appellant's bundle it appears that the acquired land enjoyed the benefit of such access.

(6) The acquired land is about 50m off Geylang Road close to its city end. It is about 5km from the city centre at Collyer Quay. Lot 3258 is the site of the former Gay World Park and the Geylang Indoor Stadium. There are a variety of shops and eating houses in nearby Geylang Road and a number of residential apartment

buildings and budget hotels between Lorong 4 Geylang and Lorong 8 Geylang. From the CIP in the appellant's bundle and another CIP produced by the Collector it is clear that the whole of Lot 365 and about 80% of Lot 364 was zoned Road in the Master Plan as at the acquisition date. All that was left of Lot 364 was a narrow strip of 84.1sm and this was zoned Residential/Institution. Lot 366-1 was also zoned Residential/Institution.

(7) The acquired land was also adversely affected by a road line ("RL"). A Road Interpretation Plan ("RIP") dated 23 November 1999 (as it was then known as) in the appellant's bundle shows that the whole of the acquired land and about 90% of Lot 366-1 were then adversely affected. All that was left of Lot 366-1 was a narrow strip abutting Lorong 4 Geylang. The RL was subsequently redrawn. As at the acquisition date the whole of the acquired land was still adversely affected but now only about one half of Lot 366-1 was adversely affected by a Category 1 (Expressway) road reserve.

Compensation

(8) Section 33 of the Act provides:

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall ... take into consideration the following matters and no others:

(a) the market value -

(i) ...

(C) as at 1st January 1995 in respect of land acquired on or after 27th September 1995;

(ii) as at the date of publication of the notification under section 3(1) if the notification is, within 6 months from the date of its publication, followed by a declaration under section 5 in respect of the same land or part thereof; or

(iii) as at the date of publication of the declaration made under section 5,

whichever is the lowest;

...

(5) For the purposes of subsection (1)(a) -

...

(e) the market value of the acquired land shall be deemed not to exceed the price which a bona fide purchaser might reasonably be expected to pay for the land on the basis of its existing use or in anticipation of the continued use of the land for the purpose designated in the Development Baseline referred to in section 36 of the Planning Act 1998, whichever is the lower, after taking into account the zoning and density requirements

and any other restrictions imposed under the Planning Act 1998 and any restrictive covenants in the title of the acquired land, and no account shall be taken of any potential value of the land for any other more intensive use

No notification under s 3(1) was published and the s 5 declaration was published on 28 April 2001 (the acquisition date as noted earlier) and it is common ground that the market value as at 28 April 2001 was lower than as at 1 January 1995 and it is the market value as at 28 April 2001 that among other matters has to be taken into consideration.

Petition of Appeal

(9) In the petition of appeal in both this appeal and in AB 3/2002 the appellant claims \$3 566 000 for market value of the acquired land together with Lot 366-1 and "costs, including stamp duties, disbursements and legal and valuers' charges". In para 1(e) of the petition of appeal in this appeal read together with the grounds of appeal referred to the appellant says that:

- (a) the Collector failed to consider use of the acquired land, together with Lot 366-1, as a development site;
- (b) the Collector failed to adopt appropriate comparable transactions to determine the award; and
- (c) the Collector erred in using transactions of properties affected by road lines as comparables as this does not reflect the true fair market value of the acquired land.

These will be referred to as paras (a), (b) and (c) of the grounds of appeal. The appellant relies on an additional ground of appeal in AB 2002.003.

(10) At the hearing the appellant adduced evidence that the market value was \$3 335 000 if the acquired land and Lot 366-1 were "treated as one under a single ownership" or \$1 437 229 for the acquired land and \$1 202 207 for Lot 366-1 for a rounded off total of \$2 639 000 if they were "valued as two separate parcels". The Collector adduced evidence that the market value of the acquired land was \$570 000 and he did not seek to support his finding that it was \$290 000.

