LAND ACQUISITION ACT

APPEALS BOARD

AB 2013.016

In the Matter of Compulsory Acquisition of
Part of Lot 5163X Mukim17
8 Thomson Lane

Between

Singapore Investments (Pte) Ltd
(RC No. 19470087Z)

… *Appellant*

And

The Collector of Land Revenue

… *Respondent*

Solicitors for the Appellant:
WongPartnership LLP
- Mr Tan Kay Kheng
- Ms Novella Chan

Solicitors for the Respondent:
Attorney-General's Chambers
- Mr David Lee
- Ms Elaine Liew
- Ms Debra Lam

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue of compensation in the amount of $155,500 in respect of the acquired land at part of Lot 5163X Mukim 17 at 8 Thomson Lane be confirmed;

And

(2) That the Appeal be dismissed with costs to the Respondent to be taxed if not agreed.

BRIEF STATEMENT OF REASONS

Appeal

1 This is an appeal by the Appellant, Singapore Investments (Pte) Ltd, in respect of the compulsory acquisition of part of Lot 5163X Mukim 17 at 8 Thomson Lane.

2 In this appeal, the Appellant seeks an increase in the compensation awarded by the Collector of Land Revenue, the Respondent in these proceedings, from $155,500 to $3,110,000.

Background

3 By Notification No. 3245 dated 9 November 2011 published in the Government Gazette, Electronic Edition on 15 November 2011, part of Lot 5163X Mukim 17 at 8 Thomson Lane was declared under s 5 of the Land Acquisition Act, Cap. 152 ("LAA") to be required for the construction of the North South Expressway Stage 2 from Toa Payoh Rise to East Coast Parkway.

4 The acquired land is a strip along the south-western boundary of Lot 5163X fronting Thomson Road. The strip stretches from the junction with Thomson Lane to the junction with the Pan-Island Expressway. The locality comprises a mixture of high-rise and low-rise residential developments. Prominent developments in the area include Thomson Medical Centre, Thomson Police Complex, SLF Building and Singapore Polo Club.

5 The acquired land is at access road level with Thomson Road and lies within the fenced area of Lot 5163X. It is 174.1 m^2 which is about 0.9% of Lot 5163X's total land area of 19,040.2 m^2. At the acquisition date, the acquired land included part of Lot 5163X's boundary fence, turfing and landscaping. No

building structures were affected by the acquisition. The remaining land has a reduced land area of 18,866.1 m^2. Lot 5163X has a freehold tenure.

6 After the acquisition, the Appellant sold Lot 5163X (excluding the acquired land) to Chequers Properties Pte Ltd ("CPPL"). CPPL, the current owner of Lot 5163X, has agreed for the Collector's Award in respect of the acquired land to be awarded to the Appellant.[1]

7 The key events leading to the hearing before the Board are set out in the table below.

Date	Event
6 Feb 2009	The Appellant received Written Permission (ES20070215R0167) from the Urban Redevelopment Authority ("URA") to erect a 24-storey hotel development with two basement car parks. The Written Permission was subject, *inter alia*, to the following conditions: (a) the total gross floor area ("GFA") of the proposed building shall not exceed 39,984.42 m^2 (Hotel GFA = 28,806.99 m^2 and Commercial GFA = 11,177.43 m^2); and (b) the overall gross plot ratio ("GPR") shall not exceed 2.1.[2]
8 Oct 2009	The Appellant received Written Permission (ES20090729R0166) (hereinafter referred to as the "2009 Written Permission") from the URA in respect of its application to regularise the GFA and its amendment to the approved erection of a 24-storey hotel development with two basement car parks. The total GFA and overall plot ratio remained unchanged at 39,984.42 m^2 and 2.1 respectively. It was provided that the 2009 Written Permission would lapse on 6 February 2011.[3]
25 Jan 2011	The date for the 2009 Written Permission to lapse was extended from 6 February 2011 to 6 February 2013.

[1] Affidavit of Tan Chwee Huat (TCH1) at [10].

[2] Agreed Bundle of Documents (ABOD) at Tab 36.

[3] Agreed Bundle of Documents (ABOD) at Tab 37.

