

LAND ACQUISITION ACT

APPEALS BOARD

AB 2007.047

In the Matter of the Acquisition of Land at
Lots 2422C and 2441W of Mukim 25
50 Stadium Boulevard

Between

Oasis Holdings Private Limited

... Appellant

And

Collector of Land Revenue

... Respondent

Mr Tan Kay Kheng and Ms Sheerene Lye for Appellant
Mr Eric Chin and Mr Kessler Soh for Respondent

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue ("Collector") of compensation in an amount of \$41 700 000 in respect of the land at Lots 2422C and 2441W of Mukim 25 ("acquired land") and its apportionment as to \$39 740 000 to the appellant be confirmed;

And

(2) That there be liberty to apply.

REASONS FOR THE DECISION

Appeal

(1) On 2007 June 13 ("acquisition date") a notification No 1791 was published in the *Gazette* under s 5 of the Land Acquisition Act ("s 5 declaration") declaring that "the pieces of land situated in Mukim 25 ... containing a total area of 5,412.9 square metres or thereabouts ... more particularly described in the Schedule" were needed for a public purpose namely "for the development as part of or incidental to the Singapore Sports Hub" ("SSH"). The land is described in the Schedule as:

<i>Lot No</i>	<i>MK</i>	<i>Area in sq m</i>	<i>Owner(s)*</i>
2422C	25	3,385.8	Oasis Holdings Private Limited <i>Mortgagee</i> DBS Bank Ltd
2441W	25	2,027.1	Oasis Holdings Private Limited <i>Mortgagee</i> DBS Bank Ltd

* Persons who from available information in the Singapore Land Authority are believed to be the owners.

It is not in dispute that the land described in the Schedule is the acquired land and that the appellant is the owner referred to in the s 5 declaration and is a person interested in respect of the acquired land.

(2) The Collector took proceedings for the acquisition of the acquired land and pursuant to the Collector's notice under s 8 and for the purpose of the inquiry held under s 10 the appellant made a claim to compensation of \$75 000 000. The Collector found that the market value of the acquired land as at the acquisition date was \$41 000 000 and on 2007 December 12 he made an award of (a) compensation for the acquired land in the amount of \$41 700 000; and (b) apportionment of the compensation among the appellant and certain other persons interested as to \$39 740 000 to the appellant, \$430 000 to Oasis Bay Pte Ltd ("OB"), \$320 000 to Thai Village Sharksfin Restaurant Pte Ltd ("TVSR"), \$500 000 to No Signboard Seafood Restaurant Pte Ltd ("NSSR"), and \$710 000 to Great World KTV & Nite Club ("GWKTV"). All these other persons interested were as at the acquisition date the tenants of the appellant in respect of separate units in the buildings on the acquired land.

(3) In his grounds of award the Collector said in para 17:

After apportioning to the 4 Tenants a total of \$1,260,000 from the market value of \$41,000,000, the market value to be apportioned to the Appellant is \$39,740,000. On 12 December 2007, I issued an award of \$39,740,000 to the Appellant for its interests in the Land Acquired pursuant to Section 10 of the Act.

In fact he made an award of \$41 700 000 under s 10 as noted above. He said he considered the market value. That was found by him to be \$41 000 000. He might have considered other matters as well in accordance with s 15 but there is no mention of any such matters. There is no explanation as to how he arrived at \$41 700 000 as compensation for the acquired land from a market value of \$41 000 000.

(4) The appellant appeals against the award of the Collector. In its amended petition of appeal it claims that "any increase in the market value above the sum of \$41 million is to be awarded to the Appellant alone, to the exclusion of the tenants." The petition of appeal does not say what the market value should be or should be increased to and the parties appear to be content with the appellant relying on the evidence to be received by this Board. OB also lodged an appeal but its appeal was withdrawn without a hearing. The other tenants have not lodged any appeal against the award.

Acquired Land

(5) Lot 2441W is a near rectangular waterfront plot at the mouth of the Geylang River in the Kallang Basin with an area of 2 027.1sm comprised in Lease 13022 for 99 years expiring on 2067 January 31. Lot 2422C is a foreshore and seabed plot on the adjacent seaward side with an area of 3 385.8sm comprised in Lease 13023 also for 99 years expiring on 2067 January 31. The appellant is the lessee under both the leases and in this decision the 2 leases will for convenience be referred to together as the "appellant's lease". As at the acquisition date there was a 3 storey building ("main building") on the site of Lot 2441W and 3 single storey "floating" buildings ("floating buildings" and each a "floating building") all out at sea on the site of Lot 2422C and all the 4 buildings were interconnected by covered walkways.

(6) The main building was sub-divided into units #01-01 (lettable area = 638sm), #01-02 (lettable area = 373sm) and #01-02A (lettable area = 169sm) all on the 1st storey, #02-00 (lettable area = 1 371sm) on the 2nd storey and #03-00 (lettable area = 768sm) on the 3rd storey and the floating buildings were sub-divided into units #01-03 in the centre building (lettable area = 1 146sm), #01-04 in the building to one side (lettable area = 670sm) and #01-05 in the building to the other side (lettable area = 670sm). The main building was served by one passenger lift and 2 staircases. The total lettable area of all the 4 buildings was 5 805sm. The gross floor area ("GFA") of the whole development was 6 914.66sm on a site area of 5 412.9sm giving a plot ratio of about 1.28. There were also 3 unnumbered areas which were leased as at the acquisition date. There was no car park on the acquired land but car parking facilities were available at a public car park located near the front entrance to the main building and elsewhere in the vicinity.

(7) "The Oasis" as the development was commonly known as had been a feature of the Kallang waterfront area for about 35 years before the acquisition date and was undoubtedly a unique development by the sea and out at sea. Plans for the development of SSH on an approximately 35ha site immediately next to it (see below) were announced as far back as 2005 April and the Stadium MRT station on the Circle Line was under construction nearby. This was the scene shortly before the publication of the s 5 declaration which stated as noted above that the acquired land

was needed for a public purpose namely "for the development as part of or incidental to [SSH]".

