2015 年 3 月 24 日
討論文件

立法會發展事務委員會

評估被收回物業的法定補償及解決因收回土地而引致的糾紛

序言

本文旨在闡述政府如何評估發放予收回單一及分散業權物業的業權人之法定補償金額，以及解決因收回土地而引致糾紛的一般做法。

收回土地及補償

2. 為進行工務工程或因其他公共用途，政府會引用法例條文收回土地物業（即土地及建築物）。政府最經常引用收回土地的權力源自《收回土地條例》（第 124 章）（「條例」）內的條文；相關條文以及適用的普通法原則，為政府評估發放予受影響業權人的補償金額提供了基礎。值得注意的是，補償法則以「等效原理」作為基礎：即「（業權人）盡可能在金錢上被置於等同其土地未被收回的境況。換言之，他獲發放的金額不少亦不多於其因公眾利益所招致的損失」（*Horn 對 Sunderland Corp.*案例 [1941] 2 KB 26）。另一項獲確立的補償法則稱作 *Pointe-Gourde* 規定，指補償金額「不可包括引發土地物業收回的有關計劃所導致的升值」（*Pointe Gourde Quarrying and Transport Co 對 Sub-Intendent of Crown Lands* 案例[1947] AC 565）。

3. 政府為個別收回土地行動所訂定的法定補償，是由地政總署的專業測量師負責評估。申索人有權就地政總署所提出的補償建議尋求專業意見，而根據「條例」第 6(2A)條及第 8(4)條，申索人可就其聘用任何人以專業身分辦理與該項申索有關的事宜，因而合理招致或支付的費用或酬金作出申索。地政總署會相應向申索人償還合理款項，而署方一般會根據香港測量師學會收費表（1995 年版）審核償還專業費用的申索。除此之外，有關

專業費用的申索亦可轉交土地審裁處，以裁定申索人合理招致或支付的費用或酬金之金額（「條例」第 10(2)(e)(ii)條）。如地政總署所提出的補償建議不被申索人所接納，署方會繼續與申索人及/或申索人聘用之專業人士磋商法定補償金額。如未能達成協議，則申索人或署方可根據「條例」第 6(3)條向土地審裁處提出申請，以裁定有關金額。有關程序已於《收回市區土地及補償安排－供業主，佔用人及測量師參考的指引》（載於附件一）中闡述及解說，有關指引可於地政總署網頁內瀏覽，亦會派發予所有受影響業權人及佔用人，以供參閱。

4. 「條例」第 10(1)條列明（如未能達成協議）土地審裁處須根據申索人因其物業被收回而蒙受的損失或損害，裁定須支付的補償額。「條例」第 10(2)條及第 12(d)條進一步列明，土地審裁處須以自願的賣家於收回當日在公開市場出售該土地及建築物而預期變現可得的款額，作為裁定收回土地及建築物的補償基準，亦須根據「條例」第 11 條及第 12 條內的規定，例如(i)考慮該物業的性質及現況（第 11(1)(a)條）；(ii)不考慮將建築物出租作非法用途所得的租金（第 11(2)(a)條及第 11(3)(a)條）；(iii)不得因收地屬強制性而予以任何寬容（第 12(a)條）；(iv)不將被收回土地可能處於《城市規劃條例》（第 131 章）下各土地規劃用途地帶的事實作為考慮之列（第 12(aa)條）；(v)不按照政府租契條款的範疇不獲補償（第 12(b)條）；及(vi)不得因預期獲得或頗有可能獲得政府或任何人批出、續發或延續任何會影響被收回的土地及建築物之特許、許可、契約或許可證而給予補償（第 12(c)條）。「條例」原文載於附件二以供參閱。

土地審裁處

5. 土地審裁處是根據《土地審裁處條例》（第 17 章）設立。審裁處有四位專業法官，包括由一名高等法院原訟法庭法官出任的土地審裁處庭長，以及由三名區域法院法官出任的土地審裁處法官。審裁處還有兩位身為認可測量師的審裁處成員。庭長和法官可單獨或會同審裁處成員審理案件，審裁處成員亦可單獨審理純粹牽涉估價原則而不涉及任何重大法律爭議的案件。在土地審裁處進行訴訟的各方，可以親自應訊及陳詞，也可以延聘大律師或律師代表應訊，或在獲得審裁處的許可後授權他人代表應訊。一般來說，在審裁處進行的聆訊，方式與高等法院和區域法院的民事案件相若，但會較不拘泥於形式。審裁處會在不損害公平原則的情況下，向沒有律師代表的訴訟人作出指引。在聆訊中，

訴訟各方可口頭作證、呈交支持文件和傳召證人。審裁處會在聆聽各方的證供和陳詞後作出判決。在審裁處進行法律程序的任何一方，可以基於審裁處的判決、命令或決定在法律論點上有錯誤為理由，針對該判決、命令或決定，向上訴法庭提出上訴（惟需得土地審裁處或法庭信納該上訴有合理機會得直，或有其他有利於秉行公正的理由以進行聆訊，並批准上訴）。除上訴外，土地審裁處可在作出決定的一個月內決定覆核該項決定（不論是自發覆核或因應任何一方申請覆核）。審裁處可於覆核中審理和接納其認為合適的證據。

評估補償金額所採用之原則

公開市值

6. 根據「條例」第 12(d)條，被收回土地的價值，須被視為由自願的賣家在公開市場出售該土地而預期變現可得的款額。就大部分個案而言，物業的公開市值為佔用或獲取租金收入而付出的代價，即現有用途的價值。如整項物業由單一業權人擁有，他可選擇將物業拆卸及重建，並作佔用、租賃或出售；或將該用地及建築物出售予發展商作重建用途。該用地業權人因重建可收取的代價為其重建價值。重建價值並不一定高於現有用途的價值。重建價值（即重建後的物業價值減去重建成本、融資成本及考慮重建期間之市場風險）有可能低於現有用途的價值，即實則該土地並未達到適合重建的時機。然而，可以理解的是，對於個別單位的業權人而言，除非所有業權人均同意重建，否則他**並不**擁有重建建築物的選擇，因他只擁有土地不分割分數，而**並不擁有該土地的控制權**。此觀點亦與《土地（為重新發展而強制售賣）條例》（第 545 章）背後的精神一致，該條例使在某地段的不分割份數中擁有達到一個指明多數的份數的人，可向土地審裁處提出申請，為重新發展該地段而強制售賣該地段所有不分割份數作出命令。

7. 高等法院上訴法庭於 2013 年 7 月 31 日就 *Siu Sau Kuen 對 The Director of Lands*（編號 CACV 180/2012）案所作出的判決可作為參考，當中確立了在裁定被收回物業可獲發之補償當中應否計及其發展價值時，須以衡量各方的可能性後，是否有證據證明該物業在收回當日有可能用作重建作為判斷標準。此可能性可透過業權人擬議重建該物業的確切計劃彰顯（或以欠缺該等計

劃彰顯重建的不可能性），而不論重建牽涉該建築物本身或與其他物業合併重建；或在被收回物業周邊重建的證據（不論有否被收回物業的重建計劃作佐證），只要有關證據可證明周邊的重建能支持被收回物業可在合理時間內獨立重建或與其他物業合併而得出一個可行重建計劃的結果。上訴法庭及土地審裁處所頒布的判案書副本分別載於附件三及附件四（只有英文版）。

8. 經考慮前文所述、並透過上述判決確立的原則，地政總署現行的評估慣例是就建築物內的個別單位而言，除非有證據證明建築物在收回當日具有重建的可能性，否則署方只會以現有用途的價值向作出補償建議。就收回單一業權的物業而言，署方會評估物業的現有用途的價值及其重建價值，並會以較高的金額作為建議。

重建價值

9. 有不少的個案，當中業權人的重建計劃並不符合因應工務工程或因其他公共用途擬定的法定規劃大綱圖，尤其是當有關用地已被劃作「政府、機構或社區」或「休憩用地」，而該些用途一般並不容許私人發展。然而，「條例」列明，當申索人按照土地契約條款要求而提交之重建計劃與該等規劃管制有抵觸時，在評估補償金額時將不須考慮該等規劃管制(「條例」第 12(aa)條）。另一方面，如業權人就重建計劃提出的重建價值是建基於土地契約條款會作出修訂，則署方會基於**不應假設**有關修訂申請將獲批准（「條例」第 12(c)條）為由，而不接納該重建價值，例如不應假設將農地的土地契約條款改作興建建築物用途以作擬議重建的申請會獲批准。

海外慣例

10. 政府當局參考了立法會秘書處資料研究組撰寫、題為《評估被收回物業的價值》(IN03/14-15)的資料摘要(附件五)，該文件提及就個別海外慣例所作研究的結果。然而，鑒於該研究報告並無提及分散業權物業的情況，故並不適合將此等海外慣例與香港的情況作直接比較。需強調的是，如整幅土地或整幢建築物由單一業權人擁有（即可合理地預期有較大機會實現重建計劃），地政總署會評估其重建價值；如建築物的重建價值高於其現有用途的價值，署方會以重建價值作為建議。就此而言，我們認為署方現行的做法，並無偏離該資料摘要所述之海外慣例。

解決糾紛

11. 立法會秘書處資料研究組亦發出了題為《解決因收回土地而引致的糾紛》（IN04/14-15）的資料摘要（附件六）。

12. 地政總署迄今未有採納「調解」作為解決與評估補償金額相關糾紛的標準程序。正如政府當局於 2014 年 3 月 26 日立法會席上回應陳偉業議員提出的質詢時所作的解釋，可獲補償的權益、申領補償的程序以及評估補償基準和原則已在有關條例列明，法例並賦予土地審裁處就補償金額作最終裁決的權力。地政總署在評估法定補償時，須遵循相關法例所列明的準則及法庭過往就徵收土地補償所作的判決。在此情況下，若雙方的分歧在於法律原則的詮釋和應用，可以進行調解的空間便相對有限，因此即使採用調解方式去處理相關爭議，亦不一定可以提高政府處理法定補償申索事宜的彈性。

13. 根據過往經驗，現行的補償制度行之有效。例如就市區重建項目開展的收回土地而言，受影響業主對政府當局提出的補償建議接受率達百分之 69，反觀只有百分之 12 的補償建議被轉交土地審裁處裁定有關金額（其餘百分之 19 屬進行中或無法追尋業權人下落的個案）。因此，政府當局現時並無計劃引入調解作為解決與評估補償金額相關糾紛標準程序的一部分。

14. 然而，如申索人要求以調解方式處理法定補償申索，地政總署可按個案情況考慮，惟需視乎署方與申索人的糾紛之性質，以及調解可否協助解決相關的申索，並以調解的程序及協議不可影響政府及土地審裁處行使法例賦予的權力為基礎。

總結

15. 歡迎議員備悉本文所列之適用於收回土地及補償的既定一般做法及機制。

發展局
地政總署
2015 年 3 月

收回市區土地及補償安排

供業主,佔用人及測量師參考的指引

地善其用　　政行其宜

地政總署
二〇一三年七月
(修訂本)

(本小冊子只供一般參考用途，並非法律文件，不具法律效力，亦不得視為具法律效力的文件。本小冊子提及的任何政府政策，均有可能更改。)

LDPM_0047 (Rev. 07/2013)

收回市區土地

1. 目的

本小冊子簡介收回市區（市區的定義爲香港島、九龍及新九龍）私人土地的程序及補償規定。收回土地的法律程序，會因應不同的目的而根據相關的條例提出。由於各條例所訂定的程序及補償規定各有不同，下文僅就收地事宜提供概括性的指引。倘任何人的權益受收地計劃影響，請參閱有關條例的規定，以瞭解其中詳情或諮詢專業顧問。

2. 收回土地

政府爲進行公共工程，例如道路計劃、發展公共房屋、市區重建計劃、提供遊憩用地、排水改善工程、提供新街市、興建新學校或展開工務計劃下任何項目等，均可能須收回私人土地。根據不同公共工程的目的，收回土地的法律程序主要根據下列條例的規定提出：

(a) 《收回土地條例》（第 124 章）

(b) 《道路（工程、使用及補償）條例》（第 370 章）

(c) 《鐵路條例》（第 519 章）

(d) 《土地徵用（管有業權）條例》（第 130 章）

(e) 《土地排水條例》（第 446 章）

(f) 《市區重建局條例》（第 563 章）

(g) 《地下鐵路（收回土地及有關規定）條例》（第 276 章）

地政總署署長獲授權力執行此等條例所訂定的收回土地及補償規定。

3. 收地通告

在下令進行收地計劃時，政府會在憲報刊登收地公告和進行凍結人口登記[1]。該公告的一份副本會在受影響物業或其附近張貼，並盡可能寄交有關註冊業主。在一般情況下，政府給予的通知期爲在受影響物業或其附近張貼公告當日起計的三個月。公告所載的限期屆滿後，受影響物業的業權即復歸政府所有。倘有迫切需要收回有關物業，通知期可能縮短。自復歸日期起，有關人士享有的一切法律權利及權益亦於該日終止。此後，前業主不得向其租戶或物業佔用人收取租金或任何費用。

4. 補償建議

政府採取行動收回私人土地或以其他方式令有關土地受到不利影響時，須要按有關法定權益喪失或受到影響的相應條例，向受影響人士作出補償。有關土地的前業主或擁有該土地權益的人士(例如租戶)，可根據收回有關土地的條例規定，就土地及建築物(如有的話)的價值或其他土地權益獲得法定補償。

(a) 按《收回土地條例》（第 124 章）收回的土地，政府會就收回土地，向前業主及根據在土地註冊處註冊的文書而在緊接復歸前擁有該土地產業權或權益的任何人士，發出補償建議，或邀請有關人士在復歸日期起計的 28 天內，就法定補償提出申索。任何人士如認爲其擁有該收回土地的可獲補償權益，而又未接獲政府的補償建議或獲邀請提出補償

[1] 地政總署在鐵路工程項目宣布時，或市區重建局在宣布市區重建項目時，便會展開登記。有關的登記可能在刊憲收回土地超過一年以前展開，而地政總署會採納有關的登記作爲凍結人口登記。

申索，可於復歸日起計的一年內提出申索，列明其在有關土地上擁有的產業權或權益的性質，以及他就政府收回有關產業權或權益所申索的補償額。

(b) 按《道路（工程、使用及補償）條例》（第 370 章）及《鐵路條例》（第 519 章）收回的土地，任何人士如擁有該土地的可獲補償權益，須於該等條例附表第 II 部分所列明的期限內，提出申索。

(c) 補償額按相關法例所述的準則評估。倘申索人接受提出的補償建議，於能夠證明其業權達到政府滿意的程度後，須簽署所需文件。當局其後會安排發放補償金。以簡單個案而言，在收到申索人接納補償的文件及業權證明後，會在四個星期內按建議補償額備妥支票候領。

5. 評估收回物業公開市值

根據條例，支付給註冊業主的補償額，是根據該收回物業在收回當日的公開市值計算。地政總署評估收回物業價值時採取的估價原則及程序如下：

(a) 如何評估公開市值

評估收回物業的公開市值，會參考收回當日前後近似地區內同類物業的市場資料。評估包括比較收回物業及同類物業的售賣交易，再就各種因素，如地點、環境、物業狀況、樓齡、交通方便程度、交易日期、樓層、面積、座向及設施等作出調整。

(b) 現有用途價值

至於共有業權物業，評估個別單位的公開市值時，通常會參考經批准建築圖則／改建及加建圖則顯示的用途，以及租契許可的用途。進行法定補償評

估時，任何未得建築事務監督批准的用途更改，即使租契許可，通常都不會在考慮之列。舉例而言，倘經批准建築圖則／改建及加建圖則或佔用許可證顯示某單位的用途爲住宅用途，如未經建築事務監督批准而將該單位部分／全部改作非住宅用途，在估值時，該單位仍視作住宅用途。同樣，倘經批准建築圖則／改建及加建圖則或佔用許可證顯示某單位的用途爲非住宅用途，如未經建築事務監督批准而將該單位部分／全部改作住宅用途，在估值時，該單位將視作非住宅用途。

(i) <u>收回物業面積</u>

一般而言，評估收回物業的實用面積*作法定補償時，會採用在已登記轉讓文件劃定，並由經批准建築圖則／改建及加建圖則量度所得的面積。此外，評估時還會考慮個別單位附屬地方，如露台、平台、天台、窗台、雜用房及天井等的面積。倘若無法找到經批准建築圖則／改建及加建圖則(特別是戰前樓宇)，當局便會於已登記轉讓文件描述或表明的物業進行實地量度，以確定物業的實用面積。倘因現場限制而無法實地量度實用面積，便會於實地量度室內樓面面積*，再進行適當調整以轉換成實用面積。

(ii) <u>違例構築物</u>

收回物業內有時會發現違例的地下閣樓、閣樓擴建物、樓梯底構築物、天台、平台及天井構築物，以及擴建工程等。這些構築物倘若不符合《建築物條例》及有關土地的租契條款，並不會獲得補償。然而，露天天台、

* 根據香港測量師學會於一九九九年三月一日所發出的測量守則及其後補充文件的定義或修訂。

露天平台、天井及地下商舖的高淨空高度等，均會在評估中反映。

(iii) <u>出租物業</u>

出租物業的公開市值通常包括餘下租期租金的的資本轉化值及遞延復歸價值。租約餘下租期、租賃協議下支付的租金、復歸時的十足市值租金及復歸前的遞延期，均會在評估中反映。至於定期租賃，則必須視乎每宗個案來計算餘下的租期。

(c) <u>重新發展價值</u>

(i) 對於單一業權的地段，當局會評估地段的現有用途價值及重新發展價值。兩者之中會以較高的價值作爲建議的法定補償金額。評估重新發展價值時，任何租客補償、拆卸現有建築物的成本及取得空置管有權所需時間等，均會反映在估值之中。

(ii) 倘屬與毗連不同業權地段的聯合發展作爲根據的補償申索，申索人必須證明聯合發展的可能性。此外，必須有證據證明(i)聯合發展確實有可能性；(ii)聯合發展有較高的價值；(iii)聯合發展並無明顯障礙；及(iv)建議計劃與周圍的主要重新發展計劃協調。當局會參考每宗個案的獨特事實及情況。

(iii) 對於以重新發展或聯合重新發展作爲根據的補償申索，假設的發展計劃必須切實可行。假設重新發展計劃時，必須考慮合併地段的面積、周圍的環境及重新發展的模式。進行建議重新發展或聯合重新發展預計所需的時間，必須在重新發展的價值中恰當反映。

6. 發放給各類人士的法定及特惠補償

受收地計劃影響人士可獲補償的類別，會視乎物業類別及有關人士所擁有物業的法定權益而定。詳情見下列各段。

6.1 住宅物業

6.1.1 法定補償

(a) 業主的物業權益

合法業權擁有人有權獲得收回物業在復歸政府當日的公開市值，估值時會以騰空交回管有權或連租約作爲根據。在恰當情況下，亦會考慮收回物業的重新發展價值。評估收回物業公開市值的詳情載列於第 5 段。

(b) 租客的物業權益

合法租客有權獲得其於住宅物業所擁有權益(如有的話)的公開市值(例如：現有租金低於市值租金情況下的餘下租期市值)。

(c) 搬遷費用及開支

(i) 合法的住宅物業佔用人(包括自住業主及租客)，倘因收回土地而須由收回的單位遷往新單位，有權就因此引致的合理損失及開支提出申索。當局通常會就此支付特惠補償，代替法定補償。然而，倘若確實的搬遷費用(包括印花稅、代理費及法律費用)超逾政府建議的特惠補償，有關佔用人可提出申索，要求付還因搬遷而合理引致的確實費用。

(ii) 倘提出以收回物業的重新發展價值作爲向業主的補償，有關業主無權就搬遷費用及開支申索補償。

6.1.2 自置居所津貼及額外津貼

(a) 自住業主

(i) 除法定補償外，自住業主亦有可能領取稱爲自置居所津貼的特惠補償。

(ii) 政府向自住業主發放自置居所津貼，旨在協助他們在收回單位的鄰近地方購置面積相若的較新重置單位。向個別業主發放的自置居所津貼金額，爲假設重置單位(同一地區內與收回單位面積相若的七年樓齡單位)價值與收回單位公開市值的差額。當局會根據政府的現行政策，審查業主是否合資格領取自置居所津貼。倘自住業主已接受政府安置，便不會獲發自置居所津貼。

(iii) 倘整個單位由一名業主佔用或他能證明整個單位均由其直系家庭成員(包括子女、父母及受供養的兄弟姐妹、祖父母或外祖父母、孫或外孫、繼父母、配偶的父母或繼父母)佔用，政府會向該業主發放全數自置居所津貼。

(b) 出租單位或出租地方的業主

(i) 除法定補償外，出租單位或出租地方的業主有資格領取額外津貼。額外津貼補足連租約的收回單位的公開市值。

(ii) 倘業主佔用單位的一部分，並將單位部分出租，則該業主會獲發其佔用的部分的全數自

置居所津貼，以及出租地方全數自置居所津貼的 75%作爲額外津貼。

(iii) 倘業主直系家庭成員佔用單位的一部分，並將單位部分出租，則該業主會獲發其直系家庭成員所佔用部分的全數自置居所津貼，以及出租地方全數自置居所津貼的 75%作爲額外津貼。

(iv) 首個全部出租單位會獲發全數自置居所津貼的 50%作爲額外津貼，而第二個全部出租單位會獲發全數自置居所津貼的 25%作爲額外津貼，但第三個全部出租單位不會獲發額外津貼。

(c) <u>如何評估自置居所津貼</u>

就所有爲某個發展項目收回的舊式樓宇單位而言，地政總署署長會評估七年樓齡的假設重置單位的單位價值（即$/平方米）。假設重置單位將假定位於質素與收回樓宇可資比較的假設樓宇內，在特點及交通方便程度方面屬類似地區。假設重置單位位於假設樓宇中層，座向一般(即並非向南或向西，無海景)。一般而言，會選擇大約七年樓齡，並在復歸日前後成交的單位作爲可資比較個案。基於這些可資比較個案，當局會就時間、樓齡、座向、樓層、質素、面積、交通及環境等因素作調整，以便就有關收地項目訂出假設重置單位的單位價值。假設重置單位的單位價值，會在整個收地項目內劃一採用。

收回單位的自置居所津貼爲假設重置單位的價格(假設重置單位的單位價值乘以收回單位面積)與收回單位公開市值的差額。

(d) <u>自置居所津貼／額外津貼有關的一般事項</u>

(i) 空置單位業主有資格領取的額外津貼金額與出租單位業主相同。

(ii) 每次收地的每名業主，最多可就三個單位獲發自置居所津貼／額外津貼。

(iii) 計算自置居所津貼／額外津貼時，會以業主佔用單位的實用面積作爲計算根據。然而，違例建築工程不會計算在實用面積內。實用面積的定義，依據香港測量師學會於一九九九年三月一日發出的測量守則及其後的補充文件或修訂。

(iv) 非法天台搭建物的業主不會獲發自置居所津貼／額外津貼。合法自住業主仍有資格領取根據天台本身公開市值評估的補償和獲得安置(如符合資格的話)。

(v) 倘收回土地的法定補償是根據重新發展原則進行估值，業主無權申索自置居所津貼／額外津貼。倘重新發展價值大於現時用途價值，業主有權爲本身利益，申索現時用途價值加自置居所津貼。

(vi) 以市區重建項目而言，倘分契單位業主選擇不領取自置居所津貼，可能會獲安置。

(vii) 獲發給住宅用途以外佔用許可證的非住宅物業，倘已用作住宅用途一段長時間，只要租契並無禁止此項用途，該非住宅物業的自用業主亦可獲發自置居所津貼。

(viii) 以市區重建項目而言，受影響物業的業主，如於根據《市區重建局條例》第 23 條在憲報

刊登發展項目的開始日期後才取得有關物業，不會獲發自置居所津貼／額外津貼。

(ix) 當局通常會採納政府進行的登記(如屬鐵路工程項目)或市區重建局進行的登記(如屬市區重建項目)資料來決定自置居所津貼／額外津貼的申領資格(有關的登記會在項目宣布時進行)。政府的最新登記則會在收地通告刊憲時進行，所得的資料將用於複查有關業主當時是否仍然有資格領取自置居所津貼／額外津貼或與自置居所津貼／額外津貼金額相同的款項。在正常情形下，任何人士不會因爲最新的登記而可享有額外的自置居所津貼／額外津貼或較高金額的自置居所津貼／額外津貼。

