

LAND ACQUISITION ACT

APPEALS BOARD

AB 2001.047

In the Matter of the Acquisition of Land at
Lot 9-73 of Mukim 24
17 Irving Place

Between

Koh Tat Wan 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 \$2 800 000 in respect of the land at Lot 9-73 of Mukim 24 be increased to \$4 300 000;

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 9-73 of Mukim 24 together with the building at 17 Irving Place ("17IP") 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 \$5 900 000 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 \$2 800 000 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 \$4 300 000. At the hearing the Collector adduced evidence that the market value was \$3 100 000 and he did not seek to support his finding that it was \$2 800 000.

Acquired Land

(4) Lot 9-73 is a rectangular plot on the North side of Irving Place to the West of and close to Upper Paya Lebar Road. It has a frontage of about 20m to Irving Place and a site area of 619.80sm. It is about 1.5km to the PIE/Paya Lebar Road interchange for direct access to PIE and about 9km to the city centre at Collyer Quay. The acquired land is in a largely industrial locality with flatted warehouse and factory buildings nearby. It was not in dispute that the site was zoned Light Industry under the 1998 Master Plan and that the maximum permissible gross plot ratio ("MPGPR") was 2.5.

(5) On site is 17IP which is a 2 storey warehouse building with a 1st storey mezzanine. Written Permission for the development was granted in October 1984 and on completion the Certificate of Fitness For Occupation (as it was then known as) was issued in November in 1986. Lot 9-73 was zoned Warehouse in the Master Plan that was current then. In a letter to the appellant dated 25 April 2002 Portwood & Associates a firm of civil and structural engineers said:

1 ADDITIONAL STOREYS

The piling, beams and columns are capable of accepting an addition of two extra floors on the building.

2 FLOOR LOADING

That the capacities of the building's floors are significantly (greater by a factor of 1.5 to nearly 2) the loading required by the Building Regulations (*sic*)

The engineer who wrote the letter did not testify but the letter is in the appellant's bundle and no evidence was adduced to the contrary.

(6) It was agreed that (1) the gross floor area ("GFA") of 17IP was 500sm; (2) the GFA of the 1st storey was 203.55sm of which 27sm was used as an office and showroom; (3) the GFA of the 1st storey mezzanine was 85.57sm and it was used as a place of residence for the mother of the two shareholders of the appellant company; and (4) the GFA of the 2nd Storey was 203.55sm. Other areas of the building accounted for the remaining 7.33sm. It appears that the site has been developed to a gross plot ratio of only about 0.8.

Compensation

(7) 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

(8) Mrs Lydia Sng of Knight Frank Pte Ltd testifying for the appellant stated in her valuation report dated 6 June 2003 that she determined the market value by the comparable sales method. She 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

"EGFA" was a reference to the equivalent GFA assuming the GFA of the 2nd storey in each case to be equivalent to 80% of the GFA of the 1st storey. In the table above the EGFA represented the total EGFA of the building. Mrs Sng also referred to a 10 Howard Road ("10HR") transaction of 11 May 2001 but in his closing submission counsel for the appellant said that he was not relying on this transaction.

(9) Mrs Sng made adjustments for type of building, warehouse use/construction specifications, age/condition, location (only for 3KCT), unit size and time (only for 1IP). She derived an average adjusted EGFA rate of \$10 835.64/sm. She assumed the GFA of the 1st storey mezzanine of 17IP as well as the GFA of the 2nd storey to be equivalent to 80% of the GFA of the 1st storey and found that the EGFA was 434.85sm on the basis of the agreed GFA. She applied the EGFA rate to the EGFA of 17IP and would have found a value of \$4 711 878. It would have been much less when the 10HR transaction was taken into account as she earlier did and in the event she concluded that the market value of the acquired land as at the acquisition date was \$4 300 000.

