Land Court-Legal Update-Case Summaries

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1. Aria Securities Pty Ltd as Tte v Valuer-General [2018] QLC 2

BACKGROUND: This appeal, pursuant to s 155 of the LVA concerns a site value of land situated on the corner of Merivale and Peel Streets, South Brisbane. The land has an area of 2,738 m^2, is not subject to easements or encumbrances and is zoned Principal Centre (City Centre) under the Brisbane City Plan 2014. This is a High Density Mixed-Use zone where a block of land at least 1,800 m^2 can be developed to a maximum building height of 30 storeys with a maximum of 80% site cover. The appellant has appealed the objection decision reduction to $23, 000, 000 and contends that the correct valuation is $20,800,000. The valuation experts agreed that the highest and best use of the land would be for the 30-storey development.

The site values of the sale properties recorded in the valuation JER- are not in dispute as the value is not derived from the sales analysis i.e. the JER simply reports the Valuer-General's value applied as at 1 October 2015. With Sales 2 and 3, each valuer's analysed sale price is quite close the Valuer-General applied amount. The appellant's valuer made it very clear that he also considered the applied site value in order to reach his valuation and not merely to for instance, check it.

ISSUE: Did the appellant's valuation expert err in considering the applied site value of the Sale 1 in arriving at his contended value for the subject site?

HELD: This is a fundamental error which invalidates the method which the appellant's valuer applied to value the subject i.e., he departed from valuing the land himself by introducing something decided by someone else i.e. the objection delegate. The Court is not aware of the delegate's reasoning and it is quite irrelevant to the process in this Court and has a contaminated the process the appellant's valuation expert claimed to be applying. The respondent's valuer was clear that she did not proceed this way i.e. she valued the land by the method stated in the report.

The method appellant's valuer used is not an acceptable and reliable method when used in this way by blending the Valuer-General's issued valuation into the valuation expressed to be derived from analysis of comparable sales. This approach departs from the avowed method and the outcome will be unreliable.

This Court must consider the opinion evidence of expert valuers rather than the opinions of persons not giving evidence before it. The respondent's valuer appeared to have no difficulty in being frank and when asked for her opinion in relation to the $17,500,000 applied site value, having analysed the sale, did not support it, and stated that $19,000,000 was appropriate.

This illustrates that the $17,500,000 figure, arrived at by an administrative process in relation to Sale 1, while correct within that process, is not useful in this case and is inapplicable in principle. The respondent's value was correct not to consider it and would have been incorrect if she considered she was in any way bound by it.

Once the Valuer-General's applied site values are allowed to intrude into the valuation process, it is no longer an analysis of the evidence of sales but becomes contaminated by the addition to it of the concept of relativity with other values. It is however a tool useful to ensure that values of an area bear acceptable relativity to each other, this process is different to the Court's task of determining the value of the subject. [refer LAC *Gibson v Chief Executive, Department of Lands* (V92-64) *Bignell v Chief Executive Department of Lands* (AV92-65) and LC in *Thomson v DNRM [2007]QLC 92].*

The judgement noted that in *Musumeci v Valuer-General* (2014) 35 QLCR 185, the learned President had valuation evidence from only one valuer and that valuer used sales evidence. The Court explained the usefulness of applied values when all land in an area was being valued but considered it to be an error for the valuer to use analysed sale prices in those circumstances.

The Court confirmed the following general principles:

- The Court is not an inquisitorial body and must consider the evidence put before it by the parties. The appellant must prove their case.
- The best test of value is to be found in the sales of comparable properties, preferably unimproved, on the open market around about the relevant date of valuation and between prudent and willing, but not over-anxious parties. A large increase in value is in itself not a relevant issue provided bona fide sales of comparable parcels support that value.
- A valuation deduced from relativities that were not tested in the present proceedings by reference to sales evidence cannot safely be relied upon. Where the subject valuation is said to be incorrect, it would not be safe to rely on other valuations and to assume that they are correct so as to draw a conclusion about the valuation of the subject land. *Finlayson v VG*
- It is desirable that valuations of comparable lands should bear proper relativity, one to the other, so long as the valuations are soundly based. It is untenable to adopt a value for one parcel on relativity with another which has no sound basis. *Barnwell v The Valuer-General*
- The best basis for assessment of unimproved value is the use of sales of vacant or lightly improved parcels of land. *Barnwell v The Valuer-General*
- Correct relativity is of considerable importance for rating valuations, but relativity should not be preferred to the exclusion of relevant (even if not ideal) sales evidence.
- If possible, the Valuer-General should obtain uniformity between different blocks in the same land category or type, but should do so (preferably by reference to sales of comparable land) by correcting inaccuracies rather than by making an inaccurate assessment in order to secure uniform error *Barnwell v The Valuer-General*
- The superiority of sales evidence is illustrated by President Trickett in *Fairfax v DNRM* [2005] QLC 11:

  "The principles for determination of the "market value" of land were established by the High Court in Spencer where that Court found that the value of land is determined by the price that a willing but not overanxious buyer would pay to a willing but not over-anxious seller, both of whom are aware of all the circumstances which might affect the value of the land, either advantageously or prejudicially, including its situation, character, quality, proximity to conveniences or inconveniences, its surrounding facilities, the then present demand for land and the likelihood of a rise or fall in the value of the property".
- The decision in this case is not influenced by this piece of evidence. The decision is inevitable in view of the defect in the approach used by the appellant's valuer. No reliable conclusion on valuation could be safely drawn from the appellant's valuation evidence, which was the appellant's entire case. Accordingly, the appeal must be dismissed, the appellant having failed to prove its case.

2. Body Corporate for 'Tennyson Reach' CTS 39925 v Valuer General [2018] QLC 3

BACKGROUND: This appeal concerns the site valuation as at 1 October 2015 of three parcels of land at Tennyson which together comprise one valuation. This appeal is against a site valuation pursuant to the LVA of $ 18.5 M as at 1/10/2015 while the appellant contends the correct should be $14.5M.

OBSERVATION: The value of the land on the valuation day will be the price that would be arrived at in a theoretical agreement on that day between a willing but not anxious buyer negotiating with a willing but not anxious seller, both perfectly acquainted with the land and aware of all the circumstances that would affect its value. The roles of the vendor and purchaser merge and the Court must ascertain at what monetary point they would agree.

ISSUE: Should the Court accept the appellant's valuers evidence regarding the height to which tower blocks could be built or the evidence of the respondent's town planner?

HELD: The appellant's valuers approach is defective as it is inconsistent with the planning potential which increased in 2014 and provides no acceptable explanation why this increased potential should not apply to some extent to the land. The valuer's opinion that it would make no difference is not supported by any analysis that supports the correctness of his assumption. His view denies the planning relaxation any effect and is at odds with the expert planner's evidence that the development potential is increased. The appellant's valuer's opinion cannot be favoured over that of the town planner in the absence of a relevant defect being shown in the planner's evidence.

ISSUE: What is the highest and best use of the land on the valuation date?

HELD: The highest and best use and the degree of precision that can be achieved within that concept are questions of fact that the Court must resolve within the evidence put before it.

The use contended by the respondent's valuer i.e. that the HBU of Sites 1 and 2 was buildings in the current footprint of what was already there but 15 storeys high, comprising 12 storeys of residential dwelling and three storeys of aboveground car parking. The existing GFA of 37,605 m^2 would be increased by 5,005 m^2 to give a new potential GFA of 42,610 m^2.

For Site 3, the respondent's valuer, considered the HBU to be a low to medium density residential development with a maximum of 45% site cover and a building height up to three storeys.

The Court prefers the evidence of the respondent's valuer regarding the HBU as it is the better of the two views, is consistent with the town planning evidence and more conservative than the maximum development which the planning evidence supports.

ISSUE: What is the correct valuation methodology?

