
AUSTRALIA / JUDGMENT

Verran v Valuer-General [2018] NSWLEC 1086

Source: caselaw.nsw.gov.au · Research copy typeset by Esheria. Not court-issued or certified.

Land and Environment Court

New South Wales

Medium Neutral Citation: Verran v Valuer-General [2018] NSWLEC 1086

Hearing dates: 14 February 2018

Date of orders: 27 February 2018

Decision date: 27 February 2018

Jurisdiction: Class 3

Before: Maston AC

Decision: (1) The appeal is dismissed.

(2) The decision of the Valuer-General determining the Land Value of 16 Reginald Avenue, Belmore (Property Number 1436511) to be \$937,000 for the base date 1/7/2016, is confirmed.

(3) The exhibits may be returned.

Catchwords: LAND VALUE for rating and taxing purposes; APPEAL against Valuer-General's determination as at 1/7/2016-whether highest and best use for dual occupancy development-Comparable Sales method of valuation. Land zoned R3-Medium Density Residential

Legislation Cited: Canterbury Development Control Plan 2012: Canterbury Local Environmental Plan 2012: Environmental Planning and Assessment Act 1979: Sydney Water Act 1994:

Valuation of Land Act 1916

Cases Cited: Flack v Valuer-General (1952) LGR Vol18, p157:

Graham Trilby Pty Ltd v Valuer-General [2008] NSWLEC 217 (Jagot J) at [41]

Hillman v Valuer-General (1938) LGR Vol14, p14

Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 (Preston CJ)

Category: Principal judgment

Parties: Garry John Verran (Applicant)

Valuer-General (Respondent)

Representation: Counsel:

Mr S Nash (Respondent)

Solicitors:

Lea Armstrong, Crown Solicitor for NSW (Respondent)

File Number(s): 17/143249

Publication restriction: No

Judgment

1. These proceedings are an appeal under s.37 of the Valuation of Land Act 1916 [VL Act] against the decision of the Valuer-General disallowing the Applicant's objection to the valuation of the Applicant's land at 16 Reginald Avenue, Belmore (Property ID 1436511) as at 1/7/2016. The land is that comprised in Certificate of Title Folio Identifier 3/307073 (the land).
2. The Land Value (LV) of land is defined in s6A of the VL Act relevantly as:
 1. The land value of land is the capital sum which the fee-simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona-fide seller would require, assuming that the improvements, if any, thereon or appertaining thereto, other than land improvements, made or required by the owner or the owner's predecessor in title had not been made;
 2. Notwithstanding anything in subsection (1), in determining the land value of any land it shall be assumed that
 1. The land may be used, or may continue to be used, for any purpose for which it was being used, or for which it could be used, at the date to which the valuation relates; and
 2. Such improvements may be continued or made on the land as may be required in order to enable the land to continue to be so used
 3. But nothing in this subsection prevents regard being had, in determining that value, to any other purpose for which the land may be used on the assumption that the improvements, if any, other than land improvements, referred to in section (1) had not been made.
1. Mr Verran as the registered proprietor of the land was issued with a Notice of Valuation of the land by the Valuer-General as at 1/7/2016 stating that the land value was \$937,000.
2. Issues:

3. The issues in the case may be broadly stated as:

1. The accumulation, adjustment and analysis of comparable sales, it being accepted by the parties that the best method of valuing the land was by reference to comparable sales;
 2. The relevance and nature of the statutory rights of Sydney Water to keep and maintain a sewer main pipe line within the land which runs parallel and adjacent to the eastern boundary of the land, and its effect on value;
 3. The relevance of statistics relating to the Valuer-General's valuation of the land or other land in the local area from 2014 to 2016;
 4. The "Highest and best use" of the land: -whether for a single dwelling house or as a site for dual occupancy development.
1. The Valuer-General was represented by Mr S Nash of Counsel. Mr Verran appeared in person.

Evidence:

1. The hearing commenced with a view at the site of the subject property and included views of relevant comparable sales and thereafter continued in Court. Mr Verran gave evidence for himself, much of which was in the form of opinion evidence relating to the land and its value. I permitted this to be led but on the basis that he was not an expert witness and that it represented his own observations and personal opinions. Mr Verran called no witnesses.
2. Mr Nash called evidence of two witnesses:

* Mr David Haskew who is a practising Town Planner. He holds the degree of Bachelor of Town Planning from the University of NSW with first class honours and has been involved in the practice and teaching of town planning since 1994. He was employed by Rockdale City Council as a Development Planner from 1996 to 1998;

* Mr Angelo Konidaris who has over 11 years experience in the property industry concentrating on valuation and property consultancy. His expertise includes valuations under the VL Act. He has an Advanced Diploma in Property (valuation) and a Masters degree in Property Development from the University of Technology Sydney.