Collector's Valuation

(10) Ms Chee Hok Yean of Jones Lang LaSalle Property Consultants Pte Ltd testifying for the Collector stated in her valuation report dated 6 June 2003 that she arrived at her valuation by direct comparison with transactions of comparable properties within the vicinity and elsewhere around the material dates of valuation. She referred to the following transactions:

<i>Property</i>	<i>Site Area EGFA</i>	<i>Price /sm EGFA</i>	<i>Transaction Date</i>
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1	124 Paya Lebar Road ("124PLR")	725.8sm 508.5sm	\$4 100 000 \$8 063/sm	1997 Oct 2
2	10 Howard Road ("10HR")	2 145.6sm 2 480.66sm	\$14 800 000 \$5 966/sm	2001 May 11

124PLR was a part 1/part 2 storey building and 10HR was a 3 storey building. The EGFA was also based on the assumption that the GFA of the 2nd and 3rd storeys was equivalent to 80% of the GFA of the 1st storey. In the table above the EGFA represented the total EGFA of the building.

(11) Ms Chee made adjustments for accessibility, time, EGFA (size), age/condition and Road Line ("RL") (for 124PLR only). The site at 124PLR was adversely affected by RL at the time of the transaction while the acquired land was not so adversely affected at the acquisition date. From the 124PLR transaction she derived an adjusted EGFA rate of \$7 055/sm. Ms Chee also assumed that the GFA of the 1st storey mezzanine and of the 2nd storey of 17IP was equivalent to 80% of the GFA of the 1st storey and on the agreed GFA she would have found the EGFA to be 434.85 which is different from the EGFA she earlier found but the difference is not significant. Applying the EGFA rate to the EGFA of 434.85sm she found that the market value was \$3 100 000. From the 10HR transaction she derived an adjusted EGFA rate of \$6 264/sm and applying this to the EGFA of 17IP she would have found the market value to be \$2 750 000 but in her valuation report she gave her opinion that the market value of the acquired land as at the acquisition date was \$3 100 000.

Comparable Properties

(12) Mrs Sng said that she adopted the "comparable sales" method of valuation and Ms Chee said that she arrived at her valuation by "direct comparison with transactions of comparable properties". Both expressions refer to the same approach. Both imply an analogy. In the case of "comparable sales" the analogy is between the reference transaction and the transaction in a hypothetical sale of the acquired land and in the case of the other expression it is between the reference property and the acquired land.

(13) 10HR is a 3 storey detached multiple user warehouse building with a 2 000kg cargo lift. The GFA of the 1st storey is 954.12sm. This alone without taking into account the 2nd and 3rd storeys is more than twice the EGFA of 17IP. The GFA of the 2nd and 3rd storeys is also 954.12 in each case. The site area of the land is 2 145.6sm which is substantially more than 3 times the site area of Lot 9-73 on which 17IP stands. It appears that the site has been developed to a gross plot ratio of more than 1.3. In the May 2001 transaction the property was sold for \$14 800 000. Since then it has undergone what appears from public view to be substantial refurbishment that is still continuing.

(14) The buyer has made a substantial investment in a multiple user warehouse building and 10HR is likely to be put to use to produce revenue from providing warehousing facilities and services. 17IP was and still is used by the appellant (and a company the majority of whose issued shares are held by the shareholders of the

appellant company) partly for the storage of their own goods of their trade and partly as a showroom and a residence as the appellant alleges. These two properties are quite different in essential respects. There is no reason to say that they would appeal to the same market segment or that the probable price or market value of the acquired land may be inferred from the price paid for 10HR. On the evidence the 10HR transaction is not a comparable sale and 10HR is not a comparable property for the purpose of determining the market value of the acquired land and this Board finds accordingly even though both the appellant and the Collector are no longer relying on them.

(15) Ms Chee referred to the 124PLR transaction. 124PLR is a single storey factory building with a 2 storey office annexe with an EGFA of 508.5sm on a rectangular plot with a site area of 725.8sm. 17IP is a warehouse building which is partly used for the storage of goods but these are goods of the trade of the occupiers. It is also partly used for a showroom and a residence as noted above. There are these differences as well as differences in accessibility, time of transaction, EGFA and the age/condition of the building but on the evidence these are differences for which some adjustments can be made. These are not the only differences.