HELD: The rate per m^2 of site area [Approach A] is the correct valuation methodology as it is a valid methodology and has the advantage that the valuers are using the same method which should make comparison of their conclusions at least possible if not necessarily easy.

Given the Courts conclusion re the HBU the appellant's valuers other methods are not useful lost i.e. (b). rate per potential/approved unit (c). rate per potential/approved 2-bedroom equivalent unit (d) rate per potential/approved bedrooms (e) rate per m^2 of GFA. The limitation on development imposed by the appellant's valuer, which would allow these methods to be readily applied, is erroneous and therefore the methods of comparison are useless/unreliable.

ISSUE: which sales are comparable such that they can be used to value the subject land?

The appellant's valuer relied on sales 1,2 and 3 as most comparable:

Sale 1 - 600 Coronation Drive, Toowong - Formerly an ABC site, 130 m of Brisbane River frontage with an area of 14999 sqm. Approved development over site subject of C of A proceedings. This legal position introduces sufficient planning uncertainty as to make a detailed consideration of the development potential unhelpful. The cancer cluster associated with the site has attracted a negative perception of it,

and the pending appeal introduces a good deal of uncertainty. The shortcomings of the sale are significant. Especially influential is the existence of the appeal in relation to the development approval which puts a question mark over the highest and best use of the site, and therefore its comparability to the subject. It will be necessary to use considerable caution in applying it as a comparable sale; caution not extended to it by Mr Ladewig, who analysed the sale to show $1,428 per m^2

Sale 2 - 20 Festival Place, Newstead - Sold vacant for $23.35M (settled on 15 June 2015), with approval for a 25-storey development, obtained by the purchasers while it was under contract. an area of. Smaller than the subject (8,184 m^2) with superior shape in a superior non-river front location with views over the river and CBD. Considered by the valuers to be superior overall to the subject land (used by both valuers).

Sale 3 - 295 Fairfield Road, Yeronga - land was formerly the RSPCA site and rubbish dump and is contaminated. Proposed development will be impact assessable Sold in August 2014 and settled in June 2015 for $ 4,500,000. At 16,860 sqm the sale is smaller than the subject with a superior shape and an inferior location. The respondent's valuers major concern was verifying the costs related to decontamination, coping with flooding, and of constructing the community hall.

In addition to sale 2 the respondent's valuer also relied on Sales 4 to 11:

Sale 4 - 24 Kurilpa Street, West End - 7,630 sqm of High Density Residential (up to seven storeys). Sold on 28-9-2015 and settled on 30-10- 2015 for $10.8M. The land is rectangular, has two street frontages, is significantly flood affected and has no river views. The site is considered superior in location, shape, access, exposure, and freedom from easements than the subject, inferior in area, zoning, potential building height, views and with comparable flood impact. A code assessable DA was made before sale and approved after settlement for 80 townhouses over three to four storeys. Issues concern comparability due to its small size and scale of development.

Sale 5 - 51 Ferry Road, West End - 6,381 sqm High Density Residential (up to eight storeys). Sold on 27-6-14 for $19,000,711 and settled 10-11-2014. On 12-11-2014 a code assessable DA lodged and approved on 27-2-2015 (DA = demo and 77 units over 7 levels). VG valuer-sale comparable in riverfront position and view, superior in location and shape, less flood affected, and free of easement but with inferior in zoning, building height, and access. Superior overall. APP valuer considered site had superior location and amenity but noted that 5,128 m^2 of improvements demolished and site was yet to be developed.

Sale 6 - 25 Donkin Street, West End - VG valuer accepted sale was high but considered it useable and her best sale e.g. area of 16,823 m^2, riverside location and development potential were considered comparable. This land is zoned Mixed Use and High Density Residential, up to 15 storeys. The neighbourhood plan limits height to 12 storeys with 70% site cover in the mixed use area and 60% in the residential area. Sold on 18-9-2015 for $82,500,000 and settled on 27-11-2015. The analysed sale price is $80,545,300 which yields a rate of $4,788 per m^2 of land area. The property was sold subject to development approval. On 2-12-2014 a code assessable development application and approved on 24-6-2015 [demolition + 7 X 12 storeys buildings =982units]

VG Valuer advised by developer that DA value to $3,000,000 site decontamination a $5,000,000 cost and demolition $2,000,000. Sale considered overall superior with comparable riverfront position and views, superior in location and shape, less flood affected and free of easements but smaller with inferior in zoning, maximum building height, and access.

APP Valuer noted the purchase by a local developer only six months earlier for $25,650,000 and considered sale to an overseas developer via an off-market transaction to be above market value. He also noted that the site is yet to be developed and given the differing estimates, remediation must be considered uncertain.

Sale 7 - 90 Waldheim Street, Annerley - 5,147 sqm of land Low-Medium Density Residential development land. Sold on 13 May 2015 for $4 200 000 which analysed to $4,156,320, allowing for demolition cost and infrastructure credits ($808/ sqm). Impact assessable DA was made on 14 May 2014 and decided on 4 November 2015. Development was to be two buildings, each of 3 to 4 storeys yielding 66 units of 1 & 2BR plus car and bicycle parking. VG valuer considered the site to be superior in shape, not affected by flood or easements, and with inferior location, zoning, building height, and view. It was seen as inferior overall. APP valuer difficult compare given relatively small-scale, of development scheme

Sale 8 - 30 Johnston Street, Bulimba - 6,553 m^2 block sold on 16-11- 2015 for $9,650,000 (30-11-2015). Site has two street frontage and is zoned LMD Residential development (3 storeys). Sale analysed at $9,728,538, which is $1,485/sqm after demo/inf credits. On 30-11- 2015 a code assessable DA was made for demolition and construction of a three storey, 80 residential unit development with 137 basement car parks and 100 bicycle parks. This site is close to the river but does not have river views. Considered superior in location, shape and access, it is less impacted by flood and is inferior in zoning, building height, and views. Considered inferior overall by VG valuer and difficult to compare by APP valuer given superior location and small scale of the development.

Sale 10 - 26 Stevens Street, Yeronga - 1045 m^2 LMD Residential site (2 to 3 storeys) which sold on 9-2-2015 for $780,000 (settled 10-8-2015). Sale 10 has two-street access, is flood affected and analysed to $760,200 (demo $8200/infra credits –rate $727 per sqm) Proposed townhouse development not approved-but a code assessable 3 lot subdivision was approved 9-8- 2017. VG-Valuer considered sale comparable to Site 3 in location, and superior in shape and zoning with no easements. Smaller with inferior flood impact and views. Overall inferior. APP valuer found site difficult to compare given the size, and scale of development. APP valuer considered location to be inferior.

Sale 11-126-130 School Road, Yeronga - 1,619 sqm LMD Residential corner site for 2-3 storey development. Sale 11 analysed at $1,742,250 and $1,076 per sqm after allowing for demo of two houses and infrastructure credits. Sale was two sites that sold and settled on different dates. After the contracts were signed, an impact assessable development application was made (app 24-12-2014) re demo plus 14 townhouses over three storeys.

VG-Valuer- viewed sale 11 as superior to Site 3 in shape and zoning noting that it was flood free, had no easements and was smaller with inferior location and views. VG saw sale as inferior to Site 3 overall but superior in rate per m^2 due to its smaller area. APP Valuer felt sale was difficult to compare due to its size and scale of development but agreed location was inferior.

ASPECTS* OF SALE 6- a sale must be indicative of the market to provide a useful comparison *NB VG-Valuer reports purchaser "believed the decontamination would be $5,000,000".

