

LAND ACQUISITION ACT

APPEALS BOARD

AB 2012.035

In the Matter of Compulsory Acquisition of
Part of Lot 99949L Mukim 14
926 Upper Bukit Timah Road

Between

ExxonMobil Asia Pacific Pte Ltd

... 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 Jeyendran Jeyapal
- Mr Wilbur Lua
- Ms Chua Ying Hong

DECISION

The decision of this Board is:

- (1) That the award of the Collector of Land Revenue of compensation in the amount of \$5,920,000 in respect of the acquired land at part of Lot 99949L Mukim 14 at 926 Upper Bukit Timah Road be increased to \$6,699,000.

And

- (2) That the Collector of Land Revenue pay to the Appellant the balance of the award together with interest at 6% per annum from the date of taking possession (21 June 2013) to the date of payment;

And

- (3) That there be no order as to costs

And

- (4) That the deposit paid by the Appellant be paid out to the Appellant.

BRIEF STATEMENT OF REASONS

Appeal

1 This is an appeal by the Appellant, ExxonMobil Asia Pacific Pte Ltd, in respect of the compulsory acquisition of part of Lot 99949L Mukim 14 at 926 Upper Bukit Timah Road.

2 The Appellant operates a petrol service station on Lot 99949L and the acquired land was part of the petrol service station. In this appeal, the Appellant seeks an increase in the compensation awarded by the Collector of Land Revenue, the Respondent in these proceedings, from \$5,920,000 to \$16,996,000.

Background

3 By Notification No. 2211 dated 12 August 2010 published in the Government Gazette, Electronic Edition on 25 August 2010, part of Lot 99949L Mukim 14 at 926 Upper Bukit Timah Road was declared under s 5 of the Land Acquisition Act, Cap. 152 ("LAA") to be needed for a public purpose, viz:

"Widening of Woodlands Road and Upper Bukit Timah Road from Mandai Road to Jalan Asas; and construction of flyovers at junctions of Woodlands Road / Choa Chu Kang Road and Upper Bukit Timah Road / Dairy Farm Road / Hillview Road."¹

4 The total land area of Lot 99949L Mukim 14 ("Lot 99949L") is 905.9 square metres. It is a leasehold estate for 999 years commencing 2 October 1876. Erected on Lot 99949L is an Esso Petrol Service Station ("Esso Station").

¹ Agreed Bundle of Documents (ABOD) Tab 14 at p.63.

5 Written permission was granted by the competent authority on 19 April 1960 for the reconstruction of the existing petrol filling station to a petrol service station on Lot 99949L. Over the years, various other written permissions were granted by the competent authority under the prevailing Planning Act for various additions and alterations to the existing petrol service station on site, the last of which was given on 11 January 1999.²

6 The acquired land, with a land area of 141.9 square metres, comprises Lot 99949L's road frontage to Upper Bukit Timah Road up to a depth of approximately 6 to 6.5 square metres from the road frontage. It is almost rectangular in shape with a splay at its south-western corner, comprising part of the forecourt and the front setback of the Esso Station.

7 The Esso Station is located less than 400 metres after the major junction of Woodlands Road/Choa Chu Kang Road/Bukit Panjang Road/Upper Bukit Timah Road, just after Petir Road, in the city or south bound direction. The immediate locality is mixed in nature comprising mainly HDB flats, residential and commercial developments. Prominent landmarks in the locality include The Linear, Maysprings, Bukit Panjang Plaza and Ten Mile Junction.

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

Date	Event
May 2010	The Appellant closed the Esso Station for two weeks to accommodate the Land Transport Authority (LTA) in its preparation for construction works on Lot 99949L. Four of the Appellant's eight fuel pumps in the Esso Station were decommissioned for safety reasons due to the LTA works.

² 1st Affidavit of Chua Beng Ee (CBE 1) at p. 13.

25 Aug 2010	The notification under s 5 of the LAA vide Notification No. 2211 dated 12 Aug 2010 declaring that the land is needed for the stated public purpose was published in the Government Gazette, Electronic Edition. This is the date of the acquisition vide s 33(6) of the LAA.
Oct 2010	A Singapore Petroleum Company (SPC) petrol service station, a competitor to the Appellant's Esso Station, opened at 41 Bukit Panjang Ring Road. The SPC Station was located 1.3 km away from the Esso Station and serves the residents of Bukit Panjang estate.
26 Nov 2010	A Collector's Inquiry was held.
31 Jan 2011	The Appellant submitted a valuation report with a claim of \$26.4 million.
4 Oct 2012	The Respondent issued the Collector's Award of \$3.3 million for the acquired land and an ex-gratia payment of \$231,000.
15 Oct 2012	The Appellant filed Notice of Appeal against the Collector's Award.
June 2013	Two of the previously decommissioned fuel pumps were re-commissioned.
21 Jun 2013	The Collector issued a notice dated 21 Jun 2013 that he had taken possession of the acquired land on the same date.
23 Sep 2013	The Collector issued the Grounds of Award.
4 Oct 2013	The Appellant filed the Petition of Appeal.
15 Aug 2014	The Appellant revised its claim to \$16.99 million and \$15,200 for loss in value of improvements.
2 Apr 2015	The Appellant provided the Respondent with the actual throughput figures for the Esso Station for the months January 2010 to February 2015.
12 Apr 2015	The flyover adjoining Woodlands Road and Choa Chu Kang Road (the "Flyover") was completed.
11 Jun 2015	The Collector issued a Supplementary Award of \$2.62 million having considered the Appellant's actual throughput figures.