(16) The site of 124PLR was adversely affected by a RL at the time of the transaction as noted above. The RL was for a Category 2 road reserve and ran along the front of the property to a depth of about 5.5m from Paya Lebar Road as it then was adversely affecting not only the site but also part of the then existing building. If the road proposal was to be implemented not only would a substantial part of the site be required but part of the building might have to be demolished. The alternative would have been for the entire site to be compulsorily acquired as in fact it was by a s 5 declaration published the same day as in this case. In the case of the acquired land the RL was for a Category 5 road reserve and only affected about 41sm of the site and the whole of the affected part was outside the boundary wall and entrance gate as at the acquisition date. This is a difference in an essential respect and there is no market evidence to point to the adjustment which would have to be made to enable the probable price or market value of the acquired land to be inferred from the 124PLR transaction. In the decision of this Board 124PLR is not a comparable property and the 124PLR transaction is not a comparable sale.

Market Value as at Acquisition Date

(17) Mrs Sng referred to the 1IP and 3KCT transactions. 1IP is a 2 storey end unit with an EGFA of 327.6sm in the same street as 17IP and 3 KCT is an intermediate terrace unit with an EGFA of 443.7sm some distance away to the East of Paya Lebar Road and both are factory units constructed in the 1970s. The contract date for the 1IP transaction was December 1999 and the site was also affected by RL but the effect appears to be quite negligible. 17IP is a detached warehouse unit with an EGFA of 434.85sm constructed in 1986. This Board accepts that these are comparable transactions notwithstanding the differences and find accordingly. For these differences (other than for warehouse use/construction specifications and for age/condition) Mrs Sng allowed an adjustment of +2.5% for the 1IP transaction and +5.4% for the 3KCT transaction. This Board sees no reason to disagree and finds accordingly.

(18) For warehouse use/construction specifications and for age/condition Mrs Sng allowed +10% for each difference in both cases. For the difference between factory space and warehouse space she referred to URA, *Property Market Information* ("PMI") but the median prices given in PMI are for multiple user factory space and multiple user warehouse space. When Ms Chee was cross examined she agreed that warehouse use would give a higher value than light industrial use and she said she would allow +5% altogether for the two differences. For age and condition she thought that \$150 000 to \$200 000 would be about the cost involved and +5% would be an appropriate allowance. It follows that she would allow something more to take into account warehouse use/construction specifications. For an average base EGFA rate of about \$8 750/sm +5% amounts to about +\$190 000 while Mrs Sng's allowance of +20% amounts to about \$760 000.

(19) On the evidence and doing the best in the circumstances of this case this Board finds that the base EGFA rate should be adjusted by +10% in all for both warehouse use/construction specifications and for age/condition. This amounts to a total adjustment of +12.5% for the 1IP transaction and +15.4% for the 3KCT transaction for an average EGFA rate of \$9 963/sm or a value of \$4 332 411 when applied to the EGFA of 17IP. This will be rounded down to \$4 300 000. 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 \$4 300 000; 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)

(20) In its petition of appeal the appellant says under para 1:

- (e) Grounds of Appeal ...
 - (5) The Collector has failed to consider awarding damages under Section 33 (1)(e) of the Act.

Section 33 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:

...

(e) if, in consequence of the acquisition, [the person interested] is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to that change

What s 33(1)(e) provides is that the reasonable expenses must be taken into consideration in determining the amount of compensation to be awarded and not that damages might be awarded separately or additionally. No particulars of the injury or loss giving rise to any such misconceived right to damages and no particulars of any expenses have been given but when counsel opened his case he referred to the cost of about \$20 000 to be incurred in moving the goods stored at 17IP and dismantling and re-assembly of a hoist. No objection was taken to this ground of appeal having been raised in this way and this Board will allow it to be relied on.

(21) On the same day that the s 5 declaration was published the Commissioner of Lands wrote to the appellant to say:

3 Land Office intends to take possession of your property by Apr 2006. However, if you wish you may hand over your property earlier.

