[2016] WASAT 23

JURISDICTION	:	STATE ADMINISTRATIVE TRIBUNAL
ACT	:	VALUATION OF LAND ACT 1978 (WA)
CITATION	:	CITIC PACIFIC MINING MANAGEMENT PTY LTD and VALUER GENERAL [2016] WASAT 23
MEMBER	:	JUDGE D R PARRY (DEPUTY PRESIDENT)
HEARD	:	3 AND 4 FEBRUARY 2016
DELIVERED	:	9 MARCH 2016
FILE NO/S	:	DR 169 of 2015
BETWEEN	:	CITIC PACIFIC MINING MANAGEMENT PTY LTD Applicant AND VALUER GENERAL Respondent

Catchwords:

Valuation of land - Gross rental value - Transient workers' accommodation village in Pilbara region - Isolated and remote location - Whether gross rental value of the land can reasonably be determined on the basis of gross annual rental that the land might reasonably be expected to realize if let on a tenancy from year to year - Whether gross rental value of the land is required to be determined on the basis of assessed value - Methodology of valuation - Comparable rent method adopted and applied by Valuer General to derive hypothetical gross annual rental of the land - Rents relied upon by Valuer General as 'comparable' in respect of transient workers' accommodation villages in Karratha and Roebourne townsites - Whether rents relied upon by Valuer General are 'comparable' having regard to differences in location and size

in comparison to Eramurra Village - Whether specific adjustments for differences in location and size can safely be made on evidence to determine gross rental value of the land - Whether the land is 'land in respect of which ... a lease is held under the *Mining Act 1978*' for purposes of definition of 'unimproved value' and hence 'capital value' and 'assessed value' of the land where the land is only part of the property leased under the *Mining Act 1978* (WA) - Whether there is sufficient evidence of 'the estimated replacement cost of improvements to the land' for the purposes of the definition of 'capital value' and hence 'assessed value' of the land

Legislation:

Local Government Act 1995 (WA), s 6.28
Mining Act 1978 (WA)
State Administrative Tribunal Act 2004 (WA), s 27
Valuation of Land Act 1978 (WA), s 4(1), s 18, s 32(1), s 32(3), s 32(7), Pt III, s 33(1), s 33(2)
Valuation of Land Regulations 1979 (WA), reg 3(2)

Result:

Application for review allowed
Gross rental value of a 100 hectare portion of Lot 263 on Deposited Plan 220164 comprising and known as Eramurra transient workers' accommodation village as at 1 August 2011 of $12,008,880 set aside and decision substituted that gross rental value of that land as at that date was $3,396,055.10

Summary of Tribunal's decision:

The applicant sought review of the valuation by the Valuer General of the gross rental value of land in a remote and isolated location in the Pilbara region of Western Australia. The land comprises Eramurra Village which is a transient workers' accommodation village associated with a magnetite mining project. The Valuer General had determined the gross rental value of the land as at the date of valuation of 1 August 2011 to be $12,008,880. The primary issue in the review was whether, having regard to the rental evidence available, the gross rental value of the land could reasonably be determined on the basis of the hypothetical gross annual rental that the land might reasonably be expected to realize if let on a tenancy from year to year, in accordance with the comparable rent method applied by the Valuer General.

The Tribunal determined that, in light of the fundamental differences in location and size between three other transient workers' accommodation villages relied on by the Valuer General as 'comparable' rents and Eramurra Village

(the other three villages were all located in townsites, rather than in remote and isolated locations, and contained only 1% - 3% of the number of accommodation units of Eramurra Village) and the lack of sufficient cogent evidence on the basis of which to be able to make appropriate adjustments for those fundamental differences, the three rentals relied on by the Valuer General were not reasonably and safely comparable to the hypothetical gross annual rental of the subject land. The gross rental value of the land could not therefore reasonably be determined on the basis of the gross annual rental that the land might reasonably be expected to realize if let as a tenancy from year to year.

Consequently, the gross rental value of the land had to be determined on the basis of the alternative, prescribed method of the 'assessed value' of the land, which was relevantly 5% of the sum of the unimproved value of the land and the estimated depreciated replacement cost of improvements to the land plus GST.

The Tribunal found that the assessed value, and hence the gross rental value, of the land was $3,396,055.10 as at the date of valuation and substituted this valuation for the Valuer General's valuation of $12,008,880.

Category: B

Representation:

Counsel:

Applicant	:	Mr MT McKenna
Respondent	:	Ms CA Ide

Solicitors:

Applicant	:	Allens
Respondent	:	State Solicitor's Office

Case(s) referred to in decision(s):

Buckingham v Valuer-General (2002) 30 SR (WA) 30
City of Kwinana v Lamont [2014] WASCA 112
Duffy v Minister for Planning [2003] WASCA 294
Fremantle Markets Pty Ltd and Valuer General [2015] WASAT 121
Leichhardt Municipal Council v Seatainer Terminals Pty Ltd (1981) 48 LGRA 409

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 CITIC Pacific Mining Management Pty Ltd (applicant) seeks review of the valuation by the Valuer General of the gross rental value of $12,008,880 as at 1 August 2011 (date of valuation) of a 100 hectare portion of Lot 263 on Deposited Plan 220164 (land). The valuation the subject of this review came into force on 1 July 2013 and is relevant to rating in the 2013/2014 financial year.

2 The land comprises and is known as Eramurra Village which is a transient workers' accommodation (TWA) village. Eramurra Village is located at Mardie Station, within the district of the City of Karratha (City) (formerly the Shire of Roebourne), in the Pilbara region of Western Australia (Pilbara). Eramurra Village is in a remote and isolated location, approximately 84 kilometres by road south-west of the Karratha townsite and approximately 115 kilometres by road from the Roebourne townsite.

3 As at the date of valuation, the land was subject to a Crown Lease (No 453/1984) which commenced on 21 December 1984 for a term of 44 years, 6 months and 11 days. The Crown Lease was also subject to General Purpose Lease 08/75 under the *Mining Act 1978* (WA) (Mining Act) held by Pastoral Management Pty Ltd, a related company to the applicant, for which the applicant is an authorised agent, which commenced on 21 July 2009 for a term of 21 years (General Purpose Lease 08/75). General Purpose Lease 08/75 is over an area of 597.05 hectares, of which the land the subject of this review forms about one-sixth, and authorises, among other things, the construction of accommodation facilities on the land. (The Crown Lease expired on 30 June 2015 and was re-issued from 1 July 2015 under a new format as Pastoral Lease 50076 for the same term).

4 Eramurra Village was constructed in 2010 for the purpose of accommodating workers at the Sino Iron Project, an integrated magnetite mining and export operation conducted by related companies to the applicant and managed by the applicant, located approximately 15 kilometres by road from Eramurra Village. Eramurra Village consists of 1,714 rooms with ensuites which can accommodate 1,754 people as there are some couples' rooms. Other onsite facilities include a dining room / kitchen (known as the 'mess'), a swimming pool, recreation rooms and a gymnasium. As at the date of valuation, Eramurra Village was fully occupied.

5 Transient workers' accommodation constitutes a significant proportion of accommodation in the Pilbara. According to the Pilbara Development Commission report *Transient Worker Accommodation in the Pilbara - Final Draft* (March 2012), there were 50,388 TWA beds in the Pilbara in 2011 (of which 13,038 were located within the district of the City). The report also states that an increase of 23,281 TWA beds was expected from 2012 to 2015 across the Pilbara (of which 6,526 were planned within the district of the City). The report states that, in comparison, the total estimated residential population of the Pilbara in 2010 was 48,610 people.

6 The valuation expert witnesses, Mr Gavin Chapman, called by the applicant, and Mr Stephen Fern, called by the Valuer General, gave evidence that there were about 80 TWA villages in the Pilbara at the date of valuation. However, the experts also gave evidence that very few of the TWA villages were rented, because most were purpose built for particular mining companies or projects and because others were occupied on the basis of a tariff arrangement (meaning, as Mr Chapman said, and as Mr Fern agreed (T:64.6; 03.02.16), 'on a nightly basis, including meals, accommodation, laundry, and other services' (T:63.8; 03.02.16)), rather than on the basis of rental. Consequently, as Mr Fern frankly observed in an exchange with the Tribunal during concurrent evidence, the valuation exercise in this case 'isn't straightforward' (T:113.8; 03.02.16).

7 The primary issue between the parties in this review is whether, having regard to the rental evidence available, the gross rental value of the land can reasonably be determined on the basis of the hypothetical gross annual rental that the land might reasonably be expected to realize if let on a tenancy from year to year in accordance with the comparable rent method. The applicant contends that the gross rental value of the land cannot reasonably be determined on this basis, whereas the Valuer General contends that it can be (although Mr Fern, again frankly, said in a discussion with the Tribunal in concurrent evidence that this case is 'close to whether' gross rental value of the land cannot reasonably be determined on the basis of the hypothetical gross annual rental and is 'just within the outlines of that sort of reasonableness' (T:113.9; 03.02.16)).

