IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 230

Originating Application No 1130 of 2023

Between

Huber's Pte Ltd

… *Applicant*

And

Hu Lee Impex Pte Ltd

… *Respondent*

GROUNDS OF DECISION

[Land — Easements — Creation — Section 97A of the Land Titles Act]

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Huber's Pte Ltd
v
Hu Lee Impex Pte Ltd

[2024] SGHC 230

General Division of the High Court — Originating Application No 1130 of 2023
Wong Li Kok, Alex JC
1, 11, 18 July 2024

6 September 2024

Wong Li Kok, Alex JC:

Introduction

1 This was an application by Huber's Pte Ltd (the "Applicant") to obtain two temporary court-ordered easements (the "Easements") over Hu Lee Impex Pte Ltd's (the "Respondent") premises, pursuant to s 97A of the Land Titles Act 1993 (2020 Rev Ed) ("LTA"). The Applicant sought the Easements to allow it to carry out its construction plans to redevelop its own premises.

2 After hearing the parties' submissions, I allowed the application with the additional order that the Respondent be granted broad liberty to apply for, *inter alia*, compensation as well as to resolve any operational issues during the construction period which cannot be resolved between parties. As there have been no previous reported cases on s 97A of the LTA, I considered it useful to provide the full grounds of my decision.

3 Section 97A of the LTA was enacted to allow the court to create easements following increased activity in the redevelopment of properties in Singapore and to ensure the most efficient use of land (see [16] below). Parties agreed that s 97A of the LTA is *in pari materia* with s 88K of the New South Wales Conveyancing Act 1919 (the "NSW Act").[1] That being the case, I was grateful for the extensive jurisprudence on this subject from the courts of New South Wales in helping me reach my decision. That jurisprudence however had to be read in the Singapore setting. The tight spaces and limited room for manoeuvring are a unique part of our living and they create different challenges to perspectives of neighbourliness. This decision should be read in that context.

Facts

4 The Applicant is a family-owned company incorporated in Singapore. It is involved in the butchery business and is the registered tenant of the property located at 16 Chin Bee Avenue, Singapore 619939, Lot No. MK6-1341W (the "Dominant Tenement").[2] The Respondent is a company registered in Singapore that is in the business of importing and distributing fresh produce, such as fresh fruits and vegetables.[3] It is the registered tenant of the property located at 16A Chin Bee Avenue, Singapore 619945, Lot No. MK6-3877L (the "Servient Tenement").[4] Both the Servient Tenement and the Dominant Tenement are industrial properties owned by Jurong Town Corporation ("JTC").[5]

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1 Applicant's Written Submissions dated 25 June 2024 ("AWS") at paras 3.2.1–3.2.2; Respondent's Written Submissions dated 25 June 2024 ("RWS") at paras 18–21.

2 Ryan Huber's first affidavit dated 2 November 2023 ("RHA-1") at p 2 para 1.2.1.

3 Lau Bock Thiam's first affidavit dated 8 January 2024 ("LBTA-1") at p 2 para 5.

4 LBTA-1 at p 23.

5 RHA-1 at para 1.2.2; RWS at para 1.

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5 The Easements which the Applicant sought over the Servient Tenement comprised of:

(a) a 4m-wide, 60-day long easement that runs along the entirety of the boundary line between the Dominant Tenement and the Servient Tenement (the "Boundary Line");[6] and

(b) a 60-day long easement adjacent to the Servient Tenement's main entrance that is located along Chin Bee Avenue for the Applicant's agents and/or employees to access the above (see (a)) easement.[7]

Background to the dispute

6 The Applicant sought to redevelop the Dominant Tenement as it was underutilised (the "Intended Redevelopment"). It housed a two-storey singular user factory (the "Existing Structure") that only met the minimum gross plot ratio ("GPR") of 1.04, although the maximum GPR of the Dominant Tenement is 1.40. In order to maximise the GPR and install an automated storage retrieval system (to facilitate its intended food storage operations), the Applicant decided to demolish part of the Existing Structure to construct a new three-story ancillary office (the "New Structure").[8]

7 As part of the Intended Redevelopment, the Applicant wished to demolish the wall of the Existing Structure that faces the Servient Tenement

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6 Originating Application dated 2 November 2023 at Prayer 1.

7 Originating Application dated 2 November 2023 at Prayer 2.

8 RHA-1 at p 6 para 2.2.2.

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(the "Boundary Wall").[9] This Boundary Wall is 15m to 20m tall.[10] Due to the Boundary Wall's proximity to the Servient Tenement, the Applicant sought the Easements to install, *inter alia*, scaffolding, hoardings and a dust-and-noise barrier (the "External Buildup") before it commenced the Intended Redevelopment, including the demolition of the Boundary Wall.[11]

Pre-action communications and negotiations between parties

8 The parties exchanged emails between 23 September 2022 and 28 September 2022. The Applicant informed the Respondent of its intention to demolish the Boundary Wall and its need for access to the Servient Tenement for the Easements.[12] However, the Respondent intimated to the Applicant that the Easements were "clearly untenable".[13]

9 Subsequently, the parties' representatives met in several meetings to further discuss the Intended Redevelopment and Easements.[14] According to the Applicant, in a meeting on 30 January 2023, the Respondent's Chief Executive Officer suggested that the Applicant consider constructing the wall of the New Structure, that faces the Servient Tenement, with a setback of 1m from the Boundary Line for ease of future maintenance.[15] In an email on 17 February 2023, the Applicant sent the Respondent a set of slides detailing the altered plan

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9 RHA-1 at pp 4–5 paras 2.1.1–2.1.4.

10 Jason Oh Boon Chye's and Er Chong Kee Sen's affidavit dated 5 January 2024 ("Oh & Chong's Affidavit") at p 11.

11 RHA-1 at p 6 paras 2.2.3–2.2.4.

12 RHA-1 at pp 56–60.

13 LBTA-1 at p 384.

14 RHA-1 at pp 8–10 paras 3.1.2–3.1.3; LBTA-1 at p 5 para 16.

15 RHA-1 at p 11 paras 3.1.5–3.1.6.

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for the Intended Redevelopment plan to reflect the new position of the Boundary Wall and shorter demolition period of one and a half months.[16] However, the Respondent explained in an email, on 18 February 2023, that "erect[ing] scaffolding from the ground is a no-go".[17]

10 The Applicant proceeded to revise its Intended Redevelopment further to address the Respondent's 18 February email. Amongst other changes, the revised plans had the External Buildup elevated 4.5m above the ground for most of the duration of the demolition of the Existing Structure (and the Boundary Wall).[18] At the same time, the Applicant also sought and obtained approval of the Intended Redevelopment from the following authorities:

(a) JTC approved the Intended Redevelopment by way of a letter dated 14 April 2023;[19] and

(b) the Building and Construction Authority ("BCA") approved of the demolition of the Existing Structure, using ground-to-roof scaffolding, by way of an approval dated 20 April 2023 and a demolition permit dated 9 May 2023.[20]

11 The Applicant sent the Respondent various emails to inform it of JTC and BCA's approval. The Applicant also sent the Respondent the revised plans for the Intended Redevelopment containing the proposed elevated External Buildup.[21] The Respondent replied, by way of an email on 19 May 2023, and

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16 RHA-1 at p 11 para 3.1.8 and pp 105–118.

