

LAND ACQUISITION ACT

APPEALS BOARD

AB 1997.080

In the Matter of the Acquisition of Land at
Lots 2754 and 2756 of Mukim 22
862 Upper Serangoon Road

Between

Shell Eastern Petroleum (Pte) Ltd

... Appellant

And

Collector of Land Revenue

... Respondent

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue of compensation in an amount of \$7 183 000 in respect of the land at Lots 2754 and 2756 of Mukim 22 be increased to \$12 900 000;

And

(2) That the Collector of Land Revenue pay to the appellant the balance of the award together with interest at 6% per year from the date of taking possession;

And

(3) That the deposit paid by the appellant be repaid to it;

And

(4) That there be no order as to costs of this appeal.

BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

Appeal

(1) On 28 June 1996 ("acquisition date") a notification was published in the *Gazette* of a declaration made under s 5 of the Land Acquisition Act ("s 5 declaration") that the land at Lots 2754 and 2756 of Mukim 22 ("acquired land") was required for a public purpose namely North-East MRT Line and Comprehensive Development. The appellant was then the proprietor of the acquired land for an estate in fee simple and is a person interested.

(2) For the purpose of the inquiry held under s 10 the appellant submitted a claim of \$53 120 000 for compensation. The respondent ("Collector") found that the market value of the acquired land as at 1 January 1995 was \$7 183 000 and on 20 February 1997 he made an award of compensation in that amount.

(3) The appellant appeals against the award on the ground that the award is inadequate, unrealistic and not reflective of the market value of the acquired land and on other grounds stated in its petition of appeal. In the course of the hearing the appellant amended its claim to \$12 900 000. The Collector does not seek to support his award and at the hearing adduced evidence that the market value of the acquired land as at 1 January 1995 was \$11 400 000 and proposed compensation in that amount.

Acquired Land

(4) The acquired land consists of two adjacent lots forming a fairly rectangular plot abutting Upper Serangoon Road. The aggregate site area is 2 359.6sm. The frontage to Upper Serangoon Road is about 85m. It is zoned Local Shopping in the Master Plan and at the acquisition date and for some years prior to that it was used for a petrol service station. Written Permission was granted as long ago as 1 August 1966 under the planning legislation then in force for development of the site of the acquired land for this purpose. The two adjacent lots have at all material times been enjoyed as one plot with a petrol service station on it.

(5) The acquired land is located on the South side of Upper Serangoon Road close to its junction with Hougang Street 21 which leads to Hougang Town Centre. As at the acquisition date the developments in the vicinity were predominantly residential with a mix of low rise buildings for commercial use on the 1st storey and residential use on the upper storeys, mixed landed residential buildings and HDB flats. Close to it on the same side of the road was another petrol service station and diagonally across the road there were two more petrol service stations one on each side of Flower Road. The appellant's station was one of a cluster of 4 such stations in that locality, two on the South side of Upper Serangoon Road and two on its North side.

(6) On 31 March 1995 Urban Redevelopment Authority ("URA") published the *Hougang Planning Area Planning Report 1995* ("Planning Report") which contains "proposals for addition/alteration to the Master Plan" submitted to the Minister for

approval. In these proposals the "proposed zoning of the site" of the acquired land was Transport Facilities which was a proposed new zone and petrol service station was a purpose for which the acquired land might be used subject to special consideration. These proposals were overtaken by compulsory acquisition considerations and have not been approved. As at the acquisition date the position was that the acquired land was zoned Local Shopping and it was subject to proposals in the Planning Report which had not been approved.

Compensation

(7) Section 33 of the Act provides:

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall ... take into consideration the following matters and no others:

(a) the market value -

(i) ...

(C) as at 1st January 1995 in respect of land acquired on or after 27th September 1995;

(ii) as at the date of publication of the notification under section 3(1) if the notification is, within 6 months from the date of its publication, followed by a declaration under section 5 in respect of the same land or part thereof; or

(iii) as at the date of publication of the declaration made under section 5,

whichever is the lowest

The s 3(1) notification was published on 4 March 1996 and the s 5 declaration in respect of the same land was published within 6 months later on 28 June 1996 (the acquisition date as noted earlier) and it is common ground that the market value as at 1 January 1995 was the lowest and it is the market value as at 1 January 1995 that among other matters has to be taken into consideration.

