LAND ACQUISITION ACT

APPEALS BOARD

AB 2012.036

In the Matter of Compulsory Acquisition of
Lot 1289X Mukim 7

Between

YCH Distripark Pte. Ltd.
(RC No. 194700023Z)

… *Appellant*

And

The Collector of Land Revenue

… *Respondent*

Solicitors for the Appellant:
WongPartnership LLP
- Mr Tan Kay Kheng
- Mr Tan Shao Tong
- Mr Jeremiah Soh

Solicitors for the Respondent:
Attorney-General's Chambers
- Mr Jeyendran Jeyapal
- Ms Debra Lam
- Ms Linda Esther Foo

DECISION

The decision of this Board is:

(1) That the Appeal be dismissed with costs to the Respondent to be taxed if not agreed.

STATEMENT OF REASONS

Appeal

1 This is an appeal by YCH Distripark Pte Ltd ("the Appellant") against the decision of the Collector of Land Revenue ("the Collector") to award "nil compensation" in respect of the Appellant's interest in its sub-lease over the land at Lot 1289X Mukim 7, also known as 30 Tuas Road ("the Acquired Land").

2 In this appeal, the Appellant seeks to be awarded compensation for the said interest under s 33(1)(a) of the Land Acquisition Act (Cap. 152) ("the LAA") in the amount of $34,010,296.

Background

3 The Appellant is part of the YCH group of companies that provide supply chain management and logistic services.

4 The head lessor of the Acquired Land was Jurong Town Corporation ("JTC"). RBC Dexia Trust Services Singapore Limited ("RBC Dexia") (as trustee of Cambridge Industrial Trust) was the lessee of the Acquired Land.

5 The Appellant entered into a lease agreement dated 25 July 2006[1] with RBC Dexia which was subsequently varied by a supplemental lease agreement dated 13 July 2007[2]. For ease of reference, we shall refer to the lease agreement as varied as "the Lease". Under the Lease, RBC Dexia agreed to grant the Appellant a lease of the "Demised Premises" for a duration of 10 years commencing from 25 July 2006 with an option to renew for an additional five years. "Demises Premises" is defined under Clause A1 of the Lease to mean "the Building" and "Building" in turn is defined to

[1] Exhibited in the Affidavit of Yap Ai Cheng (YAC1) at pp. 24-81.
[2] Exhibited in the Affidavit of Yap Ai Cheng (YAC1) at pp. 83-103.

mean "the building erected on the Property known as 30 Tuas Road, Singapore 638492."[3] "Property" is defined as "the land and the Building".[4]

6 The Collector (the Respondent in this appeal) had first issued a declaration ("First Declaration") under s 5 of the LAA to acquire part of the Acquired Land amounting to an area of 27,373.7 sqm pursuant to Gazette Notification No. 87 dated 5 January 2011 which was published in the Government Gazette, Electronic Edition on 11 January 2011 ("the First Gazette Date").[5]

7 On 29 July 2011, RBC Dexia wrote to the Collector to request for a full-lot acquisition pursuant to s 49 of the LAA.[6]

8 The Collector acceded to RBC Dexia's request. By Notification No. 300 dated 30 December 2011 ("Second Declaration") published in the Government Gazette, Electronic Edition on 8 February 2012 ("the Second Gazette Date"), the entire Lot 1289X Mukim 7 comprising an area of 78,279.4 sqm was declared to be acquired.[7]

9 As stated in both the First Declaration and the Second Declaration, the purpose of the acquisition was for a public purpose, *viz*. the construction of Tuas West Mass Rapid Transit Extension and road works along the Pan Island Expressway, Tuas Road, Pioneer Road, Tuas West Road, Tuas West Drive and Tuas South Avenue 3.

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[3] As defined in the lease agreement dated 25 July 2006. In the supplemental lease agreement dated 13 July 2007, "Building" was redefined to mean "the building erected on the Property known as 30 Tuas Road, Singapore 638492 (including all the Upgrading Works carried out thereto)".
[4] The full definition of "Property" in the lease agreement dated 25 July 2006 states as follows: "Property means the land and the Building, with a leasehold title of 30 years commencing from 1 July 1979 (and the Tenant has fulfilled the fixed investment criteria for an extension of another 30 years pursuant to the terms of the Head Lease), and within the Building, and a gross floor area of approximately 53,000 square metres (which includes alteration and additional works to the office block), comprised in Government Resurvey Lot 1289X Mukim 7, and M&E". In the supplemental lease agreement dated 13 July 2007, the definition of "Property" was amended by replacing the words "and M&E Equipment" with "together with M&E Equipment and the Upgrading Works".
[5] Affidavit of Evidence-In-Chief of Lee Hwee Chuan (LHC1) at p. 18.
[6] Affidavit of Evidence-In-Chief of Lee Hwee Chuan (LHC1) at pp. 22-25.
[7] Affidavit of Evidence-In-Chief of Lee Hwee Chuan (LHC1) at pp. 27.

10 At the time of acquisition, there were seven blocks of warehouses, one corporate office block and other smaller ancillary offices and buildings on the Acquired Land. Out of the seven blocks of warehouses, Block 7 housed the Appellant's Automated Storage and Retrieval System ("ASRS"). The ASRS was a specialised system designed for the automated storage and retrieval of pallets which included eight cranes that moved and stored goods automatically without the need for human intervention.

11 In addition, situated on the Acquired Land was a car park with 66 parking lots as well as 95 parking lots for container and heavy vehicle parking.

12 After holding a Collector's Inquiry on 9 March 2012, the Collector issued a Collector's Award under s 10 of the LAA on 10 October 2012. The aggregate Award of $94,810,000 was apportioned as follows:

(a) $19,660,000 was paid to JTC;

(b) $72,400,000 was paid to RBC Dexia; and

(c) $2,750,000 was paid to the Appellant for the depreciated value of the ASRS.

13 On 19 October 2012, the Appellant filed a Notice of Appeal against the Collector's Award. On 30 April 2013, the Appellant submitted a revised total claim for compensation of $83,539,708 to the Collector. The claim comprised three major components:[8]

(a) The expenses that would be incurred by the Appellant to relocate its business operations pursuant to the acquisition which would take place in two stages;

[8] Agreed Statement of Facts (ASOF) at para 7.

(b) The claim for the Appellant's ASRS; and

(c) The losses suffered by the Appellant in respect of its interest as a lessee in the Acquired Land ("the Lease Interest").

14 On 6 February 2014, the Appellant submitted a revised claim of $10,965,758 for the depreciated value of the ASRS. On 6 March 2014, the Collector issued a Supplementary Collector's award in the sum of $8,215,758 in full and final settlement of the appeal in relation to the ASRS. The supplementary award, together with the initial compensation of $2,750,000, totalled $10,965,758, which is equivalent to the depreciated value of the ASRS submitted by the Appellant.[9]

15 In addition, the Appellant has received as compensation for relocation expenses the sum of $25,376,569.17. In total, a sum of $36,342,327.17 has been disbursed to the Appellant as compensation for relocation expenses and for the depreciated value of the ASRS. These two components of the compensation are settled and are not contested in this appeal.

16 The crux of this appeal is whether any compensation is payable to the Appellant under the LAA in respect of its Lease Interest.[10] Section 10 of the LAA provides that "any person interested" in the land to be acquired has the right to make representations to the Collector in an inquiry. The Collector accepts that "person interested" includes a person with a leasehold in the land, regardless of whether this person is head lessor or sub-tenant. This is because the LAA defines "person interested" widely to be "every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant by

[9] Agreed Statement of Facts (ASOF) at para 8.
[10] Agreed Statement of Facts (ASOF) at para 13.

the month or at will"[11], and the Appellant does not fall within the stipulated excluded category.[12]

17 The Appellant and the Collector agree that the methodology to be adopted in assessing the compensation for the Appellant's Lease Interest is to determine the profit rent ("Profit Rent") accruing to the Appellant under the Lease, if any. The Appellant's valuer, Ms Chua Beng Ee ("Ms Chua") of Acreage Property Consultants LLP ("Acreage"), explained the methodology as follows:[13]

> The profit rental is the difference between the market rent and the rent being paid by the lessee under the lease agreement. For example:
>
> | | | |
> |---|---|---|
> | Market rent | = | $100,000 |
> | Less Lease Rent | = | $60,000 |
> | Profit Rent | = | $40,000 |
>
> This difference is called a profit rental because the lessee enjoys the difference as a profit. In this example, he/she is able to sublet (if allowed under the lease agreement) the premises for $100,000/month and thus enjoy a profit of $40,000/month. If the lessee cannot sublet, he/she still enjoys $40,000 profit as an opportunity costs. That is, the lessee enjoys the benefit of $100,000/month premises for only $60,000/month. Or if he/she is compelled to move to another similar premises, he/she would have to give up his existing $60,000/month for a similar replacement property and thus lose his/her profit rent of $40,000/month.

18 The Appellant is claiming an amount of $31,597,515 for Profit Rent based on their valuation as at the First Gazette Date.[14] The Collector's position is that the Appellant's Lease Interest is without value as at the Second Gazette Date and accordingly, the Appellant should receive no compensation in respect of its Lease Interest.[15]

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[11] See s 2 of LAA.
[12] Collector's Closing Submissions (RCS) at pp. 8-9.
[13] Affidavit of Chua Beng Ee (CBE1) at p.14.
[14] Appellant's Closing Submissions (ACS) at p 15.
[15] Agreed Statement of Facts (ASOF) at para 15.

19 The Appellant is also claiming an amount of $2,412,781 as a result of its inability to use the 95 heavy vehicle parking lots on the Acquired Land.[16] The Collector's position is that there should not be a separate compensation in respect of the heavy vehicle parking lots.

20 For the purpose of this appeal, the experts engaged by the respective parties prepared and filed the Experts' List of Agreed and Disputed Issues ("EL") on 16 March 2018. By agreement, the evidence of the experts was taken concurrently, or what is commonly referred to as "hot-tubbing".

Overview of the Appellant's Case

21 The Appellant's case may be summarised as follows:[17]

(a) The relevant date for assessing the market value of the Appellant's interest in the Acquired Land under s 33(1)(a) of the LAA is the First Gazette Date (11 January 2011);

(b) In respect of Profit Rent:-

(i) The relevant GFA figure that should be adopted for the purposes of computing Profit Rent is 73,976.79 sqm, given that the market value hypothesis would demand a consideration of the equivalent storage capacity of Block 7;

(ii) The "total occupation costs" incurred by the Appellant that are relevant for the purposes of the computation of the Profit Rent under the Lease was $0.80 psf/month as at the First Gazette Date;

[16] Agreed Statement of Facts (ASOF) at para 20 & Appellant's Closing Submissions (ACS) at p 15.
[17] Appellant's Closing Submissions (ACS) at pp. 13-15.

(iii) Based on the comparables adopted by the Appellant's valuers, "the market rent of the Acquired Land" is $1.50 psf/month as at the First Gazette Date;

(iv) The Profit Rent is $557,400 per month as at the First Gazette Date which would yield a market value of $31,597,515 based on a capitalisation of the Profit Rent over the unexpired term of the Lease;

(c) In respect of the heavy vehicle parking lots:-

(i) The market value of the heavy vehicle parking lots as at the First Gazette Date, based on the capitalisation of the value of the vehicle parking certificates and the parking benefits, is $2,412,781.

Overview of the Collector's Case

22 The Collector's case may be summarised as follows:[18]

(a) The relevant date of acquisition is the Second Gazette Date (8 February 2012);

(b) In respect of Profit Rent:-

(i) The relevant GFA of the Acquired Land is the URA approved GFA of 53,368.3 sqm;

(ii) As at the Second Gazette Date, the "passing rent" was $13.15 psm/month;

(iii) Based on the comparables adopted by the Collector's valuer, the prevailing market rent ranges from $9.69 - $11.84 psm/month;

[18] Collector's Opening Statement (ROS) at pp. 14-15.

(iv) Since the passing rent of $13.15 psm/month is higher than the prevailing market rent of $9.69 - $11.84 psm/month, there is no Profit Rent.

(c) In respect of the heavy vehicle parking lots:-

(i) The Appellant is not entitled to separate compensation for the heavy vehicle parking lots, the value of which has already been "encapsulated in the prevailing market rent of the Acquired Land".

The Issues

23 Against this backdrop, the issues for determination may be summarised as follows:

(a) Is the relevant date for assessing Profit Rent the First Gazette Date (11 January 2011) or the Second Gazette Date (8 February 2012);

(b) In determining Profit Rent:

(i) What is the relevant GFA figure that should be adopted for the leased premises;

(ii) What was the "total occupation costs" or "passing rent" the Appellant was paying for the leased premises;

(iii) What was the prevailing market rent of the leased premises;

(c) Is the Appellant entitled to separate compensation in respect of the heavy vehicle parking lots.

Matters to be considered in determining compensation

24 The matters to be considered in determining compensation to be awarded for land acquired are set out in s 33 of the LAA. The relevant parts of s 33 of the LAA read:

> 33.—(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 of the acquired land —
>
> (i) …
>
> (ii) as at the date of the publication of the declaration made under section 5 …
>
> (b) …
>
> (c) …
>
> (d) …
>
> (e) …
>
> (f) …
>
> (1A) …
>
> (2) …
>
> (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 willing to pay, after taking into account the zoning and density requirements and any other restrictions imposed by or under the Planning Act (Cap. 232)

> as at the date of acquisition 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 use more intensive than that permitted by or under the Planning Act as at the date of acquisition.
>
> (6) For the purposes of this section, the date of acquisition of any land shall be the date of the publication of the notification under section 5(1) declaring that that land is needed for the purpose specified in the declaration.

25 Section 34 of the LAA sets out the matters that are to be disregarded in determining compensation.

26 Under s 25(3) of the LAA, the onus of proving that the award is inadequate lies on the Appellant.

27 As noted earlier, the parties agree that since the Appellant holds a leasehold interest, the appropriate compensation is to be determined by the Profit Rent methodology.

Our Decision

Relevant date of valuation

28 The Appellant contends that the relevant date of valuation should be the First Gazette Date (11 January 2011). The Appellant puts forth several arguments which may be summarised as follows:

1) Firstly, s 49 of the LAA provides the legal machinery for a person interested with the option to make a request to the Collector for the acquisition of the whole where only a part was initially acquired. This acquisition is an emanation or extension of the original acquisition of a part. Under the mechanism contemplated under s 49(1) of the LAA, there would

be no break in the acquisition process and the intention to acquire the subject property subsists throughout the entire acquisition process. [19]

2) Secondly, based on Indian case law,[20] the compensation scheme under s 49(1) of the Indian LAA is merely an alternative to the compensation for injurious affection.[21] As the Indian provisions are *in pari materia* with the equivalent provisions in the LAA, the Appellant contends that the bases for compensation for injurious affection under s 33(1)(d) of the LAA and an owner-initiated acquisition under s 49(1) of the LAA are interchangeable and should produce the same outcome. Therefore, the date of valuation should be based on the same date of the declaration for part of his land.[22]

3) Thirdly, reliance was placed on the Indian case of *The Special Tahsildar for Land Acquisition Municipal Cases, Madurai vs. G. Venkatesan and Ors.* AIR 1980 Mad 61 ("*G. Venkatesan*"). In that case, the Indian State Government had exercised its jurisdiction under s 49(2) of the Indian LAA and issued a direction to the Land Acquisition Officer to acquire the whole of the land of which the land first sought to be acquired formed a part. It was held that the entirety of the land should be valued based on the earlier date of acquisition. The Appellant submits that since s 49(1) of the LAA (owner-initiated acquisition) and s 50 of the LAA (Collector-initiated acquisition) are two sides of the same coin, the valuation date of the Acquired Land should likewise be based on the First Gazette Date.[23]

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[19] Appellant's Closing Submissions (ACS) at paras 19-23.
[20] *Special Land Acquisition Officer, Mangalore vs Piadade Fernandes AIR* 1973 Kant 62, AIR 1973 Mys 62; *P.V.Lakshmi Ammal vs State of Madras And Anr.* AIR 1955 Mad 119, (1954) IIMJ 222; *State of Bihar v. Kundun Singh* AIR 1964 SC 350.
[21] Appellant's Closing Submissions (ACS) at para 24.
[22] Appellant's Closing Submissions (ACS) at para 29.
[23] Appellant's Closing Submissions (ACS) at para 35.

4) Lastly, the Appellant submits that a principled application of the scheme of the Indian LAA or the LAA would also demand that the same valuation date be used whether or not it is the person interested that initiates the acquisition of the whole land under s 49(1) of the LAA, or the Collector who does so under s 50(1) of the LAA. If there was a discrepancy or misalignment in the dates of valuation, this could potentially provide an avenue for abuse by the party interested whose land is being part-acquired by cherry-picking the date of valuation which results in the most favourable valuation for him.[24]

29 The Collector submits that the relevant date of valuation should be the Second Gazette Date (8 February 2012). The Collector refers to the UK Privy Council decision in *Ma Sin and Ors v Collector of Rangoon* AIR 1929 PC 126 ("*Ma Sin*") as persuasive authority for the proposition that where there are two notifications pertaining to the same plot of land and when the latter notification stipulates that the former is cancelled, the latter date is the relevant date from which the valuation must be taken. In reaching this conclusion, the Privy Council had examined s 23(1) of the Indian LAA 1894 which is *in pari materia* with s 33(1) of the LAA. [25]

30 The Collector contends that the facts in *Ma Sin* are similar to the present case. Like *Ma Sin* where the Government announced that the first notification was cancelled, the Collector in this case had also made it clear to the Appellant by way of letter dated 4 January 2012[26] that the intention behind publishing the second notification was to have it supersede the first and restart the entire acquisition process due to RBC Dexia's request *via* their letter dated 29 July 2011.[27] The material parts of the Collector's letter dated 4 January 2012 states:

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[24] Appellant's Closing Submissions (ACS) at para 37.
[25] Collector's Closing Submissions (RCS) at para 57.
[26] Affidavit of Yap Ai Cheng (YAC1) at p. 109.
[27] Collector's Closing Submissions (RCS) at para 58; RBC Dexia's letter dated 29 July 2011, Affidavit of Evidence-in-Chief of Lee Hwee Chuan (LHC1) at pp. 22-25.

> 3. A fresh notification under Section 5 of the Land Acquisition Act will be gazetted subsequently to acquire the entire full lot of 1289X Mk 7. We will also serve fresh notices under Section 8 of the Land Acquisition Act …

31 Having carefully considered the submissions by the parties, we set out our analysis and determination of the issue. As highlighted by the parties, the unique feature of the present case is that there were two s 5 notifications: the first notification was published in the Gazette on 11 January 2011, and the second notification was published in the Gazette on 8 February 2012. As the second notification was a result of the request by RBC Dexia pursuant to s 49 of the LAA, we begin by examining the provision.

32 The material parts of s 49 of the LAA read:

> **Owners who suffer substantial impairment in rights in land may require their land to be acquired**
>
> 49. –(1) The owner of any … any severed land may, by notice in writing given to the Collector, request the Government to acquire under this Act –
>
> *(a)* … the severed land (as the case may be) …
>
> *(b)* …
>
> if the owner considers that he suffers substantial impairment of his rights in the lands in paragraphs *(a)* and *(b)* because of –
>
> (i) …
>
> (ii) …
>
> (iii) the severance arising from the acquisition under this Act of any other part of the owner's land.
>
> (2) …
>
> (3) Any notice under this section is irrevocable once given to the Collector.

(4) …

(5) …

33 Hence, s 49(1) of the LAA allows*, inter alia,* for the owner of a severed land to request the Government to acquire the severed land if the owner considers that he suffers substantial impairment of his rights in the severed land because of the severance arising from the acquisition under the LAA of any other part of the owner's land.

34 Section 49A(1) sets out the procedures and timelines for such owner-initiated acquisition. The material parts of s 49A(1) read:

> **Owner-initiated acquisition**
>
> 49A. –(1) Upon receiving a notice under section 49(1) in relation to … any severed land (as the case may be) … the Collector is to assess whether the owner of those lands suffers or does not suffer substantial impairment of his rights in those lands because of –
>
> *(a)* …
>
> *(b)* …
>
> *(c)* the severance arising from the acquisition under this Act of any other part of the owner's land.
>
> (2) The President is to proceed under this Act to acquire the land that is the subject of a notice under section 49(1) as if the land was needed for a public purpose, if the Collector assesses that the owner of the land giving notice suffers substantial impairment of his rights in the land because of any of the circumstances described in subsection (1)*(a), (b)* or *(c).*
>
> (3) …
>
> (4) A fresh notification or other proceedings under section 5, 6 or 8, as the case may be, shall be necessary for the acquisition of the land that is the subject of

a notice under section 49(1) and in respect of which subsection (5) does not apply.

(5) However, the President is not to proceed under this section to acquire any land that is the subject of a notice under section 49(1) if –

(a) the notice is not given to the Collector within the claim period applicable to that land; or

(b) the notice is given to the Collector-

(i) …

(ii) for a notice that concerns severed land, after the Collector has made an award under section 10 for the acquisition under this Act of the other part of the owner's land so severed.

(6) …

(7) …

(8) For the purpose of this section, an owner of land suffers substantial impairment of his rights in the land if, and only if, the owner of the land or, if the owner is not in occupation of the land, any lawful occupier of the land –

(a) is unable for a period of one year or longer, to use the land, and any land related thereto, according to –

(i) the zoning and density requirements and other restrictions imposed by or under the Planning Act (Cap. 232); and

(ii) any other restrictive covenants in the State title for the land and the land related thereto (if any); and

(b) is displaced from the land and any land related thereto for a period of one year or longer,

solely by reason of any of the circumstances described in subsection (1)*(a), (b)* or *(c).*

(9) In this section –
"claim period" means –

(a) …

(b) …

(c) for any land remaining after any other part of the owner's land is severed because of an acquisition under this Act – one year

> starting from the date of acquisition for that other land so acquired;
>
> "date of acquisition", for any land, airspace or subterranean space acquired under this Act, means the date of the publication of the notification under section 5(1) declaring that land, airspace or subterranean space is needed for the purpose specified in that declaration;
>
> "displace", in relation to a person in occupation of any land, means being compelled to relocate the person's principal place of residence or business on that land as a result of –
>
> *(a)* …
>
> *(b)* …
>
> *(c)* any severance;
>
> "severance" means severing of land acquired under this Act from other land;
> …

35 Of particular significance is s 49A(4) of the LAA which stipulates that a "fresh notification or other proceedings under section 5, 6 or 8, as the case may be, shall be necessary for the acquisition of the land that is the subject of a notice under s 49(1)". This may be contrasted with s 50(2) of the LAA which provides that "no fresh notification or other proceedings under sections 5, 6 and 8 shall be necessary" where the Collector acquires the whole or any additional portion of the land of which the land first sought to be acquired forms a part.

