

LAND COURT OF QUEENSLAND

CITATION: *The Angliss Estate (Annandale) Pty Ltd v Valuer-General*
[2012] QLC 0016

PARTIES: The Angliss Estate (Annandale) Pty Ltd
(Appellant)

v

Valuer-General
(Respondent)

FILE NO: VLA401-10, VLA402-10, VLA403-10, VLA404-10

DIVISION: General Division

PROCEEDING: Appeals against valuation under the *Land Valuation Act*
2010

DELIVERED ON: 21 June 2012

DELIVERED AT: Brisbane

HEARD AT: Townsville

HEARD ON: 29 September 2011

MEMBER: Mr WL Cochrane

ORDER/S: **1. With respect to VLA401-10, the appeal is dismissed.**
2. With respect to VLA402-10, the appeal is dismissed.
3. With respect to VLA403-10, the appeal is dismissed.
4. With respect to VLA404-10, the appeal is dismissed.

CATCHWORDS: Statutory Valuation. *Valuation of Land Act* 1994,
unimproved value – improved land – presence of shopping
centre – absence of evidence. Presumption of correctness.
Evidentiary onus.

APPEARANCES: Mr RJ Williams, Director of the appellant.

Mr SP Fynes-Clinton instructed by the Director Legal
Services, Department of Environment and Resource
Management, for the respondent.

- [1] This is the decision in four related appeals concerning land located on the corner of University Road, Macarthur Drive and Morstone Street in Annandale which is a southern suburb of Townsville. The land is described as:
- (a) Lot 777 on SP142949 County of Elphinstone Parish of Stuart;
 - (b) Lot 801 on SP142949 County of Elphinstone Parish of Stuart;
 - (c) Lot 802 on SP142949 County of Elphinstone Parish of Stuart; and
 - (d) Lot 804 on SP142949 County of Elphinstone Parish of Stuart.
- [2] The valuations appealed against were all as at 1 October 2009 and were issued on 22 March 2010 with an effective date from 30 June 2010.
- [3] Lot 777 has an area of 5.211 hectares and is improved with the Annandale Shopping Centre.
- [4] Lot 801 has an area of 2,939 m² and is vacant land with no significant improvements.
- [5] Lot 802 has an area of 1,841 m² and is improved with a Fast Food outlet.
- [6] Lot 804 has an area of 1.102 hectares and is basically vacant unimproved land.
- [7] In total the subject land comprises 67,910 m² of land.
- [8] The valuations which applied to each of the subject lots of land as at 1 October 2009 were as follows:
- (a) Lot 777 - \$6,300,000 which equates to \$121/m².
 - (b) Lot 801 - \$830,000 which equates to \$282/m².
 - (c) Lot 802 - \$460,000 which equates to \$250/m².
 - (d) Lot 804 - \$1,450,000 which equates to \$132/m² overall for 1.102 ha which represents a rate of \$176/m² for the usable are of 8215 m² (1.102 ha less drainage area of 2805 m²)
- [9] The respondent contends that the valuations are appropriate and should stand.
- [10] The appellant through its representative contended that the valuations should be as follows:¹
- (a) Lot 777 SP142949 52110m² at \$3,650,000 which calculates to \$70/m².
 - (b) Lot 801 SP149249 2939m² at \$465,000 which calculates to \$158/m².
 - (c) Lot 802 SP142949 1841m² at \$295,000 which calculates to \$160/m².
 - (d) Lot 804 SP142949 11020m² at \$771,000 which calculates to \$70/m².

¹ Exhibit 15 page 1.

- [11] At the hearing of the appeal Mr RJ Williams who is the director of the Angliss Estate appeared for the appellant and Mr SP Fynes-Clinton of Counsel appeared for the respondent.
- [12] The evidence was of relatively short compass.
- [13] The appellant gave evidence through a statement prepared by its director Mr Williams.
- [14] Mr Williams is not a registered valuer but does hold a Bachelor of Applied Science in valuation and a Graduate Diploma in Applied Finance and Investments. Notwithstanding his lack of registration as a professional valuer it is clear from his evidence that he has a good understanding of valuation concepts and a good understanding knowledge of the property market in and around Townsville particularly insofar as it relates to shopping centres.
- [15] Mr Williams produced a single report relating to all four lots prepared by himself which was admitted into evidence as Exhibit 9.
- [16] Because of his ownership of the subject property and his clear interest in the outcome of these appeals, Mr Williams cannot, be considered an independent expert witness. He clearly was an advocate for the case advanced by him but, that said, I felt that he attempted to give his evidence in an honest and forthright matter and in cross-examination by Mr Fynes-Clinton made appropriate concessions. I give his valuation evidence weight but not as much weight as I would give to an independent expert witness for the reasons set out above.
- [17] For the respondent Mr Fynes-Clinton called evidence including written reports from Melissa Larkins, a valuer in the employ of the Valuer-General in the (then) Department of Environment and Resource Management.
- [18] The four lots the subject of this appeal together with an additional lot the namely lot 803 constitute what might generally be referred to as the Annandale Shopping Centre. Lot 803 is in separate ownership and accommodates a Hungry Jacks fast food outlet but does not constitute part of the current appeals.
- [19] Ms Larkins produced four separate reports which were admitted into evidence as Exhibits 10, 11, 12 and 13. Mr Williams also produced a response report which became Exhibit 14 and Ms Larkins produced a response report which became Exhibit 15.
- [20] For reasons which appear later in this judgment it has essentially devolved to a judgment only in respect of Lots 777 and 804 because in the course of evidence it

became clear, after cross-examination, that Mr Williams came to accept the Valuer-General's valuation in respect of lot 801 and lot 802.

