SUPREME COURT OF VICTORIA
COURT OF APPEAL

S EAPCI 2024 0044

GRAND RIDGE PLANTATIONS PTY LTD Applicant

v

VALUER-GENERAL VICTORIA Respondent

JUDGES:	EMERTON P, McLEISH and KENNEDY JJA
WHERE HELD:	Melbourne
DATE OF HEARING:	16 September 2025
DATE OF JUDGMENT:	2 December 2025
MEDIUM NEUTRAL CITATION:	[2025] VSCA 299
JUDGMENT APPEALED FROM:	[2024] VSC 129 (Richards J)

LAND VALUATION – Assessment of capital improved value of land under *Valuation of Land Act 1960* – Where land Crown land and land vested in Victorian Plantations Corporation – Where land used for forestry plantation – Whether 'forest produce' forms part of land for the purpose of assessment – Whether *Forests Act 1958* and *Victorian Plantations Corporation Act 1993* separate ownership of land from forest produce – Whether plantation licence an 'other charge' for the purposes of assessment – *Forests Act* and *Victorian Plantations Corporation Act* do not apply to hypothetical fee simple estate – 'Other charge' refers to general burden on land and encompasses licence – Forest produce forms part of land to be valued – Application for leave to appeal refused.

Forests Act 1958, ss 3(1), 4, 7, 42, 50, 51, 52, 58, 80; *Victorian Plantations Corporation Act 1993*, pt 3 div 3, pt 3A, ss 3, 20(2), 22*; Valuation of Land Act 1960*, ss 2(1), 5A.

Royal Sydney Golf Club v Commissioner of Taxation (Cth) (1955) 91 CLR 610; *Valuer-General v AWF Prop Co No 2 Pty Ltd* (2021) 65 VR 327; *Shell Co of Australia Ltd v City of Melbourne* [1997] 2 VR 615, considered.

Counsel

Applicant:	Mr S Goubran KC with Mr C Hibbard
Respondent:	Mr DJ Batt KC with Mr G Kozminsky and Ms E Delany

Solicitors

Applicant:	Minter Ellison
Respondent:	DTP Legal

EMERTON P
McLEISH JA
KENNEDY JA:

Introduction

1 This appeal concerns the assessment of the capital improved value of land that is either Crown land or land vested in the Victorian Plantations Corporation (the 'Corporation') on which the applicant conducts forestry operations pursuant to a lease and a licence respectively. This includes the cultivation, harvesting and sale of 'forest products', principally timber.

2 The applicant is required to pay municipal rates on all of the land, regardless of tenure. The applicable rates are based on the capital improved value of the land. The assessment of the capital improved value of the land is a matter of dispute between the parties and forms the central question in this appeal.

3 Under the *Valuation of Land Act 1960* ('Valuation Act'), 'capital improved value' is defined as:

> the sum which land, if it were held for an estate in fee simple unencumbered by any lease, mortgage or other charge, might be expected to realize at the time of valuation if offered for sale on any reasonable terms and conditions which a genuine seller might in ordinary circumstances be expected to require.[1]

4 Section 5A(1) of the Valuation Act provides that when a body or person is determining the value of land, 'every matter or thing' which it 'considers relevant to such determination shall be taken into account'. Section 5A(3) contains a non-exhaustive list of matters that 'shall, where it is relevant, be taken into account' which include 'the effect of any Act, regulation, local law, planning scheme or other such instrument which affects or may affect the use or development of such land'.[2]

5 In the proceeding below (as in the current appeal), the applicant submitted that the use or alienability of the hypothetical fee simple estate referred to in the definition of capital improved value is affected by provisions of the *Forests Act 1958* ('Forests Act') and the *Victorian Plantations Corporation Act 1993* ('VPC Act'), such that forest produce should be excluded when assessing the capital improved value of land to which those Acts apply.

6 A judge in the Trial Division held that forest produce is part of the land to be valued for the purposes of determining its capital improved value under the Valuation Act.[3] Her Honour reasoned that the Forests Act and VPC Act only apply to certain land (Crown land and vested land, respectively), and the restrictions imposed under those statutes do not affect the hypothetical estate in fee simple that must be used to determine the capital improved value of the land in question.

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1 *Valuation of Land Act 1960*, s 2(1) (definition of 'capital improved value') ('*Valuation Act*') .
2 *Valuation Act*, s 5A(3)(b).
3 *Grand Ridge Plantations Pty Ltd v Valuer-General Victoria* [2024] VSC 129, [13] (Richards J) ('Reasons').

7 Although the applicant has now raised six grounds of appeal, the central question on appeal is whether forest produce on land held under the Forests Act and the VPC Act forms part of the land for the purposes of assessing its capital improved value.

8 For the reasons that follow, none of the grounds is made out and leave to appeal will be refused.

Background

The land

9 As at 1 January 2019, the applicant owned or occupied 771 parcels of land in Gippsland (the 'Strzelecki property'), which was used for the commercial production of timber. The Strzelecki property encompasses land at Flynns Creek and Hiawatha within the Wellington Shire, and Koornalla within the Latrobe City Shire.

10 The Strzelecki property is subject to various forms of tenure:

(a) freehold land;

(b) Crown land leased to the applicant under the Forests Act, comprising 'reserved forest'[4] and 'protected forest'[5] under that Act;

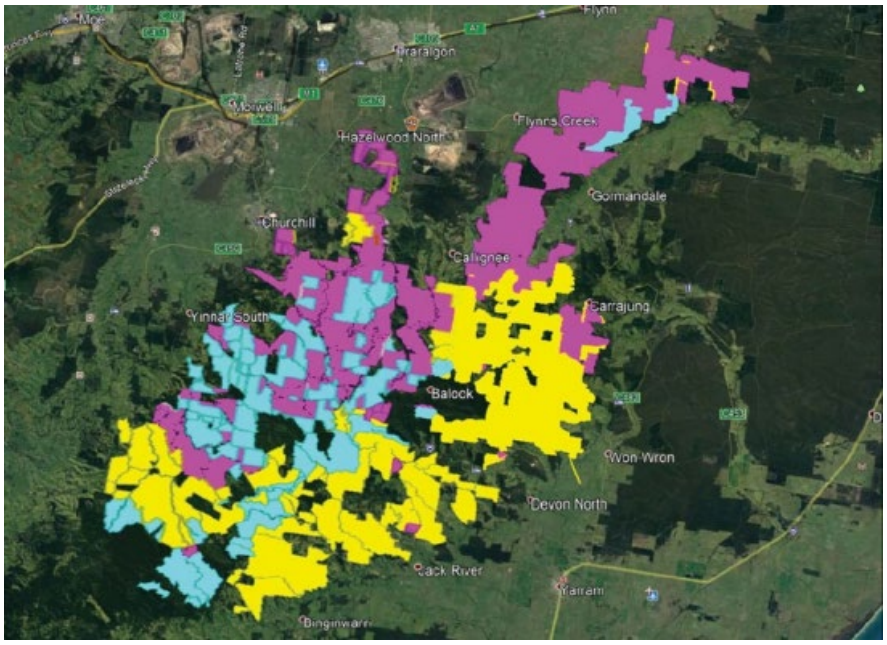
(c) land vested in the Corporation, licensed to the applicant under pt 3A of the VPC Act; and

(d) unused road and waterfront licences from the Crown under the *Land Act 1958*.

11 The coloured map reproduced below shows the Strzelecki property, with colour coding indicating the different forms of tenure: the freehold land is in pink; the leased Crown land is in blue; and the land licensed by the Corporation is in yellow:

[4] Subject to any adjustment of boundaries and excision under repealed legislation, 'reserved forest' is all land dedicated as such under the *Forests Act 1958*; land previously dedicated as permanent forests or timber reserves; and unoccupied Crown land within the certain areas of Crown land referred to in the Second Schedule of the *Forests Act* and described either as reserved forests, or as permanent forests or timber reserves: *Forests Act 1958*, s 3(1) (definition of 'reserved forests'); s 42 ('*Forests Act*').

[5] Protected forest land includes all unoccupied Crown land proclaimed as protected forest under the *Forests Act* or any corresponding previous enactment, and every unused road and water frontage: *Forests Act*, s 3(1) (definition of 'protected forests').



The valuations

12 In May and August 2019, valuation and rates notices were issued to the applicant. Separate valuation assessments were undertaken for the Flynns Creek, Hiawatha and Koornalla land.

13 The applicant objected to the valuations on two bases.[6] It asserted, first, that land parcels that should have been valued in one valuation had been valued separately and, secondly, that the assessments of capital improved value were too high.

14 The first ground of objection was accepted by the valuers for both the Wellington Shire Council and Latrobe City Council, and recommendations were made to the Valuer-General for the adjustment of the valuations.[7] The Valuer-General confirmed the recommendations for the Flynns Creek and Hiawatha land and issued Notices of Confirmation on 20 March 2020.[8] The Valuer-General did not make a determination in respect of the Koornalla land within two months of receiving the recommendation, with the consequence that the adjustment was deemed to have been disallowed.[9] Subsequently, on 6 May 2020, the Valuer-General issued a Notice of Confirmation in respect of the Koornalla land.