15 Nov 2011	The notification vide Notification No. 3245 dated 9 November 2011 declaring the acquisition was published in the Government Gazette, Electronic Edition on 15 November 2011. This is the date of the acquisition vide s 33(6) of the LAA.[4]
7 Feb 2012	A Collector's Inquiry was held.
5 Mar 2012	The Appellant submitted a valuation report with a claim of $3.29 million.[5]
24 Apr 2012	The Appellant sold Lot 5163X (excluding the acquired land) to CPPL.
2 Aug 2012	The Appellant confirmed that it was not claiming for severance damage and injurious affection for the acquisition.[6]
12 Sep 2012	The Collector wrote to URA to query if the owner would be entitled to the previously approved GFA of 39,984.42 m^2 if it decided to redevelop the site:[7] "*For the purpose of determining compensation payable for the acquisition, we would appreciate your advice whether the owner will be entitled to the approved GFA of 39,984.42 sq m should they carry out a redevelopment on the reduced site of 18,866.1 sq m after the acquisition.*" The URA confirmed on the same day that if the redevelopment proposal was for "Hotel" use, the URA would continue to honour the last approved GFA:[8] *"Upon redevelopment, if the development proposal is consistent with the zoning of the land in the Master Plan 2008, i.e. Hotel zone, URA will honor the last approved GFA as the maximum intensity for the site. In other words, after land acquisition and based on site area of 18,866.1 sq m, the permissible GFA will be 39,984.42 sq m and resultant GRP 2.1193."*

[4] Agreed Bundle of Documents (ABOD) at Tab 40.

[5] Agreed Statement of Facts (ASOF) at [10].

[6] Agreed Bundle of Documents (ABOD) at Tab 9.

[7] Agreed Bundle of Documents (ABOD) at Tab 10.

[8] Agreed Bundle of Documents (ABOD) at Tab 10.

11 Jan 2013	The Appellant received a final extension of the 2009 Written Permission. The date for the 2009 Written Permission to lapse was extended from 6 February 2013 to 6 February 2015.
16 Jan 2013	The Collector sought URA's confirmation on the maximum GFA before and after the acquisition.[9]
25 Jan 2013	The URA confirmed that it will honour the last approved GFA of 39,984.42 m^2 as maximum intensity for the site.[10]
20 May 2013	The Respondent issued the Collector's Award of $128,400 for the acquired land.
29 May 2013	The Appellant wrote to the Collector for a copy of URA's written undertaking to safeguard the approved GFA.[11] The Collector conveyed the request to the URA on the same day.[12]
30 May 2013	The URA replied to the Collector as follows: [13] *"If the applicant wish to proceed with the above-captioned which was granted WP in ES20070215R0167, we will honour the approved GFA for that proposal. For info, please note that final WP extension was granted and the WP is still valid to lapse on 06-02-2015."*
31 May 2013	The Collector informed the Appellant that the URA will honour the last approved GFA of 39,984.42 m^2:[14] *"If the applicant wish to proceed with the above-captioned proposal which was granted WP in ES20070215R0167 and ES20090729R0166, URA will honour the approved GFA for that proposal. For info, please note that the final WP extension was granted and the WP is still valid to lapse on 06-02-2015."*

[9] Agreed Bundle of Documents (ABOD) at Tab 12.

[10] Agreed Bundle of Documents (ABOD) at Tab 13.

[11] Agreed Bundle of Documents (ABOD) at Tab 15.

[12] Agreed Bundle of Documents (ABOD) at Tab 16.

[13] Agreed Bundle of Documents (ABOD) at Tab 17.

[14] Agreed Bundle of Documents (ABOD) at Tab 18.

14 Jun 2013	The Appellant filed Notice of Appeal against the Collector's Award.
10 Mar 2014	The Collector issued the Grounds of Award.
25 Mar 2014	The Appellant filed the Petition of Appeal.
15 Oct 2014	The Collector took possession of the acquired land under s 16 of the LAA.[15]
6 Apr 2016	The Collector issued a Supplementary Award of $27,100.[16]

Matters to be considered in determining compensation

8 The matters to be considered in determining compensation to be awarded for land acquired are set out in s 33 of the LAA. The relevant parts of s 33 of the LAA read:

> 33.—(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 of the acquired land —
>
> (i) …
>
> (ii) as at the date of the publication of the declaration made under section 5 …
>
> (b) …

[15] Respondent's Bundle of Documents (RBOD) at p. 3; Exhibit R 1.