36 For ease of comparison, it would useful to set out s 50 of the LAA in full:

> **Acquisition of whole or any additional portion of land where compensation for severance is payable**
>
> 50.- (1) If any claim for compensation is made to a Collector holding an inquiry under section 10 by a person interested or his agent as provided by sections 15 and 33(1)*(c),* on account of the severing of the land to be acquired from his other land, or if, notwithstanding that no

> such claim has been made, a Collector holding such an inquiry has certified under his hand that compensation as aforesaid is payable upon the acquisition, it shall be lawful for the President at any time before the Collector has made his award, to order the acquisition of the whole or any additional portion of the land of which the land first sought to be acquired forms a part.
>
> (2) No fresh notification or other proceedings under sections 5,6 and 8 shall be necessary; but the Collector shall without delay furnish a copy of the order of the President to the person interested and shall thereafter proceed to make his award under section 10 as if the whole or any additional portion of the land specified in the order of the President were the subject of the initial notification under section 5.

37 Pursuant to s 50(2) of the LAA, the whole or any additional portion of the land acquired by the Collector shall be treated as if they were "the subject of the initial notification under section 5". This means that the date of valuation in determining compensation is the date of the initial notification. In contrast, there is no similar provision in s 49/s 49A of the LAA.

38 It is clear from the above that there are distinct differences between s 49 and s 50 of the LAA. In our respectful view, it is erroneous for the Appellant to assert that they are "two sides of the same coin" when they are in actual fact two very different coins, so to speak. As noted earlier, s 49A(4) stipulates that a "fresh notification or other proceedings under s 5, 6 or 8 as the case may be, shall be necessary for the acquisition of the land which is the subject of a notice under section 49(1)". In essence, this requires the acquisition process to be started anew. By implication, the previous notification and proceedings would be superseded by the fresh notification and proceedings. Applying s 33(1)(a) of the LAA, the correct date of the valuation would be the date of the publication of the fresh s 5 notification.

39 In the present case, the Collector had informed RBC Dexia that a fresh notification under s 5 would be gazetted to acquire the whole land and fresh notices under s 8 of the LAA would be served. Following that, a fresh notification acquiring

the entire lot was published on 8 February 2012, i.e. the Second Gazette Date. We note that the approach taken by the Collector is consistent with s 49A(4) of the LAA. Accordingly, we find that the relevant date of valuation for the leased premises is the Second Gazette Date.

40 Before moving on, we should make a brief observation with regard to the Appellant's proposition that the compensation in an owner-initiated acquisition under s 49(1) should be valued on the same basis and produce the same outcome as a compensation for injurious affection under s 33(1)(d). There is no necessity to go into a detailed analysis of the issue save only to point out that in an injurious affection claim under s 33(1)(d), the owner retains ownership of the severed land even after an award of compensation for injurious affection whereas in the case of an owner-initiated acquisition under s 49(1), the owner relinquishes ownership of the whole land. For this reason alone, the proposition is clearly untenable.

Relevant GFA

41 As a preliminary step to the determination of the Profit Rent, the rent being paid by the Appellant to RBC Dexia will first have to be ascertained (see paragraph 17 above). The Appellant refers to this as the "total occupation costs" whilst the Collector refers to this as "the passing rent". The Appellant submits that notwithstanding the difference in the terminology, the crux here is to determine the total costs that the Appellant had to pay under the Lease so that it can be put on as equal a footing when compared to the total costs that have to be paid for the comparables.[28]

42 It is not in dispute that in determining the total costs that the Appellant had to pay under the Lease, one of the components is the actual rent paid by the Appellant to RBC Dexia. It is also not disputed that as at the date of the Second Gazette notification i.e. 8 February 2012, the actual rent paid by the Appellant was $507,364.93 per

[28] Appellant's Closing Submissions (ACS) at paras 81-82.

month.[29] Under the supplemental lease agreement dated 13 July 2007, the monthly rental was revised and amended to $474,172.83 per month with effect from 1 August 2007 subject to a rental escalation of 7% on the commencement of the fourth year and a further 7% on the commencement of the seventh year of the term commencement date,[30] i.e. 25 July 2006.[31] The sum of $507,364.93 payable on 8 February 2012 represents a 7% increase of $474,172.83.

43 In commercial and industrial properties, the unit of comparison is expressed in price per square foot or square metre: see *N Khublall, Compulsory Land Acquisition Singapore and Malaysia (Second Edition)* ("*Khublall*") at page 139. In the present case, we shall for ease of reference refer to the contracted rent per month expressed in per square metre as the "unit rent".

44 In determining the unit rent, the Appellant had adopted an "equivalent GFA" of the buildings of 73,976.79 sqm.[32] Based on this approach, the unit rent paid by the Appellant would be $6.86 psm/month ($507,364.93 per month/73,976.79 sqm).

45 The Appellant's valuer Ms Chua explained the concept of the equivalent GFA as follows:[33]

> I note that the Respondent's Valuers have utilised the figure of 53,368 sq m as the GFA of the buildings in the computation of the per sq m per month contracted rent which is payable to Cambridge by the Appellant. I would like to point out that the GFA of 53,368.3 sq m represents the highest gross floor area of the buildings on the Acquired Land as approved by the Urban Redevelopment Authority.
>
> In my 10 March 2016 Valuation Report and the January 2011 Profit Rent Computations, I have taken into consideration the fact that Block 7 has a height of approximately 33m and houses the Appellant's automated storage and retrieval system ("ASRS"). I understand that following the further checks by Ms Yap, the height of the Block 7 is approximately 31.5m and not 33m. This difference of 1.5m does not

[29] Affidavit of Chua Beng Ee (CBE1) at p.25.
[30] See the supplemental lease agreement exhibited in the Affidavit of Yap Ai Cheng (YAC1) at p.86.
[31] See the original lease agreement exhibited in the Affidavit of Yap Ai Cheng (YAC1) at p.28.
[32] Affidavit of Chua Beng Ee (CBE1) at p.15.
[33] Affidavit of Chua Beng Ee (CBE2) at paras 14-15.

> affect the valuation in my 10 March 2016 Valuation and January 2011 Profit Rent Computations. In any case, given its height, Block 7 and the ASRS contains the equivalent of 4 levels of storage capacity of a typical industrial building with a stud height of about 8 metres high. As set out in the January 2011 Profit Rent Computations, the adjustment for the high stud height of Block 7 is done through multiplying the ground floor area of Block 7 by 4 in arriving at the total "equivalent" GFA of the buildings of 73,976.79 sq m. **I am of the view that any lessee would take into consideration the fact that Block 7 contains the equivalent of 4 levels of storage capacity in rationalising the gross rent that would be payable to the landlord.** As such, the highest gross area of 53,368.3 sq m (as referred to by the Respondent's Valuers) is not representative of the actual space that is being leased by the Appellant and should not be utilised (without further adjustment) in the computation of the per sq m per month contracted rent which is payable to Cambridge as the Respondent's Valuers have done.
>
> (emphasis in bold added)

46 The concept of the equivalent GFA, as explained by Ms Chua in the part in bold above, is based on a hypothetical lessee. This is reiterated in the Appellant's Closing Submissions (ACS) the material parts of which state as follows:

> We submit that the Appellant's reliance on the equivalent GFA of the buildings on the Acquired Land of 73,976.79 sq m is clearly supported by an application of the market value hypothesis test …[34]
>
> Based on the test enunciated in *Spencer*, the hypothetical willing buyer (or lessee) and willing seller (or landlord) are envisaged to be persons who are conversant with the subject and who are cognisant of all circumstances which might affect the subject's value. In the present case, the hypothetical rental market for the Acquired Land is not any person on the street, and is confined to those who are in the warehousing industry that are engaged in the demand and supply of warehouse buildings …[35]
>
> In the particular context of block 7, which has been agreed by parties to this appeal to have been built to accommodate an ASRS system, the group of hypothetical lessees must also include lessees who are desirous of implementing an ASRS system and who would be able to maximise the 30.2m in height of block 7 …[36]
>
> In the case of *ExxonMobil Asia Pacific Pte Ltd v The Collector of Land Revenue* ab 2012.035 ("*ExxonMobil*"), this Honourable Board has also recognised at [38] of the judgment that a party whose land is being

[34] Appellant's Closing Submissions (ACS) at para 43.
[35] Appellant's Closing Submissions (ACS) at para 46.
[36] Appellant's Closing Submissions (ACS) at para 47.

> acquired could itself even be considered a *bona fide* purchaser in the hypothetical market analysis. Based on *ExxonMobil*, even the Appellant, who is in the warehousing business and is concerned about the maximisation of pallet or storage capacities through the use of the ASRS, may also be considered as a potential hypothetical lessee for the Acquired Land.[37]

47 In our respectful view, the hypothetical market analysis relied upon by the Appellant and its valuer to justify their use of the equivalent GFA is misconceived. As Ms Chua herself has explained, the first step in ascertaining the Profit Rent is to determine "the rent being paid by the lessee under the lease agreement" (see paragraph 17 above). This is a factual matter which does not involve any hypothetical analysis. Indeed, it is wholly irrelevant what a hypothetical lessee would have paid. What is required is the actual rent paid by the Appellant - not a hypothetical rent paid by a hypothetical lessee based on a hypothetical market analysis.

48 Factually, under the lease agreement dated 25 July 2006, the Appellant and RBC Dexia had agreed on a monthly rent of $454,000 for the "Demised Premises" (defined in the lease agreement as the buildings erected on the land) commencing 25 July 2006.[38] It is also clear that the rent was computed by reference to the GFA of the buildings (which at the time of the lease agreement was estimated to be "approximately 53,000 square metres"[39]). This is evident from Clause C2 of the lease agreement which states explicitly as follows:[40]

> C2. **GROSS FLOOR AREA** AND DUE DILIGENCE
>
> Upon final due diligence and determination of the gross floor area of the Building by the Landlord's consultants, **the actual Rent** and actual Security Deposit **shall be computed by reference to the gross floor area as finally determined**, such revision to take effect from the commencement of the Term Provided that the Rent shall not be adjusted if upon final due diligence the variance in the gross floor area as finally determined does not exceed three per cent (3%) of 53,000 square metres. For the purpose of computation, the adjustment to

[37] Appellant's Closing Submissions (ACS) at para 48.
[38] See lease agreement dated 25 July 2006 exhibited in the Affidavit of Yap Ai Cheng (YAC1) at p. 29.
[39] See definition of "Property" at p.2 of the lease agreement exhibited in the Affidavit of Yap Ai Cheng (YAC1) at p.27.
[40] See Affidavit of Yap Ai Cheng (YAC1) at p.30.

> the Rent shall be made on the basis of Dollars Eight and Cents Fifty-Seven **($8.57) per square metre per month** …
>
> (emphasis in bold added)

49 The unit rent of $8.57 psm/month in Clause C2 is derived by taking the monthly rent of $454,000 and dividing it by the estimated GFA of 53,000 square metre. Therefore, the use of the equivalent GFA by the Appellant's valuer Ms Chua to compute the unit rent payable by the Appellant under the lease agreement is devoid of any factual basis.

50 When the Board sought clarification from the experts as to whether it is the industry norm for warehouse rental quotations to be given in equivalent GFA, Ms Chua's evidence was as follows:[41]

> It's usually the actual GFA, yah, because I mean the reason why we have the equivalent storage capacity or the equivalent GFA is because of these ASRS buildings and there are not that many ASRS building around for rental, yah.

51 It is clear from the above that the use of the equivalent GFA by Ms Chua as a unit value in warehouse rental is not reflective of the industry practice. In fact, we note that none of the rental quotations received by the Appellant in 2011 and 2012 when it was looking for alternative premises were in terms of the equivalent GFA.[42] Similarly, none of the five rental comparables relied upon by the Appellant to estimate the market rental were in terms of the equivalent GFA.[43]

52 Whilst Ms Chua appears to suggest that ASRS buildings are the exceptions, she did not provide any actual example where the unit rent was quoted in terms of the equivalent GFA. In fact, the leased premises - the sole example of a lease with an ASRS building - contradicts all that she is asserting. There is nothing in the lease agreement dated 25 July 2006 nor in the supplemental lease agreement dated 12 July

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[41] Transcript of proceedings ("TS") Day 2 at pp. 17-29.
[42] Affidavit of Yap Ai Cheng (YAC1) at para 13; Agreed Bundle of Documents (ABOD1) at Tab 27.
[43] Experts' List of Agreed and Disputed Issues (EL) at p.6.

2007 that even vaguely suggests that the contracting parties had contemplated the use of the equivalent GFA to determine the monthly rent or that they had even applied their mind to such fundamental questions as to how the equivalent GFA was to be computed. In our respectful view, it would be fundamentally wrong for Ms Chua to adopt a different method of computing the unit rent when that was not even contemplated by the parties. The unit rent so derived would not be an accurate representation of the true state of affairs.

53 In summary, the unit rent being paid by the Appellant should simply be based on what the parties had actually agreed upon. It is clear from the Lease that the unit rent is based on the GFA of the leased premises. According to the URA's latest records as of 9 October 2009, the highest GFA of the Acquired Land is 53,368.3 square metres.[44] As the URA did not grant any planning approval for any development applications in respect of the Acquired Land between October 2009 and 8 February 2012,[45] we agree with the Collector that this is the objective rate to apply in respect of the leased premises.[46]

Total Occupation Costs / Passing Rent

Whether maintenance and repairs should be excluded

54 The lease agreement dated 25 July 2006 between the Appellant and RBC Dexia is a sale and leaseback ("SLB") agreement. The Appellant had sold its interest in the Acquired Land to RBC Dexia as trustee of Cambridge Industrial Trust and RBC Dexia

[44] Affidavit of Evidence-in-Chief of Lee Hwee Chuan (LHC1) at Tab 8. Although the Appellant's Surveyor's GFA is 203.47 sqm less than the URA's GFA, the Appellant is agreeable in-principle to the use of URA's GFA of 53,368.3 sqm for the purpose of valuing the Appellant's interest as a lessee: see Affidavit of Yap Ai Cheng (YAP3) at para 8.
[45] Reply Affidavit of Ee Kong Han Daniel (DE2) at p.4.
[46] Collector's Closing Submissions at p.73.

granted the Appellant a lease of the "Demised Premises" for a term of 10 years commencing 25 July 2006 with an option to renew for a further term of 5 years.[47]

55 According to the valuer for the Collector Mr Ee Kong Han Daniel ("Mr Ee") of Savills Valuation and Professional Services (S) Pte Ltd ("Savills"), the contracted rent payable by the Appellant to RBC Dexia under the lease agreement is on a "triple net basis" which means the Appellant pays JTC land rent and property tax and covers the cost of property maintenance, repairs and insurance during the term of its lease.[48] As the prevailing market rental of non-SLB transactions is typically calculated on a "gross rent basis" (whereby the landlord pays the JTC land rent, property tax and the costs of property maintenance, repairs and insurance), there is a need to make upward adjustments to the contracted rent (which is on a "triple net basis") so that it can be compared on the same basis as the prevailing market rent (which is on a "gross rent basis").[49]

56 This is not disputed by the Appellant except that its valuer Ms Chua took the view that the cost of property maintenance and repairs should not be taken into consideration as this component is irrelevant where the entire property is being leased. According to Ms Chua, the cost of property maintenance and repairs may feature in the case where part of a communal development is leased such that maintenance contributions have to be paid by the lessee for the use and upkeep of the common property in the development. Ms Chua claims that the Appellant is the sole lessee of the Acquired Land[50] and "[e]verything within the rental premises, it's always the tenant's responsibility."[51]

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[47] See preamble in the lease agreement dated 25 July 2006 at p.26 of the Affidavit of Yap Ai Cheng (YAC1).
[48] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at para 12.
[49] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at para 13.
[50] Affidavit of Chua Beng Ee (CBE2) at para 7; see also Appellant's Closing Submissions (ACS) at paras 82, 89, 91, 94.
[51] TS Day 2 at p. 44.

57 However, it is clear to us that Ms Chua's claim is factually and legally incorrect. The preamble in the lease agreement dated 25 July 2006 states as follows:

> WHEREAS:
>
> (A) By a Purchase Agreement dated 25 JUL 2006 between the Tenant as Vendor and the Landlord as Purchaser, the Tenant had sold its interest in the **Property (defined below**) to the Landlord.
>
> (B) It was a term of the Purchase Agreement that the Landlord shall grant the Tenant a lease of the **Demised Premises (defined below**) on the terms and subject to the conditions in this Lease.
>
> (emphasis in bold added)

58 The relevant definitions under Clause A1 state as follows:

> *Building* means the building erected on the Property known as 30 Tuas Road, Singapore.
>
> *Demised Premises* means the Building.
>
> *Property* means the land and the Building, with a leasehold title of 30 years commencing from 1 July 1979 (and the Tenant has fulfilled the fixed investment criteria for an extension for another 30 years pursuant to the terms of the Head Lease), and within the Building, and a gross floor area of approximately 53,000 square metres (which includes alteration and addition works to the office block), comprised in Government Resurvey Lot 1289X Mukim 7, and M&E Equipment.

59 The terms of the lease agreement reproduced above show clearly that the Appellant had sold the "Property" (which is the Acquired Land 1289X Mukim 7) to RBC Dexia and the leaseback is only in respect of the "Demised Premises" (which is the building erected on the "Property") and not the entire property as erroneously asserted by Ms Chua. Hence, Ms Chua's basis for excluding the cost of external property maintenance and repairs is in clear disregard of the terms of the Lease.

60 Under the Lease, there are "common areas" and areas outside of the Building for which the Appellant was responsible for the repair and maintenance. In particular, Clause D8.1 provides as follows:

D8. KEEP IN TENANTABLE REPAIR

D81.1 The tenant shall at all times keep clean and in good and tenantable repair and condition (fair wear and tear excepted), the Demised Premises … and any other Common Areas comprised in the Demised Premises …

61 "Common Areas" is defined in Clause A1 as follows:

Common Areas means:-

(a) (if the Demised Premises is subdivided and registered under the Land Titles (Strata) Act, Chapter 158) the parts of the Demised Premises which are within the definition of common property under the Act; or

(b) (if the Demised Premises is not subdivided and registered under the Land Titles (Strata) Act, Chapter 158) the parts of the Demised Premises which would reasonably be treated as common parts of the Demised Premises for common use or benefit if the Demised Premises had been subdivided and registered under the said Act, including but not limited to the Car Park, access and interior roads, walkways, pavements, passages, entrances, lobbies, corridors, toilets, stairways, escalators and lifts of the Demised Premises.

62 Other relevant clauses include:

D14.2 The Tenant shall reinstate the Property (as set out in Clause D14.5) and quietly yield up the Demised Premises in a good and tenantable condition …

D36.3 The Tenant shall keep the Property clean and free from dirt and rubbish and throw all trade waste, debris, dirt and rubbish (and in particular wet waste) in proper receptacles and shall arrange for the regular removal thereof from the Property …

D36.4 The Tenant shall employ or continue to employ in or about the Property any cleaners or cleaning contractors to carry out cleaning works in the Property PROVIDED ALWAYS that the Landlord shall not be liable for any misconduct or negligent acts or defaults of the said cleaning contract or contractors. Any cleaners so employed by the Tenant shall be at the sole expense and responsibility of the Tenant.

D36.6 The Tenant shall employ/appoint at the Tenant's own cost and expense such persons to undertake all necessary actions to ensure that adequate security for the Property is maintained at all times during the Term.

63 When comparing with the non-SLB comparables where the landlords pay for the repairs and maintenance of the areas external to the leased area, the cost of external

repairs and maintenance should be included to place the leased premises on the same footing as the non-SLB comparables.

64 For completeness, we now address a key contention raised in the Appellant's Closing Submissions (ACS) on this same issue. The Appellant contends that the definition of "Common Areas" as provided for in the Lease is merely a notional one and there are in fact no external areas on the Acquired Land. This is because the Appellant had leased the entire premises on the Acquired Land, of which the entirety would constitute internal areas for which no adjustment should be necessary.[52] Four main arguments were raised in support of the contention.

65 Firstly, the Appellant has sought to argue that it is "apparent from the Lease that the terms "Demised Premises" and "Property" have been used interchangeably in respect of the obligations of the Appellant".[53] However, we note the contrary to be the case. As an illustration, Clause D36.2 of the lease agreement states as follows:

> The Tenant shall pay on demand to the Landlord the costs and expenses incurred by the Landlord in cleaning any drains and pipes choked or blocked up whether in the Property and/or the Demised Premises due to the fault or default of the Tenant or its sub-tenants, employees, customers, invitees or licensees.

66 Clause D36.2 affords the Landlord with a contractual claim against the Tenant for the costs and expenses incurred by the Landlord in cleaning any drains and pipes in the Property that are choked or blocked up due to the fault of the Tenant or its sub-tenants, employees, customers, invitees or licensees. If the word "Property" is deleted, Clause D36.2 would only apply to drains and pipes in the Demised Premises. Drains and pipes that are outside the Demised Premises would not be covered. Clearly, the terms "Demised Premises" and "Property" are not interchangeable.

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[52] Appellant's Closing Submissions (ACS) at para 93.
[53] Appellant's Closing Submissions (ACS) at para 99.

67 Secondly, the Appellant has argued as follows[54]:

> Whilst the Appellant acknowledges that there is some drafting ambiguity in the Lease, the Appellant's interest as a lessee in the Acquired Land as a whole (including the land and the Building) is not inconsistent with Clause B1 which recognises that as part of the Lease, the Appellant's interest is not limited solely to the Demised Premises (which is defined to mean the Building) but also includes "the right … thereto for all purposes connected with the use of the Demised Premises", which we submit, extends to the lease of the Acquired Land as a whole.

68 Since reference has been made to Clause B1, it would be useful to reproduce the clause in full:

> B1. DEMISE
>
> In consideration of the Rent set out in Clause C1 and C2 and of the Tenant's covenants and agreements hereinafter reserved and contained, the Landlord HEREBY DEMISES unto the Tenant the Demised Premises TOGETHER WITH (but to the exclusion of all other liberties, easement, rights or advantages and subject always to the Landlord's rights to refuse access hereinafter contained) the right for the Tenant and others duly authorised by the Tenant in common with the Landlord and all others so authorised by the Landlord and all other persons entitled thereto for all purposes connected with the use of the Demised Premises but not for any other purposes
>
> (a) of ingress to and egress from the Demised Premises but only so far as necessary and as the Landlord can lawfully grant the same in, over and along all the usual entrances, landings, passenger lifts, service lifts and passage-ways leading thereto;
>
> (b) to the use of such sufficient toilet facilities in the Common Areas; and
>
> (c) to the use and benefit of the air-conditioning system (if any) installed in the Common Areas;
>
> EXCEPTING AND RESERVING unto the Landlord the free and uninterrupted passage of electricity, telephone, telex and other Conducting Media in, through or under the Demised Premises and the running of water, soil, gas and electricity in and through the same Conducting Media to other parts of the Property TO HOLD the Demised Premises unto the Tenant for the Term commencing on the Term Commencement Date and upon the covenants and conditions herein set out.