(e) 上訴機制

(i) 業主倘就自置居所津貼／額外津貼的發放對地政總署署長的決定(關乎領取自置居所津貼／額外津貼資格、計算自置居所津貼／額外津貼的樓面面積及其他有關事項的爭訟事宜)感到不滿，可於署長作出決定後的 60 天內，向上訴委員會提出上訴。上訴委員會聽取上訴和進行調查後，倘有需要，可就地政總署署長的決定作出裁決。地政總署署長倘不接納裁決，有關個案將呈交發展局局長覆核和作出最後決定。業主如欲提出上訴，可去信上訴委員會，地址爲香港添馬添美道 2 號政府總部西翼 17 樓。

(ii) 有關以上第 6.1.2(c)段提及的假設重置單位基本單位價值的上訴，由地政總署署長考慮。合法業主須於提出補償建議日期起計的兩個月內，以書面提出上訴。

6.2 商業物業

(a) 對自用業主的補償

商業物業的合法自用業主，有權獲得收回物業在復歸政府當日的現有用途價值，加上下列其中一項額外補償：

(i) 相等於復歸日當時的收回物業應課差餉租值[2]四倍的特惠津貼，並在適當情況下，根據《僱傭條例》(第 57 章)向僱員發放的遣散費；或

(ii) 倘業主相信其商業損失大於額外補償的數目，該業主有權根據《收回土地條例》第 10(2)(d)條提出商業損失申索(須有文件證據支持)；根據該條例第 10(2)(e)(i)條提出的搬遷費申索；及根據該條例第 10(2)(e)(ii)條提出專業費用申索(亦見以下第 10 段)。

關於以上第 6.2(a)(ii)段，自用業主可就因結束營業或將業務遷離收回物業而引致的商業損失及有關損失或開支，提出法定補償申索。法定補償的各項申索項目可包括：

(I) 永久或暫時的生意利潤損失；

(II) 被逼出售附屬裝置與設備及存貨所引致的損失；

(III) 商譽損失；及

(IV) 根據《僱傭條例》(第 57 章)向僱員發放的遣散費。

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[2] 物業的應課差餉租值爲差餉物業估價署評定有關物業每年的合理租值。應課差餉租值每年檢討。

上述項目並非詳盡無遺，而當局會根據每宗個案的情況作個別考慮。

在適當的情況下，倘收回土地的重新發展價值高於復歸當日的現有用途價值，政府會提出以前者作爲法定補償的建議。不過，倘若根據收回土地的重新發展價值評估補償額，則自用業主無權申索以上第6.2(a)(ii)段的補償。

(b) 對業主的補償(非佔用物業)

出租或空置商業物業的合法業主，可獲發放以下兩項補償中價值較高的一項：(i)收回物業於復歸政府當日的重新發展價值(倘已確定)；及(ii)收回物業的現有用途價值加相等於同一物業復歸日當時的應課差餉租值的特惠津貼。

(c) 對租客的補償

合法租客有權獲得其於商業物業所擁有的權益(如有的話)的公開市值(例如：現有租金低於市值租金情況下的餘下租期市值)加下列其中一項額外補償：

(i) 相等於收回物業在復歸日當時的應課差餉租值三倍的特惠津貼，並在適當情況下，根據《僱傭條例》(第 57 章)向僱員發放的遣散費；或

(ii) 按以上第 6.2(a)(ii)段所述，有權根據《收回土地條例》就補償提出法定申索。

7. 工業物業

工業物業的合法自用業主及租客，有權取得類似商業物業的補償，但特惠津貼則會根據收回物業的樓面面積評估。

8. 支付利息

以法定補償及特惠津貼形式支付的任何款項，由復歸當日起至付款日期止，可孳生利息。利率不會低於發鈔銀行就 24 小時通知存款不時釐定的最低息率。

9. 暫付款項

倘政府收地而其建議發放的補償不獲接納，政府將向申索人發放由政府評估的法定補償的 100%，作爲暫付款項，並付利息。其後，雙方可繼續商討，或向土地審裁處申請裁定補償額。如最終協議的補償額超逾暫付款項，政府會將差額連同利息支付予申索人。倘暫付款項超逾申索人與政府最終協議的補償額或土地審裁處所裁定的款額，申索人必須將多付款額退還政府。

10. 專業費用

倘申索人爲申索法定補償委聘專業人士，在恰當情況下，其所支付的合理費用及酬金可獲發還。不過，政府並不一定會支付專業費用。申索人須首先確立有關專業服務實屬必要。此外，申索費用須符合下列三項要求：

(a) 所支付的費用必須合理；

(b) 須按有關條例規定正式申索專業費用；及

(c) 獲聘的專業顧問必須具備認可專業資格。

當局不會就發還的專業費用支付利息。

11. 轉介土地審裁處

倘申索人與政府未能就法定補償額(如有的話)達成協議，任何一方可向土地審裁處申請裁定補償額。土地審裁處判定的數額對申索人及政府均具約束力。倘有關個案已轉介土地審裁處處理，先前的自置居所津貼／額外津貼建議即告撤回。

12. 所需資料

12.1 損失及開支證明

申索人須就其法定申索提供證據，以便當局處理。倘就損失及開支提出申索，申請人須提供收據及發票等證明文件。舉例來說，申索商業損失的人士須提供以下文件(以下列表並非詳盡無遺)支持其申索：

(a) 商業登記證；

(b) 申索所涉期間以至之前年度的財政文件(如資產負債表、損益表)；

(c) 每月銷售／收入分析報告；

(d) 支持申索的報稅表；

(e) 租賃協議(如適用的話)；及

(f) 存貨清單及有關項目的價值。

12.2 業權證明

就收回土地向申索人發放補償之前，申索人須證明對即將收回的土地擁有妥善業權。申索人須向分區法律

諮詢及田土轉易處提交建議信附表列明的所有業權契據及文件。同時，申索人須呈交其身分證或例如護照等的其他身分證明文件的副本。

13. <u>查詢</u>

如需其他資料或有任何疑問，可到北角渣華道 333 號北角政府合署十九樓地政總署土地徵用組查詢，本署人員樂意提供協助。

地政總署土地徵用組
二〇一三年七月

章：	124	**《收回土地條例》**	憲報編號	版本日期
		詳題	29 of 1998 ss. 31 & 32	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第31及32條

本條例旨在利便收回須作公共用途的政府土地。
(由1911年第50號修訂；由1912年第1號附表修訂；由1998年第29號第31條修訂)

〔1900年11月14日〕

(本為1900年第32號(第124章，1950年版)

條：	1	**簡稱**	29 of 1998 ss. 31 & 32	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第31及32條

本條例可引稱為《收回土地條例》。
(由1924年第5號第6條修訂；由1998年第29號第32條修訂)

條：	2	**釋義**	6 of 2001	12/04/2001

附註：
具追溯力的適應化修訂—見2012年第2號第3條

在本條例中，除文意另有所指外—
"土地"(land) 指在香港及新界的任何類別政府土地(不論是根據政府租契或根據政府承認的其他業權而持有)或其任何部分或分段，並包括在其上建造的建築物； (由1911年第50號修訂；由1911年第51號修訂；由1912年第1號附表修訂；由1912年第2號附表修訂；由1998年第29號第105條修訂)
"工作日"(working day) 就第16A及17條而言，指—
(a) 既非公眾假日；
(b) 亦非《釋義及通則條例》(第1章)第71(2)條所界定的烈風警告日或黑色暴雨警告日，
的任何日子； (由2001年第6號第2條增補)
"主管當局"(Authority)—
(a) 就《新界條例》(第97章)第II部不適用的土地而言，指地政總署署長；及 (由1978年第107號法律公告修訂；由1982年第76號法律公告修訂；由1986年第94號法律公告修訂；由1993年第291號法律公告修訂)
(b) 就《新界條例》(第97章)第II部適用的土地而言，指地政總署署長； (由1974年第63號第2條增補。由1981年第370號法律公告修訂；由1982年第76號法律公告修訂；由1986年第94號法律公告修訂；由1993年第291號法律公告修訂)
"收回作公共用途"(resumption for a public purpose) 包括—

(a) 收回衞生情況欠佳的物業，以確使經改善的住宅或建築物得以在其上建造，或確使該物業的衞生情況得以改善；及 (由1911年第51號修訂；由1912年第2號附表修訂；由1998年第315號法律公告修訂)

(b) 收回其上有任何建築物的任何土地，該建築物由於接近或連接任何其他建築物，以致嚴重干擾空氣流通，或在其他方面造成或導致該等其他建築物的狀況不適合人居住或危害或損害健康；及 (由1911年第51號修訂；由1912年第2號附表修訂)

(c) 為與香港駐軍有關的任何用途而作出的收回；及 (由2012年第2號第3條代替)

(d) 為行政長官會同行政會議決定為公共用途的任何類別用途而作出的收回，不論該用途是否與以上的任何用途同類； (由1911年第51號修訂；由1912年第2號附表修訂；由2000年第3號第3條修訂)

"非工作日" (non-working day) 指並非工作日的日子； (由2001年第6號第2條增補)

"前業主" (former owner) 就政府已收回的土地而言，指緊接該土地根據第5條歸還政府之前，該土地的最後業主； (由1974年第63號第2條增補。由1998年第29號第105條修訂)

"發鈔銀行" (note-issuing bank) 就第16A及17條而言，具有《法定貨幣紙幣發行條例》(第65章)第2條給予該詞的涵義； (由2001年第6號第2條增補)

"業主" (owner) 指就政府尋求予以收回的任何土地而業已或有權在土地註冊處註冊的人，如該人不在香港，或不能尋獲，或已破產或死亡，則指其在香港的代理人或代表。 (由1911年第50號第4條修訂；由1911年第51號修訂；由1912年第1號附表修訂；由1912年第2號附表修訂；由1912年第21號第2條修訂；由1993年第8號第2條修訂；由2000年第3號第3條修訂)

(由1911年第50號第4條修訂)

條：	3	**收回土地作公共用途**	29 of 1998; 3 of 2000	01/07/1997

附註：
具追溯力的適應化修訂—見1998年第29號第32條；2000年第3號第3條

每當行政長官會同行政會議決定須收回任何土地作公共用途時，行政長官可根據本條例命令收回該土地。

(由1930年第27號第2條代替。由1974年第63號第3條修訂；由2000年第3號第3條修訂)

條：	4	**公告**	29 of 1998; 3 of 2000	01/07/1997

附註：
具追溯力的適應化修訂—見1998年第29號第32條；2000年第3號第3條

(1) 凡發出命令以收回土地，須在憲報刊登中英文公告，說明該土地須作公共用途及將予收回。 (由1974年第63號第4條修訂)

(2) 如能尋獲業主，則須將該公告的副本送達業主，並須在將予收回土地的顯眼部分張貼公告，又如該土地分為地段、分段或小分段者，則在切實可行範圍內，須在受影響的每一地段、分段或小分段張貼公告。

(3) 張貼於該土地的公告須註明張貼日期，並須註明該土地將於上述日期起計的1個月屆滿時收回，但如行政長官已授權給予較長的通知期則除外；如有此情況，則須註明該較長的期限。 (由2000年第3號第3條修訂)

(4) 根據本條刊登及送達或張貼的公告，須當作是給予該土地的業主及就該土地擁有權益、權利或地役權的每個人的通知。

(由1930年第27號第2條代替)

條：	4A	**藉協議購買**	29 of 1998 ss. 32 & 33	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第32及33條

凡已根據第3條發出命令收回任何土地，主管當局可在該土地根據第5條歸還政府前，與業主達成協議，及與根據在土地註冊處註冊的文書而就該土地擁有產業權或權益的任何人達成協議，以購買該土地及任何上述產業權或權益；如在《1984年收回官地(修訂)條例》(Crown Lands Resumption (Amendment) Ordinance 1984)(1984年第5號)的生效日期或之後，曾就該等協議所關乎的土地而根據第3條發出命令者，則該協議可訂定，該業主或上述的人聘用任何人以專業身分辦理與該項購買有關的事宜，因而合理招致或支付的費用或酬金，須由主管當局支付給該業主或上述的人。

(由1974年第63號第5條增補。由1984年第5號第2條修訂；由1993年第8號第2條修訂；由1998年第29號第33條修訂)

條：	5	**擁有權歸還政府**	L.N. 362 of 1997; 29 of 1998	01/07/1997

附註：
具追溯力的適應化修訂—見1998年第29號第32及105條

在1個月屆滿或在根據第4(3)條授權的較長期限屆滿時，除根據第4A條藉協議購買的土地外，有關的其他土地—

(a) 如屬土地的不分割份數，則須歸屬財政司司長法團所有，而任何建築物或其部分的使用權與佔用權如附帶於該份數的擁有權，則亦須一併歸屬財政司司長法團所有；及 (由1997年第362號法律公告修訂)

(b) 在所有其他情況下，則須歸還政府， (由1998年第29號第105條修訂)

而該土地的擁有人、其承讓人或代表以及任何其他人就該土地或其任何部分或在該土地上或其任何部分上所擁有的一切權利，均絕對終止。

(由1987年第71號第20條代替)

條：	6	**補償**	29 of 1998 ss. 32 & 105	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第32及105條

(1) 在土地根據第5條歸還政府的日期起計28天內，主管當局須— (由1998年第29號第105條修訂)

(a) 致函前業主，以及致函緊接土地歸還政府之前根據在土地註冊處註冊的文書而對該土地擁有產業權或權益的任何人，就收回該土地而作出補償要約；或 (由1984年第5號

第3條修訂；由1993年第8號第2條修訂)

(b) 向(a)段所提述的任何人送達由主管當局指明格式的通知書，要求該人在該通知書所指定的時間內，呈交其補償申索。

(2) 凡已根據第(1)(b)款送達通知書予任何人，則該人須按主管當局所指明的格式呈交其申索，並須將主管當局合理規定的帳目、文件及詳情提交主管當局，以支持該項申索。

(2A) 凡遵照在《1984年收回官地(修訂)條例》 (Crown Lands Resumption (Amendment) Ordinance 1984)(1984年第5號)的生效日期或之後根據第3條發出的命令而收回土地，並根據本條向任何人作出補償要約，或任何人根據本條呈交補償申索，如該人聘用任何人以專業身分辦理與該項要約或申索有關的事宜，因而合理招致或支付任何費用或酬金，則該項要約可訂定，該等費用或酬金須由主管當局支付給該人，而該項申索可包括該等費用或酬金的申索。 (由1984年第5號第3條增補)

(3) 如—

(a) 已根據第(1)(a)款獲補償要約的人，在該要約作出日期起計28天內仍不接納該項要約；或

(b) 已根據第(1)(b)款獲送達通知書的人—

(i) 沒有在通知書指定的時間內呈交其申索，或

(ii)已呈交其申索，但他與主管當局未能就補償額達成協議，

則該人或主管當局可將該事轉交土地審裁處，以裁定須支付的補償額。 (由1984年第5號第3條修訂)

(由1974年第63號第7條代替)

條：	7	**進入的權力**	29 of 1998; 3 of 2000	01/07/1997

附註：
具追溯力的適應化修訂—見1998年第29號第32條；2000年第3號第3條

(1) 凡已發出擬收地公告，則行政長官及獲其授權的所有其他人無須經有關業主或佔用人同意，可合法進入任何擬收回土地之內或之上，以就該土地進行測量工作及量度水平位的工作，及作出為劃定工程界線而需要的一切作為。 (將1910年第18號第6條編入。由1911年第28號第6(c)條修訂；由1911年第51號修訂；由1912年第2號附表修訂；由1974年第63號第8條修訂；由2000年第3號第3條修訂)

(2) 如因根據第(1)款進入土地及土地之上或因進行任何工程而造成任何損害，業主或佔用人可就該等損害向主管當局呈交補償申索。 (由1974年第63號第8條增補)

(3) 對於根據第(2)款呈交的任何申索，主管當局可作出妥協或和解，如無法達成協議，則任何一方均可將該事轉交土地審裁處，以裁定須支付的補償額。 (由1974年第63號第8條增補)

條：	8	**補償申索**	29 of 1998; 3 of 2000	01/07/1997

附註：
具追溯力的適應化修訂—見1998年第29號第32及105條；2000年第3號第3條

(1) 任何人因任何土地根據本條例被收回而申索補償，而該人又從未接獲根據第6(1)(a)條以書面作出的補償要約，亦不曾接獲根據第6(1)(b)條送達的通知書，則該人可向主管當局呈交書面申

索，說明其就該土地擁有的產業權或權益性質，以及他尋求追討的款額。

(2) 如任何該等人士及主管當局未能就補償額(如有的話)達成協議，則任何一方均可將該申索轉交土地審裁處，以裁定須支付的補償額(如有的話)。

(3) 任何人根據第(1)款申索補償，須於有關土地根據第5條歸還政府的日期起計1年內，或行政長官在任何個案中容許的較長期間內，向主管當局呈交其申索。 (由1984年第5號第4條修訂；由1998年第29號第105條修訂；由2000年第3號第3條修訂)

(4) 凡遵照在《1984年收回官地(修訂)條例》(Crown Lands Resumption (Amendment) Ordinance 1984)(1984年第5號)的生效日期或之後根據第3條發出的命令而收回土地，則任何人就該土地而根據第(1)款呈交的申索，可包括該人聘用任何人以專業身分辦理與該項申索有關的事宜，因而合理招致或支付的費用或酬金的申索。 (由1984年第5號第4條增補)

(由1974年第63號第9條代替)

條：	9	**禁止對政府採取法律行動**	29 of 1998; 3 of 2000	01/07/1997

附註：
具追溯力的適應化修訂—見1998年第29號第32條；2000年第3號第3條

除本條例條文另有規定外，不得因根據本條例進行的收地導致任何人蒙受損失或損害而對政府或任何其他人採取任何法律行動或進行任何訴訟。

(由1974年第63號第10條代替。由2000年第3號第3條修訂)

條：	10	**土地審裁處裁定政府須支付的補償**	29 of 1998	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第32條

(1) 對於根據第6(3)或8(2)條向土地審裁處呈交的申索，該審裁處須根據申索人因申索內所指明的土地被收回而蒙受的損失或損害，裁定須支付的補償額(如有的話)。

(2) 土地審裁處裁定根據第(1)款須支付的補償額(如有的話)時，須以下列各項為基準—

(a) 被收回的土地及其上的任何建築物在收地當日的價值；

(b) 申索人就被收回的土地而擁有、持有或享有的地役權或其他權利在收地當日的價值；

(c) 申索人因被收回的土地或其上建築物，與申索人的任何其他相連或毗鄰的土地或其上建築物分割，以致蒙受損失或損害的款額；

(d) 申索人於收地當日在被收回的土地上或在其上建築物內經營的業務，因收地而須遷離該土地或建築物，因而蒙受的損失或損害的款額；

(e) 如屬遵照在《1984年收回官地(修訂)條例》(Crown Lands Resumption (Amendment) Ordinance 1984)(1984年第5號)的生效日期或之後根據第3條發出的命令而收回的土地，則—

(i) 申索人從他在被收回土地上擁有或佔用的任何處所遷往其他土地或土地連建築物時所合理招致的開支，或申索人在取得其他土地或土地連建築物時所合理招致的有關開支，但(d)段所適用的款額不包括在內；

(ii) 第6(2A)及8(4)條所述的任何費用或酬金。 (由1984年第5號第5條增補)

(由1974年第63號第10條代替)

條：	11	**評估補償的原則**	29 of 1998	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第32條

(1) 當任何物業被收回，土地審裁處在裁定須支付的補償額及估計所收回土地及其上的任何建築物的價值時— (由1911年第28號第6(i)條修訂；由1911年第50號修訂；由1912年第1號附表修訂)

(a) 可考慮該物業的性質及現況、該等建築物在現有狀況下頗有可能存在的時間、以及其維修狀況；及

(b) 對於在憲報刊登擬收地公告的日期後對該物業作出的任何增建或改善，可拒絕作出補償(除非該項增建或改善是為維持該物業的妥善維修狀況而有需要作出的)： (由1937年第27號附表修訂)

但如有任何權益是在上述刊登日期後取得的，則不得為增加補償額而對該權益作獨立估值。

(2) 土地審裁處亦可收取用以證明以下各項的證據— (由1911年第28號第6(i)條修訂)

(a) 由於有關建築物或處所用作妓院或博彩場館或任何非法用途，以致其租值提高；或

(b) 有關建築物或處所的狀況構成關乎建築物或公眾衞生的任何條例所指的滋擾，或該等建築物或處所缺乏合理的良好維修；或 (由1911年第50號修訂；由1911年第51號修訂；由1912年第1號附表修訂；由1912年第2號附表修訂；由1948年第20號第4條修訂)

(c) 有關建築物或處所不適合人居住，及無法在合理情況下使其適合人居住。 (由1911年第51號修訂；由1912年第2號附表修訂)

(3) 土地審裁處如信納該等證據，則—

(a) 在第一種情況下，補償若以租值為計算基準，須以有關建築物或處所如非被佔用作妓院、博彩場館或任何非法用途而可得的租金，作為補償的基準；及 (由1911年第51號修訂；由1912年第2號附表修訂)

(b) 在第二種情況下，須以有關的滋擾減除後或有關建築物或處所獲合理的良好維修後，該建築物或處所的估值額作為補償，但須扣除用於減除有關滋擾或進行該等維修的估計開支；及 (由1911年第50號修訂；由1911年第51號修訂；由1912年第1號附表修訂；由1912年第2號附表修訂)

(c) 在第三種情況下，須以土地的價值及其上建築物的材料價值作為補償。
(由1911年第28號第6(d)條修訂；由1921年第14號第7條修訂；由1974年第63號第11條修訂)

條：	12	**裁定補償的附加規則**	29 of 1998 ss. 32 & 105	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第32及105條

在裁定根據本條例須支付的補償時— (由1924年第5號第30條修訂)

(a) 不得因收地屬強制性而予以任何寬容；

(aa) 如有關土地所在的地區、地帶或區域是已預留或劃出作《城市規劃條例》(第131章)第4(1)(a)、(c)、(d)、(e)、(f)、(g)、(h)或(i)條所指明的用途，或該土地受該等地區、地帶或區域影響，則不得將此事實作為考慮之列； (由1973年第32號第2條增補。由1988年第2號第8(2)條修訂；由1991年第4號第9條修訂)

(b) 凡根據政府租契持有土地而不按照政府租契的條款使用土地，則不得就該項使用給予

補償； (由1998年第29號第105條修訂)

(c) 不得因預期獲得或頗有可能獲得政府或任何人批出、續發或延續任何特許、許可、契約或許可證而給予補償； (由1998年第29號第105條修訂)

但如屬以下情況，即是若非因該土地被收回，便可按應有權利確使任何特許、許可、契約或許可證獲批出、續發或延續者，則本段對該情況不適用；及

(d) 除第11條及本條(aa)、(b)及(c)段另有規定外，被收回土地的價值，須被視為由自願的賣家在公開市場出售該土地而預期變現可得的款額。 (由1924年第5號第30條修訂；由1973年第32號第2條修訂；由1984年第5號第6條修訂)

(由1922年第9號第2條代替)

[比照1919 c. 57 s. 2(1) & (2) U.K.]

