

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

LAND VALUATION LIST

VCAT REFERENCE NOS. L1/2004 AND L10/2005

CATCHWORDS

Valuation of Land – Site value – Role of tribunal in reviewing valuation decision – Identifying highest and best use of land – Reliability of sales of improved land – Meaning of “improvements” – whether excavation of site is work done “on the land” – Whether excavation of land for basement car park comprises the removal of “rocks, stone or earth” – Methods of assessing site value – High Court decision in *Maurici* – Credibility of valuers – Methods of analysing improved sales – Comparable sales of vacant land – Relevance of other valuations by tribunal and council – Factors relevant to costs – *Valuation of Land Act 1960*.

APPLICANT FOR REVIEW	ISPT Pty Ltd
FIRST RESPONDENT	City of Melbourne
SECOND RESPONDENT	Valuer-General of Victoria
SUBJECT LAND	114 William Street MELBOURNE
WHERE HELD	Melbourne
BEFORE	Justice Stuart Morris, President
HEARING TYPE	Hearing
DATES OF HEARING	27, 28, 29 and 30 March, 3 and 4 April, 24 April, 18 May and 26 September 2006
DATE OF ORDER	3 May 2007
CITATION	ISPT Pty Ltd v City of Melbourne (Land Valuation) [2007] VCAT 652

ORDER

1 The questions posed by the order made 6 March 2006 are answered as follows:

- 1 Is the excavation of the land at 114 William Street, Melbourne below the natural surface level an improvement within the meaning of the first part of the definition of the term “improvements” in section 2 of the *Valuation of Land Act 1960*? **Yes.**

- 2 If the answer to question 1 is yes, does the improvement comprise the removal of rocks, stone or earth within the meaning of paragraph (b)(i) of the definition of the term “improvements” in section 2 of the *Valuation of Land Act 1960*? **No.**

Note: For the purpose of answering these questions (but not determining the applications) the tribunal has assumed that such excavation increases the value of the land and the benefit is not exhausted at the time of the valuation.

- 2 The determination of the valuer to disallow the objection to the 2002 assessment the subject of proceeding L1/2004 is affirmed and the site valuation of \$5,568,000 is confirmed.
- 3 The determination of the valuer to disallow the objection to the 2004 assessment the subject of proceeding L10/2005 is varied and the tribunal orders that the site valuation be reduced to \$5,568,000.

Stuart Morris
President

APPEARANCES:

For ISPT Pty Ltd	Mr J Delany SC and Mr D Batt of counsel, instructed by Gadens Lawyers
For City of Melbourne	Mr J Rantino, solicitor of Maddocks
For Valuer-General of Victoria	Mr C Horan of counsel, instructed by the Victorian Government Solicitor’s Office

REASONS

- 1 Although this proceeding only concerns the site value of the land at 114 William Street, Melbourne on 1 January 2002 and 1 January 2004, it has assumed greater significance as a test case. First, it is a test case about important valuation principles; and, second, it is a test case about the value of vacant commercial land in Melbourne in 2002 and 2004. The valuation principles arise in the context of valuing the “site value” of land, which is an artificial construct mainly used to achieve equity in the incidence of land tax. The valuation of the land in question, which is in a commercial precinct in central Melbourne, is challenging as many of the sales of vacant land within central Melbourne during the relevant period were in the context of proposed residential development.

Key background matters

- 2 Section 13DC of the *Valuation of Land Act 1960* (“the Act”) provides that in every valuation for the purposes of the *Local Government Act 1989*, each separate occupancy on rateable land must be computed at its net annual value, its capital improved value and, if required by a rating authority, its site value. For the valuations conducted by the City of Melbourne (“the council”) for 1 January 2002 and 1 January 2004 the site value of land was required to be assessed.
- 3 The land at 114 William Street, Melbourne (“the land” or “the subject land”) contains a building with two basement levels used for car parking and 25 levels used for office purposes. The land is on the north-east corner of William Street and Little Collins Street; and for many years was known as Qantas House.
- 4 The municipal valuer returned the following valuations in respect of the land:
 - a. As at 1 January 2002
 - i. Site value \$5,568,000
 - ii. Capital improved value \$38,940,000
 - iii. Net annual value \$3,300,000
 - b. As at 1 January 2004
 - i. Site value \$5,940,000
 - ii. Capital improved value \$49,000,000
 - iii. Net annual value \$3,900,000.
- 5 The applicant objected to the assessed site values and asserted that the land should have been given a site value of \$3,720,000 as at both 1 January 2002 and 1 January 2004. The objections were disallowed. Indeed the council

and the Valuer-General, who was joined as a party to the proceeding, now contend that a site value of \$5,900,000 should be adopted for both dates.

Key statutory provisions

- 6 The definition of “site value”, which is contained in section 2(1) of the Act, is at the heart of this case. Thus it is desirable to set it out in full.

“**site value**” of land, means the sum which the land, if it were held for an estate in fee simple unencumbered by any lease, mortgage or other charge, might in ordinary circumstances be expected to realise at the time of the valuation if offered for sale on such reasonable terms and conditions as a genuine seller might be expected to require, and assuming that the improvements (if any) had not been made;

- 7 It can be seen that the definition depends upon another term, that of “improvements”, which is also a carefully defined term. Once again, it is desirable to set it out in full.

“**improvements**”, for the purpose of ascertaining the site value of land, means all work actually done or material used on and for the benefit of the land, but in so far only as the effect of the work done or material used increases the value of the land and the benefit is unexhausted at the time of the valuation, but, except as provided in sub-section (2AA)¹, does not include –

- (a) work done or material used for the benefit of the land by the Crown or by any statutory public body; or
- (b) improvements comprising –
 - (i) the removal or destruction of vegetation or the removal of timber, rocks, stone or earth; or
 - (ii) the draining or filling of the land or any retaining walls or other works appurtenant to the draining or filling; or
 - (iii) the arresting or elimination of erosion or the changing or improving of any waterway on or through the land –

unless those improvements can be shown by the owner or occupier of the land to have been made by that person or at that person’s expense within the fifteen years before the valuation;

- 8 I should also mention section 2(2) of the Act, although, for reasons I will give, this is not ultimately critical.

- (2) In estimating the value of improvements on any land for the purpose of ascertaining the site value of the land, the value of the improvements is the sum by which the improvements upon the land are estimated to increase its value if offered for sale on such reasonable terms and conditions as a genuine seller might in ordinary circumstances be expected to require.

¹ Section 2AA is concerned with works relating to a port and is not relevant in the present context.

- 9 Finally I refer to section 5A of the Act, which provides general guidance as to the method to be used in valuing land. I regard this section as being no more than a restatement of principles of common law – even common sense – and it is not necessary to set it out or dwell upon it.²

The hearing of this proceeding

- 10 In 2003 the tribunal received references in relation to objections to site value in respect of 28 different properties in or nearby to the central business district of Melbourne. Most, if not all, of these references related to land which was used for commercial purposes. The objections to site value followed the same general theme: that is, that the council had erred in ascribing high levels to site value by wrongly applying sales evidence concerning vacant land which was purchased for residential development. All these proceedings were concerned with the value ascribed for various properties as at 1 January 2002.
- 11 Following the valuation of land within the City of Melbourne which related to the valuation date of 1 January 2004 the tribunal received references of objections in relation to 23 of the 28 properties for which it had earlier received a reference. In addition, the tribunal received references for 27 additional properties in relation to the 2004 valuation.
- 12 As it was apparent that all these proceedings raised substantially similar issues, the tribunal made an order on 17 May 2005 (by consent) that steps be taken to consider if any of the proceedings might proceed by way of a test case or test cases. At the same time (again by consent) the tribunal joined the Valuer-General as a party to many of the proceedings. This process led to an order of the tribunal on 30 September 2005 where two properties were identified as suited to be test proceedings (in respect of both the 2002 valuation and the 2004 valuation), namely 600 Bourke Street, Melbourne and 114 William Street, Melbourne. For reasons that need not be set out, the test case in relation to 600 Bourke Street, Melbourne was not pursued.
- 13 It became apparent during the procedural stages of these proceedings that the Valuer-General (but not the council) wished to pursue certain legal arguments concerning the interpretation of the meaning of “improvements”. Essentially the Valuer-General wished to contend that the site value of

² In making these comments I put to one side the additional provisions added by the *Water (Resource Management) Act 2005*; none of these additional provisions are relevant to these proceedings. Section 5A(1) requires all relevant matters to be taken into account. Section 5A(2) requires that evidence of value be weighed according to factors such as the time of the transaction, the terms of the transaction and the degree of comparability. Section 5A(3) provides that, where relevant, factors to be taken into account include the highest and best use of the land, planning and like restrictions, and the qualities of the land. Section 5A has been touched upon in various cases: see, for example, *Australian Postal Commission v Melbourne City Council* [2005] VSCA 295, *Pioneer Concrete (Vic) Pty Ltd v Commissioner of State Revenue* [2001] VSCA 55, *101 Collins St Pty Ltd v City of Melbourne* (unreported, 2 April 1996, per Batt J) and *City of Castlemaine v Scott (No 2)* [1973] VR 277. In the *101 Collins St* case at [70] Batt J, in discussing section 5A(2), observed that the provision “reflects the common law”.

many city allotments was enhanced by the fact that excavation had taken place for underground car parking; and, as the council had not taken this into account in its valuations, the valuations were conservatively low. At a directions hearing on 6 March 2006 the Valuer-General expressed concern that the use of the land at 114 William Street, Melbourne might not enable this important question to be determined. As a consequence I directed that at the hearing of the present proceedings, in addition to any other matters to be resolved in determining the proceedings, the tribunal was to answer the following two questions:

- 1 Is the excavation of the land at 114 William Street, Melbourne below the natural surface level an improvement within the meaning of the first part of the definition of the term “improvements” in section 2 of the *Valuation of Land Act 1960*?
- 2 If the answer to question 1 is yes, does the improvement comprise the removal of rocks, stone or earth within the meaning of paragraph (b)(i) of the definition of the term “improvements” in section 2 of the *Valuation of Land Act 1960*?