[54] Appellant's Closing Submissions (ACS) at para 98.

69 Clause B1 provides, *inter alia*, for the right of the Tenant and others authorised of ingress to and egress from the Demised Premises. It is not difficult to understand the rationale for the clause as the Demised Premises (the Building) are located within the Property and there is obviously a need for the Tenant and others authorised to enter the Property to get to the Demised Premises. We do not see how the grant of a right of passage to the Demised Premises (as well as the use of toilets and air-conditioning system in the common areas) can be interpreted to mean that the Appellant had leased the entire Property. These are two separate matters altogether.

70 Thirdly, the Appellant has also sought to argue that the property tax for the Acquired Land as a whole is comprised in two separate property tax assessments (exhibited by Mr Ee at DE-6), one relating to the Building and one relating to the land. The Appellant claims that they are responsible for paying the property tax contained in both property tax assessments for the Acquired Land as a whole, and if the Appellant's interest as a lessee was only limited to the Building, the Appellant would only have been paying for the property tax relating to the Building.[55]

71 However, the Appellant is not contractually bound to pay the property tax for the Acquired Land as a whole. Clause D3.1 provides as follows:[56]

> D3. PROPERTY TAX
>
> D3.1 The Tenant shall pay as and when required by the Landlord all sums in respect of government property tax or imposition of like nature of whatever name called that may be levied and imposed upon or in respect of or apportioned or attributable to the Demised Premises. The Tenant shall not be entitled to raise any objection as to the annual value (as determined by the Chief Assessor, the Property Tax Division, Inland Revenue Department, Government of the Republic of Singapore) which may be attributable to the Demised Premises.

[55] Appellant's Closing Submissions (ACS) at p. 64.
[56] See also Clause C1.2 of the Lease.

72 It is clear from Clause D3.1 that the Appellant is only required to pay the property tax that may be attributable or apportioned to the Demised Premises. This is further reinforced in Clause E4 which states as follows:

> E4. RATES, TAXES AND OUTGOINGS
>
> The Landlord shall pay all present and future rates, taxes, assessments, impositions and outgoings upon or in respect of the Property or any part thereof save and except such as are herein agreed to be paid by the Tenant.

73 We note that the two IRAS property tax assessments in DE-6 which were stated to be for "30 Tuas Road" and "MK7 A3436 PT". There is unfortunately a lack of clarity as to which of these assessments relate to the land and which to the buildings, or whether they relate to both land and buildings. The Appellant did not adduce any evidence to explain why they had paid for the property tax for the Acquired Land as a whole when their contractual obligation under Clause D3.1 is limited to the property tax attributable to the Demised Premises only.

74 In any event, the payment of property tax is a contractual agreement between the parties. It does not, on its own, indicate whether the lease is for the whole of the Acquired Land or the buildings only. This is clear when we compare the payment of the property tax with the payment of the JTC land rent under the lease. A comparison of the relevant clauses shows that they pull in different directions - under Clause D3.1, the Appellant is responsible for paying the property tax attributable to the Demised Premises only whereas under Clause 1.2, the Appellant is responsible for the JTC land rent for the whole of the Acquired Land. Clearly, these clauses cannot be taken by themselves to indicate if the whole of the Acquired Land or only the buildings were leased out to the Appellant.

75 Fourthly, the Appellant has also contended that they have exclusive use and possession of the Acquired Land as a whole which includes for example, the heavy

vehicle parking lots which are located on land outside the Building. In particular, the Appellant contends as follows:[57]

> It is also a fact that the Appellant has exclusive possession of the Acquired Land as a whole and all the land area that is located within the fence line of the Acquired Land, which is to the exclusion of any other person from the Appellant.

76 However, there is nothing in the Lease that provides that the Appellant shall have exclusive possession and use of the heavy vehicle parking lots or the Acquired Land as a whole. On the contrary, the right to exclusive possession has been demarcated and confined to the Demised Premises. For example, Clause 11.1 states as follows:

> The Tenant shall permit the Landlord and its servants or agents at all reasonable times to enter into, inspect and view the Demised Premises and examine the condition and also to take a schedule of fixtures in the Demised Premises.

77 The requirement to obtain the Tenant's approval for entry is confined to entry into the Demised Premises. There is no requirement under the Lease for the Landlord to obtain the Tenant's approval for entry into those parts of the Property not within the Demised Premises.

78 For the above reasons, we are not persuaded by the Appellant's submissions. We note further that under the Lease, the Tenant may sublet the Demised Premises with the written consent of the Head Lessor and the Landlord. Clause D48.1 states as follows:

> D48.1 – The Tenant shall not assign, underlet, sublet, license or otherwise part with or share possession or use of the Demised Premises or any part thereof without the written consent of the Head Lessor and the Landlord (whose consent shall not be unreasonably withheld) and any fees payable in respect of such consents shall be payable by the Tenant.

[57] Appellant's Closing Submissions (ACS) at p. 64.

79 It is clear that the parties contemplated the possibility of the Appellant sub-leasing a part of the Demised Premises to another party. By defining the areas which would usually be considered areas for common use or benefit under the Land Titles (Strata) Act, it is clear that the Appellant (and not RBC Dexia) would be responsible for the maintenance and repair of these common areas regardless of whether there is a sub-tenant on the premises or not. Hence, it would not be correct to say that the reference to "Common areas" is merely notional.

Computation of Passing Rent/Total Occupation Costs

80 As noted above, the components that make up the Passing Rent / Total Occupations Costs are:

1) The contracted rent paid by the Appellant under the lease agreement;

2) The property tax;

3) The JTC land rent;

4) The costs of external repairs, maintenance and insurance

Contracted Rent

81 As at the Second Gazette Date (8 February 2012), the monthly rent payable by the Appellant was $507,364.93.[58] The GFA of the buildings was 53,368.3 square metres. Hence, the unit rent payable by the Appellant was $9.51 sqm/month ($507,364.93/53,368.3 square metres) as correctly calculated by Mr Ee.[59] Ms Chua, on

[58] Affidavit of Yap Ai Cheng (YAC2) at para 11.
[59] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at para 14. See also Collector's Closing Submissions at para 81.

the other hand, has relied on the equivalent GFA in her computation. The use of the equivalent GFA, as we have explained earlier, is incorrect.

Property Tax

82 Both the Appellant's valuer Ms Chua and the Respondent's valuer Mr Ee accept that the Annual Value of the Acquired Land is $5,667,700. This is derived by adding up the first property tax assessment relating to "No. 30 Tuas Road) which has an Annual Value of $5,613,000 and the second property tax assessment relating to "Mukim 7 A3436 Pt" which has an Annual Value of $54,700. The property tax payable in respect of the Acquired Land is 10% of its Annual Value. This amounts to $566,770 or $47,230.83 per month.[60] This was the amount paid by the Appellant as at 8 February 2012.[61]

83 Although the parties are apparently *ad idem* on this component, there is an underlying difference that needs to be considered. The Appellant has adopted the property tax amount of $47,230.83 per month for the Acquired Land as this is consistent with their position that they had leased the whole of the Acquired Land. In contrast, the Collector's position is that the leased area only comprises the buildings sitting on the Acquired Land, and not both land and buildings.[62] Despite the position of the Collector, Mr Ee has adopted the property tax of $47,230.83 per month for the Acquired Land to derive at the unit rate of $0.88 psm/month ($47,230.83/53,368.3 square metres).[63]

84 Mr Ee's approach fails to take into consideration Clause D3.1 which provides that the Appellant is only liable to pay the property tax imposed upon or apportioned

[60] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at para 14(b); Affidavit of Chua Beng Ee (CBE2) at p.22.
[61] Affidavit of Yap Ai Cheng (YAC2) at para 11.
[62] Collector's Closing Submissions (RCS) at para 91.
[63] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at para 14(b).

or attributable to the Demised Premises. In the circumstances, we find that the unit rate of $0.88 psm/month derived by Mr Ee is erroneous.

85 As neither the Appellant nor the Collector has adduced any evidence or provided any basis as to how the sum of $47,230.83 per month may be apportioned, the best that the Board could do is to take a broad approach by apportioning the property tax based on the GFA and the site area of the Acquired Land as follows:

> 53,368.3 sqm (GFA)/78,279.4 sq m (site area of Acquired Land) = 68% (approximately)
>
> 68% x $47,230.83 per month = $32,116.96 per month
>
> $32,116.94/53,368.3 sqm = **$0.60 psm/month**

86 As such, we find that the appropriate unit rate to be applied for the property tax is $0.60 psm/month.

JTC Land Rent

87 Clause 1.2 provides as follows:

> The Tenant shall pay the land rental in respect of the Property levied by the Head Lessor during the Term.

88 The "Head Lessor" refers to JTC.[64] In respect of the JTC land rent, it is clear that the Appellant's contractual obligation is to pay the land rent of the Acquired Land. It is not in dispute that the land rent payable to JTC for the Acquired Land was $89,890.84 per month[65]. This was the amount paid by the Appellant as at 8 February 2012.[66] In the circumstances, we accept that the unit rate of $1.68 psm/month ($89,890.84/53,368.3 square metres) as calculated by Mr Ee is correct. We note that Ms Chua has also added the JTC land rent to the actual rent in her computation.[67]

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[64] See definition of "Head Lessor" in Clause A.1 of the Lease.
[65] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) para 14(a); Affidavit of Chua Beng Ee (CBE2) at p. 25.
[66] Affidavit of Yap Ai Cheng (YAC2) at para 11.
[67] Affidavit of Chua Beng Ee (CBE2) at p. 25.

Cost of external repairs, maintenance and insurance

89 The Appellant's valuer Ms Chua has excluded the cost of external repairs and maintenance as she had proceeded on the assumption that the Appellant had leased the whole of the Acquired Land. On this assumption, nothing is external and therefore everything is within the Tenant's responsibility. She has hence excluded the cost of external repairs and maintenance. However, as noted earlier, Ms Chua's assumption is incorrect as the leased area is confined to the buildings on the Acquired Land.

90 Although Ms Chua has excluded the cost of external repairs and maintenance on the basis that everything is internal, she has included a sum of $722.84 per month being the actual insurance paid by the Appellant (as well as the property tax and JTC land rent as noted earlier).[68]

91 The Collector's valuer Mr Ee has made an upward adjustment of $1.08 psm/month to account for the cost of property repairs, maintenance and insurance ("RMI").[69] Mr Ee carried out a study of 29 properties owned by three different REITs (Exhibit R1 to R4) to ascertain the actual expense incurred by these landlord REITs when maintaining the common areas outside of the tenant's leased area.[70] From his study, Mr Ee then computed the psf/month cost of RMI by applying the following formula:[71]

> Total annualised RMI cost/Total lettable area/12 months

92 The Appellant contends that R1 to R4 contains substantially redacted information that Mr Ee has extracted from accounting information obtained from the REITs landlords. As it is impossible for the Appellant and its valuers to verify the

[68] Affidavit of Chua Beng Ee (CBE2) at p.25 and Affidavit of Yap Ai Cheng (YAC2) at para 11.
[69] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at para 14(c).
[70] Collector's Closing Submissions (RCS) at para 101; TS Day 3 at 136:12 to 137:15; TS Day 4 at 14:15-28.
[71] Collector's Closing Submissions (RCS) at para 102; TS Day 2 at 4:22.

veracity and truth of the information provided in R1 to R4, the Appellant submits that Mr Ee's study cannot be relied on. Without any underlying source documents, or, even simply the identity of the subject, the Appellant and its valuers are in no position to perform their own checks as to the minimal data that has been provided in R1 to R4. Furthermore, with the dearth of information, the bare accounting line items cannot be taken at face value since it is critical to understand exactly what has been incurred in respect of these line items, in order to determine if these costs of repairs, maintenance and insurance are even relevant or comparable to the Acquired Land.[72]

93 Under s 25(3) of the LLA, the onus of proving the award is inadequate lies with the Appellant. It is trite that "the party with the legal burden of proof has, simultaneously, the obligation or burden to adduce evidence".[73] The onus is hence on the Appellant to adduce evidence to show that the notional cost for the external RMI derived by Mr Ee is incorrect. While it may be difficult for the Appellant to verify the veracity of the information given the redaction, there is actually no necessity to embark on such a course of action. This is because the subject-matter of the inquiry pertains to the actual cost incurred by the Appellant for external RMI. This is a factual inquiry and the facts are well within the knowledge of the Appellant. It would not have been difficult for the Appellant to provide the actual cost incurred for RMI in the same way that it has provided the actual costs for property tax and JTC land rent. The external component may be derived from the actual cost incurred for RMI. This would show whether Mr Ee has overprovided or underprovided for the cost of the external RMI. However, the Appellant did not adduce any such evidence save only for the actual cost of insurance. In fact, if the actual cost is provided, there would be no necessity to resort to notional cost. As the Appellant did not provide any such evidence, there is no reason for the Board to come to a different conclusion.

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[72] Appellant's Closing Submissions (ACS) at paras 110-112.
[73] See Peter Gabriel, *Burden of Proof and Standard of Proof in Civil Litigation* (2013) 25 SAcLJ 130 at p.154; see also *HSBC Institutional Trust Services (Singapore) Ltd (trustee of Capitaland Mall Trust) v Chief Assessor* [2019] SGHC 95.

Passing Rent/Total Occupation Costs

94 The passing rent/total occupation costs is computed as follows:

Contract rent	- $9.51 psm/mth
Property Tax	- $0.60 psm/mth
JTC Land Rent	- $1.68 psm/mth
External RMI	- $1.08 psm/mth
Passing Rent/Total Occupation Costs	- **$12.87 psm/mth or $1.20 psf/mth**

Prevailing Market Rent

Collector's Comparables

95 According to the Collector's valuer Mr Ee, he analysed the contracted rents of comparable properties and made adjustments to these contracted rents to account for differences in location, floor area and date of transaction, amongst other factors affecting the value. Based on his analysis of the comparable properties, the prevailing market rent (on a gross rent basis) of the Acquired Land is between $9.69 psm/month to $11.84 psm/month ($0.90 psf/month to $1.09 psf/month). As the prevailing market rent is less than the passing rent, the Appellant suffered no loss of Profit Rent, and he accordingly recommended a nominal value of $1 to the Appellant's interest in the Acquired Land.[74]

96 Mr Ee produced a worksheet setting out 8 comparable property transactions exhibited as "DE-8" in his first Affidavit (DE1). He explained that as there is little information on rental transactions in the market that is publicly available, he has also relied on comparable property transactions that he has managed to obtain from Savills' internal database. In order to preserve the confidentiality of Savills' clients, he has not specified on exact location, land area, and floor area of these comparable properties.

[74] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at paras 17-18.

However, he has provided in DE-8 information that is as accurate as possible to the exact location, land area, and floor area without breaching his duty of confidentiality to Savills' clients.[75] This was re-exhibited (with errors corrected) in "DE-8A" in his Supplemental Affidavit (DE3).

97 The comparables were selected by Mr Ee based on the type of transactions, time of contract, location and size.[76] The adjustments that he made to arrive at his opinion of the prevailing market rent were as follows:[77]

(a) Time – Adjustments for time differences between the date of transaction of each comparable property and the date of acquisition taking reference from the rental movement reflected on the URA warehouse rental index (exhibited in "DE-9");

(b) Location – Adjustments for location based on the land rents and prices for each industrial area published by the JTC with effect from 1 January 2012 (exhibited in "DE-10");

(c) Size – An adjustment of 10% for every doubling of GFA for each comparable property transaction.

98 Mr Ee's worksheet (DE-8A) setting out his analysis and adjustments is as follows:

INDUSTRIAL – NON STRATA	**Material Valn Date: 8 Feb 12**								
Particulars	**Subject Property**	**Rental 1**	**Rental 2**	**Rental 3**	**Rental 4**	**Rental 5**	**Rental 6**	**Rental 7**	**Rental 8**
Address	**30 Tuas Rd (WHOLE LOT)**	**Pioneer Place**	**Tuas West Rd**	**Ang Mo Kio Ind Park 2**	**1 Tuas Ave 4 (bought by Sabana REIT)**	**30 & 32 Tuas Ave 8 (bought by Sabana REIT)**	**34 Penjuru Lane (bought by Sabana REIT)**	**Changi South St 3, Level 1**	**Changi South Ave 2**
Type of Property	WDH1/2	Part of 1st & mezz level	Single storey det fty with mezz flr	Part of L1 and L4 of 4/s Fty Bldg	WDH1/3	E8 Fty + 4/S Extn	WDH5	Part of L1 whse	4/s Fty/Whse Bldg
Rental info – Gross rate	$1.22/ft pm	$1.21/ft pm	$1.19/ft pm	$1.23/ft pm	$1.43/ft pm	$1.29/ft pm	$1.27/ft pm	$1.50/ft pm	$1.35/ft pm
Rental info – Triple Net rate	$0.88/ft pm	N.A.	N.A.	N.A.	$1.11/ft pm	$1.00/ft pm	$1.01/ft pm	N.A.	N.A.
Gross Land Area (sqm)	78,279.40	-	8,000 to 8,500	-	13,730.80	14,598.90	15,410.10	-	10,000 to 10,500
Total GFA (sqm)	53,368.30	2,500 to 3,000	5,000 to 5,500	2,000 to 2,500	14,898.04	14,757.30	38,486.98	1,000 to 1,500	15,000 to 15,500

[75] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at para 19.
[76] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at para 20.
[77] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at para 21.

Source of GFA	URA	Savills	Savills	Savills	Sabana REIT	Sabana REIT	Sabana REIT	Savills	Savills
Existing Plot Ratio	0.68				1.09	1.01	2.50		
Contract Date		May-10	Aug-10	Jun-10	Nov-10	Nov-10	Nov-10	Mar-12	Sep-12
Rental Value based on comparable (over GFA)		$696,672	$684,572	$706,686	$820,784	$741,769	$730,766	$861,911	$777,919
Adjustment Factors									
Time (URA rental index)		31%	26%	31%	15%	15%	15%	0%	-1%
Size		-42%	-33%	-45%	-18%	-18%	-4%	-50%	-18%
Age/Condition		0%	0%	0%	0%	0%	0%	0%	0%
Location/Siting		-5%	0%	-30%	0%	0%	-15%	0%	0%
Total Adjustment (%)		**-16%**	**-7%**	**-44%**	**-3%**	**-3%**	**-4%**	**-50%**	**-19%**
Adjusted Value		$586,374	$635,524	$398,938	$796,889	$718,908	$702,510	$430,955	$631,850
Final Adj $psf over GFA		$1.02	$1.11	$0.69	$1.39	$1.25	$1.22	$0.75	$1.10
Average of the comparable sales analysis =		**$612,744**							
	say,	**$613,000**							
Recommendation		**$psm over TGFA**	**$psf over TGFA**						
Market Rental Value	**$613,000**	**$11.49**	**$1.07**						

99 For ease of reference, we shall refer to "Rental 1" to "Rental 8" as "RC 1" to "RC 8".

100 After preparing the Valuation Report, and in the course of preparing for this appeal, Mr Ee was able to obtain additional information on 8 other comparable property transactions within the Jurong location. He used the opportunity to conduct further checks and calculations to confirm the reasonableness and reliability of his opinion on the prevailing market rent that is stated in the Valuation Report.[78]

101 He analysed the contracted rents of the 8 additional comparable property transactions, and made adjustments to these contracted rents to account for differences in location, floor area, and the date of transaction amongst other factors affecting the value. In addition, he also made adjustments to account for the higher ceiling height of the ASRS and the over-provision of heavy vehicle parking lots on the Acquired Land. Based on his analysis of the 8 additional comparable property transactions, the

[78] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at para 23.

prevailing market rent (on a gross rent basis) of the Acquired Land as at the date of acquisition is $11.24 psm/month, which was well within the range of the prevailing market rent stated in his Valuation Report. A worksheet setting out his analysis of the 8 additional comparable property transactions, as well as the adjustments he performed is exhibited as "DE-12" in his first Affidavit (DE1).[79] This was re-exhibited (with errors corrected) as "DE-12A" in his Supplemental Affidavit (DE3).

102 As an additional check, Mr Ee performed an online search of the Real Estate Information System ("REALIS") maintained by the URA and obtained statistical data for rental transactions of warehouse-type properties in the Tuas Planning Area during the period February 2011 to February 2012. Based on his analysis of the data obtained from REALIS, the estimated prevailing market rent (on a gross rent basis) for the Acquired Land as of the date of acquisition is $9.74 psm/month. This figure is also within the range of the prevailing market rent stated in the Valuation Report. The worksheet setting out his analysis of the data as well as the adjustments he performed is exhibited in "DE-4" in his first Affidavit (DE1).[80] This was re-exhibited (with errors corrected) in "DE-4A" in his Supplemental Affidavit (DE3).

103 Mr Ee also points out that the Inland Revenue Authority of Singapore ("IRAS") has assessed the Annual Value of the Acquired Land at $5,667,700. Based on the Annual Value of $5,667,700 as assessed by IRAS, the Acquired Land would have fetched a market rent of $8.85 psm/month. Thus, even based on this assessment, the Appellant's interest in the Acquired Land would be without value.[81]

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[79] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at paras 23-26.
[80] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at para 27-30.
[81] Affidavit of Evidence-in-Chief of Ee Kong Han Daniel (DE1) at para 30.