1. There was no challenge by Mr Verran to the experience and expertise of Mr Nash's witnesses, each of whom had prepared expert reports which complied with the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules.

The hearing

1. Mr Haskew was not required for cross examination and there was no challenge to his written evidence. Mr Haskew's evidence, which I accept, states, in summary:

* The Land is zoned R3/Medium Density Residential under the Canterbury Local Environment Plan 2012 (CLEP). Relevantly, development permitted with development consent in that zone includes dwelling houses and dual occupancies. These expressions are defined in CLEP.

* 'Dwelling House' means a building containing only one dwelling. Dual occupancy means a dual occupancy (attached) or a dual occupancy (detached) and each type is defined to mean two dwellings on one lot of land, but does not include a secondary dwelling.

* The expert report of Mr Haskew reviewed the principal development standards in part 4 of CLEP. Clause 4.1A set minimum lot sizes for dual occupancies and dwelling houses in certain residential zones including the R3 zone. Subclause 4.1A(3) provides that "development consent must not be granted for the purpose of a dual occupancy on land to which [cl 4.1A] applies unless the area of the lot is at least 600m².

* Clause 4.1B of CLEP has the objective of ensuring that appropriate minimum lot sizes are provided for the subdivision of land and for dual occupancies: see cl 4.1B(1). That clause goes on to provide that despite cl 4.1 and cl 4.1(A) development consent may be granted to a development application (DA) for subdivision of the land in certain circumstances. One is that if the application also provides for the erection of a dual occupancy on that land, that is to say it is a DA for both the erection of dual occupancy development and for a subdivision of the land, development consent may be granted to the subdivision. However, this only applies if:

1. The lot size of each resulting lot will be at least 300m², and
 2. There will be one dwelling on each resulting lot.
1. On the face of the evidence adduced, the land does not strictly comply with the 300m² minimum lot size requirement for subdivision and minimum lot sizes for dual occupancy development.

Land size

1. The Notice of Valuation as at 1/7/2016 states that the area of the land is 600.7m² "calculated". This would indicate compliance with the requirement of 600m² site area and of 300m² per lot for the dual occupancy lots. However, the lots would not comply with the minimum frontage requirement set by 2.2.1 of Canterbury Development Control Plan 2012. The frontage requirement is found in cl 2.2.1 Control C2 which requires a minimum site frontage of 15m. Mr Haskew states that the width of the subject site is 14.63m which represents a short-fall of approximately 2.5%.
2. Mr Verran also assumed that the site frontage that was available for dual occupancy development on the subject land was 14.63m and that the area of the land is 594.4m²: See his outline of submissions (Exhibit A).

3. Mr Konidaris states in para 11 of his Expert Report (Exhibit 3) that the land was identified by him by reference to a number of means, the only one of which that is useful for present purposes is an extract he provided from registered Deposited Plan No. 307073. From this he concluded that the land was rectangular in shape with frontage to the southern side of Reginald Avenue of approximately 14.63m, a maximum depth of 41.148m and a land area of 23.5 perches, which converts to 594.4 m² metric. The total area based on the multiplication of the shown dimensions of the land equates to 601.99 m² which is a difference of 7.59m² from the area shown on the deposited plan. In the absence of a certificate of a registered surveyor he had adopted the lower area of 594.4 m² as the actual area of the land for the purposes of the valuation evidence.
4. Mr Verran assumed that the land would not have qualified at all to satisfy the dual occupancy development standards in CLEP (or the DCP).
5. I accept Mr Konidaris' information as it is derived from the registered deposited plan converted to metres and decimals of a metre. On that basis the land does not comply with the land area requirement for dual occupancy development in CLEP.
6. Mr Haskew carefully applied the requirements of cl 4.6 and provides a suggested planning objection to strict compliance with the development standards. He referred to a recent decision concerning cl 4.6 of the Standard Instrument Local Environmental Plan. This is the recent decision in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 which dealt with the matters which must be adequately addressed in the preparation of a cl 4.6 request for variation.
7. He notes that it must be demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard. It must also be demonstrated that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.
8. Mr Haskew's analysis leads to the conclusion that both the minimum lot size requirement under cl 4.1A(3) of 300m² per lot and the minimum subdivision standard under cl 4.1B(3)(a) are different and require separate variation applications.
9. Following a review of the statutory requirements as well as the planning principles concerning undersized lots and formed the opinion that because of the extremely minor extent of the site area non-compliances, Mr Haskew found that a proposal for dual occupancy development would be able to meet all planning controls in CLEP and that there were sufficient environmental planning grounds to justify the variation from the standards in cl 4.1A(3) and cl 4.1B(3)(a).