15 On 17 April 2020, the applicant filed three applications in the Victorian Civil and Administrative Tribunal ('VCAT') for review of the Notices of Confirmation issued in respect of the Flynns Creek and Hiawatha Land, and the deemed disallowance of the adjustment for the Koornalla land. The ground of review for each application was that the assessment of capital improved value was too high.

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6 Pursuant to *Valuation Act*, s 16.
7 Pursuant to *Valuation Act*, s 21(3)(b).
8 Pursuant to *Valuation Act*, s 21(4)(b).
9 Pursuant to *Valuation Act*, s 22(3).

16 The applicant applied to have the VCAT applications treated as appeals to the Supreme Court.[10] The primary judge made orders to that effect on 25 January 2022.

17 The applicant made four further review applications to VCAT in October 2023, three of which related to the recommendations made to the Valuer-General and the fourth of which sought review of the Valuer-General's decision to confirm the recommendation for the Koornalla land. With the parties' consent, the Court made orders for the further applications to be treated as appeals to the Supreme Court, forming part of the existing proceeding.

18 All seven VCAT applications were heard together by the judge in the Trial Division on 13 and 14 November 2023.

19 Relevantly for present purposes, the Court considered the following question:

> (1) For the purpose of determining the capital improved value under the [Valuation Act], is 'forest produce' part of the land to be valued where that land is:
>
> (a) Reserved forest under the Forests Act;
>
> (b) Protected forest under the Forests Act;
>
> (c) Vested land under the VPC Act?

20 As discussed, the judge answered the question affirmatively, finding that forest produce is part of the land to be valued for the purposes of determining its capital improved value under the Valuation Act. The judge's reasons are described in detail below.

21 It is convenient at this point to set out the legislative provisions upon which the applicant relies and to describe the terms of the lease and licence pursuant to which forestry operations are carried out on those parts of the Strzelecki property that are reserved or protected forest, or land that is vested in the Corporation.

Key legislative provisions

Forests Act

22 Section 4 of the Forests Act relevantly provides:

> (1) All forest produce in State forests is the property of the Crown.
>
> (2) Property in forest produce only passes from the Crown to another person in accordance with this Act.

23 'State forest' includes reserved forest and protected forest land.[11]

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10 Pursuant to *Valuation Act*, s 23(3).

11 *Forests Act*, s 3(1) (definition of 'State forest').

24 'Forest produce' is defined in s 3(1) to mean:

> (a) all parts of trees or plants, including any parts below the ground;
>
> (b) the products of trees or plants, whether or not those products have become separated from those trees or plants prior to being harvested and includes—
>
> (i) honey;
>
> (ii) beeswax;
>
> (iii) oil distilled from any species of eucalypt;
>
> (iv) firewood;
>
> (c) stone, gravel, limestone, lime, salt, sand, loam, clay or brick-earth—
>
> but does not include—
>
> (d) gold, silver, metals or minerals;

25 Section 7 of the Forests Act prohibits the cutting and removal of timber and forest produce in State forests, except in accordance with the regulations under the Act.

26 Section 42(1) identifies certain land dedicated as 'reserved forests', while the balance of s 42 restricts the conveyance and alienation of reserved forests except in accordance with the Forests Act. Relevantly, sub-ss 42(2) and (3) provide:

> (2) A reserved forest or any part thereof shall not be alienated either wholly or in part for any estate in fee simple or for any lesser estate save as hereinafter expressly provided.
>
> (3) Every conveyance and alienation of a reserved forest or any part thereof in contravention of this section shall be absolutely void as well as against His Majesty as against all other persons whomsoever.
>
> …

27 Section 51 of the Forests Act provides that the Minister may lease any Crown land in a reserved forest subject to certain conditions. Section 51(3) provides:

> (3) A lease under this section is subject to—
>
> (a) the covenants, terms and conditions that are determined by the Minister; and
>
> (b) the payment of royalties as determined by the Minister.

28 Section 52 empowers the Minister to grant a licence or permit in respect of Crown land in a reserved forest, including with respect to forest produce.[12] Relevantly, the Minister may grant a licence or permit to cut, dig, and take away forest produce, or to thin, cut,

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12 *Forests Act*, sub-ss 52(1A)(e), (f), (g), (j).

and remove timber in a reserved forest or protected forest.[13] The licence or permit may be 'subject to any terms and conditions that may be prescribed, any additional covenants, terms and conditions that the Minister considers appropriate to impose in a particular case, and the payment of any rent, fees, royalties or charges that the Minister may determine'.[14]

29 Section 58(1) provides that the Minister may at any time proclaim unoccupied Crown land to be a protected forest and may at any time alter or revoke such proclamation. Generally, a proclamation has the effect that all forest produce in a protected forest is under the control and management of the Secretary.[15]

30 Section 80(1) provides:

> All forest produce cut or obtained in a forest upon which under the provisions of this Act any royalties dues or charges are payable shall until the payment thereof remain the property of the Crown and may be seized and detained or removed by any authorised officer or police officer until such royalties dues and charges have been paid, and in default of payment within ten days of the seizure may by direction of the Minister be disposed of or destroyed.

31 Section 82(1A) contains a presumption that in any proceedings under the Forests Act with respect to forest produce that is timber, the forest produce is taken to be the property of the Crown in the absence of evidence to the contrary.[16]

VPC Act

32 For its part, the VPC Act creates a framework for the management of timber plantations by the Corporation. Part 3 div 1 of the VPC Act vests certain land in the Corporation for that purpose ('vested land').[17] Upon vesting, the land ceases to be reserved forest or subject to the Forests Act (except where otherwise provided), or subject to any permanent or temporary reservation under the *Crown Land (Reserves) Act 1978*.[18]

33 Section 3 of the VPC Act defines 'forest produce' to mean:

> (a) vegetation of any kind, whether living or dead; or
>
> (b) any produce or substance derived from vegetation; or
>
> (c) stone within the meaning of the *Mineral Resources (Sustainable Development) Act 1990*; or

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13 *Forests Act*, sub-ss 52(1A) and (1B).
14 *Forests Act*, s 52(1).
15 *Forests Act*, s 58(3)(b).
16 Similarly, in any proceedings under the *Forests Act* with respect to forest produce other than timber, that forest produce is deemed to be the property of the Crown unless shown otherwise: *Forests Act*, s 82(1).
17 *Victorian Plantations Corporation Act 1993,* s 3 (definition of 'vested land'), pt 3 div 1 ('*VPC Act'*). Although not presently relevant, the Corporation may also hold freehold land and managed land under the *VPC Act*.
18 *VPC Act*, s 9(1).

(d) honey or beeswax—

but does not include a mineral within the meaning of the *Mineral Resources (Sustainable Development) Act 1990*.

34 Part 2 of the VPC Act sets out the powers of the Corporation. Relevantly, s 5 confers additional powers relating to plantations, including:

(a) to take or convert or permit the taking or conversion of forest produce from freehold land, managed land or vested land;

(b) to sell or otherwise dispose of forest produce which it takes;

(c) to charge royalties, rent or fees for—

(i) forest produce that the Corporation permits to be taken; or

(ii) leases, licences, permits or other authorities granted by the Corporation; or

(iii) services provided by the Corporation;

35 Section 20(2) provides that for the purposes of the VPC Act, the Corporation may grant leases, licences or permits over vested land. As set out above, the Corporation is empowered to charge royalties, rent or fees for such leases, licences or permits.[19]

36 Section 22 of the VPC Act deals with the ownership of forest produce:

(1) The Corporation owns forest produce on freehold land and vested land.

(2) Property in forest produce owned by the Corporation passes from the Corporation to a person authorised to take the produce when the produce is taken in accordance with that authority and any appropriate royalty is paid.

37 Forest produce owned by the Corporation cannot be taken by another person unless a lease, licence, permit or other authority is granted under the Act.[20] Property passes in accordance with that authority and upon payment of the royalty.

38 The Corporation has the same rights and remedies in relation to the entry of persons onto vested land as if it were the owner.[21] The Corporation is required to grant reasonable access rights over vested land to the Minister or Secretary,[22] and other specified persons or bodies.[23] These rights may be granted by way of lease, licence or permit.[24]

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19 *VPC Act*, s 5(c)(ii).
20 *VPC Act*, s 24(1).
21 *VPC Act,* s 9(4).
22 *VPC Act,* s 11.
23 *VPC Act,* s 12 and sch 2.
24 *VPC Act,* s 13.

39 Part 3A of the VPC Act establishes a plantation licensing regime for forestry businesses. Section 27B relevantly provides for the granting of perpetual licences for a forestry business as follows:

> (1) Without limiting section 20(2), the Corporation may grant a perpetual licence over all or any part of vested land—
>
> (a) to establish, maintain and manage timber plantations on that land; and
>
> (b) to take or convert forest produce on that land—
>
> and to do all other things necessary or convenient to be done for or in connection with, or as incidental to, paragraph (a) or (b).
>
> (2) Despite section 22, on the granting of a licence under this section over vested land, forest produce on that vested land becomes the property of the licensee.