[16] Agreed Statement of Facts (ASOF) at [10].

(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;

(e) …

(f) …

(1A) …

(2) …

(5) For the purposes of subsection (1)(a) … —

…

(e) the market value of the acquired land shall be deemed not to exceed the price which a bona fide purchaser might reasonably be willing to pay, after taking into account the zoning and density requirements and any other restrictions imposed by or under the Planning Act (Cap. 232) as at the date of acquisition and any restrictive covenants in the title of the acquired land, and no account shall be taken of any potential value of the land for any other use more intensive than that permitted by or under the Planning Act as at the date of acquisition.

(6) For the purposes of this section, the date of acquisition of any land shall be the date of the publication of the notification under section 5(1) declaring that that land is needed for the purpose specified in the declaration.

9 Section 34 of the LAA sets out the matters that are to be disregarded in determining compensation.

10 Under s 25(3) of the LAA, the onus of proving that the award is inadequate lies on the Appellant.

Issues in this appeal

11 Following without-prejudice discussions between the Appellant's valuer and the Respondent's valuer, the Appellant and the Respondent reached the following agreement in respect of the compensation to be awarded to the Appellant in the alternative scenarios:[17]

> Scenario A
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> In the event the Board agrees with the Respondent that the compensation to be awarded to the Appellant for the acquisition under the LAA is to be made on the basis that there is no loss of GFA as a result of the acquisition, which should be taken into account by the valuers, and that the acquired land should be treated as "Road and/or Green Buffer", the parties agree that the compensation should be the sum of $155,500 (as awarded initially and vide the Supplementary Award).
>
> Scenario B
>
> In the event the Board agrees with the Appellant that the compensation to be awarded to the Appellant for the acquisition under the LAA is to be made on the basis that there is a loss of GFA as a result of the acquisition, which should be taken into account by the valuers, the parties agree that the compensation should be increased to the sum of $3,110,000.

[17] Agreed Statement of Facts (ASOF) at [11].

Appellant's case

12 The Appellant's case is that it should be awarded compensation under Scenario B. The pertinent points of the Appellant's submissions are as follows:

(a) The Appellant should be awarded compensation based on the market value of the acquired land under s 33(1)(a) of the LAA;[18]

(b) The relevant date of assessment of the market value of the acquired land is the date of acquisition, i.e. 15 November 2011;[19]

(c) The market value is to be assessed with reference to what a bona fide purchaser might reasonably be willing to pay, taking into account the circumstances which might affect the value of the land as at the acquisition date;[20]

(d) The Appellant was informed by the Respondent that the URA would honour the approved GFA only on and after 31 May 2013;[21]

(e) A bona fide purchaser valuing the land as at the acquisition date (15 November 2011) could not have taken into account the URA's confirmations (given only on and after 31 May 2013) on the safeguarding of the GFA;[22]

(f) There was no certainty, as at the acquisition date, that the GFA of 39,984.42 m^2 would be safeguarded by the URA in respect of the reduced area of 18,866.1 m^2;[23]

(g) There is therefore no basis for a bona fide purchaser to assume that the maximum permissible GFA stipulated in the 2009 Written permission would continue to be applicable to a reduced site area after acquisition;[24]

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[18] Appellant's Closing Submissions (ACS) at [19].

[19] Appellant's Closing Submissions (ACS) at [22].

[20] Appellant's Closing Submissions (ACS) at [25].

[21] Appellant's Closing Submissions (ACS) at [10] & [11].

[22] Appellant's Closing Submissions (ACS) at [28].

[23] Appellant's Closing Submissions (ACS) at [75].

[24] Appellant's Closing Submissions (ACS) at [63].