17 LBTA-1 at p 400.

18 RHA-1 at pp 12–15 para 3.1.11 and pp 120–134.

19 RHA-1 at pp 137–139.

20 RHA-1 at pp 144–164.

21 RHA-1 at pp 17–18 paras 3.2.1–3.2.5 and pp 167–179.

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reiterated its concerns about the effect of the Applicant's demolition works on the Respondent's business.[22]

12 In response, the Applicant sent an email on 13 June 2023 wherein it sought to reassure the Respondent that the Applicant's "contractor has taken several steps to ensure the safety of the demolition works" and expressed its willingness to "enter into an indemnity agreement" with the Respondent,[23] although the exact scope of the indemnity agreement was not apparent from the evidence. The Respondent responded via an email on 30 June 2023, indicating that it still had concerns about the Applicant's proposal and requesting for a banker's guarantee as well as a comprehensive demolition strategy ("CDS").[24]

13 The Applicant then responded with an email on 19 July 2023. In this email, the Applicant offered to "purchase an insurance policy (with [the Respondent] named as an insured party) to insure [the Respondent] against any damage arising from [the Applicant's] demolition works". It also offered, "as a further show of good faith … monetary compensation for [the Respondent's] 'loss of use' of the area of access required" for the demolition works. However, the Applicant explained that it was unable to provide a formal CDS and instead attempted to set out "the key information that [the Respondent] requested for".[25] The Respondent did not accept the Applicant's suggestions. It reiterated that the "proposed demolition works will have devastating effects [to the Respondent's]

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22 LBTA-1 at p 7 para 17.

23 RHA-1 at p 172.

24 LBTA-1 at pp 9–10 paras 24–25.

25 RHA-1 at pp 181–182 paras 3–4.

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businesses" and that it had not received a CDS, "which should include every single detail of the planned demolition works".[26]

14 The Applicant sent a final email on 10 August 2023 to provide some further documents to the Respondent, though it still had not provided a CDS. These documents included, *inter alia*, the *curriculum vitae* of the Resident Technical Officer; risk assessments carried out by the Applicant's main contractor; and the drawing of the demolition of the Boundary Wall by a Qualified Person.[27] To date, the Respondent has not responded to this email.[28] The Applicant commenced the present application on 2 November 2022.[29]

The applicable law on s 97A of the LTA

15 Sections 97A(1) and 97A(2) of the LTA sets out the circumstances in which the court may grant an easement and the requirements which need to be satisfied:

> **Power of court to create easements**
>
> **97A.**—(1) The court may, on application by an interested person (called in this section the applicant), make an order creating an easement over registered land if the easement is reasonably necessary for the effective use or development of other land (whether registered or unregistered) that will have the benefit of the easement.
>
> (2) An order under subsection (1) may be made only if the court is satisfied —
>
> (a) that the use of the land to which the benefit of the easement is to be made appurtenant will not be inconsistent with the public interest;

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26 LBTA-1 at p 11 para 26; RHA-1 at p 181.

27 RHA-1 at pp 189–192.

28 RHA-1 at p 22 para 3.2.15.

29 AWS at p 8 para 2.3.10.

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> (b) that the proprietor of the land to be burdened by the easement can be adequately compensated for any loss or other disadvantage that will arise from the creation of the easement; and
>
> (c) that all reasonable attempts have been made by the applicant to obtain the easement or an easement having the same effect directly from the proprietor of the land to be burdened by the easement.
>
> …

16 The purpose of this provision was explained in the second reading of the Land Titles (Amendment) Bill. The provision was enacted to empower the court to create easements "in light of increased activity in the redevelopment of properties", since "[w]hen land is re-parcelled and developed, it can give rise to situations where … new easements are required" to avoid "less efficient use of the land" (see Singapore Parl Debates; Vol 91, Sitting No 3; Page 41; [17 February 2014] (Indranee Rajah, Senior Minister of State for Law)).

Issues to be determined

17 In brief, the Applicant submitted that in order to conduct the Intended Redevelopment, it would need to demolish the Boundary Wall. These demolition works necessitated the granting of the Easements. As such, it contended that the Easements were necessary for the installation of the External Buildup. Without the Easements, the Boundary Wall could not be demolished, and the Applicant would be unable to proceed with the Intended Redevelopment.[30] The Applicant further explained that the retention of the Boundary Wall was likely to be more complex, risky and expensive. In any event, any retention of the Boundary Wall would similarly require an easement into the Servient Tenement to be granted.[31]

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30 AWS at para 4.2.

31 AWS at paras 4.4.5–4.4.6.

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18 The Respondent argued otherwise and focused its contention on the fact that the Applicant had failed to adduce any evidence to support a finding that there were no alternatives which would not require the demolition of the Boundary Wall.[32] This failure was aggravated by the fact that significant burdens would be imposed on the Respondent as a result of the Applicant's demolition works, in the form of safety concerns and disruptions to business.[33] On safety concerns, the Respondent stressed that it would be faced with "safety and health related challenges of onerous magnitude and complexity" due to the Applicant's non-compliance with demolition guidelines and "callous approach".[34] On disruptions to business operations, the Respondent pointed out that the Easements would prevent it from receiving and processing several larger container trucks in which its goods are typically transported. As a result, it would lose "its business substratum" which would result in significant losses of revenue and losses to its customer base.[35]

19 The parties' main submissions can be distilled into four main issues (which mirror the four requirements set out in s 97A of the LTA). They are as follows:

(a) whether the Easements were reasonably necessary for the effective use or development of the Dominant Tenement;

(b) whether the Applicant's Intended Redevelopment was inconsistent with the public interest;

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32 RWS at para 31.

33 RWS at para 51.

34 RWS at paras 54–57.

35 RWS at paras 59–66.

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(c) whether the Respondent could be adequately compensated for any loss or other disadvantage that will arise from the creation of the Easements; and

(d) whether all reasonable attempts had been made by the Applicant to obtain the Easements directly from the Respondent.

The Easements were reasonably necessary

20 In order to satisfy the court that an easement should be granted, an applicant must satisfy the precondition of establishing that "the easement [was] reasonably necessary for the effective use or development" of its land, as provided for in s 97A(1) of the LTA. On the facts of the present case, I found that the Applicant satisfied this precondition.

The general legal principles on reasonable necessity

21 In the absence of Singapore case law, the parties rightly leaned heavily on precedents from New South Wales (as noted above at [3]). In *117 York Street Pty Ltd v Proprietors of Strata Plan No 6123* (1998) 43 NSWLR 504 ("*117 York Street*"), Hodgson CJ explained the requirement of "reasonably necessary" as follows:

> … (1) the proposed easement must be *reasonably necessary* either for *all reasonable uses or developments* of the land, or else for some *one or more proposed uses or developments* which are (at least) *reasonable* as compared with the *possible alternative uses and developments*; and (2) in order that an easement be reasonably necessary for a use or development, *that use or development with the easement* must be (at least) *substantially preferable* to the *use or development without the easement*.
>
> [emphasis added]

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22 This approach was affirmed in *Moorebank Recyclers Pte Ltd v. Tanlan Pty Ltd* [2012] NSWCA 445 ("*Moorebank*"). On the first proposition, the New South Wales Court of Appeal ("the NSWCA") explained that a proposed use or development would be, at least, reasonable compared to alternatives if it is "appropriate to the area in which the land is situated and is at least an economically rational use of the land" (at [155]). As for the second proposition, the determination of whether an easement is reasonably necessary "involves [a] consideration of the alternative methods by which such use or development could be achieved" (at [158]). It also "means something more than mere desirability or preferability over the alternative means available [… but] does not mean absolute necessity" (at [154]). Moreover, the concept of reasonable necessity "requires consideration of the effect of the grant of the easement on the servient tenement [… such that] the greater the burden on the servient tenement, the stronger the case needed to justify a finding of reasonable necessity" (at [156]–[157]). Finally, none of these factors should be "considered in isolation from the others" (at [159]).