(8) The Master Plan that was current as at the acquisition date did not indicate on the map the plot ratio for the acquired land and where as in this case the plot ratio was not indicated para 6.3 of the then current Written Statement provided that "the plot ratio to be allowed shall be determined by the competent authority at his discretion". The plot ratio prescribes the maximum permissible intensity for developments within the demarcated area. In the Master Plan the acquired land was zoned "Commercial" and as at the acquisition date the tenants were carrying on businesses related to food and beverage and entertainment all of which were permitted uses.

Compensation

(9) Section 33 of the Act provides:

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

(a) where the date of acquisition of the land is on or after 12th February 2007, the market value of the acquired land –

(i) as at the date of the 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 made under section 5 in respect of the same land or part thereof; or

(ii) as at the date of the publication of the declaration made under section 5, in any other case

The date of acquisition is the date of publication of the declaration under s 5 (see s 33(6)) which is the acquisition date. No notification under s 3(1) was published in respect of the acquired land and it is not in dispute that it is the market value as at the acquisition date that is to be taken into consideration.

Petition of Appeal

(10) In its petition of appeal the appellant says:

(1) The [Collector] has failed to consider, or not sufficiently considered, all relevant factors in determining the compensation, including but not limited to the following: -

(i) the Income Method of Valuation and the elements thereof to be adopted in arriving at the market value of the acquired land; and

(ii) the increase in the market value of the acquired land as a result of the well publicised development of the Singapore Sports Hub.

(2) Further or alternatively, the Collector has erred in: -

- (i) failing to provide any substantive ground for his view in the Grounds of Award that the market value of the acquired land was \$41 million;
 - (ii) the manner he has apportioned the market value between the Appellant and the tenants.
- (3) Any increase in the market value above the sum of \$41 million is to be awarded to the Appellant alone, to the exclusion of the tenants.

The appellant intends to proceed with the appeal as regards the amount of the compensation (for the acquired land) and when the amount of the compensation has been settled it will seek directions as regards any dispute as to the apportionment among the persons interested. (See s 38.) This appears to be the approach it is taking notwithstanding that as this Board pointed out in the early stages of the hearing the determination of the market value might involve issues in which the tenants would have an interest for the purpose of apportionment. It may be noted that the question of apportionment will only arise if the market value is found by this Board to exceed \$41 000 000.

Market Value

Appellant's Case

(11) Ms Chua Beng Ee, a director of Acreage Property Consultants LLP, testified for the appellant. She said in her valuation report dated 2008 August 26 at para 11:

We have adopted the Income Method of Valuation in arriving at the value of the property. The Income Approach is a method estimating the present worth of the rights and benefits to be derived from the ownership of a specific interest in a property. These rights are often expressed as income in the form of rentals to be received in the future. From the estimated market rental, the outgoings which will be incurred in the management and maintenance of the property would be deducted as well as other expenses including insurance and property taxes. The net income is then capitalized at an appropriate yield to arrive at the capital value of the property.

This statement appears to follow very closely Valuation Standard 3 paras 3.5.1, 3.5.3 and 3.5.4 published by the Singapore Institute of Surveyors And Valuers and it may be noted that Ms Chua described herself as a member of the Institute in her valuation report. In the context of this appeal this method appears to be what is also referred to as the income capitalisation method (see Australian Property Institute, *Valuation Principles And Practice* (2nd Edition, 2007) at p 4 and see also at p 21). This method of valuation involves the use of yield or years purchase (the reciprocal of yield) and net rent or net rental value.

(12) As at the acquisition date the tenant of #01-01 was TVSR paying \$35 000 monthly, the tenant of #01-04 was NSSR paying \$30 000 monthly, the tenant of #01-05 was OB paying \$45 000 monthly, and the tenant of #03-00 was GWKTV paying \$15 000 monthly. Unnumbered areas on the rooftop were leased to Starhub Ltd ("StarHub") which paid \$1 500 monthly and Mobileone Ltd ("M1") which paid \$500 monthly, and an unnumbered area in the atrium was also let on a month to

month basis for \$1 000 a month. Ms Chua did not take into account the actual rent received except in the case of #01-05 and the 3 unnumbered areas. For the 3 other units under lease she attributed a rental value based on the rent received for #01-05. In each case it was more than the rent payable under the leases. There were also 3 units which were vacant and in respect of these units she attributed a rental value which was also based on the rent received for #01-05.

(13) Ms Chua said in her report at para 8.6:

We have been informed by the owner that as at the date of acquisition, they were in the process of carrying out extensive additions and alterations amounting to some \$11,000,000. Other than modernizing the buildings, the additions and alterations also include the addition of a fourth level to the existing 3-storey main building.

She accordingly took into account additions and alterations ("A & A") to The Oasis which would add a 4th storey to the existing main building with a lettable area which she estimated to be about 1 115sm at a cost which the appellant estimated at \$11 000 000. She attributed a rental value to the additional lettable area based also on the rent received for #01-05.

(14) The appellant's lease of the acquired land had a remainder of about 59.5 years but Ms Chua did not adopt the same rent to be capitalised over the entire remainder. She assumed changes to the rental value brought about by (a) disruption during the A & A works resulting in partial loss of rent and (b) completion of A & A, completion of Stadium MRT Station nearby and completion of SSH all resulting in increases in the rent and arrived at different rental values for each of the years to 2008 June, 2009 June, 2010 June and 2011 June and thereafter for the remainder of the appellant's lease. She derived an annual rental value for each of the 5 periods and from each of these she deducted 10% for vacancy and 10% for maintenance, insurance and other expenses and from the remaining 80% she deducted 10% for property tax for a net annual rental value equivalent to 72% of the annual rental value.

(15) Ms Chua adopted an annual yield of 6% for all the units as well as the unnumbered areas and for all the 5 periods. She said 6% was the usual rate for such an investment. She then capitalised the net annual rental value in each case and discounted it at the same rate to the acquisition date. From this she deducted the estimated A & A cost and the differential premium. She concluded that the market value of the acquired land as at the acquisition date was \$75 000 000. Ms Chua's analysis at Appendix D to her report was amended in the course of the hearing by Exhibit A14 but the changes do not materially affect the conclusions.