Appellant's Criticisms

104 The Appellant contends that the approach adopted by Mr Ee is fraught with error and weakness and should be disregarded in its entirety.[82] The contentions of the Appellant may be summarised as follows:

Location

(a) Mr Ee has selected properties that are located a significant distance away from the Acquired Land, such as Ang Mo Kio Ind Park 2 (RC3 in DE-8A) and Changi South St 3, Level 1 (RC7 in DE-8A) and Changi South Ave 2 (RC8 in DE-8A);[83]

(b) Given that Mr Ee was willing to consider properties that were located even in Changi, he would have come across more than the 8 transactions in DE 8-A. The comparables were chosen by Mr Ee with a view to support his valuation and not with the aim of accurately evincing the true market rent of the Acquired Land;[84]

(c) Mr Ee's reliance on the JTC Index for locational adjustments is erroneous. The JTC Index is reflective of the rents and prices of general industrial land, and does not provide specific rents and prices of warehouse space and therefore cannot be used to adjust for locational differences of warehouse space;[85]

(d) Mr Ee's application of the JTC Index is in any case erroneous and unreliable;[86]

(e) Mr Ee's willingness to accept the data in DE-14A without any similar locational adjustment based on the JTC Index clearly undermines any significance that is attached to the JTC Index;[87]

[82] Appellant's Closing Submissions (ACS) at para 132.
[83] Appellant's Closing Submissions (ACS) at para 134.
[84] Appellant's Closing Submissions (ACS) at paras 135-137 and paras 267-289.
[85] Appellant's Closing Submissions (ACS) at para 138-141.
[86] Appellant's Closing Submissions (ACS) at para 142-147.
[87] Appellant's Closing Submissions (ACS) at para 149.

Time

(f) In DE-12A, Mr Ee has produced 2 transactions dating back to October 2007 and 1 transaction in April 2008. There is no reason why Mr Ee should not be considering the lease of the Acquired Land itself sometime in 2006 to arrive at the determination of the market rent of the Acquired Land. With the uplift based on time adjustments alone, this would be a clear indication that there is Profit Rent due to the Appellant;[88]

Property Type

(g) Mr Ee has not made any adjustments to the rents of the Collector's comparables to take into account the ground floor and standalone advantages of the Acquired Land. The comparables do not have ramp-up facilities and are in fact only served by cargo lifts and/or passenger lifts;[89]

(h) Mr Ee recognised this omission and acknowledged that there should in fact generally be a 20% premium for warehouse spaces situated on the ground floor as compared to those that are situated on higher levels. He has also conceded during the hearing that he should have done so for the rental comparables that he had relied on;[90]

(i) In the course of the hearing, Mr Ee attempted to explain that he had taken the opportunity to revisit the workings to take into account the proposed adjustment of 20%. Even after revisting his workings, Mr Ee claims that his conclusion remains that there is still no Profit Rent due to the Appellant. Given that Mr E has not provided any evidence or revisions to the Collector's comparables, Mr Ee's assertion must be rejected;[91]

Size

(j) Mr Ee asserts that a downward adjustment of 10% for every doubling of GFA is necessary. This rigid fixation with his methodology is erroneous;[92]

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[88] Appellant's Closing Submissions (ACS) at para 158.
[89] Appellant's Closing Submissions (ACS) at para 169.
[90] Appellant's Closing Submissions (ACS) at para 170.
[91] Appellant's Closing Submissions (ACS) at para 174.
[92] Appellant's Closing Submissions (ACS) at paras 180-189.

(k) Based on the analysis of the data in R5 to R9 (tendered by Mr Ee for his Height Study), the Collector's own data contradicts and disproves Mr Ee's assertion in respect of size;[93]

(l) Mr Ee's methodology as to the adjustments for size is inapplicable and should be disregarded, and no adjustments to rentals will in fact be required for size differences;[94]

Height

(m) In order for Mr Ee to be able to isolate the impact of height on rental prices and to arrive at an accurate conclusion, the only variable between the subject properties in the Height Study must only be that of height;[95]

(n) The soundness of Mr Ee's Height Study is contingent on the correctness of the ancillary adjustments that Mr Ee has made. However, there are serious flaws and errors committed by Mr Ee in making the ancillary adjustments. Therefore, the Height Study is gravely unsound such that no reliance can be placed on it;[96]

(o) Furthermore, it is apparent that it would be an impossible task to account for and neutralise every variable between the subjects in order to ensure that the subject properties are perfectly comparable apart from height only, in order to yield a fair study;[97]

(p) Mr Ee has not applied the adjustment for differences in height to the Collector's comparables in DE-8A, and had only done so for DE-12A and DE-14A. Mr Ee has explained during the hearing that the issue of height had only arisen subsequent to this valuation report (for which the Collector's comparables in DE-8A had been relied on), and he therefore only had the opportunity to take into account the height adjustments for DE-12A and DE-14A. Notwithstanding the opportunities to revisit his workings in DE-8A, he has chosen to retain the integrity of the data given that he had performed his valuation solely on the workings in DE-8A. Therefore, the market rent that Mr Ee has derived based on DE-8A is obviously undervalued;[98]

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[93] Appellant's Closing Submissions (ACS) at paras 190-192.
[94] Appellant's Closing Submissions (ACS) at para 193.
[95] Appellant's Closing Submissions (ACS) at para 200.
[96] Appellant's Closing Submissions (ACS) at paras 201 and 204.
[97] Appellant's Closing Submissions (ACS) at para 202.
[98] Appellant's Closing Submissions (ACS) at paras 213-214.

(q) Mr Ee has only attributed a blanket increase of 5% in DE-12A and DE-14A to account for the differences in heights of the buildings on the Acquired Land, which suggests that Mr Ee has based his methodology on the assumption that all the comparables have the same height. Given that the Collector's comparables are all of varying heights, it is clearly erroneous for Mr Ee to have applied the blanket increase of 5% without tailoring the adjustment according to the specific height of each comparable;[99]

(r) Based on the Height Study, Mr Ee's finding is that a warehouse of 8m would have a $0.10 premium over a warehouse of 5m. The premium attributed by Mr Ee, based on his study, should not be a blanket 5%, given that the heights of the Collector's comparables vary, and these variances (of approximately 4m) are quantitatively significant in the context of Mr Ee's Height Study;[100]

Age/Condition

(s) Mr Ee's adjustments made based solely on the criterion of age are completely unsound, given that age in itself reveals nothing about the actual condition of the buildings;[101]

(t) In any case, the Appellant was fully operational on the Acquired Land until the day the Appellant had to vacate the premises, and there has been no suggestion that the buildings on the Acquired Land were in poor condition such that an adjustment as to condition was required;[102]

Asking rents

(u) In the course of searching for alternative sites after the Acquisition, the Appellant managed to obtain rental quotes for some prospective sites which ranged from $1.55 psf to $1.80 psf;[103]

(v) Mr Ee has stated in the EL that he is of the view that rental quotations or offers should not be used where actual transactions are available, but he has stated in the valuation report that in assessing the market rent of the Acquired Property, he had used the market comparison method which

[99] Appellant's Closing Submissions (ACS) at paras 215-216.
[100] Appellant's Closing Submissions (ACS) at para 217.
[101] Appellant's Closing Submissions (ACS) at para 230.
[102] Appellant's Closing Submissions (ACS) at para 231.
[103] Appellant's Closing Submissions (ACS) at para 233.

involves the analysis of comparable asking/contracted rents with Jurong and other locations;[104]

(w) The Appellant's rental quotations would have clearly indicated to Mr Ee that his proposed market rents of $0.90 to $1.10 psf as at the Second Gazette Date are clearly erroneous.[105]

105 Given the numerous deficiencies in Mr Ee's methodologies, the resultant adjusted rents of the Collector's comparables would be equally unreliable.[106] Furthermore, Mr Ee's adjustments range up to a maximum of -50% for size, up to a maximum of -30% for location, and his cumulative adjustments have also hit a maximum of -50%. Mr Ee's sanity check which is capped at -50% is arbitrary, unworkable and illogical. Any comparable that requires significant adjustments would tend towards being a poor or unreliable comparable.[107] His tolerance for a high magnitude of adjustment renders the Collector's comparables and the resultant adjusted rents unsafe to be relied on.[108]

106 In addition to the above criticisms, the Appellant contends that the Collector's rental evidence should be disregarded in their entirety. Mr Ee has failed to provide the exact addresses for all the Collector's comparables apart from 4 comparable *viz.* RC4, RC5 and RC6 in DE-8A, as well as RC8 in DE-12A. Without the exact identities of the comparables, the Appellant's valuers are unable to verify the data provided by Mr Ee or to be fully apprised of the characteristics of the comparables, apart from the information as described by Mr Ee in the respective tables. The importance of the identification of a comparable is clearly stated as a requirement in the guidance provided in the Singapore Institute of Surveyors and Valuers Valuation Standards ("SISV Standards") which Mr Ee himself has exhibited in DE-1.[109] The descriptions

[104] Appellant's Closing Submissions (ACS) at para 237.
[105] Appellant's Closing Submissions (ACS) at para 241.
[106] Appellant's Closing Submissions (ACS) at paras 290-291.
[107] Appellant's Closing Submissions (ACS) at paras 292-289.
[108] Appellant's Closing Submissions (ACS) at para 300.
[109] Appellant's Closing Submissions (ACS) at paras 247-250.

provided orally by Mr Ee during hot-tubbing are imprecise and fraught with uncertainty, and cannot be relied on at face value.[110] Although DE-12A does not form the basis of Mr Ee's valuation report, the criticisms that apply to DE8-A would similarly extend to DE12-A.[111] As for DE-14A, it is apparent that Mr Ee does not know the identities of the properties for which the rental data relates to.[112] Mr Ee's professional obligations as a valuer does not absolve him of the need to provide sufficient evidential proof for the valuation that he has tendered.[113]

107 The Appellant further contends that it would be unsafe to rely on RC4, RC5 and RC6 in DE-8A as these are SLB transactions. SLB transactions tend not to be reflective of the market, owing to the degree of customisation and negotiation involved in such transactions.[114]

108 The Appellant also points out that the rents that Mr Ee has arrived at range from $0.69 to $1.30 and in arriving in his opinion of the market rent of the Acquired Land in his valuation report, he had relied on the average of the rents contained in DE-8A. The computation of the average of a wide distribution of numbers is not a useful exercise. The liberal and imprecise approach that Mr Ee has adopted in determining the market rents by taking the average of many widely disparate rents renders the Collector's comparables and Mr Ee's valuation unreliable and meaningless in the exercise of evincing the market rent of the Acquired Land.[115]

109 In summary, the Appellant contends that the Collector's rental evidence should be disregarded in its entirety.[116]

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[110] Appellant's Closing Submissions (ACS) at paras 252-253.
[111] Appellant's Closing Submissions (ACS) at para 254.
[112] Appellant's Closing Submissions (ACS) at para 255.
[113] Appellant's Closing Submissions (ACS) at para 257.
[114] Appellant's Closing Submissions (ACS) at paras 259-266.
[115] Appellant's Closing Submissions (ACS) at paras 301-305.
[116] Appellant's Closing Submissions (ACS) at para 305.

Appellant's Comparables

110 The Appellant's valuer Ms Chua relied on 5 comparables to arrive at the market rent of $1.59 psf/month as at the First Gazette Date, and a market rent of $1.77 psf/month as at Second Gazette Date[117]. These comparables were compiled by the Appellant's second valuer Mr Dennis Yeo Huang Kiat ("Mr Yeo") of CBRE Group, Inc ("CBRE"). Three of the comparables were lease transactions that occurred in 2011 of varying sizes which Mr Yeo was personally involved in:[118]

Comparable Lease Transactions						
S/N	**Address**	**Level**	**Approx. Area (sq ft)**	**Term (years)**	**Gross Rent (S$sq ft p.m)**	**Lease Commencement**
1.	15 Pioneer Walk	6	35,000	1	$1.31	1-Jan-11
2.	24 Penjuru Road	4	61,074	8	$1.48	1-Jan-11
3.	34 Boon Leat Terrace	1	59,410	3	$1.43	1-Oct-11

111 According to Mr Yeo, 2011 presented a very tight supply market and as a result of increasing demands, rents were resiliently high. The warehouse rent achieved during the year 2011 averaged at S$1.41/sq ft (ranging between $1.31/sq ft to $1.48/sq ft).[119]

112 Mr Yeo also provided 2 lease transactions in 2012 which he was also involved in:[120]

Illustrative Transaction Evidence					
Address	**Level(s)**	**Approx Area (sq ft)**	**Term(years)**	**Gross Rent (S$sq ft p.m)**	**Lease Commencement**
7 Clementi Loop	1	40,000	3	$1.60	Jun-12
Tuas Connection	1	42,092	3	$1.60	1-Aug-12

[117] Appellant's Closing Submissions (ACS) at para 120; EL at pp. 6 & 7; Affidavit of Chua Beng Ee (CBE3) at p. 8 (CBE-7).
[118] Affidavit of Dennis Yeo Huang Kiat (DY1) at para 6.
[119] Affidavit of Dennis Yeo Huang Kiat (DY1) at para 7.
[120] Affidavit of Dennis Yeo Huang Kiat (DY2) at para 2.

113 According to Mr Yeo, 2012 still presented a very tight supply market, and as a result of increasing demand, rents were resiliently high and had increased when compared to 2011.[121]

114 The Appellant's comparables and the adjustments made by Ms Chua to the comparable transactions are set out in the table annexed as "CBE-7" in Ms Chua's third Affidavit (CBE3) as follows:

Particulars	**Subject**	**Rental 1**	**Rental 2**	**Rental 3**	**Rental 4**	**Rental 5**
Address	30 Tuas Road	15 Pioneer Walk	24 Penjuru Road	34 Boon Leat Terrace	7 Clementi Loop	Tuas Connection
Type of Property	1 & 2/s Warehouse	L6 Warehouse	L4 Warehouse	L1 Warehouse	L1 Warehouse	L1 Warehouse
Land Area (m2)	78,279.4					
Total GFA (m2)	53,368.3	3,252	5,674	5,519	3,716	3,910
"Equivalent" GFA capacity (m2)	73,976.79					
Existing Plot Ratio	0.68					
Contract Date		Jan-11	Jan-11	Oct-11	Jun-12	Aug-12
Rental Info – Gross Rate ($psf/mth)		$1.31	$1.48	$1.43	$1.60	$1.60
Adjustments						
(a) Time URA Index		81.5	81.5	90.6	90.5	93.6
As at 11 Jan 2011	81.5	0%	0%	-10%	-10%	-13%
(b) Property Type		20%	20%	10%	10%	10%
Total Adjustment		20%	20%	0%	0%	-3%
Adjusted Rental Rate ($psf/mth)		$1.57	$1.78	$1.43	$1.60	$1.55
(a) Time (URA index)						
As at 8 Feb 2012	92.4	13%	13%	2%	2%	-1%
(b) Property Type		20%	20%	10%	10%	10%
Total Adjustment		33%	33%	12%	12%	9%
Adjusted Rental Rate ($psf/mth)		$1.75	$1.97	$1.60	$1.79	$1.74

115 For ease of reference, "Rental 1" to "Rental 5" shall be referred to as "AC 1" to "AC 5".

[121] Affidavit of Dennis Yeo Huang Kiat (DY2) at para 3.

116 The Appellant has chosen to only rely on the market rent of $1.50 psf/month both as at the First Gazette Date and the Second Gazette Date for the purposes of computing the Appellant's interest as a lessee.[122]

117 Ms Chua and Mr Yeo explained during hot-tubbing that the choice of comparables is extremely important. They have therefore chosen to rely on comparables which are as close as possible to the Acquired Land which would result in the least adjustments, as these would generally be comparables that are more reliable.[123] The comparables they have chosen were all situated in the western part of Singapore and which were not too far from the Acquired Land in terms of distance. No adjustment is therefore required as to location.[124]

118 To account for the difference in timing of the transactions that have taken place in respect of the Appellant's comparables, Ms Chua has made the adjustment for time based on the URA warehouse rental index. This is the method that has also been adopted by Mr Ee.[125] Notwithstanding the ability to make adjustments for time based on the URA warehouse rental index, Ms Chua has also explained during hot-tubbing that it is nevertheless important to select comparables that must be available around the time of acquisition. Comparables that date back a number of years would simply not be comparables that would be available during the relevant period, and it would be difficult to establish the market at the time of acquisition based on these comparables.[126]

119 The Appellant's valuers have made adjustments to account for the difference in property types of the Appellant's comparables. In particular, there are 2 aspects that the Appellant's valuers have considered in making these adjustments *viz.* (1) ground

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[122] Appellant's Closing Submissions (ACS) at para 120.
[123] Appellant's Closing Submissions (ACS) at paras 121-123.
[124] Appellant's Closing Submissions (ACS) at para 127.
[125] Appellant's Closing Submissions (ACS) at para 150.
[126] Appellant's Closing Submissions (ACS) at para 150.

floor; and (2) the standalone advantages of the Acquired Land.[127] Ms Chua elaborated that approximately 85% of the GFA of the buildings on the Acquired Land are ground floor space and situated within a large compound that was only for the Appellant's exclusive use and which also contained dedicated loading and unloading bays.[128] To account for the ground floor advantage of the buildings on the Acquired Land, Ms Chua has applied a +10% adjustment to the rentals for AC 1 and AC 2, given that they are not ground floor warehouses.[129]

120 As to the standalone advantage of the buildings on the Acquired Land, Ms Chua explained that a lot of flexibility is afforded to the Appellant who has exclusive use of the compounds and the dedicated loading and unloading bays, given that the Appellant can load and unload its goods at any time. The Appellant's vehicles can also be manoeuvred or stopped freely within the large compound on the Acquired Land with a total land area of 78,279.4 sqm, without fear of obstruction to other users.[130] For the standalone advantage factor, Ms Chua has applied a +10% adjustment to the rentals for all of the Appellant's comparables AC1 to AC5 as none of the comparables enjoys the same standalone advantage of the buildings on the Acquired Land.[131]

121 Ms Chua explained that there is no necessity for the adjustment for size. There is a limited supply of properties with a GFA as large as the Acquired Land (of 78,279.4 sqm) which are suitable for the large scale operations. Based on the theory of demand and supply, in the case where the supply of a particular good or resource is low, the price will be correspondingly higher, and vice versa. Ms Chua elaborated that the dearth of large size warehouse premises available for rental is attributable to the existence of JTC sub-letting restrictions, which means that only 50% of the land area in each JTC property can be sub-let. To be able to find an area equivalent to the land

[127] Appellant's Closing Submissions (ACS) at para 159.
[128] Appellant's Closing Submissions (ACS) at para 160.
[129] Appellant's Closing Submissions (ACS) at para 162.
[130] Appellant's Closing Submissions (ACS) at para 163.
[131] Appellant's Closing Submissions (ACS) at para 166.

area of the Acquired Land for lease, the property would effectively need to be 2 times the area of the Acquired Land.[132] Ms Chua further explained during hot-tubbing that in considering the aspect of size, a distinction should be drawn between rental transactions and sale transactions.[133]

122 The Appellant's valuers have not made any adjustments to the Appellant's comparables for differences in height. Ms Chua explained that no adjustment will be necessary unless the height of the warehouse building is exceptionally high or exceptionally low. A lessee that is open to considering a warehouse building with an 8m height, will also be equally open to considering a warehouse building that is 7m or 10m, for example. In this regard, the "weighted average" height of the warehouse floors on the Acquired Land was computed by Ms Chua to be 8.58m. As such, if one was comparing the Acquired Land to a comparable that was 7m or 10m, for example, there would not have been a need to adjust for the rents of such comparables.[134]

123 Mr Yeo also elaborates that there are generally 2 categories of warehouses, namely the conventional warehouses (which Mr Yeo pegs at a height of up to 15m) and the ASRS warehouses (which Mr Yeo pegs at a height of approximately 30m or more). Mr Yeo has selected the 5 Appellant's comparables on the basis that these rentals are reflective of the rentals of conventional warehouses, ranging in heights from approximately 6.7m to 15m.[135]

124 Mr Yeo has selected 7 Clementi Loop (AC4) as a comparable notwithstanding its height of approximately 25m, given that 7 Clementi Loop was only utilised as a conventional warehouse to stack 2 to 3 levels of goods.[136] As for Block 7, which falls into the second category of ASRS warehouses, the Appellant's valuers have taken into

[132] Appellant's Closing Submissions (ACS) at para 176.
[133] Appellant's Closing Submissions (ACS) at para 178.
[134] Appellant's Closing Submissions (ACS) at para 195.
[135] Appellant's Closing Submissions (ACS) at para 196.
[136] Appellant's Closing Submissions (ACS) at para 196.

account the fact that Block 7 which is 30.2m in height, is approximately 4 times the height of a conventional warehouse, and which has been factored into the valuation by taking into account the equivalent GFA of Block 7 (which is 4 times the GFA of Block 7).[137]

125 The Appellant's valuers are of the view that no adjustments have to be made to the Appellant's comparables in order to account for differences in age.[138] Ms Chua explained during hot-tubbing that in the context of the rental of warehouse space, users are primarily concerned about the integrity of the space and the associated risks, such as flooding, pest infestation or water seepage, and the dangers that are posed to the goods.[139] Mr Yeo explained that based on general industry practice, it is the obligation of the landlord to be responsible for any structural risk of the warehouse building and to take up insurance for such structural risks. Consequently, even if age were to have an impact on the structural integrity of the warehouse, this would not be a concern for the tenant given that the economic risk would have shifted to the landlord.[140]

126 In summary, the Appellant's valuers have only made 2 adjustments to the Appellant's comparables *viz.* for time and for the type of property.[141]

Collector's Criticisms

127 The Collector points out that in their own affidavits, the Appellant's experts had proffered the views that "a valuation of the Acquired Land would require a consideration of the size, location as well as the ceiling height of the buildings located on the Acquired Land" and that "reference should also be made to the storage volume and stack capacity when determining the market value of the Acquired Land".

[137] Appellant's Closing Submissions (ACS) at para 197.
[138] Appellant's Closing Submissions (ACS) at para 219.
[139] Appellant's Closing Submissions (ACS) at para 220.
[140] Appellant's Closing Submissions (ACS) at para 223.
[141] Appellant's Closing Submissions (ACS) at para 243.

Notwithstanding these views, the Appellant's valuer chose not to adjust for these very factors in her valuation workings. When asked for the reasons behind such inconsistency, the Appellant's experts gave illogical and/or unsubstantiated reasons.[142] The contentions of the Collector may be summarised as follows:

Location

(a) No explanation or evidence was given by the Appellant's experts as to why comparables falling within the same zone as the subject property do not have to be adjusted for location, even though the "west" spans across a vast, undefined area;[143]

Size

(b) Given that the comparison method by its very nature entails the valuer identifying "properties that are transacted in the current market and resemble the subject property and to make the appropriate adjustments to reflect whatever differences between them", referencing such differences as a basis to say one "can't adjust" is most unconvincing;[144]

Height

(c) The Appellant's valuer failed to adjust for height. Up to the hearing it was never a part of the Appellant's case that 7 Clementi Loop did not have to be adjusted for storage capacity / ceiling height because the building was being utilised as a conventional warehouse. This was a new and unsubstantiated consideration that the Appellant's experts had added to the mix;[145]

(d) In any event, the Appellant's own case is that storage capacity is relevant, and that the higher the ceiling of the building, the more goods in theory can be stored. Thus, on the Appellant's own case, whether the tenant actually maximises the storage capacity would be beside the point;[146]

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[142] Collector's Closing Submissions (RCS) at para 105.
[143] Collector's Closing Submissions (RCS) at paras 106-108.
[144] Collector's Closing Submissions (RCS) at para 109-110.
[145] Collector's Closing Submissions (RCS) at para 112.
[146] Collector's Closing Submissions (RCS) at para 113.