Appellant's Valuation

(11) Mr Yee Ming Yeow of Dennis Wee Realty Pte Ltd testifying for the appellant referred to his final report which was included in the appellant's bundle and which contained a reference to the following transactions:

<i>Property</i>	<i>Site Area</i>	<i>Price /sm Site Area</i>	<i>Transaction Date</i>
1 Lot 366-1 Mk 25 (Residential/Institution)	350.6sm	\$838 000 \$2 390/sm	1999 Dec 4
2 Lot 364 Mk 25	415.9sm	\$710 000	2000 Mar 3

(Part Road/Part
Residential/Institution)

\$1 707/sm

These were the two transactions by which the appellant bought Lot 366-1 and Lot 364. Mr Yee said that he adopted these as comparable transactions. He determined the market value under what he called Scenario 1 in which "all 3 lots [were] treated as one under a single ownership" and alternatively under Scenario 2 in which "the 3 lots [were] valued separately under Lot 366-1 as one and [Lots] 364 and 365 as another".

(12) For his analysis in both Scenario 1 and Scenario 2 Mr Yee found that the site area of the part of Lot 364 zoned Residential/Institution was 84.1sm. Including the whole of Lot 366-1 the site area zoned Residential/Institution was 434.7sm and the site area zoned Road was 765.9sm. He assumed that the market value of the acquired land and Lot 366-1 together was the sum of the values of the part zoned Residential/Institution and of the part zoned Road.

(13) To determine the value of the part zoned Residential/Institution he adjusted the site area rate derived from the Lot 366-1 transaction down to \$2 280/sm for time by reference to the indices in URA, *Property Market Information* ("PPI"). He then adjusted this by +50% for improvement from change of RL. At the time of the transaction Lot 366-1 was about 90% adversely affected and at the acquisition date it was only about 50% adversely affected. He then adjusted this further by another 20% (after the adjustment for improvement from change of RL) for enlargement of the site by treating the 3 Lots as one plot. He derived an adjusted site area rate of \$4 109/sm which he applied to the site area of the part zoned Residential/Institution for a value of \$1 784 009.

(14) To determine the value of the part zoned Road Mr Yee adjusted the site area rate derived from the Lot 364 transaction down to \$1 579/sm for time by reference to PPI. As this is for a mixed zone site he adjusted it by -5% to derive the Road zone rate and he adjusted the result by +35% for enlargement of the site. He derived an adjusted rate of \$2 025/sm and applying this to the site area of the part zoned Road he found a value of \$1 550 999. He added the two values and concluded that the market value of the acquired land and Lot 366-1 together was \$3 335 000 as at the acquisition date.

(15) For Scenario 2 Mr Yee adopted the same approach and made the same adjustments for time, for improvement from change of RL and for mixed zone but no adjustment was made for enlargement of the site. He concluded that the market value of the acquired land as at the acquisition date was \$1 437 229 (and \$1 202 207 for the market value of Lot 366-1 rounded off to \$2 639 000 for the market values of the acquired land and of Lot 366-1).

Collector's Valuation

(16) Ms Chee Hok Yean of Jones Lang LaSalle Property Consultants Pte Ltd testifying for the Collector stated in her valuation report dated 6 March 2003 that she arrived at her valuation by inference from transactions of comparable properties but she referred to the following single transaction only:

<i>Property</i>	<i>Site Area</i>	<i>Price /sm Site Area</i>	<i>Transaction Date</i>
1 Lot 365 Mk 25	434.1sm	\$405 000 \$932.96/sm	1996 Dec 30

Lot 365 is one of the two Lots comprised in the acquired land. 30 December 1996 was the date of the transfer and the contract date would have been earlier. The buyer in the transaction Universal Development Pte Ltd ("Universal Development") carried out certain improvement works and let the property out to "two groups of people" as one of its directors Chew Lay Seong said before selling it to the appellant in January 1997 for \$730 000.

(17) Ms Chee adjusted the site area rate of \$932.96/sm by -25% for time and -10% for size for a total adjustment of -35% or an adjusted site area rate of \$606/sm. She applied this to the total site area of Lots 364 and 365 and concluded that the market value of the acquired land as at the acquisition date would have been \$520 000. She also referred to PPI for the adjustment for time. She heard the evidence of Chew Lay Seong who said that the company spent more than \$100 000 on improvements and taking into account depreciation over the years down to the acquisition date Ms Chee allowed \$50 000 for these improvements as a further adjustment and concluded that the market value as at the acquisition date was \$570 000. Ms Chee was aware of the January 1997 transaction but she rejected this as a comparable.