8 It is common ground between the parties that if the comparable rent method can reasonably be applied in this case to determine the hypothetical gross annual rental of the land, then the Valuer General's valuation under review should be affirmed. It is also common ground that if the gross rental value of the land cannot reasonably be determined on the basis of the hypothetical gross annual rental of the land in accordance

with the comparable rent method, then the gross rental value of the land must be determined on the basis of an alternative approach set out in the *Valuation of Land Act 1978* (WA) (VL Act), namely, the 'assessed value' of the land. The 'assessed value' of the land is 5% of the 'capital value' of the land. The 'capital value' of the land is, relevantly, the sum of the 'unimproved value' of the land and the estimated replacement cost of improvements to the land, after making such allowance for obsolescence, physical depreciation and such other factors as are appropriate in the circumstances.

9 If the gross rental value of the land is required to be determined in this case on the basis of the 'assessed value', then there are two further issues in contention between the parties. First, which of two paragraphs of the definition of 'unimproved value' in s 4(1) of the VL Act applies to the determination of unimproved value of the land in the circumstances of this case. Secondly, whether the evidence establishes, on a balance of probabilities, the estimated replacement cost of improvements to the land after making such allowance for obsolescence, physical depreciation and such other factors as are appropriate in the circumstances.

10 I will now set out the legislative framework and applicable principles for the resolution of this matter. I will then state the specific issues for determination and proceed to address each issue in turn.

Legislative framework and principles

11 Section 6.28 of the *Local Government Act 1995* (WA) (LG Act) states, in part, as follows:

> (1) The Minister is to -
>
> (a) determine the method of valuation of land to be used by a local government as the basis for a rate; and
>
> (b) publish a notice of the determination in the *Government Gazette*.
>
> (2) In determining the method of valuation of land to be used by a local government the Minister is to have regard to the general principle that the basis for a rate on any land is to be -
>
> (a) where the land is used predominantly for rural purposes, the unimproved value of the land; and
>
> (b) where the land is used predominantly for non-rural purposes, the gross rental value of the land.

> (3) The unimproved value or gross rental value, as the case requires, of rateable land in the district of a local government is to be recorded in the rate record of that local government.
>
> …

12 Pursuant to s 6.28 of the LG Act, on 19 July 2013, the Minister for Local Government, Hon Tony Simpson MLA, published a notice of the Minister's determination in the *Government Gazette* (page 3274) that a specifically identified and delineated 100 hectare portion of Lot 263 on Deposited Plan 220164, which is now the land the subject of the valuation in this proceeding, is to be valued for the purposes of rating with effect from 1 July 2013 on the basis of gross rental value.

13 Section 18 of the VL Act states as follows:

> For the purposes of a general valuation, the Valuer-General shall determine, or cause to be determined, with respect to rateable land, the gross rental value or the unimproved value, as the case requires, so far as that value is required by a rating or taxing authority for the purpose of assessing any rate or tax or is, in the opinion of the Valuer-General, reasonably likely to be so required before the next general valuation of the land is made.

14 In this case, the Valuer General determined the gross rental value of the land under s 18 of the VL Act as at 1 August 2011, because that value is required by the City as the rating authority with effect from 1 July 2013 relevant to the 2013/2014 financial year.

15 The term 'gross rental value' is relevantly defined in s 4(1) of the VL Act as follows:

> ***gross rental value*** of land means the gross annual rental that the land might reasonably be expected to realize if let on a tenancy from year to year upon condition that the landlord were liable for all rates, taxes and other charges thereon and the insurance and other outgoings necessary to maintain the value of the land, provided that -
>
> (a) where the gross rental value of land cannot reasonably be determined on such basis, the gross rental value shall be the assessed value; …

16 The term 'assessed value' is defined in s 4(1) of the VL Act as follows:

> ***assessed value*** of land means such percentage of the capital value of the land as may from time to time be prescribed either -

(a) in respect of land generally; or

(b) in respect of a class of lands which includes the land[.]

17 As at the date of valuation, reg 3(2) of the *Valuation of Land Regulations 1979* (WA) (VL Regulations) stated as follows:

> The percentage of the capital value of land prescribed for the purposes of the term assessed value in section 4 of the Act is -
>
> (a) in the case of land which is designated for residential use, 3%; and
>
> (b) in the case of all other land, 5%.

18 The term 'capital value', which is referred to in the definition of 'assessed value', is defined in s 4(1) of the VL Act as follows:

> ***capital value*** of land means the capital amount which an estate of fee simple in the land might reasonably be expected to realize upon sale - provided that where the capital value of land cannot reasonably be determined on such basis, the capital value of such land shall be the sum of, first, the unimproved value of the land, and, secondly, the estimated replacement cost of improvements to the land after making such allowance for obsolescence, physical depreciation, and such other factors as are appropriate in the circumstances[.]

19 It is agreed between the valuation expert witnesses and common ground between the parties that 'the capital amount which an estate of fee simple in the land might reasonably be expected to realize upon sale', which is the primary defined meaning of the term 'capital value', cannot reasonably be determined in this case, because of an absence of evidence. Thus, if the 'assessed value' of the land and therefore the 'capital value' of the land is required to be determined in this case, then the capital value must be determined on the basis of the alternative approach set out in the definition of 'capital value', namely, the sum of the unimproved value of the land and the estimated replacement cost of improvements to the land after making such allowance for obsolescence, physical depreciation, and such other factors as are appropriate in the circumstances.

20 The term 'unimproved value', which is referred to in the definition of 'capital value', is relevantly defined in s 4(1) of the VL Act as follows:

> …
>
> (b) in relation to any land not included in any area referred to in paragraph (a) [the land the subject of the valuation in this case is not in an area referred to in paragraph (a)], where any such land is -

> …
>
> (ii) land in respect of which -
>
> …
>
> (III) any other licence [other than an exploration licence - see paragraph (b)(ii)(II)] or a lease is held under the *Mining Act 1978* - 5 times the annual rent payable for the licence or lease under that Act; or
>
> …
>
> (vii) land to which any of subparagraphs (i) to (vi) do not apply -
>
> (I) the capital amount that an estate in fee simple in the land not including improvements might reasonably be expected to realize upon sale; or
>
> (II) where the unimproved value cannot reasonably be determined on the basis in item (I) - … [not relevant in this case, because the valuation expert witnesses and the parties agree that, if necessary, the unimproved value of the land can reasonably be determined on the basis of paragraph (b)(vii)(I)].

21 As discussed later in these reasons, if the 'assessed value' of the land is required to be determined for the purposes of the valuation in this proceeding, then the Tribunal will need to determine whether paragraph (b)(ii)(III) of the definition of 'unimproved value' applies (as the applicant contends) or whether paragraph (b)(vii)(I) of the definition of 'unimproved value' applies (as the Valuer General contends), in the circumstances of this case.

22 In ***Fremantle Markets Pty Ltd and Valuer General*** [2015] WASAT 121 at [61], the Tribunal said the following in relation to the determination of gross rental value on the basis of the gross annual rental that the land might reasonably be expected to realize if let on a tenancy from year to year:

> … [T]he determination of 'the gross annual rental that the land *might* reasonably be expected to realize *if* let on a tenancy from year to year' (emphasis added), within the meaning and for the purposes of the definition of 'gross rental value' in s 4(1) of the VL Act, involves a hypothetical exercise. … The relevant principles and authorities were summarised by Master Newnes (as his Honour then was) in

J B Investments Pty Ltd v The Valuer-General [2004] WASCA 307 at [43] as follows:

> It was common ground that, in assessing the gross rental value of land, the land is to be assessed at what a hypothetical tenant might reasonably be expected [to] pay to a hypothetical landlord for a tenancy on the hypothesis that both parties are reasonable, the landlord not being extortionate and the tenant not being under any pressures, and the premises being available to be let: *R v Paddington (Valuation Officer)*; *Ex parte Peachey Property Corporation Ltd* [1965] 2 All ER 836 at 848. The rental actually paid by an occupier does not necessarily indicate the rent that a tenant ought reasonably be expected to pay: *London County Council v Erith Churchwardens* [1891] All ER 577 at 585. While the amount paid may be persuasive evidence of the rental value, it is not decisive and it is only evidence of value: *Garton v Hunter (Valuation Officer)* [1969] 1 All ER 451; Halsbury's Laws of England, 3rd ed, vol 32, 76 [107].

23 In ***Buckingham v Valuer-General*** (2002) 30 SR (WA) 30 (***Buckingham***) at [7], the former Land Valuation Tribunal said the following in relation to the comparable rent method for the purposes of determining gross rental value:

> Generally, where a property is not of itself the subject of a lease, the most desirable method of determining its gross rental value is direct comparison of the property with materially similar properties which are actually rented in accordance with the statutory definition of 'gross rental value' as at the date of valuation. The use of such evidence involves a comparison of the property in question with other properties exhibiting some degree of comparability and will require appropriate adjustment to those rentals to reflect the distinguishing characteristics. It is important, however, that the other rental properties are sufficiently analogous to the property the subject of the valuation before they can be relied on with any confidence. The degree of weight that will be attributed to that evidence will undoubtedly depend on the extent to which such adjustments are required. The fundamental principle is that like must be compared with like (see *Robinson Brothers (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee* (at 476); *Norwich Assessment Committee v Pointer* [1922] 2 KB 47 at 52-53; *Cooper v City of Perth* [1961] WAR 112).

