ACT CIVIL & ADMINISTRATIVE TRIBUNAL

ELLIOTT v COMMISSIONER FOR ACT REVENUE (Administrative Review) [2018] ACAT 70

AT 18/2018

Catchwords: **ADMINISTRATIVE REVIEW –** unimproved value of land (UV) for determining rates – former 'Mr Fluffy' block – New Crown Lease permits dual occupancy and unit titling on the land – objection to UV – method of determining UV: section 6 of the *Rates Act 2004* – established principles of valuation – highest and best use – use of comparable land sales prior to and subsequent to acquisition of land for determining UV — evidence of qualified valuer accepted in preference to lay opinions of applicant – effect of utility services easement in assessing UV – UV of nearby parcels of land not relevant consideration – reviewable decision confirmed

Legislation cited: *ACT Civil and Administrative Tribunal Act 2008* s 68
Rates Act 2004 ss. 6, 8, 9, 10, 14, 70, 73

Cases cited:
Boyle and Ors v Minister for the Capital Territory [1979] AATA 91
Challenger Property Asset Management v Stonnington City Council [2011] VSC 184
Chen & Zhang v Commissioner for ACT Revenue [2014] ACAT 70
Chowdhury v Commissioner for ACT Revenue [2014] ACAT 15
City Hill PTY Ltd v ACT Planning and Land Authority [2011] ACAT 87
Commonwealth v Arklay (1952) 87 CLR 159
Cottee and Minister for the Capital Territory [1979] AATA 25
Grove and the Minister for the Capital Territory [1979] AATA 5
Hamilton v Demgold Pty Ltd (1990) 97 ALR 481
Marshall & Carlini v Commissioner for ACT Revenue (unpublished) ACT Civil and Administrative Tribunal AT 55/17 and AT 65/17
Trewhella and Minister for the Capital Territory [1979] AATA 108

Tribunal: Presidential Member E. Symons

Date of Orders: 5 July 2018
Date of Reasons for Decision: 5 July 2018

AUSTRALIAN CAPITAL TERRITORY)
CIVIL & ADMINISTRATIVE TRIBUNAL) AT 18/2018

BETWEEN:

CRAIG ELLIOTT
Applicant

AND:

COMMISSIONER FOR ACT REVENUE
Respondent

TRIBUNAL: Presidential Member E Symons

DATE: 5 July 2018

ORDER

The Tribunal orders that:

1. The decision under review is confirmed.

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Presidential Member E Symons

REASONS FOR DECISION

Background

1. This is an application to the ACT Civil and Administrative Tribunal (**Tribunal**) for review of a decision (**reviewable decision**) made on 15 January 2018 to confirm an earlier decision (**original decision**) made on 15 September 2017 with respect to the 1 January 2017 Unimproved Value (**UV**) of the crown lease at Block 11 Section 44, Hackett known as 7 Bragg Street, Hackett (**Land**) owned by the applicant and Christine Fiona Elliott.

2. On 25 May 2015, the lessees of the Land surrendered the Crown lease for the Land in accordance with the Territory's Loose Fill Asbestos Insulation Eradication Program (**Program**). The surrender of the Crown lease was registered on 19 June 2015.[1]

3. On 30 June 2015 the Land was placed on the Affected Residential Premises Register (**Register**) for containing loose fill asbestos insulation, known as Mr Fluffy.[2]

4. On 11 November 2015 the Minister for Planning approved a variation to the Territory Plan in the *Planning and Development (Plan Variation No 343) Notice 2015* – NI2015-642 (**Plan Variation**). The Plan Variation provides, inter alia, that dual occupancy and unit titling will be permitted on residential land that is surrendered under the Program and has a minimum size of 700m².

5. The asbestos material was removed in a clean-up which involved the demolition of all the asbestos affected structures on the Land. A garage and a shed were left on the Land. The Land was removed from the Register on 6 September 2016.

6. On 3 November 2016, the applicant attended a public auction of Mr Fluffy blocks. The Land was passed in at $550,000. As the highest bidder when the land was

[1] Tribunal (**T)** Documents page 3
[2] T Documents page 16

passed in the applicant negotiated for the purchase of the Land and was successful in purchasing the Land for $650,000.[3]

7. On 19 December 2016 the Commonwealth granted a Crown lease to the applicant and Christine Fiona Elliott.[4]

8. The respondent undertook a redetermination of the UV of the Land. In a Valuation Notice dated 15 September 2017, the redetermined UV of the Land, as at 1 January 2017, was $625,000.[5] On 15 September 2017 the respondent issued a rates assessment notice for the period 1 July 2017 to 30 June 2018 which was based on the UV of $625,000 as at 1 January 2017 (**Original Decision**).[6]

9. The applicant wrote to the respondent on 14 and 22 November 2017 objecting to the UV assessment of 1 January 2017.[7] A Senior Valuer from the ACT Valuation Office conducted a review of the original decision. The respondent confirmed the original decision on 15 January 2018.[8]

10. On 9 February 2018 the applicant sought a review of the reviewable decision in the ACT Civil and Administrative Tribunal.

11. The matter was heard on 28 June 2018. The applicant represented himself. Ms Katrina Musgrove of Counsel, instructed by Ms Emily Josifoski of the office of the ACT Government Solicitor appeared for the respondent. The Tribunal reserved its decision at the conclusion of the hearing. This is the Tribunal's decision.

12. In these reasons for decision the tribunal hearing this matter is referred to as Tribunal. References to tribunal or ACAT in these reasons refer to the ACT Civil and Administrative Tribunal generally.

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[3] T Documents page 4
[4] T Documents page 6
[5] T Documents page 7
[6] T Documents page 8
[7] T Documents page 9 and T Documents page 11
[8] T Documents page 2

Issues

13. The primary issue for consideration is whether the respondent has arrived at the correct UV as at 1 January 2017 for the applicant's Land pursuant to section 6 of the *Rates Act 2004* (**Rates Act**).

14. In deciding this issue it is necessary, given the dispute between the parties, to determine:

    (a) the correct approach to be adopted in determining the UV of the Land and the deductions to be made from comparable sales of the value of improvements on those blocks of land in order to derive the UV;

    (b) the effect in determining the UV of land on which the Plan Variation permitted, inter alia, dual occupancy and unit titling if it was surrendered under the Territory's Program and has a minimum size of 700m²;

    (c) the impact, if any, of easements on the Land in determining the UV;

    (d) the impact, if any, of street trees, which the applicant alleged limited development on the Land, in determining the UV; and

    (e) the effect, if any, of the Mr Fluffy remediation in reducing the natural ground level of the Land which is on the low side of Bragg Street, Hackett, in determining the UV.