條：	13	**(由1974年第63號第12條廢除)**	29 of 1998	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第32條

條：	14	**(由1974年第63號第12條廢除)**	29 of 1998	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第32條

條：	15	**(由1974年第63號第12條廢除)**	29 of 1998	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第32條

條：	16	**批租或批出已收回土地的權力**	29 of 1998; 3 of 2000	01/07/1997

附註：
具追溯力的適應化修訂—見1998年第29號第32條；2000年第3號第3條

根據本條例條文收回的任何土地，可由行政長官批租及批出，而批租及批出的條款、條件及價格(不論是租金、地價或以其他形式收取者)，以及應以公開拍賣方式或私人合約方式批租及批出，均由行政長官決定。

(由1911年第28號第6(d)條修訂；由2000年第3號第3條修訂)

條：	16A	**補償額待決期間的暫支款項**	6 of 2001	12/04/2001

附註：
與2001年第6號的修訂相關的利息支付的認可以及適用範圍的條文見載於2001年第6號第13條。

(1) 凡遵照在《1984年收回官地(修訂)條例》(Crown Lands Resumption (Amendment) Ordinance 1984)(1984年第5號)的生效日期或之後根據第3條發出的命令而收回土地，而主管當局根據本條例就任何申索向任何人作出的補償要約又不獲接納，則在等待土地審裁處對於根據本條例就該項申索須支付的補償額(如有的話)作出裁定期間，主管當局可—

(a) 支付一筆款項，作為暫支憑藉上述裁定而須支付的款項；及

(b) 支付根據(a)段所作付款的利息，由土地根據第5條歸還政府的日期起計，至付款日期為止，而利息則按照第(1A)款按日計算。 (由1985年第62號第2條修訂；由1998年第29號第105條修訂；由2001年第6號第2條修訂)

(1A) 為施行第(1)(b)款，就—

(a) 某工作日而支付的利息的利率，不得低於發鈔銀行在該日營業時間結束時就24小時通知存款所訂的最低利率；及

(b) 某非工作日而支付的利息的利率，不得低於發鈔銀行在該日之前的最後一個工作日營業時間結束時就24小時通知存款所訂的最低利率。 (由2001年第6號第2條增補)

(2) 主管當局根據第(1)款就任何申索所作付款，並不影響有關申索，亦不影響根據本條例向土地審裁處呈交該項申索或土地審裁處根據本條例對該項申索作出裁定；但憑藉該項裁定而須就該項申索支付的補償額，須扣除該已付款額。 (由1985年第62號第2條修訂)

(3) 憑藉土地審裁處根據本條例作出的裁定而須支付的補償額，在根據第(2)款扣除根據第(1)款支付的款額後，餘額可由該付款日期起孳生利息，除此之外補償額不得由該日期起孳生利息。(由1985年第62號第2條代替)

(4) 主管當局根據第(1)款就任何申索支付的款額，如超逾土地審裁處就該項申索而裁定的補償額，則多付的款額，可由主管當局作為民事債項予以追討。 (由1985年第62號第2條修訂)

(由1984年第5號第7條增補)

條：	17	**補償及利息的支付**	6 of 2001	12/04/2001

附註：

與2001年第6號的修訂相關的利息支付的認可以及適用範圍的條文見載於2001年第6號第13條。

(1) 所有經協定或經裁定作為補償的款額(連同以下所述的利息)，以及所有經判定由政府負擔的費用及酬金，均須由政府一般收入支付。 (由1974年第63號第13條修訂；由2000年第3號第3條修訂)

(2) 主管當局可根據本條例須支付的補償額經協定或經土地審裁處裁定後，隨時在憲報刊登公告，規定有權領取補償的人，在該公告指明的地點及時間內，領取該筆補償。 (由1974年第63號第13條代替)

(3) 除第16A(3)條另有規定外，憑藉土地審裁處根據本條例作出的裁定或憑藉根據本條例達成的協議而須支付的補償金，均孳生利息，由收地日期起計，至第(2)款所述的公告所指明的時間屆滿時為止。任何費用或酬金則不附帶利息。 (由1974年第63號第13條代替。由1984年第5號第8條修訂)

(3A) 在符合第(3B)款的規定下，第(3)款所指的利息的利率為土地審裁處所釐定者。 (由2001年第6號第2條代替)

(3B) 根據第(3A)款就—

(a) 某工作日而釐定的利息的利率，不得低於發鈔銀行在該日營業時間結束時就24小時通知存款所訂的最低利率；及

(b) 某非工作日而釐定的利息的利率，不得低於發鈔銀行在該日之前的最後一個工作日營業時間結束時就24小時通知存款所訂的最低利率。 (由2001年第6號第2條增補)

(4) 如在指定的地點及時間內，無人認領該筆補償金，則上述的指定人員須安排將該筆款項付入庫務署。

(5) 如此付入庫務署的款項或其任何部分，在第(2)款所提述的時間屆滿時起計5年內，可由有權領取該款項的人認領，在他證實其有權認領後，則須付予該人。

(6) 在上述5年期限屆滿後，如該款項或其任何部分仍未支付予任何人，則須轉撥入香港政府一般收入。 (由1971年第71號第3條修訂)

(由1929年第33號第2條代替)

條：	18	**業主不在等情況下付款**	29 of 1998; 3 of 2000	01/07/1997

附註：
具追溯力的適應化修訂—見1998年第29號第32條；2000年第3號第3條

任何已收回的土地，如其業主不在香港或不能尋獲，或該業主在補償額裁定當日起計6個月內並無申索該筆補償，或行政長官認為該業主不能有效地解除付款的責任，則行政長官可指示按他認為適當的條件將該筆補償付予他認為適當的而又代表該業主的其他人，而該人的收據，即為付款責任的有效及有作用的解除，猶如已付款予該業主一樣。

(將1910年第18號第7條編入。由1911年第28號第6(e)條修訂；由1911年第50號修訂；由1912年第1號附表修訂；由1985年第62號第3條修訂；由2000年第3號第3條修訂)

條：	19	**收地公告作為證據的效力**	29 of 1998	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第32條

在任何收地公告內，如述明須收回該土地作公共用途，即已足夠，而無須述明該土地須用作某特定用途；而載有該項陳述的公告，須作為該項收回是作公共用途的確證。

(由1911年第28號第6(f)條修訂)

條：	20	**與業主安排重造其建築物或住宅**	29 of 1998; 3 of 2000	01/07/1997

附註：
具追溯力的適應化修訂—見1998年第29號第32條；2000年第3號第3條

每當任何土地上的建築物或住宅，在光線及空氣情況方面屬不衞生的建設時，則儘管本條例載有任何收地的權力，或在任何該等權力行使前，行政長官可准許有關業主重造或重建該等建築物或住宅或其任何部分，但重造或重建須符合行政長官認為適當的條款及條件，並且有關業主須為該項重造或重建的妥善進行而提供行政長官認為適當的保證。

(由1911年第28號第6(f)條修訂；由1911年第50號修訂；由1912年第1號附表修訂；由2000年第3號第3條修訂)

條：	21	**(由1974年第63號第14條廢除)**	29 of 1998	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第32條

條：	22	**根據政府租契收地的權力的保留條文**	29 of 1998 ss. 32 & 34	01/07/1997

附註：
具追溯力的修訂—見1998年第29號第32及34條

本條例不得被當作為阻止政府行使任何政府租契所載的收地權力。
(由1911年第28號第6(f)條修訂；由1911年第50號修訂；由1912年第1號附表修訂；由1998年第29號第34條修訂)

附件三
Annex C

CACV 180/2012

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL

CIVIL APPEAL NO. 180 OF 2012

(ON APPEAL FROM LDLR NO. 1 OF 2010)

BETWEEN

SIU SAU KUEN	Applicant (Appellant)
and	
THE DIRECTOR OF LANDS	Respondent (Respondent)

Before: Hon Kwan, Fok and Barma JJA in Court

Date of Hearing: 24 July 2013

Date of Judgment: 31 July 2013

J U D G M E N T

Hon Kwan JA:

1. I agree with the judgment of Fok JA.

Hon Fok JA:

Introduction

2. This appeal is concerned with the question of whether the compensation payable for the compulsory resumption of the applicant's

property was properly assessed by the Lands Tribunal (the Tribunal) and, in particular, whether the test for determining if the compensation payable under the Lands Resumption Ordinance (Cap. 124) (the Ordinance) should include an element for its development value was properly formulated and applied.

3. By its Judgment dated 9 March 2012 (Judgment), the Tribunal assessed the amount of compensation payable to the applicant in the sum of $4,710,000. Dissatisfied with this assessment, the applicant applied to the Tribunal for leave to appeal, which was refused by the Tribunal's Reasons for Decision dated 19 April 2012 (Reasons for Decision). On the applicant's renewed application for leave to appeal, leave was granted by this court[1] on 15 August 2012.

The Property and its resumption

4. The applicant was the registered owner of the ground floor unit at No. 426A Un Chau Street, Cheung Sha Wan, Kowloon ("the Property"). The Property was used as a shop for processing and selling glass. It was situated in a six-storey tenement building completed in 1956, on a site area of 100.34 m^2 including a scavenging lane. On the approved building plans the Property was designed for shop use and it was held under a government lease that was unrestricted in general, except for offensive trades. It was zoned for "Residential (Group A)" uses on the relevant Outline Zoning Plan.

5. By a notice of resumption dated 7 July 2005, the Government gave notice of its resumption of the Property for the implementation of a development scheme by the Urban Renewal

[1] Tang VP and Fok JA.

Authority called "K21" at Castle Peak Road/Hing Wah Street/Un Chau Street. K21 was part of a larger resumption scheme consisting also of three other development proposals called "K20", "K22" and "K23". For its own part, K21 comprised 24 to 25 tenement buildings, consisting of 291 domestic premises and 59 non-domestic premises. The notice of resumption was affixed to the Property on 15 July 2005 and reversion of the Property to the Government took effect under the notice on the expiration of 3 months from that date, namely on 15 October 2005.

6. On 23 March 2010, the applicant made an application to the Tribunal for determination of the amount of compensation to be paid in respect of the resumption of the Property pursuant to s. 6(3) of the Ordinance.

The Tribunal's approach

7. Pursuant to s. 10(1) of the Ordinance, the Tribunal is directed to assess compensation payable in respect of a claim under s. 6(3) "on the basis of the loss or damage suffered by the claimant due to the resumption of the land specified in the claim" and s. 10(2)(a) stipulates that this is to be determined on the basis of "the value of the land resumed and any buildings erected thereon at the date of resumption".

8. Under s. 12(d) of the Ordinance, "the value of the land resumed shall be taken to be the amount which the land if sold by a willing seller in the open market might be expected to realize".

9. It was the applicant's case before the Tribunal that compensation for the resumption of the Property should incorporate its development value, that being "an added value on the open market

because of the likelihood that it will be incorporated into a scheme of redevelopment": see *Cheung Lai-wan & Others v Director of Lands and Survey*[2] [1977] HKLTLR 14 at 17.

10. In its Judgment, the Tribunal accepted that, in determining the compensation for resumption of a property, the claimant is entitled to include the development value if justified (Judgment §36).

11. So far as the assessment of that development value was concerned, the Tribunal appears to have adopted a two-stage approach advocated by the respondent's counsel, namely (Judgment §31):

(1) Stage 1: Whether it is more likely than not that such redevelopment will, in a no-scheme world, take place on the date of resumption; if this question is determined against a claimant, that would be the end of the matter; and

(2) Stage 2: If Stage One is determined in favour of a claimant, the Court/Tribunal would then proceed to conduct a valuation of the redevelopment potential.

12. The Tribunal considered the evidence and concluded that there was no or no sufficient evidence to suggest that at the date of resumption "there might well have been several people ready to buy up properties … with a view to collecting a site worth redevelopment"[3] (Judgment §§38 to 41).

13. Although it held that there was no evidence to reflect development value in the Property, so that Stage One was determined

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[2] The respondent to the case is mistakenly reported as being the Director of Public Works.

[3] *Harding v Cardiff Corporation* (1971) 219 Estates Gazette 885.

against the applicant, the Tribunal went on to deal with Stage Two for the sake of completeness (Judgment §54). In this regard, the Tribunal considered and rejected the applicant's expert valuer's approaches (as to residual valuation and premium ratio) (Judgment §§54 to 67). Instead, it held that the direct comparison method was the best approach in valuing the market value of the Property and that, if the Property had any development value, this would be reflected in the comparables (Judgment §68). On the facts, it considered that four of the respondent's expert's comparables (identified as RC6, RC8, RC9 and RC10), which were shops in 8-storey buildings of a similar age to that in which the Property was situated, might reflect the development value, if any, of the Property (Judgment §46).

14. The Tribunal ultimately assessed the value of the Property as being $4,713,298 which it rounded off to $4,710,000 (Judgment §188) and it awarded the applicant this sum by way of compensation (Judgment §193(2)).

The appeal

15. On appeal, the applicant challenges the Tribunal's decision on two broad grounds, namely:

(1) First, on the basis that the Tribunal's formulation of the Stage One approach was wrong in principle and law; and

(2) Secondly, on the basis that the finding that there was no or no sufficient evidence to suggest that at the date of resumption there might well have been several people ready to buy up properties with a view to collecting a site worth redevelopment was predicated on a wrong premise.

16. In substance, these two challenges are, first, to the formulation of the relevant test and, secondly, as to its application.

17. On the basis that these challenges were made good, the applicant invited this court to set aside the Tribunal's assessment of compensation and to remit the matter to the Tribunal for re-assessment.

The applicant's challenge to the formulation of the test

18. Mr Patrick Chong, counsel for the applicant, submitted that the Stage One test apparently adopted by the Tribunal is in line with and "by and large" applied in cases such as *Cheung Lai-wan, Million-Add Development Ltd & Anor v Secretary for Transport* [1997] CPR 316 and *Joy Take Development Ltd & Ors v Director of Lands* [2008] 6 HKC 232.

19. However, Mr Chong noted that the facts of those cases involved claimants for compensation who owned an entire block of land being resumed rather than just one unit on it. Those owners had contended that, but for the resumption, they could have co-operated with the owners of the adjoining lands jointly to redevelop their combined sites together. As such, Mr Chong maintained that it was understandable that the Tribunal embarked on the fact-finding exercise it did in those cases, namely to assess whether the claimants could have jointly redeveloped their sites with their neighbours' on or before the date of resumption. If they could, that would be the best-use of the claimants' lands. In this regard, Mr Chong referred to the fundamental principle in land compensation that the claimant is entitled to compensation for the best-use of the dispossessed land: see Cruden *Land Compensation & Valuation Law in Hong Kong* (3rd Ed.) at pp. 123-4.

20. This did not mean, Mr Chong submitted, that the cases were laying down a general rule that, if before the date of resumption, the claimants could not have jointly co-operated with their neighbours, no compensation would be awarded for the development potential. Even though the lands might not be able to be incorporated into a larger redevelopment scheme before the date of resumption, they nonetheless would still have development potential, albeit to a lesser extent.

21. The crux of Mr Chong's criticism of the Stage One test as formulated by the Tribunal, therefore, was that that formulation would appear to preclude the award of compensation for development value in a case where an adjoining owner of land had not agreed and committed to redevelopment of its land together with the claimant's land before the date of resumption of the claimant's land.

22. Mr Chong illustrated this criticism and argument by way of the following example. In January, the adjoining owner promised he would only be willing to amalgamate his site with the claimant owner's land jointly to redevelop their sites in July. The adjoining owner expressly stipulated he would not do so any earlier than July. In the meantime, the Government issued a notice in February notifying the claimant that his land would be resumed in March and it was so resumed. As at the date of resumption in March, in light of the express agreement between the two land owners, the resumed land could not have been incorporated in a redevelopment plan. Applying Stage One of the approach formulated by the Tribunal, the claimant would receive no compensation for the potentiality of development. That, however, would be unfair in the light of the agreement to develop. Instead, it would be appropriate to recognise the "second best" use of the claimant's

land in this scenario and take into account the potentiality for development by assessing the present value of that potential as at the date of resumption.

23. It was submitted that this argument was supported by *Cheung Lai-wan* where the Tribunal, having rejected a valuation based on a joint-site development, considered an alternative of redevelopment of the sites individually. At p. 18 of the report, President Power (as he then was) said:

> "The witness for the Respondent, Mr Hay, who also submitted a proof of evidence Exh.2, approached the valuation 'on the basis that the lots were ripe for redevelopment.' However in his approach each lot was redeveloped individually.
>
> The Tribunal is of the opinion that in this case Mr Hay's approach is the correct one provided that he can show that the redevelopment value of the land exceeds the capitalized value of the existing rents. …".

24. In *Million-Add* and *Joy Take*, the Tribunal found that there would be redevelopment on a joint-development basis and so there was no need to consider this alternative. But, it was submitted, neither of those cases, nor *Cheung Lai-wan* were authority for the proposition that, if joint-development were not possible, "that would be the end of the matter" as postulated by the Tribunal's Stage One test in the present case.

25. Thus, it was submitted, the Tribunal should have gone on to consider whether the Property had future potential for redevelopment given the location and attributes of the Property in a no-scheme world. Mr Chong supported this submission by reference to *Transport for London (formerly London Underground Ltd) v Spirerose Ltd (in administration)* [2009] 1 WLR 1797. In that case, planning permission had not been granted to the claimant as at the date of resumption but the

House of Lords held that the valuation should take into account its potential for development, albeit discounted for future uncertainties. Lord Collins, with whose speech the rest of their Lordships agreed, said (at §95):

> "I emphasise that the reference is to 'possibilities of the land and not its realised possibilities', and that a deduction would have to be made to take account of the fact that the land might not be required for building or might not be required for a considerable time. This is a powerful confirmation of a principled approach to valuation. … It is elementary that the price which the land in question might reasonably be expected to fetch on the open market at the valuation date would be expected to reflect whatever development potential the land has …".

26. Similarly, in *Waters & Ors v Welsh Development Agency* [2004] 1 WLR 1304, Lord Nicholls emphasised the need to take the potentiality of development into account when assessing compensation, when he said:

> "32. … The resultant compensation, which takes potentiality into account in all cases, approximates more closely to the price an owner could reasonably expect if the property were sold in the open market between a willing seller and a willing buyer. …
>
> …
>
> 36. … Potentiality is part of the market value of land and must be taken into account when assessing compensation. Potentiality should be valued even if the only likely purchaser is the acquiring authority itself. That was decided in the *Indian* case".

27. The latter case referred to by Lord Nicholls as "the *Indian* case" is *Raja Vyricherla Narayana Gajapatiraju v The Revenue Divisional Officer, Vizagapatam* [1939] AC 302. In that case, Lord Romer said (at p. 313):

> "For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined … but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self-evident one. No one can suppose in the case of land which is certain, or even likely, to be used in the immediate or reasonably near future for building purposes, but which at the valuation date is waste land or is being used for agricultural purposes, that the owner, however willing a vendor, will be content to sell the land for its value as waste or agricultural land as the case may be. It is plain that, in ascertaining its value, the possibility of its being used for building purposes would have to be taken into account. It is equally plain, however, that the land must not be valued as though it had already been built upon … it is the possibilities of the land and not its realized possibilities that must be taken into consideration."

28. Finally, in this context, Mr Chong also cited *Cedars Rapids Manufacturing and Power Company v Lacoste & Ors* [1914] AC 569, where the Privy Council stated the following two propositions (at p. 576), namely:

> "(1.) The value to be paid for is the value to the owner as it existed at the date of the taking, not the value to the taker. (2.) The value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined."

29. In my view, if what the Tribunal did was to apply the test encapsulated in the formulation of Stage One of the two-stage approach set out in §31 of the Judgment, there would be some justification for Mr Chong's submission that the Tribunal formulated the test incorrectly. As noted above, that formulation was in the following terms, namely:

> "(a) Stage One: Whether it is more likely than not that such redevelopment will, in a no-scheme world, take place on the date of resumption; if this question is determined against a claimant, that would be the end of the matter".

As such, the test would appear to look only to development potential committed to take place as at the date of resumption and would not, on its face, appear to cater for the existence of future potentialities for development.

30. However, I accept the submission of Mr Simon Lam, counsel for the respondent, that the test as set out in §31 of the Judgment is in fact merely an adoption of the submission advanced by him as counsel below (and which he did not seek to defend on appeal, accepting it to be too narrow) since the Stage One and Stage Two approach set out there is apparently quoted from his submission. It is therefore not clear that the Tribunal was expressing itself to be in agreement with that formulation. Instead, I would accept Mr Lam's submission in this court that the test the Tribunal actually applied is to be found in §§37 and 41 of the Judgment, namely: whether the Tribunal was satisfied on the evidence that, at the date of resumption, there were people ready to buy up properties in the subject lot with a view to collecting a site worth redeveloping.

31. That being so, it is not the case that the Tribunal applied a test that required it not to take account of any future redevelopment potential existing as at the date of the resumption. Rather, the Tribunal focused on the question of whether there was evidence to establish that there was this redevelopment potential, i.e. existing in the future, at that date. This is made clear in §13 of the Reasons for Decision where the Tribunal said:

> "So, it is not the case that we did not take into account any redevelopment potential that could have been in the future, but it is entirely a matter of whether there are [sic] evidence establishing that there was this possibility at the date of the

> resumption. And, in our case, we found there was no such evidence."

32. Therefore, whilst at first blush the so-called Stage One test[4] identified by the Tribunal appears to contain an error, and would be better not to be expressed in that way in future, the reality is that the Stage One test actually applied by the Tribunal was capable of reflecting the development value for potential redevelopment as at the date of valuation.

33. However, in order to avoid any confusion that might arise by formulating the relevant test in the way the Tribunal appeared to do in §31 of the Judgment and to provide guidance on this for future cases, I would instead suggest that the inquiry on which the Tribunal should focus in deciding whether an element of development value should be included in the compensation to be paid on the resumption of land should look to the considerations that were identified by Cruden DJ when sitting as Presiding Officer of the Tribunal in *Tsang Chun Ki & Anor v Director of Engineering Development*, unrep., LDMT 2/1984, 24 October 1984 at pp. 6-7. There, His Honour said:

> "The applicants therefore only had to establish that redevelopment was likely. They did not have to establish that specific redevelopment proposals contemplated by the owners had been frustrated by the resumption. [The respondent's expert's] evidence was misconceived to the extent that it was concerned with the absence of any actual proposals by the applicants to redevelop rather than addressed to the different question whether the likelihood of redevelopment existed and if so to what extent. Although I accept that it is proper to consider whether the absence of any actual proposal is in the circumstances evidence of the possible unlikelihood of redevelopment.

[4] It is not necessary to call this the Stage One test and, insofar as I refer later in this judgment to "the Stage One test", I do so for convenience only. This is, in fact, simply the first question the Tribunal must ask itself when determining if a development value should be included in the compensation payable in respect of a resumed property.

> On the other hand, the likelihood of redevelopment would strongly be established if evidence of an actual redevelopment proposal, solely frustrated because of the resumption, was adduced. However, the likelihood of redevelopment may also be established by different and far less positive evidence. For example, in *Director of Lands & Survey v Cheung Ping-kwan* (1978) HKLTLR 101, 107 there was evidence of redevelopment in the vicinity of the resumed property but no evidence of any redevelopment plans for the resumed property. The Lands Tribunal inspected the locality and from that merely visual evidence was prepared to find that a merger of the resumed property with two of its neighbours 'was likely within a for[e]seeable time scale and that such a merger would result in a viable redevelopment scheme'."

34. Restating the relevant test in the light of those considerations will address the concerns of Mr Chong with regard to the Tribunal's apparent formulation of that test, since the potentiality of future development, existing as at the date of the resumption, will be taken into account. I would therefore restate the test as follows:

> "Whether, on a balance of probabilities, the evidence discloses that, as at the date of resumption, redevelopment of the property resumed was likely. Such likelihood may be demonstrated by:
>
> (i) actual proposals by the applicant to redevelop the property (or unlikelihood demonstrated by the absence of such proposals) whether on its own or by merger with other properties, or
>
> (ii) evidence of redevelopment in the vicinity of the resumed property (whether accompanied by evidence of redevelopment plans for the resumed property or not), so long as such evidence of redevelopment in the vicinity supports a finding that redevelopment on its own or merger of the resumed property with other properties giving rise to a viable redevelopment scheme was likely within a reasonably foreseeable time scale."

35. So far as the cases cited by Mr Chong are concerned (namely *Spirerose, Waters & Ors v Welsh Development Agency*, the *Indian* case and *Cedars Rapids Manufacturing and Power Company v Lacoste & Ors*), I would accept Mr Lam's submission that these each concerned

development potentials or possibilities that already existed as at the relevant valuation date. As such, they do not establish any proposition that wholly future potentialities, i.e. the viability of future redevelopment that could not be shown as at the date of the resumption to be likely within a reasonably foreseeable time scale, should be taken into account or reflected in the valuation.[5] I do not think there is any basis for the applicant to contend that this is what the authorities require and it is noteworthy that, even in Mr Chong's example summarised above, the thrust of the example is addressed to an agreement for development that has actually been made before the date of valuation, albeit is not to be carried out until after that date. As I have indicated, it is that sort of future potential that should be reflected in the valuation, as well as likely future redevelopment supported by evidence of redevelopment in the vicinity of the resumed property but not wholly future potentialities.

36. I do not therefore accept the applicant's first main ground of appeal based on the formulation of the Stage One test.

The applicant's challenge to the application of the Stage One test

37. The applicant's second broad ground of appeal focuses on the Tribunal's application of the Stage One test. The criticism here appears to be two-fold, namely that: (1) the Tribunal failed to consider whether it was possible that, after the resumption date, there was any chance that the Property could have been redeveloped or acquired for the purpose of redevelopment; and (2) the Tribunal failed to take into account the effect of the extracts of the annual report of the Land Development Corporation in 1997 (the 1997 LDC plan).

[5] This was the thrust of Mr Chong's argument at the leave application before the Tribunal, as reflected in §§14 to 16 of the Reasons for Decision.