Grounds of Appeal

Para (a)

(18) The appellant alleges that the Collector failed to consider use of the acquired land together with Lot 366-1 as a development site. This ground raises at least two distinct questions: *first* whether Lots 364, 365 and 366-1 should be considered together as the "particular land" that was declared to be required or needed under s 5, and *secondly* if they should be considered together then whether it should be valued as a development site. As to the first question it is a matter of some regret that in answer to this Board counsel for the appellant said that he was not referring to the award or to the s 5 declaration in either appeal and these documents and the *Gazette* in which the notification or notifications were published were not produced and any advantage that might have been gained by reference to these documents or perusing their terms has not been availed of.

(19) No submissions have been addressed to this Board on the first question but it is a matter of some importance and this Board should state its views even if they can only be tentative in the circumstances. Section 5 of the Act provides:

(1) Whenever any *particular land* is needed -

(a) for any public purpose ...

the President may, by notification published in the *Gazette*, declare *the land* to be required for the purpose specified in the notification.

[italics added]

Upon the publication of the notification the Collector will be directed to take proceedings for the acquisition of *the land*. See s 6. See also ss 7, 8 and 9. The Collector is required by s 8 to give notice requiring all persons interested in *the land* to appear before him at the time and place appointed to state the amount and particulars of their claims to compensation among other things. Section 10 provides:

(1) On the day so fixed, or on any other day to which the inquiry has been adjourned, the Collector shall proceed to inquire into ... the value of *the land* ... and shall, as soon as possible after the conclusion of the inquiry, make an award under his hand of -

...

(b) the compensation which in his opinion should be allowed for *the land*

[italics added]

It appears that the award of compensation under s 10 is the award of compensation for *the particular land* which has been declared to be required under s 5.

(20) As noted above the s 5 declaration and the *Gazette* in which it was published have not been produced. No evidence has been given as to the identity of the "particular land" described in the declaration. The Collector's notice under s 8 has also not been produced. From his grounds of award in both the two appeals it appears that the same declaration namely No 1156 dated 20 April 2001 was published in the same *Gazette* namely *Gazette* No 18 of 28 April 2001 and that by what appears to be the same declaration "notice pursuant to s 5 ... was given" that the acquired land was needed for a public purpose and also that Lot 366-1 was needed for the same public purpose. There is nothing unusual about this. Where land is intended to be acquired it may comprise a number of land lots in respect of some of which there may be only one person interested as in this case and in respect of others there may be other persons interested and all the land lots may be comprised in the same s 5 declaration.

(21) On 28 May 2001 the Collector proceeded with the inquiry under s 10. The Collector said in his grounds of award that "no claim to compensation was submitted at the inquiry" and that on 27 July 2001 a claim was submitted. He went on to say that he made his award "after giving due consideration to the appellant's claim". It is clear that the claim was made before the conclusion of the inquiry and that it was made for the purpose of the inquiry. The claim included a claim for the market value of the acquired land and Lot 366-1 taken together as one site.

(22) If it is necessary to come to a decision on this question this Board would have said that where one person is as in this case or the same persons are the person or persons interested in respect of two or more land lots which are being acquired in pursuance of the same s 5 declaration then and in such a case all the land lots together and in this case Lots 364, 365 and 366-1 constitute the "particular land" for the purpose of the s 5 declaration. The Collector should make one award for all the land lots. This Board should add that this is not to be understood as requiring the

Collector to find the market value of the several land lots taken together as one site. He is free to do so just as he is free to find that the market value of all the land lots is the sum of the market values of the several land lots or combination of land lots according to the evidence before him. This will allow the person interested to contend as in this case that all or some of the land lots should be valued together as one site.

(23) What has to be considered now is whether the three Lots should be valued as a development site. John Jeffrey Greig who has been a Planner with the URA since October 1997 said in his affidavit:

(9) In relation to the potential for development on [Lots 364, 365 and 366-1], the firm position as at the acquisition date of 28 April 2001 is as follows:

(a) No developments will be permitted on Lots 364 Mk 25 and 365 Mk 25 as these are within the road reserve lines.

(b) New developments, if any, on Lot 366-1 Mk 25 must be subject to set back requirements drawn from the road reserve lines. Only minor alteration and addition works would have been permitted to the then building on Lot 366-1 Mk 25, and no additional gross floor area or further encroachment into the setback area would be permitted for that portion of the building that lies within the road reserve area. Set back requirements are as follows:

Institutional - at least 15 metres from a Category 1 road

Residential - at least 24 metres from a Category 1 road

Institutional - 3 metres from Lorong 4 Geylang

Residential - 3 metres from Lorong 4 Geylang

It follows that based on setback requirements for the site no viable development would be possible on [Lot] 366-1 Mk 25 as the width of the lot from the road reserve line to the boundary along Lorong 4 Geylang is only about 13 metres.

