

SUPREME COURT OF SOUTH AUSTRALIA

(Land and Valuation Division)

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NELSON v COMMISSIONER OF HIGHWAYS

[2020] SASC 109

Judgment of The Honourable Justice Blue

19 June 2020

**REAL PROPERTY - COMPULSORY ACQUISITION OF LAND -
COMPENSATION**

**REAL PROPERTY - COMPULSORY ACQUISITION OF LAND -
COMPENSATION - ASSESSMENT - MARKET VALUE - GENERALLY**

**REAL PROPERTY - COMPULSORY ACQUISITION OF LAND -
COMPENSATION - ASSESSMENT - MARKET VALUE - CAPITALISATION
OF INCOME**

Referral of question of market value of land compulsorily acquired in 2014 under section 16 of the Land Acquisition Act 1969 (SA). The land had been used to retail barbecues and wood heaters.

Expert valuation evidence was given by a valuer called by the plaintiff and two valuers called by the defendant. The valuers agreed that the highest and best use of the land was its existing use as a bulky goods store and that the most appropriate method of valuation was by capitalisation of imputed rental income. Each valuer arrived at a different valuation.

Held:

1. The imputed rental value of the land at the time of acquisition was \$188,050 per annum, from which land tax should be deducted, resulting in net rental income of \$182,203 per annum (at [154], [157], [158]).

2. The appropriate capitalisation rate was 7.75 per cent (at [187]).

3. The value of the land therefore comprised \$2,330,000 after deducting the estimated cost of installing air conditioning and rounding (at [193]).

Plaintiffs: COLIN PETER NELSON AND COLIN NELSON NOMINEES PTY LTD **Counsel:** MR S HENRY QC - **Solicitor:** RADBONE & ASSOCIATES

Defendant: COMMISSIONER OF HIGHWAYS **Counsel:** MR S WHITTEN - **Solicitor:** CROWN SOLICITOR'S OFFICE

Hearing Date/s: 28/05/2018 to 31/05/2018, 06/06/2018

File No/s: SCCIV-17-1127

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Development Act 1993 (SA) s 42; *Land Acquisition Act 1969* (SA) ss 16, 22B, 23C, 25; *Retail and Commercial Leases Act 1995* (SA) s 30; *Retail and Commercial Leases Regulations 2010* (SA), referred to.

Wade v South Australian Planning Commission (1985) 59 LGRA 290, discussed.

Cook v City of Stirling (1991) 4 WAR 469 ; *District Council of Lower Eyre Peninsula v Allen* [2007] SASC 333; *Spencer v The Commonwealth* (1907) 5 CLR 418; *Sydney Water Corporation v Caruso* [2009] NSWCA 391, considered.

NELSON v COMMISSIONER OF HIGHWAYS
[2020] SASC 109

Land and Valuation Division

BLUE J:

1 On 13 March 2014 the defendant, the Commissioner of Highways, compulsorily acquired land at 38A South Road Torrensville from the first plaintiff, Colin Nelson, pursuant to section 16 of the *Land Acquisition Act 1969* (SA) (the *Act*).

2 Mr Nelson has referred to the Court the question of the market value of the land pursuant to section 23C of the *Act*. These reasons for judgment address that question. Other questions relating to compensation to Mr Nelson and to the second plaintiff, Colin Nelson Nominees Pty Ltd, are to be addressed subsequently.

Background

Purchase, development and use of the land

3 In February 1991 Mr Nelson purchased the land at 38A South Road Torrensville contained in certificate of title register book volume 4145 folio 998. I refer to the land including its improvements as the *Land* or the *subject property*.

4 The Land was about 4 kilometres by road south-west of the centre of the Adelaide central business district.

5 The Land had a frontage onto the western side of South Road. It was a right-angled trapezium. For ease of reference, I assume that South Road runs exactly north – south at that point when describing the location of the Land and the position of buildings and other features on it. Its front (eastern) boundary was 80.0 metres long.¹ Its rear (western) boundary was 85.2 metres long. Its right-hand side (southern) boundary was 25.6 metres long and was at a right angle to its front and rear boundaries. Its left-hand side (northern) boundary was 25.9 metres long. Its area was 2,106 square metres.²

6 When Mr Nelson purchased the Land, his company Colin Nelson Nominees Pty Ltd was carrying on a barbecue and wood heater retail business at nearby premises on South Road under the name “Bonza BBQ’s and Stoves” (*Bonza BBQ*). Mr Nelson purchased the Land for the purpose of constructing a showroom/warehouse on the Land with associated car parking, access and egress and landscaping. He moved the Bonza BBQ business onto the Land shortly after settlement.

¹ All lengths in metres are rounded to the nearest 0.1 metre unless otherwise indicated.

² All areas in square metres are rounded to the nearest square metre unless otherwise indicated.

7 In October 1990, after entering into a contract to purchase the Land and before settlement, Mr Nelson applied to the City of West Torrens (the *Council*) for development approval to use the Land for the retail sale of barbecues and heaters and to construct a showroom with associated car parking and landscaping. In December 1990 the Council granted development approval.

8 In 1991 Mr Nelson constructed a showroom on the Land as stage 1 of its development (the *showroom*). The showroom was rectangular with a length of 35.4 metres and a width of 15.6 metres. It had a span clearance of 3.5 metres. It was in the south-western quadrant of the Land with its rear wall on the western boundary and its right-hand wall on the southern boundary. Its frontage was 35.4 metres parallel to the frontage of the Land onto South Road. It had a rectangular veranda on its eastern side along most of its frontage (the *rectangular veranda*).

9 The showroom walls were constructed of brick, except the rear (western) wall, which was constructed of coloured-bonded iron. The roof of the showroom and the veranda were constructed of coloured-bonded iron. The primary access to the showroom was through glass doors from the veranda to the east. It had a roller door 2.9 metres wide by 3.5 metres high in its northern wall (the *internal roller door*). It also had a separate single door in its northern wall. The showroom contained a separate office, kitchen and bathroom with two toilets and a shower.

10 The gross lettable area (or gross building area³) (*GLA*) of the showroom, as measured by John Bested & Associates surveyors (*Bested Surveyors*) in April 2014, was 552 square metres.

11 In May 2000 Mr Nelson applied to the Council for development approval to construct a “showroom addition” in terms of an attached plan. The plan was entitled “Proposed Showroom Addition” and showed the proposed building as “showroom addition”. It showed the internal roller door at the northern end of the showroom “to remain” and thereby to become a means of access between the showroom and the showroom addition. In June 2000 the Council granted development approval. There were three planning conditions. They included that “development is to take place in accordance with the supporting documentation and plans” and that “the colours and finishes of all external building material shall be as near as practicable to match those of the principal building”. In August 2000 the Council granted provisional building rules consent. There were four building conditions, none of which is relevant.

12 In 2000-2001 Mr Nelson constructed the showroom addition on the Land as stage 2 of its development (the *showroom addition*).⁴ The showroom addition

³ The valuers in their evidence used these terms interchangeably. Ms Gornall gave evidence that for practical purposes in the present case they can be treated as the same. I infer from her evidence that they are not identical in all cases but there is no need to distinguish them in the present case.

was rectangular with a length of 33.3 metres and a width of 5.8 metres. It had a span clearance of 4.3 to 4.8 metres. It was built on the western side of the Land with its rear wall on the western boundary of the Land. Its southern wall was the northern wall of the showroom, with the internal roller door between the two rooms. Its frontage was 33.3 metres parallel to the frontage of the Land onto South Road. A more or less square veranda was built to effectively fill in the corner to the left of the showroom and the right hand front of the showroom addition (the *square veranda*).

13 The showroom addition walls and roof and square veranda were constructed of coloured-bonded iron. Access to the showroom addition was through the internal roller door from the showroom. It also had two external roller doors, each 2.9 metres wide by 3.6 metres high, in its eastern wall and a separate single door in its eastern wall.

14 Mr Nelson gave evidence, which I accept, that the internal roller door between the showroom and the showroom addition was kept open during hours when the premises were open (*trading hours*). Mr Nelson generally displayed between 15 and 20 barbecues in the showroom addition and prospective customers could view those barbecues by passing through the internal roller door.

15 The GLA of the showroom addition, as measured by Bested Surveyors in April 2014, was 194 square metres.

16 In October 2009 Mr Nelson applied to the Council for development approval to construct an “additional store area” as a standalone building to the north of the showroom addition. In April 2010 the Council granted development plan consent. There were nine planning conditions. Condition 5 was that “The existing roller door that currently demarcates the existing retail showroom area from the existing store shall remain closed at all times during trading hours” (*condition 5*). Mr Nelson was not questioned about this condition but I accept his evidence that in fact the roller door was kept open during trading hours both before and after construction of the additional store area.

17 In November 2010 building rules consent was granted by a private certifier and development approval was granted consequentially by the Council. There were three building conditions, none of which is relevant. In November 2010 Mr Nelson applied for development approval for a variation of the development approval for the storeroom, involving a change in the separation between the showroom addition and the storeroom. This did not involve development plan consent but only building rules consent, which was granted in January 2011.

⁴ There is an issue whether this building was a combination showroom/warehouse or merely a warehouse. I use the term “showroom addition” in a neutral sense, taking it from the description of the development on the approved plans.

18 In 2011 Mr Nelson constructed the standalone storeroom on the Land as stage 3 of its development (the *storeroom*). The storeroom was a right-angled trapezium with the sides adjacent to the right angle having a length of 24.0 metres and a width of 14.0 metres. It had a span clearance of 4.3 to 4.8 metres. It was built in the north-western quadrant of the Land with its rear wall on the northern boundary of the Land and its right-hand wall on the western boundary of the Land. Its frontage was 24 metres facing south.

19 The storeroom walls and roof were constructed of coloured-bonded iron. It had a roller door 2.9 metres wide by 3.6 metres high in its southern wall.

20 The GLA of the storeroom, as measured by Bested Surveyors in April 2014, was 259 square metres.

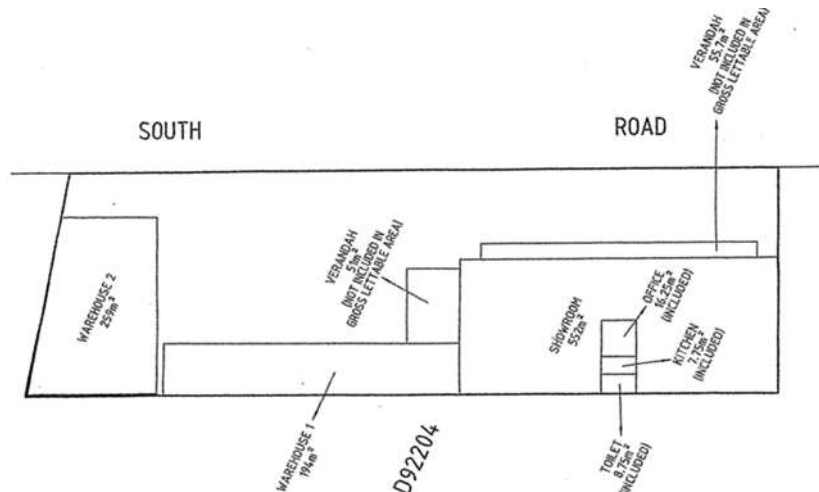
21 The frontage onto South Road was fenced with a tubular steel fence. There was a very large swinging entrance gate at the southern end of the fence (the *southern gateway*), with a brick-paved driveway leading into the property. There were 22 car parks, comprising:

- one car park in front of the showroom near the southern boundary;
- 12 car parks in front of the showroom addition; and
- nine car parks on the eastern boundary.