[21] However, because of the issue of relativity between Lots 777 and 804 on the one part and Lots 801 and 802 on the other I have continued to deal with the appeal and the evidence as though, up until the present time the issues remained live in respect of all four lots.

[22] That is to say an issue remains live with respect to the relativities of the values of the various conjoined lots of land having regard to the late concession in the course of the evidence that the appellant accepted the valuations advanced by the respondent in respect of Lots 801 and 802.

The setting of the land

[23] Ms Larkins in her reports usefully sets out details of the subject lots.

[24] Some of the assertions contained in her reports were, as I understood the evidence not contentious or, at least, not disputed by Mr Williams.

[25] Ms Larkins describes the subject land as being situated in the prestige suburb of Annandale on the south side of the Ross River approximately 6.7 radial kilometres south-west of the Townsville General Post Office located in Sturt Street of the CBD.²

[26] The suburb of Annandale had a 2006 Census population of 9,298 persons with approximately 3,000 residential dwellings in the suburb.

[27] The land itself is located close a number of other facilities of importance in the Townsville context. They are:

- Lavarack Barracks
- The Townsville Hospital
- James Cook University
- Child care facilities, pre-school, primary schools and high schools
- Murray Sporting Complex and
- Parks

[28] Generally all of those facilities are located within 4 kilometres of the subject land (or closer).

[29] The suburb of Annandale is located between two other relatively prosperous suburbs namely Douglas and Idalia. Some distance south east of Annandale is a less salubrious suburb identified as Wulguru.

² See for example Exhibit 11 page 4.

[30] Considering the lots together it became clear that they were all the subject of a number of burdening easements and in addition all enjoyed the benefit of some easements over adjoining lots for the purpose of access and services. Those easements are concisely set out and described in the various reports prepared by Ms Larkins. It is unnecessary to describe or identify those easements in any detail.

[31] Ms Larkins also concisely and usefully sets out the situation with respect to access and roads relevant to the subject lots in each of her reports. She says:

“14. Access and Roads:

The site forms part of the Annandale Shopping Centre precinct which has good exposure from University Road (Bruce Highway) which is a 4 lane highway with a grassed median strip separating east bound and west bound lanes. Access from University Road into Macarthur Drive is via a round-a-bout.

Macarthur Drive is a two lane bitumen sealed road with concrete channelling and kerbing divided by a central median strip, restricting access to left land ingress and egress only. Macarthur Street is depicted as part sub arterial, part major collector street under Townsville City Council, City Plan 2005 Map 3.2(b) – Road Hierarchy (Refer Appendix G).

The site is located at the round-a-bout intersection with William Angliss Drive, which is a 2 lane bitumen sealed road with central median strip.

Practical access to the site is via Easement A SP142949 on adjoining Lot 777 SP142949 which abuts the sites northern and western boundaries and is accessed at the Macarthur Drive/William Angliss Drive round-a-bout.”

[32] Mr Williams in his report identifies the relevant street frontages as follows:³

- (a) University Street – 249 m
- (b) McArthur Drive – 213 m
- (c) Morstone Street – 211 m

[33] It is useful also to consider the description of the lots provided by Ms Larkins she says with respect to each of the lots as follows:

- “(a) with respect to Lot 777: The 5.2110 hectare site is irregular in shape, and has a near level to gently sloping contour providing a good building platform. The site has multiple street frontage.
- (b) with respect to Lot 801: The 2939 square meter site is irregular in shape, and has a near level contour providing a good building platform. The site fronts Macarthur Drive.
- (c) with respect to Lot 802: The 1841 square meter site is irregular in shape, and has a near level contour providing a good building platform. The site fronts Macarthur Drive.
- (d) with respect to Lot 804: The 1.102 ha site is irregular in shape, and has a near level contour providing a good building platform. The site is not directly accessible off Macarthur Drive due to a large open drain which fronts the property. The drain is

³ Exhibit 9, page 2 para 1.2.

fully vegetated. The drain is depicted as Easement J on SP 142949, as having an area of 2805m². Easement J is not registered on title. The easement area is considered to have limited development potential.”⁴

The Town Planning Context

[34] All of the lots of land are zoned “Neighbourhood Centre Precinct” within the “River South” District under the Townsville City Council, City Plan 2005 which commenced 1 January 2005.

Legislative Provisions

[35] Because of the date of the valuations namely being effective from 30 June 2010 with a date of valuation as at 1 October 2009 these appeals are pursuant, to the provisions of s.268 and s.269 of the *Land Valuation Act 2010* to be considered and determined pursuant to the *Valuation of Land Act 1944 (VOLA)*. The relevant version of *VOLA* is embodied in Reprint No. 9 (Revised).