10. I accept Mr Haskew's reasoning in regard to this matter. It follows that on the valuation date dual occupancy development was available on the subject land subject to development consent of the Council and that Mr Haskew's advice demonstrates that such an application, properly designed, would be accepted by the Council. A 1% variation to the standard, in Mr Haskew's opinion, would not thwart the attainment of the objective in cl 4.1B(1) which is to ensure that appropriate minimum lot sizes are provided for the subdivision of land for dual occupancies.
11. As to the control of the minimum site frontage of 15m for the dual occupancy development, Mr Haskew noted that the width of the subject site that he had assumed was 14.63m which represents a short fall of 37cm or 2.5%. Mr Haskew referred to s79C(3A) of the Environment Planning and Assessment Act 1979 (EPA Act) which deals with provisions of a development control plan which set standards with respect to an aspect of development where the development application does not comply with the standard. The section provides in subclause (b) that the consent authority is to be flexible in applying such provisions and must allow reasonable alternative solutions that achieve the objects of the standards for dealing with the particular aspect of the development. In the present case Mr Haskew considered that in the circumstances a 2.5% variation to the DCP requirement would be consistent with the "flexible" application of the standard and he foresees no likely scenario in which a sensitive design would impart unsatisfactory impact as a consequence of the shortfall in the dual occupancy site frontage or width. Mr Haskew's view is that the DCP requirement would be "highly unlikely" to constitute grounds for a refusal of a development application for dual occupancy development of the site. I accept Mr Haskew's evidence on the planning aspects of dual occupancy development.

Comparable Sales

1. Mr Konidaris states in his expert report (Exhibit 3) that his approach to the valuation of the subject land is in accordance with s6A(1) of the VL Act. Further, in his opinion the direct comparison valuation approach was the most appropriate method to value the land. He researched and analysed sales of parcels in Belmore with similar dual occupancy development potential within the R3 residential zone. He states that sales located within the same locality as the subject land, being the suburb of Belmore, represented the best evidence of value and he therefore limited his search to the immediate locality so as to minimise the need for adjustment for location. He investigated purchases close to the base date as the most relevant. They were analysed by him on a "block value" basis which he states is consistent with the way the market operates in the locality. He rejected a rate per square metre analysis as not appropriate. Mr Konidaris analysed six sales of land with a range of values between \$900,000 and \$1,300,000. The six sales are summarised in paragraph 38 (figure 7) of his expert report. He states that sales 1-4 provide a narrow range of values from between \$1,260,000 to \$1,376,000 land value, all offering similar development potential, namely, for dual occupancy development and were improved with modest quality building improvements considered to be of no added value to the land. He considered that the four

sales are directly comparable to the subject land due to their size and potential with a difference of less than 10% or less than 3%). On a block value basis, he states that there would be no measurable difference in value between these sales on balance. Sales one and four support a value of \$1,250,000 and \$1,260,000 for the subject land.

2. Mr Konidaris' schedule of these sales is as follows:

1. Sale 1: 25 Trafalgar Street Belmore (land area 602m²) sold on 17/12/2016 for \$1,290,000 with the benefit of a development approval for dual occupancy development.
 2. Sale 2: 17 Archibald Street Belmore (land area 682.9m²) sold on 18/05/2016 for \$1,376,000 with no development consent for dual occupancy.
 3. Sale 3: 53 Nelson Avenue Belmore (land area 727.2m²) sold on 26/10/2016 for \$1,300,000 with no development consent for dual occupancy.
 4. Sale 4: 55 Nelson Avenue Belmore (land area 607m²) sold on 18/2/2017 for \$1,260,000 with development consent for dual occupancy obtained after the sale date.
 5. All sales relied upon by Mr Konidaris were inspected by the Court and the parties during the hearing. Mr Konidaris concluded that having regard to the sales analysed and information that he obtained, the land value of the subject land fell within a range of between \$1,240,000 and \$1,260,000. He decided to adopt as the valuation amount \$1,250,000 for the subject land as at 1/7/2016, being an amount at the lowest end of the range of Land Values based on the comparable sales.
1. The consequence is that the issued land value as at the 1/7/2016 of \$937,000 is conservative when viewed against the analysed relevant market evidence. I accept Mr Konidaris' evidence and the amount fixed by him for the land value of the subject land on the base date.