Applicable Law

15. Section 68 of the *ACT Civil and Administrative Tribunal Act 2008* provides:

> ***68 Review of decisions***
>
> *(1) This section applies if the tribunal reviews a decision by an entity.*
>
> *(2) The tribunal may exercise any function given by an Act to the entity for making the decision.*
>
> *(3) The tribunal must, by order—*
>
> *(a) confirm the decision; or*
>
> *(b) vary the decision; or*
>
> *(c) set aside the decision and—*
>
> *(i) make a substitute decision; or*

(ii) remit the matter that is the subject of the decision for reconsideration by the decision-maker in accordance with any direction or recommendation of the tribunal.

16. Pursuant to section 70 of the Rates Act the taxpayer can seek review by this tribunal of a determination by the Commissioner of an objection to a decision mentioned in section 70. Section 73(1) provides:

> ***73. Review by ACAT***
>
> *(1) This section applies to a determination by the commissioner of an objection to a decision mentioned in section 70, other than a decision mentioned in section 70 (a).*
>
> *(2) The determination is prescribed for the Taxation Administration Act, section 107A (Meaning of reviewable decision etc—div 10.2).*
>
> *Note Applications for review by the ACAT may be made in relation to a determination by the commissioner of a decision on an objection to an assessment.*

17. The Commissioner's decision made on 15 January 2018 is a reviewable decision.

18. Section 14 of the Rates Act provides that rates are imposed for a parcel of 'rateable land' in accordance with the applicable formula.

19. 'Rateable land' is defined in section 8 of the Rates Act as:

> ***8. Meaning of rateable land***
>
> *(1) In this Act:*
>
> *"rateable land"—*
>
> *(a) means all land in the ACT, including Commonwealth land; but*
>
> *(b) does not include—*
>
> *...*
>
> *(vii) Commonwealth land that is not leased and is unoccupied (other than land that, immediately before becoming unoccupied, was occupied by a lessee of the Territory or Commonwealth on a weekly or fortnightly tenancy).*

20. Sections 9 and 10 of the Rates Act (which are set out at the end of this decision) provide for the determination and annual redetermination of UV's for parcels of land in the ACT. Section 6 defines UV and states:

6. Meaning of unimproved value

*(1) The **unimproved value** of a parcel of land held under a lease from the Commonwealth is the capital amount that might be expected to have been offered on a date (the **base date**), for the lease of the parcel, assuming that—*

(a) the only improvements on or to the parcel were the improvements (if any) by way of clearing, filling, grading, draining, levelling or excavating—

(i) if the Territory or Commonwealth had, before the parcel became rateable as a separate parcel, granted a development lease of land that included the parcel—made by the lessee under that lease or by the Territory or Commonwealth, or the cost of which was met by that lessee or by the Territory or Commonwealth; or

(ii) in any other case—made by the Territory or Commonwealth or the cost of which was met by the Territory or Commonwealth; and

(b) he circumstances that existed on the prescribed date also existed on the base date; and

(c) on the base date, the lease had an unexpired term of 99 years; and

(d) a nominal rent was payable under the lease for the 99 year term.

The applicant's contentions

21. The applicant contends the following:

(a) The UV has not been calculated in accordance with the information on the rates notice and should be $580,000.[9] He said the UV has been calculated incorrectly due to omitting the 2015 value of $499,000.[10] The 2015 UV was assigned to the Land throughout the marketing campaign of the Land.[11]

(b) The Land was advertised for a long period before auction and at the end of the auction the highest bid, when the block was passed in, was $550,000

[9] Application for review of a decision, filed 5 February 2018, reasons for applying for review and applicant's letter of objection dated 13 November 2017 to original decision.
[10] Email from applicant to respondent 22 November 2017
[11] Applicant's witness statement at [5]

and this is the value of the Land on the free market;[12] and when the shed and garage left on the Land are taken into account the UV should be reduced to $530,000.[13]

(c) The encumbrance at the rear of the Land limited development;[14]

(d) The state in which the Government left the Land was not taken into account in determining the UV.[15]

(e) It is unfair and unreasonable for a Government body to assign a different UV than neighbouring properties when the blocks are a similar size, shape and slope.[16]

(f) The fact that the Land is 714m² and the Crown Lease provides for dual occupancies and unit titling does not take into account the fact that a dual occupancy requires a minimum 20m x 35m block and the Land is 33.5m and the maximum building envelope is 663m² if the shed is removed;[17] and two significant street trees limited development and location of the driveway.[18]

(g) The Land is on the low side of Bragg Street, on a remediated block (a big hole was left) where the natural ground level was reduced by 0.5m; the house on the Land sits very low; the applicant's views are not as good as his neighbours' views[19] and the slope of the Land affects land values.[20]

(h) Former Mr Fluffy blocks are not general sales and consideration of other recent sales and deducting improvement values to derive a deduced land value is a 'robust' methodology.[21]

The respondent's contentions

22. The respondent contends[22] the following:

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[12] Ibid
[13] Email from the applicant to the respondent 22 November 2017
[14] Ibid
[15] Ibid
[16] Objection letter dated 13 November 2017
[17] Applicant's witness statement at [9]
[18] Applicant's witness statement at [7]
[19] Ibid
[20] Ibid at [8]
[21] Ibid
[22] Respondent's statement of facts and contentions, part C Contentions [1] to [7]

(a) The Land is 'rateable land' within the meaning of section 8 of the Rates Act from 19 December 2016 onwards.

(b) The Land is a private residential block, which for valuation purposes, is otherwise unexceptional. Pursuant to the Land Variation, as the land was surrendered under the Program and is a block of land over 700m², dual occupancy and unit titling is now permitted on the Land. Prior to participation in the Program, dual occupancy and unit titling were not permitted on the Land.

(c) The most useful evidence for assessing the UV of the Land is derived from sales of comparable land close to the assessment date. In particular, sales of other Mr Fluffy blocks in Hackett and other sales' sites that permit two dwellings on the same block provide good evidence of the Land's UV on 1 January 2017.

(d) The sale of the Land itself on 3 November 2016 for the price of $650,000 provides the best evidence of the Land's UV as at the relevant date. The fact that $550,000 was the highest bid at auction on 3 November 2016 does not establish the free market value of the Land. The contract sale price of $650,000 is useful and clear evidence of the Land's value.

(e) The UV of the Land should be assessed for its highest and best use.[23] The highest and best use of the Land includes the dual occupancy and unit titling permitted by the Plan Variation.

(f) The UVs of nearby parcels of land in Hackett are not a relevant consideration in determining the Land's UV.

(g) The valuation and re-valuation were carried out by professional valuers using the appropriate methods of valuation for the purpose of determining UV of the Land pursuant to section 6 of the Rates Act.

