

# LAND APPEAL COURT OF QUEENSLAND

CITATION: *Lakes Investments Pty Ltd & Anor v Department of Natural Resources and Mines* [2002] QLAC 096

PARTIES: **Lakes Investments Pty Ltd and Landel Pty Ltd**  
(applicant)  
v  
**Chief Executive, Department of Natural Resources and Mines**  
(respondent)

FILE NO: LAC2002/0032

DIVISION: Land Appeal Court of Queensland

PROCEEDING: Decision on Costs

ORIGINATING COURT: Land Court of Queensland

DELIVERED ON: 6 December 2002

DELIVERED AT: Townsville

HEARD AT: Written submissions

JUDGE  
MEMBERS: Cullinane J  
Mr RE Wenck and Mrs CAC MacDonald

ORDER: **1. It is ordered that the respondent pay to the appellant 50% of the appellant's costs of and incidental to the proceedings in the Land Appeal Court concerning its appeal against the determination by the Land Court of the unimproved value of Lots 135 and 136 on SP 116240 as at 1 October 1999.**

**2. The amount of the costs is to be decided by the appropriate assessing officer of the Supreme Court under the scale of costs prescribed by law for proceedings in the Supreme Court pursuant to s.34(5) of the *Land Court Act 2000*.**

CATCHWORDS: Valuation of land – costs – application for costs in Land Court and Land Appeal Court hearings – no order for

costs in Land Court – two issues in Land Appeal Court – successful challenge by appellant to long standing valuation principle on one issue – partial award of costs to appellant.

- [1] On 12 September 2002, the Land Appeal Court allowed appeals by Landel Pty Ltd against determinations by the Land Court of the unimproved value of Lots 135 and 136 on SP 116240 and Lot 38 on RP 893501, as at 1 October 1999. The Land Court determinations were set aside and the unimproved valuations were determined as follows:
- Lot 135 - \$446,000  
Lot 136 - \$416,000  
Lot 38 - \$117,000
- [2] The appeal by Lakes Investments Pty Ltd against the Land Court determination of the unimproved value of Lot 1 on SP 107568 as at 1 October 1996 was not proceeded with and was dismissed. The appeal against the determination of the value of that land as at 1 October 1999 in the amount of \$350,000 was disallowed.
- [3] Landel Pty Ltd now seeks an order for the costs of and incidental to the appeals before the Land Court and the Land Appeal Court concerning Lots 135, 136 and Lot 38. The respondent submits that these applications should be refused.

### **Power to Award Costs**

- [4] The Land Appeal Court has a discretion as to the award of costs (ss.72 and 34(1), *Land Court Act 2000*), but that discretion is to be exercised subject to the provisions of the *Valuation of Land Act 1944*.
- [5] Section 66 of the *Valuation of Land Act 1944* (the Act) provides that upon the rehearing of an appeal, the Land Appeal Court may, subject to s.70, make such order as it deems fit with respect to the payment of costs.
- [6] Section 70 of the Act provides that:
- “(1) Where the value of land as finally determined upon an appeal against the valuation is the value stated by the owner in the owner’s notice of appeal against the valuation, or is nearer to that value than to the valuation appealed against, costs shall not be awarded against the owner.
- (2) Otherwise costs shall not be awarded against the chief executive.”
- [7] In *Bowden v Valuer-General* (1980-81) 7 QLCR 138 at 146, 147, the Land Appeal Court discussed the general principles to be applied in determining liability for costs in respect of appeals under the *Valuation of Land Act*. While acknowledging that the Court has a discretion as to the award of costs which must be exercised judicially, the Court said that

a relevant consideration in the exercise of the discretion in valuation appeals is that it is most desirable in revenue cases that there should be ease of access to the Land Court and the Land Appeal Court to air grievances and have valuations reviewed, without fear of costs being awarded, except in special circumstances. The Court also noted (at 146) that it would be unjust to adopt a restrained attitude towards awarding costs against citizens without adopting an equally restrained attitude towards awarding costs against the Valuer-General. The same principles were adopted in *Hymix Industries Pty Ltd v The Valuer General* (1990) 13 QLCR 173 at 185, 186 where the Court also said that it was relevant to consider whether either party had approached the valuation in an arbitrary, frivolous or vexatious manner, or had completely disregarded relevant valuation principle.

