

LAND COURT OF QUEENSLAND

CITATION: *Tseng v Valuer-General* [2018] QLC 42

PARTIES: **En-Tzu (Pheobe) Tseng**
(appellant)

v

Valuer-General
(respondent)

FILE NOs: LVA826-16
LVA827-16

DIVISION: General division

PROCEEDING: Appeals against valuation objection decisions under s 155 of the *Land Valuation Act* 2010

DELIVERED ON: 9 November 2018

DELIVERED AT: Brisbane

HEARD ON: 8 June 2017 (Court) and 12 December 2017 (on the papers)

HEARD AT: Brisbane

JUDICIAL REGISTRAR: GJ Smith

ORDERS:

- 1. Appeal LVA827-16 is allowed.**
- 2. The unimproved value of Lot 19 on SP 125370 and Lot 22 on SP 285410, County of Stanley, Parish of Yeerongpilly, as at 1 October 2014 is determined at Six Hundred and Twenty Thousand dollars (\$620,000).**
- 3. Appeal LVA826-16 is allowed.**
- 4. The unimproved value of Lot 19 on SP 125370 and Lot 22 on SP 285410, County of Stanley, Parish of Yeerongpilly, as at 1 October 2015 is determined at Six Hundred and Twenty Thousand dollars (\$620,000).**

CATCHWORDS: REAL PROPERTY – VALUATION OF LAND – METHOD OF ASSESSING – SALE OF SUBJECT –

whether sale to appellant was *bona fide* – prudent purchaser – limited enquiries – motivation of purchaser – proposed use not feasible – purchase not for highest and best use – rural zoning – clearing permit not granted – sale not accepted as evidence of value – *Spencer Test* – *Land Valuation Act* s 18

REAL PROPERTY – VALUATION OF LAND – METHOD OF ASSESSING – VEGETATION PROTECTION ORDER – order imposed after sale – native vegetation on land at valuation date – highest and best use – vegetation clearing not permitted – mango orchard not feasible – rural home site – impact on unimproved value – no evidentiary basis to correct unimproved value.

REAL PROPERTY – VALUATION OF LAND METHOD OF ASSESSING unimproved value – availability of water, sewerage and stormwater to subject land – assumed unimproved state – no evidence of connection costs – use of comparable sale to correctly make valuation – no basis to correct unimproved value – *Land Valuation Act* s 170.

REAL PROPERTY – VALUATION OF LAND – METHOD OF ASSESSING – unimproved value – drainage easement on subject land – valuation date – impact of easement use – no basis demonstrated to correct unimproved value.

REAL PROPERTY – VALUATION OF LAND – METHOD OF ASSESSING – unimproved value— comparability – comparison of sales – whether similarly affected – impact of arterial road – impact of flooding – location and surrounding amenity – adjustment to sales – analysed unimproved value – issued value – speaking report and reasoning – lack of comparability – all sales superior to subject – reduction to issued value necessary to correctly make valuation. –

REAL PROPERTY – VALUATION OF LAND – METHOD OF ASSESSING – unimproved value – impact of flooding – comparison of sales – basis of comparison – similar flooding issues – extent of flooding on subject – sales not comparable – inadequate allowance on subject – reduction necessary to correctly make valuation.

PRACTICE AND PROCEDURE – FURTHER EVIDENCE hearing and submissions completed – no formal application to reopen hearing – generally inappropriate for Court to consider unless leave given – do interests of justice require further evidence to be received – would evidence affect outcome of appeals.

Land Valuation Act 2010 s 5, s 6, s 7(b), s 17, s 18, s 23
s 26(1), s 45, s 46, s 47, s 48, s 155, s 169, s 170
Local Government Act 2009 s 93(3)

AT Dewer v Valuer-General (1980-81) 7 QLCR 112, applied
Body Corporate for Wendell Court & Anor [2015] QLC 16,
applied

Boland v Yates Property Corporation Pty Ltd (1999) 74
ALJR 209, applied

*Chief Executive, Department of Natural Resources v Radlett
Enterprises Pty Ltd* (1997-98) 18 QLCR 397, cited

*Chief Executive, Department of Natural Resources and
Mines v Kent Street P/L* [2009] QCA 399, applied
Edgarhead Pty Ltd v Valuer-General [2015] QLC 18,
applied

James A Farrell v Valuer-General [1995] QLC 101, applied
*Nerang Pastoral Co Pty Ltd v. Chief Executive, Department
of Natural Resources* [1997] QLC 102, applied
ISPT Pty Ltd v Melbourne City Council [2008] VSCA 180,
applied.

McMurray v The Valuer-General 1983 9 QLCR 35, applied

Musumeci v Valuer-General [2014] QLC 15, applied

JL & I Qualischefski v Valuer-General (1979) 6 QCLR 167,
applied

Reid v Brett [2005] VSC 18, applied

*Scougall v Chief Executive, Department of Natural
Resources and Mines* [2003] QLC 35, applied

Spencer v The Commonwealth of Australia (1907) 5CLR
418, applied

*Valuer-General v Body Corporate for 'Tennyson Reach'
Community Titles Scheme 39925* [2018] QLAC 7, applied

*West v Chief Executive, Department of Natural Resources,
Mines and Energy* [2014] QLC 31, applied

APPEARANCES: En-Tzu (Pheobe) Tseng, the appellant in person
RA Harding of Counsel (instructed by In-House Legal,
Department of Natural Resources, Mines and Energy) for the
respondent

Background

- [1] Pursuant to s 155 of the *Land Valuation Act 2010* (LVA), Ms En-Tzu (Phoebe) Tseng (the appellant) appealed against the Valuer-General's valuation objection decisions for the valuation dates 1 October 2014 and 1 October 2015 (the valuation dates) in respect of land owned by her at 151-161 Compton Road, Kuraby, located within the Brisbane City Council local government area, Yeerongpilly division.

- [2] The subject land is more particularly described as Lot 19 on SP 125370 and Lot 22 on SP 285410, County of Stanley, Parish of Yeerongpilly.
- [3] Appeal LVA827-16 concerns the unimproved value of the land as at 1 October 2014, while Appeal LVA826-16 concerns the 1 October 2015 valuation date. The unimproved value issued by the respondent for each valuation date is \$740,000. The appellant's estimate for both valuation dates is \$300,000.
- [4] The land at each valuation date had a rural zoning pursuant to Brisbane City Plan 2014. By virtue of s 7(b) of the LVA, the value that was required to be determined was an unimproved value rather than a site value as defined by s 19 of the LVA.
- [5] Both valuations under appeal were undertaken by the respondent on an "interim basis"¹, i.e. subsequent to the issue date for the corresponding annual valuation. The valuations were required as a consequence of a change of ownership in the land following its purchase from the Brisbane City Council by the appellant. Previously the land was not required to be valued when it was under the ownership of the Council.²
- [6] The hearing of both appeals commenced on 8 June 2017 with all evidence and submissions being completed on that date. Ms Tseng conducted the proceedings on her own behalf, while the respondent was represented by Ms RA Harding of Counsel, instructed by In-House-Legal, DNRME. With the agreement of the parties, both appeals were heard together with each witness giving their evidence concurrently in respect of each appeal. At the conclusion of the evidence each appeal was addressed by a single submission and reply.
- [7] On 29 September 2018, and 11 and 12 December 2018, further materials were provided by the appellant to the Land Court registry. Each party provided submissions in respect of the admissibility of these further materials. The issues surrounding the receipt of these materials by the Court are dealt with in these reasons at [136] to [144].

¹ T 1-55, lines 44-45.

² This is the combined effect of s 93(3) of the *Local Government Act 2009* which provides that land owned or held by a local government is exempt from rates, together with ss 5 and 6 of the LVA which requires the Valuer-General to decide the value of land for, *inter alia*, the making and levying of rates.

Legislation

[8] The subject land in this case is rural land and, therefore, under s 7(b) of the LVA the value of the land to be determined is its unimproved value.

[9] Relevantly, s 26(1) of the LVA provides:

26 What is the unimproved value of improved land

- (1) If land is improved, its unimproved value is its expected realisation under a bona fide sale assuming all site improvements and non-site improvements on the land had not been made.
- (2) ...

[10] The *expected realisation* of land is defined in s 17 of the LVA as follows:

17 What is the land's expected realisation

- (1) The *expected realisation* of land under a bona fide sale is the capital sum that its unencumbered estate in fee simple might be expected to realise if that estate were negotiated for sale as a bona fide sale.
- (2) In this section—
unencumbered means unencumbered by any lease, agreement for lease, mortgage or other charge.

[11] Section 18 of the LVA provides that a *bona fide sale* is:

18 What is a bona fide sale

- (1) A *bona fide sale*, for land, is its sale on reasonable terms and conditions that a bona fide seller and buyer would require assuming the following (the *bona fide sale tests*)—
 - (a) a willing, but not anxious, buyer and seller;
 - (b) a reasonable period within which to negotiate the sale;
 - (c) that the property was reasonably exposed to the market.
- (2) For subsection (1), in considering whether terms and conditions are reasonable, regard must be had to—
 - (a) the land's location and nature; and
 - (b) the state of the market for land of the same type.
- (3) To remove any doubt, it is declared that if -
 - (a) there is a sale of the land in question; and
 - (b) the bona fide sale tests are complied with;the sale is a bona fide sale.
- (4) In this section—
land in question means land whose value is being decided.

[12] Chapter 2, Part 2, Division 5 of the LVA deals with allowances and concessions. Most relevantly, Subdivision 2 provides a concession for land used exclusively as a single dwelling house or for farming in the following terms:

Subdivision 2 Exclusive use as a single dwelling house or for farming

45 Application of sdiv 2

- (1) This subdivision applies for deciding the value of land used only as a single dwelling house or for farming.
- (2) For this section, land is not used only for a single dwelling house or for farming if—
 - (a) the land is divided into individual lots; and
 - (b) there is evidence, including advertising or actual sales, of an intention to sell the individual lots.