Matters to be considered in determining compensation

9 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) any increase in the value of any other land (such as contiguous or adjacent land) of the person interested likely to accrue from the use to which the land acquired will be put;
- (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) 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; and
- (f) if, in consequence of the acquisition, any reissue of title is necessary, the fees or costs relating to survey, issue and

registration of title, stamp duty and such other costs or fees which may reasonably be incurred.

(1A) ...

(2) If the value of any other land of the person interested likely to accrue from the use to which the land acquired will be put is increased, the increase is to be set-off only against the amount of compensation that would otherwise be payable under subsection (1)(c) or (d) or both, or subsection (1A)(c) or (d) or both, where applicable.

(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.

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

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

Issues in this appeal

12 The Appellant and the Respondent have agreed that the “before and after” method is the appropriate method for the purposes of determining the compensation that should be awarded to the Appellant. This method of determining compensation has been adopted in similar cases involving part-lot or whole-lot acquisition of a petrol service station: see *Shell Eastern Petroleum (Pte) Ltd v The Collector of Land Revenue* [2002] SGAB 3 (AB 080/1997); *Shell Eastern Petroleum (Pte) Ltd v The Collector of Land Revenue* [2002] SGAB 4 (AB 081/1997); *Syed Taha bin Salim Albar, the Administrator of the Estate of Andi Abdul Hafeez bin Haji bin Mandak @ Abdul Hafeez bin Daing bin Mandak @ Abdul Hafiz D.A.Bogas, deceased and Another v The Collector of Land Revenue* [2002] SGAB 5 (AB 087/1997); *ExxonMobil Asia Pacific Pte Ltd v Collector of Land Revenue* (AB 2001.005).

13 The “before and after” method involves the determination of the market value of the land as at the acquisition date immediately before publication of the s 5 notification and the market value of the remaining land in its condition at the time of the Collector’s taking possession of the acquired land. The market value is determined by the product of the annual throughput and the appropriate throughput rate for a petrol service station on site. The measure of the loss is the diminution in the market value of the land: see *ExxonMobil Asia Pacific Pte Ltd v Collector of Land Revenue* (AB 2001.005) at [12] of the Brief Statement of Reasons.

14 Although the Appellant and the Respondent are in broad agreement on the application of the “before and after method”, there are several fundamental differences between them. The main issues in dispute are as follows:

Basis of compensation

- (i) The legal basis of the compensation to be awarded to the Appellant as a result of the acquisition:
 - (a) Whether the “before and after method” captures the total loss (i.e. market value, severance damage and injurious affection) suffered by a dispossessed landowner as a result of an acquisition of its land;
 - (b) Whether the acquired land has any market value; and
 - (c) Whether the Appellant has suffered any injurious affection as a result of the operation of the Flyover completed on 12 April 2015.

Application of the “before and after” method

- (ii) The application of the “before and after” method:
 - (a) Whether the “before” throughput should be estimated on the basis of the annual achieved throughput in the lone year preceding May 2010 or on the basis of the average annual throughput achieved in the three years preceding May 2010;
 - (b) Whether the “after” throughput should be estimated on the basis of the projection made by the Appellant’s proprietary fuels volume forecasting model (“GINA+”) or on the basis of the actual throughput achieved by Esso Station after possession of the acquired land was taken; and
 - (c) Whether the correct throughput rate that should be applied is \$4.00 per litre (as contended by the Appellant) or \$3.11 per litre (as contended by the Respondent).

Compensation for loss of two fuel pumps

- (iii) The Appellant’s claim for compensation of \$6,000 for the loss of two fuel pumps - whether the Appellant has suffered any physical loss of the two fuel pumps at the Esso Station.

Appellant's case

Basis of compensation

15 The Appellant submits that it should be entitled to compensation for market value, severance damage as well as damage for injurious affection under s 33(1)(a), (c) and (d) of the LAA. The Appellant's claim is for compensation of \$16,990,000 for the acquired land and \$6,000 for the loss of two fuel pumps that were permanently decommissioned.

16 The Appellant submits that the "before and after" method captures the total loss (i.e. market value, severance damage and injurious affection) suffered by a dispossessed landowner as a result of an acquisition of its land as a whole, without further specification or breakdown into the different components of the total loss. Having adopted the "before and after" method, it is unnecessary to quantify specifically the market value of the acquired land.

17 On injurious affection, the Appellant submits that it is entitled to claim compensation for damage arising from the diversion of traffic from the Esso Station to the Flyover. As such, it has taken into account the loss in throughput due to the diversion of traffic to the Flyover in its projection of the "after" throughput when applying the "before and after" method.

Application of the before and after method

18 The Appellant submits that the "before" throughput should be 8,916,360 litres. In determining the "before" throughput, the Appellant's valuer Ms Chua Beng Ee relied on the actual throughput of the Esso Station in the 12-month period immediately prior to May 2010 (i.e. from May 2009 to April 2010). Ms Chua is of the view that there was a sustainable upward trend in the achievable throughput of the Esso Station. According to Ms Chua, a bona fide purchaser

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will be aware that Bukit Panjang is a growing area and will base its bid on the most recent achievable throughput of the Esso Station.

