

LAND ACQUISITION ACT

APPEALS BOARD

AB 1996.374

In the Matter of the Acquisition of Land at
Lot 181-4 and Lot 181-5 of Town Subdivision 18

Between

Mustaq Ahmad @ Mushtaq Ahmad (s/o
Mustafa)

... Appellant

And

Collector of Land Revenue

... Respondent

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue of compensation in an amount of \$3 300 000 in respect of the land at Lot 181-4 and Lot 181-5 of Town Subdivision 18 be increased to \$5 640 000;

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 the Collector of Land Revenue took possession of the acquired land to the date of payment;

And

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

And

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

BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

Appeal

(1) On 4 March 1996 a notification was published in the *Gazette* under s 3(1) of the Land Acquisition Act that the land at Lot 181-4 and Lot 181-5 of Town Subdivision 18 was likely to be needed for a public purpose. On 28 June 1996 ("acquisition date") a declaration under s 5 in respect of the same land was published in the *Gazette*. The Appellant was then the proprietor of a leasehold estate in the acquired land for the unexpired residue of the term of 999 years from 1 November 1859 and is an interested person.

(2) For the purpose of the inquiry held under s 10 the Appellant submitted a claim of \$6 750 000 for the acquired land and \$357 500 for "miscellaneous and turnaround costs" for an aggregate claim of \$7 107 500 for compensation. On 11 September 1996 the Respondent ("Collector") made an award of \$3 300 000 for the acquired land.

(3) The Appellant appeals against the award on the ground that it is manifestly inadequate and unrealistic and that the Collector has erred in not giving any or adequate consideration to the matters set out in his petition of appeal. These matters concern the market value of the acquired land. At the commencement of the hearing the Appellant applied for and was granted leave to amend the petition by deleting the claim for "miscellaneous and turnaround costs" and reducing the claim for the acquired land to \$5 838 187.

Compensation

(4) Section 33 of the Act provides:

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

(a) the market value -

(i) ...

(C) as at 1st January 1995 in respect of land acquired on or after 27th September 1995;

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

(iii) as at the date of the publication of the declaration made under section 5,

whichever is the lowest

(5) The notification under s 3(1) was within 6 months of its publication followed by the declaration under s 5 and it is common ground that the market value as at 1 January 1995 was the lowest.

Acquired Land

(6) The acquired land is a "corner lot" at the junction of Owen Road and Race Course Road. The site area is 298.5sm for Lot 181-4 and 176.6sm for Lot 181-5 for an aggregate of 475.1 sm. The site of the acquired land is zoned Local Shopping in the Master Plan. On 7 September 1993 written permission was granted by the competent authority under the Planning Act (Cap 232 of 1990 Ed) (Repealed) (as it was in force at all material times down to the acquisition date) ("Planning Act (repealed)") for development of the site for a "3 storey and an attic residential building with a restaurant at the 1st storey (Total: 1 flat & 1 maisonette)" ("original development proposal"). Construction works commenced in July 1994 and by May 1995 foundation works had been completed and the building was partially completed. The works were then suspended pending an application to amend the approved original development proposal.

Provisional Permission (Planning)

(7) On 2 June 1995 an application was submitted by the Appellant's architect Mr Kim Chan Wah for an amendment "involving additional 4th storey and conversion of the flats to boarding house". It is not disputed that "flats" is a reference to the flat and the maisonette. The gross floor area ("GFA") of the 4th storey was the same as that of the 3rd storey and the attic would be constructed over the 4th storey with the same GFA and the overall GFA would be increased by that of the additional storey only. Mr Kim testifying for the Appellant said that to construct the 4 storey building the main part of the structure of the partially completed building could be used and a lift and an additional staircase would be added. On 18 July 1995 provisional permission was granted subject to certain conditions and the application was to be resubmitted. The provisional permission was expressed to be valid for the period of 6 months from 27 July 1995 only and would lapse automatically upon the expiry of the validity period on 27 January 1996.