22 A driveway led to two swinging exit gates towards the northern end of the fence (the *northern gateway*).

23 There was a double-sided sign, 5 metres by 3 metres, near the southern boundary of the Land displaying the name “Bonza BBQ’s and Stoves” and telephone numbers for the business. There were double sided A-signs, 1.5 metres by 1 metre, either side of the southern gateway stating “Open for BBQ and Wood Heaters, Sales, Entry Only”. There was a sign, 4 metres by 2 metres, towards the eastern end of the northern wall of the showroom advertising wood heaters. There were four signs, 1.5 metres by 1 metre, on the eastern wall of the showroom addition also advertising wood heaters.

24 A plan prepared by Bested Surveyors showing the position of the buildings on the Land is reproduced below:



Adjoining land

25 The southern boundary of the Land was approximately 72 metres to the north of the junction of Ashwin Parade with South Road. The land fronting onto South Road between Ashwin Parade and the Land was essentially undeveloped and fenced off with a see-through tubular steel fence. This enabled traffic travelling north along South Road to see the buildings and signage on the Land through the tubular steel fence.

26 To the north of the Land were two homes owned by the Council but not used for any domestic or commercial purpose.

27 To the west of the Land was the Brickworks Markets. This land was owned by the Council (the *Brickworks land*). The Council leased the Brickworks land to a third party, who rented sites to stall holders. The stalls were contained in two large sheds as well as outdoor, mostly covered, stalls. The entrance to the Brickworks Markets was off Ashwin Parade.

28 In or before 2013 Woolworths entered into a contract with the Council to purchase the Brickworks land. In July 2013 the Development Assessment Commission granted development plan consent to Fabcot Pty Ltd, a Woolworths company, to construct a shopping centre on the Brickworks land. The entrance to the shopping centre was to be off Ashwin Parade. The development was intended to commence in August 2013 and be completed in 2014 at a cost of \$38.5 million and to comprise:

- a 4,200 square metre Woolworths supermarket;
- a full-size Big W store;
- a Dan Murphy Liquor Store;
- a second mini major retail store;

- 45 specialty stores and kiosks including an outdoor dining precinct, fresh food precinct, fashion and homewares shops and banks and services;
- 680 car parking spaces; and
- associated roadways and landscaping.

29 In March 2014 when the Commissioner acquired the Land, construction of the development had commenced but had not been completed.

30 The land on the opposite side of South Road from the Land comprised commercial, retail and office buildings.

31 As at March 2014, the Land fell within the District Centre Zone of the West Torrens Council Development Plan and within Brickworks Policy Area 6 within that Zone. The Objectives for the District Centre Zone were:

1. A centre that accommodates a range of retail facilities, offices, consulting rooms, and cultural, community, public administration, entertainment, educational, religious and residential facilities to serve the community and visitors within the surrounding district.
2. Development of a visually and functionally cohesive and integrated district centre.
3. A centre of accommodating medium to high-density residential development in conjunction with non-residential development.
4. Development that contributes to the desired character of the zone.

32 The Objective for Brickworks Policy Area 6 was:

1. Development that contributes to the desired character of the policy area.

33 The Desired Character for Brickworks Policy Area 6 reflected its existing use as the Brickworks Market as well as its contemplated future use as a regional shopping centre. The Desired Character extended over two pages but included the following passages:

The policy area is strategically significant represented by its area, location at the gateway of the Council area, location on a transit corridor and location relative to key economic areas, in particular the “Thebarton Bioscience Precinct”.

...

The policy area will be a vibrant, active area incorporating a mix of uses including restaurants, shops and commercial activity operating beyond normal business hours, attracting both the local population and visitors from a wider catchment...

...The policy area will accommodate ‘district level’ retailing in the form of a discount department store, supermarket and specialty shops, combined with activities such as banks, offices, consulting rooms, post office and health centre, educational and community facilities such as child care centre, civic uses and educationalist establishments, expansion of the existing ‘Thebarton BioScience Precinct’ including

research and development facilities, low impact laboratories and associated support facilities and high density residential such as apartments as part of an integrated mixed use development where interface, potential land use conflict and amenity impacts can be appropriately managed and addressed.

Acquisition, valuations and compensation

34 On 25 October 2013 the Commissioner served on Mr Nelson notice of intention to acquire the Land pursuant to section 10 of the Act.

35 In December 2013 Mr Nelson engaged William Fudali, of Wm Fudali & Co, to value the Land. Mr Fudali inspected the Land on 19 December 2013. On 22 March 2014 he produced a valuation report valuing the Land as at 19 December 2013. He valued the Land at \$2.75 million.

36 On 13 March 2014 the Commissioner compulsorily acquired the Land. At the same time, the Commissioner made an offer to pay compensation of \$2.12 million to Mr Nelson and paid that amount into Court pursuant to section 23A of the Act.

37 In 2014 the Commissioner engaged Tracy Gornall, of Jones Lang LaSalle, to value the Land as at 13 March 2014. She inspected the Land on 13 May 2014 and produced a valuation report dated 29 May 2014 in which she valued the Land at \$1.87 million.

38 On 23 April 2014 Bested Surveyors provided a report to the Commissioner showing the gross lettable area (GLA) of the buildings on the Land as follows:

- Showroom 552 square metres
- Showroom addition 194 square metres
- Storeroom 259 square metres
- Total 1,005 square metres.

39 In March 2017 Mr Nelson engaged Alex Smithson, of Knight Frank, to value the Land as at 13 March 2014. He produced a valuation report dated 26 April 2017 in which he valued the Land at \$2 million.

40 On 22 December 2017 Mr Fudali and Ms Gornall produced a joint report that identified areas of agreement and disagreement between them.

41 On 20 February 2018 Mr Fudali produced a supplementary report dated 20 February 2018 in which he commented on comparative properties referred to by Mr Smithson in his report and also identified additional comparative properties.

42 On 20 February, 19 March and 25 May 2018 Ms Gornall produced supplementary reports in which she updated the GLA of the buildings on the

Land by reference to the Bested areas; commented on comparative properties referred to by Mr Smithson; and commented on three comparative properties.

43 On 29 May 2018 Mr Fudali, Ms Gornall and Mr Smithson produced a joint report, in the form of a table of properties they agreed to exclude from consideration (the *discarded properties table*), a rental evidence spreadsheet showing the remaining properties considered for determining an imputed market rental (the *rental spreadsheet*) and a sales evidence spreadsheet showing the remaining properties considered for determining a capitalisation rate (the *capitalisation spreadsheet*).

The hearing

44 A written statement of evidence by Mr Nelson was tendered. He gave supplementary oral evidence in chief and was cross-examined. There is no challenge to the honesty, and in general no challenge to the reliability, of Mr Nelson's evidence. To the extent that there is any challenge to his evidence, I address it below under the heading "Factual findings".

45 Several documents were tendered by the parties.

46 Views were conducted in the vicinity of the Land (including the Woolworths shopping centre development) and of most, but not all, of the comparative properties shown in the rental and capitalisation spreadsheets.

47 Mr Nelson called Mr Fudali to give expert valuation evidence. His valuation report and supplementary report were tendered and he gave supplementary oral evidence in chief.

48 The Commissioner called Ms Gornall to give expert valuation evidence. Her valuation report and three supplementary reports, together with the joint report with Mr Fudali, were tendered and she gave supplementary oral evidence in chief.

49 The Commissioner called Mr Smithson to give expert valuation evidence. His valuation report was tendered and he gave supplementary oral evidence in chief.

50 The three valuers then gave concurrent evidence.

51 The valuers generally agreed that the global financial crisis that began in 2008 had a depressive effect on rental and particularly land values but by 2014 the market was emerging from the effects of the crisis and was more buoyant.

52 Each valuer valued the Land on the basis that its highest and best use was as a bulky goods store. Each valuer used as their primary method of valuation the capitalisation of net imputed market rent. They all said that this was the most common method used to value commercial properties (such as the Land).

53 Mr Fudali considered a secondary method of summation of the value of the site by reference to comparative land sales and of the improvements.⁵ Ms Gornall considered in a quantitative sense a secondary method of the value of the improved site by reference to comparative land sales. Mr Smithson considered in a qualitative sense the value of the improved site by reference to comparative land sales.

54 Each valuer initially had regard to a different set of comparative properties for the purpose of determining imputed market rental and an appropriate capitalisation rate, although there was some overlap as between any two valuers. The market rental paid for a property is not public knowledge. Although the sale price of a property is publicly known, the capitalisation rate is not public knowledge. Each valuer had access to private information about a different set of properties. Each valuer calculated or was provided with slightly different areas of each of the three buildings on the Land. Each valuer deducted from the gross imputed market rent an amount for land tax. In addition, Mr Fudali alone deducted an amount for maintenance. Ms Gornall alone deducted from the capital value a capital amount for the cost of installation of air conditioning.

55 Mr Fudali arrived at a value of the Land using the capitalisation of net imputed market rent method as follows:

Imputed rent showroom	535 sq metres	\$235 psm	\$125,725
Imputed rent warehouse	193 sq metres	\$235 psm	\$45,355
Imputed rent storeroom	255 sq metres	\$175 psm	\$44,625
Gross rent			\$215,705
Less land tax			-\$6,575
Less maintenance			-\$2,093
Net rent			\$207,037
Capitalisation rate			7.5%
Capital value			\$2,760,493
Valuation			\$2,750,000

56 Ms Gornall arrived at a value of the Land using the capitalisation of net imputed market rent method as follows:

Imputed rent showroom	534 sq metres	\$200 psm	\$106,800
Imputed rent warehouse	195 sq metres	\$125 psm	\$24,375
Imputed rent storeroom	252 sq metres	\$100 psm	\$25,200
Gross rent			\$156,375
Less land tax			-\$5,847
Net rent			\$150,528
Capitalisation rate			8.0%
Gross Capital value			\$1,881,600
Less air conditioning			\$10,000
Net capital value			\$1,871,600
Valuation			\$1,870,000

⁵ The Commissioner contends that this was a primary method but I reject that contention for the reasons given below.