For the purpose of answering these questions (but not determining the applications) the tribunal is to assume that such excavation increases the value of the land and the benefit is not exhausted at the time of the valuation.

- 14 The hearing of the proceeding commenced on 27 March 2006 and continued until 4 April 2006, when it was adjourned for a further day’s hearing on 24 April 2006. The proceeding was then further adjourned to 18 May 2006 in order to hear final submissions. The tribunal then reserved its decision in order to consider the evidence and submissions.
- 15 By letter dated 13 June 2006 the council asked that the hearing be reopened to allow additional evidence to be heard in relation to a recent sale of the property at 565 Collins Street, Melbourne. A further hearing was held on 5 July 2006 in order to consider this application. After hearing the parties I decided to fix the case for further hearing, which was ultimately held on 26 September 2006. I gave reasons for the decision to reopen the hearing.³ In essence I found that the evidence of the resale of 565 Collins Street could be probative and could affect the result of the proceeding.

The role of the tribunal

- 16 The tribunal is charged with reviewing the matters referred to it: that is, the decisions of the valuer to disallow objections to the valuations. In addition to reviewing these decisions, the tribunal is empowered to confirm, increase or reduce or otherwise amend any valuation.⁴
- 17 In vesting power in the tribunal to review a valuation the Parliament should be taken to understand the structure and nature of the tribunal. In particular,

³ See *ISPT Pty Ltd v Melbourne City Council* [2006] VCAT 1304.

⁴ *Valuation of Land Act 1960* section 25(1). This section has now been amended but there has been no change of substance.

it should be taken to understand that the tribunal is an expert tribunal⁵, where the practice is to assign cases to lists where the members hearing a case have knowledge or experience of matters likely to arise in the list.⁶ Further, the Parliament should be taken to have contemplated that the *review* of a matter would involve a complete re-assessment, and the exercise of a judgment, in respect of the matter; and not just the acceptance of one side or another.⁷ Hence, subject to natural justice considerations, there is clearly some role for the tribunal to use its expert knowledge and skill in the review of a valuation.

- 18 Counsel for the council and the applicant referred to the South Australian decision in *Brewarrana Pty Ltd v Commissioner of Highways (No 2)*⁸ where Wells J cautioned against a valuation court making its own valuation and said it was not the role of the court to “bring a third set of opinions into the arena”.⁹ It may be that an expert tribunal is in a different position; and the tribunal’s role in conducting a review is subtly different to a body such as the Supreme Court. I would think that the tribunal may suggest an approach not taken by any valuer called to give evidence and, subject to hearing the parties and affording them natural justice, then adopt that approach. But I do not need to determine this, as it is a moot point in this case. This is because I propose to proceed on the basis outlined by Batt J in *101 Collins Street Pty Ltd v City of Melbourne*, where his Honour said:

Whilst I cannot piece together a valuation of my own (*Brewarrana* at 545), it appears to me that I am entitled, by reference to evidence of one valuer, to adjust on a number of aspects the valuation of another valuer, provided that I make allowance for the fact that one variable in a component consisting of several variables may in fact have been balanced in the latter valuer’s valuation by one or more of the other variables. In such a case it might, depending upon the circumstances, be necessary to refrain from making the adjustment and to adopt the component in full or not at all.¹⁰

- 19 I do not accept the submission made by the council that the tribunal should only interfere with a valuation if it is somehow unsound. In conducting a

⁵ Compare *Spurling v Development Underwriting (Vic) Pty Ltd* [1973] VR 1, at 10.

⁶ The tribunal’s jurisdiction has been inherited from the Land Valuation Board of Review, an expert body set up in 1963. Recent amendments to the *Valuation of Land Act* 1960, which increase the role of the tribunal in resolving valuation disputes, were made in the knowledge that the tribunal is organised in lists to promote expertise in decision-making. One of these lists is the Land Valuation List.

⁷ In this respect section 51 of the *Victorian Civil and Administrative Tribunal Act* 1998 is relevant.

⁸ (1973) 6 SASR 541, (1973) 32 LGRA 170.

⁹ (1973) 6 SASR 541, at 544-545, (1973) 32 LGRA 170, at 174-175.

¹⁰ (Unreported, Supreme Court of Victoria, 2 April 1996) at para [83]. This excellent decision should be reported. The reason it has not been reported may be that it was overturned on appeal (on what might be thought to be a somewhat fortuitous ground). The fact that the decision was overturned does not affect the issue presently being considered.

review of a valuation it is the tribunal's role to seek to arrive at a valuation which it believes is the correct valuation.¹¹

LEGAL ANALYSIS

Meaning of "improvements"

On the land

- 20 The Valuer-General submitted that the excavation of the land at 114 William Street, Melbourne below the natural surface level was not an improvement within the meaning of the first part of the definition of the term "improvements". The word "improvements" is defined to mean all work actually done or material used "on and for the benefit of" the land; which led the Valuer-General to submit that excavation below the natural surface level was not an improvement because it was not work done "on" the land. The Valuer-General submitted that excavation work was not on, but beneath, land as it removed the surface of land.
- 21 I cannot accept this submission. Where the word "on" is used in the first part of the definition of "improvements" it is a reference to a relationship between the work done (or material used) and the land; it is not a reference to the physical place where work is done (or material is used).
- 22 It is true that the preposition "on" can mean a position above and in contact with a supporting surface.¹² But the preposition can also be used to introduce an object or point of reference. An example of the latter might be in the expression "I have done some work on my car", which might be work on the engine, or tyres, or interior, and not just to the upper surface. Having regard to the context in which the expression is used in the Act, I would regard the Parliament as intending the latter meaning. This conclusion is consistent with the approach taken by the High Court in *Commonwealth of Australia v Oldfield*¹³ where it was held that the preposition "on" did not mean "on the surface of the land". Although that case was concerned with different statutory provisions to those now under consideration, it demonstrates that the proposition "on" can mean "appertaining to" and its meaning needs to be determined by its context.
- 23 For the most part improvements will consist of buildings. In turn, it is trite that buildings are nearly always connected to land: for example by footings or stumps. In order to provide an appropriate connection it is usual that footings or stumps are placed beneath the surface level of the land. If the contentions advanced by the Valuer-General were correct this would make

¹¹ See the classic statement in *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577, at 589, per Bowen CJ and Deane J to the effect that the role of an administrative tribunal is to make the "correct or preferable" decision in the circumstances. The Administrative Review Council prefers the words "correct and preferable" (see *Better Decisions: Review of Commonwealth Merits Review Tribunals*, Report 39, 1995), but nothing turns on this.

¹² See the first meaning given for the word in the *Macquarie Dictionary*, 3rd edition.

¹³ (1976) 133 CLR 612, at 620.

the practice of site valuation unduly complex: as work below the surface (such as footings) would not be an improvement that was to be disregarded for the purpose of site valuation. In turn, this makes it unlikely that the Parliament intended that the concept of an improvement be limited to work done (or material used) above the surface level of the land.

- 24 There are other difficulties with the Valuer-General's argument. It assumes that land does not include in its mass that which is beneath its existing surface.¹⁴ If land is to include all its strata, then an improvement below the natural surface might still be "on" the land, even in the sense of being above and in contact with a supporting surface. Further, if an excavation is made which reduces the surface level of land could it not be said that the resulting improvement is then on top of the land. However it is unnecessary to explore these difficulties, as I am of the opinion that the reference to "on" the land is intended to refer to the object of the work done (or material used).

Excavation

- 25 The Valuer-General then submitted that excavation of land for the purpose of providing car parking to be contained in a building is an improvement comprising "the removal of ... rocks, stone or earth" and therefore fell within paragraph (b)(i) of the definition of improvements. Because such improvements are excluded from the definition of "improvements", the Valuer-General contended that the site value of the land ought be determined without assuming that those improvements had not been made: in other words, that any added value of the land as a result of the excavation be included in the site value.¹⁵
- 26 The Valuer-General submitted that the excavation of land for the purposes of creating underground levels for a building to be constructed on that land involved the removal of rocks, stone or earth within the ordinary meaning of those words. By contrast, the council and the applicant argued that the context in which the expression is used indicated that it was not intended to embrace the removal of rocks, stone or earth where this was part of the process of erecting a building.
- 27 The question raised by the Valuer-General does not appear to have arisen for decision under Victorian legislation. However a similar issue has been addressed in New South Wales in the context of the *Valuation of Land Act* 1916 (NSW). In *Commissioner for Railways v Wynyard Holdings Limited*¹⁶ the question arose concerning the value to be attributed to the excavation of land relating to the Wynyard Railway Station in Sydney. A preliminary

¹⁴ Compare *Commonwealth v New South Wales* (1923) 33 CLR 1 at 33 per Isaacs J and *Gas and Fuel Corporation of Victoria v City of Williamstown* (1978) 40 LGRA 390 per Harris J.

¹⁵ The Valuer-General acknowledged that this exclusion was subject to the "fifteen year rule", that is that the improvements were not excluded where they can be shown to have been made by or at the expense of the owner or occupier of the land within a period of fifteen years before the relevant valuation. The fifteen year rule did not apply in the context of the subject land.

¹⁶ (1969) 17 LGRA 269.

question was whether or not the excavation was a “site improvement” within the definition contained in the New South Wales Act that was in force at the relevant time. That definition relevantly provided that “site improvements” included “the excavation, grading or levelling of land, not being works of irrigation or conservation”. Else-Mitchell J concluded that an excavation of land will be a “site improvement” if it in fact operates to improve the land.

28 In *Perpetual Trustee Company Limited v Valuer-General*¹⁷ the Land and Environment Court of New South Wales was required to determine a question whether an excavation made for the purposes of an underground car park beneath a high rise building was a “land improvement” within the meaning of the New South Wales Act that was in force. The Act had been amended since the decision of Else-Mitchell J in *Wynyard Holdings* and the new definition – now called “land improvement” – relevantly included:

- (d) The restoration or improvement of land surface by excavation, filling, grading or levelling, not being works of irrigation or conservation.