Mr Greig was not cross examined. As noted above the RL was for a Category 1 road reserve. As at the acquisition date the acquired land was incapable of any development because of the RL and Lot 366-1 was incapable of any viable development because of the setback requirements. Combining any two or all three of these lots together would not address the difficulty in the way of anyone contemplating development of the site and this Board finds that all the three Lots "treated as one under a single ownership" was incapable of any viable development. In the circumstances there was no occasion to consider the use of the three Lots as a development site for the purpose of valuation.

(24) In the decision of this Board this ground of appeal fails. In the result the question whether all the three Lots together constitute the "particular land" for the purpose of the s 5 declaration and only one award should be made or whether one award may be made for the acquired land and another for Lot 366-1 does not arise for the purpose of determining the compensation to be awarded for the acquired land or for Lot 366-1.

Para (b)

(25) The appellant alleges that the Collector failed to adopt appropriate comparable transactions to determine the award but no particulars are given. The appellant does not say which transactions should be adopted as comparable but Mr Yee referred to the appellant's own purchase of Lots 366-1 and 364. Ms Chee referred to the December 1996 sale of Lot 365 to Universal Development and to determine the market value of Lot 366-1 she also referred to the same Lot 366-1 transaction as Mr Yee did. The only transaction she did not refer to was the Lot 364 transaction.

(26) The appellant bought Lot 365 in January 1997 for \$730 000. In January 1998 it entered into an agreement (by exercise of an option) to buy the adjacent Lot 364 for \$800 000 but this agreement was not completed and the deposit and part payment of \$160 000 was forfeited to the seller. The appellant then bought Lot 366-1 in November 1999 for \$838 000 and as it said in its letter dated 27 July 2001 "to complete a good parcel for the purpose of development [the appellant] re-negotiated to purchase the third parcel lot 364 in February 2000 at the price of \$710 000". The \$160 000 forfeited to the seller was taken into consideration. Lot 364 was bought in March 2000 for \$710 000.

(27) Ms Chiang Siew Chee the managing director of the appellant said that the intention was to develop apartments or high-rise buildings. She knew that "based on Lot 365 [she did not think that she] could do anything" and the intention was to "collect". Even with the three Lots the appellant still had to continue to "collect" more land. Ms Chiang said the appellant intended to buy Lot 1183. As at the acquisition date it had not done so. With Lot 1183 the appellant would have a near rectangular plot with a total site area of 1749.2sm and a frontage to Lorong 4 Geylang of about 30m.

(28) The appellant was aware of the RL affecting the properties. Ms Chiang said that before the appellant bought Lot 366-1 she had seen the RL plan. What she saw would have been either the RIP in the appellant's bundle referred to earlier or a plan similar to it. The option to buy Lot 366-1 granted to the appellant was dated 20 November 1999; the RIP was dated 23 November; and the agreement was made (by exercise of the option) on 4 December 1999. The RIP or a similar plan would have shown that the whole of the acquired land and about 90% of Lot 366-1 was adversely affected by the RL. Even with Lot 1183 which would also have been quite substantially adversely affected by the RL it would still be unlikely that the unaffected part would be capable of development for apartments or high rise buildings or for any economic use.

(29) Under cross examination Ms Chiang said:-

A: (To Board) When I bought [Lot 364] contract stated RL there. Very clear.

Q: RL affected entire Lot 364?

(Q explained by Commissioner)

A: Y.

Ms Chiang was clearly referring to the purchase by the appellant. The appellant knew that the whole of Lot 364 was adversely affected by the RL.

(30) Mr Greig said in his affidavit:

(10) I understand that [Lots 364, 365 and 366-1] were purchased on the following dates:

Lot 364 Mk 25: 3 March 2000
Lot 365 Mk 25: 21 January 1997
Lot 366-1 Mk 25: 4 December 1999

In relation to the potential for development on [Lots 364, 365 and 366-1] as at their transaction dates, the firm position is as follows:

(a) No developments will be permitted on any lots that are within road reserve lines.

