LAND COURT OF QUEENSLAND

CITATION:	*Chin Hong Investments Corporation Pty Ltd as Tte v Valuer-General* [2018] QLC 46
PARTIES**:**	**Chin Hong Investments Corporation Pty Ltd as Tte** (appellant) v **Valuer-General** (respondent)
FILE NO:	LVA102-18
DIVISION:	General
PROCEEDING:	Costs application in appeal under s 155 of the *Land Valuation Act 2010* against objection decision
DELIVERED ON:	12 December 2018
DELIVERED AT:	Brisbane
HEARD ON:	Heard on the papers. Submissions closed on 16 November 2018
HEARD AT:	Brisbane
MEMBER:	WA Isdale
ORDERS:	**The respondent's costs application is dismissed.**
CATCHWORDS:	REAL PROPERTY – VALUATION OF LAND – OBJECTIONS AND APPEALS – QUEENSLAND – COSTS – DISCONTINUANCE OF PROCEEDINGS – application by respondent for costs when appeal withdrawn – statutory basis for costs order – discretion – exercise of discretion *Land Court Act 2000* s 34 *Land Court Rules 2000* r 18 *Land Valuation Act 2010* s 171 *Alceon Captrans JV Pty Ltd v Valuer-General* [2017] QLC 30, applied *Brisbane Square Pty Ltd v Valuer-General* [2015] QLC 40, applied

Chrismel v Department of Natural Resources and Mines (2005) 26 QLCR 32, applied
Multiplex 240 Queen Street Landowner Pty Ltd & Anor v Department of Natural Resources and Water [2008] QLC 52, applied
Reed v Department of Natural Resources and Mines & Ors [2014] QLC 1, applied
YFG Shopping Centres Pty Ltd as Tte v Valuer-General [2017] QLC 11, applied

APPEARANCES: The matter was heard on written submissions
In-house-legal Department of Natural Resources, Mines and Energy, for the respondent
Savills Valuations Pty Ltd, as agent for the appellant

Background

[1] The appellant's land was routinely valued by the respondent. The land has an area of 2.541 ha and is located at 2 Goodrich Road West, Murrumba Downs. The respondent valued it at $6,300,000 as at 1 October 2016. The appellant objected to the respondent's valuation and on 19 February 2018, appealed to this Court against the respondent's decision on the objection. The appellant contended for a value of $5,100,000 in its Notice of Appeal. The appellant was represented by its authorised agent, Mr N Murphy of Savills Valuations Pty Ltd.

[2] The appeal was case managed by the learned President who made orders to advance it through the Court's processes.

[3] Most notably, for present purposes, the learned President made orders by consent of the parties on 17 August 2018 for the respondent to file in the Court Registry and serve on the appellant by 21 September 2018 a statement of evidence by its quantity surveyor to be relied on at the hearing. The hearing was set down for three days commencing on 4 February 2019.

[4] There were also orders made for a consolidated brief to the valuation witnesses who were to meet on or before 2 November 2018 and produce a joint report by 7 December 2018. That report was to be filed in the Registry within two days of its receipt.

[5] On 27 September 2018 the date for filing and serving the quantity surveyor's report was extended, by consent, to 5 October 2018. It was filed on 5 October 2018.

[6] The management of the appeal in this Court then conformed with the expected progress and the appeal was on track for hearing.

A change

[7] On 29 October 2018 a Notice of Discontinuance was filed in the Registry. It was signed by Mr Murphy as agent and dated 16 October 2018. The space on the form for the respondent's consent was not completed.

[8] On 30 October 2018 the matter came back before the learned President who ordered that the appeal was withdrawn and that costs would be determined on the papers. A timetable was set for submissions, closing on 16 November, 2018.

The respondent's claim for costs

[9] The respondent seeks orders that the appellant pay for the costs incurred by the respondent in obtaining the report from the quantity surveyor. The respondent's submissions include a copy of its letter dated 22 October 2018 to Mr Murphy wherein it states that the amount for costs incurred is $8,000. The quantity surveyor's invoice, which was provided with the appellant's submissions, is for $8,215, excluding GST. It is clear that the respondent has chosen to claim the rounded-down figure of $8,000. The respondent's submissions also ask for the costs of the submissions.

[10] The letter of 22 October 2018, expressed to be without prejudice save as to costs, included a draft order that the appellant pay $8,000, being the respondent's costs relating to the quantity surveyor's report. Otherwise, each party was to bear their own costs. Clearly, more is now being sought.