40 Section 23(1) of the VPC Act applies certain provisions of the Forests Act to vested land, including ss 80 and 82.

The Lease and the Licence

41 We set out below the terms of the specific arrangements pursuant to which the applicant was, at the relevant dates, entitled to take forest produce under the Forests Act and the VPC Act. The particular terms of these agreements were not relied upon by the applicant in argument below and the respondent has objected to the Court considering the grounds of appeal other than by reference to the 'architecture' of the legislation. We agree that the legislation is the basis upon which the applicant's grounds of appeal rise or fall. Nonetheless, it is convenient to briefly describe the leasing and licensing arrangements, which broadly reflect the legislative architecture.

42 On 28 October 2011, the applicant as 'Tenant' entered into a 40-year lease of reserved forest land (Crown land) forming part of the Strzelecki property under s 51 of the Forests Act 'for the purpose of establishment, management, roading and harvesting of hardwood and softwood plantations' ('Lease').[25] The Lease prohibits the applicant from using the land for any other purpose.

43 Under cl 3.1(a) of sch 2 ('Special Conditions'):

> The Minister agrees that the Tenant is the beneficial owner of the Plantation and transfers all the Minister's right, title and interest in the Plantation to the Tenant for the Term.

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[25] At the time of entering into the Lease, the subject land was already being leased to the applicant pursuant to three separate leases granted under the *Forest (Wood Pulp Agreement) Act 1961*. 'Plantations' include both the existing plantations of trees for timber production growing on the land at the date of commencement of the Lease and any plantation established on the land during the term, including self-sown trees of the same species and no older than the surrounding plantation.

44 The Lease gives the applicant the right to harvest the Plantation (as defined), authorising it to fell, cut and remove the trees without paying any royalty to the Minister, and to upgrade, maintain and construct roads and tracks on the land as reasonably required for the efficient harvest of the Plantation.[26] On expiry of the Lease, all right, title and interest in any plantation on the land reverts to the Crown.

45 The applicant is required to pay rent to the Minister, without any abatement, deduction or right of set-off. The Lease initially provided for an annual rent of $374,000, to be revised every ten years from 27 April 2017.

46 In addition to paying rent to the Minister, it is an essential term of the Lease that the applicant pay all existing and future rates, taxes, duties, charges, assessments, impositions and outgoings on or against the land, or payable by the owner or occupier of the land.

47 The Lease is granted subject to certain reservations, including the reservation to the Crown of gold, other minerals and petroleum, and the Crown's rights of access for certain stipulated purposes connected with searching for, obtaining, and conveying those reserved minerals.

48 In addition to the Lease, a licence for the entry, occupation and use of land vested in the Corporation within the Strzelecki property is held, in perpetuity, by a related entity of the applicant under s 27B of the VPC Act ('Licence').

49 Under the terms of the Licence, the licensee may enter, occupy and use the vested land to take or convert forest produce, to establish, maintain and manage timber plantations, and to do all other things necessary or convenient to those activities. The licensee may also construct roads on the licensed land and is granted certain rights of the Corporation, including rights and remedies in relation to the entry of persons onto the land, and access rights over Crown land. The Licence specifies that it does not create any tenancy, give the licensee any leasehold interest in the land or create any of the rights referred to in s 42 of the *Transfer of Land Act 1958*.

50 The Licence is assignable, subject to conditions, and the licensee may create any interest in the rights conferred by the Licence, or declare that it holds any such interests or rights on trust. The licence agreement provides that the Corporation will not cancel the Licence unless requested by the licensee. The Licence may also be cancelled on recommendation of the Minister where the vested land is no longer being used solely for plantation purposes.[27]

51 On the completion date, the licensee is required to pay a licence fee without demand and without deduction or set-off. The licence fee is not refundable in any circumstances.

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[26] The applicant is not, however, entitled to any compensation or other off-set for the value of any part of the Plantation that is not harvested or is destroyed by fire, storm or pest. The applicant is also obliged to re-establish each plantation area following harvest or where the Plantation is otherwise damaged or destroyed.

[27] Plantation purposes are defined in the *VPC Act* as (a) the establishment, maintenance or management of a timber plantation; and (b) the taking or conversion of forest produce— and the doing of any thing necessary or convenient to be done for or in connection with, or incidental to, paragraph (a) or (b): *VPC Act,* s 27A (definition of 'plantation purposes').

Judge's reasons for decision

52 The judge began by formulating the substantive question arising for determination at trial in the following terms:

> whether 'forest produce' on land held under the Forests Act and the VPC Act formed part of the land for the purposes of assessing its capital improved value.[28]

53 Her Honour summarised the parties' positions on this question as follows:

> The Valuer-General's position was that trees and other forest produce form part of the land to be valued regardless of land tenure, and that the valuations correctly included forest produce in the assessment of capital improved value. Grand Ridge contended that forest produce should be excluded when assessing the capital improved value of land it holds under the Forests Act and the VPC Act. The Valuer-General maintained that the capital improved value of the Strzelecki Property was correctly assessed to be $110,895,000, while Grand Ridge argued that it should be reduced to $57,670,247.[29]

54 The judge recorded that the Valuation Act provided that land was to be valued as if it were held for an estate in fee simple — that is, as the highest estate in land, unencumbered and subject to no condition restricting the use and enjoyment of the land.[30] The Valuation Act selected the notional owner of the first estate of freehold as the taxpayer to represent all persons who may be beneficially entitled to the land and those licensed to occupy and use it.[31]

55 The judge rejected the applicant's submission that the common law concept of a fee simple estate could be amended by statute.[32] However, her Honour accepted that 'the use and enjoyment of a fee simple estate in land may be restricted by a public law of general application'.[33] Common examples of such laws were planning schemes, environmental laws, and legislation to preserve cultural heritage.[34] The valuation exercise required consideration to be given to whether the legislation amounted to a public law or was merely 'a restriction on title'.[35] Her Honour continued:

> In my view, the provisions of the Forests Act and the VPC Act that separate ownership of forest produce from ownership of the land are not public laws of general application that are to be taken into account in valuing a fee simple estate in the land. They apply only to certain land held by the Crown under the Forests Act and by the Corporation under the VPC Act. They are specific to

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28 Reasons, [11].

29 Reasons, [11].

30 Reasons, [65].

31 Reasons, [65] citing *Royal Sydney Golf Club v Commissioner of Taxation (Cth)* (1955) 91 CLR 610, 623 (Dixon CJ, McTiernan, Webb, Fullagar and Kitto JJ); [1955] HCA 13 ('*Royal Sydney*').

32 Reasons, [66]. Her Honour held that the applicant's reliance on *Northern Territory v Arnhem Land Trust* (2008) 236 CLR 24; [2008] HCA 29 in support of this argument was misplaced: Reasons, [66].

33 Reasons, [67] citing *Royal Sydney* (1955) 91 CLR 610, 623–4 (Dixon CJ, McTiernan, Webb, Fullagar and Kitto JJ); [1955] HCA 13.

34 Reasons, [67].

35 Reasons, [67] citing *Royal Sydney* (1955) 91 CLR 610, 624 (Dixon CJ, McTiernan, Webb, Fullagar and Kitto JJ); [1955] HCA 13.

> those two landholders, under those two statutes, and do not translate to the hypothetical estate in fee simple that is used to determine capital improved value.
>
> All protected forest and most reserved forest held under the Forests Act is Crown land. The Crown has ultimate, radical title in all unalienated Crown land in its sovereign territory — relevantly here, the State forests of Victoria. That is a different and distinct form of tenure from an estate in fee simple that may be the subject of a Crown grant.[36]

56 The judge observed that the reserved forest within the Strzelecki property is subject to the Forests Act '*because* it is State forest owned by the Crown'.[37] Only by virtue of it being Crown land did s 4 — providing that forest produce is property of the Crown — apply.[38] If the land were held by the notional vendor of the hypothetical fee simple estate, the Forests Act would not apply. In that case, the trees growing on the land would be part of the land, and would form part of the fee simple estate to be sold by the notional vendor to the notional purchaser.[39]

57 Moreover, the judge rejected the applicant's submission that s 4 of the Forests Act separated ownership of land from ownership of forest produce. There was no suggestion that a lease of Crown land in reserved forest under s 51 did not extend to forest produce.[40] The purpose of the legislative framework was to 'set up a mechanism for the Crown to permit use of forest produce in State forests' and the Crown clearly remained owner of that forest produce unless and until it disposed of its interest by way of lease, licence or permit.[41]

58 The judge also concluded that the VPC Act was not a public law of general application.[42] Both freehold and vested land under the VPC Act were a different form of tenure from a fee simple estate. The provisions of the VPC Act applied specifically to these two categories of land because they were owned by or vested in the Corporation. Vested land is similar to Crown land, except that it is specific to the Corporation and exists only under the VPC Act. While freehold land under the VPC Act is held by the Corporation as an estate in fee simple, it is also subject to the operation of the VPC Act in a way that the hypothetical fee simple estate is not. In either case, the notional vendor of the hypothetical fee simple estate for the purposes of ascertaining