Bannon J accepted that the excavation would have fallen within the definition of “site improvements” in the terms considered by Else-Mitchell J in *Wynyard Holdings*. However he held that the excavation did not fall within paragraph (d) of the definition of “land improvements” as he did not see it as an improvement “to the land surface”. Notably the definition of “land improvements” in the New South Wales Act was subsequently amended to reverse the effect of the decision of Bannon J. The amendments added a further paragraph to the definition of “land improvement” as follows:

- (d) (i) Without limiting paragraph (d) any excavation, filling, grading or levelling of land for the purpose of the erection of a building, structure or work, not being for the purpose of irrigation or conservation.”

29 I find the New South Wales decisions of little assistance. First, the two decisions seem inconsistent; unlike Bannon J, I am not persuaded that the change in the applicable statutory provisions justified different outcomes. Second, the Victorian legislation does not use the word “excavation”, which carries a different connotation to the removal of earth. Third, there does not appear to be any reference to the purpose of the provision or the practicality of adopting a particular approach.

30 The Valuer-General accepted that any retaining walls or other supporting structures required to maintain the structural integrity of the excavation would not themselves fall within the exclusion in paragraph (b)(i) of the definition of improvements.¹⁸ But the Valuer-General contended that the

¹⁷ (1994) 83 LGERA 206.

¹⁸ By reason of paragraph b(ii) of the definition, a retaining wall is excluded if it is appurtenant to the draining or filling of land; but not, it would seem, if the retaining wall was appurtenant to the excavation of land.

(additional) value of the excavation may be determined on the basis that supporting structures are present, but without including the value of those structures as part of the value of the excavation.

- 31 It is now trite law that the meaning of individual words is influenced by, and may depend upon, the context in which they are used. This requires consideration of the whole of the definition of the term “improvements”, as well as the purpose sought to be achieved by the concept.
- 32 It is striking that the various improvements identified in paragraph (b) of the definition all relate to works which change the form of the land as such. Although this observation does not provide an answer to the Valuer-General’s contention, it provides some support to the answering submission that paragraph (b) is not at all concerned with changes to land form that are part and parcel of the construction of a building.
- 33 It is also significant that to fall within paragraph (b) the improvements must “comprise” one or other of the identified works. The council and the applicant submitted that this meant “consisted of”; and thus did not include works specified in paragraph (b) that were inseparable from works that were not specified in paragraph (b). In my opinion there is much force in this submission.
- 34 I also agree with the submission made by the council that it is illogical to separate the construction of a basement from the excavation needed to undertake the construction. Virtually every building affixed to land has a structure contained in an excavation into the land: whether it be a column, or a pier, or a stump, or a concrete footing, or a raft slab. When land is excavated for this purpose, the excavation ought be regarded as part and parcel of the building and to have merged into the building.
- 35 The evidence illustrates that the excavation of land within the central business district of Melbourne is not feasible without accompanying works to shore up adjoining land and public streets. It is common that these shoring up works consist of “soldier” piers that are built before the land is excavated and then left in place. Indeed, it is common that these piers ultimately form part of the construction of the building. Hence, once construction is completed, the excavation and the building are inseparably connected and the excavation no longer exists as a separate thing as it once did. Thus, in reality, there is but one improvement: namely the building with all it entails, including its occupation of the formerly excavated space.
- 36 The adoption of the interpretation sought by the Valuer-General would also produce unworkable and absurd outcomes. In relation to the site value of commercial land it would make the task of performing a general valuation of site values much more complex and time consuming. Moreover, there could be no basis to adopt a different interpretation depending upon whether the land was commercial land or residential land.

- 37 In a detailed submission the council referred to the history of the definition of “improvements” in the Act, pointing out that the definition seems to have drawn on the New South Wales Royal Commission into Rating, Land Valuation and Local Government Finance chaired by Justice Else-Mitchell. To the extent this can be relied upon as indicating the intent of the Victorian Parliament, it supports the notion that excavations for buildings should be regarded as merging with the land, not the contrary.¹⁹
- 38 Finally, I would note that it is likely to be difficult to find market evidence about the added value an excavation might deliver to a site. Although this is not a reason to adopt one statutory interpretation rather than another, it suggests that the Valuer-General’s contention might be futile, as well as complex and time consuming.
- 39 For these reasons I have concluded that the second question ought be answered in the negative.

The assessment of site value

- 40 It is desirable that I briefly reflect on the concept of site value and methods of assessing site value.
- 41 The concept of the “value” of land is simple enough, even though often difficult to assess. Traditionally this has been based upon the principle of a transaction between a willing buyer and a willing seller. This concept was elaborated upon by Isaacs J in the oft-quoted case of *Spencer v The Commonwealth*.²⁰ A contemporary interpretation might be the amount that would result from voluntary bargaining between a vendor and a purchaser, both being fully knowledgeable of the property being transacted and of all the factors that influence its value.²¹
- 42 Site value is an artificial construct; that is, it depends on assumptions. However the valuation of vacant land will generally require no assumptions, with the result that the *Spencer* principles can be used without modification. However in a case like the present, where the land is improved by a substantial building, it is necessary to make an assumption (or assumptions). This can make the valuation process difficult.

Methods of assessing site value

- 43 The Privy Council has sought to explain the way in which unimproved value is to be assessed. In *Toohey’s Ltd v The Valuer General* it made the following observations in relation to the concept of “unimproved value” (which is a similar concept to site value):

Words could scarcely be clearer to show that the improvements were to be left entirely out of view. They are to be taken, not only as non-

¹⁹ *Report of the Royal Commission of Inquiry into Rating, Valuation and Local Government Finance*, July 1967, paragraph 3.51.

²⁰ (1907) 5 CLR 418, at 441.

²¹ Compare Michael Fibbens, “Principles and Methods of Valuation”, in *Valuation Principles and Practice*, First Edition, Australian Institute of Valuers and Land Economists, at page 1.

existent, but as if they never had existed. It is, therefore, to approach the question from a completely wrong point of view to begin with a calculation which takes in the improvements and then proceed by means of subtraction of a sum arrived at by an independent valuation in order to find the required figure. What the Act requires is really quite simple. Here is a plot of land; assume there is nothing on it in the way of improvement; what would it fetch in the market?²²

In *Tetzner v The Colonial Sugar Refining Co Ltd*²³ the Privy Council qualified this by observing that the assumption required by the statute was that the improvements “had not been made” – not that “they never had existed” – so that improvements on all other land ought be taken into account in assessing the unimproved value of a particular property, even if those improvements were consequential on the improvements required to be disregarded.

- 44 The “simple” method identified in *Toohy’s Ltd* is not always easy to apply in practice. This is because there may be few, if any, sales of vacant land which are comparable to the subject land when the latter is assumed to be without improvements. Hence it is now recognised that it is also legitimate to assess site value by assessing the value of the land as improved, calculating the value of the improvements, then deducting the latter from the former to deduce site value.
- 45 The “improved sales” method is recognised in section 2(2) of the Act, which I have set out in paragraph [8]. But I do not regard this provision as establishing the only or the main method of assessing site value. Rather the purpose of the sub-section is to emphasise that when using this method the value of the improvements is not the *cost* of those improvements (or the current day cost of those improvements), but the sum by which the improvements increase the value over the value it would have if it was vacant.

The *Maurici* decision

- 46 The decision of the High Court of Australia in *Maurici v Chief Commissioner of State Revenue*²⁴ might be thought to place some of the matters I have set out in doubt. However this is not so.
- 47 The legislation considered in *Maurici* was section 6A of the *Valuation of Land Act 1916* (NSW) which, although different to the Victorian legislation, adopted the same essential framework. The issue involved the assessment of the unimproved value of a parcel of waterfront land at Hunters Hill, a settled Sydney suburb in which there were few vacant residential sites. Commissioner Nott of the New South Wales Land and Environment Court accepted evidence that the unimproved value was to be

²² [1925] AC 439, at 443.

²³ [1958] AC 50.

²⁴ [2003] HCA 8, (2003) 212 CLR 111.

ascertained by reference to vacant land sales, effectively disregarding sales of improved land. The High Court held that this approach was erroneous.

- 48 The High Court observed that the traditional, and usually unexceptional, method of valuation is to seek out relatively contemporaneous sales of comparable properties between parties at arm's length, unaffected by special circumstances, and to use those sales as a yardstick for the valuation of the relevant land.²⁵ The court then observed that the method adopted by the valuer upon which Commissioner Nott relied was defective as being unduly selective (being confined to sales of vacant or substantially vacant land). The court said:

They were not representative of sales in Hunters Hill. This must be so, because, as both sides accept, vacant land in Hunters Hill is scarce, if not to say, very scarce. The approach of the respondent, taken to its ultimate conclusion would mean that if there were one only (reasonably comparable in location, outlook and other relevant features) vacant parcel of land left in a district, the likely or actual recent sale price of that parcel would effectively set the value for each and every improved parcel of land in that district.²⁶

One might question the logic of the position adopted by the parties and upon which the court was required to proceed. Every parcel of land in Hunters Hill was potentially a vacant parcel; all that would be required would be that the purchaser would demolish any improvements on the land, which would usually involve a relatively modest cost. Thus a vacant parcel of land does not exist in a market where there is limited supply (or scarcity) of vacant lots; it is part of a broader market that includes properties that can readily be made vacant by the demolition of existing improvements. This being so it is difficult to understand why the parties accepted that the sale of a vacant parcel, or a few vacant parcels, was affected by a "scarcity" factor. In any event, I would note that in the present proceeding no party sought to rely upon any argument based upon this so called "scarcity" factor.

- 49 The *Maurici* decision has been carefully considered by the New South Wales Court of Appeal in *AMP Henderson Global Investors v The Valuer General*²⁷. Speaking for the court, Tobias JA said that, in his opinion, *Maurici* stood for the following propositions only:

- (a) Section 6A(1) of the Act does not require when utilising the comparable sales method of valuation that only sales of vacant land should be considered.
- (b) Confining one's consideration to only sales of scarce vacant land and disregarding sales of improved land which would otherwise be as comparable as the vacant land sales in terms of timing, location, outlook and other relevant features, offends the

²⁵ [2003] HCA 8, (2003) 212 CLR 111, at 120[16].