(8) On 26 December 1995 the application was resubmitted. This was the second resubmission and was made after making certain changes to the proposal for the amendment and after complying with the conditions. The changes included the provision of an additional staircase at the rear and a passenger lift. On 16 February 1996 the Appellant was informed by the competent authority that "the site [fell] within a sensitive area under study" and that he would be informed as to the outcome of his application as soon as the competent authority had been informed of the decision on the study. After the publication on 4 March 1996 of the s 3(1) notification the Appellant was informed that the competent authority would "not process [his] application further". The "study" was undoubtedly related to land acquisition considerations and had nothing to do with planning considerations.

(9) As at the acquisition date there was an uncompleted building at the site of the acquired land. It is not disputed that the written permission for the original

development proposal was still valid but Mr Mirza Namazie of counsel for the Appellant submitted that the provisional permission for the proposed amendment to the original development proposal had not lapsed and was still valid as at the acquisition date. He referred to the letter of the competent authority dated 23 September 1995 which contained this statement:

... your original provisional permission has been extended to lapse on 27.1.96.
You may wish to apply for an extension for our consideration, if needed.

and said that this indicated that the "life of the provisional permission was preserved". This was a letter written in response to the Appellant's first resubmission of the application for amendment. Mr Namazie also referred to the resubmission on 26 December 1995 and the reply of the competent authority of 16 February 1996 to which reference has already been made. He said that the omission of the competent authority to say that the provisional permission had lapsed lent support to his submission.

(10) Section 11 of the Planning Act (repealed) provided:

(1) ... the competent authority or the Minister, as the case may be, may at any time after an application for permission to develop any land under s 10(1) and before the application is determined in accordance with that section, provisionally grant permission to develop the land for such period, not exceeding 6 months, and subject to such conditions as he thinks fit, except that the competent authority or the Minister may extend the period of the provisional permission for such period as he thinks fit.

An "application for permission to develop" clearly includes an application for an amendment to an approved development proposal and the provisional permission granted on 18 July 1995 could only have been valid for a period of 6 months unless it was extended but the competent authority stated that it was valid for 6 months from 27 July 1995. In effect the Appellant was given an extension of about 9 days. The additional 9 days would have been sufficient for the Appellant to comply with the conditions which related more to form than to substance.

(11) The Appellant was invited by the competent authority's letter of 23 September 1995 to apply for an extension of the validity period if he wished but he did not. When the competent authority wrote the letter of 16 February 1996 there was no application for an extension of the validity period before him and there was no occasion for making any reference to the lapsing of the provisional permission. It cannot be said that the provisional permission was still "alive". Its validity period had not been extended.

(12) This Board finds that the provisional permission granted on 18 July 1995 for an amendment to the original development proposal lapsed on 27 January 1996. As at the acquisition date there was a valid written permission for the original development proposal but the development had not been completed. There was no valid provisional permission for an amendment involving an additional storey and conversion of the flat and the maisonette to a boarding house or for any other amendment but no planning decision had been taken to refuse the Appellant's application for an amendment to the original development proposal. The provisional

permission which had been granted had merely lapsed through passage of time during which the application had been overtaken by land acquisition considerations.

Market Value (1)

Land

(13) Mrs Lydia Sng of Knight Frank Pte Ltd testifying for the Appellant said that the market value of the acquired land as at 1 January 1995 was the aggregate of \$4 500 000 for the value of the land component of the acquired land and a sum for the value of the improvements on site namely the uncompleted building. She said that she adopted the summation approach in view of the absence of market evidence of transactions involving land with an uncompleted building on it.