(h) In the alternative, the Appellant has suffered severance damage and injurious affection under s 33(1)(c) and (d) of the LAA as the Appellant lost its entitlement to the GFA of 365.61 m^2 as a result of the acquisition;[25]

(i) Severance damage is the depreciation in value of the retained land as a result of the severing of the entire piece of land;[26]

(j) Damage for injurious affection is also the depreciation in value of the retained land as a result of the acquisition;[27]

(k) Similar to the claim under market value, the URA's confirmations cannot be taken into account for the purpose of assessing compensation for severance damage and injurious affection as the relevant date of assessment of severance damage and injurious affection is the acquisition date.[28]

Respondent's case

13 The Respondent's case is that compensation should be awarded under Scenario A. The pertinent points of the Respondent's submissions are as follows:

(a) The Respondent is statutorily required under s 33(5)(e) of the LAA, when determining what a bona fide purchaser might pay for the acquired land, to take into account the Master Plan zoning and density of the acquired land, as well as restrictions imposed under the Planning Act, Cap. 232;[29]

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[25] Appellant's Closing Submissions (ACS) at [85].

[26] Appellant's Closing Submissions (ACS) at [82].

[27] Appellant's Closing Submissions (ACS) at [82].

[28] Appellant's Closing Submissions (ACS) at [83].

[29] Respondent's Closing Submissions (RCS) at [12] & [13].

(b) The Respondent is thus statutorily required to ascertain the GFA of the acquired land as at the acquisition date[30] and is obliged to make enquiries with the URA concerning its position on safeguarding;[31]

(c) The Respondent placed reliance on URA's confirmations, in particular, the confirmations of 12 September 2012 and 25 January 2013, which stated respectively that, as at the acquisition date, URA's position was that it would safeguard the previously approved GFA set out in the 2009 Written Permission;[32]

(d) The URA's position whether safeguarding will take place in a specific case depends on the facts and does not detract from the certainty of the URA's confirmations;[33]

(e) The URA's confirmations are certain and may be relied upon;[34]

(f) The Respondent is not under a duty to communicate its consideration to the Appellant or any of the factors it has taken into consideration to the Appellant prior to making the Collector's Award - the time to do so is the issuance of the Collector's Grounds of Award; [35]

(g) With regard to the Appellant's alternative claims for injurious affection and severance damages, there is no factual basis to back up these claims;[36]

(h) In any event, these issues have been superseded by the issues as stated in the Agreed Statement of Facts.[37]

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[30] Respondent's Closing Submissions (RCS) at p.15.

[31] Respondent's Closing Submissions (RCS) at [16].

[32] Respondent's Closing Submissions (RCS) at [14].

[33] Respondent's Closing Submissions (RCS) at [28].

[34] Respondent's Closing Submissions (RCS) at p.25.

[35] Respondent's Closing Submissions (RCS) at [20].

[36] Respondent's Closing Submissions (RCS) at [10].

[37] Respondent's Closing Submissions (RCS) at [5].

Our Decision

14 The parties proposed that the central issue before the Board is whether the market value of the acquired land should be determined on the basis that (a) there is a loss of GFA for the remaining land as a result of the acquisition (as contended by the Appellant) or (b) there is no loss of GFA for the remaining land as a result of the acquisition (as contended by the Respondent).

15 At the outset, it is clear from the evidence presented that by "loss of GFA", the Appellant means the difference between the maximum GFA of 39,984.42 m^2 for the development proposal shown in the approved plan under the 2009 Written Permission and the computed GFA of 39,618.81 m^2 for the remaining land based on its land area of 18,866.1 m^2 multiplied by the GPR of 2.1, i.e. 365.61 m^2 in quantum. The Appellant asserts that it had "in fact suffered a loss of GFA as it had sold the remaining land to Chequers on the basis that the GFA of 39,984.42 m^2 was not safeguarded for the remaining land".[38]

16 In our view, it would have been helpful if the parties had explained how such "loss of GFA", if any, is a relevant factor for determining the market value of the acquired land under s 33(5)(e) of the LAA. The Appellant has not shown how the loss of GFA sustained at the remaining land adds to the market value of the acquired land to a bona fide purchaser. In fact, it was the Respondent's valuer who postulated that by honouring the maximum GFA approved under the 2009 Written Permission for use on the remaining land, the URA was doing it by transferring the allowable GFA of the acquired land to the remaining land and as a consequence, "there is therefore no plot ratio ascribed or ascribable to the Acquired Land".[39]

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[38] Appellant's Closing Submissions (ACS) at [86].