Valuation Statistics

1. As to Mr Verran's contentions that the Land Value ought to be determined by reference to previous assessments of the Land Value by the Valuer-General of the subject land or of other properties or that percentage increases in Land Values can be gleaned from such statistics:
 1. The well established principal is that where comparable sales are available then direct comparison should provide the conventional method of valuation: See eg *Graham Trilby Pty Ltd v Valuer-General* [2008] NSWLEC 217 (Jagot J) at [41]
 2. The Courts have long rejected a percentage increase approach: Because it does not deduce Land Value from actual market transactions relevant to the base date in question: See generally *Flack v Valuer-General* (1952) LGR Vol18 p157; *Hillman v Valuer-General* (1938) LGR Vol14 p14. Accordingly I reject Mr Verran's contention that it is possible to more accurately determine the Land Value of his property by methods of this kind.

Sewer Issues

1. Mr Verran placed significant emphasis on the fact that his land was affected by a "statutory easement" for a sewer main. He tendered as evidence (Exhibit B) a certificate of a plumber dated 18/2/2016, who stated that he was accredited to carry out a "service protection report". The certificate relates to 16 Reginald Avenue, Belmore and contains a sketch plan which indicates that there is a sewer main laid within number 16 Reginald Avenue running from the front boundary to the rear boundary in a straight line and said to be 0.8m to the east of the boundary. The pipe in question is earthenware and its size is 225mm (presumed diameter).
2. Reference is made to the Sydney Water Act 1994 and s 44 thereof headed Protection of Works. That section provides that land in or on which a work of the corporation (Sydney Water) is installed is taken to be the subject of a covenant in favour of the corporation pursuant to which the owner from time to time of land in or on which the work is installed must ensure that the work or any structure owned by or under the control or management of the corporation is not wilfully or negligently destroyed or damaged or interfered with. Taking Mr Verran's submission to refer to these provisions he submitted that his land was less valuable than the sale properties in evidence. Mr Verran cross examined Mr Konidaris on this issue and pressed him to indicate an amount representing the impact of the existence of the sewer line. Initially Mr Konidaris replied that in the worst case he would discount 5% of the Land Value he had determined in his expert report of \$1,250,000. However Mr Konidaris stated that he wished to make enquiries during an adjournment to confirm his position.
3. Mr Konidaris' determination of land value was \$1,250,000. 5% of that amount would be \$62,500. Deducting this would in the worst case have yielded \$1,187,500 land value. This figure is significantly higher than the issued land value at 1/7/2016 of \$937,000. If applied, the 5% reduction would not have altered the issued land value and Mr Nash informed the Court that the Valuer-General did not contend for a land value greater than the issued land value.
4. Following the adjournment, Mr Nash produced sewer service diagrams issued by Sydney Water with respect to 17 Archibald Street, 25 Trafalgar Street, 53 Nelson Avenue (also showing 55 Nelson Avenue) and 41 Trafalgar Street, Belmore. Each of these properties was shown to have a Sydney Water sewer entering and crossing the allotments. This demonstrates that the sales applied or considered by Mr Konidaris were equally "affected" by a "statutory easement". Accordingly no adjustment was warranted for the existence of the sewer main on Mr Verran's property.
5. Mr Verran referred to 41 Trafalgar Street, Belmore. This sold on 19/5/2016 for \$900,000, according to Mr Konidaris' research. However, this sale (Sale 6) in Mr Konidaris' opinion is affected by a large open drainage channel or canal which affects approximately 140m² of the total land area rendering that area entirely unavailable for use. Sale 6 therefore had an actual usable land area of 476.4m² rather than the 613.4m² on title.

6. Consistently with Mr Konidaris' expert evidence I find that the land value of the subject land on the base date was \$1,250,000. However, in view of the stance taken by the Valuer-General the land value will remain unaltered at \$937,000.

Orders

1. The orders of the Court are:
 1. The appeal is dismissed.
 2. The decision of the Valuer-General determining the Land Value of 16 Reginald Avenue, Belmore (Property Number 1436511) to be \$937,000 for the base date 1/7/2016, is confirmed.
 3. The exhibits may be returned.

.....

John Maston

Acting Commissioner of the Land & Environment Court of NSW

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated: 27 February 2018

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.caselaw.nsw.gov.au/decision/5a937806e4b087b8baa86c00>

CASE PAGE <https://chat.esheria.ai/case-law/australia/verran-v-valuer-general-2018-nswlec-1086-2018>

Prepared on 24 October 2026 · Esheria