

LAND ACQUISITION ACT

APPEALS BOARD

AB 2001.005

In the Matter of the Acquisition of Land at
Lot 474pt of Mukim 10
213 Upper Bukit Timah Road

Between

ExxonMobil Asia Pacific Pte Ltd

... Appellant

And

Collector of Land Revenue

... Respondent

Ms Indranee Rajah SC, Ms Celeste Ang and Ms Adeline Sim for Appellant
Mr Eric Chin for Respondent

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue of compensation in an amount of \$1 773 000 in respect of the land at Lot 474pt of Mukim 10 be increased to \$3 593 141;

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 to the date of payment;

And

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

And

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

BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

Appeal

(1) On 2000 June 2 ("acquisition date") a notification No 1471 was published in the *Gazette* under s 5 of the Land Acquisition Act ("s 5 declaration") declaring that the land at Lot 474pt of Mukim 10 ("acquired land") was needed for a public purpose namely Widening of Upper Bukit Timah Road From Hume Avenue To Clementi Road. Mobil Oil Singapore Pte Ltd which subsequently changed its name to ExxonMobil Oil Singapore Pte Ltd ("ExxonMobil Oil") was then the proprietor of the acquired land for an estate in fee simple and was a person interested.

(2) The appellant ExxonMobil Asia Pacific Pte Ltd is the successor in title to ExxonMobil Oil in respect of the whole of Lot 474 and in particular of the acquired land and by an order of the Board dated 2002 December 27 it was made a party in this appeal in place of ExxonMobil Oil and the parties have agreed that it is entitled to the compensation and other reliefs claimed (including interest from the date of taking possession and costs) and also liable for costs as ExxonMobil Oil would have been entitled to or liable for if there had been no change of parties.

(3) In this Decision "appellant" is as well a reference to the appellant named in this appeal as a reference to its predecessor in title by whichever name called in respect of the whole of Lot 474 and of the acquired land unless the context otherwise discloses.

(4) For the purpose of the inquiry held under s 10 the appellant submitted a claim to compensation of \$15 270 000 which was said to comprise -

Value of freehold land in its existing use:	\$9 751 500
Severance Value:	\$5 481 000
Estimated Cost of Removal/Relocation:	\$37 500
Total:	\$15 270 000

The parties have also agreed that (1) the claim of the appellant for the purpose of ss 32(3) and 32(4) and (2) the claim made pursuant to a Notice under s 8 as stated in para 1(d) of the petition of appeal is \$15 270 000. The respondent ("Collector") found that the market value of the acquired land as at the acquisition date was \$1 773 000 and on 2001 January 10 he made an award of compensation in that amount.

(5) The appellant appeals against the award on the ground that it is inadequate and on other grounds stated in the petition of appeal. In the petition (as amended) the appellant claims compensation in the amount of \$12 227 000 and certain other reliefs. The claim for compensation was reduced to \$12 142 308 in the course of the hearing and further reduced to \$9 704 000 at the close. The Collector does not seek to support the award or an award based on the market value of the acquired land and at the close submitted that the compensation should be \$2 646 141.

Acquired Land

(6) Lot 474 is a near rectangular plot on the left side of the North bound carriageway of Upper Bukit Timah Road between Ewart Circus and the turn off into Old Jurong Road. To avoid confusion the left side of the North bound carriageway will be referred to as West (and the left side of the South bound carriageway as East) in this Decision notwithstanding the actual orientation at any particular point along Upper Bukit Timah Road and Lot 474 is accordingly on the West side. It has a site area of about 2 238sm with a road frontage of about 61m and an average depth of about 37m. On site as at the acquisition date was a petrol service station ("PSS"). For well over 30 years down to the acquisition date the appellant had operated (and has since continued to operate) a PSS at this site. Written permission for such development was first granted in 1964 under the planning legislation then in force and there have since been additions and alterations. Written permission for the last of these additions and alterations before the acquisition date was granted in 1992.