(14) For the value of the land component Mrs Sng referred to the following sale transactions:

	<i>Property</i>	<i>Site Area</i>	<i>Price (Net for Land Value)</i>	<i>Contract Date</i>
1	62/66 Rangoon Rd 29.3% Local Shopping 70.7% Residential	322.1sm	\$12 030/sm	25 Oct 95
2	196 Race Course Rd Residential	122.4sm	\$13 072/sm	9 Nov 94
3	96 Owen Rd Local Shopping	108.0sm	\$12 870/sm	23 Mar 95

"Local Shopping" and "Residential" are references to the Master Plan zones. "Price (Net for Land Value)" is the site area rate derived from the contract price after deducting the depreciated value of the buildings on the land. The depreciated value of the buildings is derived from an assumed site cover of 65% to obtain the total gross floor area and a value of \$538/sm for the total gross floor area.

(15) Mrs Sng made adjustments for differences in size of the land, time of the transaction and location of the land and she obtained an average site area rate of \$11 215/sm. Applied to the site area of the acquired land this will yield a value of about \$5 330 000. However she said that she did not carry out the original valuation on the basis of which a claim had previously been made for \$4 500 000 for the land component of the market value and she accepted that value as fair.

(16) Ms Chua Beng Ee of Inland Revenue Authority of Singapore testifying for the Collector also adopted the summation approach in the valuation of the acquired land. She said that the value of the land component of the acquired land as at 1 January 1995 was \$2 100 000 to which a sum for the improvements would be added for the market value of the acquired land as at that date.

(17) For the value of the land component Ms Chua referred to the following sale transactions:

	<i>Property</i>	<i>Site Area</i>	<i>Price</i>	<i>Contract Date</i>
1	132 Race Course Rd Residential	223.1sm	\$1 800 000	6 May 96
2	138 Race Course Rd Residential	216.6sm	\$1 800 000	6 May 96
3	437/447 Balestier Rd Local Shopping	608.4sm	\$3 500 000	11 Mar 94
4	120 Race Course Rd Residential	236.3sm	\$1 800 000	19 Dec 95
5	122, 124 Race Course Rd Residential	453.2sm	\$4 056 000	13 Nov 95

"Residential" and "Local Shopping" are references to the Master Plan zone. 132 and 138 Race Course Road are on either side of 134 and 136 Race Course Road. They were bought by the owner of the intermediate properties. Ms Chua said that this was a special case and if anything it might have inflated the price. All the properties were redevelopment sites. Except for 437/447 Balestier Road all the properties are zoned "Residential With Commercial At 1st Storey Only" in the Development Guide Plan for Rochor.

(18) Ms Chua took into account the development charge where it was payable and derived the plot ratio rate of the respective prices from the gross plot ratio ("GPR") achieved and the site area in each case. She adjusted the plot ratio rates for differences in time of the transaction, location of the site, ratio of the commercial GFA to the residential GFA and the size of the land and GPR and obtained an average plot ratio rate of \$1 975/sm. Applying this to the site of the acquired land and rounding it up she obtained a value of \$1 930 000 for the land component. She said that this was her primary method of valuation.

(19) Ms Chua also referred to transactions in other locations which yielded a value of \$2 080 000. She said that she only used that as a check. Nevertheless she found that the value of the land component was \$2 080 000 to which she added about \$1 189 000 for improvements and rounded this up to \$3 300 000 for the market value of the acquired land.

(20) Ms Chua was asked by this Board if she was able to carry out a similar exercise with data from the transactions relating to 62/66 Rangoon Road and 96 Owen Road referred to in Mrs Sng's evidence. In the event Mr Tan Hee Joek of counsel for the Collector conferred with the Collector and Ms Chua and agreed to place such evidence before this Board.

(21) When the hearing resumed Ms Chua said that she derived a plot ratio rate of \$4 161/sm from the sale of 62/66 Rangoon Road and a plot ratio rate of \$4 826/sm from the sale of 96 Owen Road. She also referred to the sale of 126 Owen Road from which she derived a plot ratio rate of \$3 865/sm. However in regard to 62/66 Rangoon Road she did not make any adjustment for the difference in the ratio of the

commercial GFA to the residential GFA or for the fact that this property was purchased with provisional permission for development for shops on the 1st storey and a boarding house on the upper storeys and left these two adjustments open.