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36 Reasons, [68]–[69] (citations omitted).
37 Reasons, [71].
38 Reasons, [71].
39 Reasons, [71].
40 Reasons, [72]. At the hearing below, counsel for the applicant agreed with her Honour's construction that sch 2, s 3.1(a) of the Strzelecki property Lease involved 'the Minister on behalf of the Crown conferring ownership of the plantation, so the forest produce, on the lessee for the term of the lease' but rejected the suggestion that 'ownership of the forest produce runs with ownership of the land'. The applicant emphasised that the lease 'confers title to the produce' and that this was not (as suggested by her Honour) 'part and parcel of a grant of an interest in land', as the *Forests Act* creates a separate form of ownership for forest produce and land and therefore that, analogous to *Valuer-General v AWF Prop Co No 2 Pty Ltd* (2021) 65 VR 327; [2021] VSCA 274 ('*AWF*'), the forest produce was not to form part of the land for valuation.
41 Reasons, [73].
42 Reasons, [74].

capital improved value is not the Corporation, and is not subject to the operation of the VPC Act.[43]

59 The judge considered that there was no separation of the ownership of forest produce and the land under the VPC Act. The Act enabled the Corporation to authorise a person to take forest produce without a licence, while it remained the owner of both the land and the produce. Where a licence was granted, forest produce became property of the licensee.[44]

60 Finally, rejecting the applicant's contention that a licence under the VPC Act was not an encumbrance to be disregarded for the purposes of assessing capital improved value, her Honour held:

> The words 'unencumbered by any lease, mortgage or other charge' in the definition of capital improved value are not words of limitation or qualification. Rather, they serve to emphasise the unencumbered nature of a fee simple estate …[45]

61 The judge held that a licence under the VPC Act was an 'other charge' for the purposes of the definition of capital improved value:

> To the extent that such a licence affects the value of the relevant land, it is a 'load, burden, or weight' that encumbers the estate in fee simple, and is to be disregarded in assessing capital improved value.[46]

62 Her Honour dismissed the appeal and held that the land was correctly valued.[47]

Ground 1 — failure to first identify the land

63 Ground 1 is that the judge erred in applying the definition of capital improved value by failing to first identify the land, as required in *Valuer-General v AWF Prop Co No 2 Pty Ltd* ('*AWF*').[48]

Applicant's submissions

64 The applicant submits that when assessing the capital improved value of land, the first task is to identify the land to be valued. To start with a hypothetical unencumbered fee simple estate is to invert the proper order of the inquiry.

65 The applicant points to what it says is the particular treatment of forest produce under the Forests Act as the property of the Crown, the conveyance of which is separate from any conveyance of the real property on which the forest produce is located.[49] It submits

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43 Reasons, [74].
44 Reasons, [75].
45 Reasons, [76].
46 Reasons, [77].
47 Reasons, [78].
48 (2021) 65 VR 327; [2021] VSCA 274.
49 Pursuant to *Forests Act,* s 4. The applicant also refers to s 82(1A) which creates a presumption that forest produce is the property of the Crown and ss 51 and 52 which create separate processes for the licensing / permit process for using forest produce and granting a lease over land.

that the Forests Act severs the proprietary interest in forest produce from the proprietary interest in the real property of the relevant land.[50] Accordingly, the proprietary restriction imposed by the Forests Act, which affects the use or alienability of the land, 'must continue to apply to the hypothetical estate in fee simple' for the purposes of the assessment of capital improved value, such that any interest in forest produce should be excluded from the hypothetical fee simple estate.

66 The applicant submits that the VPC Act alters the hypothetical estate in fee simple of land vested in the Corporation in 'substantially the same way'.[51]

67 The applicant argues that the analysis that was undertaken by this Court in *AWF* is applicable in the present case, and that the judge failed to properly engage with or apply *AWF*, despite its prominence in the submissions that were made.

68 The applicant places particular emphasis on the fact that in *AWF*, the Court had regard to the leases held by the respondent, AWF, and the effect of s 154A of the *Property Law Act 1958* ('Property Law Act'), which modified and displaced the common law principles governing the ownership of fixtures by landlords and tenants. The Court held that even if the wind farm assets were fixtures, the operation of the Property Law Act and the terms of the leases meant that the wind farm assets did not form part of the land to be assessed. The applicant submits that a critical question addressed by the Court in *AWF* in determining what constituted the land was the ownership of the fixtures, which was answered by reference to the legislative framework under the Property Law Act and the terms of the leases.

69 The applicant contends that *AWF* therefore stands for the proposition that a factual analysis of the ownership rights attaching to the land and the things that are on the land must be undertaken in addressing the question of what is the land to be valued. According to the applicant, the ownership of the forest produce is relevant to determining whether forest produce forms part of the land for the purpose of assessing its capital improved value.

70 At the hearing, senior counsel for the applicant emphasised that the anterior step of identifying the land for the purposes of assessing capital improved value was a factual and not a hypothetical enquiry, involving not only consideration of the 'metes and bounds' of the land but, additionally, what rights 'carry with' the land. As the forestry legislation (being the Forests Act and VPC Act) had the effect of conveying ownership of the forest produce to the lessee/licensee for valuable consideration, the forest produce was no longer part of the land for the purpose of assessing its capital improved value. This was said to be consistent with, and a direct application of, this Court's approach in *AWF*.

71 The applicant contends that as the forestry legislation places 'fundamental' restrictions on the land, consistently with *AWF*, these restrictions 'must be included in the identification of the land the subject of the valuation exercise'. According to the applicant, the judge should have found that ownership rights in the forest produce had

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50 Similarly, the applicant notes that where Crown land is declared protected forest land, all forest produce is under the control and management of the Secretary: *Forests Act*, s 58.

51 Citing *VPC Act*, s 22.

been conveyed from the Crown and the Corporation to the applicant pursuant to the forestry legislation (and under the terms of the Lease and Licence), the effect of which was to separate the forest produce from the land for the purposes of determining the capital improved value of the land.

72 The applicant further submits that to include forest produce in the land to be valued imposes a burden of double taxation on the applicant, which is unfair, unreasonable and contrary to common sense, as the applicant has already given valuable consideration for that produce.

Respondent's submissions

73 The respondent submits that neither the Forests Act nor the VPC Act has any bearing on the first step in *AWF*, which involves determining the physical area of the land and whether any items on the land are fixtures or chattels. It was therefore not necessary for the judge to substantively address that case. The judge was clearly aware of *AWF* but did not consider it necessary to address it more fully in light of her observation (as recorded in the transcript) that the forest produce clearly formed part of the land to be valued. Alternatively, the judge's determination that the legislation effected no separation of ownership between the land and the forest produce disposed of the applicant's argument regarding *AWF* and no further analysis was required.

74 The respondent submits that the judge's finding that the legislation does not separate ownership of the land from ownership of the forest produce is correct and vitiates the entire premise of the applicant's first proposed ground.[52] The applicant's argument fails, first on the basis that the question of ownership is irrelevant to determining what is the land and, secondly, because the premise of the applicant's argument — the separation of ownership — was expressly considered and rejected by the judge and there is no challenge to that finding.

75 According to the respondent, the applicant's contention that the judge was required to look to ownership rights when identifying the land to be valued is unsupported by any authority or doctrine, and the ownership of forest produce has no bearing on the question of what is the land to be valued.

76 The respondent points to the narrow focus of *AWF*, which was concerned with the application of the common law of fixtures and chattels in the context of s 154A of the Property Law Act, none of which is relevant to this proceeding. The respondent argues that the applicant is seeking to use the confined basis of *AWF* as support for the proposition that the alienation of a thing on the land removes that thing from the land for valuation purposes. In oral submissions, the respondent highlighted the 'extraordinary' ramifications of adopting such an approach, given the expansive

[52] At the hearing, counsel for the respondent took issue with the applicant's framing of this ground in their oral submissions, asserting that the written submissions and argument below turned on the contention that the architecture of the legislation created a dichotomy between ownership and the conveyance of title in the land on the one hand, and forest produce on the other. It was argued that the applicant's oral submissions, focussed on the actual interest in the land and ownership of the forest produce, were outside the scope of its previous argument and should not be entertained by this Court on appeal. In the result it has been unnecessary to determine this issue.

definition of forest produce under the Forests Act and VPC Act. Those consequences were at odds with the legislature's intention that capital improved value be based on the highest estate known to law, and that licensees under the VPC Act have no lesser tax liability than other plantation owners.

77 The respondent referred the Court to the debates for the Victorian Plantations Corporation Amendment Bill 1998, which it submitted show a clear legislative intention that lessees or licensees under the VPC Act should not carry a lesser burden for municipal rates and land tax than private plantation owners. It was the intention of the legislature that capital improved value be determined on the basis of the highest estate known to the law, regardless of the actual estate in which the land is held.

78 More generally, the respondent submits that the fact that capital improved value is defined by reference to a hypothetical owner and a hypothetical fee simple estate is dispositive of all grounds raised by the applicant.

Consideration

79 This ground can be disposed of shortly. *AWF* is a case about the distinction between fixtures and chattels at general law and pursuant to the particular provision for tenants' fixtures made in s 154A of the Property Law Act. That distinction is not in issue in the present case. *AWF* affords the applicant no support for an argument based on the alleged separation of ownership of land and forest produce under the statutory regime for the exploitation of timber and other resources in Victorian State forests and/or on land vested in the Corporation.

80 The fact that it is necessary to identify the land to be valued in order to ascertain its capital improved value is an obvious and uncontroversial proposition. What comprises the land to be valued will be ascertained by reference to the metes and bounds of the relevant parcel or geographic area; in substance, it requires the relevant geospatial boundaries of the parcels in question to be identified. As was the case in *AWF*, it may also require determining whether things on the land are fixtures or chattels, for if they are fixtures, they will form part of the land, but if they are chattels, they will not.