23 I broadly agreed with the legal principles enumerated by the NSWCA in *Moorebank*, and found that they effectively required the court to consider three key questions:

(a) Whether the proposed use or development of the land was *reasonable* as compared to possible alternative uses and developments ("the Reasonable Use Question").

(b) Whether the proposed easement was reasonably necessary for that proposed use or development of the land (as set out in (a) above). This entails a consideration of whether the use or development *with* the easement was *substantially preferable* to an alternative use or

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development *without* the easement ("the Substantially Preferable Question").

(c) The effect of the grant of the easement on the owner of the affected land.

I used the terms 'proposition' and 'question' intentionally as none of the above considerations are inflexible prerequisites which must be invariably satisfied in every instance. As aptly explained by Preston CJ in *Rainbowforce Pty Ltd v Skyton Holdings Pty Ltd* [2010] NSWLEC 2 ("*Rainbowforce*"), while proof that use with the easement is "substantially preferable to use or development without the easement will conduce to a finding of reasonable necessity", this "is not a necessary precondition" (at [80]).

24 In other words, to be satisfied that the easement sought by an applicant is reasonably necessary, the court ought to consider *both* the Reasonable Use Question and the Substantially Preferable Question. Although an affirmative answer to both questions would be a strong indication that the easement sought is reasonably necessary, it does not mean that an easement would necessarily be granted. In a similar vein, if one of the above questions is not satisfied, that would not, in itself, preclude the court from granting the easement. This is because an evaluation of each of the composite factors (listed above at [23]) in conjunction with each other is vital to the court's determination of whether a proposed easement is reasonably necessary for the effective use or development of an applicant's land (*Moorebank* at [159]).

25 I begin with the Reasonable Use Question. To satisfy this question, I agreed with the court in NSWCA that it would be sufficient for an applicant to show that its proposed use or development was appropriate to the area and an

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economically rational use of the land (see above at [22]). Although not the sole means of satisfying this question, where a party has received planning approval from the relevant planning authorities, such approval would be strong evidence that an applicant's proposed use or development was reasonable as compared to alternatives. In *Shi v ABI-K Pty Ltd* [2014] NSWCA 293 ("*Shi*"), the NSWCA held that "[w]here a particular proposed development has received planning approval, there will usually be an *evidential burden* on the owner of the servient tenement to demonstrate that the *proposed development* is *not at least reasonable* having regard to the capacity and zoning of the developer's land" [emphasis added] (at [8]). I found such an approach sensible. When a relevant planning authority has approved of a proposed redevelopment, the court, without the technical expertise of said authority, should be slow to challenge this determination. Hence, when the party seeking the easement has shown that they have received such approval for their proposed development – the court will accept that as *prima facie* evidence that the proposed development is reasonable. The burden then shifts to the party resisting the easement to explain *why* the proposed development is unreasonable.

26 The next factor for consideration is the Substantially Preferable Question. As explained in *117 York Street*, and affirmed in *Moorebank*, for an easement to be reasonably necessary for a use or development, that use or development with the easement must be (at least) substantially preferable to the use or development without the easement. Implicit in this test is the requirement for the court to consider the alternative methods by which a proposed use or development could be achieved (see above at [21]–[22]). In other words, the inquiry would necessarily involve a consideration of whether the proposed use or development of the land can be achieved without the creation of an easement. If it can, then an applicant would have to show that despite so, it is substantially

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preferable to create an easement to achieve the intended use or development of the land. If it cannot, that would bolster a finding that the proposed use or development of the land *with* the easement is substantially preferable to an alternative *without* it. In this regard, I agreed that the test of substantial preferability connotes something more than mere desirability and preferability but does not rise to the level of absolute necessity.

27 I also accepted the Applicant's argument that it should only be expected to demonstrate that its proposed use was substantially preferable to alternatives raised by the Respondent, if the Respondent was able to first show that said alternatives were viable.[36] To find otherwise would be logically untenable as it would effectively require a party, seeking an easement, to show that its proposal is preferable to a potentially limitless list of possible alternatives. This would render the hurdle of obtaining an easement insurmountable.

28 Finally, I address the consideration of the burden imposed on the owner of the affected land. This is an important aspect of the court's exercise of discretion in deciding whether the easement sought was reasonably necessary, particularly in relation to the Substantially Preferable Question. As alluded to above (at [22]–[24]), the importance and necessity of adducing proof that the proposed development of the land with the easement is substantially preferable to an alternative development without the easement depends on whether granting the easement would cause significant detriment to the servient tenement. This is aligned with the general proposition that reasonable necessity must be "assessed [with] regard to the burden which the easement would impose" on the servient tenement, such that the "greater the burden the stronger

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[36] Applicant Counsel's letter dated 2 July 2024 at paras 18–20.

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the case needed to justify a finding of reasonable necessity" (*Moorebank* at [156] and [163]; citing *Rainbowforce* at [77]).

29 Such an approach was eminently logical. While proof that an applicant's intended development is substantially preferable to alternatives would clearly support a finding of reasonable necessity, it ought not be a strict requirement. Such a requirement would risk creating a "gloss" over the statute – as warned against by Hamilton J in *Woodland v Manly Municipal Council* [2003] NSWSC 392 – and distract the court from carrying out its function in accordance with the objective of the statute, which is to promote the more efficient use of the land. Indeed, it would not be hard to imagine a situation where an alternative development could be *equally* efficacious to an applicant's proposed approach. In such a situation the court should not be precluded from granting an easement *unless* it can be shown that an applicant's approach imposes a significant detriment to the respondent, which would otherwise not be occasioned with the alternative approach.

30 To summarise, the court, in exercising its discretion on whether to grant an easement, must be satisfied that the easement sought is reasonably necessary for the effective use or development of the land which will have the benefit of the easement, as per s 97A(1) of the LTA. To be satisfied of such, the court would be guided by the following considerations:

(a) the Reasonable Use Question (see [25] above);

(b) the Substantially Preferable Question (see [26]–[27] above); and

(c) the burden likely to be imposed on the servient tenement (see [28]–[29] above).

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None of these factors ought to be considered in isolation, nor are they strict requirements. While a consideration of alternatives is crucial to this exercise, the question of whether the court needs to be satisfied that the applicant's proposed use or development and easement is substantially preferable to said alternatives ultimately depends on the facts of each case. More specifically, it depends on the relative burden imposed on the servient tenement. In terms of the alternatives which the court should pay heed to, it is clear that the court should only consider *viable* alternatives and not alternatives that are mere theoretical possibilities (*Rainbowforce* at [79]; citing *Woodland* at [9]).

31 Having set out the relevant legal principles and appropriate approach, I now turn to the facts of the present case.

Application to the facts

The Reasonable Use Question

32 As held in *Shi* (see above at [25]) the fact that a proposed development has received planning approval imposes an evidential burden on the owner of the servient tenement to demonstrate that the development is not reasonable. Here, given that JTC approved of the Applicant's Intended Redevelopment,[37] it was *prima facie* a reasonable use and/or development of the Dominant Tenement. Notably, the Respondent did not appear to dispute the fact that the Applicant's Intended Redevelopment (*ie*, to replace the Existing Structure with the New Structure) was reasonable. Rather its contention was focused on the fact that the Applicant's method of *achieving* said redevelopment, by demolishing the Boundary Wall, was one that was not substantially preferable to other available alternatives. This is the question I turn to.

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[37] RHA-1 at p 137.

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The Substantially Preferable Question

33 The main alternative raised by the Respondent (to the Applicant's plan to demolish the Boundary Wall) was to retain the Boundary Wall by preserving the "external shell or façade by erecting structural frame to maintain the lateral stability within the demolition site" (the "Retention Alternative").[38] The nub of the parties' dispute was whether the demolition of the Boundary Wall was substantially preferable to its retention.