46 Particular enhancements must be disregarded

- (1) In deciding the value, any enhancement in its value because of any of the following for the land must be disregarded—
 - (a) a subdivision by survey;
 - (b) a potential use for industrial, subdivisional or any other purposes.
- (2) Subsection (1)(b) applies whether or not the potential use is lawful on the valuation day.

47 What is a *single dwelling house*

- (1) A *single dwelling house* is—
 - (a) a dwelling used solely for habitation by a single household; or
 - (b) a building consisting of 2 flats used solely for habitation; or
 - (c) a building consisting of 2 self-contained units, known as a duplex, and used solely for habitation.
- (2) Subsection (1)(a) includes a dwelling used solely for habitation by a single household—
 - (a) part of which is used or available for use as a furnished room or furnished rooms; or
 - (b) with a single self-contained flat.

48 What is *farming*

- (1) *Farming* is the use of land for a farming business if—
 - (a) the use is the land's dominant use; and
 - (b) the conditions under subsections (2) and (3) are complied with.
- (2) The business must be carried out for profit on a continuous or repetitive basis.
- (3) The business must have a substantial commercial purpose or character shown by at least one of the following—

- (a) having an average gross annual return, worked out over a 3-year period, of at least \$5000;
- (b) if the business is establishing and harvesting native or non-native forests—having an average anticipated gross annual return, worked out over the period from establishment to harvesting that is usual for the particular species of tree, of at least \$5000;
- (c) if the business is maintaining and harvesting native forests—having an average anticipated gross annual return, worked out over the period from the start of maintenance to harvesting of the particular species of tree, of at least \$5000;
- (d) having both of the following—
 - (i) a minimum value of farm improvements or planting of forest or orchard trees of \$ 50000;
 - (ii) the appearance of being kept for farming or expenditure on crops, forest trees, maintenance of farm improvements, livestock or orchard trees.

(4) In this section—

farm improvements includes appropriate sheds, other structures, facilities, farm plant and land development for the particular farming business but does not include a dwelling or car accommodation.

farming business means—

- (a) the business or industry of grazing, dairying, pig farming, poultry farming, viticulture orcharding, apiculture, horticulture, aquaculture, vegetable growing, the growing of crops of any kind or forestry; or
- (b) another business or industry involving the cultivation of soils, the harvesting of crops or the rearing of livestock.

[13] Section 169 details the nature of the hearing and onus of proof:

169 Nature of Hearing

- (1) The hearing must be limited to the grounds stated in the valuation appeal notice.
- (2) The appeal must be by way of a rehearing.
- (3) However, the appellant has the onus of proof for each of the grounds of appeal.

[14] Section 170 concerns what this Court may do on appeal:

170 Order on valuation appeal

The Land Court may—

- (a) confirm the valuation appealed against; or
- (b) reduce or increase the valuation to the amount it considers necessary to correctly make the valuation under this Act.

The subject land

- [15] The subject land is located on Compton Road, approximately 23km south of the Brisbane Central Business District. At this location Compton Road forms a boundary between the suburb of Kuraby in Brisbane and the suburb of Woodridge in Logan. The subject land itself is located within the Brisbane City Council local government area.
- [16] The land is held as two vacant adjoining lots, namely Lot 19 on SP 125370 (Lot 19) and Lot 22 on SP 285410 (Lot 22), having a total area of 2.0879 ha. Lot 22 adjoins an unformed portion of Millers Road on its eastern boundary, while the southern boundary of both lots adjoin Compton Road. A signalised T-intersection is operational on Compton Road adjacent to the eastern boundary. The Brisbane-Gold Coast rail line is also located some 400 m to the west of the subject.
- [17] No water, electricity, telecommunications, sewerage or stormwater services were connected to the subject land at the relevant valuation dates.
- [18] The land was subject to a number of overlays under the Brisbane City Plan 2014, at the relevant valuation dates. Part of the land was covered by a High Ecological Significance Overlay, while the whole of the land was covered by a Critical Infrastructure and Movement Overlay. A Waterway and Wetlands Vegetation Overlay and a Significant Vegetation Overlay also applied to the subject land at the valuation dates.
- [19] The land is significantly affected by flooding and is traversed in part by Slacks Creek. A Waterway Corridor and an Overland Flow Flood Planning Area overlay covers the northern half of the land. A 775 m² drainage easement in favour of the Brisbane City Council is situated just inside the eastern boundary of Lot 22. This easement is recorded as having been registered on 11 February 2016.³
- [20] On 31 May 2016, the Brisbane City Council issued a Vegetation Protection Order (VPO) pursuant to its *Natural Assets Local Law 2003* in respect of protected native vegetation on the subject land. In a letter from the Council to the appellant dated 31 May 2016,⁴ the Council stated that the vegetation on the land had been protected

³ Ex 5, page 24.

⁴ Ex 3, page 1.

under two categories pursuant to its local law, namely *Waterway and Wetland Vegetation* and *Council Vegetation*. The letter also confirmed that the *Council Vegetation* category protected all vegetation on any land owned, controlled or occupied by the Council and that, although the *Council Vegetation* category was no longer appropriate given the transfer of the property to private ownership, the *Waterway and Wetland Vegetation* category would remain in place.

[21] On 30 November 2016, Brisbane City Council officers undertook a site inspection of the subject property in relation to alleged interference with the protected vegetation on the land. Later, on 3 March 2017, a compliance notice was issued to the appellant by the Council requiring that any further interference cease and that certain steps to rehabilitate the area of alleged interference be undertaken.

[22] The alleged interference appears to concern preparatory steps undertaken by the appellant for the planting of mango trees on the subject land.

The appellant's evidence

[23] At the commencement of the hearing of these appeals, a written statement by the appellant was admitted into evidence.⁵ The appellant's statement refers to three sales and in her own words raises the following matters:

- i. The subject land is rural and it is inappropriate to the valuer-general to appraise its value under rural residential criteria.
- ii. The appellant did not engage in the professional due diligence prior to the auction and was not aware of the severe restrictions on protected vegetation and flooding issues before the auction. Thus the sale price did not reflect the restrictions on the land in relation to the spreading vegetation as per enclosed NALL map and severe flooding as per the enclosed map and corridor overlay map.
- iii. As per the enclosed compliance notice (Brisbane City Council) there are 2 vegetation protection orders on the land (a) significant native vegetation and (b) waterway and wetland vegetation. Considering the protected vegetation, Brisbane City Council should have kept the land as conservation park so the benefit of wildlife and public interest. It is disputable for the Brisbane City Council to sell at the appellant this rural land but not allow removing native vegetation on the land in compliance with rural use.
- iv. Appellant was not allowed to clear the land to conduct agricultural activities even though it is under rural zoning in the Brisbane City plan. After clearing some vegetation Brisbane City Council issued

⁵ Ex 1.

the Appellant the compliance to replant native vegetation on the land. The valuer-general overestimated the rural use and the actual value of this protected land as per the enclosed compliance notice.

- v. The subject land is right opposite to the Woodridge/Logan City Council, it is the place as one of the most dangerous suburbs in South East Queensland. Also, the subject land is on the border of the Brisbane City Council and the Logan City Council. In accordance with the Land Valuation Act 2010, a list of comparable sales is provided for your perusal.
- vi. About 2/3 of the land is subject to flooding as the enclosed flood a waterway overlay map. Any council plan to improve the storm water and drainage system in the surrounding areas could not be found. The valuer-general did not consider this severe inundation factor when reviewing the value of the subject land.
- vii. No water supply, sewerage, stormwater trunk network infrastructure found in the Brisbane City Plan 2014 for the subject land. The value of the land significantly for rural use or because the Brisbane City Council does not design this subject land to rural residential use. Please kindly adjust the value of this subject land to reflect the fact of rural use of the land.”⁶

Sales relied upon by appellant

[24] The sales relied upon by the appellant for each appeal are:

- **Sale 1** situated at 60 Springlands Drive, Slacks Creek, comprising 1.133 ha of Rural Residential land, sold for \$672,000 on 4 November 2016.
- **Sale 2** situated at 143 Kingston Road, Woodridge, comprising 2,053 m² of land zoned Low Medium Density Residential, sold for \$295,000 on 10 August 2014.
- **Sale 3** at 13 Bligh Street, Woodridge, comprising 895 m² of residential land, sold for \$152,000 on 14 July 2015.

[25] Although the respondent’s sales evidence will be discussed later, it is convenient at this point to consider the respondent’s submissions concerning the comparability of these sales.

[26] The appellant contends generally that these sales are closer to the subject land, demonstrate a lower value in the surrounding area and specifically, that Sale 2 is situated on Kingston Road, which is a very busy road.

[27] The respondent contends that the sales are not comparable for the following reasons:

⁶ Ibid.

- The sales involve a different use and zoning to the subject land.
- Sale 1 at Slacks Creek occurred in the latter part of 2016 and was therefore well after each valuation date.
- The land area of Sales 2 and 3 at Woodridge are much smaller in comparison to the subject.

[28] A further point raised by the respondent's valuation expert is that Sales 1 and 2 have subdivisional and multi-unit potential, which conflicts with the concessional basis upon which a rural home site / single unit dwelling is required to be valued,⁷ and as a consequence these two sales could not be considered comparable to the subject.⁸

[29] I have considered the contentions of the parties and on the evidence before the Court I am unable to conclude that any of the appellant's sales can be considered comparable to the subject land. Sale 1 is well after each valuation date, Sale 2 has multi-unit potential and is therefore unlikely to be comparable to the subject which is required to be valued on a concessional basis as if solely used for a single dwelling house,⁹ while Sale 3 has a far smaller area (895 m²) as compared to the subject land (2.0879 ha).