Petition of Appeal

(8) In para 5 of his Grounds of Award dated 3 July 1998 lodged pursuant to s 23(2) the Collector said:

b the [acquired land] was reassessed at \$3 044/sm (land and improvements) with effect from 11 Sep 1995 based on existing use as a petrol and service station for property tax purposes. This is the best guide to the market value of the [acquired land].

In the Grounds of Award the Collector states that the market value of the acquired land is estimated to be \$7 183 000 but he gives no grounds or no grounds other than

the "best guide" for estimating the market value or for determining the compensation which in his opinion should be allowed.

(9) In para (e)2 of its petition of appeal the appellant says the Collector has wrongly relied on the assessment for property tax purposes and gives its reasons in para (e)3. The Collector has adduced no evidence to support his estimate of the market value. He now says that the market value as at 1 January 1995 was \$11 400 000.

(10) The Collector must "inquire ... into the value of the land". He must "after the conclusion of the inquiry, make an award under his hand of ... the compensation which in his opinion should be allowed for the land". See s 10(1)(b). In determining the amount of compensation he must take into consideration the market value as at the relevant date. See s 15. He has not shown that the "best guide" is a sufficient basis for making a finding as to the market value and he has not disclosed any other basis to form an opinion as to the compensation to be allowed for the acquired land. Not surprisingly he does not as noted above seek to support his award in this appeal.

(11) In para (e)(1) of the petition of appeal the appellant says that the award is inadequate, unrealistic and not reflective of the market value and in para (e)(4) it says that the award should be based on sales of comparable and similar properties.

Appellant's Valuation

(12) Ms Ng Poh Chue of DTZ Debenham Tie Leung (SEA) Pte Ltd testifying for the appellant referred to the following transactions:

<i>Location</i>	<i>Date</i>	<i>Premium</i>	<i>Sales (lit/year)</i>
1 355 Commonwealth Ave	Jan 1995	\$6 391 950	3.45m
2 260 Queensway	Jan 1995	\$5 249 640	2.82m

These are not sales in the open market but tenders for renewal of leases submitted by the appellant and accepted by a public authority as the freehold owner. The date is the effective date of renewal or the date of commencement of the new term. The premium paid is for a 30 year lease. The sales are the average sales for one year of the sales for 1993 and 1994 of the appellant as the existing lessee and successful tenderer. Ms Ng also referred to two other transactions one of which was a tender by the appellant and the other by another oil company. These were tenders for new sites and the date was the date the tenders closed. She said she was not relying on these other two transactions for the purpose of this appeal.

(13) Using the two transactions described above as a basis Ms Ng derived an average throughput rate of \$1.865/lit. She adjusted this for an average freehold throughput rate of \$3.11/lit and applied it to the average annual throughput of the acquired land for 1993 to 1996 of 4 066 330 lit/year. She added the agreed value of improvements of \$260 000 and concluded that the market value as at 1 January 1995 was \$12 900 000.

Collector's Valuation

(14) Ms Chua Beng Ee of Inland Revenue Authority of Singapore testifying for the Collector also adopted the same approach in the valuation of the acquired land. She referred to the following transactions:

<i>Location</i>	<i>Date</i>	<i>Premium</i>	<i>Sales (lit/year)</i>
1 Tampines Ave	Jun 1994	\$21.3m	14.6m
2 Choa Chu Kang Way	Nov 1995	\$30.3m	18.3m
3 Pasir Ris Drive 1	Nov 1995	\$25.7m	16.4m

As in the case of the transactions referred to by Ms Ng these transactions were also tenders which were accepted by a public authority as the freehold owner. However these were tenders submitted by a different oil company and not the appellant and they were for new 30 year leases and not for renewal of existing leases. The sales represent the projected throughput as estimated by the oil company. The date is the date when tenders closed.

(15) The throughput rates were \$1.42/lit for transaction 1, \$1.66/lit for transaction 2 and \$1.57/lit for transaction 3 but Ms Chua adopted a rate of \$1.65/lit as at 1 January 1995. She applied the unadjusted throughput rate of \$1.65/lit to the average annual throughput of the acquired land for the three years to 1995 of 4 047 870 lit/year to obtain the value of \$6 678 989. She then adjusted this for tenure to obtain the value of \$11 131 648 which she rounded up to \$11 140 000. Adding to this the agreed value of improvements of \$260 000 she said that the market value of the acquired land as at 1 January 1995 was \$11 400 000.

