

LAND COURT OF QUEENSLAND

CITATION: *ING Management Limited (as responsible entity) & Anor v Department of Natural Resources and Water* [2009] QLC 0094

PARTIES: ING Management Limited (as responsible entity)
- and -
Trust Company Fiduciary Services Limited
(appellants)

v.

Chief Executive, Department of Natural Resources and Water
(respondent)

FILE NO: AV2007/0556, AV2007/0666 and AV2008/0089

DIVISION: Land Court of Queensland, General Division

PROCEEDING: Appeals against annual valuations under the *Valuation of Land Act 1944*

DELIVERED ON: 7 July 2009

DELIVERED AT: Brisbane

HEARD AT: Brisbane

MEMBER: Mr RS Jones

ORDERS: **1. Appeals AV2007/0556, AV2007/0666 and AV2008/0089 are allowed**
2. The unimproved value of Lot 102 on Survey Plan 102966 as at 1 October 2006 is determined in the amount of Sixty Four Million, Eight Hundred and Forty Thousand Dollars (\$64,840,000).
3. The unimproved value of Lot 28 on Registered Plan 170279 as at 1 October 2006 is determined in the amount of Twenty-Six Million, Seven Hundred and Ten Thousand Dollars (\$26,710,000).

CATCHWORDS: STATUTES – CONSTRUCTION AND INTERPRETATION OF LEGISLATION – Determination of whether existing approvals associated with improvements on the land add value to the land pursuant to s.3(2B) of the *Valuation of Land Act Qld 1944* – consideration of whether or not infrastructure credits

associated with previous building works carried out on the land add value to the land pursuant to s.3(2B) of the *Valuation of Land Act Qld 1944* – treatment of infrastructure credits under s.3(1)(b) of the Act

VALUATION OF LAND – SALES EVIDENCE – Application of sales – relevance of sales of significantly smaller parcels of land – treatment of sale affected by an easement – consideration of so-called principle of “discount for size” in the comparison of the subject land to sales and other sites – consideration given to hypothetical maximum development permitted on subject land and sales

VALUATION OF LAND – NO EVIDENCE IN SUPPORT OF VALUATIONS APPEALED AGAINST – Presumption of correctness pursuant to s.33 of the *Valuation of Land Act 1994* not applicable

Valuation of Land Act ss 3 and 33

GPT RE Limited (as responsible entity) & Anor v Department of Natural Resources and Water [2009] QLC 0078 (Unreported decision of Land Court)

Perpetual Trustee Company Ltd v Chief Executive, Department of Natural Resources and Mines [2006] QLC 0017 (Unreported decision of Land Court)

AMP Life Limited & Others v Department of Natural Resources and Mines [2002] QLC 099 (Unreported decision of Land Court)

Multiplex 240 Queen Street Landowners Pty Ltd v Department of Natural Resources, Mines and Water [2007] QLC 0010 (Unreported decision of Land Court)

APPEARANCES:

Mr R Traves SC with Mr R Anderson of Counsel instructed by Clayton Utz Lawyers for the appellants
Mr P Flanagan SC with Mr E Morzone and Ms J Brien of Counsel instructed by Crown Law for the respondent

Background

[1] The appellants have appealed against the assessment of the unimproved value assigned to their land by the respondent, the Chief Executive, Department of Natural Resources and Water. The relevant date of valuation is 1 October 2006 and the sites are located within the central business district of Brisbane. The appeals concern the following land:¹

Applicant	Property Location	Appeal
ING Management Limited	239 George Street	AV2007/0556
Trust Company Fiduciary Services Limited	69 Ann Street	AV2007/0666 AV2008/0089

¹ The real property description of the land is Lot 28 on RP 170279 (239 George Street) and Lot 102 on SP 102966 (69 Ann Street). Both are located in the County of Stanley and Parish of North Brisbane.