[39] Affidavit of Tok Yee Fong (Yvonne Tok) (YT1) at [12].

17 However, there is no evidence to support this presumption. Certainly, the URA had not said so and the URA was also not asked to confirm it. In the absence of any supporting evidence, there is simply no basis to suggest that the GFA has been taken away from the acquired land upon the publication of the s 5 declaration and before the Collector takes possession of the acquired land and re-registers it as State land under s 18 of the LAA.

18 The valuers for both sides are of the view that following the acquisition of the acquired land, the land area of Lot 5163X was reduced from 19,040.2 m^2 to 18,866.1 m^2 such that the maximum permissible GFA of the property based on a GPR of 2.1 would have been 39,618.81 m^2, i.e. there would be a potential loss of GFA of 365.61 m^2.[40] This view is deceptively simple but flawed because post-acquisition, the land that matters is the remaining lot and not the entire lot. Insofar as the land that comprises the remaining lot is concerned, it would have the same GPR of 2.1 and the same GFA of 39,618.81 m^2 both before and after acquisition, i.e. there is no change or loss of GFA. But because of URA's policy and practice in a case with facts such as this to honour the GFA for the entire lot for the remaining lot, the allowable GFA for the remaining lot will actually increase beyond its original value, thus bringing the remaining lot's GPR up from 2.1 to 2.1193. That was URA's consistent position all along for the asking. Unfortunately, the Appellant failed or chose not to find out early enough. Viewed in this light, there is clearly no loss of GFA at any time for the land that comprises the remaining land.

19 Indeed, the evidence before the Board shows that the URA had confirmed on several occasions in communications with the Collector that it

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[40] Affidavit of Tok Yee Fong (Yvonne Tok) (YT1) at [8]; Affidavit of Wong Loo Kuan Lydia (LS1) at p. 13.

would safeguard the approved GFA of 39,984.42 m^2. The first of these confirmations was given on 12 September 2012, i.e. after the acquisition date of 15 November 2011.

20 The Appellant contends that the first time it was informed by the Collector of the URA's confirmation was on 31 May 2013[41] whilst the Respondent asserts that the Appellant was informed of the URA's confirmation sometime between 25 January 2013 and 20 May 2013.[42] Be that as it may, there is no dispute that the Appellant was informed of the URA's confirmation after the acquisition date.

21 As mentioned above, the Respondent's valuer deemed that the acquired land had lost all its GFA to the remaining land and she concluded that the acquired land was therefore "legally incapable of further development".[43] For reasons of restrictions imposed by or under the Planning Act, the Respondent's valuer also concluded that the acquired land was "incapable of any hotel development" and was "also physically incapable of any further development on its own to build any ancillary use".[44] Her bases for valuation for the acquired land as "Road and/or Green Buffer" are set out in her affidavit (YT1) at [11] to [13].

22 Correspondingly, the Appellant's valuer's bases of valuation are set out in her affidavit (LS1) at page 12, which show that she was not valuing the market value of the acquired land in accordance with s 33(5)(e) of the LAA, but

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[41] Appellant's Closing Submissions (ACS) at [86].

[42] Respondent's Reply Submissions (RCS) at pp. 24-26.

[43] Affidavit of Tok Yee Fong (Yvonne Tok) (YT1) at [12].