(22) Mrs Sng also prepared an analysis of the 62/66 Rangoon Road transaction and others on the basis similar to that of Ms Chua but she assigned different values to the adjustments. She derived a plot ratio rate of \$4 318/sm. The other transactions referred to by her involved properties with site areas ranging from 108 sm to 122.4 sm which would be unsuitable for development having regard to the road line and provisions for set-back. Mrs Sng made no adjustment for the difference in the transactions as regards provisional permission.

(23) While both Mrs Sng and Ms Chua adopted the summation approach they differed fundamentally as to the probable use of the acquired land and in consequence of that the choice of comparables. The probable use of the acquired land assumed by Mrs Sng was development for a restaurant (or other commercial use) on the first storey and a boarding house on the upper storeys as proposed in the amendment to the original development proposal. The probable use assumed by Ms Chua was development for a restaurant on the first storey and a flat and a maisonette on the second and third storeys as in the original development proposal.

(24) There was no evidence that there was a substantial difference in value between shop space and restaurant space and no adjustment for any such difference appears to have been made by either party but the business of a boarding house in the locality of "Little India" was lucrative as Mr Richard Tan a director of the company which purchased 62/66 Rangoon Road said. The inference is that land in the vicinity of 62/66 Rangoon Road which could be developed for a boarding house was more valuable than if it could be developed for residential flats.

(25) 62/66 Rangoon Road referred to by Mrs Sng was purchased for development for shops or commercial use on the first storey and a boarding house on the upper storeys. The properties referred to by Ms Chua were developed for commercial use on the first storey and residential flats on the upper storeys.

Potential for Development

(26) Mr Tan submitted that the potential for development as envisaged in the Appellant's application for an amendment to the original development proposal could not be taken into account for the purpose of determining the compensation to be awarded. He referred to s 33(5)(e) which provides:

33(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 expected to pay for the land on the basis of its existing use or in anticipation of the continued use of the land for the purpose designated in the Master Plan, whichever is the lower, after taking into account the zoning and density requirements and any other restrictions imposed under the Planning Act

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 more intensive use

(as it was in force as at the acquisition date)

(27) Section 33(1)(a) has been set out above. In determining the amount of compensation to be awarded this Board has to take into consideration the market value of the acquired land as at the relevant date. "Market value" is not defined in the Act but it may be seen as the selling price which is most likely to emerge from a transaction involving the subject property (in this case the acquired land) if it were exposed for sale for a reasonable time in the market current at the relevant time at terms of sale which were then predominant for properties of the subject type. A buyer in that market will take into consideration a number of factors which will include the purpose for which that property may be used.

(28) In the case of the acquired land the buyer will take into consideration the original development proposal for which written permission has been obtained from the competent authority. He will learn from the architect that provisional permission had been granted for an amendment to the original development proposal. He will learn of the proposal to develop for a restaurant on the 1st storey and more importantly for a 37 room boarding house on the upper storeys. He will learn that the main building of the partially completed building can be used in the construction of the boarding house. He will learn that the provisional permission has lapsed through passage of time but that no planning decision has been taken to refuse permission for such a development. He will learn that this is the probable use of the property if it is exposed for sale. These are factors which among others will influence the selling price which is most likely to emerge. His assessment of the degree of certainty as to the grant of written permission for the development is one of these other factors which will influence the selling price. This applies to all development sites. No person may develop any land without the written permission of the competent authority. See Planning Act (repealed) s 10.