²⁶ [2003] HCA 8, (2003) 212 CLR 111, at 120[17].

²⁷ [2004] NSWCA 264, at [66].

principle that a reasonably representative group of comparable sales should be considered when applying that methodology.

Tobias J continued that, in his opinion, *Maurici* does not stand for the proposition that if the *only* comparable sales are those of vacant land, they must be rejected because they are too few in number to constitute a “representative group of comparable sales”. He observed that *Maurici* proceeded upon the assumption, and also the fact, that there were many sales of improved land in the vicinity of the land to be valued which could have been established as comparable and the fact that those sales were of improved land would not detract from their comparability. I agree with Tobias JA as to what the *Maurici* decision stands for; and what it does not stand for. I would add that it does not stand for the proposition that improved sales are generally more reliable than unimproved sales in determining the unimproved value of land.

Comparing sales

- 50 As the High Court has explained, the principal method of valuing land is to seek out relatively contemporaneous sales of comparable properties and to use those sales as a yardstick for the valuation of the relevant land. Thus if particular land was sold on the relevant date for valuation, and the land was in the form to be valued (for example, it was vacant land), and the sale was not affected by special factors (such as a distressed seller), then that sale would be a perfect yardstick in valuing that land. But rarely is the valuer that lucky. The more usual occurrence is that there are some sales that are comparable, but require either adjustment to be an accurate yardstick or to be given reduced weight in making a valuation judgment.
- 51 It is sometimes thought that sales are either comparable or not comparable: that is, a binary paradigm should be used to classify sales. In my opinion, this is a flawed approach. Rather there will be gradations of comparability: from identical to irrelevant. As this scale of comparability approaches the irrelevant end, there will be many sales that offer so little assistance that they ought to be disregarded. Further, there will be circumstances where there is a sale or sales that are strongly comparable; in which case there will be no need to closely analyse other sales, even though these may be comparable in some way.
- 52 The strength of the comparison between a sale and the land to be valued will depend on a comparison of the different circumstances. Suppose the land to be valued was sold, in the same condition, one year before the date of valuation. The sale may or may not be directly useful in the valuation: whether it is will depend on evidence of general market movements over the period between the sale and the date of valuation. However, even if there is evidence of substantial market movements over that period, the sale may still be relevant provided adjustments are made for that general market movement. As a matter of logic, a sale after the valuation date is just as relevant as a sale before that date. However it will still be necessary to

consider market movements or trends in deciding what weight to give such a sale or whether to make adjustments to it before comparing it with the subject land.

- 53 The comparable size, location and condition of land must also be taken into account in a similar way. Similarly, the use to which land might be put must be considered. This exercise might produce the result that a sale is so dissimilar that it should be disregarded; or it might produce the outcome that a sale needs to be adjusted before being applied; or it might produce the outcome where a sale is given more or less weight in the exercise of a valuation judgment.
- 54 When the valuer is required to assess the *site* value of land the task of comparing sales is often more complex, as it may be necessary to consider the sales of improved land. By definition the sale of land with improvements that add value is not directly comparable with the land to be assessed for site value. Although there are methods of making the necessary adjustments, this may introduce an element of uncertainty into the process. This will tend to be so if the adjustments require the valuer to exercise a value judgment and if the final outcome is particularly sensitive to the adjustments that are made.

The reliability of different methods

- 55 In my opinion, the direct method of assessing site value by reference to vacant, or near vacant, land sales will usually be much more reliable than the indirect method of analysing improved sales then making a deduction for improvements. Of course this will depend on the availability of sales of vacant, or near vacant, land which is comparable to the subject land. And this observation does not justify a disregard for relevant and credible evidence based upon improved sales.
- 56 It is extremely difficult to reliably assess the *added* value of improvements. This is because there is no separate market for improvements that are attached to land.²⁸ Rather, the improvements must be sold with the land.
- 57 The difficulty exists even if the improvements have been freshly made. When a speculative builder erects a house, the builder hopes the added value will exceed the cost of the house. But builders have been known to over-capitalise land; and add improvements that cost more than the added value. So we know that whilst cost is a guide to the added value of improvements, it does not determine this. As Professor Whipple has explained, forces giving rise to prices in the building supply and construction markets are different from those operating in the real estate market.²⁹

²⁸ There may be some exceptions, such as transferable water rights.

²⁹ R T M Whipple, *Property Valuation and Analysis*, 1995, Law Book Company Ltd, 488-450. This extract contains a scathing and persuasive criticism of the depreciated replacement cost method.

- 58 When the improvements have been made many years ago, the exercise of valuing improvements becomes more complex. It is possible that a building on land does not add to land value at all; indeed, the building may even detract from land value by reason of the cost of demolition. One approach is to depreciate the cost of the building by reference to the building's age, condition and obsolescence. This is a legitimate approach; but one fraught with difficulty. This is because the adopted depreciation involves a significant element of judgment, yet has a substantial impact on the level of site value that is ascribed to a property.
- 59 The conclusions I have expressed in relation to the reliability of assessing site value by reference to the sale of improved land are consistent with those of referees appointed by the New South Wales Land and Environment Court to enquire and report upon relevant questions following the Court of Appeal decision in *AMP Henderson Global Investors Ltd v Valuer General*.³⁰ This was a case in which a similar method was used to that in this case. The referees observed:

... where there are "land sales" which provide a reasonably "representative group of comparable sales", it may not, and usually will not, be necessary to have regard to "improved sales". That is because in the case of the latter a very subjective deduction has to be made for the value of the improvements. The complexity and wide disparity of such deductions was clearly evident in both valuers submissions. Because this exercise involves a subjective judgment, its intrusion into the valuation process will tend to make the resulting valuation less reliable than it would be based upon a truly comparable set of "land sales".³¹

Subsequently, Cowdroy J found that there was no error in such an approach.³²

- 60 My conclusions are also consistent with decisions of the Queensland Land Court, including the recent, detailed, decisions in *Multiplex 240 Queen Street Landowner Pty Ltd v Department of Natural Resources, Mines and Water*³³ and *Multiplex 324 Queen Street Landowner Pty Ltd v Department of Natural Resources, Mines and Water*³⁴.

Identifying highest and best use

- 61 Counsel for the applicant argued that it was necessary to identify a *precise* highest and best use for the land being valued before embarking on the process of ascertaining and considering comparable sales.
- 62 Highest and best use represents the most profitable potential use to which land can be put having regard to both planning and like controls and the

³⁰ [2004] NSWCA 264.

³¹ Quoted in *AMP Henderson Global Investors Ltd v Valuer General* [2006] NSWLEC 16 at [48].

³² *AMP Henderson Global Investors Ltd v Valuer General* [2006] NSWLEC 16.

³³ [2007] QLC 10.

³⁴ [2007] QLC 36.

circumstances of the land. It is to be distinguished from the present use of land; although the present use might also be the highest and best use. When land is sold, the market values the land at its highest and best use: as buyers will not be constrained to continue the existing use; and the seller will seek to achieve the highest price for the land. This is why highest and best use is relevant in assessing value, whether improved value or site value.³⁵

- 63 As Jacobs J pointed out in *Adelaide Clinic Holdings v Minister for Water Resources*³⁶ highest and best use is not the value of land assuming there are no planning or like controls. Rather it is the most profitable use having regard to the physical, economic and legal constraints on the use of the land.
- 64 Often the highest and best use of land will be obvious, but this will not always be so. In a residential zone the highest and best use of a 500 square metre parcel in Cranbourne is likely to be for a single detached house. But if this parcel was in Richmond, the highest and best use might be as a small apartment block with, say, three dwellings. When land is in a business zone the identification of the highest and best use becomes even more complex: this is because the range of permitted uses is broader, and the identification of highest and best use will involve identifying both the nature and the intensity of use.
- 65 In a mixed zone, such as that applicable in central Melbourne, different categories of buyers of land compete for opportunities. Some buyers might seek to maintain land in its present condition and seek a rental return. Other buyers might buy to “land bank” with a view to selling or developing the land at some future time. Other buyers may seek to develop the land for commercial uses. Yet other buyers may seek to develop the land for residential purposes. The highest and best use in this situation is the use to which the highest bidder wishes to put the land.
- 66 When it comes to the assessment of site value, the land is to be assumed to be without improvements that add value. Land in such an assumed state may not attract the investor seeking a rental return; but the land banker, the office developer and the residential developer will all compete in the market to purchase the land. Indeed there will be developers who build both offices and apartments or some mix of the two, depending on what is regarded as more profitable. The decision as to how to develop the land might not even be made at the time of the purchase.
- 67 The applicant’s submission does not recognise the reality of the marketplace. In my opinion, at least, in the circumstances of this case, it is not necessary to identify a precise highest and best use of the land in order to assess site value. I would add that, if the highest and best use must be ascertained, it might be identified in general terms: such as an intense use

³⁵ See *Spicer v Valuer General* (1963) 10 LGRA 319, at 320 per Else-Mitchell J.

³⁶ (1988) 65 LGRA 410, at 415.

for office, residential, hotel, club or retail purposes (or some combination of these); without specifying a single, precise use.

- 68 I accept that in identifying comparable sales it will be relevant to consider what uses are likely to be most profitable for the subject land and to look for sales of land with similar characteristics in that respect. And if a sale was in respect of land with a different use profile, then it might be disregarded or be accorded less weight. But where realistic options for the development of land might be a residential tower or an office tower, the sale of such land is likely to be relevant even if the actual purchaser had one or other type of development in mind when the land was purchased.³⁷

FACTS

Characteristics of the subject land

- 69 The land has a frontage to William Street of 46.12 metres and a frontage to Little Collins Street of 36.36 metres. The total site area of the land is 1,858 square metres. A light and air easement, approximately 3.9 metres wide, runs along the eastern boundary of the site. There is also a footway easement, approximately 1 metre wide, which runs along the Little Collins Street frontage.
- 70 The land is zoned “Capital City Zone 1 – Outside Retail Core” pursuant to the Melbourne Planning Scheme. The purpose of this zone is to provide for a range of financial, legal, administrative, cultural, recreational, tourist, entertainment and other uses that complement the capital city function of the locality. Significantly, land within this zone may be used and developed for both commercial (office) uses and for residential uses.
- 71 The land is centrally located within Melbourne’s central business district. Traditionally Collins Street has been a major street containing office accommodation, particularly east of King Street. However there are also substantial offices in Bourke Street and William Street. Major tram services operate along Collins Street and Bourke Street. There is also a less frequent tram service along William Street. The subject land is within reasonable walking distance of railway stations which form part of the City Loop.
- 72 At the relevant dates of valuation the property was improved by a 25 level office building, comprising basement car parking for 100 vehicles over two levels, a ground floor foyer and retail tenancies, and 22 upper levels of office accommodation. The property had a net lettable area of approximately 20,912 square metres.