*APP Valuer re sale date referenced to a caveat lodged in 11/2014 with settlement 11/2015. Analysis includes decontamination at $5,000,000, noting that sale was for $82,500,000 but sold 5/2014 ("6 months prior") $25,650,000 to "a local developer" cf current sale which was an off market transaction to a Chinese developer "*indicates that the transaction was not in the conventional market where comparable sales would be expected to be found"*

COURT NOTED: *There was no other evidence that indicates that the market for this sort of property increased by the amount indicated by this sale, namely a little over 320% in that six month period. The earlier sale to a local developer indicates a sale to a purchaser familiar with the market. For these reasons, the Court could not place any reliance on this sale for the purpose of comparing it to the subject land. Ms Wang's description of it as the best sale available at the time shows significant reliance was placed on it when it is not useful at all.*

Decontamination- Both valuers referred in the JER to an estimated remediation cost of $5,000,000 however Ex. 33 tendered by the respondent reveals an estimated remediation costs of $22,682,604. The result is that the evidence shows a huge range in remediation costs and although the purchaser may have relied on a $5,000,000 estimate, this does not remove the uncertainty when the purchaser's decision on price is not able to be shown to be consistent with the market. Sale 6 must be excluded from consideration.

Discussion of Sales- The respondent relies on sales 2, 4, 5, 6, 7 and 8 to value Sites 1 and 2. The analysed sale price per sqm rates are (excluding sale 6):

Sale 2: $2,801 **Sale 4**: $1,395 **Sale 5**: $2,922 **Sale 7**: $808 **Sale 8**: $1,485

From this the VG Valuer adopted an unadjusted rate of $1,615 "after considering sales evidence". Unfortunately, it was not explained how this figure was arrived at, so the Court has no basis upon which to be satisfied that it was properly arrived at.
After making a further allowance for flood 15%, easement 5%, shape 5%, and planning risk 10%, the VG valuer opined that an "appropriate rate of $1,050 m^2 has been adopted for Sites 1 and 2".

HELD: *This explains the reduction to the adopted rate of $1,050 but the weakness remains that it is not explained how the $1,615 point was reached from the figures derived from the sales, either when including sale 6 or if it is excluded.*

The VG valuer relies on sale 9 ($820/sqm), 10 ($727/sqm) and 11($1,076/sqm) to find a rate for Site 3 to arrive at a rate $770/sqm. An amount of 10% is deducted for planning risk and, in the JER $700 is adopted. In Court, VG valuer deducted a further 5% for shape to arrive at $665 per sqm for Site 3.

HELD: *There is no explanation as to why $770 was correct although by inference it is explicable as conservatively in the range shown by the sales. This explanation, even though it is necessary to infer it, is more likely to be open in the case of Site 3. The range of values of sites comparable to site 3 is compact and by inference more safe, than in the case of Sites 1 and 2 where there is a figure sitting in a much broader range, the upper limit of which is much less than Ms Wang used, once sale 6 is disregarded*.

The Court observed: *The respondent does not have to justify the valuation, it is for the appellant to prove that valuation for which it contends is correct. The discussion has occurred as once the respondent introduces evidence, it is legitimate to consider it together with the appellant's evidence to see whether or not it has some weight in the appellant's case. Additionally, section 170(b) of the Act instructs the Court to "correctly make the valuation" so it must endeavour to do so within the constraints of the evidence before it.*

It has become apparent that the sales in the JER relied upon by the respondent do not support the value claimed to be deduced from the sales [refer Q.3 of parties].

The appellant's sales:
APP valuer used the following sales:

Sale 1 is analysed to a rate of $1,428 per sqm for the 14999 sqm land area indicating a value of $21 418 572. Sales has uncertain development potential pending a decision of the Court of Appeal.

Sale 2 is common to both valuers, with an analysed rate of $2,801 per sqm of land area.

Sale 3 the old RSPCA site, is now better understood due to evidence which became available during the course of the hearing. This sort of surprise is undesirable as it presents a challenge to the parties to consider the new material properly under the pressure of a hearing. As a result of the new material, APP valuer arrived at a rate of $346 per m^2.

APP Valuer - adjusted his rates per sqm to account for varying sale dates, although it was clear this was done APP Val has not explained how this was calculated. The adjusted rates were: **Sale 1**: $1300/sqm: **Sale 2**: $2688/sqm: **Sale 3**: $237/sqm.

APP Valuer - using these sales, values entire subject land of 18,318 sqm within the range of the subject land in the range of $775 to $825 per sqm, rather than considering Site 3 separately. These rates produce an overall range between $14,196,450 and $15,112,350. APP Valuer has selected the half-way point, $14,654,400, and adopts $14,500,000.

That sale 2 is superior on a rate per sum basis is not in dispute. The rate used for sale 1 is currently supportable. It may be changed by the result of the appeal to the Court of Appeal, or it may not. This Court is entitled to decide this case on what is known now, while acknowledging the possibility of a future change. Sale 3 is clearly inferior to the subject, as is sale 1, for the reasons that have been given in detail.

The reasons for the differing approaches of the valuers in relation to Site 3 were not exposed. In the case of APP Valuer it is readily inferred that he did not distinguish Site 3 as he has valued all of the land as if it were one sale. This would seem unobjectionable. Ms Wang did not explain why she proceeded as she did, so it is not possible to prefer her method, which might have been possible if the reasons for using it had been explained.

HELD: The Court is satisfied on the evidence put before it that the value of the land will be, on a rate per m^2 basis, higher than that of sale 3 and less than that of sale 1. It is also satisfied that it will be much less than that of sale 2. The Court is further satisfied that the range contended for by APP Valuer is within the range of possible values of the land, that is to say, between the values shown by the rates per m^2 of the land in sales 1 and 3. The land is clearly significantly superior to that in sale 3 and somewhat inferior to that in sale 1.

HELD: It is open to APP-Valuer to hold the opinion that the valued in the ranged between $775 to $825 per sqm and therefore a site value of $14,500,000. APP-Valuer was repeatedly cautioned in relation to avoiding an argumentative approach when questioned. Such behaviour is inconsistent with the duty of an expert witness. Unfortunately had difficulty heeding the Court's warning. His evidence must be examined with caution. The Court will not exclude it on the basis of his behaviour in Court, looking instead at the evidence itself, however much its bearer did to weaken his own claim to being an independent expert.

HELD: The evidence called by the respondent does not support a finding that the Court should reject the appellant's evidence. Additionally, it does not establish a satisfactory basis upon which the respondent's value of $18,500,000 could be accepted as correct. On the whole of the evidence, the Court finds that the appeal must be allowed and the valuation as at 1 October 2015 must be reduced to $14,500,000.

3. Beydoun v Valuer-General [2018] QLAC 1

BACKGROUND:

The Valuer-General undertook a routine valuation pursuant to the *Land Valuation Act* 2010 (Qld) of the appellants 1,012m^2 parcel at 227 McLeod Street, Cairns. The date of the valuation was 1 October 2015 and the issued site value was assessed at $305,000. The initial appeal to the Land Court was dismissed in a decision handed down on 14 July 2017. This decision concerns an appeal by *Beydoun* against the initial Land Court decision.

Ground of Appeal A **-** the Land Court failed to rely primarily in determining the value of the appellant's relevant land on the values or valuation of the adjoining block of land at 229 McLeod Street, Cairns to the appellant's land.

HELD: Ground A is based on relativity i.e. appellant's land value compared to a neighbour's value. This is not the question that was before the Land Court which, under section 170(b) of the *Land Valuation Act 2010*, may amend the valuation so that it is "correctly" made.

The Land Appeal Court has consistently recognised that relativity of valuations is desirable. It has also recognised that the relativity of valuations to each other does not establish that a valuation pointed to for the purpose of showing correct relativity is itself an accurate valuation. Decisions e.g. *Bignell v Chief Executive, Department of Lands indicate that* it would be incorrect to rely primarily on the valuation of the land adjoining the subject land for the purpose of valuing it. Ground of Appeal "A" must fail.

Ground of appeal B - the Land Court relied primarily on valuations elsewhere in the neighbourhood of sold real estate.