- [2] The unimproved values originally assigned to the subjects were \$37,000,000 (239 George Street) and \$86,000,000 (69 Ann Street).
- [3] These appeals were heard in conjunction with appeals concerning two other Brisbane central business district (CBD) sites located at 10 Eagle Street and 123 Eagle Street. The evidence in one appeal was evidence in the others. On 2 June 2009 I gave my reasons disposing of the 10 Eagle Street and 123 Eagle Street appeals.² The unimproved value of each of those properties was determined in the amount of \$48,218,000 and \$111,688,000 respectively. In disposing of these appeals, where common issues have been considered and determined by me in the previous appeals, I will refer to and rely on my previous reasons.
- [4] At the hearing of these appeals the respondent did not seek to defend the valuations issued but, relying on the advice of Mr D Hill, a registered real estate valuer, initially contended for the following valuations: \$36,450,000 (239 George Street)³ and \$73,000,000 (69 Ann Street).⁴ At the conclusion of the hearing, the respondent contended for the following figures: \$31,800,000 and \$71,950,000 respectively.⁵ These figures are generally in accordance with Mr Hill's further valuations.⁶
- [5] Relying primarily on the advice of Mr G Jackson, also a registered real estate valuer, the appellants contended for the following figures: \$21,625,000 (239 George Street)⁷ and \$45,975,000 (69 Ann Street).⁸
- [6] Both of the sites are located towards the western perimeter of the Brisbane CBD fronting George Street. The 239 George Street site enjoys frontage to both George Street and Adelaide Street and laneway access along its southern boundary. The 69 Ann Street site has three street frontage to George Street, Ann Street and Adelaide Street. The 239 George Street site is occupied by a high rise commercial building known as the "Hitachi Building". The 69 Ann Street site is located directly opposite the Queensland Supreme Court building to the west and adjacent to the Brisbane City Council Hall to the east and is presently under commercial high rise development.
- [7] Often in appeals under the *Valuation of Land Act 1944* (VLA) the valuation appealed against has the benefit of the statutory presumption of correctness provided by s.33 of the Act. That is not the case here however. In these appeals the only valuation evidence

² *GPT RE Limited (as responsible entity) & Anor v Department of Natural Resources and Water* [2009] QLC 0078.

³ Exh.12 p.41.

⁴ Exh.11 p.39.

⁵ Respondent's written submissions at p.131.

⁶ Exh.45.

⁷ Exh.8.

⁸ Exh.7.

before me is the evidence of Messrs Hill and Jackson. In circumstances where the only probative evidence contradicts the valuations issued by the respondent the statutory presumption of correctness cannot apply.⁹

[8] In the circumstances of these appeals, both valuers agreed that the subjects should be valued in accordance with s.3(1)(b) of the VLA. Section 3 relevantly provides:

3 Meaning of *unimproved value*

- (1) For the purposes of this Act—
unimproved value of land means—
- (a) in relation to unimproved land—the capital sum which the fee simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require; and
 - (b) in relation to improved land—the capital sum which the fee simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require, assuming that, at the time as at which the value is required to be ascertained for the purposes of this Act, the improvements did not exist.
- (2) ...
- (2A) The assumption mentioned in subsection (1), definition *unimproved value*, paragraph (b) is limited to the notional removal of the improvements only as at the time of valuation.
- (2B) For subsections (1) and (2), the unimproved value of land includes any increase in the value of the land that has happened in connection with—
- (a) a local planning instrument; or
 - (b) a development approval or other approval or authority under an Act, other than a hotel licence, relating to the land or an improvement of the land.
- (2C) Nothing in subsection (1) or (2) requires an assumption, in relation to improved land, that the improvements have never been made.
- (3) ...
- (4) Notwithstanding anything contained in this section, in determining the unimproved value of any land it shall be assumed that—
- (a) the land may be used, or may continue to be used, for any purpose for which it was being used, or for which it could be used, at the date to which the valuation relates; and
 - (b) such improvements may be continued or made on the land as may be required in order to enable the land to continue to be so used;
- but nothing in this subsection prevents regard being had, in determining that value, to any other purpose for which the land may be used on the assumption that any improvements referred to in subsection (1) had not been made.

[9] The term “development approval” in s.3(2B) has the same meaning as that term when used in the *Integrated Planning Act 1997* (IPA) which is:

“***development approval*** means a decision notice or a negotiated decision notice that—

- (a) approves, wholly or partially, development applied for in a development application (whether or not the approval has conditions attached to it); and
- (b) is in the form of a preliminary approval, a development permit or an approval combining both a preliminary approval and a development permit in the one approval.”

A “local planning instrument” for the purposes of s.3(2B) is defined as:

“... a planning scheme, temporary local planning instrument of planning scheme policy.”

⁹ *Perpetual Trustee Company Limited v Department of Natural Resources, Mines and Water* [2006] QLC 0017 at paras [22] – [24]; *AMP Life Limited & Ors v Department of Natural Resources and Mines* [2002] QLC 0099 at paras [26] – [27] (unreported decisions of the Land Court).

[10] As was the case concerning the 10 Eagle Street and 123 Eagle Street appeals, Mr Hill's knowledge of the subtleties of the Brisbane CBD market was the subject of a fairly searching cross-examination by Mr Traves SC senior counsel for the appellants. For the reasons given in disposing of those appeals I do not accept that there is any reason for discounting the weight that ought to be given to Mr Hill's evidence when compared to that given by Mr Jackson.