- 57 Mr Smithson arrived at a value of the Land using the capitalisation of net imputed market rent method as follows:

Imputed rent showroom	529 sq metres	\$190 psm	\$100,510
Imputed rent warehouse	195 sq metres	\$120 psm	\$23,440
Imputed rent storeroom	275 sq metres	\$150 psm	\$41,250
Gross rent			\$165,200
Less land tax			-\$5,846
Net rent			\$159,354
Capitalisation rate			8.0%
Capital value			\$1,991,925
Valuation			\$2,000,000

- 58 In the course of conferring with each other and providing a joint report to the Court, the three valuers adopted one common set of comparative properties for determining market rental and another common set of comparative properties for determining an appropriate capitalisation rate, although they did not necessarily agree that each property was sufficiently comparable with the subject property to be useful or on the extent to which a given property was comparable with the subject property. This involved discarding some properties used by each valuer that the valuers collectively agreed were outliers or should otherwise be discarded.

- 59 The conferral process resulted in each valuer having available a greater number of comparable properties because they effectively pooled their private sources of information. The valuers produced the discarded property table, rental spreadsheet and capitalisation spreadsheet that reflected the process they undertook on conferral. Most of the properties on each spreadsheet were properties that all three valuers agreed were sufficiently comparable to be useful but there were two properties in each spreadsheet that only two valuers considered were sufficiently comparable and one or two properties that only one valuer considered were sufficiently comparable.

- 60 The areas of each building used by each valuer differed slightly between themselves and also from the areas shown by the survey undertaken by Bested Surveyors after each valuer prepared their principal report. It is appropriate to substitute the accurate areas as surveyed by Bested Surveyors.

- 61 The land tax figure used by Ms Gornall and Mr Smithson was the same, being \$5,847;⁶ whereas Mr Fudali used a higher figure. Mr Fudali accepted that his figure was incorrect and agreed with the figure used by Ms Gornall and Mr Smithson. Mr Fudali included an allowance for maintenance by the landlord; whereas Ms Gornall and Mr Smithson did not. Mr Fudali in his oral evidence agreed with the approach by Ms Gornall and Mr Smithson.

⁶ Mr Smithson used \$5,846 but I infer that he rounded down whereas Ms Gornall rounded up.

62 Mr Smithson during his oral evidence adopted the approach of Ms Gornall of allowing for the capital cost of installing air conditioning. For the reasons given below, I consider that it is appropriate to make an allowance of \$20,000. I therefore include an allowance of \$20,000 in the comparative table below.

63 Mr Smithson, as a result of consultation with the other valuers, during his oral evidence revised his imputed gross rental for the showroom to \$200 per square metre and his imputed gross rental for the showroom addition to \$150 per square metre.

64 Making these various adjustments results in the following assessments by the three valuers:

Valuer	Fudali	Gornall	Smithson
Showroom rent psm	\$235	\$200	\$200
Warehouse rent psm	\$235	\$125	\$150
Storeroom rent psm	\$175	\$100	\$150
Showroom rent per annum	\$129,720	\$110,400	\$110,400
Warehouse rent per annum	\$45,590	\$24,250	\$29,100
Storeroom rent per annum	\$45,325	\$25,900	\$38,850
Total rent per annum	\$220,635	\$160,550	\$178,350
Less land tax	\$5,847	\$5,847	\$5,847
Net rent per annum	\$214,788	\$154,704	\$172,503
Capitalisation rate	7.5%	8%	8%
Gross capital value	\$2,863,832	\$1,933,794	\$2,156,288
Less air conditioning	\$20,000	\$20,000	\$20,000
Net capital value	\$2,843,832	\$1,913,794	\$2,136,288

65 Mr Nelson made some general submissions supporting the evidence and opinions of Mr Fudali and criticising the evidence and opinions of Ms Gornall and Mr Smithson. Conversely, the Commissioner made some general submissions supporting the evidence and opinions of Ms Gornall and Mr Smithson and criticising the evidence and opinions of Mr Fudali.

66 All three valuers have extensive qualifications and experience. Mr Fudali obtained a Diploma of Technology (Valuation) from the South Australian Institute of Technology in 1975. He was admitted as an Associate in 1977, and a Fellow in 1997, of the Australian Institute of Valuers and Land Economists. He commenced work as a valuer at RJ Taylor and Associates in 1975, where he remained for a total of eight years. Since 1992 he has worked as a valuer successively at Fudali Waterhouse PRP, Heron Todd White and Wm Fudali & Co. Since 1992 he has undertaken valuations of commercial properties encompassing industrial, offices and retail and residential development projects.

67 Mrs Gornall has a Bachelor of Business (Property) with Honours. She is a Fellow of the Australian Property Institute. She commenced employment as a valuer at an international property firm in about 1997 and joined Jones Lang LaSalle in 2011. Since 1999 she also has undertaken valuations of commercial

properties encompassing industrial, offices and retail and residential development projects.

68 Mr Smithson has a Bachelor of Applied Science (Valuation) from the University of South Australia. He is a Fellow of the Australian Property Institute. He commenced work as a valuer for the State Government Valuation and Highways Department in 1974. Since 1984 he worked for three major property firms, the last being Knight Frank which he joined in 2002. Since 1984 he also has undertaken valuations of commercial properties encompassing industrial, offices and retail and residential development projects.

69 I found that Mr Fudali, in both his manner of expression and the substance of his opinions, tended to be positive in his outlook on the various matters that are relevant to the valuation of the Land, including in making comparisons between the Land and comparative properties. Conversely, I found that Ms Gornall, in both her manner of expression and the substance of her opinions, tended to be negative in her outlook on the various matters that are relevant to the valuation of the Land. This has caused me to exercise caution in considering the opinions expressed by Mr Fudali and Ms Gornall. I stress that I regard each as an honest witness and that each witness was endeavouring to assist in accordance with the obligations of an expert witness. I stress also that my determination of the compensation payable under sections 22B and 25 of the Act turns on a detailed analysis of the evidence, including specific opinions expressed by the valuers, in relation to the imputed rental of the buildings in question and the capitalisation rate. However, in undertaking that analysis, I bear in mind the general impression I formed as summarised in this paragraph.

70 Mr Smithson did not display a tendency to be either positive or negative across the board in relation to the relevant matters. On some occasions, he appeared to be positive and on other occasions he appeared to be negative. Again, this is not to say that I accept his evidence as to overall value or even necessarily in relation to individual matters. However, it is a general observation that I bear in mind in undertaking the detailed analysis referred to in the previous paragraph.

71 As noted above, each valuer in their report considered a secondary method of valuation in addition to the primary method of capitalisation of imputed net rentals. In closing address, each party was critical of the secondary method adopted by the valuer witness or witnesses called by their opponent. However, neither party in closing address supported the secondary method adopted by their own witness. Nor did either party adduce adequate evidence to rely on a secondary method.

72 Mr Fudali considered a summation approach as a secondary method. This assessed the value of the unimproved land at \$900 per square metre based on a comparative sale in mid-2008 of a parcel just south of the Land that did not have its extensive frontage (and added the value of the improvements). I accept the

Commissioner's submission that a single comparative sale was an inadequate foundation on which to assess the value of the unimproved land.

73 Ms Gornall considered a direct comparison approach as a secondary method. She considered six sale transactions for the purpose of determining an appropriate capitalisation rate when utilising her primary method. She considered the same six transactions when considering a direct comparison approach. She observed that the sales evidence indicated a broad range of values between \$1,311 and \$3,438 per square metre of GLA. She adopted a value for the Land based on a range of \$1,800 to \$2,000 per square metre of GLA. The fact that the sales evidence indicated such a huge range of values in itself renders the direct comparison approach of little value. Moreover, the valuers collectively discarded three of the six properties identified by Ms Gornall as not sufficiently comparable and added other properties that Ms Gornall agreed should be considered. However, Ms Gornall did not revisit the direct comparison approach by reference to the revised set of properties.

74 Mr Smithson also considered a direct comparison approach as a secondary method. Unlike Ms Gornall, he did not arrive at a value based on a direct comparison approach. He considered eight sale transactions for the purpose of determining an appropriate capitalisation rate. He then considered the same eight transactions when considering a direct comparison approach. He observed that the sales evidence indicated a broad range of values between \$1,229 and \$3,936 per square metre of GLA. The fact that the sales evidence indicated such a large range of values in itself renders the direct comparison approach of little value. Moreover, the valuers collectively discarded three of the eight properties identified by Mr Smithson as not sufficiently comparable and added other properties that Mr Smithson agreed should be considered. However, Mr Smithson did not revisit the direct comparison approach by reference to the revised set of properties.

75 Ultimately, the various secondary methods considered do not assist in making a finding as to the actual value of the Land.

76 The Commissioner submits that Mr Fudali in fact used the summation approach as his primary method. I reject that contention. Mr Fudali expressly stated in his report, under the heading "Primary Method", that "[t]he value of land acquired has been determined by capitalisation of imputed net rentals. As a secondary method a summation approach was considered." Moreover, in the joint report by Mr Fudali and Ms Gornall, they stated "Both Valuers adopted a capitalisation of imputed rentals as the appropriate method of assessing the fair market value as at the relevant date".

77 All three valuers cooperated in an exemplary fashion to produce the joint report for the Court comprising the discarded properties table and the rental and capitalisation spreadsheets. They also assisted the Court by giving concurrent evidence.

Principles relating to determination of compensation

78 Section 22B of the Act confers a right to compensation for the divestment of a person's interest in land when the freehold estate is acquired. It provides:

22B—Entitlement to compensation

Subject to this Act, a person is entitled to compensation for the acquisition of land under this Act if—

- (a) the person's interest in land is divested or diminished by the acquisition; or
- (b) the enjoyment of the person's interest in land is adversely affected by the acquisition.

79 Section 25 sets out certain principles governing the determination of the amount of compensation. They include the following:

25—Principles of compensation

(1) The compensation payable under this Act in respect of the acquisition of land shall be determined according to the following principles:

- (a) the compensation payable to a claimant shall be such as adequately to compensate him for any loss that he has suffered by reason of the acquisition of the land; and
- (b) in assessing the amount referred to in paragraph (a) of this section consideration may be given to—
 - (i) the actual value of the subject land; and
 - (ii) the loss occasioned by reason of severance, disturbance or injurious affection; and
- (c) compensation shall be fixed as at the date of acquisition of the land; ...

80 It is common ground that “the actual value of the subject land” means its market value in accordance with the definition in *Spencer v The Commonwealth*,⁷ namely “what would a man desiring to buy the land have had to pay for it on that day to a vendor willing to sell it for a fair price but not desirous to sell”.⁸

81 It is common ground that, in assessing value in the context of a compulsory acquisition of land, when considering hypothetical purchasers it is appropriate to include the dispossessed owner of the land as one of those hypothetical potential purchasers.⁹

⁷ (1907) 5 CLR 418.

⁸ At 432 per Griffiths CJ. Applied in *Commissioner of Highways v Tynan* (1982) 53 LGRA 1 at 7 per Wells J.

⁹ *Minister Administering the Heritage Act 1977 v Haddad* (1988) 67 LGRA 438 at 444-445 per Mahoney JA (with whom Clarke JA generally agreed).