[44] Affidavit of Tok Yee Fong (Yvonne Tok) (YT1) at [11] & [12].

valuing, for purposes of claiming compensation, the presumed loss of hotel GFA at the remaining land because "[b]ased on information available as of 15 November 2011, there is no certainty that in the event of future development, GFA will be safeguarded by the Competent Authority".[45]

23 The Appellant contends that the URA's confirmation should not be taken into account as the relevant date of assessment of the market value of the acquired land is the date of acquisition and the URA's confirmation came only after the acquisition date. Without knowledge of the URA's confirmation as at the acquisition date, a bona fide purchaser valuing the land as at the acquisition date could not have taken into account the URA's confirmation.[46]

24 The Appellant further contends that there was no certainty as at the acquisition date that the URA would necessarily safeguard the GFA of 39,984.42 m^2 on the reduced site of 18,866.1 m^2. The Appellant submits as follows:

> Firstly, the URA does not, as a matter of course or otherwise, safeguard the GFA in every land acquisition case. This is clear from the evidence of Mr Wong Chiew Yii, the Senior Planner in URA ("Mr Wong") and confirmed by the understanding of the Collector, Ms Wee Kim Eng Fiona ("Ms Wee"). According to Mr Wong, it all depends on the facts and circumstances of the case. For example, there are many planning parameters (such as the size of the acquired land, where the acquired land is situated on the site, setback requirements, height requirements etc.) which the URA will need to consider and assess before it decides whether to safeguard the GFA in a particular case.[47]
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> …

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[45] Affidavit of Wong Loo Kuan Lydia (LS1) at p. 12.

[46] Appellant's Closing Submissions (ACS) at [46].

[47] Appellant's Closing Submissions (ACS) at [48].

> Put another way, only the URA has the right to decide whether to safeguard the GFA. While the Board was informed at the hearing that there is a general principle and policy that the URA would not unduly prejudice land owners, that is only a general policy. As Mr Wong repeatedly emphasised, there are many planning parameters to consider and it all depends on the facts of the particular case[48] …
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> Thus the URA can well decide not to safeguard the GFA in a particular case. This is also consistent with the Collector, Ms Wee's understanding[49] …
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> It is plain from Mr Wong's and Ms Wee's evidence that there is simply no certainty that the URA would always safeguard the GFA in an acquisition case. That is determined by the URA on a case by case basis.[50]

25 Based on the evidence of Mr Wong and Ms Wee, the Appellant contends that that there is no way a bona fide purchaser would be able to assume with certainty that the GFA would be safeguarded after the acquisition and proceed to value the acquired land on that basis.[51]

26 The Appellant submits that only information that is certain as at the acquisition date can be taken into account when assessing market value under the LAA. In support of this submission, the Appellant refers the Board to the Court of Appeal's decision in *Collector of Land Revenue v Mustaq Ahmad s/o Mustafa* [2002] 1 SLR (R) 413 ("*Mustaq*").

27 *Mustaq* was an appeal by the Collector against an award made by the Appeals Board in favour of the respondent as compensation for the acquisition of his property. Prior to the acquisition, the respondent had obtained permission

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[48] Appellant's Closing Submissions (ACS) at [50].

[49] Appellant's Closing Submissions (ACS) at [51].

[50] Appellant's Closing Submissions (ACS) at [52].

[51] Appellant's Closing Submissions (ACS) at [52].

to develop his property and later obtained provisional permission to increase the size of the development and to convert the residential building to a boarding house. By the time the property was acquired, the provisional permission had lapsed. In determining the market value of the acquired property, the Appeals Board took into account the fact that the respondent had obtained provisional permission. The Collector, who disagreed with the approach of the Appeals Board, appealed against its decision.

28 The Court of Appeal allowed the appeal and remitted the case back to the Appeals Board for the compensation payable to the respondent to be computed on the basis of the written permission granted for the development of the acquired property. The Court of Appeal explained at [10] of the grounds of judgment as follows:

> The provisional approval granted to Mustaq cannot be equated with written permission to develop the site. If provisional permission for a proposed plan is to be taken into account for the purpose of determining the market value of an acquired property, it will be necessary to evaluate whether or not it is likely that written permission will eventually be granted after the submission of building plans, and whether or not the written permission may include restrictions, which have to be taken into account. Such speculation is unnecessary and undesirable.

29 In coming to its decision, the Court of Appeal affirmed at [10] the approach adopted by the Appeals Board in an earlier decision in *Beauty Park Development (Pte) Ltd v Collector of Land Revenue* [1991] 2 MLJ li ("*Beauty Park*").