[36] Further, because Lots 777 and 802 are improved land the provisions of *VOLA* s.3(5) come into play. That section 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 negotiated as a bona fide sale; and
 - (b) in relation to improved land—the capital sum that the fee simple of the land might be expected to realise if negotiated as a bona fide sale, assuming the improvements did not exist.
- (2) However, the unimproved value of improved land can not be less than the sum that would be obtained by deducting the value of improvements from the improved value on the date of valuation.
- (2A) The assumption mentioned in subsection (1)(b) is limited to the instant in time when the valuation is to be made on the date 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; or
 - (c) the making or use of an improvement to the land.
- (2C) Nothing in subsection (1)(b) requires an assumption, in relation to improved land, that the improvements have never been made.

...

⁴ Exhibits 10, 11, 12 and 13.

- (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; and
 - (c) there is no greater risk than that which applied to the actual use of the land in its actual condition, on the date of valuation, in realising the use of the land, or continuing the use of the land, for any purpose for which it was being used on the date of valuation;

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.

- (5) To remove any doubt, it is declared that—
- (a) the benefit of a lease, agreement for lease or any other instrument of any type relating to land, or improvements on land that enhances the value of the land, as unimproved or improved must be included in its unimproved value; and
 - (b) the following apply for assessing the unimproved value of land—
 - (i) the bond rate must be adopted in analysing—
 - (A) the added value of improvements on the land including any allowance to be made under this section or section 5; and
 - (B) the added value of improvements involved in any comparable sale of improved land;
 - (ii) no amount can be deducted for goodwill whether in analysing the improvements on the land, or any comparable sale of improved land, or otherwise;
 - (iii) no deduction for any profit and risk allowance or development premium can be made for the realisation of the use of the land, or for continuing the use of the land, for any purpose for which it was being used on the date of valuation;
 - (iv) if the land is improved and the assessment includes a comparison with sales of vacant or lightly improved land, or with sales for redevelopment, an amount representing the development premium inherent in the value of the land as improved must be added to the level of value established by the sales;
 - (v) the benefit to the land of the payment of infrastructure charges or of infrastructure construction must be included; and
 - (c) the term ‘unimproved value’ defined under this section has been given a special meaning that must be applied whether or not that definition accords with the ordinary meaning of that term.”

[37] Pursuant to s.63A of the *Valuation of Land Act* the burden of proof lies upon the appellant and the hearing itself is limited to the grounds stated in the Notice of Appeal.

[38] In each of the appeals the following grounds of appeal are set out by the appellant:

“When compared to sale prices of similar properties, the figures support our valuation and not the valuation of the Director General.

- 1) 106 Barnard Drive Mount Sheridan
 - Sold for \$2.25 in 12/08
 - site area 3.36 Ha @ \$67/m²
 - adjacent to Mount Sheridan shopping centre
- 2) Johanna Boulevard, Kensington, 3k S-W of Bundaberg CBD
 - 5.78 Ha @ \$70/m²
 - 250 m from Sugarland shopping centre
- 3) Moreton Mill site, Nambour
 - part of larger site sale
 - 6/09 sale to Coles
 - \$4.65 m @ \$106/m²”

[39] Additionally, with respect to lot 804, the following appears in the ground of appeal:

“Our value of \$771,000 represents an increase of 26.4% over the previous valuation of \$610,000.”

[40] Similarly, with respect to lot 777, the additional ground of appeal states as follows:

“Our value of \$3.65 m represents an increase of 58.7% over the previous valuation of \$2.3m.”

[41] It ought immediately be noted that the magnitude of change in percentage terms is not itself necessarily indicative that a valuation is poorly founded. If the percentage increases are in line with land value movements across an area then sometimes relatively high levels of increase, measured in percentage terms, are entirely appropriate.

[42] Lot 777 is improved with the Annandale Shopping Centre comprising a tenancy anchored by Coles with 26 speciality shops, four ATMs and two island stands together with a community centre.

[43] Lot 801 is vacant save for a concrete hardstand in the south west corner of the site which provides access into adjoining lot 802 (the Kentucky Chicken outlet). The lot has the benefit of development approval for a food precinct granted by the Townsville City Council in 2009 such an approval and land use being consistent both with the highest and best use of the subject land and the Town Planning Scheme.

[44] Lot 802 is fully developed with a Kentucky Fried Chicken Fast Food outlet, a bitumen hardstand, concrete kerbing and landscaping such commercial use being consistent with both the town plan and the highest and best use of that particular site.

[45] Lot 804 has had, since 2009, a development approval for the extension of the shopping centre on lot 777 adjoining lot 804 is proposed to be car-parking for the

shopping centre and the drainage area (subject of an easement) is to be converted to an underground piped drain.

[46] At the hearing of this appeal there was no dispute but that its current use reflects its highest and best use for commercial purposes. I note that there is a development approval extant since 2009 to allow expansion of the shopping centre to include a discount department store other specialty stores, a food court and office space. Such a development approval clearly builds on the ongoing highest and best use of the subject land for retail type development.

[47] The appellant clearly and unequivocally pinned all of its hopes of success in this appeal on three sales being

- (a) 106 Barnard Drive Mount Sheridan
- (b) Johanna Blvd Kensington (near Bundaberg)
- (c) Moreton Mill Site in Nambour.

[48] Mr Williams in his report⁵ states as follows:

“There were very few larger developments site sales at the date of the valuation. The Valuer-General supplied one larger sale at the preliminary conference before the Judicial Registrar at Townsville on 12 April 2011. This sale transacted at the peak of the market in 2007 (at \$150/m²) and as a result, we contend that it is so far off the mark compared to the economy and market at the valuation date of 1 October 2009 to be not a good indicator.

