AUSTRALIAN POSTAL COMMISSION v MELBOURNE CITY COUNCIL

COURT OF APPEAL

CHARLES, EAMES and NETTLE JJA

13 April, 12 December 2005
[2005] VSCA 295

Land — Valuation — Land containing heritage-listed building — Fire-damaged building — Melbourne General Post Office — Supplemental valuation — Reduction in site, capital improved and net annual values — Building restoration costs exceeding pre-fire capital improved value — Existing use — Regard to be had to potential for change of use — Valuation of Land Act 1960 (No 6653) ss 2(8), 5A.

Statutes — Interpretation — Literal interpretation — Two provisions in same Act — Uncertainty as to "mischief" at which prevailing provision directed — "Unless otherwise expressly provided" — "Despite anything in this Act".

Section 5A(1) of the Valuation of Land Act 1960 provided that, "[u]nless otherwise expressly provided" where a statute required, inter alia, a valuer to determine the value of any land, every matter or thing which such valuer considered relevant to such determination was to be taken into account. Section 5A(2) dealt with the weight to be given to the evidence of sales of other lands when making such a determination, and section 5A(3) set out a non-exhaustive list of relevant valuation factors including:

> "(a) the use to which such land is being put at the relevant time, the highest and best use to which the land might reasonably be expected to be put at the relevant time and to any potential use."

Section 2(8) of the Act provided that "[d]espite anything in this Act" the capital improved, net annual and site values of any rateable land on which there was situated a building included in the Heritage Register established under the Heritage Act 1995 were to be calculated on a specified basis.

After the heritage-listed Melbourne General Post Office ("the GPO") was damaged by fire in 1991, a supplemental Melbourne City Council valuation reduced each of the site, capital improved and net annual values. In an appeal to the Victorian Civil and Administrative Tribunal against the disallowance of its objection to that assessment, the Australian Postal Commission ("the APC") relied on an expert valuer's evidence that to value the GPO in accordance with s 2(8) of the Act as if its highest and best use were as a post office the capital improved and site values were both nil because the building's estimated restoration cost would exceed the capital improved value assessed before the fire. However, the tribunal preferred the council valuer's evidence that, properly construed, s 2(8) did not exclude potential for change in land use or improvement over time and that, accordingly, the most appropriate method of valuation was to establish a capital improved value by direct comparison to sales of comparable heritage-listed properties and then to determine the site value by deducting the estimated value of the improvements in their damaged condition. The APC applied for leave to appeal.

Held, granting the application and allowing the appeal: *Per* Charles and Nettle JJA, Eames JA dissenting. (1) Because s 2(8) of the Act began with the words "despite anything in this Act", it followed, as a matter of plain and ordinary meaning, that, to the extent of any express or implied inconsistency between ss 2(8) and 5A, s 2(8) prevailed. [14].

> *In re Bland Bros and Council of the Borough of Inglewood (No 2)* [1920] VLR 522 referred to.

(2) Under s 5A of the Act the determination of the land value on the basis of the highest and best use of land required that the land be considered with all its attributes, existing and potential which it might be put assuming the restrictions to which it was subject at the time of valuation. [17].

Equity Trustees Executors and Agency Co Ltd v Melbourne and Metropolitan Board of Works [1994] 1 VR 534 referred to.

(3) However, s 2(8) so clearly excluded consideration of uses other than the existing land use that it was not reasonably open to construe it as allowing for any potential for change of use and, unless read that way, it would serve no function. [19], [20].

Wentworth Securities Ltd v Jones [1980] AC 74 applied.

Project Blue Sky Inc v Australian Broadcasting Authority (1988) 194 CLR 355; *Transport Accident Commission v Treloar* [1992] 1 VR 447 referred to.

Brenchley Gardens Pty Ltd v City of Caulfield (unreported, Land Valuation Board of Review, Appeal No 91/A32, 11 October 1991) disapproved.