Respondent's Case

(16) Ms Loh Chye Ling the principal valuer with IRAS testified for the respondent. She said in her report dated 2008 August 29 at para 8.2:

Market Value is the estimated amount at which a property should be transacted on the date of valuation in an arm's length transaction. Hence, the exercise is to find the *most probable selling price* of the subject property as at the date of acquisition.

She considered the income approach and the cost approach and she also considered the direct sale evidence (not the sale of the acquired land but of the whole of the issued shares of the appellant company). She found 3 different values and gave her opinion of the market value based on the income approach. During the hearing she said the cost approach and the direct sale evidence approach were used as check methods. The income approach that Ms Loh adopted was the same as the income method adopted by Ms Chua and the income capitalisation method referred to above but she differed from Ms Chua in its application. Ms Loh found the yearly market rent as at the acquisition date and multiplied it by the years purchase ("YP") to determine the market value.

(17) To determine the market rent of units in The Oasis Ms Loh said she took into consideration the rent received for food and beverage units in Singapore Indoor Stadium ("SIS") which she said were comparable. She said in her report her "valuation [did] not take into account the existing leases." It did not take into account the rent receivable under the leases. It also did not take into account the unnumbered areas or the rent receivable. For the 1st storey of the main building she found a rent of \$5.50/sf/m for a total rent of \$69 858/m, for the 2nd storey \$3.50/sf/m for a total rent of \$51 651/m and for the 3rd storey \$2.00/sf/m for a total rent of \$16 534/m. For the floating buildings she found a rent of \$5.50/sf/m also for a total rent of all the 3 floating buildings of \$147 176/m. The total market rent for all the lettable areas in the numbered units was \$285 219/m or \$3 422 628/y. She deducted 5% for vacancy and 15% for property tax and outgoings for a net annual rent of \$2 738 103. She capitalised the net annual rent by a YP of 15 and concluded that the market value as at the acquisition date was \$41 000 000. She said she derived the YP by comparing with the returns on certain commercial properties sold between 2007 March 30 and July 5. These were all single units of between 314sm and 401sm within commercial developments of which the units formed part. It may be noted that a YP of 15 is equivalent to a yield of about 6.67% while a yield of 6% (adopted by Ms Chua) is equivalent to a YP of about 16.67.

Board's Decision

What the acquired land will fetch

(18) Whipple, *Property Valuation And Analysis* (2nd Edition 2006) states at p 105:

[T]he task of the valuer is to predict the most probable price.

and at p 106:

"The most probable price is that selling price which is most likely to emerge from a transaction involving the subject property if it were exposed for sale in the current market for a reasonable time at terms of sale which are currently predominant for properties of the subject type."

This definition is due to Ratcliff

and at p 109:

What will the property fetch?

What would the acquired land fetch as at the acquisition date and how is this affected by the Act?

What a "bona fide purchaser might reasonably be willing to pay"

(19) Section 33 provides:

(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 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.

Subsection (1)(a) has been cited above.

Singapore Sports Hub

(20) In 2005 April there was published a document called the Market Awareness Brochure ("Brochure"). The Brochure stated among other things that the Ministry of Community Development, Youth and Sports was leading the development of the then current Singapore National Stadium and the surrounding area into a multi-purpose Sports Hub using a Public Private Partnership ("PPP") procurement process. It also stated:

It is proposed that the Sports Hub will incorporate:

- 1 New 55,000 capacity National Stadium ...
- 2 Existing Indoor Stadium;
- 3 New 6,000 capacity Multi-Purpose Indoor Arena;
- 4 New Aquatic Centre;
- 5 Supporting Leisure and Commercial development opportunities; potentially incorporating:
 - Visitor Attraction
 - Health and Fitness Centre
 - Commercial Leisure Activities including, for example, Tenpin Bowling, Specialist Retail, Food and Beverage, Snooker/Billiards etc;
- 6 Other developments, as appropriate, such as Service Apartments and mixed use (non-event driven) waterfront development; and
- 7 Car Parking.

The Sports Hub will form a major element of longer-term plans for a vibrant sports city providing yet more sporting facilities that will complement the Sports Hub PPP Facilities. The Sports Hub and surrounding sports city will be the largest ever sports and leisure development in Singapore and will be a major focus for sporting and lifestyle activities in Singapore in the future.

SSH on an approximately 35ha site in Kallang and the surrounding sports city will be the "largest ever sports and leisure development in Singapore". The site plan in the Brochure shows that the development site is right next to the acquired land and shares a common boundary with it on the entire landward side. Notably the public car park which had served The Oasis well was included in the development site. Even more notably there would be a "New Aquatic Centre" and "Supporting Leisure and Commercial development opportunities; potentially incorporating ... Commercial Leisure Activities including, for example ... Food and Beverage" and SHH "will form a major element of longer-term plans for a vibrant sports city providing yet more sporting facilities that will complement the Sports Hub PPP Facilities."

The Brochure further stated:

Following the bidding process a preferred PPP Consortium will be selected by the Government and will have an obligation to design, build, finance and operate (DBFO) all facilities within the Sports Hub for a contract period of circa 20 to 30 years, (with potential to subcontract the operation to consortia shareholders or third parties.

Media reports after the acquisition date stated that 3 consortia had submitted plans by 2007 March and the SSH was expected to cost \$650 million to \$800 million.

Appellant's Proposed Development

(21) Ms Chua said in her report that she was informed that the appellant was "in the process of carrying out extensive [A & A]" but this was not supported by the evidence. Ms Teo Soak Hoon Ellen a director of the appellant said in her affidavit that the appellant had consulted RSP Architects & Engineers (Pte) Ltd ("RSP") in 2007 February and she produced a letter dated 2007 February 12 from Mr Yang Soo Suan a director of RSP which stated:

PROPOSED A&A TO 3 STOREY MAIN BUILDING AND 3 NOS. FLOATING RESTAURANTS

Thank you for inviting RSP to register our interest in and submit professional fee proposal for the above project.

Further to our meeting on Wednesday, 7 February 2007 in your office and as requested, we are pleased to provide the following information.

1 Cost Estimate

Base (*sic*) on current cost of construction and your outline indication of what you envisage the final objective of the A & A should be, we estimate that the total cost will be S\$9.6M, S\$5.3M for the main building with a floor area of 3,800 SM and S\$4.3M for the floating restaurants with a floor area of 2,500 SM.