24 In ***Buckingham***, the Land Valuation Tribunal determined that, in the absence of 'clear cogent rental evidence' (at [21]) in that case, the gross rental value of the land could not reasonably be determined on the basis of the gross annual rental that the land might reasonably be expected to realize if let on the tenancy from year to year in accordance with the comparable rent method, and, therefore, had to be determined on the basis of the assessed value of the land.

25 In ***Duffy v Minister for Planning*** [2003] WASCA 294 (***Duffy***) at [23] - [25], McLure J (as her Honour then was, and with whom Anderson and Steytler JJ agreed) set out applicable principles in relation to the comparable sales method of ascertaining market value for the purposes of determining compensation for the compulsory acquisition of land. Substituting the word 'rent' for 'sales', the principles stated by McLure J are applicable by analogy to the comparable rent method of valuation adopted and applied in the Valuer General's case in this proceeding. The principles stated by her Honour are as follows:

> [23] One method of ascertaining market value is the comparable sales method. That method requires that the sales evidence relied on be relevant and sufficient in volume: *Maurici v Chief Commissioner of State Revenue* [2003] HCA 8 at [18]; (2003) 195 ALR 236 at 242 [18].
>
> [24] A helpful description of what the comparable sales method involves was given by Wells J in *Brewarrana Pty Ltd v Commissioner of Highways* (1973) 32 LGRA 170. He said (at 179-180):
>
> > It is general valuation practice for sales characterized as comparable sales to be used as bases for the valuation of lands said to be similar. But allowances must always be made before such sales can be so used. No two parcels of land are identical in all respects: the sale price of any given piece of land is not necessarily the price at which it ought to have been sold, or the same thing as its true value. Before using any allegedly comparable sale, therefore, the valuer must consider whether, having regard to the circumstances … appertaining to the parcel of land in question, and to the transaction of sale, there are sufficient similarities to the circumstances appertaining to the subject land and to the notional sale presupposed by the test formulated in *Spencer v The Commonwealth of Australia* … to warrant a court's reasoning from the sale price paid under the allegedly comparable sale, with or without other evidence, to a value for the subject land. Adjustments must, of course, be made every time reasoning of that kind is undertaken. For example, in relation to the land itself and the circumstances appertaining to it, it may be necessary to consider such matters as topography, location, size, shape … land use (actual and potential), scope for, and difficulties of, development, …; and in relation to the transaction of sale, the valuer must weigh such things as the character, business and relationships of the parties, their motives, the terms and conditions in their contract of sale, and any

> other special considerations that induced or may have induced them to conclude the contract at the selling price agreed, as well as the dates when the contract of sale and the transfer were concluded or effected.
>
> [25] There is no hard and fast rule by which a valuer can draw the line that clearly separates sales that are comparable from those that are not. It is a matter of degree. Some adjustment is always necessary but too much adjustment may render it unsafe to use a sale. Where the line is to be drawn is a matter for the expert valuer to determine. Further, just because a sale is excluded from use in the comparable sales reasoning process does not necessarily mean that it is irrelevant: *Brewarrana* (above) per Wells J at 180.

26 The principles discussed by McLure J in ***Duffy*** at [25] were expressed by Hope JA (with whom Moffitt P and Mahoney JA agreed) in the New South Wales Court of Appeal in ***Leichhardt Municipal Council v Seatainer Terminals Pty Ltd*** (1981) 48 LGRA 409 at 435 as follows:

> Whether the differences between land a sale of which is to be relied upon and the land to be valued are so great that the land the subject of the sale cannot be regarded as comparable is a question of fact and degree. The differences may be so great that a court may be constrained to hold that the land is in no sense comparable, and that the adjustments which have to be made are so great that the sale can provide no evidence of the value to be determined, and no basis upon which that value can be assessed.

27 In ***Duffy***, McLure J proceeded to discuss principles in relation to valuation expert evidence which are also applicable in relation to valuation expert evidence concerning gross rental value. Her Honour held in ***Duffy*** at [26] - [31] as follows:

> [26] The general principles relating to the admissibility of and weight to be given to expert evidence are not in dispute. The basic principle is that an expert must either prove by admissible means the facts on which the opinion is based or explicitly state the assumptions as to fact on which the opinion is based: *Pownall v Conlan Management Pty Ltd* (1995) 12 WAR 370; *Pollock v Wellington* (1996) 15 WAR 1; *Makita (Australia) Pty Ltd v Sprowles* (2001) 52 NSWLR 705.
>
> [27] Further, the process of inference that leads to the opinions of the valuer must be stated or revealed in a way that enables the conclusions to be tested and a judgment made about their reliability. If not, the opinion can carry no weight: *Pollock v*

Wellington (above) at 4 per Anderson J; *Makita (Australia) Pty Ltd v Sprowles* (above) at 741.

[28] The expert must fully expose the reasoning relied on in reaching his or her opinion and the opinion must be rationally based: *Maurici v Chief Commissioner of State Revenue* (above).

[29] However, those principles have to be applied in the context of the valuers 'art'. The established principles were stated in *Spencer v Commonwealth* (above) where Isaacs J quoted with approval the following passage in *Secretary of State for Foreign Affairs v Charlesworth, Pilling & Co* [1901] AC 373 at 391:

> It is quite true that in all valuations, judicial or other, there must be room for inferences and inclinations of opinion which, being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others. Everyone who has gone through the process is aware of this lack of demonstrative proof in his own mind, and knows that every expert witness called before him has had his own set of conjectures, of more or less weight according to his experience and personal sagacity. In such an inquiry as the present, relating to subjects abounding with uncertainties and on which there is little experience, there is more than ordinary room for such guesswork; and it would be very unfair to require an exact exposition of reasons for the conclusions arrived at.

[30] An illustration of the practical application of the principles is seen in *Leichhardt Municipal Council v Seatainer Terminals Pty Ltd* (1981) 48 LGRA 409. In that case the subject land to be valued was a container terminal site. It was common ground that that was the best and highest use for the land. Notwithstanding that there was no sales evidence of container terminals, one expert used the comparable sales method and the basic sale he relied on was of industrial land with no water frontage. The valuer added between $100,000 - $120,000 per hectare as an adjustment for the subject land's water frontage. It was common cause that the expert did not have any sales evidence on which to rely for his quantification of the water frontage adjustment and he said it was fixed as a matter of judgment. The appellant in that case submitted that while judgment based on experience is a permissible method of making adjustments in the course of valuing, the selection of a figure based on nothing could not alter its character as in essence a guess or an arbitrary figure. The Court held that the need to make adjustments to values to arrive at the true valuation of subject land does not preclude the valuer or the Court who has the task of valuing the land from making adjustments which may be nothing more than the best guess that can be made in the circumstances. The Court also rejected an argument that a judgment of that nature was not valid

> unless there was evidence to establish the upper and lower limits within which the judgment must operate.
>
> [31] An opinion that is not based on sales or other empirical evidence is often referred to as a judgment, usually said to be based on skill and experience. Sometimes it may be difficult to draw the line between judgment and mere speculation. A rule of thumb is that a judgment formed without some disclosed rational basis will be speculation to which little, if any, weight should be given. However, generalised statements of principle are best avoided because whether and if so what weight should be accorded to a valuer's opinion will depend on the facts and circumstances of each case.

28 Section 32(1) of the VL Act enables any person who is liable to pay any rate or tax assessed in respect of land and who is dissatisfied with a valuation of such land made by the Valuer General under Pt III of the VL Act (which includes s 18) to lodge an objection to the valuation. Section 32(3) of the VL Act states that an objection to a valuation may be made 'on the ground that the valuation is not fair or is unjust, inequitable or incorrect, whether by itself or in comparison with other valuations in force under this Act.' Pursuant to s 32(1) of the VL Act, on 19 September 2014, the solicitors for the applicant lodged an objection to the valuation of the gross rental value of the land with the Valuer General principally on the basis that the gross rental value was considered to be 'too high' 'having regard to the remote location and nature of the property'.

29 Section 32(7) of the VL Act requires the Valuer General 'with all reasonable despatch, [to] consider any objection' and states that the Valuer General 'may either disallow it or allow it, wholly or in part.' On 20 March 2015, the Valuer General wholly disallowed the applicant's objection to the valuation.

30 Section 33(1) of the VL Act confers a right of review by the Tribunal upon any person who is dissatisfied with the decision of the Valuer General on an objection by that person, by way of a notice requiring the Valuer General to refer the valuation to the Tribunal for a review. On 19 May 2015, the applicant required the Valuer General to refer the valuation of gross rental value of the land as at the date of valuation to the Tribunal for a review. On 20 May 2015, the Valuer General referred the valuation to the Tribunal for a review under s 33(2) of the VL Act.

31 Finally, s 27 of the *State Administrative Tribunal Act* 2004 (WA) concerns the nature of review proceedings in the Tribunal and states as follows:

> (1) The review of a reviewable decision is to be by way of a hearing de novo, and it is not confined to matters that were before the decision-maker but may involve the consideration of new material whether or not it existed at the time the decision was made.
>
> (2) The purpose of the review is to produce the correct and preferable decision at the time of the decision upon the review.
>
> (3) The reasons for decision provided by the decision-maker, or any grounds for review set out in the application, do not limit the Tribunal in conducting a proceeding for the review of a decision.