(e) Ms Chua's reference to the "weighted average" concept was not supported by any evidence and does not appear to be accepted industry practice;[147]

Age

(f) In respect of "age", while this adjustment factor does not feature in the Appellant's case, Mr Yeo acknowledged that the comparables used by Ms Chua were younger than the Acquired Land. However, they took the view that because of "other attributes" that the comparable had would affect the market rent, it would not be appropriate to adjust it for age;[148]

(g) This approach is confusing and tends to obfuscate one quality (efficiency) with another (age). The better approach is to identify with clarity the main characteristics of properties across the board that a landlord/tenant would take into account when determining rent, and to adjust the comparables for these characteristics, as the Collector's valuer has done;[149]

(h) Notably, this very same approach was taken in respect of the Appellant's own adjustment factor of "property type". However, in this one factor alone, the Appellant's valuer lumped together adjustments to take into account : (a) what floor the warehouse is on (ground floor versus not ground floor); (b) whether the warehouse is standalone or strata-titled; and (c) whether the premises are for exclusive use or multi-use premises (affording the user flexibility and unlimited, uninhibited access to the loading and unloading bays as well as ease of manoeuvring on the premises, etc). Such a consolidated classification is unhelpful and unsatisfactory from a valuation standpoint.[150]

128 In summary, the Collector submits that the market rent which Ms Chua derived for the Acquired Land ($16.15 sqm/month)[151] is unreliable and was derived at on unprincipled basis, and should therefore be rejected in favour of Mr Ee's market rent range ($9.69 to $11.84 sqm/month)[152].

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[147] Collector's Closing Submissions (RCS) at para 114.
[148] Collector's Closing Submissions (RCS) at para 115.
[149] Collector's Closing Submissions (RCS) at para 117.
[150] Collector's Closing Submissions (RCS) at para 117.
[151] Equivalent to $1.50 psf/month.
[152] Collector's Closing Submissions (RCS) at para 118.

129 Further, when adjusting for differences between the subject property and the comparable rental transactions, the Appellant's valuer gave evidence that, largely speaking, if the comparable is inferior to the subject property, a percentage would have to be added; whereas if the comparable is superior to the subject property, then a percentage would have to be deducted. In this regard, as a result of Ms Chua's failure to adjust for size, she did not deduct a substantial percentage of the gross rental rate from all her comparables (which would have in turn suppressed the derived market rent of the Acquired Land).[153]

130 According to Mr Ee, if the appropriate adjustments were made to the comparable transactions, the adjusted comparable rate for the Acquired Land should only be $0.85 psf/month as at 8 February 2012. Mr Ee's adjustments, as set out in "DE-25" exhibited in his Second Reply Affidavit (DE4) dated 12 January 2018, are as follows:

INDUSTRIAL – NON STRATA					**Date of Val:**	**8-Feb-12**
Particulars	**Subject Property**	**Rental A**	**Rental B**	**Rental C**	**Rental D**	**Rental E**
Address	**30 Tuas Rd (WHOLE LOT**	**15 Pioneer Walk, Pioneer Hub (Level 6)**	**24 Penjuru Road (Level 4), Singapore Commodity Hub**	**34 Boon Leat Terrace (Level 1)**	**7 Clementi Loop (Level 1**	**Tuas Connection (Level 1)**
Type of Property	Warehouse complex (including a ASRS block)	Warehouse (Ramp Up)	Warehouse (Ramp Up)	Warehouse	Warehouse	Warehouse
Est Ceiling Height		10-12m	8-9m (est)	No more than 6m (est)	30m	Part 6m/Part 12m
Est Floor Loading		30 KN/sm	At least 15KN/sm (est)	N.A.	15 KN/sm	12.5 to 20KN/sm
Age		Circa 2008	Circa 2010	Circa 1990s	Circa 1997	Circa 2008
Tenancy		1 year	8 years	3 years	N.A.	N.A.
Remarks						
Rental info – Gross rate	$701,932					
	$1.22/ft pm	$1.31/ft pm	$1.48/ft pm	$1.43/ft pm	$1.60/ft pm	$1.60/ft pm
Rental info – Triple Net rate	$0.88/ft pm	N.A.	N.A.	N.A.	N.A.	N.A.
Land Area (sm)	78,279.40					
Total GFA (sm)	53,368.30	3,251.6	5,674.0	5,519.4	3,7160.0	3,910.0
Total GFA (sf)	574,451	35,000	61,074	59,410	39,999	42,087
Source of GFA	-	DY's Affidavit	DY's Affidavit	DY's Affidavit	DY's Affidavit	DY's Affidavit
Contract Date		Jan-11	Jan-11	Oct-11	Jun-12	Aug-12
Rental Value based on comparable (over GFA)		$752,531	$850,188	$821,465	$919,122	$919,122

[153] Collector's Closing Submissions (RCS) at para 119.

(A) Adjustment Factors						
Time (based on URA rental index)		13%	13%	2%	2%	-1%
Size		-40%	-32%	-32%	-38%	-37%
Age/Condition		-10%	-10%	0%	0%	-10%
Location/Siting		-5%	-15%	-20%	-15%	5%
Sub Total Adjustment (%)		**-42%**	**-44%**	**-50%**	**--51%**	**-43%**
Initial Adjusted Value		$436,468	$476,105	$410,732	$450,370	$523,899
(B) Additional Adjustment Factors						
Ceiling Height		5%	5%	5%	0%	5%
Over Provision of Heavy Vehicle Lots		2%	2%	2%	2%	2%
Sub Total Adjustment (%)		**7%**	**7%**	**7%**	**2%**	**7%**
Final Adjusted Value		$467,021	$509,432	$439,484	$459,377	$560,572
Final Adj $psf over GFA		$0.81	$0.89	$0.77	$0.80	$0.98
Weightage		1	1	0.5	1	1
Average of the comparable sales analysis =		**$492,476**				
	say,	**$490,000**				
Recommendation			**over TGFA**			
Market Rental Value	**$490,000**	**$9.18 psm**	**$0.85 psf**			

Our Analysis

131 At the outset, it is important to remember that the onus of proving that the award is inadequate shall be on the Appellant: see s 25 of the LLA. As noted by the Board in *Mr Lim Ngee Sing & Mdm Ong Min Chin v Collector of Land Revenue* (AB 2012.008), the appellant in a land acquisition case is analogous to a plaintiff and the standard of proof is on a balance of probabilities. The Board referred to *Chuah Say Hai & Ors v Collector of Land Revenue, Kuala Lumpur* [1967] 2 MLJ 99 where Gill J noted as follows:

> I must state at the outset that in proceedings of this nature it is for the owners of the land acquired to prove that the award was inadequate. As was stated by Broomfield J in *Assistant Director Officer, Bombay v Tayaballi* AIR 1933 Bom 361, 364:-
>
> > "The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing prima facie that the award is inadequate, then Government must support the award by producing evidence."

132 The position in Singapore is consistent with the approach articulated by Broomfield J. This is evident from Regulation 11(2) of the Land Acquisition (Appeals Board) Regulations ("LAAR") which states as follows:

> At the hearing the appellant shall begin and, if he fails to make out a prima facie case that the Collector's award is inadequate, the Board may dismiss the appeal without calling the Collector and make such order as to costs as may be just.

133 Under Regulation 11(1) of the LAAR, the procedure at the hearing of any proceedings shall be such as the Board may determine subject to the provisions of the LAA and the LAAR. In the present case, the Board has allowed for the expert evidence to be given by witness conferencing (hot-tubbing) as proposed by the parties. This is a procedural matter that lies within the discretion of the Board to facilitate the just, expeditious and economical disposal of the matter. This departure from the traditional trial procedure does not displace the substantive requirement which places the onus of proof on the Appellant pursuant to s 25 of the LAA.

134 Hence, for the purpose of our analysis, it is necessary to begin by examining the evidence produced by the Appellant to determine if a *prima facie* case has been made out that the award is inadequate. It is only if a *prima facie* has been made out that we turn to consider the evidence produced by the Collector in support of the award. This means that the supporting evidence to show that the award is inadequate must be provided by the Appellant. Even if, for the sake of argument, we were to accept the Appellant's submission to disregard the Collector's rental evidence in its entirety,[154] it is still incumbent on the Appellant to satisfy the Board that the award was inadequate by providing supporting rental evidence.

135 With this framework in mind, we shall now examine the evidence of the Appellant's comparable transactions. The Appellant has provided 5 comparable transactions set out in CEB-7. We note at the outset that the choice of the 5

[154] Appellant's Closing Submissions (ACS) at para 305.

comparables is not in contention. The issue in dispute is whether the Appellant's valuer has made appropriate adjustments to the comparable transactions. The learned author in *Khublall* noted at page 138 as follows:

> **Adjustments**
>
> In most cases it may be necessary to make adjustments of the comparable to reflect differences in size, accommodation, number of rooms, location, accessibility, and condition, among other matters. In *Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue, Province Wellesley* the learned judge deducted 30 per cent for differences relating to the land and five per cent for difference in time. Allowances were made for all dissimilarities in question. The comparable was a previous acquisition.
>
> What allowance should be made for any such difference is not a matter which can be reduced into a formula. Whatever differences there are, the valuer must remember that the comparable must relate to properties which in general are similar and are in the same or in a similar locality as the subject property. Once the sales data are analysed and adjustments made the valuation process can be carried out.

136 The importance of making appropriate adjustments cannot be overemphasized.[155] This is clear from the instant case where the difference in the adjustments made has led to two significantly different outcomes. Ms Chua arrived at a market rental of $1.77 psf/month[156] whilst Mr Ee came to $0.85 psf/month[157]. This is a difference of more than 50% even though the valuations of both valuers were based on the same set of comparables.

137 What is the reason for such a stark difference in valuation? We note that in her valuation, Ms Chua has made only two adjustments to the comparables *viz.* (a) time and (b) property type. In contrast, Mr Ee has made 6 adjustments *viz.* (a) time (b) size

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[155] See also Singapore Institute of Surveyors and Valuers' Valuation Standards and Guidelines (2000) (SISV Guidelines) at para 3.3.3 which states: "The method is concerned with the identification and measurement of the effect that the presence or absence or amount of some characteristics has on the price/rental of competitive (comparable) properties. The approach is to find properties that are transacted in the current market and resemble the subject property and to make the appropriate adjustments to reflect whatever differences between them".

[156] Appellant's Closing Submissions (ACS) at para 120; EL at pp. 6 & 7; Affidavit of Chua Beng Ee (CBE3) at p. 8 (CBE-7).

[157] 2nd Reply Affidavit of Ee Kong Han Daniel (DE4) at para 15.

(c) age/condition (d) location/siting (e) ceiling height and (f) over provision of heavy vehicle lots. A comparative table setting out the difference in the adjustments made by the two valuers is set out below:

Particulars	Rental A	Rental B	Rental C	Rental D	Rental E
Address	**15 Pioneer Walk, Pioneer Hub (Level 6)**	**24 Penjuru Road (Level 4) Singapore Commodity Hub**	**34 Boon Leat Terrace (Level 1)**	**7 Clementi Loop (Level 1)**	**Tuas Connection (Level 1)**
Time					
Ms Chua (Appellant)	13%	13%	2%	2%	-1%
Mr Ee (Collector)	13%	13%	2%	2%	-1%
Size					
Ms Chua (Appellant)	-	-	-	-	-
Mr Ee (Collector)	-40%	-32%	-32%	-38%	-37%
Age/Condition					
Ms Chua (Appellant)	-	-	-	-	-
Mr Ee (Collector)	-10%	-10%	0%	0%	-10%
Location/Siting					
Ms Chua (Appellant)	-	-	-	-	-
Mr Ee (Collector)	-5%	-15%	-20%	-15%	5%
Ceiling Height					
Ms Chua (Appellant)	-	-	-	-	-
Mr Ee (Collector)	5%	5%	5%	0%	5%
Over Provision of Heavy Vehicle Lots:					
Ms Chua (Appellant)	-	-	-	-	-
Mr Ee (Collector)	2%	2%	2%	2%	2%
Property Type					
Ms Chua (Appellant)	20%	20%	10%	10%	10%
Mr Ee (Collector)	-	-	-	-	-

138 From the comparative table above, it can be seen that Ms Chua and Mr Ee are *ad idem* on time adjustment. Both took reference from the URA Warehouse Rental Index (DE-9) to arrive at the same adjustment factors for all the 5 comparables. Apart from this singular item which they agree on, the valuers differ in their approach in all other aspects. Consequently, it is necessary for the Board to examine the rationale for each of these other adjustments in some detail.

Size

139 The need to make adjustments to reflect differences in size is an established valuation principle: see *Khublall* at page 138 (see extract at paragraph 135 above). At page 144, the learned author noted further as follows:

> Value is not necessarily proportionate to size; as the size increases the general tendency is for the price per unit to decrease.

140 In the present case, the comparable properties have a GFA of between 3,251.6 sqm and 5,674.0 sqm. The subject property, which has a GFA of 53,368.3 sqm,[158] is about 10 or more times the size of the comparables. Ms Chua has not made any adjustment whilst Mr Ee has made adjustments of between -32% to -40%, adopting a rule-of-thumb adjustment factor of 10% for every doubling in GFA.[159] Hence, there are two questions that require the Board's determination: (a) whether adjustment should be made and (b) if so, what should the adjustment factor be.

141 In her evidence in her second Affidavit (CBE2) at paragraph 19, Ms Chua expressed the following opinion:

> In my opinion, **a valuation of the Acquired Land would require a consideration of the size, location as well as the ceiling height of the buildings located at the Acquired Land.** Particularly in the context of high specification warehouses such as the warehouses on the Acquired Land, reference should also be made to the storage volume and stack capacity when determining the market value of the Acquired Land. In addition, comparables of rentals involving warehousing buildings should preferably be used, rather than those pertaining to industrial properties. **In any case, particularly where the attributes of the comparables used deviate significantly from the Acquired Land, appropriate adjustments have to be made before they may be used to help determine the prevailing market rent of the Acquired Land**. Further, comparables, if relied upon, should be in respect of rental transactions entered into within a period as close to (either before or after) the date of valuation, and not years before or after.
>
> (emphasis in bold added)

142 It is clear from the above that Ms Chua recognises the need to make appropriate adjustment to reflect differences in size particularly where the attributes of the comparables used deviate significantly from the subject property. In the present

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[158] Out of the 5 comparables, the largest size is 5,674 sqm (24 Penjuru Road) and the smallest in size is 3,252 sqm (15 Pioneer Walk). The Acquired Land is approximately 9 and 16 times the size of 24 Penjuru Road and 15 Pioneer Walk respectively.
[159] Reply Affidavit of Ee Kong Han Daniel (DE2) at para 11(a).

case, the subject property is almost 10 times or more the size of the Appellant's comparables. This raises the question as to why Ms Chua did not find it necessary to make any adjustment to the comparables.

143 At the hearing, Ms Chua explained as follows:[160]

> The---the next adjustment or rather we have actually considered is for size. And we are of the view that there's---I'm of the view that there is no need for any adjustment of size for warehouse in this Tuas area. I'll explain why. Size als---we're talking about large gross floor area here. There's a limited su---there's a limited supply of properties with GFA or gross floor area as large as sub---subject property, which are suitable for the operation of business as YCH. And there's---it's---it's also not evident that rental rates achieve---achievable from warehouse buildings are lower for larger size facilities.
>
> Now, it is basically economics that price is a factor of supply and demand. So when supply is low, the price will be higher and vice versa. There is a dearth of large size warehouse premises available for rental due to JTC sub-letting restrictions. Because subject is actually situated on JTC land, so it's subject to JTC sub-letting restrictions. And in fact, almost the whole of Tuas, most---except for a few GLS site---GLS is government land sales sites, that are sold, the rest of the land in Tuas are all JTC sites. So all the buildings, all those properties, all those premises that are sitting on JTC sites are all subject to JTC sub-letting restrictions, and JTC will only allow 50% of the area in each property to be rented out.
>
> So---so if we want to find enough space to accommodate a property as huge as subject, then the---the place that YCH has to rent from must have at least two times the area of YCH, you know, in order that after---in order that they could rent half of it to YCH, to accommodate YCH. So of course, such buildings, if they exist, are very rare and---okay.

144 The Appellant's second valuer Mr Yeo also provided the following explanation in his first Affidavit (DY1) at paragraph 8:[161]

> Warehouse buildings located within a large site have the advantage of shorter distance travel for movements and transfer of goods. Efficiencies are further enhanced if these buildings, all of which are located within a large site, are single storey structures. Some of the data for the comparable lease transactions set out above comprised

[160] TS Day 2 pp. 73-74.
[161] See also TS Day 2 at pp. 80 and 111.

> ramp-up warehouse sites (i.e. located on multi-levels) that are dissimilar in size to the large site of the Property. The warehouse buildings located on the Property are mostly single storey buildings. Such industrial warehouse buildings located within a large site are rare and would usually command a premium of at least 10% to 20% in terms of the rental rate per sq ft.

145 In short, the Appellant's valuers are of the view because the subject property is very rare, it should command a premium based on the theory of supply and demand, although they have not made any adjustments on that basis.[162]

146 We note however that supply is only half the story. The price of a commodity is determined by the interaction of supply and demand. The Appellant's valuers have not provided any evidence to show that the demand for such property is high.

147 The Collector's valuer Mr Ee gave evidence that it is not possible for a site to be rented out at a premium simply because of its large size as there are other options available:[163]

> Instead of making downward adjustments to account for the lower price per unit of larger sized properties, Mr Yeo has, on the contrary, claimed that industrial warehouse buildings located within a large site would command a premium of at least 10% to 20% in terms of rental rate per square foot. This is untrue. In order for a large site like the Acquired Land to command a rental premium, the Landlord will have to attract tenants that have no other economically feasible alternatives. However, a logistics company like the Appellant that requires a large site area for operations has other alternative options. Apart from renting premises with a large site area, the logistics company could choose to (i) split its operations over multiple locations; or (ii) apply to JTC for a large plot of land construct its own buildings. Several logistics companies in Singapore such as DB Shenker, Freight Links, Keppel Logistics, Menlow Worldwide, Cogent and CWT currently adopt the model of splitting their operations over multiple locations, while the Appellant itself has adopted the approach of leasing land directly from JTC for its new premises known as Supply Chain City. It is therefore not possible for a site to be rented out a premium simply because of its large size as a prudent purchaser would simply pursue other options instead.

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[162] Appellant's Closing Submissions (ACS) at para 177.
[163] Reply Affidavit of Ee Kong Han Daniel (DE2) at para 11(b).

148 In contrast, we note that the Appellant has not produced any evidence on the demand for such property nor has the Appellant's valuer Mr Yeo provided any evidence to substantiate his claim that such property "would usually command a premium of at least 10% to 20% in terms of the rental rate". As this is not a mere expression of opinion but an assertion of fact, we find the claim puzzling given the fact that Ms Chua has testified that the Appellant has not been able to find rental evidence of such big area.[164]

149 Another explanation offered by Ms Chua for not making any adjustment for size is that a distinction should be drawn between rental transactions and sale transactions[165]:

> And then the other point I want to make is that if you have a huge area, the owners can always sub-divide into smaller units and rent them out. Therefore, a---a big space can always be sub-divided into smaller space but not the other way round. You cannot combine the small space to get a big space unless this small space are all contiguous next to each other, then you can combine to get a big space. So therefore, there's really no reason why a landlord will let the big space to a tenant at a much reduced rental, you know. And in fact, it's more risky to rent big space to one tenant and get a lower rent because if this guy go, then your whole property becomes vacant. It's probably better to chop up into smaller area and rent out at higher rental, you know. That's why there's no reason why the landlord has to rent to you at a lower rent just because you want a very big space, yah.
>
> And this is---this is especially true for rental unlike sales. Sales you cannot say I only sell part of my property because when you sell, you have to sell the whole property. So then there may be some discount for size. When you talk about rental, you can actually rent part of it out bit by bit so there's no reason why there should be such a huge discount for size.

150 The Collector objects to the evidence on the basis that such evidence, given in the course of hot-tubbing, was entirely different from the reasons provided by Ms Chua's affidavit for objecting to Mr Ee's size adjustments.[166] The Collector points out

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[164] TS Day 2 at page 106; Appellant's Closing Submission (ACS) at para 177.
[165] TS Day 2 at p. 75; Appellant's Closing Submissions (ACS) at para 178.
[166] Collector's Reply Closing Submissions (RRCS) at para 174.

that the Collector had agreed to the hot-tubbing process on the basis that the valuers shall limit their oral evidence to the Expert's List of Issues (EL) and the positions they have set out in their respective affidavits, and are not permitted to introduce new evidence during the hearing. The Collector asserts that Ms Chua has intentionally held her cards closely to her chest and this has resulted in the Collector's valuer being unable to prepare his responses and gather the evidence necessary to support his side of his dispute. The Collector contends that Ms Chua's raising of new evidence without any reasonable basis is a breach of the agreement on hot-tubbing between the parties and must be disregarded.[167]

151 For the purpose of our decision, it is unnecessary for us to get into the technical objections raised by the Collector. Substantively, we note that Ms Chua has not provided any evidence to substantiate her claim or produced any text or literature to show that this is an established principle of valuation. In the absence of any empirical evidence or authoritative text, we are left with only the reasons proffered by Ms Chua herself. We find this to be unsatisfactory because one can conceive of just as many reasons to support the contrary position that a landlord would prefer to have one guaranteed tenant at a lower rent than incur the risks and inconvenience associated with having to deal with multiple tenants. Thus, we do not find the reasons offered by Ms Chua to be convincing. They are speculative in nature and lead us nowhere.

152 Having carefully considered the evidence before us, we find that the Appellant has failed to prove on a balance of probabilities that the subject property would command a premium. In our view, appropriate adjustments should be made to reflect the differences in size between the subject property and the Appellant's comparables. These differences, as noted above, are not insignificant.

[167] Collector's Closing Submissions (RCS) at para 37.