The respondent's evidence / valuation approach

[30] The evidence relied upon by the respondent comprises a separate valuation report for each valuation date prepared by registered valuer, KR Wickham (valuation expert).¹⁰

[31] The respondent's valuation expert relied upon the direct comparison approach whereby the subject property was compared with three sales selected by her for the purposes of determining the unimproved value of the subject land as at 1 October 2014 and 1 October 2015. This approach involved the analysis of vacant / lightly improved sales¹¹ or demolition sales considered by the valuation expert to be comparable to the subject land. Following the analysis, deductions were made to each sale price in order to remove any added value that may have been attributable to any remaining improvements in order to arrive at what the valuation report referred to as

⁷ *Land Valuation Act 2010* s 45 and s 46.

⁸ T 1-30, lines 35-40.

⁹ *Land Valuation Act 2010* s 45, s 46 and s 47.

¹⁰ Ex 4, Ex 5.

¹¹ *Edgarhead Pty Ltd v Valuer-General* [2015] QLC 18, [37].

an analysed unimproved value. This value was then used for comparing the subject land and each sale in order to determine the unimproved value of the subject land.

[32] With the exception of the subject land, each sale relied upon by the respondent was not rural land and was therefore valued on a “site value”¹² basis rather than on an “unimproved value”¹³ basis. The site value of land in its simplest form comprises the unimproved value plus the added value of any site improvements as defined by s 23 of the LVA, e.g. clearing, levelling, underground drainage, etc. Site values, like unimproved values, are utilised for rating purposes by local authorities and for determining land tax by the State.

[33] In the course of the valuation expert’s evidence¹⁴ it became apparent that both valuation reports had omitted to include the applied or issued site values for the sales relied upon by the respondent.

[34] The issued value of a sale is the actual value issued by the respondent. The issued value is also commonly referred to as the applied value given that the amount is viewed as the percentage ‘applied’ of the analysed site / unimproved value derived from a sale, e.g. applied value/analysed value \$90,000/\$100,000 = 90%.

[35] A document including this information was provided by Counsel for the respondent and was admitted into evidence.¹⁵ The relevant details of the respondent’s sales are summarised in the following tables:

1 October 2014 valuation

| Sale | Address | Issued Site Value | Analysed Unimproved Value |
|------|-----------------------------------|-------------------|---------------------------|
| 1 | 2985 Old Cleveland Road, Chandler | \$680,000 | \$670,000 |
| 2 | 127 Kavanagh Road, Wishart | \$720,000 | \$890,000 |
| 3 | 147 Warriewood Street, Chandler | \$735,000 | \$730,000 |

1 October 2015 valuation

| Sale | Address | Issued Site Value | Analysed Unimproved Value |
|------|--|--------------------|---------------------------|
| 1 | 181 Bacton Road, Chandler | \$800,000 | \$945,000 |
| 2 | 44 Oakbridge Street, Burbank | \$850,000 | \$865,000 |
| 3 | 151-161 Compton Road, Kuraby (the subject land) | \$740,000 (UIV) | \$767,000 |

¹² Land Valuation Act 2010 Part 2 Division 3.

¹³ Land Valuation Act 2010 s 7.

¹⁴ T 1-45, line 29; T 1-46, line 25.

¹⁵ Ex 6.

[36] As can be noted from the preceding tables, the analysed unimproved values for Sale 2 (for the 1 October 2014 valuation date) and Sale 1 (for the 1 October 2015 valuation date) far exceed the actual site values issued by the respondent in respect of the land which comprised each sale.

[37] The valuation report relied upon by the respondent in respect of the 1 October 2014 valuation includes the following comments under the heading Market Comments:

“The Brisbane market for rural home sites for the division of Yeerongpilly leading up to the date of valuation 1-10-2014 has generally shown an upward movement in the order of 10%.”¹⁶

The appeal issues

[38] The appellant is self-represented in these proceedings and has filed identical grounds in each appeal. A summary of these grounds is set out in the respondent’s written submissions¹⁷ and lists the majority of the issues to be determined in each appeal. Using the respondent’s summary as a guide, it is considered that the following issues require determination in these appeals:

1. What is the highest and best use of the subject land?
2. Should the sale of the subject land be received as evidence in relation to the 1 October 2015 valuation? (*Referable to ground 2 of the appellant’s notices of appeal*)¹⁸
3. What is the impact of the VPO? (*Referable to grounds 3, 4 and 5 of the appellant’s notices of appeal*)
4. Has the absence of water supply, sewerage or stormwater infrastructure to the site been taken into account by the Valuer-General? (*Referable to ground 7 of the appellant’s notices of appeal*)
5. What is the impact of the drainage easement? (*Referable to ground 8 of the appellant’s notices of appeal*)
6. Comparability / comparison of sales (*Referable to ground 1 of the appellant’s notices of appeal*)

¹⁶ Ex 4, page 11.

¹⁷ Filed 8 June 2017, page 2.

¹⁸ Although in both Notices of Appeal Ground 2 is identical the sale of the subject is not relied upon by the respondent as at 1 October 2014 i.e. LVA827-16.

7. Has the Valuer-General allowed for the impact of flooding? (*Referable to ground 6 of the appellant's notices of appeal*)

Each of these issues will be discussed in turn.

Issue 1: What is the highest and best use of the subject land?

[39] In these appeals the respondent's valuation expert is of the opinion that the highest and best use of the subject land is as a rural home site, whilst the appellant contends that her proposed mango orchard would be a 'better use.'¹⁹

[40] A consideration of the evidence suggests that a degree of misapprehension regarding the highest and best use of the land and the notion of a rural home site may have obscured the issues in these appeals.

[41] Although the term 'rural home site' is not defined in the LVA, the Land Appeal Court in *Dewer v Valuer-General*²⁰, accepting that a rural home site might be purchased for a variety of purposes, made the following useful statement:

"The term 'rural home site' is a widely accepted and commonly used expression in the real estate profession. The term recognises the trend in more recent times where people are seeking to escape the confinement, bustle, noise, pollution, etc., of smaller allotments within the high density residential areas of cities and towns and are buying lands in a rural setting on the outskirts of towns and cities whereon to build their homes and either live in a pleasant rural setting or engage, part time or full time, (and to varying degrees as they choose) in some form or forms of rural hobby or pursuit.

...

The market for rural home sites demonstrates that they are purchased on a site basis and not on a pro rata per hectare basis."

[42] A rural home site used solely as a single dwelling house will attract a concession under s 46 of the LVA. In such cases the valuation approach must ignore any potential higher uses that might be feasible on the land, e.g. potential for subdivision or multi-unit development.

[43] The concept of 'highest and best use' of a parcel of land was detailed by the Victorian Court of Appeal in *ISPT Pty Ltd v Melbourne City Council* in the following terms:

"Highest and best use represents the most profitable potential use to which land can be put having regard to both **planning and like controls** and the

¹⁹ T 1-65, lines 10-15.

²⁰ (1980-81) 7 QLCR 112;114-115.

circumstances of the land. It is to be distinguished from the present use of land; although the present use might also be the highest and best use. When land is sold, the market values the land at its highest and best use: as buyers will not be constrained to continue the existing use; and the seller will seek to achieve the highest price for the land. This is why highest and best use is relevant in assessing value, whether improved value or site value.”²¹ (emphasis added)

- [44] The ultimate question regarding the highest and best use of land must be determined on the evidence before the Court.²² In this case, although the appellant considers that a mango orchard would be a ‘better’ use of the land, there is no evidence to suggest that this use was feasible at the relevant valuation dates given the “planning and like controls” applying to the native vegetation present on the site pursuant to the Council’s Planning Scheme and *Natural Assets Local Law 2003* discussed above at [20].
- [45] It is important to keep in mind that while this Court may consider issues relating to the likely highest and best use of a parcel of land from a valuation perspective, it has no power to adjudicate upon or alter the prevailing planning controls that may determine the feasibility of uses contemplated for a particular site.²³
- [46] In my view the respondent’s valuation expert is correct in concluding that the likely highest and best use of the subject land was as a rural home site rather than a mango orchard at each valuation date. Although the evidence is not extensive, it would seem that at each valuation date a prudent purchaser would consider that an approval for a single dwelling house would more likely to be granted than an approval for agricultural uses which involve additional clearing given the presence of protected native vegetation on the subject land.
- [47] Accordingly, the subject land clearly has no higher potential that needs to be ignored under s 46 of the LVA at either valuation date given the limited potential use is solely as a rural home site. In such cases a purchaser will invariably view the site area as just one attribute of a collection of attributes on an overall basis. In the absence of some higher development potential, a uniform correlation between size and value may not be consistently reflected by the market for rural home sites.²⁴

²¹ *ISPT Pty Ltd v Melbourne City Council & Anor* [2008] VSCA 180, [41].

²² *Ibid* [57] to [62].

²³ *Land Valuation Act 2010* s 170.

²⁴ *West v Chief Executive, Department of Natural Resources and Mines* [2014] QLC 31, [218].

[48] Following on from this, the highest and best use will usually provide a perspective from which the comparability of the sales evidence may be considered.

Issue 2: Should the sale of the subject land be received as evidence in relation to the 1 October 2015 valuation? (Appeal ground 2)

[49] The sale of the subject land is Sale 3 in the respondent's valuation report for the 1 October 2015 valuation (Appeal LVA826-16). The appellant contends that this sale should not be relied upon by the respondent for the purpose of determining the unimproved value. This ground is also included on the notice of appeal for the 1 October 2014 valuation (Appeal LVA827-16) but is of no utility for that appeal given that this is not relied upon by the respondent for the 1 October 2014 valuation.