Highest and Best Use

[11] The valuers agree that the highest and best use of each of the sites as at the date of valuation was "commercial office development".¹⁰ As the evidence evolved it became clear that this highest and best use included the potential for some retail component, at least at ground floor level. The nature and extent of the retail potential for each site was largely dependent on locational issues and, in particular, the volume of likely pedestrian traffic past and/or through the site.

The Sales Evidence – An Overview

[12] In arriving at the respective valuations, each of the valuers had regard to sales of five CBD properties.¹¹ They were 333 Ann Street, 40 Elizabeth Street, 110 Mary Street, 400 George Street and 480 Queen Street. The sale date for the first four properties is 6 July 2006, 8 March 2006, 17 July 2006 and 22 November 2005 respectively. There was some dispute about the date of the 480 Queen Street sale. For the reasons given by me in *GPT RE Limited* the date of this sale was determined to be 2 May 2006.¹²

[13] Mr Hill also had regard to the sale of another CBD property located at 42-60 Albert Street. The date of this sale was 2 April 2007. Mr Jackson considered this sale to be unreliable sales evidence because of what he perceived to be a significant increase in market demand for and market price of CBD properties from late 2006 into 2007. For the reasons considered by me in *GPT RE Limited*, Mr Jackson's evidence on this topic was rejected and I found that this sale could be relied upon as evidence of value. Also, for the reasons given in the *GPT RE Limited* I determined that the applicable rate of market growth through 2006 into 2007 was 3.625%.¹³

[14] Before adjustments to take account of market movement between the date of sale and the date of valuation and other matters which will be discussed below, the valuers were in agreement about the rate per metre yielded by the 333 Ann Street, 40 Elizabeth Street, 110 Mary Street and 42-60 Albert Street sales. The agreed rate per square metre was

¹⁰ Joint statement of valuers – Exh.15A p.1.

¹¹ In *GPT RE Limited* in para [14] I stated that the valuers had regard to four CBD sales. That failed to include the sale at 400 George Street dealt with therein at para [34].

¹² At para [15].

¹³ At paras [16] – [23].

\$7,100/m², \$7,900/m² and \$8,300/m² and \$14,000/m² respectively.¹⁴ The two sales where the valuers could not agree on an analysed rate per square metre were 480 Queen Street and 400 George Street.

[15] In *GPT RE Limited*, after consideration of the evidence and the parties submissions concerning the adjustments required to be made to the 333 Ann Street, 42-60 Albert Street and 480 Queen Street sales, I determined that the appropriate rate per square metre to be used as at the date of valuation was: \$7,836/m²,¹⁵ \$10,950/m²¹⁶ and \$13,740/m²¹⁷ respectively. I can see no reason why those rates should not be used in these appeals.

[16] Unfortunately, when considering the appeals concerning 10 Eagle Street and 123 Eagle Street, I did not expressly state that I rejected Mr Jackson's approach of not adjusting for market movement between the date of sale and date of valuation before making further adjustments for location, views, size etc.¹⁸ I do so now. Before making adjustments in comparing the sales to the subjects to bring into account the differences between them, including physical differences, it is necessary to bring them to a real equivalent dollar value as at the date of valuation. In the case of a rising market, as was the case here, sales before that date have to be inflated to reflect their notional value as at the date of valuation and in the case of sales after that date they have to be discounted for the same reason.

[17] Adopting the agreed analysed rate of \$7,900/m² and \$8,300/m² for the 40 Elizabeth Street and 110 Mary Street sales, and adjusting those figures to take account of the time between the date of sale and date of valuation results in the rates of about \$9,850/m² and \$9,050/m² respectively. These figures reflect the increase in the value of the sales, on a rate per square metre basis, from the date of sale to date of valuation, in a market increasing, on average, at the rate of 3.625% per month.

[18] Turning then to the sale of 400 George Street, Mr Jackson analysed it to reflect (before adjustments for market movement) a base rate of \$5,870/m².¹⁹ Mr Hill analysed the sale on a similar (but not identical) basis to arrive at a rate of \$6,247/m².²⁰ The significant differences between the valuers at this stage of the analysis of this sale were the treatment of the delay between the date of contract and date of settlement, the value to be assigned to the transferable site areas (TSAs) associated with the sale and the treatment of Easement D which affects the site.

¹⁴ See Exh.22 and Exh.15B, p.1.

¹⁵ At para [36].

¹⁶ At para [38].

¹⁷ At paras [45] – [58].

¹⁸ See for example Exh.8, Annexure 3, T.59 L.27-45 to T.61.

¹⁹ Eg. Exh.7 p.15.