82 It is common ground that, when assessing the value in the context of a compulsory acquisition of land, “doubts are resolved in favour of a more liberal estimate”.¹⁰ It is common ground that this approach only applies as a last resort when there is no basis on the assessment of the evidence to prefer one finding over another on the relevant issue.

83 In *Cook v City of Stirling*¹¹ two valuers adopted a capitalisation rate of 13 per cent and one valuer adopted a capitalisation rate of 12.5 per cent. Anderson J adopted the capitalisation rate of 12.5 per cent, which was favourable to the plaintiff, and said:

This is very much a matter for judgment. None of these valuers was guilty of any fallacious reasoning in selecting their respective capitalisation rates, so far as I can determine. None took into account irrelevant considerations or gave too much weight to trivial matters or too little weight to weighty matters. Yet they came to different conclusions. As I am not able to regard one opinion as any more meritorious than another on this point, I must resolve the question in favour of the rate that will result in the more liberal award of compensation.¹²

84 In *Sydney Water Corporation v Caruso*¹³ Allsop P said:

The general principle that in determining compensation to a dispossessed owner doubts should be resolved in favour of a more liberal estimate is well-known. That does not, however, detract from the need to engage with and evaluate evidence and competing witnesses. If, however, upon engagement and assessment, the judicial valuer finds, for example, as Anderson J did in *Cook and Edwards v City of Sterling*, that the reasoning of both valuers was not fallacious, that their respective capitalisation rates were open, that none took into account irrelevant considerations and no errors otherwise appeared, the proper conclusion might be that there are simply two open views on the relevant issue – as there can be in ascribing a value. In such circumstances, applying the general principle would be uncontentious.

It is not helpful to examine the scope of the general principle in the abstract beyond saying that it is not a licence to accept one expert over another without undertaking the task of assessing the evidence in the usual way.¹⁴

Factual findings

85 Mr Nelson gave evidence about several matters that were, in the main, uncontroversial.

¹⁰ *Commissioner of Succession Duties (SA) v Executor Trustee and Agency Co of South Australia Ltd* (1974) 74 CLR 358 at 374 per Dixon J; *Gugusheff v South Australian Urban Land Trust* (1990) 55 SASR 268 at 272 per Jacobs J; *Cook v City of Stirling* (1991) 4 WAR 469 at 473 per Anderson J; *Sydney Water Corporation v Caruso* [2009] NSWCA 391 at [3] per Allsop P.

¹¹ (1991) 4 WAR 469.

¹² At 473.

¹³ [2009] NSWCA 391.

¹⁴ At [3]-[4]. (Citations omitted).

Traffic and access

86 Mr Nelson produced Traffic Flow Maps for the Urban Area published by the Department of Planning, Transport and Infrastructure in September 2015 showing the average two-way traffic flow over 24 hours (the *Traffic Flow Maps*). The relevant map shows that the average two-way traffic flow past the Land was 50,200 vehicles. Mr Fudali and Mr Smithson each referred to that figure in their reports and it is not controversial. I accept that the traffic flow along South Road, and in particular in the vicinity of the Land, is at the upper end of traffic flows in the metropolitan area.

87 Mr Nelson gave evidence that the signage on the Land made the business obvious to northbound and southbound traffic on South Road. I accept that evidence.

88 Mr Nelson gave evidence that vehicles could easily enter the Land, park on the Land and exit the Land. He said that there was rarely any need for a customer to park elsewhere. I accept that evidence. The Commissioner points to the fact that northbound traffic on South Road would need to be in the left lane, or move into the left lane, to turn into the Land and, if a vehicle missed the turn, would need to travel some distance down South Road and make a U-turn. However, I accept Mr Nelson's contention that, given the visibility of the Land, most motorists would be in the left lane or move into the left lane in time to turn left and otherwise they could execute U-turns to enter the Land.

89 The Commissioner points to the fact that vehicles exiting the Land would need to wait for a break in the traffic to re-enter South Road. I accept that this may involve some waiting but do not consider that it is a significant disincentive to vehicles entering the Land in the first place. I also accept Mr Nelson's evidence that regular breaks in the traffic were caused by the operation of the traffic lights at Ashwin Parade. The time spent entering and exiting premises on such a main road may be expected to be significantly less than time spent entering and exiting homemaker centres.

90 I accept that southbound vehicles on South Road would need to execute a U-turn to enter the Land but I do not consider that this was a significant disadvantage. Retail premises are situated on main roads due to the volume of traffic and this is a common concomitant of such a situation.

91 Mr Nelson gave evidence that, if he had retained the Land in 2014, the development by Woolworths of the adjacent shopping centre on the Brickworks land would have been beneficial. I accept that evidence. The development would have attracted substantial numbers of visitors to the immediate area. I accept that a person visiting the shopping centre who wished to enter the business premises on the Land would need to walk around the shopping centre or alternatively drive via Ashwin Parade and South Road into the Land. Nevertheless, the existence of the shopping centre would have been of substantial benefit to the Land.

Air conditioning

92 Mr Nelson gave evidence that the showroom was designed with a large circular venting system in the northern and southern walls and the underside of the roof was double insulated. He said that this resulted in there being only three or four days per year when summer heat made the showroom uncomfortable. He said that four slow combustion heaters kept the showroom warm during winter. Mr Nelson gave evidence that the temperature in the showroom addition was the same as in the showroom and there were also only three or four days per year when summer heat made it uncomfortable. He said that customers commented to him on the efficacy of the heating and cooling systems. The Commissioner did not object to the latter evidence on the ground of hearsay but contends that it has little weight. This is a paradigm case for hearsay evidence where it is impracticable to call former customers to give evidence of their perception. I accept Mr Nelson's evidence about what he observed and what he was or was not told. I reject the Commissioner's contention that customers bothered by the heat or cold were unlikely to make that known to Mr Nelson or that Mr Nelson is atypically tolerant of heat.

93 Nevertheless, I accept the Commissioner's submission that most prospective purchasers would be looking for airconditioned premises. I accept that a capital allowance should be made for the cost of air conditioning and address the amount of that allowance below.

Use of showroom addition and roller door

94 Mr Nelson gave evidence that he normally kept between 15 and 20 barbecues on display in the showroom addition. Mr Nelson was taken in cross-examination to a photograph showing only eight barbecues on display in the showroom addition and he said that this photograph was taken after he had started to wind down the business in anticipation of the acquisition. I accept Mr Nelson's evidence about the extent of use of the showroom addition for the display of barbecues.

95 As noted above, Mr Nelson gave evidence that the internal roller door between the showroom and the showroom addition was kept open during trading hours. The Commissioner contends that this was illegal because it was in breach of condition 5 imposed in 2010 as a condition of the development plan consent for the construction of the storeroom. Mr Nelson contends that that condition was ultra vires and invalid because it was not imposed as a condition of development plan consent for the construction of the showroom addition in 2000 but only as a condition of development plan consent for the construction of the storeroom in 2010.

96 Section 25(1)(f) of the Act provides that "where the value of the land is enhanced by reason of its use, or the use of any premises on the land, in a manner that may be restrained by any court, or is contrary to law..., the amount of that enhancement shall not be taken into account".

97 Subsection 42(1) of the *Development Act 1993* (SA) provides, and in 2010 provided:

42—Conditions

(1) A decision under this Division is subject to such conditions (if any)—

(a) as a relevant authority thinks fit to impose in relation to the development; or

(b) as may be prescribed by the regulations or otherwise imposed under this Act.

98 In *District Council of Lower Eyre Peninsula v Allen*¹⁵ the Full Court held that the power conferred by section 42(1)(a) is limited, amongst other things, to imposing conditions that fairly and reasonably relate to the proposed development. DeBelle J (with whom Doyle CJ and Nyland J agreed) said:

The power of a planning authority to impose conditions is not unlimited. It is a power which must be exercised in good faith and within limits which, though not specified in the Act, are indicated by the nature of the purposes for which a planning authority is entrusted with the discretion to impose conditions. For the reasons which follow, the power to impose conditions is limited to the imposition of conditions that fairly and reasonably relate to the proposed development, in this case the division of the subject land.¹⁶

99 In *Wade v South Australian Planning Commission*¹⁷ the Wades owned five hectares of land at Cherry Gardens on which was constructed a house (the *old house*). In 1978 they sought and were granted planning approval by the District Council of Stirling to construct an additional house on the land (the *new house*). The Council imposed a condition on the approval including that use of the old house be limited to the owners' immediate family or a caretaker and that it not be let for commercial purposes or sold separately to the new house and a condition that the old house be removed prior to sale of the property, unless otherwise allowed by Council. Jacobs J held *obiter* that these conditions were invalid. Jacobs J said:

In addition to that, however – and although it may not be strictly necessary so to decide in these proceedings – these conditions appear to me to be invalid and, in the circumstances, severable. The conditions relate solely to a dwelling, the “old” house, which was not the subject of the application for planning approval, and there is no power to impose such extraneous conditions.¹⁸

100 In the present case, the Council had granted development approval in 2000 for construction of the showroom addition. There was no condition in that development approval relating to the internal roller door being kept closed. There was no condition limiting the use of the showroom addition to use only as a store room. Under that development approval, Mr Nelson was entitled if he wished to

¹⁵ [2007] SASC 333.

¹⁶ At [10]. (Citations omitted).

¹⁷ (1985) 59 LGRA 290.

¹⁸ At 294. (Citations omitted).

leave the roller door open permanently or to leave it open during trading hours and he was entitled to use the showroom addition for display as well as storage of stock. I reject the Commissioner's submission that the position was ambiguous or unclear in or after 2000.

101 The development approval in 2010 related exclusively to the construction of the storeroom. It did not relate to the showroom or the showroom addition. Whether the internal roller door between the showroom and the showroom addition was open or closed was a matter entirely extraneous to the construction of the storeroom. It was not a condition that, in the words of section 42(1)(a), was in relation to the development the subject of the 2010 application for development approval. The condition was invalid.

102 It follows that section 25(1)(f) of the Act has no application in relation to the roller door remaining open during trading hours.

103 I consider that it is highly unlikely that a potential purchaser of the Land would have sought out the conditions applying to development approval in relation to the historical development of the Land. It is highly likely that a purchaser would assume that the existing use of the Land was lawful. In this respect, I note that none of the three valuers ascertained the conditions of development approval in relation to the Land. If a hypothetical purchaser did make inquiries and observed condition 5, I accept Mr Nelson's submission that the purchaser would obtain legal advice and the legal advice would be that the condition was invalid.

Imputed rental

Showroom and showroom addition

104 The rental spreadsheet lists 11 properties that all valuers accepted were sufficiently comparable with the Land (although they obviously held differing views about the extent to which each property was comparable); two properties that two valuers considered were sufficiently comparable; and two properties that only one valuer (Ms Gornall) considered were sufficiently comparable.