(7) As at the acquisition date the whole of the length of the road frontage of Lot 474 to an average depth of about 13m with a site area of about 785sm was zoned Road ("Road Zone") in the 1998 Master Plan and the rest with a site area of about 1 453sm was zoned Transport Facilities ("Transport Facilities Zone"). The acquired land is part of the Road Zone. It is the whole of the road frontage to an average depth of about 10m with a site area of about 591sm so that the part of Lot 474 not acquired ("remaining land") will have a site area of about 1 647sm comprising the whole of the Transport Facilities Zone and a narrow strip of the Road Zone.

(8) That stretch of Upper Bukit Timah Road in the vicinity of the acquired land serves substantial residential developments at Bukit Regency and Ridgevale Gardens before the junction with Old Jurong Road and beyond that The Hillside, Hume Park I, Hume Park II, Symphony Heights, Parc Palais, Summerhill and others to name only those on the West side of the North bound carriageway all of which were either under construction or already completed as at the acquisition date. As at that date substantial roadworks affecting Upper Bukit Timah Road were in progress. The acquired land breached the then existing line of Upper Bukit Timah Road and encroached upon it and created or would have created a bottleneck.

Compensation

(9) 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 -

...

(c) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing that land from his other land;

(d) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner

If only the acquired land alone without any part of the Transport Facilities Zone was exposed for sale as at the acquisition date it would be difficult if not impossible to see that any bona fide buyer for it could be found or that subdivision of Lot 474 would be permitted to allow an instrument of transfer to be capable of registration and quite properly both the appellant and the Collector abandoned market value and relied on para (c) ("damage for severance") and para (d) ("damage for injurious affection") of s 33(1) at the hearing of this appeal notwithstanding the Collector's grounds of award and part of the appellant's original claim and its grounds of appeal.

Petition of Appeal

(10) Para 1(e)(iii) of the petition of appeal states:

Alternatively [t]he total compensation (rounded off) that should be awarded to the appellant should be \$12 227 000 comprising:

- (1) damage sustained by reason of the effect of injurious affection and/or severance on remaining land being \$10 812 167;
- (2) demolition and rebuilding cost at \$1 414 729.

The total compensation claimed was reduced to \$12 142 308 as the demolition and rebuilding cost was reduced to \$1 330 141.

(11) Damage for severance falls under para (c) of s 33(1) and damage for injurious affection falls under para (d). The appellant does not distinguish one from the other for the purpose of this appeal and does not apportion the damage between the two. The Collector has not taken any point in this regard and it will make no difference to this Board's decision although the matter to be taken into consideration in this appeal is properly damage for severance under para (c). Damage for injurious affection under para (d) is damage by reason of the acquisition "injuriously affecting his *other property ... in any other manner*". While *other property* may well include the remaining land as does *other land* in para (c) the *injurious affection* has to be in a manner other than by severance. See also Aggarwala, *Compulsory Acquisition of Land in India*, 7th Ed (1999), pp 710, 711.

Damage for Severance

Loss in Market Value

(12) Both parties adopted the "before and after" valuation approach to determine the damage sustained by the appellant. The measure of the loss in this approach is the diminution in the market value of Lot 474 by reason of the severance. The "before" valuation is the market value as at the acquisition date immediately before the publication of the s 5 declaration. The "after" valuation is the market value of the remaining land in its condition at the time of the Collector's taking possession of the

acquired land. See Aggarwala, *op cit*, p 720 para 286. The choice of date provisions in s 33(1)(a) are not relevant and the capping provisions in s 33(5)(e) only apply for the purposes of subsection (1)(a). Both parties also adopted the throughput approach in the valuation of Lot 474 and the remaining land. In this approach the market value is determined by the product of the annual throughput and the appropriate throughput rate for a PSS on site.

Demolition and Reconstruction

(13) The PSS on the original Lot 474 had to be demolished and reconstructed to give value to the remaining land or to salvage it and it was not disputed for the purpose of this appeal that the appellant acted reasonably in incurring an expense of \$1 330 141 for this purpose. The damage for severance comprises the loss in market value and the expense of demolition and reconstruction.