In the Land Court the VG relied on the evidence of a registered valuer who the Court noted, analysed three sales chosen as the most comparable considering their size, location and zoning. The appellant did not propose any other sales for consideration.

The Court noted the following general principles:

- The basis for assessment of unimproved value is the use of sales of vacant or lightly improved parcels of land ***Grahn v Valuer-General***.
- Maintenance of correct relativity is important for rating valuations, the use of the principal of relativity should not be preferred to the exclusion of relevant (even if not ideal) sales evidence. ***Fisher v The Valuer-General***
- If possible, the Valuer-General should obtain uniformity between different blocks in the same land category or type but should do so (preferably by reference to sales of comparable land) by correcting inaccuracies rather than by making an inaccurate assessment in order to secure uniform error. ***Barnwell v The Valuer-General***

For the reasons that have been given, Ground of Appeal "B" is not a proper basis upon which to criticise the decision of the learned President which was made in accordance with the correct approach in the use of evidence of sales.

Ground of Appeal C - The Land Court placed too much weight on arbitrary assessment of the value of land divorced from improvements (like a house) of property sold in the neighbourhood.

- The Court relied on the evidence of the sole expert witness, a registered valuer with approximately 30 years' experience in the Cairns area.
- It would be incorrect to categorise the valuer's expert opinion as arbitrary, it is an expert's report of her opinion. The appellant had and took the opportunity to cross-examine the valuer on the report.
- Accordingly it is not a valid criticism of the learned President's decision that weight was placed on the value of land divorced from improvements upon it, such as a house. That is the correct approach. Ground of appeal "C" is not made out.

Ground of Appeal D - The Land Court did not give sufficient weight to the Respondents their own current assessment of the value of land adjoining the appellants land at 229 McLeod Street, Cairns.

- The only expert evidence was that given by the VG. The expert valuer provided an opinion which was persuasive to the learned President and was not contradicted by any competing expert evidence.
- The appellant did not have a valuation assessment arrived at by a method which the Courts have decided would be reliable.
- This Court has also recognised the reliability of valuations based on sales. As was said by this Court in *N.R and P.G Tow v Valuer-General*:

"Courts of the highest authority have laid down that the test of value is to be found in the sales of comparable properties, preferably unimproved, on the open market round about the relevant date of valuation and between prudent and willing, but not over-anxious parties".

HELD: the evidence shows that the Land Court did not fail to give sufficient weight to the respondent's opinion of the value of the adjoining land. As noted, since the appellant's opinion was not that held by a suitably qualified expert and was not based on a value disclosed by a sale, it was inevitable that it was accorded less weight than the expert's opinion based on a comparison made using sales evidence.

For these reasons ground D must also fail.

Ground of appeal E - The Land Court did not give sufficient weight to the distinctive defects of the Appellant's land compared to the adjoining land at 229 McLeod Street, Cairns namely:

- Frontage and Drainage
- Site level/Water runoff - no remedy
- Narrow Frontage - ability to demolish/construct

HELD:

Frontage and Drainage: -The decision of the Land Court considered the aspects of frontage and drainage, along with the appellant's statement that substantial costs would need to be incurred in order to rectify the drainage problem. The Land Court has not been shown to be in error in this regard.

Site level/Water runoff - no remedy: The Land Court accepted the respondent's valuer's opinion that if the land was vacant, the drainage issues could be dealt with by minor earth works. The Land Court did not fail to appreciate these aspects of the case. The Court accepted the evidence of the valuer in regard to them when they were not contradicted by any expert evidence. This is a decision which it was open to the Land Court to make and has not been shown to be in error.

Narrow Frontage - ability to demolish/construct: The Land Court considered these aspects, noting that the Valuer accepted that the narrow frontage was a disadvantage. The assertion that the value should not be assessed purely on its area without taking into account its unique defective features is not of assistance to the appellant. The unique defects to which the appellant refers are clearly dealt with in the reasons of the Land Court and have already been discussed.

Appeal ground E has not been made out.

4. GPT Limited v Valuer-General (No. 2) [2018] QLC 9

The appellant, **GPT**, appealed against the Valuer-General's valuation of GPT's land situated at 123 Eagle Street, Brisbane as at 1 October 2012. **(Riverside Centre)**. Valuer-General's valuation as at that date was $87,000,000 - GPT has initially contended for a valuation of $68,900,000, but its final position was $62,000,000.

Land Court determined the site value as at 1 October 2012 to be $70,800,000.

ISSUE 1 - RIVER FRONT WALL - The primary question whether works done below ground level near the Brisbane River were site improvements as envisaged by s 23(1)(e)-(h) LVA or were excavations, footings, foundations and/or underground building levels as envisaged by s 23(3) LVA and therefore non- site improvements.

The Court noted the following matters:

- Both parties engineering experts concluded that the river wall was an integral part of the Riverside Centre but differed re it being a site improvement re s 23 of the LVA. NB - GPT's expert engineers concluded that the riverfront wall is an integral part of the basement carpark and the Riverside Centre was accepted by the Court.
- GPT contended that s 23(1) concerns things "done to the land" which are "site improvements" i.e. things done to the land rather than development upon the land.
- Court considered - Explanatory Note to LVA Bill - The definition will clearly state that site improvements 'to' the land will form part of the valuation. Those improvements that do not improve the land or are associated with the construction of a building, for example, an excavation that merges with the building, will not form part of the site valuation."
- GPT's engineering evidence, which the Court accepted is that the river wall is an integral part of the foundations of the development. The river wall cannot stand on its own without the other footings and foundations, and neither can the other footings and foundations stand without the river wall.
- The Court further noted that difficulties for the Valuer-General do not end there, as s 23(3) of the LVA is conclusive on the facts of this matter. Section 23(3) provides as follows:

    (3) Also, excavating the land for any of the following is not a site improvement—

    (a) footings or foundations;

    (b) underground building levels.

    Example of an underground building level—

    an underground car park

- HELD: regarding the application of s 23(1) of the LVA, there is no doubt on the basis of the finding of fact that the river wall was constructed as part of the building project for the 123 Eagle Street tower. It forms an integral part of the Riverside Centre. The building would be unable to stand but for the existence of the river wall as part of its footing stand foundations and underground building levels.

ISSUE 2 - VALUER IMPARTIALITY - should GPT's valuer be disregarded as an expert witness because he has 'advised and represented the appellant for over 10 years in relation to its site valuation issues' concerning 123 Eagle Street? Of what relevance are earlier Court decisions/findings involving the appellant's valuer?

EARLIER COURT DECISIONS: The Court noted that the correct legal position is that the appellant's valuers evidence must be assessed in this case without reliance on other findings by other Courts.

APPELLANTS 10 YEARS OF ADVICE & REPRESENTATION TO GPT - the Court confirmed interstate judgments which observed that from a practical point of view an owner would consult who they thought was the best valuer for advice regarding a statutory valuation & that in cases where that valuer had some earlier involvement it would be impractical to have to abandon that valuer as a witness in an appeal.

COURT NOTED:

1. No allegation by GPT that the VG Valuer should not be accepted as an expert on this basis - VG valuer had for some time been valuer and team leader for CBD valuations including 123 Eagle St.
2. If, however, the Valuer-General's submissions are correct, by logical extension the VG's Valuer would be in the same position, such an outcome would make untenable for both appellant's and the Valuer-General in LVA appeals.

The Court noted there were aspects of the evidence of both GPT valuer and the VG valuer that it did not accept, but this did not mean that their status as experts or impartiality was not accepted.

3. The Vision Sale 111 Mary Street - "forced sale" and added value of "basement excavation".

The 111 Mary Street sale took place in July 2010. It has a site area of 5,478 m^2 and the sale price was $41,800,000.