(h) In the absence of any contrary expert valuation evidence, the Tribunal should accept the valuation provided by the respondent and confirm the reviewable decision.

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[23] *City Hill Pty Ltd v ACT Planning and Land Authority* [2011] ACAT 87 at [105]

The applicant's evidence

23. The applicant gave evidence under affirmation and was cross examined. His Witness Statement, which was Exhibit A1, included a Contour Survey of the Land dated 29 November 2016, 8 coloured photographs of the Land and the house on the Land and email correspondence between the applicant and Mr Peter Hawke, Sales and Design Manager of GR8 Constructions, between 10 April 2018 and 19 April 2018. He also tendered the Valuation Notice for the Land dated 15 September 2017, which was marked Exhibit A2. He did not call evidence from an expert valuer.

24. The applicant told the Tribunal that he had no issue with the value of the Land as it had been valued on the basis that the use of the Land included dual occupancy.

25. However, his primary argument was that the UV should not have been based on the Land being able to have dual occupancy just because its size exceeded 700m² and it was a former Mr Fluffy block. He said while the Land exceeded 700m² and looked like it could accommodate a dual occupancy, there were other factors to be considered.

26. He referred to the email correspondence between himself and Mr Hawke of GR8 Constructions, whom he described as a leading construction designer who specialises in dual occupancy. The applicant submitted this correspondence was evidence that a block would need to be a minimum of 20 metres wide x 35 metres deep for a dual occupancy notwithstanding that for dual occupancies on former Mr Fluffy blocks, the minimum block was 700m². The applicant's Land measured 21.335 metres wide and 33.53 metres deep. Therefore, in determining the UV consideration should not have been given to the land being able to be used for a dual occupancy.

27. He also said, of the eight properties the respondent compared in determining the Land's UV, only two blocks near to his Land had provision for dual occupancy, however one of which has a dual frontage (26 Mills Street) and the other was 790m² (18 Bragg Street). His Land did not have a dual frontage and was only 714m².

28. The applicant submitted that the natural ground level of the Land had been reduced during the remediation and that there was a hole on the Land which was .5m below ground level. He referred the Tribunal to the contour map which showed, when viewing the Land from Bragg Street, that the contours towards the right hand side of the Land reduced from 614.58 to 613.56 and 613.42 in front of the weatherboard shed. This comprised the hole. As a result, he alleged the Land and the house on it were lower than his immediate neighbour's block as shown in the photographs annexed to his Witness Statement.[24] He said "I know that will have a significant negative effect on my property if I sell it," adding this is a well-known opinion and while he did not have expert evidence to support this at the hearing he could get it.

29. The applicant told the Tribunal that he was not a valuer and he did not pretend to be one. He had not sold and/or purchased vacant land before he purchased the Land the subject of this application; however he had sold and purchased seven properties during his life. In his experience, a lower sitting house will sell for less money on the open market.

30. The applicant pointed out that the Valuation Notice (Exhibit A2) clearly stated:

> ***USE OF 2017 UNIMPROVED LAND VALUE***
> *The 2017 unimproved land value will be used together with the 2015 and 2016 unimproved land values to calculate the Average Unimproved Land Value (**AUV**) of your property (shown below for information). The AUV will be used to assess a portion of rates and, if applicable, all Land Tax and City Centre Marketing and Improvements Levy (CCMIL) charges for 2017 and 2018. In addition, the 2017 unimproved land value will be used to assess land rent charges and rent charges in 2017-18 if applicable.*

1 January 2015	**1 January 2016**	**1 January 2017**	**AUV**
	$555,000	**$625,000**	**$590,000**

31. This Valuation Notice did not list a UV for 1 January 2015. Had it listed a UV on that date then the applicant submitted that it would have been $499,000 which was the UV that applied to the Land before its Crown Lease was surrendered on

[24] Photograph 8

25 May 2016.[25] He submitted that only having two and not three UVs skewed the average UV (**AUV**).

32. There are two significant street trees on the nature strip outside his Land which impacted on where he could locate his driveway for his new home. The drip lines from these trees measured four metres outwards which meant that his driveway was pushed onto his neighbour's block.

33. Further, there was a 2.43 metre electricity easement along the rear boundary and a power pole on his Land. While the power pole was not a major issue there are power lines within the easement which further block his views and he had to ensure that trucks carrying out repairs and maintenance to the electricity services had access on the Land. This meant that he could not locate a carport next to his home because of the height the carport had to be to permit such access.

34. In cross examination the applicant said he was a public servant and agreed that he did not have any qualifications as a valuer. He also agreed that he took some time to look at the market place in Canberra after he arrived here and that he had tried to buy four properties before he purchased the Land. He had carried out due diligence and market research and figured out the positives and negatives of each property he bid on. He said he went through the same consideration processes when looking to purchase the Land including what it was worth and what he was willing to pay.

35. The applicant agreed that he had purchased the Land for $650,000 on the same day it was passed in for $550,000 at the auction. When it was put to him that the price he paid was an appropriate price for the Land he said "it was the price I had to pay". He conceded that no one forced him to pay that amount and that he had agreed to pay that amount.

36. One of the grounds that the applicant relied on in this review was that it was not fair that his Land had a UV different to that of other blocks in the street. Having read the cases provided by the respondent he said he now understood that fairness

[25] Exhibit R1 T3 pages 30-31. 'The Surrender of the Crown Lease' was registered on 19 June 2016

was not one of the considerations for determining the UV of his Land and he no longer pressed that ground.

37. He also confirmed that he was aware that a number of Hackett properties have encumbrances along the back of their property and that the encumbrance was within the three metre restriction on building out from the back fence.

38. The applicant said he was also aware that his Land was a Mr Fluffy block which had been surrendered in May 2015 and that the Crown Lease for his Land entitled him to build a duplex and for the duplexes to be sold as separate unit titles. He was not aware that this was unique for remediated Mr Fluffy blocks with an area of over 700m².

39. In relation to the emails between himself and GR8 Constructions, the applicant agreed that they were 'general' emails which did not specifically address what can be done on his Land or take into account the characteristics of the Land. He did not accept the proposition that the contents of the GR8 Construction's email was one person's ideal of a dual occupancy. While agreeing that the emails did not specifically refer to his Land he told the Tribunal that these emails were very specific in relation to the minimum block dimensions for a dual occupancy.

40. While GR8 Constructions had drawn the plans for the house which has since been built on the Land and were familiar with the Land, the applicant agreed that his questions to GR8 Constructions were in the form of a general enquiry and the answers from GR8 Constructions did not refer to the applicant's Land.