38. Taking criticism (1) first, the applicant submitted that the Property must have had the potential of redevelopment because of the following attributes, namely:

(1) It was part of a building erected on a piece of land which had not fully utilised its plot ratio;

(2) The building in which the Property was located and the buildings in the vicinity were about 48-years old at the time of resumption;

(3) The Property was zoned for Residential (Group A) use in the Outline Zoning Plan and thus capable of being developed at a higher density and for a more valuable composite development without the need for further Government approvals;

(4) It was situated in a convenient and busy location in Kowloon.

39. Mr Chong relied on dicta in *Tak Shing Investment Co Ltd v Director of Lands*, unrep., LDLR 23/1995, 9 April 1996 (at p. 4) and *Tsang Chun Ki & Anor v Director of Engineering Development* (at p. 5) to support the proposition that it is very common in Hong Kong for old and under-developed properties like the Property to be bought by a property developer or speculator to exploit the potential for redevelopment.

40. That this potential should be reflected in the assessment of the valuation on resumption of the Property was supported, it was submitted, by the requirement in s. 12(d) of the Ordinance that the value

of the land resumed should be taken to be the amount which a willing seller of the land might be expected to realise in the open market.

41. I have already addressed above, in relation to the applicant's first main ground of appeal, the criticism that the Tribunal did not consider the possibility that the Property could have been redeveloped after the resumption date. As I have noted, however, it is apparent from the Judgment that the Tribunal did consider the development potential of the Property, namely the chance that the Property would be redeveloped in the future, but concluded that there was no or insufficient evidence to show that, as at the date of resumption, there were people ready to buy up properties in the subject lot with a view to collecting a site worth redeveloping (Judgment §41). The Tribunal went on to say, in §42 of the Judgment, that:

> "… In the present case, almost all the owners in K21 were different. No single lot was owned by one owner. We are not satisfied that in a no-scheme world, there were several people ready to buy up properties in the subject lot with a view to collecting a site worth redeveloping on the date of resumption. We are not satisfied on the balance of probabilities that there was existence of this possibility. Thus, we do not find that there was any likelihood back in 2005 to have the Property redeveloped. …"

42. This is clearly a finding of fact on the evidence before the Tribunal and the question is whether this finding, which was open to the Tribunal, has been shown to be plainly wrong such as to entitle this court to reverse it. In this regard, turning to the applicant's criticism (2) of the Tribunal's application of the Stage One test, Mr Chong submitted that the Tribunal erred in failing to take into account the effect of the 1997 LDC plan.

43. It was submitted that, although the Tribunal purported to make its finding of facts "in a no-scheme world", it was evident that the Tribunal did not in fact take the effect of the 1997 LDC plan into account. Mr Chong submitted that the reality was that, once the lands had been earmarked by the LDC in 1997, this would naturally put off developers and speculators who would not wish to buy into litigation. This explained the Tribunal's observation that "[o]ver the years, there had been very little acquisition activities going on in the K21 area"[6] and that there were not "several people ready to buy up properties in the subject lot with a view to collecting a site worth redeveloping on the date of resumption".[7] As a matter of commercial common sense, Mr Chong submitted, the reality was that the sterilisation started in 1997, at which time the 1997 LDC plan scared off developers and speculators.

44. In this regard, Mr Chong relied on *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111 for the proposition that losses sustained after inception of a scheme for the resumption of land but before resumption were due to the resumption of the land within s. 10(1) and qualified for compensation if the conditions applicable to post-resumption losses were fulfilled. Thus, in that case, the loss of profits in the shadow period, being the period after the possibility that the claimant's site might be resumed became known and which had a paralyzing effect on its operations, were awarded.

45. In further support of this argument, Mr Chong referred to a list of redevelopment sites showing 45 examples of sites of low-rise tenements redeveloped in the Sham Shui Po district, some of which were in the immediate vicinity of the Property. He submitted that these

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6 Judgment §40.
7 Judgment §42.

examples illustrated that, but for the 1997 LDC plan, the Property could have been incorporated in a redevelopment plan in a no-scheme world even before the date of resumption as there were developers and speculators interested in the area. Notwithstanding this, Mr Chong continued, the Tribunal did not explain why it did not accept the applicant's expert's evidence regarding the sterilizing effect of the 1997 LDC plan.

46. Mr Chong also relied on the evidence given by the applicant's expert, referred to in §41 of the Judgment, "that the applicant might have to wait for about 10 years to have the Property developed, and he contended that the applicant had the financial ability to hold on to the Property for another 10 years". He submitted that the Tribunal's holding that this was "totally beside the point" disclosed an error of law in its fact finding as regards the question of whether the Stage One test was satisfied by the applicant.

47. Mr Lam submitted in response that the alleged sterilization effect of the 1997 LDC plan was pure conjecture on the part of the applicant and that there was no probative evidence to support it.

48. I agree with this submission and the reasoning advanced by Mr Lam in support of it.

49. The document described as the 1997 LDC plan consists of four sheets, being extracted from another document the provenance of which is unclear. There is no evidence that the document came from a publication of the LDC or that it was even published in 1997, although it seems that when it was introduced into the trial bundles it was agreed to be an extract of the annual report of the LDC in 1997. The document

did not form part of the appendices to the applicant's expert's report and although it appears to have been introduced by the applicant on the first day of the trial below[8] and referred to obliquely by counsel for the applicant in his opening submissions,[9] it was not obviously referred to at trial in the evidence of the witnesses nor was it referred to in counsel's closing submissions. Even if the 1997 LDC plan was rather cryptically referred to by the applicant's expert in evidence,[10] it was not put to the respondent's expert as evidence supporting the alleged sterilization effect.

50. More importantly, the projects in the list which appear to be relied upon by the applicant are not directly referable to the schemes in question in the present case, including K21. The projects are listed under a heading "Projects under Planning" but there is no explanation as to what precisely this designation means or whether this would have a sterilization effect on the properties covered by the development schemes leading to the resumption of the Property. Reference to the transcript demonstrates that the applicant's expert referred in cross-examination to developers being put off by a scheme, but that scheme was one published in 2005 and not in 1997. The alleged blighted effect arising from any plan in 1997 was not dealt with in closing arguments for the applicant, hence it is unsurprising that the blighted effect which the Tribunal did deal with (Judgment §§101 to 107) concerned the period from the commencement of negotiations concerning the K20, K22 and K23 projects in 2004 to the resumption date in October 2005. Similarly, the applicant's expert also referred in cross-examination to the effect of the Housing Society's decision to zone K21 for redevelopment (which might or might not have been a cryptic reference to the effect of the 1997 LDC

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8 Transcript, p. 8 (16.5.11).
9 Transcript, p. 78 (17.5.11).
10 Transcript, p. 326 (8.9.11) & p. 442 (14.9.11).

plan) but it would appear from his expert report that he was referring to something occurring after the publication of the Cheung Sha Wan Outline Zoning Plan which was dated 12 August 2005. Thus, the scheme to which he was referring would appear to be one in 2005 and not 1997.

51. Furthermore, Mr Lam pointed to the following matters in support of his argument that the effect of the 1997 LDC plan contended for by the applicant was conjecture. First, the fact that it was accepted by the Tribunal[11] that it was because redevelopment by private developers was too slow that the Urban Renewal Authority had to step in and implement the development proposals K20, K21, K22 and K23. The inclusion of the site in LDC planning would therefore point towards a lack of interest by private developers. Secondly, the Tribunal also noted[12] that, since 1983, there were only three suspected acquisition transactions within the area of K21. Even if one only considered the period up to 1997, this still represented a period of 14 years in which only three transactions took place, none of which were in the building in which the Property was situated. Thirdly, the Tribunal did not confine itself to looking at the site of K21 but looked to the whole area of Sham Shui Po, in which, since 1985, there were only 45 development projects and the fact, confirmed by a site visit in May 2011, that only sporadic redevelopments were seen.[13]

52. As regards reliance on the applicant's expert's evidence that the applicant might have to wait for about 10 years to develop the Property, Mr Chong confirmed that this was the only evidence to which the applicant could point to support the potentiality of redevelopment.

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11 Judgment §40.
12 *ibid.*
13 Judgment §39.

As such, I do not think there can be any doubt that this would not satisfy the Stage One test as I have indicated that should be formulated. This is clearly not evidence of any actual proposal by the applicant to redevelop the Property, nor is it evidence of redevelopment in the vicinity of the resumed property such as to support likely future redevelopment. Indeed, in my view, that evidence could not show the viability of future redevelopment as at the date of the resumption to be likely within a reasonably foreseeable time scale.

53. For these reasons, I do not accept the applicant's case that the Tribunal erred in its application of the Stage One test.

54. This conclusion makes it unnecessary to deal with Mr Lam's further point that the applicant's argument based on the 1997 LDC plan is procedurally objectionable. Had it been necessary to do so, however, I would have accepted Mr Lam's submission in this regard. As already mentioned, the document was introduced by the applicant at a late stage in the trial below and was not referred to at trial in the evidence of the witnesses or in counsel's submissions (or, if it was, any such reference was at best ambiguous). The respondent's expert was never cross-examined on the document or on the alleged sterilization effect, nor was the Tribunal invited to consider or take this into effect. I am not satisfied that the point is such that, had it been raised by the applicant at trial, the respondent would not have wished to adduce evidence in response to it. Applying the applicable principles,[14] I do not consider that it is open to the applicant to raise this new point for the first time in this court on appeal.

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[14] See *Flywin Co Ltd v Strong & Associates Ltd* (2002) 5 HKCFAR 356 at §38.

55. The conclusion that the Tribunal did not err in the application of the Stage One test also makes it unnecessary to express any view on the further argument of Mr Lam that the applicant's complaints in this regard are immaterial by reason of the fact that the development value of the Property was already taken into account by the Tribunal. The factual basis of that argument is addressed above at §13.

Conclusion

56. For the above reasons, I would dismiss this appeal.

57. It was common ground that costs should follow the event and I would accordingly make an order that the applicant pay the costs of the appeal to the respondent, to be taxed if not agreed.

Hon Barma JA:

58. I agree with the judgment of Fok JA.

(Susan Kwan)	(Joseph Fok)	(Aarif Barma)
Justice of Appeal	Justice of Appeal	Justice of Appeal

Mr Patrick Chong, instructed by B. Mak & Co., for the Applicant (Appellant)

Mr Simon K C Lam, instructed by the Department of Justice, for the Respondent (Respondent)

附件四
Annex D

LDLR 1/2010

IN THE LANDS TRIBUNAL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

Lands Resumption Application No. 1 of 2010

BETWEEN

SIU SAU KUEN Applicant

and

THE DIRECTOR OF LANDS Respondent

Before: HH Judge M Wong, Presiding Officer of the Lands Tribunal and Mr Kenneth Kwok, Temporary Member of the Lands Tribunal

Dates of Hearing: 16-20 May 2011, 8, 9, 12, 14, 16, 19 & 20 September 2011, 4 & 31 October 2011 and 10 November 2011

Date of Judgment: 9 March 2012

JUDGMENT

BACKGROUND

1. This is an application made by the applicant on 23 March

2010 for determination of the amount of compensation to be paid in respect of the resumption of "1/6th equal and undivided parts and shares of and in the Remaining Portion of New Kowloon Inland Lot No. 1497 and of and in the appurtenant thereto together with the right to the exclusive use occupation and enjoyment of messuage, erections and buildings known as No. 426A Un Chau Street, Cheung Sha Wan, Kowloon together with the sole and exclusive right and privilege to hold use occupy and enjoy the Ground Floor of the said messuages erections and buildings" ("the Property") pursuant to section 6(3) of the Lands Resumption Ordinance, Cap 124 ("the Ordinance").

2. The applicant was the registered owner of the Property and used it as a shop for processing and selling glass. By notice of resumption dated 7 July 2005 and published in Gazette Notice No. 3331, the government resumed the Property for the implementation of the development proposal "K21" by the Urban Renewal Authority in association with the Hong Kong Housing Society. The applicant and the respondent could not agree on the amount of compensation payable to the applicant and hence the applicant makes the present application.

3. There is no dispute that the Property comprised a shop on the Ground Floor together with a cockloft at No. 426A Un Chau Street in Cheung Sha Wan, Kowloon. The Property formed part of a building which was a 6-storey tenement building completed in 1956. The site area of the land upon which the building was erected is 100.34 m^2 including scavenging lane. According to the approved building plans, the Property was designed for shop uses. The government lease under which the Property was held was unrestricted in general, except for

offensive trades.

4. Under the Cheung Sha Wan Outline Zoning Plan No. S/K5/28 dated 12 August 2005, the Property was zoned for "Residential (Group A)" uses as at the date of resumption. The Property was resumed for implementation of the development proposal K21 at Castle Peak Road/Hing Wah Street/Un Chau Street. Together with development proposals K20, K22 and K23, the four development proposals form part and parcel of a large resumption scheme.

5. In the Notice of Application, the applicant claimed for a sum of $7,727,610.00 as the market value of the Property. The applicant also claimed for a disturbance payment of $19,396,301.10 or $49,224,160.00. Nevertheless, at the trial, the applicant amended the claim for the market value of the Property to a sum of $56,951,770.00 and confirmed that there is no longer any claim for disturbance payment.

6. In support of the application, the applicant's valuation expert, Mr Wong Yung-shing ("Mr Wong") of Dynasty Premium Asset Valuation & Real Estate Consultancy Limited, gave a valuation report dated 3 December 2009, in which Mr Wong opined that:-

> (1) "according to the scientific method of assessment, the reasonable total amount of statutory land valuation to the claimant as at 15th October, 2005 in its existing use and state, with the benefit of immediate vacant possession, and without the problem of 3rd parties' interests in the affected property, is **HK$56,951,770.00** … This value is the maximum amount of acquisition price that might be expected to realize by the affected owner out of her own willingness according to the Section 12(d) of the relevant Ordinance under the 'as-of-right' conditions of the Government Lease, the current town planning controls and the building regulations at the date of valuation."

> (2) "However, according to the performance in the general market, … the affected owner should be paid not less than ***HK$27,123,911.10*** by way of bare negotiation and mutual agreement with the acquisition institutions under the circumstances of private acquisition for redevelopment to a larger density and upon the compliance with the 'as-of-right' conditions of the Government Lease, the current town planning controls and the building regulations at the date of valuation."
>
> (3) "According to the direct comparison method for assessment of the market value on the basis of "existing use and state", the market value of the affected property is **HK$7,727,610.00**."

7. In his Supplementary Statement dated 15 November 2010, Mr Wong added that since the market value of the Property means the "full market value of the land taken", the reasonable amount of resumption compensation can be equivalent to either one of the following 10 scenarios:-

> "(a) under Section 10(2)(a) of Cap. 124 and principle of common law basis (***Horn v Sunderland Corp*** (1941)) with reference to the definition of "value to the owner" embedded in Section 12(d) of Cap. 124
>
> in line with the Judge Cruden's advice for the case of solitary purchaser. The form of resumption compensation may be divided into two heads – 'present' market value of property plus development land value:
>
> (i) Section 10(2)(a) - **HK$8,126,081.00** for the part of 'present market value in existing (lawful) use and state; plus ***Horn v Sunderland Corp*** (1941) - **HK$20,396,463.31**, for the part of development land value which is the loss to the affected owner; or
>
> (ii) Section 10(2)(a) - **HK$8,126,081.00** for the part of 'present' market value in existing (lawful) use and state; plus ***Horn v Sunderland Corp*** (1941) - **HK$48,825,689.00**, for the part of development land value which is the loss to the affected owner; or
>
> (iii) Section 10(2)(a) - **HK$8,126,081.00** for the part of

'present' market value in existing (lawful) use and state; plus ***Horn v Sunderland Corp*** (1941) - **a value between HK$20,396,463.31 and HK$48,825,689.00** for the part of development land value which is the loss to the affected owner; **OR**

(b) wholly under Section 10(2)(a) of Cap. 124

(i) either **HK$28,522,544.31**

(ii) or **HK$56,951,770.00**

as the whole full market value of the affected property; **OR**

(c) under Section 10(2)(a) & 10(2)(b) of Cap. 124

(i) Section 10(2)(a) - **HK$8,126,081.00** for the part of 'present' market value in existing (lawful) use and state plus Section 10(2)(b) - **HK$20,396,463.31** for the value of the right in the land resumed, owned, held, or enjoyed by a claimant at the date of resumption. The right is the proprietary right or the legal entitlement of assigning the property to a third party purchaser in the competitive market at a higher value shown in Appendix VI(c) of my First Valuation Statement; or

(ii) Section 10(2)(a) - **HK$8,126,081.00** for the part of 'present' market value in existing (lawful) use and state plus Section 10(2)(b) - **HK$48,825,689.00** for the value of the right in the land resumed, owned, held, or enjoyed by a claimant at the date of resumption. The right is the proprietary right or the legal entitlement of assigning the property to a third party purchaser in the competitive market at a higher value shown in Appendix VI(d) of my First Valuation Statement; or

(iii) Section 10(2)(a) - **HK$8,126,081.00** for the part of 'present' market value in existing (lawful) use and state plus Section 10(2)(b) - **a value between HK$20,396,463.31 and HK$48,825,689.00** for the value of the right in the land resumed, owned, held, or enjoyed by a claimant at the date of resumption. The right is the proprietary right or the legal entitlement of assigning the property to a third party purchaser in the competitive market at a higher value shown in Appendix VI(c) of my First Valuation Statement; **OR**

(d) wholly under Section 10(2)(b) of Cap. 124

a higher compensation value not less than the average premium ratio of 3.51 (= ranging from 3.42 to 3.65) times to the present market value in existing lawful use and state on the date of

> valuation (= **Multiplier 3.51 x Existing Use Value HK$8,126,081.00 = HK$28,522,544.31)**, when the claimant can freely and is entitled to exercise her exclusive (proprietary) right of selling her affected property to an acquiring entity in the open competitive market as if the instant resumption scheme does not occur.
>
> (e) <u>wholly under Section 10(2)(a) of Cap. 124 on the basis of existing (lawful) use and existing state with reference to the best evidence</u>
>
> Since EUV-3 is most proximity to the affected property accurately reflecting the parameters of the affected property for its market value, it is likely the best comparable. Adopting my adjustment to the different parameters of the Comparable EUV-3 in the Appendix VI(b) of my First Valuation Statement, the reviewed most reasonable amount of the market value of the affected property will be :
>
> Adjusted Unit rate of EUV-3 x Effective total saleable area of the affected property
>
> = HK$9,776,09 sq.ft.'S x 851.56 sq.ft.'S
>
> = **HK$8,324, 927.20**
>
> (f) <u>wholly under Section 10(2)(a) of Cap. 124 on the basis of existing (lawful) use and existing state with reference to the average adjusted unit rate of 4 comparables</u>
>
> The market value of the affected property is accordingly **HK$8,126,081.00**."

8. The respondent contends that the applicant's claimed amount is not properly assessed under the Ordinance and the claim is considered to be excessive. The respondent's valuation expert, Mr Lai Wah Chi ("Mr Lai") of AA Property Services Limited, gave a report dated 2 September 2010 and opined that the amount of compensation payable to the applicant for the resumption of the Property under the Ordinance should be $4,569,000.00. Mr Lai is of the views that the statutory principle of "value to the owner" as submitted by Mr Wong should be rejected and that compensation for the resumption of the Property should

be assessed on the basis of "market value" as defined by the Hong Kong Institute of Surveyors in paragraph VS3.1 of its Valuation Standard on Properties (first Edition 2005), namely:-

> "Market Value is the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."

9. Thus, although Mr Wong and Mr Lai both agree that the compensation should be based on the market value of the Property, they seem to have different interpretations on the basis of assessment for the compensation payable to the applicant.

RELEVANT STATUTORY PROVISIONS

10. Section 10 of the Ordinance provides that:-

> "(1) The Tribunal shall determine the amount of compensation (if any) payable in respect of a claim submitted to it under section 6(3) … on the basis of the loss or damage suffered by the claimant due to the resumption of the land specified in the claim.
>
> (2) The Tribunal shall determine the compensation (if any) payable under subsection (1) on the basis of-
>
> (a) the value of the land resumed and any buildings erected thereon at the date of resumption;"

11. Section 11 of the Ordinance provides that:-

> "(1) When any property is resumed, the Lands Tribunal in determining the compensation to be paid and in estimating the value of the land resumed and of any buildings thereon, may-
>
> (a) take into consideration the nature and existing condition of the property, and the probable duration of the buildings in their existing state, and the state of repair thereof; and

(b) decline to make any compensation for any addition to or improvement of the property made after the date of the publication in the Gazette of the notice of intended resumption (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair):

Provided that, in the case of any interest acquired after the date of such publication, no separate estimate of the value thereof shall be made so as to increase the amount of compensation.

(2) The Lands Tribunal may also receive evidence to prove-

(a) that the rental of the buildings or premises was enhanced by reason of the same being used as a brothel, or as a gaming house, or for any illegal purpose; or

(b) that the buildings or premises are in such a condition as to be a nuisance within the meaning of any Ordinance relating to buildings or to public health, or are not in reasonably good repair; or

(c) that the buildings or premises are unfit and not reasonably capable of being made fit, for human habitation.

(3) If the Lands Tribunal is satisfied by such evidence, then the compensation-

(a) shall, in the first case, so far as it is based on rental, be based on the rental which would have been obtainable if the building or premises had not been occupied as a brothel, or as a gaming house, or for an illegal purpose; and

(b) shall, in the second case, be the amount estimated as the value of the building or premises if the nuisance had been abated or if they had been put into reasonably good repair, after deducting the estimated expense of abating the nuisance or putting them into such repair, as the case may be; and

(c) shall, in the third case, be the value of the land and of the materials of the buildings thereon."

12. Section 12 of the Ordinance provides that:-

"In the determination of the compensation to be paid under this Ordinance-

(a) no allowance shall be made on account of the resumption being compulsory;

> (aa) no account shall be taken of the fact that the land lies within or is affected by any area, zone or district reserved or set apart for the purposes specified in section 4(1)(a), (c), (d), (e), (f), (g), (h) or (i) of the Town Planning Ordinance (Cap. 131);
>
> (b) no compensation shall be given in respect of any use of the land which is not in accordance with the terms of the Government lease under which the land is held;
>
> (c) no compensation shall be given in respect of any expectancy or probability of the grant or renewal or continuance, by the Government or by any person, of any licence, permission, lease or permit whatsoever:
>
> Provided that this paragraph shall not apply to any case in which the grant or renewal or continuance of any licence, permission, lease or permit could have been enforced as of right if the land in question had not been resumed; and
>
> (d) subject to the provisions of section 11 and to the provisions of paragraphs (aa), (b) and (c) of this section, the value of the land resumed shall be taken to be the amount which the land if sold by a willing seller in the open market might be expected to realize."

BASIS OF ASSESSMENT

13. From the above statutory provisions, it is clear to us that the applicant should be compensated on the basis of "the value of the land resumed and any buildings erected thereon at the date of resumption" (section 10(2)(a) of the Ordinance), and that the value of the land resumed, subject to the provisions of sections 11, 12(aa), 12(b) and 12(c) of the Ordinance, shall be taken to be "the amount which the land if sold by a willing seller in the open market might be expected to realize" (section 12(d) of the Ordinance).

14. In other words, the compensation payable to the applicant should be assessed on the basis of the open market value of the Property. The wording in section 12(d) of the Ordinance is not quite the same as the

definition used by the Hong Kong Institute of Surveyors mentioned above, but the concept is more or less the same. It still denotes an objective assessment based on the open market value.