[50] It is worth noting that the sale took place on 11 March 2016, well after the date of valuation and also after the date of issue for the 2015 annual valuation.²⁵ In my experience, such sales would ordinarily form part of the sales basis for the subsequent annual valuation,²⁶ i.e. 1 October 2016, particularly given that each valuation report records an increase applied to the subject land for that subsequent valuation period.²⁷ On this basis alone, I would be reluctant to receive the sale of the subject land as evidence for the determination of the unimproved value as at 1 October 2015.

[51] Notwithstanding this, it is still necessary to consider the validity of the sale. Although neither the *Spencer Test*²⁸ nor s 18 of the LVA²⁹ are specifically referred to by the appellant, the validity of the sale emerges from ground 2 of the notice of appeal for Appeal LVA826-16 which provides:

“2. The property was purchased from the Brisbane City Council via public auction. However, council did not disclose its intention of maintenance of native vegetation on the whole site for the wildlife in neighbouring area including Karawatha Forest and Kuraby Bushland before or on the auction date, which made people attending auction overpriced the value of the site. Thus, Valuer-General should not just consider sale price of the site or other properties.”³⁰

[52] In *Boland v Yates Property Corporation Pty Ltd*, Callinan J made the following observations concerning the *Spencer Test*:

²⁵ 2 March 2016.

²⁶ *Scougall & Anor v Chief Executive, Department of Natural Resources and Mines* [2003] QLC 35.

²⁷ Ex 4, page 10; Ex 5, page 10.

²⁸ *Spencer v The Commonwealth of Australia* (1907) 5 CLR 418.

²⁹ *Land Valuation Act 2010* s 18 Definition of *bona fide* sale.

³⁰ Notice of Appeal LVA826-16 filed 26 August 2016.

“266. In Australia it has long been accepted that the various statements made by Justices of this Court in *Spencer’s case* correctly formulated the principles to be applied in compensation courts. The most frequently quoted statement is that of Griffith CJ:

‘In my judgment the test of value of land is to be determined, not by inquiring what price a man desiring to sell could actually have obtained for it on a given day, *i.e.* whether there was in fact on that day a willing buyer, but by inquiring ‘What would a man desiring to buy the land have had to pay for it on that day to a vendor willing to sell it for a fair price but not desirous to sell?’ ... The necessary mental process is to put yourself as far as possible in the position of persons conversant with the subject at the relevant time, and from that point of view to ascertain what, according to the then current opinion of land values, a purchaser would have had to offer for the land to induce such a willing vendor to sell it, or, in other words, to inquire at what point a desirous purchaser and a not unwilling vendor would come together.’

267. I would emphasise the important phrase in his Honour’s judgment ‘persons conversant with the subject’. The formula suggested by Griffith CJ contemplates a prudent purchaser and one who would make a point of informing himself or herself of all of the relevant attributes and advantages that the property enjoyed so as to make that purchaser ‘conversant’ with the subject, meaning thereby not just the land in its existing state but also any profitable uses to which it might be put.

268. Isaacs J put the matter even more strongly. His Honour said that the hypothetical parties should be regarded as not anxious to trade and as being:

‘perfectly acquainted with the land, and cognisant of all circumstances which might affect its value, either advantageously or prejudicially, including its situation, character, quality, proximity to conveniences or inconveniences, its surrounding features, the then present demand for land, and the likelihood, as then appearing to persons best capable of forming an opinion, of a rise or fall for what reason soever in the amount which one would otherwise be willing to fix as the value of the property’.

269. The comprehensive language used by Isaacs J is clearly capable of embracing matters with which perhaps courts of today have become more familiar, such as the value of highly restrictive or very advantageous planning approvals, the changing value of money over time and opportunity cost. ...”³¹

[53] Although there is limited evidence from the respondent regarding what investigations³² were undertaken in respect of the sale, it is not in dispute that the Brisbane City Council sold the subject land to the appellant on 11 March 2016, and then later, on 31 May 2016, placed a VPO over the significant native vegetation on the subject land.

³¹ *Boland v Yates* (1999) 74 ALJR 209 [266] to [269].

³² *Nerang Pastoral Co Pty Ltd v. Chief Executive, Department of Natural Resources* [1997] QLC 102, 10.

- [54] The appellant contends that some notification of this VPO should have been disclosed by the Brisbane City Council prior to the auction of the land and that, in the circumstances, the respondent should not have considered the sale when determining the unimproved value of the land as at 1 October 2015.
- [55] It is not in dispute that the appellant purchased the land for the sole purpose of establishing a mango orchard³³ or that the ability to clear the land would be required in order for the appellant to proceed with the proposed orchard.
- [56] Relevantly, the appellant gave evidence that she had not previously purchased land in Australia,³⁴ had not undertaken any due diligence prior to the purchase,³⁵ and had thought that the land could be cleared.³⁶ In cross examination, the appellant conceded that she was aware of some restrictions, however her evidence remained that the land was far more restricted than she had believed it was prior to the auction date.³⁷
- [57] On the evidence there seems little doubt that the appellant made few inquiries and received no town planning or other expert advice regarding the likelihood of being able to clear the subject land in order to establish a mango orchard. In the circumstances it would appear unlikely that the appellant was **“perfectly acquainted with the land, and cognisant of all circumstances which might affect its value”** (emphasis added).³⁸ The appellant was clearly motivated to purchase the subject land on the basis of what she perceived was its potential for development as a mango orchard, a potential which the evidence suggests was not likely to be achievable at either valuation date.
- [58] In the circumstances, I am not able to conclude that the appellant could be viewed as a prudent purchaser at the time she purchased the land on 11 March 2016. I am also of the view that the sale of the subject land could not be considered a *bona fide* sale as envisaged by s 18 of the LVA. Notwithstanding these conclusions, several further matters warrant consideration.
- [59] As already noted, it is not in dispute that the subject land was purchased by the appellant for the sole purpose³⁹ of establishing a mango orchard, a use contrary to the

³³ T 1-11, lines 30-35.

³⁴ T 1-11, line 39.

³⁵ Ex 1, page 1.

³⁶ T 1-11, lines 24-25.

³⁷ T 1-18, line 3.

³⁸ *Boland v Yates* (1999) 74 ALJR 209, [267].

³⁹ T 1-11 line 35; T 1-18 line 23.

valuation expert's view that the highest and best use of the land was as a rural home site. In these circumstances, it follows that the land was purchased by the appellant for a use other than its highest and best use, and on this basis it is difficult to conclude that such a purchase would, in any event, have provided convincing evidence of value as a rural home site.

[60] The respondent has contended that the sale of the subject land was “supporting sales evidence”⁴⁰ in respect of the unimproved valuation as at 1 October 2015, and that “it is clear that the price that was achieved at auction was not the primary basis of [the valuation expert's] opinion as to the unimproved value of the subject land as at that date”.⁴¹

[61] In considering this contention, it is difficult not to question how the sale of the subject land, which was the only sale that had been inspected at the date of issue,⁴² somehow became supplanted by sales (the ‘primary basis’) that were not part of the annual valuation basis for the suburb of Kuraby for either valuation date and were not inspected until 4 May 2017.

[62] Whilst not a personal criticism of the valuation expert, this approach runs the real risk of being more akin to the confirmation of a predetermined amount rather than a reasoned conclusion as to value. In these circumstances, I have real difficulty with the sale of the subject land being recast as ‘supporting sales evidence’ when the ‘primary sales evidence’ had not even been inspected at the date the interim valuations were issued on 1 June 2016.

[63] In my view the valuation expert has erred in relying on the sale of the subject land for the 1 October 2015 valuation, and I find appeal ground 2 proven on the balance of probabilities for LVA826-16.

Issue 3: What is the impact of the VPO? (Appeal grounds 3, 4 and 5)

[64] This issue concerns the imposition of a VPO by the Brisbane City Council over the subject land pursuant to the *Natural Asset Local Law 2003*. The VPO was imposed on 31 May 2016, a date subsequent to the purchase of the land by the appellant, well after each valuation date and also subsequent to the date of issue for the relevant annual valuations.

⁴⁰ Respondents Submissions filed 8 June 2017 para 41; Ex. 5 page 23.

⁴¹ Ibid.

⁴² 1 June 2016.

[65] Although the date that the VPO was imposed appears to be well after the relevant dates of valuation⁴³ it appears that the VPO was at least considered by the respondent notwithstanding these dates.⁴⁴ It would seem that such an approach is open to be adopted in cases where a newly created parcel becomes liable to be valued during a valuation period.⁴⁵

[66] The grounds relevant to the VPO are grounds 3, 4 and 5 of each Notice of Appeal, the text of which is set out below:

“3. Had the rigid decision on the VPO been revealed to the public by the Brisbane City Council prior to the auction (i.e. that a vegetation protection order would be imposed over the property) the chance of selling the property would have been extremely low, with reduced interest from private buyers due the inability to clear the land in order to undertake agricultural pursuits.

4. The natural protected vegetation spreads over the whole property. With the severe restriction of the VPO it is not possible to conduct effective agriculture activities which was also not reflected in the sale price. Hence the Valuer-General did not take this factor into consideration.

5. On the facts keeping native vegetation for the movement of animals and viable populations valuer-general should evaluate the property as parkland and not rural land. The land value deteriorates severely for the sake of sacrificing the public interest because the council reassures the opposition of rural use on clearing the land as per the enclosed letter on 4 August 2016.”⁴⁶

[67] In considering these grounds it is important that the function of this Court not be viewed as an enquiry undertaken to ascertain what the outcome of the auction may have been had the VPO been in place or foreshadowed beforehand.

