

THE ECONOMIC OF LAND ACQUISITION – USING KOTAKA’S MODEL IN LAND ACQUISITION TO PROVIDE LAND FOR INFRASTRUCTURE DEVELOPMENT IN MALAYSIA

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ABSTRACT: *Land acquisition is a way to make land available in the market for development purposes. An adequate compensation in land acquisition is always been referred to the open market value of the land taken plus its consequences including severance, injurious affection and disturbances. It is always been referred to the value of land to the affected landowners. Kotaka (2000, 2002) models the elements of adequate compensation in land acquisition. Therefore the paper seeks to redefine the adequate amount of compensation from landowners, valuers and administrators viewpoints using Kotaka’s Model with special application in Malaysia. In doing so, data is gathered from landowners, administrators and valuers from selected cases of land acquisitions. Data gathered is analysed using qualitative descriptive analysis to identify elements of dissatisfactions by landowners upon compensation and proposed solutions by the selected respondents. In the end, findings show that there are elements of dissatisfactions of the landowners and ways out are to be more professional in dealing with them. In line with Kotaka’s Model (2000, 2002), amendments to the elements of adequate compensation had been made to further explain it for implementation.*

KEY WORDS: *Land acquisition - Kotaka’s Model - Malaysia*

1. INTRODUCTION

In Malaysia, land acquisition is guided by the Land Acquisition Act 1960 (amended) in relations to the law and rules. However, in determining the adequate amount of compensation, the Federal Constitution 1957 under Article 13 stipulates that no land shall be taken without adequate amount of land compensation. Unfortunately, both instruments of the guidance are not sufficient in guiding exact definition of the adequate compensation. There are always been elements of dissatisfactory on the part of the affected landowners, particularly with regards to the land value, severance,

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injurious affection and disturbances. They always dissatisfied with low amount of compensation on land taken (Rowan-Robinson, 1995), improper notices and delay in making payments (Mazlan, 2008).

Moreover, valuers are using different ways altogether in valuing those claimable heads of claims. Comparing the method of valuation across the world, there are disparity and differences in the way in which valuers assessing the amount of compensation. More disastrously, land administrators are looking for deviated techniques of decision in making up the amount of compensation to the affected landowners.

Whatever it is, there is a model after Kotaka (2002) who proposed techniques of satisfying landowners by way of identifying elements of adequate compensation. The paper will look into the aspects of adequate compensation as proposed by Kotaka (2002) by undertaking a study on selected land acquisition cases in, Malaysia.

2. LITERATURES ON ADEQUATE COMPENSATION

Land Acquisition Act (1960) originates from Land Acquisition (Straits Settlements) Enactments of different States in Peninsular. In 1948, Land Acquisition Ordinance (Compensation) (Special Allocation) was introduced. The land Acquisition Act (1960) upheld the Article 13 of the Federal Constitution which stipulated that any land acquired by the government for public purpose must be paid adequately. This is aimed at standardizing the payment of adequate compensation in the country.

The Land Acquisition Act (1960) laid every steps, process and procedures in taking land for public purposes. In general, failure to follow the regulations may lead to unfair or inadequate payment of compensation of the land taken from landowners. For example, once the land office was delayed in delivering notice to landowners, the implication is that time taken may reflects inefficiency and therefore contributed to the dissatisfaction to the landowners who had suffered losses.

Opinion on the true meaning of adequate compensation may be different from one person to another (Weisheit, 1989). Adequate payment to somebody wouldn't be similar to just to somebody else's. In general, there are similarities between just, fair, adequate amount of compensation. Whatever the terminology used, the amount of compensation must refer to open market value of the land taken (Usilappan, 1999).

Kotaka (2002), asserted that adequate compensation must complies three situations: the affected landowners are being paid all the losses incurred as agreed during a harmonised negotiation (or hearing) as it happened in sale transaction; payment is made considering physical factor and no sentimental value is taken into account and; the date of valuation is going to be the date of its first proposal to acquire the land and not when it has been actually acquired.