It was common ground that the 111 Mary Street sale was a "forced sale" as the owner/developer of that site had gone into administration and, as a result, the site was sold by the administrators. VG valuer viewed this fact & his enquiries, is enough for him to disregard the sale. GPT valuer viewed his enquiries as confirming that the sale was properly marketed and able to be relied on.

Court confirmed view expressed in *Macarthur Central v Valuer-General (No.2)* that:

"Sales by liquidators, like those by mortgagees, demand close scrutiny before being accepted as evidence of market value. There is insufficient evidence about the circumstances of the sale to overcome the usual caution exercised in relation to sales of this nature. On the evidence, the Court could not rely on this sale, with any confidence, in valuing the subject lot."

The decision (LAC) in Mayne Property Development Pty Ltd v Chief Executive, Department of Natural Resources concerning a mortgagee in possession sale was also noted:

"In the absence of any direct evidence as to what occurred, we agree with the learned President (Trickett) that the sale must be disregarded in this case. We cannot be assured that, even assuming the mortgagee met its statutory obligation, the sale was made without coercion or was not influenced by factors peculiar to the particular mortgagee and purchaser."

HELD: (accepting VG submission & rejecting sale) it is only when it can be established that the sale was consistent with the market price for such properties that the value derived from the sale can give comfort to the Court in relation to meeting the requirements for the Spencer test and s 18 of the LVA.

ISSUE 3 – THE VISION SALE - 111 MARY STREET - Added value of "basement excavation" $10,000,000 -
The Court accepted the evidence that there were major concerns for the safety of the excavation at the time of sale, as the initial rock anchors had reached their lifespan and the remainder would expire over the following 10 months and that the administrators had received expert opinions regarding the options available to deal with any concerns that might arise regarding the excavation.

HELD:

- Clearly difficulties and concerns that potential purchasers have as regards the excavation in general and the state of the rock anchors in particular.
- Even if the sale was accepted there was insufficient evidence to convince the Court of the GPT valuer's calculation of $10,000,000 in added value as a result of the excavations.

ISSUE 4 - DIFFERENT APPROACHES - MODEL LITIGANT - 304 GEORGE STREET - VG ANALYSIS

- GPT submits that the Valuer-General has adopted a different position for the sale of 304 George Street in the current case, to what it did in *Brisbane Square* i.e the effect of the Valuer-General's conduct is to assess the site value of 304 George Street as at 1 October 2013 at $61,500,000, but analysing a sale at $64,720,001.

- As GPT puts it, it is highly undesirable and unfair for the Valuer-General to urge the Court to adopt the sale value as analysed by one of its employees in circumstances where the Valuer-General applied a different rate to the land and the valuer agreed that the applied value is reasonable i.e. $61,500,000.
- GPT contended that to treat citizens differently in like litigation is not only contrary to authorities, but also conflicts with the *Model Litigant Principles*, noting that the first principle is "acting consistently in the handling of claims and litigation".

The submissions by GPT concerned the certain principles within which are set out below:

- Rule 1 Fairness - The State and all agencies must conduct themselves as model litigants in the conduct of all litigation by adhering to the following principles of fairness: acting consistently in the handling of claims and litigation, endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, where it is not possible to avoid litigation, keeping the costs of litigation to a minimum not contesting matters which it accepts as correct.
- The Valuer-General contended that the model litigant is not required to adopt the same position in litigation regardless of what contentions the model litigant faces and further, that the model litigant, like the Court, is bound by the LVA and is also limited by the evidence of appropriately qualified experts who must be true to their oaths.

The Court noted:

- The actions of the VG in adopting a different analysed value for 304 George Street in the current case to that adopted in the *Brisbane Square* were troubling, more so, when the position adopted by the VG in *Brisbane Square for* 304 George Street was for a sum identical to the issued valuation for 304 George Street for 1 October 2013.
- ……the Crown has an overriding responsibility to act fairly in issuing and defending valuations, which extends to the Crown analysing the same sale in different cases for valuation purposes under the same legislation (being the LVA) in the same way.
- The Court was not prepared to hold the Valuer-General to the concession re the analysis of the 304 George Street sale in *Brisbane Square appeal,* GPT contended for a form of issue estoppel.
- The Court was satisfied that there was, in effect, a finding by President Kingham as to the analysed value of the 304 George Street sale in the sum of $61,500,000 and although not bound by the decision, was informed by it and may take it into account.
- Further noted that the site valuation made by the Valuer-General for 304 George Street as at 1 October 2013 is in the sum of $61,500,000 and was informed by that statutory site valuation.

ISSUE 5 – SITE PENALTY ISSUE - should be a 10% deduction to the site value of 123 Eagle Street because site conditions on the subject made it more expensive to develop? It was common ground between the valuers that a separate 5% allowance should be made for flooding impacts.

GPT contended that the site conditions on the subject site are plainly more difficult than the conditions on the comparable sites, particularly 304 George Street. GPT's valuer proposed a site penalty of 10%.

The VG Valuer made no deduction on the basis of site penalties.

The 10% discount adopted by GPT's valuer was attributable to the following factors GPT's valuer is as follows:

- The utility of the existing improvements, if deemed to be site improvements and how they assist or hinder the development of the land;
- The nature of the soil conditions of the subject land;

- The presence of acid sulphate soil;
- The presence of flooding;
- The groundwater table;
- The need to excavate rock;
- The requirement of retention systems in developing the land adjacent to the river; and
- The easements burdening the land impacting on construction.

HELD:

Site penalty - the evidence in this area suggests a potential for doubling re specific impacts upon site penalties examples:

- Flooding - an agreed allowance of 5% was already in place. GPT valuer's evidence re the distinction for an additional allowance as a site penalty is unsatisfactory. This is a classic case of doubling up and the site penalty allowance of 10% must be rejected.
- Rock Excavation - this factor was relied upon by GPT's valuer in support of a 10% allowance however the expert evidence is that rock extraction was a major factor re the development of 304 George Street and would therefore seem to have already been included the comparative analysis and therefore any further allowance would be a doubling up.
- Easements impacting on construction - the comparative sale approach between 304 George Street and the subject has resulted in the application of burdened/unburdened rates to the 304 George Street sale and therefore a further allowance for easements as a site penalty for 123 Eagle Street would doubling up.

CONCLUSION:

123 Eagle Street involves greater engineering challenges than 304 George Street, some of which have been taken into account, while others have not.

As already pointed out, as a matter of legal principle, it is considered that that the better approach is to include all such issues as part of a comparable sales approach wherever possible. This avoids the dangers of doubling up, however, that there may be cases where that is either difficult or not appropriate.

Doing the best that it can on the evidence and having regard to the findings of fact the Court considers a site penalty of 5% appropriate.

5. ISPT Pty Ltd v Valuer-General; ISPT Custodians Pty Ltd v Valuer-General [2018] QLC 6

BACKGROUND:

The decision concerns two appeals, the first LVA023-17in respect of land located at 345 Queen Street Brisbane having an area of 2,979 m^2 and an issued value as at 1-10-2015 of $49, 500,000, the second, LVA025-17 concerns land located at 100 Creek Street Brisbane with an area of 1,722 m^2 and an issued value of $ 28 000 000 as at 1-10-2015.

ISSUE 1 - Is an adjustment required for student accommodation "infrastructure concession" in an analysis of 97 Elisabeth Street and 38 Wharf Street?

HELD: It was clarified in cross-examination that that calculation seemed to have been done by a town planner not a valuer, although the identity of that person was never revealed to the Court nor was the basis for the figure. It is difficult to see how any proper weight can be given to figures of such magnitude when no proper explanation for their generation has been given to the Court. Accordingly, no adjustment should be allowed for the student accommodation infrastructure concession in the way in which Mr Jackson contends it should. The proposition advanced the respondent's valuation expert that the infrastructure concession may have been something which was influential upon the purchaser but not relevant to the vendor is accepted.