Appellant's Valuation

Annual Throughput

(14) Mr Shek Wai Ming the Network Planning and Real Estate Manager of ExxonMobil Hong Kong Ltd which provides service station real estate management services to the appellant said in his affidavit:

Based on the records and information to which I have access ...

(b) the annual throughput of the subject station on [Lot 474] for the years 1998 to 2000 is as follows:-

1998	:	8 892 000 litres/year
1999	:	8 700 000 litres/year
2000	:	4 332 000 litres/year
(YTD June)		
Average	:	8 770 000 litres/year

Ms Ng Poh Chue of DTZ Debenham Tie Leung (SEA) Pte Ltd testifying for the appellant adopted 8.77m lit/y as the annual throughput for the "before" valuation. The Collector accepted this as the annual throughput for the purpose of this appeal.

(15) Mr Pipat Nanan the South East Asia Lead Market Planner with Esso (Thailand) Public Company Limited ("ETL") said in his Affidavit:

I am responsible for ETL's provision of market planning services to ExxonMobil affiliates in Singapore, Malaysia and Thailand. In addition to these territories, I also give technical advice to other ExxonMobil entities or affiliates throughout Asia Pacific region for our forecasting volume model.

The "forecasting volume model" was a computer program of the mathematical representation of the relationship of a number of attributes of a PSS which he used to forecast the throughput of the reconstructed PSS on the remaining land. In para 27 of his report attached to the affidavit he said:

... by reason of the severance and possession of the acquired land, the efficiency of the remaining plot would be affected. I would (based on ExxonMobil's 2000 forecasting volume model with the adjustment of the appropriate factors to take the above circumstances into account) assess the volume potential of the remaining plot to decrease by 39%.

Immediately before that in para 26 he said:

... after severance and possession, Mobil Upper Bukit Timah has a remaining area of 1,646.8 sq.m. The Mobil station had to be demolished and reconstructed. The remaining site would be reduced by approximately one-third of the previous total area. The remaining site would also not have the benefit brought by the facilities such as the lubritorium / service bay and automatic car wash as the remaining site would not be able to accommodate these facilities and would only have a covered forecourt with four pump islands and one main building for sales room, store and toilets.

These were the "above circumstances" which he took into account. Ms Ng Poh Chue adopted a fall of 39% and found that the estimated annual throughput for the "after" valuation was 5.35m lit/y.

Throughput Rate

(16) Ms Ng Poh Chue referred to the following transactions:

<i>Address</i>	<i>Transaction Date</i>	<i>Premium (30 years)(\$)</i>	<i>Throughput (lit/y)</i>	<i>Rate (\$/lit)</i>
1 622 Queensway (Mobil)	1995 Jun	7 445 500	3.65m	2.04
2 Boon Lay Ave (Esso)	2000 Nov	25 100 000 (Shell)	(13.2m)	(1.90)
		23 700 000 (Esso)	13.2m	1.80

These are not sales in the open market but tenders for PSS sites. In the case of item 2 ("BLA Esso") it was a tender for renewal of a lease for a further term of 30 years from the transaction date. The existing tenant then was Esso and its bid of \$23 700 000 was below Shell's bid of \$25 100 000 which was accepted. Shell's estimate of the annual throughput is not before this Board and \$1.90/lit is the throughput rate derived by attributing to Shell's tender the annual throughput of Esso. Ms Ng Poh Chue adopted \$1.90/lit for a 30 year lease and grossed it up at 60% for a freehold rate of \$3.17/lit. She adopted this rate for both the "before" and "after" valuation.

Road Zone

(17) Ms Ng Poh Chue took into consideration that about 785sm of Lot 474 was the Road Zone and allowed a 10% discount from the market value and derived a "before" market value of \$24 994 500. She then took into consideration that the acquired land was only 591sm of the Road Zone so that about 194sm of the remaining land was Road Zone and she allowed a 2% discount and derived an "after" market value of \$16 620 310.

Damage

(18) The "after" value was \$8 374 190 less than the "before" value so that taking into account the expenditure of \$1 330 141 the damage for severance was \$9 704 331. In the premises Ms Rajah of counsel for the appellant submitted that compensation should be allowed in the amount of say \$9 704 000.