(b) New developments, if any, must be subject to set back requirements drawn from the road reserve lines. Set back requirements as at the transaction dates (effective up to November 2000) were as follows:

Institutional - at least 30 metres from a Category 1 road
Residential - at least 30 metres from a Category 1 road
Institutional - 6 metres from Lorong 4 Geylang (based on the Geylang Urban Design Guidelines at date of transaction)
Residential - 6 metres from Lorong 4 Geylang (based on the Geylang Urban Design Guidelines at date of transaction)

As noted above the RL was for a Category 1 road reserve. The unaffected part of Lot 366-1 would only be about 2m at the narrowest and 4m at the widest from Lorong 4 Geylang.

(31) The appellant bought the properties subject to existing tenancies. Lim Hwa occupied about one third of both Lots 364 and 365 and paid \$2 420/m rent and Cosmic Stones (S) Pte Ltd occupied the remaining two thirds and paid \$5 150/m rent. Lim Hwa was a *karang guni* man and Cosmic Stones was in the business of dealing in building materials and they used the premises for the storage of the goods of their trade. On site were buildings of temporary construction and the two parts occupied by the tenants were separated by a corrugated iron fence. The buildings and grounds were in a poor state of repair and maintenance. Lot 366-1 was occupied by Chin Loy Electrical Works to house their workmen and also as a store. On site was a single storey raised detached building. The rent paid by Chin Loy was \$2 800/m. Having bought these three Lots and while waiting to "collect" more land the appellant could look to a return of \$10 370 a month by way of rent against a capital outlay of \$2 278 000 or a return on investment of about 5.46%/y. This remained the position down to the acquisition date.

(32) Section 34 of the Act provides:

In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall not take into consideration ...

(h) evidence of sales of comparable properties, unless the Board is satisfied that the sales are made bona fide and not for speculative purposes and the onus of proving that the transactions are made bona fide and not for speculative purposes shall lie with the appellant.

So long as the planning restrictions and the development guidelines which were in force when the Lot 364 transaction took place remained in force the appellant could not carry into effect its intention to develop the properties whether for apartments or for any high rise building and whether taking each Lot singly or taking two or three Lots together. It had to "collect" more land. The RL and planning restrictions had to be favourably changed.

(33) In the decision of this Board the appellant has not discharged the statutory onus of proof. This Board is not satisfied that the Lot 364 transaction was not for speculative purposes. Para (b) of the grounds of appeal fails. The appellant has not shown that the Collector or Ms Chee by whom he was advised failed to adopt appropriate comparable transactions to determine the award (as the appellant alleges) or to determine the amount of the compensation.

Para (c)

(34) The appellant alleges that the Collector erred in using transactions of properties affected by road lines as comparables as this does not reflect the true market value of the acquired land. The appellant did not pursue this ground or did not pursue it vigorously but it has to be said that in the view of this Board this ground of appeal is untenable.

(35) Ms Chee determined the market value by inference from past transactions of comparable properties. There is no evidence that such an approach is for any reason at all inappropriate in the circumstances of this case or generally. It is an approach that is recognised and accepted by the profession. The whole of the acquired land was at the acquisition date adversely affected by the RL. Ms Chee referred to the Lot 365 transaction of December 1996. Lot 365 was similarly affected by the RL at the transaction date as it was at the acquisition date. The effect of the RL on the market value was the same or likely to be so.

(36) In the decision of this Board para (c) of the grounds of appeal fails. The Collector was not in error in using transactions of properties affected by RL as comparables. He was not in error in relying on the advice of Ms Chee who referred to the Lot 365 transaction of December 1996 as a comparable transaction. Ms Chee was not in error in referring to this transaction as a comparable by reason only that Lot 365 was at the transaction date adversely affected by the RL just as the acquired land was adversely affected by the RL at the acquisition date and the Collector was not in error in relying on her evidence.

Market Value as at Acquisition Date

(37) In Scenario 1 Mr Yee determined the market value of the acquired land and Lot 366-1 together as a development site. As noted above he assumed that the market value of the site was the sum of the market values of the part zoned Residential/Institution and of the part zoned Road. This Board has found that the acquired land and Lot 366-1 "treated as one under a single ownership" was incapable of any viable development as at the acquisition date and there was no occasion to consider the use of the three Lots as a development site for the purpose

of valuation. It would be wholly inappropriate to determine the market value of the site by summation of the market values of the two parts zoned differently.