105 Ms Gornall alone considered that there were two properties (which she had included in her report) that were sufficiently comparable to take into account in the valuation exercise. The first property was ANZ Office Furniture at 301 South Road Mile End. The rental was \$80,000 per annum and its GLA was 687 square metres, giving a rate of \$116 per square metre. It comprised a showroom, warehouse and mezzanine. Mr Fudali expressed the opinion that this was not a comparative property because it was used to undertake repairs to office furniture and sell office furniture as seconds; it had a narrow difficult frontage just south from Richmond Road; and it had limited visibility to traffic on South Road. Mr Smithson expressed the opinion that this was not a comparative property because it did not retail goods to consumers; had a narrow frontage and limited visibility and presented as an office warehouse. Ms Gornall accepted that it was by no

means a perfect piece of evidence but included it because it was also located on South Road and contained a substantial warehouse component.

106 The second property was Total Workwear at 360 North East Road Klemzig. The rental was \$68,000 per annum and its GLA was 566 square metres, giving a rate of \$120 per square metre. It comprised a showroom at the front and stockroom at the rear together, inferentially, with a mezzanine. Mr Fudali expressed the opinion that this was not a comparative property because it was in a lesser retail area, it comprised a portion of an older building, it had limited visibility and it had a very small front parking area. Ms Gornall accepted that its exposure was mainly for traffic heading east rather than west for the reasons given by Mr Fudali; and accepted that it was inferior retail space compared to the showroom on the subject property.

107 I consider that these two properties are not sufficiently comparable to be of use as comparative properties. I accept the evidence of Mr Fudali in respect of them and the evidence of Mr Smithson in respect of the ANZ Office Furniture property.

Comparative properties

108 The 13 remaining properties assembled in descending order of rental per square metre of GLA are summarised in the following table:

Tenant	Address	GLA	Rental	\$psm
Barbeques Galore	T4 150 Main North Road Gepps Cross	810	\$218,909	\$270
BCF	228-232 Port Road Alberton	1,079	\$250,000	\$232
	U1&2 57 Magill Road Stepney	501	\$115,230	\$230
	100 Main North Road Prospect	482	\$105,000	\$218
	T4&5 12-18 David Witton Drive Noarlunga	731	\$149,760	\$205
Farquhar Kitchens	144-156 Magill Road Norwood	966	\$198,054	\$205
Supercheap Auto	334 Main North Road Blair Athol	620	\$126,000	\$203
Discount City Carpets	T2 6 Dutton Road Mt Barker	624	\$124,253	\$199
Natuzzi Italia	19A-21 Anzac Highway Keswick	1,187	\$231,465	\$195
Doors Plus	213-215 Main North Road Sefton Park	599	\$100,000	\$167
Highgrove Bathrooms	23-29 Sir Donald Bradman Drive Mile End	1,129	\$156,570	\$139
Clark Rubber	322 Main North Road Blair Athol	891	\$120,000	\$135
Petbarn	113-115 Tapleys Hill Road Hendon	1,004	\$126,730	\$126

109 Mr Smithson observed in his report that there was a dearth of highly comparable properties in the vicinity of the Land and he considered leases over a wide geographic area. The task of the valuers can be contrasted with the simpler process of valuing houses and units where there are usually many comparative properties in the same general area and the sale price is publicly available information via the Lands Titles Office. Even by combining information available to three different valuers, there were only 13 comparative properties and, as will be seen, the majority of those are not comparable.

110 The Barbecues Galore property at Gepps Cross was situated in the Gepps Cross Homemaker Centre. It formed part of an off-road shopping centre specialising in homewares, including bulky goods stores. It comprised a showroom and a storeroom. The passing rental in 2014 was \$218,909 (\$270 per square metre of GLA). The lease commenced in June 2009. The original rental in 2009 was \$190,232 (\$235 per square metre of GLA). The passing rental in 2014 was a result of annual increases equal to changes in the consumer price index plus one per cent. Mr Fudali included this property in his report and considered that it was comparable to the subject property.

111 Ms Gornall preferred not to rely on the passing rental for this property because the original lease rental was struck in 2009 and the passing rent in 2014 was the result of annual adjustments by reference to the consumer price index plus one per cent. Mr Smithson considered that it was a comparable property, although he would have preferred that there were more comparable properties whose rental rates had been set closer to 2014 and said that caution needed to be exercised because the rent had been set five years earlier.

112 On the one hand, when the original rent of \$235 per square metre was set in 2009, this was in the depth of the global financial crisis. On the other hand, Ms Gornall gave evidence that rents do not necessarily increase at the same rate as the consumer price index and referred to the fact that retail sentiment was only just improving by early 2014 and retailing still faced some challenges. I accept that caution needs to be exercised in relation to this property because the lease was entered into five years before the valuation date.

113 Ms Gornall also considered that this is property not directly comparable with the subject property because it was 810 square metres of GLA compared to 1,005 square metres for the subject property. Although I accept the general evidence by the valuers that it is undesirable to have regard to a comparable property that is much smaller or much larger than the subject property, the Gepps Cross property was 80 per cent of the size of the subject property and was closer in size than half of the comparative properties considered by the valuers set out in the table above. I therefore do not accept Ms Gornall's opinion in this regard.

114 This property was similar to the subject property in that they were both used for bulky goods stores selling barbecues. They both have a broadly similar fit-out, albeit the Gepps Cross property is more modern.

115 Mr Fudali in his report referred to information obtained from rental agents for homemaker centres that a current rental for premises leased in June 2013 in the Mile End Homemaker Centre was approximately \$235 per square metre. Ms Gornall expressed the opinion that rents in homemaker centres were not closely comparable to rents for stand-alone properties on main roads. Mr Fudali took issue with that opinion. Mr Smithson had in his own report referred to rents at the Mile End Homemaker Centre and the Gepps Cross Home HQ and expressed the

opinion that rents at homemaker centres should be compared but that caution should be exercised due to the different nature of the premises.

116 On the one hand, homemaker centres have the advantage of extensive parking and adjacent shops that attract traffic. On the other hand, the time spent to park and access a shop within a homemaker centre is likely to be longer than for a standalone shop on a main road; an individual shop within a homemaker centre is less prominent than a standalone shop on a main road; and a shop within a homemaker centre will have closer competition if there is a shop selling similar wares within the same homemaker centre. The respective advantages and disadvantages are likely to balance each other to a degree. Neither Ms Gornall nor Mr Smithson identified, in a quantitative sense, a differential rental as between a standalone store and a homemaker centre store. Nor did they cite any empirical evidence for a differential.

117 I am not affirmatively satisfied that, all other things being equal, rent at a homemaker centre will be higher than a standalone store on South Road in the location of the Land. Equally, I am not affirmatively satisfied that, all other things being equal, rent at a homemaker centre will be the same as such a standalone store. Overall, while it is appropriate to have regard to rents at homemaker centres, they need to be treated with caution due to the different nature of the premises. The fact that the rental was originally fixed in 2009 also results in the need for caution in relying too strongly on this property.

118 The Boating Camping Fishing property at 228-232 Port Road Alberton (\$232 per square metre of GLA) was a standalone property on the eastern side of Port Road to the south of Grand Junction Road. It comprised a showroom, mezzanine and storeroom constructed in 2012. A site plan shows that the mezzanine comprised 199 square metres out of the total GLA of 1079 square metres. The lease commenced in August 2012. Ms Gornall included this property in her report.

119 The property was built for the purpose of leasing it to BCF. It is constructed of tilt-up concrete panels with internal visibility of the underside of the roof. The Traffic Flow Maps show that the average two-way traffic flow on Port Road in that vicinity was 30,600 vehicles. Mr Fudali considered that it had a much poorer location than the subject property and no showroom exposure due to a lack of windows at the front. Ms Gornall acknowledged that the absence of windows, the location and traffic numbers were disadvantages for this site as compared to the subject property. She also acknowledged that the mezzanine had a lower rental value than the ground floor. However, she considered that the quality of the building was superior to the showroom on the subject property and also that BCF may have paid a premium for a purpose-built building. It also had a greater number of car parks.

120 Ms Gornall in her report showed this property as comprising 1,108 square metres GLA and that area was carried forward into the rental spreadsheet.

However, a site plan shows that the GLA is 1,079. This indicates that the rental per square metre should be \$232 per square metre.

121 Overall, I consider that this property is reasonably comparable to the Land but it is necessary to take into account that it was a purpose-built building for the tenant.

122 The 57 Magill Road Stepney property (\$230 per square metre of GLA) comprised units 1 and 2 out of four units in a strip mall on the northern side of Magill Road between the junction of Magill Road, Payneham Road and Nelson Street. It comprised a showroom and a store with a roller door at the rear. A site plan shows that the store comprises 103 square metres out of total GLA of 501 square metres. The lease commenced in October 2012. Mr Fudali included this property in his report and considered that it was closely comparable to the subject property.

123 Ms Gornall and Mr Smithson expressed the opinion that properties in the inner eastern suburbs are well sought after compared to properties in the inner western suburbs. Mr Fudali did not agree with this opinion. It is general knowledge that, as a generalisation, residential properties in the inner eastern suburbs attract higher rentals and higher sale prices than residential properties in the inner western suburbs. I do not accept that the rationale for this applies to a commercial property or in particular to a bulky goods store. The rental a tenant is willing to pay is likely to be linked to the revenue that the tenant can generate from the site. It is not evident that a tenant would generate higher revenue from a bulky goods site in an inner eastern suburb compared to an inner western suburb. A bulky goods store is different in this respect to say a high-end designer clothing store. Ms Gornall and Mr Smithson did not refer to any empirical evidence to support their opinion. Nor did they identify, in a quantitative sense, a differential rental as between an inner eastern suburbs bulky goods store and an inner western suburbs bulky goods store.

124 Ms Gornall referred in the context of capitalisation rate to the fact that this property was close to the Caroma site which in 2014 had been purchased by Renewal SA and leased back to Caroma with a view to redevelopment. Ms Gornall expressed the opinion that the redevelopment would benefit the freehold value of the property. In her oral evidence, Ms Gornall said that she considered that the prospect of such redevelopment had some bearing in terms of the appeal of the property for tenants but less than for prospective purchasers. Mr Fudali disagreed. Mr Smithson considered that any such ultimate appeal would be too remote as at 2014. I consider, based on the opinions expressed by Mr Fudali and Mr Smithson, that proximity to the Caroma site was not relevant to the rental value of the 57 Magill Road property in 2014.

125 On the one hand, the Traffic Flow Maps show that the average two-way traffic flow on Magill Road in that vicinity was 22,400 vehicles. On the other hand, this property, with a GLA of 501 square metres, had the second lowest

GLA of the comparative properties included in the rental spreadsheet. The valuers gave general evidence that, all other things being equal, a property of a substantially smaller size may be expected to command rental at a higher rate per square metre than a larger property. Overall, I consider that this property is reasonably comparable to the subject property but it is necessary to take into account the significantly lower GLA of this property.