Collector's Valuation

Annual Throughput

(19) As noted above the Collector accepted 8.77m lit/y as the annual throughput for the "before" valuation. He did not adduce any evidence of the effect of acquisition and possession on the throughput of a PSS reconstructed on the remaining land. Surprisingly both the appellant and the Collector elected not to place before this Board the actual throughput achieved by the reconstructed PSS although it had been in operation for some time before the hearing of this appeal. It may at least be relevant as to the reliability of the "forecasting volume model" employed by Mr Pipat Nanan. It may also be relevant as to the increase in value of the remaining land if any likely to accrue from the use to which the land acquired was intended to be and has in fact been put although the Collector has not taken this matter into consideration.

(20) Ms Rachel Ng of Inland Revenue Authority of Singapore testifying for the Collector accepted that given a reduction in the site area to about 1 646sm there would be a reduction in the annual throughput for a PSS reconstructed on the site of the remaining land but she did not accept a reduction of 39%. She would accept a reduction of 30% or an "after" throughput of 6.139m lit/y. She did not refer to any market or other evidence to support this.

Throughput Rate

(21) Ms Rachel Ng also relied on the BLA Esso transaction. Esso offered \$23 700 000 and its estimate of the annual throughput was 13.2m lit/y and Esso was the sitting tenant then operating the PSS at the site. It follows, so her argument would have proceeded, that \$1.80/lit was the throughput rate that Esso deemed to be the appropriate rate. Her evidence was that \$1.80/lit or \$3.00/lit for a freehold site was the appropriate throughput rate. She rejected \$1.90/lit or \$3.17/lit for a freehold site as the appropriate rate. Her reasoning appears to be that Shell's offer was \$25 100 000 but it did not follow that \$1.90/lit which was derived by attributing to it not its own estimate of the annual throughput but that of Esso's was what Shell considered to be the appropriate rate.

Road Zone

(22) Ms Rachel Ng also took into consideration that the whole of the acquired land comprised much of the Road Zone. She would allow a discount from the market value of 25% and not just 10% that Ms Ng Poh Chue allowed. She also adopted a conversion from 30 years leasehold to freehold at 60%. In her analysis she found a "before" market value of \$19 732 500. She did not allow any discount from the "after" market value for the remaining land comprising part of the Road Zone as Ms Ng Poh Chue did. Allowing for a fall in the estimated throughput of 30% and applying the rate of \$3.00/lit for a freehold site she found an "after" market value of \$18 417 000 and concluded that the loss under this head would be \$1 315 500 or, say \$1 316 000.

Damage

(23) To the loss in market value of \$1 316 000 will be added the expense of demolition and reconstruction of \$1 330 141 for a total of \$2 646 141 for damage for severance and Mr Chin of counsel for the Collector submitted that taking into consideration the damage for severance the compensation to be allowed should be \$2 646 141.

Board's Decision

Annual Throughput

(24) Mr Pipat Nanan in his report said that he would "assess the volume potential of the remaining [land] to decrease by 39%". Mr Chin submitted that "a drop closer to 30% is more realistic". He said Mr Pipat Nanan had admitted that "traffic count was part of his model" but in this case he "had not changed anything for the traffic count". The model was based on a 2000 database. Mr Pipat Nanan said in his report that "existing sites in Singapore can grow in line with the market growth at about 1 - 2% [a year]". This is in addition to the potential increase in traffic having regard to the residential developments referred to above and the widening of Upper Bukit Timah Road. Mr Chin also referred to the "ingress/egress" point made by Mr Pipat Nanan and submitted that there was no appreciable difference in this respect between the PSS on the pre-acquisition site ("old PSS") and the reconstructed PSS ("new PSS").

(25) This Board finds that the omission to take into account the traffic count and the market growth would have made a difference to the result produced by the model used by Mr Pipat Nanan as did the less easy ingress and egress in relation to the new PSS reconstructed on a smaller site. The widening of Upper Bukit Timah Road was a use to which the acquired land would be put as stated in the s 5 declaration and any increase in the value of the remaining land likely to accrue from such use is a matter to be taken into consideration under s 33(1)(b) but in the circumstances of this appeal and the approach adopted by both parties it will be taken into consideration in determining the loss in market value.