81 In *AWF*, the land in question was populated with wind towers and turbines that had been brought onto the land and assembled by the tenant pursuant to lease agreements with the farmers who owned the land. In determining the capital improved value of the land, it was necessary to determine whether they formed part of the land as fixtures or whether they were chattels and therefore not part of the land. No such issue arises in this case. The trees and other vegetation growing on the land clearly form part of the land, as do the earth, stone, clay and loam that fall within the definition of forest produce. As the respondent submitted, the proposition that the vegetation, earth, stone, clay and loam do not form part of the land lacks any basis in law, or reality.

82 Section 154A of the Property Law Act, which is a statutory inroad into an aspect of the common law of fixtures, provides no assistance to the applicant. While it relates to tenants' fixtures, and is to that extent referrable to ownership, it arises only in the context of the fixtures/chattels dichotomy.

83 In short, *AWF* considered the operation of the general and statutory law of Victoria concerning fixtures and chattels. There was no reason for the judge to apply *AWF* when considering the applicant's argument concerning the implications of the (allegedly) separate ownership of the land and the timber growing on the land under the forestry legislation. Her Honour did not apply *AWF* because she correctly reasoned that it did not apply.

84 Furthermore, as a general proposition, ownership will usually have no bearing on whether a thing forms part of land. In *Chief Commissioner of State Revenue v Pacific National (ACT) Ltd*,[53] in response to the submission that part of a structure in the ownership of one entity might be 'land' for the purposes of the *Duties Act 1997 (NSW)* but another part of the structure in different ownership would not be land, Basten JA observed:

> In the general meaning of 'land', the identity of the owner is rarely if ever a relevant criterion for determining whether or not the thing owned is land or not.[54]

85 This statement was quoted with approval by Payne JA (with whom the four other members of the New South Wales Court of Appeal agreed) in *Conexa Sydney Holdings Pty Ltd v Chief Commissioner of State Revenue (NSW)*[55] when considering whether a pipeline affixed to land formed part of the land (again for the purposes of the *Duties Act 1997 (NSW)*). His Honour concluded:

> The character of the pipeline as part of the land is not affected by the fact that the pipeline is owned by an entity other than the proprietor of the surrounding land.[56]

86 As the respondent submitted, it would be an aberrant outcome for something that has formed part of the land to cease to form part of the land because of a change of title.

87 Moreover, and more fundamentally, different treatment of parts of a parcel of land based on different ownership is not compatible with the definition of capital improved value, which is based on the value of a hypothetical fee simple estate, such value to be determined by what a hypothetical vendor would realise if the land were sold on reasonable terms and conditions. The definition permits of no distinction between owners (and no resort to actual land tenure).

88 Finally, and in any event, we accept the respondent's argument that the premise of the applicant's argument that the Forests Act and the VPC Act effect a fundamental separation of ownership between the land and the forest produce was expressly considered and rejected by the judge and there is no direct challenge to that finding.

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53 (2007) 70 NSWLR 544; [2007] NSWCA 325.
54 (2007) 70 NSWLR 544, 561 [76]; [2007] NSWCA 325.
55 [2025] NSWCA 20.
56 *Conexa Sydney Holdings Pty Ltd v Chief Commissioner of State Revenue (NSW)* [2025] NSWCA 20, [70].

89 In explaining why she did not accept the submission that s 4 of the Forests Act had the effect of separating ownership of the land from ownership of the forest produce on that land, the judge said:

> The Crown owns both the land and the forest produce in State forest. There is nothing in s 51 of the Forests Act that suggests that a lease of Crown land in a reserved forest does not extend to the forest produce on that land. In fact, the leases to [the applicant] under s 51 of the Forests Act grant interests in land that include the Minister's right, title and interest in the plantations of trees on that land for the term of the lease.[57]

90 Furthermore, as the judge recognised, the purpose of ss 4 and 52 of the Forests Act is to allow the Crown to license or permit a person to cut, dig, and take away forest produce in State forest, without also having to grant an interest in the land. There is no question that the Crown is the owner of the forest produce unless and until it disposes of its interest by way of lease, licence or permit.[58]

91 We see no error whatsoever in this analysis.

92 The judge made similar — unimpeachable — findings in relation to ss 22 and 27B of the VPC Act. She said:

> [Section] 22 of the VPC Act does not separate ownership of forest produce on vested land and freehold land from ownership of that land. The Corporation owns both the land and the forest produce. Like ss 4 and 52 of the Forests Act, s 22 of the VPC Act enables the Corporation to authorise a person to take forest produce without having to grant that person a licence under Pt 3A. Where a plantation licence is granted over vested land under s 27B, the forest produce on that land becomes the property of the licensee, despite s 22.[59]

93 Again, there is no question that the Corporation is the owner of the forest produce unless and until it disposes of its interest in accordance with the provisions of the VPC Act.

94 *AWF* has nothing to say about this question of statutory construction.

95 We reject ground 1.

Grounds 2 and 3 — relevance of Forests and VPC Acts to valuation

96 These grounds allege that the judge erred:

(a) by failing to apply s 5A of the Valuation Act in determining the capital improved value of the land; and

(b) by finding that the relevant provisions of the Forests Act and the VPC Act should not be taken into account in determining the capital improved value of the land.

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57 Reasons, [72].
58 Reasons, [73].
59 Reasons, [75].

Applicant's submissions

97 The applicant's contentions under grounds 2 and 3 concern the second stage in the *AWF* analysis, being the valuation exercise. The applicant submits that sub-ss 5A(1) and (3)(b) of the Valuation Act, in conjunction with the definition of capital improved value, require the valuer to take into account the effect of any relevant legislation on the value of the land. In this case, the relevant legislation is said to be the Forests Act and the VPC Act, insofar as they deal with ownership of the land and the ownership of the forest produce.

98 The applicant submits that the judge was wrong to apply *Royal Sydney Golf Club v Federal Commissioner of Taxation* ('*Royal Sydney*')[60] to conclude that the provisions of the Forests Act and VPC Act 'are not public laws of general application that are to be taken into account in valuing a fee simple estate in the land'.[61]

99 According to the applicant, *Royal Sydney* was not concerned with an abstract or general rule as to when the use and enjoyment of a fee simple estate may be restricted, but involved the construction of a particular piece of legislation that was different in language and structure from the Valuation Act. The *Land Tax Assessment Act 1910–1950* (Cth) ('LTAA'), with which the High Court was concerned, contained no provision equivalent to s 5A of the Valuation Act. The value to be determined under the LTAA was the 'pure' fee simple and not the 'more qualified form of fee simple' in the definition of capital improved value in the Valuation Act. The LTAA expressly excluded the owner of a leasehold estate under laws relating to Crown lands from the liability to pay tax, whereas in this case the applicant, as holder of a lease over Crown land, is the ratepayer. Moreover, it is submitted, the application of *Royal Sydney* is inconsistent with this Court's application of s 5A of the Valuation Act in other cases.[62]

100 Before us, counsel for the applicant described the concept of a public law of general application as 'extraordinarily nebulous', submitting that the Court should be cautious when disregarding any State legislation in the application of such a principle, particularly where the operation of the Forests Act and the VPC Act results in contracts with clear consequences for parties' rights in respect of substantial assets.

101 In summary, the applicant contends that it is s 5A, and not the test laid down in *Royal Sydney* as to whether the law is one of general application, which must be applied to the valuations in issue.

Respondent's submissions

102 The respondent submits that none of the matters identified as relevant to the determination of land value in s 5A (including relevant legislation) alter the hypothetical fee simple estate for the purposes of ascertaining capital improved value. To allow such an alteration would be to apply laws that are premised on something other than a pure fee simple estate, thereby altering the hypothetical.

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60 (1955) 91 CLR 610; [1955] HCA 13.

61 Quoting Reasons, [68].

62 Citing *Australian Postal Commission v Melbourne City Council* (2005) 14 VR 678; [2005] VSCA 295; *Public Transport Development Authority v Commissioner of State Revenue (Vic)* [2017] VSCA 266.

103 The respondent submits that the proper interpretation and application of the definition of capital improved value is dispositive of the applicant's proposed grounds 2 to 6. Once the land to be valued is established — which in this case poses no difficulty — the application of the definition of capital improved value requires value to be assessed by reference to the hypothetical sale of a hypothetical fee simple estate by a hypothetical seller. As the restrictive provisions imposed by the VPC Act and the Forests Act are only applicable to specific forms of tenure where the land is owned by the Crown or vested in the Corporation, those legislative restrictions are a factual circumstance which is fundamentally incompatible with the hypothetical fee simple estate.[63] The respondent therefore submits that the statutory test for assessing capital improved value necessarily precludes the restrictions in the Forests Act and the VPC Act from being taken into account.

104 The respondent submits that the phrase 'where it is relevant' in s 5A(3)(b) must be given work to do — only those laws which are relevant to the value of the fee simple hypothesis are to be taken into account. Neither the Forests Act nor VPC Act are relevant in light of their inapplicability to a fee simple estate.