34 The Applicant submitted that the retention of the Boundary Wall was likely to "pose a heightened risk". It was "not supported by the rest of the Existing Structure [and] there [was] a risk that the Boundary Wall may collapse"[39] once the Existing Structure, which it was attached to, was demolished and replaced pursuant to the Applicant's Intended Redevelopment. Additionally, even if the Boundary Wall was successfully retained, the Applicant would need to regularly seek access to the Servient Tenement to maintain it, which would be needlessly cumbersome.[40] The Applicant also stressed that the Respondent's Design for Safety expert and Professional Engineer ("Mr Oh and Mr Chong"), who had advocated for the retention of the Boundary Wall, conceded that they had not conducted a feasibility study on retaining the Boundary Wall with one-sided support frames.[41] As such, in order to implement the Retention Alternative, the Applicant would likely still need the Easements to access the Servient Tenement to install the necessary support frames to retain the Boundary Wall.[42] Finally, the Applicant pointed out that *if*

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38 Oh & Chong's Affidavit at p 40.

39 AWS at para 4.4.6(b).

40 AWS at para 4.4.6.

41 Applicant Counsel's letter dated 2 July 2024 at para 32.

42 AWS at para 4.4.6(c).

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the Easements were not granted, it would likely need to expend additional time and effort to re-design new plans and seek the relevant planning authorities' approval. Such additional efforts would likely result in more delays and costs.[43]

35 Despite having raised these drawbacks about the Retention Alternative at the hearings before me, the Applicant conceded that it had not adduced any expert evidence to support its criticisms of the Retention Alternative. However, it maintained that this did not detract from the veracity of its contentions.

36 The Respondent disputed the Applicant's claim that the Retention Alternative was not feasible. The Respondent stressed that while proof that the Applicant's proposed use was substantially preferable to alternative uses was not strictly necessary, the question of alternatives remained an imperative part of the consideration of the Substantially Preferable Question and the requirement of reasonable necessity as a whole.[44] The Applicant had failed to "adduc[e] any evidence to show that there are no other possible design alternatives or construction methods that do not require the demolition of the Boundary Wall".[45] This, the Respondent argued, was due to the Applicant's fixation on its proposed design and construction method, which meant that it failed to consider the possibility of any other method of construction not involving the demolition of Boundary Wall.[46] Consequently, the Applicant failed to show that the Easements were reasonably necessary and thus the Substantially Preferable Question ought to be answered in the negative.

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43 Applicant Counsel's letter dated 2 July 2024 at para 37.

44 Respondent Counsel's letter dated 2 July 2024 at paras 2.1–2.2.

45 RWS at paras 31 and 85.

46 RWS at paras 38–39.

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37 I agreed with the Respondent that the Applicant had not provided any evidence regarding the viability of alternative developments of the Dominant Tenement that would dispense of the need for the Easements (*ie*, by keeping the Boundary Wall in place). I was cognisant that the Applicant had raised an alternative involving setting the Boundary Wall back from the Boundary Line (see at [9] above) as well as an alternative method of constructing the External Buildup 4.5m above the ground for a majority of its construction (see at [10] above). However, these were not genuine alternatives as they still required the demolition of the Boundary Wall and hence the creation of the Easements. To this end, I was also unable to accept the Applicant's unsubstantiated assertion that the Easements would still be necessary even if the Boundary Wall was retained, as the necessary support and scaffolding would need to be erected on the Servient Tenement. At the hearing, Mr Oh and Mr Chong testified that a one-sided scaffolding, erected only on the Dominant Tenement was possible, and the Applicant did not adduce any expert evidence to suggest otherwise.

38 That said, as held by Preston CJ in *Rainbowforce* (at [80]), although the consideration of alternatives was a crucial part of the Substantially Preferable Question, it was not a pre-condition to a finding that Easements were reasonably necessary. The absence of expert evidence from the Applicant on the Retention Alternative was ultimately not fatal to a finding of reasonable necessity. To illustrate this point, I found the case of *Blulock Pty Ltd v Majic* [2001] NSWSC 1063 ("*Blulock*"), which had been discussed at length by parties, to be helpful. In that case, the easement sought by the applicant constituted a "serious interference with property rights" as it had "the effect of precluding almost any future change to the present structures on that land" (at [21]). In assessing whether the easement was reasonably necessary, Windeyer J opined (at [15]):

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> While I do not think it is necessary for the purpose of satisfying the requirements of s88K(1) that detailed evidence be given to the court of alternative plans there is little doubt that as the court retains a discretion as to whether or not an easement ought to be imposed, one would at least expect there to be some view expressed by the developer or an architect or a planner that the proposed development is a sensible and reasonable development as compared with some other development which would involve a set back on the western side or some development where council would not require the easement the subject of the present condition. Where an existing building is to be completely gutted and transformed the court should not be too ready to assume the easement sought is reasonably necessary for effective development. I am not satisfied on the evidence that the requirements of s88K(1) are made out.

39 I agreed with the Applicant's submissions[47] that Windeyer J, in *Blulock*, was effectively stating that detailed evidence on alternative plans generally need not be adduced for the court to exercise its discretion in determining whether to grant an easement. However, where the proposed development is one which would require an easement with long-lasting ramifications, such as when it requires an "existing building … to be completely gutted and transformed", some evidence from a developer or architect on the relative preferability of the proposed development would be reasonably expected. Indeed, such a reading was in line with the proposition that the reasonable necessity of an easement must be assessed with reference to the burden which that the easement would impose (*Moorebank* at [156]).

40 In this regard, the Applicant's failure to adduce any evidence on the Retention Alternative was just one of the many elements which I had to consider in totality. This element, of the relative preferability of possible alternatives, should not be considered in isolation from the other factors, such as whether the use of the Dominant Tenement is reasonable and the burden imposed on the

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47 Applicant Counsel's letter dated 2 July 2024 at paras 22–29.

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Respondent (see above at [22]–[24]; *Moorebank* at [159]). Having considered the relative preferability of the Retention Alternative raised by the Respondent and the reasonableness of the Applicant's Intended Redevelopment (see [32] and [34]–[37] above), this left the factor of the burden imposed on the Respondent.

The burden imposed on the Servient Tenement

41 The Respondent pointed out that the dearth of evidence from the Applicant in relation to the possible alternatives was particularly egregious in light of the significant detriment imposed on the Respondent. As held in *Moorebank* (see above at [22]), the greater the burden imposed on the Respondent, the stronger the Applicant's case would have to be on why its proposed use was substantially preferable to other alternatives. The parties' arguments coalesced around two points, namely, safety concerns and business interruption. I deal with the Respondent's contentions regarding the latter issue of business interruption in greater detail subsequently (from [57] onwards). At this juncture, it suffices to say that I did not think that the burden imposed on the Respondent was so logistically insurmountable or incapable of compensation, so as to detract from a finding of reasonable necessity. This was especially so as the Easements sought only imposed a temporary burden (for no more than 60 days) on the Servient Tenement.

42 On the issue of safety, the Respondent contended that demolishing the Boundary Wall could not be substantially preferable to retaining it, in light of the safety issues arising from the demolition.[48] In short, the Respondent claimed that the demolition of the Boundary Wall raised two sets of safety issues. First,

[48] RWS at paras 34–36.