²⁰ Eg. Exh.11 p.45. Mr Hill also made a minor adjustment of \$6,825 for existing development approval infrastructure credits. This adjustment is so minor as to require no further consideration.

[19] As to the first of these matters, on 22 November 2005 a “put and call option” was executed and a deposit of \$1,800,000 paid. Settlement did not occur until 4 July 2006 when the balance of the purchase price was paid. Mr Hill made no allowance or adjustment for the passing of time between 22 November 2005 and 4 July 2006. Mr Jackson on the other hand, adjusted this sale by \$525,207 to bring into account cost savings and other benefits associated with a delayed settlement. This exercise according to Mr Jackson was necessary to determine the real “cash equivalent” of the purchase price.²¹ According to him, this contract reflected a delay in completion in the order of four to five months beyond the “normal” settlement period of 90 days.²² While I accept that the purchaser achieved some benefits from the delayed settlement, there is no reliable basis for the adjustment of the purchase price in the manner contended for by Mr Jackson. First, there is no objective evidence to support the view that a 90 day settlement period was the norm. In fact, there is evidence to suggest that it is not. In three of the five sales relied on by Mr Jackson there was a delay of in the order of five to six months between the date of the so-called “put and call option” and settlement date.²³ Where there is no reliable evidence that, as a matter of fact, the sale price has to be adjusted to take into account a delayed settlement, it would be wrong to make that adjustment. To adopt the words of the then President of the Land Court, when it has not been demonstrated that the sale price was so affected:

*“it would be wrong to assume the sale price negotiated between the parties at the date of contract contained a component for the settlement period”.*²⁴

[20] Turning then to the issue of the value to be attributed to the TSAs, Mr Jackson adopted a rate of \$1,050/m² and Mr Hill \$600/m². It would be wrong to assume that the value of the subject TSAs would exceed their value in the open marketplace because of any adjoining owner influence. As Mr Hill pointed out, purchasers could acquire the necessary TSAs in the open marketplace without having to pay a premium.²⁵

[21] Mr Jackson’s rate of \$1,050/m² was derived from a transaction concerning 333 Ann Street. Mr Hill’s rate was derived from his analysis of two sales involving TSAs at 138 Mary Street.²⁶

[22] I have no confidence in Mr Hill’s valuation of the TSAs. His rate is derived from information apparently passed on by a property owner objecting to the unimproved value

²¹ Exh.7 p.15.

²² T.173 L.25 - T.174 L.5.

²³ Exh.7 pp20-21.

²⁴ *Multiplex 240 Queen Street Landowners Pty Ltd v Department of Natural Resources, Mines and Water* [2007] QLC 0010 at [211].

²⁵ T.429 L.43 – T.430 L.5.

²⁶ Exh.15B, p.2.

attributed to his land and recorded by an employee of the respondent.²⁷ Neither the person who gave the information, nor the person who recorded it, was called to give evidence and, as far as I am aware, no independent attempt was made to verify the accuracy of the information given and recorded. This evidence amounts to little more than hearsay on hearsay and ought be given no weight. In reaching this conclusion I acknowledge that Mr Jackson's evidence is also essentially grounded in hearsay but at least it is the product of his own investigations and inquiries.

[23] Another reason for preferring Mr Jackson's evidence is that his sale of TSAs was much closer in time to the relevant date of valuation, 1 October 2006. It seems to me that, if sales of land which occurred prior to the date of valuation have to be adjusted upwards to take into account market movement, so would the value of TSAs. The rate of increase in value may not be the same but there seems to me to be no logical reason why, while the value of land is on the rise, the value of TSAs remains static. Mr Hill's sales of TSAs occurred in October 2005.

[24] For the reasons given I will adopt the rate of \$1,050/m² as being the value of the subject TSAs. This results in a total value of \$1,338,750.

[25] The next matter that needs to be dealt with is the value to be attributed to the part of the land occupied by Easement D. The dominant tenement is Lot 1 on SP148948 and the primary purposes of this easement are to provide for parking and vehicular access to Tank Street.²⁸ The easement is of an irregular shape and contains a total area of 1,110m².

[26] According to Mr Jackson no discount ought be allowed over the easement affected area because of the benefits it provides to the balance of the site.²⁹ According to Mr Hill a discounted rate per square metre ought be applied to 650m² of the easement area to bring into account its negative impact on full commercial development of the site. Mr Hill's rate of discount was 30% and the 650m² of Easement D to which it was applied is located over the substantive part of Lot 2 on the corner of Turbot and George Streets.³⁰

[27] The relevance of any discount for Easement D is that any reduction in the value of the land affected by the easement has an inflationary effect on the value of the balance of the sale area on a square metre basis. It is the value of the balance unaffected area on a rate per square metre that Mr Hill then applies to the subjects.