105 The respondent further submits that it was not strictly necessary for the judge to have referred to *Royal Sydney* and to have found that the Forests Act and the VPC Act were not laws of general application, as the very nature of the statutory inquiry under the Valuation Act provides a decisive answer. However, her Honour was nonetheless correct in her consideration and application of *Royal Sydney*. The provisions of the LTAA considered by the High Court in *Royal Sydney* and those in the forestry legislation are not relevantly different, and subsequent authorities, including the recent High Court decision in *Valuer-General Victoria v WSTI Properties 490 SKR Pty Ltd*,[64] have affirmed the correctness and orthodoxy of applying the principles set down in *Royal Sydney*.

Consideration

106 As discussed, s 5A(1) of the Valuation Act provides that when a body or person is determining the value of land, 'every matter or thing' which it 'considers relevant to such determination shall be taken into account'. Section 5A(3) contains a non-exhaustive list of matters that may be considered, including 'the effect of any Act, regulation, local law, planning scheme or other such instrument which affects or may affect the use or development of such land'.

107 The question raised by this ground is whether the judge was bound to consider the effect of the VPC Act and Forests Act when determining the capital improved value of the land.

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63 In oral submissions, counsel noted that there was one limited exception to their point that all land to which the *Forests Act* applied was Crown land, in the case of reserved forest land under ss 47 and 48 of the *Forests Act*. However, on the facts of this case where no land was reserved forest under those particular provisions, that exception did not arise. This exception was also acknowledged by the primary judge, who ultimately rested her decision on the issue of ownership and not tenure: Reasons, [70].

64 (2025) 99 ALJR 955; [2025] HCA 23.

108 As the respondent submitted, the answer to this question lies in the terms of the definition of capital improved value in s 2 of the Valuation Act. The capital improved value of land is to be determined as 'if it were held for an estate in fee simple'. An estate in fee simple is the highest estate in land; it is unencumbered, and subject only to restrictions imposed by public laws of general application.[65]

109 The Forests Act and the VPC Act are not laws of this kind. Rather, they apply only to certain land held by the Crown under the Forests Act and by the Corporation under the VPC Act. None of the matters in the VPC Act and the Forests Act identified by the applicant as relevant to the determination of land value alter the hypothetical fee simple estate for the purposes of ascertaining capital improved value. As we have said, the judge identified the different form of tenure in the Forests Act:

> All protected forest and most reserved forest held under the Forests Act is Crown land. The Crown has ultimate, radical title in all unalienated Crown land in its sovereign territory — relevantly here, the State forests of Victoria. That is a different and distinct form of tenure from an estate in fee simple that may be the subject of a Crown grant.[66]

110 While recognising that some of the land in Victoria that is reserved forest may be held by the Crown as freehold land,[67] her Honour concluded that it did not matter whether the reserved forest within the Strzelecki property was Crown land or freehold land that had been reacquired by the Crown:

> That is because, in either case, the land is subject to the Forests Act *because* it is State forest owned by the Crown. It is only in those circumstances that s 4 of the Forests Act, which provides that forest produce is the property of the Crown, has any effect. If the land were held by the notional vendor of the hypothetical fee simple estate, the Forests Act simply would not apply. In that case, the trees growing on the land would be part of it, and would form part of the fee simple estate to be sold to the notional purchaser.[68]

111 This analysis is correct. The Forests Act has nothing to say about the notional sale of the hypothetical fee simple estate. It is because the land is State forest, a public asset owned by the Crown, that the Forests Act applies to impose special rules governing the exploitation of the forest produce by third parties. Those rules or restrictions say nothing about the value of the land if treated as a hypothetical estate in fee simple in the hands of a notional innominate vendor (who is not subject to the requirements of the Forests Act).

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65 *Royal Sydney* (1955) 91 CLR 610, 623–4 (Dixon CJ, McTiernan, Webb, Fullagar and Kitto JJ); [1955] HCA 13.

66 Reasons, [69].

67 The judge recognised that 'in theory at least, some reserved forest may be freehold land reacquired by the Crown and then dedicated as a reserved forest under ss 47 or 48 of the Forests Act. Land in this category would be held as an estate in fee simple, with the Crown or an agency of the Crown named as the registered proprietor. Having been dedicated as reserved forest, it would be governed by the Forests Act. There was no evidence that any of the land within the Strzelecki Property is of this kind; all of the leases under the Forests Act are of Crown land': Reasons, [70].

68 Reasons, [71].

112 The same analysis is applicable to vested land under the VPC Act. The Corporation holds both vested and freehold land under that Act, although the Strzelecki property is only vested land. As the judge pointed out, the provisions of the VPC Act apply specifically to these two categories of land because the land is owned or functionally controlled by the Corporation. In either case, the notional vendor of the hypothetical fee simple estate is not the Corporation, and is not subject to the operation of the VPC Act.[69]

113 The applicant's submission that the primary judge's proposed application of *Royal Sydney* was inconsistent with the way in which this Court has previously applied s 5A of the Valuation Act must also be rejected. The authorities referred to by the applicant are not inconsistent with the judge's conclusion that s 5A does not require the application of the forestry legislation when valuing the hypothetical fee simple estate. In *Australian Postal Commission v Melbourne City Council*,[70] the Court was concerned with the valuation of heritage-listed land under the *Heritage Act 1995*, and reasoned that s 5A required the assessment of capital improved value to take into account 'existing heritage restrictions'.[71] *Public Transport Development Authority v Commissioner of State Revenue*[72] concerned a planning scheme which had the effect that the only potential purchaser of the land was the State of Victoria. In each case, the Court was called upon to consider the effect on the hypothetical fee simple estate of a law governing the 'use or development' of land generally, and not merely land subject to particular forms of tenure and ownership (as is the case under the Forests and VPC Acts). The conclusion in each case is consistent with the reasoning in *Royal Sydney* that only public laws of general application modify the hypothetical estate in fee simple. In her reasons, the judge correctly referred to planning schemes and legislation preserving cultural heritage as common examples of public laws restricting the use and enjoyment of a fee simple estate.[73] Grounds 2 and 3 are not made out.

114 Having so concluded, it is unnecessary to consider the judge's application of *Royal Sydney* under these grounds. However, we give some further attention to that case in the context of ground 4, which follows.

Ground 4 — 'public law of general application'

115 As an alternative to grounds 2 and 3, ground 4 is that the judge erred in finding that the Forests Act and the VPC Act are not public laws of general application.

Applicant's submissions

116 The applicant submits that if *Royal Sydney* does apply, the judge erred in concluding that, because the Forests Act and the VPC Act only apply to land owned by the Crown or controlled by the Corporation, they are not 'public laws of general application'.

117 The applicant submits that the nature of the tenures created by those Acts is such that each is a public law as described by the High Court in *Royal Sydney.* First, while the

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69 Reasons, [74].
70 (2005) 14 VR 678; [2005] VSCA 295.
71 (2005) 14 VR 678, 683 [17], [20] (Charles and Nettle JJA); [2005] VSCA 295.
72 [2017] VSCA 266.
73 Reasons, [67].

judge 'blurred' the distinction between Crown land and land held by the Crown as registered proprietor, they are distinct forms of tenure, such that the legislative regime under the Forests Act applies to different forms of tenure in land in a specified place. Secondly, under the Forests Act and the VPC Act, the lessee or licence-holder (and not the Crown as the owner) has been selected as ratepayer and is therefore the analogue of the taxpayer in *Royal Sydney*. Significantly, in *Royal Sydney*, taxpaying responsibility was attributed to the person 'who at least in theory is capable of realising the land (as owner)'.[74] However, a ratepayer in the applicant's position has no such capability.

Respondent's submissions

118 The respondent submits that the judge correctly identified that 'the use and enjoyment of a fee simple estate can be restricted by a public law of general application' and that neither the Forests Act nor the VPC Act are such laws, given that they apply only to land held by the Crown or the Corporation under forms of tenure that do not translate to a hypothetical fee simple.

119 At the hearing, counsel again addressed this ground by reference to the hypothetical inquiry required by the definition of capital improved value and its fundamental incompatibility with the application of the provisions of the Forests Act and the VPC Act. Once it is appreciated that the central features of those particular legislative regimes turn on ownership by either the Crown or the Corporation and specific forms of tenure, they cannot be laws of general application capable of modifying the hypothetical fee simple. According to the respondent, it is not consistent with the principles articulated in *Royal Sydney* that a law can be said to be of general application when its application fastens on a certain form tenure or ownership, as opposed to the use and enjoyment of the land.

120 In response to the argument that the Forests Act applies to different forms of tenure (on the basis that some reserved forest land may be freehold land acquired by the Crown and dedicated as a reserved forest[75]) and that it is therefore a law of general application, the respondent conceded that this was one exception (although none of the Strzelecki property falls into this category). However, the respondent emphasised that the judge's conclusion was based on ownership (not tenure) and the fact that the Forests Act only applies to land 'because it is State forest owned by the Crown'. If the land were held by the notional owner of a hypothetical fee simple estate, the legislation would not apply.[76]

121 In response to the argument that it is unfair to impose taxpayer responsibility on the applicant as the person 'capable of realising the land', the respondent submits that that approach is consistent with the way in which Crown leases are valued in other taxation contexts and the legislature has not embraced similar 'fairness' arguments advanced by timber plantation owners in the past. In circumstances where certain rights to forest produce are given to the applicant, excluding forest produce from the hypothetical fee

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74 Citing *Royal Sydney* (1955) 91 CLR 610, 623 (Dixon CJ, McTiernan, Webb, Fullagar and Kitto JJ); [1955] HCA 13.