41. The applicant did not have any expert evidence at the hearing in relation to the drip lines for the significant trees. He had not made an application for either or both of the trees to be removed or enquired about the potential impact of the trees if he wished to put a dual occupancy on the Land.

42. When asked about [6] of his witness statement in which he had stated:

> *Static (statistical) analysis of Mr Fluffy blocks identifies blocks that sold at the reserve, sold between 33% to 38% of the last recorded UV as per the relevant date, 35% X the last recorded UV is very close to the set reserve. (7 Bragg st (sic) Hackett $487,000 x 35% = $657,450. This blanket approach*

> *to valuation suggests the best decision in many cases has not been achieved, this is especially the case when blocks have unique burdens and correct (sic) be developed as the government expected (due) to various issues.*

43. The applicant said that he had based these figures on what he believed to be the sales prices although he did not know the actual reserves for the blocks. He was unable to remember where he had obtained the sales figures or the UV figures, other than it was from 'online somewhere.' He agreed that it was not a scientific analysis and that neither the raw data nor details about the equation used were before the Tribunal.

44. The applicant confirmed that he wanted the UV for his Land assessed at $580,000 based on the fact that he believed you cannot have a dual occupancy on his Land; if you could have a dual occupancy then he would agree that the UV of $625,000 is correct.

45. When it was put to the applicant that UV should not be determined from his subjective opinion but on the Land's highest and best use and the fact that as the Crown Lease for the Land permits a dual occupancy which can be sold with separate titles that is the Land's highest and best use he said "I am not sure if that is how it should be determined."

46. He had read the definition for 'rateable land' but did not agree that in 2015 the Land was not rateable because it did not meet that definition. It was put to him that there was no Crown Lease after the Land was surrendered and deregistered and therefore no UV and no rates. He did not accept this as, in his opinion, "the UV comes back to the 1st January 2015; someone who was living in the house would have been paying rates for the first quarter of 2015."

47. Ms Musgrove asked the applicant if he was aware how an AUV was determined and if he had looked at the definition of how AUV was calculated under the Rates Act. The applicant said he had only looked at the form that accompanies the rates notices.

The respondent's evidence

48. The T Documents filed by the respondent were Exhibit R1.

49. The respondent called evidence from Mr Geoff McInerney who is a Senior Valuer with the Australian Valuation Office (**AVO**). Mr McInerney filed a witness statement dated 4 June 2018 (Exhibit R2) to which he attached his curriculum vitae. The witness statement included his 'Summary of Comparable Market Sales Evidence' for eight properties in Hackett and the applicant's property. Mr McInerney was cross examined by the applicant. The Tribunal noted his qualifications and experience.

50. Mr McInerney is a Certified Practicing Valuer and Associate Member of the Australian Property Institute and has been a valuer for in excess of 41 years. He is a Senior Valuer with the ACT Valuation Office. He described his primary role as doing valuations of all classifications of real estate property – commercial, industrial, rural and residential.

51. In his professional role as a Senior Valuer he reviewed the applicant's objection to the UV as at 1 January 2017 for the Land and provided a 'Review of Objection Report' dated 28 November 2017 to the respondent. The respondent provided a copy of this report to the applicant with the reviewable decision dated 15 January 2018.[26] Mr McInerney also provided his written response to the issues raised by the applicant in these proceedings. His response was annexure A to his witness statement.

52. Mr McInerney said he carried out the assessment of the Land by analysing the market sales evidence of eight other comparable properties to determine their market value and the subject Land which he had shown on a map of Hackett which was annexure 3 to his witness statement. These properties were:

Sale	Property	Sale Price	Contract Date	Site area	Comments
Subject Land	7 Bragg St Vacant land	$650,000	3/11/2016	714m²	Used for single dwelling

[26] T Documents pages 13 - 17

Sale 1	11 Bragg St	$680,000	25/3/17	747m²	Deduced land value. Single dwelling use site
Sale 2	18 Bragg St Vacant land	$810,000	30/3/17	790m²	Use of single dwelling
Sale 3	27 Hedley St Vacant land	$650,000	30/317	751m²	DA for 2 units
Sale 4	17 Steele St	$631,000	11/8/16	714m²	Deduced land value. Single dwelling use site
Sale 5	4 Skeats St Vacant land	$600,000	9/6/17	536m²	Single dwelling use site
Sale 6	36 Mills St Vacant land	$625,000	8/11/16	746m²	DA for 2 units Inferior location
Sale 7	17 Newton St Vacant land	$655,000	30/3/17	651m²	Single dwelling use site
Sale 8	29 Rivett St Vacant land	$630,000	25/5/17	663m²	Single dwelling use site

53. In analysing the market sales of these properties he considered the size, contour, views, surrounding land and use of the land. All of these blocks were similarly affected by easements along their rear boundary, as are the majority of residential building blocks in Hackett, and subject to a three metre building set back from the rear boundary. Annexure 4 to Mr McInerney's witness statement consisted of five coloured aerial photographs of sections of Hackett including most of the comparable properties and the subject Land which showed the easements highlighted. He had taken the easements into consideration in reviewing the Land's UV.

54. He provided the following information about the properties:

Sale	Property	Comments site location	Reconciliation with subject Land
1	11 Bragg St	Reasonably level site, subject to easement along rear boundary	Slightly larger block, similar building land and outlook

2	18 Bragg St	Former Mr Fluffy block, reasonably level, no significant outlook	Larger block, similar quality. 2 dwelling rights
3	27 Hedley St	Former Mr Fluffy block, level, no views	Slightly larger block. 2 dwelling rights
4	17 Steele St	Level rectangular shaped block	Single dwelling site. Similar size to subject
5	4 Skeats St	Former Mr Fluffy block, Irregular shaped block. Easement adjoins rear boundary	Single dwelling site. Smaller block. Affected by excavated area approximately 0.5 metre depth
6	36 Mills St	Former Mr Fluffy block Rectangular shaped block. Slightly below road level. Slight fall to rear. Easement adjoins rear boundary	Slightly larger. Very similar dimensions. Built dual occupancy. Inferior location directly Hackett shops. Aspect looks at brick wall
7	17 Newton St	Former Mr Fluffy block Easement along rear boundary	Smaller block. Reasonably level site. No significant outlook
8	29 Rivett St	Former Mr Fluffy block Easement along rear boundary	Smaller block. Approximately 50% site excavated 0.3m – 0.4m depth for remediation works. Will require earth works prior to constructing building. 2 Storey single dwelling proposed.