Certainty of Planning Permission

(29) Mr Tan included in his bundle of authorities *Beauty Park Development (Pte) Ltd v Collector of Land Revenue* [1991] 2 MLJ li where the headnote contained this statement attributed to a differently constituted Board:

Held, dismissing the appeal:

(1) In valuing the land, the benefit of planning permission should not be taken into account as there was no certainty that planning permission would in fact have been granted

A headnote contains editorial statements. Such statements are not those of the Board. Mr N Khublall formerly an associate professor at the National University of Singapore was probably referring to the statement in this headnote when he commented:

On the question of the granting of planning permission, the Appeals Board held recently in *Beauty Park Development (Pte) Ltd v Collector of Land Revenue* that as planning permission was not a 'certainty' it could not be taken into account. Irrespective of whether the appellant's argument has any merit, what seems to be wrong in principle is the Board's ruling as to 'certainty' in planning permission.

See Khublall, *Compulsory Land Acquisition - Singapore and Malaysia* (2nd Ed) at p 176.

(30) In the *Beauty Park Development* case it was the appellant company's case that the land should be valued with the benefit of planning permission and one of the main issues identified by the Board was whether the land should be valued with the benefit of the planning permission that the appellant alleged that it would have got but for the acquisition. See at p lii. The appellant had obtained what was then known as 'in principle' permission (which is the equivalent of provisional permission under the Planning Act (repealed)) and it was directed by the competent authority to amend its plans. It was in this context that "the Board decided [this] issue in favour of the respondent". See at p lv.

(31) It is one thing to say that land should not be valued with the benefit of planning permission which in fact it does not have. There can be no reasonable ground to disagree with that. It is altogether another thing to say that to find the market value of the acquired land its potential for development or for development along the lines envisaged in a proposal for an amendment to the original development proposal cannot be taken into account by reason only that written permission or provisional permission for such development has not been obtained. This is inconsistent with principles of valuation.

(32) When the market value for the purpose of s 33(1)(a) has been found the next question that has to be considered is the effect of s 33(5)(e). For the purposes of s 33(1)(a) the market value is deemed not to exceed the lower of two prices which a bona fide purchaser might reasonably be expected to pay for the land. The first is the price expected to be paid "on the basis of its existing use" ("existing use price"). The second is the price expected to be paid "in anticipation of the continued use of the land for the purpose designated in the Master Plan" ("Master Plan use price").

(33) As at the acquisition date construction works were in progress at the site of the acquired land although the works were suspended pending the application for an amendment. There was no "use" to which the acquired land was then put. There was no "existing use" and no price to be paid "on the basis of its existing use" as there was no such basis. The acquired land was as at the acquisition date zoned Local Shopping in the Master Plan and as there was no existing use as at the relevant date the market value of the acquired land can only if at all be deemed not to exceed the Master Plan use price. See *Trustees of the Kheng Chiu Tin Hou Kong and Burial Ground v Collector of Land Revenue* [1992] 1 SLR 425 at pp 434, 435.

(34) "Master Plan" as defined in the Planning Act (repealed) includes the written statement. See s 2. Para 8.1 of the Written Statement (To Accompany the Revised Master Plan 1985) which was current as at the acquisition date provides:

8.1 Within the zones shown on the Maps, it is intended that the Competent Authority shall control development in such a manner as to preserve or promote the character of the areas as indicated by the notations on the Maps or on any further development scheme plans as approved from time to time. It is intended that such control shall be exercised by the Competent Authority in accordance with Table 14 in the Appendix to this Statement which indicates, for the various zones, the purpose of which it is intended that:-

- (i) buildings/land may be used;
- (ii) buildings/land may be used only subject to special consideration by the Competent Authority;
- (iii) buildings/land may not be used.

(35) Table 14 in the Appendix to the Written Statement indicates that for Local Shopping zone the "purpose for which buildings and lands may be used" ("Category 1") includes restaurant and shop and the "purpose for which buildings and lands may be used subject to special consideration" ("Category 2") includes hotel. Boarding house is not mentioned in Table 14 but "hotel" is defined as any building specifically designed and constructed or substantially adapted to be used to accommodate persons for the purpose of gain or profit (which would include a boarding house) with provision for a bar and restaurant and "restaurant" includes a bar. For Residential zone Category 2 purposes include restaurant and hotel. Table 14 also mentions the "purpose for which buildings and lands may not be used" ("Category 3") which is referred to here for completeness but is otherwise not relevant for the present purpose. No other categories of purposes are indicated and it is clear that these three categories are the three categories referred to in Para 8.1.