[68] In a practical sense, the substance of appeal grounds 3 and 4 concern the reliance by the respondent on the sale of the subject land. The subject sale has already been examined in some detail and for the reasons set out at [49]-[63] above, I do not intend to rely on the sale. As a result, and given the resolution of appeal ground 2 in favour of the appellant, grounds 3 and 4 for both LVA826-16 and LVA827-16 are in reality of very limited utility and in my view no further discussion about how the VPO may have impacted a buyer’s decision to purchase the land is necessary or warranted.

⁴³ *McMurray v The Valuer-General* 1983 9 QLCR 35, 36.

⁴⁴ Ex.4 page 8; Ex.5 page 8.

⁴⁵ *State Government Insurance Office v. Valuer-General* 1980-81 7 QLCR 171, 196.

⁴⁶ Notice of Appeal LVA826-16 and LVA827-16 filed 26 August 2016.

[69] Appeal ground 5 asserts that the subject land should be valued as parkland as a consequence of “keeping native vegetation for the movement of animals and viable populations”.⁴⁷ The Court has accepted the conclusion of the respondent’s valuation expert that the highest and best use of the land at each valuation date is as a single unit dwelling.⁴⁸ Given this finding, and in the absence of any evidentiary or legal basis that would require the subject land to be valued as parkland, I am unable to conclude that appeal ground 5 is established for either appeal.

Issue 4: Has the absence of water supply, sewerage or stormwater infrastructure to the site been taken into account by the Valuer-General? (Appeal ground 7)

[70] Ground 7 in each Notice of Appeal provides that:

“7. No water supply, sewerage or stormwater infrastructure for the subject site is not provided for in the Brisbane City Plan 2014 and as a consequence the value of the site drops significantly because the site is located on the fringe of the infrastructure plan.”⁴⁹

[71] The substance of this issue is that the respondent is alleged not to have taken these factors into account at either valuation date. It should be noted at this point that there is a potential degree of overlap between the specific factor of stormwater discharge and the issue of flooding. In light of this, I intend to consider the stormwater infrastructure issue within the flooding issue in order to avoid any possibility of duplication or doubling up.

[72] The LVA requires rural land to be valued on an assumed unimproved basis⁵⁰ and therefore, the absence of utilities reflects the basis upon which the subject land is required to be valued.

[73] Although a prudent purchaser might be likely to make enquiries regarding the connection costs for these utilities, such a purchaser might also enquire in relation to off grid options. As will be discussed at [91] I am of the view that the respondent’s Sale 1 for 1 October 2014 (2785 Old Cleveland Road, Chandler) is able to be treated as comparable to the subject land and similarly affected given the absence of water or sewerage connections. In other words, I consider the best the Court can do in the

⁴⁷ Ibid.

⁴⁸ At [46].

⁴⁹ Notice of Appeal LVA826-16 and LVA827-16 filed 26 August 2016.

⁵⁰ *Land Valuation Act* 2010 s 26. See also *James A Farrell v Valuer-General* [1995] QLC 101.

absence of specific connection costs is to treat the sale at 2785 Old Cleveland Road as being similarly affected to the subject land in respect of this issue.

- [74] Accordingly, on this basis and in the absence of any other evidence that would warrant an alteration so as to ‘correctly make’⁵¹ the unimproved value, I am of the view that appeal ground 7 is not established on the balance of probabilities for either appeal on the evidence taken as a whole.

Issue 5: What is the impact of drainage easement? (Appeal ground 8)

- [75] Appeal ground 8 relates to a registered drainage easement in favour of the Brisbane City Council, recorded as Easement A over Lot 22 on SP 285140. The substance of this ground is that Easement A “limits the portion use and development potential of the land”⁵² and that the Valuer-General “forgot to reduce the value of the land because the easement usage”.⁵³

- [76] Easement A is approximately 775 m², is a near regular triangular shape, and is situated just inside the eastern boundary of the subject land. A title search and related easement documents annexed to each valuation report record that Easement A was executed and witnessed on 3 February 2016 and registered upon title on 11 February 2016.⁵⁴

- [77] The evidence before the Court does not demonstrate how Easement A “limits the portion use and development potential”⁵⁵ of the subject land or how the easement may have impacted the use of the land. As a consequence, no basis is demonstrated on the evidence that would require the Court to alter the valuations on this ground. Appeal ground 8 is therefore not established on the balance of probabilities at the valuation dates for either appeal.

Issue 6: Comparability / comparison of sales (Appeal ground 1)

- [78] The appellant contends that none of the sales relied upon by the Valuer-General are comparable to the subject land and therefore should not be relied upon to determine the unimproved value of the subject land at each valuation date.⁵⁶

⁵¹ *Land Valuation Act* 2010 s 170 (b).

⁵² Notices of Appeal LVA827-16 and LVA826-16 filed 26 August 2016.

⁵³ *Ibid.*

⁵⁴ Ex 5, page 26.

⁵⁵ Notices of Appeal LVA827-16 and LVA826-16 filed 26 August 2016.

⁵⁶ T 1-12, line 27; T 1-60, line 27.

[79] Apart from the sale of the subject land, none of the sales relied upon by the respondent are located within the suburb of Kuraby or the local government division of Yeerongpilly. Instead, the respondent's preferred sales have been selected from suburbs of Chandler, Burbank and Wishart.

[80] A summary, in the appellant's own words, of the specific matters concerning the sales evidence is detailed below:

- The subject land was purchased for farming and not for a rural home site. The land cannot be cleared to conduct agricultural activity.
- The suburb of Woodridge is just across Compton Road and is a different environment and a different suburb that is dangerous and notorious. The surrounding area has low value as a result.
- The valuer-general's sales are the different environment and community. The residents are well off and can afford luxury living in the surrounding area.
- The sales are all in very good suburbs and the purchasers pay a very good price and don't need to clear or remove trees as they just want to build a home.
- The valuer-general's sales are all over 20 km from the subject property.
- Chandler and Wishart are very good suburbs to raise kids where buyers pay for land, space and privacy.
- Valuer-General's sales are all in a good living environment i.e. quiet with privacy, where you can have a horse, raise children and a good family.
- The subject land cannot be cleared for farming purposes fruit trees and vegetables cannot be grown on the land. With the sales the buyers just wish to build a house inside the forest.
- Only one sale is on a busy road and that sale has no flooding or vegetation issues.
- The subject land is on a very busy road, you cannot even raise a horse, it is not meant or designed to raise kids there.
- The sales do not have a comparable rural zoning.
- Subject land has a 200 m frontage.⁵⁷

[81] In *Edgarhead Pty Ltd v Valuer-General*⁵⁸ the question of comparability was considered by then President MacDonald, who observed:

“[40] Mr Heslehurst adopted the conventional technique for ascertaining the site value of land for the purposes of the Act that is the use of vacant or lightly improved comparable sales. However, in my opinion Sale 1 is the only one of his sales that could be said to be comparable with the subject. It is well recognized that it is almost always necessary, when applying the comparable sales method, to make adjustments between the sales and the subject property. However, there comes a point where the number of adjustments to be made is such that the sales cannot be said to be comparable. Thus in *Leichhardt Municipal Council v Seatainer Terminals Pty Ltd*, Hope JA said:

⁵⁷ T 1-61, lines 8-12.

⁵⁸ [2015] QLC 18, [40].

‘Whether the differences between land a sale of which is to be relied upon and the land to be valued are so great that the land the subject of the sale cannot be regarded as comparable is a question of fact and degree. The differences may be so great that a court may be constrained to hold that the land is in no sense comparable, and that the adjustments which have to be made are so great that the sale can provide no evidence of the value to be determined, and no basis upon which that value can be assessed.’ (citations omitted).”⁵⁹

- [82] Given the nature of this issue there is benefit in considering the questions of comparability and the process of comparison in parallel in respect to the respondent’s sales for each valuation date.

Valuation date 1-10-2014

Sale 1 – 2785 Old Cleveland Road, Chandler

- [83] Sale 1 was purchased for \$690,000 on 14 October 2013 for the construction of a new dwelling and comprised 9,196 m² of land zoned Environmental Management pursuant to the Brisbane City Plan 2000. For comparison purposes, the respondent’s valuation expert concluded that the sale price analysed to an analysed unimproved value of \$670,000 as at 1 October 2014. The reasoning of the respondent’s valuation expert is detailed as follows:

“Sale 1 - Comparison to subject: smaller land area, similar street frontage to busy road, superior location (better suburb), similar views and zoning characteristics, superior land type (no vegetation protection issues or flooding overlays). Overall inferior.”⁶⁰

- [84] The comparison of Sale 1 to the subject on the basis of having a “similar street frontage to busy road”⁶¹ in my view understates material differences between the frontage of Sale 1 and that of the subject land and, as a consequence, understates the impact of Compton Road on the subject land as a rural home site.
- [85] The nature of the frontage is in my view a highly influential consideration in the mind of potential purchasers at each relevant valuation date and is critical to the process of comparison undertaken in respect of this issue.
- [86] Firstly, analysis of the survey plans,⁶² reveals that the subject land has a frontage of 180 m to Compton Road, whereas Sale 1 is narrower with a frontage of only 50 m, a

⁵⁹ Ibid [40]

⁶⁰ Ex.4 page 19.

⁶¹ Ibid.

⁶² Ex.4 page.21 and page.45.

significant difference of 130 m. Secondly, the frontage of Sale 1 is separated from the busy carriageway of Old Cleveland Road by a fenced, two-lane, dead-end side street.⁶³ Lastly, a signalised T-intersection is adjacent to the eastern boundary of the subject land, where the unformed portion of Millers Road adjoins Compton Road from the north. Traffic travelling northbound from Nyanza Street, Woodridge enters this intersection in order to access the eastbound or westbound lanes of Compton Road.