2 Professional Fees

Our comprehensive professional fees for Architectural and Engineering (civil / structural and mechanical / electrical) will be 11.5% of total cost of construction or a lump sum of S\$110, 000.00 (*sic*) whichever is higher.

3 Relationship with future Sports Hub (SH)

For your reference, we enclose a location plan of the SH. We should like to highlight that the existing open carpark is within the site boundary of the SH. Whether the current carpark will remain will depend on the planning of the SH.

We hope the above information is helpful and look forward to your early response.

(The professional fees appear to have been wrongly stated in para 2 of RSP's letter. 11.5% of \$9.6 million is \$1 104 000 and it is most unlikely that RSP would have limited its fees to only \$110 000.)

(22) There was no response to RSP's letter but 3 days later on 2007 February 15 an Outline Application for erection of a 6 storey hotel was received by URA from the appellant. According to the website of URA:

An Outline Application is a broad proposal to test the land use, plot ratio, building height and building form on a development site.

It can also help the applicant find out important planning information like whether the site is affected by public schemes, specific urban design or planning parameters.

You can submit an Outline Application for additions and alterations and new erection of buildings if the proposed intensity or height is beyond the approved control parameters.

There is no need to prepare and submit detailed plans for an Outline Application. The website was accessed in the course of the hearing and again while writing this Decision and there is no reason to suggest that this information would not have been similarly available immediately before the acquisition date.

(23) URA's reply which the appellant received on 2007 March 8 stated:

We wish to inform you that the proposal falls within an area under study, hence the proposal has to be deferred for 9 months until 15 Nov 2007.

...

We will re-activate your case as soon as the study is finalised, and contact you immediately. Meanwhile, please do not hesitate to contact me for further clarification, or if you wish to withdraw this application.

The appellant appealed to URA and even approached the Singapore Tourism Board for support but the only substantive response it received from URA was a refusal of planning permission dated 2007 June 22 which was shortly after the publication of

the s 5 declaration. The reason given for the decision was that the site was affected by a public scheme.

(24) What the appellant had done was to invite RSP to register its interest and to submit a fee proposal for the proposed A & A. RSP replied and said it looked forward to the appellant's early response but none was received. There is no evidence that the appellant did anything further in regard to the proposed A & A at any time at all. Neither RSP nor any other consultants were instructed to prepare any plans and no plans were prepared. There were no cost studies made. There were no cash flow statements prepared relevant to the proposed A & A. Altogether the proposed A & A was wholly lacking in details. Instead an Outline Application was submitted for a 6 storey hotel.

(25) URA's response to the Outline Application was to the effect that the acquired land was "under study" and that the appellant's proposal (for a 6 storey hotel) had to be deferred for 9 months to 2007 November 15 and that the appellant's case would be "re-activated as soon as the study [was] finalised". Although URA's response related to the hotel proposal it would still have left no doubt in the mind of a valuer that on the evidence available or which ought to have been made available by the appellant an additional storey could not be taken into consideration for the purpose of the income method of valuation as at the acquisition date. There is no evidence of any indication that the study was "finalized" by then.

(26) Instead of or in addition to making an Outline Application for a 6 storey hotel the appellant could also have made a similar application for the proposed A & A. The plot ratio for the acquired land was not indicated on the then current Master Plan and under para 6.3 of the Written Statement this meant that the plot ratio to be allowed was to be determined by the competent authority at his discretion as noted above. The appellant would not know if the additional 4th storey would be within the plot ratio to be allowed until it had been determined by the Competent Authority. In the circumstances an Outline Application would not only be appropriate "to test the ... plot ratio, building height and building form on a development site" but it would have been an essential step to take if the appellant had any real intention of proceeding with the proposed A & A.

(27) Ms Tan Wan Lin a planner with URA said in her affidavit at para (5):

As the [acquired land was] located right at the waterfront, any further intensification of the existing development beyond the existing floor area would have been incongruent with the planning intention and would not have been supported.

The proposed A & A would add 1 115sm of lettable area which Ms Chua estimated to be about 85% of the additional GFA so that she was assuming that the proposed A & A would add more than 1 300sm of GFA to an existing 6 914.66sm of GFA. This is nearly 19% more and would cost about \$11 000 000 according the appellant's estimate. Ms Tan was asked whether Written Permission would be granted to add a 4th storey to the main building and her answer was a clear "No". The reason was as given in her affidavit at para 5. If an Outline Application had been made for the proposed A & A immediately before the acquisition date this Board can see no reason why planning permission should not be refused outright or the decision

should not be deferred for the reason that the site was under study as in the case of the Outline Application for a 6 storey hotel.

(28) On the evidence this Board finds that Ms Chua was not justified in taking into consideration an additional storey or any more lettable area than in the existing buildings in the valuation of the acquired land. There was no basis for attributing to The Oasis more lettable area than the total of 5 805sm and the unnumbered areas under lease as at the acquisition date for the purpose of determining the market value by the income method. There was no real potential increase in lettable area.

(29) If the acquired land were exposed for sale in the period from say 2007 March (when as noted above 3 consortia had submitted plans for SSH) to the acquisition date with an asking price of anything from \$41 000 000 (the market value as found by the Collector) to \$75 000 000 (the market value asserted by the appellant) and a probable buyer was desirous of buying it he would quite properly want to consider the effect of SSH (among other things) before deciding whether to buy it and if so what price he would be willing to pay for it.

(30) SSH and the surrounding sports city would be the "largest ever sports and leisure development in Singapore" and it would be right next to the acquired land and sharing a common boundary with it on the entire landward site. SSH would "incorporate ... New Aquatic Centre". Facilities for aquatic sports such as swimming could be constructed inland but for other aquatic sports such as rowing the site of The Oasis at the mouth of the Geylang River in the Kallang Basin would occupy what might well be a strategic part of an attractive location for the new aquatic centre. The attractiveness of the site of the acquired land for the development of SSH and the likelihood of compulsory acquisition must be a source of concern for an intending buyer of the acquired land.