[11] The letter of 22 October 2018 refers to an email from Mr Murphy on 16 October 2018 enclosing the notice of withdrawal of the same date.

[12] It is clear that the quantity surveyor's report, which is dated 4 October 2018, was filed on 5 October 2018 and required to be served on 5 October 2018. There is nothing to indicate that the regularity of compliance with this Court order should be doubted. It is not suggested that the report was not served as and when required. If the appellant had the report on Friday 5 October 2018, it was in circumstances where the Court orders made on 17 August 2018 required the parties to prepare and provide a brief to their valuation witnesses by 19 October 2018.

[13] The Court order made by consent on 27 September 2018 had moved the date for filing and serving of the quantity surveyor's report from 21 September 2018 to 5 October 2018. Compliance with that order had been made on the last day and there were two weeks in which to take the next step.

[14] On 16 October 2018 the appellant sent the email with the Notice of Withdrawal or Discontinuance attached.

Respondent's offer to settle

[15] The respondent's lawyer, Mr Prasad, wrote to Mr Murphy on 8 August 2018 making an offer, without prejudice save for costs, to the effect that if the appeal was withdrawn each party would bear their own costs. This was stated in the letter of offer to be open until 4.00 pm Thursday 16 August 2018. The offer was not accepted.

[16] The withdrawal of the appeal was communicated on 16 October 2018, two months after this offer expired, by an email from Mr Murphy enclosing the notice signed on that day.

[17] As pointed out in the letter dated 22 October 2018 to Mr Murphy, the parties went back to Court on 17 August 2018 and orders were made including that the quantity surveyor's report be provided. The date for that to happen was subsequently extended to 5 October 2018.

Respondent's letter of 22 October 2018

[18] The letter from Mr Prasad to Mr Murphy on 22 October 2018 takes issue with a claim (referred to as being made in an email dated 17 October 2018) that the proceedings were discontinued early. It points out that the earlier letter stated the respondent's wish to avoid incurring further costs. The costs involving the quantity surveyor's report are the further costs now in issue. In his letter to Mr Murphy, Mr Prasad also states that the claim of the appellant in the email of 17 October 2018, being that the withdrawal was made after reviewing new information not previously provided by the Valuer-General, did not specify what that new information was. The respondent's letter seeks the $8,000 costs of obtaining the report, which was ordered by the Court the day after the respondent's offer had expired.

Observations in relation to the chronology

[19] After the offer to settle had expired, the appellant continued with the appeal, the process of which necessitated the respondent incurring the cost of obtaining the report due on, and provided by, 5 October 2018. The Notice of Withdrawal or Discontinuance, Form 18, was signed and delivered on 16 October 2018. The cost was therefore necessarily incurred and there is no suggestion that the $8,000 claimed is not appropriate.

[20] There are a number of statutory provisions relating to costs which must be considered.

The legislation

[21] Section 34 of the *Land Court Act 2000* provides that:

> **34 Costs**
>
> (1) Subject to the provisions of this or another Act to the contrary, the Land Court may order costs for a proceeding in the court as it considers appropriate.
>
> (2) If the court does not make an order under *subsection (1)*, each party to the proceeding must bear the party's own costs for the proceeding.

[22] Rule 18 of the *Land Court Rules 2000* states that:

> **18 Costs**
>
> If an applicant or appellant discontinues or withdraws, the court may order the applicant or appellant to pay –
>
> (a) The costs of the party to whom the discontinuance or withdrawal relates up to the date of the discontinuance or withdrawal, if the party has not consented to the discontinuance or withdrawal; and
>
> (b) The costs of another party or parties caused by the discontinuance or withdrawal.

[23] Section 171 of the *Land Valuation Act 2010* (LVA) makes specific provision in relation to costs. This provision will apply in this case and is in the following form:

> **171 Costs**
>
> (1) Each party to a valuation appeal must bear the party's own costs of the appeal.
>
> (2) However, the Land Court may make a costs order it if considers any of the following circumstances applies –
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> (a) all or part of the appeal was frivolous or vexatious;

(b) a party has not been given reasonable notice of intention to apply for an adjournment;

(c) an applicant for an adjournment incurred costs because of the other party's conduct;

(d) a party incurred costs because the other party did not comply with the court's procedural requirements;

(e) without limiting paragraph (c), a party incurred costs because the other party introduced, or sought to introduce, new material;

(f) a party did not properly discharge the party's responsibilities for the appeal.

