

LAND ACQUISITION ACT

APPEALS BOARD

AB 2001.045

In the Matter of the Acquisition of Land at
Lot 2105 of Mukim 23
146 Paya Lebar Road

Between

Kai Lim 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 \$3 500 000 in respect of the land at Lot 2105 of Mukim 23 be increased to \$3 990 000;

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 was published in the *Gazette* under s 5 of the Land Acquisition Act ("s 5 declaration") declaring that the land ("acquired land") at Lot 2105 of Mukim 23 together with the building at 146 Paya Lebar Road ("146PLR") was needed for a public purpose namely Construction of Circle Line and Comprehensive Development. The appellant was then the proprietor of the acquired land 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 \$6 500 000 for market value of the acquired land and a sum to be ascertained for expenses under s 33(1)(e). The respondent ("Collector") found that the market value of the acquired land as at the acquisition date was \$3 500 000 and on 12 November 2001 he made an award of compensation in that amount.

(3) The appellant appeals against the award. In its petition of appeal it says that the award is inadequate and does not reflect the market value of the acquired land and that the market value as at the acquisition date was \$5 830 000. At the hearing the Collector adduced evidence that the market value was \$3 640 000 and he did not seek to support his finding that it was \$3 500 000.

Acquired Land

(4) Lot 2105 is a near rectangular plot on the East side of Paya Lebar Road at its junction with and to the South of a cul-de-sac which is also known as Paya Lebar Road. It is about 0.5km to the PIE/Paya Lebar Road interchange for direct access to PIE. The acquired land is in a largely industrial locality. Flatted warehouse and factory buildings are nearby and across Paya Lebar Road on the West are HDB residential flats. Lot 2105 has a road frontage of about 16m to Paya Lebar Road and about 39m to the cul-de-sac.

(5) It was not in dispute that the site was zoned Light Industry and that the maximum permissible gross plot ratio ("MPGPR") was 2.5. 146PLR was at the acquisition date a single storey semi-detached building. From the documents before this Board it appears that the earliest development for which in November 1954 a Certificate of Fitness for Occupation (as it was then called) was issued was of a "Store, Office & Jaga's [Guard's] Quarters" comprising two buildings. At some point in time the two buildings were either extended into or replaced by one much larger rectangular shaped single storey store. In August 1958 planning approval was obtained for the adjacent Lot 1124 in conjunction with Lot 2105 for the "erection of a 2-storey extension" comprising certain facilities on the first storey and "office on the first floor [second storey] as an extension to the existing building over common lot boundary".

(6) At the request of the parties the Board inspected the acquired land and the building on the site of Lot 1124. It appears that at some time in the past there was an

existing building on Lot 1124 and the two storey extension referred to in the planning approval was an extension of this building as far as the common boundary. At the same time the store on Lot 2105 was also extended to the common boundary. At the time of the inspection a wall separated the store from the building on Lot 1124. At the back of the store on the North side there were an office and other facilities and a short flight of steps which led to a higher level above. This higher level part was referred to as Mezzanine 3 for identification. Next to the office there was a gate with direct access to the cul-de-sac. The gate was wide and high enough for a lorry to drive through. Beyond this gate there was another area with a higher level referred to as Mezzanine 1 for identification. On the opposite side of Mezzanine 1 there was a third area with a higher level which was referred to as Mezzanine 2 for identification. At the front of the store there was another gate with direct access to Paya Lebar Road. This gate was also wide and high enough for a lorry to drive through. Mezzanine 1, Mezzanine 2 and Mezzanine 3 are together referred to as the mezzanine floors in this Decision.

(7) At the acquisition date the gross floor area ("GFA") of the store at 146PLR was agreed at 589.88sm. It was also agreed that the GFAs of Mezzanine 1, Mezzanine 2 and Mezzanine 3 were 32.56sm, 106.78sm and 35.53sm respectively. Mezzanine 1 and Mezzanine 2 were built against the walls of the store and it was not disputed that they were otherwise without any walls. Mezzanine 3 was also built against the wall but unlike the other mezzanine floors it was walled in. Mr Lim Hong Liu a director of the appellant said in his affidavit that he inspected 146PLR before the appellant bought it in 1990 and he remembered seeing the mezzanine floors there and that the appellant "did not alter the interior layout of the building".