126 The property at 100 Main North Road Prospect (\$218 per square metre of GLA) was a standalone bulky goods store constructed in the late 1980s. Mr Fudali and Ms Gornall both included this property in their reports for the purpose of determining an appropriate capitalisation rate. The valuers agreed on conferral that it should also be included in the rental spreadsheet. The Traffic Flow Maps show that the average two-way traffic flow on Main North Road in that vicinity was 47,600 vehicles. This property, with a GLA of 482 square metres, had the lowest GLA of the comparative properties included in the rental spreadsheet. Overall, I consider that this property is reasonably comparable to the Land but it is necessary to take into account the significantly lower GLA of this property.

127 The property at 12-18 David Witton Drive Noarlunga Centre (\$205 per square metre of GLA) comprised several bulky goods stores. Tenancy T4 and T5 comprised one of those stores. It was constructed in 2009 and is constructed of tilt-up concrete panels. Mr Smithson included it in his report. There are several separate areas in Noarlunga Centre that contain bulky goods stores. David Witton Drive is not an arterial road. The lease commenced in October 2014.

128 The property at 144-156 Magill Road Norwood (\$205 per square metre of GLA) was a standalone older building containing a kitchen and bathroom renovation business. It was on the southern side of Magill Road on the corner of Edward Street between Osmond Terrace and Portrush Road. It comprised a showroom of 808 square metres and a warehouse of 158 square metres. The Traffic Flow Maps show that the average two-way traffic flow on Magill Road in that vicinity was 26,000 vehicles. The lease was reviewed to market rental in 2010. Mr Fudali included this property in his report. The rental in 2010 was \$176,069 (\$182 per square metre) and the rent was adjusted annually by four per cent per annum, resulting in rent in 2014 of \$198,054 (\$205 per square metre). I accept that, like the Barbecues Galore property referred to above, caution needs to be exercised in relation to the rent because the market rental was fixed four years before the valuation date.

129 The Supercheap Auto property at 334 Main North Road Blair Athol (\$203 per square metre of GLA) was a standalone building constructed in about 2005. It was situated on the western side of Main North Road, between Regency Road and Grand Junction Road. It comprised a showroom, incorporating an office, staff room, kitchen and toilet, and a storeroom accessed by an external roller door. It was set down to some degree from the level of Main North Road. It had no windows facing Main North Road and Mr Fudali considered that it therefore

had no showroom exposure. The Traffic Flow Maps show that the average two-way traffic flow on Main North Road in that vicinity was 43,200 vehicles. The lease commenced in April 2013. It had a GLA of 620 square metres. Ms Gornall included this property in her report.

130 The property at 6 Dutton Road Mount Barker comprised 16 bulky goods stores constructed in about 2007. Tenancy 2 is Discount City Carpets (\$199 per square metre of GLA). It was constructed of tilt-up concrete panels. The lease commenced in August 2014. Mr Smithson included this property in his report.

131 The Natuzzi Italia property at 19A-21 Anzac Highway Keswick (\$195 per square metre of GLA) was a standalone building. It was situated on the northern side of Anzac Highway, between Richmond Road and South Road. It comprised a showroom. Traffic Flow Maps show that the average two-way traffic flow on Anzac Highway in that vicinity was 48,500 vehicles. The lease commenced in June 2013. Ms Gornall included this property in her report. The tenant had undertaken a high end, relatively expensive, fit-out at its own cost. Mr Fudali agreed that it had good location and exposure but considered that it had very limited and shared parking.

132 The Doors Plus property at 213-215 Main North Road Sefton Park (\$167 per square metre of GLA) was a standalone building constructed in the mid-1990s. It was situated on the eastern side of Main North Road, between Nottage Terrace and Regency Road. It comprised a showroom and a storeroom. Traffic Flow Maps show that the average two-way traffic flow on Main North Road in that vicinity was 45,100 vehicles. The lease commenced in February 2012, which was more than two years before the valuation date. Ms Gornall included this property in her report. Mr Fudali and Mr Smithson expressed the opinion that this property was inferior by comparison with the subject property. Ms Gornall accepted that this property was inferior to the subject property and accepted that the Land would have a higher rental.

133 The Highgrove Bathrooms property at 23-29 Sir Donald Bradman Drive Mile End (\$139 per square metre of GLA) was a building containing two tenancies side by side, one of which was Highgrove Bathrooms. It was probably constructed in the 1980s. It was situated on the southern side of Sir Donald Bradman Drive, between James Congdon Drive and South Road. It comprised a showroom (490 square metres) and a storeroom with roller door access (639 square metres). Traffic Flow Maps show that the average two-way traffic flow on 23-29 Sir Donald Bradman Drive in that vicinity was 33,000 vehicles. The lease commenced in April 2014. Mr Smithson included this property in his report.

134 The Clark Rubber property at 322 Main North Road Blair Athol (\$135 per square metre of GLA) was a standalone building. It was situated on the western side of Main North Road, between Regency Road and Grand Junction Road. It comprised a showroom and a storeroom with roller door access (807 square metres) together with an office (51 square metres) and a mezzanine (33 square

metres). Traffic Flow Maps show that the average two-way traffic flow on Main North Road in that vicinity was 43,200 vehicles. The lease commenced in June 2014. Mr Smithson included this property in his report. The property had been vacant for more than 12 months before it was leased. All three valuers agreed that the rental rate was out of kilter with the other properties and considered that it was abnormally low.

- 135 The Petbarn property at 113-115 Tapleys Hill Road Hendon (\$126 per square metre of GLA) was a standalone building. It was situated on the corner of Tapley's Hill Road and Circuit Drive. Traffic Flow Maps show that the average two-way traffic flow on Tapley's Hill Road in that vicinity was 20,700 vehicles. The lease commenced in August 2013. Ms Gornall included this property in her report. Mr Fudali said that this was an isolated development on the edge of the Hendon industrial area; it had no showroom exposure; it was distant from other retail outlets and it carried much less traffic than South Road in the vicinity of the subject property. He expressed the opinion that this was not a comparable property. Mr Smithson expressed the opinion that this was a clearly inferior property compared to the subject property but considered that it could still be taken into account as a comparative property. Ms Gornall expressed a similar opinion.

Showroom and showroom addition

- 136 Mr Fudali expressed the opinion that the showroom and showroom addition should be considered together with a single rate per square metre applying to both. He said that his experience was that in bulky goods retail facilities a portion of the retail area is generally set aside for deliveries and holding of additional stock and the same rental rate is applied to the combined area.

- 137 Ms Gornall and Mr Smithson expressed the opinion that the showroom and showroom addition should be considered separately. They accepted that in general a single rate is applied to combined showroom and storage space. However, they considered that the subject property should be treated differently because the showroom addition was not as well adapted to use as a showroom and because in comparative properties the tenant is able to reconfigure the division between showroom and storeroom depending on need.

- 138 There were one or two comparative properties where the valuers had not been inside the property or there was no direct evidence whether they contained storage space. However, in respect of the remainder of the comparative properties, all of them contained a separate storeroom physically divided from the showroom and the area of the storeroom was substantial. In some cases, plans or other evidence were tendered to show the relative size of the showroom and storeroom. In general, and having regard to all of the comparative properties, it appears that the storeroom comprises between about 20 and 25 per cent of the total GLA.

139 In general, it is highly desirable that a bulky goods store carry stock on the premises that does not fit into the showroom. I accept that many of the comparative properties comprise more or less square boxes and that, if the tenant was prepared to engage in the requisite capital expenditure, the internal walls between showroom and storeroom could be reconfigured. However, given that tenants at bulky goods stores use substantial areas for storage as opposed to showroom, this distinction is more theoretical and practical. The situation is loosely analogous to the treatment of car parking and driveways in tenancies. It is assumed that a tenancy will have car parking and driveways and rental is assessed with reference merely to the area of the leased buildings without including any component on account of the area devoted to car parking and driveways. Similarly, in applying a single rate to what is a combination of showroom and storage space, a distinction is not drawn by the valuers. The position would be different if an unusually large proportion of the total area were devoted to storage space and indeed this applies to Mr Nelson's storeroom which is considered separately below.

140 While I accept that the showroom addition is not as well adapted to use as a showroom as the showroom, nevertheless it is capable of being used to some extent for that purpose.

141 The approach by Ms Gornall and Mr Smithson effectively values the showroom by reference to a combination of showroom and warehouse space at comparative properties and then values the showroom addition by reference to purely warehouse space.

142 Comparing a single rate for combined showroom and storage space at the comparative properties with only the showroom at the Land and not the showroom addition is not comparing like with like.

143 There are two alternative approaches to determine what is, on the evidence, an appropriate rental value for the showroom and showroom addition. The first approach is to assess them separately and reflect the fact that the showroom is entirely devoted to showroom space in a higher rental than would apply to a combination of showroom and storage space. The second approach is to assess them as a combination at a single rate applying to both.

144 If I were to assess different rental values for the showroom and showroom addition, the rental value for the showroom would be substantially higher than the figure of \$200 per square metre adopted by Ms Gornall and Mr Smithson.

145 The BCF property at Alberton (\$232 per square metre of GLA) had a GLA of 1,079 square metres which is very close to the GLA of the Land at 1,005 square metres. On the one hand, traffic on Port Road in the vicinity of the BCF property is only 60 per cent of the traffic on South Road in the vicinity of the Land and the BCF property does not have any significant windows at the front. On the other hand, the BCF property has a greater number of car parks, was

leased shortly before the valuation date and was purpose-built for the tenant. The rate for showroom space only would substantially exceed \$250 per square metre if the non-showroom space were valued at say \$150 per square metre.

146 The property at 100 Main North Road Prospect (\$218 per square metre of GLA) is reasonably closely comparable to the Land. However, it is necessary to take into account the fact that its GLA is less than half that of the Land.

147 The properties at 12-18 David Witton Drive Noarlunga Centre, 144-156 Magill Road Norwood and 334 Main North Road Blair Athol were each about \$205 per square metre of GLA. They are each somewhat smaller than the Land. They comprise, or it may be inferred that they comprise, a mixture of showroom and storeroom space. Assuming that the storeroom space comprised 20 to 25 per cent of the total and that the rate for storeroom space were say \$150 per square metre, the imputed rate for the showroom space would be of the order of \$220 per square metre.

148 The Natuzzi property at Keswick (\$195 per square metre of GLA) has a GLA of 1,187 square metres which is a substantially larger than the GLA of the showroom of 552 square metres. It comprises solely showroom space. It has an extensive fit-out by the tenant and it is not known to what extent that resulted in a lower rental than would otherwise have applied.

149 The remaining properties are either affected by the uncertainty associated with being in a homemaker centre, are substantially smaller in GLA or are not comparable for the reasons given above.

150 I would assess the rental value of the showroom at \$220 per square metre.

151 If I assessed the rental value of the showroom and showroom addition separately, I would assess the value of the showroom on the basis that it is a warehouse, and it would be appropriate to use the same rate as for the storeroom which I assess below at \$150 per square metre.

152 Assessed on the basis of the first alternative approach, the rental value of the showroom and showroom addition would total \$150,540 per annum.