[87] In addition to the less exposed frontage, Sale 1 has the further advantage of more expansive site layout options which flow from a full 150 m of unconstrained depth. This allows a proposed dwelling to be located much further from the roadway and is an attractive attribute. From the aerial photography,⁶⁴ this option appears to have been adopted on several neighbouring sites as a means of reducing the impact of arterial roadway.

[88] Due to the location of the Waterway Corridor and related overlays under the Brisbane City Plan 2014, any planned dwelling would need to be constructed on the southern half of the subject land towards Compton Road i.e. approximately half or 52 m⁶⁵ of the depth can be used to locate a dwelling within the site.

[89] The conclusion by the respondent's valuation expert that Sale 1 is overall inferior to the subject is very difficult to reconcile given that the valuation report does not record the sale as being inferior to the subject in respect of any specific attribute. My impression of the evidence is that this overall conclusion does not recognise the full impact of Compton Road on the subject land, or fully appreciate the significant advantages of Sale 1, i.e. a flood free site with 150 m of useable depth in a far superior location with superior surrounding amenity.

[90] In my view a prudent purchaser contemplating the purchase of land to be solely used as a rural home site would readily consider Sale 1 as a superior site when compared to the subject land on a site to site basis.

⁶³ Ex.4 page.45.

⁶⁴ Ex.4 page.47.

⁶⁵ Ex.4 page 9.

[91] Although I am unable to accept the valuation expert's overall comparison I am however of the view that Sale 1 is still able to be treated as comparable to the subject land.

Valuation Date 1-10-2014

Sale 2 – 127 Kavanagh Road, Wishart

[92] Sale 2 sold for \$950,000 on 4 August 2014 and comprised 1.146 ha of land zoned Open Space pursuant to the Brisbane City Plan 2014. The land was purchased for the construction of a single unit dwelling following the demolition of an existing house. Although the sale has an Open Space zoning, residential use is permitted as a dwelling was previously on the land. The reasoning of the respondent's valuation expert is as follows:

“Sale 2 - Comparison to subject: Smaller land area, similar flooding issues, similar vegetation protection order overlays, superior views and location (better suburb, quiet neighbourhood, adjacent to park, inferior zoning. Overall superior.”⁶⁶

[93] Sale 2 is the only flood affected sale relied upon by the respondent for the 1 October 2014 valuation.

[94] The respondent's valuation report⁶⁷ records that the land adjoins Bulimba Creek, is a gently sloping, irregular shaped lot, and is situated slightly below road level with a gentle cross fall in a north-south direction. Further, the report notes that the land is predominantly cleared with some established trees and shrubs and some views overlooking the immediate area. Reticulated water and sewerage, electricity and storm water are recorded as connected, with a sewerage line also traversing the block.

[95] When Sale 2 was inspected by the respondent's valuer on 4 May 2017 a new dwelling was under construction.

[96] In my view, Sale 2 is materially dissimilar to the subject land, is vastly superior and provides little, if any guidance in valuing the subject land on an unimproved basis. The sale is situated within a prestige location, has a vastly superior surrounding environment/amenity and is situated within a cul-de-sac unaffected by major road impacts. These major differences in my view place the sale in a completely different

⁶⁶ Ex 4 page.19.

⁶⁷ Ex 4 page.15.

market to that of the subject land and as a result, I do not consider the sale to be comparable to the subject.

[97] Further, an issue that emerges from Sale 2 is the substantial disparity between its issued site value of \$ 720,000 as at 1 October 2014 and its analysed unimproved value of \$ 890,000, i.e. the value applied by the respondent's valuation expert for comparison purposes. Sale 2, although described as superior in the valuation report, has a site value lower than the subject land's issued unimproved value of \$740,000.

[98] This anomaly, particularly in the context of an interim valuation, goes beyond an isolated question of relativity and goes to the weight that can be placed on the sale. The Court is being urged by the respondent to apply Sale 2 at a substantially higher analysed unimproved value as evidence that the disabilities affecting the subject land have been adequately taken into account by this comparison.

[99] In *Musumeci v Valuer-General*,⁶⁸ then President MacDonald considered the respondent's valuer had been in error in using the analysed sales prices, rather than the applied values of the sales, in valuing the subject land. President MacDonald later went on to observe in *Body Corporate for Wendall Court & Anor v Valuer-General*:

“... the applied values are important information because it is the applied values, rather than the analysed values of sales, which are to be used for the purposes of determining the unimproved or site values of land”.⁶⁹

[100] The circumstances in *Musumeci* are clearly not identical. The present appeals concern the use of an analysed unimproved value for comparison purposes in circumstances where the sale property has an issued site value, whereas in *Musumeci* both the analysed value and the issued value concerned unimproved values under the *Valuation of Land Act 1944*. Notwithstanding this distinction, in my view the rationale of *Musumeci* is nonetheless applicable particularly given that Sale 2 involves a far lower applied site value, a value that is in a conventional or practical sense the sum of the unimproved value and the added value of any site improvements.

⁶⁸ [2014] QLC 15, [15].

⁶⁹ [2015] QLC 16, [37].

[101] In these circumstances, it is reasonable to question whether Sale 2 has in reality even been relied upon for the in determining that sales site value as at 1 October 2014 “or whether it can be fairly said that the sale has been disregarded”.⁷⁰

[102] In any event, for the reasons I have given above, I do not consider that Sale 2 is comparable to the subject land. Even if it could be treated as comparable, I would not be prepared to rely on Sale 2 given the substantial difference between the analysed unimproved value and the issued value.

Valuation date 1-10-2014

Sale 3 – 147 Warriewood Street, Chandler

[103] Sale 3 comprising 1.063 ha of land sold for \$805,000 on 30 November 2014. The comparison set out in the respondent’s valuation report is as follows:

“Sale 3 - comparison to subject: smaller land area, inferior views, similar Vegetation Protection Overlays, superior location (better suburb, quiet neighbourhood), superior land type (no flooding issues) and similar zoning characteristics. Overall slightly inferior.”⁷¹

[104] I am not able to conclude that Sale 3 is comparable given that it has a significantly superior location and surrounding development/amenity and is not subject to flooding or major road impacts. These factors are substantial advantages not available to the subject land and concern attributes to which a purchaser looking to build a home would be particularly sensitive.

[105] Although the respondent’s valuation report records that views are the only attribute by which Sale 3 is inferior, the report nonetheless concludes that the sale is slightly inferior overall. It is unclear from the report how a particular attribute or attributes contributed to this overall conclusion, which on a site to site comparison is difficult to reconcile. The sale is clearly a ‘bush’ block with a home site area enclosed by thick vegetation. The absence of suburban views on Sale 3 is less influential given that the added privacy of heavily vegetated lot is often an attractive attribute for purchasers of ‘bush’ blocks.

[106] The analysis of Sale 3 by the respondent’s expert does not reflect the impact of the disabilities affecting the subject land as a rural home site, or the significant advantages

⁷⁰ *Chief Executive, Department of Natural Resources v Radlett Enterprises Pty Ltd* (1997-98) 18 QLCR 397, 404.

⁷¹ Ex.5 page 17.

of Sale 3 not available to the subject. On the evidence, Sale 3 would clearly be viewed as superior by a prudent purchaser in comparison with the subject on a site to site basis.

Valuation date 1-10-2015

Sale 1 – 181 Bacton Road, Chandler

[107] Sale 1 sold for \$1,025,000 on 10 April 2015 and comprised 2.15 ha of land zoned Environmental Management pursuant to the Brisbane City Plan 2014. The comparison undertaken by the respondent’s valuation expert is set out below:

“Sale 1 - Comparison to subject: Slightly larger land area, similar flooding issues, similar Vegetation Protection Overlays, superior location (better suburb, quiet neighbourhood), similar zoning characteristics. Overall, superior due to location and size.”⁷²

[108] In my view, Sale 1 is within a vastly superior location with a vastly superior surrounding environment/amenity as compared to the subject. The sale is also unaffected by severe arterial road impacts. The conclusion that the sale has “similar flooding issues”⁷³ is not supported by the evidence and I am unable to conclude that the application of this sale could have resulted in an adequate allowance for the flooding impacting upon the subject land. In these circumstances, I am unable to conclude that the sale is comparable to the subject land.

[109] Further, the same issue arises with this sale to that which emerged in relation to Sale 2 (127 Kavanagh Road, Wishart) for the 1 October 2014 appeal, i.e. the analysed unimproved value utilised for comparison purposes (\$945,000) exceeds the issued site value (\$800,000) by \$145,000. Accordingly, the concerns raised⁷⁴ in relation to Sale 2 for the 1 October 2014 appeal are equally applicable to this sale. Even if the question of comparability is put to one side, I still have real doubts as to how any comparison undertaken on the basis of the substantially higher analysed unimproved value could reflect an adequate allowance for the disabilities affecting the subject land.

[110] In light of the above, I am not prepared to rely on this sale.

⁷² Ex 5 page.17.

⁷³ Ibid.

⁷⁴ [97] to [102].

Valuation date 1-10-2015

Sale 2 – 44 Oakridge Street, Burbank

[111] Sale 2 sold for \$875,000 on 17 April 2015 and comprised 2.388 ha of land zoned Environmental Management pursuant to the Brisbane City Plan 2014. The land was purchased for the construction of a single unit dwelling. The respondent's valuation expert utilised an analysed unimproved value of \$865,000 for comparison purposes. The underlying site value at 1 October 2015 was at \$850,000.