19 The “after” throughput estimated by the Appellant is 4,668,000 litres. This estimate is projected by the Appellant’s propriety fuels volume forecasting model GINA+ and is based on a consideration of factors which would, in the Appellant’s experience, strongly affect the throughput of a petrol station. As the version of the GINA+ model used when the Appellant projected the “after” throughput is the 2008 GINA+ model, the projection is based on information as at 2008. Information after 2008 was not in the 2008 GINA+ model.

20 When projecting the “after” throughput for the purposes of this appeal, the Appellant had considered the impact of the scheme as set out in the s 5 notification. As noted earlier, the Appellant had included the impact of the Flyover in this projection. On the other hand, factors such as “road” zoning of part of the Esso Station, the upcoming residential developments announced in 2011 and the presence of competitors were excluded as the Appellant considers these factors to be unrelated to the acquisition.

21 The Appellant adopted a throughput rate of \$4.00/litre (or \$2.40/litre on a 30-year leasehold basis). In arriving at this estimated rate, Ms Chua relied on 6 comparable sites set out in the table below.

S/N	Location	Land Area (sq m)	Tender closing date	Lease Term (years)	Tender Price S\$	Projected Volume (kl/mth)	Rate S\$/litre (30-yr leasehold)	Successful Bidder
1	Bukit Panjang Road	2,000.0	6/10/2009	30	13,600,000	409.00	2.77	SPC
2	2225 Ang Mo Kio Ave 8	1,929.6	24/11/2009	30	17,180,000	738.00	1.94	Appellant
3	Sengkang East Way	1,994.3	5/1/2010	30	17,299,027	590.00	2.44	SPC
4	99 Bedok North Road	1,680.2	20/5/2010	30	12,820,000	568.00	1.88	Appellant

5	Punggol Road	1,981.1	26/8/2010	30	25,040,000	764.00	2.73	Shell
6	302 Jalan Ahmad Ibrahim	2,746.2	15/12/2010	20	30,200,000	1,260.00	2.00 (2.5)	Appellant
Average throughput rate							2.38	

22 The table sets out the tender prices by the successful bidders in 6 sites from 6 October 2009 to 15 December 2010. All of these sites are 30-year leases except for the site at 302 Jalan Ahmad Ibrahim (no. 6), which is a 20-year lease. The Appellant was the successful bidder in three of the sites (nos. 2, 4 and 6) whilst its competitors SPC and Shell were the successful bidders in the other three sites (nos. 1, 3 and 5). The projected volumes provided by the Appellant included those sites where the Appellant was not the successful bidder. The projected volumes are the Appellant's projections. The tender prices and projected volumes are used to determine the throughput rate for each of the sites. The throughput rate of \$2.00/litre for the site at 302 Jalan Ahmad Ibrahim when adjusted to a 30-year lease gives \$2.50/litre. The average of the throughput rates for the 6 comparables based on 30-year leasehold is \$2.38/litre.

23 In arriving at the throughput rate of \$2.40/litre for the present case, Ms Chua was of the view that she was entitled to take a figure slighter higher than the average figure of \$2.38/litre of the six comparables. Ms Chua explained that in terms of the 6 comparables, she placed higher weightage on the sites at Bukit Panjang Ring Road, Sengkang East Way and Punggol (nos. 1, 3 and 5) as they are similarly located in areas of growth. However, she is cognizant of the fact that the three sites are not the Appellant's sites and has thus adopted a more

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“conservative”³ rate of \$2.40/litre which is equivalent to \$4.00/litre for freehold land.⁴

24 Taking the above into consideration, Ms Chua derived at the valuation as follows⁵:

“Before” Land Value

743.03 KI/mth x 1000 x 12 mths x \$4.00/litre = \$35,665,228

“After” Land Value

389 KI/mth x 1000 x 12 mths x \$4.00/litre = \$18,672,000

Loss in Land Value

\$16,993, 228

Say \$16,990,000

Respondent’s case

Basis of compensation

25 The Respondent accepts that the Appellant has suffered severance damage under s 33(1)(c) of the LAA on the basis that the severance of the acquired land from the rest of Lot 99949L has adversely affected the market value of the remaining land. The acquisition has reduced the number of fuel pumps that can be operated on the remaining land from eight to six. The market value of a petrol service station is affected by its annual throughput and the permanent loss of use of two fuel pumps would result in a fall in annual throughput of the remaining land, and thereby the market value of the remaining land.

³ Notes of Evidence, Day 3 at p. 17 line 28.

⁴ The adjustment factor based on SLA leasehold table for a 30-year lease is equivalent to 60% of the freehold value: Notes of Evidence, Day 3 at p. 17 lines 1-3.

⁵ 1st Affidavit of Chua Beng Ee (CBE1) at p. 8.

26 However, the Respondent submits that the Appellant is not entitled to compensation under s 33(1)(a) of the LAA as the acquired land has no market value because no bona fide purchaser would be willing to purchase the acquired land.

27 On injurious affection, the Respondent contends that a claim can only be made for injurious affection if the remaining land is affected by activities carried out on the acquired land. The acquired land was used to widen Bukit Timah Road to accommodate the construction of the Flyover. Any loss in throughput due to a reduced traffic flow due to the diversion of traffic to the Flyover cannot be considered injurious affection under s 33(1)(d) of the LAA. Moreover, such a loss cannot be considered damage due to severance because it is not caused by severing the acquired land from the remaining land. In substance, the Appellant's complaint is a complaint that the Flyover will result in a loss of earnings for the Appellant. However, the LAA does not provide compensation for business loss.

