Land Court-Legal Update-Case Summaries

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Hydrox Nominees Pty Ltd v Valuer-General [2016] QLC 56

Background-concerns an appeal pursuant to s 155 of the *Land Valuation Act 2010* (the LVA) against an issued site value of $15,000,000 as at 1 October 2014 of land located in Mackay. Hydrox P/L contended for a site valuation of $8,150,000.

The appellant brought an interlocutory application to the Court seeking leave to file an amended notice of appeal to include the following ground:

> *'Further, or in the alternative, the value of the land for the purposes of the Land Valuation Act 2010 is its unimproved value, rather than its site value.'*

The appellant contended that the amendment was possible by virtue of a combination of r 4 of the *Land Court Rules 2000* (the LCR) and r 357 of the *Uniform Civil Procedure Rules 1999* (the UCPR) and that this position was supported by the Land Appeal Court's decision in *Dawson v Department of Natural Resources and Mines* (2002-03) 24 QLCR 70 (*Dawson*). *Dawson* concerned an appeal under the *Water Resources Act 1989* (the WRA), s 51(5) of the WRA provided:

> *'The notice of appeal must state the grounds upon which the appellant intends to rely and the appellant is not entitled to raise on the appeal a ground not stated in the notice.' (emphasis added)*

The respondent submitted that s 169(1) of the LVA is clear and unambiguous and the hearing **'must be limited to the grounds in the valuation appeal notice'** and the Court's procedural powers did not permit s 169(1) of the LVA to be interpreted to allow the stated grounds to be amended. This position was confirmed by the Land Appeal Court's decision in *Franklin v Valuer-General* (1978) 5 QLCR 181 (*Franklin*) which concerned s 21(3) of the *Valuation of Land Act 1944* (the VLA) (a similar provision to s 169(1) of the LVA) and also the Land Appeal Court's decision in *Pratt v Valuer-General* (1981-82) 8 QLCR 145 (*Pratt*) and by the Land Court re s 169(1) of the LVA in *Finlayson v Valuer-General* [2013] QLC 23.

Issue: Could the notice of appeal be amended, given s 169(1) of the LVA provides:

> 'The hearing must be limited to the grounds stated in the valuation appeal notice.'

The Land Court held:

1. The clear and unambiguous words of s 169(1) of the LVA do not require any reference to other material either to find their meaning or to confirm their meaning. The Court has no power to allow the notice of appeal to be amended in this case.
2. In *Dawson*, the Land Appeal Court, when interpreting s 51(5) of the WRA, concluded that at the hearing the appellant could not go beyond the grounds of appeal but that this did not preclude the notice of appeal being amended before then.
3. In the present case, s 169(1) of the LVA is briefer than the earlier s 21(3) of the VLA. In both cases however, the reference is to the same thing; then the notice of appeal and now, the valuation appeal notice. s 169(1) directs that the hearing **'must'** be limited to the grounds stated in the valuation appeal notice and is not different in substance and effect to the earlier s 21(3) of the VLA. Therefore, s 169(1) quite different to s 51(5) of the WRA which only restricted what could be raised for the first time at the hearing of the appeal and did not control what might occur before then. **The decision in *Dawson* is not relevant for present purposes and this Court is bound by the decisions in *Franklin* and *Pratt*.**

Mau & Anor v Valuer-General [2016] QLC 58

Background- concerns an appeal pursuant to s 155 of the *Land Valuation Act 2010* (LVA) against the site value of land located in Runcorn (BCC).

The self-represented appellants adopted a novel approach to the assessment of the site value of their land that was not supported by valuation evidence and involved allocating points to each sale based on attributes such as distance from the city, proximity to transport, risk of flooding, proximity to highways and shape. The points were then applied to the land area to determine the site value. The approach was then applied by the appellants to the subject property who then arrived at an estimated a site value of $322,000.

The valuer-general relied on the evidence of a valuer who applied a direct comparison approach to determine the site value of the subject land at $370,000 at 1 October 2014.