[112] The comparison undertaken by the respondent's valuation expert is set out below:

“Comparison to subject: larger land area, similar flooding issues, more vegetation protection order overlays, superior outlook and location (better suburb, quiet neighbourhood), similar zoning. Overall, superior due to location and size.”⁷⁵

[113] Sale 2 is certainly superior to the subject land and I think it is fair to say, vastly superior. Although the sale has flooding issues and vegetation protection overlays, it is not subject to severe road impacts, and has a highly superior location and surrounding environment to that of the subject. In view of these considerable advantages and overall superiority I am unable to conclude that this sale is comparable to the subject land.

[114] For completeness, in my view the lack of comparability and the extent of the flooding impacts upon the subject land⁷⁶ do not permit the sale to be treated as similarly affected comparable land for the purpose of deciding that the sale is reflective of a market allowance in respect of the flooding impact.

Valuation 1-10-2015

Sale 3 – 151-161 Compton Road, Kuraby (the subject property)

[115] The sale of the subject property is examined under Issue 2 at [49]-[63]. For the reasons given there, this sale cannot be relied upon.

Conclusions re: comparability / comparison of sales

[116] With the one exception⁷⁷ all of the respondent's sales are significantly dissimilar to the subject land, being located in substantially superior locations without major road

⁷⁵ Ex.5 page.17.

⁷⁶ See also [125-135].

⁷⁷ 2785 Old Cleveland Road, Chandler- Sale 1 as at 1 October 2014.

impacts, and surrounded by quality rural home sites within established estates. Several of the sales have involved purchasers demolishing or removing existing homes in order to construct a new dwelling.

[117] Conversely, the subject land is severely impacted by Compton Road, is flood prone, being partly traversed by Slacks Creek, and is subject to extensive overlays under the Brisbane City Plan 2014 which restrict the site set-out options for of a single unit dwelling upon the land. The busy mixed use area immediately to the east of the subject and the neighbourhood to the south, are quite unlike the surroundings of the sales relied upon by the respondent. The sales are in my view in a quite different market segment to the subject land.

[118] In determining this issue I have considered the evidence overall and the relevant submissions of each party. One submission on behalf of the respondent in support of comparability is based on oral evidence by the valuation expert to the effect that “Kuraby is not a bad area”⁷⁸ and that “Kuraby is a good area”.⁷⁹ In my view, although a general suburb to suburb comparison is sometimes potentially useful, in the current appeals the approach appears to be incorrectly premised on the subject land being representative of an overall local standard for the suburb of Kuraby.

[119] A broad comparison on this basis overlooks the stark differences between the subject land and what might be considered a representative local standard for the suburb. A likely consequence of such a comparison is that insufficient weight is attributed to the specific disabilities that distinguish the subject land from the sales contended on behalf of the respondent to be comparable. A relativity comparison or an examination of the improved market as a check method to demonstrate or support the issued values at each relevant date is likely to have been of greater assistance than a general suburb to suburb comparison.

[120] A further contention by the respondent in support of comparability is based on oral evidence that the respondent’s valuation expert had given consideration to the adjustments made to the sales and considered that as a result of those adjustments, the sales relied upon were “most comparable”.⁸⁰

⁷⁸ T 1-58, line 3.

⁷⁹ T 1-58, line 7.

⁸⁰ T 1-56, line 8.

- [121] A difficulty with this submission is that the valuation reports relied upon by the respondent are not ‘speaking reports’ and do not identify the amount of any specific adjustment made, or provide any explanation or reasoning as to how any such adjustment might have been determined i.e. the reports did not permit “the reader to look in detail at the calculations and assumptions which must be made to carry out valuation analyses.”⁸¹ I am therefore unable to accept the respondent’s submission that there was an explanation of the reasoning process in applying the sales while taking account of those differences.⁸²
- [122] Against this background, the adjustments made to the sales by the respondent’s valuer appear to be somewhat of a notional exercise given that the issued unimproved values of \$740,000 for the subject land at each valuation date had already been determined and issued on 1 June 2016, entirely independently of any adjustments made to the sales which were inspected on 4 May 2017.
- [123] In the circumstances, with the exception of Sale 1 for 1 October 2014⁸³ I am unable to accept that the respondent’s sales are comparable and in my view the respondent’s valuation expert has erred in relying on these sales.
- [124] I find ground 1 for both Appeal LVA827-16 and Appeal LVA826-16 to be established on the evidence as a whole on the balance of probabilities.

Issue 7: Has the Valuer-General allowed for the impact of flooding? (Appeal ground 6)

- [125] This issue emerges from ground 6 of the appellant’s notices of appeal, which is set out in the following terms and identical for both appeals:

“6. Because flood overlay and waterway corridor overlay in the Brisbane City Plan affect 65 % of the land, the majority has suffered from flooding for a long time. It will still be inundated if local council does not improve the storm water and drainage system in the surrounding areas. All most two-thirds is not suitable for any construction or growing crops per the advice of the town planning team in the local council. Valuer-General was unable to take this severe shortcoming of inundation into consideration when reviewing the site value.”⁸⁴

⁸¹ *West v Chief Executive, Department of Natural Resources, Mines and Energy* [2014] QLC 31, [199].

⁸² Respondents submissions filed 8 June 2017 para 55.

⁸³ 2785 Old Cleveland Road, Chandler.

⁸⁴ Notices of Appeal LVA827-16 and LVA826-16 filed 26 August 2016.

- [126] The appellant generally confirmed these matters in her statement⁸⁵ and oral evidence.⁸⁶
- [127] The appellant's statement of evidence includes a map from the Brisbane City Plan 2014 depicting the Waterway Corridor overlay across the subject land. The valuation reports on behalf of the respondent also include extracts from the Brisbane City Plan which show the Overland Flow Flood Planning Area and Citywide Waterway Corridor for the subject land and sales. These materials have been considered in conjunction with the aerial imaging of the various sites together with the evidence presented by both the appellant and respondent.
- [128] The valuation expert's reports for both appeals conclude that each flood affected sale has "similar flooding issues"⁸⁷ to the subject land. Although the reports include the relevant flooding overlays it is not explained on the face of the reports how this conclusion is reached.
- [129] During cross examination, the respondent's valuation expert indicated that flooding on the subject land was considered by a comparison of the size of the flood overlays on the subject property and the flood affected sale.⁸⁸ The comparison did not appear to involve a consideration of the overlays as a percentage or proportion of the total area of either the subject land or the sales.⁸⁹
- [130] My understanding of this evidence is that, as a result of this comparison by the valuation expert, the relevant sales were treated as having "similar flooding issues"⁹⁰ and consequently the valuation expert appears to have concluded that no allowance or adjustment was necessary in respect of the impact of flooding on the subject land. In other words, the sales, by virtue of having similar flooding issues, implicitly included an allowance as a consequence of this similarity. Neither valuation report records any specific flooding allowance being applied or allowed in respect of the subject land.

⁸⁵ Ex.1.
⁸⁶ T 1-58, lines 7 to 11.
⁸⁷ Ex 4 page.19; Ex 5 page.17.
⁸⁸ T 1-35 lines 1 to 3.
⁸⁹ Ibid.
⁹⁰ Ex 4 page.19; Ex 5 page.17.

- [131] In my view, the utility of this approach is of limited assistance in these appeals given that the flood affected sales relied upon by the respondent are significantly superior to the subject land and lack overall comparability. The sales do not usefully inform the assessment of the unimproved value of the subject land or demonstrate that an adequate allowance for flooding will follow as a consequence of their application.
- [132] For completeness, I should record that even if the sales were to be treated as being otherwise comparable, I would still hold significant doubts regarding the valuation expert's conclusion that the flood affected sales were impacted by "similar flooding issues".⁹¹ Putting to one side that the comparison process is not detailed in either valuation report, I find it difficult to reconcile how an area to area comparison led to this conclusion given that the subject land has a considerably greater area of overlays (estimated to be almost 65% by the appellant) than any of the other flood affected sales.
- [133] In considering this issue, I have considered the evidence of both the appellant and the valuation expert, the aerial photography, mapping and associated overlays concerning both the subject land and sales. It is my view, given the configuration of Slacks Creek within the subject land, the extent and position of these overlays and the absence of any stormwater infrastructure at both valuation dates, that the conclusion by the respondent's valuation expert that the sales evidence is impacted by "similar flooding issues"⁹² in comparison to the subject land is not supported by the evidence. This conclusion materially understates the flooding impact on the subject land and as a consequence even if the relevant sales were assumed to be otherwise comparable, the flooding issues would still not have received any proper or adequate allowance due to the greater impact of flooding on the subject land.
- [134] The impact of flooding has been discussed earlier in the context of comparability / comparison of sales at [93] and [108]. As noted, two of the three flood affected sales have substantially higher analysed unimproved values than the actual site values issued by the respondent (see Sale 2 for 1-10-2014 with a difference of \$170,000, and Sale 1 for 1-10-2015 with a difference of \$145,000). For the reasons previously detailed, I also have difficulty accepting that a comparison based on the much higher

⁹¹ Ex 4 page.19; Ex 5 page.17.

⁹² Ibid.

analysed values of these sales could in any event, adequately incorporate an allowance for flood impacts upon the subject land.

[135] On the whole of the evidence, I consider that appeal ground 6 is established on the balance of probabilities in respect both appeals.

Should further evidence be received after submissions have closed ?

[136] On 29 September 2017, after the close of evidence, the appellant filed in the Land Court Registry a document requesting that “the judge of the Land Court contact the Brisbane City Council for the actual date of starting to vegetation protection orders on Lot 19 and Lot 22”. This document filed was not accompanied by any application for specific orders or affidavit in support.

[137] On 3 October 2018, the Court made directions by consent for the filing of any submissions regarding receipt by the Court of this additional material. On behalf of the respondent it was contended that the Court should not receive or act on the document given that the Court may not assume the role of an investigating tribunal and is limited to determining the valuation on the evidence placed for it. The case of *Qualischefski v Valuer-General*⁹³ was cited as authority supporting this contention. The submissions by the appellant did not set out any legal basis or authority for the receipt of the document or for the Court to act as requested.