(4) *Per* Eames JA, dissenting. Reference to the potential use of the property as a post office was not expressly denied by the terms of s 2(8) of the Act and the tribunal was therefore not obliged to ignore the market which was identified by the council's valuer as the basis for his valuation. [25], [30].

Application for leave to appeal

This was an application by the Australian Postal Commission for leave to appeal from a decision of the Victorian Civil and Administrative Tribunal dismissing the commission's appeal against disallowance of its objection to a supplemental assessment under the Valuation of Land Act 1960 of the fire-damaged Melbourne General Post Office building. The facts are stated in the joint judgment of Charles and Nettle JJA.

J Delany SC and *L G De Ferrari* for the appellant.

J D Pizer for the respondent.

Cur adv vult.

1 **Charles and Nettle JJA.** This is an application for leave to appeal from a decision of the Victorian Civil and Administrative Tribunal ("VCAT") made on 29 August 2003. It poses a question of law as to the correct construction of ss 5A and 2(8) of the Valuation of Land Act 1960.

2 The general methodology of valuation for the purposes of the Valuation of Land Act is laid down in s 5A of the Act as follows:

> *Determining value of land*
>
> (1) Unless otherwise expressly provided where pursuant to the provisions of any Act a court board tribunal valuer or other person is required to determine the value of any land, every matter or thing which such court board tribunal valuer or person considers relevant to such determination shall be taken into account.
>
> (2) In considering the weight to be given to the evidence of sales of other lands when determining such value, regard shall be given to the time at which such sales took place, the terms of such sales, the degree of comparability of the lands in question and any other relevant circumstances.

(3) Without limiting the generality of the foregoing provisions of this section when determining such value there shall, where it is relevant, be taken into account —

(a) the use to which such land is being put at the relevant time, the highest and best use to which the land might reasonably be expected to be put at the relevant time and to any potential use;
(b) the effect of any Act, regulation, local law, planning scheme or other such instrument which affects or may affect the use or development of such land;
(c) the shape size topography soil quality situation and aspect of the land;
(d) the situation of the land in respect to natural resources and to transport and other facilities and amenities;
(e) the extent condition and suitability of any improvements on the land; and
(f) the actual and potential capacity of the land to yield a monetary return.

3 Section 2(8) provides specifically for the valuation of heritage-listed land, thus:

(8) Despite anything in this Act or the Local Government Act 1989, the capital improved value, net annual value and site value of any rateable land which is a registered place within the meaning of the Heritage Act 1995 or on which there is situated a building which is included in the Heritage Register established under that Act must be calculated on the basis —

(a) as to the part actually occupied by the building included in the Heritage Register established under the Heritage Act 1995 —
  (i) that the land may be used only for the purpose for which it was used at the date of valuation; and
  (ii) that all improvements on that land as at the date of valuation may be continued and maintained in order that the use of the land referred to in sub-paragraph (i) may be continued; and
  (iii) that no improvements, other than those referred to in sub-paragraph (ii), may be made to or on that land; or
(b) as to any part (not actually occupied by the building which is included in the Heritage Register and which is not land that is included in the Heritage Register) that the building which is included in the Heritage Register cannot be removed or demolished and that any land referred to in paragraph (c) must not be subdivided or developed unless a permit to subdivide or develop the land has been granted by the Heritage Council; or
(c) as to any land that is included in the Heritage Register established under the Heritage Act 1995 that the land cannot be subdivided or developed or if a permit to subdivide or develop the land has been granted by the Heritage Council, that it can be subdivided or developed only in accordance with that permit.

4 The issue in this case is whether s 2(8) of the Valuation of Land Act requires heritage-listed land to be valued under s 5A as if the land were devoid of potential for change of use and improvement.