(36) To "designate a purpose" for the use of land is to indicate a purpose for its use and "use of the land for the purpose designated in the Master Plan" means use of the land for a purpose indicated in the Master Plan. The Master Plan indicates three categories of purposes. Category 3 is clearly inappropriate in the context of an inquiry into the price to pay for land to use it for that purpose. That leaves only Category 1 and Category 2 as purposes designated in the Master Plan for the use of land.

(37) "In anticipation of the continued use" means in anticipation of the use (for the purpose designated in the Master Plan) continuing or remaining unchanged. A price that a purchaser may pay in anticipation of any change of zoning or change of purpose for which land may be used is excluded for the purpose of determining the upper limit of the market value for the purposes of s 33(1)(a).

(38) Consistently with the "continued use of the land for the purpose designated in the Master Plan" the potential value of the land for any other more intensive use should be disregarded and s 33(5)(e) concludes with these words:

... no account shall be taken of any potential value of the land for any *other* more intensive use. [italics added]

Use for a Category 3 purpose is excluded. That would be one such *other* use. Any use other than use for a Category 1 or Category 2 purpose after taking into account

zoning and density requirements and other restrictions imposed under the Planning Act (repealed) and restrictive covenants in the title of the acquired land is excluded. Those concluding words do not apply to exclude a use for a Category 1 or Category 2 purpose which complies with zoning and density requirements and other restrictions imposed under the Planning Act (repealed) and where the title of the acquired land is free of any restrictive covenants. Such use is not an *other use*.

(39) The proposed amendment to the original development proposal is to develop the acquired land for a Category 1 and Category 2 purpose. There is no evidence that in any respect at all it fails to comply with the relevant planning requirements or restrictions but on the contrary it has received provisional permission which lapsed by passage of time in the circumstances and for the reasons mentioned above. In the decision of this Board the use of the acquired land for the purpose as envisaged in the proposed amendment to the original development proposal is not excluded by the concluding words in s 33(5)(e) and may be taken into account to determine the Master Plan use price.

(40) No evidence has been adduced with specific reference to the Master Plan use price. The parties have adopted the summation approach to find the market value and it is not the case of the Appellant or of the Collector that the market value so found is more than or in any respect different from the Master Plan use price determined in accordance with s 33(5)(e).

(41) On the admitted facts and the evidence adduced this Board finds that the probable use of the acquired land for the purpose of determining its market value is use for a restaurant on the 1st storey and a boarding house on the upper storeys in a building with 4 storeys and an attic as proposed in the Appellant's application for an amendment to the original development proposal and for which provisional permission had been granted. The transactions referred to by the Collector concern properties for development for commercial use on the 1st storey and residential use on the upper storeys. These are not comparable with the acquired land. Only 62/66 Rangoon Road offers a good comparable. The actual intended use for its purchase was development for commercial use on the 1st storey and a boarding house on the upper storeys. At the time of the contract it had provisional permission for such development and the provisional permission was still valid. As at the acquisition date the Appellant's provisional permission had lapsed. That represents a difference for which an adjustment may be made to derive an appropriate unit rate to apply to the acquired land.

(42) The plot ratio rate derived from the 62/66 Rangoon Road transaction and without making any adjustments for differences between this property and the acquired land is \$4 998/sm. Mrs Sng adjusted this by -6% for time, -5% for size, +5% for corner lot and +2% for other features and derived a plot ratio rate of \$4 318/sm. This will yield a value of \$5 415 912 but she accepted that \$4 500 000 for the value of the land component was fair.