³⁷ I am not persuaded that the decision of the Land Appeal Court of Queensland in *Department of Natural Resources and Mines v QNI Metals Pty Ltd* [2002] QLAC 71 affects this analysis. In this respect I adopt what was said in *Multiplex 240 Queen Street Landowner Pty Ltd v Department of Natural Resources, Mines and Water* [2007] QLC 10. Nor am I persuaded that section 5A of the *Valuation of Land Act* affects the analysis.

- 73 Evidence was given to the effect that the existing building on the site could easily be adapted to residential use. However I do not regard this evidence as relevant to an assessment of the site value of the land. As I have explained, this task is to be approached by assuming that there is nothing on the land by way of improvement.

The market over time

- 74 One matter which has commanded agreement in these proceedings is that the relevant market was relatively stable between 1 January 2002 and 1 January 2004. This means that sales during that period, and shortly before 1 January 2002 and shortly after 1 January 2004, are likely to provide guidance without the need to make any adjustment for time.
- 75 Because the parties also relied on sales before and, indeed, after, the 2002-2004 period, it is necessary to say something about the general movement in the market over a longer time frame.
- 76 As I have explained, purchasers of vacant, or near vacant, land in the central business district of Melbourne are usually developers or speculators. These types of purchasers have a strong focus on the likely movement in the market; and land values are strongly influenced by perceptions as to demand from end users that will arise two or three years down the track.
- 77 Mr Grant Jackson, who is an experienced valuer and a director of the company “m3 property”, gave evidence that, after accelerating through 1999 and 2000, demand for office space in the Melbourne central business district went into reverse during 2001. He said that in 2002, as the market was expected to experience an oversupply, there was a tendency for major developers to avoid purchasing development land in Melbourne in favour of other commercial markets around Australia. Mr Jackson said that in 2002, given the lack of demand from potential purchasers, if sales were to occur they would most likely be at levels below that experienced in 1998 and 1999 when supply conditions were more favourable.
- 78 Mr Mark Karutz, a senior valuer employed by the council since 1998, gave evidence that the commercial property market had performed strongly since the late 1990s and that prior to January 2002 the commercial market had achieved significant growth in all areas, including office rentals, as demand for space outweighed supply. Mr Karutz was of the view that in relation to site values the market peaked in mid to late 2002 and settled at that level to at least 2004. Mr Karutz gave evidence that he had analysed and mapped all sales in the central city over an extended period and considered that, from 1999 onwards, these sales retained some relevance and indicated – at a minimum – the lower level of land value in the City of Melbourne.
- 79 Based upon this evidence, I find that sales from 1999 to 2004, inclusive, are relevant; although caution needs to be used in placing reliance on sales distant in time from the relevant dates. However it would also seem to be

common ground that the market picked up from 2005 onwards, with the consequence that more recent sales need to be treated with great care.

Short summary of evidence

Jackson

- 80 The applicant relied upon the evidence of Mr Jackson, who assessed the site value of the land to be \$3,720,000 as at both 1 January 2002 and 1 January 2004. This is the equivalent of a rate per square metre of \$2,000.
- 81 Mr Jackson identified that the highest and best use of the land, if vacant, would be consistent with the existing use of the land, being commercial office accommodation. He regarded the identification of the highest and best use as an important step in his assessment.
- 82 Mr Jackson's approach was to first adopt the method of a direct comparison with sales of vacant sites which had been sold for the development of commercial office buildings within the Melbourne central business district; then comparing the sales, on a rate per square metre of land area, to the subject land.
- 83 Mr Jackson then had regard to the sales of improved commercial properties within the locality of the subject land. Mr Jackson analysed these improved sales so as to derive a rate per square metre in respect of the land component of each property. This analysis involved obtaining an estimate of the replacement cost of the building on each property which had been sold and then making an allowance for depreciation.
- 84 Mr Jackson also referred to some vacant land sales which had occurred several years prior to the relevant dates; and to a VCAT site value determination made in respect of the land at 15 William Street, Melbourne in respect of the date 1 January 2002.
- 85 Using both the vacant land sales and the improved sales, Mr Jackson arrived at his assessment in relation to the subject land. The key vacant land sale which Mr Jackson relied upon was a sale of land at 565 Collins Street in February 2003. This land had an area of 3,942 square metres and was sold for \$8,500,000, which is the equivalent of \$2,156 per square metre. Mr Jackson also relied upon his analysis of a number of improved sales.

Karutz

- 86 The council relied upon evidence from Mr Karutz, who assessed the site value of the land at \$5,568,000 as at 1 January 2002 and \$5,940,000 as at 1 January 2004. These were the same values as were returned by the municipal valuer. These values are the equivalent of rate per square metre of \$3,000 and \$3,200.
- 87 Mr Karutz explained the process that had been adopted in conducting the municipal wide valuation. He explained that council's original valuations

were the product of a “mass appraisal”; whereas his valuations of the subject land for the purpose of his evidence was a subsequent and independent confirmation of the outcome of the mass appraisal.

- 88 Mr Karutz took the view that land having the character of the subject land might be used for offices, residential purposes, hotel purposes or retail purposes, or some combination of these purposes. He stated that these various land uses had been undertaken in the locality over the last few years and concluded that the best direct comparison was for sales of land with similar potential: that is, sales of similarly zoned land offering comparable amenity and suitable for some form of intensive development. He did not confine himself, like Mr Jackson, to the sale of land having potential for a commercial office. However he did acknowledge that the most probable use of the subject land would be for an office development.
- 89 Mr Karutz relied upon both unimproved sales and improved sales. In relation to improved sales his method of analysis was superficially similar to that used by Mr Jackson, but seemed to place considerable importance upon the site value levels which had been determined by the mass appraisal method of valuing central business district properties.

Kensley

- 90 The Valuer-General relied upon the evidence of Mr Alistair Kensley, an experienced valuer and employee of Charter Keck Cramer, property consultants. Mr Kensley initially assessed the site value of the land at \$5,900,000 as at both 1 January 2002 and 1 January 2004. However Mr Kensley revised his assessments to \$5,700,000 when asked to assume that the Valuer-General’s legal contentions concerning the excavated state of the subject land were not accepted. This is the equivalent of an average rate per square metre of \$3,068.³⁸
- 91 Mr Kensley relied upon sales of vacant (or near vacant) land, as well as the sale of improved properties. He gave greater weight to the sales of vacant land than improved sales. However Mr Kensley did not give much weight to the sale of the land at 565 Collins Street, Melbourne. Mr Kensley considered the sale of improved properties using a similar method to Mr Karutz.

The credibility of the valuers

- 92 Counsel for the applicant submitted that I should prefer the evidence of Mr Jackson to that of the other two valuers. I accept that of the three valuers who gave evidence, Mr Jackson was the most polished and the valuer who demonstrated the closest familiarity with the Melbourne commercial market. I also accept that he was the valuer who had the most experience in relation to the valuation task at hand. But I am not persuaded that this case is to be resolved on that basis. Rather it is to be resolved by the tribunal

³⁸ In his initial report Mr Kensley adopted a different rate for the easement affected land at the east of the subject land; but it is easier to compare rates if a common averaged rate is used.

considering the intellectual foundation of each valuation and the evidence supporting each valuation. Not only is this the most reliable method to ascertain the correct answer, but also it acknowledges the possibility that an expert might be tempted to promote the case of the party on whose behalf they appear.

Highest and best use

- 93 Assuming that the improvements on the subject land had not been made, I find that the highest and best use of the land was for intensive development with a tower building (of a similar volume to the existing building) and underground car parking, to be used for either office purposes or residential purposes or institutional purposes³⁹ or some combination of these. I accept that the most probable of these uses would be an office use. I also find that the ground floor level of any such intense development would most probably be used for a retail or quasi retail purpose.
- 94 I do not accept the submission by the applicant that at the relevant times there were two separate and distinct markets (office and residential) operating in the central business district of Melbourne. Nor do I accept the submission that all the valuers proceeded on this basis. It is true that the council reported on each of the residential market and the office market; but in so reporting it was talking about end user markets. But the assumed state of the subject land places it in a “developers’ market” (and, possibly, in a “land bankers’ market”), where both office use and residential use would have been in contemplation by different players in this market.

Comparable sales

- 95 The key sales relied upon by the valuers are set out in Table A (vacant and near vacant land) and Table B (improved land). More detailed findings about some of these sales are set out in the Appendix to these reasons. The sales are set out in the tables in chronological sequence.

**Table A
Vacant Land Sales**

Address	Description	Land Area sq m	Date of Sale mm/yy	Jackson \$ per sq m	Karutz \$ per sq m	Kensley \$ per sq m
Cnr Bourke/William Sts	Grand Central	6,947	04/98	\$1,888	\$3,000	
483-501 Bourke St	RACV	6,483	09/99	\$3,000	\$3,280	\$3,000
95-129 Bourke St	Southern Cross	9,573	07/01	\$3,064		
9-27 Downie St		1,187	08/01			\$3,370
542 Little Bourke St	BCL car park	1,683	10/01		\$3,000	\$2,971
393-403 Bourke St	Bunnings	4,954	09/02		\$3,458	\$3,700
565 Collins St	565 Collins	3,942	04/03	\$2,156	\$2,150	\$2,156
182-200 Spencer St		1,969	10/03		\$4,150	\$4,151

³⁹ I include in this category a use for a club or a government entity, such as a large tribunal.