The issues before the Land Court were:

1. Did the appellants prove the grounds of appeal to the valuation decision?
2. Could the appellants' novel valuation method be applied?

The Land Court held:

1. Market value of land is to be determined using s 18 of the LVA which codifies the test from *Spencer v The Commonwealth* (1907) 5 CLR 418.
2. The onus of proof is on the appellants to prove each of the grounds of appeal. The standard of proof in land valuation appeals is the balance of probabilities. *Meiers v Valuer-General* [2012] QLC 19 applied.
3. To succeed on relativity, an appellant must prove that other, nearby blocks have the correct valuation and that the appeal block has the incorrect valuation. *Burnett v Department of Natural Resources and Water* [2010] QLC 57 applied.
4. The correct basis to value a residential lot is not the application of a rate per square metre but an assessment of unimproved value of each lot as land used for single unit residential purposes. *Grahn v Valuer-General* (1992-93) 14 QLCR 327 applied
5. The appellants' points system essentially sets out the factors of comparison when comparing subject and sales properties. The failing is in the provision of arbitrary scores, based on no evidence and no mathematical justification, to the points allocated to each category. The approach is subjective and wrong. The principles of valuation are not apt to be determined by a random mathematical formula which could apply equally across all properties in a diverse state such as Queensland.
6. A valuation method must be based on evidence and mathematical justification, and not the assignment of arbitrary scores. A valuation case is a matter of expert opinion evidence, not an application of a scientific or mathematical formula.
7. The appellants have failed to establish on the balance of probabilities that the respondent's valuation was incorrect. The appeal is dismissed.

Brisbane Square Pty Ltd v Valuer-General [2016] QLC 69

Background- appeal concerns the site value of land bounded by North Quay and Queen, George and Adelaide Streets. A sale at 304 George St for $63,000,000 in May 2013 was considered the most influential sale for assessing the site value of Brisbane Square as it comprised an adjacent CBD block of comparable size with four street frontages.

The City Centre Neighbourhood Plan 2000 (Performance Criteria P27) provided that *'in appropriate locations, additional public open space is provided at ground level, as a logical extension of the adjoining public domain.'*

Brisbane Square contended that planning risk distinguished the subject block and 304 George St i.e. the risk arose from the possibility of an owner being required to provide public open space comparable to Reddacliff Place in a future development of the site.

Issue: if and how such risk might affect a hypothetical prudent purchaser's opinion about the value of the site.

Brisbane Square contended that the site should be valued on the assumption that it is probable the risk would be realised, and on that basis, the adjoining sale of 304 George Street is a more attractive and more valuable property than Brisbane Square.

The Valuer-General made no allowance for the risk and made no distinction between the two blocks to account for the contended planning risk. Underlying their respective positions re planning risk were disputes about the town planning advice the hypothetical purchaser would receive and the information a town planner could consider in providing advising such a purchaser.

The issues before the Land Court were:

1. What information can the hypothetical purchaser consider? DA/Lease ?
2. What advice might the hypothetical purchaser receive about planning risk?
3. What impact would that advice have on their assessment of site value?
4. Does the valuation reflect the legal constraints on the land per appeal ground #2?
5. Is the valuation supported by the sale of 304 George Street?(appeal ground #1)
6. How should the site value of 304 George Street be applied to Brisbane Square so as to account for the planning risk related to a public open space requirement?
7. What area of burdened land should be adopted?
8. How should the degree of certainty associated with any public open space requirement be approached when determining the site value of the subject property?

The Land Court held:

1. The Development Approval (DA) is a source of relevant information re the planning context, and in determining site value the Court will consider the DA in a limited sense, i.e. it is something the town planners may consider when advising on planning risk. The Lease of Reddacliff Place; this issue only arises because the lessee is also the planning authority. It is an unattractive argument that whether a lease may be considered depends on the identity of the lessee, as this leaves open a different approach to similar parcels of land and consequently runs the risk of anomalous results. The Court will not consider the lease.