(3) In this section –

costs includes witness allowances for attending to give evidence.

The respondent's submissions and reply submissions

[24] Most of the respondent's submissions relate to the matters which have already been referred to and it is unnecessary to repeat them. Some significant aspects remain and will be addressed now.

[25] The respondent relies on all of these provisions but primarily on s 171(2)(f) of the LVA, submitting that the appellant did not properly discharge its responsibilities for the appeal.

[26] The respondent submits that in not accepting its settlement offer, then proceeding with the appeal after the offer expired, and then withdrawing it after the $8,000 costs had been incurred without a proper justification or explanation for the basis of that withdrawal, (as referred to in its letter of 22 October 2018), is unmeritorious conduct by the appellant amounting to a failure to properly discharge its responsibilities as referred to in s 171(2)(f).

[27] The respondent claims that the expense to which it was put could have been avoided if the appellant carried out its responsibilities properly.

[28] The respondent's reply submissions make clear an aspect not previously developed. The respondent submits that the absence of reasons for acceptance of its offer to settle by the appellant, must be considered in the context of the respondent having provided disclosure and a statement of facts, matters and contentions. The respondent also

points out that no request was made by the appellant for more time to consider the respondent's offer.

[29] The respondent disagrees that the appeal was withdrawn "very early in the proceeding"[1] as asserted by the appellant. The respondent goes on to say in the reply submission that it is curious that the contemporaneous reason given by the appellant in the email on 17 October 2018 for withdrawing the appeal differs from the explanation given in the email on 29 October 2018. That email referred to a decision of this Court on 28 September 2018 which prompted the appellant's decision to withdraw the appeal. It is clear that the respondent sees the explanation as contradictory and unsatisfactory, if not mendacious. This will be considered in detail later in these reasons.

[30] The respondent submits that the appellant's claim that it would be unlikely to face a costs application if there had been a hearing is hypothetical only. The Court accepts that it is not useful, in deciding that orders ought to be made in the present case, to speculate on what might have been done in hypothetical circumstances.

The appellant's submissions

[31] The appellant submits that the costs application should be dismissed and that the respondent should pay its costs. No particular amount is claimed. As the submissions were prepared by the agent, rather than a lawyer, the Court cannot order the payment of legal professional costs.

[32] The appellant refers to *Chrismel v Department of Natural Resources and Mines* where the Land Appeal Court said that the primary rule that each party bear their own costs exists so as to ensure that citizens are not discouraged from bringing proceedings for fear of a "crippling" costs order. The Land Appeal Court was there considering a decision of the Court of Appeal which dealt with an appeal from the Planning and Environment Court. The Land Appeal Court said that the primary rule also recognised the wider public interest likely to be involved in the proceeding. The Land Appeal Court found that those considerations applied to the case before it, which considered

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1 Letter dated 22 October 2018 from Mr Prasad to Mr Murphy; Appellant's submissions filed 9 November 2018, para 24(c).

s 882(4) of the *Water Act 2000*.[2] The provision being discussed there, s 882(4)(g), is effectively the same as s 171(2)(f).

[33] The appellant submits that the respondent's offer, dated 8 August 2018, was made after the parties had nominated their expert witnesses.[3] That is correct.

[34] The appellant submits that the offer of 8 August 2018 was made "…after the Valuer-General had filed an expert report from his quantity surveying expert;"[4] This is incorrect. That report was filed on 5 October, 2018.

[35] The appellant also submits that the offer was made before the expert valuation evidence had been produced.[5] That is correct.

[36] The appellant refers to the decision of the Land Appeal Court in *Williams v Department of Environment and Resource Management*[6] as authority for the proposition that an unreasonable rejection of a *Calderbank*[7] offer could in some circumstances amount to a failure to discharge a party's responsibilities, enlivening the discretion under s 882(4) of the *Water Act 2000*.[8]

[37] The appellant submits that those observations are "…apt in respect of the current matter."[9]

[38] The appellant submits that the relevant question is whether, by not responding to the offer, it had acted unreasonably in all the circumstances.[10]

[39] It is pointed out on behalf of the appellant that at the time the offer was made there was no valuation evidence filed so the appellant did not have enough material to be in a position to accept the respondent's offer. The respondent's offer is criticised by the appellant for giving no reasons why it should be accepted and for giving only eight days in which it could have been accepted. The appellant said that at least 14 days should have been given.