However, Table 1 shows different concepts of adequate compensation as applied in different countries.

Table 1. Concepts of adequate compensation in selected countries

| Country | Concept of Adequate Compensation |
|-----------|---|
| England | Under Compulsory Purchase Act 1965, payment is base don market value of land taken and all losses borne by affected landowners |
| India | Just compensation refers to value to the landowners as practice in England, Australia and Canada. |
| Australia | Same concept of 'just term' or 'just compensation' or 'adequate compensation'. For example, Section 25 (1) Land Acquisition Act 1969 South Australia refers to adequate compensation to all payments such as severance, injurious affection and disturbances at the time of acquisition. |

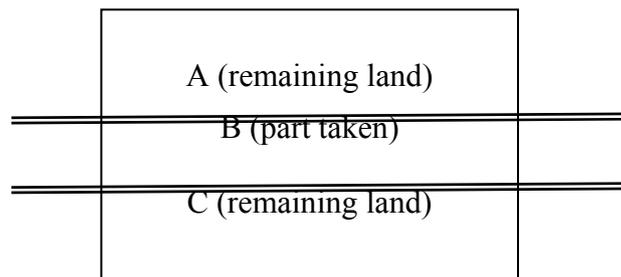
Source: Mazlan 2008

3. HEADS OF CLAIMS

In Peninsular Malaysia, the Land Acquisition Act 1960 explains basis of valuation for compensation under Schedule 1. Section 1 and 2 of Schedule 1 stipulated the open market value as the basis for the valuation of land for compensation purposes.

(a) The Land Value. Malaysian Valuation Standards (2006) defined open market as the expected price that will be achieved once the property is transacted on the date of valuation between a willing seller and a willing buyer who are acted knowledgeably, prudently and without any compulsion. The American Institute of Real Estate Appraisers (AIREA) defines open market as the highest selling price in monetary term when the property is transacted in open market within a reasonable period of time to get a knowledgeable buyer (Ismail and Mazlan, 2005).

(b) Severance. Severance happens when the land acquired is splitted into two or more due to partial land acquisition.

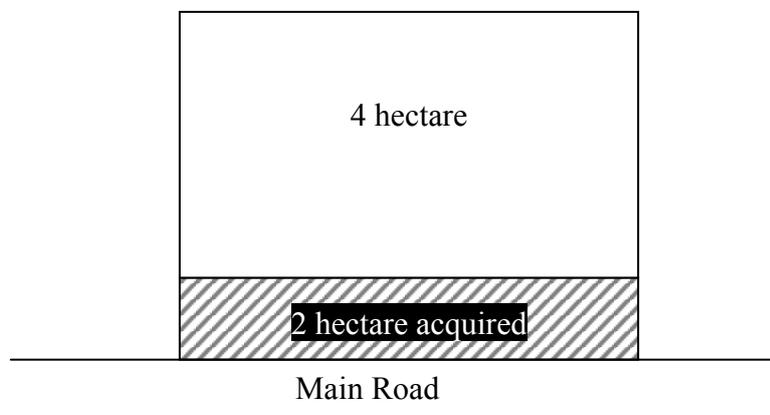


Source: Gibbard, 2001

Figure 1. Severance

The affected landowners are eligible and have rights under the land acquisition act to claim the losses due to the value of land acquired and the depreciated value of the remaining lands that had not been acquired. Severance had caused the value of remaining lands depreciated (Brown, 2004). The valuer will do the comparison between the before and the after valuation and the differences in value reflects the amount of compensation to be paid to the affected landowners due to severance. In case, the remaining land is no more economic, the landowners may put forward their request so that the government may acquire all the lands (Denyer-Green, 1982).

(c) Injurious Affection. Injurious affection happens whenever the value of remaining land depreciated due to the works of the land acquisition carried out by the acquirer or their contractors.