32 As the review of the valuation of gross rental value of the land in this case is to be by way of a hearing de novo, and is not confined to matters before the Valuer General when the Valuer General disallowed the applicant's objection, both parties may (subject to natural justice being afforded to the other party) rely upon new or different contentions, evidence and submissions in the review.

33 As noted earlier, the primary issue between the parties in this review is whether the gross rental value of the land can reasonably be determined on the basis of the hypothetical gross annual rental of the land in accordance with the comparable rent method. Relying on the evidence of Mr Fern, the Valuer General contends that the gross rental value of the land can reasonably be determined on this basis, because there is rental evidence of three other TWA villages in the Pilbara at around the date of valuation, two in the Roebourne townsite and one in the Karratha townsite, to which adjustments can be made so as to be able to determine the hypothetical gross annual rental of the land having regard to the three 'comparable' rentals. In contrast, relying on the evidence of Mr Chapman, the applicant contends that the gross rental value of the land cannot reasonably be determined on this basis, because there were no 'sufficiently analogous properties' that were rented at the date of valuation from which to determine the hypothetical gross annual rental of the land.

Issues for determination

34 After discussion between the Tribunal and the parties during their openings, the following five issues for determination were identified:

> 1) Whether the 'gross rental value' of the land as at the date of valuation can reasonably be determined on the basis of

the gross annual rental that the land might reasonably be expected to realize if let on a tenancy from year to year upon condition that the landlord were liable for all rates, taxes and other charges thereon and the insurance and other outgoings necessary to maintain the value of the land.

2) If the answer to issue (1) is 'yes', what was the 'gross rental value' of the land determined on that basis as at the date of valuation?

3) If the answer to issue (1) is 'no', for the purposes of determining the 'unimproved value' of the land and hence the 'capital value' of the land as at the date of valuation, whether paragraph (b)(ii)(III) or paragraph (b)(vii)(I) of the definition of 'unimproved value' applies in the circumstances of this case.

4) If the answer to issue (1) is 'no', for the purposes of determining the 'capital value' of the land when added to the 'unimproved value' of the land as at the date of valuation:

   (i) What was the estimated replacement cost of improvements to the land after making such allowance for obsolescence, physical depreciation and such other factors as appropriate in the circumstances?

   (ii) What was the 'capital value' of the land?

5) If the answer to issue (1) is 'no', what was the 'assessed value' (being 5% of the 'capital value') and hence the 'gross rental value' of the land as at the date of valuation?

Can the gross rental value of the land reasonably be determined on the basis of the gross annual rental that the land might reasonably be expected to realize if let on a tenancy from year to year?

35 As noted earlier in these reasons, although, at around the date of valuation, there were approximately 80 TWA villages providing over 50,000 beds for transient workers in the Pilbara, most TWA villages were purpose built for mining companies or projects or occupied on a tariff basis. The valuation expert witnesses and the parties agree that very few

TWA villages in the Pilbara were rented at the time. This fact significantly limits the potential basket of comparable rents available for the purpose of the comparable rent method of valuation to be able to determine the gross rental value of the land on that basis.

36 In his original witness statement, Mr Fern identified and relied on rents of five TWA villages in the Pilbara which he regarded as 'comparable' to the hypothetical gross annual rental of Eramurra Village. However, following a pre-hearing conferral with Mr Chapman directed by the Tribunal, Mr Fern revised his opinion in a further responsive witness statement in which he relied on rents of only three of the originally identified five TWA villages as 'comparable' to the hypothetical gross annual rental of Eramurra Village. Mr Fern analysed each of the three 'comparable' TWA village base rents to determine gross rent per annum for each of those villages and, by dividing that gross rent by the number of units / rooms in each village, and then dividing by 52, he analysed gross rent per unit / room per week for each village. Mr Fern's analysis is set out in his table entitled 'TWA Rental Evidence (analysed to a gross annual rent)' which he provided in his further responsive witness statement and which is reproduced at the end of these reasons.

37 The first rent relied on by Mr Fern as 'comparable' is the TWA village at No 4 (Lot 1) Nairn Street, Roebourne (Nairn Street Village). Nairn Street Village comprises 28 single person units. General amenities of Nairn Street Village consist of a dining room and small recreation room. A base rent of $582,400 per annum was paid during a six year period (3+2+1 year lease) from 10 August 2009 for the whole property of 28 units. The rent remained unchanged throughout the lease term. Mr Fern analysed the base rental paid for the Nairn Street Village and, after making adjustments, determined an analysed gross rent of $648,667 per annum or $446 per unit per week (exclusive of furnishings and meals, and inclusive of outgoings and GST) (in his further responsive witness statement).

38 The second rent relied on by Mr Fern as 'comparable' is the TWA village at No 7 Hall Street, Roebourne (Hall Street Village). Hall Street Village adjoins Nairn Street Village and comprises 16 single person units. General amenities at Hall Street Village consist of a dining room and small recreation room. The base rent for Hall Street Village is $479,063 per annum for a five year period (3+2 year lease) from 1 August 2012 for the whole property of 16 units. The rent has remained unchanged throughout the lease term. After making adjustments, Mr Fern

determined that this rent showed an analysed gross rent of $522,178 per annum or $628 per unit per week (exclusive of furnishings and meals, and inclusive of outgoings and GST) (in his further responsive witness statement).

39 Although the Nairn Street Village and the Hall Street Village are located within the Roebourne townsite, Mr Fern gave evidence (which was not questioned or contradicted and which I accept) that 'Roebourne is a small and remote townsite with few facilities for TWA workers and with significant social issues such as substance abuse and antisocial behaviour.' He expressed the opinion that, in consequence, 'there is no premium for being … located in a townsite such as Roebourne.' Mr Fern also expressed the opinion that, in comparison to Nairn Street Village and Hall Street Village, Eramurra Village is 'inferior with regard to its location in terms of distance from Karratha', 'larger in scale as it accommodates 1,754 persons', 'superior with regards to general facilities ([Nairn Street Village and Hall Street Village have] no pool, courts or tavern)' and 'similar with regards to standard of single unit accommodation.'

40 The third rent relied on by Mr Fern as 'comparable' is King TWA Village, Karratha (King Village), which is situated within the light industrial area of the Karratha townsite, some four kilometres south of the Karratha central business district. King Village comprises 56 single person units with every two units sharing a kitchenette. General amenities consist of a dining room and recreation room. A base rent of $2,327,495 per annum (according to Mr Fern's further responsive witness statement) was paid during a five year lease from 1 January 2008 for the whole property of 56 units. The rent remained unchanged throughout the lease term. After making adjustments, Mr Fern determined that the rent at King Village showed an analysed gross rent of $2,368,254 per annum or $813 per unit per week (exclusive of furniture and meals, and inclusive of outgoings and GST) (in his further responsive witness statement).

41 Mr Fern considers King Village to be 'the most comparable [to Eramurra Village] as it is the largest of the three properties'. However, at 56 units, King Village still only comprises about 3% of the accommodation of Eramurra Village. Put another way, Eramurra Village is over 30 times larger in terms of accommodation than King Village which Mr Fern considers to be 'the most comparable as it is the largest of the three properties'. Nairn Street Village, with 28 units, comprises less than 2% of the accommodation of Eramurra Village or, put another way, Eramurra Village has more than 60 times the accommodation of Nairn Street Village. Hall Street Village, with 16 units, comprises about

1% of the accommodation of Eramurra Village or, put another way, Eramurra Village has 100 times the accommodation of Hall Street Village.

42 Mr Fern acknowledged that 'the TWA facilities that I rely upon differ in scale to the subject TWA Village, Eramurra.' However, he said that 'I am of the view that the rents achieved for King Village, Nairn Street and Hall Street facilities are evidence that a rental value can reasonably be determined'.

43 Mr Fern gave two principal reasons as to why he considers that King Village, Nairn Street Village and Hall Street Village are 'evidence that a rental value can reasonably be determined' for Eramurra Village.

44 First, he said that 'accommodation provided in TWAs is largely standardised throughout the Pilbara … in other words, "a room is a room"'.

45 Secondly, as Mr Fern said (and Mr Chapman agreed in their joint statement), at the date of valuation, 'the mining market was in a very strong phase, characterised by high demand for TWAs.' Mr Fern said that 'mining companies sought rooms wherever they were available' and, given the strong demand, he considers that the size of Eramurra Village 'would be attractive to CITIC and a number of other mining companies'. He gave evidence (which was not questioned or contradicted and which I accept) that he is aware of an instance in which Woodside Limited, a resources company, lodged staff working at its North West Shelf gas plant at Fortescue River TWA Village, which is located approximately 35 kilometres south-west from Eramurra Village and at a distance of approximately 130 kilometres from the gas plant. Mr Fern, therefore, expressed the opinion that 'the location of Eramurra would not, in my view, make it less rentable than TWAs located in Karratha, or other more remote sites' and that 'travel distances do not necessarily render a facility unsuitable due to the need to secure accommodation', particularly as at the date of valuation.