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2 *Chrismel v Department of Natural Resources and Mines* (2005) 26 QLCR 87, [46].
3 Appellant's submissions filed 9 November 2018, para 13(a).
4 Ibid 13(b).
5 Ibid 13(c).
6 (2014) 35 QLCR 569.
7 *Calderbank v Calderbank* (1976) 3 All ER 333.
8 *Williams v Department of Environment and Resource Management* (2014) 35 QLCR 569, [30]; Appellant's submissions filed 9 November 2018, para 14.
9 Appellant's submissions filed 9 November 2018, para 15.
10 Ibid 16-17.

[40] The appellant submitted that there is no basis for the respondent's submission that it could be inferred that the appeal was "wholly unmeritorious"[11]

[41] The appellant further submitted that it is difficult for the Court to be satisfied that the "…refusal of the V-G's (sic) offer was unreasonable."[12]

Observations on the appellant's submissions so far

[42] It is not correct that the offer was made after the quantity surveying report was filed. The offer expired the day before the Court ordered, on 17 August 2018, that the report was to be filed by 21 September 2018, that date being subsequently varied to 5 October 2018.

[43] It was not incumbent on the respondent to give reasons for its offer, or to allow at least 14 days for it to be considered.

[44] It is unnecessary for the Court to be satisfied that the appeal was "wholly unmeritorious".[13]

The appellant's submissions on "failure to withdraw the appeal early in the proceedings"[14]

[45] At paragraph 26 of the appellant's submissions, the appellant challenges the respondent's claim, at paragraph 27 of the respondent's submissions, that no adequate explanation for the withdrawal of the appeal was provided. The appellant states:

> "On 29 October 2018 we wrote to the solicitor for the Valuer-General regarding the withdrawal and indicating that the decision of the Court in *BWP Management Ltd v Valuer-General (No 2)* [2018] QLC 30 was a relevant consideration for the Appellant in deciding to withdraw the appeal. That decision was handed down on 28 September 2018 and dealt with some of the comparable sales that were to be considered in this appeal. A copy of the email sent on 29 October 2018 is attached to these submissions."[15]

[46] The relevant part of that email of 29 October 2018 from Mr Murphy to Mr Prasad is as follows:

> "The appellant has done everything in its power to reduce costs for all parties once they became aware of the recent decision in BWP and the Valuer General (sic) and comments in relation to the Appellants (sic) expert and

11 Ibid 21.
12 Ibid 23.
13 Ibid 21.
14 Ibid 25-34.
15 Ibid 26.

> sales also relied on (sic) this appeal. There can be numerous reasons why an appellant withdraws an appeal but has at all times up until the withdrawal have (sic) maintained their position in relation to the appeal."[16]

[47] At paragraph 25 of its submissions, the appellant states that there are any number of reasons why an appellant may choose to withdraw an appeal. At paragraph 26 it states that the Court decision on 28 September 2018 "was a relevant consideration".[17] At paragraph 27 of its submissions it is stated:

> "Having the benefit of the decision in the *BWP Management Limited* appeal, the Appellant acted appropriately by assessing its position and taking steps to withdraw the appeal. Taking those steps saved any further costs for the parties to the appeal."[18]

[48] It is clear that this was the factor which, it is now submitted, resulted in the decision by the appellant to withdraw or discontinue the appeal.

Observation on this

[49] The appellant's submissions, made after those of the respondent, make no mention of the following paragraph in the respondent's letter of 22 October 2018:

> "Your further email dated 17 October 2018 in response to the reason why the Appellant no longer wishes to continue with the appeal asserted that the "*Appellant has withdrawn the matter very early in the proceeding after reviewing new information not previously provided by the Valuer-General*"'[19]

[50] The quoted assertion does not provide any useful information and could readily be understood as inconsistent with the email of 29 October 2018 and the appellant's submissions now made. However, it is also open to conclude that the opaque expression in the email of 17 October 2018 may relate to the Court decision of 28 September 2018. The Court has not been provided with that email of 17 October 2018 and has only the quote from it, which has not been disputed. That Court decision may be the "new information" that was referred to. The Court will proceed on the basis that this is so, giving the appellant the benefit of the doubt.

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16 Email of 29 October 2018, 2.55 pm from Neil Murphy to Predev Prasad.
17 Appellant's submissions filed 9 November 2018, para 26.
18 Ibid 27.
19 Letter dated 22 October 2008 from Mr Prasad to Mr Murphy.