We have primarily relied on the sale of a parcel of land adjoining the Mt Sheridan Plaza shopping centre in Cairns, a Centre similar in size, age and site area to Annandale (at \$67/m²), which occurred in a similar economic time between unrelated arms-length parties, both sophisticated investors.”

[49] Mr Williams observes elsewhere in his report⁶ with respect to the Mount Sheridan property as follows:

“We had particular regard to the sale of Mt Sheridan Plaza in Mt Sheridan in Cairns for \$26,250,000 in December 2008. The property is improved with a fully enclosed neighbourhood shopping centre which originally commenced trading during 2001. On site car parking is provided for approximately 458 vehicles. There is also an adjoining 3.356 ha vacant ‘District Centre’ zoned site available for future expansion. There was a Development Approval in place to extend the existing centre in to a sub-regional shopping centre the total GLA of approximately 21,200 m². There was an appeal to this Development Approval being considered by the Planning and Environment Court. A detailed analysis of this sale represents the following:

- Initial Yield of 8.99%
- Equivalent Yield of 8.77%
- Internal Rate of Return of 9.59%
- Rate of \$3,438 per square metre of GLA

The centre was occupied by Coles and 31 speciality tenancies.”

⁵ Exhibit 9.

⁶ Exhibit 9, page 8.

[50] Mr Williams in his report identifies a number of competing facilities located within close proximity to the subject land including:

- (a) Townsville CBD – 40, 000 m² GLA (gross lettable area)
- (b) Fairfield Shopping Centre – Fairfield Waters – (unknown) approximately 4 km north east of the subject site.
- (c) Stockland Townsville Shopping Centre – (27,050 m² GLA – 3.7 km north west of the subject site.
- (d) Townville Kmart Plaza – 12,801m² GLA - 4 km north west of the subject site.
- (e) Willow Shopping Town Kirwan – 37,482 m² GLA - 7km west of the subject site.
- (f) Castle Town Shopping World at Pimlico – 27,016 m² GLA - approximately 5 km north of the subject site.
- (g) Sunland Plaza Kirwan – 6,601 m² GLA - 7 km west of the subject site.
- (h) Vincent Shopping Village – 5,197 m² GLA – 5 km north west of the subject site.
- (i) North Ward Shopping Village – 4,941 m² GLA – 8 km north east of the subject site.
- (j) Hermit Park Shopping Centre – 3,955 m² GLA - 5 km north of the subject site.⁷

[51] Nowhere in the material tendered before me at the hearing of this matter did it become clear what the gross lettable area of the subject shopping centre was.

[52] Mr Williams in his evidence pointed out that the shopping centre built on the subject land (dealing with it collectively) has been well accepted by the community and is a successful centre.⁸

[53] It was the strongly held contention of Mr Williams, as made clear in his evidence, that the Mount Sheridan sale was a very good guide, in particular, to the value of both Lots 777 and 804.

[54] In the course of his evidence he said:

“The year of 2009 will go down as one of the worst years for retail property in particular. I've mentioned in my submission a lack of funding, expensive funding, high margins. From personal experience I can say that the - well, that the margins that banks were charging in 2007 increased significantly in the two years to 2009, as a result of foreign banks removing themselves from our market, and not funding these sorts of assets. Also in the - the result of the GFC affected spending, and hence turnover, which had an effect on shopping centre

⁷ Exhibit 9 page 4-6.

⁸ T. 1-15.30.

values and potential growth, again, noted in my submission. So both parties have had a lack of plentiful sales, to rely on, in valuing these properties in 2009, because of a lack of buyers, which was a result of a lack of funding and a downturn in the cycle. I looked at a range of sales and came to the view that Mount Sheridan was a very good guide for, in particular, both lots 777 and 804. Mirvac has been one of the larger property companies in Australia for 40 years, in shopping centres, hotels and high end residential, and the Green Group is a long established private property company. So it is a classic example of an arms length transaction between skilled professional property people. There - the similarities between Mount Sheridan Plaza and Annandale Shopping Centre are uncanny. Mount Sheridan was developed at the same time as Annandale, and completed within months of Annandale's completion. It's a very similar size and tenancy mix. It has a Coles Supermarket with surplus land for an extension. In its early years, in 2000, Annandale started off at a much better rate than Mount Sheridan, because it had an already established trade area. What Mount Sheridan did over time, during the 2000s, was to catch up to Annandale, such that in the year of 2009 for the first time Mount Sheridan - the Coles turnover for Mount Sheridan exceeded that of Annandale.”⁹

[55] Later in that same passage of evidence Mr Williams said as follows:

“And so I contend that the sale of the land adjoining Mount Sheridan Plaza is of the same zoning and the same sort of land, with very similar development potential, in a location that is - one is seven kilometres, one is eight kilometres from the CBD of respective Cairns and Townsville. That whether it was us or Stockland or Green Group, if they're buyers of shopping centres and developers of shopping centres, provided they had confidence in the centre where they're buying, it wouldn't make a major difference to them whether they were buying in Cairns or in Townsville. There would, of course, be a difference if you were buying land in, say, a smaller town like Charters Towers because if you developed a similar size shopping centre there, to Mount Sheridan or Annandale, your end value, your value as a going concern, would be - your buyers would be limited by the fact that it was a small town and that some of the property trusts would rule out a Charters Towers as against a Brisbane CBD. And so sometimes there'll be differences in the close metropolitan area of Brisbane because - in the value of development land for a shopping centre because your pool of end buyers of the going concern are greater than they would be in a Townsville/Cairns. I think there are a lot of similarities between Townsville and Cairns. I've made some comments and adjustments between the two, but I think they can be regarded in the same pool and so if you have land similarly zoned - similarly located and - as to the subject property, I think it's both relevant and important to take that sale into account. And one of the major large sales that the Valuer-General has relied upon, I've commented had a 2007 sale date.”¹⁰

[56] I regard it as important that Mr Williams, in the course of his evidence, failed to establish that land sales and land values in the Cairns area were commensurate with the values in the Townsville area, that is to say, typically shopping centre land would achieve a similar per m² rate if it had the same attributes in each centre.

[57] With respect to the Mount Sheridan sale Mr Williams in his written statement¹¹ said as follows:

“The most significant and relevant land sale was the land adjoining Mount Sheridan Plaza. The site sold from Mirvac to the Green Group for \$2,250,000 in December 2008 at a rate of \$67/m². There was a subsequent transfer to a related company which we do not consider as relevant or reflecting an open market transaction. I interviewed Shaun Green regarding the sale and he confirmed the arms length nature of the transaction and the value of the land.”

⁹ T.1-20 L. 48 – 1-21 L.22.

¹⁰ T.1-22 L. 5.

¹¹ Exhibit 9 p. 9.

[58] In summary, Mr Williams approach to the relevant valuation exercise is summarised in his observations in evidence¹² where he said referring to the Geaney Road land identified by the Valuer-General:

“So I'm not putting any weight on the Geaney Road land at all. In fact, my - the whole purpose of me raising it is that I'm saying that the sale is irrelevant because of the major gap in time between when the sale occurred at the peak of the market in 2007, compared to the valuation date of 1 October 2009, and when you have appropriately zoned land so similar to the subject property, even though it's in Cairns, then that sale in Cairns should be relied upon and be a good indicator to the value of the subject property.”

[59] That proposition is one which needs to be carefully examined.

[60] Because of the weight attached by Mr Williams to the Mount Sheridan sale it is appropriate to include in this judgment, in its entirety the observations of Ms Larkins with respect to that sale, she said:¹³

“Mount Sheridan Plaza is located approximately 9.5km south west by road from the GPO in the CBD. Zoned District Centre commercial under Cairns Plan, 2005.

Mount Sheridan Plaza, sold 19/12/2008 for a total of \$26,250,000 under two contracts. One contract dated 19/12/2008 was for the vacant land component (Lot 4 SP136776) which comprised 3.356 Ha of moderately sloping land for \$2,250,000 (\$67/m²). The site transferred from Trust Company Limited (C/- Mirvac Group) To Mount Sheridan Development Pty Ltd (Mount Sheridan Development Pty Ltd is a subsidiary company of the Green Group).

The second contract comprised the adjoining improved shopping centre (lots 1, 3, 5, 6 SP136776). The 3.306Ha improved site/s contracted 19/12/2008 for \$24,000,000. The sites transferred from Trust Company Limited (C/-Mirvac Group) To Green Group Property Investments Pty Ltd.

The sales were negotiated as single entity. The original asking price for the sites was \$28.7 million. Negotiations took 6 months with a final out come of \$26.25 million for the combined sites.

There was a Development Approval over the aggregate site to expand the shopping centre which was approved November 2007 (amended Nov 2009). There was an appeal against the Development Approval from Stockland Earlville at time of sale. This appeal created an additional bargaining chip in negotiations due to increased risk, and anticipated further legal costs. The appeal was discontinued November 2009. The November 2009 development approval shows the shopping centre is to be increased to 21200m² GLA plus tavern and liquor sales area.

The contacts for the vacant land component and the improved shopping centre were linked – one could not sell without the other.

The sale of the vacant land component can not be considered as being representative of a stand alone transaction in the market place.

The valuer for the Green Group advised he undertook a valuation dated 1 November 2008. He was advised that the total contract price was \$26.25M. In the report he applied \$2,267,277 to the vacant land component. He was unaware of what the final contact figure end up being.

The sale of Lot 4 SP136776 is not viewed in the market place as a singular stand alone sale. The sale of Mount Sheridan is referred to as a total sale of \$26.25M for a shopping centre

¹² T. 1-23 L. 28.

¹³ Exhibit 15 p. 1-2.

site in documents and commentary which discusses the sales/s. Mr Williams himself in his report has referred to the sale as a \$26.25M shopping centre site. He has also produced two documents, the first an ASX Announcement from Mirvac (the vendor), which discusses the sale of Mount Sheridan Plaza at \$26.3 million., The second is a Ray White Invest sales extract which discusses the sale as a \$26.25 million dollar sale and analyses the sale a whole in terms of yields, IRR, and rate/m² GLA. Mr Williams has adopted this analysis in his report.

In addition the sale price of \$2,250,000 \$67/m² for Lot 4 SP136776 is not supported by local sales evidence.” (Mr Williams has adopted this analysis in his report.)