The facts

5 The application arises out of a supplemental assessment issued under Valuation of Land Act in respect of the land known as the Melbourne General Post Office ("the GPO"). The GPO is a four-level building featuring a colonnaded ground floor level along Bourke and Elizabeth Street frontages with an internal gallery extending the full height of the building and four floors of retail and office space around the central gallery. It was constructed between 1851 and 1859, with later additions in 1889, and is included in the Victorian Heritage Register under the Heritage Act 1995 and within the Heritage Overlay in the Melbourne

Planning Scheme and is listed in the schedule to the overlay as H0676. Under the Heritage Overlay a planning permit is required to remove, demolish or alter the exterior of the building in any way, or to paint the building a different colour, but is not required for routine maintenance and repairs. The GPO is also within Capital City Zone No 2, which means that a planning permit is required to develop the land and demolition of the building is a consideration as part of the planning application.

6 As at 1 January 2000 the GPO was valued under the Act as follows:

Site Value	$2,240,000
Capital Improved Value	$7,860,000
Net Annual Value	$502,000

7 On 9 September 2001 the building was badly damaged by fire, and following the fire the GPO was revalued by way of supplementary valuation as follows:

Site Value	$1,930,000
Capital Improved Value	$2,410,000
Net Annual Value	$120,500

The applicant objected against the assessment and subsequently appealed to VCAT against the disallowance of its objection. VCAT dismissed the appeal.

8 Two valuers gave evidence before VCAT: Mr L J Brown on behalf of the applicant and Mr R G Buckley on behalf of the respondent. It was common ground that the capital improved value of the GPO before the fire was in the order of $7.86m and that the costs of restoring the GPO to its pre-fire condition would be in the order of $12m.

9 The substance of Mr Brown's evidence was that he considered that he was bound by s 2(8) of the Valuation of Land Act to value the GPO as if its highest and best use were as a post office and that thus, as he put it, on the basis that it would cost in the order of $12m to restore the GPO to a capital improved value of approximately only $8m. On the basis of those assumptions, he considered it followed that no one in their right mind would be prepared to pay a cent for the GPO. Hence in his opinion, the capital improved value and therefore the site value as calculated in accordance with s 2(8) of the Valuation of Land Act were both nil.

10 Of course Mr Brown did not suggest that market value of the GPO was nil. In cross-examination he accepted that it might command a price of some millions of dollars, even as damaged. But his point was that market value reflects the potential for change of use and improvement over time, and he said in effect that, as he construed s 2(8), he considered he was bound to value the land as if there could not be any change in use or improvement over time.

11 Mr Buckley did not disagree with the logic of Mr Brown's thesis. In cross-examination he conceded that it would be illogical to purchase a burnt out post office and spend $12m on repairs if its value following repairs would be only $8m. But he made the point that there is a market for heritage-listed properties which may be demonstrated by comparative sales value data, and he said that it is so because, despite the restrictions which heritage listing imposes, buyers

perceive heritage-listed properties to have potential for change in use and for improvements and hence for development over time.

12 Mr Buckley said that, as he construed s 2(8), it did not exclude potential for change in use or improvement over time and it followed, in his opinion, that the most appropriate method of valuation was to establish a capital improved value by direct comparison to sales of comparable heritage-listed properties (and then to determine the site value by deducting the estimated value of the improvements in their damaged condition). He explained that his analysis of sales of comparable heritage-listed properties yielded a capital improved value of the total site (including the GPO in its fire-damaged condition) of $2.86m, from which he then deducted a sum of $570,000 representing the value of the fire-damaged improvements, resulting in a total site value of $2.29m and a site value for the GPO (after excluding the contiguous Chelsea House building) of $1.93m. Mr Buckley added that the approach which he had adopted was the approach ordinarily used in council valuations of heritage-listed properties and he said that in his opinion it provided an accurate reflex of the effect of heritage listing.

13 VCAT accepted Mr Buckley's valuation and thus confirmed the supplemental assessment.

The construction of s 2(8) of the Valuation of Land Act

14 Inasmuch as s 5A begins with the words "Unless otherwise *expressly* provided", it suggests that the principles of valuation adumbrated in s 5A(1) were intended to yield only to any express contrary provision. But, because s 2(8) begins with the words "despite *anything* in this Act", we read s 2(8) as prevailing over any inconsistency, express or implied.[1] It follows, as a matter of the plain and ordinary meaning of the words of the two provisions that, to the extent of any express or implied inconsistency between ss 5A and 2(8), s 2(8) should prevail.

