

LAND ACQUISITION ACT

APPEALS BOARD

AB 1997.081

In the Matter of the Acquisition of Land at
Lot 1372 of Mukim 22
851 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 \$7 256 000 in respect of the land at Lot 1372 of Mukim 22 be increased to \$15 884 000;

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 Lot 1372 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 \$56 150 000 for compensation. The respondent ("Collector") found that the market value of the acquired land as at 1 January 1995 was \$7 256 000 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. For the purpose of the appeal the appellant submitted a claim for \$29 290 000 but this was amended to \$28 090 000. In the course of the hearing the appellant changed its basis of valuation and further amended its claim to \$19 894 006. 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 \$12 220 000 and proposed compensation in that amount.

Acquired Land

(4) The acquired land comprises a fairly rectangular plot at Upper Serangoon Road. The site area is 2 152.9sm. The frontage to Upper Serangoon Road is about 55m. It is zoned Residential in the Master Plan and at the acquisition date it was used for a petrol service station. Written Permission was granted on 23 February 1994 under the planning legislation then in force for development of the site of the acquired land for this purpose subject to special conditions one of which was:

- (a) The planning permission is for a period of 30 years to lapse on 23 FEB 2024.

The development was substantially completed in July 1994 and the acquired land has since been used as a petrol service station although it has been used as such for some time prior to 1994. There were full year sales for 1993.

(5) The acquired land is located on the North side of Upper Serangoon Road on one side of Flower Road at its junction with Upper Serangoon Road. On the other side of Flower Road was another petrol service station and diagonally across Upper Serangoon Road there were two more petrol service stations. 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. The appellant's petrol

service station was one of a cluster of 4 such stations in that locality, two on the North side of Upper Serangoon Road and two on its South 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 Residential 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 \$3 370/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 \$7 256 000 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 \$12 220 000.

(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 10 Marsiling Road	Jun 1995	\$22 599 000	8.6m
2 31 Choa Chu Kang Way	Nov 1995	\$30 315 000	13m
3 355 Commonwealth Ave	Jan 1995	\$6 391 950	3.45m
4 260 Queensway	Jan 1995	\$5 249 640	2.82m

These are not sales in the open market but tenders submitted for leases (in the case of the first two transactions one of which was by the appellant and the other was by another oil company) and for renewal of leases (in the case of the other two transactions both of which were by the appellant) and accepted by a public authority as the freehold owner. The date in the case of the first two transactions is the closing date of the tenders and in the other two cases is the date of commencement of the new term. The premium paid is for a 30 year lease. The sales represent the estimate of the annual throughput of the site made by the successful tenderer in the

case of the first two transactions and the average sales for one year of the sales for 1993 and 1994 in the other two cases.

(13) Using this as a basis Ms Ng derived an average throughput rate of \$2.11/lit. She applied it to the average annual throughput of the acquired land for 1995 and 1996 of 7 647 165 lit/year. She adjusted this for 27.7 years remaining under the Written Permission as at the acquisition date and concluded that the value as at 1 January 1995 of the acquired land for petrol service station use was \$15 516 990.

(14) Ms Ng then referred to the following transaction:

<i>Location</i>	<i>Master Plan Zoning</i>	<i>Site Area</i>	<i>Date</i>	<i>Price</i>
Mk 22 Lot 121-7 Kovan Rd	Residential	1 897sm	Feb 1994	\$5.72m \$3 015/sm

She adjusted the site area rate by -15% for location and +30% for time and derived an adjusted site area rate of \$3 467.25/sm. She applied this to the site area of the acquired land and would have obtained the value of \$7 464 642.50. She then allowed 2%/year for inflation and 5%/year for the rate of return on investment in residential land over the period of 27.7 years and would have obtained the present value of the acquired land for residential use. On this basis she would have found the residential use value to be \$3 424 000 at 1 January 1995 prices. She added the petrol service station use value to the residential use value and the value of the improvements of \$827 039 for a total of \$19 768 029 for the market value of the acquired land as at 1 January 1995.

Collector's Valuation

(15) 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. For the petrol service station use value 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 as two of the transactions referred to by Ms Ng were. The date is the date when tenders closed.

(16) 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 throughput rate of \$1.65/lit to the annual throughput of the

acquired land for 1995 of 6 903 220 lit/year to obtain the value of \$11 390 313. She then adjusted this for the 22 years remaining under the Written Permission from the expected date of taking possession to obtain the value of \$9 643 798.

(17) For the residential use value Ms Chua also referred to the same transaction referred to by Ms Ng from which she derived not the site area rate but the gross plot ratio (GPR) rate. Since the GPR is the same in the case of the acquired land and the land in the transaction referred to the result will be the same whether she applied the GPR rate to the GPR area of the acquired land or the site area rate to the site area of the acquired land as Ms Ng has done. Ms Chua allowed +15% for time and -15% for location and frontage and made no adjustment in the circumstances. She would have obtained the value of \$6 493 000. She then allowed 6% for rate of return (including 1% for the risk factor) over the period of 22 years and would have obtained the present value of \$1 801 841 at 1 January 1995 prices. She adopted the value of \$895 710 for the improvements and adjusting this for the 22 years remaining she obtained the value of \$656 854 and adding this to the petrol service station use value and the residential use value she would have obtained the value of \$12 102 493 or about \$12 103 000 for the market value of the acquired land as at 1 January 1995.

Throughput Rate

(18) The parties have agreed that the evidence adduced in AB 80/97 may be used in this appeal and in that appeal this Board found that the throughput rate was \$1.865/lit. This Board has considered the further evidence adduced in this appeal and the submissions of counsel but sees no reason to come to a different finding as regards the throughput rate and accordingly finds that for the purpose of determining the petrol service station use value of the acquired land the throughput rate is \$1.865/lit for a 30 year lease.