[28] The evidence concerning Easement D is conflicting. The evidence is that it does not affect gross floor area (GFA) calculations and therefore does not limit the hypothetical maximum development potential of the land. On the other hand, it does affect

²⁷ Exh.48.

²⁸ Exh.53, clause 2.1.

²⁹ Exh.7 p.15.

³⁰ Exh.11 p.23.

development flexibility over this site. On this topic however, I accept the evidence of Ms Vigar that provided access rights were not interfered with, some form of development could occur over the easement area.³¹ I also accept the evidence to the effect that, given the difficulties associated with providing access to and from George Street and Turbot Street the easement offers considerable advantages for the optimum development of the site.³² In the circumstances surrounding this sale, I find that while the positives and negatives associated with Easement D tend to largely balance one another out, some adjustment is still required, even if only minor, representing little more than recognition of some blot on title. I will adopt a discount rate of 10% over the 650m² identified by Mr Hill.

[29] Bringing the above findings into account the analysis of this sale so far reveals a rate of \$6,049/m² calculated as follows:

Sale price	\$18,900,000
Less DA infrastructure credits	\$6,825
Less Value of TSAs	\$1,338,750
Adopt	\$17,554,000
Divided by 2,902m ²	

[30] The next step is to bring into account market movement between the date of sale and the date of valuation. For the reasons set out in paragraph [16] above I reject Mr Jackson's approach of making this adjustment after bringing into account other physical differences between the sales and the subject properties.

[31] Adjusting the rate of \$6,049/m² by 3.625% per month for 10.3 months results in a rate of \$8,300/m² in round figures. The treatment of the area affected by Easement D is dealt with further below.

[32] Accordingly, I find that in respect of the sales evidence the applicable rates per square metre as at the date of valuation are:

333 Queen Street	\$7,836/m ²
42-60 Albert Street	\$10,950/m ²
480 Queen Street	\$13,740/m ²
40 Elizabeth Street	\$9,850/m ²
110 Mary Street	\$9,050/m ²
400 George Street	\$8,300/m ²

[33] Before moving on to the application of the sales evidence there are three other matters that I should address. First, the added value (if any) given to the land because of any so-

³¹ T.284 L.15-L.20.

³² T.9 L.20 – T.10 L20.

called development approvals. Second, the added value (if any) given to the land by virtue of existing infrastructure credits. Third, any material development potential differences between the sales and the subjects.

Development Approvals and Infrastructure Credits

Re 239 George Street

[34] As was the case concerning the land located at 10 Eagle Street and 123 Eagle Street, Mr Hill effectively proceeded on the basis that the existing approval or authority concerning the land was a “development approval” for the purposes of s.3(2B) of the VLA.³³ That is so despite him elsewhere in his report recording that

“... no particular development approval exists for the development of the Hitachi building ... Nevertheless, as at the date of valuation, the subject land had the added value and benefit of an authority under the Integrated Planning Act 1997 to continue lawfully using the land for the purposes of development. Such authority to continue to lawfully use the land is equivalent in nature to a development approval for such purpose. The added value of that existing lawful use right comprised of two components: ...”³⁴

[35] For the reasons given by me in *GPT RE Limited* concerning 10 Eagle Street and 123 Eagle Street³⁵ I find that the existing approvals/authorities, as at the date of valuation, do not increase the value of the 239 George Street site.

[36] Consistent with the case for the respondent³⁶ I also find that there is no increase in the value of the land resulting from any infrastructure credits.

Re 69 Ann Street

[37] Again, in respect of this site, as was the case with all of the other subject sites, Mr Hill treated the existing approval or authority over the land as if it was a development approval for the purposes of s.3(2B) of the VLA. For the reasons given in *GPT RE Limited* I find that the existing approvals/authorities concerning this site do not add any value. I note here that even Mr Hill discounts his notional value of the so called “development approval” by 85% because of age.

[38] Also for the reasons given in *GPT RE Limited* I find that any increase in value caused to this site by existing infrastructure credits is not caught by s.3(2B) but by s.3(1)(b) of the VLA.³⁷ Consistent with the approach adopted by me in that case³⁸ I determine the increase in the value the infrastructure credits give to the land to be \$477,590 made up as follows:

$$\$502,727^{39} \times 0.95 = \$477,590 \text{ (rounded)}$$

³³ See for example Exh.12 at pp 37 and 39 where he refers to the “existing development approval”.

³⁴ Exh.12 pp 37-38.

³⁵ At paras [81]-[110].

³⁶ Respondent’s written submissions at paras (30) and (309).