ISSUE 2 - In a proper analysis of the sale of 55 Elizabeth Street is an adjustment required for the Development Approval or the prospective tenancy of the ATO?

HELD: the appellant's valuation expert observed that there was no particular science behind the 5% adjustment. He considered was the minimum allowance that one could make to reflect the benefits that the purchaser obtained. This observation is entirely unhelpful and on the basis of this evidence the Court is unwilling to make any adjustment to the sale if weight were to be placed upon it.

ISSUE 3 - Is an adjustment required for existing excavation or holding costs in any proper analysis of the sale of 304 George Street?

HELD: The appellant's valuation expert does not give the sale particular weight. The respondent's valuation expert conceded an analysed price of $61,500,000 in *Brisbane Square*, which at a rate per m^2 rate of $7, 793 is not altogether different from the $7,767 m^2 value developed by Mr Jackson. In the *Suncorp* decision, the Court accepted Mr Jackson's analysis of the rate per m^2 in preference to the analysis of Mr Hart, as it included a proper allowance for the excavation, and as there was no delay, the holding costs allowed were not required. In any event, the sale occurred more than two years prior to the date of valuation and that effluxion of time is relevant notwithstanding the dearth of comparable sales. The Court is satisfied that the 304 George Street sale is of limited utility to the valuation exercise necessary to resolve this appeal.

ISSUE 4 - are the sales are properly compared with the appeal properties in order to arrive at their valuation?

HELD:

1. The Court accepts the following submissions on behalf of the appellant:

a. The 2014 sales at 443 Queen Street, 240 Margaret Street and 30 Albert Street are sales in a different market for a different use and are of limited comparability.

b. The appellants valuation evidence that they were sales into the peak of the residential market and that this market no longer existed at the same level at the date of valuation is accepted.

c. It is particularly curious that the Valuer-General can maintain a position that the same five sales that supported the valuation when the subject sites were considered to have a residential highest and best use can support the same valuation despite the change to highest and best use to commercial.

2. The sale in February 2011 of 55 Elizabeth Street is at a time so distant, and the formation of the contract at an even more distant time, to preclude any substantial reliance upon it. There is insufficient evidence to satisfy the Court that the market deteriorated between that time and the date of valuation.

3. The three 2015 sales were predominately for student accommodation, a quite different use and not in any way similar to the subject sites. Further, these sales were not in that part of the CBD colloquially referred to as the 'golden triangle'.

4. The appellant's valuation expert applied a premium for the 2015 sales to achieve a figure of \$13,500 m^2 in for 100 Creek Street land, and a figure of \$14,500 $m^{2\ for}$ 345 Queen Street land.

5. The respondents valuation expert concluded that the land in each appeal should sit above the analysed rate for the three 2015 sales due to their superior location and surrounding development, size, shape and dimensions, street address, frontage and topography, and in the case of 100 Creek Street it's light and air easement and opined that 100 Creek Street should be analysed at \$18,500 m^2 and 345 Queen Street at \$19,000 m^2.

6. Although the appellant has succeeded with respect to appeal grounds 1, 2, and 7, the appellant has failed to satisfy the Court that the valuation attaching to each of the lots is incorrect, having regard to the agreed highest and best use for commercial development. In all of the circumstances the approach of the respondent's valuation expert is preferred, and the Court finds that the appellant has failed to discharge the onus of proof placed upon it by section 169 of the LVA

6. Eastcote Pty Ltd as Tte v Valuer-General [2018] QLC 11

BACKGROUND:

The respondent assessed the site value the subject land at $7,400,000 as at 1 October 2015 pursuant to the *Land Valuation Act* 2010. The owner Eastcote Pty Ltd appealed to the Land Court contending for a valuation of $6,700,000. At the hearing, the Court was informed that a maintenance valuation had been issued by the respondent for $9,200,000 as at that date. As the appellant contended a value of $7,100,000 and the respondent's valuer a value of $10,300,000 there was no support for the issued valuation of $ 7,400,000 from either party.

ISSUES:

1. Can the Court accept the respondent's contended site value of $ 9 200 000 as appropriate, given the respondents valuation expert stated a site value of $ 10 300 000 in the Joint Expert Report?
2. How should the Court approach the evidence of the respondents' valuation expert given that he was warned four times for advocacy and arguing?
3. How should the Court approach the evidence of the appellant's valuation expert given that he was warned three times for being unresponsive and argumentative?
4. As the respondent did not support the valuation appealed $7,400,000 could the dispute be limited the appellants newly contended amount of $7,100,000, or the respondents assessed $9,200,000?
5. What valuation approach should be adopted?
6. How should the Court approach in the expert evidence given the lack of independence of the valuers?
7. Has the appellant proved its case?

HELD:

1. The respondent's site valuation of $9,200,000 is not justified by its valuation expert. The Court could not correctly make a valuation determination of $9,200,000 on the basis of a valuation of $10,300,000, as $1,100,000 has been removed without proper explanation.
2. The Court is careful to avoid disadvantage to a litigant because of the qualities of a witness. The evidence must be judged, not the person delivering it. It is also the case that an expert witness should provide independent assistance to the Court and should never assume the role of advocate.
3. The Court is not an investigative body and must rely on the evidence which the parties choose to put before it to "correctly make the valuation" under the LVA.
4. The respondent's valuation expert was argumentative and partisan and did not qualify as an independent expert whose opinion the Court could place any reliance upon. No opinion of the respondent's valuer or fact referred to in arriving at a valuation of $10,300,000 is able to be relied upon to support either the appellant's or the respondent's case. Accordingly, it is unnecessary to analyse the sales of the respondent's valuation expert in coming to his opinion.
5. The Court is not much assisted by appellant's valuation expert's opinions as he lacked the necessary quality of independence. His evidence will be scrutinised with great care as it cannot be treated as the evidence of an independent expert. The Court will endeavour to find assistance in the parts of his evidence which are predominantly factual.
6. The Court could not allow the appeal by simply accepting the evidence of one party or the other i.e. if the Court did not accept either body of evidence, it ought to dismiss the appeal, leaving the valuation of $7,400,000 in place. The valuation will remain in place unless the appellant proves its case is the correct proposition

7. Both valuers agreed that the direct comparison of the land with sales on a dollar rate per m^2 is the appropriate methodology for valuation. As required by the Act, it was assumed that all non-site improvements had not been made.
8. The respondent's valuer cannot be regarded as an independent expert and therefore qualified to provide an opinion, there is no competing opinion to that of the appellant's valuer with its accompanying credit issues. The adjustments made by the appellant's valuer to the comparable sales are clearly explained, acceptably comparable, and provide a valid and useful basis of comparison. The Court accept the use of these sales and the validity of the valuation conclusions, which remain sustainable when the evidence is scrutinised upon the basis of the restriction which the Court has found it necessary to place on accepting that evidence i.e. minimising reliance on opinion as far as possible and focusing on the facts disclosed.
9. The valuation appealed against is not supported by either party and is disavowed by the respondent. If the appellant fails to prove its case, this valuation would remain. In the very unsatisfactory situation which the parties have created, it is open to the Court to accept the appellants valuation expert, on the limited basis as explained, as sufficiently supporting the conclusion which he has ultimately drawn, namely that the valuation should be correctly made at $7,100,000.

7. Drivas Lakes Pty Ltd v Valuer-General [2018] QLC 31

BACKGROUND

This decision concerns applications by both the appellant and respondent in relation to further discovery in anticipation of the hearing of an appeal pursuant to s 155 of the *Land Valuation Act* 2010 (the LVA) against the site value of land owned by the appellant.