153 The Appellant's valuers did not provide any evidence on the adjustment factor. Mr Yeo was asked specifically for his views in cross-examination but declined to do so despite repeated questioning:[168]

Jeyendran:	So the total GFA for subject property 30 Tuas Road is 53,368.3 square metres. 34 Boon Leat Terrace is 5,519 square metres. So let's say you have to make adjustment. Let's say you have to make an adjustment for height to 34 Boon Leat Terrace. How would you do it? Sorry, for size. For size. How would you do it? Would you make an upward revision, like an upward percentile revision, or a downward percentile revision? Very simple question. As I told you, it's not a trick question. I'm not holding you to this, to whether you should be making adjustments or not.
Witness (AW3):	To this---
Jeyendran:	I'm just asking---
Witness (AW3):	I'm not saying that it's a---I'm not saying that it's a trick question, but when you say that, you're talking about two different properties.
Jeyendran:	Mm-hm.
Witness (AW3):	Okay? There---wait. For two different properties, there are a lot of other factors. You see, the thing is that: Like in any experiment, you have to keep all variables constant, then you say what is the difference for the ceiling height or size in this case. What is the difference for the size?
Jeyendran:	Mm-hm.
Witness (AW3):	But, no, we are not in the situation. So you ask---you're not asking me a trick question, I ga---I gather there. But you're asking me a question that I can't answer.
Jeyendran:	Okay.
Witness (AW3):	Okay.
Jeyendran:	Then, fine, let me look at another comparable.

[168] TS Day 2 at pp. 112-116.

Witness (AW3): **So my answer would be this: If I can't make the adjustment, then I won't make the adjustment.**

Jeyendran: Because you're looking at---what do you mean? You said it's a different property so you can't make an adjustment?

Witness (AW3): Yah.

Jeyendran: Okay, what---let---fine. Let's look at 15 Pioneer Walk then. Can you make an adjustment for ha---if you're going to make an adjustment about size, how would it be? Would it be upward revision or a downward revision, if you want to make it a compared proper---

Witness (AW3): Upward revision to where---to what?

Jeyendran: To size, to size.

Witness (AW3): To---to which property?

Jeyendran: 15 Pioneer Walk.

Witness (AW3): Yah, upward revision from where? From which property?

Jeyendran: 15 pra---upward revision in terms of---you want to make---use a comparable, 15 Pioneer Walk.

Witness (AW3): Yah.

Jeyendran: If you want to adjust it for size, adjusting for size, let's say---

Witness (AW3): What size to what size?

Jeyendran: What do you mean "what size to what size"?

Witness (AW3): No, adjust for size.

Jeyendran: You're a---you are the valuer, I'm not the valuer. I'm asking you a question. If you make the---

Witness (AW3): No, no, no. You are not clear. No, no, no---

Jeyendran: If you're making an upward adjustment, downwards only for size.

Witness (AW3): Upward adjustment from where? From where?

Jeyendran: From 3,252. 3,252 square metres. How difficult is this question?

Witness (AW3): No, no, no.

Jeyendran: It's a very simple question.

Witness (AW3): No, no, no.

Jeyendran: As a valuer.

Witness (AW3): Don't tell me how difficult this question is, okay. Are you treating me like an idiot?

Jeyendran: I'm not treating you like an idiot.

Commissioner: Hold on, hold on, hold on.

Jeyendran: All I'm asking---

Commissioner: Hold on. Mr Jeyendran.

Jeyendran: Yes.

Witness (AW3): Mm.

Commissioner: I think perhaps the clarity needed here is the comparison between A and B.

Witness (AW3): Yah.

Commissioner: I think the second part is missing.

Witness (AW3): Which---

Jeyendran: Exactly, Your Honour.

Commissioner: Yes.

Jeyendran: I've already said it. I said the subject property at 30 Tuas Road. If you're going to compare---if using comparables rental 1 through 5 as comparables, right.

Witness (AW3): Yes.

Jeyendran: Yes. And comparables in terms of? Vis-à-vis?

Witness (AW3): Vis-à-vis?

Jeyendran: Okay. Why are you using the comparables rentals 1 to 5?

Witness (AW3): To find out the market rent as evidence of market rent for the subject property, yes.

Jeyendran: And the comparable---and the---and these comparables relate to?

Witness (AW3): Subject property, 30 Tuas---

Jeyendran: Yes.

Witness (AW3): Okay.

Jeyendran: Is that now what I said from the start?

Witness (AW3):	So you are saying this compared to subject property. So what I'm telling you is very simple.
Jeyendran:	Yes.
Witness (AW3):	Okay. There are other variables other than ceiling height.
Jeyendran:	No, no, no, not height, size.
Witness (AW3):	Oh, sa---other than size?
Jeyendran:	Yes.
Witness (AW3):	**Okay. So I cannot give you an---I cannot give you an adjustment, so which is why our stand is that we do not adjust for size.**
Jeyendran:	No, no, no.
Witness (AW3):	If I have to give you an adjustment and based on scarcity of the subject property, I would have to adjust the subject property higher.
Jeyendran:	For size?
Witness (AW3):	Yes.
Jeyendran:	Okay. Your Honour, it's a---as I said, it was a very simple question just to test out what valuation principles I'm using. I am not trying to insinuate to Mr Chua, mister---Ms Chua or Mr Yeo that they have to use size or they don't have to use size. That's our---that's what Mr Ee is saying, you know. And I realise that I'm having a difficult time getting this answer out. And Mr Yeo is, I don't know, needlessly offended by line of questioning. I'm going to leave it as this and I'm going to submit that Mr Yeo is not answering the question. So let's move on.
Witness (AW3):	Sure.

(emphasis in bold added)

154 In the Appellant's Reply Submissions (ARCS) at paragraph 55, the Appellant explained that Mr Yeo's response that "he can't make an adjustment" as to size was because of the Appellant's valuers' position that there is no necessity to make any

adjustment as to size. In light of the position taken by the Appellant's valuers, the Board is left with only Mr Ee's evidence on the appropriate adjustment factor to be applied to the Appellant's comparables.

155 According to Mr Ee, the adjustment factor of 10% for every doubling in GFA was applied by the Collector's valuer in the case of *Novelty Department Store Pte v Collector of Land Revenue* AB 2011.062 ("*Novelty*").[169] Relevant extracts from the transcripts and Statement of Reasons were annexed in his Reply Affidavit (DE2) at "DE-16" and "DE-17". The relevant parts of the transcripts dated 29 May 2014 showing the evidence of the Collector's valuer bear this out:[170]

> My size adjustment was done on the principle of the bigger the property's gross floor area, the lower is the price per square---per unit GFA. And based on the rule that te---the rule of 10% in---decrease in unit rate for every doubling in size. I understand this method of adjustment for size is also commonly used by valuers in the industries.

156 At paragraph 23(ii) of the Statement of Reasons in *Novelty*, the Board said as follows:[171]

> Whilst Collector's valuers had made appropriate adjustments for GFA differences, this had not been done for Novelty's two valuers.

157 It is clear from the above that this is not the first time that the adjustment factor of 10% for every doubling of GFA has been applied. Whilst this Board is not closed to the consideration of other adjustment factors if they can be shown to be more accurate and reliable, there is no such evidence before us. Mr Yeo, as noted above, has declined to express any opinion even though he was given ample opportunity to do so. In the absence of a more reliable alternative, there is no reason for the Board to reject Mr Ee's adjustment factor which was applied and accepted in *Novelty*.

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[169] Reply Affidavit of Ee Kong Daniel (DE2) at para 11(a).
[170] See extract of transcripts exhibited in the Reply Affidavit of Ee Kong Han Daniel (DE2) at DE-16.
[171] See Statement of Reasons exhibited in the Reply Affidavit of Ee Kong Han Daniel (DE2) at DE-17.

Age/Condition

158 The buildings on the Acquired Land are about 30 years old generally as at the date of acquisition with the exception of Blocks 6 and 7 which were added in the late 1990s. In contrast, the Appellant's comparables are between 1 and 15 years old as at the date of their respective transactions.[172] The Collector's valuer Mr Ee applied a -10% adjustment factor on three of the comparables, namely AC1 (15 Pioneer Walk), AC 2 (Penjuru Road) and AC5 (Tuas Connection). These are properties which are much younger than the subject property. According to Mr Ee,

> It is generally accepted that newer properties that have more up-to-date features and facilities usually command a better rent than older properties.[173]

159 The Appellant's valuers are of the view that no adjustments have to be made to the Appellant's comparables in order to account for differences in age.[174] Ms Chua explained during hot-tubbing that in the context of the rental of warehouse space, users are primarily concerned about the integrity of the space and the associated risks, such as flooding, pest infestation or water seepage, and the dangers that are posed to the goods. Ms Chua adds that tenants are usually not overly concerned with the age of the building as long as the warehouse space does not exhibit these dangers or risks.[175] Ms Chua also expressed her view that in contrast, age would likely be more of an important concern in the context of residential properties, since it directly affects the comfort of the occupiers staying in the residential properties. Age may also matter where one is considering the sale of a warehouse property, given that the purchaser would be concerned about future repairs or the replacement of the property, should structural issues surface. In addition, it is evident that an older property would have a shorter

[172] Second Reply Affidavit of Ee Kong Han Daniel (DE4) at para 14(a)(iii).
[173] Second Reply Affidavit of Ee Kong Han Daniel (DE4) at para 14(a)(iii).
[174] Appellant's Closing Submissions (ACS) at para 219.
[175] Appellant's Closing Submissions (ACS) at paras 220-221; TS Day 2 at pp. 86 and 95.

remaining leasehold tenure which would in turn impact on the capital value of the property, in such sale scenarios.[176]

160 The Appellant's second valuer Mr Yeo explained during hot-tubbing that based on general industry practice, it is the obligation of the landlord to be responsible for any structural risk of the warehouse building and to take up insurance for such structural risks. Consequently, even if age were to have an impact on the structural integrity of the warehouse building, this would not be a concern for the tenant given that the economic risk would have shifted to the landlord.[177] The Appellant points out that this practice is indeed set out in Clauses E2 and E3 of the Lease, where RBC Dexia in fact bears the costs of insurance in respect of the structure, and the obligation to keep all structural walls in good and tenantable repair and condition. A tenant's concern about the condition would therefore effectively be neutralised by the assurances provided by the landlord, and would not have any or any significant impact on rental prices.[178]

161 A basic question that arises from the above discourse is whether there is any difference between a new and an old warehouse from the perspective of a tenant. We find the following evidence of Mr Yeo to be revealing:[179]

Jeyendran:	So when we take comparables and we compare it with the subject property, what---where---when adjustments are made to ensure that the comparables are, as far as possible, on par---
Witness (AW3):	Right.
Jeyendran:	---with the subject property.
Witness (AW3):	Right.
Jeyendran:	Okay. So if that's the case, given that the landlord would charge a higher rental rate for a

[176] Appellant's Closing Submissions (ACS) at para 222; TS Day 2 at p. 86.
[177] Appellant's Closing Submission (ACS) at para 2223; TS Day 2 at pp. 87 and 88.
[178] Appellant's Closing Submission (ACS) at para 219
[179] TS Day 2 at pp. 151-152.

newer building, wouldn't that---wouldn't you not have to adjust for age and condition in order to keep that newer building on par with the older building?

Witness (AW3): But like I mention earlier, right, age is only one factor.

Jeyendran: Yes, yes, yes.

Witness (AW3): Right?

Jeyendran: Yes. One factor out of many.

Witness (AW3): You know, how do you get a comparable---

Jeyendran: Yes.

Witness (AW3): ---that is exactly the same? You can't.

Jeyendran: Exactly. That's where we're all stuck with.

Witness (AW3): Okay.

Jeyendran: We all can't get the exact property because this is a unique building. This has got 500,000 square feet---

Witness (AW3): So---

Jeyendran: ---and it's a old---30-year old building. Now we've got a new building.

Witness (AW3): So you are saying hypothetically, right? Hypothetically, if there were two buildings, one is older, one is newer.

Jeyendran: Yes.

Witness (AW3): Alright? And I've also answer that.

Jeyendran: Okay.

Witness (AW3): It really depends on whether the tenant required the newer building and he has to pay a higher rent for it. **If the two buildings are of the same rent, of---obviously he will pick the newer building.** But now you are saying that if the building is higher for the newer building---I mean, the rent is higher for the newer building, I'm saying that from the tenant's perspective, it's really up to him and what his requirement is.

(emphasis in bold added)

162 Mr Yeo's evidence in bold reveals what is really a common sense answer. We do not think any reasonable valuer would fail to see the difference between a modern day building and one that was constructed 30 years ago. Apart from differences in the specifications as the older property was built in a different era[180], normal wear and tear would have set in over the passage of time even with care and proper maintenance. It is little wonder that a tenant would "obviously" pick the newer building. To assert that age does not make a difference would be to shut the eyes to the obvious.

163 Apart from the integrity of the space and the associated risks as pointed out by Ms Chua, there is also a need to take into account the responsibilities undertaken by the tenant under the lease. Taking the present case as an example, Clause 8.1 of the Lease provides as follows:

> D8. KEEP IN TENANTABLE REPAIR
>
> D.8.1 The Tenant shall at all times keep clean and in a good and tenantable repair and condition (fair wear and tear excepted), the Demised Premises including the interior, the flooring, the interior plaster or other surface material or rendering on walls and ceilings, the fixtures, all doors, windows, glass, locks, fastenings, installations and fittings for light and power, the Conducting Media within the Property and serving the Demised Premises, sanitary, water, gas and electrical apparatus, air-conditioning and other installations and fire detection and fire fighting installations and any other Common Areas comprised in the Demised Premise and shall make good to the satisfaction of the Landlord any damage or breakage caused to any part of the Demised Premises or to the Landlord's fixtures & fittings by the transportation of the Tenant's goods or effects or resulting from any action or omission of the Tenant's goods or effects or resulting from any action or omission of the Tenants, its sub-tenants, employees, independent contractors, agents or any permitted occupier.

164 Clause D36.5 provides as follows:

> The Tenant shall be responsible for the maintenance and repair lifts and other mechanical and electrical works and shall ensure that in the case of lifts, the certificate of maintenance of lifts within the Demised Premises is valid at all times.

[180] TS dated 25 July 2018 at p. 72.

165 Clearly, a property with newer lifts, interior plaster, surface material, rendering on walls and ceilings, fixtures, doors, windows, glass, locks, fastenings, installations and fittings for light and power, conducting media, sanitary, water, gas and electrical apparatus, air-conditioning and other installations and fire detection and firefighting installations would carry a lower risk of component parts breaking down compared to an aged property with parts that have been subject to wear and tear over the years. Surely, this must matter to any prudent tenant who has to undertake the responsibility of maintaining and repairing these component parts.

166 For the above reasons, we are of the view that appropriate adjustments should be made to reflect differences in age/condition. As the Appellant's valuers have not provided their opinion on the appropriate adjustment factors for the Board's consideration, we accept the adjustments made by Mr Ee.

Location/Siting

167 The need to make adjustments of the comparable to reflect differences in location is a well-established principle of valuation: see *Khublall* at page 138 (cited at paragraph 135 above). This is acknowledged and accepted by all the valuers in the present case.[181]

168 In her second Affidavit (CBE2) at paragraph 21(b), Ms Chua said as follows:

> Where possible, properties that are referred to as comparables should be properties that are **located not too far away from the subject property.** The area within which a property is located would have its own special attributes and benefits to specific businesses. Furthermore, rentals are a function of the specific and demand of the properties within an area. It would therefore be less appropriate to refer to, as comparables, properties that are located far away from the Acquired Land such as the properties located in Changi South which have been referred to by Daniel Ee.
>
> (emphasis in bold added)

[181] Affidavit of Chua Beng Ee (CBE2) at para 19; Affidavit of Dennis Yeo Huang Kiat (DY2) at para 11; Affidavit of Evidence-In-Chief of Ee Kong Han Daniel (DE1) at para 20(c).

169 The same opinion was echoed by Mr Yeo in his second Affidavit (DY2) at paragraph 13(b).

170 Despite the consensus on the need to adjust for locational differences, the Appellant's valuers did not make any adjustments for its 5 comparables whilst adjustments of between -20% and 5% were made to the comparables by the Collector's valuer.

171 As to why no adjustments were made to the Appellant's comparables for distance, Ms Chua explained at the hearing that the comparables were all situated in the western part of Singapore and therefore not too far from the subject property in terms of travelling distance:

> Witness (AW2): Okay. Wait, okay. Yes, okay. On location, we have made no adjustments for location. In our view, **that's not necessary because the comparables are all situated in the western part of Singapore, yes. And not too far from subject location, in terms of travelling distance,** and so in my view they are quite comparable subject in terms of location therefore there is no need to make an adjustment. And okay, for ceiling height, this except for SR---the Block 7 which is the SRS, the rest are---
>
> (emphasis in bold added)

172 It is clear from the above that locational difference is based on the distance between the comparable and the subject property, i.e. how far apart they are. However, a different explanation emerged from Mr Yeo's oral evidence:

> Witness (AW3): … **In terms of location, why we did not adjust for location? If you look at all our comparables, rental 1 to 5, they are all situated at the west location, okay?** How do we classify that is a west location? **Okay, the subject is also at the west location, they are in the same category so we do not adjust for the location because all my comparables are actually located in the west**. Okay. Earlier,

yesterday, I think, my learned friend mentioned that Boon Leat Tellace---Te---Terrace is not the west, it's actually Google map---want to show me Google map and all that. But in my 30 years of being a practitioner in real estate - industrial and logistic real estate, we create---we create, asking rents indication and we sent it out to the market. Okay? **What we do is that we classify properties according to their zone.** I can show you that evidence, okay, that is done all the way back to 2011 and even earlier, okay, that we put them in location, in region, so we have the---there is no south region. **It's north, south, east, west. There's no south region.** The south region normally likes---will be---there's no south region. So we have north which is Admiralty, Mandai, Woodlands area. We have east which is Tampines, Changi, Paya Lebar area. We have the central region which is Henderson, Ang Mo Kio area and we have the west region. The west region includes Alexandra, Boon Leat, including Tuas. This is some---some---this is not something that we cooked up, okay, now for this case. **This is something that we have practised, you know, being in the industrial---in---in the industry for the last 30 years**. We had practised as a firm transacting industrial properties that this is what we classified and this is something that we sent out and this is how we defined regions when we talked to our clients.

Commissioner: So, just a point of clarification, does it mean that if the premises fall within the same region then as a matter of practice, no adjustment is made for location? Is that the---because the---

Witness (AW3): Not---not---not necessarily, okay, but **the reason why we picked those comparables is because they fall within the region.** You see, if you look at all our comparables, we did not bring in a---bring in Changi or bring in Ang Mo Kio, you know, in a different region and try and adjust because our principle is that the more you adjust, the more inaccurate it becomes. Right? **So in picking our comparables, we were very selective. We want to make sure that we are not picking---in terms of location, we are not picking a location, we---we're not picking a---the property---the comparable that falls outside the location**

> **because if---if that happens then we have to make adjustment and that adjustment can be grossly inaccurate.** Okay? Because as with any rent or maybe that's amiss of view, as with any rental, there are a lot of other factors. There are a lot of other factors. So the least factors you have to adjust, the more accurate you are. Okay? That's---that's really our point which is why we only have two factors to---to adjust which is why we also picked the comparables that are more closer, you know, to the subject---subject 30 Tuas Road. Okay.

(emphasis in bold added)

173 Mr Yeo's oral evidence suggests that so long as a comparable falls within the same region, no adjustment for locational difference is required even if the comparable is located far away from the subject property. In fact, no adjustment will be made even if there are locational attributes that are more favourable to the comparable, such as being near to a seaport. This is evident from his answers in cross-examination:

Jeyendran:	I said that from 30 Tuas Road - what is that - 30 Tuas Road, 20---34 Boon Leat Terrace is 20 kilometres away from 30 Tuas Road, you know, and Boon Leat Terrace is in Pasir Panjang, just beside the port. So would you say that 34 Boon Leat Terrace would have a lower or the same rent as 30 Tuas Road? There's no port in 30 Tuas Road. So they have the same rental, 34 Boon Leat Terrace, Pasir Panjang, beside a port.
Witness (AW3):	Rental is made up of a few attributes. It's---you understand?
Jeyendran:	No, no, no. Absolutely. But it's---but location is one of the factors and you agreed that location is one of the factors, right?
Witness (AW3):	Mm-hm.
Jeyendran:	34 Boon Leat Terrace is in Pasir Panjang, the port is just beside. 30 Tuas Road has got no port. It's going to be built in 2019 or 2020, but there's no port at this point in time. Regardless---because you had also agreed the seaport is a consideration, right? So regardless, 34 Boon Leat Terrace will have the same rental as 30 Tuas Road?

Witness (AW3): Port is also one of the consideration, I must agree.

Jeyendran: Okay. But did you take that in consideration---that into consideration for 34 Boon Leat Terrace?

Witness (AW3): One of the considerations. So we have considered and we have decided---

Jeyendran: Yes.

Witness (AW3): ---that location, **as long as it's within the same region---**

Jeyendran: Yes.

Witness (AW3): **---we will not adjust.** Because if we ad---

Witness (AW2): We don't need adjust---no need to adjust.

Witness (AW3): We don't need to adjust. Because if we adjust---

Jeyendran: Yes.

Witness (AW3): ---we subject ourself[sic] to more errors.

Jeyendran: Okay. So your evidence basically is that what's more important is the region.

Witness (AW3): Yes.

…

Jeyendran: You have said that the region in which the comparables are located, the western region where the comparables are located, is more important than the actual location of the comparable. You said that the region is more important, you know, when it come---determining market rental rate.

Witness (AW3): I---I didn't say that it's more important.

Jeyendran: Yes.

Witness (AW3): I said that we have considered making the adjustment but **we did not make the adjustment because having considered that they are within the region.**

Jeyendran: Okay. Then---

Witness (AW3): So I can't---I didn't say it is more important. I said the---we have considered.

Jeyendran:	Yes.
Witness (AW3):	But because our comparables are for---all fall within the region and you will agree that that is the best region, we---
Jeyendran:	I don't agree.
Witness (AW3):	Okay. Then I---then I---I---
Jeyendran:	That's your---yours.
Witness (AW3):	So---
Jeyendran:	That's your thing. I don't agree.
Witness (AW3):	You know. Yah, so I---so we have made the con---we have considered---
Jeyendran:	Yes.
Witness (AW3):	---and we felt---
Witness (AW2):	We don't think that it's necessary.
Witness (AW3):	Yah. We have considered that---
Witness (AW2):	Yes.
Witness (AW3):	---and **we don't think it's necessary to make the adjustment---**
Jeyendran:	Right.
Witness (AW3):	---**because all our comparables falls within the region.**
Jeyendran:	Very well. Then I'll put it to you---
Witness (AW3):	Okay.
Jeyendran:	---that you were wrong not to make the necessary adjustments for location for 34 Boon Leat Terrace.
Witness (AW3):	I disagree.