(26) Mr Pipat Nanan referred to the reduction in site area owing to the acquisition and possession in his report but the site area itself was not a critical factor among the factors he referred to in his oral evidence. He referred to the depth of what he called the "forecourt". He explained in evidence:

This one is in terms of customer's stand point when they get into the site, how big of the depth, the customer feeling. It, it's not really the exactly the boundary but it's, it's being how big the forecourt have. Now, which is in this case is just a little less than 20 [metres].

In the case of the new PSS he took into account the space between the two parallel pairs of pumps and the free space on either side. That was the space the customer would see when he entered the PSS. It was less than 20m. In the case of the old PSS Mr Pipat Nanan also took into account the space between the two parallel pairs of pumps and the free space on either side. That would also have been less than 20m or about the same as in the case of the new PSS but he added the space occupied by the shop and the lubritorium and service bay. There was no space there for any effect on "customer feeling" of the depth of the forecourt or "how big" it was. On a score of 1 to 5 he scored 2 for the new PSS and 4 for the old PSS. This is a substantial difference but his conclusion is not supported by the evidence.

(27) In his report Mr Pipat Nanan also referred to the "benefit brought by the facilities such as the lubritorium/service bay and automatic carwash". What he meant was increase in throughput by reason of having these facilities. The old PSS did have these facilities. The new PSS did not. His evidence under cross examination was:

Q Do you have any data to show how many percent of persons who use the car wash to, then pump petrol?

A I have no data at all.

....

Q Mr Nanan, let's move away from the car wash for a moment. Let's look at your Lub Bay.

A Yes.

Q Perhaps, I can start with my last question first. Do you have any data to show what percentage a person who use Lub Bays then pump petrol?

A Same answer. I have no data at all.

He had no relevant data. He had no basis to know if there was any "benefit brought by" these facilities. He could not know if the throughput would be reduced by not having these facilities. There is no apparent reason why it should be.

(28) Mr Pipat Nanan's assessment of the fall of 39% in the throughput potential of the new PSS was based on the forecasting volume model of ExxonMobil (which may be assumed to be a corporate entity related to the appellant) "with adjustments of the appropriate factors". There is no evidence that the forecasting volume model is one that is commonly used and relied upon in the market and there is no clear evidence as to the effect of his "adjustments of the appropriate factors". There is no evidence as to the reliability of the model. As noted above the actual throughput achieved by the new PSS may have been relevant as to the reliability but sadly this evidence is not before this Board. Mr Pipat Nanan undoubtedly has the relevant experience as

he said in his report and he relies on the model for the purpose of this appeal. Mr Chin does not object to its use and there is no reason why the results obtained by working with it should not be taken into consideration with such modification as may be appropriate in the circumstances.

(29) On the evidence this Board finds that for the purpose of the "after" valuation the throughput of the old PSS of 8.77m lit/y should be reduced by about one third to 5.85m lit/y.

Throughput Rate

(30) Ms Ng Poh Chue testified for the appellant in AB 1997.080 and in that appeal she derived a rate of \$1.865/lit for a 30 year lease commencing in 1995 and the Board found that the appropriate rate was \$1.865/lit. There is no evidence that there has been any movement in throughput rates between 1995 and 2000 or that the appropriate throughput rate for the purpose of the "before and after" valuation in this appeal should be different. The Decision in AB 1997.080 was included in the bundle of authorities before this Board.

(31) In the BLA Esso transaction relied on in this appeal the derived rate based on Esso's unsuccessful bid of \$23 700 000 and an estimated throughput of 13.2m lit/y was \$1.80. Shell made a successful bid of \$25 100 000 but there is no evidence as to its estimate of the throughput. In the decision of this Board it would be wrong to assume that Esso's estimate could be applied to Shell's bid to derive a rate of \$1.90/lit. Shell might have estimated the throughput higher than 13.2m lit/y. If it was estimated at about 13.9m lit/y the derived throughput rate would have been about \$1.80/lit.