30 *Beauty Park* was an appeal to the Appeals Board against an award of compensation for compulsory acquisition of about two and a half acres of land at Bukit Timah. Prior to the acquisition, the owner had submitted an application for planning permission to build a 27-storey commercial and residential complex. After discussion with planning authorities, alterations to meet the

requirements of the Planning Department were made. However, the plans were not submitted due to a dispute between the owner and the architect over the architect's fees. The project was then in abeyance for some time and subsequently resumed with a different architect. However, before the plans could be submitted, the land was acquired by the government. Before the Appeals Board, the owner maintained that the land should be valued with the benefit of planning permission which would have been obtained but for the acquisition of the land. The board did not accept the argument and dismissed the appeal. The board said at pp liv-lv as follows:

> Here, there was no certainty that planning approval would in fact have been granted. There was evidence before the Board that at all material times, all that the appellants could be said to have got from the Planning Department at the very most was an 'in principle approval' of their plans. This however, did not necessarily mean that a final approval would have been granted to them.
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> Although it was said that it was reasonable then to expect that planning permission would have been granted to the appellants when they had amended their plans according to the directives given by the officer from the Planning Department, it is a wholly different thing to say that it was certain that they would have been granted such planning permission …

31 The Appellant submits that in light of the case law as discussed above, the URA's confirmations are merely red herrings in the present appeal and ought to be disregarded entirely for the purpose of assessing market value under the LAA. The Appellant contends as follows:

> Given the uncertainty of the safeguarding of the GFA, we submit that a bona fide purchaser would not know, until confirmation from the URA has been given, whether the GFA would in fact be safeguarded in a particular case. Coming back to the case at hand, there is simply no basis for a bona fide purchaser to assume (with any degree of certainty) that the maximum permissible GFA stipulated in the 2009 Written Permission, bearing in mind that the 2009 Written Permission was granted for the entire Lot 5163X, would continue to be applicable to a reduced site area after the Acquisition. This uncertainty is precisely why

> it was necessary to seek URA's confirmation on the same. This was also expressly accepted by Mr Wong (more than once during his cross-examination) …[52]

It was further highlighted that the Appellant's approach in this appeal is no different from the Collector's approach in *Beauty Park* and *Mustaq.*[53]

32 In our respectful view, we do not think that the approach adopted by the Appellant is a correct application of the approach in *Beauty Park* and *Mustaq*. At the outset, it should be pointed out that both of these cases involve approvals that were provisional in nature and are clearly distinguishable from the factual matrix of the present case.[54]

33 In determining the market value, it is necessary to begin with s 33(5)(e) of the LAA. This provides that -

> the market value of the acquired land shall be deemed not to exceed the price which a bona fide purchaser might reasonably be willing to pay, *after taking into account the zoning and density requirements and any other restrictions imposed by or under the Planning Act (Cap. 232) as at the date of acquisition* and any restrictive covenants in the title of the acquired land, and no account shall be taken of any potential value of the land for any other use more intensive than that permitted by or under the Planning Act as at the date of acquisition.
>
> [Emphasis added]

34 It is clear that under s 33(5)(e) of the LAA, a bona fide purchaser is expected to take into account, *inter alia*, the zoning and density requirements and any other restrictions imposed by or under the Planning Act on the parcel

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[52] Appellant's Closing Submissions (ACS) at [63].

[53] Appellant's Closing Submissions (ACS) at [84].

[54] *Mustaq* involved a "provisional approval" / "provisional permission" whilst *Beauty Park* involved an "in principal approval".

of land that makes up the acquired land as at the date of the acquisition. Hence, the question that needs to be answered is this - what are the zoning and density requirements and any other restrictions imposed by or under the Planning Act on the acquired land as at the date of acquisition in the present case?

35 For reasons already mentioned above, the Respondent's valuer had determined that the acquired land is both legally and physically incapable of hotel development or any further development, and its existing use for turfing, garden space and part of the fence is the best use. The Appellant's valuer has not given any evidence to the contrary.

36 If for argument's sake, we extend the enquiry to the remaining land, the answer to the question is plain and certain - the URA has a general principle and policy that it would not prejudice land owners for development planning approval that has been granted and that each case is to be assessed based on the facts.[55]

37 There is no necessity for a bona fide purchaser to speculate whether the GFA would be safeguarded after the acquisition in any particular case. Indeed, it is imprudent to engage in such speculation when all the bona fide purchaser needs to do is to make the necessary enquiry concerning URA's position on safeguarding.