The case law

[51] His Honour Member Cochrane considered the same statutory provision in *Alceon Captrans JV Pty Ltd v Valuer-General.*[20] In that case the valuation appeal was discontinued while disclosure was still incomplete[21] and there was no suggestion by the appellant that the decision to discontinue, which was a result of recent legal advice,[22] "…related only to factors which had lately emerged…"[23] In the present case, the respondent claims that the withdrawal was "…very early in the proceeding after reviewing new information not previously provided by the Valuer-General."[24]

[52] Mr Murphy was the appellant's agent in that case also. In this case there is the assertion quoted above, distinguishing it from that earlier case.

[53] His Honour Member Cochrane said that s 171 "…makes it clear that there must be some unsatisfactory aspect of the conduct of the party against whom a cost (sic) order is sought."[25] His Honour was satisfied that the appellant had put the respondent to unreasonable trouble and expense in attempting to comply with Court orders in the face of the appellant's inadequate disclosure. His Honour said that the appellant "…late in the piece, decided to withdraw its appeal."[26] In the present case, the appellant, again with Mr Murphy as its agent, has asserted that it withdrew "…very early in the proceeding."[27]

[54] The Court must consider the facts of the present case, where the appeal was discontinued on 16 October 2018, in the factual matrix which has been referred to. In this case the report of the quantity surveyor had to be provided by the respondent by 5 October, 2018. It was therefore necessary for it to incur expense in doing so.

[55] In *Alceon Captrans* his Honour Member Cochrane ordered that the appellant pay the respondent's costs after a date which he specified. He was satisfied that, from that

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20 [2017] QLC 30.
21 Ibid [27].
22 Ibid [19].
23 Ibid [23].
24 Letter dated 22 October 2018 from Mr Prasad to Mr Murphy.
25 *Alceon Captrans JV Pty Ltd v Valuer-General* [2017] QLC 30, [44].
26 Ibid [56].
27 Letter dated 22 October 2018 from Mr Prasad to Mr Murphy.

date, the appellant put the respondent to unreasonable trouble and expense.[28] His Honour said:

> "In cases where the application of a provision such as r (sic) 171 applies, the Court needs to be, in my opinion, objectively satisfied of some failing by the party against whom the Court order is sought."[29]

[56] In that case his Honour pointed out that:

> "The appellant had an opportunity to inform the Court of the nature of the advice or to provide information establishing that the advice could not have been provided earlier. They did not do that."[30]

[57] Section 171 is a specific provision applying to cases such as the present. Section 34 and r 18 do not extend its operation. Sub-section (1) of s 171 provides the starting position, that each party must bear their own costs. Sub-section (2) provides for a discretion which the Court may exercise, and paragraph (f) is pointed to by the respondent.

[58] The respondent submits that the discretion to award costs granted by s 34 is unfettered but must be exercised judicially, for reasons that may be explained and substantiated.[31]

[59] In *Multiplex 240 Queen Street Landowner Pty Ltd & Anor v Department of Natural Resources and Water*,[32] President Trickett considered s 34 of the *Land Court Act* 2000. At that time s 171 of the present Act did not exist. The learned President considered that the discretion is complete but must be exercised judicially. The Court is not precluded from resorting to "settled practice".[33]

[60] In *Reed v Department of Natural Resources and Mines*[34] President MacDonald considered s 882 of the *Water Act 2000*, which is analogous to s 171. Section 882(4)(g) is effectively the same as s 171(2)(f).[35]

[61] In that case the learned President found that the appellant had failed to comply with the Court's procedural requirements, a specific ground enlivening the discretion.[36] Her Honour found, in the alternative, that the appellant had not properly discharged his

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28 *Alceon Captrans JV Pty Ltd v Valuer-General* [2017] QLC 30, [56]-[57].
29 Ibid [48].
30 Ibid [51].
31 Respondent's submissions filed 2 November 2018, and re-filed on 5 November 2018 with the attachments which were not provided on 2 November 2018, para [9].
32 [2008] QLC 52.
33 Ibid [19]-[30], [28].
34 [2014] QLC 1.
35 Ibid [6].
36 Ibid [32].

responsibilities under s 882(4)(g).[37] The learned President also found that r 5 of the *Uniform Civil Procedure Rules* 1999 (UCPR) applied in that case.[38]

[62] Sub-section (3) of r 5 of the UCPR states that a party impliedly undertakes to proceed in an expeditious way. The Court is satisfied that this rule applies in the present case.