2. In the framework of applicable planning instruments, given the continuity of public open space on site and the DA itself, a hypothetical prudent purchaser would be advised that it would be highly probable that the BCC would seek a commitment of equivalent public open space. The history and level of use of the generous space on this site signals high public interest in its future development. A hypothetical prudent purchaser would assume the BCC would be sensitive to any reduction to the area of public space. Further at the date of valuation, a hypothetical prudent purchaser would be advised they would have to respond to P27 in developing the site.

   It is not as simple as arguing that P27 could be satisfied by a smaller and different configuration of public space and, as a Code compliant development, the Council would have to approve it. Ultimately, if the developer did not propose an area of public open space that satisfied the Council, the Council could either impose a condition or refuse the application.

   A condition involving as much as 30% of the site is not required by the development so would have to be relevant to, but not an unreasonable imposition on it. There is a broad discretion to impose lawful conditions and any challenge to the condition would involve an examination of all relevant factors. A prudent purchaser would be advised they would have reasonable prospects of succeeding in securing a DA with a smaller area of public space and a different configuration to Reddacliff Place.

3. In assessing the site value of Brisbane Square, both valuers considered the critical issues were how to analyse the sale of 304 George Street and how to deal with the possibility of a requirement to provide 30% of the site as public open space. After the sale, the Valuer-General assessed the site value of 304 George Street at $61,500,000. During evidence Mr Hart agreed that was a sound assessment. Given that evidence, the Valuer-General conceded that the assessed site value of 304 George Street should be used in valuing Brisbane Square. Incidentally, the assessed site value and Mr Gasiewski's adjusted sale price are the same: $61,500,000.

4. Ground 2 is not made out as the Court is not satisfied that Brisbane Square should be valued as if the land is legally constrained by either the DA or the City Plan.

5. The owner has established that the Valuer-General has not accounted for the different planning risk related to Brisbane Square, either in considering the sale of 304 George St and in arriving at the valuation for that site, therefore grounds (1) and (8) of appeal are made out.

6. If effect is given to the Valuer-General's concession that $61,500,000 should be the starting point, the rate per m2 should be $7,793. Applying that to Brisbane Square as an overall rate, the site value on the Valuer-General's reasoning would $57,153,862 It stands to reason that if a purchaser would prefer not to have a public open space requirement of that order on a site, the potential imposition of such a requirement must have some negative impact on their assessment of the site value.

7. As the case was conducted by Brisbane Square with emphasis on the town planning opinion that a lesser area of 25% might be reasonable and the town planning and valuation experts were questioned on that assumption, the Court will adjust the calculations of Brisbane Square's to reduce the burdened area from 30% to 25%.

8. The possibility that such a public open space requirement could be successfully challenged would affect the hypothetical prudent purchaser's assessment of value and consequently the calculations of Brisbane Square's valuation expert need to be modified to account for the uncertainty of the planning outcome.

9. To account for this, the burdened area will be further reduced to 15%. If the overall site rate for 304 George Street ($7,793) is applied to the entire area of Brisbane Square (7,334m2), the assessed value would be $57,153,862. An assessed value of $50,700,000 applies a discount of almost 9% on the value derived from a comparable site.

10. That is a reasonable discount in the unusual circumstances of this case. A hypothetical prudent purchaser could be expected to negotiate a meaningful discount if advised there is a high probability Council would seek a commitment of public open space similar to Reddacliff Place and that the prospects of successfully challenging such a requirement are not certain.

Macarthur Central **Shopping** *Centre Pty Ltd v Valuer-General (No. 2)* [2016] QLC 80

Background

This decision concerns an appeal by Macarthur Central Shopping Centre Pty Ltd (Macarthur Central) against the Valuer-General's 1 October 2012 valuation of a volumetric lot within Macarthur Chambers, a heritage listed building on the corner of the Queen and Edward Streets, Brisbane.