52-64 Latrobe St		5,961	08/04	\$1,563		
677-689 Bourke St	Savoy site	1,830	04/05		\$5,400	\$5,410

- 96 I find that there have been sufficient sales of vacant, or near vacant, land to provide a sound guide to the site value of properties within the central business district of Melbourne; and, in particular, the subject land.
- 97 In respect of the subject land, the RACV sale, the Bunnings sale and the sale of 565 Collins Street received particular attention, as different valuers emphasised the importance of these. I regard these sales as the most relevant of the vacant (or near vacant) land sales in the assessment of the site value of the subject land. The location of the first two of these sales make them significant. The likely use and the timing of the sale of 565 Collins Street makes it a significant sale.
- 98 I do not find the sale of the land at 52-64 Latrobe Street as sufficiently comparable to be regarded as relevant. The land the subject of this sale is some distance from the subject land, it is of an unusual shape, its main frontage is to a street of lesser status than William Street; and it is a sale that requires some analysis to produce a square metre land rate (which may tend to introduce error).
- 99 I find the remaining sales in table A are relevant, but of lesser weight to the three sales I have identified. I will refer to these sales in the body of these reasons, but leave more detailed analysis to the appendix.
- 100 Table B contains the improved sales initially relied upon by the valuers.

**Table B
Improved Sales**

Address	Description	Land Area sq m	Date of Sale mm/yy	Jackson \$ per sq m	Karutz \$ per sq m	Kensley \$ per sq m
114 William St	Qantas House	1,858	10/02	\$1,566		
40 Market St		2,309	10/03	\$1,569		
555 Collins St	Enterprise House	2,241	04/03	\$1,539		
589 Collins St	Transport House	3,817	01/03	\$1,537		
374 Latrobe St	AWB site	2,915	10/01		\$3,450	
433 Collins St	AXA	2,963	11/04		\$4,000	

- 101 For different reasons, I do not regard the improved sales analysis by any of the valuers as reliable. Hence I cannot rely on these sales as comparable sales.

The reliability of the improved sales analysis

102 The reason that I find the improved sales analysis of Mr Karutz (and Mr Kensley) unreliable is that the method used involves circular reasoning. The reason that I find the improved sales analysis of Mr Jackson unreliable is that the method depends on fine judgments, particularly in relation to depreciation, that are inadequately unsupported; and the site valuation outcome is highly sensitive to these judgments.

The Karutz/Kensley method is a circular method

- 103 In a VCAT proceeding concerning 15 William Street, Melbourne the tribunal criticised the method used by a valuer for the council for assessing site value by reference to the sale of improved land. The method was to analyse the sale of improved properties upon the basis that the valuer already knew the value of the land component by reference to many other sales of unimproved land in the area. The tribunal observed that this method represented “begging the question”.⁴⁰ Notwithstanding that criticism, Mr Karutz (and Mr Kensley) used a similar method in their analysis of improved sales.
- 104 It may be that this method is suitable to assess the value of improvements, which can then be used as a check method in successive valuations across the municipality. But I question its integrity when used as a method to assess the site value of a particular site, as the site value outcome seems dependent on the site value that is assumed. The method is essentially circular: what is assumed as the land component must always end up as the result of the analysis. Moreover, the ingredients for the initial assumption will usually be sales of vacant, or near vacant, land. Thus a more direct – and intellectually satisfying – approach will be to make a direct comparison with those sales.
- 105 The method adopted by Mr Karutz in analysing improved sales is made more obscure because he did not clearly identify the sales of vacant, and near vacant, land which produced the assumed site values. I appreciate that in conducting the municipal valuation some general inferences will need to be made about the spatial pattern of raw land values; and a map of site values might be prepared. But when it comes to justifying the site value of a particular site it will be necessary to do more than apply a figure indicated on a map.

The Jackson method is unreliable

106 The improved sales relied upon by Mr Jackson were in respect of 40 Market Street, 555 Collins Street, 589 Collins Street and the subject land itself. The essential method used by Mr Jackson was to use a “cost less depreciation” method to determine the added value of improvements, which (together with other deductions in respect of existing tenancies and holding

⁴⁰ *AMP Henderson Global Investors Ltd v City of Melbourne* [2003] VCAT 2046.

costs) was subtracted from the sale price of the property to deduce site value.

- 107 There are two main problems with this method. First, the selected depreciation rate is not based upon market evidence. Second, when there are substantial improvements on land, the method is extremely sensitive to the selection of the depreciation rate.⁴¹
- 108 In relation to the second problem, I note that a variation of, say, 5% in this rate will produce dramatically different site value outcomes. Yet one can have no confidence that a particular depreciation rate is more accurate than one 5% higher or 5% lower than the selected rate. As an example, in Mr Jackson's analysis of 555 Collins Street, he selected a depreciation rate of 70%. However if he had selected 67.5% the resulting land value would have been 50% lower than what he assessed. And if he had selected 75% the resulting land value would have been more than double that which he had assessed.
- 109 It is to be noted that the reasons given by Mr Jackson for selecting a particular depreciation rate for each analysed sale were much the same, yet the rates adopted varied from 40% to 70%. Although this does not show Mr Jackson to be wrong, it underscores the qualitative nature of the selection of an appropriate depreciation rate. It is this qualitative nature that robs the method of confidence. The Valuer-General invited the inference that, in selecting his depreciation rates, Mr Jackson had regard to the impact of the selected rate on the analysed site value.⁴² However it is not necessary to make such an inference to conclude, as I do, that the method is too unreliable in this case to provide a sound yardstick to the assessment of the site value of the subject land.
- 110 I note that Mr Jackson assessed the site value of the land at 555 Collins Street at \$1,539 per square metre and the site value of the land at 589 Collins Street at \$1,537 per square metre. In my view these assessments are inconsistent with his assessment of the site value of 565 Collins Street at \$2,156 per square metre. It would be surprising if the land at 555 Collins Street, which has excellent exposure, is a corner allotment and is a smaller parcel, was worth less than the mid-block land at 565 Collins Street. The main consequence of this inconsistency is that it further undermines confidence in the improved sales assessments made by Mr Jackson.
- 111 The method of analysing improved sales also requires adjustments for the letting up period, interest charges and holding costs; and requires a judgment to be made about whether a developer's margin is to be added. All these factors add further uncertainty to any resulting calculation.

⁴¹ The method is likely to be more reliable when the ratio between the value of the improvements and the value of the land is weighted in favour of land value. I note that this would have been the case with the houses in Hunters Hill considered by the High Court in *Maurici*.

⁴² In this regard Mr Jackson was criticised for assessing the site value of the subject land at exactly the same amount as contended for in the objection lodged by his client, notwithstanding that he relied on different sales.

The sale of the subject land

- 112 Ironically, in none of the initial valuation reports did any of the three valuers assess the sale of the subject land itself, which occurred in October 2002. However each valuer made a subsequent analysis, using the same method which they had used for other improved sales.
- 113 Mr Jackson analysed the sale of the subject land as having a land component of \$1,566 per square metre, a figure below his valuation of \$2,000 per square metre. The applicant submitted that this difference was not inconsistent: but I would regard the difference as significant and illustrating that, in the context of assessing the site value of land containing major buildings, there are inherent difficulties in using a valuation method that relies upon an analysis of improved sales.
- 114 The irony with the sale of the subject land is that it requires no adjustment for time (being made at about the time of the two valuations and in a flat market) and no adjustment for location, yet it is still problematic as a guide to site value. Quite apart from adjustments to reflect tenancy arrangement, there is a need to make an adjustment for depreciation. In his analysis Mr Jackson adopted a depreciation rate of 40%, which resulted in a site value of \$1,566 per square metre. I find that the adoption of a depreciation rate of 40% is unconvincing – it could easily have been 45%. And if it had been 45%, this would have produced a site value in the order of \$3,000 per square metre.

Other valuations

- 115 Before passing to consider the key sales which determine these proceedings, I must refer to certain other valuations which the applicant relied upon in support of its case.

VCAT determination: 15 William Street

- 116 As at 1 January 2002, the council assessed the site value of land at 15 William Street, Melbourne at \$8,410,000. The property, formerly known as Monash House, comprises a 20 level office building, situated on the south-west corner of William Street and Flinders Lane.
- 117 An appeal was lodged with the tribunal against the assessment of site value. Following the appeal the tribunal reduced the site value to \$6,300,000.⁴³ As the land has an area of 4,211 square metres, this produces an analysed rate of \$1,496 per square metre.
- 118 The decision of the tribunal is curious in that it found itself unable to accept the approach of the valuer relied upon by the landowner; and it also found itself unable to accept the approach of the valuer relied upon by the council. The tribunal cogently analysed each valuer's evidence and made pointed and effective criticisms. However when the tribunal turned to making its

⁴³ *AMP Henderson Global Investors Ltd v City of Melbourne* [2003] VCAT 2046.

own assessment of the appropriate value its reasoning was fleeting. Because there is no apparent empirical basis for the tribunal's decision, I cannot regard the decision as providing guidance. I place very little weight upon it.

Council site valuations

119 The site value of properties recorded in the council's valuation records are also of no real assistance in the review of the site value of the subject land. For the council to rely upon such valuations would be to pull itself up by its own bootstraps. For the applicant to rely on such valuations would also be inappropriate: as it would assume that these valuations are correct. The purpose of a review is to reconsider a valuation which has been made. That process is not assisted by assuming the correctness of the council valuation, whether of the subject land or other land.