(43) Ms Chua made adjustments of -12.5% for time and +5% for corner lot and derived a plot ratio rate of \$4 161/sm but leaving an adjustment to be made for the commercial GFA to boarding house GFA ratio and for the provisional permission

which was still valid at the time of the transaction in the case of 62/66 Rangoon Road but which had lapsed in the case of the acquired land.

(44) In the case of 62/66 Rangoon Road the commercial GFA to boarding house GFA ratio is 17:83. For the acquired land it is 13:87. There is no evidence as to the difference in value between commercial use and boarding house use and there appears no reason to make any adjustment for this. Mrs Sng allowed for the difference in size while Ms Chua did not. For 62/66 Rangoon Road the site area is 322.1sm and the GPR achieved in the development proposal is 2.83. For the acquired land the site area is 475.1sm and the GPR achieved in the proposed amendment is 2.64. Some adjustment has to be made for this difference. Some adjustment also has to be made for the difference as regards provisional permission for development.

Market Value (2)

Improvements

(45) The Appellant claims \$1 279 753 for the value of the improvements. The Collector concedes \$1 246 113 as expenses incurred which added value. About \$12 000 of the difference is for the balance of the premium and expenses for Workmen's Compensation and Contractor's All Risks Insurance and for the Banker's Guaranty. These would have been included in the contract price and while part of it has been conceded the balance has not as the Appellant could not produce receipts for payment. On the evidence adduced this Board finds that the Appellant has paid this amount of about \$12 000 and that this is an expenditure that adds value as improvements. The remainder of the difference is for architect's fees and payment to authorities in respect of the proposed amendment to the original development proposal. As the probable use is development as envisaged in the proposed amendment this Board finds that the associated expenses also add value as improvements.

(46) Some part of the total expenses will be "thrown away" and lost. A lift is going in where there was no provision for it in the original development proposal. Part of the completed works will have to be demolished. A staircase is to be added. Again some part of the completed works will have to be demolished. The works were suspended in May 1995 and remained suspended for a year as at the acquisition date. Additional expenses will have to be incurred to recommence construction and to recover the value of the partially completed works.

(47) The total expenses include \$87 865 for preliminaries and general and \$4 144 for external works a substantial part of which will be lost and \$399 225 for main building works and \$204 110 for mechanical and electrical works part of which will also be lost. There is no direct evidence as to any of these matters but this Board has to do the best in the circumstances and will allow a deduction from the total expenditure to reflect these considerations.

Award

(48) On the admitted facts and the evidence adduced this Board finds:

(a) that for the purpose of s 33(1)(a) the market value of the acquired land was the lowest as at 1 January 1995;

(b) that the value of the land (without improvements) was \$4 500 000 and the value of the improvements was \$1 140 000 and that as at 1 January 1995 the market value of the acquired land was \$5 640 000; and

(c) that the market value so found does not exceed the Master Plan use price determined in accordance with s 33(5)(e).

(49) Taking into consideration the market value as at 1 January 1995 this Board determines that the amount of compensation to be awarded for the acquired land is \$5 640 000. 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%/year from the date of taking possession to the date of payment.

Costs

(50) For the purpose of the inquiry held under s 10 the Appellant made a claim of \$7 107 500 for compensation. This was a claim made pursuant to the Collector's notice under s 8. In a letter to the Collector dated 3 November 1999 the Appellant's solicitors submitted a "breakdown of [their] client's claim" for an aggregate sum of \$5 850 000 which included \$4 500 000 for the value of the land component but the claim made pursuant to the s 8 notice remains what it is and the Appellant concedes (rightly in the view of this Board) that for the purpose of s 32(4) the claim of the Appellant is \$7 107 500. As this exceeds the amount awarded by this Board by more than 20% the Appellant is not entitled to his costs.

Dated 2001 July 16

Commissioner of Appeals T Q Lim
Assessor Lim Sean Teck
Assessor Lim Lan Yuan