(8) At the acquisition date 146PLR was used for the appellant's business of buying in bulk, re-packing as necessary and selling building materials such as sand, cement, granite, tiles and steel bars. The gates and the high ceiling of the store allowed lorries to be driven through between Paya Lebar Road and the cul-de-sac and the higher levels of the mezzanine floors facilitated the loading and unloading of the lorries. Some materials were also stored and re-packed in the mezzanine floors. Among the documents in the appellant's bundle is a copy of a certificate by a professional engineer that "the floor (non-suspended) is capable of sustaining at least 30kN/m²". The professional engineer did not testify but it was not disputed that a 10 tonne lorry could be driven through the store for loading and unloading and there was enough room for 3 or 4 lorries to remain in the store at any one time.

(9) The acquired land was adversely affected by a road line ("RL") at the acquisition date. The RL plan shows that the RL runs along and approximately parallel to the front and side of Lot 2105 to a depth of about 5m from the existing Paya Lebar Road and about 2m from the existing cul-de-sac with a corner splay. Part of the front of the store and part of the lean to structures on the side appear to be also directly affected. The area adversely affected is about 166sm which is more than 20% of the area of the whole of Lot 2105. In September 1999 planning permission was granted for additions and alterations to the store although the proposed works were not carried out. Neither the planning permission nor any documents relating to the proposed works were produced and there is no evidence as to the effect of the RL on the proposed works if any.

Compensation

(10) 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.

Appellant's Valuation

(11) Mr Steven Loh of Steven Loh Consulting Pte Ltd testifying for the appellant stated in his valuation report dated 6 January 2003 that he determined the market value by the Direct Comparison approach. He referred to the following transactions:

	<i>Property</i>	<i>Site Area EGFA</i>	<i>Price /sm EGFA</i>	<i>Transaction Date</i>
1	1 Irving Place ("1IP")	586.4sm 327.6sm	\$3 000 000 \$9 158/sm	1999 Dec 29
2	3 Kim Chuan Terrace ("3KCT")	567.8sm 443.7sm	\$3 700 000 \$8 339/sm	2001 Apr 27
3	23 Harper Road ("23HR")	680.4sm 518.4sm	\$5 450 000 \$10 513/sm	1996 May 21
4	23 Harper Road	680.4sm 518.4sm	\$6 000 000 \$11 574/sm	1996 Aug 8
5	124 Paya Lebar Road ("124PLR")	725.8sm 508.5sm	\$4 100 000 \$8 063/sm	1997 Oct 2

"EGFA" was a reference to the equivalent GFA assuming the GFA of the second storey in each case to be equivalent to 80% of the GFA of the first storey and in the table above it represented the total EGFA of the building.

(12) Mr Loh made adjustments for time (except for the 3KCT transaction), EGFA size, building design (except for the 124PLR transaction), location (except for the 23HR and 124PLR transactions), corner lot, and RL (except for the 124PLR transaction) and derived an average value of \$5 827 600. In his analysis he treated the mezzanine floors of 146PLR as equivalent to the second storeys of the properties in the reference transactions and he allowed an adjustment of -5% for RL. 124PLR was a detached building and the adjustment of +5% was not really for corner lot but for the access to 146PLR from the cul-de-sac. Mr Loh concluded that the market value of the acquired land as at the acquisition date was \$5 830 000.

(13) Mr Loh said that Mezzanine 1 and Mezzanine 2 added value to the acquired land although they were "open platforms" as he called them. He said he estimated that it would cost \$139 000 to build these platforms at the rate of \$1 000/sm. The value added as at the acquisition date he said was \$890 000.