Source: Raja Aris, 1987

Figure 2. Injurious Affection

Injurious affection may be explain by ways in which the value of remaining land depreciated and the way in which damages happened to the value of land by way of haze, insecurity and other disturbances (Denyer-Green, 1982).

(d) Disturbances. The affected landowners may be shifted somewhere else. The costs incurred are transferring cost, estate agent costs, lawyers' fees, income losses in commercial properties. Compensation to the affected landowners due to disturbances is based on real expenditure as shown by receipts.

The expenditures must not be too remote. Under the Land Acquisition Act 1960, Section 2 (e) and 2 (f) under Schedule 1 empowered land administrators to offer compensation of disturbances. Ex-gratia payment is made by the authority to the ground leaseholder upon transfer to new sites.

(e) Solatium. Solatium is a payment to the affected landowners as an extra payment over the open market value of the land taken excluding the compensation for disturbances (Sarkar, 1998). According to Brown (2000), the purpose of solatium is to compensate landowners on depression factors due to land acquisition. Solatium is usually paid in India, Western Australia and New Zealand but not in Malaysia.

4. METHODOLOGY, ANALYSIS AND DISCUSSION

In completing the study, the affected 40 landowners were taken as sample for interviews. The respondents are taken from four case studies i.e prawn aquaculture, Beris Dam, higher institution and road widening Gurun-Sik Road. The interviews are meant to identify and classify factors that caused dissatisfaction amongst the affected landowners. Moreover, data on opinions of valuers and land administrators were also taken to analyse further the situation qualitatively.

The empirical study is conducted using qualitative analysis. Several land acquisition projects have been chosen for investigation. (Please refer Appendix A for locations of selected case studies).

- The Beris Dam project is located in District of Sik to supply water to surrounding areas. It worth RM186 million involving about 16,000 of paddy lands.
- Prawn Rearing Kerpan Project is involving Malay Reservation Land of about 1,000 acres owned by 800 Malays farmers.
- Construction of Yayasan Al-Bukhary for higher learning involving about 100 families
- Gurun-Sik Road widening scheme involving the acquisition of industrial, residential and commercial lands along the road stretch of about 36 kilometers.

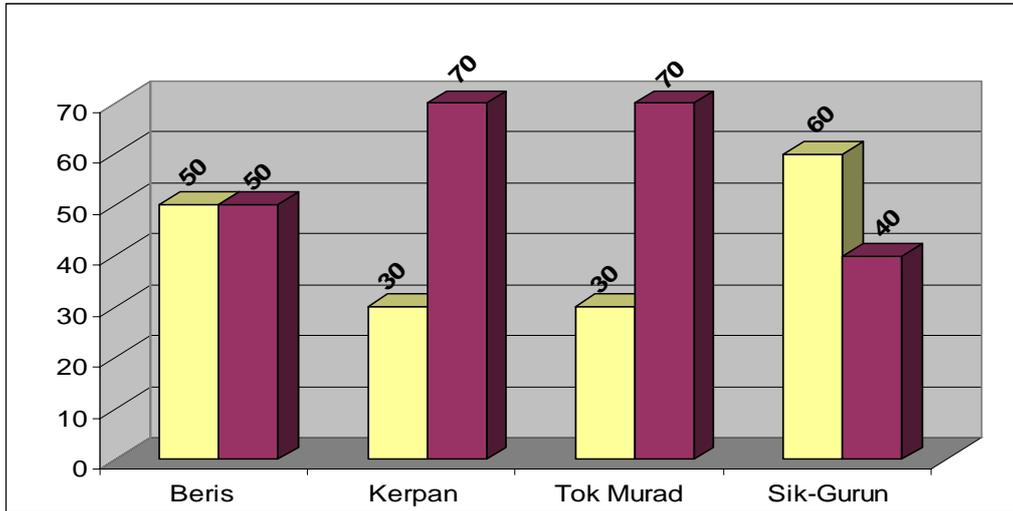
4.1. Analysis on Landowners

The main respondents interviewed were affected landowners of the above selected land acquisition projects. There are about 40 landowners interviewed to gather information on factors that make them dissatisfied with the amount of compensation. Interviews were also been conducted with private and public valuers to gather information on their perceptions about just compensation. In addition, opinions from land administrators were also gathered through interviews with them. Analyses on data gathered were shown in the form of histogram, pie-charts, and quotation to ease the explanation.