75 *Forests Act*, ss 47 and 48.

76 Quoting Reasons, [71].

simple estate would create a situation in which the rateable value of the land was diminished while the correlative interest in the timber was not subject to rating.

Consideration

122 In *Royal Sydney*, the High Court was concerned with the introduction of a planning scheme that affected the land owned by the golf club. In determining that the planning scheme should be taken into account for the purposes of assessing the capital improved value of the golf club land, the Court distinguished between a public law affecting the enjoyment of land on the one hand, and a restriction of title on the other.

123 The Court concluded that the restrictions in the planning scheme were more than encumbrances, conditions or restrictive obligations affecting the titles to specific parcels of land. The planning scheme was a law operating over an area which was chosen independently of all questions of title or ownership and it controlled the use to which all owners, interest occupiers, licensees and even trespassers could put the land. The Court continued:

> However the title may be derived and whatever may be the form of ownership, occupation or enjoyment, the use of all land within the scheme is affected actually or contingently, presently or in the future, but in varying degrees and subject to varying conditions. In the case of land within the area coloured dark green the restriction, if not more proximate, is at all events more stringent. But it is nevertheless a restriction which arises from the law affecting an area in which the land lies, and not something altering the hypothesis upon which the Federal statute requires the land to be assessed.[77]

124 In other words, the planning scheme, as a public law of general application, affected the use and development of all land in its area of operation, regardless of the form of ownership or occupation.

125 As the judge concluded, the provisions of the Forests Act and the VPC Act that provide for the ownership of the land and the exploitation of forest produce apply only to land held by the Crown under the Forests Act and the Corporation under the VPC Act. They impose requirements specific to those two landholders. These requirements do not apply to the hypothetical estate in fee simple that is used to determine capital improved value. Accordingly, the Forests Act and the VPC Act are quite plainly not public laws of general application that are to be taken into account in valuing the fee simple estate in the land.

126 Ground 4 is not made out.

Grounds 5 and 6 — is the Licence to be disregarded?

127 Grounds 5 and 6 concern the proper construction of the definition of capital improved value and whether the Licence is to be disregarded when determining the capital improved value of the land vested in the Corporation. Ground 5 is that the judge erred

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77 *Royal Sydney* (1955) 91 CLR 610, 624–5 (Dixon CJ, McTiernan, Webb, Fullagar and Kitto JJ); [1955] HCA 13.

in finding that the words 'unencumbered by any lease, mortgage or other charge' do not limit or qualify the forms of encumbrance to be disregarded in determining capital improved value, such that a licence under the VPC Act is an encumbrance to be disregarded. Ground 6 is that the judge erred in holding that the words 'other charge' extend to a licence under the VPC Act.

Applicant's submissions

128 The applicant submits that the 'estate in fee simple' in the definition of capital improved value is deliberately qualified by three categories of interest. Since Parliament has made a deliberate decision to qualify the fee simple estate by those forms of encumbrance, the judge was incorrect in holding that '[t]he words "unencumbered by any lease, mortgage or other charge" … are not words of limitation or qualification. Rather they serve to emphasise the unencumbered nature of a fee simple estate …'[78] It is submitted that her Honour's construction renders the statutory words a 'surplusage', and a construction that gives effect to the language as expressing a qualified form of estate in fee simple should be preferred. The applicant submits that the statutory language and choice not to expressly include 'licence' in the definition revealed Parliament's intention that licences should not be disregarded.

129 The applicant relies on the judgment of Batt J in *Shell Co of Australia Ltd v City of Melbourne* ('*Shell*')[79] to support its contention that 'encumbrance' should not be construed in an unlimited and generic manner. Batt J considered that the express inclusion of the three categories of encumbrance in the definition told against a 'pure' fee simple analysis and was 'restrictive of the type of encumbrances excluded'.[80]

130 In relation to ground 6, the applicant submits that the judge erred in finding that a licence under the VPC Act fell within the rubric of 'other charge' on the basis that such a licence was a 'load, burden or weight' on the fee simple estate.[81] The applicant contends that the use of 'charge' in the definition refers to 'in essence a form of security for money owed (in the context of land) by the proprietor of that land' and not merely a burden or weight on the land.[82] As a licence under the VPC Act 'does not, of itself, secure anything' it cannot be said to be a 'charge' for the purposes of the definition of capital improved value.[83]

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78 Reasons, [76].

79 *Shell Co of Australia Ltd v City of Melbourne* [1997] 2 VR 615 ('*Shell*').

80 *Shell* [1997] 2 VR 615, 672–3 (Batt J).

81 Citing Reasons, [77].

82 The applicant relies on the definition of 'charge' in the cases of *Re Bank of Credit and Commerce International SA (No 8)* [1998] AC 214, 226 (Lord Hoffman); [1997] 4 All ER 568; *Hycenko v VHY Enterprises Pty Ltd* [2020] VSC 834, [33] (Derham AsJ) (citations omitted), alongside the *Oxford English Dictionary* (online at 11 November 2025) 'charge (n.1)' (def II.14.a) and other statutes, such as *Transfer of Land Act 1958*, div 9.

83 Referring to *VPC Act*, s 27B. At the hearing below, counsel for the applicant referred to *Sigma Constructions (Vic) Pty Ltd v Maryvell Investments Pty Ltd* (2004) 22 VAR 279; [2004] VSCA 242, arguing that while it 'doesn't take matters very far…it does provide some authority for the proposition that a charge as it's conventionally understood, is not going to include a licence'.

131 In oral submissions, counsel argued that 'other charge' was limited by — and should be understood having regard to — the reference to 'mortgage', and was therefore directed to a form of security.[84]

132 While the applicant resisted an interpretation which connected the term 'other charge' to 'lease' (and thereby broadened the concept of 'other charge'), counsel for the applicant maintained that, even if such a construction were accepted, a licence would not fall into that broad category.

Respondent's submissions

133 The respondent submits that the judge was correct to hold that the words 'unencumbered by any lease, mortgage or other charge' are not words of limitation or qualification and that the words 'other charge', in context, include a lease. More fundamentally, the respondent submits that as the definition of capital improved value proceeds on the assumption of a hypothetical fee simple estate, that hypothetical estate could not be burdened by a licence under the VPC Act, rendering the proposed grounds of appeal 'otiose'.

134 The respondent submits that the definitions of 'charge' referred to by the applicant are not relevant and that the construction advanced by the applicant ignores the term 'other' in the phrase, which suggests that a lease and mortgage are also 'charges' for the purpose of the definition of capital improved value. Here, the term 'other' is critical in suggesting that both licences and mortgage are charges for the purpose of the Valuation Act. Plainly, a lease is not a security and therefore on this reasoning, 'other charge' expands to non-security interests. Furthermore, the word 'charge' is to be accorded its natural and ordinary meaning, consistently with her Honour's reasoning that it refers to 'a burden on the land'. A licence under the VPC Act, which grants the applicant a proprietary interest in forest produce, is clearly a burden or weight on the land and therefore constitutes an 'other charge'.

135 At the hearing before us, counsel for the respondent referred to legislative history in support of the contention that the phrase was one of emphasis and not one of limitation, submitting that it was evident that the phrase was intended to highlight the unencumbered nature of the fee simple for the purpose of capital improved value.[85]

Consideration

136 Under these grounds, we are concerned with the meaning of the words in the definition of capital improved value that describe the estate in fee simple as being

> unencumbered by any lease, mortgage or other charge

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84 In reply, counsel contended that 'mortgage' was a reference to registered forms of charge while 'other charge' describes unregistered forms of charge.

85 In reply, counsel for the applicant contended that the Court should have real pause before relying on the early legislative history referred to by the respondent's counsel and the focus should instead be on the more immediate history, including the legislature's failure to simplify the definition of capital improved value and refer only to unencumbered land.

137 The starting point in any exercise of statutory construction is the text of the provision, considered in light of its context and purpose.[86] Context includes the legislative context, because the meaning of a provision must be determined by reference to the entire Act.[87] Consideration of purpose is reinforced by s 35(a) of the *Interpretation of Legislation Act 1984*, which provides that a construction that would promote the purpose of the Act (whether or not that purpose is expressly stated) shall be preferred to a construction that would not promote that purpose or object. As this Court said in *Bloomfield (a pseudonym) v The King*[88] with regard to statutory purpose:

> Identification of the statutory purpose may appear from an express statement in the statute or by reference to, or inference from, its language. Discernment of purpose may be aided by reference to any relevant extrinsic materials, in particular those that identify the mischief to which it is directed.[89]

138 There was some debate before us about the history of the definition of capital improved value and how that legislative history should be taken into account by the Court in construing the phrase in question. In support of its argument that the words 'unencumbered by any lease, mortgage or other charge' are not words of limitation or qualification, counsel for the respondent traced the definition of capital improved value to its first iteration in the *Land Tax Act 1910*.[90] That Act passed following a 'somewhat arduous' passage through Parliament, involving debate on four separate but relevantly identical bills.[91] The second reading speech for the Land Valuation Bill 1908 contained the following statement:

> We do not bother ourselves about any interests in land whatever. We deal with the land as if it had only one owner. We do not deal with the mortgagor or the mortgagee or the lessor or the lessee, or any similar interest in the land. We simply deal with the land as fee-simple, which makes our system somewhat simpler than others which have been adopted.[92]

139 This, it was submitted, made it clear that capital improved value was directed only to the fee simple estate and not to any other interest in land, which supported the judge's conclusion that the words 'unencumbered by any lease, mortgage or other charge' were not words of limitation but emphasised the unencumbered nature of that estate.