³⁷ At paras [96]-[99] and [111]-[117].

³⁸ At paras [120]-[126].

³⁹ Exh.25.

Development potential

- [39] Under this heading it is necessary to deal with two matters. First, whether some premium needs to be brought into account when applying the 280 Queen Street sale to the subjects. Second, identifying any material town planning differences which might affect the sales and/or the subjects' respective maximum development potential.
- [40] As to the first of these matters, it was asserted on behalf of the appellants that in comparing the 280 Queen Street sale with the subjects, an allowance had to be made for the added value the potential for mixed development gave to the site. The nature of the mixed development was commercial and residential and the premium advocated for was 10%.
- [41] In *GPT RE Limited* I decided that, in the circumstances of the appeals then before the court, no allowance or adjustment had to be made concerning this sale to take account of any potential for mixed residential/commercial use.⁴⁰ While the subjects in these appeals probably have less potential for any material component of residential development than the 123 and 10 Eagle Street sites I remain of the view that it would not be appropriate to make any mathematical adjustment to the analysis of this sale when comparing it to the sites the subject of these appeals.
- [42] However, the potential for mixed use development is a matter which nonetheless has to be taken into account in an overall sense when comparing this sale to the subject sites.
- [43] Turning to the next matter, it was argued on behalf of the appellants that in respect of the 480 Queen Street site, it had potential for a level of development intensity materially superior to the subjects. It was asserted that by way of contrast the "development ratio" for 480 Queen Street (expressed as a function of GFA over site area) was in the order of 20:1 while for 69 Ann Street and 239 George Street the ratios were of in the order of 11.3:1 and 16.5:1 respectively.⁴¹
- [44] In *GPT RE Limited* I expressed my reservations about the accuracy of those comparisons.⁴² Those reservations apply equally in these appeals.
- [45] Leaving aside for the moment site specific issues which might affect development (eg easements and heritage considerations) the best evidence is that, with the exception of 239 George Street and 40 Elizabeth Street, none of the sites under consideration here (sales or the subjects) enjoys any material development potential advantage when compared one to the other. The 239 George Street and 40 Elizabeth Street sites, unlike

⁴⁰ At paras [53]-[58].

⁴¹ Appellants' written submissions paras 120-121.

⁴² At paras [26]-[29].

the others, are located in Sub-precinct 1 of the town plan of the Brisbane City Council. Development in this sub-precinct is subject to a height limit of 70mAHD.

Application of the Sales Evidence

[46] Before descending into this exercise in detail it is desirable to first make some general observations and findings.

[47] In respect of the 480 Queen Street site it is considered superior to the subject sites by both valuers.⁴³ I agree. It is located, at least in part, within the prestigious commercial precinct within the Brisbane CBD referred to as the “golden triangle”. This precinct accommodates a number of Brisbane’s prime commercial developments, including Riverside, Waterfront Place, the Riparian building and AMP Place. This sale also has, unlike the subjects, potential for mixed residential/commercial development. And, unlike the 239 George Street site, is not subject to any heights limitations on development. However, in considering the respective development potentials of this sale when compared to the subjects, I consider that they, particularly 239 George Street, have more potential for ground floor retail uses.

[48] On balance, I have reached the conclusion that the 480 Queen Street sale is so significantly superior to the subjects as to provide only limited evidence of value. Limited to the extent of doing no more than identifying a level of value on a rate per square metre basis that neither of the subjects could exceed.

[49] Turning then to the 333 Ann Street sale, which was Mr Jackson’s second most comparable sale.⁴⁴ For the reasons given in *GPT RE Limited*⁴⁵ I considered this sale to be unreliable evidence of value for the 10 and 123 Eagle Street sites. I consider this sale to be unreliable evidence of value in these appeals for the same reasons. In this context, Mr Hill considered this sale to be only “conservative” evidence of value.⁴⁶

[50] As for the 40 Elizabeth Street and 110 Mary Street sales, Mr Hill described them as being smaller inside development sites with restricted potential and views. Mr Hill also pointed out that the 40 Elizabeth Street site is subject to height restrictions similar to that applying to 239 George Street. There is no doubt that the development potential for these sites is vastly different to that for the subjects. By virtue of their size and, as a consequence, their development potential, they are not, in my view, sales of truly comparable sites. In this context Mr Jackson also points out that in any comparison of these sales to the 69 Ann Street site a “discount for size” would have to be factored in.⁴⁷

⁴³ Exh.11 p.34; Exh.12 p.36 (per Mr Hill); Exhs.7 and 8 p.28 (per Mr Jackson).

⁴⁴ Exh.7 p.28, Exh.8 p.29.

⁴⁵ Para 36.