[61] Ms Larkins also makes the point, uncontradicted by Mr Williams, that the \$67/m² reflected in the undeveloped Mount Sheridan land sale is not supported by local evidence.

[62] To support this contention she refers to three Cairns sales for land which she regards as generally inferior to the Mount Sheridan site all of which achieved prices higher than \$67/m². Those sites are:

- (a) Swallow Road Bentley Park – a 70,100m² site which analysed out to \$93.8/m².
- (b) Cairns Road Gordonvale site – with a usable area of 15,010m² which analysed out to \$133/m².
- (c) Land at Draper Road Gordonvale with an area of 35,400m² which analysed out to \$100/m².

[63] Ms Larkins provided further details of those sales in her report but it is, in my opinion, unnecessary to recite those additional details here. It is sufficient to note that she was uncontradicted in the contention that both qualitatively and locationally those sites were inferior to the Mount Sheridan site.

[64] I should also that a number of points in the course of his evidence Mr Williams referred to commentary made by the Valuer-General’s representative at a mediation conducted before the Judicial Registrar, Mr O’Connor. Those discussions, unless they result in agreement, are, of course, clearly “without prejudice”. Notwithstanding that, no objection was taken by the Counsel for the Valuer-General and in any event nothing much seemed to turn upon those aspects of the mediation dialogue to which Mr Williams referred.

[65] In his report¹⁴ Mr Williams makes the following observations about Lot 777:

“Lot 777 on SP142949 is currently improved with Annandale Central shopping centre and additionally provides a balance land component. Portion of the site, behind the existing shopping centre and fronting Morstone Street, is expected to be developed as residential. This is a sensitive area as it adjoins existing housing, and there have been two development applications in recent years that have been rejected by Council, the most recent being low rise apartments.”

¹⁴ Exhibit 9 p.10.

[66] In the course of his oral evidence¹⁵ he made this observation:

“Now go on, Mr Williams?-- The land that I referred at the bottom of section - of page 10 of my submission has an area of a little over 8,000 square metres, which is the land that has some degree of restricted development potential. The development potential is unknown, but all we know is that a development application for low-rise apartments and for storage sheds were both rejected. And so the purpose of that - the report with the three different colours is merely to say that the area behind the shopping centre that is affected by that has an area of some 8,000 square metres.”

[67] That oral evidence somewhat conflicts with the information advanced in his written statement insofar as he evinces a view that the site is expected to be developed as “residential” but in oral evidence said that “attempts to achieve such development have so far been rejected by the Townsville City Council.” That seems to me, on the face of it, to be unsurprising when regard is had to the zone of the subject land being “neighbourhood centre” commercial and an amendment to the Town Planning Scheme of 27 December 2006 observes that:

“Residential uses form part of these centres only where they are integrated into the centre and do not adversely impact on the primary shopping and service functions of the centre.”¹⁶

[68] Exhibit 22 tendered by the Counsel for the respondent shows clearly that an application in respect of Lot 777 for multiple dwelling (6 x 1 bedroom home units, 17 x 1 home bedroom units with studies, 23 x 2 bedroom home units, 23 x 2 bedroom home units with studies and 11 x 3 bedroom home units) was refused by the Townsville City Council in 2005.

[69] Exhibit 21 tendered by Mr Williams shows that in October 2009 the Development Approval was granted in respect of lot 777 and Lots 801-804 for a Material Change of Use for Code Assessable Shopping Complex Extensions and Preliminary Approval of Building Works. That factual evidence does not sit easily with the contention that Lot 777 at some stage will be used for residential purposes. Rather, in my opinion, it confirms the contention by the Valuer-General that the highest and best use of the land is for commercial development.

[70] In the course of the hearing and without any prior notice Mr Williams sought to raise an issue with respect to the impact of a drainage swale which passes across all of the subject land. Those drainage easements have apparently been converted from overland flow to underground drainage and Mr William’s initial intention was to claim that allowance should be made for the existence of those drainage works in the valuation exercise.

¹⁵ T. 1-27 L.38.

¹⁶ Exhibit 13 p. 6 s.16.

- [71] Contentions of that sort had not previously been raised in any of the material filed in the Court by Mr Williams and certainly were not raised as one of the grounds of appeal.
- [72] In the course of the hearing it was made plain to Mr Williams that if there was a continued aspiration to rely on issues relating to the drainage easement then if applications were made by the Valuer-General for an adjournment so that that issue could be properly articulated by Mr Williams and properly investigated by the Valuer-General then that would only occur on the basis of Mr Williams paying any costs thrown away.¹⁷
- [73] Ultimately Mr Williams, while conceding that he is inexperienced in conducting valuation appeals had led to the situation in which he found himself, withdrew that issue.
- [74] In the course of his evidence Mr Williams was keen to address a sale that had apparently been referred to earlier by the Valuer-General of land located in Thuringowa Drive, Kirwan to Coles. As things turned out the Valuer-General never referred to that sale and it was not relied upon save with respect with lot 777.¹⁸
- [75] With respect to that sale Ms Larkins observed as follows:¹⁹
- “Thuringowa Drive, Kirwan comprises 4.434 ha and has a Court order(ed) preliminary approval for shopping centre and associated buildings. The site sold 30/06/2010 for \$232/m² (including approvals). The location of the site is considered superior to the subject as the site has exposure to two main roads and is situated in a growth residential area. The site is inferior in size (by 8,680m²). The site is considered superior to the subject and depicts the upper end of the valuation range at \$232/m².”
- [76] Ms Larkins relies upon that sale to confirm the conservative nature of the \$121/m² for lot 777 contended for by her having regard to her view that the Thuringowa site was qualitatively superior even though smaller in size.
- [77] Mr William’s particular concern was that, in his view, the sale was not in any event a relevant one not being an arms-length transaction but reflecting a keen desire by Coles to secure a site to confront increasing the effective competition in the area from Woolworths.
- [78] The reference to that sale has played no part in my decision and I mention it only for completeness since it was a matter to which Mr Williams adverted.
- [79] Interestingly, as was elicited by Mr Fynes-Clinton in cross-examination of Mr Williams both Ms Larkins for the Valuer-General and Mr Williams for the appellant contend for very similar relativities between the larger site Lot 777 and the two