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86 *SAS Trustee Corporation v Miles* (2018) 265 CLR 137, 149 [20] (Kiefel CJ, Bell and Nettle JJ), 157 [41] (Gageler J), 162–3 [64] (Edelman J); [2018] HCA 55; *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27, 46–7 [47] (Hayne, Heydon, Crennan and Kiefel JJ); [2009] HCA 41.

87 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 381 [69] (McHugh, Gummow, Kirby and Hayne JJ); [1998] HCA 28.

88 [2025] VSCA 98.

89 [2025] VSCA 98, [116] (Walker JA) (citations omitted).

90 The respondent submitted that the applicant was incorrect in its contention that the definition of capital improved value was first introduced pursuant to the *Local Government Act 1969* and the language of 'lease, mortgage or other charge' was introduced by the *Local Government Act 1972*, asserting instead that both the definition and that particular phrase could be tracked through the complicated legislative history to the *Land Tax Act 1910.*

91 Referring to the Land Valuation Bill 1908, Land Valuation Bill 1908, Land Tax Bill 1909 and Land Tax Bill 1910.

92 Victoria, Parliamentary Debates, Legislative Assembly, 21 July 1908, 226–7 (Mr Mackinnon).

140 In reply, counsel for the applicant submitted that the Court's focus should be on the immediate legislative history and not on the extended history relied on by the respondent. In particular, it was submitted that the Court should not rely on the second reading speech for a 1908 bill which never passed into law.

141 Counsel for the applicant took the Court to the definition of capital improved value as first introduced into the *Local Government Act 1958* in 1969. That definition contained no reference to the estate being unencumbered by a 'lease' or 'charge'.[93] The language of 'lease, mortgage or other charge' found its way into the definition of capital improved value in the *Local Government Act 1972*.[94] In 1989, the same definition was introduced into the Valuation Act.[95] While this involved some simplification of language (the removal of 'thereon' from the phrase 'lease, mortgage or other charge'), the applicant submitted that Parliament had made a deliberate choice to retain the phrase 'lease, mortgage or other charge' rather than further simplifying and restricting the language, and that this supported the proposition that the phrase was one of limitation and qualification.

142 Turning specifically to the word 'mortgage', counsel for the applicant submitted that the term 'mortgage' in the definition of capital improved value as originally introduced into the *Local Government Act 1969* encompassed every kind of charge. Having regard to that history, and splicing in the current definition of 'mortgage' in the Valuation Act,[96] it was submitted that the term 'mortgage' in 'lease, mortgage or other charge' was intended to refer to any registered form of charge while 'other charge' describes any unregistered form of charge.

143 We have considered the different legislative histories that were advanced. The fact that each party seized upon a relevantly different history illustrates both the benefits and the difficulties of such an exercise in the task of statutory construction. In the end, we consider that the answer is to be found in the text itself.

144 In our view, the text has a tolerably clear meaning. The words 'other charge' must refer back to 'lease' as well as 'mortgage'. Had the legislature intended it not to do so and

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93 The definition was introduced pursuant to the *Local Government Act 1969*, s 254(1) which read as follows: '"Capital improved value" of land means the sum which the land, if it were held for an estate in fee-simple unencumbered by any mortgage, might be expected to realise at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might in ordinary circumstances be expected to require' (emphasis added).

94 Section 11.1(a) of the *Local Government Act 1972* stipulated that: 'In sub-section 1 and the interpretation of "capital improved value," for the word, "mortgage," there shall be substituted the words, "lease, mortgage or other charge thereon"'.

95 Pursuant to the *Valuation of Land (Amendment) Act 1989*, s 5(1)(b): '"Capital improved value" means the sum which land, if it were held for an estate in fee simple unencumbered by any lease, mortgage or other charge, might be expected to realise at the time of valuation if offered for sale on any reasonable terms and conditions which a genuine seller might in ordinary circumstances be expected to require' (emphasis added).

96 'Mortgage' includes every charge upon land which is registered under any Act relating to the registration of deeds or instruments affecting title to land, and includes a transfer or conveyance to a registered building society, subject to a deed of defeasance in favour of a borrower: *Valuation Act,* s 2(1) (definition of 'mortgage').

for ‘other charge’ to mean ‘other form of security over land’, the phrase would have been constructed as follows:

> unencumbered by any lease, or mortgage or other charge

145 The absence of the ‘or’ as indicated means that ‘charge’ must be understood to include ‘lease’ and therefore generally as an encumbrance or burden on the land. The judge was correct to hold that the words were not words of limitation or qualification.

146 We observe that the construction of ‘other charge’ as a general burden or encumbrance on the land is also consistent with the statement in the second reading speech to the Land Valuation Bill 1908 that the legislation (and the definition of capital improved value) deals with the land as if it had only one owner, that is, the owner of the fee simple estate. It does not deal with the mortgagor or the mortgagee or the lessor or the lessee, or any person having a similar interest in the land.

147 Likewise, capital improved value as defined in the Valuation Act is based on the assumption of a hypothetical fee simple estate in the hands of the first (hypothetical) owner. The construction of ‘other charge’ as a general burden or encumbrance on the land is consistent with this statutory hypothesis. Reading the words as words of limitation is not.

148 We do not consider this analysis to be placed in doubt by the obiter reflections of Batt J in *Shell*.[97] *Shell* concerned an objection to the assessment of capital improved value of a building that was subject to a lease that was more favourable to the landlord than the market. The respondent council argued that the particular effect of this lease should be taken into account when assessing capital improved value because the lease did not encumber — in the sense of ‘burden’ — the land. In this context, Batt J considered whether the words ‘unencumbered by’ in the definition of capital improved value meant ‘unaffected by’ (in the sense of ‘not subject to’ or ‘without’), or ‘not burdened by’ (in the sense of ‘not hampered by’ or ‘not depreciated by’). His Honour held that text, context and legislative history supported a construction of ‘unencumbered’ as meaning ‘unaffected by’ (in the sense of ‘not subject to’ or ‘without’). Hence

> the clear and natural meaning in their context of the words ‘unencumbered by any lease, mortgage or other charge’ in the definition is ‘not leased, not mortgaged and not charged’.[98]

149 This construction was said to be supported by the rationale for the definition of capital improved value, namely, ‘to obtain the ordinary market value of the highest interest known to the law in each physical parcel of land’.[99] Batt J reasoned that ‘[i]t would distort the tax base if that ordinary market value were required to be increased to reflect the adventitious circumstance that the actual owner of the fee simple estate had the benefit of a lease favourable to it’.[100] Moreover, the respondent’s construction would

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97 [1997] 2 VR 615.
98 *Shell* [1997] 2 VR 615, 668.
99 *Shell* [1997] 2 VR 615, 668.
100 *Shell* [1997] 2 VR 615, 668.

create administrative difficulties, requiring valuers to ascertain whether the terms of a lease were more favourable to the landlord.[101] These points remain good.

150 However, in relation to the construction of the words now in issue, Batt J went on to say:

> I take the word 'unencumbered' to qualify the word 'estate'. But for the words 'by any lease, mortgage or other charge' that follow the word 'unencumbered', it would be clear beyond argument that the estate in fee-simple spoken of is a 'pure' fee-simple. However, it seems to me that the words 'by any lease, mortgage or other charge' might be said to be restrictive of the type of encumbrances excluded and, in view of the exclusion of the word 'lease' (ie a non-security word), to admit of the possibility that interests or rights such as easements, profits a prendre, restrictive covenants and the like are encumbrances within the contemplation of the definition but are not directed to be disregarded.'[102]

151 Ultimately, Batt J found this question to be a 'difficult one' on which it was not necessary for him to reach a concluded view.[103]

152 On its face, *Shell* might appear to provide some support for a restrictive interpretation of the phrase 'unencumbered by any lease, mortgage or other charge'. However, his Honour did not have the benefit of the legislative history placed before us and did not, in fact, decide that such a restrictive interpretation was required.

153 This case is distinguishable from *Shell* in any event. The court in *Shell* was concerned with a lease burdening a fee simple estate. In this case, the form of the land tenure and the licence in question are both creatures of the VPC Act. For the reasons articulated under grounds 1, 2 and 3, a licence given by the Corporation in respect of land vested in it pursuant to the VPC Act does not fit coherently into the framework for valuing the hypothetical fee simple estate that forms the basis for the determination of capital improved value.

154 Grounds 5 and 6 must fail.

Disposition

155 None of the proposed grounds having a real prospect of success, the application for leave to appeal will be refused.

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101 *Shell* [1997] 2 VR 615, 668.
102 *Shell* [1997] 2 VR 615, 672–3.
103 *Shell* [1997] 2 VR 615, 673.