(31) SSH would also "incorporate ... Supporting Leisure and Commercial development opportunities; potentially incorporating ... Commercial Leisure Activities including, for example ... Food and Beverage". There would be competition from the supporting commercial facilities for food and beverage and for entertainment. A substantial amount of money would be invested in SSH and its new facilities were likely to be given strong marketing support. The competition could be expected to be fierce and the intending buyer would be concerned about improvements to The Oasis or re-development of the site to be able to withstand the competition or to position himself and the development to take advantage of any improvement in the rental market in the locality. In its then condition (described by both Ms Chua and Ms Loh as "average") and for the facilities it then offered The Oasis would be seriously disadvantaged.

(32) The probable buyer might not know of the Outline Application made by the appellant in 2007 February or the response it received from URA but he would certainly want to make an application himself "to test the land use, plot ratio, building height and building form" on the site of the acquired land. To make such an application he had to obtain the consent of the appellant as owner and he would ask for it if he intended to proceed with an Outline Application. It would not be right to speculate as to the development proposed for the purpose of the application (whether A & A or re-development) but it would be inconceivable that the probable

buyer would be willing to pay anything from \$41 000 000 to \$75 000 000 and yet be content to retain the existing 35 year old development in "average condition" without learning of the potential of increasing the GFA or re-development by making an Outline Application. He would be paying a price which would translate to about \$7 063/sm of lettable area to about \$12 920/sm of lettable area for a leasehold interest with less than 60 years to run.

(33) If the probable buyer made an Outline Application shortly before the acquisition date in all probability he would receive a response that would reflect the position that URA took in its response to the appellant's Outline Application as Mr Tan of counsel for the appellant quite rightly conceded. He would be informed that the site was under study and that his proposal would have to be deferred for a period which could be up to 2007 November 15 (unless of course the study had been "finalised" by then). He would certainly wait until a decision was received before proceeding with his purchase. Until then he would not be willing to commit himself to a purchase let alone be willing or reasonably be willing to pay any price at all for the acquired land or any price above \$41 000 000. This is sufficient for the purpose of disposing of this appeal but the parties have adduced not an inconsiderable amount of evidence as to valuation and it is right that this Board should address this matter.

Method of valuation

(34) Ms Chua adopted what she called the income method and Ms Loh gave her opinion of the market value based on the income approach. She also considered as check methods the cost approach and the sale of the issued shares in the capital of the appellant company. Whipple (*op cit*) states at p 314:

When a property generates an income, or is capable of doing so, the valuer has available another method of estimating the price it will probably fetch.

This applies when the market associates productivity with the property's income stream and the items making up the property's productivity are organised to that end - or largely so. Properties which fall into this category are office buildings, shopping centres, rental shops and flats, land subdivisions and other development projects - in fact, anything that produces a flow of cash over time. Investors regard such properties as cash-generating vehicles and tend to assess them as they would any other investment such as equities.

The acquired land was capable of and did generate an income and the several units in the buildings on the site and even the unnumbered areas were leased to various parties although a number of them were vacant as at the acquisition date. The cost approach which Ms Loh considered was not helpful on the materials before her and Ms Loh did not rely on it other than as a check method. She also considered the sale of the issued capital of the appellant company but she did not rely on it in giving her opinion as to the market value of the acquired land other than as a check method. On the evidence this Board is satisfied that an income method of valuation or income approach to valuation or income capitalisation method is appropriate in this case and finds accordingly.

(35) In her approach Ms Loh determined the net market rent and multiplied it by the YP to determine the market value. This is sometimes conveniently called the

"straight line capitalisation" method. It assumes that the market rent or more accurately the market rental value does not fluctuate and where there are fluctuations due to market forces as often there will be it allows for such fluctuations to be provided for in the determination of the appropriate YP. Australian Property Institute (*op cit*) states at p 21:

Where investment income streams fluctuate over time, straight line capitalisation (the capitalisation "in perpetuity" of the income being received at the time of the valuation, as done above) is inappropriate. However, it is possible to apply the Income Capitalisation approach to the valuation of fluctuating streams and later chapters of this text provide an expansion of capitalisation theory.

See later at pp 107 to 111 and *Example 1* and pp 115 to 117 and *Example 2* for cases where the tenancies provide for periodical rent review. See also Whipple (*op cit*) at p 338 and *Example 2*. All the leases in the case of The Oasis did not provide for any rent review. The rent for the entire term was fixed in every case.

(36) As at the acquisition date some of the units in The Oasis were leased and some were vacant as noted above. See Table 1 below.

Table 1

	Unit	Area sm	Tenant	Term	To yy.mm.dd	Rent \$/m	Option	Rent \$/m
<i>Main building</i>								
1	#01-01	638	TVSR	3 years	09.03.14	35 000	2 years	Negotiable
2	#01-02	373	Vacant	6 mths	07.09.30 (Note 1)		2 years	18 000
3	#01-02A	169	Vacant	(Note 2)				
4	#02-00	1 371	Vacant	(Note 2)				
5	#03-00	768	GWKTV	3 years	09.10.31	15 000	3 years	Maximum 18 000
<i>Floating buildings</i>								
6	#01-03	1 146	Vacant	(Note 3)				
7	#01-04	670	NSSR	3 years	09.04.30	30 000	2 years	Not exceed 36 000
8	#01-05	670	OB	3 years	10.03.31	45 000	3 years	To be agreed
<i>Unnumbered areas</i>								
9	Roof	-	Starhub			1 500		
10	Roof	-	M1			500		
11	Atrium	-	-			1 000		

Notes

1 #01-02 was leased from 01.01.01 to 04.12.31 for \$15 000/m and from 05.05.01 to 08.04.30 for \$10 500/m. The unit was vacant before the expiry of the lease. It was last leased for 6 months from 07.04.01 for a rent that included 6% of sales. There was an option for 2 years at a fixed rent of \$18 000/m without any percentage of the sales.

2 #01-02A and #02-00 were last leased together as one unit for 3 years. The lease expired on 04.12.31.

3 #01-03 was leased from 00.12.13 for 3 years for \$35 000/m and for 3 years from 04.05.01 for \$27 500/m.

If any of the fixed rents are different from the market rental value as at the acquisition date it would be wrong not to allow for the differences in the application of the income capitalisation method.