15. We agree with Mr Lai that it is wrong for Mr Wong to rely on the principle of "value to the owner" or to say that this principle is embedded in section 12(d) of the Ordinance. The concept of "value to the owner" denotes a subjective assessment and has ceased to apply in Hong Kong since 1921 when section 12(d) was first enacted under the Crown Lands Resumption (Amendment) Ordinance 1921. In his book *Land Compensation & Valuation Law in Hong Kong* (3rd ed), p 102-103, Judge Cruden gave a succinct account of the no longer applicable concept of "value to the owner" as follows:-

> "Special value is a historical land compensation principle which no longer applies in Hong Kong. In other common law jurisdictions, the term was and in some is still concerned with an element of the higher value a property might have to the owner compared to the lower value of the same land to a resuming authority. The value to the owner was generally higher than open market value. At times, it also came to be used either to include or separately describe disturbance compensation. The concepts of 'value to the owner' and 'special value' ceased to apply in Hong Kong when in 1921 statutory changes replaced compensation for land resumed from the subjective basis of value to the owner to the objective assessment of the open market value of land.
>
> Despite these important statutory changes, the term 'value to the owner' and to a lesser extent 'special value' has lingered on at the highest judicial level. This, if fortunately declining practice, is not only wrong but can be misleading. Although it did not on the facts affect the outcome, the Privy Council in recent years in applying Hong Kong resumption law, while at times correctly referring to open market value, has also used the terms 'value to the owner' and 'special value': *Shun Fung Ironworks Ltd v Director of Buildings and Lands* [1995] 2 AC 111 at 125. More recently, Lord Millett in *Director of Lands v Yin Shuen Enterprises* (2003) 6 HKCFAR 1 when observing

> that English and Hong Kong land compensation law were generally the same, also listed the first relevant English compensation assessment principle as the value of the land to the claimant. That was only an accurate statement of English law until 1919 and of Hong Kong law until 1921. The no longer applicable concept of 'value to the owner' was replaced in both jurisdictions in 1919 and 1921 respectively by similar statutory amendments. Hence Lord Millett's statement in 2003 is no longer good law. These recent judgments emphasise the importance of using correct current statutory and common law compensation terminology. Otherwise errors of this magnitude can result in valuations being carried out on a fundamentally wrong basis. Although special value is no longer part of Hong Kong compensation law, an awareness of its history is useful, when considering the extent to which judgments referring to special value are otherwise relevant to Hong Kong."

16. We agree with Judge Cruden's views as aforesaid. We do not find it correct for Mr Wong to use the concept of "value to the owner" or to suggest that such a concept is embedded in section 12(d) of the Ordinance. In determining the compensation payable to the applicant, the basis of assessment should just be the open market value as stipulated in section 12(d) of the Ordinance, ie "the amount which the land if sold by a willing seller in the open market might be expected to realize".

RELEVANT DATE

17. According to section 10(2)(a) of the Ordinance, the relevant date for determining compensation is "the date of resumption". In his valuation report, Mr Wong submits that the Notice of Land Resumption for the Property was published in Gazette Notice No. 3331 dated 7 July 2005 and the date of resumption is 7 October 2005. Mr Wong further submits that the date of reversion and the date of valuation are both 15 October 2005. In Mr Wong's evidence, the date of resumption is different from the date of reversion.

18. Mr Lai, on the other hand, submits that the date of resumption and the date of reversion are the same. As the notice of resumption dated 7 July 2005 and published in G.N. 3331 stated that the Property would be resumed after the expiration of 3 months from the date of the affixing of the notice, and the notice of resumption was affixed to the Property on 15 July 2005, reversion took place on 15 October 2005 upon expiration of the 3-month notice period. Thus, the date of valuation should be 15 October 2005.

19. In our view, although Mr Wong agrees that 15 October 2005 is the valuation date, his opinion that the date of reversion and the date of resumption are different is clearly flawed. It is clearly stated in the notice of resumption G.N. 3331 that the Property "shall be resumed and revert to the Government … on the expiration of THREE months from the date of the affixing of this notice to the said land." Thus, both the date of reversion and the date of resumption should be 15 October 2005, being the expiration of 3 months from the date of affixing of the notice of resumption to the Property on 15 July 2005. The date of valuation should therefore be 15 October 2005.

PLEADING POINT

20. The respondent objects to the applicant asking us to determine the "development land value" of the Property as it is not a claim included in the Notice of Application. We do not agree with the respondent in this aspect. There is only one claim made by the applicant and that is "the value of the land resumed and any buildings erected thereon" pursuant to section 10(2)(a) of the Ordinance. The applicant is

not making a separate claim for "development land value", but merely alleges that the value of the land includes "development land value". The respondent is well aware of this issue as it was mentioned in the applicant's expert reports. We see no prejudice to the respondent by making determination of this issue. The Notice of Application in the Lands Tribunal is strictly speaking not a pleading. As long as the issues are clearly identified and the parties are not prejudiced in any way, we are entitled to proceed with the determination of the issues, including this issue on the "development land value" of the Property.

THE ISSUES

21. Mr Mak, counsel for the applicant, identifies the following main issues in this case:-

> "(a) The existence of Development Value.
>
> (b) Residual Value Method.
>
> (c) The "Premium Ratio" point.
>
> (d) Existing Use Value point.
>
> (e) "Without Prejudice Offers" point."

22. Mr Mak summarizes the applicant's case as follows:-

> (1) The compensation of the interest resumed is entitled to include development value.
>
> (2) If there is little or even total lack of evidence of likelihood of development, the Court will do its best, by making a discount, perhaps a substantial discount,

to measure that value (see *Transport for London (formerly London Underground Ltd) v Spirerose Ltd (in administration)* [2009] I WLR 1797).

(3) The extent of that development value is normally measured by reference to the residual value method, discounted by the likelihood of development. The figure advised by the applicant's expert is $56,951,770.

(4) Another bench mark is the compulsory sale of unwilling owner holding minority undivided share. In the speech of the Secretary for Development, a ratio or multiplier of 2.66 may be expected and in the event of the auction under an order of the Tribunal, the owner will get his percentage share of the profit in the land by way of development potential.

(5) Adopting the premium ratio approach, in the present case, comparables were adopted and a ratio or multiplier of 3.51 was arrived at. The figure advised by the applicant's expert is $27,123,911.10. Alternatively, if the premium ratio is 3.44, this will give $26,582,978.40 (3.44 x $7,727,610). The applicant does not apply mechanically the ratio of 2.66.

(6) Under the existing use valuation, this is arrived at by a direct comparison method. The figure as advised by the expert is $7,727,610.

(7) The objection to without prejudice correspondence is totally misplaced. The respondent has withdrawn its objection of the first offer and had failed to object to the content of the applicant's expert report with references to the offers. The respondent has waived its rights to object.

23. Mr Mak also makes it clear in his oral closing submission that he does not wish to go into the minor issues on valuation, but would leave them to the Tribunal for determination.

24. On the other hand, Mr Lam, counsel for the respondent, submits that the sole issue in the proceedings herein is the appropriate amount of compensation to be paid under section 10(2)(a) of the Ordinance, but it requires the Tribunal to determine the following matters:-

(a) What are the measurements of the Property and how should the ancillary areas (cockloft, yard etc.) be converted to arrive at the effective floor area for the purpose of valuation?

(b) What is the valuation obtained by using market comparables (called existing use value (EUV) by the

applicant's expert, but which the respondent says is already the "market value" under section 12(d) of the Ordinance)?

(c) Should a premium be added to the value at (b) above to reflect the redevelopment value of the Property and if so how much?

25. We shall deal with all these issues below.

DEVELOPMENT VALUE

26. Mr Mak submits that in determining the compensation for the resumption of the Property, the applicant is entitled to include development value, and the Property was ripe for development.

27. Mr Mak relies on *Tak Shing Investment Co Ltd v Director of Lands*, Crown Lands Resumption Reference No. 23 of 1995, where the Tribunal found the existence of development potential on the basis that the area was ripe for redevelopment, because of the age of the buildings and their location within the vicinity.

28. Mr Mak submits that the applicant does not need to show the existence of likelihood of development with adjoining buildings at the date of resumption. All that the applicant needs to show is that the Property has the ability to be considered as having development potential. Once this is accepted then it is a matter of estimating the quantum of development value. So long as the applicant can redevelop the lot, and so long as this is not excluded by the provisions under section 12 of the Ordinance, she should be entitled to claim development value, on top of

the existing use value.

29. Mr Mak further submits that there is no impediment for individual owners of units within a single building coming together and agreeing to combine their undivided shares to enable them to sell the combined interest to benefit from the development value of their combined interests. The only difference between single ownership and multiple ownerships is in the time that it would take the multiple owners to agree to join together.

30. Mr Mak also submits that section 12(d) of the Ordinance requires valuation on the basis of a "willing seller". If the land owner cannot negotiate or sell at the best value he could obtain in the open market, he is not a "willing seller". The best value in a piece of land that has no restriction of planning (ie under Residential Group A zoning), with unused plot ratio, and can redevelop without the need to apply for modification of the lease terms, must be the market value that includes development value.

31. On the other hand, Mr Lam submits that in the assessment of development value, a two-stage approach ought to be adopted:-

> "(a) Stage One: Whether it is more likely than not that such redevelopment will, in a no-scheme world, take place on the date of resumption; if this question is determined against a claimant, that would be the end of the matter ; and
>
> (b) Stage Two: If Stage One is determined in favour of a claimant, the Court/Tribunal would then proceed to conduct a valuation of the redevelopment potential."

32. Mr Lam submits that in Stage One, the approach in this

regard was explained by President Power in *Cheung Lai-wan v Director of Lands and Survey* (wrongly reported as Director of Public Works), [1977] HKLTLR 14, as follows:-

> "The Tribunal agrees that In re **Lucas and Chesterfield Gas & Water Board** is applicable in so far as it lays down, at 31, that when a value exists for possible purchasers, such as redevelopers, 'the owner is entitled to have this value taken into consideration' when compensation is being assessed. ... the Tribunal is satisfied that in broad terms the test to be applied in this regard in Hong Kong is still that laid down by Fletcher Moulton L.J. when he stated, at 30: 'The owner is to receive compensation based upon the market value of his lands as they stood before the scheme was authorized by which they are put to public purposes. Subject to that he is entitled to be paid the full price for this lands, and any or every element of value which they possess must be taken into consideration in so far as they increase the value to him .'
>
> Mr. Kan also referred to **Harding** *v* **Cardiff Corporation**. Again the Tribunal accepts the applicability of this decision in so far as it established, at 886, that where 'there might well have been several people ready to buy up properties (in a particular area) with a view to collecting a site worth redeveloping' this factor, must, where it is established to the satisfaction of the Tribunal, be taken into consideration as a factor increasing value when compensation is being assessed. The Tribunal further agrees that the words 'open market' are to be given the meaning attributed to them in the cases of **I.R.C.** *v* **Clay** and **Glass** *v* **Inland Revenue** ... We respectfully hold that Swinfen Eady L.J., at 475, of the former case, correctly set out the meaning of those words when he said: 'A value, ascertained by reference to the amount obtainable in an open market, shews an intention to include every possible purchaser. The market is to be the open market, as distinguished from an offer to a limited class only, such as the members of the family. The market is not necessarily an auction sale. The section means such amount as the land might be expected to realize if offered under conditions enabling every person desirous of purchasing to come in and make an offer, and if proper steps were taken to advertise the property and let all likely purchaser know that the land is in the market for sale.'
>
> These authorities establish that if it is shown that a property has an added value on the open market because of the likelihood that it will be incorporated into a scheme of

> redevelopment then this added value must be taken into account when compensation is being assessed. However before such a value can be attributed to the property the *likelihood of redevelopment* must be shown. It must be established, as it was to the satisfaction of the Tribunal in **Harding's case**, that 'there might well have been several people ready to buy up properties ... with a view to collecting a site worth redevelopment.' What the Tribunal was there saying was that they were, on the evidence before them in that claim satisfied on the balance of probabilities, of the existence of this possibility.
>
> What the Tribunal in the present case must ask is whether or not we are so satisfied. ... Having considered the matter the Tribunal feels that the redevelopment value of the sites on the evidence as it stands is so remote that it cannot be given any real weight."

33. Mr Lam further submits that *Cheung Lai-wan* is in line with later cases such as *Million-Add Development Ltd & Anor v Secretary for Transport* [1997] CPR 316 and *Joy Take Development Ltd & Others v Director of Lands* [2008] 6 HKC 232, and in short, in cases where a claimant claims compensation on the basis that the piece of land in question would be jointly developed with other pieces of land, the Court/Tribunal requires to be satisfied that it is more likely than not that the joint development would, but for the compulsory acquisition, occur on the date of resumption.

34. As to Stage Two, Mr Lam submits that after being satisfied on a balance of probabilities basis that compensation ought to be paid for redevelopment potential, the Court/Tribunal would then go on to look for comparables which have the same potential as the subject property, so as to give a value to the potential. This is the reverse of the scenario in *View Point Development Ltd & Another v Secretary for Transport* [2004] 2 HKC 52, where the Court had to look for comparables without

redevelopment potential. Such an approach is also in line with *Maori Trustee v Ministry of Works* [1959] AC 1 and *Transport for London (formerly London Underground Ltd) v Spirerose Ltd (in administration)*, supra, where the Court reiterated that compensation ought to be paid for "unrealized possibilities", not for "realized possibilities" (see also Judge Cruden's book, supra, p126).

35. Mr Lam submits that, in the present case, no compensation ought to be paid for any development value because:-

(a) But for the scheme, the chance of the Property being redeveloped together with all the other units in K21, or being acquired for the purpose of such redevelopment, at the date of resumption is remote; and

(b) The applicant has failed to prove such redevelopment value, by way of suitable comparables or other methodology, even assuming that such value in theory exists.

36. Although we agree with Mr Mak's submission that in determining the compensation for the resumption of a property, the claimant is entitled to include development value (if so justified), we also agree with Mr Lam's two-stage approach in assessing the compensation for development value.

37. In our view, *Cheung Lai-wan* sets out the test which the Tribunal should apply in the assessment of compensation payable to an

owner of a property with development value. Applying *Cheung Lai-wan* and considering Stage One, we have to examine if there were people ready to buy up properties in the subject lot with a view to collecting a site worth redeveloping.

38. There is no evidence before us that the owners of the subject lot were related to each other, or offers had been made to acquire their interests, other than from the respondent or the Urban Renewal Authority in association with the Hong Kong Housing Society. Applying the well established *Pointe Gourde* principle (*Pointe Gourde Quarrying and Transport Co v Sub-intendent of Crown Lands* [1947] AC 565), we should ignore the offers made under the K21 scheme.

39. According to Mr Wong, a developer, Yue Tai Hing or its associate companies, bought 3 properties at 422 Un Chau Street within K21 over a period of 12 years before 2005. Other than this, there is no evidence before us that of the 350 odd owners in the whole K21 site, there was any other majority owner. In fact, according to Mr Wong's own evidence, since 1985, in the vast area of Sham Shui Po covered by the plan at p 2235 of exhibit "A7", there were only 45 redevelopment projects as listed in p 2237 of Exhibit "A7". This is in line with observations during the site visit on 18 May 2011, where only sporadic redevelopments were seen, and they were relatively new and tall buildings surrounded by a sea of old Chinese tenement buildings.

40. We agree with the respondent that it is exactly because redevelopment by private developers in the area was too slow that the Urban Renewal Authority had to step in and implement the development

proposals K20, K21, K22 and K23. It is undisputed that, within the K21 area, there were 291 domestic premises and 59 non-domestic premises, of which the Property was only one. There were about 24 to 25 Chinese tenement buildings within the Scheme area, mostly of 4 or 5-storey high. The building in which the Property was situated was 6-storey high, with one unit on each floor. Over the years, there had been very little acquisition activities going on in the K21 area. The information produced by the applicant shows that since the year 1983, there were only three suspected acquisition transactions within the area, and among these three transactions, two were no more than loan activities not directly related to acquisition (it was only when the borrower defaulted in payment that the lender might be able to foreclose the properties). None of the suspected acquisition transactions occurred in the building in which the Property was situated.

41. Mr Wong agreed during cross-examination that the applicant might have to wait for about 10 years to have the Property developed, and he contended that the applicant had the financial ability to hold on to the Property for another 10 years. However, whether or not the applicant would be able to hold on to the Property for another 10 years or not is totally beside the point. The relevant date is the date of resumption, ie 15 October 2005. We have to consider the situation back in 2005. There is no evidence or no sufficient evidence to suggest that at the date of resumption, "there might well have been several people ready to buy up properties … with a view to collecting a site worth redevelopment" (see *Harding v Cardiff Corporation* (1971) 219 Estates Gazette 885).

42. The case of *Tak Shing Investment Co Ltd*, supra, is different

from the present case. In that case, it was held that in the assessment of development value, regard should have been made to the 2 flanking adjacent sites which were owned by one single owner. In the present case, almost all the owners in K21 were different. No single lot was owned by one owner. We are not satisfied that in a no-scheme world, there were several people ready to buy up properties in the subject lot with a view to collecting a site worth redeveloping on the date of resumption. We are not satisfied on the balance of probabilities that there was existence of this possibility. Thus, we do not find that there was any likelihood back in 2005 to have the Property redeveloped. In the circumstances, the applicant has failed to prove that the Stage One test in *Cheung Lai-wan* is satisfied.

43. Furthermore, we also agree with Mr Lam that the applicant has failed to prove the existence of development value by way of suitable comparables. In the course of Mr Wong's examination in chief in May 2011, we invited him to provide comparables which might already reflect the development value, so that the development value, if any, could be taken into account while using the direct comparison method. However, Mr Wong fails to produce any suitable comparables.

44. In *Nam Chun Investment Co Ltd v Director of Lands*, CACV 335 of 2003, Hon Rogers VP said that:-

> "Section 12 (d) requires the value to be taken as the amount that would be agreed between a willing buyer and willing seller. The best way of assessing compensation in accordance with these provisions is to take the amount of comparables as the starting point for the assessment. If the comparables taken are true comparables in terms of lease conditions and town planning orders, they will produce a result which reflects the

value required to be taken under section 12(d)."

45. Our suggestion to Mr Wong to look for comparables which might already reflect the development value follows the observation of Hon Rogers VP. However, there was no such comparable produced by the applicant.

46. As a matter of fact, as we shall examine later, in assessing the market value of the Property, Mr Lai produces 4 comparables, RC6, RC8, RC9 and RC10, which are shops in buildings of 8-storey high and may reflect the development value, if any, of the Property.

47. We also note that if the applicant is not willing to sell unless she could obtain a price which includes development value from either a developer or an investor, then the applicant is not a willing seller in the open market. In *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111, Lord Nicholls of Birkenhead said that:-

> "The purpose … is to provide fair compensation for a claimant whose land has been compulsorily taken from him. This is sometimes described as the principle of equivalence. No allowance is to be made because the resumption or acquisition was compulsory; and land is to be valued at the price it might be expected to realise if sold by a willing seller, not an unwilling seller. But subject to these qualifications, a claimant is entitled to be compensated fairly and fully for his loss. Conversely, and built into the concept of fair compensation, is the corollary that a claimant is not entitled to receive more than fair compensation: a person is entitled to compensation for losses fairly attributable to the taking of his land, but not to any greater amount. It is ultimately by this touchstone, with its two facets, that all claims for compensation succeed or fail."

48. We are of the view that by insisting that she would only sell

to someone offering a price which included development value, the applicant would not be compensated as a willing seller and she would be compensated more than fairly as mentioned in the case of *Shun Fung Ironworks Ltd*, supra. This would not satisfy the requirement in section 12(d) of the Ordinance.

49. Mr Mak, however, submits that if there is little or even total lack of evidence of likelihood of development, the Tribunal will do its best, by making a discount, perhaps a substantial discount, to measure that value. Mr Mak relies on the case of *Spirerose*, supra, to suggest that the potential for development has to be valued by discounting for future uncertainties, and as said in that case:-

> "the principles applicable were that the value of land the subject of compulsory acquisition was its open market value, any depression in the price that it might be expected to fetch caused by the scheme was to be disregarded, the valuation had to take into account its potential, including its potential for development, and that potential had to be valued by discounting for future uncertainties".

50. Mr Mak also relies on *Potter v London Borough of Hillingdon* [2010] UKUT 212 (LC). It was held by the English Lands Tribunal in that case that a prospective purchaser would have paid the full potential development value of the land resumed but that any such potential value must be discounted for delay and risk.

51. Mr Mak further relies on *Tsang Chun Ki & Wong Yuet Sin v Director of Engineering Development*, MTR Reference 2 of 1984, where the Tribunal held that redevelopment potential existed and the likelihood of redevelopment may also be established by different and far less

positive evidence. For example, in *Director of Lands & Survey v Cheung Ping-kwan* (1978) HKLTLR 101, there was evidence of redevelopment in the vicinity of the resumed property but no evidence of any redevelopment plans for the resumed property. The Tribunal inspected the locality and from that merely visual evidence was prepared to find that a merger of the resumed property with two of its neighbours "was likely within a foreseeable time scale and that such a merger would result in a viable redevelopment scheme."

52. We do not agree that either *Spirerose* or *Potter* is applicable, as they were concerned with valuation of the whole site in question. Here we are dealing with only 1/6th share in the subject lot. Not until the owners in the subject lot have joined together, there is no question of valuing development value of the subject lot. Likewise, *Cheung Ping-kwan* is not applicable as it was concerned with a site and there was evidence that it could be developed with the adjourning sites.

53. Although *Tsang Chun Ki* was concerned with a flat, it is still different from the present case in that the assessment was based on the evidence from a comparable. It only establishes that if redevelopment value is proved to exist, the valuation may be made by applying a discount to the value of the comparable on vacant possession basis, rather than subject to tenancy. It does not help the applicant in the present case.

RESIDUAL VALUATION

54. We have already held that there was no evidence to reflect development value in the Property, and hence the applicant fails to satisfy

us at Stage One. Nevertheless, for the sake of completeness, we shall still deal with Stage Two below.

55. As advised by Mr Wong, the applicant claims compensation including development value of the Property by reference to residual valuation, and before any discount is given for the extent of likelihood for development by merger of site, the value is at $56,951,770.

56. In his assessment, Mr Wong first of all determines the land value of the whole site comprised in the K21 scheme by residual valuation. He then apportions the land value to the subject lot by the proportion of the site area of the subject lot to the total site area of K21. Mr Wong then further apportions the value so ascribed by the existing use value of the Property bears to the existing use value of all the units on the subject lot.

57. Mr Mak submits that in a compulsory sale order granted under the Land (Compulsory Sale for Redevelopment) Ordinance, Cap 545, the Lands Tribunal is required to include development potential in the determination of the reserve price. The aim is to protect minority owner. If a minority owner is to be protected in an order for sale by the majority, it is difficult to see why the applicant, being also a minority owner, should not be protected similarly. Otherwise there can be no sufficient balance of the right and interests of the owner and that of the public interest.

58. In our opinion, residual valuation is just one of the methods to value development value. It is a means to an end. However, by

adopting this approach, the applicant would be compensated for value that she would not be able to establish, had there not been any resumption. This is not in line with the principles in *Maori Trustee* and *Spirerose*, supra. It is clearly not appropriate to use the residual valuation method in the present case when there was no evidence to support any development value.

59. We also find it inappropriate to relate Cap 545 with the Ordinance. Cap 545 concerns with the situations where there will definitely be redevelopment. The Ordinance only concerns with the open market value of the property in question at the date of resumption, and redevelopment (apart from the one intended for the resumption which should not be taken into account) would not necessarily happen. The two ordinances operate under completely different situations and criteria. Under the Ordinance, compensation is to be assessed in a "no scheme world"; whereas under Cap 545, the minority owner will have a share of the prospect of redevelopment reflected in the auctioned price. Thus, we do not see any merit in the applicant's argument.

PREMIUM RATIO

60. As an alternative, the applicant claims compensation by reference to the premium ratio approach suggested by Mr Wong. By multiplying a ratio or multiplier of 3.44 to the existing use value of $7,727,610, Mr Wong arrives at a sum of $26,582,978.40.

61. Mr Mak accepts that this is a novel approach. He quotes the speech of the Secretary for Development that a ratio or multiplier of 2.66 of the existing use value of a property may be expected by the owner

in the event of an auction under an order for compulsory sale of the Lands Tribunal pursuant to Cap 545.

62. According to Mr Wong, the premium ratio represents the historic difference between purchase offers resulting in development and those that do not result in development. This ratio, according to his assessment, should be 3.51. He submits that the systematic approach to arrive at 3.51 is a reasonable approach. The starting point is to select appropriate comparables, which consists of 45 redevelopment sites in the vicinity of the Property. 13 comparables are then selected to examine the unused plot ratio and planning use. In his analysis, only 38 Hing Wah Street (with a multiple or Premium Ratio of 3.46) and 477-487 Shun Ning Road (with a multiple or Premium Ratio of 3.42) appear to be suitable comparables. These two comparables are sufficiently good for comparison with the subject lot. In particular, the 38 Hing Wah Street development includes two of the shop comparables of the respondent, which must be assumed to be good equivalents with the subject lot. If 12-22 Davies Street is included, the average is 3.51. If not, the average premium ratio is 3.44. Applying 3.44, the claim is $26,582,978.40.

63. Mr Lam, on the other hand, submits that this approach ought to be rejected without further ado. According to Mr Wong himself, as stated in his report, the acquisition price that a developer is willing to pay depends on the stage of acquisition. It is undisputed that the Hing Wah and Shun Ning acquisitions were at a very late stage (if not the last batch) of acquisition. The price that a developer might be willing to pay for these acquisitions is totally irrelevant to what he might be willing to pay to buy the Property (assuming there was an interested developer around),

which was situated in a site in respect of which there was hardly any acquisition activity at all. The sample size is in any event too small for any generalization.