Collector's Valuation

(14) Ms Chee Hok Yean of Jones Lang LaSalle Property Consultants Pte Ltd testifying for the Collector stated in her valuation report dated 10 April 2003 that she arrived at her valuation by direct comparison with transactions of comparable properties but she referred to the following single transaction only:

	<i>Property</i>	<i>Site Area GFA EGFA</i>	<i>Price /sm EGFA</i>	<i>Transaction Date</i>
1	124PLR	725.8sm 530.8sm 508.5sm	\$4 100 000 - \$8 063/sm	1997 Oct 2

124PLR was a part 1/part 2 storey building and the GFA stated above represented the total GFA of the two storeys. The EGFA was based on the assumption that the GFA of the second storey was equivalent to 80% of the GFA of the first storey.

(15) Ms Chee adjusted the EGFA rate of \$8 063/sm by -19% for time, -1.5% for EGFA and -3% for age/condition of the building for a total adjustment of -23.5% or an adjusted EGFA rate of \$6 168/sm. She applied this to the EGFA of 146PLR and concluded that the market value of the acquired land as at the acquisition date was \$3 640 000. She assumed that the EGFA of 146PLR was 589.5sm. Her evidence was given before the parties agreed that the GFA of the store other than that of the mezzanine floors was 589.88sm but the difference would have been of no real significance. She did not allow for any part of the GFA of the mezzanine floors.

(16) Ms Chee did not consider any of the other transactions referred to by Mr Loh to be comparable. She said that 1IP was a different type of property. It was a 2 storey corner terrace factory building. It was only about 20+ years old and the land was only marginally affected by a RL. 3KCT was a 2 storey intermediate terrace factory building. It was also only about 20+ years old. There was a RL but it was barely touching the boundary of the site. The probable use would be different. 23HR was also a corner 2 storey factory building of about 20+ years. Again the effect of the RL was marginal.

(17) As noted above Ms Chee did not allow for the GFA of the mezzanine floors. She did not agree that the GFA of the mezzanine floors could be equivalent to 80% of the GFA of the first storey of the store. She agreed that "at best" she would assign a depreciated replacement cost ("DRC") for those structures. In that case she would allow \$100/sm for Mezzanine 1 and Mezzanine 2 and \$150/sm for Mezzanine 3. On the basis of the agreed GFAs of the mezzanine floors the DRC would be about \$13 934 for Mezzanine 1 and Mezzanine 2 and about \$5 329.50 for Mezzanine 3 or a total of \$19 263.50 or about \$20 000.

Market Value as at Acquisition Date

(18) 146PLR was adversely affected by a RL. The RL along Paya Lebar Road is for a Category 2 (Main Arterial) road and about 5m of the front of Lot 2105 is adversely affected while along the cul-de-sac it is for a Category 5 road and about 2m of the side is adversely affected. In the case of 1IP and 23HR the RL is also for a Category 5 road and from the RL plan the effect appears to be minimal or marginal as Ms Chee said. In the case of 3KCT the RL is also for a Category 5 road and from the RL plan it appears to run along the boundary of the existing road and to have no adverse effect at all. This difference in the effect of the RL appears to this Board to be quite substantial and there is no direct evidence as to the effect of such a difference on the price which is most likely to emerge from a transaction involving the acquired land if it were exposed for sale in the market current as at the acquisition date.

(19) 1IP, 3KCT and 23HR are 2 storey factory buildings which were completed in the last 20 to 30 years. 146PLR was built nearly 50 years ago as a store or warehouse, office and guard's quarters and after its purchase by the appellant in 1990 it was used primarily for the sale of building materials and for their storage and re-packing

as ancillary to the appellant's business. The sites of all these properties are zoned Light Industry. "These areas are used or intended to be used mainly for clean or light industrial purposes" (see Master Plan Written Statement) and it is unlikely that the profile of the buyers in the reference transactions would be comparable with that of the probable buyer of the acquired land if it were offered for sale. No evidence has been adduced as to the probable buyer or as to the probable use of the acquired land in a sale as at the acquisition date.