OBSERVATIONS

"The Land Court has recourse to the UCPR to the extent our procedure is not otherwise prescribed by the Land Court Act or Rules. Other provisions are also relevant and may guide the Court in exercising its powers under those Rules. Firstly, section 7(b) of the Land Court Act 2000 7(b) and the requirement to:

> *...act according to equity, good conscience and the substantial merits of the case without regard to legal technicalities and forms or the practice of other courts.*

Secondly, the LVA provides a starting point that parties will bear their own costs and identifies circumstances in which the Court may make orders as to costs against the party. Some of the correspondence between the Valuer-General and some representatives in these matters, a recourse to self-serving letters which misstates the situation or attempt to colour how the Court will approach such matters. Now, that is a general observation. It is not confined to this particular case although there are examples in this case, and one is the letter that is exhibit 1. Now, I do not want it to be thought that I am pointing the finger only at the Valuer-General, the same can be said of the appellant and an example in this case, is the letter from the former representative of the appellant which misstated there were no further documents to disclose. Since then, the Valuer-General filed an application and there was further limited disclosure, some of which, the appellant contests, is actually relevant – strictly relevant or disclosable.

It is hoped that, if there are further disputes between the parties about disclosure in this matter relating to infrastructure charges or anything else, that there will be more active cooperation between the practitioners in trying to identify and deal with those documents rather than waste this Court's time and your client's money with these sorts of applications."

HELD:

1. The Valuer-General's application is dismissed on the basis that Counsel properly conceded that if he had received the affidavit of Mr Drivas before today, he would not have pursued the application today. The application was brought in circumstances where the Valuer-General had some cause for believing there would be further documents. However, the cost order sought relates to the hearing today, not to the cost of preparing and filing that application. The appellant was not required to file a rule 223 affidavit by my order from the 30th of August, I think, but was required to respond to the substance of the application and I consider Mr Lonergan's affidavit did do that. The reading of Mr Lonergan's affidavit by counsel for the appellant is somewhat generous, particularly regarding the due diligence aspect.

It is a reasonable inference from the other matters that he deposed to that he was addressing due diligence even though he did not explicitly say so and that matter could have been put beyond doubt by conversation between the practitioners. Instead, a letter was sent on a misstatement of the effect my order. Although Mr Drivas' affidavit does include some further disclosure, I accept there is some doubt that it fits the disclosure test of direct relevance to the matter in issue, or at least some of it. In those circumstances, I consider the proper approach is to make no order for costs on that application.

2. The appellant seeks orders regarding a number of categories of documents, I was directed to only one category, I presume because the appellant does not pursue the application in relation to any of the other categories. I could not find anything to support an application in relation to the other categories of documents and it did smack somewhat of a sword being used in defence. It is somewhat ironic, though, that the application is based on documents that came to light as a result of the Valuer-General's application.

   That email exchange does refer to a number of properties, but it seems to be conceded that one of the properties would be the subject property. It seemed to me that it was accepted that one of the Yarrabilba properties was this property and I am allowing the application on that basis only. As to the balance of the application there is no justification in either the material or the submissions for making an order on those categories. And the appellant did not provide proper notice under the Rules.

3. The Court will make an order on the appellant's application in terms of paragraphs (1)(a) and (2) only and I will make no order as to costs because of non-compliance. No order was sought by the appellant's counsel because the time requirement had not been complied with.

8. Cidneo Pty Ltd v C/ E, Dept of Transport and Main Roads (No 2) [2018] QLAC 5

Background

On 22 February 2008 just over 8 hectares of 100 hectares of Cidneo's land near the intersection of the Ipswich Motorway and the Centenary Highway was resumed by DTMR. The matter was initially heard by the Land Court in November 2011, with judgment being delivered in July 2013.

Cidneo appealed that judgment to the Land Appeal Court and DTMR cross appealed. The Land Appeal Court judgment (6 June 2014) was to allow the appeal and to dismiss the cross-appeal. The Land Appeal Court remitted the matter to the Land Court for the determination of compensation.

DTMR took its cross-appeal to the Court of Appeal. On 5 June 2015, the Court of Appeal allowed the cross-appeal in part and remitted that subject matter to the Land Court for determination of compensation. The remitted hearing in the Land Court took place in February 2016. In a judgment dated 24 August 2017 compensation was ordered in almost the same as initially ordered in July 2013.

Cidneo now asks the Land Appeal Court to correctly determine the amount of compensation.

Ground 1. Did the Land Court (remitted hearing) err in failing to take into account actual time taken to negotiate the Transport Infrastructure Contribution TIC?

HELD:

1. It is inappropriate to use the 24 month period between the lodging of the development application and Cidneo's agreement with DTMR Department on the amount of TIC in the way Cidneo's valuer has in his cashflows. There were not active negotiations for all that period and there was no imperative for Cidneo to resolve that matter quickly, as there would have been for the hypothetical developer assumed by the valuer's cashflow i.e. a developer ready to proceed with construction, incurring holding costs, but had not agreed a TIC.

2. Another reason to use what the experts considered a reasonable time rather than the actual time taken to agree was the evidence that negotiations between Cidneo and DTMR were unreasonably long and acrimonious. The valuers were performing a hypothetical exercise to fix a fair compensation and, in these circumstances, it is fairer to use a reasonable time, rather than an unusually protracted time.

3. There is no evidence that negotiations were actively carried on for the whole 24 months and no evidence that the passage of time had a causal effect on the TIC being agreed. To the contrary, the TIC seems to have been agreed upon in a commercial amount, at a time which suited the parties in the context of Cidneo's wider, and on-going, litigation in the Planning and Environment Court.

4. The 12 months preconstruction period assumed in the after cashflow by DTMR's valuer is preferable to the period assumed Cidneo's valuer. This period was supported by the civil engineers on both sides, Mr Beard and Cidneo's town planner, Mr Cumming and was the period preferred by the Land Court Member on the remitted hearing.

Ground 2. Did the Land Court (remitted hearing) err in preferring DTMR's evidence as to the timing of construction of Stage 3?

HELD:

1. This Court has come to the same conclusion as the Land Court and prefers DTMR's evidence as to the timing of construction of Stage 3?

2. The evidence of the valuation expert of DTMR is preferred as to the timing of the construction of Stage 3. The lack of independence of the director of Cidneo and his lack of expertise as a valuer to properly assess market conditions requires that his evidence be given less weight than that of the valuation expert of DTMR.

3. Fundamentally, this question is one which turns on an assessment of the market as at the time of valuation. Further, for reasons explained the evidence of the valuation expert of DTMR is preferred to Cidneo's valuation expert. Cidneo's valuer says that the market in February 2008 was buoyant, however his timing of the construction of Stage 3 does not reflect this.

4. The matters which canvassed above [64]-[70], [80]-[86] and [93] re his lack of independence from his client, further incline the Court to accept the evidence of the valuation expert of DTMR.

9. Valuer-General v Suncorp Metway Insurance Pty Ltd (No 2)[2018] QLAC 8

BACKGROUND

This is an appeal by the Valuer-General against a decision of the Land Court regarding a 2015 maintenance valuation pursuant to the *Land Valuation Act 2010 (Qld)* (*LVA*) by Valuer-General.

Suncorp held no freehold land but had three leases from the Commissioner of Railways of areas above the Brisbane Central Railway Station. Two of the three leases were registered in 1986: J11951 and J11952. The third was registered in 2004: 707974408. The third lease was over relatively minor areas, such as stairwells. The 1986 leases were of areas mainly occupied by the Sofitel hotel. The two 1986 leases were of part of, but not all of, the land contained in Vol 4385, Folio 53 and Vol 3332, Folio 45.

In February 2007 the description of the land in Vol 4385, Folio 53 and Vol 3332, Folio 45 changed. Volumetric Lot 2 on Survey Plan 140773 was created, essentially in the shape of the hotel built above the railway station. Most of the land leased by Suncorp fell within volumetric Lot 2, but some fell within Lot 6 on Survey Plan 140772 and some fell within Lot 11 on Survey Plan 165989.