64. Mr Lam also comments on the premium ratios calculated from the Hing Wah, Shun Ning and Davies acquisitions. For the Hing Wah acquisition, Mr Lam submits that the exercise is of no value whatsoever because of the following:-

(1) Adjustments have to be made for a host of other factors and the accuracy of such adjustments gravely affects the accuracy of the exercise.

(2) Substantial adjustments have to be made for size and time, thus making the resulting figure unreliable.

(3) In calculating the price without redevelopment value, an average is taken between two sets of figures which are substantially apart (one in the region of $12,000 and the other $8,000). Such an averaging exercise is meaningless.

(4) The transacted sale at G/F, No. 27A Hing Wah Street is very close in age and nature to the Property, but Mr Wong claims that it has no redevelopment value. If there is no redevelopment value in the transacted sale, why is there such value in the Property?

(5) The same “market value on basis of Existing Use Value” is

used for both the 1st and 2nd acquisitions, when the difference in price index between the time of these two acquisitions differed by as much as 46.07%.

65. For the Shun Ning acquisition, Mr Lam submits that the exercise is again futile because:-

(1) The exercise combined shop and residential premises. Mr Wong admits under cross-examination that the premium which a developer is willing to pay for residential premises may be different from shop premises.

(2) The adjustments for other factors also make the exercise valueless.

(3) 3 shop comparables in Po On Road were used to calculate the existing use value. Vast adjustments for location, size and time are required, gravely affecting the accuracy of the exercise.

(4) After adjustment, shop premises are even cheaper than residential premises. This makes a mockery of the entire exercise.

(5) In any event, the resulting figure is only in relation to the situation in 1999, and has little relevance to the situation in 2005.

66. For the Davies Street acquisitions, Mr Lam queries that although analysis has been done for both domestic and shop premises, only premium ratio related to shop premises is used by Mr Wong, and it was a waste of time to analyse domestic premises. He submits that the exercise is also futile because:-

(1) Davies Street is situated in Hong Kong Island. Mr Wong admits under cross-examination that there may be a great difference between the premium that a developer is willing to pay for land in Hong Kong Island and the premium for land in Sham Shui Po.

(2) Some of the shop premises used for the calculation of existing use value were built in the 1960s. If they had no redevelopment value, why would the Property have such value?

(3) Substantial adjustments have to be made for other factors.

67. We agree with Mr Lam's analysis of the weakness and unreasonableness of the premium ratio approach advocated by Mr Wong. We would add that in the samples cited to us, the premium ratio ranges between 2.66, being the average of some of the Cap 545 cases, and 3.65, for a development site in Davies Street. Even in Mr Wong's evidence, he only identifies 13 sites out of 45 redevelopment sites in the vicinity of the Property for examination. Of these 13 sites, only 2 are suitable comparables according to Mr Wong. In the end, he has to rely on a transaction in Davies Street on Hong Kong Island to support his approach.

We are very doubtful of the accuracy and reliability of Mr Wong's novel approach. It is extremely arbitrary. We do not accept that the premium ratio approach is used by professional valuers in assessing the market value of properties with development potential. In our view, there are other more conventional and well tested valuation methods which can be applied to value the compensation payable to the applicant. We therefore do not accept Mr Wong's proposed premium ratio approach, even if the Property had development value.

MARKET VALUE

68. We agree with the respondent that the direct comparison method is the best approach in valuing the market value of the Property. Although Mr Wong alleges that this approach only reflects the existing use value, we do not agree with him and are of the view that this approach can assess the true market value of the Property. If the Property had any development value, it would also be reflected in the comparables.

The Property

69. When we had site inspection in May 2011, we found that the areas covered by the development proposals K21 (which encompassed the Property) and K22 (which were on the opposite side of Un Chau Street) had become development sites. Hence, we have to rely on the photographs produced and the evidence adduced by the parties to ascertain the situation back in 2005. Mr Wong produced some video clips taken at the junction of Un Chau Street and Cheung Wah Street between 25 September and 31 October 2010. However, we do not find these video clips helpful, as they were not taken at the Property and they

were taken only about 7 months earlier than our site visit, but still some 5 years after the valuation date.

70. Mr Wong describes the Property as located at or very near to the junction of Cheung Wah Street and Un Chau Street. This is rather misleading and we cannot agree. As a matter of fact, the Property was not located at the junction of Cheung Wah Street and Un Chau Street. As can be seen on the plans shown to us at the hearing (for example, the plan at page 2235 of Exhibit "A7"), it was located almost in the middle between Cheung Wah Street and Hing Wah Street. This is not the same as "very near" to the junction of Cheung Wah Street and Un Chau Street.

71. Mr Wong also alleges that the Property had a strategic position, in that it was placed at the centre of a large number of residential buildings clustered with low to middle income accommodation. On the evidence, we note that these "residential buildings" were just old tenement buildings.

72. Mr Wong places a lot of emphasis in advocating that a minibus terminus of 7 routes is located just across the street and that a large number of passengers setting down are expected. Although we cannot step back to 2005, during our site inspection in May 2011, we were able to see the minibus terminus at Un Chau Street as it stood in 2011. There is no evidence produced by both parties that there was any substantial difference between 2005 and 2011, in so far as the minibus terminus is concerned.

73. Before the hearing, Mr Wong and Mr Lai had different

views on some of the measurements and the calculation of the effective floor area of the Property. At the end of the hearing, the two experts were able to narrow down the differences.

74. The agreed measurements of the Property are:-

(1) Ground Floor 63.47 m²
(2) Yard 23.88 m²
(3) Headroom 2.743 m

75. The following items are not agreed:-

Item		Mr Wong		Mr Lai	
		Area	Conversion Factor	Area	Conversion Factor
(a)	Area under staircase	5.20 m²	1/2	4.04 m²	1/2
(b)	Covered yard	23.88 m²	1/4	23.88 m²	1/6
(c)	Enclosed cockloft	19.91 m²	1/2.5	21.24 m²	1/4
(d)	Frontage	3.362 m	N/A	3.63 m	N/A

Area under staircase

76. Mr Mak submits that the applicant can alter any part of her premises to provide maximum use, so long as it is not unauthorized structure. In the present case there is never any suggestion of unauthorized works. In Mr Mak's submission, 5.2 m² is therefore the correct figure to be used.

77. Mr Lam submits that Mr Wong's measurement is based, not

on the approved building plan, but on a new position of an internal staircase apparently constructed without proper authorization.

78. We agree with Mr Lam that since there is no evidence that the new position of the internal staircase is authorized, we should adopt Mr Lai's calculation rather than Mr Wong's. The area should be 4.04 m^2.

79. We also agree with the conversion factor of 1/2 used by both experts.

Covered yard

80. Mr Wong maintains that since the yard is covered, it should be valued as such. Since there is no suggestion of any unauthorized work, the yard may be considered to be covered yard, under section 41(3) of the Buildings Ordinance, as exempted works. He proposes a conversion factor of 1/4. However, Mr Wong could not produce any evidence showing that the cover is authorized and just argues that the applicant has been using it for a long period of time. When we raised the question to Mr Wong that if the structure covering the yard was not authorized, this would be unauthorized building works and how would he value unauthorized building works, Mr Wong was evasive.

81. We hold that since there is no evidence that the majority of the covering to the yard was authorized, we prefer Mr Lai's conversion factor of 1/6.

Cockloft

82. Mr Wong's area is 19.91 m² and Mr Lai, 21.24 m². Both experts confirm that their figures were from measurement of plans. However, their details of measurement or calculation were not shown to us. Doing the best we can, we determine the area to be 20.58 m² by taking the average of the two figures.

83. Mr Wong adopts a conversion factor of 1/2.5. To support his methodology, Mr Wong produces 3 sets of "comparables", which are sales analysis of ground floor shops and mezzanine floor commercial units.

84. Mr Lam submits that such an exercise is devoid of meaning because:-

(1) All three sets of "comparables" are in respect of mezzanine floor premises, which are very different from cocklofts.

(2) Substantial adjustments have to be made for the other factors (eg size). The accuracy of such adjustments greatly affects the reliability of the figure advocated by Mr Wong.

(3) The sample size is too small to be reliable.

(4) The resulting figures from the exercise range from 30.225% to 31.16%. There is no satisfactory explanation as to why 1/2.5 (i.e., 40%) is adopted by Mr Wong.

85. In response to Mr Lam's criticism, Mr Mak submits that:-

(1) The 3 sets of "comparables" are in respect of mezzanine floor, but they are not necessary better in terms of usage, as separate access/ staircase would have to be used.

(2) Adjustments made are said to be substantial. However, Mr Lai makes no effort to suggest suitable comparables, and makes no suggestion what adjustments are appropriate.

(3) Sample size of 3 is not too small. The comparables are near the locality of the Property.

(4) The criticism of use of 1/2.5 or 40% is that there is no satisfactory explanation why it should differ from the range of 30.225% to 31.16%. However, if this is a sensible criticism, it amounts to a suggestion that the conversion factor of 1/3 should be used.

(5) The rule of thumb is 1/3 which is not substantially different from 1/2.5. The difference between 1/2.5 and 1/3 is 1/15 which is not a significant difference for the adjusted area. The difference is actually 1/15 x 23.88 = 1.592 m.

86. On the other hand, Mr Lai adopts a conventional conversion factor of 1/4, which is used in *Poon Chao Fai v Director of Lands*, LDLR 6 of 1998.

87. We do not accept Mr Wong's analysis. A cockloft is very different to a mezzanine floor. A cockloft is part and parcel of the ground floor, without unauthorized alteration, accessible only from within. We agree with Mr Lam that Mr Wong's exercise is devoid of meaning. After considering the 2 different approaches of the experts, we prefer the methodology of Mr Lai and adopt a conversion factor of 1/4.

Frontage

88. Mr Mak submits that Mr Wong's figure is less favourable to the applicant. Both experts have not produced details to support their evidence. In our view, the minor difference has no bearing on the valuation of the Property. However, for completeness, we shall adopt 3.5 m as the frontage.

High headroom

89. In the calculation of effective floor area, Mr Wong applies an increase of 10% because the high headroom of 5.18 m of the Property commands 10% higher in value (not in area) than lower headroom of 2.74 m. Therefore notwithstanding the adjustment is in fact made in the area, this has no difference in impact on the adjustment in value.

90. Mr Lam submits that this approach is unconventional, subjective, and without justification.

91. In our view, if there is a difference in headroom between the Property and any of the comparables, any adjustment should be made in the analysis of the comparables. Mr Wong's approach is amounting to

double counting. We reject his methodology.

Effective Floor Area

92. Our assessment of the effective floor area of the Property is:-

Item		Area	Conversion Factor	Effective Floor Area
(1)	Ground Floor	63.47 m²	N/A	63.47 m²
(2)	Area under staircase	4.04 m²	1/2	2.02 m²
(3)	Covered yard	23.88 m²	1/6	3.98 m²
(4)	Enclosed cockloft	20.58 m²	1/4	5.15 m²
Total				74.62 m²

Direct Comparison Method

93. Between the experts, it is common ground that the Direct Comparison Method should be used as the primary method of valuation. Both experts analyze comparables and apply the adjusted unit rate to the effective floor area to determine the market value of the Property, although in Mr Wong's valuation, this is his existing use value.

94. Mr Wong's valuation on this basis is $7,727,610 or $8,126,081, whereas Mr Lai's revised valuation is $4,666,000.

Comparables

95. Both experts are wide apart in the choice of comparables and their appropriate adjustments. Mr Wong does not agree to any of the 10 comparables of Mr Lai nor Mr Lai to Mr Wong's 4 comparables.

96. The comparables are:-

Mr Wong's comparables

Ref.	Date of Transaction	Location	Price	Area m²
EUV-1	13/10/2005	Shop 1C, LG/F, Lai Bo Garden 38 Cheung Wah Street	$1,570,000	11.61
EUV-2	5/10/2005	Shop 7A-7C Federal Plaza 550-554 Fuk Wing Street	$7,300,000	41.25
EUV-3	30/9/2005	Shop 1 Campion Court 20 Cheung Wah Street	$1,700,000	8.76
EUV-4	13/9/2005	Shop 2 Peaceful Mansion 283 Shun Ning Road	$12,800,000	58.34

Mr Lai's comparables

Ref.	Date of Transaction	Location	Price	Area m²
RC1	3/4/2006	Shop 14 Golden Jade Heights Nos.482-492 Un Chau Street	$3,480,000	48.2
RC2	11/11/2005	Shop 3 Hing Wah Apartments 38 Hing Wah Street	$2,950,000	32.6

RC3	11/11/2005	Shop 5 Hing Wah Apartments 38 Hing Wah Street	$2,450,000	28
RC4	14/9/2005	Shop 12 Golden Jade Heights 482-492 Un Chau Street	$2,980,000	46.37
RC5	19/4/2005	Shop A, Lun May Building 386-390 Castle Peak Road	$5,900,000	92
RC6	18/3/2005	G/F, 27B Hing Wah Street	$4,000,000	57.13
RC7	21/2/2005	Shops C & D Chiu Tak Mansion 373-379 Caste Peak Road	$12,080,000	158.49
RC8	30/1/2005	G/F, 561 Fuk Wing Street	$2,570,000	53.65
RC9	29/1/2005	G/F, 567 Fuk Wing Street	$2,980,000	52.78
RC10	25/1/2005	G/F, 383 Castle Peak Road	$5,200,000	83.27

Location

97. In Mr Wong's opinion, one important feature of the Property is that it has a "strategic" position in the locality, which can be regarded as the centre of a hinterland according to the Central Place Theory. The locality of the Property, particularly at the junction of Cheung Wah Street and Un Chau Street, is the hub of the bustling commercial area serving

the local residents and the commercial buildings with the operation of a franchised minibus terminus nearby. The position of the Property is within the central point of this commercial area.

98. We reject Mr Wong's opinion outright for the simple reason that if, the position of the Property is at or near the centre of a bustling commercial area, this is not reflected by the uses of the Property and its neighbouring shops which are largely workshop type. We find no justification in Mr Wong's adjustments for location in the comparables.

99. In our view, in valuing the Property, it is not necessary to rely on any academic theory, such as the Central Place Theory. Reference should be based on evidence from analyzing suitable comparables, and making suitable adjustments to relevant factors, such as pedestrian flow.

100. We have also found earlier that the location of the Property is not at the junction of Cheung Wah Street and Un Chau Street. There is no merit whatsoever in Mr Wong's opinion.

Blighted Effect

101. Mr Mak submits that if Mr Lai's comparables were to be used, any blighted effect due to the resumption should be removed. This proposition is the reverse of the Pointe Gourde principle. In *Melwood Units Pty Ltd v Commissioner of Main Roads* [1979] AC 426, 37 acres of land were severed into a north and south block. The Privy Council was satisfied that but for the resumption, planning permission would have been granted for the whole 37 acres. It was held that the *Pointe Gourde*

principle applied in reverse. Secondly, it was also held that foreknowledge of a road having a depressive effect should be excluded.

102. Mr Mak further submits that in the present case, the blighted effect of K20, K22, K23 projects, or the foreknowledge of these projects, between commencement of negotiation (in 2004) and the resumption date (October 2005) has the impact of reducing the value of the Property. The effect of the blight operated from the moment when the Hong Kong Housing Society commenced negotiation in July 2004, stating clearly that the Housing Society intended to redevelop comprehensively as an urban renewal project in association with the Urban Renewal Authority, and that it had the right to apply to the Secretary for Housing, Planning and Lands to recommend land resumption. The scope of the redevelopment did not include K21 alone, but was extended to K20, K21, K22 and K23.

103. Mr Wong rejects Mr Lai's comparables because in Mr Wong's opinion, Mr Lai has failed to prove his comparables are suitable because of the blighted effect. According to Mr Wong, there are two dimensions to the blighted effect. Firstly the five URA redevelopment projects had a blighted effect on the location factor of Mr Lai's comparables. Pedestrian flow was also affected due to people moving out from the URA projects. Secondly, when people moved out in a substantial form this would render Mr Lai's comparables not suitable for use. Mr Wong is of the view that the blighted effect of the URA projects, or the foreknowledge of these projects, had the impact of reducing the value of Mr Lai's comparables at the valuation date.

104. To establish that Mr Lai's comparables RC2, RC3, RC5,

RC6, RC7 and RC10 are unsuitable because they were subject to blighted effect, Mr Wong makes comparison between the following transactions:-

(a) RC1 with RC4;
(b) RC2 and RC3 with RC6;
(c) RC5 with RC10;
(d) RC8 with RC9;
(e) RC1 with RC8 and RC9; and
(f) RC4 with RC8 and RC9.

105. Mr Lam submits that such an exercise is wholly irrational and pointless, for the following reasons:-

(a) The combination of comparables chosen for comparison is entirely arbitrary.

(b) All other adjustment factors are simply ignored and the price difference attributed entirely to time.

(c) The analysis shows an increase in value with the approach of resumption and beyond. The exercise negates blighted effect rather than proving it.

106. Mr Lam criticizes Mr Wong contradicts himself in this respect by adopting EUV-3, which Mr Wong calls "the best comparable" and "the best evidence", because EUV-3 is closer to the K21 site than any of the RCs. If blighted effect did exist, EUV-3 should be the first to be disregarded.

107. After considering carefully Mr Wong's exercise, we reject his proposition. In Mr Wong's opinion, RC2, RC3, RC5, RC6, RC7 and RC10 should not be used because they were subjected to blighted effect. If Mr Wong wishes to prove his case, he should compare these comparables with Mr Lai's remaining comparables, ie RC1, RC4, RC8 and RC9 to see if there is any substantial difference in the adjusted rates. However, all the comparisons of Mr Wong are between either comparables which Mr Wong asserts were subjected to blighted effect, or not subjected to blighted effect. There is no comparison between comparables with and without blighted effect. We find Mr Wong has failed to prove there was blighted effect in any of Mr Lai's comparables.

Mr Wong's Comparables

EUV-1

108. EUV-1 is a shop at Shun Ning Road, near the junction with Cheung Wah Street. During our site inspection, we find the locality distinctly different to Un Chau Street, without the busy vehicular traffic. The shop is very small.

109. Mr Mak submits that location should be the primary consideration in deciding whether a comparable is suitable. Size comes with secondary importance. The logic is relatively simple, no matter how similar the size a potential comparable is, if it is situated in a different district, it would not be a suitable comparable as objectivity and arbitrariness would inevitably arise on adjustment on location and other matters. On the other hand, difference in size can be made up by relatively simple adjustments to size and perhaps frontage. The small size

of EUV-1 is well compensated because of Mr Wong's -30% adjustment to size. Such adjustment should not be considered to be too large. This is because the prices of comparables RC8 and RC9 of Mr Lai have reflected the volatility of the prices, despite their very close proximity to each other. Their transaction prices differ by 17.8%, and despite the transactions differ only by one day.

110. Mr Lam submits that EUV-1 is unsuitable, and ought to be rejected because it is extremely small. EUV-1's size is only about 15.4% of the Property.

111. We find EUV-1 not a suitable comparable because it is too small. We reject it for exactly the same reason as Mr Mak's reason in not rejecting it. A -30% adjustment in size speaks of itself.

EUV-2

112. EUV-2 is located at the junction of Castle Peak Road and Fuk Wing Street. The shop also opens to an internal arcade of the shopping complex.

113. Mr Lam submits that EUV-2 enjoys triple frontage and is at the busy junction of Castle Peak Road and Fuk Wing Street, close to the industrial area in Castle Peak Road. It is of a totally different character and class from the Property.

114. Whilst we do not agree to reject EUV-2 as a suitable comparable because of location, we agree with Mr Lam that its triple frontage is of a totally different character from the Property. We reject

EUV-2.

EUV-3

115. EUV-3 is very near the Property, on the same side of Un Chau Street and close to the junction with Cheung Wah Street. It has a return frontage to a small side lane from Un Chau Street.

116. Mr Mak submits that, similar to EUV-1, the small size of EUV-3 is well compensated because of -35% adjustment to size. EUV-3 is in close proximity to the Property. Purchase of this property for development purpose should not be discounted. Exclusion of this property only on ground of size is inappropriate.

117. Mr Mak relies on *Chung Pui Hing and Tam Wai Ling v The Director of Lands* LDLR 2 of 2008, where it was held that the most important factor governing the value of a shop is location.

118. Mr Lam submits that EUV-3 is unsuitable, and ought to be rejected because it is extremely small. EUV-3's area is only about 11.6% of the Property.

119. We find EUV-3 not a suitable comparable. In addition to being too small, EUV-3 has a return frontage to a side lane, making it very different in character to the Property. We also do not understand Mr Mak's submission that the shop could be purchased for development purposes because the building is fairly new, completed in 1996.

120. Regarding Mr Mak's reliance on *Chung Pui Hing*, we

observe that despite the remarks of the Tribunal, in the end the comparables adopted by the Tribunal were with sizes ranging from 12.06 m² to 25.81 m², comparing to the size of the subject property in that case of 10.31 m².

EUV-4

121. EUV-4 is located at Shun Ning Road, directly opposite a wet market. We find the location completely different from the Property.

122. Mr Lam submits that EUV-4 is right within the market place in Shun Ning Road, and far away from the Property. It is situated in a locality of totally different character.

123. We agree with Mr Lam that the location of EUV-4 within the market place is totally different to the Property. We reject EUV-4.

Mr Lai's Comparables

Measurements of the Comparables

124. All measurements of RCs are agreed between the experts. The only disagreement, which gives rise to different effective floor areas for RC6, RC8, RC9 and RC10, is whether the yard of these comparables ought to be taken into account in the calculation.

125. Mr Wong refuses to take the yards into account, on the ground that service facilities are located in these comparables.

126. Mr Mak submits that the respondent has the burden of proof that the yard in all the comparables is part of the comparable property,

that the yard in question could be used for useful purpose. He relies on *Rand Company Ltd v Director of Lands* LDLR 7 of 2001, where it was held that as it is not proved that the occupier has used the yard, there being no evidence that the yard forms part of the property, the yard should be excluded.

127. Mr Lai uses a conversion factor of 1/4.

128. In our view, there is no evidence that the yard is not part of the comparable. *Rand* is not applicable. However, the size of the yard is very small. We hold that the appropriate conversion factor should be 1/6.

RC1and RC4

129. RC1 and RC4 are both situated at Un Chau Street, on the same side as the Property. They are located further along Un Chau Street towards Castle Peak Road than the Property.

130. Mr Wong's objection to RC1 and RC4 is on the basis that they are of different character from the Property in terms of locality. They are industrial and distinctly different from the residential character of the Property. The 2 comparables are situated in a locality comprising printing, metal-ware, car-repair, and logistic trade's shops.

131. Mr Lam submits that it is however undisputed that the locality of the Property is similarly made up of glass shop, building material shop, metal shop, and locksmith. The locality at which RC1 and RC4 is situated is even more superior to that of the Property. Mr

Wong's ground of objection is wholly without merits.

132. We find RC1 and RC4 to be good comparables because they are on the same side of Un Chau Street as the Property, and in close proximity. From what we observe from our site inspection, we are disturbed to note Mr Wong's comment that the locality is industrial, which is by no means true. Except for age, we find the characters of the 2 comparables and the Property are very similar. The 2 comparables are also directly opposite a mini-bus terminus, similar to the Property as advocated by Mr Wong.

RC2 and RC3

133. RC2 and RC3 are situated at Hing Wah Street, between Castle Peak Road and Shun Ning Road.

134. In Mr Wong's view, RC2 and RC3 should be considered as one unit. As a matter of fact, they are used as a single unit, as a restaurant. Before selling as RC2 and RC3 to 2 different owners, they were bought together by one owner and rented to the same tenant. Since RC2 and RC3 are used as a single unit, there should not be any size adjustment. This is because the combined size of the two units is 60.6 m^2 and the difference with the Property is only 14.14 m^2. Adopting Mr Lai's approach, no adjustment on size should be made if the size difference is less than 20 m^2.

135. Mr Wong is also of the opinion that the 2 comparables are situated in an area which has a much wider road (Hing Wah Street) separated by long and large stretch of flower beds from the other side of

the road. They do not enjoy any advantage of mini-bus stop and has no public transport stops. They are inferior to the Property.

136. Mr Lam agrees that RC 2 and RC3 are used as a single unit, as a restaurant. However the two premises were sold to two different purchasers and there is no evidence to show that the two purchasers are related.