46 Mr Fern conceded in cross-examination that the three 'comparable' rents he relied on are 'not directly comparable' (T:84.1; 03.02.16) to Eramurra Village and said that he 'would class them [as] secondary evidence' (T:84.2; 03.02.16). He explained in his evidence that in order for this 'secondary evidence' to be able to be used for the comparable rent method to determine the hypothetical gross annual rental of Eramurra Village, he made 'adjustments to allow for location, notional

differences in facilities provided and size'. In particular, Mr Fern made adjustments to the analysed gross rent per unit / room per week that he determined in relation to Nairn Street Village, Hall Street Village and King Village under four categories, namely 'location allowance', 'camp size allowance', 'accommodation quality allowance' and 'village facilities allowance'.

47 In relation to 'location allowance', Mr Fern said that he 'aggregated the two Roebourne TWAs (given they are adjoining to each other and used by the same tenant and are standard TWA units) to give a hypothetical Roebourne TWA of 44 units' which he said 'produces a neat comparator to the King Village TWA in Karratha which is 56 units and also a standard TWA (save for the shared kitchenette accommodation, for which I allow 5%)'. Mr Fern gave evidence that this method enabled him to calculate what difference in rent can be attributed to 'the real difference in location between Karratha and Roebourne' (which he determined in his original witness statement to be -25% and in his further responsive witness statement to be -30%) and he 'then extrapolated from that percentage to determine a location allowance for the other TWA sites as compared with the subject'. In cross-examination, Mr Fern gave evidence that the -25% (or -30%) difference in location allowance between King Village (Karratha) and Nairn Street Village / Hall Street Village (Roebourne) reflects 'the difference between not isolated [Karratha] and semi-isolated [Roebourne]' (T:89.8; 03.02.16). Mr Fern 'extrapolated' from the -25% (or -30%) location allowance between Karratha and Roebourne by attributing a further location allowance of -15% from the Roebourne villages to Eramurra Village on the basis that Eramurra Village 'is only 15% worse located than the two Roebourne TWAs (for being 35km further away from Karratha than Roebourne)'. In cross-examination, Mr Fern gave evidence that 'the difference [in location allowance] between Roebourne and Eramurra [reflects the difference] … between semi-isolated and isolated' (T:89.8; 03.02.16).

48 Mr Chapman disagreed with Mr Fern's aggregation of the two TWA villages in Roebourne to give a hypothetical Roebourne TWA village of 44 units. Mr Chapman gave evidence that 'these transactions concern independent lessors and are deemed therefore to be independent transactions'. He gave evidence that:

> In my experience, it is not acceptable valuation practice to aggregate evidence because it is convenient for comparative purposes and accordingly, reference to this analysis should be ignored because it is not relevant.

49 Mr Chapman was not challenged in relation to this opinion, and I accept his evidence in this regard, both because the lessors of the two Roebourne TWA villages were different and because Mr Fern himself conceded in cross-examination that 'there's a leap of faith there that … aggregating them doesn't make them more or less than the sum of their parts' (T:91.5; 03.02.16).

50 In relation to Mr Fern's 'extrapolation' from his -25% (or -30%) location allowance between Karratha to Roebourne by attributing a further location allowance of -15% from Roebourne to Eramurra Village (because Eramurra Village is 15% further away from Karratha than Roebourne is from Karratha), Mr Chapman agreed that 'locational differences will relate in part to distance'. However, Mr Chapman gave evidence that other important factors in relation to location were ignored in Mr Fern's 'extrapolated' further adjustment between Roebourne and Eramurra Village, 'including but not limited to size / population, amenity, supporting infrastructure, proximity to the coast and demography'. I accept Mr Chapman's criticism that Mr Fern ignored relevant considerations in relation to locational differences between Eramurra Village, which is in a remote and isolated location, and Roebourne which, although according to the evidence is small, semi-isolated and suffers from social problems, is nevertheless a town. I accept Mr Chapman's opinion that the allowance for location 'should consider a wider scope of factors' than included by Mr Fern and I, therefore, accept Mr Chapman's criticism that 'the allowances made by Mr Fern are to some extent arbitrary'.

51 In relation to 'camp size allowance', Mr Fern conceded that 'the subject [Eramurra Village] is significantly larger than any of the TWA [villages] considered' and he therefore applied 'a discount for bulk occupancy' between the analysed gross rent per unit / room per week of the three 'comparable' rent TWA villages and the hypothetical gross annual rental of Eramurra Village. The specific camp size allowance adjustments applied by Mr Chapman between the three other villages and Eramurra Village are -50% for Nairn Street Village, -60% for Hall Street Village and -40% for King Village. However, there is absolutely no evidence before the Tribunal (other than Mr Fern's professional judgment) to support these particular percentage camp size allowance adjustments between the 'comparable' rents and Eramurra Village.

52 Mr Fern also made a -5% adjustment for 'accommodation quality allowance' as between King Village and Eramurra Village, because of the inclusion of shared kitchenettes at King Village, and adjustments for

'village facilities allowance' of +20% between Nairn Street Village and Eramurra Village and of +10% between each of Hall Street Village and King Village, and Eramurra Village. Neither Mr Chapman nor the applicant raised any real concerns about these allowances, either in terms of making the allowance or in terms of the reasonable calculation of the adjustments.

53 When the specific negative and positive adjustments under each of Mr Fern's four 'allowance' categories are added up, the net specific adjustments that he makes between the analysed gross rent per unit / room per week of the three 'comparable' rent TWA villages and the hypothetical gross annual rental per unit per week at Eramurra Village are -45% for Nairn Street Village, -65% for Hall Street Village and -80% for King Village.

54 Mr Fern's 'further revised' comparable rent method analysis to arrive at the hypothetical gross annual rental that the land might reasonably be expected to realize if let on a tenancy from year to year, including the specific adjustments that he makes for 'location', 'camp size', 'accommodation quality' and 'village facilities' allowances, is set out in his 'further revised SF7' table entitled 'TWA Rental Evidence - Comparison to Eramurra' which he provided in his further responsive witness statement and which is reproduced at the end of these reasons.

55 As can be seen from Mr Fern's table 'TWA Rental Evidence - Comparison to Eramurra', having analysed the stated gross rent per room per week from each of the three 'comparable' rents, Mr Fern made negative or positive 'allowances' / adjustments for location, camp size, accommodation and village facilities and thereby derived 'indicative subject rent (on a per unit per week basis)' for the types of accommodation available at Eramurra Village and determined an 'indicative subject rent per annum' for Eramurra Village based on each of the three 'comparable' rents. On this basis, Mr Fern determined gross rental value of the land to be $15,286,128, which is slightly above the 'indicative subject rent per annum' that he derived on the basis of the King Village rent (which, as noted earlier, Mr Fern regarded as 'most comparable'), although considerably lower than the 'indicative subject rent per annum' which he derived from the analysis of the two Roebourne TWA village rents. The gross rental value determined by Mr Fern is, therefore, more than $3 million or 25% greater than the gross rental value determined by the Valuer General which is the subject of this review.

56 Mr Chapman disagreed with Mr Fern's opinion that the three rentals relied on by Mr Fern are relevantly 'comparable' to the hypothetical gross annual rental of Eramurra Village. Mr Chapman's first two reasons for disagreeing are because the other three TWA villages are in a 'townsite location and not a remote facility' and 'size [; the number of units in each of the other TWA villages] is too small to reasonably be comparable to the subject'. It is, therefore, Mr Chapman's evidence that, although he agrees with Mr Fern that 'the Gross Rental Value of the subject property should be assessed by the application of comparable rental evidence', it 'cannot reasonably be determined on this basis because the property is highly specialised, and exists in an imperfect rental market devoid of comparable rental evidence'.

57 It appears that the accommodation units / rooms at each of the three TWA villages relied on by Mr Fern are similar to the accommodation units / rooms at Eramurra Village. However, in light of the fundamental differences in location and size between the three TWA villages relied on by Mr Fern and Eramurra Village and the lack of sufficient cogent evidence on the basis of which to be able to make appropriate adjustments for those fundamental differences, I find that the three rents relied on by Mr Fern are not reasonably and safely comparable to the hypothetical gross annual rental of the subject land. In terms of the 'fundamental principle' stated by the Land Valuation Tribunal in ***Buckingham*** at [7] that 'like must be compared with like', I am not satisfied that the evidence before the Tribunal enables the three rents relied on by Mr Fern to be considered 'like' the hypothetical gross annual rental of the subject land.

58 In relation to location, there is a fundamental difference between a TWA village being located in a townsite and a TWA village being located in a remote and isolated location.

59 King Village, which Mr Fern regarded as the 'most comparable' of the three rents, is located in Karratha, which the Valuer General conceded to be 'effectively the key city within that location in the Pilbara' (T:21.5; 04.02.16). The 'key city' in the Pilbara is fundamentally different to an isolated and remote mining location which lacks the services, facilities, amenities and infrastructure of a major centre. Furthermore, although Mr Fern described Roebourne as 'semi-isolated' … [b]ecause it's a long way from the people who have to travel to either Karratha or … Cape Lambert, which is past Wickham and very close to Point Samson' (T:78.5-78.8; 03.02.16), and although Roebourne is 'a small and remote townsite with few facilities for TWA workers and with significant social

issues', it is nevertheless a town and not a remote and isolated mining location.