28 Since the acquired land has no market value and the Appellant has not suffered any injurious affection to his other property, the Respondent submits that the correct application of the "before and after" method in this case should yield only the damage due to severance under s 33(1)(c) of the LAA.

Application of the before and after method

29 The Respondent submits that the "before" throughput should be 8,504,000 litres. In determining the "before" throughput of the Esso Station, the Respondent's valuer Mr Liaw Hin Sai used the average of the actual annual realised throughput (supplied by the Appellant) of the preceding three years of operation prior to May 2010. The annual throughput of each individual year is set out in the following table.

Time period	Annual throughput
May 2007 to April 2008 ("Year 1")	8,219,000 litres
May 2008 to April 2009 ("Year 2")	8,377,000 litres
May 2009 to April 2010 ("Year 3")	8,916,000 litres
Average annual throughput	8,504,000 litres

30 Mr Liaw explained that the average of the three years' throughput would yield a fairer estimate of the annual throughput as compared to only considering the annual throughput for one year because this would account for and lessen the impact of fluctuations in petrol sales volume. Such an approach was used in the assessment of the "before" throughput in *ExxonMobil Asia Pacific Pte Ltd v Collector of Land Revenue* (AB 2001.005).

31 The Respondent submits that the "after" throughput should be 6,601,000 litres. Mr Liaw has determined the "after" throughput achievable by the Esso Station as at the time of the Collector's taking possession of the land, by estimating the throughput with reference to the actual throughput achieved by the Esso Station after taking possession when six of the eight fuel pumps were in operation. Mr Liaw compared the average annual throughput achieved by the Esso Station between May 2007 to May 2010 when eight fuel pumps were in operation against the average annual throughput achieved by the Esso Station between June 2013 and February 2015 when six fuel pumps were in operation. He found that the reduction in annual throughput was 2,142,000 litres. Mr Liaw noted that there was also a fall in throughput during the period of June 2010 to May 2013. In his opinion, this could not have been due to the loss of use of fuel pumps as the number of fuel pumps in operation had remained constant during this period. He assessed that the most compelling external reason was for the

drop in throughput was the presence of a SPC petrol service station that opened in October 2010 at 41 Bukit Panjang Ring Road. The SPC petrol service station was located a mere 1.3 km away from the Esso Station and would have served the residents of the Bukit Panjang estate. In his analysis, the presence of the SPC petrol service station would have accounted for 239,000 litres of the reduction in throughput. Mr Liaw deducted 239,000 litres from 2,142,000 litres to obtain the throughput loss – 1,903,000 litres – that could be attributed to the severance.⁶ This is equivalent to the “after” throughput of 6,601,000 litres. Mr Liaw explained that he had ensured that the throughput loss as a result of competition was not taken into account because the impact of such market competition is not a relevant factor for determining compensation under s 33(1) of the LAA. Mr Liaw also did not take into account any loss in throughput due to a diversion of traffic to the Flyover.

32 The Respondent submits that the correct throughput rate to be applied is \$3.11/litre. Mr Liaw explained that the Appeals Board in *Shell Eastern Petroleum (Pte) Ltd v The Collector of Land Revenue* [2002] SGAB 3 (AB 080/1997) found that the throughput rate for a petrol service station with a freehold lease commencing in January 1995 was \$3.11/litre. As the throughput of \$3.11 per litre was found to be applicable by the Appeals Board previously in the absence of any evidence that there had been any movement in throughput between 1995 and 2000 (*ExxonMobil Asia Pacific Pte Ltd v Collector of Land Revenue* at [30]), Mr Liaw adopted a similar approach by ascertaining if there was any evidence to show that the throughput rate of \$3.11 per litre (for freehold land) had changed between 1995 and the acquisition date. To do so, Mr Liaw analysed the average unit land rate of petrol service sites based on publicly

⁶ 3rd Affidavit of Liaw Hin Sai (LHS3) at [25] & [26]. An arithmetical error in LHS3 was corrected by Mr Liaw at the hearing – see Notes of Evidence, Day 4 at p.4 lines 27-28 and p. 5 lines 7-10.

available data on sales prices for petrol sites from 1992 to 2012. Based on his analysis, he found that the average unit land rate for 2010 was generally no higher than that for 1995. As there was no evidence that the throughput rate for 2010 was different from that in 1995, he adopted the throughput rate of \$3.11/litre.

33 Taking the above into consideration, Mr Liaw assessed the severance damage as follows⁷:

Throughput loss due solely to the loss of 2 pump dispensers
2,142,000 – 239,000 litres = 1,903,000 litres

Severance damage
1,903,000 litres x \$3.11/litre = \$5,918,330
Rounded up \$5,920,000

Compensation for loss of two fuel pumps

34 The Respondent submits that additional compensation should not be given for the two fuel pumps that were permanently decommissioned. The Appellant's evidence shows that while the two fuel pumps have been decommissioned, they are physically on the Appellant's remaining land. Therefore, the Appellant has suffered no physical loss.

⁷ 3rd Affidavit of Liaw Hin Sai (LHS3) at [25] & [26]; Notes of Evidence, Day 4 at p.4 lines 27-28 and p. 5 lines 7-10.