137. We find the size of RC2 is only 51.36% of the Property and RC3, 44.12%. Since they are Mr Lai's comparables and he adopts them as separate comparables, we conclude that we should not use them as suitable comparables in the present exercise, particularly when there are other more suitable comparables for the purpose of comparison.

RC5

138. RC5 is situated at Castle Peak Road. It is next to K20.

139. In Mr Wong's opinion, the transaction date is 19 April 2005 when a large number of residents in K20 must have moved away. The blighted effect would have set in and yet no account is taken of this fact by Mr Lai. The photos exhibited show much less pedestrian flow and prove RC5 being inferior to the Property. Castle Peak Road is apparently more heavily used by buses and any effect of pedestrian flow from the opposite side of the road is lessened.

140. Mr Lam submits that RC5 is situated right at the busy Castle Peak Road, a thoroughfare with heavy traffic and pedestrian flow. There are bus stops right in front of the shop. The locality of the shop is

definitely more superior to that of the Property.

141. We have already ruled out blighted effect. We agree Castle Peak Road is a busy street. The bus stops in front of the shop should have added value. We find RC5 is superior to the Property in terms of location.

RC6

142. RC6 is situated at Hing Wah Street, between Castle Peak Road and Shun Ning Road, on the opposite side as to RC2 and RC3.

143. Mr Wong opines that RC6 is separated by a long and wide stretch of flower beds from the opposite side of Hing Wah Street. Pedestrians are not turning from Castle Peak Road into Hing Wah Street to approach RC6.

144. Mr Lam submits that the junction of Hing Wah Street and Castle Peak Road is a busy area. The junction brings pedestrians to RC6. The locality is more superior to that of the Property.

145. From what we observe, we consider RC6 is similar in location to the Property. Any advantage in the pedestrian flow from Castle Peak Road is offset by the reduction in vehicular traffic when comparing to the Property.

RC7 and RC10

146. RC7 and RC10 are at Castle Peak Road, near the junction with Hing Wah Street.

147. Mr Wong's objection to the use of these 2 comparables is also that blighted effect would have set in at the transaction dates but no account is taken of this fact with an upward adjustment on location by Mr Lai. In Mr Wong's opinion, the 2 comparables are inferior to the Property. There are no mini-bus stops on the other side of the street. Again Castle Peak Road is apparently more heavily used by buses and any effect of pedestrian flow from the opposite side of the road is lessened.

148. Mr Lam submits that RC7 and RC10 are similar to RC5.

149. We reject Mr Wong's opinion that the location of the 2 comparables is inferior to the Property. From our observation during the site inspection, we find Castle Peak Road a busy shopping street, with retail shops catering for the daily requirements of the local residents. Indeed we are very surprised that given the claim by Mr Wong of his intimate local knowledge, he would have considered the 2 comparables inferior to the Property in terms of location. We are very doubtful of Mr Wong's professional judgment.

RC8 and RC9

150. RC8 and RC9 are located at Fuk Wing Street, between Castle Peak Road and Cheung Wah Street.

151. In Mr Wong's opinion, RC8 and RC9 are of different characters in terms of locality. They do not suffer from the objection of

a blighted effect.

152. Mr Lam submits that the locality bears resemblance with that of the Property, both being occupied predominantly by retail-cum-workshop type of shops. He admits that the locality is inferior to the Property.

153. We reject Mr Wong's opinion that RC8 and RC9 are of different characters in terms of locality. We find that although the location of the 2 comparables is inferior to the Property, they share the same characteristics in many aspects. We accept RC8 and RC9 are good comparables.

154. The effective area and unit rate before adjustment of the comparables adopted by us are:-

Ref.	Price	Area m²	Cockloft Yard Area m²	Factor	Area m²	Effective Area m²	Unit Rate /m²
RC1	$3,480,000	48.2				48.2	$72,199
RC4	$2,980,000	46.37				46.37	$64,266
RC5	$5,900,000	92				92	$64,130
RC6	$4,000,000	57.13	6.19	1/6	1.03	58.16	$68,776
RC7	$12,080,000	158.49				158.49	$76,219
RC8	$2,570,000	53.65		1/6		54.28	$47,347

			3.80		0.63		
RC9	$2,980,000	52.78	3.86	1/6	0.64	53.42	$55,784
RC10	$5,200,000	83.27	75.90 8.43	1/4 1/6	18.98 1.41	103.66	$50,164

Factors of Adjustment and the Appropriate Adjustment

Time

155. Both experts use the Rating & Valuation Department's Private Retail - Price Indices ("R & V Indices") for the whole territory of Hong Kong.

156. Although both experts agree the time adjustments for RC2 to RC10 (inclusive), for RC1, Mr Wong's adjustment is +2% whilst Mr Lai, -2%. Both experts agree the R & V Indices for RC1 and the Property are respectively 155.8 and 153.2. Based on a simple mathematical calculation, Mr Wong clearly has made a mistake. We accept Mr Lai's figure and reject Mr Wong's.

Date of Transaction of Comparables

157. Mr Mak submits that if reference is made to transactions entered by way of provisional sale and purchase agreement, this is at the most only "provisional" and cannot be market value information. This is because firstly, the provisional agreement has a standard clause that one party can withdraw by forfeiting the deposit together with another amount of the deposit. This is commonly known as double penalty clause. Further, provisional agreement is not registered and hence it

cannot be market information. Formal sale and purchase agreements are registered in the Land Registry and both parties could claim for specific performance. Therefore the date for formal sale and purchase agreement ought to be adopted.

158. Mr Lai uses the date of provisional sale and purchase agreement as the date of transaction.

159. We reject Mr Mak's submission. If the sale is cancelled after the signing of sale and purchase agreement (whether provisional or otherwise), this should not be relied on by the experts as market evidence. We do not agree that an agreement must be registered at the Land Registry before experts may use it as market evidence. Tenancy agreements are often not registered and there is no reason why experts may not use them in determining market rents.

Location

160. In his adjustments for RCs , Mr Wong divides the factor for location into 5 sub factors:-

(a) Accessibility;
(b) Complimentarity;
(c) Intensity of use;
(d) Visibility; and
(e) Distance to the centre point.

161. Mr Wong gives an adjustment figure to each of the 5 sub-factors and adds them together to arrive at total location adjustment.

He explains that the impact of the factors will affect the business customs of a given volume of pedestrian flow. Thus it is important to distinguish between the 5 sub-factors.

162. In particular, Mr Wong considers visibility is an important sub-factor. In his opinion, there are 2 aspects for visibility: signage and parking meters. It cannot be disputed that the signage is there. No suggestion is made to the legality of the signage. Dilapidation of the signage only affects the extent of adjustment. The lack of parking meters outside the Property also improves the visibility of the Property and commands additional value. The circumstances in the present case requiring a sub-factor analysis is rather obvious, as adjustment for location is always a complex matter.

163. Mr Mak submits that the analytical approach of Mr Wong is a better choice than a subjective and arbitrary assessment on pedestrian flow.

164. Mr Lam submits that it is undesirable to make separate assessments and add the figures together to arrive at total location adjustment, for the following reasons:-

(a) The approach is unconventional.

(b) Some of these "sub-factors" do not seem to be conceptually well defined.

(c) There may be overlapping among the "sub-factors".

(d) Making separate adjustment for these "sub-factors" runs a high risk of losing sight of the big picture and arriving at grossly inflated overall location adjustment totally out of touch with the reality.

(e) At the end of the day, the location value of shop premises depends on the volume of pedestrians and the character of the pedestrians (who they are, what they are there for, etc.). It is better for a valuer to use common sense rather than being bogged down by unrealistic technicalities.

165. We reject Mr Wong's exercise to subdivide location into 5 sub-factors. In our view, in considering location, an expert would take into account the 5 sub-factors as identified by Mr Wong as well as other factors coming to his mind and make a global decision. It is not necessary to subdivide the factors.

166. We also reject Mr Wong's claim that the projecting signage should command additional value. On the evidence, there is no record that the signage is approved or authorized.

167. For visibility, we agree that this is a relevant consideration for shop valuation. However, in our view, since the Property and all the comparables are mainly used as services or local day-to-day retail but not premium high street type retail shops, we agree with Mr Lam's submissions that visibility has very little, if not nil, effect on the value of

the Property and the comparables. We accept that nil adjustment should be made.

168. Mr Lam also submits that:-

(a) The vicinity of the Property is occupied by retail-cum-workshop type of shops selling glass, building materials, metal-ware, tyres and locks, as well as engineering shops.

(b) On the evidence, photographs show that building materials were dumped on the pavement in the vicinity of the Property, and lorries were parked (sometimes double parking) off the pavement outside the Property, apparently loading and unloading building materials.

(c) The Property is situated at a quieter section of Un Chau Street, and the side of the road at which the Property is situated is quieter than the opposite side of the road.

(d) The side of the road at which the Property is situated is "cut off" from the opposite side by mini-buses parked along the pavement of the opposite side.

(e) There are people alighting from mini-buses at the section of Un Chau Street where the Property is situated, but they mostly walk to the opposite side of

the road, not to the side where the Property is situated.

(f) The section of Un Chau Street between Castle Peak Road and Cheung Wah Street is, on the other hand, much busier; it is here (and not the section where the Property is situated) that people wait/waited to get on mini-buses.

169. Based on what we observe during the site inspection, we agree with Mr Lam's submission and hold that the location of the Property is primarily service type uses.

Size

170. Mr Wong conducts an exercise of making comparison between 4 pairs of transactions to arrive at 1% per 1 m^2 in his adjustments.

171. Mr Lam submits that the exercise is meaningless and valueless, for the following reasons:-

(a) Adjustments have to be made for a host of other factors before comparison on size could be made; the accuracy of the exercise depends too much on the reliability of the other adjustments.

(b) Mr Wong adopts an adjustment rate of 7.62% per 1 m for frontage. If this rate is rejected by the Tribunal, the accuracy of the exercise is gravely called into

question.

(c) In each pair of transaction, Mr Wong compares a large shop with a small shop and not shops of similar size.

(d) For example, for S3 and S4 (in Mr Wong's exercise), the total adjustment is as big as 96%, and the size of the two shops are 32 times different.

(e) The sample size is in any event too small for any generalization.

172. We agree with Mr Lam's submission that Mr Wong's exercise is meaningless because it is subjective and very arbitrary. We reject Mr Wong's adjustments and prefer Mr Lai's figures.

Frontage

173. Mr Wong carries out investigation with reference to market evidence, by making comparison between 3 pairs of transactions and arrives at a rate of 7.62% per metre.

174. Mr Lam submits that Mr Wong's unconventional approach is wholly untenable, and meaningless, for the following reasons:-

(a) Substantial adjustments have to be made for other factors, such as time and size, making the accuracy of the exercise highly dependent upon the other adjustments.

(b) In making size adjustment, Mr Wong does not make use of the 1% per m² rate that he advocates.

(c) The transaction dates of some of transactions are far apart; the character of the locality may have changed with time rendering the comparison meaningless.

(d) The selection of transactions for comparison is arbitrary and apparently to suit Mr Wong's purpose. For instance, if F2 and F4 (in Mr Wong's exercise) are compared (the transactions being merely one month apart), it will be discovered that the shop with the larger frontage (F2) fetches a lower price; this highlights the fallacy of the entire exercise.

(e) The exercise results in figures which range from 6.83% to 9.05%. It is meaningless to take an average out of figures that disagree by such a large magnitude.

(f) The samples are in any event too small for any generalized conclusion to be drawn.

175. Mr Lai uses an adjustment of 2% for every 1 metre difference in frontage, in accordance with *Gaininn Company Limited v The Director of Lands* LDLR 5 and 10 of 2006.

176. We agree with Mr Lam that Mr Wong's exercise is

subjective and meaningless. We reject Mr Wong's adjustment and adopt Mr Lai's figures.

Vacant Possession

177. All the comparables of Mr Lai except RC7 are subject to tenancies.

178. Mr Wong is of the opinion that according to the general valuation principle, in assessing the open market value of a property at a particular valuation date, one should take into account the effect of the tenancy subsisting. Mr Wong relies on *Yuen Shu Wing v Director of Lands* LDLR 1 to 4 of 2004, that the market will always give allowance as to whether vacant possession can be given at a certain date of valuation. The Court has to give regard to this fact.

179. Mr Wong adopts nil adjustment for tenancies more than one year, 5% for one year (because they are less secure) and 10% for monthly tenancy (because they are unsecure).

180. Mr Lam submits that since none of the comparables are subject to unusual tenancies, no adjustment needs to be made for tenancies.

181. In our view, Mr Wong's interpretation of *Yuen Shu Wing* is mistaken. In *Yuen Shu Wing*, the Tribunal applies the term and reversion method to value the subject property which is subject to tenancy. Applying *Yuen Shu Wing*, it is the unexpired term that matters, not the original length of tenancy. For monthly tenancy, since they may

be terminated at any time, there should be no adjustment. We reject Mr Wong's adjustments.

182. We have examined the tenancy details of the RCs. We agree with Mr Lai that no adjustment is necessary because the tenancies are either just starting (hence the rent should be at or close to market rent) or expiring soon.

Headroom

183. In Mr Wong's opinion, RC2 and RC3 combined together have an effective floor area of 60.6 m² but RC5 has an effective floor area of 92 m². The volume of the headroom space is much larger in the case of RC5. Therefore a downward adjustment of -2% and -5% for RC2 and RC3, and RC5 respectively is not incorrect, notwithstanding these RCs have the same headroom.

184. With respect, we cannot understand the rationale of Mr Wong. If the comparables have the same headroom, any adjustment for headroom should be the same. If Mr Wong considers volume should be a factor of adjustment, he should put forward his suggestion accordingly, but not mingle it under headroom.

185. Earlier in this judgment, we said any adjustment for headroom should be made in the analysis of the comparables. We have compared Mr Wong and Mr Lai's figures. Since we are doubtful of Mr Wong, we prefer Mr Lai's.

Adjusted Unit Rate

186. Taking into account all the factors as examined above, the adjusted unit rate to be used in the direct comparison valuation is:-

Ref.	Unit Rate /m²	Time	Location	Size	Frontage	Headroom	Total	Unit Rate /m²
RC1	$72,199	-2%	0%	-7%	0%	2%	-7%	$67,145
RC4	$64,266	-1%	0%	-7%	3%	2%	-3%	$62,338
RC5	$64,130	1%	-15%	0%	0%	-3%	-17%	$53,228
RC6	$68,776	2%	0%	0%	0%	2%	4%	$71,527
RC7	$76,219	11%	-15%	21%	-9%	2%	10%	$83,841
RC8	$47,347	5%	15%	-5%	-3%	2%	14%	$53,976
RC9	$55,784	5%	15%	-5%	-3%	2%	14%	$63,594
RC10	$50,164	5%	-15%	7%	0%	2%	-1%	$49,662

Average	$63,164

187. Looking at the adjusted rates of all the comparables adopted by us, we are satisfied that they are all within a reasonable range. We are satisfied that if there is any development value attributable to the comparables, it is reflected in the adjusted unit rates. No further adjustment is necessary.

188. Applying the average unit rate to the effective area of the Property, the value of the Property is $4,713,298 (74.62 m² x $63,164 / m²), which we round off to $4,710,000.

"WITHOUT PREJUDICE" OFFERS

189. On 11 May 2011, shortly before the commencement of the trial, the respondent applied by summons to strike out certain documents enclosed in Mr Wong's reports, including Exhibit III of Mr Wong's 1st

report (ie the 4 letters of offer dated 31 July 2004, 4 November 2005, 21 September 2006 and 12 October 2007) on the ground that it is "unnecessary, irrelevant, lacking in probative value and/or prejudicial and that they are unhelpful to the Court in the determination of any issue to be resolved herein".

190. During the trial, the parties at first agreed that these documents could be admitted *de bene esse*, subject to the determination of the Tribunal at the end of the trial. The parties then agreed that most of these documents including the letter of offer dated 31 July 2004 could be admitted as evidence and the respondent no longer raised any objection to these documents. The letters of offer dated 4 November 2005, 21 September 2006 and 12 October 2007 were, however, removed from the exhibits and the applicant did not attempt to put them back in evidence. Nevertheless, Mr Mak in his closing submission made lengthy submission on these letters of offer, when they were not produced as evidence.

191. In our view, our duty is to determine the amount of compensation payable to the applicant under the Ordinance, and as aforesaid, it should be the open market value. We are not required to arbitrate on or to have regard to the offers made by or on behalf of the respondent. The offers, whether made known to us or not, or whether made “without prejudice” or not, will in no way affect our determination. We fail to see why the applicant would rely on these offers at all.

192. As the parties have actually resolved what documents should be admitted or not, we do not find it necessary to make any determination

concerning the summons. Thus, no order will be made in respect of the summons. As to the costs of the summons, subject to any further application, we will make no order as to costs, as the parties seem to have resolved the matters themselves.

ORDER

193. We therefore order that:-

(1) In respect of the summons dated 11 May 2011, no order is made, save that there be a costs order nisi that the summons shall have no order as to costs. If the parties do not make any application concerning the costs of the summons within the next 14 days, the costs order nisi shall become absolute.

(2) The amount of compensation payable to the applicant is in the sum of $4,710,000.

(3) All the consequential and ancillary matters, including professional fees, interest and costs, be adjourned to a date to be fixed by the listing officer at the request of the parties.

(Michael Wong)
Presiding Officer
Lands Tribunal

(Kenneth Kwok)
Temporary Member
Lands Tribunal

Mr Andrew MAK, instructed by Messrs Yip & Partners for the applicant

Mr Simon LAM, instructed by the Department of Justice, for the respondent

立法會秘書處
資料研究組

資料摘要
評估被收回物業的價值

IN03/14-15

1. 引言

1.1 政府目前根據《收回土地條例》(第 124 章)、《道路(工程、使用及補償)條例》(第 370 章)及《鐵路條例》(第 519 章)等相關法例的條文收回私人土地作公共用途。因土地／物業被收回而遭剝奪相關管有權的業主，及／或在相關土地擁有權益的人，例如租戶等，均有權根據相關法例條文，就被收回的土地及建築物(如有的話)的公開市場價值或其他土地權益獲得法定補償。公開市場價值指"由自願的賣家在公開市場出售該土地而預期變現可得的款額"。[1]

1.2 政府亦已訂立特惠土地補償及特惠津貼的制度，作為法定補償以外的另一選擇，以(a)回應受影響各方的合理需要；及(b)減少他們提出法定補償申索的需要。有關各方如不接納當局提出的特惠補償建議，可繼續就法定補償提出申索。

1.3 地政總署在釐定屬*共有業權*的地段／建築物的法定補償時，所採取的做法是參考經批准建築圖則／改建及加建圖則所顯示的用途，以及租契許可的用途，評估個別單位在收回有關地段／建築物當日的公開市場價值(即個別單位的現有用途價值)。就屬*單一業權*的地段／建築物而言，當局會評估其現有用途價值及重新發展的價值，並會以兩者當中的較高價值作為建議的法定補償。[2]

1.4 發展事務委員會將於日後的會議上討論有關政府在評估法定補償時對屬*單一*及*共有業權*的地段／建築物採取不同處理方法的事宜。為方便討論上述課題，事務委員會在 2014 年 10 月 28 日的會議上要求資料研究組研究海外地方在評估被收回物業的價值時採取的做法。[3] 本資料摘要研究英國的英格蘭、澳洲的新南威爾斯州、

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1 《收回土地條例》第 12(d)條。

2 請參閱 Lands Department (2013)。

3 事務委員會亦要求資料研究組研究香港及英聯邦國家在解決因收回土地而引致的糾紛方面所採取的機制。資料研究組為此擬備了另一份題為"*解決因收回土地而引致的糾紛*"的資料摘要(IN04/14-15)。

加拿大的安大略省[4]及新加坡在評估被收回物業的價值時採取的做法。資料研究組選定英格蘭、新南威爾斯州及安大略省進行研究，是因為三者均為普通法司法管轄區，而選定新加坡進行研究，則因為當地的社會經濟狀況與香港相近。

2. 香港如何評估被收回物業的價值

2.1 在香港，當局在評估被收回物業的法定補償時所須依循的原則，載於各相關法例及法院就相關收回土地(下稱"收地")個案作出判決當中。《收回土地條例》訂明，須向被收回土地的業主支付的法定補償按土地被收回當日的公開市場價值計算。然而，有關補償不得考慮下列情況：(a)收地屬強制性(第12(a)條)；(b)有關土地受城市規劃圖則的指明條文影響的事實(第12(aa)條)；(c)任何不符規劃的土地用途(第12(b)條)；及(d)預期獲得或頗有可能獲得批出、續發或延續任何特許、許可、契約或許可證，但若非因該土地被收回，便可按應有權利確使可獲批出、續發或延續者，則屬例外(第12(c)條)。

2.2 規管收地補償的法律條文由普通法的原則予以補充。該等普通法原則包括：

(a) 推定法律不容許收地時不給予補償；

(b) 不會考慮因為收地的計劃而引致土地價值增加或減少；

(c) 如被收回的土地具發展潛力，業主有權把發展價值納入其土地的價值內評估；

(d) 業主有權按土地的最大及最合適的用途估算其土地的價值[5]；及

(e) 申索人可按土地現時最低限度的價值另加騷擾補償提出申請，或按有關土地的發展價值提出申請。[6]

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4 在澳洲及加拿大，收地程序受個別州／省及領地所制定的法例規管。

5 在香港，普通法的最合適用途原則"受《收回土地條例》第12(c)條規限為，根據政府租契、政府新批出的租約或其他業權的用途契諾可作的合法用途"。請參閱 Cruden(2009)。

6 請參閱 Special Committee on Compensation and Betterment (1992)。

2.3 據地政總署所述，對於應採取甚麼基準評估發展價值，可參考上訴法庭在 2013 年 7 月就 *Siu Sau Kuen v The Director of Lands* 一案作出的判決。上訴法庭在該判決中裁定，在決定就被收回物業支付的補償應否包括發展價值時所採用的準則如下：*在權衡相對可能性的情況下*，相關證據有否顯示，截至收回物業當日為止，被收回的物業有可能重新發展。該判決亦裁定可藉下列情況證明被收回的物業有可能重新發展：(a)"有關申請人提出把物業本身或把該物業與其他物業合併後重新發展的實際建議(或由於沒有提出有關建議而顯示沒有可能重新發展有關物業)"；或(b)"有證據顯示被收回物業附近一帶會重新發展(不論是否附有重新發展被收回物業的計劃為證據)，只要附近一帶會重新發展的證據足以證明，在合理可預見的時間內，有可能進行一個可行的重新發展計劃，以把被收回物業本身或將之與其他物業合併後重新發展"。[7]

2.4 因應相關法律條文及相關法院案例所確立的原則，地政總署在釐定屬*共有業權*的物業的法定補償時所採取的方法，是根據既定的估價做法，評估該類物業的現有用途價值。至於屬*單一業權*的地段／建築物，地政總署考慮到，若證實重新發展更有利可圖，有關的業主通常會選擇重新發展其地段／建築物。在該等情況下，由私人主動提出重新發展的可能性較高，當局因而會評估有關地段／建築物的現有用途價值及重新發展的價值，並會以兩者當中的較高價值(即反映更有利可圖方案的價值)作為建議的法定補償。

2.5 然而，地政總署表明會研究每宗補償個案的獨特事實及情況。如前業主認為在其物業被收回當日，該物業屬有可能重新發展的建築物的一部分，該業主須提供相關的證據(例如是否有經批核的重新發展方案)，以證明存在重新發展的可能性。

3. 選定海外司法管轄區如何評估被收回物業的價值

3.1 關於評估被收回物業的價值時所採取的做法，選定司法管轄區的相關收地法例並無任何條文指明，應採取不同方法評估屬*單一*及*共有業權*的被收回物業的價值。如有關當局有就收地補償發出指引，相關的指引亦沒有訂明該規定。

[7] 請參閱 *Siu Sau Kuen v Director of Lands, CACV 180/2012*。

3.2 在選定的海外司法管轄區中，評估被收回物業的價值的原則由相關的收地法例及案例法訂定。除非相關法例另有規定，否則在第 2.2 段提述的普通法補償原則亦適用。一般而言，被收回物業的價值按有關物業在收回物業或就物業估價當日的市場價值予以評估。下文各段闡述選定海外司法管轄區就評估被收回物業的價值所採取的做法，尤其是在進行有關評估時會否及如何計算被收回物業的發展潛力。