(38) In Scenario 2 Mr Yee as noted above also assumed that the market value of the acquired land was the sum of the market values of the part zoned Residential/Institution and of the part zoned Road. The undisputed evidence is that the acquired land and each of the two Lots comprised in it were incapable of any development as at the acquisition date and this Board finds accordingly. It follows that it is wholly inappropriate to determine the market value of the acquired land by summation of the market values of the two parts zoned differently.

(39) Although the acquired land was incapable of any development it had an existing use. It was let to two tenants who used the site and the buildings on it for the purpose of storage of the goods in their trade. They were paying the appellant the total rent of \$90 840/y. Ms Chee referred to the Lot 365 transaction of December 1996. That was the sale of the property to Universal Development for \$405 000. Universal Development improved the property and let it out before selling it to the appellant for \$730 000 in January 1997.

(40) The sharp rise in the price at which the same property was transacted was not borne out by anything Mr Yee knew as he said. Clearly the appellant was prepared to pay the much higher price albeit after the improvement and the letting to the "two groups of people" because it was "collecting" and it was speculating on the likelihood of favourable changes in the RL or planning restrictions. Its intention was to develop residential apartments or high-rise buildings. Ms Chee rejected the January 1997 transaction as a comparable and on the evidence this Board agrees that it is not a comparable transaction.

(41) This Board accepts the adjustments made by Ms Chee. At the hearing it was agreed that the market value determined on this basis would not exceed the existing use price or the Development Baseline use price for the purpose of s 33(5)(e). In the premises this Board finds that:

- (a) for the purpose of s 33(1)(a) the market value of the acquired land as at 28 April 2001 was the lowest;
- (b) the market value of the acquired land as at 28 April 2001 was \$570 000; and
- (c) the market value so found does not exceed the existing use price or the Development Baseline use price determined in accordance with s 33(5)(e).

Losses, Expenses

(42) In the course of the hearing the parties agreed that the claim would be limited to items 2, 3 and 4 of the list set out in an annexure to the appellant's letter of 27 July 2001 which has been referred to above. These are in each case expenses incurred for legal fees, stamp fees and other disbursements in the purchase of the acquired land (and Lot 366-1) by the appellant. There are no particulars as to the provisions

of the Act that the appellant is relying on and counsel has not addressed this Board on this part of the appellant's case.

(43) In determining the amount of compensation this Board must take into consideration the matters referred to in s 33 and no others and the matters raised in this part of the appellant's case are not any of the matters referred to in s 33. In the decision of this Board the alleged losses and expenses may not be and they will not be taken into consideration.

Award

(44) Taking into consideration the market value as at 28 April 2001 this Board determines that the amount of compensation to be awarded for the acquired land is \$570 000. This exceeds the amount of the Collector's award and this Board orders that the Collector pay to the appellant the excess together with interest at the rate of 6% per year from the date of taking possession to the date of payment.

Costs

(45) This Board gave the parties an intimation of the proposed award and the reasons in both appeals and heard counsel on the question of costs. The proposed award and reasons in this appeal are substantially the same as in this decision and the proposed award and reasons in AB 2002.003 are substantially the same as in the decision which will be given in that appeal.

(46) For the purpose of the inquiry held under s 10 the appellant made a claim of \$6 163 595.18 (which included \$5 600 000 for the market value) but this was a claim in respect of all the three Lots. No amount was stated in the claim for the acquired land alone. In its petition of appeal the appellant stated that the "claim, if any, made pursuant to a Notice under Section 8 of the Act" was \$3 566 000 and claimed this amount for the market value of the three Lots together as a development site. At the hearing the appellant adduced evidence that the market value of the acquired land was \$1 437 229 (if valued as a separate parcel from Lot 366-1) and claimed \$1 510 000 including losses and expenses.

(47) Counsel for the appellant submitted that the appellant had made a claim pursuant to the Collector's notice under s 8 notwithstanding the omission of an amount for the acquired land alone until the hearing. In the circumstances of this case this Board agrees and finds accordingly. In the decision of this Board the claim of the appellant was for \$1 510 000 which included \$1 437 229 for the market value of the acquired land. This exceeds the amount awarded by this Board by more than 20% and in accordance with s 32(4) the appellant is not entitled to its costs.

Dated 2003 July 7

Commissioner of Appeals T Q Lim SC
Assessor Teo Pin
Assessor Yang Soo Suan
2002.001Decision(2)