Based on the interviews, most of landowners were dissatisfied with the way hearing was conducted. Almost 60 per cent of landowners interviewed in Beris and Kerpan are not happy with the ways interviewed were being conducted without any details. Almost 80 per cent of respondents in Kampong Tok Murad were less satisfied with the hearing. In contrast, only 20 per cent of landowners in Sik-Gurun were satisfied with the hearing.

Landowners were quite happy that the government allowing them to appoint private valuers and this helps. The government paid for the services. Unfortunately, there are landowners who are not happy with the amount of compensation but accepting the figures to avoid long process of appeal and were not happy to pay deposits. Beris Dam was a good case whereby about 70 per cent were not happy but still accepting the compensation from the government. In Kerpan, the number was 80

percent, in Kampong Tok Murad it was 90 per cent. In Sik-Gurun, most of landowners were unhappy but still accepting due to small amount of compensation.



| Owners | % / (person) | % / (person) | % / (person) | % / (person) |
|--------------|--------------|--------------|--------------|--------------|
| Satisfied | 40 / (4) | 40 / (4) | 20 / (2) | 80 / (8) |
| Dissatisfied | 60 / (6) | 60 / (6) | 80 / (8) | 20 / (2) |

Figure 3. Satisfaction on Hearing Conducted

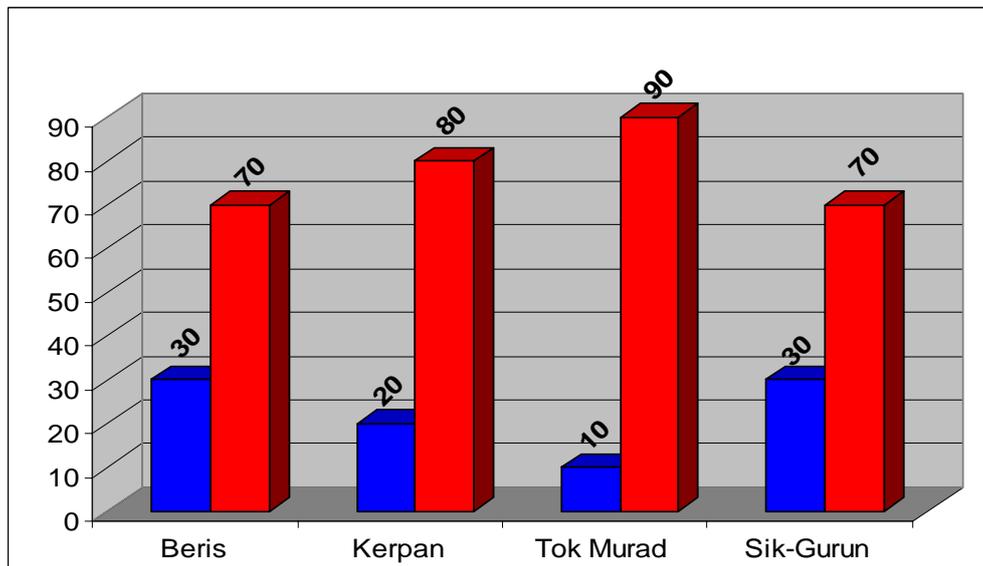


Figure 4. Satisfaction Towards Amount of Compensation

The amount of compensation must be paid as soon as available. Delays mean higher costs due to interests. Usually, 3 months period is reasonable for the payment to be made. In Kerpan and Tok Murad, almost 70 per cent of landowners were dissatisfied with the time taken to disburse the payment to them. Beris recorded 50 per cent dissatisfaction and Sik-Gurun recorded 40 per cent. The reason for Kerpan having higher percentage was due to longer time taken to solve the problem with inheritancy.