A property identification number ID 41108706 was assigned to volumetric Lot 2, which belonged to Q-Rail. A separate property identification number, ID 1284749, was assigned to Suncorp, at the latest in 1996 i.e. before volumetric Lot 2 was created, and before Suncorp took lease 707974408.

The particulars of the subject land against which Suncorp appealed were stated as Property ID 1284749, described as Lot 2 on SP 140773, County of Stanley, Parish of Brisbane with an area of 7,432 m^2.

On 4 April 2017 the respondent's solicitor wrote to the appellant's solicitor advising that pursuant to s.163 of the *LVA*, the valuation was reduced to $34,500,000 and that the property in question, Property ID 1284749 as "the land the subject of leases numbered J1195, J11952 and 7070674408" (J1195 should have been J11951). It was urged by the respondent that s 163 of the *LVA* by referring to the land the subject of the leases, had the effect of defining what was valued and therefore the subject of the appeal.

The Valuer-General changed the real property description and area for ID 1284749 in QVAS to accord with this in or around April 2017 and contended that the real property description which had appeared on QVAS, and on the 2015 notice of valuation, were errors.

ISSUE: Were the three leases held by Suncorp together or separately a lot or a parcel as defined by the Schedule to the LVA?

HELD: Suncorp's three leases were not lots of land, nor were any of the three leases a parcel of land within the meaning of the LVA.

Leases J11951 and J11952 and related Plans 205710 and 205711 were registered, on the same day. The plans showed surveyed representations of the areas to be leased and show very detailed "separate and distinct" areas of land which were the subject of the two leases. However, the registered plans did not create any land within the definition of a "lot" in the *Land Title Act*, they simply identified the land which was leased. Although the two leases might have created leasehold estates, they did not create land, for these reasons, Suncorp's three leases were not lots of land.

The area of the three leases have never been declared to be a declared parcel. It might be thought that s 53(3)(b) and s 53(4) of the LVA prevent the Valuer-General declaring the three leased areas held by Suncorp Metway Insurance are a parcel: QRail owns the land in fee simple. For these reasons none of the three leases are parcels of land within the meaning of the LVA and were therefore not land to be valued under the LVA.

ISSUE: Was that the subject matter of the 2015 maintenance valuation, and thus the subject matter of the dispute in the Land Court the area of the three leases held by Suncorp?

HELD: This Court is not prepared to conclude that the subject of the 2015 maintenance valuation was the area of three leases granted to Suncorp. It is no more certain that the subject of the maintenance valuation was volumetric Lot 2, although that is what the valuation notice said; subparagraph (a) (i) of the definition of land in the LVA is not read as a deeming provision. The subject matter of the 2015 maintenance valuation is simply uncertain on the evidence before this Court. If the subject of the 2015 maintenance valuation was indeed the area of the three leases held by Suncorp then the valuation notice was invalid, as explained, the Valuer-General could not value this area of real property because it was not land as defined.

ISSUE: Was the Land Court was wrong to continue to hear and determine the appeal below once the uncertainty as to the subject matter of the maintenance valuation became apparent?

HELD: The Land Court was wrong to continue to hear and determine the appeal below once the uncertainty as to the subject matter of the maintenance valuation became apparent. On the evidence there was not any sound basis to decide that the subject matter of the 2015 maintenance valuation was volumetric Lot 2. But even if the Land Court was correct to find that the subject matter of the notice was volumetric Lot 2, the proceeding should not have continued in circumstances where the Valuer-General did not seek to contend for a value of volumetric Lot 2, and Suncorp was not an owner or lessee of volumetric Lot 2.

OBSERVATION by the Land Appeal Court:

No doubt it is necessary for the Valuer-General to maintain a roll of properties and to maintain a system which allows the issuing of valuations which are able to be used for the statutory purposes set out at s 6 of the LVA. However, it seems to me that the Valuer-General, in this argument, places too much emphasis on its system, and pays too little heed to the provisions of the Act. The LVA does not know any concept of "rating valuation" or "land tax valuation". The Act is not concerned with property identification numbers. The Act requires that land, as defined, be valued. While it might be convenient for rating purposes for the Valuer-General to value the area of the three leases held by Suncorp, it did not have legal power to do so, as discussed above. Furthermore, the Valuer-General did not produce any clear evidence that it has ever in fact valued the area of the three leases, either in the past, or in issuing its 2015 maintenance valuation.

10. McVicker & Anor v Valuer General [2018] QLC 4

BACKGROUND: The respondent determined the site value of the subject land to be $335,000 as at 1 October 2016. The appellant's have appealed this decision contending an estimate of $234,450 on the grounds that the respondent has not used comparable sales or properly allowed for the constraints on the land. This contended estimate was arrived at by comparing one "*recent sale*" to the subject land and then applying adjustments to reflect the "*comparative effect*" on the value of the subject land of the differences between the qualities/attributes of that one sale and the subject land.

ISSUE: what orders should the Court make?

ORDERS:

1. The appeal is allowed
2. The site valuation of Lot 2 on Survey Plan 176476 as at 1 October 2016 is reduced to Three Hundred and Twenty-five Thousand Dollars ($325,000) to correctly make the valuation under the *Land Valuation Act 2010*The respondent's valuation report addressed the site value of the subject property at the relevant date and other matters including town planning constraints re vegetation management and matters of environmental significance including high and medium bushfire hazard areas; an impact buffer bushfire hazard area and a > 15% slope hazard area.

The respondent's valuation notes that the subject land is zoned Rural Residential – Park Living. It is not in dispute that the highest and best use of the subject land is for a "Rural Home Site", which is consistent with the zoning. The valuation report also addresses attributes such as shape, topography, frontage, location, encumbrances/access easement, surrounding development, services (no town water/sewerage) and nature of street e.g. bitumen no kerb and channel and subject to access (not land) flooding.

The respondent's valuer chose four sales and upon realising there was a structure on Sale 4 that had not been allowed for, corrected his report to reduce the analysed sale price of sale 4 to $300,000; a $20,000 reduction. As a result, the range of values for the subject are altered from between $320,000 to $350,000, to between $300,000 and $350,000. The respondent's valuer accordingly re-estimated the value of the subject land to be $325,000.

ISSUE: is the approach undertaken the appellants able to be adopted by the Court?

HELD: There are difficulties with the appellant's approach. Firstly, it is a sample of one, there are no other sales provided by the appellants. Secondly, a very large total net allowance of minus $65,500 has been made to arrive at a value. The estimates have been made by a layman in the expert field of valuation. Exactly how the allowances were quantified is not shown to have a supportable basis e.g. it was not explained how the market would demonstrate the accuracy of this estimate.

The net allowance is so large, and subject to such uncertainty, that it cannot be said that the actual sale is being relied on at all. There are no workings to substantiate the justification of the allowances. This approach is a theoretical construct of estimated value guessed at by the appellants. The Court is unable to accept that the valuation methodology applied by the appellants has been shown to be reliable. The same may be said of all of the allowances made by the appellants in relation to the comparisons made between the subject land.

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The best test of value is to be found in comparable sales. What is relied upon by the appellant does not, when such allowances are made, amount to making a comparison to a sale. It is a work of theory.

ISSUE: How should the Court address the respondent's case?

HELD: The Court has considered all of the evidence which the parties have chosen to put before it. The appellants did not establish any reliable basis for a valuation of $234,450 either in their own case or when the respondent's evidence was also taken into account.

There is only one body of expert evidence, that called by the respondent. The respondent's valuer has acknowledged and corrected a significant error of fact in his original valuation. When the evidence called on behalf of the respondent is taken into account, the appellants have discharged their onus of proof under s 169(3) since the evidence does show that the respondent's use of comparable sales was not correct; a deficiency remedied in Court.