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the Respondent questioned the safety of the demolition methodology and the feasibility of demolishing such a substantial structure in close proximity to its operational and working premises.[49] Second, the Respondent raised various workplace safety and health ("WSH") issues in having its staff work in such close proximity to the demolition works and the Applicant's purported non-compliance with the WSH (Design for Safety) Regulations 2015 ("WSH DFS Regulations") and the Workplace Safety and Health Act 2006 (2020 Rev Ed) ("WSHA").[50]

43 With regard to the first issue of the demolition methodology, the Respondent took the view that the Applicant had taken a lackadaisical approach to safety by rushing headlong into the demolition process without considering all of the safety implications. The Respondent questioned the value of BCA's approval (see above at [10(b)]) on the basis that BCA had only concerned itself with the "baseline, minimum standards required for approval", and did not consider if "the design or safety features are at the standard where they minimi[s]e risks as best as they can".[51] This was because BCA had given its approval without considering the impact of the demolition works on neighbouring premises, namely the Servient Tenement.[52] In support of this, the Respondent cited Mr Oh and Mr Chong's report which further stated that the Boundary Wall should not be demolished as the risks to the Servient Tenement were too high. It argued that significant weight should be given to Mr Oh and Mr Chong's report as they assessed the situation from a more holistic standpoint

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49 RWS at paras 52–54.

50 RWS at paras 55–56.

51 RWS at para 32.

52 RWS at para 33.

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than BCA.[53] On the second issue of WSH concerns, the Respondent sought to rely on the evidence of its WSH expert ("Mr Sim"). Mr Sim's evidence was that, in spite of BCA's approval, there remained various steps necessary for the Applicant to take to ensure that its demolition works complied with its obligations under the WSH DFS Regulations and the WSHA, as well as to ensure the safety and health of everyone on the Servient Tenement.[54]

44 The court should be slow to challenge BCA's conclusions on the approval of the demolition works. In this instance, despite the Respondent's efforts at downplaying BCA's approval, the fact remained that BCA was much more qualified to assess the safety of the demolition methodology than the court. Further, at the hearing, Mr Oh and Mr Chong conceded that BCA's approval was only *one part* of the safety process for the demolition. A professional engineer and safety design expert would still have to approve of and be responsible for the demolition process, which would include considering the design for safety aspects. The Respondent was effectively asking me to conclude that the Applicant would ignore all of these safety requirements and rush headlong into the demolition. I was unable to arrive at such a conclusion. This was mere speculation and would have required me to assume that the Applicant would deliberately flout the law and ignore safety concerns in the demolition. There was no evidence to show that this would be the case.

45 The Respondent also wrongly took the view that BCA had not considered the proximity of the Respondent's working premises, on the Servient Tenement, to the demolition. As the Applicant rightly pointed out, BCA had, in

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53 RWS at para 35; citing Oh & Chong's Affidavit at pp 40 and 130.

54 RWS at para 34; citing Iverson Sim Kuang Sen's affidavit dated 8 January 2024 at pp 6–30.

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fact, expressly considered this. After the Respondent sent Mr Oh and Mr Chong's report as well as Mr Sim's report to BCA, BCA confirmed that its approval had taken these issues into consideration.[55] Despite having sight of the Respondent's various experts' reports, BCA maintained that "the approved plan has considered both the safety of demolition works as well as the safety of occupants of [the Servient Tenement]".[56]

46 Regardless of the Respondent's concerns, the fact remained that JTC and BCA *had* approved the Applicant's Intended Redevelopment and proposed demolition works, respectively. In *Moorebank*, the NSWCA accepted that the existence of planning approval from the relevant planning authorities would support a finding that the easement sought by an applicant was preferable to alternatives. In that case, the NSWCA took into account a development control plan in determining that the alternative access route proposed by the defendant was not viable as that route was a flood prone zone. In fact, the NSWCA appeared to have given substantial weight to the development control plan and agreed with the claimant that its "importance … cannot be underestimated" (at [164]–[165]). Similar weight and deference ought to be accorded here.

47 The WSH safety issues also failed to move the needle for the Respondent. Significantly, at the hearing, Mr Sim conceded that he had written his report based on outdated documentation exchanged between the parties in the initial stages of the engagement. He further conceded that he lacked sight of the documents provided to BCA which contained further elaborations on how the Applicant planned to mitigate certain safety risks, such as fire and falling debris. The Applicant had since provided the Respondent with more updated

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55 Lau Bock Thiam's second affidavit dated 14 June 2024 ("LBTA-2") at pp 26–76.

56 LBTA-2 at p 240.

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materials, addressing various WSH issues, but these were not provided to Mr Sim. In any event, there was no conclusion from *any* of the Respondent's experts that it was *impossible* for the demolition to be conducted safely alongside the Respondent's business operations at the Servient Tenement. Indeed, I surmised that BCA would not have given its approval if this was the case.

48 In summary, the key thrust of the Respondent's contentions on safety boiled down to the fact that there were numerous safety concerns, raised by its experts, that had not been addressed. However, as the Applicant noted in its submissions, there was nothing to suggest that it could not and would not address these issues at an appropriate time. In *Rainbowforce*, Preston CJ affirmed that the requirement of reasonable necessity "does not require that all other obstacles to the proposed use or development of the land that will have the benefit of the easement must have been overcome before the court has power to grant an easement". It is only if the "proposed easement would be absolutely illegal and there was no chance of obtaining a consent necessary to make it other than illegal, would the court be precluded from finding that the easement was reasonably necessary" (at [83]). In my judgment, such an approach was not only pragmatic and expedient, but also in line with the language of s 97A of the LTA, which does not impose any requirement that all obstacles must be overcome before an easement can be granted.

49 Even if I took the Respondent's case at its highest and accepted that the Applicant's demolition methodology required additional health and safety precautions to properly reduce the risk of any property damage and injuries to the Servient Tenement, this would not preclude me from granting the Easements. The need for such revisions, on their own, did not mean that the Easements were not reasonably necessary. Moreover, any additional costs

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incurred by the Respondent as a result of such revisions can be claimed as part of the Respondent's compensation.

50 Therefore, I was satisfied that the Applicant's proposed use, *ie*, the Intended Redevelopment, was a reasonable use of the Dominant Tenement. Additionally, I accepted that the Easements were reasonably necessary for the effective use and development of the Dominant Tenement, in accordance with the Intended Redevelopment.

The Intended Redevelopment was not inconsistent with public interest

51 In *Shi*, the NSWCA held that when consent has been given by the relevant consent authority, "it may be assumed in the absence of evidence to the contrary … that [such consent] would usually be a highly material and possibly decisive factor demonstrating that the proposed development was not inconsistent with the public interest" (at [70]). This was subsequently affirmed in *McGrath v Mestousis* [2017] NSWSC 995 ("*McGrath*"), where Darke J accepted that consent from the relevant authority though "not itself decisive [was] highly material" (at [77]). In *McGrath*, Darke J concluded that the proposed use and easement were not inconsistent with the public interest as, in addition to being in accordance with planning consent, the easement formed part of a development that was common throughout many areas (at [77]).

52 Despite the novelty of s 97A of the LTA, there has been some case law in Singapore addressing this question of public interest in the context of easements. In *Yickvi Realty Pte Ltd v Pacific Rover Pte Ltd* [2009] 4 SLR(R) 951, the respondent sought to alter the appellant's right of way by realigning a route to facilitate a development on the respondent's land, intended to maximise its plot ratio and use (at [6]). The applicant sought an injunction to restrain the

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realignment but was ultimately unsuccessful (at [19]). In arriving at this decision, the Court of Appeal held that there was an element of public interest, despite the case only concerning the private rights of two private commercial owners in two private properties (at [14]–[15]). The Court of Appeal found that "because of the scarcity of land in Singapore, land should be allowed to be developed to its optimal potential as permitted by planning law and the claimant suffer[ed] no injury or inconvenience as a result" of the realignment, thus the realignment was in line with the public interest (at [15]). This was subsequently affirmed in *Botanica Pte Ltd v Management Corporation Strata Title Plan No 2040* [2012] 3 SLR 476 ("*Botanica*") (see [52]), a case which similarly involved an applicant seeking to realign and modify an existing easement.