Key sales of unimproved land

483-501 Bourke Street, Melbourne (RACV)

- 120 This site was purchased by the RACV in November 1999 for \$20,000,000. The land has an area of 6,209 square metres, with extensive frontage to both Bourke Street and Little Collins Street. This land is in close proximity to the subject land. Mr Jackson analysed this sale at \$3,221 per square metre. Mr Karutz analysed the sale at a similar figure; and Mr Kensley analysed the sale at \$3,000 per square metre.
- 121 Mr Jackson gave evidence that the RACV paid a premium for the site as it had a requirement to secure a large site for redevelopment as its club within the same central business district block of the previous RACV Club. As a consequence he did not place weight upon this sale.
- 122 Mr Karutz also regarded the price paid by the RACV as containing a premium, which he (wrongly, in my view) described as "adjoining owner influence".
- 123 There is support for the fact that the RACV wanted to re-establish its club within the same part of the city as its former club, but whether this meant it had to purchase in the same block is doubtful. What is clear is that the RACV had to compete with other purchasers, who would have appreciated the attributes of the site but are unlikely to have been compelled to buy in a particular block; and only had to offer a price in excess of those other prospective purchasers. I find that it is unlikely that any "excess" was greater than 10% of the purchase price. Thus I would accept the rate ascribed to the site by Mr Kensley.
- 124 The fact that the RACV site was purchased for a mixed development, with a private club being the main component, does not make the sale irrelevant to the assessment of the site value of the subject land. The RACV would have had to compete in the marketplace with those proposing to build

offices and even dwellings. Moreover – and importantly – the RACV site is close by to the subject land.

125 I record that, for reasons given above, I do not regard as relevant the fact that the council has ascribed a site value for the RACV land at the equivalent of \$2,400 per square metre.

393-401 Bourke Street, Melbourne (Bunnings site)

126 This land was sold in September 2002 for \$17,130,000. The land has an area of 4,942 square metres. The site fronts Bourke Street, with a secondary frontage to Little Collins Street and was used for many years as a McEwans hardware store (later a Bunnings store). The improvements on the land have been subsequently demolished, with the exception of the four level façade fronting Bourke Street, which has heritage restrictions.

127 Mr Karutz analysed this sale: and this analysis indicated a range of values for the site between \$3,500 to \$4,000 per square metre, depending upon the treatment of the added value of the improvements. Mr Karutz adopted a value of \$3,700 per square metre.

128 Mr Kensley also analysed this sale, and arrived at a land value of \$3,458 per square metre.

129 I do not regard the fact that the Bunnings site was purchased for a residential development as meaning that it is not a comparable sale. I accept that the subject land would be regarded as more of an “office” precinct than the Bunnings site. But there are no hard and fast rules. There are major office towers adjacent to the Bunnings site, on the corner of Bourke and Elizabeth Streets and in Collins Street. If the market support was there, it would be no surprise to find another office tower on the Bunnings site. Equally, although the subject land is most obviously suited to an office tower, if vacant one could not rule out a purchaser wishing to erect a tower for residential or institutional purposes.

130 Although the Bunnings site is closer to the centre of the retailing precinct than the subject land, it is still comparable in terms of the quality of the location. Nevertheless, in terms of location, it is not as good a comparator as the RACV site. It may be that some downwards adjustment needs to be made to the Bunnings per square metre rate to reflect the fact that it is close to, or part of, the retail precinct.

131 On the other hand, the Bunnings site was more than three times the size of the subject land; and this factor needs to be taken into account in comparing a per square metre rate with the subject land. I accept that generally a larger site will attract a lower square metre rate, as the number of buyers, and the depth of the market, is less than with a smaller site.

132 The sale of the Bunnings site requires adjustment to account for the improvements on the site, which is made more complex by the fact that some of the improvements were required to be retained for heritage reasons.

Nevertheless, I find that the price reflects a rate significantly greater than \$3,000 per square metre for the land component; and that this rate is relevant to the subject land. The applicant made much of the fact that parts of the building were to be retained and recycled for residential use. But I am not satisfied that is of great moment, as the cost of recycling an old building (especially where there are heritage restrictions) is often comparable with the cost of erecting a new building.

565 Collins Street, Melbourne

- 133 This property comprises a large vacant development site with a wide frontage to Collins Street of 72.32 metres. It is situated between two office buildings of 23 and 18 levels respectively and is to the north of a 12 level car park. The land was purchased by a private investor controlled by Harry Stamoulis in February 2003. The purchase price was \$8,500,000. As the land has an area of 3,942 square metres, this translates into \$2,156 per square metre.
- 134 The land was sold in an excavated state, with the site being approximately 3 metres below its Collins Street level. However I find that this would not have had any noticeable impact upon the price paid for the land.
- 135 I regard this sale as important, but hardly decisive, in assessing the site value of the subject land. It is important because it was a sale of vacant land; the land was suited for intense development, including for office development; and the sale was around the time of the valuation dates. It is not decisive because it is just one sale; the sale occurred in circumstances that place doubt upon its reliability when considered as a separate sale; and the location of the land, west of King Street, was not as desirable at the time of the valuation dates as was the subject land.
- 136 I accept the evidence given by Mr Kensley that this sale was affected by the fact that the purchaser also purchased the office building at 555 Collins Street (from the same vendor). Mr Kensley explained that the sale of 555 Collins Street proved difficult and the vendor decided to use the vacant land at 565 Collins Street to entice a transaction which also involved selling 555 Collins Street. No doubt the vendor would have focused on the bottom line of the two transactions, whereas the purchaser would naturally have sought to structure the arrangement in a way that suited its own commercial ends, including maximising the depreciation tax benefits that flow from improved properties.
- 137 More significantly, I find that at the time this sale was effected there was a strong market perception that land in the central business district west of King Street was inferior to land east of King Street. In particular, I find that the subject land was significantly better located and was more attractive as a development site, whether for office or residential purposes, than 565 Collins Street. In this respect, I do not accept that a Collins Street address is everything; rather, I find that it depends where in Collins Street the land

is located. I accept Mr Kensley's evidence that, at the relevant dates, the locational attributes of the two sites were "oceans apart". The fact that 565 Collins Street has remained undeveloped for several decades – and through several property cycles - tends to confirm this observation.

- 138 It is arguable that a further adjustment needs to be made in respect of this sale for the size of the land. Generally smaller parcels tend to attract a higher price per square metre, probably because the total price is less and the market is deeper. However the development opportunities presented by a large parcel can sometimes result in a higher price per square metre. Notwithstanding Mr Jackson's evidence to the contrary, I am inclined to think the former force was more influential in the case of 565 Collins Street. However, in the end, I do not place reliance on this factor.
- 139 At the resumed hearing evidence was introduced that 565 Collins Street had been resold in May 2006 for \$25,100,000, which represents a rate of \$6,340 per square metre. The evidence was that the land had been exposed to open market competition and had received interest from a number of parties. The purchaser was proposing to erect office towers, though not necessarily of the design allowed by the permit that had passed with the purchase.
- 140 Mr Karutz gave evidence that since 1 January 2004 there had been a positive movement in the market, which had been reflected in investment property sales. But he thought the extent of the change in the market could not explain the sale of 565 Collins Street in February 2003 for only \$8,500,000. Rather he concluded that the recent sale tended to confirm the levels of value displayed by the sale of properties in or near Spencer Street, such as those at 182-200 Spencer Street, Melbourne and 677-689 Bourke Street, Melbourne (Savoy site).
- 141 Mr Jackson gave evidence that market conditions changed dramatically between 1 January 2004 and May 2006. He supported this evidence with details of the net absorption of office space in the Melbourne central business district over the period. According to Mr Jackson, it was this change in the market conditions – together with the value of the planning permit in respect of the land – which explained the substantial increase in the value of the land.
- 142 I find that the resale of 565 Collins Street does add to my doubts as to the reliability of the earlier sale as a comparable sale. However the resale is not itself a comparable sale, as it post-dates the relevant valuation dates by too long a period in which market conditions changed significantly. The reason the resale adds to my doubts on the earlier sale is that: first, there is no reason to question the recent resale as a fair indicator of the market in May 2006; and, second, the increment in value appears to be so large (more than a tripling of value). In making this latter comment, I rely upon the evidence of Mr Karutz as to movements in the market over the period to May 2006.
- 143 What this all means is that I would not be prepared to accord the sale of 565 Collins Street significant weight in assessing the site value of the subject

land, without making adjustments for both location and the circumstances of the sale. When such adjustments are made, the sale of 565 Collins Street should be seen as in line with the sales of the RACV site and the Bunnings site.

Assessment

- 144 I find that the sale of the RACV site in September 1999 supports the adoption of a rate of \$3,000 per square metre for the site value of the subject land. In making this finding I regard it as significant that the subject land is located very close to the RACV site and has many of the locational attributes of that site. I have taken account of the fact that the RACV site has a Bourke Street frontage. On the other hand, I have also taken into account the fact that the subject land is smaller in area and, as Mr Kensley has observed, is likely to attract a deeper market because the overall price is likely to be lower. I have also taken into account the time of the sale.
- 145 The sale of the Bunnings site in September 2002 also supports a rate of \$3,000 per square metre for the subject land. Taking account of the complexities in analysing the sale of the Bunnings site and its location closer to the retail core of the central city, this sale nonetheless provides support for the rate of \$3,000.
- 146 I also find that the sale of 565 Collins Street in March 2003, at an indicated rate of \$2,156 per square metre, supports the adoption of a rate of \$3,000 per square metre for the subject land. I regard this sale as requiring substantial adjustment to take account of the superior location of the subject land and also its smaller total area. I am also concerned that the sale of 565 Collins Street might not have fully reflected the value of the 565 Collins Street site at the time of its sale in April 2003; and I take this factor into account as well.
- 147 I also find that the adoption of a rate of \$3,000 per square metre for the subject land is consistent with other sales. It is consistent with the sale of the Grand Central site in April 1998. In this respect, I do not regard this sale as being one where the improvements on the site added much, if any, value: so I regard this sale as indicating a rate of about \$3,000 per square metre. Notwithstanding that the Grand Central site is clearly a better site than the subject land, the sale occurred as early as April 1998 and this is a factor working in the other direction.
- 148 The adoption of a rate of \$3,000 per square metre for the subject land might be thought to be a little high having regard to the sale of the Southern Cross site in July 2001. There is no question that the Southern Cross site is in a better location. On the other hand the land area was very large (five times the area of the subject land) and it is difficult to know on the evidence what, if any, adjustment needs to be made for this factor. Bearing these matters in mind, I do not regard this sale as requiring a different answer than that indicated by the more comparable sales.