[8] *Lot 135*

Valuation appealed against	\$640,000
Value contended for by appellant in Notice of Appeal	\$400,000
Evidence lead to, on hearing	\$66,000
Determination by Land Appeal Court	\$446,000

Although on the hearing of this matter in the Land Court the appellant lead evidence to a value considerably less than that contended for in the Notice of Appeal, the wording in s.70(1) of the Act indicates that the section is to be applied to the value stated in the Notice of Appeal. The effect of s.70 is, therefore, that costs cannot be awarded against the appellant in respect of Lot 135, as the amount contended for by the appellant (\$400,000) was closer to the value determined by this Court (\$446,000) than the valuation appealed against (\$640,000).

[9] *Lot 136*

The same reasoning and conclusion applies to the appeal relating to lot 136, where the relevant figures are:

Valuation appealed against	\$680,000
Value contended for by appellant in Notice of Appeal	\$289,500
Evidence lead to, on hearing	\$50,000
Determination by Land Appeal Court	\$416,000

[10] *Lot 38*

Valuation appealed against	\$180,000
Value contended for by appellant in Notice of Appeal	\$40,000
Evidence lead to, on hearing	\$49,000
Determination by Land Appeal Court	\$117,000

In this appeal, the respondent's valuation is closer to the valuation determined by the Land Appeal Court, and therefore no order for costs can be made against the respondent. The appellant has submitted, nevertheless, that the costs in this appeal both before the Land Court and the Land Appeal Court be awarded as part of the costs in the appeals in respect of Lots 135 and 136, because the factual matrix, with few exceptions, was the same for all three appeals which were heard concurrently. We do not accept this submission. In our opinion, the terms of s.70 are mandatory and no costs can be awarded against the respondent in respect of Lot 38.

[11] The application for costs in respect of Lot 38 is therefore refused.

### **Land Court Proceedings**

[12] Five appeals were heard by the Land Court over some 12 days. Those appeals raised a number of issues, including:

- (1) The allowance to be made for fill on Lots 135, 136 and 38. This involved two sub-issues -
  - (a) the amount to be allowed for the value of fill (the *Alfred Grant* issue); and
  - (b) the appropriate level of development of the land to be allowed for. In this respect, extensive evidence was given as to flood risk, site exposure, drainage, tank effect and jump up, comparative sales and improvements such as retaining walls.
- (2) Consideration of extensive sales evidence in relation to each of the lots.
- (3) The appropriate valuation methodology to be adopted.
- (4) The application of s.6(2) of the Act.
- (5) Whether other allowances should be made.

[13] We can see no reason to exercise our discretion in favour of the appellant in respect of the hearing of the appeals in the Land Court. With the possible exception of the *Alfred Grant* issue, which is discussed further below, there was nothing "special" or "exceptional" in any of the matters to warrant an order for costs against the respondent. We accept that the hearing was lengthy and involved extensive engineering and valuation evidence. However, we note that, in respect of Lots 135 and 136, the appellants lead evidence to amounts which were substantially lower than the final determinations of this Court. In those circumstances, there is nothing to suggest that the conduct of the respondent in defending the valuations was arbitrary or capricious.