Our Decision

Basis of compensation

35 We begin first by considering the market value of the acquired land. The acquired land comprises a narrow strip of land sandwiched between the public road and the remainder of the Esso Station. It lies within the “Road” zone under the 2008 Master Plan.⁸

36 The Respondent’s valuer Mr Liaw is of the view that the acquired portion is on its own incapable of any independent development and would have no market value, having regard to its site constraints in terms of configuration, size and land use zoning.⁹ In support of his assessment, Mr Liaw made reference to *ExxonMobil Asia Pacific Pte Ltd v Collector of Land Revenue* (AB 2001.005), which involved a part-lot acquisition of a petrol service station. According to Mr Liaw, the market value of the land acquired in that case “is assessed as nil”.¹⁰

37 We are, respectfully, unable to agree with Mr Liaw’s analysis. In our view, it is important to bear in mind that the market value of a petrol service station site is determined by the annual throughput and the throughput rate.¹¹ In the present case, there is no dispute that the acquisition of the part-lot has led to the Appellant permanently closing two out of its eight pumps and the reduction

⁸ 1st Affidavit of Liaw Hin Sai (LHS1) at [11].

⁹ 1st Affidavit of Liaw Hin Sai (LHS1) at [11].

¹⁰ 1st Affidavit of Liaw Hin Sai (LHS1) at [14].

¹¹ 1st Affidavit of Liaw Hin Sai (LHS1) at [15].

in the throughput. Clearly, the acquired land has a significant impact on the throughput of the Esso Station.

38 When Mr Liaw expressed the opinion that if the acquired land were to be put on the market for sale, no bona fide purchaser for it would be found, he did not appear to have taken into consideration the position of the Appellant who could step into the shoes of a bona fide purchaser in his hypothetical analysis.¹² In this regard, paragraph 3 of the letter dated 7 November 2008 from the Urban Redevelopment Authority to the Commissioner of Lands enclosing the Certified Interpretation Plan states that the area of the acquired land can be taken to have the same zoning and intensity as the part of the lot immediately contiguous to it for the purpose of plot ratio computation for the remaining area of the lot.¹³ The acquired land would have enabled the Appellant, who owns the adjoining land, to operate two additional pumps and increase the throughput volume. For this reason, we are unable to accept Mr Liaw's assessment that the acquired land has no market value.

39 We find the alternative position contended by the Appellant to be more tenable and consonant with the method of valuing a petrol service station. As the market value of a petrol service station is dependent on the throughput volume, we agree with the Appellant that the loss in the market value of a petrol service station after part-lot acquisition would have included the market value of the acquired land. In this regard, we do not think that *ExxonMobil Asia Pacific Pte Ltd v Collector of Land Revenue* (AB 2001.005) cited by Mr Liaw is of assistance as both the Appellant and the Collector had abandoned market value in that case.¹⁴

¹² 1st Affidavit of Liaw Hin Sai (LHS1) at [15].

¹³ Agreed Bundle of Documents (ABOD) Tab 17 at p 91.

¹⁴ *ExxonMobil Asia Pacific Pte Ltd v Collector of Land Revenue* (AB 2001.005) at [9].

40 We should point out however that it makes no difference to the outcome of this case whichever position is taken on this issue. This is because the Appellant's valuer and Respondent's valuer have both relied on the "before and after" method to arrive at their opinion of the appropriate compensation for the present appeal. The Appellant has not put forth a separate claim for market value in view of the position it has taken.

41 We turn next to injurious affection. For ease of reference, s 33(1)(d) of the LAA is reproduced below:

- (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

[emphasis added]

42 The central issue is whether any loss in throughput to the Esso Station as a result of the diversion of traffic to the Flyover is compensable under s 33(1)(d) of the LAA. This revolves around the fact that the Flyover was not constructed on the acquired land, which gives rise to a question of law as to whether the act causing damage to the Appellant's remaining land must occur on the acquired land in order for a claim for injurious affection to be made out. This turns on the interpretation of the words "by reason of the acquisition" in s 33(1)(d) of the LAA.

43 The Board heard extensive submissions by the Appellant and Respondent on this issue. The Appellant contends that the word "acquisition" in s 33(1)(d) should be defined to mean the overall scheme of the acquisition exercise as defined in the s 5 notification. The Appellant submits that such a reading of s 33(1)(d) is supported by a plain reading of the provisions (s 5 read

with s 6 of the LAA). The Respondent, however, contends that interpreting the word “acquisition” according to what is stated in the s 5 notification does not accord with a plain or purposive reading of the provision. The Respondent submits that “acquisition” is determined with reference to the land that is actually acquired in each particular case. An interpretation which allows a claimant compensation for damage caused by activities on land that is not acquired from him is inconsistent with the other provisions under s 33 of the LAA. Both parties cited several foreign authorities in support of their contention. These include cases from Australia¹⁵, the United Kingdom¹⁶ and India¹⁷.

44 The word “acquisition” in s 33(1)(d) is not defined in the LAA. As noted above, the Appellant has sought to rely on ss 5 and 6 of the LAA in support of their contention that the s 5 notification defines the “acquisition” in each case.¹⁸ We shall thus begin by examining ss 5 and 6 of the LAA the material parts of which are as follows:

Declaration of intended acquisition

Notification that land is required for specific purposes

5.—(1) Whenever any particular land is needed -

(a) for any public purpose;

¹⁵ *Marshall v Director-General, Department of Transport* [2001] 180 ALR 351; *The Commonwealth of Australia v Morison* [1972] 127 CLR 32; *Treston v Brisbane City Council* (1985) 10 QLCR 247; *The South East Queensland Electricity Board v Beaver Dredging Pty Ltd* (1985) 10 QLCR 166.

