

25 JUNE 1997

Re: **Application for Costs -  
AV96-499**

**DJ and FM Look**

**v.**

**Chief Executive, Department of Natural Resources**

**D E C I S I O N**

Consequent upon delivery of the decision dismissing the appeal and affirming the Chief Executive's valuation in the above matter, the respondent Chief Executive, Department of Natural Resources, applied for costs incidental to the hearing of the matter in the sum of \$160. These costs are claimed as being of the valuation fees incurred by the respondent in the preparation for and attendance at the Court. The appellants, through Donald James Look, resisted the application.

The respondent's application was made since it appeared to him that the Court's decision basically followed a decision by my learned colleague, Mr Wenck, in a previous appeal against a 1995 relevant date valuation of the same land which is situated at 43 Andrew Avenue, Tarragindi (Appeal Ref AV95-683 refers). For reasons indicated in his written decision, Mr Wenck also dismissed the former appeal. It is the respondent's submission that there was in this appeal no substantial basis or arguable point additional to those raised by the appellants in Appeal AV95-683, and that the appeal really falls into the category of being frivolous, arbitrary or vexatious.

Mr Look opposes the application on the basis that he introduced additional evidence in this case, namely a reference to and comparison between the value of the subject property and the value of sites situated at Nos. 7, 9 and 11 Glencoe Avenue, Tarragindi. That this is so is not technically in doubt, but I should say that Mr Look made reference to the comparison between the value of the subject land and the value of the Glencoe Avenue properties in yet another earlier appeal against the valuation of 43 Andrew Avenue (AV94-0215). It is to be noted that appeal references AV95-683 and AV94-0215 were heard together.

Now as submitted by counsel for the respondent, perhaps the leading authority concerning an award of costs in this jurisdiction in appeals under the provisions of the *Valuation of Land Act 1944* is the judgment of the Land Appeal Court in *Re: WH Bowden against the determination of the Valuer-General - Shire of Pine Rivers* (V79-476) - (1980-81) 7 QLCR 138. This judgment, insofar as it is relevant, reads:

"We think in dealing with questions of costs, that it is an important consideration that there be ease of access to the Land Court and to the Land Appeal Court ... Fear of an adverse order with respect to costs may deter citizens with just complaints from resorting to the Courts; that has in the past occurred, as will appear. It seems to us unjust to adopt a restrained attitude towards awarding costs against citizens without adopting an equally restrained attitude towards awarding costs against the Valuer-General. That is not to say that, in a proper case, the Land Court or the Land Appeal Court will not award costs against either citizen or an authority subject to the provisions of the statute which governs the matter."

That awards of costs are normally not made by this Court in appeals against determinations by the Chief Executive is a matter of historical record. In this case, my inclination to depart from precedent and make an award of costs in favour of the respondent Chief Executive is slightly diluted by the fact that the appellants did introduce the additional evidence of the comparisons with the Andrew Avenue properties, and that these comparisons were not included within the grounds of appeal in the earlier case (AV95-683). In these circumstances, I refrain from complying with the costs application made by the respondent Chief Executive, and make no order as to costs.

**CH CARTER**  
**MEMBER OF THE LAND COURT**