- 149 For what it is worth, the adoption of a rate of \$3,000 per square metre for the site value of the subject land is also consistent with the sale of the BCL car park site in October 2001.
- 150 I also regard the adoption of a rate of \$3,000 per square metre for the subject land as consistent with the sale of sites such as 9-27 Downie Street, 182-200 Spencer Street and 677-689 Bourke Street. All these sites sold at rates that are in excess of \$3,000 per square metre – in some instances considerably in excess – and are sites west of King Street, which is generally considered inferior for commercial development. I take account of the fact that the sites were purchased for residential development, which is not the most likely option if the subject land is assumed to be vacant. However, having regard to the mixed nature of the market for developable land, these sales retain some relevance and support my finding of \$3,000 per square metre for the subject land. Certainly these sales would be inconsistent with the adoption of a figure of \$2,000 per square metre for the subject land (as contended for by Mr Jackson), even after taking into account all the factors which might be identified to differentiate the circumstances of these sales.
- 151 My conclusions are largely consistent with the evidence of Mr Karutz and Mr Kensley, particularly the latter. In essence I accept their evidence as to value insofar as it relies upon the sales of vacant, or near vacant, land; and I would note that this was the foundation of their evidence, rather than their evidence about improved sales.

CONCLUSION

The issues

- 152 I hold that the council valuers applied a definition of “improvements” that was in accordance with the *Valuation of Land Act 1960* and that the contentions advanced by the Valuer-General concerning the method of valuing land that contains a basement car park are not correct.
- 153 In relation to both valuation dates, I assess the value of the subject land at a rate of \$3,000 per square metre. This equates to a site value of \$5,568,000 in respect of each date. This is the value returned by the council in respect of 1 January 2002. It should also have been the value returned by the council in respect of 1 January 2004.

Costs

- 154 It is desirable that I set out some provisional views in respect of the cost of these proceedings.
- 155 The Valuer-General did not need to be a party, other than in relation to issues concerning the interpretation of the Act. As it did not succeed on those issues, it should not recover any costs from another party.

- 156 The applicant has fallen well short of the value it contended for and has been unsuccessful on the major valuation issues. In such circumstances, I doubt that it would be fair for it to recover costs.
- 157 The council has largely succeeded, even though there has been a reduction in valuation for the 2004 year. As I understand the applicable provisions, as interpreted by the Full Court of the Supreme Court in *Esso Exploration and Production Australia v Shire of Morwell*⁴⁴, costs could not be awarded in favour of the council in respect of the 2004 valuation. And in relation to the 2002 year my tentative view is that no costs should be awarded having regard to the fact that this was a test case and will confer broader benefits on the parties, particularly the council.

Stuart Morris
President

⁴⁴ [1986] VR 289.

Appendix

Findings as to other sales

Vacant and near vacant sales

Corner Bourke and William Streets, Melbourne (Grand Central)

158 In April 1998 the so called “Grand Central” site on the corner of Bourke and William Streets, Melbourne was purchased for redevelopment. The sale price was \$20,000,000. The site had a land area in the order of 6,900 square metres. Mr Karutz analysed this sale at \$3,000 per square metre, placing no added value on the buildings on the site. By contrast, Mr Jackson put substantial added value on the building on the site and analysed the sale at \$1,888 per square metre.

159 I find the analysed site value of this site to be much closer to Mr Karutz’s figure than Mr Jackson’s figure. Subsequent events have shown that the buildings on the site were of little value. I agree that the matter ought be approached by reference to the circumstances of the sale and the expectations held at the time of the sale. But even when so approached, I find that the added value of the buildings was modest in the eyes of the parties to the transaction.

160 It is true that the purchaser of the Grand Central site put forward a plan to use some of the buildings on the site; and submitted a case for the site value of the land to be reduced. It is also true that the council accepted this submission and reduced the site value. But the purchaser’s actions can, and should be, ascribed to be simply the prudent commercial action of the owner of a land rich investment, subject to substantial tax. And the council’s action can, and should be, ascribed to acquiescence in the absence of interest.

95-129 Bourke Street, Melbourne (Southern Cross)

161 This site is known as the Southern Cross site and is on the corner of Bourke, Exhibition and Little Collins Streets, within the eastern core of the Melbourne central business district. The land was sold in July 2001 for \$29,333,333. The land has an area of 9,573 square metres, which Mr Jackson analysed at \$3,064 per square metre. The circumstances of this sale were unusual in that the property was sold in an off-market transaction based upon the averaging of valuations. I regard this sale as a relevant sale, however it cannot be applied directly because it is in a quite different part of the city.

542-546 Little Bourke St, Melbourne (BCL car park)

162 This land was purchased from Barristers Chambers Ltd for development as a car park. At the time of the purchase it had the benefit of a planning permit for a long stay car park, an attribute that is likely to have added

significant value. Mr Karutz analysed this sale at \$3,000 per square metre; and Mr Kensley arrived at a similar figure.

- 163 The problem with this sale is that at least two adjustments need to be made to compare it with the subject land. First, the site is in a significantly inferior location to the subject land. But, second, the existence of the planning permit for a long stay car park was a clear advantage as the grant of such a permit would appear to be contrary to planning policy. Do these two factors cancel each other out? In my view, it is difficult to make the required adjustments with confidence.

182-200 Spencer Street, Melbourne

- 164 This sale occurred in October 2003 when the land was purchased for \$8,173,725. The land has an area of 1,969 square metres. This site was sold with a previous development approval, but this seems to have been of little relevance. The purchaser has subsequently lodged an application to erect a 41 level building for residential purposes. Mr Karutz analysed this sale and arrived at a land component of \$4,150 per square metre.

677-689 Bourke Street, Melbourne (Savoy site)

- 165 This land was sold in April 2005 for \$9,900,000. The land has an area of 1,830 square metres. The property offered minimal improvements which I would not regard as adding to land value. Mr Karutz analysed this sale as having a land component of \$5,400 per square metre. The land has frontages to Bourke Street, Spencer Street and Godfrey Street.
- 166 A development permit has been issued for the construction of a 47 storey building on this land, comprising office and residential use and a car park. However there was a question as to whether this permit added value, as a development of that intensity was not regarded as practicable.
- 167 This site was purchased with the intent that the land would be developed for residential purposes. In that respect it differs from the subject land in that the subject land was clearly better located for commercial office purposes.
- 168 Another relevant factor was that this sale occurred in April 2005, some 15 months after the second of the two relevant valuation dates. This is a significant factor which needs to be taken into account in relying upon this sale.

9-27 Downie Street, Melbourne

- 169 This land was sold in August 2001 for \$4,000,000. The land has an area of 1,187 square metres. The land contained older style industrial buildings, of no added value. The purchaser sought the land to construct a residential tower. Mr Kensley analysed the sale to produce a land component of \$3,370 per square metre.

52-64 Latrobe Street and 9-39 McKenzie Street, Melbourne

170 This land, which has a land area of 5,961 square metres was sold for \$11,400,000 in August 2004. This produces an analysed rate of \$1,563 per square metre. I do not find the sale of this land as sufficiently comparable to be regarded as relevant. The land the subject of this sale is some distance from the subject land, it is of an unusual shape, its main frontage is to a street of lesser status than William Street; and it is a sale that requires some analysis to produce a square metre land rate (which may tend to introduce error).

374-384 Latrobe Street, Melbourne (AWB site)

171 The sale of this site took place in October 2001 for the sum of \$10,000,000. The land has an area of 2,915 square metres. At the time of the sale the land was improved with a two level car park but has since been developed with a 24 level office building, that is now occupied by the Australian Wheat Board. Mr Karutz analysed this sale and produced a land component of \$3,450 per square metre. Mr Jackson did not consider this sale, as he regarded the transaction as complex and unreliable. I am not satisfied that this sale can be easily analysed. In any event, there is better and more reliable evidence of the value of the subject land.

Improved sales

40 Market Street, Melbourne

172 This property was purchased in October 2003 for \$30,000,000. The land has an area of 2,309 square metres. The property was improved with a nine storey office building, with four showrooms, and a two level car park basement of 85 bays. The total net lettable area of the building was 11,659 square metres. The building had been completed in 1988 and had been internally refurbished in 1997. Mr Jackson analysed this sale and produced a land content of \$1,569 per square metre.

555 Collins Street, Melbourne (Enterprise House)

173 This land was sold in April 2003 for \$38,000,000. The land was purchased by interests associated with Mr Harry Stamoulis, who also purchased the vacant land at 565 Collins Street as part of the same transaction. The land area of 555 Collins Street was 2,241 square metres. The building was improved by a 24 level office building, known as Enterprise House, which had a total net lettable area of 22,273 square metres.

174 The building at 555 Collins Street had been completed in 1975. At the time of the purchase in April 2003 it was in reasonable condition for its age and was classified as a "B" grade building. The building had been occupied for many years by Victorian Government departments, but it was anticipated at the time of the sale that this government lease was coming to an end.

175 Mr Jackson analysed the sale to produce a land content of \$1,539 per square metre. He did this by adopting a replacement cost for the building on the land and then applying a depreciation rate of 70% which he took to be an appropriate rate reflecting the quality and condition of the building at the time of the sale.

589 Collins Street, Melbourne (Transport House)

176 This property was sold in January 2003 for \$54,000,000. It has a land area of 3,817 square metres. The land is improved by a building, known as Transport House, which is an 18 level office building with basement car parking for 156 cars. The building was completed in 1984 and has a total lettable area of 31,906 square metres.

177 Mr Jackson analysed this sale and produced a land content of \$1,537 per square metre. He undertook this exercise by estimating the replacement value of the building and then applying a depreciation allowance of 65%.

433-455 Collins Street, Melbourne (AXA site)

178 This property has been improved by a 1960s office tower now occupied by AXA. The sale, which took place in November 2004, was for \$81,000,000. The site has a land area, including the building forecourt, of 2,963 square metres. Mr Karutz analysed this sale as having a land component of \$4,000 per square metre. He acknowledged that the sale was difficult to analyse as it was necessary to deduct the value of the building. He accepted that the assessment was susceptible to small changes in the assumptions. On my part, I would regard it as unreliable.