(emphasis in bold added)

174 We find Mr Yeo's oral evidence troubling in three aspects. Firstly, there was no mention in paragraph 13(b) of his second Affidavit (DY2) that adjustment for locational difference is based on "region". As this is a central tenet of his oral

explanation, it seems odd that the explanation did not appear in either of his affidavits. Secondly, the oral explanation given by Mr Yeo (i.e. region) is materially different from the written explanation given in paragraph 13(b) of his second Affidavit (DY2) (i.e. distance). The difference between the two concepts - region and distance – becomes apparent once we take Mr Yeo's "region" approach to its logical conclusion. Applying this approach, no adjustment will be required for locational difference so long as a comparable falls within the same region as the subject property; it does not matter that the comparable is far away from the subject property. On the other hand, an adjustment will be required if a comparable falls within a different region from the subject property; it does not matter if the comparable is near to the subject property. Mr Yeo, when giving a summation of his approach to valuation in the later part of his oral evidence, made it clear that he did not use distance as a proxy for adjustment.[182] Yet distance was precisely the proxy that was alluded to in his affidavit when he averred that "comparables should be properties that are located not too far away from the subject property."[183]

175 Thirdly, despite the extensive experience of over 30 years of classifying properties into regions by his firm, Mr Yeo has not provided any evidence and explanation as to why comparables falling within the same region do not have to be adjusted for location. In addition, he has also not provided any evidence as to how adjustment for locational difference can be made should such adjustment become necessary. In the absence of any such evidence and explanation, there is simply no proof that the approach that he has adopted is sound and reliable. Moreover, the fact

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[182] The relevant parts of Mr Yeo's oral evidence in TS, Day 5 are as follows: "Yesterday, Your Honour, Prof Leong, mention about or measuring distance, do you use---which method is adopted. Measuring distance is basically not a method. It is a proxy that he used **which we did not use it as a---as a adjustment factor**. Okay, so---so let's not---I want---I want to clarify this so that we are not confused. Because I was already very confused with your flatted---so I thought we---let's not be confused about the comparison method. There's only one method being used here." (emphasis in bold added)

[183] Affidavit of Dennis Yeo Huang Kiat (DY2) at para 13(b) where he averred: "Where possible, properties that are referred to as **comparables should be properties that are located not too far away from the subject property** … It would therefore be less appropriate to refer to, as comparables, properties that are located far away from the Acquired Land …" (emphasis in bold added)

that his oral explanation differs from his written affidavit compels us of the need to examine the validity of the approach with caution.

176 On the other hand, the Collector's valuer Mr Ee made it clear in his first Affidavit (DE1) at paragraph 21 as follows:

> Location – I have made adjustments to account for the fact that some of the comparable properties were situated in superior locations. In making these adjustments, I was guided by the land rents and prices for each industrial area published by the JTC with effect from 1 January 2012, which is annexed hereto and marked as "DE-10".

177 The Appellant contends that while the JTC Index is reflective of the rents and prices of general industrial land, it does not provide specific rents and prices of warehouse space. Mr Ee has failed to provide any substantiation why there should be a correlation between the demand and supply of warehouse space and the demand and supply of industrial land. The prices of rentals for completed properties (such as warehouse space) and the prices of rentals for land (such as industrial land) are governed by two separate sets of demand and supply considerations and should bear no correlation. The Appellant points out that the definition of "industrial purpose" (which is a term referred to in the definition of "industrial property") in the Jurong Town Corporation Act (Cap.150) is very wide and covers a whole myriad of purposes and uses, only one of which is for warehousing. The Appellant questions why should the demand and supply for land to conduct food manufacturing or research and development activities be reflective of the demand and supply for premises to be used for warehousing. The reason as to why a certain location is preferred or in demand for a particular use would differ from use to use as there are different demand sensitivities for different uses even in respect of the same location. The JTC Index, which is representative of rents and prices of industrial land in general, therefore cannot be representative nor be used to adjust for location differences of warehouse space as Mr Ee has sought to do.[184]

[184] Appellant's Closing Submissions (ACS) at paras 140-141.

178 In response to the Appellant's submission, the Collector points out that the JTC Land Index is the best proxy available in the market because the subject property was located on JTC land and because the rent in JTC varies from place to place in Singapore.[185] The Collector refers to the following extract of Mr Ee's oral evidence:[186]

> Witness (RW2): Okay, when it comes to valuing a JTC property, JTC land rent, land price schedule is a---to me it's a refined tool for valuers to use as a proxy for this locational adjustment because JTC basically will price their land rent for different locations, even within Jurong itself there are many sub-locations. They have different land rent, land price apply to this different sub-location, reflecting the differences in the location, say for example, between west of Tuas Road and another location in east of Jurong River. So, to me this is a best proxy that I can find in terms of locational adjustment.

179 The Collector points out further that the JTC Land Index appears to be the only proxy available in the market that is reflective of locational differences and that Mr Ee had notably invited the Appellant's valuers to suggest a better proxy but they stayed silent on the matter.[187] In the absence of any alternative, the Collector submits that the JTC Land Index must be taken as the best proxy notwithstanding the issues that the Appellant had raised but not proven.[188]

180 The Collector contends that it cannot logically be said that there is no correlation between the land rent/price JTC charges to an industrialist and the rent the industrialist might in turn charge a building occupant. Ultimately, an industrial building sits on JTC land. If the land rent JTC charges the industrialist is higher, then this would give rise to a higher rent passed on to the building occupant. In short, the land rent JTC charge does have a direct bearing on the strike rental a warehouse

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[185] Collector's Reply Submissions (RRCS) at para 158.
[186] TS Day 7 at p. 20.
[187] Collector's Reply Submissions (RRCS) at para 159.
[188] Collector's Reply Submissions (RRCS) at para 160.

building occupant would be willing to pay. It is therefore an appropriate proxy to use for determining the locational adjustments to be made.[189]

181 As between the "region" approach and the JTC Land Index, the choice in our mind is clear. From all that we could gather from Mr Yeo's evidence, the only thing that is clear is that properties that fall within the same region do not have to be adjusted for locational differences. Beyond that, everything else appears vague and nebulous. At the most basic level, there is no evidence or explanation as how an adjustment has to be made in the event that an adjustment for location is necessary using the "region" approach. It seems to be implicit in Mr Yeo's evidence that no locational adjustment will ever be necessary because he will only choose a comparable that falls within the same region as the subject property. If that is the case, there is all the more reason for a clear explanation to be given as to why properties located within the same region do not have to be adjusted for locational difference regardless of how far apart they may be. Without any clear explanation, the value of the proposition is as good as asserting that properties located within the small island state of Singapore do not have to be adjusted for locational difference. Moreover, there is also no evidence as to the precise boundary of each region and how this is determined. He has also not identified the "special attributes and benefits to specific businesses"[190] that set one region apart from the others. The 30 years' experience of his firm, in our respectful view, is simply not a good enough substitution for clarity, logic and proof. In contrast, the JTC Land Index provides at least some assurance of transparency and rationality in its application for locational adjustments. No doubt, there are limitations in its application but that is only to be expected as proxies are just what they are. If, despite all its limitations, this is the best proxy applicable to the circumstances, a valuer will simply have to work within

[189] Collector's Reply Submissions (RRCS) at para 161.
[190] See Affidavit of Dennis Yeo Huang Kiat (DY2) at para 13(b) where he states : "Where possible, properties that are referred to as comparables should be properties that are located not too far away from the subject property. The area within which the property is located would have its own **special attributes and benefits to specific businesses** …" (emphasis in bold added).

such limitations using his best skills and professional judgment. As noted in *Khublall* at page 162,

> Valuation is not a precise science; valuers resort to simple mathematics only as an aid to valuation. However overwhelming are the sales evidence and other relevant data at the disposal of a valuer, he nevertheless has to exercise a value judgment in the light of his training and professional experience as to what in his considered opinion the value of a property should be. Different valuers tend to give different figures within a range for the same property.

182 The Appellant has been critical of Mr Ee's application of the JTC Land Index to the Collector's comparables, arguing that his application is unreliable and fraught with error. The Appellant contends that there are quantitative differences when Mr Ee chooses to rely on plot ratios that differ from the actual, or locations that are closer to but the actual locations of the comparable. Even after arriving at an adjustment figure following the application of the JTC Land Index, Mr Ee does not even utilise the figure he obtains from the computation.[191] The Collector has responded to each of the Appellant's criticisms and sought to show that Mr Ee's methodology was neither unprincipled or arbitrary.[192]

183 We note that Mr Ee was not questioned on his application of the JTC Land Index to the Appellant's comparables. Neither did the Appellant's submissions make any reference to this. We assume, for the purpose of this part of our decision, that the same criticisms that were levelled against Mr Ee's application of the JTC Land Index to the Collector's comparables, apply equally to the Appellant's comparables.

184 Mr Ee has explained in his evidence that as a starting point he would look at the master plan zoning for the subject property. As far as possible, he would follow the master plan plot ratio ("PR") as a basis failing which he might use other PR as a reference point.[193] Hence, whilst there are four PRs (PR 1.0, PR1.4, PR 2.0, PR 2.5) in

[191] Appellant's Closing Submissions (ACS) at paras 142 to 147.
[192] Collector's Reply Submissions (RRCS) at paras 163- 170.
[193] TS Day 4 at p. 86, line 26-29.

the JTC Land Index under West of Tuas Road where the subject property is located, Mr Ee picked PR 1.4 as a starting point because the subject property is zone business at PR 1.4.[194] He would then compare the published JTC land rent in West of Tuas Road at PR 1.4 ($20.68 psm per annum) with the JTC land rent of the area where the comparable is located.[195] However, where the comparable site does not have PR 1.4, Mr Ee would select another PR which is common to both locations.[196] Mr Ee gave an example of his calculation as follows:

> Witness (RW2): And for Pioneer Place, it's located at west of Sungei Lanchar. Plot ratio 1.4 will be 22.39. If you take 20---if you take---sorry. 20.68 divided by 22.39, you get a 0.92. 0.92, which means this is actually approximately 8%. But then of course I'm not taking it wholesale.[197]

185 Mr Ee explained that after obtaining the 8%, he scaled it down to 5%. He explained that this was an exercise of professional judgment to account for variance.[198] There is no special formula used but most of his location adjustments are in the multiple of 5%.[199]

186 Overall, we find that Mr Ee has reasonably explained the rationale in his application of the JTC Land Index to the comparables. Certainly, as with all matters involving professional judgment, there is room for debate such as the need for and accuracy of the further adjustment. As stated earlier, the Board is not closed to any view that can be shown to be more reliable. However, despite all the criticisms that have been levelled against the approach adopted by Mr Ee, the Appellant's valuers have not shown how they would exercise their professional judgment in applying the JTC Index to the Appellant's comparables. No alternative method of application has

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[194] TS Day 4 at p. 84 line 25-30.
[195] TS Day 4 at p. 83 line 7-10 & p. 84 line 14-17.
[196] TS Day 4 at p 85 line 1-10.
[197] TS Day 4 at p. 90 line 4-8.
[198] TS Day 4 at p. 90 line 23-31, p. 91 line 1-3, 15-18 and p. 92 line 1-9.
[199] TS Day 4 at p. 90 line 26-29.

been offered for the Board's consideration. In the circumstances, there is simply no reason for us not to accept the adjustments made by Mr Ee.

Ceiling Height

187 The Appellant's valuers and the Collector's valuer are of the same view that there is a need to adjust for height differences but they differ in their approaches.

188 Ms Chua has explained that no adjustment will be necessary unless the height of the warehouse building is exceptionally high or exceptionally low. A lessee that is open to considering a warehouse building with an 8m height will also be equally open to considering a warehouse building that is 7m or 10m, for example. In this regard the "weighted average" height of the warehouse floors on the Acquired Land was computed by Ms Chua to be 8.58 m. As such, if one was comparing the Acquired Land to a comparable that was 7m or 10m, for example, there would not have been a need to adjust for the rents of such comparables.[200]

189 Mr Yeo also elaborates that there are generally 2 categories of warehouses, namely the conventional warehouses (which Mr Yeo pegs at a height of up to 15m) and the ASRS warehouses (which Mr Yeo pegs at a height of approximately 30m or more). Mr Yeo has selected the 5 Appellant's comparables on the basis that these rentals are reflective of the rentals of conventional warehouses, ranging in heights from approximately 6.7m to 15m. Mr Yeo has selected 7 Clementi Loop (AC4) as a comparable notwithstanding its height of approximately 25m given that 7 Clementi Loop was only utilised as a conventional warehouse to stack 2 to 3 levels of goods.[201]

190 In her oral evidence, Ms Chua elaborated as follows:[202]

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[200] Appellant's Closing Submissions (ACS) at para 195; TS Day 2 at p 70; EL, p. 2 No.6C.
[201] Appellant's Closing Submissions (ACS) at para 196; TS Day 2 at p. 71; TS Day 5 at p. 26.
[202] TS Day 2 at p. 108.

Witness (AW2):	I think this conventional warehouse, why we did not make any adjustment for ceiling height, I think Mr Yeo has reckon---responded. Like---like I said earlier, I think for conventional warehouse, it's not so price-sensitive, you know? A person who is looking for a 8-metre high warehouse would probably be open to looking at a 9-metre high or 10-metre high or even 11-metre high or even 7-metre high. You know? These are for conventional warehousing, unlike, say, ASRS, then I think it's a separate animal altogether. Yah? So because of this, we don't think there is actually a necessity to make adjustment for ceiling height. In fact, if you talk about adjustment for ceiling height, like, Tuas Connection, the ceiling height is only 6 metre. The---our rental number 5. We could have made an upward adjustment for that as well. So---but consistently, we don't make any adjustment for ceiling height. Yah.

191 The Appellant emphasised that the contradistinction between the category of conventional warehouses versus the category of ASRS warehouses is not disputed by Mr Ee, and is even a category of distinction that he has recognised in his study R5 to R9.[203]

192 As the 5 Appellant's comparables were selected on the basis that they were representative of rents of conventional warehouses when compared to the average height of 8.58m for the buildings on the Acquired Land, the Appellant submits that its valuers adopted a rational basis in making no adjustment to the rents of the Appellant's comparables for height.[204]

193 The Collector submits that no evidence was supplied to justify Ms Chua's assertion that conventional warehouses are "not so price-sensitive". This was, plainly, a bare assertion. In fact, and to the contrary, it would appear from Mr Ee's market study (see R5) that conventional warehouse spaces with higher ceilings heights do

[203] Appellant's Closing Submissions (ACS) at para 196; TS Day 2 p.71; TS Day 5 at p. 26.
[204] Appellant's Closing Submissions (ACS) at para 198.

indeed command a premium.[205] The Collector points out that no evidence was adduced to prove the Appellant's valuers' bare assertion that for the purposes of pricing rent, warehouses should properly be divided into 2 broad camps of "conventional" and "ASRS", each attracting their own type of rent.[206] Most importantly, even after Mr Ee took issue with Ms Chua's use of the concepts of weighted average height and weighted average, no valuation evidence was supplied by the Appellant's valuers to show that these concepts are legitimate industry practice.[207] The Collector also points out that up to the hearing, it was never a part of the Appellant's case that 7 Clementi Loop (AC4) did not have to be adjusted for storage capacity/ceiling height because the building was being utilised as a conventional warehouse.[208] In any event, the Appellant's own case is that storage capacity is relevant, and that the higher the ceiling of the building, the more goods in theory can be stored. Thus, on the Appellant's own case, whether the tenant actually maximises the storage capacity would be beside the point.[209]

194 In our view, there is some logic to the "weighted average" height approach adopted by Ms Chua. The approach, as we understand it, is utilised to determine the weighted average height of the subject property as there are several buildings of varying heights on the Acquired Land. This singular figure is then used to compare with the height of comparable properties. Insofar as it provides a convenient yardstick for comparison, we find the concept to be clean and useful.

195 However, the water was muddied when Ms Chua applied a different concept to the ASRS building (Block 7), i.e. the equivalent GFA approach. Although the Appellant's valuers have endeavoured to explain that there are 2 categories of warehouses (conventional and ASRS), this does not by itself explain why the

[205] Collector's Closing Submissions (RCS) at para 27(a).
[206] Collector's Closing Submissions (RCS) at para 27(b).
[207] Collector's Closing Submissions (RCS) at para 27(c).
[208] Collector's Closing Submissions (RCS) at para 112.
[209] Collector's Closing Submissions (RCS) at para 113.

equivalent GFA concept is only applicable to ASRS buildings and the weighted average height concept is only applicable to conventional warehouses. Conceptually, it is also unwieldy to mix up equivalent GFA with height. In the absence of hard evidence, we find it difficult to imagine any prospective tenant applying this mixed bag of concepts.

196 As regards Mr Ee's approach, this was explained in his reply affidavit (DE2) at paragraph 7(d) as follows:

> The correct way to account for the higher ceiling height of the ASRS Building would be to make appropriate adjustments to the comparable property transactions that are used to determine the prevailing market rent in order to account for the increased ceiling height of the ASRS building as a positive feature of the Acquired Land. This was done in my second analysis of 8 additional comparable property transactions (see [23] to [26] of my First Affidavit and DE-12), where I made a 5% adjustment to account for the higher ceiling height of the ASRS Building (for the avoidance of doubt, the term "ASRS" at [24] of my First Affidavit refers to the ASRS Building). For completeness, I should state that the 5% adjustment was made on the assumption that all the comparable properties had normal ceiling heights. In making the 5% adjustment, I had also taken into account the higher-than-average ceiling height of Block 1 building (based on information provided to me by the Appellant). In my view, an adjustment of 5% to the comparable property transactions is reasonable given that the rental rates of warehouses generally increase by no more than $0.10 psf/month for every 50% increase in ceiling height.

197 In respect of the Appellant's comparables, Mr Ee applied an uplift of 5% to all the comparables except 7 Clementi Loop (AC4) where he applied a 0% adjustment. We note that AC4 has a ceiling height of 30 m[210] which is close to the 30.2m[211] ceiling height of the ASRS Building (Block 7).

198 As we have established earlier (see paragraphs 41 to 53 above), the use of the equivalent GFA by Ms Chua to compute the unit rent of the subject property to account

[210] DE-25.
[211] Experts' List of Agreed and Disputed Issues (EL) at p. 2.

for the height of the ASRS building (Block 7) is erroneous. Consequently, it follows that the mixed bag approach adopted by Ms Chua (which employed in part the equivalent GFA approach) to adjust for differences in height would also have fallen into error. In the circumstances, the proper way to account for the higher ceiling height of the ASRS Building is to make appropriate adjustments to the comparable property transactions.

199 The question that follows is, how is the adjustment factor to be determined. Taking into account the height of the ASRS building (Block 7) and higher-than-average ceiling height of Block 1 on the subject property, Mr Ee applied a 5% adjustment factor to comparables with normal ceiling height based on his understanding that the rental rates of warehouses generally increase by no more than $0.10 psf/month for every 50% increase in ceiling height.[212] In his oral evidence, he elaborated that the $0.10 psf/month for every 50% increase in ceiling height is not something that he plucked from the air[213] but based on a study of the rental transactions in four developments in the course of his work[214] to find out the correlation between industrial rent and ceiling height.[215] Following the Appellant's valuers' comments that they would not be able to test the accuracy of what Mr Ee has said without sight of the study,[216] Mr Ee tendered the Height Study (R5 to R9) with parts redacted where it is necessary to protect the confidentiality of client information.[217]

200 There have been several criticisms by the Appellant of Mr Ee's Height Study and these have been noted in the earlier part of this decision (see paragraph 104(m)-(r) above). The Appellant criticised the soundness of his Study and faulted Mr Ee for

[212] Reply Affidavit of Ee Kong Han Daniel (DE2) at para 7(d); TS Day 1 at pp. 102-103.
[213] TS Day 1 at p. 105 line 5-7.
[214] TS Day 1 at p. 102 line 4-6.
[215] TS Day 4 at p. 12.
[216] TS Day 1 at p. 103 line 3-13.
[217] TS Day 4 at pp. 12 line 25-31.

applying a blanket increase of 5% to the Collector's comparables without tailoring the adjustment according to the specific height of each comparable.

201 Despite the criticisms, we note that the Appellant's valuers have avoided stating what the adjustment factor for height should be, not unlike how they have also avoided stating what the adjustment factor for locational difference should be. They insisted that Mr Ee must tailor his adjustment to the specific height of each of the Collector's comparables, but when it came to their own comparables, the Appellant's valuers took the position that no adjustment will be necessary unless the height of the warehouse building is "exceptionally high" or "exceptionally low". They did not specify what is "exceptionally high" or "exceptionally low" and this lack of specificity means that it remains unclear when an adjustment for height will ever be required.

202 They avoided making any adjustment for 7 Clementi Loop (AC4) even when this comparable stood out like a sore thumb - AC4, at a height of 30m, is more than 3 times the weighted average height of 8.58m by their own computation. They explained that this is because the tenant had only utilised it as a conventional warehouse to stack 2 to 3 levels of goods. We did not find the explanation convincing at all. In our respectful view, it makes no sense that the storage capacity of a building should be dependent on how many stacks of goods are being stored inside the building instead of how many stacks of goods the building can store.

203 Overall, we find the approach adopted by the Appellant's valuers to be less than satisfactory. There is a striking lack of clarity as regards when an adjustment for height is required, what is the adjustment factor to be applied and how is the adjustment factor to be determined. To the extent that Mr Ee's approach answers all these fundamental questions, it is clearly more transparent, coherent and subject to closer scrutiny.

204 Certainly, the value of Mr Ee's Study is only as good as the data it draws on and the strength of the analysis. However, it is always open to the Appellant's valuers to conduct their own study on the correlation between industrial rent and height but they have not done so. Their position on the appropriate adjustment factor to be utilised remains extremely vague even up to now. Despite all its imperfection, the best evidence available before the Board is that provided by Mr Ee. As stated before, the Board is always open to the consideration of any alternative approach if it can be shown to be more reliable. Valuation, after all, is not an exact science. That is why skill, judgment and objectivity are extremely important attributes of any competent valuer. As the Appellant's valuers have not provided any alternative adjustment factor for the Board's consideration, there is no reason for the Board not to accept the adjustments made by Mr Ee.