The Commissioner of Lands and the Land Office were then the authorities which would manage state land which was what the acquired land would be when the acquisition was completed. Down to the date of hearing the appellant was still in possession and although the Collector has made his award the appellant has not been paid the compensation in full and there is no evidence that any amount has been paid into court in accordance with the provisions of s 40.

(22) In his written submissions counsel for the Collector said (a) that the appellant had not carried on business at the acquired land; and (b) that "the business has to date not relocated or 'changed its place' ". He submitted that for either of these reasons the appellant could not "avail itself of a remedy under s 33(1)(e)". This Board will assume that what counsel meant was that in the circumstances of this case there was no matter to be taken into consideration under s 33(1)(e).

(a) *Carrying on business at the acquired land*

(23) Mr Koh Hock Bin the managing director of the appellant company and one of its shareholders said in his affidavit:

7 The [acquired land] is currently owned by the Appellant and has been jointly used by the Appellant and Chin Lim Timber Merchant Pte Ltd ("Chin Lim") as a warehouse cum office since it was built

8 Both companies deal primarily in construction materials such as sawn timber, plywood and other related products. They share common directors and also have the same shareholders except for one Ms Koh Beng Hwa who is a shareholder of Chin Lim but not of the Appellant

9 The Appellant and Chin Lim have not entered into any formal tenancy agreement, however, for the use of the premises, Chin Lim pays S\$3000 per month to the Appellant on a month-to-month basis.

The statement in para 7 is not quite accurate as the mezzanine floor was used as a residence and part of the 1st storey was used for a showroom also and 17IP was reported in October 1997 to be owner occupied as will be seen later.

(24) Under cross examination Mr Koh said that down to the acquisition date Chin Lim was paying \$4 000/month. It was reduced sometime last year. He said that the appellant occupied the showroom and about 20% of the storage space on the 1st storey. As noted above the GFA of the office and showroom was about 27sm and the GFA of the remaining space on the 1st storey was about 176.55sm and 20% of that would be about 35.31sm. The rest of the space was occupied by Chin Lim. On his evidence the appellant occupied about 62.31sm of the 1st storey and Chin Lim occupied the rest of the 1st storey and the whole of the 2nd storey with a GFA of 203.55sm. "Chin Lim" or *zhen lin* (in Chinese characters) can be clearly seen in a prominent position on the outside wall of 17IP when the photograph in Mrs Sng's valuation report of 6 June 2003 was taken.

(25) Mr Koh said that the appellant's goods stored at 17IP were plywood and sometimes zinc sheets and that Chin Lim's were plywood, cement, sawn timber, roofing products, zinc, asbestos and partition boards. There were no markings on the goods to identify them as belonging to one or the other of the occupiers and "[they] just knew [themselves]". The goods were received into the warehouse in crates and they were stored by type. There were no designated areas in the warehouse for the use of one or the other.

(26) On the evidence such as it is this Board finds that the appellant did carry on construction materials business at 17IP and that such business continued through the acquisition date and this part of the Collector's case fails.

(b) *Business has not relocated*

(27) It is not disputed that the business carried on at 17IP has not relocated but this does not conclusively determine the question whether there is any matter to be taken into consideration under s 33(1)(e). Acquisition begins when a s 5 declaration is published. The Collector is then directed under s 6 to take proceedings for the acquisition of the land. He gives notice under s 8 that the Government intends to acquire the land and that claims to compensation for all interests in the land may be made to him. The notice will also require all persons interested to appear before him at an appointed time and place and to state among other things the amount and particulars of their claims. The appointed time must be not earlier than 21 days after the date of the notice. Under s 10 he inquires into three matters including the value of the land and the respective interests of the persons claiming the compensation "and shall as soon as possible after the conclusion of the inquiry, make an award under his hand of ... the compensation which in his opinion should be allowed for the land". s 15 provides:

In determining the amount of compensation, the Collector shall take into consideration the matters mentioned in section 33

The matters he must take into consideration include the expenses under s 33(1)(e). If the change of place of business must take place before the expenses incidental to

it can be taken into consideration the person interested will be seriously disadvantaged and it is necessary to examine the language of the provision to see if that is the legislative intent.