60 In terms of size, the 'comparable' rent TWA villages relied on by Mr Fern are, as Mr MT McKenna suggested in opening for the applicant, 'orders of magnitude smaller' (T:33.3; 03.02.16) than Eramurra Village. As noted earlier, the number of units / rooms at the other three TWA villages is between 1% and 3% of the number of units / rooms at Eramurra Village or, put another way, Eramurra Village is between 30 and 100 times larger than the other three TWA villages in terms of accommodation. The Pilbara Development Commission report referred to earlier in these reasons indicates that there were large, comparably sized TWA villages to Eramurra Village in the Pilbara at around the date of valuation. In 2011, there were nine TWA villages with between 1,000 and 1,499 beds, five TWA villages with between 1,500 and 1,999 beds, and three TWA villages with 2,000 or more beds, in the Pilbara. However, it appears that none of these comparably sized TWA villages were rented, supporting Mr Chapman's evidence that there was relevantly 'an imperfect rental market devoid of comparable rental evidence' at the date of valuation.

61 As noted earlier, Mr Fern conceded in cross-examination that the three rents he relies on are 'not directly comparable' (T:84.1; 03.02.16) and he said that he 'would class them [as] secondary evidence' (T:84.2; 03.02.16). He conceded, further, in cross-examination that 'generally in valuations you would … be most comfortable doing a valuation if you had empirical evidence that was in the order you're valuing[.] Smaller and larger' (T:83.1; 03.02.16) and that in this case he is 'limited to a set that ranges between 16 and 56 [units / rooms]' (T:83.6; 03.02.16). Importantly, Mr Fern also conceded that 'there is a significantly high potential error - margin of error in that [valuation] exercise' (T:83.8; 03.02.16) in the circumstances of this case.

62 There is simply no evidence before the Tribunal (other than Mr Fern's professional judgment) to support his specific and significant 'camp size allowance' of -50% (for Nairn Street Village), -60% (for Hall Street Village) and -40% (for King Village) to account for the differences in size to Eramurra Village. Mr Chapman gave evidence that although it is appropriate to 'give weight to size', that is, to make an adjustment, if that is possible, 'to allow a reasonable trend to be identified for the purpose of weighting the evidence, and therefore a reasonable comparison to the subject property to be made, I would require sufficient comparable evidence which would be evidence of properties both smaller

and larger than the subject; or at least of a similar size to the subject'. I find that there is no rational basis disclosed in the evidence, whether of the nature referred to by Mr Chapman or otherwise, for making the nominated camp size adjustments by Mr Fern (or, indeed, for making any other specific camp size adjustments).

63 Although, as McLure J emphasised in ***Duffy*** at [29], in valuation cases, appropriate scope and latitude should be allowed for professional judgment of experienced valuers (the so-called 'valuers art'), in my view, Mr Fern's professional opinion in relation to the 'camp size allowance' is not a sufficient evidentiary basis for making his nominated camp size adjustments in the circumstances of this case. This is particularly because of the fundamental difference in size, by 'orders of magnitude', between the TWA villages relied on by Mr Fern and Eramurra Village, and the fair and proper concession made by Mr Fern that 'there is a significantly high potential error - margin of error in that [valuation] exercise' (T:83.8; 03.02.16) in the circumstances of this case.

64 In the circumstances, notwithstanding that Mr Fern's 'camp size allowance' forms part of the expert evidence of a qualified and highly experienced valuer, including in relation to the valuation of the TWA villages in the Pilbara, I find that the nominated adjustments are arbitrary and speculative.

65 Furthermore, there is, in my view, absent a sufficient evidentiary basis for Mr Fern's 'location allowance' to enable it and his ensuing analysis to be safely relied upon to determine the gross rental value of the land on a comparable rent basis. Mr Fern's starting point in his analysis of 'location allowance', namely, the aggregation of the two Roebourne TWA villages to give 'a hypothetical Roebourne TWA of 44 units' is highly problematic and speculative, given that they are two different properties, leased by two different lessors, although apparently to the same lessee. As Mr Chapman said, 'it is not acceptable valuation practice to aggregate evidence because it is convenient for comparative purposes', and as Mr Fern himself conceded, his analysis involves 'a leap of faith'. The valuation in this case cannot safely proceed on this basis.

66 Furthermore, as Mr Chapman said in evidence, Mr Fern's 'extrapolation' of the location allowance, while in part rationally based on the relative distance from Eramurra Village to Karratha, in comparison to the distance from Roebourne to Karratha, ignores other relevant factors which should be allowed for in an analysis of locational differences between a TWA village in a townsite, even a 'semi-isolated' one, and

a TWA village in an isolated and remote mining location, namely, as Mr Chapman said, factors such as 'size / population, amenity, supporting infrastructure, proximity to the coast and demography'. Given that these relevant factors are ignored in Mr Fern's location allowance, and that, as Mr Chapman said, it is 'to some extent arbitrary', it and his consequent analysis cannot safely be relied upon on a comparable rent methodology basis.

67 Mr Fern applied a 'check method' to the gross rental value that he determined for the land on the basis of the comparable rent method by noting that the gross rental value of the land was only approximately six times the King Village gross annual rental at the date of valuation, whereas Eramurra Village accommodates 30 times the number of workers as King Village. On the basis of this 'check method', Mr Fern considers the gross rental value that he determined for the land 'to be fair and reasonable'. However, the 'check method' assumes that King Village is a comparable rent to the hypothetical gross annual rental of the subject land, whereas I have found that it is not reasonably and safely comparable.

68 In her closing submissions, Ms CA Ide, counsel for the Valuer General, submits that Mr Fern's evidence of gross rental value should be accepted for several reasons. First, because in Mr Fern's table 'TWA Rental Evidence - Comparison to Eramurra', 'each adjustment has been expressly identified' and is discussed in his evidence. However, although Mr Fern appropriately addressed each adjustment separately, and did not aggregate adjustments, for reasons set out earlier, there is absent a sufficient evidentiary foundation for his adjustments in relation to location and camp size to be safely accepted and hence for the result of his comparable rent analysis to be accepted.

69 Secondly, Ms Ide emphasises Mr Fern's 'significant experience in undertaking specialised valuations and [that he] has extensive knowledge of the Pilbara and the … transient workers' accommodation market' (T:17.2; 04.06.16). She submits that 'it's entirely appropriate in this case for the Tribunal to accord considerable weight to the opinions reached by Mr Fern in his role as an expert valuer assisting the Tribunal' (T:17.2; 04.2.16). I fully accept that Mr Fern is a highly experienced valuer in relation to specialised valuations and has extensive knowledge of the Pilbara and TWA villages in the region. Nevertheless, for reasons given earlier, the rents Mr Fern relied upon are not reasonably and safely comparable, because of the absence of sufficient evidence in relation to necessary adjustment factors.

70 Thirdly, Ms Ide relies on Mr Fern's evidence that, at the date of valuation, mining companies went to extreme lengths to find accommodation for their workers and, in particular, Mr Fern's evidence of Woodside Limited accommodating some workers approximately 35 kilometres from Eramurra Village and approximately 130 kilometres from the worksite. However, as Mr Fern agreed in cross-examination, the one specific example that he gave of Woodside Limited involved accommodating only about 100 workers (which is less than 6% of the number of workers who can be accommodated at Eramurra Village), for a period of only two months (rather than on an annual basis), and on a tariff arrangement (rather than on the basis of an annual rental) (T:76.2-76.5; 03.02.16). This evidence does not establish that there was a market for annual rental of TWA villages of the characteristics of the site, nor does this evidence provide the necessary evidentiary foundation for a finding that the three rents relied on by Mr Fern are reasonably and safely comparable to the hypothetical gross annual rental of the subject land.

71 Finally, in relation to the adjustment for camp size, Ms Ide relied on Mr Chapman's agreement in cross-examination with Mr Fern's opinion that there is a 'broad [valuation] principle that as one goes up in size typically discount size is allowed as against a small property' (T:103.4; 03.02.16). However, although this principle was accepted by both valuation expert witnesses, neither referred to any recognised level or scale of discount relevant to camp size of TWA villages or relevant to different sizes of any other type of property. Although the valuation expert witnesses, and the Tribunal, recognise the principle, the evidence presented in this case does not enable the principle to be safely and appropriately applied.

72 For reasons set out above, I find that the 'gross rental value' of the land as at the date of valuation cannot reasonably be determined on the basis of the gross annual rental that the land might reasonably be expected to realize if let on a tenancy from year to year upon condition that the landlord were liable for all rates, taxes and other charges thereon and the insurance and other outgoings necessary to maintain the value of the land.

73 In consequence, issue (2) does not arise and the gross rental value of the land is required to be determined on the basis of the alternative approach set out in the definition of 'gross rental value' in s 4(1) of the VL Act, namely, the 'assessed value' of the land. I will now proceed to address the two matters in contention between the parties in relation to the determination of the assessed value of the land.