[14] What is referred to as the *Alfred Grant* issue does raise different considerations. Before both the Land Court and this Court, the appellant challenged an earlier decision of this

Court in *Alfred Grant Estates (Surfers Paradise) Pty Ltd v The Valuer-General* (1966) 33 CLLR 1 as to the appropriate methodology to be applied in valuing fill in circumstances where the fill had been obtained at a comparatively low cost from a source no longer available at the date of valuation. In the Land Court, the learned Member held that he was bound by the decision in *Alfred Grant* to adopt a rate which reflected the cost, at the date of valuation, of fill obtained in the way in which it was when the works were carried out on the subject properties. He rejected a submission that the fill should be valued on the assumption that the work had been carried out on the date of valuation. On appeal, this Court departed from the decision in *Alfred Grant* and held that the added value which should be ascribed to the fill should be established at the relevant date by reference to the amount which a reasonable purchaser would ascribe to the fill, that is, the cost of acquiring the fill from the most readily available source at a reasonable price as at that date.

[15] Although the appellant was ultimately successful in this Court in its challenge to the decision in *Alfred Grant*, we do not consider that success of itself means that the appellant is entitled to an order for costs in the Land Court. Given the state of the authorities, the respondent did not act unreasonably in resisting that challenge, particularly as a member of the Land Court was bound to follow the decision in *Alfred Grant*. We also note that the *Alfred Grant* issue was only one of a considerable number of issues raised in the appeal to the Land Court and that on many of those issues the learned Member did not accept the evidence lead by the appellant.

[16] The application by the appellant, for costs in respect of the hearing of the appeals concerning Lots 135 and 136, in the Land Court is, therefore, also refused.

### **Land Appeal Court Proceedings**

[17] Although the Notice of Appeal to this Court was wide-ranging, the appellant's submissions on the hearing of that appeal were confined to two principal issues:

- (1) The amount to be allowed for the value of the fill (the *Alfred Grant* issue); and
- (2) The appropriate level of development of the land to be allowed, for the purpose of determining unimproved value.

The appeal succeeded in respect of the first issue but was rejected in relation to the second.

[18] We consider that the appellant should be allowed part of its costs of this appeal. As with the Land Court, success in an appeal to this Court is not, of itself, sufficient to justify the exercise of our discretion in favour of the appellant. However, we consider that the

successful challenge to the decision in *Alfred Grant* was unusual and exceptional and that it warrants the exercise of our discretion in the appellant's favour. It was necessary, if the decision in *Alfred Grant* were to be challenged effectively, for the right of appeal to this Court to be exercised. As we noted in our decision in the substantive matter, the circumstances in which this Court will depart from an earlier decision of the Court are those identified by the High Court in *Nguyen v Nguyen* (1989-90) 160 CLR 245 at 269, 270, that is when the Court is compelled to the conclusion that the earlier decision is wrong. The occasions upon which such departure is warranted are infrequent and exceptional and we therefore consider that this is a special circumstance which justifies the Court departing from its normal practice of not awarding costs in a valuation appeal. We note, also, that in *The Valuer-General v Queensland Club* (1991) 13 QLCR 207 the Land Appeal Court made an order for costs in favour of the successful party in a valuation appeal where the appeal was in the nature of a test case which, the Court said, was a unique feature of the matter.

[19] The appellant has succeeded on one of its two grounds of appeal, and we have decided, in the circumstances, to award the appellant 50% of its costs of the appeal in respect of Lots 135 and 136.

#### **Orders**

- [20]
- (1) It is ordered that the respondent pay to the appellant 50% of the appellant's costs of and incidental to the proceedings in the Land Appeal Court concerning its appeal against the determination by the Land Court of the unimproved value of Lots 135 and 136 on SP 116240 as at 1 October 1999.
  - (2) The amount of the costs is to be decided by the appropriate assessing officer of the Supreme Court under the scale of costs prescribed by law for proceedings in the Supreme Court pursuant to s.34(5) of the *Land Court Act 2000*.

**CULLINANE J  
JUSTICE OF THE SUPREME COURT**

**RE WENCK  
MEMBER OF THE LAND COURT**

**CAC MACDONALD  
MEMBER OF THE LAND COURT**