(37) Vacant units will also have to be addressed. Estimated rental income may be attributed to them as both Ms Chua and Ms Loh have done but there would be associated expenses not only of the actual cost of obtaining the lease for each unit but more significantly of the "loss" or non-receipt of the income from the vacancy continuing until the unit is leased. Australian Property Institute (*op cit*) states at p 111:

It may also be worth considering vacant areas within a building. In the above example, if Tenant C's area was vacant, it would be necessary to estimate the rental income augmented by a letting up allowance. This letting up allowance may equate to, say, nine months rent plus legal and agency fees for obtaining that tenancy.

If a unit was vacant there would be no income to be taken up to be capitalised but it was proper in an appropriate case to augment the total rental income by attributing an estimated rent to the vacant unit subject to a deduction for a letting up allowance. Regrettably neither Ms Chua nor Ms Loh addressed this not insignificant point notwithstanding that 3 059sm out of a lettable area of 5 805sm or more than half of the lettable area (excluding the unnumbered areas) was vacant. #02-00 had been vacant since 2005 January - for more than 2 years before the acquisition date and #01-02 was vacant shortly after the lease commenced. An overall deduction of 10% for vacancy allowed by Ms Chua may have been intended to provide in part for the vacant units without specifically referring to them but this is not satisfactory. As regards the leased units this may be high as she opined (and Ms Loh assumed only 5%) but as regards the vacant units this is far too low.

Market rental value

(38) Ms Chua considered the rent for #01-05 (\$45 000/m) in one of the floating buildings the lease for which was negotiated shortly before the acquisition date and concluded that it represented the market rent for this unit. For the other units she adjusted the floor area rate derived from the rent for #01-05 by 15% down for each floor up and by 15% down for each doubling of floor area. The tenant of #01-05 (OB) carried on the business of serving *taiwan zhou* (Taiwan porridge) a popular all day and night meal. Mr Chin of counsel for the Collector submitted that her conclusion of the market rent was "highly questionable". His argument was that Taiwan porridge

had been sold at #01-05 for more than 30 years and that OB was an incumbent tenant that enjoyed "very substantial locational goodwill".

(39) In his grounds of award the Collector said that the depreciated value of the "costs of the fixed assets concerned" in the renovation of OB's unit was \$300 000 and he applied a "depreciation factor based on a straight line method over the remaining first term" of OB's tenancy. Its lease dated 2007 February 15 provided for the term to commence and rent to be payable from April 1 although it was given a rent free period from February 26 to March 31. It appears that OB re-decorated its unit shortly before its term commenced. A new tenant would also incur expenditure on re-decoration and would probably be given the same rent free period with a likelihood of a period of vacancy before the lease of the new tenant commenced. Alternatively OB could have taken other premises and carried out re-decoration work there and there was a real likelihood that it would have been given a rent free period for re-decoration as well. But there was some goodwill – a probability that a customer for the particular fare served at #01-05 at The Oasis would come back for it. Such goodwill was not personal to OB. It attached to The Oasis, the location, and was rightly called "locational" by Mr Chin himself. On the evidence this Board finds that the lease and the rent reserved by it are relevant for determining the market rental value of #01-05.

(40) #01-02 was regarded by Ms Chua as vacant as at the acquisition date but Ms Teo admitted that there was a lease for a term of 6 months from 2007 April 1 at a rent comprising \$6 500/m and "6% of the total sales of the business at the premises during the term" but she said the tenant Hong Kong Café Pte Ltd (HKC) vacated the premises before expiry of the term and paid only \$13 000 for 2 months of the monetary component of the rent. The appellant did not seek recovery of any damages for early termination of the lease or the sales component of the rent as HKC was said by Ms Teo to be a good customer. The appellant company was a member of the Union Energy group of companies which among other things carried on the business of suppliers of gas for HKC's business of operating restaurants. The lease included an option for renewal for 2 years from October 1 at the rent of \$18 000/m "without 6% of business sales". This option rent is relevant and will be taken into consideration.

(41) Ms Chua assumed an increase of 25% in the market rent after completion of the proposed A & A. For the reasons given above this Board is not satisfied that any increase in rent can be attributed to the proposed A & A and this Board finds accordingly. Ms Chua has also assumed an increase of 60% in the market rent after completion of the Stadium MRT Station and of SHH. In the income capitalisation method of valuation it is the market rental value as at the date of valuation (in this case the acquisition date) that is taken into consideration unless there is a good reason for any departure. The only instances of departure this Board is aware of are where there are leases with provisions for rent revision. This is not such an instance in the present case. There is also insufficient evidence for a modified income method or discounted cash flow method to be considered.

(42) There is a further difficulty in the appellant's way. In its condition as at the acquisition date and for the facilities that it then offered The Oasis would not be able to derive any real or substantial benefit from any improvement in the rental market in

the locality through completion of the MRT station or SSH. The site had to be re-developed (a 6 storey hotel was considered by the appellant) or alternatively the existing buildings had to undergo substantial A & A which would increase the total lettable area (an additional floor was also considered by the appellant). The reportedly "revamped" Kallang Leisure Park and its "market positioning" is an example of what A & A or re-development could do to increase its market rental value and to take advantage of the completion of the MRT station and SSH. The appellant made an Outline Application for a 6 storey hotel and the "proposal [fell] within an area under study" and it had to be "deferred for 9 months until 15 Nov 2007". If it had made an Outline Application for the proposed A & A it would have failed or received the same response for the reasons given above. On the evidence this Board is not satisfied that there would be an increase in the market rent by reason of the completion of the MRT station or SHH which can be taken into consideration for the purpose of valuation by the income capitalisation method and finds accordingly.

(43) #01-01, #03-00 and #01-04 were leased and whether the rent in each case was or was not below the market rent it would have to be taken into consideration for the purpose of the application of the income capitalisation method as this Board has said above in regard to Ms Loh's approach. Ms Chua disregarded the NSSR and GWKTV leases for another reason. It was said that there was a special relationship between some of the former shareholders of the appellant company and the tenants. There was some connection but this is not the only consideration. There were a number of vacant units in The Oasis and there has been no explanation for such vacancies. #01-02 was vacated by HKC before expiry of its term. From Exhibit R2 it appears that the previous tenant also vacated the premises before expiry of its term. The lease for #01-02A and #02-00 expired on 2004 December 31 but there is no evidence as to when the tenant in fact vacated the premises. The units were vacant as at the acquisition date. The lease for #01-03 expired on 2007 May 1 but again there is no evidence as to when the tenant in fact vacated the premises. On the evidence this Board finds that while there may be a connection between the former shareholders and the tenants the leases and the rent reserved by them are relevant and would not be disregarded for the purpose of determining the market rental value. Where there is a difference between the reserved rent and the estimated rent the difference will be taken up in the same way as estimated rent for vacant units but deferred until expiry of the existing leases.