53 Looking at both the New South Wales and Singapore jurisprudence on public interest, I drew the following legal principles. First, the existence of planning consent or permission would be a strong factor in favour of a finding that the proposed use or development was not inconsistent with public interest. Second, it would be consistent with public interest for land to be developed to its optimal potential, such as by maximising its plot ratio. However, such considerations must also be weighed against the potential injury or inconvenience which would be imposed on the servient tenement. I now turn to apply these principles to the present case.

54 The Applicant highlighted that since both JTC and BCA had approved its Intended Redevelopment and demolition methodology, respectively, this supported a finding that neither was inconsistent with public interest.[57] In response, the Respondent repeated its safety concerns, doubts about BCA's

[57] AWS at paras 5.1.4–5.1.7.

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approval and the Applicant's alleged failure to adhere to the WSH DFS Regulations and the WSHA.

55 The Respondent's arguments on its safety concerns have been extensively addressed (at [42]–[48] above). As previously stated, I did not find the Applicant's proposed use of the Dominant Tenement to be inconsistent with public interest as it had received approvals from both JTC and BCA. Such approvals clearly supported a finding that the Applicant's proposed use of the land was indeed *consistent* with the public interest (*McGrath* at [77]). Additionally, as the Applicant rightly pointed out, for every easement granted by the court under s 97A of the LTA, the party seeking the easement would still need to obtain the necessary planning approvals as well as satisfy the applicable laws and regulations before commencing the proposed demolition works.[58] There was nothing to suggest that the Applicant's proposed use and plans were illegal or that there was no chance of the Applicant conducting its works in a manner consistent with public interest. Consequently, the mere presence of some safety concerns was insufficient to lead to a finding that the Intended Redevelopment was inconsistent with public interest.

56 As canvassed above (at [53]), apart from the existence of permissions from the relevant planning authorities, another relevant consideration would be whether the proposed use or development allowed the land to be developed to its optimal potential. In this regard, I agreed with the Applicant's submission that the Intended Redevelopment was consistent with public interest as it "promotes the efficient use of … land", particularly in a country as land-scare as Singapore.[59] The Intended Redevelopment had been approved by JTC, as the

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58 AWS at para 5.2.3.

59 AWS at paras 5.1.3–5.1.4.

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planning authority for industrial land in Singapore. It also allowed the Dominant Tenement to be used in a more efficient manner by maximising the GPR. Thus, it could not be seriously argued that the Intended Redevelopment was inconsistent with public interest.

The Respondent could be adequately compensated

57 In *Rainbowforce*, Preston CJ clarified that when determining if the owner of the affected land can be adequately compensated, the court will consider "'any loss or disadvantage' that will arise from the imposition of the easement" provided that there is "a causal relationship between the loss or disadvantage for which compensation is claimed and the imposition of the easement" (at [107] and [109]). Preston CJ also outlined three elements which compensation would ordinarily comprise: "(a) the diminished market value of the affected land; (b) associated costs that would be caused to the owner of the affected land, and (c) an assessment of compensation for insecurity and loss of amenities, such as loss of peace and quiet" (at [111]).

58 In relation to element (c), Preston CJ affirmed that the court may find the disadvantage suffered to be incapable of adequate compensation if the "imposition of the easement causes material injury to intangible benefits or the imposition of material intangible detriments, such as reduced amenity, enjoyment of property, and exposure to increased disruption and interference, which are not readily capable of being estimated in monetary terms" (*Rainbowforce* at [114]). In *Khattar v Wiese* [2005] NSWSC 1014 ("*Khattar*") Brereton J similarly found that the types of "injury to intangible benefits and … intangible detriments" which would weigh against a finding that a defendant can be adequately compensated, would encompass "reduced amenity and enjoyment of property, and exposure to increased disruption and interference"

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(at [50]). This is because such intangible injuries concerned an individual's "subjective tastes, preferences or beliefs … [and are not] readily capable of being estimated in money, nor one which can be adequately compensated by a small money payment" (at [49]).

59 I agreed with the elements enumerated in *Rainbowforce* and the characterisation and definition of the types of harms not readily compensable, as outlined in *Rainbowforce* and *Khattar*. Although the precise compensation due to the owner of the affected land is ultimately fact-specific and would vary from case to case, the court will generally consider the diminished value of the affected land, the additional costs imposed on the owner and the loss of any amenities in determining whether compensation could be adequate. Moreover, where a party is likely to suffer losses in amenities that are subjective or nearly impossible to quantify, such as the loss of enjoyment of a property, this would be a strong indication that the harm suffered was incapable of adequate compensation.

60 The Applicant submitted that the Respondent *can* be adequately compensated for any losses or disadvantages suffered. The Applicant argued that the Easements were only temporary, and the Respondent can be adequately compensated for the rental for the area lost as well as the additional costs incurred to relocate the temporary containers that would usually be stationed there.[60] The Applicant also contended that that Respondent's claims of revenue losses and business disruptions were heavily overblown. According to the Applicant, the harm arising from a loss of competitive edge and customer base were merely speculative and, in any regard, could not be properly regarded as

[60] AWS at paras 6.2.2–6.2.3.

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"irreparable".[61] Ultimately, the Applicant submitted that it would be adequate for the court to grant the Respondent leave to apply for further compensation on a subsequent date when it has better clarity on the actual amount of loss or damage suffered.

61 The Respondent heavily disputed such a characterisation. First, the Respondent reiterated the Applicant's non-compliance with certain safety guidelines (as discussed above at [51]) and claimed that as its business would require its workers to work underneath ongoing demolition works, this carried the reasonably foreseeable risk of loose debris falling from a height and damaging vehicles, goods and even individuals.[62] These concerns, of damage to property and harm to workers, were exacerbated by the allegedly lackadaisical attitude taken by the Applicant. According to the Respondent, this was evidenced by, *inter alia*, the fact that the load capacity of the catch platform did not meet the standard set out in the Singapore Standard Code of Practice for Demolition and that the Applicant's safety measures did not appear to extend beyond "safety netting and external scaffolding".[63]

62 Second, as a result of the aforementioned safety concerns, the Respondent argued it would have no choice but to cease some of its key operations. The Respondent's business operations were likely to be hampered by the fact that:[64]

(a) The Easements would result in the Respondent's prime movers, most of which are 40-foot containers, having insufficient space to

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61 AWS at para 6.2.16.

62 RWS at paras 52–53.

63 RWS at para 55.

64 RWS at paras 58–61.

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manoeuvre into and out of the loading and unloading bays. This could result in an increased risk of collision between the prime movers and the scaffolding, which may cause the latter to collapse and result in property damage and injury ("the Prime Movers Issue').

(b) The Easements would deprive the Respondent of access to plug-ins located on the Boundary Wall which were specifically designed to allow the Respondent to keep its containers refrigerated. Without these plug-ins, there could be a compromise in the quality of the Respondent's fresh produce due to a "cessation of the cold chain" ("the Plug-ins Issue").