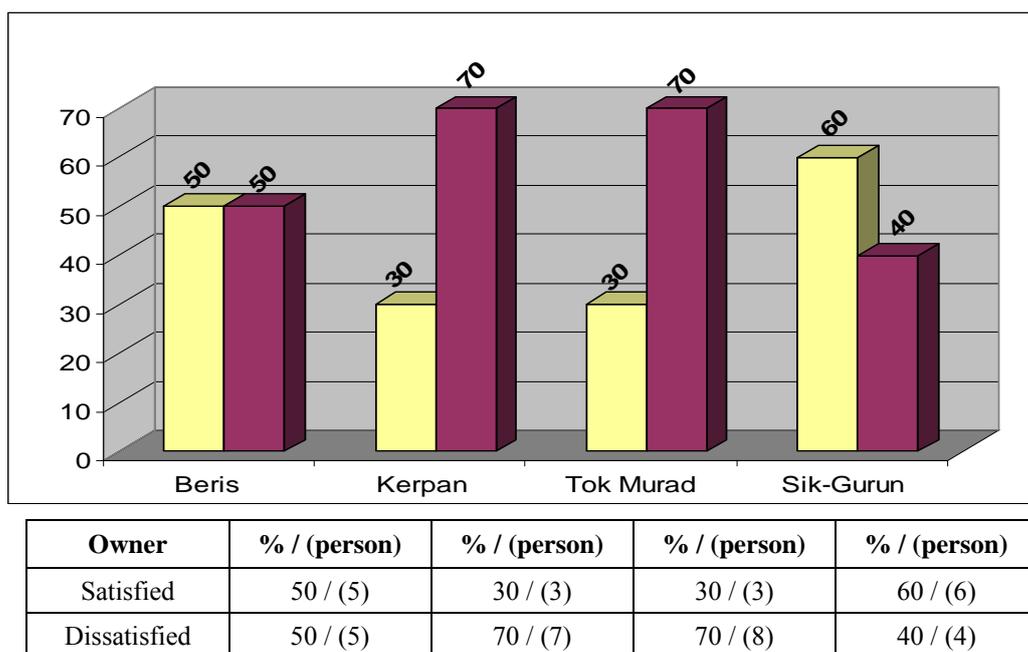


Figure 5. Satisfaction Over Time Taken to Pay The Compensation

4.2. Perspective of Land Administrators

A number of land administrators have been interviewed to gauge their opinions on adequate compensation. They were asked about amount of compensation, type of payments, head of claims and solutions.

All land administrators interviewed agreed that affected landowners should be given chances to participate in the land projects. This is due to the fact that partnership would stimulate income (prawn rearing), offer opportunity for business venture (prawn rearing), accumulate capital (higher institution), gain capital appreciation (prawn rearing), sharing profit arises from development and therefore affected landowners will less tendency to appeal at high courts.

In the Beris Dam project, the affected landowners will be given land as substitution elsewhere. About 80 per cent of landowners agreed with the reinstatement and 20 per cent opposing. Compensation in the form of reinstatement is close to the principles of no less no better due to land acquisition.

Table 2. Partnership Scheme

| Partnership between owners and developers | Resp. A | Resp. B | Resp. C | Resp. D | Resp. E |
|--|----------------|----------------|----------------|----------------|----------------|
| Opportunity | √ | | | | |
| Inject capital | | √ | | | |
| Capital appreciation | | | √ | | |
| Sharing profit | | | | √ | |
| Less appeal and court cases | | | | | √ |

Landowners are less burden to go for alternative lands. The affected landowners having recoup their harmonies with the land and less problems with human values and family ties whereas the cash is having a higher liquidity.