55. Mr McInerney told the Tribunal that Sales 1 and 4 are sales of improved properties analysed to a deduced underlying land value for single dwelling use. He explained that he determined the deduced land value by taking off the appreciated value of improvements on site from the sale price. The Sale 1 improvements were a homestead, garage, carport and ground improvements (landscaping). Valuers are aware of the construction cost for a standard residential property. He used his extensive experience to analyse these sales. The other six

sales had building envelopes subject to all boundary building setbacks and are affected by remediation excavation works similar to the subject Land.

56. He said was not comparing the UVs of any of these properties as it was not a consideration in determining the UV for the subject Land. He explained that this was because the other UVs might be contestable and people do not buy properties based on the property's UV.

57. When asked what use he had made of the Land's purchase price of $650,000 he said it was in line with market evidence.

58. He had considered the topography of the subject Land by physically looking at the block. He said, to the naked eye, it looked reasonably level. He also referred to the photograph of the Land in his witness statement[27] which was taken around the time of its sale to the applicant and said there was a slight fall from the front to the back which was not a negative, adding that it would probably be a benefit as the storm water drain drains to the rear of the property.

59. When asked about the applicant's allegation that there was a significant hole of up to 0.5m on the Land, Mr McInerney said if there was a significant hole it would be taken into consideration. He, again, referred to the photograph of the Land referred to in the previous paragraph and pointed out the small piles of rubble which he said, have since been used to fill any depression in the site prior to constructing the dwelling.[28] He believed the contour map indicated that a small section of the land in front of the weatherboard shed and brick garage was approximately between 0.2 metres and 0.3 metres below the immediate adjoining sections of the land. He maintained that it was a reasonably level block. He referred the Tribunal to the photograph[29] of the applicant's house on the Land and the adjoining block and observed that they were almost at the same level. The other neighbouring house[30] was slightly elevated. He opined that this had no effect on the Land's value. He said that it is not unusual for blocks in any street

[27] Page 2 Exhibit R2
[28] Page 14 Exhibit R2
[29] Page 3 Exhibit R2
[30] Page 4 Exhibit R2

in most suburbs in the ACT, especially on undulating to hilly terrain, to have varying building platform levels on adjoining or nearby blocks.[31]

60. Mr McInerney said that the "frontal sunken appearance" referred to by the applicant in the south east corner of the block is "considered to be minor in nature and was taken into consideration in the original objection valuation decision".[32] It did not affect the site value.

61. He had considered the two significant trees on the road reserve area of Bragg Street in determining the UV and regarded them as adding to the aesthetics of the street and the Land. In relation to the shed and the old garage remaining on the land at the time of sale, as the whole of the site had to be considered as vacant land when determining its UV, he had considered the old garage had a value of $10,000.

62. In cross examination, the applicant put to Mr McInerney that he did not understand why reliance was placed on sales after he had bought the Land on 3 November 2016. Mr McInerney explained that a valuation was not carried out on the date of the auction of the Land and that, as there was no Crown Lease for the Land at the date the applicant purchased it, it did not have a UV. In this matter one of the comparable sales occurred within five days of the applicant's purchase of the Land and others occurred early in 2017.

63. When asked what he meant by 'analysing' sales Mr McInerney explained that he sought to understand everything about the sale and in doing this he undertook a physical process by going out and looking at the property the subject of each sale; he said it not was a desk top process.

Submissions

64. Both parties made oral submissions at the conclusion of the evidence.

[31] Page 5 Exhibit R2
[32] Page 14 Exhibit R2

Consideration

65. This review has arisen from the decision of the respondent on 15 January 2018 to confirm the decision on 15 September 2017 to determine the Land's UV as at 1 January 2017 at $625,000.

66. UVs are used in the ACT to calculate land based taxes and are determined annually at 1 January each year to apply to liabilities in the following financial year. Sections 9 and 10 of the Rates Act provide for the determination of the UV of parcels of land in the ACT and sections 14 to 19 of the Rates Act provide for the imposition and payment of rates.

67. Subsection 6(1)(a) – (d) of the Rates Act sets out the approach to be adopted in determining a UV[33] and the meaning of 'unimproved value' (see [20] above). This section sets out the relevant assumptions which are required to be taken into consideration when determining unimproved value.

68. In *Hamilton v Demgold Pty Ltd*[34] the Federal Court of Australia considered the meaning of 'unimproved value of land' in section 5(1) of the *Rates and Land Tax Ordinance 1926* (**RLTO**). Wilcox J said:

> *The formula embodied in s.5(1) –* 'the capital sum that might be expected to have been offered on the relevant date for the lease of a parcel of land' *is an unusual one. The explanation of that wording, no doubt, is that in s.5(1) of the Rates and Land Tax Act the legislature was concerned only with leased Crown land. It wished to put all lessees on an equal footing, whether they were original lessees or not.*

In other words, the assumptions in subsection 6(1)(a) – (d) of the Rates Act applying in the present application, are designed when determining the UV to put landowners on an equal footing in relation to the determination of the UV of the land for taxation purposes.

69. Mr McInerney used these assumptions in comparing other properties to work out the UV of the Land (see [54] above).

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[33] Issue (a) in [14]
[34] (1990) 97 ALR 481, 494

70. The High Court, in *Commonwealth v Arklay*,[35] ***(Arklay***) considered the 'value' of land under the *Lands Acquisition Act 1906-1936* and said:

> *...It is established that "value" in such a context means the value of the land to the owner. Where the amount by which a vendor may sell and a purchaser buy is not controlled the Court poses the hypothetical problem, the answer to which supplies this value. ... Shortly stated what is required is "an estimate of the price which would have been agreed upon in a voluntary bargain between a vendor and purchaser each willing to trade but neither of whom was so anxious to do so that he would overlook any ordinary business considerations. ...* ***It is simply an analysis of what in all the relevant circumstances would be the price that a willing purchaser would have to pay a vendor willing but not anxious to sell in order to obtain the land.*** [Tribunal's emphasis] *Where the land has no special suitability for some business or activity carried on by the owner and has no added potential value if put to some better use,* ***the value on a free market is usually its market value. The best evidence of this value is of comparable sales of other land either before or after the date of acquisition but this evidence is often not available.*** (Tribunal's emphasis)

71. It is a well-established valuation principle that in determining the value of land, a valuer is required to consider the land's "highest and best use".[36] In an unpublished recent decision of the tribunal in *Marshall & Carlini v Commissioner for ACT Revenue*[37] the tribunal referred to the 2011 tribunal decision in *City Hill Pty Ltd v ACT Planning and Land Authority*[38] (**City Hill)** where that tribunal said:

> *General Considerations about Valuation*
>
> *i. Highest and Best Use*
>
> *105. The Tribunal is required, as are the valuers in this case, to have regard to the highest and best use of the subject site when establishing the After Value. The concept of highest and best use as a principle of land valuation was established by the High Court in Spencer v The Commonwealth of Australia [1907] 5 CLR 318 and has received judicial approval in numerous subsequent cases. In ISPT Pty Ltd v City of Melbourne [2007] VCAT 652, the Tribunal President wrote*
>
> > *Highest and best use represents the most profitable potential use to which land can be put having regard to both planning and like controls and the circumstances of the land When land*

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[35] (1952) 87 CLR 159 at 169-170
[36] Respondent's statement of facts and contentions part B Legislative Scheme at [8]
[37] AT 55/17 & AT 65/17 at pages 62 - 67
[38] [2011] ACAT 87

> *is sold, the market values it at its highest and best use, as buyers will not be constrained to continue the existing use and the seller will seek to achieve the highest price for the land.*

72. In City Hill that tribunal also referred to the decision of the Victorian Supreme Court in *Challenger Property Asset Management v Stonnington City Council*[39] where Croft J, speaking about what 'highest and best use means', referred to the following statements in *Commonwealth Custodial Services as Trustees for Burwood Trust Fund v Valuer-General*[40]:

> *There is no statutory definition of "highest and best use". It has been described in the High Court as "the most advantageous purpose for which [the land] was adapted": Spencer v Commonwealth. It "is the present value alone of such advantages that falls to be determined" In Park v Allied Mortgage Corporation Ltd (1995) NSWConVR 55-753 Hill J said at [70]: "As Spencer's case itself makes clear the valuation must proceed by reference to the best use of the property. For this purpose the valuer will take into account not only the present use to which the land is applied, but any more beneficial use to which it may reasonably be applied. This is the process which a purchaser negotiating to purchase the property would undertake. Thus, it is not inappropriate in valuing property to take into account a potential development of the property, for among the range of hypothetical purchasers can be assumed to be a person who would undertake such a development as would maximise the usage of the land.*

73. In the present case, the respondent contended that the Land is a private residential block, which for valuation purposes, is otherwise unexceptional.[41] Its highest and best use, notwithstanding the use to which the Land is presently being put, is the more beneficial use which clause 2(f) of the Crown Lease permits it to be put, which includes dual occupancy and unit titling.

74. It was readily apparent from the application, supporting documentation and the applicant's evidence that he did not agree that his Land was, for valuation purposes, unexceptional. The Tribunal will now consider this contention, being issue (b) in [14] above and the applicant's contention in (f) in [21] above.

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[39] [2011] VSC 184 at [43]
[40] (2006) 148 LGERA 38
[41] Statement of facts and contentions, part C Contentions at [2]

75. At the hearing, the applicant's primary contention was that the valuer, in determining the UV, had not given any or any proper weight to the fact that although the Land, as a former Mr Fluffy block exceeding 700m², was permitted to have dual occupancy and unit titling, he believed that in order to have a dual occupancy his Land needed to have, at a minimum, dimensions of 20 metres wide and 35 metres long, and the length of the Land was only 33.5 metres. He relied on the email correspondence between himself and GR8 Constructions annexed to his witness statement as evidence to support this contention (see [39], [40] above).

76. The applicant did not call any one from GR8 Constructions to give evidence at the hearing. The Tribunal is unaware of Mr Hawke's experience in designing and/or building dual occupancies. Mr Hawke was the author of the emails. As he did not appear at the hearing his statements in his emails were unable to be tested. Therefore, the weight the Tribunal can attach to this correspondence is negligible. Having read the emails, the Tribunal is satisfied that the applicant posed general questions to Mr Hawke and his advice did not refer to the applicant's Land. The replies were equally general. Notwithstanding the applicant's belief that this correspondence came from "a leading Canberra based dual occupancy designer and builder", given the lack of relevant evidence, the Tribunal is unable to accept this evidence. At its highest it is untested evidence of Mr Hawke's opinion and the applicant's opinion.

77. In this regard the Tribunal noted Mr McInerney's evidence, that Mr Hawke did not submit specific town planning guidelines which may have supported his general comments[42] and "the available building envelope area after considering boundary setbacks is considered to supply a sufficient site area to enable the construction of a dual occupancy type development" on the Land. Mr McInerney referred the Tribunal to the dual occupancy site plan for 36 Mills Street, Hackett[43] which had a site area of 746m².

78. The applicant did not provide any other evidence which might have assisted the Tribunal when considering this contention. Notwithstanding that the applicant has chosen to build a single dwelling on the Land, the fact is that the Crown Lease

[42] Exhibit R2 at [2i]
[43] Exhibit R2 Attachment 1

issued to him and his wife commenced for a term of 99 years on 15 December 2016 with Clause 2(f) permitting the Land to be used for either a single dwelling or multi-unit housing of not more than two dwellings as it was over 700m². The lease makes no reference to the dimensions of the Land and without compelling evidence, the dimensions are not relevant.

79. There are two matters raised by the applicant in relation to his contention that his Land would not accommodate a dual occupancy that the Tribunal wishes to comment on.

    (a) In his submissions, the applicant said that the respondent had not provided any evidence that a dual occupancy could be built on the Land whereas he had provided evidence that a dual occupancy would not be able to be built given the Land's dimensions. There is no requirement for the respondent to 'prove' that a dual occupancy could be built on the Land. This is not the relevant test. The test is the highest and best use of the Land. The Tribunal will return to this test below. Further, the applicant's contention overlooks Mr McInerney's evidence that a dual occupancy could be built on the Land.

    (b) The fact that Mr McInerney referred the Tribunal to the drawings for the dual occupancy at 36 Mills Street which, coincidentally has dimensions of 35.05 length x 21.335 width; this was not evidence that these dimensions are necessary for building a dual occupancy.

80. The Tribunal is satisfied and finds that the Land has a legal entitlement to build two separate titled dwellings which is superior to the majority of surrounding blocks limited to single dwelling rights.

81. Having considered all of the evidence, for these reasons, the Tribunal finds that the applicant's contention in relation to the Land's dimensions not accommodating a dual occupancy is without merit and must fail.

82. The Tribunal will now consider the applicant's other contentions in the order they appear in [21] above.

(a) The Average Unimproved Value (AUV) should have been calculated on three years' UVs, 2015, 2016 and 2017

83. The calculation of the UV did not consider three years of UVs, to which the Valuation Notice (Exhibit A1) referred; it only referred to the 2016 and 2017 UVs. The applicant submitted that 2015 UV of $499,000 was included in the marketing material for the Land prior to auction and his subsequent purchase and if this amount had been included in his Valuation Notice, rather than leaving the space for a 2015 UV a blank, his UV would have been determined by averaging the three UVs rather than just the 2016 and 2017 UVs. His contentions are more fully set out in [30] and [31] above.