Which provision in the definition of 'unimproved value' applies in the circumstances of this case?

74 The 'assessed value' of the land is, relevantly, 5% of its 'capital value'. The term 'capital value' relevantly means the sum of the 'unimproved value' of the land and 'the estimated replacement cost of improvements to the land …'.

75 As noted earlier, the definition of 'unimproved value' in s 4(1) of the VL Act relevantly includes the following:

> ***unimproved value*** means -
>
> …
>
> (b) in relation to any land not included in any area referred to in paragraph (a) [the land the subject of the valuation in this case is not in an area referred to in paragraph (a)], where any such land is -
>
> …
>
> (ii) land in respect of which -
>
> …
>
> (III) any other licence [other than an exploration licence - see paragraph (b)(ii)(II)] or a lease is held under the *Mining Act 1978* - 5 times the annual rent payable for the licence or lease under that Act; or
>
> …
>
> (vii) land to which any of subparagraphs (i) to (vi) do not apply -
>
> (I) the capital amount that an estate in fee simple in the land not including improvements might reasonably be expected to realize upon sale; or
>
> (II) where the unimproved value cannot reasonably be determined on the basis in item (I) - … [not relevant in this case, because the valuation expert witnesses and the parties agree that, if necessary, the unimproved value of the land can reasonably be determined on the basis of paragraph (b)(vii)(I)].

76 The applicant contends, but the Valuer General disputes, that paragraph (b)(ii)(III) of the definition of 'unimproved value' applies for

the purpose of determining the 'unimproved value' of the land in the circumstances of this case. It is common ground between the parties that no other provision in any of subparagraphs (i) to (vi) of paragraph (b) the definition of 'unimproved value' applies to the land and that if paragraph (b)(ii)(III) of the definition of 'unimproved value' does not apply for the purpose of determining the 'unimproved value' of the land, then the 'catch-all' provision in paragraph (b)(vii)(I) of the definition of 'unimproved value' applies in the circumstances of this case.

77 There is no dispute between the parties as to the correct calculation of the 'unimproved value' of the land under each of the two potentially applicable provisions in the definition of that term. The valuation expert witnesses agree that:

- if paragraph (b)(ii)(III) of the definition of 'unimproved value' applies for the purpose of determining the 'unimproved value' of the land in the circumstances of this case, then the unimproved value of the land ('5 times the annual rent payable for [General Purpose Lease 08/75]') was $42,428 as at the date of valuation; and

- if paragraph (b)(vii)(I) of the definition of 'unimproved value' applies for the purpose of determining the 'unimproved value' of the land in the circumstances of this case, then the 'unimproved value' of the land ('the capital amount that an estate in fee simple in the land not including improvements might reasonably be expected to realize upon sale') was $6,074,037 as at the date of valuation.

78 The applicant submits that the terms of paragraph (b)(ii)(III) of the definition of 'unimproved value' are 'clear' and that that provision 'plainly applies to the subject land in question as it is land in respect of which General Purpose Lease G08/75 is in force and authorises the construction of the accommodation village in respect of which the valuation is being conducted'.

79 In contrast, the Valuer General submits that paragraph (b)(ii)(III) is not 'an appropriate fit' in the circumstances of this case, 'as while the subject land is subject to a general purpose lease, the "land" in question is the 100ha TWA site which only forms part of the General Purpose Lease'.

80 In my view, on the proper interpretation of paragraph (b)(ii)(III) of the definition of 'unimproved value', the Valuer General's submission is

correct. As the Court of Appeal said in ***City of Kwinana v Lamont*** [2014] WASCA 112 at [47], 'the starting point and ending point for the task of statutory construction is the statutory text' and the duty of the Tribunal is 'to give the words of the statutory provision the meaning that the legislature is taken to have intended them to have', which '[o]rdinarily, but not universally … will correspond to the grammatical meaning of the provision'. There are two textual indications in the provision which support the Valuer General's position. First, the land the subject of the valuation is not 'land in respect of which … any other licence or a lease is held under the *Mining Act 1978*'. Rather, the land the subject of the valuation is *only part* of land in respect of which a licence or lease is held under the Mining Act. Secondly, the fact that 'unimproved value' in relation to land is relevantly, under paragraph (b)(ii)(III), '5 times the annual rent payable for the licence or lease under that Act' indicates that the land the subject of the valuation must be coextensive with the land that is licensed or leased under the Mining Act for paragraph (b)(ii)(III) to be applicable. Paragraph (b)(ii)(III) of the definition of 'unimproved value' establishes a formula by which unimproved value of land to which it applies is to be determined. The formula is a multiple of 'the annual rent payable for the licence or lease under that Act'. The annual rent payable for the licence or lease under the Mining Act is payable in respect of the whole of the land that is the subject of the licence or lease under the Mining Act. This formula indicates that the land the unimproved value of which is prescribed by paragraph (b)(ii)(III) is the same land as the land in respect of which the annual rental for the licence or lease is paid (and cannot refer to only part of that land).

81 As paragraph (b)(ii)(III) of the definition of 'unimproved value' does not apply for the purpose of determining the 'unimproved value' of the land in the circumstances of this case, and as no other provision of subparagraphs (i) to (vi) of paragraph (b) of the definition applies and the unimproved value of the land can reasonably be determined on the basis of the 'catch-all' provision in paragraph (b)(vii)(I) of the definition, that provision applies in the circumstances of this case for the purpose of determining the unimproved value of the land. Consequently, the unimproved value of the land was $6,074,037 as at the date of valuation.

What was the estimated replacement cost of improvements to the land and what was the capital value of the land as at the date of valuation?

82 As noted earlier, the determination of the 'capital value' of the land relevantly requires an assessment of 'the estimated replacement cost of improvements to the land after making such allowance for obsolescence,

physical depreciation, and such other factors as are appropriate in the circumstances', to be added to the unimproved value of the land.

83 The applicant called Ms Kim Liew, a certified practising accountant and the applicant's Financial Controller of Financial Reporting, to give evidence as to the estimated replacement cost of improvements to the land. Ms Liew is responsible for all statutory reporting requirements of the applicant and related companies, including the companies involved in the Sino Iron Project and the related workers' accommodation at Eramurra Village.

84 With the assistance of Mr Eric Yong, Asset Accountant for the applicant, Ms Liew interrogated the applicant's computer system by searching for all assets corresponding to the specific location code for Eramurra Village. Ms Liew gave evidence that this 'produced all assets associated with Eramurra Village'. The data extracted from the computer system was downloaded into the form of a spreadsheet.

85 Ms Liew gave evidence that she 'deleted columns and rows of data [in the spreadsheet] that were not relevant to the acquisition costs of the buildings, fixtures and fittings at Eramurra Village at the date of construction'. When Ms Liew was asked in cross-examination what data she was asked to exclude, she replied 'I can't remember but I believe things like air conditioners, things that just have a quick wear and tear' (T:48.1; 03.02.16). Ms Liew could not recall what items, other than air conditioners, she was asked to exclude. However, Mr Chapman gave evidence that 'in the first instance, I was provided with a dump of data from [the applicant's] accounting system … [which] included items of plant and equipment, that were obviously plant and equipment, such as tables, chairs, beds, refrigerators, those sorts of things' and that he was the one who 'reverted to Ms Liew and … asked her whether she could provide me with a conclusive list for the assets that related to the property, including the establishment costs, the buildings, infrastructure, etcetera' (T:71.6-71.7; 03.02.16). On the basis of Ms Liew's and Mr Chapman's evidence, I find that the only assets associated with Eramurra Village that were excluded by Ms Liew in the spreadsheet she compiled and presented in her evidence were plant and equipment, rather than improvements to the land. (Although Ms Liew said in cross-examination that she believed that she excluded 'things like air conditioners', whereas in fact the spreadsheet includes three 'asset' items with 'asset description' of 'Air Conditioner, Ceiling Cassette', 'Air Conditioner, Split System' and 'Air Conditioner, Ceiling Cassette', nothing turns on this discrepancy as it was not suggested on behalf of the Valuer General that these three

air conditioner asset items are not properly 'improvements to the land' and as I have found that the only items excluded by Ms Liew were plant and equipment).

86 The spreadsheet produced by Ms Liew (attachment KWL-1 to her affidavit) lists 29 items of 'asset' with the 'asset class description' of either 'Building' or 'Fittings & Fixtures', each with an 'asset description' and the initial cost. In his responsive witness statement, Mr Fern said that 'there are costs that appear to be missing [from Ms Liew's spreadsheet KWL-1] for infrastructure type improvements [at Eramurra Village] such as site clearing[,] fencing[,] bitumen roads and parking[,] underground site services (power, water, sewerage and drainage)[,] a swimming pool[,] sports courts; and the Tavern building [and holding ponds - added in joint expert statement]'.

87 However, Ms Liew gave evidence that, although her spreadsheet KWL-1 'is broken down into a number of different [asset] descriptions':

> One [asset] description may encompass one or more assets. For example, I am told by Mr Yong that items described as 'module installation' may encompass a number of different buildings. It is not possible to break down the assets further because the assets were inputted into [the computer system] under these descriptions.