(32) On the evidence and having regard to the finding in AB 1997.080 this Board finds that for the purpose of the "before and after" valuation the throughput rate for a 30 year lease is \$1.865/lit. This is equivalent to \$3.11/lit for a freehold site converted at 60% which is not in dispute.

Road Zone

(33) In the course of the hearing this Board asked counsel if a probable buyer as at the acquisition date would not offer a price "working up" from what he would pay for Lot 474 without the Road Zone and allowing something for the period when he could reasonably expect to enjoy the entirety of the site rather than "working down" as both Ms Ng Poh Chue and Ms Rachel Ng have done. Neither party pursued this point but Mr Chin in his closing submissions suggested that if the probable buyer did that he would only offer \$1 000 000 more than what he would pay for the "after" site. That is approximately what the product of a throughput of 8.77m lit/y and \$1.80/lit (for 30 years) converted to one year would be so this Board was given to understand. That would represent the loss in market value.

(34) As at the acquisition date Lot 474 was adversely affected by a road line and the part that was adversely affected was the acquired land. That part was not only adversely affected by a road line but it was also part of the Road Zone. Having regard to the surrounding circumstances referred to above a prudent probable buyer

or one who had competent advice would certainly have been aware of the likelihood of compulsory acquisition under the Act. He would also expect to carry out some alterations if not a complete reconstruction of the old PSS which was a Mobil PSS and for substantial alterations or a reconstruction his building plans would have had to be prepared on the basis of setbacks measured from the road line. In these circumstances it is likely that he may offer a price based on the "after" value and be ready or willing to add some amount for the "before" throughput of the PSS site. A relevant question may then be: How long can a probable buyer expect to enjoy a throughput of 8.77m lit/y if he does not reconstruct a new PSS or carry out substantial alterations? One year? Two years? How much would he pay for that? \$8 374 190 or any amount of that order as the claim for damage for severance implies seems far too much.

(35) Using the above as a guide or check this Board finds that a discount of only 10% adopted by the appellant "working down" as it has done is grossly insufficient. For a fall in the throughput from 8.77m lit/y to 5.85m lit/y and a throughput rate of \$3.11/lit a 10% discount without any discount for the "after" market value translates to \$6 353 730 to pay to enjoy the higher throughput for an indefinite but likely to be a short period of time. This is grossly excessive. The Collector's case is that the discount should be 25%. On the evidence and "working down" as both parties have done this Board finds that the "before" market value should be reduced by 25% to allow for the Road Zone.

(36) The acquired land of about 591sm was that part of Lot 474 that was part of the Road Zone and also the part adversely affected by the road line as noted above. The remaining land comprises the Transport Facilities Zone and also about 194sm of the Road Zone. As at the acquisition date immediately after the publication of the s 5 declaration it must have been clear that no part of the remainder of the Road Zone which was then comprised in the remaining land was at any real risk of compulsory acquisition or at any greater risk than the rest of the remaining land. In these circumstances this Board finds that a discount in the "after" market value would be inappropriate.

Damage

(37) For the above reasons and on the evidence this Board finds that the "before" market value was \$20 456 025 and the "after" market value was \$18 193 500 for a loss under this head of \$2 262 525 or say \$2 263 000. To that will be added the expense incurred in demolition and reconstruction of \$1 330 141 for a total of \$3 593 141. In the premises this Board finds that the damage sustained by the appellant at the time of the Collector's taking possession of the acquired land by reason of severing the acquired land from its other land namely the remaining land under s 33(1)(c) was \$3 593 141.

Award

(38) Taking into consideration the damage for severance under s 33(1)(c) this Board determines that the amount of compensation to be awarded for the acquired land is \$3 593 141. 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

(39) For the purpose of the inquiry held under s 10 the appellant made a claim of \$15 270 000. 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 in accordance with s 32(4).

Dated 2005 January 29

Commissioner of Appeals T Q Lim SC
Assessor Lim Lan Yuan
Assessor Tan Kim Choon