84. Having considered all of the evidence, the Tribunal is satisfied and finds that the Crown Lease for Land held by the previous owners, was surrendered in accordance with the Program in May 2015 and the surrender of the Crown Lease was registered on 19 June 2015 as the Land was deemed to be affected by loose fill asbestos insulation. No current Crown Lease existed over the land whilst it underwent remediation works prior to being sold by the ACT Government. Essentially, there was no Crown Lease during this period until 15 December 2016, when the Commonwealth granted the applicant and his wife a new Crown Lease and the respondent undertook a redetermination of the UV of the Land. Accordingly, there was no 2015 UV and the blank space on the Valuation Notice was correct.

85. The Tribunal observes that there would not appear to be any reason why, given the reference in the Valuation Notice to the three years 2015, 2016 and 2017, the Valuation Notice does not include an explanation for why the place for a UV (in this case under 2015) is left blank. It could have avoided the misunderstanding that arose in this application.

(b) The price at which the Land was passed in at auction, $550,000, is the value of the Land on the free market

86. The value on a free market is usually (the land's) market value (see *Arklay* in [69] above).

87. The fact is that the Land was not sold for $550,000 at the auction. It was passed in. The purchase price was $650,000, which the applicant paid after the auction. The Land's market value was $650,000 and it was a nearly vacant block.

88. Having considered all of the evidence, and for these reasons, the Tribunal rejects the applicant's contention that $550,000 was the value of the Land on the free market.

(c) The encumbrance at the rear of the Land limited development and the impact, if any, of easements on the Land in determining the UV.[44]

89. In *Boyle and Ors v Minister for the Capital Territory*[45] Senior Member Hall of the Administrative Appeals Tribunal said in relation to an easement shown on the plan as 2.438 metres wide:

> *I am … satisfied that the existence of the easement is a proper factor to be taken into account in determining the value of Block 12, as its presence along the side boundary could inhibit the full utilisation of the land.*

90. The Tribunal has considered the evidence. In his review of the objection which was dated 28 November 2017[46], Mr McInerney stated:

> *The registered survey plan shows a 2.43 metre wide electricity easement extending across the rear boundary of the Land. Adjoining blocks and other blocks on the opposite side of the street have similar width easements.*
> *There are general building setbacks from rear and side boundaries for most residential blocks in the ACT. The approved plan dated 30 September 2017 for the redevelopment of the subject site shows the retained garage almost adjoining the easement alignment and the plan also states that the weatherboard shed is to be removed.*
> *The maximum plot ratio allowed on the block is 50%. The approved plan shows that the new house and garage built occupies only 335.52% plot ratio.*

91. In his witness statement, Mr McInerney said:

> *The standard rear boundary building setback is approximately 3 metres and the existing 2.44 metre wide easement adjoining the rear boundary of*

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[44] Also Issue (c) in [14] above
[45] [1979] AATA 91
[46] T Documents page 14 point 3

> *the subject property is located within that rear boundary building setback requirement.*[47]

92. The Tribunal also noted Mr McInerney's oral evidence that he had considered the easement when determining the UV.

93. The Tribunal finds that the valuer and Mr McInerney considered the easement and whether it would impact development.

(d) The state of the Land at the date of the auction and the effects of topography have not been given due consideration

94. The Tribunal is satisfied, having considered all of the evidence, that the respondent had inspected the land around the time of the auction and the physical nature of the Land was taken into account when Mr McInerney undertook the objection report.

95. The Tribunal accepted Mr McInerney's evidence, set out in this decision, and in his witness statement [48]that:

> *The majority of residential sites may generally require some earthworks such as excavations to footing/in-ground building slabs, leveling of undulating sections or filling of low sections prior to building works or general landscaping including retaining walls.*
> *All of the market sales evidence included in this matter are reflective of the fact that some earthworks were required to establish building platforms.*

96. Having considered all of the evidence, and for these reasons, the Tribunal is satisfied that the state of the land and the topography have been considered in determining the UV of the Land.

(e) It is unfair and unreasonable for a Government to assign a different UV to the Land compared with the UV of neighbouring properties with a similar size, shape and slope

97. The applicant agreed in cross examination that the case law provided by the respondent was precedent for not considering 'fairness' and also that the case law establishes that comparisons with the other blocks' UVs is not a consideration in determining the UV of the Land.

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[47] Page 12 Exhibit R2
[48] Ibid

98. For completeness, the Tribunal sets out the relevant statements in the following case law. In *Cottee and Minister for the Capital Territory*[49] the Administrative Appeals Tribunal (**AAT**) considered the applicant's objection based on considering the UV of neighbouring properties and referred to and adopted the conclusions expressed in another AAT decision of *Re S.M. and G.H. Grove and the Minister for the Capital Territory*[50] and stated:

> *… we are not prepared, on grounds of decided authority and of reasoned practicality, to accede to a submission that we should, without more, look at the U.V. of other neighbouring properties in order to decide whether the re-determination of the unimproved value of the subject land is too high."*
>
> *In other words, the focus of our consideration must be upon the valuation to be applied to the subject land in accordance with recognised valuation principles and in the light of the relevant evidence before us. We cannot, for the purpose of our review, undertake an analysis as to the correctness of every other valuation which an applicant may consider inconsistent with his own. If the valuation of the subject land is supportable by reference to comparable sales, it is nothing to the point that relative to an adjoining block or blocks that value may seem rather high. In that event, the error in valuation, if any, lies with the adjoining land. If the valuation is not supportable by reference to comparable sales, it will be adjusted for that reason and not for the lack of relativity, assuming that to be established. Relativity, without more, is thus an irrelevance.*

99. In *Chowdhury v Commissioner for ACT Revenue*[51] where the applicant contended that the UV for his property should have been the same as the UV for his neighbour's and work colleague's property, the tribunal said:

> *… The Tribunal is not required to determine the correctness or otherwise of the UV of the Applicant's work colleague's property; the Tribunal is required to determine the correctness or otherwise of the UV of the Applicant's property.*

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[49] [1979] AATA 25
[50] [1979] AATA 5
[51] [2014] ACAT 15 at [36]

(f) The impact of the two significant street trees on the development of the land and the location of the driveway.[52]

100. The Tribunal did not hesitate to accept Mr McInerney's evidence in relation to this contention. No other expert evidence was called and Mr McInerney's evidence was not credibly challenged. He annexed a copy of the Land's listing on Allhomes which stated:

> ***Inner North block in tree lined street.***
> *Perched within the beautiful tree lined Bragg Street is this east facing block within moments of Mount Ainslie*[53]*.*

The applicant was well aware of the existence of significant trees in this street before he purchased the Land.