15 Counsel for the applicant submitted that there is evident inconsistency between s 2(8)(a)(i) and s 5A(3)(a) in respect of which s 2(8)(a)(i) must prevail. As he put it, the requirement in s 2(8)(a)(i) that land be valued on the basis that it may be used only for the purpose for which it was used at the date of valuation means that any higher or better use and any other potential use of the kind referred to in s 5A(3) must be excluded from consideration. He contended that the words of s 2(8) are to be construed according to their plain and ordinary meaning and that as so construed they leave no room for any other interpretation.

16 Counsel for the respondent accepted the first part of the applicant's contention, but not the second. He agreed that the effect of s 2(8) is that land which is subject to heritage restrictions must be valued as such. But he submitted that s 2(8) does not exclude from the valuation such potential as there may be for the restrictions one day to change. As he put it, there is plainly a market for heritage-listed properties and, as the evidence shows, they change hands at prices which reflect their potential for change. And, he submitted that, inasmuch as it may be supposed that the purpose of the Valuation of Land Act is to produce valuations that are a true reflex of the value of property, it should not be thought that s 2(8) was intended to exclude that potential for change.

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1. Compare *In re Bland Bros and Council of the Borough of Inglewood (No 2)* [1920] VLR 522 at 533.

17 In our opinion the applicant's contention is correct. Under s 5A the determination of the value of land on the basis of the highest and best use of land requires that the land be considered with all its attributes, existing and potential, at the relevant moment for assessment of value. One must consider the potential uses to which it might be put assuming the restrictions to which it is subject at the time of valuation.[2] Therefore, putting aside the effect of s 2(8), a valuer of heritage-listed land would be required to value it on the basis of all potential uses to which the land might be put under the existing heritage restrictions and consequently would have to take into account any uses to which the land was not being put but might lawfully be put under existing restrictions. Under s 2(8), however, one is expressly directed that the valuation of heritage-listed land must be undertaken on the basis that the land may be used only for the purpose for which it was used at the date of valuation, and so, according to the plain and ordinary meaning of the terms of s 2(8), the valuer would not be permitted to take into account any other use to which the land might be put under existing restrictions. Furthermore, whereas under s 5A a valuer is directed also to take into account "any potential use", which we take to mean any use to which the land might be put in future if existing restrictions were altered in a way which at present seems conceivable, under s 2(8) the valuer is expressly directed that the valuation is to be undertaken on a basis which excludes any use other than the existing use, and therefore, as it seems to us, which necessarily excludes any potential for change to existing restrictions.

18 Counsel for the respondent adopted by way of contrary submission the decision of the Land Valuation Board of Review in *Brenchley Gardens Pty Ltd v City of Caulfield*.[3] In that case the board was concerned with the valuation of a heritage-listed property called "Rosecraddock" under Pt X of the Local Government Act 1958 and, in particular, with the effect upon the valuation of s 254(4A) (which was in terms substantially identical to s 2(8) of the Valuation of Land Act). As in this case, the dispute was whether the section excluded from the valuation any potential for a change in use, and the board held that it did not. As they put it:[4]

> … the starting point is the registered building in its actual state (frozen, so to speak) at the particular point in time … and excluding any potential for any higher or better use which, at that time, depended upon something being done to the building for which a permit from HBC would have been necessary. Were it otherwise, there would be no (or very little) room for such potential to be captured under s 258(2)(db)(iii). At the same time, we believe there has to be some recognition of any chance there may have been (and here we find there was such a chance) of an application to HB for a permit to carry out works consistent with, or for the purpose of the continuance and maintenance of, the current use being likely to succeed. *In other words, premises such as these (in contrast to a ruin destined to be preserved untouched forever) need not be valued as if condemned to remain in their physical state at the relevant time, but as (in appropriate cases) offering or embodying whatever potential there may be to make some application to HBC for a permit …*

2. *Equity Trustees Executors and Agency Co Ltd v Melbourne and Metropolitan Board of Works* [1994] 1 VR 534 at 542.
3. Unreported, Appeal No 91/A32, 11 October 1991 (which we were told has since been followed on a number of occasions by the Land Valuation Board and more recently VCAT).
4. Ibid at 24, emphasis added.