88 In her oral evidence-in-chief, Ms Liew was specifically asked about the asset items that Mr Fern said 'appear to be missing' from the spreadsheet. She responded that, having regard to her understanding as to how assets are entered into the applicant's computer system, including 'the possibility that the cost of those infrastructure [assets] were absorbed into line items such as the modulation, which is shown in the spreadsheets' (T:43.6; 03.02.16), 'they are accounted for in the spreadsheet' (T:43.8; 03.02.16).

89 Ms Liew was cross-examined about the 'missing' infrastructure assets referred to by Mr Fern, particularly the pool and bitumen roads. During cross-examination, Ms Liew gave the following evidence:

> … I believe the fixed asset register is accountable for all items that we have capitalised into the asset register. And not every single item, you know, can be split or itemised. Particularly certain items are just groups together as one asset item.
>
> (T:45.3; 03.02.16)

90 When asked specifically 'how would you be satisfied that the pool has been accounted for in this register?', Ms Liew said:

> … I would be looking at the asset register and I would say that it's probably absorbed into the module installation for, say, the gym, the gym in Eramurra.
>
> (T:48.8; 03.02.16)

91 Ms Liew explained that she formed this view '[g]iven where the location of the pool is' and 'as it was around some contract by the subcontractor, that is the - also that was mentioned by the asset accountant to me' (T:49.1-49.2; 03.02.16).

92 Similarly, when asked 'which asset description would you say bitumen roads fits under?', Ms Liew gave the following evidence:

> … but if I'm looking at a fixed asset register that itemised bitumen and would be grouped to the area of the specific module area, for example, kitchens or laundry or the room accommodation building, depending where the road is. So probably part and parcel of that.
>
> (T:50.7-50.8; 03.02.16)

93 Ms Liew gave clear, consistent and logical evidence explaining why the 'missing' infrastructure assets referred to by Mr Fern are in fact probably included in the 29 'assets' listed in the spreadsheet KWL-1, even though they are not explicitly mentioned in the 'asset description' for any of the assets. The spreadsheet was produced by Ms Liew by appropriately interrogating the applicant's computer system to obtain a complete list of all assets associated with Eramurra Village and then excluding only those assets which are not improvements to the land. Ms Liew is a certified practising accountant and the Financial Controller of Financial Reporting for the applicant and related companies and the material that she interrogated and produced for the purposes of her evidence are business records of the applicant maintained for the purposes of its business. In these circumstances, although the 'asset description' of the 'assets' listed in the spreadsheet KWL-1 do not explicitly refer to the 'missing' infrastructure assets identified by Mr Fern, I find that it is more probable than not that the spreadsheet KWL-1 in fact includes all improvements to the land and their initial cost.

94 The Valuer General did not present any evidence as to the estimated replacement cost of improvements to the land. Mr Chapman and Mr Fern agree that, if all improvements to the land are included in Ms Liew's spreadsheet KWL-1 (which, as I have found, they are), then the cost of

assets specified in that document are accepted and that 'the estimated replacement cost of improvements to the land after making such allowance for obsolescence, physical depreciation, and such other factor as are appropriate in the circumstances' (including GST) was, at the date of valuation, $61,847,065.

95 It follows that the 'capital value' of the land, which is the sum of the unimproved value of the land and the estimated replacement cost of improvements to the land after making such allowances for obsolescence, physical depreciation, and such other factors as are appropriate in the circumstances, was, as at the date of valuation:

Unimproved value	$6,074,037
Replacement cost of improvements	$61,847,065
Capital value	$67,921,102

What was the 'assessed value' of the land and hence the 'gross rental value' of the land as at the date of valuation?

96 As noted earlier, the 'assessed value' of land means the prescribed percentage of the 'capital value'. As at the date of valuation, the prescribed percentage of the 'capital value' for the purpose of determining the 'assessed value' of the land was 5%. Therefore, as at the date of valuation, the 'assessed value' and hence the 'gross rental value' of the land was:

Capital value	$67,921,102.00
	x 5%
Assessed value / Gross rental value	$3,396,055.10

Conclusion

97 The gross rental value of the 100 hectare area of land comprising and known as Eramurra Village cannot reasonably be determined as at the date of valuation on the basis of the gross annual rental that the land might reasonably be expected to realize if let on a tenancy from year to year upon condition that the landlord were liable for all rates, taxes and other charges thereon and the insurance and other outgoings necessary to maintain the value of the land. In light of the fundamental differences in location and size between the three TWA villages relied on by Mr Fern for comparable rentals and Eramurra Village and the lack of sufficient cogent evidence on the basis of which to be able to make appropriate

adjustments for those fundamental differences, the three rentals relied on by Mr Fern are not reasonably and safely comparable to the hypothetical gross annual rental of the subject land.

98 It is precisely to address unusual circumstances such as the present case, where the gross rental value cannot reasonably be determined on the primary basis for assessing gross rental value, that the VL Act provides an alternative method, namely the assessed value of the land.

99 The assessed value of the land was $3,396,055.10 as at the date of valuation which is 5% of the sum of the unimproved value of $6,074,037 and the estimated depreciated replacement cost of improvements to the land plus GST of $61,847,065.

100 It follows that the application for review should be allowed and the determination made by the Valuer General of gross rental value of the land as at the date of valuation of $12,008,880 should be set aside and a decision substituted that the gross rental value of the land as at that date was $3,396,055.10.

Orders

101 For these reasons, I make the following orders:

1. The application for review is allowed.

2. The determination by the Valuer General of gross rental value of a 100 hectare portion of Lot 263 on Deposited Plan 220164 comprising and known as Eramurra transient workers' accommodation village as at 1 August 2011 of $12,008,880 is set aside and a decision is substituted that the gross rental value of that land as at that date was $3,396,055.10.

I certify that this and the preceding [101] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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JUDGE D R PARRY, DEPUTY PRESIDENT

TWA Rental Evidence (analysed to a gross annual rent)

No	Name	Lease Comm	No of units	Base Annual Rent	Base Annual Rent Qualification	Outgoings Estimate (R&T's + Bldg Ins & Main)	Annual Rent excluding O/G's & GST	Adjustments to Base Weekly Rent per Room								Gross Weekly Rent per unit (M+N+O)	Analyzed Gross Annual Rent
								Adjusted Rent ex-O/G's & GST/unit per week	Deduction for Meals & Cleaning - NO LONGER REQUIRED	Rent (ex-O/G's, GST & meals) per unit per week	Deduction for Furniture (10% of K)	Net Weekly Rent ex-O/G's, GST, meals & furniture (K-L)	O/G's (G/D/32)	GST (10% of Net Rent)		
1	Lot 4 Nairn St, Roebourne	10-Aug-09	28	$ 582,400	Rent of land, buildings & furnishings (excluding O/G's & GST)	$ 72,091	$ 582,400	$ 400	$ -	$ 400	$ 40.0	$ 360	$ 49.51	$ 36	$ 446	$ 648,667
2	7 Hall St, Roebourne	01-Aug-12	16	$ 479,003	Rent of land, buildings & furnishings (excluding O/G's & GST). Lessor liable for R&T's.	$ 47,906	$ 479,003	$ 576	$ -	$ 576	$ 57.6	$ 518	$ 57.58	$ 52	$ 628	$ 522,178
3	King Village, Karratha	01-Dec-08	56	$ 2,327,495	Rent of land, buildings & furnishings (excluding O/G's & GST)	$ 64,034	$ 2,327,495	$ 799	$ -	$ 799	$ 79.9	$ 719	$ 22	$ 72	$ 813	$ 2,368,254

TWA Rental Evidence - Comparison to Eramurra

No	Name	Lease Comm	Lease Term	No of units	Analysed gross rent per annum	Analysed gross rent per room per week	Location allowance	Camp site allowance	Accomm-odation quality allowance	Village Facilities Allowance	Short-term lease allowance	Total allowance	Indicative subject rent (per unit per week basis)			Indicative subject rent per annum
													Subject 1,668 SPQ's	Subject 6 motel units	Subject 40 couples units	
1	Lot 4 Nairn St, Roebourne	10-Aug-09	3+2	28	$ 648,667	$ 446	-15%	-50%		20%		-45%	$ 245	$ 294.04	$ 330.79	$ 22,032,801
2	7 Hall St, Roebourne	01-Aug-12	3+2	16	$ 522,178	$ 628	-15%	-60%		10%		-65%	$ 220	$ 263.60	$ 296.55	$ 19,752,096
3	King Village, Karratha LIA	01-Dec-08	5	56	$ 2,368,254	$ 813	-45%	-40%	-5%	10%		-80%	$ 163	$ 195.19	$ 219.58	$ 14,625,660
											Adopted:		$ 170	$ 204	$ 230	$ 15,286,128
															Actual GRV:	$ 12,008,880

Type	No of	Weekly Rate	GRV
SPQ's	1668	$ 170	$ 14,745,120
Motel units	6	$ 204	$ 63,648
Couples units	40	$ 230	$ 477,360
Totals:	1714	$ 604	$ 15,286,128