153 The second approach is to assess the showroom and showroom addition as a combination at a single rate applying to both. If I were to assess them on this basis, I would adopt the rate of \$200 per square metre adopted by Ms Gornall and Mr Smithson but apply it to both the showroom and the showroom addition. In making this assessment, I take into account on the one hand that the comparative evidence indicates that a single rate of \$200 per square metre would be too low if the showroom and showroom addition were both contained within a single more or less square building. I take into account on the other hand that the showroom addition, although devoted primarily to a storage function, is not as

well adapted to a showroom use. These two factors tend to cancel each other out. Adopting this approach would result in a rental of \$149,200 per annum.

154 The two approaches result in largely the same figure. I adopt the figure of \$149,200 per annum because this approach accords slightly more closely with the approach by the valuers to assessing a single rate for comparative properties comprising a combination of showroom and storage use.

Storeroom

155 Mr Fudali expressed the opinion that the rental value of the storeroom was \$175 per annum, Mr Smithson expressed the opinion that it was \$150 per square metre and Ms Gornall expressed the opinion that it was \$100 per square metre.

156 None of the valuers engaged in an analysis of comparative rentals paid for storage space. It may well be that the rental value of a warehouse on land dedicated only to use for warehousing was of the order of \$100 per square metre. However, Mr Fudali and Mr Smithson expressed the opinion that the rental value of warehousing contained on the same land as a showroom is markedly higher than for separate warehousing. There are two evident rationales for this. First, it is of advantage to a customer to be able to collect their goods at the same site as the showroom compared to having to travel to a different location to collect the goods or awaiting delivery by the store. Secondly, it is of advantage to the store operator to conduct all operations on a single site, involving savings in labour and other expenses.

157 I am faced with a stark choice between accepting the approach by Mr Fudali and Mr Smithson on the one hand or by Ms Gornall on the other. I particularly have regard to the opinion of Mr Smithson on this issue and to my general observations expressed above concerning the opinions by Mr Fudali and Ms Gornall. I determine that the rental value of the storeroom was \$150 per square metre. This results in rental for the storeroom of \$38,850 per annum.

Imputed market rent

158 I determine that the imputed market rent of the Land was \$188,050 per annum.

Capitalisation rate

159 The capitalisation spreadsheet lists seven properties that all valuers considered were sufficiently comparable with the subject property (although they obviously held differing views about the extent to which each property was comparable); two properties that two valuers considered were sufficiently comparable; and one property that only one valuer (Mr Smithson) considered was sufficiently comparable.

160 The valuers gave evidence concerning the factors that affect the capitalisation rate. There are macro factors that affect the capitalisation rate

across the board for particular types of property (such as commercial property or, more specifically, bulky goods stores). Macro factors include the general state of the economy, yields for alternative investments such as cash or shares, and supply and demand for the type of property concerned.

161 The micro factors primarily are a function of perceived risk and, to a lesser extent, perceived opportunities. The principal risk involves the security of income: the risk that the tenant will vacate coupled with the risk of not finding a replacement tenant at an adequate rent. The former is impacted particularly by the substance of the tenant (for example, a publicly listed company is perceived as having a lower risk than a private company) and the term of the lease (the longer the better). The latter is impacted by the range of potential tenants who might be attracted to the property, which in turn is impacted by factors such as exposure of and access to the site and the configuration and quality of the building. The principal opportunities, where applicable, are potential for income growth or potential for capital growth such as resulting from redevelopment potential. It is also relevant to take into account the underlying land value.

162 Mr Smithson alone considered that a property at 210 Henley Beach Road Torrensville was a comparable property. The property was sold in August 2013. It comprised a two-storey building, an attached office/warehouse and a detached tenancy. The tenancies comprised:

- a vacant tenancy on the ground floor of 428 square metres (for which rent was imputed by Knight Frank at \$175 per square metre);
- a vacant tenancy on the ground floor of 146 square metres (for which rent was imputed by Knight Frank at \$200 per square metre);
- a warehouse tenancy on the ground floor of 230 square metres let to “West End Breeze” at a rental of \$22,594 per annum pursuant to a lease due to expire in June 2014;
- a tenancy on the first floor of 410 square metres let to “Dance Studio” at a rental of \$37,000 per annum pursuant to a lease due to expire in December 2014;
- most of the attached office/warehouse of 370 square metres let to Eco Plus at a rental of \$81,924 per annum on a holding over basis;
- the detached tenancy of 114 square metres let to “Corporate Platters” pursuant to a lease due to expire in October 2014.

163 Mr Fudali expressed the opinion that this was not a comparable property to the subject property because it was two storeys, it required leasing and it required expenditure of significant refurbishment costs. Ms Gornall expressed the opinion

that this was not a comparable property because it had multiple tenants and did not have a use similar to bulky goods uses.

164 I consider that this property is so dissimilar to the subject property and to the other comparative properties as not to be sufficiently comparable. I accept the evidence of Mr Fudali and Ms Gornall as to the dissimilarities.

Comparative properties

165 The nine remaining properties assembled in ascending order of capitalisation rate are summarised in the following table:

Tenant	Address	GLA	Sale date	Sale price	Rent	Cap rate
Profix/ Eastcoast	149-151 Sir Donald Bradman Drive Hilton	408	May 12	\$905,000	\$59,864	6.61%
	68 King William Street Kent Town	621	May 14	\$1,530,000	\$104,000	6.80%
	57 Magill Road Stepney	1123	May 14	\$3,870,000	\$279,343	7.22%
	133-139 Magill Road Stepney	1100	Nov 13	\$2,500,000	\$185,259	7.41%
BCF	228-232 Port Road Alberton	1108	Dec 12	\$3,105,000	\$250,000	7.95%
Autobarn	19 Gillingham Road Elizabeth	1583	Sep 13	\$3,350,000	\$273,736/ \$266,689	7.96%/ 8.17%
Pro AV Solutions	1/41 Magill Road Stepney	1076	June 12	\$2,725,000	\$223,830	8.21%
	100 Main North Road Prospect	482	Feb 13	\$1,260,000	\$96,400- \$105,000 ¹⁹	7.41%- 8.33% ²⁰
Cash Wizard	614-616 North East Road Holden Hill	672	Jan 15	\$1,100,000	\$100,000	9.05%

166 Mr Smithson observed in his report that there was a dearth of highly comparable properties in the vicinity of the Land and he considered sales over a wide geographic area. Even by combining information available to three different valuers, there were only nine comparative properties and, as will be seen, I consider that only two are closely comparable.

167 The property at 149-151 Sir Donald Bradman Drive Hilton (capitalisation rate 6.61%) contained side-by-side tenancies rented to Profix and Eastcoast Car Rentals. Mr Fudali included this property in his report. On the one hand, Mr Fudali expressed the opinion that it was an inferior property compared to the subject property and I accept his evidence in that respect. In addition, the sale occurred two years before the valuation date and the valuers generally gave evidence that capitalisation rates were improving (reducing) over that period. On the other hand, it had the smallest GLA of the comparative properties and the

¹⁹ There is doubt about the rental value. This is addressed below at [183].

²⁰ There is doubt about the capitalisation rate. This is addressed below at [183].

second smallest site area and was approximately half of the size of the subject property in these respects, and the valuers generally gave evidence that, all other things being equal, the capitalisation rate for a property less than half the size of the subject property may be expected to be lower because there would be more potential buyers in the market. In addition, Ms Gornall and Mr Smithson referred to the low dollar value per square metre of site area (of the order of \$800 per square metre) and considered that this suggested that it may have been purchased having regard to redevelopment value. Mr Fudali accepted that the property was not roughly equivalent to the subject property, as reflected in its substantially lower capitalisation rate compared to his adopted capitalisation rate for the subject property of 7.5 per cent. However, he expressed the opinion that it demonstrated that his adopted capitalisation rate was not unrealistic. Overall, I consider that this property is not closely comparable to the Land.

168 The property at 68 King William Street Kent Town (capitalisation rate 6.8%) contained three strata titled units each comprising a combination of office and warehouse areas. Mr Fudali included this property in his report. On the one hand, the valuers gave evidence that strata titled properties are generally not as attractive as Torrens title properties. On the other hand, this property had the third lowest GLA, the second lowest site area and was approximately half of the size of the Land in these respects. Ms Gornall expressed the opinion that this property may have had redevelopment potential. Mr Fudali expressed essentially the same opinion about this property as in respect of the Hilton property. Overall, I consider that this property is not closely comparable to the Land.

169 The property at 57 Magill Road Stepney (capitalisation rate 7.22%) contained three units. Each unit comprised a showroom and a store with a roller door at the rear. The first unit (units 1 and 2) is addressed above under the heading 'Imputed Rental'. Unit 3 comprised a relatively smaller showroom and larger storeroom. Unit 4 comprised a relatively larger showroom and smaller storeroom. The GLA (1123 square metres) and site area (2678 square metres) are larger than the Land. Mr Fudali included this property in his report. Mr Fudali expressed the opinion that this was a comparable property to the subject property in terms of capitalisation rate.

170 Ms Gornall and Mr Smithson gave evidence, summarised above, that they have a perception that land in the inner eastern suburbs may be more tightly held and regarded as more valuable than land in the inner western suburbs. I accept that, if land has the potential to be redeveloped (for example, for residential use) and that potential impacts the sale price, land in the inner eastern suburbs might achieve a lower capitalisation rate. I address redevelopment potential in relation to this property immediately below. However, for the reasons given above, leaving aside specific redevelopment potential for a specific site, I prefer Mr Fudali's evidence that bulky goods properties do not have a higher value merely because they are located in the inner eastern suburbs compared to the inner western suburbs. In addition, if there were a general differential of the type

referred to by Ms Gornall and Mr Smithson, one would expect that it would not be confined to a simple dichotomy between inner eastern and inner western suburbs but would also involve differentials between other suburbs. However, both Mr Smithson and Ms Gornall in their reports relied on capitalisation rates for properties as far afield as Elizabeth, Alberton and Holden Hill.

171 Ms Gornall referred to the fact that this property at 57 Magill Road is opposite the Caroma site which had been acquired by Renewal SA and leased back to Caroma with a view to future development. Mr Smithson provided some support for this opinion. Mr Fudali disagreed. I prefer Mr Fudali's opinion in this respect. As at May 2014 the prospect of redevelopment of the Caroma site was remote and I consider that it is unlikely to have significantly affected the sale price of this property. In addition, by comparison, the Woolworths redevelopment directly adjacent to the Land was not merely a possible future prospect but was a reality as at the date of acquisition.