(19) In AB 80/97 this Board said at para (24) of the Reasons that the market value of the acquired land has to be determined "having regard to its state and condition" as at the acquisition date. The state or condition of the acquired land is what it was on 28 June 1996. It was land with Written Permission to develop for petrol service station use with a remaining validity period of 27.7 years. There can be no reasonable ground for adopting a validity period that depends on the date the Collector chooses to take possession of the acquired land and this Board declines to do so.

Annual Throughput

(20) The annual 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	4 796 840
1994	4 482 210
1995	6 903 220
1996	8 391 110

Ms Ng adopted the average for 1995 and 1996 of 7 647 165 lit/year. Ms Chua adopted the throughput for 1995 of 6 903 220 lit as the annual throughput.

(21) Mr Chin of counsel for the Collector referred to his submissions in AB 1997.080 where he 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. In this appeal he added that after the acquisition date there were 5 other petrol service stations "relatively close to" the acquired land which were closed or whose operations were wound up and "it is inevitable that some of their regular customers would have migrated to the petrol station" at the acquired land.

(22) In AB 1997.080 this Board went on to say that on the basis of the approach adopted in that case the market value as at 1 January 1995 was 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. In this appeal and so far as the petrol service station use value of the acquired land is concerned the approach adopted is the same except that no adjustment for tenure is required but there has to be an adjustment for the remaining years left of the Written Permission. On the basis of the approach adopted in this appeal the petrol service station use value is to be determined similarly by applying the throughput rate (adjusted for remaining years left) applicable to 1 January 1995 to the annual throughput as at the acquisition date.

(23) 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 represented by the average for one year of the throughput for the two years to 1996. The Collector's case is that it is represented by the actual throughput for 1995.

(24) The year on year growth of the throughput was 54.01% for 1995 and 21.55% for 1996. Substantial improvement works were carried out in 1994 and in the absence of other circumstances as to which there is no evidence such works alone were likely to have accounted for the major part of the 54.01% increase for 1995. It is reasonable to assume that the effect may have continued into 1996 although there may be other circumstances to account for the 21.55% growth. Mr Chin has referred to the "migration" of some of the customers to the station at the acquired land after the acquisition date and while this is a possibility there is no evidence of any "migration" or of the magnitude of its effect on the throughput. This point was not taken in AB 80/97 where the petrol service station was just diagonally across the road in the same cluster of 4 such stations. Relatively minor improvement works were carried out to that station in 1993 and 1995. There the growth was a modest 9.27% for 1996. Compared with 1994 there was a negative growth of -4.44%. It appears that "migration" was probably not a factor in regard to the changes in sales for 1996 for that station.

(25) Taking the throughput for 1995 only ignores the actual throughput for nearly half a year down to the acquisition date and as this Board said in AB 1997.080 if the

price which a bona fide purchaser might reasonably be expected to pay 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. In the circumstances of this case and on the evidence adduced this Board finds that the annual throughput as at the acquisition date may be represented by the average for one year of the throughput for 1995 and 1996. On this basis this Board finds that the annual throughput was 7 647 165 lit/year.

Petrol Service Station Use Value

(26) Applying the throughput rate of \$1.865/lit to the annual throughput of 7 647 165 will result in a value of \$14 261 962. This is for a 30 year lease and has to be adjusted for the 27.7 years remaining under the Written Permission as at the acquisition date. This results in a value of about \$13 700 000 and this Board finds that this was the petrol service station use value of the acquired land as at 1 January 1995.

Residential Use Value

(27) Ms Ng adjusted the site area rate by +30% for time and Ms Chua adjusted it by +15%. There is no evidence from actual transactions as to the movement of residential land prices between February 1994 and January 1995. URA, *Price & Rental Indices* (First Quarter 1995) shows an increase of about 23% for residential apartment property in the North East region and about 19% for such property overall. Ms Ng allowed -15% for location alone while Ms Chua allowed the same adjustment for location and frontage and it is apparent that both are agreed that the site area rate derived from the sale of the property referred to has to be substantially adjusted down for location. Having regard to the evidence adduced this Board finds that adjustments of +20% should be allowed for time and -15% for location and frontage for a net total adjustment of +5%.

(28) Adjusting the site area rate by +5% gives a rate of \$3 166/sm. Applying this to the site area of the acquired land gives a value of \$6 816 081. To determine the present value Ms Ng allowed 2% for annual inflation and assumed an annual rate of return of 5%. Ms Chua did not allow for inflation but in addition to 5% for the annual rate of return she allowed 1% for the risk factor. In the decision of this Board inflation should not be allowed for but the risk factor which is a measure of what the buyer/developer will take into account in determining the price he will pay for land to develop is relevant. On the evidence adduced this Board finds that the present value should be determined by allowing a discount rate of 6%/yr. On this basis the present value of the residential use value postponed by 27.7 years is about \$1 357 000 and this Board finds accordingly.

Improvements

(29) It is not disputed that the cost of improvements was about \$895 710. Ms Ng allowed a straight line depreciation over 30 years for the remaining life of the validity of the Written Permission of 27.7 years while Ms Chua assumed a remaining life of 22 years. In the decision of this Board depreciation should be based on a remaining life of 27.7 years and accordingly this Board finds that the value of the improvements

is \$827 000. No adjustment for time is required as the value has been derived from prices prevailing at dates close to 1 January 1995.

Market Value

(30) 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 \$15 884 000;

(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

(31) In his closing submissions Mr Tan of counsel for the appellant said that he was not asking for an order for expenses under s 33(1)(e) and accordingly this Board does not take into consideration the expenses incidental to the appellant's change of place of business if any whether or not it can be said that it has been or is compelled to change its place of business.

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 \$15 884 000. 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 \$56 150 000. 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