Such disruptions and cessation of business operations would cause the Respondent to suffer immeasurable losses in the form of significant losses in revenue. Additionally, the Respondent risked losing its customer base, as any break in the cold chain could compromise the quality of its fresh produce. This may prompt the Respondent's customers to seek other distributors or suppliers who can provide better quality produce.[65]

63 As outlined above (at [57]), in order to determine the adequacy of compensation, three key elements needed to be considered. The easiest element was the diminished value of the affected land. Here, the Respondent can be adequately compensated for its loss of use of the portions of the Servient Tenement that now make up the Easements. As suggested by the Applicant, this loss would be compensable with reference to the rent corresponding to the lost area.[66] The more challenging elements were the compensation for: (1) the

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65 RWS at paras 62–65; citing LBTA-1 at paras 32–40.

66 AWS at para 6.2.3.

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associated costs that would be caused to the Respondent, such as the increased costs of relocating its prime movers and plug-ins to facilitate its business operations; and (2) any insecurity and loss of amenities, such as the resultant loss of business to be suffered by the Respondents. These two elements were vociferously challenged by the Respondent.

64 The Respondent's arguments, on the possible damage occasioned as a result of its various safety concerns, were a repeat of its safety arguments raised in the Substantially Preferable Question. In that regard, as I previously addressed (at [44]–[48] above), the presence of BCA's approval alongside the fact that the court was not precluded from granting an easement even if further actions were required to obtain the necessary (including the safety and planning) approvals, sufficiently disposed of this concern of safety. Indeed, even if I accepted that there would be an increased burden on the Respondent to put in place additional safety measures to ensure the safety of its staff that worked in close proximity to the demolition works,[67] there was no reason why such matters were incapable of being adequately compensated. I was also not swayed by the Respondent's claim that its business operations would be unduly halted by the Applicant's demolition of the Boundary Wall (assuming the Easements are granted) and that this would result in irreparable harm which could not be adequately compensated.

65 On both the Prime Movers Issue and the Plug-ins Issue, the Applicant had raised alternative measures to mitigate the effect of its demolition works. On the Prime Movers Issue, the Applicant suggested relocating some of the temporary containers parked near the Boundary Wall to a potential parking location 12 minutes away from the Servient Tenement, which also contained 50

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67 RWS at para 73.

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plug-in points. This would allow the Respondent's prime movers the required manoeuvring space.[68] In the alternative, the Applicant suggested that the Respondent could use vehicles or containers smaller than their 40-foot containers, especially since the Respondent does, in fact, already rely on 14-foot and 24-foot delivery trucks.[69]

66 The Respondent maintained that such suggestions were unworkable. It claimed, *inter alia*, that the service providers identified by the Applicant were unable to commit to "to offering plug-in services" and that such a service was crucial for preserving the quality of the Respondent's produce. The use of smaller containers and trucks was likely to increase traffic as well as require more parking spaces and charging points which the Respondent may not have the capacity to process. Further, some of the Respondent's suppliers may be unwilling to load their goods on smaller containers.[70]

67 I accepted the Respondent's claim that, despite the Applicant's various attempts at offering solutions to the Prime Movers Issue and Plug-ins Issue, its business operations would invariably be negatively impacted by the Applicant's demolition works. However, I could not accept its further claim that such impacts on its business were likely to result in intangible detriments or losses that were incapable of being expressed in monetary terms. While the relocation of several plug-ins, containers and unloading operations (even off-premises) would likely incur additional costs, these were logistical challenges that could be addressed. They were quantifiable and could be readily remedied with appropriate compensation orders. As for the Respondent's loss of revenue, such

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68 AWS at paras 6.2.9–6.2.12.

69 AWS at paras 6.2.14–6.2.15; citing LBTA-1 at p 327.

70 RWS at paras 70–72.

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losses could similarly be measured by comparing the Respondent's earnings or revenue for an equivalent time period (*eg*, the same time period from previous years) prior to and after the imposition of the Easements. The corresponding difference between those values would conceivably represent the loss suffered and thus the compensation warranted to the Respondent.

68 As for the Respondent's further claim that it would suffer immeasurable loss to its customer base, I also disagreed. Since s 97A(2)(*b*) of the LTA provided that the proprietor of the land that is burdened by the easement has to be "adequately compensated for any loss or other disadvantage that *will* arise from the creation of the easement" [emphasis added], the resultant disadvantages must be a matter of "virtual certainty" to prevent the court from grating an easement. Merely raising *possible* disadvantages that were speculative would be insufficient to show that the Respondent could not be adequately compensated, though such matters were relevant to the court's overall exercise of discretion in granting the Easements (see, *eg*, *Tanlane Pty Ltd v. Moorebank Recyclers Pty Ltd (No 2)* [2011] NSWSC 1286 at [56]).

69 I rejected the Respondent's claim that the loss of its customer base was virtually certain. To this end, I noted that Respondent had attempted to rely on a prior instance when it lost 20–30% of its recurring orders from customers when it ceased its business in August 2021.[71] However, I did not find this example compelling for two reasons. First, the loss of customers could have been due, in part, to the fact that this prior instance occurred during the COVID-19 pandemic – a time where many businesses were losing customers due to cuts in operations. Even if the Respondent had been able to continue its operations as per normal, it would likely have lost several of its customers due

[71] LBTA-1 at para 23.

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to the pandemic. Second, the Respondent had completely ceased its business during that period (*ie*, the Respondent was not undertaking *any* operations), whereas such a complete halt was unlikely to be the case here.

70 More importantly, I did not agree with the Respondent that such losses, arising from a reduction in business operations and a loss of customers, were incapable of being measured and thus compensated. As explained in *Khattar* (see above at [57]), a court is more likely to find that damages are inadequate when the specific degree of loss is *impossible* to measure because there is no possible objective metric to judge it (*Khattar* at [49]–[50]). One such instance would be if an easement blocks a defendant's view of scenery, as the court would be hard-pressed to value the loss of that scenery since its subjective value differs from individual to individual. In contrast, something like the Respondent's loss of business standing and customer base, difficult as they may be to value, were clearly not as subjective and amorphous as aesthetic preferences. In fact, as the Applicant rightly pointed out, losses arising from a "loss of business [and] erosion of customer base" have been recognised by the Singapore courts as being quantifiable and capable of compensation (see*, eg*, *Tiananmen KTV (2013) Pte Ltd and others v Furama Pte Ltd* [2015] 3 SLR 433 at [47]).

71 Additionally, the possibility of reserving the Respondent's leave to apply for compensation was raised by the Applicant,[72] and recognised in *Tregoyd Gardens Pty Ltd v Jervis* (1997) 8 BPR 15,845 ("*Tregoyd*"). In *Tregoyd*, Hamilton J allowed the defendant to "apply for further compensation in respect of the destruction of or any damage to the palm tree if such occurs" (at p 15,856). The availability of granting such leave was subsequently affirmed

[72] AWS at para 6.2.17.

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by Preston CJ in *Rainbowforce* (at [115]). Evidently, the New South Wales courts have been quite willing to grant leave for further compensation despite the NSW Act *requiring* the court to make an order as to compensation alongside the order granting the easement, as per s 88K(4) of the NSW Act. Given that no similar statutory requirement exists in Singapore, this suggests, *a fortiori*, that leave for further compensation (particularly when the loss suffered is uncertain and difficult to value) should be even *more* readily granted and relied upon here. At the hearing before me, the Applicant explicitly confirmed that it would be open to granting the Respondent the liberty to apply for compensation on more than one occasion, should that need arise.