¹⁶ *Edwards v Minister of Transport* [1964] 2 QB 134; *Moto Hospitality Ltd v Secretary of State for Transport* [2008] 1 WLR 2822.

¹⁷ *Collector of Dinagepore v Girja Nath Roy and Ors* (1898) ILR 25 Cal 346.

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

...

the President may, by notification published in the *Gazette*, declare the land to be required for the purpose specified in the notification.

(2) ...

(3) The notification shall be conclusive evidence that the land is needed for the purpose specified therein as provided in subsection (1).

Collector to proceed to acquire after notification

6. Upon the publication of a notification under s 5(1) declaring any land is needed for the purpose specified in the notification, the Minister or an officer authorised by the Minister in that behalf shall direct the Collector to take proceedings for the acquisition of the land.

45 A plain reading of these provisions clearly shows that s 5 relates to the purpose of the acquisition whilst s 6 relates to the power of the Minister to direct the Collector to take proceedings for the acquisition of the land after publication of the notification. There is nothing in ss 5 and 6 that defines “acquisition” in the manner contended by the Appellant.

46 We next consider the foreign authorities cited by the Appellant and the Respondent. While these cases are useful for the purpose of comparative analysis, we note that the statutory provisions are worded differently and would caution against placing undue weight on them in aid of the interpretation of s 33(1)(d) of the LAA. It is important to bear in mind that land is a special case in Singapore and matters of land acquisition must be considered within our own local context. As then Minister for Law Professor Jayakumar said during the 2007 amendments of the LAA (at col. 522):

We can look at the practices in other countries such as Australia, UK, India but, at the end of the day, I think we have to remind ourselves of our own context and the realities in Singapore and that context is that

we are not talking about a large country like the US, Australia, where you have large tracts of land where the approach to acquisition could perhaps be different. We are one of the smallest countries in the world – we have 704 square kilometres – and we will continue to be so. Therefore, land in Singapore is, and always has been, a special case ...

47 At an earlier Parliamentary Debates during the second reading of the Land Acquisition (Amendment) Bill 1993, Professor Jayakumar had also emphasised (at col. 537):

Let us not forget when we talk about going market rate, that we are not in the United States or Australia where they have vast open tracts of land. *Land in Singapore has been a special case, a special situation.* And very few other countries faced with this scarcity of land, with such high density of population have had so much success in public housing or industrialisation, port facilities or social and other recreational facilities. And one of the important legal and social instruments which has enabled this Government to do this has been the Land Acquisition Act. It has been a crucial instrument of policy in achieving what has been achieved thus far. It may be the ideal to pay full compensation. But bear in mind what that means. It means more costly public projects and public development. Therefore, *land acquisition policies and procedures that we have must ensure that the overall public interest and the interest of the majority must be taken into account and must promote housing, industrial, economic and other purposes. It must serve these interests efficiently, effectively, and not at a cost which will impede national development and not at an exorbitant cost.*

[emphasis added]

48 So while the cases cited by the parties demonstrate that there are jurisdictions that have either provided for or not provided for compensation for injurious affection where the damage does not arise on land acquired from the landowner, it is ultimately to our own legislation that we must turn to determine the position in Singapore. In this regard, s 9A(1) of the Interpretation Act (Cap. 1) sets out the overarching principle:

In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

49 In *PP v Low Kok Heng* [2007] 4 SLR (R) 183, the High Court made the following observation at [50]:

... a purposive approach to interpretation such as that mandated by s 9A(1) of the Interpretation Act ... should not be construed as being necessarily at odds with a literal reading of a statutory provision – a purposive interpretation simply requires one to approach the literal wording of a statutory provision bearing in mind the overarching and underlying purpose of that provision as *reflected by and in harmony with the express wording of the legislation*.

50 The purposive approach requires that we approach the literal wording of s 33(1)(d) bearing in mind the purpose of the provision in harmony with the express wording of the legislation. In other words, the purpose of s 33(1)(d) must be considered in harmony with the other provisions set out in s 33 of the LAA.

51 In this regard, s 33(1)(b) of the LAA provides that the Board shall have regard to “any increase in the value of any other land (such as contiguous or adjacent land) of the person interested likely to accrue to *the use to which the land acquired will be put*.” (emphasis added) When considering any enhancement in value to the landowner’s other property, the Board is to have regard to the use to which the land acquired is to be put. This means that any enhancement in value to the landowner’s remaining property resulting from activities on land that is not required from the landowner has to be disregarded.

52 Section 33(2) of the LAA provides *inter alia* that if the value of any other land of the person interested likely to accrue from the use to which the land acquired will be put is increased, the increase is to be set-off against the amount of compensation that would otherwise be payable under subsection (1)(c) or (d) or both.

53 In short, while s 33(1)(d) provides for the situation where an acquisition injuriously affects the value of a landowner's other property, s 33(1)(b) provides for the situation where an acquisition enhances the value of a landowner's property. The Board is to have regard to both factors when assessing the correct amount of compensation under s 33(2) of the LAA.