Table 3. Land administrators viewpoints

| Views | Positive | Negative | Remarks |
|--------------|-------------------|---|----------------|
| Respondent A | Easy replacement | - | 60% agreed |
| Respondent B | Sentimental value | Illiquid | - |
| Respondent C | Family ties | - | - |
| | Neighbourhood | - | - |
| Respondent D | Restart life | Difficult to find suitable land | - |
| Respondent E | - | Not every owner want land and buildings | 40% disagreed |
| Respondent F | - | Some want money to do other things | - |

4.3. Perspective Valuers On Adequate Compensation

Valuers are the persons whose responsible to determine the amount of adequate compensation. However, land administrators are the one who will ultimately responsible to offer the final amount of adequate compensation. In this section, interviews will be conducted with the valuers involved in the simple cases. The questions asked are related to the definition of adequate compensation, methods used and approaches to valuation of compensation:

- *Respondent A* - mentioned that open market value covers adequate compensation as far as the affected landowners are no less no better than he should be compensated upon land acquisition as if no acquisition has ever happened.

- *Respondent B* - mentioned that adequate compensation refers to amount compensation that take into account all losses and rights of affected landowners including potential value and payment for disturbances.
- *Respondent C* - refers to adequate compensation as open market value accordance to Schedule 1 Land Acquisition Act 1960. However, since land acquisition deals with human factors, valuers must consider humanism as a factor in determining the amount of adequate compensation.
- *Respondent D* - stated about open market value based on recent sales transactions that happened in the market. It has to consider consequence costs such as loss of income, loss of goodwill, cost of transfer, transportation and storage wherever applicable.
- *Respondent E* - mentioned about open market value of land taken and any losses including sentimental values and special payment of solatium.
- *Respondent F and G* - refer to adequate compensation of open market value taken and consequences losses including transfer payment, temporary buiding rent, loss of income, loss of goodwill, professional fees such as lawyers, architect, engineer, valuer, estate agents wherever applicable.
- *Respondent H* - refers to legal and financial aspects of adequate compensation. Therefore, there are related act of parliament and circulars that need to be amended to allow for adequacy in compensation to the affected landowners.
- *Respondent I* - considers adequate compensation in relation to the before and after the land acquisition. If there is a house being acquired then a similar house must be compensated accordingly. Beside a similar house consequence costs and solatium must also be paid to the affected landowners. Solatium may off set the difficulties in offering a similar house to the landowners.
- *Respondent J* - refers to the open market value of the land taken as far as the affected landowners are satisfied with the amount of compensation paid to them.

5. PRINCIPLES OF DETERMINING ADEQUATE COMPENSATION

Respondents cum valuers interviewed suggest the followings in relation to date of valuation, compensation for severance and injurious affection and rate of interests:

5.1. Date of valuation

There are about 30 per cent of respondents interviewed had agreed that date of valuation must be according to the date of proposal to acquire the land under provision

Section 4 whilst another 70 per cent agreed that the date of valuation should be under Section 8 the date of endorsement of the land acquisition. The discussion is as follows:

Table 4. Views on Adequate Compensation

| Respondent A | Respondent B | Respondent C | Respondent D | Respondent E | Respondent F, G, H |
|--|---|---|------------------------------|---------------------------------------|---|
| Date of proposal to avoid land speculation | Date of proposal Either Section 4 or Section 8 | Date of proposal to avoid difficulty in future values | Official date of acquisition | Date on Section 8 after land transfer | Date of real acquisition to avoid loss to landowners Date of acquisition to consider increase in value and open market |

5.2. Determining Severance and Injurious Affection

As discussed earlier, both severance and injurious affection are adequately provided under Section 2 (c) and 2 (d) of First Schedule. However, the power to offer compensation under these head of claims is on the land administrator and not the valuer. There are 80 per cent of respondents were disagreed with the power given to administrators due to the fact that both payments are closely related to the open market value of land and the valuers are responsible for advice on market values.