19 With respect, however, we do not find that persuasive. We acknowledge that to construe s 2(8) in the fashion which we have suggested produces a result which is remarkably beneficial to the ratepayer. One may wonder why Parliament should have thought it appropriate to value and rate heritage properties at values below market — unless perhaps it was to discourage applications for changes in restrictions and consequent redevelopment of such properties. But the words of s 2(8) seem to us so clearly to exclude consideration of uses other than the existing use that it is not reasonably open to construe them as allowing for any potential for change.[5] To do so would necessitate reading words into s 2(8) which are not there, and given the clarity of the language of the section and the apparent lack of contrary purpose, we do not think that is permissible. In terms of the three-part test propounded by Lord Diplock in *Wentworth Securities Ltd v Jones*:[6] it is not possible to determine from a consideration of the Act read as a whole precisely what "the mischief" was at which s 2(8) was directed (except of course that it was intended to allow for temporary concessional treatment in the case of heritage properties in relation to valuation for matters such as municipal rates, as a trade-off against the stringent restrictions which become applicable in relation to alterations, modifications and removal of buildings once they are entered on the Victorian Heritage Register); it is not apparent that the draftsman and Parliament have by inadvertence overlooked and so omitted to deal with an eventuality that required to be dealt with if the purpose of the Act were to be achieved; and, on any analysis, it is not possible to state with certainty where the additional words would have been inserted by the draftsman and approved by Parliament.[7]

20 Moreover, unless s 2(8) is read according to its ordinary and natural meaning, and thus in the sense in which we have construed it, we are unable to see what function it would serve. As matters stand, the sort of valuation that was produced by Mr Buckley, which takes account of existing heritage restrictions but allows for the potential for change and development over time, is exactly the sort of valuation to which a valuer should come under s 5A in the absence of s 2(8). More specifically, the terms of s 5A would be sufficient in themselves to ensure that a heritage property was valued to market (in the way that Mr Buckley has valued the GPO) and so therefore that the valuation ascribed to it accurately reflected the restrictions upon use and development which the existing heritage controls may impose. Consequently, unless s 2(8) be construed as providing for something further and different, it would be otiose. It is, however, a basic principle of statutory interpretation that words in a statute are not ordinarily to be construed as superfluous or insignificant. And that rule applies with greater force where, as in the case of s 2(8), the provision in question has been added by amendment.[8] Given, therefore, that the plain and ordinary meaning of the words of s 2(8) yields a result which is different to the unqualified terms of s 5A and that, although remarkable, that result is neither irrational or capricious or

5. Compare *R v Young* (1999) 46 NSWLR 681 at 687–8, [15]–[16] per Spiegelman CJ.
6. [1980] AC 74 at 105–6.
7. See also *Newcastle City Council v GIO General Ltd* (1997) 191 CLR 85 at 113 per McHugh JA.
8. *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 382, [71]; *Transport Accident Commission v Treloar* [1992] 1 VR 447 at 462; Pearce and Geddes, *Statutory Interpretation in Australia*, 5th ed, (2001), para [2.22].

otherwise contrary to any apparent purpose of the legislation, we see no basis to construe the section otherwise than as the applicant would have it.

Conclusion

21 It follows in our judgment that the application for leave to appeal should be allowed. The appeal should be taken to have been heard instanter and allowed, and the decision the subject of appeal should be set aside. In lieu thereof we would order that the applicant's objection against the supplemental assessment be allowed and that the supplemental assessment be reduced to nil.