The subject lot is a rectangular volumetric lot comprising the mezzanine, ground floor and basement levels of Macarthur Chambers. It is serviced by all standard utilities and has a footprint of 1,036 m^2, with a 26.557 m Queen Street frontage and an aggregate frontage of 31.691 m to Edward Street. The subject lot is leased for use as the Brisbane Apple Store.

The Valuer-Generals issued site value was $4,100,000 while Macarthur Central contended that the site value should be $3,100,000 on the following grounds:

1. The valuation is not supported by property sales and is excessive having regard to comparable sales.
2. The valuation does not reflect the physical and legal characteristics of the land and/or the constraints on the use of the land.
3. The valuation does not achieve or preserve uniformity of value between the assessed site value and valuations of comparable parcels of land.

The issues before the Land Court were:

1. Was the liquidation sale at 451-461 Ann Street (relied upon by the appellant) a bona fide sale?
2. Were the sales relied upon by the Valuer-General at 127 Charlotte Street and 105 Margaret Street comparable to the subject property given their location in a government rather than a retail precinct and given that 127 Charlotte Street carried no discernible heritage risk with a development approval (DA) in place?
3. How should the common sale of 55 Elizabeth Street be analysed given that a DA was in place at the date of sale?
4. Should the GFA of the subject lot be calculated utilising plans certified by a registered surveyor which form of the current lease document or by further deduction the area occupied by stairs, a recess doorway and a plant room as standard facilities as defined in the Property Council of Australia Method of Measure for Lettable Area (March 1997)?
5. Does the site value properly reflect the restriction of a future development to the same form as the existing heritage structure given limitations on exposure and connectivity?
6. Does the site value properly reflect the restriction of a future development to the same form as the existing heritage structure given limitations on connectivity? (e.g. connectivity between levels and to the street and adjoining shopping centre)
7. Does the site value reflect the height restriction that arises from the volumetric nature of the lot?
8. Does the valuation achieve or preserve uniformity of value between the assessed site value and valuations of comparable parcels of land?

The Land Court held:

1. 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.

2. Comparability of Sales-There are material points of distinction, but do not preclude their use as comparable sales, if those aspects are accounted for. The Valuer-General accounted for the DA in analysing the sale of 127 Charlotte Street whilst the other distinctions were addressed in the way in which he derived the Land Area (LA) and Gross Floor Area (GFA) rates from those sales. The approach to these sales was orthodox (i.e.127 Charlotte Street and 105 Margaret St).

3. Existing Development Approval-at the time of entering into the option to purchase, when the purchaser knew it had been shortlisted to develop an office building for the ATO. It is reasonable to infer that Grocon's objective in purchasing the property was to carry out the ATO development. The purchaser's DA application must have been well-advanced as the application with the Brisbane City Council was lodged less than three weeks after signing the option. Depending on market conditions, the existing DA had some value as a fall-back development if the tender failed, however, the attribution of $2,127,778 as added value to the purchase price lacks foundation and accordingly the Valuer-General's analysis of the sale is preferred.

4. Floor Area-the areas excluded by the appellant's valuer form part of the total area leased to the current tenant and are areas over which the tenant has exclusive possession. There is no evidence before the Court that these areas provide any service to, have any utility for or are accessible by any other building occupant. Adopting a common sense approach to the definition of "standard facilities", the areas should be included in calculating the Gross Lettable Area-Retail for the sales analysis. The Valuer-General's approach is to be preferred in this regard.

5. Exposure/Connectivity-the Valuer-General's valuer made no allowance in his GFA analysis as he rejected that high windows/limited visual exposure detracted from the value as a retail space. Although the shop front might not suit all retailers, the current tenant, Apple, was one of a group of international retailers opening in the Brisbane CBD from about 2009.

   Although no allowance was made, the Valuer-General did check the rate with reference to three retail sites, two of which were volumetric and two of which had heritage listings. These properties were appropriate points of reference for the limited purpose of checking the issued valuation of the subject lot. However, the relativity and discounting approach adopted by the appellant's valuer involved an unwarranted additional discount to the Valuer-General's GFA rate in respect of the lack of storefront exposure and subdivisional limitations.