(16) Ms Chua was referred to the two transactions referred to by Ms Ng which gave an average throughput rate of \$1.865/lit. She said that she was instructed by the public authority to advise on the premium for these transactions in September 1996 and the premium that was paid in each case was based on September 1996 values. She said that at the time she gave her advice she did not know that the renewal date of the leases was January 1995. She said that "internally" (meaning among the valuers instructed to advise the Collector in land acquisition cases) it was decided to adopt \$1.65/lit for January 1995 and \$1.85/lit for September 1996 but she gave no grounds for this decision. She was not asked.

Throughput Rate

(17) The successful tenders referred to by Ms Chua were submitted by another oil company as noted above and the information was given to Ms Chua during a presentation given by an officer of that company and there is no evidence that any of the appellant's officers or its advisers were present. When Ms Ng was referred to these transactions she said that she was retained by the same oil company and in the course of her professional retainer she was given sales of 12.5m lit/year, 14.5m lit/year and 12.5m lit/year for the same three years. These sales would give rates of \$1.70/lit, \$2.09/lit and \$2.06/lit for an average of \$1.95/lit which is still higher than the \$1.865/lit which she adopted.

(18) No representative of the oil company gave any evidence to explain the apparent differences in the estimated sales. Under s 25(4)(d) this Board may admit as evidence the statements of the sales which Ms Chua and Ms Ng said had been made to them by the company notwithstanding that they may not be admissible under the Evidence Act but having regard to the circumstances of this case and the conflicting statements of the sales it would be wrong to rely on them as evidence of the projected throughput in these transactions.

(19) In respect of the transactions referred to by Ms Ng the premium was based on what in Ms Chua's opinion were values prevailing in September 1996 and the premium may have been agreed only then or even later but nevertheless it is the premium for renewal of a lease to commence in January 1995. That is what the lessee paid for a new term. That is the price of the transaction. The transaction is for a new term commencing January 1995. In the approach of both the valuers for the appellant and for the Collector the date when tenders closed (in the case of new leases) or when the new term commenced (in the case of lease renewals) was treated as the date when the property was transacted and transacted at the price represented by the premium and there is no evidence to suggest that where the premium is negotiated and agreed subsequent to that date the agreed premium should represent the price of the transaction as at the date it was agreed and not as at the date the tenders closed or the new term commenced.

(20) On the evidence adduced this Board finds that for the purpose of determining the market value of the acquired land the throughput rate is \$1.865/lit before adjusting for tenure. The throughput rate is derived from the premium paid in respect of 30 year leases renewed to commence in January 1995 and no adjustment for time is required. The factor for adjustment for tenure was not in dispute and this Board finds that the adjusted throughput rate is \$3.11/lit.

Annual Throughput

(21) The annual fuel throughput of the station at the acquired land for each of the years 1993 to 1996 was:

<i>Year</i>	<i>Throughput (litres)</i>
1993	3 975 300
1994	4 313 100
1995	3 855 210
1996	4 121 710

Ms Ng adopted the average for the 4 years to 1996 of 4 066 330 lit/year. Ms Chua adopted the average for the three years to 1995 of 4 047 870 lit/year.

(22) Mr Chin of counsel for the Collector said that the market value had to be determined "based on the state and condition and other features of the subject property that were known or could reasonably be known as at the date of acquisition" which is 28 June 1996. He said that as at the acquisition date the annual throughput

for 1996 did not exist. He went on to say that the market value as at 1 January 1995 was \$11 400 000 and that this was not "reduced" by the capping provision in s 33(5)(e).

(23) The valuation of land for petrol service station use generally presents special difficulties associated with town planning considerations and limited market activity and comparisons are not readily available. In this appeal both the appellant's and the Collector's valuers have approached the valuation by applying the throughput rate to the annual throughput of the acquired land and in the circumstances of this case and on such evidence as there is this Board accepts the approach which has been adopted.