22 **Eames JA.** The applicant contended that the cost of repairing the site, at $9.2m[9] would exceed the 2001 market value of the property of $8.5m (discounted to cash) which was based on an intact and restored Melbourne General Post Office ("the GPO"). To demolish the remaining burnt out frame and rebuild the GPO was estimated to cost between $49m and, as at 2002, $58m. Thus, so it was submitted, no rational and fully informed purchaser would be interested in purchasing the property unless there was a reasonable prospect of altering the use to which the property might be put. That possibility, so the applicant contended, was the very factor which s 2(8) of the Valuation of Land Act 1960 expressly prohibited being taken into account by the valuer. The tribunal wrongly acted on the opinion of the valuer Mr Buckley, whose opinion that there was a market for the building in its burnt out condition was inappropriately predicated on the possibility of altered use.

23 The question then is this: was the opinion as to site value provided by Mr Buckley one which gave primacy to s 2(8), in particular, by calculating site value on the basis that the land could be used only for a post office and that only such improvement as had been on the land as at the date of the fire could be continued or maintained thereafter on the land? The applicant contends that it did not and that Mr Buckley's valuation was predicated upon a market comprising willing purchasers who must have had regard to the possibility of being able to vary the usage from that to which the land was presently restricted.

24 When questioned about his approach Mr Buckley said that the reasonable purchaser considering buying this fire-damaged post office with its limited usage "would consider its alternative uses and the other potential within the property". He expanded on that by reference to the development under a 99-year lease between the applicant and Melbourne GPO Pty Ltd that had been agreed before the fire. Under that agreement the developer was to refurbish the GPO building for retail/commercial purposes, demolish the Chelsea Girl building and carry out some new construction work over the Little Bourke Street courtyard.

25 Mr Buckley said that some flexibility ought to be allowed for the concept of use as a post office. He said that as with the development proposed under the 99-year lease "there's other development, there's other potentials in the site". He was asked whether he valued the site by assuming "other potentials" but denied that, saying, "No, we valued it pretty much as it was but we took a general view in relation to the evidence that we had on the subject property". He said that a potential use could not be something as radical as, say, usage as a backpackers' lodge, but he added:

9. The earlier 2001 estimate had been $11.5m–$12m.

> Well, like Mr Brown, I've valued post offices in various locations and they do get used and in fact it has been their practice to lease out parcels for retail use and I can't see that that, even artificially, can be taken out of it by the Act. It's not meant to be that tight I wouldn't think, but I might be wrong in making that assessment … what my assumptions would have included was that other uses can be reflected under the use of a general post office which is essentially retail on the ground floor and offices on other levels. As Mr Brown mentioned, a form of industrial or storage uses in other areas where the other uses in the building would be used.[10]

26 The applicant's valuer, Mr Brown, did not disagree with Mr Buckley that as at the date of the valuation in question there was a market for the burnt out shell of the GPO. In his evidence Brown agreed that, while it would be difficult, a buyer might be found, even though the investment might be an unwise one. He said that there were people around who had a passion for heritage buildings, and some people had purchased heritage property, especially residential properties, and spent considerable sums of money without regard to recouping their investment. When discussing such heritage enthusiasts Brown implied that their interest in such property was not predicated on the possibility of altered land use, but he was not clearly asked that question, nor did he volunteer that those interested in purchasing a heritage property such as the GPO, rather than residential property, might be equally disinterested in the potential for varying the land use to which the property was presently restricted.

27 The applicant contends that Mr Buckley's approach is prohibited by s 2(8); that that provision does not permit any use other than the use as the GPO which was permitted at the time of the fire. Accordingly, the market on which he based his valuation was one which could not exist if s 2(8) was given its proper primacy, and what Mr Buckley was in fact doing was applying the broader notions of "potential use" under s 5A(3)(a), which consideration was expressly rendered inapplicable because, in the terms of s 5A(1) that was a factor as to which s 2(8)(a)(i) "otherwise expressly provided", thus no account was to be taken of it.