54 It is clear from the foregoing that ss 33(1)(b) and (d) are corollary factors. Accordingly, we agree with the Respondent's contention that the term "acquisition" in s 33(1)(d) refers to the land that is actually acquired. This interpretation is consistent with both the literal meaning of the word "acquisition" in s 33(1)(d) and the corollary provisions in ss 33 (1)(b) and 33(2) of the LAA. It is also consistent with the observation made by the learned author N Khublall in *Compulsory Land Acquisition – Singapore and Malaysia* (2nd Edition) at p. 203:

... compensation for depreciation arising from injurious affection is akin to damages for nuisance so long as *the act that gives rise to the depreciation in the value of the retained land is done on land taken by the acquiring authority ...*

[emphasis added]

55 As we have found that a claim for injurious affection must be based on acts occurring on the land that has been acquired, it is unnecessary for us to dwell into the evidential issue of whether there was in fact a diversion of traffic from the Esso Station as a result of the operation of the Flyover.

Application of the before and after method

Before throughput

56 Both Mr Liaw and Ms Chua agreed that the actual realised throughput of the Esso Station before May 2010 (when all eight fuel pumps were in operation) should be used to estimate the “before” throughput. However they differ on whether the “before” throughput should be estimated on the basis of the annual achieved throughput in the single year preceding 2010 (which Ms Chua has adopted) or on the basis of the average annual achieved throughput in the three years preceding May 2010 (which Mr Liaw has adopted).

57 On the evidence before us, we are of the view that Mr Liaw’s estimate is a more reliable and accurate estimate of the before throughput. We agree with Mr Liaw that “averaging the figures over a number of years would account for and lessen the extent of fluctuations in petrol sales in petrol sales volume, which may vary from year to year.”¹⁹

58 In contrast, we find Ms Chua’s reason for ignoring the first two years unconvincing. Even if we assume that there is a sustainable upward trend in the achievable throughput of the Esso Station as claimed by Ms Chua, this does not mean that the Esso Station is immune from normal business fluctuations year to year. Ms Chua has not provided any evidence or basis to show that the spike in petrol sales from Year 2 to Year 3 was the result of residential developments. Indeed, Ms Chua has not even provided any evidence or analysis of the growth development of the neighbouring estates and the impact this has on vehicular growth and the throughput of the Esso Station. In our mind, it is improbable that

¹⁹ 2nd Affidavit of Liaw Hin Sai (LHS2) at [5].

a bona fide purchaser of a petrol service station, making a prudent commercial decision, would adopt an overly optimistic view of the sales volume without any proper and sound analysis.

After throughput

59 Ms Chua adopted the throughput forecasted by GINA+ as the “after” throughput. The projected figure reached by GINA+ was based on the assumption that “the completion of the flyover would result in a significantly reduced traffic count for the Esso Station”.²⁰ In light of our determination on injurious affection, the after throughput by GINA+ would not be appropriate to determine the compensation. As the Appellant has not provided any information on the weight and value accorded by GINA+ to the factors it takes into account to make projections, it is also not possible for the Board to make any meaningful adjustment to the projected figure provided by GINA+.

60 We note further that that the Appellant did not seek to adduce evidence of the actual throughput achieved by the Esso Station after the Flyover was completed. In *ExxonMobil Asia Pacific Pte Ltd v Collector of Land Revenue* (AB 2001.005), the relevance of such information was noted by the Board at [19] as follows:

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 mode” employed by Mr Pipat Nana. 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 Affidavit of Chow Man Kit (CMK) at [13].

The Appellant has not adduced any evidence on the reliability of GINA+ other than the fact that GINA+ has been used by the Appellant and ExxonMobil affiliates worldwide for the past 10 years²¹. There is also a lack of clarity as to how the 2008 GINA+ model²², which excludes information after 2008,²³ has been used to project the after throughput in 2017 (original completion date of the Flyover)²⁴ when circumstances have changed. In the absence of cogent evidence explaining the reliability of GINA+ and how it has specifically been applied in this appeal, it would be difficult for the Board to accord substantial weight to the “after” throughput projected by GINA+ .

61 In comparison, we find Mr Liaw’s approach in using the actual throughput figures between June 2013 and February 2015 to determine the reduction in throughput of the Esso Station due to loss of use of the two fuel pumps at the time the Collector took possession of the acquired land to be more accurate and reliable. This approach is also more transparent and liable to greater scrutiny.

62 One of the Appellant’s criticisms of Mr Liaw’s approach is that he should have removed the effect of other factors not related to the acquisition such as upcoming development in the Bukit Panjang area and vehicular population growth (similar to the way it has been done for the SPC station). The Appellant also pointed to the “difficulties in identifying all these factors and

²¹ Affidavit of Chow Man Kit (CMK) at [17].

²² Notes of Evidence, Day 1 at p. 63 line 8.

²³ Appellant’s Closing Submissions (ACS) at [155] p.81.