(24) The market value of the acquired land has to be determined "having regard to its state and condition" as at the acquisition date. To determine its market value as at 1 January 1995 the acquired land must be "evaluated in its improved state as if it were already improved" as at the earlier date. See *Collector of Land Revenue v Ang Thian Soo* [1990] SLR 11 at pp 17, 18. It must be evaluated with reference to prices prevailing as at the earlier date. The state or condition of the acquired land is what it was on 28 June 1996. It was land with a petrol service station on it with all the improvements which were completed in 1995 and it was land which was used as such. The annual throughput is a direct consequence of such use of the acquired land in such state and condition and in the decision of this Board and on the basis of the approach adopted in this case the market value as at 1 January 1995 is to be determined by applying the throughput rate (adjusted for tenure) applicable to 1 January 1995 to the annual throughput as at the acquisition date.

(25) To determine the annual throughput as at the acquisition date may require an analysis of the actual throughput for periods much shorter than one year but sadly such evidence is not available. The only evidence is of the actual throughput for each of the 4 calendar years to 1996. On such evidence as there is the appellant's case is that it is the average for one year of the throughput for the 4 years to 1996. The Collector's case is that it is the average for one year of the throughput for the three years to 1995.

(26) The average for the 4 years to 1996 takes into account the throughput for the first full years after the years in which improvement works were carried out and for that reason alone would be better than the average for the three years to 1995. Improvement works were carried out in 1993 and in 1995. No reason has been given for preferring the average for the three years to 1995 other than that as at the acquisition date the throughput for 1996 did not exist.

(27) It is not entirely right to say that the annual throughput for 1996 did not exist. The acquisition date was just two days short of 6 months into 1996 and there is no evidence to suggest that the actual throughput for all but two days of the first half of 1996 was in any way unusual other than might be attributable to the improvement works or that for any particular reason it should be disregarded. It may be helpful to refer to the capping provision in s 33(5)(e). If the price which a bona fide purchaser might reasonably be expected to pay for the acquired land depends on the annual throughput it would be most improbable that he would ignore the actual throughput

for nearly half the year down to the acquisition date. It would be more so if this is the half year following the year in which improvement works were completed.

(28) The average for the 4 years to 1996 includes the actual throughput for about half the year after the acquisition date but by taking an average of 4 years the effect of any exceptional characteristics is to that extent lessened and there is no evidence of any such characteristics. The average for the three years to 1995 excludes the actual throughput for nearly half the year to the acquisition date. As between the two this Board prefers the average of the 4 years to 1996 and decides accordingly.

Market Value

(29) On the evidence adduced and the facts agreed this Board finds:

(a) that for the purpose of s 33(1)(a) the market value of the acquired land was the lowest as at 1 January 1995;

(b) that the market value of the acquired land as at 1 January 1995 was \$12 900 000;

(c) that the market value so found does not exceed the Master Plan use price or the existing use price determined in accordance with s 33(5)(e).

Reasonable Expenses

(30) Section 33 provides:

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall ... take into consideration the following matters and no others:

...

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

In his closing submissions Mr Tan of counsel for the appellant submitted that the appellant was entitled to "removal costs" to be determined by this Board and he asked for a declaration in respect of such costs.

(31) This Board must take into consideration the reasonable expenses incidental to a change of place of business and must do so "in determining the amount of compensation to be awarded". The petition of appeal makes no reference to any matter relevant to this provision. No evidence has been adduced in respect of any such matter. The appellant has closed its case. In the decision of this Board the appellant is not entitled to the declaration asked for.

Award

(32) After taking into consideration the market value as at 1 January 1995 this Board determines that the amount of compensation to be awarded for the acquired land is \$12 900 000. This exceeds the amount of the Collector's award and this Board orders that the Collector pay to the appellant the excess together with interest at the rate of 6% per year from the date of taking possession to the date of payment.

Costs

(33) For the purpose of the inquiry held under s 10 the appellant made a claim of \$53 120 000. This was a claim made pursuant to the Collector's notice under s 8 and as it exceeds the amount awarded by this Board by more than 20% the appellant is not entitled to its costs.

Dated 2002 September 12

Commissioner of Appeals T Q Lim
Assessor Lim Sean Teck
Assessor Wong Chak Wai