⁴⁶ Exh.11 p.34, Exh.12 p.36.

⁴⁷ Exh.7 pp 26 and 27.

The principle of “discount for size” is discussed in *GPT RE Limited*⁴⁸ and it is not necessary to discuss further here.

[51] Bringing into account all of the significant differences between these two sales and the subjects, I have decided that while they are capable of providing some evidence of value, they have to be used with caution. In my view, their use should be limited to providing a relativity check against the final values for the subjects as determined by me. That is, on a rate per square metre, the unimproved value I determine for the subjects should not be materially out of line with the rates yielded by these sales.

[52] For the reasons given thus far, it is apparent that I consider the sales of 400 George Street and 42-60 Albert Street to be the best evidence of value. Mr Jackson considered the 400 George Street sale to be the best evidence of value for both sites.⁴⁹ Inferentially these sales seem to be considered the most reliable evidence by Mr Hill although he considered them both to be in inferior locations to the subjects.⁵⁰

[53] Turning specifically to the 400 George Street sale. Bringing into account the discount of 10% over 650m² of Easement D the rate per square metre that would then be applicable to the unencumbered part of that sale would be about \$8,540/m². It would be the unencumbered rate that Mr Hill would use when valuing the subjects. In circumstances where the subjects were essentially unencumbered or otherwise had no limitations or restrictions on their development I might agree with that approach. But that is not the case. For example, the 239 George Street site is the subject of height restrictions and, for the reasons set out below, development on 69 Ann Street was limited, albeit if only to a relatively minor extent, by its proximity to the Brisbane City Hall. Overall, I consider the most appropriate way to apply this sale is to adopt its analysed rate on an overall basis of \$8,300/m² rather than break it up into values for the encumbered and unencumbered areas. This sale, analysed on a “warts and all” basis can then be compared to the subjects on the same basis.

[54] That 239 George Street is subject to a height restriction is common ground. However, the respondent disputes that the 69 Ann Street site was materially hindered or restricted by its proximity to the Brisbane City Hall which is a heritage listed place and/or site. According to the respondent “... *any impact which its location next to a heritage place may have had on development was (i) fused with the impact of other factors ... (and) (ii) not significant ...*”.⁵¹

⁴⁸ Paras 40-43.

⁴⁹ Exh.7 p.28, Exh.8 p.29.

⁵⁰ Exh.11 p.34, Exh.12 p.36.

⁵¹ Respondent’s first written reply para 16.

- [55] I agree that while the impact of the proximity to City Hall might fairly be described as being minor, it nonetheless was a factor that the prudent purchaser and vendor would have to bring into account when agreeing on a price. The evidence of Mr Howard⁵² was that “heritage” issues imposed some constraints on development including, more importantly, on GFA at podium level.⁵³ His evidence about this was not seriously challenged.
- [56] Overall, however, the evidence also reveals there was an overlap between the accommodation of heritage issues and the application of good town planning and commercial design. It is also clear that a major influence on design and construction was the desire to utilise existing works including footings and car parking structures on the site.⁵⁴ Notwithstanding these mitigating factors the heritage issues associated with this site are such as to require some adjustment, something that Mr Hill did not do.⁵⁵ I do not accept Mr Hill’s evidence to the effect that advantages of adjoining a heritage site outweighed the disadvantages.⁵⁶
- [57] The best evidence of value of the 69 Ann Street site is the 400 George Street sale. They are separated by only one block (albeit on different sides of George Street) and are located towards the north-western fringe of the Brisbane CBD. 400 George Street is in a inferior location being further removed from the retail centre of the city and commercial development generally. It has an irregular shape, inferior road frontage and exposure and is affected by Easement D. On the other hand, 69 Ann Street is affected to some extent by heritage issues and, as acknowledged by the valuers,⁵⁷ having regard to its size, some adjustment on a rate per square metre basis has to be made to account for the “discount for size” principle referred to earlier herein and in *GPT RE Limited*. However, in this context, it also has to be acknowledged that the size of the site offers development options not available for smaller sites including sales the size of 400 George Street.⁵⁸
- [58] Overall, the evidence leads me to conclude that while the positives and negatives associated with these two sites may tend to balance one another out, at the end of the day, the subject site is still more valuable on a rate per square metre basis if only to a minor extent. A comparison between Mr Hill's (unencumbered) rate per square metre for this sale of \$9,100/m² and his applied rate to the subject \$10,000/m² reveals a premium of just under 10%. On the evidence before me, I consider a premium of this

⁵² Mr Howard was the town planner retained by the developer of the site to prepare necessary development application documents – statement exh.34.

⁵³ T.220-222 and T.227 L.20.