(28) Section 33(1)(e) is repeated here for convenience:

(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:

...

(e) if, in consequence of the acquisition, [the person interested] is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to that change

To avail itself of the benefit of this provision it seems quite clear that the person interested or appellant in this case must show (a) that it is compelled to change its place of business; (b) that it is compelled in consequence of the acquisition; (c) that the expenses are incidental to that change; and (d) that the expenses are reasonable. There is nothing in the language to suggest that the change must have taken place or the appellant must have relocated before the Collector makes his award or before the appeal is heard by this Board.

(29) In *Stage Development Pte Ltd v Collector of Land Revenue* (Decision in AB 1997.012 dated 21 August 2001, unreported) the appellant ceased business after the acquisition date but had not relocated when its appeal was heard. A differently constituted Board found (a) that there was no real likelihood that it would resume its business and that it had no real intention of changing its place of business; and (b) that a reasonable businessman in the position of the appellant would not secure the alternative premises or any other premises at about the same rent to resume the business there or relocate his business there; and made other related findings of fact and concluded that the appellant had not made out its case for expenses under s 33(1)(e). See para (60). See also *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111 at pp 128 to 131 *per* Lord Nicholls of Birkenhead. If the appellant in this case has relocated its business then the question raised in the Collector's case does not arise. If the appellant has not then it has to satisfy this Board that it intends to do so and that a reasonable businessman in its position would do so.

(30) Mr Koh said in his affidavit:

20 As a consequence of the compulsory acquisition of the [acquired land], the Appellant will be forced to relocate its place of business. The Appellant is currently looking for an alternative location in the neighbouring industrial estates to shift its business operations to.

21. Based on a rough estimate, it will cost the Appellant about S\$20,000 to relocate its place of business. This amount includes the cost of moving the goods being stored at the Subject Property and the dismantling and re-assembly of the two-tonne hoist. The Appellant is in the process of obtaining a formal quotation from a transportation company.

At the hearing the appellant produced a quotation dated 12 June 2003 given by Siong Hwee Transport Service Pte Ltd to relocate at Kaki Bukit for a total sum of \$20 500. \$15 000 is for relocating and installing the hoist; \$3 000 is for removing and transportation of "general office, showroom shelves and etc"; and \$2 500 is for transfer and transportation of "equipments". As noted above no particulars of the injury or loss giving rise to any misconceived right to damages claimed in the petition of appeal have been given but the appellant's case has been presented on the basis that the business carried on at the acquired land was the construction materials business for which the appellant occupied the office and showroom and about 20% of the storage space on the 1st storey. There is no reference in the quotation to the transportation of any goods in the trade of the appellant. These goods would hardly be included in the unexplained reference to "equipments".

(31) The Kaki Bukit premises have not even been identified and no evidence has been adduced as to these premises. No evidence has been given of any premises other than the broad statement that the appellant was currently looking for an alternative location. It is not disputed that the appellant has until April 2006 to give possession of the acquired land unless the Government changes its mind but it seems unlikely that if there is any intention to relocate the business much more should not have been done to acquire alternative premises before the hearing of this appeal the more so in view of the cost of land since the acquisition date whether in terms of purchase or lease.

(32) Ms Tay Shiow Juiuan of Asian Appraisal Co Pte Ltd testifying for the appellant said that in October 1997 her company was instructed by the appellant to prepare a valuation and she produced a copy of her report dated 23 October 1997. From the report it appears that the appellant owned properties at 61 Upper Paya Lebar Road ("61UPLR") which is nearby to 17IP, 133/A Upper Paya Lebar Road ("133/AUPLR") and 17/A/B Rambutan Road ("17/A/BRR") in addition to 17IP. 61UPLR is a 4 storey commercial building known as Tat Wan Building a name no doubt derived from the name of the appellant. There are shops on the 1st storey and offices on the upper storeys. According to the report "part of the [property] was owner occupied and the rest was tenanted" but Mr Koh was not cross examined on this although he said under cross examination that the appellant did not "operate from elsewhere" other than at 17IP. 133/AUPLR is an intermediate shophouse used for a coffee shop on the 1st storey and a residential unit on the 2nd storey. According to the report this property was "tenanted". 17/A/B is a 3 storey intermediate walk-up residential apartment building. According to the report all the residential units were "tenanted". Mr Koh confirmed that these properties belonged to the appellant. In the valuation report 17IP was described as owner occupied. It appears that Chin Lim was not a tenant or otherwise in occupation at that time and it is more likely than not that its name or *zhen lin* (in Chinese characters) appeared as shown in the photograph in Mrs Sng's report only after about October 1997.