Over provision of Heavy Vehicle Lots v Separate Compensation

205 As the adjustment in relation to the over provision of heavy vehicle lots is inextricably linked to the issue of whether the Appellant is entitled to separate compensation in respect of the heavy vehicle parking lots, it would be expedient for us to consider both matters together.

206 The Acquired Land has 95 parking lots for container and heavy vehicle parking.[218] The Appellant has made a claim of $2,412,781 based on the "market value" of the heavy vehicle parking lots as at the First Gazette Date[219]. As at the Second Gazette Date, the value is computed to be $2,004,703.[220]

207 The Appellant submits that as a result of the acquisition, the Appellant has suffered a loss in respect of the market value of the 95 heavy vehicle parking lots in

[218] Affidavit of Yap Ai Cheng (YAC1) at para 8.
[219] Appellant's Closing Submissions (ACS) at para 326(c)(i).
[220] Appellant's Closing Submissions (ACS) at para 310.

respect of the Acquired Land as provided for under s 33(1)(a) of the LAA.[221] The market value of the heavy vehicle parking lots is made up of 2 components – (1) the value of the vehicle parking certificates (VPC) and (2) the parking benefits which are represented by the costs that the Appellant would have had to incur in order to park the vehicles, that could be parked on the Acquired Land, elsewhere at commercial rates.[222] The VPC is an entitlement that is attached to the heavy vehicle lots. Although the VPCs are required to renew the road tax for the vehicles, the VPC is a benefit that runs with the heavy vehicle parking lots. Without the heavy vehicle parking lots, one would have to go into the open market to acquire the VPCs. As a result of the 95 heavy vehicle parking lots, the Appellant has lost a total of 236 VPCs.[223] The Appellant explained that its claim is based on 121 vehicles owned by the Appellant even though there were only 95 heavy vehicle parking lots. This is because the Appellant had 28 loading and unloading bays, which could be used to park the vehicles. Under regulation 2 of the Parking Place (Provision of Parking Places and Parking Lots) Rules 2018 (No. S286/2018), "parking lot" includes a type of parking lot, such as a loading or unloading bay". As such, the Appellant would have been able to park a total of 123 vehicles on the Acquired Land although its claim is only based on 121 vehicles.[224]

208 The Collector submits that the Appellant is not entitled to separate compensation for the heavy vehicle parking lots as the value of these lots was already encapsulated into the prevailing market rent of the Acquired Land. This is evident by the fact that before the acquisition, the Appellant did not pay RBC Dexia for any separate parking charges or fees.[225]

209 The Collector has also raised a number of other arguments to show that the Appellant is not entitled to claim for the costs of the VPCs and that the claim for 236

[221] Appellant's Closing Submissions (ACS) at para 309.
[222] Appellant's Closing Submissions (ACS) at para 312.
[223] Appellant's Closing Submissions (ACS) at para 312.
[224] Appellant's Closing Submissions (ACS) at para 317.
[225] Collector's Closing Submissions at paras 121-122.

VPCs exceeded the size of their fleet,[226] but it is unnecessary for the purpose of our decision to go into these arguments. At its core, we find that the claim for compensation for the heavy vehicle parking lots is entirely misconceived. This is because the use of the heavy vehicle parking lots is part of the basket of rights enjoyed by the Appellant as a tenant under the Lease.[227] In return, the Appellant agreed to pay RBC Dexia a monthly rent stipulated in the Lease.[228] As the right to use the car park is encapsulated in the Appellant's Lease Interest for which the Appellant has already made a claim for compensation, there is no basis for a separate compensation to be made for the heavy vehicle parking lots. In fact, the use of the description "market value" by the Appellant to describe the heavy vehicle parking lots is a misnomer as the Appellant did not enter into any tenancy agreement to lease the heavy vehicle parking lots. As we have explained in the earlier part of this decision, the lease agreement between the Appellant and RBC Dexia is confined to the buildings on the Acquired Land. As such, the car park is but an amenity provided under the terms of the lease. This is not unlike amenities like car park, swimming pool or squash court that one may find in a condominium development. A tenant of a condominium apartment is not a tenant of the car park, swimming pool or squash court in the condominium development. In the circumstances, the claim for the "market value" of the heavy vehicle parking lots under s 33(1)(a) of the LAA has no proper legal justification to begin with.

210 The proper way to account for an amenity in valuation is to ensure that a comparable enjoys a similar amenity. The learned author in *Khublall* stated at page 144 as follows:

> *Amenities and services*
>
> The lands on which comparables are based must enjoy similar amenities and services as the subject land before they can be of any

[226] Collector's Reply Closing Submissions (RRCS) at paras 221-227.
[227] For example, Clause D26 of the Lease provides *inter alia* that the tenant shall not use or cause to permit to be used the car park for any purposes other than for those for which it was constructed.
[228] See Clauses B1 and C of the Lease.

> help. Sales evidence of land with public utility services cannot be used to value land without such services.

211 In the present case, the contracted rent encompassed all that the Appellant was entitled to under the terms of the Lease and this includes the enjoyment of the car park. As such, the correct way to account for the heavy vehicle parking lots is to ensure that a comparable enjoys a similar amenity.

212 In this regard, Mr Ee found that it would be reasonable to make an upward adjustment of 2% to account for this factor. Mr Ee explained as follows:[229]

> First, as explained at paragraph 8 of my First Affidavit, the correct way of valuing the Appellant's interest in the Acquired Land is to determine if the Appellant enjoyed any profit rent. This is done by assessing whether the rent the Appellant was paying (the passing rent) is lower than the prevailing market rent. The value of the parking lots present on the Acquired Land should therefore be accounted through the assessment of the prevailing market rent that a prospective tenant would pay for the Acquired Land.
>
> Second, the Parking Costs Claim is based on the entirety of the 95 parking lots situated on the Acquired Land. However, parking lots are a necessary feature on any land that is used for the purposes of warehouses. According to the Code of Practice for Vehicle Parking Provision in Development Proposals (2011 Ed) published by the Land Transport Authority (the "LTA Code of Practice"), warehouses are to have, at the minimum, 1 lorry parking space for every 800 square metres of gross floor area. (Relevant extracts from the LTA Code of Practice are annexed hereto and marked as "DE-21"). Any warehouse premises equivalent in size to the Acquired Land would therefore have at least 67 parking lots for lorries or other heavy vehicles. Hence, at best, the comparable property transactions relied upon for the prevailing market rent could be adjusted upwards to take into account the over-provision of the 28 parking lots on the Acquired Land.
>
> This was done in my second analysis of the 8 additional comparable property transactions within the Jurong location. To give the Appellant the benefit of the doubt, I made adjustments to account for the overprovision of parking lots on the Acquired Land (see DE-12) on the assumption that the comparable properties only provided the minimum number of parking lots on their premises. Based on information provided by the Appellant on the average cost of maintaining a parking lot for heavy vehicles (which is $439.30 per month), I found that it would be reasonable to make an upward adjustment of 2% for this factor. However, even after accounting for

[229] Reply Affidavit of Ee Kong Han Daniel (DE2) at paras 18-20.

> the over-provision of these parking lots. I found that the Appellant would still not have enjoyed any profit rent.

213 Consistent with the above approach, Mr Ee also applied a 2% uplift to the Appellant's comparables. However, the Appellant's valuers have given oral evidence that the lessees in respect of the Appellant's comparables do not enjoy the benefit of heavy vehicle parking lots, i.e. they would have to pay a separate charge for the heavy vehicle parking lots.[230] As this evidence has not been disputed by the Collector, we find that Mr Ee has underprovided for the heavy vehicle parking lots in his working in DE-25 (though we note in fairness to Mr Ee that the information on the parking charges was only provided by the Appellant's valuers at the hearing and he would not have been able to take this into account when preparing DE-25).

214 Mr Ee's uplift of 2% is based on the assumption that the rental of the comparable is inclusive of 67 parking lots for lorries and other heavy vehicles. However, since the lessees of the Appellant's comparables have to pay separate charges for the heavy vehicle parking lots, the uplift should have been computed on the basis of 95 parking lots instead of 28 parking lots.

215 It would have been possible to calculate the total charge for 95 heavy vehicle parking lots for the comparable properties if the Appellant's valuers have provided information on the actual car park charges incurred by the lessees for the comparables. However, since no such information is before the Board, the best alternative would be to extrapolate from Mr Ee's calculations. Taking 28 heavy vehicle parking lots at 2% uplift, 95 parking lots would correspondingly require an uplift of 6.8%:

> 2%/28 x 95 = 6.8% (rounded up)

216 In the circumstances, we find that the appropriate adjustment to be made to account for the heavy vehicle parking lots would be 6.8% instead of 2%.

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[230] Appellant's Reply Submissions (ARS) at para 64; TS Day 5 at pp. 7-8.

Property Type

217 Under property type, Ms Chua has applied a +10% adjustment to rentals for AC1 and AC2 given that they are not ground floor warehouses and +10% adjustment to the rentals for AC1 to AC5 as none of the comparables enjoys the same standalone advantage of the buildings on the Acquired Land (see paragraphs 119 -120 above). For clarity, this may be tabulated as follows:

Particulars	Rental A (AC1)	Rental B (AC2)	Rental C (AC3)	Rental D (AC4)	Rental E (AC5)
Address	**15 Pioneer Walk, Pioneer Hub (Level 6)**	**24 Penjuru Road (Level 4) Singapore Commodity Hub**	**34 Boon Leat Terrace (Level 1)**	**7 Clementi Loop (Level 1)**	**Tuas Connection (Level 1)**
Property Type					
(a) Ground Floor					
Ms Chua (Appellant)	10%	10%	-	-	-
Mr Ee (Collector)	-	-	-	-	-
(b) Standalone					
Ms Chua (Appellant)	10%	10%	10%	10%	10%
Mr Ee (Collector)	-	-	-	-	-
(c) Total					
Ms Chua (Appellant)	20%	20%	10%	10%	10%
Mr Ee (Collector)	-	-	-	-	-

218 The Collector has criticised Ms Chua for lumping together adjustments that should have been dealt with separately from a valuation standpoint.[231] The Collector points out that it was only as late as the second day of the hearing that Ms Chua specified with particularity what her broad-brush classification of "property type" entailed. Given that this formed a material part of the Appellant's own case, it is surprising that no elaboration was provided when Ms Chua tendered her workings to the Board in CBE3. The Collector highlights that Ms Chua only provided her workings at the insistence of the Collector.[232] Because Ms Chua has intentionally held her cards closely to her chest, this has resulted in the Collector's valuer being unable to prepare his responses and gather the evidence to support his side of the dispute. His ability to

[231] Collector's Closing Submission (RCS) at para 117.
[232] Collector's Closing Submission (RCS) at para 36.

assist the Board with proper answers on the adjustments made for "property type" has thus been impaired.[233]

219 We note that while Ms Chua has given a breakdown of the component parts of the adjustments for "property type" in her oral evidence, it would have been a matter of good practice for valuers to articulate clearly in their affidavits the types of adjustments, the reasons for the adjustments made and the adjustment factors.

220 Turning to the substantive merits of the adjustments, Mr Yeo explained during hot-tubbing that in selecting the Appellant's comparables, he preferred to choose warehouses that were situated on the ground floor, or at the very least, ramp-up warehouse. Three of the Appellant's comparables (AC3, AC4 and AC5) were situated on the ground floor whilst the remaining 2 (AC1 and AC2) were ramp-up warehouses.[234] For ramp-up warehouses, Mr Yeo elaborated that they provide direct access to the warehouse via a ramp, but as that would require additional uphill travel for the vehicle (the higher the warehouse, the longer the distance of travel), a downward adjustment has to be made for the Appellant's comparables that are ramp-up warehouse as opposed to a ground floor warehouse.[235] Ms Chua has thus applied a +10% adjustment to the rentals for AC1 and A2.

221 Although the Collector has contended that Mr Ee was hampered in his response in view of the late disclosure by Ms Chua on the component parts of "property type", we note that he did in fact give a detailed response in his affidavit on the ground floor advantage. This is because Mr Yeo had alluded to the ground floor advantage in his first affidavit (DY1) at paragraph 8 as follows:

> Warehouse buildings located within a large site have the advantage of shorter distance travel for movements and transfer of goods. Efficiencies are further enhanced if these buildings, all of which are located within a large site, are single storey structures. Some of the

[233] Collector's Closing Submissions (RCS at para 37(b).
[234] Appellant's Closing Submissions (ACS) at para 161; TS Day 2 at p. 78.
[235] Appellant's Closing Submissions (ACS) at para 162; TS Day 2 at p. 157.

> data for the comparable lease transactions set out above comprised ramp-up warehouse sites (i.e. located on multi-levels) that are dissimilar in size to the large site of the Property. The warehouse buildings located on the Property are mostly single storey buildings. Such warehouse buildings located within a large site are rare and would usually command a premium of at least 10% to 20% in terms of the rental rate per sq ft.

222 In his Reply Affidavit (DE2) at paragraph 11(c) and (d), Mr Ee responded as follows:

> Mr Yeo has surprisingly asserted that efficiencies for the Acquired Land are enhanced because the warehouse buildings on the Acquired Land are single storey structures (DYHK's 1st Affidavit at p.10, paragraph 8). This is patently not true. Contrary to what Mr Yeo has suggested, single-storey warehouses are less efficient than multi-storey warehouses today. Modern multi-storey warehouses make more efficient use of the limited land area in Singapore through direct ramp access that will allow goods to be stored on multiple levels. Because multi-storey warehouses increase land productivity, they can be located nearer to the city centre, thereby reducing the distance over which goods have to be transported. Indeed, the enhanced efficiency that multi-storey warehouses provide has also been recognised by CBRE itself (see the media report dated 26 May 2016 published by CBRE annexed hereto and marked DE-18). Even the Appellant's new premises – Supply Chain City – which have been described as a "state-of-the-art supply chain nerve centre" that "redefine benchmarks in innovation and productivity", features a five-storey warehouse (see news extracts from the Appellant's website hereto and marked as DE-19).
>
> While Mr Yeo has correctly stated that rental rates are "affected by a multitude of factors", I note that he has failed to make any adjustments to the comparable transactions he used to account for these factors (save for attaching a 10 to 20% premium for the alleged efficiency of the Acquired Land, which I disagree with)…

223 In light of the above, we do not think there is merit in the Collector's submission suggesting Mr Ee was caught by surprise and therefore hampered in his response, as the ground floor advantage and efficiency of the Acquired Land was already made known in Mr Yeo's affidavit and Mr Ee had in fact responded to them.

224 In his oral evidence, Mr Ee conceded that he should have made adjustments to account for the "ground floor" advantage the subject-property had in comparison to

some of his multi-storey comparables.[236] Mr Ee acknowledged that there should in fact generally be a 20% premium for warehouse space situated on the ground floor as compared those that are situated on higher levels.[237] As Ms Chua has proposed a 10% adjustment for AC1 and AC2 for the ground floor advantage, we see no reason to disturb the adjustments made by Ms Chua.

225 With regard to the standalone advantage, Ms Chua elaborated that in a multi-user property, there are often restrictions on the use of the loading and unloading bays and the locations where the vehicles are stopped, as vehicles are typically not allowed to stop for long periods. As lessees would also have to queue up for the use of the loading and unloading bays since there are also time restrictions imposed on their use, charges would be imposed for any additional time incurred outside the allocated hours.[238]

226 The Appellant emphasised that the factor of a standalone advantage should not be conflated with the benefit of the loading and unloading bays *per se*. For example, even if a lessee of a multi-user property is granted the use of a single loading and unloading bay as part of his lease, such a lessee will not enjoy the same standalone advantage that the Appellant enjoys on the Acquired Land, given that the lessee would still not have the uninhibited use of the entire land or building area, and whose activity will still be limited by the need to be mindful of other users.[239] For the standalone advantage factor, Ms Chua applied a +10% adjustment to the rentals for all of the Appellant's comparables (i.e AC1 to AC5) as none of the Appellant's comparables enjoys the same standalone advantage of the buildings on the Acquired Land.[240]

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[236] Collector's Reply Closing Submissions (RRCS) at para 150; Appellant's Closing Submissions (ACS) at paras 170-171; TS Day 4 at pp. 115, 116 & 160.
[237] Appellant's Closing Submissions (ACS) at para 170; TS Day 4; Collector's Reply Closing Submissions (RRCS) at para 150.
[238] Appellant's Closing Submissions (ACS) at para 150; TS Day 3.
[239] Appellant's Closing Submissions (ACS) at para 165.
[240] Appellant's Closing Submissions (ACS) at para 166.

227 The Collector contends that Mr Ee's agreement that he should have adjusted for ground floor advantage is not a concession that an adjustment for a supposed "standalone" advantage is a correct one to make. The Collector's position on this is that such "standalone" advantage is baseless.[241]

228 Respectfully, we are unable to agree with the Collector. Far from being baseless, the standalone advantage is an important operational attribute that should not be underestimated. A tenant in a single-user warehouse complex would clearly enjoy greater operational efficiency because there is no necessity to compete with other tenants for the use of facilities such as the loading and unloading bays. This not only translates into the savings of time and costs for the tenant, it also allows for maximum operational flexibility and optimal planning. In the circumstances, we find that there is a need to adjust the rentals of the comparables to reflect this difference. Considering that the subject-property is situated on the Acquired Land which sits on a massive land area of 78,279.4 sqm, we find the adjustment of +10% by Ms Chua to AC1 to AC5 to be reasonable.

Prevailing Market Rent (Re-computed)

229 To recap, the market rent derived by the Appellant's valuer Ms Chua based on the Appellant's 5 comparables as at the Second Gazette Date (8 February 2012) is $1.77 psf/month.[242]

Particulars	**Rental 1 (AC1)**	**Rental 2 (AC2)**	**Rental 3 (AC3)**	**Rental 4 (AC4)**	**Rental 5 (AC5)**
Address	15 Pioneer Walk	24 Penjuru Road	34 Boon Leat Terrace	7 Clementi Loop	Tuas Connection
Rental Info – Gross Rate ($psf/mth)	$1.31	$1.48	$1.43	$1.60	$1.60
(a) Time (URA index)	13%	13%	2%	2%	-1%

[241] Collector's Closing Submissions (RRCS) at para 153.
[242] Appellant's Closing Submissions (ACS) at para 120; EL at pp. 6 & 7; Affidavit of Chua Beng Ee (CBE3) at p. 8 (CBE-7).

(b) Property Type	20%	20%	10%	10%	10%
Total Adjustment	33%	33%	12%	12%	9%
Adjusted Rental Rate ($psf/mth)	$1.75	$1.97	$1.60	$1.79	$1.74

Prevailing Market Rent:

($1.75+$1.97+$1.60+$1.79+$1.74)/5 = **$1.77 psf/month**.

230 We have found that the adjustments made by Ms Chua to account for the differences in (a) time and (b) property type (comprising the ground floor advantage and standalone advantage) were correctly made. However, we have also found that Ms Chua has failed to account for the differences in (c) size, (d) age/condition, (e) location/siting and (f) the provision of heavy vehicle lots. A revised table to take into account all these other adjustments is as follows:

Particulars	**Rental 1 (AC1)**	**Rental 2 (AC2)**	**Rental 3 (AC3)**	**Rental 4 (AC4)**	**Rental 5 (AC5)**
Address	15 Pioneer Walk	24 Penjuru Road	34 Boon Leat Terrace	7 Clementi Loop	Tuas Connection
Rental Info – Gross Rate ($psf/mth)	$1.31	$1.48	$1.43	$1.60	$1.60
(a) Time (URA index)	13%	13%	2%	2%	-1%
(b) Property Type (ground floor & standalone advantages)	20%	20%	10%	10%	10%
(c) size	**-40%**	**-32%**	**-32%**	**-38%**	**-37%**
(d) age/condition	**-10%**	**-10%**	**0%**	**0%**	**-10%**
(e) location/siting	**-5%**	**-15%**	**-20%**	**-15%**	**5%**
(f) provision of heavy vehicle lots	**6.8%**	**6.8%**	**6.8%**	**6.8%**	**6.8%**
Total Adjustment	**-15.2%**	**-17.2%**	**-33.2%**	**-34.2%**	**-26.2%**
Adjusted Rental Rate ($psf/mth)	**$1.11**	**$1.23**	**$0.96**	**$1.05**	**$1.18**

Prevailing market rent:

($1.11+$1.23+$0.96+$1.05+$1.18)/5 = **$1.11 psf/month**

231 The prevailing market rent, based on the Appellant's 5 comparables, is $1.11 psf/month when re-computed to take into account the adjustments that were omitted by Ms Chua in her valuation.

Profit Rent

232 As the prevailing market rent of $1.11 psf/month is less than the passing rent/total occupation costs of $1.20 psf/month, there is no Profit Rent accruing to the Appellant based on the Appellant's comparables.

Collector's Comparables

233 As noted earlier, the onus of proof is on the Appellant to show that the award is inadequate. It is only when the Appellant has established a *prima facie* case that the evidential burden shifts to the Collector to rebut the Appellant's case by adducing evidence to the contrary. The Board must then consider the evidence as a whole.[243] As the Appellant has failed to establish a *prima facie* case that the award is inadequate, the evidential burden does not shift to the Collector. As such, it is unnecessary for the Board to go into a detailed analysis of the Collector's comparables.

234 Even if, taking the Appellant's case at its highest, we were to reject the Collector's rental evidence in its entirety as contended by the Appellant, this would not help the Appellant's case in any way. This is because the only rental evidence before the Board would be the rental evidence of the Appellant's comparables, which as we have found, did not establish that the market rent was above the passing rent/total occupation costs. The Appellant would still have failed to discharge the onus of proof which lies at all times with the Appellant.

[243] For an example of the interaction between the legal and evidential burden of proof, *see Chee Mu Lin Muriel v Chee Ka Lin Caroline* [2010] 4 SLR 385; see also *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2019] SGHC 95 at para 35 on the legal burden of proof and the shifting of the evidential burdens as between the parties.

Conclusion

235 For the reasons set out above, we find as follows:

a) The relevant date for assessing Profit Rent is the Second Gazette Date (8 February 2012);

b) The passing rent/total occupation costs the Appellant was paying for the leased premises is $1.20 psf/month;

c) The prevailing market rent of the leased premises is $1.11 psf/month;

d) There is no Profit Rent accruing to the Appellant as at the Second Gazette Date; and

e) The Appellant is not entitled to separate compensation in respect of the heavy vehicle parking lots.

Award

236 The Appeal is dismissed with costs to the Respondent to be taxed if not agreed.

Dated the 16th day of May 2019

Commissioner of Appeals Chia Wee Kiat
Assessor Associate Professor Leong Kwong Sin
Assessor Chua Koon Hoe