172 Ms Gornall referred to the Inner Metro Rim Restructure Plan issued by the Department of Planning Transport and Infrastructure in September 2012 (the *Inner Rim Plan*). This Plan stated that it was an adjunct to the 30-Year Plan for Greater Adelaide which addressed potential development over the next 30 years. It was expressed to be at the level of strategic vision. It involved 14 sectors surrounding the parklands that in turn surround the Adelaide central business district and North Adelaide. A substantial proportion of the land contained within the 14 sectors was shown as residential infill (greater housing diversity and intensity), commercial infill (greater commercial intensity) and mixed infill (greater intensity). Sector 3 was St Peters–Hackney. The triangle between Magill Road, Payneham Road and Nelson Street was shown as commercial infill. The narrative included encouraging compatible mixed-use infill redevelopment to strengthen the identity of the commercial and light industrial area and provide opportunities for residential development where appropriate.

173 Ms Gornall did not rate the Inner Rim Plan factor particularly highly. She said that it was not something that she thought would have motivated the purchaser of the 57 Magill Road property and was merely a point of difference to a property that is not within the precincts the subject of the Inner Rim Plan. Ms Gornall was the only valuer to rely on the Inner Rim Plan. In any event, I consider that it is too amorphous and remote to have had a significant effect upon the sale price of the 57 Magill Road property. In addition, sector 12 of the Inner Rim Plan identifies the opposite side of South Road to the Land as commercial infill. While that does not include the Land itself, it may be expected to impact the Land directly and indirectly if the existence of the Inner Rim Plan impacts any land values.

174 Mr Smithson referred to the fact that the sale price of this property involved a rate of \$1,449 per square metre of site area. He expressed the opinion that the underlying land value was of the order of \$1,200 to \$1,300 which was close to

the sale price and a purchaser may have considered that in say 10 years' time the land would increase enough to redevelop it as an alternative use. Overall, I consider that the property at 57 Magill Road is closely comparable to the subject property, subject to the possible impact of redevelopment potential.

175 The property at 133-139 Magill Road Stepney (capitalisation rate 7.41%) comprised five older shops in a secondary retail strip. It was subject to local heritage listing. Mr Fudali included this property in his report. Ms Gornall said that she did not originally consider this property but appreciated that it could be put in the mix. She referred to its having an inner eastern suburb location which she considered had quite a lot of appeal with high underlying land values but she accepted that there were some probable constraints with the building arising from its heritage status. Mr Smithson referred only to the location of this property in the inner eastern suburbs. The sale price per square metre of site area was \$2,402 which is somewhat less than twice its underlying land value (in the order of \$1,200 to \$1,300 based on Mr Smithson's evidence in respect of 57 Magill Road). Ms Gornall and Mr Smithson did not suggest that it had significant redevelopment value. Overall, I consider that this property is closely comparable to the subject property.

176 The BCF property at 228-232 Port Road Alberton (capitalisation rate 7.95%) was a standalone property that is addressed above in the context of imputed rental. Ms Gornall and Mr Smithson both included this property in their reports. It had approximately the same GLA and site area as the subject property. The sale was in December 2012. It was leased to BCF for 10 years from September 2012 (plus rights of renewal). It was not suggested that it had redevelopment potential. Mr Fudali expressed the opinion that this property was in a much poorer location than the subject property and this resulted in a commensurate capitalisation rate. Ms Gornall and Mr Smithson did not give significant evidence about this property in the context of capitalisation rate apart from considering in their reports that it was comparable. Overall, I consider that this property is closely comparable to the Land.

177 The Autobarn property at 19 Gillingham Road Elizabeth was a standalone bulky goods store constructed in the 1990s with a fit-out upgrade in 2010 when it was leased to a franchisee of Autobarn. It included a small two storey office/amenities component as well as a workshop area for installation of car accessories. These comprised slightly more than 25 per cent of the total GLA. It was leased for 12 years from May 2010 (plus rights of renewal).

178 The lease required the lessee to pay land tax (\$7,047 per annum). However, subsection 30(1) of the *Retail and Commercial Leases Act 1995* (SA) provides that a retail shop lease cannot require the lessee to pay or reimburse the lessor for land tax. Section 4 provides that the Act applies to a retail shop lease subject to

exceptions. The only relevant exception is based on turnover.²¹ When the Act was enacted in 1995, section 4(2)(a) excluded the operation of the Act if the rent payable under the lease exceeded \$250,000 per annum or, if a greater amount was prescribed by regulation, that other amount. The *Retail and Commercial Leases Regulations 2010* (SA) were amended as from 4 April 2011 to specify \$400,000 as the rent threshold for the purpose of section 4(2)(a) of the Act. It is likely that this provision applied to the lease to the Autobarn franchisee notwithstanding that the lease had been entered into in May 2010 when the rental was just above the then statutory threshold. It is likely that the landlord ceased to recover land tax after the amendment came into effect. For this reason, Mr Smithson in his report used a net rental of \$266,689 per annum which did not include recovery of land tax. However, Mr Smithson gave evidence that, when the tenant does not pay land tax, on occasions a higher rental is charged depending on negotiations between landlord and tenant. In the circumstances, all that can be said is that the capitalisation rate for this property falls somewhere in the range between 7.96 and 8.17 per cent.

179 Mr Fudali expressed the opinion that this was not a comparable property because it was in a far lesser location. Mr Smithson and Ms Gornall accepted that, at the time of the sale in September 2013, there was doubt whether General Motors Holden would continue to manufacture vehicles in Australia and this may have had a negative effect on the sale price and hence the capitalisation rate. The GLA (1,583 square metres) and site area (4,455 square metres) of this property are significantly greater than those of the subject property. Overall, I consider that this property is not as comparable as the 57 Magill Road Stepney and 228-232 Port Road properties.

180 The Pro AV Solutions property at 1/41 Magill Road Stepney (capitalisation rate 8.21%) is one of five strata units contained in a retail building constructed of tilt-up concrete panels. It was leased for three years from April 2012 (plus rights of renewal). It was sold in June 2012. The building comprised the entire site area of the strata titled unit but it would have shared common areas with the other strata units. Mr Fudali said that it had only limited shared off-street car parking being five car parks at the front and six at the rear via an elongated driveway. Mr Smithson included this property in his report.

181 This property was sold in an off-market transaction. Mr Smithson explained that being sold in an off-market transaction meant that it had not been advertised and hence it had either been sold by an agent without advertising or by the vendor direct without advertising.

182 Ms Gornall said that the strata title tenure was not comparable and was believed to have contributed to a higher yield than otherwise. She said that, all other things being equal, a sale of a strata title property will be at a higher

²¹ Other exceptions include where the tenant is a public company or a subsidiary of a public company but the tenant in this case was three individuals.

capitalisation rate because strata tenure is generally seen as an inferior form of tenure compared to a normal Torrens title. The owner of a strata title property must abide by strata meetings and there are extra levels of approvals. Mr Smithson agreed with this and added that an owner of a strata title property does not have control of the redevelopment potential of a site. In the context of this property, Ms Gornall expressed the opinion that the capitalisation rate of 8.21 per cent reflected its being a strata title property. This sale was two years before the valuation date. Overall, I consider that this property is not closely comparable to the Land.

183 The property at 100 Main North Road Prospect was a standalone property that is addressed above in the context of imputed rental. Ms Gornall and Mr Fudali both included this property in their reports. Ms Gornall's original report stated that it was sold in February 2013 with vacant possession. She imputed a rent of \$200 per square metre of GLA (which translates to \$96,400 per annum). Mr Fudali said that it was leased for \$105,000 per annum to December 2020 with two rights of renewal for seven years each. This implies that the lease was granted in December 2013. Ms Gornall calculated a capitalisation rate of 7.41 per cent based on the imputed rent. Mr Fudali calculated a capitalisation rate of 8.33 per cent based on the rental transaction. Ms Gornall in her third supplementary report said that the property was marketed for sale and lease at the same time. She said that the selling agent indicated that it was sold on a leased basis. I am not satisfied that there is sufficient certainty as to when the lease commenced, and in particular whether the lease had already commenced when the contract of sale was executed, to rely upon this as a comparable property.

184 The Cash Wizard property at 614-616 North East Road Holden Hill (capitalisation rate 9.05%) contained a retail showroom of masonry construction. It was leased for three years from October 2014 (plus rights of renewal). It was sold in January 2015. Mr Smithson included this property in his report. Mr Fudali did not consider it to be a comparable property. He expressed the opinion that this was a vastly inferior property, located in a very difficult portion of North East Road. He said that being so close to the Valiant Road/Stuart Road intersection was very difficult, the adjoining uses were a massage parlour and some vacancies, and it has always been a difficult area and of lesser quality. Ms Gornall said that this property was of inferior quality and in a compromised position, being a difficult site to access given the close proximity of the traffic light intersection, and the subject property would have a much lower capitalisation rate in comparison. Mr Smithson agreed with Ms Gornall, saying that it was a secondary property. He said that it was expected to have a significantly higher capitalisation rate than the subject property. However, he still considered that it was appropriate to have some regard to it. Overall, I consider that this property is not comparable to the Land.

185 Overall, the two properties that are closely comparable to the Land are 133-139 Magill Road Stepney, sold in November 2013 at a capitalisation rate 7.41%,

and 228-232 Port Road Alberton, sold in December 2012 at a capitalisation rate 7.95%. They are both very similar in size of GLA to the Land. The Port Road property was sold 15 months before the valuation date in circumstances in which, on the evidence of all the valuers, the capitalisation rate was falling, such that it may be expected that the capitalisation rate would have been lower if it had been sold in March 2014. The Magill Road property was sold in November 2013, only four months before the valuation date. These two properties fall exactly half way in the range of capitalisation values across the nine comparable properties.

186 I consider that the capitalisation rate of 8 per cent adopted by Ms Gornall and Mr Smithson is too high. It does not sufficiently reflect the fact that the Port Road property was sold 15 months before the valuation date nor give adequate weight to the 133-139 Magill Road property (or to the 57 Magill Road property). On the other hand, I consider that the capitalisation rate of 7.5 per cent adopted by Mr Fudali is too low. It does not sufficiently reflect the capitalisation rate of the Port Road property, nor the limitations (such as they are) due to the configuration of the buildings on the subject property and number of car parks.

187 I assess an appropriate capitalisation rate at 7.75 per cent.

Conclusion

188 I have determined that the imputed market rent of the Land was \$188,050 per annum. Deducting \$5,847 for land tax results in net rental of \$182,203.

189 I have determined that an appropriate capitalisation rate is 7.75 per cent. Applying that rate results in a capital value of \$2,351,006, which I rounded to \$2,350,000.

190 Ms Gornall expressed the opinion that it is appropriate to make an allowance for the capital costs of installing air conditioning. Mr Smithson in his oral evidence agreed with that approach. Mr Fudali did not disagree.

191 Ms Gornall included an allowance of \$10,000. Mr Smithson expressed the opinion that it would cost substantially more to install reverse cycle air-conditioning. I accept Mr Smithson's opinion. Although no precise quantification was identified, I consider it is appropriate to allow \$20,000 to install air-conditioning in the showroom and showroom addition.

192 Deducting the cost of air-conditioning results in a capital value of \$2,330,000.

193 I assess the market value of the land at \$2,330,000.

194 I will hear the parties concerning the orders to be made to reflect my reasons for judgment and concerning the further conduct of this action.