72 In response, the Respondent sought to make the further point that granting it leave to seek compensation at a later date would not be adequate, as it may encounter difficulties in proving factors like causation. I was unconvinced by this point. In *Rainbowforce*, Preston CJ held that inherent in the inquiry of adequate compensation is "a requirement for a causal relationship between the loss or disadvantage for which compensation is claimed and the imposition of the easement" (at [109]). Indeed, such a requirement would flow naturally from the requirement, in s 97A(2)(*b*) of the LTA, that the loss or disadvantage imposed on the servient tenement "arise[s] from the creation of the easement". Given that the Respondent *had* been able to advocate in support of its position that it would suffer losses to its business and potential customer base (resulting from the grant of the Easements) in the proceedings before me – it would not be that much more difficult for it to raise these points if and when there is a future assessment hearing. In any regard, any loss which could not be shown to have arisen causally from the Easements would not be relevant.

73 In summary, I rejected the Respondent's claim that the injuries it would suffer were incapable of being measured and thus compensated. I concurred

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with the Applicant that any expenses incurred in relocating the plug-ins and containers as well as any losses arising from disruptions to business operations and impacts to the Respondent's customer base, were capable of being adequately compensated with appropriate orders if not agreed between the parties.

The Applicant had made all reasonable attempts to obtain the Easements

74 In *Rainbowforce* at [131], Preston CJ set out the steps necessary to show that all reasonable attempts have been made to obtain the easements:

> (a) the applicant for the order must make an initial attempt to obtain the easement by negotiation with the person affected and some monetary offer should be made: *Hanny v Lewis* at 16,210;
>
> (b)the applicant for the order should sufficiently inform the person affected of what is being sought and provide for the person affected an opportunity to consider his or her position and requirements in relation thereto: *Coles Myer NSW Ltd v Dymocks Book Arcade Ltd* (1996) 7 BPR 14,638 at 14,654;
>
> (c)the applicant for the order is not required to continue to negotiate with a person affected by making more and more concessions until consensus is reached to the satisfaction of the person affected: *Coles Myer NSW Ltd v Dymocks Book Arcade Ltd* at 14,654; and
>
> (d)the whole of the circumstances are to be considered from an objective point of view; once it appears from an objective point of view that it is extremely unlikely that further negotiations will produce a consensus within the reasonably foreseeable future, it may be concluded that all reasonable attempts have been made to obtain the easement: *Coles Myer NSW Ltd v Dymocks Book Arcade* at 14,653–14,654 and see also *Antipas v Kutcher* at [14].

I agreed wholeheartedly with the steps outlined by Preston CJ and found them to be a helpful guide when considering whether reasonable attempts had been made by an applicant.

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75 Turning to the facts of this case, the Applicant relied on its attempts to inform the Respondent about the Intended Redevelopment and to accommodate the Respondent's various concerns and requests. It had also proposed alternatives and engaged in revisions of its original plan to address the Respondent's concerns.[73] Moreover, it offered to purchase an insurance policy in favour of the Respondent during its demolition works to insure the Respondent against any potential damage or loss arising from the demolition works, and to compensate the Respondent for its loss of the exclusive use of the open area.[74] In contrast, the Respondent asserted that reasonable attempts had not been made as the Applicant failed to engage in sufficient discussions or attempts to arrive at a consensus with the Respondent before filing the present application.[75] The Respondent also claimed that a reasonable attempt at compensation had not been made as the Applicant had not made any monetary offer for the Easements.[76]

76 I disagreed with the Respondent's claim that a reasonable attempt at compensation had not been made. The Respondent relied on *Rainbowforce* for the proposition that "some monetary offer should be made" (at [45]). In *Rainbowforce*, Preston CJ had relied on Young J's observation in *Hanny v Lewis* (1998) 9 BPR 16,205 that "*in almost every case* the court would expect some monetary offer to be made because … one does not get negotiations rolling until someone has made an offer that can be tested" [emphasis added] (at 16210). Evidently, an offer of monetary compensation, though generally expected, was

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73 AWS at paras 7.2.2–7.2.3; see also RHA-1 at paras 3.1.5–3.1.11 and RHA-2 at para 3.1.5.

74 RHA-1 at paras 3.2.10–3.2.11 and pp 181–182 and 189.

75 LBTA-1 at paras 16–19 and 24–27.

76 RWS at para 83.

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not a strict requirement, and indeed nothing in the language of s 97A(2)(*c*) of the LTA or s 88K of the NSW Act imposes such a requirement. That said, even if I accepted that *Rainbowforce* imposed a strict requirement for a monetary offer to be made, there is nothing in Preston CJ's judgment in *Rainbowforce* that imposes a requirement that the monetary offer must be an exact quantified amount. Here, a monetary offer of compensation *had* in fact been made by the Applicant when it offered to: "(a) purchase an insurance for the Respondent during the course of its Demolition Works, and (b) pay the Respondent monetary compensation for its "*loss of use*" of the area that [the Applicant would] require for its Demolition Works during the relevant period".[77] Thus, it could hardly be argued that the Applicant failed to make a reasonable attempt at compensation.

77 For the sake of completeness, I would also state that the Applicant had satisfied its burden in having made reasonable attempts at obtaining the Easements directly, through the negotiation process it undertook with the Respondent. First, the Applicant had sufficiently informed the Respondent of the Easements and accorded the Respondent reasonable opportunity to consider its position in relation thereto. The Applicant did so via various emails informing the Respondent of its intention to demolish the Boundary Wall and access the Respondent's premises (at [8] above). Second, the Applicant also made continuous attempts to negotiate with the Respondent (see generally, [9]–[13] above), until it was clear that further negotiations were unlikely to produce a consensus in light of the Respondent's lack of response to the Applicant's emails (at [14] above). As held in *Rainbowforce*, the Applicant "is not required to continue to negotiate … by making more and more concessions until

[77] RHA-1 at para 3.2.10.

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consensus is reached to the satisfaction of" the Respondent (at [131(c)]). Thus, based on the Applicant's negotiations with the Respondent and the principles enumerated in *Rainbowforce* (at [74] above), I was satisfied that all reasonable attempts had been made by the Applicant to obtain the Easements directly from the Respondent.

Conclusion

78 I found that, in the present case, the requirements in s 97A of the LTA had been made out. The Easements were reasonably necessary for the effective use or development of the Dominant Tenement and the Applicant's Intended Redevelopment was not inconsistent with the public interest. Additionally, while I was cognisant of the burden which the Easements would impose on the Respondent, I agreed with the Applicant that the Respondent could be adequately compensated for any losses. Finally, I was satisfied that all reasonable attempts had been made by the Applicant to obtain the Easements directly from the Respondent.

79 Section 97A(4) of the LTA provides that the "costs of the proceedings are payable by the Applicant, unless the court otherwise orders". Having heard the parties' submissions on costs, I agreed with the Respondent that it had not conducted its defence in a manner that was so unreasonable as to disentitle it to costs to which it was entitled. Fair arguments were raised by the Respondent on whether the Applicant had genuinely considered alternatives to the demolition of the Boundary Wall. However, I accepted the Applicant's contention that the Respondent did take some arguments (such as those relating to the safety of the demolition) further than it should. Taking this into account, I ordered costs to

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be paid by the Applicant to the Respondent in the sum of $10,000, excluding disbursements.

80 I commend both sets of counsel for judiciously taking me through the jurisprudence from New South Wales on this subject. The parties had only just become neighbours and, unfortunately, one of their first substantive interactions was a lawsuit. I commented to counsels at the opening of the application that we should not allow the litigation process to amplify their disagreements. I encourage the Respondent to be cooperative in allowing the Applicant to complete its Intended Redevelopment and I encourage the Applicant to be fair in its compensation to the Respondent, for its troubles.

Wong Li Kok, Alex
Judicial Commissioner

Joseph Tay Weiwen and Tan Wei Sze (Shook Lin & Bok LLP) for the applicant;
Wong Tze Roy and Soon Wei Song (Goh JP & Wong LLC) for the respondent.

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