(20) Both Mr Loh and Ms Chee referred to the 124PLR transaction. In his analysis Mr Loh made no adjustment for building design, building condition, neighbourhood/location and RL. "Building design" was a reference to the features of ceiling height and platforms for loading as he explained. He appeared to be satisfied that there were no differences to be allowed for in all these respects and the only adjustments he made were for time, EGFA area and corner lot.

(21) In Mr Loh's analysis the market values derived from all the four transactions he referred to other than the 124PLR transaction ranged from \$5 873 000 to \$6 282 000 for an average of about \$6 078 000 while the market value derived from the 124PLR transaction was only \$4 825 000. No explanation has been given for this substantial difference in the derived values but the only significant difference between 11P, 3KCT and 23HR on the one hand and 124PLR on the other is the RL. Mr Loh allowed -5% for the four transactions but there is no direct evidence to support it and from the evidence it is likely to be much more than what he has allowed.

(22) From the RL plans the effect of the RL on the front of the acquired land and on 124PLR appears to be about the same. The RL runs along and parallel to the front of the sites to a depth of about 5m in both cases and both Mr Loh and Ms Chee did not see any difference for any adjustment to be made. The side of the acquired land was also adversely affected as noted earlier. Having regard to the evidence adduced this Board finds that the 124PLR transaction is a comparable transaction and further that the 11P, 3KCT and the two 23HR transactions are not comparable.

(23) The EGFA rate for the 124PLR transaction is \$8 063/sm. This is not disputed and it is also not disputed that the adjustment for time should be -19% and this Board finds accordingly. On the evidence adduced and with the benefit of the inspection of the building this Board finds that the EGFA is the sum of the GFA of the store (589.88sm) and 80% of the GFA of Mezzanine 3 (28.42sm) or 618.3sm. On the basis that the EGFA of 146PLR is 618.3sm Mr Loh said he would make an adjustment of -2% for EGFA size. This Board agrees with the adjustment and finds accordingly. For condition of the building Mr Loh made no adjustment but Ms Chee allowed -1.5%. This Board finds that there is a difference for which some adjustment has to be made and having regard to the difference in the construction of the buildings an adjustment by a lump sum is more appropriate and this Board finds accordingly. Some value should be given for the other mezzanine floors but DRC which reflects value to the appellant as owner is in the circumstances of this case not an appropriate measure of contribution to the market value. Some value should also be given for the access to the cul-de-sac feature but some allowance must be made for the RL on the side of Lot 2105.

(24) On the evidence and the facts agreed or not disputed this Board finds that the EGFA rate is to be adjusted by -19% for time and -2% for EGFA size for the adjusted rate of \$6 369.77/sm. From the value derived by applying the adjusted rate to the EGFA of 146PLR an amount will be deducted for condition and the RL on the side and the same amount will be added for the value of Mezzanine 1 and Mezzanine 2 and the access to the cul-de-sac feature. The resulting value will be rounded up to \$3 940 000. At the hearing it was agreed that the market value determined on this basis does 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 \$3 940 000; 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).

Reasonable Expenses under s 33(1)(e)

(25) In the course of the hearing the parties agreed that \$50 000 should be allowed for reasonable expenses incidental to the change of place of business under s 33(1)(e) and this will be taken into consideration in determining the amount of the compensation to be awarded.

Award

(26) Taking into consideration the market value as at 28 April 2001 and the reasonable expenses under s 33(1)(e) this Board determines that the amount of compensation to be awarded for the acquired land is \$3 990 000. 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

(27) For the purpose of the inquiry held under s 10 the appellant made a claim of \$6 500 000 for market value and an amount which was yet to be ascertained then for reasonable expenses under s 33(1)(e). This was a claim made pursuant to the Collector's notice under s 8 and as the claim for market value alone exceeds the amount awarded by this Board by more than 20% the appellant is not entitled to its costs.

Dated 2003 May 21

Commissioner of Appeals T Q Lim SC
Assessor Chua Koon Hoe
Assessor Tan Kim Choon