¹⁷ T. p. 1-30 , 2. 1-36.

¹⁸ Exhibit 10, page 10.

¹⁹ Exhibit 10, page 11.

smaller sites Lots 801 and 802 having a relativity of approximately 2:1 in each case save that Ms Larkins has a rate which ranges from \$121 to \$250 and \$282 whereas Mr Williams has rates which range from \$70/m² for the Lot 777 to \$158 and \$160/m² for Lots 801 and 802.

[80] A crucial passage within the oral evidence before me occurred in the cross-examination of Mr Williams by Mr Fynes-Clinton²⁰ where Mr Fynes-Clinton put to Mr Williams the following:

“Now, assume with me, and you don't have to accept this, but just assume with me that the Court were to find that the appropriate large lot rate is 121 and not 70, on that assumption would you have any serious difficulty with Ms Larkins assessments for the smaller lots which reflect a similar proportion?”

To which Mr Williams responded:

“No.”

[81] Taking an overview of Mr William's evidence it seems to me that he fixed what he refers to as the Mount Sheridan sale of vacant land at a price of \$67/m². He points out in his report²¹ that he considered other sales which evidenced per m² rates within the range \$93 - \$109 for sites in the order of 3 ha. He fixed, however, on the view that the vacant Mount Sheridan sale was the most apposite.

[82] His report then, without evidencing any particular calculation or mathematical exercise says in respect of Lot 801:

“We have adopted a rate of \$158/square metres for this site, which equates to a value of \$465,000.”²²

[83] In the respect of Lot 802 he says as follows:

“Lot 802 on SP142949 is currently improved with a KFC. We have adopted a rate of \$160/m² for this site, which equates to a value of \$295,000.”²³

[84] Under cross-examination Mr Williams was pressed by Mr Fynes-Clinton to explain that scaling up but did not do so.

[85] Upon being pressed by me because I regarded the nature of that scaling up exercise as crucial to my understanding of the case being advanced by Mr Williams, to identify “*what sort of factors did you apply in that scaling up exercise*”. Mr Williams replied responded as follows: “*Okay. Well if - if I could jump a couple of steps, if I could, to say that on the larger two lots, so the lots 777 and 804, I was comfortable and confident with the rate to be applied based on the sale of the land at Mount Sheridan Plaza in Cairns, and when I did the valuations I did not have good*

²⁰ T. 1-46-37.

²¹ Exhibit 9.

²² Exhibit 9, p. 10.

²³ Exhibit 9, p. 11.

evidence of small lot sales to backup my valuations, and I can - so I guess, sort of, cutting through it, I can see some merit in the Valuer-General's small lot sales, albeit that - that there are - there are bona fide sales that - that I saw for the first time at the preliminary conference, and that would seem to justify a higher rate for the smaller lots than what I've put on them."

[86] Unsurprisingly that response did not really inform me.

[87] Upon further questioning Mr Williams acknowledged that he might, at the time of the hearing, now accept a higher per m² rate.²⁴

[88] I was still somewhat nonplussed by Mr Williams answer and pressed him: "*You still haven't told me how you achieved the rates that you've applied. Were they just snatched out of the air, or were they in some way calculated, and I thought you told me before, that they had, in some way, been calculated having a regard to some factors. What I'm interested in is what were the factors, and how did they apply?*" In response to which Mr Williams, surprisingly, informed the Court that he had simply adopted the same valuations that the government applied in the previous valuations and that they were not rates that he had adopted or applied merely represented an affirmation of previous valuations because to use Mr Williams's language "*I thought they seemed fair for the land*".²⁵

[89] Mr Fynes-Clinton subsequently took up the cudgels for the respondent and pursued a line of cross-examination which resulted in Mr Williams agreeing that:

- (a) Having regard to Ms Larkins appeal report, Exhibit 10 her first three sales were sales of generally comparable in size to the smaller Lots 801 and 802.
- (b) Those lots were comparable in zoning and use potential.
- (c) He did not reject those sales as being of no assistance to derive the values for Lots 801 and 802.
- (d) On Ms Larkins analysis those sales revealed a fairly narrow range of per m² rates.
- (e) Those rates were between \$250 and \$280/m² respectively when applied to Lots 801 and 802.
- (f) Mr Williams said there was nothing about the application by Ms Larkins of those sales to produce a result which was wrong.

[90] Subsequently, Mr Williams²⁶ informed the Court:

²⁴ T. 1-48 L 20-40.