Table 5. Valuers and land values

| Respondents | A | B | C, D, E | F | G, H, I, J |
|-------------|----------------------|-------------------|---------------------------------------|---------------------------|---------------------------------|
| Disagreed | Valuers do valuation | | | | |
| Agreed | | Valuers do advise | | Valuers do valuation only | Decision on land administrators |
| Disagreed | 64 | 56 | Land administrators have no expertise | | |

5.3. Determination of Rate of Interests

It has been a conventional decision that 8 per cent per annum payment of rate of interest will be paid to the landowners in relation to deferred payment of compensation. This has been stipulated under Section 29A (5) and Section 32 (1) of Land Acquisition Act 1960. Valuers however have the followings:

Table 6. Valuers and Rate of Interests

| Respondent | A | B | D, H, I | C | E |
|------------|-------------------|-------------------|------------------------|--------------------------------|-----------------------------------|
| Agreed | — | According to %GDP | Adequate due to fixity | | |
| Disagreed | Current rate 3-5% | — | | May be increased, too long ago | According to land characteristics |

5.4. Valuation Method

As discussed earlier, valuation practices determined the way in which amount of adequate compensation is calculated by valuers. The followings are evidents gathered from respondent valuers interviewed in the study.

(a) Valuation considering potential land use. Majority of respondents (about 80 per cent) mentioned that Malay Reserved Land must be valued at open market although the amended Act had been done in 1997. It is difficult to accept differences in value based on the future use of land for Malays or non-Malays due to complexity of land users. For example, there will be European tourist visiting a mosque in later years.

Respondent A mentioned about the open market valuation on land with restriction in interests. There might be changes on the land use for the future due to degazette or change in economic climate or even the land acquired may be transferred to government agency for development into different use later (Respondents C, D, E, F, G and H). This is in accordance with provision under Section 68A, Land Acquisition Act 1960 (amended).

Respondent B said this would lead to inadequacy in the amount of compensation. Nonetheless, Respondent J mentioned about the nature of limited demand for Malay Reservation Land that contributed to limited Malays who may be able to buy the land in the market. Since the land for the Malays and from the Malays, the Malays are the one who will get the benefit at the end of the day (Respondent C).

In contrast, Respondent I mentioned about MRL in Kelantan whereby all the lands are categorised under the same category and hence, the land should be valued at open market. Whatever it is, most the Malays are financially capable of buying the land nowadays. Therefore, the land must be transacted at open market for the sake of adequacy in compensation in land acquisition.

(b) Valuation of land with development potential. What is the best way to value land with potential development? There are comparison, residual, cost, investment and profit method of valuation that can be used to value development lands.

6. CONCLUSION

From the above discussion and what has been analysed from selected respondents landowners, valuers and land administrators, an adequate compensation in land acquisition is really complicated and need further investigation. In brief, adequate compensation refers to date of valuation, method of valuation and head of claims. Other than elements stated under First Schedule Land Acquisition Act 1960, no other documents reveal the exact meaning of adequate compensation.

The First Schedule revealed the value of land taken, severance, injurious affection, consequential costs, loss of income, and related fees as can be considered as losses to the affected landowners. As such Kotaka (2000 and 2002) asserted that adequate compensation emerged when all the losses are paid to the affected landowners after they have been consulted in proper manner, and the land had been valued at open market without any special consideration based on the date of proposed land acquisition.

The study proposed amendment to Krotaka by suggesting more details elements to include payment of all genuine losses, common agreement on amount of compensation between landowners and land administrators, no special consideration on land value, date of proposed acquisition, no proposed land use taken into consideration, quick payment, value plants separately and the payment of solatium to the affected landowners.

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APPENDIX A Location Plan