(44) Ms Loh said that she took into consideration the rent for food and beverage units in SIS nearby. #01-03 (area = 261sm) was leased for a term commencing 2007 March 29 for \$6 000/m (or \$22.99/sm/m) and #01-06 and #01-07 (area together as one unit = 372sm) was leased for a term commencing 2007 May 1 for \$13 598/m (or \$36.55/sm/m). Both were 1st storey units. The floor area rates were \$2.14/sf/m and \$3.40/sf/m according to Ms Loh. All the other units which were also 1st storey units were leased for terms commencing well after the acquisition date and would not be relevant for the purpose of determining the market rent as at the acquisition date but it is noted that SSH would "incorporate the existing [SIS]".

(45) In her valuation of the acquired land Ms Loh said she adopted a floor area rate of \$5.50/sf/m (or \$59.20/sm/m) for the whole of the lettable area on the 1st storey or a rental value of \$69 858 for the 1st storey of the main building. The 1st storey

comprised #01-01 (area = 638 sm), #01-02 (area = 373sm) and #01-02A (area = 169sm). #01-01 was leased for \$35 000/m (or \$54.86/sm/m). #01-02 was last leased to HKC and the rent for the option term (from 2007 October 1) was \$18 000/m (or \$48.26/sm/m). It is difficult to see how \$59.20/sm/m was derived from the rent for the SIS leases which were substantially lower and the units were smaller. By applying the same rate to all 3 units she would have disregarded the difference in the floor area of each unit.

(46) For the 2nd storey comprising #02-00 Ms Loh adopted a floor area rate of \$3.50/sf/m (or \$37.67/sm/m) for a rental value of \$51 651/m. For one year ending 2001 April 15 #02-00 (area = 1 371sm) was leased for \$30 000/m. It remained vacant after that until 2002 January 1 when it was leased together with #01-02A for \$40 000/m (or \$25.97/sm/m). For the 3rd storey comprising #03-00 (area = 768sm) Ms Loh adopted a floor area rate of \$2.00/sf/m (or \$21.53/sm/m) for a rental value of \$16 534/m. The tenant was paying \$15 000/m (or \$19.53/sm/m) since 2006 February 15. The building was served by one passenger lift and 2 staircases only and the 2nd and 3rd storeys might have had limited appeal to tenants and their customers although for an entertainment business such as a KTV this might be less of a disadvantage.

(47) For the floating buildings which were single storey buildings Ms Loh applied the same floor area rate as for the 1st storey of the main building. OB was paying \$45 000/m (or \$67.16/sm/m) for #01-05 (area = 670sm). She disregarded this lease but in the circumstances of this case this Board is unable to agree. There is no reason why the rental value of the 1st storey of the main building should be the same as for the single storey floating buildings. The main building comprised 3 units on the 1st storey and 2 units on the upper storeys. Each of the floating buildings comprised only one unit and there was exclusive access to it by way of the covered walkway. NSSR had been a tenant of #01-04 (area = 670sm) since 2000 May 1 and was paying \$30 000/m rent (or \$44.78/sm/m).

(48) Ms Chua adjusted the floor area rate for storey level and area. In this case the units were used for food and beverage and #03-00 (as the name of the tenant implies) for KTV entertainment and the higher levels were all single units served by 2 staircases and one passenger lift and all the units with the exception of #01-02A were relatively large. Ms Loh adjusted for storey level at a rate of about 36% from the 1st storey to the 2nd storey and about 43% from the 2nd storey to the 3rd storey. This Board considers these rates to be much too high and would accept 20% down for each storey up. In the way Ms Loh has capitalised the rental value she has not allowed for any difference in size but in this case an allowance should be made for size and this Board would accept 15% down for each doubling in floor area as adopted by Ms Chua.

(49) On the evidence and in the circumstances of this case this Board finds that for the purpose of determining the market value of the acquired land by the income capitalisation method (a) the basis rent for the main building is the rent for #01-01 (area = 638sm) which is \$35 000/m for a floor area rate ("FAR") of \$54.8589/sm/m and the basis rent for the floating buildings is the rent for #01-05 (area = 670sm) which is \$45 000/m for a FAR of \$67.1642/sm/m; (b) the relevant FAR is to be adjusted by 20% down for one storey up and 15% down for floor area 100% up on a

straight line basis for the balance after adjustment for storey level; and (c) the relevant adjusted FAR is to be applied to the area of each unit to determine its estimated rent. This Board further finds that the MRV of the acquired land is the sum of (a) the rent receivable under the existing leases, (b) the difference between the rent receivable under an existing lease and the estimated rent (as in the case of #03-00 and #01-04) (deferred to the expiry of the lease) after a letting up allowance of 20%, and (c) the estimated rent of the vacant units after a letting up allowance of 20%.

Deductions

(50) Ms Chua allowed 10% for vacancy but Ms Loh allowed only 5%. Having regard to the rental history of The Oasis, the condition and the facilities it offered, the size of the units and the uncertainties over A & A or re-development and SSH the allowance for vacancy should be in the higher range and this Board will accept 10%. It should be pointed out that the allowance for vacancy here relates to the continuing tenancy and is different from the vacancy in the letting up allowance which relates to the position before the first letting. This Board will also accept 10% for maintenance, insurance and other outgoings and 10% of the balance for property tax for a net value of 72% of the MRV.

Yield or Years Purchase

(51) As noted above there are uncertainties as regards A & A or re-development and SSH and this should be reflected in the yield or YP. It should also be noted that rent in every case in The Oasis and generally in Singapore is payable monthly in advance and in applying the formula for capitalisation the instalments should be the net monthly rent and the interval between payments should be the month. The remainder of the appellant's lease was 715.58m. Ms Chua used an annual yield of 6% and Ms Loh used a YP of 15 which as noted above is equivalent to an annual yield of 6.67%. The appropriate yield should be in the higher range in this case and this Board will accept a monthly yield of 0.54% which is equivalent to an annual yield of 6.67% or a YP of 15.