6. Heritage Restrictions-on the undisputed information available to the valuers, heritage restrictions would likely not restrict connection as contended by the appellant. A discount for lack of connection could only be applied if it arises from the heritage restrictions, otherwise, the existing improvements must be disregarded for valuation purposes.

   Further, as Macarthur Central is the owner of both the subject lot and the adjoining centre, it is reasonable to assume a vendor will maximise the value of their lot including where it owns an adjoining parcel by facilitating access and connection between the properties to enhance the value of the sale lot. See *Bellbird Park Developments Pty Ltd v Department of Natural Resources and Water* (2009) 30 QLCR 177.

   The Court is satisfied the Valuer-General's valuation allows for the constraints arising from the heritage listing.

7. Volumetric Lot/ Height Restriction-the Valuer-General's valuer discounted his notional land area rate by 66%, after he had already discounted that rate by 15% for its heritage listing. The discount is not supported by market evidence, which is not surprising given the absence of sales of volumetric lots. Although the 66% discount requires a degree of caution, the reasoning is transparent and the method is the same as used in relation to the heritage restriction, a method accepted by the appellant for that purpose.

   Although the Valuer-General was hampered by a lack of market evidence for volumetric sites, the method was orthodox and involved a discount for factors which he could not quantify by reference to market evidence.

   The appellant has not established that it is more likely than not that the valuation does not reflect the physical and legal characteristics and the constraints on use of the land.

8. Relativity-Macarthur Central has failed to establish that the relativity properties are comparable and that their valuations are correct. The Valuer-General used relativity sites to check a valuation already derived from comparable sales analysis, whereas the appellant's valuer used the relativity sites as a fundamental part of fixing the value rather than to check a valuation he had already derived.

   Appeal Dismissed

Caseldan Pty Ltd v Moreton Bay Regional Council [2016] QLAC 1

Background

On 20 July 2012, land owned by Caseldan Pty Ltd (the appellant) at Brendale was resumed by the Moreton Bay Regional Council (the respondent) for recreation ground purposes. At this date, the land was used as a golf course and was zoned for sport and recreation under the Pine Rivers Plan 2006 (the 2006 Plan).

The resumed land has an irregular reverse-C shape. The two parcels of land within the 'C' shape had been approved for development for a hotel and motel (the Comiskey land). The land was surrounded on its other sides by Council-owned land and access roads to areas of urban residential development.

The Land Court in determining the value of the land at $1,800,000 rejected the following three elements of the appellant's argument:

1. That the highest and best use of the land was a mixed use development. The Land Court concluded that town planning approval would be unlikely given the difficulty in access without a loop road.
2. That the land was to be valued by reference to its potential conversion into sporting fields for private clubs or schools. This was rejected as the expert valuer did not take into account the cost of earthworks.
3. That substantial weight should be given to offers to purchase the land between 2005 and 2011, ranging from $3,690,000 to $8,000,000. The Land Court rejected these offers as it did not consider they were genuine.

The issues for the Land Appeal Court were:

1. Did the learned Member **err** in rejecting the appellant's **contended highest and best use of the resumed land for a mixed use development on the basis that the hypothetical prudent purchaser would have considered that the likelihood of obtaining appropriate access for such development was very low, if able to be achieved at all?**
2. Did the learned Member **err** in concluding that **the hypothetical prudent purchaser would have considered that obtaining appropriate access for a mixed use development would be expensive?**
3. Did the learned Member **err** in holding that the respondent **could not be required by the Planning and Environment Court to allow its road to be used for access to the resumed land?**
4. Did the learned Member **err in deciding that in order for approval to be granted it would need to be shown that a particular proposed development, rather than something in the general nature of the Ovenden Plan, was supported by proper grounds?**
5. How would **a potential purchaser have viewed the prospects of an approval being granted for mixed use development on the resumed land ?**
6. Did the learned Member **err in rejecting the claimant's valuation of the land on the basis of an alternative use for sporting fields?**
7. Did the learned Member **err in finding that the three offers relied upon by Caseldan were not genuine?**