28 There is, of course, a degree of absurdity in the notion that the GPO site, whatever be the state of the building above it, might have a nil site value. That sense of absurdity must give way, however, if the clear terms of the legislation require that result. In any event, as the tribunal noted in its reasons, the mechanism for the valuation and supplementary valuation of property has a certain artificiality about it anyway, requiring, for example, that a valuation of land be made as at 1 December 2000 of a damaged site, that damage not having occurred until after that date.

29 Furthermore, the nil valuation might be an appropriate outcome when regard is had to the circumstances that attend the restricted usage of heritage properties. It is inevitable that the restrictions imposed under the Heritage Act 1995 would have a pronounced impact on capital improved value, net annual value and site value of land. Thus, there is a logic in s 2(8) expressly requiring that those calculating such values do so solely on the basis of the restricted usage imposed over the land by the Act. Counsel for the applicant submitted, therefore, that it would be appropriate that the owners of heritage property, being so limited in the

10. In his evidence Brown agreed that at the time of the fire the land was being used as a post office, for retail sales and for offices.

use they could make of it, might at least gain some trade-off for their contribution to the heritage of the community by way of reduced rates.

30 Even allowing for the unique situation of the burnt out GPO building, the terms of s 2(8), in my opinion, do not expressly deny the application of Mr Buckley's wider understanding of what might constitute use as a post office. Put another way, reference to the potential use of the property as a post office is not expressly denied by the terms of s 2(8), in my opinion. In those circumstances, I am not persuaded that the tribunal was obliged to ignore the market which was identified by Mr Buckley as the basis for his valuation. Accordingly, I am not persuaded that the tribunal fell into error in its interpretation and application of s 2(8) when adopting the opinion of Mr Buckley.

31 The applicant made other complaints as to the evidence of Mr Buckley, in particular that there was no foundation for his adoption of a figure of $100 per square metre in valuing a damaged heritage-listed building shell. The tribunal held that he had relevant expertise and experience to make that assessment. Counsel for the applicant submitted that there was no foundation for this evidence, as Mr Buckley had not inspected the improvements upon which he applied his $100 figure; he had no expertise as a quantity surveyor or as a builder; he merely adopted the untested opinion of another valuer, who had also failed to inspect the property; and he had made unjustified assumptions as to the extent of damage to the second and third levels of the building.

32 In my opinion, these criticisms go only to the question of weight. As Mr Pizer submitted, no objection was taken to the qualifications of Mr Buckley, who had 30 years' experience as a valuer. Although he made use of the calculations of council employee and valuer Linda Boyd, cross-examination revealed that she had made detailed notes of the fire damage. Whilst he had not inspected the fire damage himself at that time, he had subsequently done so. Mr Buckley was challenged as to the justification for his $100 figure but maintained its appropriateness, whilst acknowledging that a valuation was no easy task for fire-damaged property. In adopting the figure reached by Ms Boyd he thereby reduced the figure that he had intended to apply, and did so to the benefit of the applicant.

33 The tribunal was not bound to apply the rules of evidence[11] and this court must make allowance for its expertise as the specialist tribunal concerned with land valuation issues. In my opinion, it was open to the tribunal to accept this evidence.

34 Other complaints were made as to Mr Buckley's calculations in reaching his site valuation. He acknowledged that he had made an error in calculating the building area, having adopted a much lower gross building area of 5727 square metres rather than the correct 8844 square metres. That had the effect of reducing the amount of rates payable by the applicant, and the respondent did not seek to revalue the liability of the applicant by reference to the correct building area. The applicant contended that the error demonstrated why Mr Buckley's evidence ought not have been accepted but it was open to the tribunal to conclude, after hearing his explanation for the error, that it did not affect his methodology or the reliability of his evidence.

11. Section 98(1) of the Victorian Civil and Administrative Tribunal Act 1998.

35 In my opinion, the grounds of appeal have no reasonable prospect of success and leave to appeal ought be refused.

Leave to appeal granted; appeal allowed.

Solicitors for the appellant: *Australia Post Legal Services*.

Solicitors for the respondent: *Maddocks*.

W F RIMMER
BARRISTER-AT-LAW