⁵⁴ Exh.34 para 6 and T.219 L.22-L.30.

⁵⁵ T.536 L.35.

⁵⁶ T.537 L.5-L.10.

⁵⁷ Mr Jackson Exh.7 pp.25 to 27, Mr Hill T 539 L22.

⁵⁸ Exh.11, p.35; per Mr Hill.

order to be reasonable but consider that it should be applied to the rate \$8,300/m² revealed by an analysis of this sale on an overall basis. Accordingly, I will adopt a rate of \$9100/m² for the subject.

[59] Turning then to a comparison between the 239 George Street and 400 George Street sites. The subject is superior in location and is, in overall terms, superior in shape. No adjustment for size is necessary but it needs to be kept in mind that while 400 George Street is affected by Easement D this site is subject to a 70mAH height limitation.

[60] In comparing this site to the 400 George Street sale, Mr Hill's approach reveals a premium of just over 35% in favour of the subject (\$12,500/m² : \$9,100/m²). The major points of distinction between the two sites in favour of the subject being location and shape.⁵⁹ In comparison with the 40-42 Albert Street sale, Mr Hill's approach reveals a premium of in the order of 12.5% (\$12,500/m² : \$10,955/m²).⁶⁰ In this comparison the major point of distinction between this sale and the subject is the superior location of the latter.⁶¹ In comparing the subject to the value applied to the 69 Ann Street site, both valuers applied a significant premium in favour of the subject. Mr Hill – 25% (\$12,500/m² : \$10,000/m²), and Mr Jackson about 30% (\$8,500/m² : \$6,500/m²). In this comparison a major (if not the major) consideration is the respective differences in the size of the two sites and the application of the so called “discount for size” principle. While I agree in general terms with Mr Hill's analyses and comparisons of the subject with these sales and the 69 Ann Street site, in my view Mr Hill failed to adequately take into account the height limitations associated with this site. While agreeing that this was an important point of distinction between it and the sales evidence and should be taken into account, Mr Hill nonetheless failed to do so.⁶²

[61] Unfortunately, accepting that this matter should be taken into account, Mr Hill was not pressed to express an opinion about what adjustment he should have made. When it is taken into account the difference in value between the subject and other sites referred to in this context must tend to close. On the evidence before me I have concluded that the value of this site, on a rate per square metre basis, should not exceed the value of the Albert Street sale. And, should not exceed the value of the 69 Ann Street site to the extent reflected by Mr Hill's valuations. On this basis I will adopt a rate of \$10,500/m² which reflects a premium in the order of 15% over and above the value of the 69 Ann Street site on a rate per square metre basis. This premium is of course much less than

⁵⁹ Exhibit 12, p.25.

⁶⁰ The rate contended for by the respondent in its written submissions at para [9].

⁶¹ Exhibit 12, p.32 – because of the way in which Mr Jackson adjusted his sales to take account of market movement and other variables (which I have rejected) a similar comparison using Mr Jackson's respective figures is of no real assistance. In the case of the 42-60 Albert Street sale, Mr Jackson did not consider it to be reliable evidence of value.

⁶² T.515 L.22-L.45 to T.516 L.1-L27.

that reflected by Mr Jackson's valuations. However, I place no weight on this evidence. In my opinion, the rate per square metre applied to the 69 Ann Street site by Mr Jackson is so unrealistically low as to be likely to distort any relationship or comparison (on a rate/m²) between these sites.

[62] The respective rates per square metre found by me sit reasonably comfortably with those rates revealed by the less comparable sales in Mary Street and Elizabeth Street.

[63] For the reasons given above, the unimproved value of 69 Ann Street is determined in the amount of \$64,840,000 made up as follows:

Land	7,073m ²	x	\$9,100/m ²	=	\$64,364,300
Value of DA					nil
Value of infrastructure credits					\$477,590
Rounded off to					\$64,840,000

And for 239 George Street \$26,710,000 made up as follows:

Land	2,544m ²	x	\$10,500/m ²	=	\$26,712,000
Value of DA					nil
Value of infrastructure credits					nil
Rounded off to					\$26,710,000

Orders

1. Appeals AV2007/0556, AV2007/0666 and AV2008/0089 are allowed
2. The unimproved value of Lot 102 on Survey Plan 102966 as at 1 October 2006 is determined in the amount of Sixty Four Million, Eight Hundred and Forty Thousand Dollars (\$64,840,000).
3. The unimproved value of Lot 28 on Registered Plan 170279 as at 1 October 2006 is determined in the amount of Twenty Six Million, Seven Hundred and Ten Thousand Dollars (\$26,710,000).

RS JONES
MEMBER OF THE LAND COURT