英國英格蘭

3.3 在英格蘭，釐定收地補償的原則由法例(包括《1961 年土地補償法令》*(Land Compensation Act 1961)*及《1965 年強制購買法令》*(Compulsory Purchase Act 1965)*)和案例法訂明。根據《1961 年土地補償法令》，被收回的物業的價值是以進行估值當日[8]的公開市場價值為基礎進行估算，不會考慮因收地以進行發展計劃而引致土地價值增加或減少。如因物業用於違法用途，或用於有損處所佔用人健康或有損公眾健康的用途，而令物業的價值增加，則有關增幅可予剔除。

3.4 被收回物業的公開市場價值可按物業的現有用途作出評估。然而，若能證明即使沒有導致須收回有關物業的計劃，該有關物業的發展價值亦已存在，則經評估的價值可反映該物業的發展價值。如聲稱被收回物業具有發展價值，須以有關發展的實際[9] 或假設規劃許可，以及市場對有關發展的需求，證明有關物業確實具發展價值。[10]

3.5 與香港的規管架構不同，英格蘭的收地法例訂明，法定規劃假設在收回具發展潛力的土地時可予適用，藉此避免須在權衡相對可能性的情況下評估日後會否取得所需的許可和批准。相關的法例訂明不同形式的假設規劃許可，當中包括：(a)根據收購當局所提發展建議而就被收回土地給予的許可；(b)當地規劃當局就向其提交的申請所核證的發展許可。如沒有實際或假設的發展許可，在評估被收回物業的價值時，可考慮在進行估值當日獲批出發展許可的機會或可能性。[11]

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8 為評估補償額而進行估值當日指：(a)收購當局取得物業管有權的日期或土地業權歸屬於收購當局的日期；及(b)作出評估的日期，當中以最早的日期為準。

9 實際規劃許可指任何在估值當日有效的規劃許可。

10 請參閱 Davies (1994 年)。

11 請參閱 Barnes (2014 年)。

澳洲新南威爾斯州

3.6 在新南威爾斯州，評估收地補償受《1991 年土地徵收(公平賠償)法令》*(The Land Acquisition (Just Terms Compensation) Act 1991)*(下稱"《土地徵收法》")所規管。《土地徵收法》規定，獨立的新南威爾斯州總估值師[12] 在釐定向遭剝奪管有權的土地業主作出補償的金額時須考慮若干事項，包括土地在徵收當日的市場價值。

3.7 在新南威爾斯州，土地的市場價值的定義如下：一名自願但並非急於求售的賣家在徵收土地當日將土地出售予一名自願但並非急於購入的買家時，該名買家會就該幅土地支付的金額。不過，有關的價值不包括(a)因收地用作的公共用途或建議用作的公共用途而導致有關土地的價值增加或減少；及(b)因土地用於違法用途而導致土地價值增加，或因州政府在收地作公共用途前進行改善工程而導致土地價值增加。

3.8 實際上，在釐定被收回土地的市場價值時，是以徵收當日的最有利用途(即被收回土地的最大及最合適的用途)為基準。有異於英格蘭的收地法例，新南威爾斯州的收地法例並沒有就規劃假設作出規定。因此，有關當局會根據規劃指引，按有關土地的最可行用途釐定最大及最合適用途的潛力，亦會考慮發展項目在實質上是否可行、是否符合法例規定[13]，以及財政上是否切實可行[14]。發展潛力的價值取決於在徵收當日，有關潛力可予以充分發揮的機會有多大。

加拿大安大略省

3.9 在安大略省，《徵用法令》(*The Expropriation Act*)訂明，須根據多項準則計算向受收地影響的物業業主支付的補償額，而有關準則包括土地的市場價值(即一名自願賣家在公開市場上將土地出售予一名自願買家而預期變現可得的款額)。在釐定土地的市場價值時不得考慮下列因素：(a)收購當局會將土地用作哪種特殊用途；(b)因收地進行發展或即將進行發展而令土地價值增加或減少；及

[12] 新南威爾斯州總估值師是由新南威爾斯州總督委任的獨立法定官員，負責監督土地估值制度。在釐定收地補償金額方面，新南威爾斯州總估值師所作的估值會獨立於被收回物業的業主及收購當局。

[13] 符合法例規定指，舉例而言，根據相關的規劃文書，被收回土地是否已劃作或可能被劃作相關的用途。

[14] 財政上切實可行指，舉例而言，有關發展項目是否可能有利可圖。

(c)因土地用於違法用途，或用於有損土地佔用人健康或有損公眾健康的用途，而令土地的價值增加。

3.10 實際上，在釐定被收回物業的市場價值時，是以最大及最合適用途(即達致最大經濟效益的用途)作為計算基準。與新南威爾斯州相類似，安大略省的收地法例沒有就規劃假設作出規定。因此，若有關土地須改劃用途才能用於最大及最合適用途，則根據規劃證據，假設的改劃工作必須在合理範圍內可行。

新加坡

3.11 在新加坡，收地過程及向受影響各方作出補償的事宜受《收回土地法令》(*The Land Acquisition Act*)(第 152 章)所規管。在 2007 年之前，當局所發放的補償金額是根據在收回物業當日或法定日期(收回物業當日之前的日期)有關物業的市場價值(以較低者為準)計算。在評估被收回物業的市場價值時，以該物業的現有用途的價值，或政府的土地用途圖則所設定的預期持續用途的價值(以較低者為準)為基準。因此，在釐定向遭剝奪管有權的物業業主發放的補償金額時，不會考慮被收回物業的潛在發展價值。

3.12 於 2007 年修訂《收回土地法令》後，在評估被收回物業的價值時，是以真正的買家在合理情況下願意就物業支付的市場價值為基準，並須考慮有關物業的許可用途及在總綱圖則[15]下可予實現的潛在價值，而該潛在價值受現行規劃規定及其他因素(例如地點、業權的限制性契諾及物業的狀況等)規限，但不得考慮以相較於總綱圖則在徵收當日所許可或訂定的用途更集約的方式使用土地而帶來的潛在價值。此外，補償金額不會計算的因素包括(a)因收回土地所作的用途而可能令價值有所增加；及(b)可資比較的物業的銷售證據，除非有關各方能證明該等交易屬不涉投機活動的真正交易。

總結

3.13 在選定的海外司法管轄區，在評估被收回物業的價值時，是以收回物業或進行估值當日有關物業的市場價值為基準。在評估

[15] 總綱圖則是法定的土地用途圖則，當中標明新加坡的許可土地用途及發展密度。總綱圖則為新加坡的中期發展綱領，每 5 年覆檢一次。

應向遭剝奪管有權的物業業主支付的補償金額時，可考慮被收回物業的發展價值。在英格蘭、新南威爾斯州及安大略省，就發展價值提出申索時必須提供證據，證明被收回物業的發展計劃在收回當日既符合法例規定，亦屬切實可行。相反，在新加坡，就發展價值提出的申索受有關法例所訂的法定限制所規限。

3.14 在英格蘭，就發展價值提出申索可以實際或假設的規劃許可作為理據。有別於英格蘭的做法，其他選定海外司法管轄區的收地法例並沒有就規劃假設作出規定。在新南威爾斯州，申索人就發展價值提出申索時須證明被收回物業的發展計劃在實質上可行、符合法例規定，以及財政上亦切實可行。在安大略省，若被收回土地須改劃土地用途才能發揮其發展潛力，就發展價值提出申索的申索人可能需要提供證據，證明被收回的土地可被改劃土地用途。

3.15 在新加坡，收地法例訂明，不得考慮以相較於總綱圖則在徵收當日所許可或訂定的用途更集約的方式使用土地而帶來的潛在價值。

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立法會秘書處
資訊服務部
資料研究組
鄭慧明
2015 年 1 月 23 日
電話：2871 2143

立法會秘書處
資料研究組

資料摘要

解決因收回土地而引致的糾紛

IN04/14-15

1. 引言

1.1 在香港，若申索人與政府未能就收回土地(下稱"收地")的法定補償金額達成協議，他們任何一方可將有關個案提交土地審裁處作最終裁決。儘管如此，有市民認為訴訟過程可能所費不菲，並建議政府應考慮引入如調解和仲裁等另類排解糾紛的程序(下稱"另類排解程序")，以解決因收地而引致的糾紛。[1]

1.2 鑒於上文所述情況，發展事務委員會於2014年10月28日的會議上，要求資料研究組就香港及英聯邦國家在解決收地糾紛方面所採取的機制進行研究。[2] 本資料摘要旨在研究香港、英國的英格蘭、澳洲的新南威爾斯州、加拿大安大略省[3] 及新加坡所採取的相應機制。選取英格蘭的相應機制進行研究，是因為當地訂有既定的收地制度，而負責審理補償糾紛的司法機構一直鼓勵相關各方採用另類排解程序解決該類糾紛。至於就新南威爾斯州及安大略省的機制進行研究的原因，在於兩地均採用另類排解程序，解決因收地而引致的糾紛。與此同時，選定新加坡為其中一個研究對象，是因為新加坡為英聯邦國家，其社會經濟特徵與香港相若。

2. 香港解決收地糾紛的機制

2.1 在香港，若政府與受收地影響的各方經磋商後未能就補償金額達成協議，他們任何一方可將法定補償申索提交土地審裁處作最終裁決。土地審裁處由一名原訟法庭法官出任土地審裁處庭長，另外包括3名由區域法院法官出任的土地審裁處法官。此外，土地審裁處還有兩位身為認可測量師的審裁處成員。庭長和法官

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1 請參閱 GovHK (2014)。

2 事務委員會亦要求資料研究組研究香港及英聯邦國家在評估被收回物業的價值方面所採取的做法。資料研究組為此擬備了另一份題為"*評估被收回物業的價值*"的資料摘要(IN03/14-15)。

3 在澳洲及加拿大，收地程序受個別州／省及領地所制定的法例規管。

可單獨或會同審裁處成員審理案件。在土地審裁處進行法律程序的任何一方，可以基於土地審裁處的判決在法律論點上有錯誤的理由，針對該判決向上訴法庭提出上訴。

2.2 司法機構近年一直鼓勵各界多加利用調解，作為解決民事糾紛(例如家事糾紛、建築糾紛及與大廈管理有關的糾紛)的另類排解程序。參與調解屬自願性質，由一名不偏不倚並曾接受相關訓練的第三者，即調解員(mediator)，協助各方當事人在良好氣氛下解決糾紛，達至既能滿足各方所需，又為各方接受的解決辦法。司法機構致力推廣使用調解，與在 2009 年 4 月實施的民事司法制度改革的目標一致。民事司法制度改革的目標包括簡化並改善民事司法程序，以及鼓勵有關各方循法院訴訟以外的其他途徑解決糾紛。

2.3 政府亦表示，會考慮在適當範疇引入採用調解或仲裁解決爭議的計劃。2014 年 8 月，政府推行一項先導計劃，採用仲裁為糾紛解決程序，以利便早日達成土地契約修訂／換地申請的補地價協議。仲裁是一個各方同意解決爭議的程序，當中各方同意把爭議交由一名或多名獨立第三者(即仲裁員)排解。仲裁員可由糾紛所涉各方委任，或由他人代表所涉各方委任。仲裁裁決為最終裁決，並具約束力。

2.4 儘管如此，有市民指出，如因收地而引致政府與公眾之間出現糾紛，政府在處理這類糾紛時傾向採用訴訟而非另類排解程序。他們關注到，受收地影響的各方若無法負擔費用高昂的土地審裁處訴訟程序，在別無選擇的情況下，只好無奈接受政府提出的補償建議。[4]

2.5 因應上述關注，政府表示，地政總署在評估法定補償額時，須遵循相關法例所列明的原則，以及法庭過往就相關收地個案所作的判決。因此，在與法定補償申索有關的事宜當中，可進行仲裁或調解的空間相對有限。此外，若政府與公眾之間的爭議涉及重要的法律爭議或重大公眾利益，另類排解程序對這類爭議或許亦不適用。遇到這類個案，實有必要尋求法庭作出裁決，以為日後政府處理同類情況時提供法律先例和指引。儘管如此，若申索人提出以調解方式處理法定補償申索，地政總署可按個案情況考慮有關要求，但調解的進程及決定不可影響政府及土地審裁處行使法例賦予的權力。

[4] 請參閱 GovHK (2014)。

3. 選定海外司法管轄區解決收地糾紛的機制

3.1 在選定的海外司法管轄區當中，安大略省是唯一一個司法管轄區，在當地的收地法例中就透過調解及／或仲裁解決因收地而引致的糾紛作出規定。相對而言，英格蘭、新南威爾斯州及新加坡的收地法例則訂明，有關補償的糾紛須提交審裁處或專責法庭，透過司法程序解決。儘管如此，該等海外司法管轄區各自的司法機關均鼓勵相關各方，在進行聆訊前採用另類排解程序解決收地糾紛。

英國英格蘭

3.2 在英格蘭，申索人或收購當局可將因收地而引致的糾紛提交上級審裁處(Upper Tribunal)的土地廳(Lands Chamber)(下稱"土地廳")作最終裁決。土地廳的司法管轄權包括就關乎以下事宜的糾紛作出裁決：是否有權獲得補償，以及須就收回物業支付的補償金額。土地廳由庭長、副庭長、6 名兼職法官及 3 名身為特許測量師的專家成員組成。相關各方可以基於法律論點，針對土地廳的判決向上訴法院提出上訴。

3.3 土地廳一直鼓勵涉及糾紛(包括收地糾紛)的各方當事人，考慮透過另類排解程序解決糾紛。[5] 另類排解程序包括調解、仲裁及早期中立評估(early neutral evaluation)[6]。相對於把糾紛提交土地廳展開訴訟程序，該等另類排解程序不但比較快捷，所涉費用亦較低。

3.4 土地廳的《實務指示》(Practice Directions)訂明，若相關各方把個案提交土地廳後，同意採用另類排解程序解決糾紛，他們可向土地廳申請暫緩進行法律程序，讓各方有時間透過另類排解程序解決糾紛。《實務指示》進一步賦權土地廳，可判處不合理地拒絕考慮採用另類排解程序的一方支付訟費。[7]

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[5] 《2010 年審裁處程序(上級審裁處)(土地廳)規則》*(Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010)*訂明，土地廳"應在適當情況下，致力(a)讓相關各方知悉，有適當的另類程序可解決有關糾紛；以及(b)在相關各方均欲採用另類程序而此舉又與主要目標相符的情況下，促使各方採用該程序"。

[6] 早期中立評估指以下程序：相關各方同意聘任一名資深的律師或其他合適的專家(例如特許測量師)，以評估有關個案可能出現的結果，或研究有關各方的證據或論據的優劣，從而就如何以最佳方式快捷而經濟地進行訴訟提出建議。

[7] 請參閱 Tribunal Judiciary (2010)。

3.5 儘管土地廳已致力提倡另類排解程序，但據報採用另類排解程序解決已提交土地廳的補償糾紛的情況並不常見。[8] 採用另類排解程序的比率偏低，原因是法律執業人士及申索人的其他相關專業顧問對該等程序的原則及過程缺乏了解或並不熟悉，以致他們在建議客戶採用另類排解程序時往往趨於審慎。[9]

澳洲新南威爾斯州

3.6 在新南威爾斯州，受收地影響的業權擁有人若反對收購當局提出的補償，可向土地及環境事務法庭(Land and Environment Court)提出反對。土地及環境事務法庭是新南威爾斯州的專責法定法庭，對環境、規劃及土地事宜具司法管轄權。收地補償申索通常由一名法官審理，有時會由一名在土地估值方面具備專門知識的專員(commissioner)[10] 協助。申索人可基於法律論點，針對土地及環境事務法庭的裁決向上訴法院提出上訴。

3.7 土地及環境事務法庭自 2006 年起實施另類排解程序制度，以處理指明類別的糾紛，當中包括收地補償申索。在土地及環境事務法院展開該等糾紛的法律程序後，有關方面便會對有關糾紛作出甄別及分析，然後轉介進行合適的另類排解程序，例如調停(conciliation)[11]、調解及中立評估。

3.8 據土地及環境事務法庭所述，自實施另類排解程序制度後，無須法庭進行聆訊及裁決而獲得解決的個案所佔百分比有所上升。具體而言，與收地補償有關糾紛的相關百分比由 2006 年的 63%上升至 2010 年的 78%。

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8 請參閱 Williams (2013)。

9 據 Williams (2013)所載資料，倘能加強進行有關教育工作，透過調解等另類排解程序解決補償糾紛的潛力仍在。

10 專員屬專家成員，基於他們在與指明類別糾紛相關的領域具備專業知識而獲委任。他們亦已接受關於另類排解程序的培訓。在指明類別的法律程序(包括收地補償申索)中，專員可行使法院的職能，在程序中作出裁決，或擔任調停人(conciliator)或調解員。

11 調停指以下程序：糾紛所涉相關各方在一名不偏不倚的調停人協助下，找出糾紛的問題所在、研究解決方案並考慮替代方法，然後致力達成協議。調停人可就爭議的內容或解決方案的結果提供意見，但並不參予作出決定。

調停

3.9　土地及環境事務法庭的《實務守則》(Practice Note)訂明了一項有利於提倡進行調停的推定：除非有關各方提出相反理據，否則涉及指明類別糾紛的事宜均會轉介進行調停。因此，調停是土地及環境事務法庭最常採用的另類排解程序。

3.10　根據《土地及環境事務法庭法令》(*Land and Environment Court Act*)，在土地及環境事務法庭進行的調停屬綜合糾紛解決程序。該程序以調停的方式展開，若各方當事人不同意解決有關糾紛，隨後便會進行審裁。調停須有一名具備與個案所涉事宜相關的專業知識的專員，在會議中擔任各方的調停人。調停人協助各方進行談判，務求令各方達成協議，從而解決糾紛。在 2008 年，為指明類別糾紛舉行了 552 次調停會議，到 2012 年，舉行這類調停會議的次數增加至 911 次。

調解

3.11　土地及環境事務法庭可應各方當事人的要求或自行將指明類別的糾紛轉介進行調解。土地及環境事務法庭可將個案轉介予法庭的調解員，為各方當事人提供免費的調解服務。土地及環境事務法庭亦可將糾紛轉介予經各方當事人同意而與法庭並無關聯的外間調解員，以進行調解。在 2012 年，共為 9 宗屬土地估值上訴及收地補償申索類別的糾紛個案進行調解。2008 年的相應數字為 8 宗。

中立評估

3.12　土地及環境事務法庭亦可在取得或未經各方當事人同意的情況下，將涉及指明類別糾紛的法律程序轉介進行中立評估。有關糾紛可轉介予一名專員或一名經各方當事人同意的外間人士，進行中立評估。

加拿大安大略省

3.13　在安大略省，《徵用法令》*(Expropriation Act)*訂明，有關收地補償的糾紛須透過調解及／或仲裁解決。不論是物業業主或是收購

當局，均可將收地而引致的爭議提交協商委員會(Board of Negotiation)處理。協商委員會是在安大略省環境及土地審裁處(Environment and Land Tribunals Ontario)(下稱"環境及土地審裁處")[12] 轄下成立的非正式審裁機構，旨在為涉及糾紛的各方提供協商渠道，透過公平的非正式平台，以調解方式達成和解。有關各方提出申請或在協商委員會處理糾紛，費用全免。

3.14 協商委員會的成員在地產、物業估價及商業損失補償申索方面素具經驗。挑選協商委員會成員的程序具競爭性，並以擇優而取為原則，獲選成員由省政府委任。[13] 為解決糾紛而召開的協商委員會會議以閉門形式進行，由有關各方參與，通常在兩名協商委員會成員的引導下舉行會議。協商委員會無權強行各方和解，但若在會議結束時各方仍未能達成和解，協商委員會可在各方已呈交充足資料的情況下，就公平的補償提出不具約束力的建議。據環境及土地審裁處表示，在提交協商委員會處理的個案中，成功達成和解的比率頗高。在 2012-2013 年度，協商委員會曾就約 28 宗個案進行調解，當中約 40%的個案獲得解決。

3.15 若在協商委員會會議後仍未能達成和解，可安排舉行第二次會議，或者任何一方可向安大略省市政管理委員會(Ontario Municipal Board)(下稱"市政管理委員會")提出上訴。市政管理委員會是在環境及土地審裁處轄下成立的獨立審裁處，旨在透過仲裁解決糾紛。其委員均曾接受法律訓練及／或在土地用途規劃或其他有關範疇具經驗。挑選市政管理委員會成員的程序具競爭性，並以擇優而取為原則，獲選成員由省政府委任。[14] 涉及糾紛的任何一方均可要求召開聆訊前會議，市政管理委員會亦可主動召開有關會議。[15] 如會議未能達成和解，市政管理委員會便會進行聆訊，根據所呈交的證據、適用的法例和政策，以及市政管理委員會先前的決定(如適用者)，就給予申索人的補償金額作出決定。

3.16 有關各方如不同意市政管理委員會的決定，可要求該委員會基於法律或事實問題覆核有關決定。他們亦可基於法律論點針對市政管理委員會所作決定向分庭提出上訴或尋求司法覆核。在 2012-2013 年度，向市政管理委員會提出而與收地補償

[12] 環境及土地審裁處轄下設有 5 個審裁處及委員會，就有關土地用途規劃、環境和文物保護，以及物業評估和土地估值等事宜進行審裁。

[13] 在 2014 年 12 月 14 日，協商委員會有 8 名委員及一個出缺席位。

[14] 於 2014 年 11 月 5 日，市政管理委員會有 30 名成員及一個出缺席位。

[15] 該會議旨在確定涉及的事宜、商討是否有機會達成和解，或處理有助以公平並具成本效益的方式盡快解決有關事宜的任何事項。

相關的爭議個案共 55 宗。據環境及土地審裁處表示，在向市政管理委員會提出的爭議個案中，大部分均透過全面聆訊予以解決。

新加坡

3.17 在新加坡，任何人如不滿獲判給的法定收地補償金額，可向上訴委員會(土地徵用)(下稱"上訴委員會")提出上訴。上訴委員會是根據《土地徵用法令》(*Land Acquisition Act*)成立的類似司法審裁機構，負責就上訴個案進行聆訊及作出裁決。上訴委員會在審理上訴時，可由一名上訴專員(Commissioner of Appeals)或一名副專員(Deputy Commissioner of Appeals)[16] 單獨開庭，或會同兩名裁判委員(來自由估值及工料測量等相關行業的專家組成的小組)一同審理。就向上訴委員會提出的上訴所進行的程序均視為司法程序，而上訴委員會的裁決屬最終決定。倘若上訴委員會裁定的補償金額超過 5,000 新加坡元(29,450 港元)，申索人或收購當局均可基於法律論點就上訴委員會的決定向上訴庭提出上訴。

收地上訴調解計劃

3.18 為加快解決與收地補償有關的糾紛，上訴委員會自 2009 年起實施自願性質的收地上訴調解計劃。根據該項計劃，向上訴委員會提出上訴的人士如所獲得的法定補償金額少於 50 萬新加坡元(295 萬港元)，而有關物業屬住宅物業，便可尋求調解服務。

3.19 在取得上訴個案有關各方同意接受調解後，上訴委員會可從裁判委員中委任一名調解員，協助有關各方達成和解。若能達成和解，便會就有關上訴編定聆訊日期，以對和解的協定條款作出同意決定。若未能在 4 星期內[17] 達成和解，或任何一方撤回就調解作出的同意，則會就有關上訴編定舉行聆訊前會議的日期，以討論與上訴有關的事宜，如有關各方有意繼續進行上訴，便會定出聆訊的日期。[18]

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16 現任專員及副專員為國家法院在任法官。

17 如獲得涉及糾紛各方的同意，調解員可延長調解的時間。

18 資料研究組曾致函上訴委員會，詢問在收地上訴調解計劃下利用調解服務解決收地所引致糾紛的比率。截至本資料摘要發表當日，仍未接獲回覆。

總結

3.20 有別於香港，各選定的海外司法管轄區根據相關的收地法例，或根據由負責處理這類糾紛的司法機構所推行的安排或計劃，推廣採用另類排解程序，以解決因收地而引致的糾紛。

3.21 安大略省是唯一一個司法管轄區，在當地的收地法例中就利用調解及／或仲裁解決補償爭議作出規定。在新南威爾斯州及新加坡，另類排解程序由負責審裁補償爭議的司法機構進行。在英格蘭，土地廳的《規則》及《實務指示》就採用另類排解程序解決向審裁處提交的糾紛(包括與收地有關的糾紛)作出規定。儘管如此，在英格蘭，採用另類排解程序的比率相對偏低；究其原因，因素之一在於申索人的專業顧問對另類排解程序的原則及過程並不熟悉。

立法會秘書處
資訊服務部
資料研究組
鄭慧明
2015 年 1 月 23 日
電話 ：2871 2143

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