The Land Appeal Court held:

1. The evidence supports the view that a hypothetical prudent purchaser of the resumed land would have considered that because of the benefits of a loop road system, there were substantial prospects of obtaining satisfactory access for the proposed development. There is no reason to think that a hypothetical prudent purchaser would have considered that concern about traffic through the South Pine Sporting Complex (SPSC) from the development of the Caseldan land was a matter of great significance.
2. The learned Member erred in holding that the respondent could not be required by the Planning and Environment Court to allow its road to be used for access to the resumed land. *Intrapac Parkridge Pty Ltd v Logan City Council* [2014] QPEC 48 cited.
3. The learned Member erred in attributing to the hypothetical prudent purchaser knowledge that 'the original Comiskey supermarket proposal was unsuccessful due to the absence of an appropriate traffic solution' and that 'Comiskey agreed ultimately to a smaller development rather than agree to a traffic master plan' as such facts were not known at the date of resumption.
4. The better view of the evidence is that a hypothetical purchaser would have considered that, at the date of resumption, that there was a real prospect that Comiskey would agree to access to the resumed land across the Comiskey land, at least as part of a loop road system.
5. The evidence demonstrated that a hypothetical prudent purchaser was likely to appreciate the need for upgrades of the external road system to accommodate development on the resumed land, but this does not support the conclusion that this consideration provided a reason why a hypothetical prudent purchaser would not consider the highest and best use of the land to be for a mixed development.
6. It would not be correct to determine the highest and best use of the resumed land on the basis that planning grounds sufficient to support an approval could not be found for a generalised form of development of the kind shown in the Ovenden plan.
7. Aside from the issue of access, a potential purchaser of the resumed land would have considered that there were good prospects of showing grounds sufficient to justify an approval of a mixed use development notwithstanding conflict with the planning scheme, and would likewise have considered that there were good prospects of getting a development approval for mixed use development of the site.
8. The hypothetical potential purchaser would have recognised that difficulty in obtaining appropriate access was the major obstacle to mixed use development on the resumed land. Such a purchaser, while considering that access might become available as a result of the SPSC, would have recognised that there was a significant risk in achieving access in this fashion; and also a risk that to achieve this access relatively quickly might involve additional cost.
9. Such a purchaser would also have recognised some prospect of achieving an arrangement with Comiskey; or alternatively of reselling the land to Comiskey for an extension of its development. The purchaser would have considered that there were good prospects of carrying out a mixed use development, but subject to the risks referred to.

10. Extensive earthworks would have been required for the development of the land for use as sporting fields. The appellant's valuer valued the land on this basis, but made no attempt to determine the extent of earthworks required, or their cost. Given the extent of the earthworks, that failure casts considerable doubt on a contention that the earthworks could be ignored when comparing the subject with the sale of the Rosalie sports grounds because that land was subject to flooding. The learned Member did not err in rejecting Caseldan's valuation of the land on the basis of this alternative use.
11. A proper conclusion to be reached on the whole of the evidence is that Comiskey genuinely intended on each occasion to purchase the land for the price stated, had any of the offers been accepted. The offers recorded in the unchallenged evidence reflect a genuine interest in purchasing the land at the prices and on the terms stated and are consistent with the fact that Comiskey owned, and was in the course of developing, the adjoining land. These matters should have been considered by the learned Member when determining whether the Comiskey offers were genuine.
12. The learned Member indicated, by reference to *Phillipou & Anor v Housing Commission of Victoria* (1969) 18 LGRA 254 that had he accepted that the Comiskey offers were genuine, he would have accepted the submissions made on behalf of Caseldan that such offers were relevant, and to be taken into account. To that extent, he was correct.

13. Once it is accepted that the offers are relevant in determining the market value of the resumed land, they can at least assist in identifying the lower limit of the market value of the land; and in considering whether the value determined by the learned Member is correct, provide strong grounds for thinking that the value adopted by the learned Member was in error.