101. In his witness statement. Mr McInerney stated that the two trees did not have their base within the Land; they were located on the road reserve area. He observed that the canopy area of the trees partially overhangs within the front boundary set back and opined that "It is not unusual for property owners to plant trees and large shrubs within residential blocks to provide shade and general amenity."[54]

102. Mr McInerney also referred to the photographs[55] in his witness statement which showed that there was vehicular access onto the Land, in relation to the position of the trees and that a single driveway provides sufficient vehicular access for either a single dwelling or two residential units.

103. Notwithstanding that the applicant was aggrieved because he could not locate his carport adjoining the house because its proposed height prevented service vehicle access to the easement, the Tribunal accepted Mr McInerney's evidence that the location of the trees had been considered in determining the Land's UV. The Tribunal finds the applicant's contention had been properly considered in arriving at the Land's UV.

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[52] Also Issue (d) in [14] above
[53] Annexure 2 Exhibit R2
[54] page 13 Exhibit R2
[55] Witness statement pages 3 and 4

(g) The fact that the house sits very low on the Land, that the applicant's views are not as good as his neighbours' views and the slope of the Land all affect land values

104. Mr McInerney told the Tribunal that the aspect of the Land, the views and the slope of the Land were considered in determining its UV. He said the applicant had not submitted any market evidence to support his statement that varying ground levels affect values.

105. In his Witness Statement Mr McInerney referred to the applicant's statement that the small section of the front south east corner of the block affects the Land's value as it has a "frontal sunken appearance" and stated that it was minor in nature and it was taken into account in the original objection valuation decision. He added that the overall appearance of the Land does not represent a sunken appearance that affects the site value and a number of sites immediately to the north of the Land are set slightly further below road level and have a more defined slope to the rear compared to the subject Land.[56]

106. For the above reasons the Tribunal also finds that this contention was properly considered in arriving at the Land's UV.

(h) Former Mr Fluffy blocks are not general sales

107. In his witness statement, the applicant stated:

> *6. Static (statistical) analysis of Mr Fluffy blocks identifies blocks that sold at the reserve, sold between 33% to 38% of the last recorded UV as per the relevant date, 35% X the last recorded UV is very close to the set reserve. (7 Bragg Street Hackett* (the Land) *$487,000 x 35% = $657,450). This blanket approach to valuation suggests the best decision in many cases has not been achieved, this is especially the case when blocks have unique burdens and correct (sic) be developed as the government expected to various issues.*

108. In cross examination the applicant conceded he did not, at the hearing, have the raw data on which he relied to make the statements in [6] of his witness statement. He was also unable to recall the website from which he had obtained the sales figures, reserves and UVs he referred to. He conceded that his was not a scientific

[56] Exhibit R2 page 14

analysis. The Tribunal was not informed of any qualifications which may have equipped him to make these statements.

109. In these circumstances, the Tribunal is satisfied that these statements are the applicant's opinions, and without supporting evidence, the Tribunal is unable to attach any weight to them.

Conclusion

110. The Tribunal has considered the UV applied to the Land in light of Mr McInerney's evidence and the applicant's grounds of contention to which it can properly have regard.

111. While the applicant sought that the UV for his Land be assessed at $580,000 he did not provide any expert evidence to support his contentions or any contrary expert valuation evidence to challenge the respondent's decision or Mr McInerney's expert evidence. He relied on his own evidence. In *Chen & Zhang v Commissioner for ACT Revenue* [57] I considered the weight to be attached to evidence from a lay applicant who was not a professional valuer. I referred to the decision of the Administrative Appeals Tribunal in *Trewhella and Minister for the Capital Territory* [58] which stated:

> *The applicant himself is not a professional valuer and he did not adduce any evidence from anyone qualified as such. This is a situation which has quite often arisen before the Tribunal in Australian Capital Territory rating cases. It has been said by the Tribunal in a number of cases that opinions of lay applicants upon matters requiring professional qualifications and experience can carry little if any weight when opposed to opinions expressed by a qualified expert. (See for example Firth and the Minister for the Capital Territory (No 78/5073) and Boyle, Boyd and Liu and the Minister for the Capital Territory (Nos. 78/5072, 5077 and 5078).*

112. For these reasons the Tribunal finds that the very little if any weight can be given to the applicant's evidence.

113. In comparison, Mr McInerney's expertise, qualifications and experience were impressive. His evidence of the process he went through in undertaking the

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[57] [2014] ACAT 70 at [50]
[58] [1979] AATA 108

valuation for the UV for the subject Land was not credibly challenged. He corroborated the respondent's assessment of the UV of $625,000 following the procedure set out in section 6 of the Rates Act and ascertaining the Land's market value in accordance with the test in *Arklay*, namely by looking at the evidence of comparable sales of other land before and after the date the applicant purchased the Land. The Tribunal found Mr McInerney's evidence reliable and accepted it.

114. Taking all these matters into account and from considering all of the documents, the evidence and oral submissions, the Tribunal has concluded that the correct UV for the applicant's Land was $625,000 at 1 January 2017. The Tribunal will confirm the reviewable decision.

……..
Presidential Member E Symons

Legislation

Rates Act 2004

9. First determination of unimproved value

(1) This section applies to a parcel of land that becomes rateable in a financial year (the ***first financial year***).

(2) The commissioner must determine the unimproved value of the parcel of land for the first financial year as at 1 January in the immediately preceding financial year.

(3) If the determination for the first financial year is not made in that year, the commissioner must also determine the unimproved value of the parcel for each subsequent financial year.

Example

A parcel of land became rateable on 28 September 2009. However, the first determination of the unimproved value of the parcel of land was not made until 2016. The first determination of the unimproved value of the parcel of land is for the unimproved value as at 1 January 2009 and applies to the parcel for the financial year beginning on 1 July 2009.

The commissioner must redetermine the unimproved value of the parcel of land for each of the financial years from 2010 to 2016.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

10. Annual redeterminations

(1) This section applies to a parcel of land that is rateable on 1 January in a year.

(2) The commissioner must, as soon as practicable after 1 January, redetermine the unimproved value of the parcel of land as at that date for the financial year immediately following that date.

HEARING DETAILS

FILE NUMBER:	AT 18/2018
PARTIES, APPLICANT:	Craig Elliott
PARTIES, RESPONDENT:	Commissioner For ACT Revenue
COUNSEL APPEARING, APPLICANT	N/A
COUNSEL APPEARING, RESPONDENT	Ms Musgrove
SOLICITORS FOR APPLICANT	N/A
SOLICITORS FOR RESPONDENT	ACT Government Solicitor
TRIBUNAL MEMBERS:	Presidential Member E Symons
DATES OF HEARING:	28 June 2018