[138] The submissions by each party have been considered and in my view it is clearly beyond the jurisdiction of this Court to act on the appellant’s request.⁹⁴ I accept the respondent’s contention that the Court is unable to undertake investigations and must act upon the evidence placed before it. Accordingly the Court does not propose to receive the document or act upon as requested by the appellant.

[139] On 11 December 2017, the Court received further correspondence from the appellant requesting that three additional documents be received as evidence. The first of these documents, dated 30 October 2017, is headed “victim statement” and is addressed to the Premier of Queensland by the appellant; the second document is a letter dated 24 November 2017 from the Department of Premier and Cabinet to the appellant; and the final document is a letter dated 7 December 2017 from the Department of

⁹³ (1979) 6 QCLR 167.

⁹⁴ Ibid.

Infrastructure, Local Government and Planning to the appellant. Approximately 20 electronic references or links are included within the statement addressed to the Premier of Queensland.

[140] On 13 December 2017, additional correspondence was received by the Court from the appellant. This correspondence requested that five photographs and associated commentary concerning the Brisbane City Council be received as evidence by the Court. These further materials appear to mostly concern events that took place well after the issue date for each annual valuation. Although some of the material is described as important, it is not clear how it is relevant to any issue that is within the jurisdiction of this Court to resolve.

[141] Although not intended as a criticism of the appellant who is self-represented, it should be noted that these matters have arisen after the close of evidence and in circumstances where no application to reopen was formally made by either party, despite liberty to apply being available.

[142] The respondent contends that this additional material is irrelevant and of no probative value in respect of the determination by the Court of the correct valuation for the subject land as at 1 October 2014 and 1 October 2015.

[143] The further materials sought to be admitted have been considered along with the related submissions. I do not propose to receive these materials into evidence as in my view they do not constitute further evidence that is “so material that the interests of justice to require its admission”⁹⁵ or “if accepted would most probably affect the outcome of the case”.⁹⁶

[144] Although there is no specific prejudice complained of by the respondent, it is difficult to see that any real purpose would be achieved by effectively reopening the proceedings and accordingly it is not proposed to reopen either appeal in order to receive these materials as evidence.

⁹⁵ *Reid v Brett* [2005] VSC 18, [41].

⁹⁶ *Ibid.*

Conclusions

1 October 2014 valuation (Appeal LVA827-16)

- [145] With no personal criticism of either Ms Tseng or the respondent's expert, Ms Wickham, I am unable to adopt their contended unimproved values for the subject land. I understand that both witnesses were giving evidence for the first time and, given this circumstance, I should record that although I have not fully accepted their evidence, I nonetheless appreciate their efforts in presenting their respective cases.
- [146] Although I do not accept Ms Tseng's sales are comparable, I do consider her general observations regarding the contrasting attributes between the subject land and the sales evidence in the context of use as a rural home site to be realistic. For completeness, I should record that for the reasons noted above, I am unable to accept the valuation conclusions on behalf of the respondent notwithstanding the absence of expert evidence in the appellant's case.
- [147] I have not accepted the sale of the subject land as a bona fide sale and with the exception of Sale 1 for the 1 October 2014 valuation⁹⁷ I do not accept the respondent's sales evidence to be comparable to the subject land or to be similarly affected for the purposes of concluding that these sales implicitly reflect allowances that can then be adopted in respect of the unimproved value of the subject land. The respondent's sales that I have found not to be comparable are situated within vastly superior estates, have vastly superior surrounding amenity and, critically, none of these sales are impacted by a major arterial road.
- [148] The purchase of the subject land by the appellant on 11 March 2016 for agricultural purposes and the consequent issued value of \$740,000 for each valuation date appears to have been treated as a benchmark value for the land as a rural home site. My impression of the evidence is that this pre-determined amount has strongly influenced the sales selection and the comparison undertaken by the respondent's valuation expert.
- [149] The respondent is clearly free to select sales from Burbank, Wishart and Chandler to value land on Compton Road. However, given that these appeals concern an interim valuation, i.e. a valuation undertaken subsequent to the annual valuation, it may have

⁹⁷ 2785 Old Cleveland Road, Chandler.

assisted if some relativity and/or sales data from the 1 October 2014 and 1 October 2015 valuation years from the division of Yeerongpilly had been included in the respondent's evidence, even if only as a check method. This is even more so given that three of the selected sales had site values lower than their analysed unimproved values, and two of those sales had a substantially lower site values.

[150] None of the respondent's sales formed part of the annual valuation basis for the division of Yeerongpilly for either the 1 October 2014 or 1 October 2015 valuation years. This approach is somewhat novel given that the prevailing relativity for both valuation dates had already been set, and that sales from within the local government division of Yeerongpilly were available for at least the 1 October 2014 annual valuation.⁹⁸

[151] In my view the existing relativity would ordinarily be afforded much greater weight when undertaking a valuation on an interim basis. The valuation approach adopted in these appeals appears to have overlooked the prevailing relativity, even as a check method in favour of sales that could not be considered to be comparable.

[152] I have considered the evidence in its entirety and, for the reasons already given, I find that appeal ground 1 (comparability / sales comparison) and appeal ground 6 (flooding) for the 1 October 2014 valuation (Appeal LVA827-16) are established by the overall evidence on the balance of probabilities and that the issued value is in error.⁹⁹ As a consequence, I consider that this Court is required to reduce the unimproved value of \$740,000 to an amount it considers necessary to correctly make the valuation as required by s 170(b) of the LVA.¹⁰⁰ In undertaking this process, the Court as a specialist tribunal¹⁰¹ may use its own judgment when determining the alteration required in order to correctly make the valuation.¹⁰²

[153] To this end, I consider the most informative sale upon which the Court can rely for Appeal LVA827-16 is the respondent's Sale 1 at 2985 Old Cleveland Rd, Chandler,

⁹⁸ T 1-70 lines 3 to 7, Ex.4 page 11.

⁹⁹ *Valuer-General v Body Corporate for 'Tennyson Reach' Community Titles Scheme 39925* [2018] QLAC 7, [50].

¹⁰⁰ *Ibid.*

¹⁰¹ *Land Court Act 2000* (Qld), s 4 (1).

¹⁰² *Chief Executive, Department of Natural Resources and Mines v Kent Street P/L* [2009] QCA 399, [171].

a sale which I have found to be superior to the subject property. In my view, the reduction required to be made to the issued value for the subject must to some degree reflect the fact that Sale 1, although smaller in size, is on a site to site comparison, superior to the subject property as a rural home site.

[154] Sale 1 has main road proximity, is not connected to utilities and, although smaller, is larger than the flood free portion of the subject land. Sale 1 is not impacted by flooding and is unaffected by easements or local authority constraints or overlays associated with flooding, vegetation or infrastructure. The land enjoys a vastly superior location and surrounding amenity and, although adjacent to a busy road, is less impacted than the subject.

[155] The advantages of Sale 1 outweigh those of the subject and, in my view on a site to site comparison, Sale 1 could not be considered less desirable due to its smaller area. I note that the respondent's valuation expert does not conclude that any of the sales relied upon for the 1 October 2014 valuation are inferior due to size.¹⁰³

[156] Taking all of the evidence into account and being guided by Sale 1, I consider a reduction of \$120,000 is required to be made to the issued unimproved value in order to correctly make the valuation of the subject land as at 1 October 2014. The unimproved value of the subject land is therefore determined at \$620,000 as at 1 October 2014.

1 October 2015 valuation (Appeal LVA826-16)

[157] The grounds of appeal for this appeal are in effect identical to the grounds of appeal for Appeal LVA827-16. In a practical sense, ground 2 is relevant only to the 1 October 2015 valuation given that the sale of the subject was not relied upon by the respondent for the 1 October 2014 appeal.

[158] For the reasons already given, I find that for this appeal (Appeal LVA826-16), appeal ground 1 (comparability / comparison of sales), appeal ground 6 (flooding) and ground 2 (sale of the subject land) are established by the overall evidence on the balance of probabilities. As a result, I do not accept the valuation amounts contended for by either party for the 1 October 2015 valuation, being \$300,000 for the appellant

¹⁰³ Ex 4 page. 19.

and \$740,000 for the respondent to be correct. As with Appeal LVA827-16, the Court must again do the best it can as a specialist tribunal to “correctly make the valuation” as required by s 170 of the LVA.¹⁰⁴

[159] In the absence of cogent evidence or any contention by the parties that there should be any increase or decrease in the unimproved value of the subject land as between the 1 October 2014 and 1 October 2015 valuation years it is necessary and appropriate in my view for the Court to determine the unimproved value of the subject land as at 1 October 2015 at the same amount as for 1 October 2014, namely \$620,000.

Orders

- 1. Appeal LVA827-16 is allowed.**
- 2. The unimproved value of Lot 19 on SP 125370 and Lot 22 on SP 285410, County of Stanley, Parish of Yeerongpilly, as at 1 October 2014 is determined at Six Hundred and Twenty Thousand dollars (\$620,000).**
- 3. Appeal LVA826-16 is allowed.**
- 4. The unimproved value of Lot 19 on SP 125370 and Lot 22 on SP 285410, County of Stanley, Parish of Yeerongpilly, as at 1 October 2015 is determined at Six Hundred and Twenty Thousand dollars (\$620,000).**

GJ SMITH
JUDICIAL REGISTRAR OF THE LAND COURT

¹⁰⁴ *Valuer-General v Body Corporate for 'Tennyson Reach' Community Titles Scheme 39925* [2018] QLAC 7, [50].