²⁴ Affidavit of Chow Man Kit (CMK) at [12]; Notes of Evidence, Day 1 at p. 67 lines 19-30.

quantifying the impact to the throughput” and “this points to the inherent problem with using actual throughput figures.”²⁵

63 With regard to the last point, we note that the Appellant has adopted a similar approach to exclude factors not relevant to the acquisition in this appeal.²⁶ If there were difficulties in identifying these factors and quantifying their impact using Mr Liaw’s approach, the same must also be true of GINA+. There is however no evidence of any difficulty in identifying the factors in GINA+. There is also no evidence that the two factors specifically identified by the Appellant (or any other extraneous factors not specifically identified by the Appellant) had a significant impact on the throughput of the Esso Station at the material time. In the absence of such evidence, we find no basis to doubt the reliability of the “after” throughput derived by Mr Liaw.

Throughput rate

64 Ms Chua has relied on six comparables to arrive at the throughput rate of \$4.00/litre while Mr Liaw has relied on the average unit land rate of petrol service sites from 1992 to 2012 as a proxy to show that there has been no change in the throughput rate of \$3.11/litre since 1995.

65 Of the two approaches, we prefer the approach adopted by Ms Chua with a caveat which we will explain in a moment. The use of comparables is an accepted method of valuation²⁷ and was in fact adopted by the Respondent’s valuer to derive the throughput rate in *Shell Eastern Petroleum (Pte) Ltd v The*

²⁵ Appellant’s Closing Submissions (ACS) at [203] at p.109.

²⁶ Appellant’s Closing Submissions (ACS) at [152-3] at pp.79-80.

²⁷ N Khublall, *Compulsory Land Acquisition – Singapore and Malaysia* (2nd Edition) at pp.137-148.

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Collector of Land Revenue [2002] SGAB 3 (AB 080/1997) and *ExxonMobil Asia Pacific Pte Ltd v Collector of Land Revenue* (AB 2001.005).

66 In *ExxonMobil Asia Pacific Pte Ltd v Collector of Land Revenue* (AB 2001.005), the Board noted that the throughput rates derived by the Appellant (Esso) and the Respondent for the Boon Lay Ave transaction were based on Esso's estimated throughput. Shell was the successful bidder in that transaction and there was no evidence as to its estimate of the throughput. The Board said at [31]:

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.

67 It was in the absence of reliable comparative data that the Board adopted the throughput rate in *Shell Eastern Petroleum (Pte) Ltd v The Collector of Land Revenue* [2002] SGAB 3 (AB 080/1997). The Board said at [30]:

There is no evidence that there has been any movement in the 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.*

[emphasis added]

68 It is clear from the above that Mr Liaw's reliance on *Shell Eastern Petroleum (Pte) Ltd v The Collector of Land Revenue* [2002] SGAB 3 (AB 080/1997) in support of the average land unit rate in preference to the comparison method is misplaced. In our view, the use of average land unit rate as a proxy is fundamentally unsound as the key determinant in the valuation of a petrol service station is the throughput volume and not the land size.

69 Although we have accepted the comparison method adopted by Ms Chua, it is necessary to exclude the three sites that are not owned by the Appellant. This is because, as the Board had noted in AB 2001.005, it would be wrong to assume that the Appellant's estimates could be applied to the winning bids of its competitors to derive the throughput rates. The throughput rates, so derived, would not be a true reflection of the actual throughput rates.

70 Ms Chua has derived at an average throughput rates of \$2.38/litre (which she rounded up to \$2.40/litre) based on the 6 comparables. If the comparables are limited to sites nos. 2, 4 and 6 where the actual throughput rates are known, the recomputed average throughput rate would be as follows:

S/N	Location	Land Area (sq m)	Tender closing date	Lease Term (years)	Tender Price S\$	Projected Volume (kl/mth)	Rate S\$/litre (30-yr leasehold)	Successful Bidder
2	2225 Ang Mo Kio Ave 8	1,929.6	24/11/2009	30	17,180,000	738.00	1.94	Appellant
4	99 Bedok North Road	1,680.2	20/5/2010	30	12,820,000	568.00	1.88	Appellant
6	302 Jalan Ahmad Ibrahim	2,746.2	15/12/2010	20	30,200,000	1,260.00	2.00 (2.5)	Appellant
Average throughput rate							2.11	

71 Adjusted to freehold, the average throughput rate would be \$3.52/litre.

Damage

72 For the above reasons, the Board finds as follows:

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"Before" Land Value

8,504,000 litres x \$3.52/litres = \$29,934,080.

"After" Land Value

6,601,000 litres x \$3.52/litres = \$23,235,520

Loss in Land Value

\$6,698,560

Rounded up \$6,699,000.

Compensation for loss of two fuel pumps

73 As the Appellant has not suffered any physical loss of the two decommissioned fuel pumps and has not adduced evidence to show that the decommissioned pumps cannot be reasonably redeployed, we find that the claim for compensation for loss of the two fuel pumps is not made out.

Award

74 The Board determines that the amount of compensation to be awarded for the acquired land is \$6,699,000. 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 annum from the date of taking possession to the date of payment pursuant to s 36 of the LAA. For the avoidance of doubt, the date of taking possession is the date specified in the notice of possession served on the Appellant pursuant to s 16 of the LAA, i.e. 21 June 2013.²⁸

²⁸ Agreed Bundle of Documents (ABOD) Tab 19 at p.103.

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Costs

75 As the claim of the Appellant exceeds the amount awarded by 20%, the Appellant is not entitled to its costs in accordance with s 32(4) of the LAA.

Dated the 17th day of January 2017

Commissioner of Appeals Chia Wee Kiat
Assessor Professor Florence Ling Yean Yng
Assessor Wo Mei Lan