Appeal against decision of the Land Court in *Caseldan Pty Ltd v Moreton Bay Regional Council* (2014) 35 QLCR 412; [2014] QLC 53 allowed.

Body Corporate for Bougainvillea Way North CTS v Valuer-General; Body Corporate for Avenue of Palms CTS v Valuer-General [2017] QLC 2

- The appellants appealed against the annual site valuations of two properties within the Mirage Resort development in Port Douglas. The sites were subject to the Mirage Port Douglas Scheme of Integrated Resort Development 1988 (the MPDSIRD). The MPDSIRD is created under the *Integrated Resort Development Act 1987* (the *IDRA).*
- The valuer-general exercised his discretion under s 70(1) (a) of the *Land Valuation Act 2010* (the LVA) to value the sites separately from the rest of the lots comprising the MPDSIRD, including the 'secondary thoroughfare'.
- The appellants argued that the discretion under s 70(1)(a) of the LVA had miscarried as the subject properties should have been valued as a single property including the other lots comprising the MDPSIRD, including a secondary thoroughfare.
- The appellants arguments were based their interpretation of the *Body Corporate and Community Management Act 1997* (the BCCMA) and the *Building Units and Group Titles Act 1980* (the BUGTA).

Valuation Approach

- The *IRDA* requires division of a resort into 'precincts' before final development may occur by way of a Building Unit Plan (BUP) or a Group Title Plan (GTP).
- Pursuant to s 139(1) of the IDRA, the freehold owner (as registered under the *Land Title Act 1994*) of land within the particular precinct is the Principal Body Corporate (PBC).
- The precinct is then developed by further subdivision and subsequent registration of BUPs or GTPs. Section 139(3) of the IDRA provides that the body corporate created by the registration of the BUP or GTP (that is the appellants in this case) is a member of the PBC.
- Thus, the body corporate of each BUP in the current case is the owner. The respondent then has discretion under s 70(1) (a) of the LVA to group lots on a BUP as if each part were a single lot.
- The appellants disagreed with the application of s 70 of the LVA by the valuer-general arguing that s 62 of the BUGTA deems the PBC as the owner (for valuation purposes) of a parcel (meaning all land in a plan), regardless of legal ownership of the parcel.
- The appellant therefore contended that the whole resort must be valued as one property because the top level of the layered body corporate scheme i.e. the PBC, is the only level where it can be said that none of the bodies corporate have been broken up for valuation purposes.
- The appellants' reasoning was that the BCCMA would apply to the MDPSIRD, rendering the BUPs as community title schemes (CTSs), except for s 328 of the BCCMA, which deems that the BUGTA applies. The appellants then argued that the BCCMA was intended as a rewrite of the BUGTA and can be used in its interpretation. The position if the lots in the MPDSIRD were CTSs is provided for in s 69 of the LVA and is that the respondent must value the lots in the CTS together; there is no exercise of discretion.

- The appellant contended that, the discretion as exercised by the respondent under s 70 of the LVA was therefore miscarried and the respondent should have valued the subject properties as part of the MPDSIRD as a whole.

The issues before the Court were:

1. Whether the appellants have shown error on the part of the respondent by way of application of s 70 of the LVA?
2. Whether the respondent's site valuation takes into account the cost of maintaining the secondary thoroughfare?

The Court held:

1. The appellants have failed to show error on the part of the respondent with respect to its application of s 70 of the LVA. The respondent clearly articulated the manner in which it exercised its discretion under s 70(1)(a) of the LVA.
2. The site valuation must be adjusted to take into account the cost of maintaining the secondary thoroughfare.
    a. The respondent's valuer assessed the added value that comes to an owner because of the secondary thoroughfare but did not take into account the annual cost (around $12,000/annum per unit holder).
    b. Based on the quantum of the annual payment, the site valuations should be reduced by 5%.
3. The appeals are allowed.