[63] In *Chrismel v Department of Natural Resources and Mines*[39] the Land Appeal Court considered s 882(4) and said:

> "[50] Having regard to the apparent legislative intent evinced in the provisions of s 882(4), which is to give the court the power to compensate a party disadvantaged by the unmeritorious conduct of another party in the appeal, there is no reason why s 882(4)(g) ought not to be construed as extending to a wide variety of unmeritorious conduct in the appeal, such as the presentation of irrelevant evidence or the raising of plainly unarguable matters."[40]

[64] In *Brisbane Square Pty Ltd v Valuer-General*[41] his Honour Member Smith referred to the *Reed* and *Chrismel* cases without disagreement [42] although, in the case then before him, the decision depended on a finding concerning whether conduct was frivolous or vexatious, which does not arise here.

[65] In *YFG Shopping Centres as Tte v Valuer-General*[43] the learned President considered s 171(2)(f). The learned President found that the appellant had "…offered no explanation for its substantial change to comparable sales evidence raised months after it had delivered its particulars."[44] In those circumstances the learned President was satisfied that the appellant did not discharge its responsibilities in the appeal.[45] The learned President then considered whether the discretion should be exercised in the Valuer-General's favour, noting the starting point is s 171(1) and that costs are not awarded to punish but are compensatory in nature.[46]

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37 Ibid [33].
38 Ibid [35].
39 (2005) 26 QLCR 87.
40 Ibid [50].
41 [2015] QLC 40.
42 Ibid [67], [68].
43 [2017] QLC 11.
44 Ibid [16].
45 Ibid [16].
46 Ibid [18]-[19].

How does the appellant's conduct fall within s 171(2)(f)?

[66] The respondent submits that it does so by failing to respond substantively to the appellant's letter of offer dated 8 August 2018 and by not withdrawing the appeal prior to the directions hearing on 17 August 2018 and before the $8,000 cost issue was incurred.

Finding regarding s 171(2)(f)

[67] Proceeding in the manner indicated by the authorities which have been referred to, the Court must first consider, on the facts that have been recounted, whether the appellant did not properly discharge its responsibilities for the appeal.

[68] The appellant submits that after the Court decision in another valuation case was handed down on 28 September 2018, the appellant assessed its position and decided to withdraw. The email of 29 October 2018 refers to comments of the Court in that case and that sales in that case were also relevant to this appeal. The Notice of Discontinuance dated 16 October 2018 was explained in the email of 29 October 2018.

[69] This Court is satisfied that the factor which prompted the discontinuance was the Court decision on Friday 28 September 2018. It resulted in discontinuance on Tuesday 16 October 2018. The discontinuance was provided to the respondent on that date and filed in Court, apparently by the respondent, on 29 October 2018.

[70] Only 12 working days after the Court decision, the decision to discontinue the appeal was properly communicated to the respondent.

[71] The Court is not satisfied that this was a failure to proceed expeditiously under r 5 UCPR. It appears that the decision to discontinue was not due to any failure of the appellant to properly discharge its responsibilities as there was not shown to be an inappropriate delay in acting once the operative occurrence, the Court decision of 28 September 2018, occurred.

[72] The fact of the offer having been not accepted and the expense of the quantity surveyor's report incurred is not relevant for present purposes. The appellant was entitled to appeal and stopped the process with reasonable promptness when the relevant Court decision was made.

[73] The Court finds, accordingly, that it is not able to be satisfied that the appellant did not properly discharge its responsibilities for the appeal.

[74] The discretion in s 171(2) is therefore not enlivened and the respondent's application must be dismissed for the reasons given.

[75] As has already been referred to, the Court is not able to award legal professional costs to the agent and no specific items of cost are claimed by the appellant. Were it able to make such an order, (and on the material provided it cannot), the Court would decline to do so. The opaque explanation given by the appellant on 17 October 2018 and the explanation in its email of 29 October 2018, which could readily be interpreted as contradictory and therefore lacking in candour, could provide a reasonable basis for the respondent's action in obtaining the Court order on 30 October 2018 setting the timetable for the progress of the present costs application.

Orders:

The respondent's costs application is dismissed.

WA ISDALE
MEMBER OF THE LAND COURT