38 The need to make the necessary enquiry is clear from the evidence of Mr Wong:

Cross-Examination of Mr Wong Chiew Yii[56]

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[55] Cross-Examination of Wong Chiew Yii, Notes of Evidence, Day 1 at p.52 lines 4 to 6.

[56] Cross-Examination of Wong Chiew Yii, Notes of Evidence, Day 1 at p.53 lines 17 to 21.

> Q: And because it's case by case, would it be fair to say that every case would have been presented to the URA for confirmation?
>
> A: Well, if there's ---
>
> Q: As to whether you --- the last GFA will be honoured or not.
>
> A: Correct.

39 This is also alluded to in the valuation report of the Appellant's valuer dated 5 March 2012 which states at para 12(4) as follows:

> As we have not had the *benefit of official advice*, we have, for the purpose of this claim for compensation, assumed that the GFA as set out in the Grant of Written Permission dated 6 February 2009 for a hotel development of 39,984.42 sqm will not be safeguarded by the Competent Authority in the event of future redevelopment.[57]
>
> [Emphasis added]

40 According to the Valuation Standards and Guidelines (March 2000) issued by the Singapore Institute of Surveyors & Valuers, a bona fide purchaser is expected to act prudently and knowledgeably.[58] As noted above, the URA would assess each case on its facts. A bona fide purchaser who chooses not to make the necessary enquiry is not only acting imprudently, he is unnecessarily creating an uncertainty in his mind by his default. In our view, this cannot be an excuse to disregard the confirmation given by the URA that it would safeguard the previously approved GFA of 39,984.42 m^2 as at the acquisition date, which he would have known if he had made the necessary enquiry.

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[57] Exhibit WKE 8 at p. 63 of the Affidavit of Wee Kim Eng Fiona (FW1).

[58] Affidavit of Tok Yee Fong (Yvonne Tok) (YT1) at p. 43.

41 For the above reasons, we find that the Respondent was correct, and indeed statutorily obliged, to take into account the URA's confirmation that it would safeguard the GFA of 39,984.42 m^2 when assessing the compensation to be awarded under s 10 of the LAA.

42 Accordingly, we hold that Scenario A applies, i.e. the compensation to be awarded to the Appellant for the acquisition under the LAA is to be made on the basis that there is no loss of GFA as a result of the acquisition, and that the acquired land should be treated as "Road and/or Green Buffer".

Observations

43 The two scenarios presented to the Board are supposedly premised on the market value of the acquired land. In Scenario A, the market value of the acquired land is assessed on the basis that the acquired land has no GFA and is also physically incapable of any further development on its own to build any ancillary use as it is a small and irregular shape plot of land impacted by planning restrictions.[59] As such, it is difficult to see how the GFA of the acquired land, however much or little, could make any difference to its market value. In Scenario B, the market value of the acquired land was not assessed at all by the Appellant, but instead the GFA of 365.61 m^2 that was presumed lost to the remaining land as a consequence of acquisition was valued as hotel GFA.

44 It seems to us that a more coherent approach towards the assessment of compensation in the present case would have been to consider the loss of GFA to the remaining land, if any, as an issue of severance damage instead of conflating it with the market value of the acquired land. Under s 33(1) of the LAA, severance damage and market value are distinct heads of compensation.

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[59] Affidavit of Tok Yee Fong (Yvonne Tok) (YT1) at [11] & [12].

45 Having said that, we should point out that the end result would have been the same. The Appellant did not suffer any severance damage given the URA's confirmation that it would safeguard the approved GFA.

Award

46 For the above reasons, the Board confirms the award of the Collector of Land Revenue of compensation in the amount of $155,500 in respect of the acquired land.

47 The Appeal is dismissed with costs to the Respondent to be taxed if not agreed.

Dated the 29th day of May 2017

Commissioner of Appeals Mr Chia Wee Kiat
Assessor Mr Chua Koon Hoe
Assessor Ms Poh Kwee Eng