QGC Pty Ltd & Ors v Vogt & Anor* [2017] QLC 20*

Background- the applicant QGC undertakes preliminary activity in extracting coal seam gas beneath Mr & Ms Vogts' land. QGC seek a determination of compensation payable to the Vogts and an order imposing conditions on future use of land through a conduct and compensation agreement (CCA). The Vogts played no role in the Court proceedings and did not lead any evidence. The Court relied entirely upon the valuation evidence called by QGC.

The subject property was 337.5 ha in area, 11.42 ha of which included gas infrastructure which comprised 6 wells covering 1 ha each, 2 ha of access tracks and 3.42 ha of gathering systems. Tree clearing restrictions applied to approximately 90% of the land

532(4) *Petroleum and Gas (Production and Safety) Act 2004* (PGPS Act sets out the items of compensation that may be claimed-

> ***compensatable effect*** means all or any of the following—
>
> (a) all or any of the following relating to the eligible claimant's land—
>
> (i) deprivation of possession of its surface;
> (ii) diminution of its value;
> (iii) diminution of the use made or that may be made of the land or any improvement on it;
> (iv) severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
> (v) any cost, damage or loss arising from the carrying out of activities under the petroleum authority on the land;
>
> (b) accounting, legal or valuation costs the claimant necessarily and reasonably incurs to negotiate or prepare a conduct and compensation agreement, other than the costs of a person facilitating an ADR;
> *Examples of negotiation—*
> an ADR or conference
>
> (c) consequential damages the eligible claimant incurs because of a matter mentioned in paragraph (a) or (b).
>
> ***relevant authorised activities*** means authorised activities for the petroleum authority carried out by the holder or a person authorised by the holder.

QGC's valuation expert assessed a "before" land value of $225,000 using comparable sales, an amount above the Valuer-General's unimproved value of $126,000. The valuer then

assessed compensation at $30,000 for a 100% loss of use for the area subject to wells and access tracks, a further 50% loss of use for the area with gathering systems, and a 10% diminution in the value of the balance land.

The valuer made no allowance for impacts/disturbance on the subject land as he had no details in this aspect of compensation. In relation to the CCA, QGC proposed using the standard form agreement. A summary of the valuation approach is set out as follows:

Wells	
5.9883 ha each @ $667/ha @100% depreciation	**$3,994**
Access Tracks	
2.0038 hectares overall @ $667/ha @ 100% depreciation	**$1,337**
Gathering Systems	
3.4291 ha @ $667/ha @ 50% depreciation	**$1,144**
Impact to Balance Land	
326.0788 ha @ $667/ha @ 10% depreciation	**$21,749**
Total	**$28,224**
ADOPT OVERALL	**$30,000**

The issues before the Court were:

1. What is the applicable legislation?
2. What compensation is payable from QGC to the Vogts?
3. What conditions will the Court impose through the CCA ?

The Court held:
In relation to applicable legislation:

1. Section 228 of the *Mineral and Energy (Common Provisions) Act 2014* (MERCP Act) provides that existing negotiations relating to a CCA on foot before the commencement of the MERCP Act are to be continued under the *Petroleum and Gas (Production and Safety) Act 2004* (PGPS Act).
2. The Court will decide compensation under s 537B of the PGPS Act, taking into account the considerations in s 532(4) of the PGPS Act. (see attached p16)
3. The Court's jurisdiction to impose conditions is exercised address 537DB and 537DC of the PGPS Act.

In relation to compensation:

1. In the absence of other evidence, the Court must accept the expert evidence of QGC's valuation expert.
2. The Court is required to make an allowance for disturbance under s 532(4)(a)(v) of the PGPS Act.
3. Compensation for disturbance/impacts are assessed at $5,000, taking into account the presence of workers and machinery on the land, noise, dust and the length of construction period.
4. Compensation is assessed at $35,000.

In relation to conditions:

1. The standard form CCA will be used to provide consistency between this case and the accepted standard. The standard agreement is suitable to regulate the future conduct of the parties in respect of this matter.