Market Value

(52) The market value of the acquired land is found by the sum of (a) the present value ("PV") of the net receivable rent, (b) the PV of the future value ("FV") of the net difference between the receivable rent and the estimated rent deferred to the expiry of the lease in each case (discounted at the same rate as the monthly yield), and (c) the PV of the net estimated rent of the vacant units. See Table 2 below.

Table 2

<i>Unit</i>	<i>Area (sm)</i>	<i>Receivable Rent (\$/m)</i>	<i>Estimated Rent (\$/m)</i>	<i>Letting up Allowance</i>	<i>MRV (\$/m)</i>
<i>Leased</i>					
#01-01	638	35 000	-	-	35 000
#01-05	670	45 000	-	-	45 000
Roof	-	1 500	-	-	1 500

Roof	-	500	-	-	500
Atrium	-	1 000	-	-	1 000
#03-00	768	15 000	(29 000)	-	15 000
#01-04	670	30 000	(45 000)	-	30 000
					=====
					128 000
<i>Vacant</i>					
#01-02	373	-	22 000	4 400	17 600
#01-02A	169	-	10 000	2 000	8 000
#02-00	1 371	-	50 000	10 000	40 000
#01-03	1 146	-	69 000	13 800	55 200
					=====
					248 800
					=====
<i>Leased</i>					
<i>Receivable rent less than estimated rent</i>					
#03-00					
Difference 'A' (Lease to 09.10.31)	-	14 000	2 800		11 200
					=====
#01-04					
Difference 'B' (Lease to 09.04.30)	-	15 000	3 000		12 000
					=====
Net MRV (Excluding difference)					179 136
Net MRV Difference 'A'					8 064
Net MRV Difference 'B'					8 640
					=====

Notes

- 1 Main Building: Estimated rent based on \$35 000/m for #01-01 (\$54.8589/sm/m).
- 2 Floating Buildings: Estimated rent based on \$45 000/m for #01-05 (\$67.1642/sm/m).
- 3 FAR adjusted 20% down for 1 storey up; 15% down for floor area 100% up on straight line basis for balance after adjustment for storey level.
- 4 Leased units: Receivable rent to be taken up. Difference between estimated rent and receivable rent deferred to expiry of lease less 20% for letting up allowance to be taken up.
- 5 Vacant units: Estimated rent less 20% for letting up allowance to be taken up.
- 6 Net MRV: To deduct 28% for vacancy, maintenance, insurance, Property Tax, other outgoings.
- 7 PV calculated on net MRV for remainder of 715.58m at 0.54%/m.
- 8 PV of 179 136 at 0.54%/m for 715.58m = 32 506 920.
- 9 PV of 8 064 at 0.54%/m for 687m deferred 28.58m = 1 248 640.
- 10 PV of 8 640 at 0.54%/m for 693.01m deferred 22.57m = 1 382 954.
- 11 32 506 920 + 1 248 640 + 1 382 954 = 35 138 514.

This Board finds that the market value of the acquired land as at the acquisition date does not exceed \$41 000 000. This too is sufficient for the purpose of this appeal and on the evidence and in the circumstances of this case it is sufficient for this Board to find that any amount that exceeds \$41 000 000 would exceed the price which a bona fide purchaser might reasonably be willing to pay for the acquired land having regard to s 33(5)(e).

Grounds of Appeal

(53) The appellant says in its petition of appeal:

The [Collector] has failed to consider, or not sufficiently considered, all relevant factors in determining the compensation, including but not limited to the following:

- (i) the Income Method of Valuation and the elements thereof to be adopted in arriving at the market value of the acquired land; and
- (ii) the increase in the market value of the acquired land as a result of the well publicised development of the Singapore Sports Hub.

In accordance with s 15 the Collector is required to take into consideration the market value and the other matters mentioned in s 33 in determining the compensation for the acquired land. In his grounds of award he has not disclosed the matters he took into consideration other than the market value but this failure has not adversely affected the appellant's claim in this appeal. The Collector relied on the opinion of the valuer as to the market value and the method of valuation and the matters relevant to the valuation in giving her opinion as he is entitled to and while there has been a failure on the valuer's part to consider certain factors as noted above such failure has not adversely affected the appellant's claim in this appeal. Accordingly this ground of appeal fails.

(54) The appellant further says:

Further or alternatively, the Collector has erred in: -

- (i) failing to provide any substantive ground for his view in the Grounds of Award that the market value of the acquired land was \$41 million;
- (ii) the manner he has apportioned the market value between the Appellant and the tenants.

This Board has heard no submission that the Collector is obliged to provide any ground for his view as to the market value of the acquired land in his grounds of award but if there was such an obligation and there was a failure on his part such failure has not adversely affected the appellant's claim in this appeal. As noted above he relied on the opinion of the valuer he consulted. In accordance with s 10 the Collector is required to make an award of the apportionment of the *compensation* and not of the *market value*. The market value is one of the matters he has to take into consideration in determining the amount of the compensation. In any event such error if any has not adversely affected the appellant's claim in this appeal. Accordingly this ground of appeal fails.

(55) The appellant claims:

Any increase in the market value above the sum of \$41 million is to be awarded to the Appellant alone, to the exclusion of the tenants.

This Board has found that the market value of the acquired land as at the acquisition date does not exceed \$41 000 000 and accordingly this appeal fails.

Award

(56) The Collector has not said what he took into consideration in determining the amount of the compensation other than the market value of the acquired land or how he arrived at a compensation of \$41 700 000 from a market value of \$41 000 000 but in this appeal there is no dispute as to the difference of \$700 000. There is also no dispute as to the apportionment of the compensation where the market value does not exceed \$41 000 000. In the premises and for the above reasons the award of the Collector is confirmed and there will be liberty to apply as regards costs and other matters.

Dated 2009 July 3

Commissioner of Appeals T Q Lim SC
Assessor Wong Chak Wai
Assessor Chong Kim Chang