(33) Mr Koh said in his affidavit that his mother was the previous owner of Lot 9-73 and a shareholder of the appellant company until she transferred her shares to the two present shareholders in 1997. They now hold an equal number of shares each. Among the documents in the appellant's bundle are copies of the share transfer forms and an extract from the balance sheet of the appellant as at 31 December

1996 which was used to determine the value of the shares for the purpose of stamp duty. There is also a copy of a letter from the mother to resign as a director.

(34) The total value of the land taken from the valuation report was \$18 050 000, the value of the current assets \$799 415 and the value of the current liabilities \$376 027 for the value of total net assets of \$18 473 388. Much of the land was let to a number of tenants and some part of the current assets and liabilities must have been associated with this business and it is unlikely that the construction materials business of the appellant if any then was significant at the date of the balance sheet. Printouts from the Registry of Companies show the principal activity of Chin Lim as "Sawn timber, plywood and related products (50422)" and the principal activities of the appellant as "(1) Real estate agents (including appraisers, valuers and rental service) (70210) (2) Sawn timber, plywood and related products (50422)". Mr Koh was not cross examined as to the turnover or any of the financial features of the appellant's business carried on at 17IP or any business carried on anywhere else.

(35) After the transfer of shares from the mother the present two shareholders became and they still are the only shareholders and directors of the appellant company. They are two of the directors of Chin Lim. The third director is their sister who holds 10 000 of the 65 000 issued shares. She is not a shareholder of the appellant. The evidence is that Chin Lim pays \$3 000/month rent for part of 17IP for its construction materials business and has from a date after October 1997 had its name in a prominent position on the building. There is no evidence that there will be any change in the business of Chin Lim and if the construction materials business is to continue there is no reason why it should not be continued by Chin Lim and not the appellant. After the mother ceased to be a shareholder of the appellant towards the end of 1997 there was no apparent reason for the two companies to carry on the same kind of business at the same place.

(36) The appellant has at all material times had the business of a landowner. Apart from 17IP it still owns valuable properties at 61UPLR, 133/AUPLR and 17/A/BRR. It continues to receive or to be entitled to rental income from the letting of these properties. In 1997 it occupied part of Tat Wan Building which is a commercial building with shops on the 1st storey and offices on the upper storeys and there is no evidence of any change in the circumstances. Its registered office is still there and the probability is that it is still in such occupation and this Board finds accordingly.

(37) On the evidence the appellant has not satisfied the Board that it has any real intention of relocating its business whether at Kaki Bukit or elsewhere or that a reasonable businessman in the position of the appellant would do so and this Board finds accordingly. In the decision of this Board there is no matter to be taken into consideration under s 33(1)(e).

Award

(38) 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 \$4 300 000. 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

(39) In the Collector's grounds of award he said that for the purpose of the inquiry held under s 10 the appellant made a claim of \$5 900 000 for market value and gave notice of a further claim for reasonable expenses under s 33(1)(e). This was a claim made pursuant to the Collector's notice under s 8. At the hearing the petition was amended so that the claim was said to be \$4 300 000 but the evidence was and the fact was not disputed that the claim that was made was for \$5 900 000 for market value alone and this Board finds accordingly. This claim 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 29

Commissioner of Appeals T Q Lim SC
Assessor Yap Neng Chew
Assessor Tan Kim Choon