²⁵ T. 1-48-49.

²⁶ T. 1-51.

“So - as I was alluding to before, your Honour, I have come to the conclusion that I agree with the Valuer-General's assessments of Lots 801 and 802.”

[91] That disposed of the appeals VLA402-10 and VLA403-10 and resulted in a valuation of \$830,000 applying to lot 801 (\$282/m²) and a valuation of \$460,000 applying to lot 802 (\$250/m²).

[92] As I suggested earlier in these reasons regard has to be had to the relativities between Lots 801 and 802, on the one hand and Lots 777 and 804 on the other.

[93] The Court is left in the position that in the course of the appeal Mr Williams agreed with the respondent's valuations of Lots 801 and 802 and had earlier agreed²⁷ that he would not have any serious difficulty with Ms Larkins assessments for the smaller lots.

[94] That is to say Mr Williams had contended for similar relativities between the larger lot 777 and the two smaller Lots 801 and 802 and then subsequently resailed from his valuations for Lots 801 and 802.

[95] Accordingly, I then have little difficulty accepting the evidence of Ms Larkins with respect to lot 777 and lot 804.

[96] In coming to that view I reject the approach adopted by Mr Williams of hiding off that part of the Mount Sheridan sale which resulted in a calculation of \$67/m². In my view that sale must be considered in its context of a sale for the whole Mount Sheridan Plaza for a total of \$26,250,000 under two different contracts.

[97] As Mr Fynes-Clinton described it in the context of their being two separate contracts for \$24,000,000 and \$2,500,000 respectively

“That was done because, although it was in substance one vendor to one purchaser, there were in fact two corporate entities which separately owned the two properties.”²⁸

[98] Mr Williams did not seek to contradict the propositions put to him by Mr Fynes-Clinton that an agreed figure for the whole transaction of \$26,250,000 was reached between the vendor and purchaser and then a valuer was approached to apportion the price between the improved site and the vacant site, that valuer being one David Kernke.

[99] With respect to the \$67/m² figure Mr Williams was invited by Mr Fynes-Clinton to point the cord to any sale of unimproved, or at least vacant land, with shopping centre potential, of a size comparable to Lots 777 which revealed a rate of \$67/m² or

²⁷ See paragraph 80.

²⁸ T.1-54 L.44.

less but he was unable to. He acknowledged that he had found some sales which ranged from \$93 to \$101/m².²⁹

[100] Throughout his evidence Mr Williams was keen to inform the Court that apart from the Mount Sheridan sale which he relied upon, it was his view that there were no relevant comparable sales from which guidance could be gleaned.

[101] That theme was taken up by Ms Larkins in her evidence in chief when she was asked to tell the Court about the process that she used to derive the issue valuation for lot 777 in circumstances where there were no directly applicable 2009 large lot sales. She told the Court this:

“There were a lack of large sales in that period to draw evidence from. As such I relied on smaller sales. These sales were generally 2300 to 2600 square metres of similar zoned land. And as such an appropriate drawback on a rate per square metre needed to be established. To assist me in that I had regards to Townsville Historic Commercial Size Table, which has been established over a number of years based on sales in the Townsville region.

Could I just stop you and just ask you to explain to the Court what that table is and what function it serves or what it tells you?-- The - the table is a size table, which shows incremental decreases for different size blocks. So for comparison purposes from one sized allotment to another.

Is that table based on sales or some other information or some mathematical formula?-- It's been tested over time against sales and with a little bit of mathematics scaling back between sizes where sales are not available.

All right. So does that complete the answer to that question about how you derived the issued value for Lot 777? From the information you had at the time?-- From the information at the time I had regard to this table, to the smaller sales and taking into consideration the site. I considered it - the characteristics and - of the site, I considered 121 overall fair and reasonable.

Thank you. Now, by the time it became your reports for the Court and these appeals, there were some larger lot sales in the Townsville locality in 2010 and you've referred to them in your report Exhibit 10. Can you explain to the Court what role those sales have played in the analysis you now present to the Court?-- Yes, I've included those sales as additional support evidence. As has been referred to before, they show a higher rate and, if anything, demonstrate that my applied rate in 2009 is conservative.”³⁰

[102] With respect to the Mount Sheridan sale and her reservations about adopting the \$67/m² value applied by Mr Williams, Ms Larkins said as follows:

“The purchase of the Mount Sheridan site was always offered and negotiated as one entity, it was never - never negotiated as two sites. Original asking price was 28.7 million. After six months of negotiation they resolved it at 26.25 million. The two site - two sales were linked. One could not sell it - two contracts were linked - one could not sell without the other. This is due to there being a development approval for the expansion of the shopping centre over the conglomerate of the sites. So it was for the expansion. I've spoken to the valuer for - for Green Group, he advised exactly as I said, that it was negotiated as one site. He was requested to do a valuation in early - in early November 2008.”³¹

29 T.1-58 L.35.

30 T.1-72 L.5-41.

31 T.1-73 L.22-37.

- [103] Later in her evidence she advised that she had spoken with the valuer one David Kernke.
- [104] Despite investigations in the southern corridor of Cairns where the Mount Sheridan site is located Ms Larkins was unable to identify any sales in the Cairns area which supported a price of \$67/m² for a shopping centre in town.
- [105] Other sites considered by her analysed out to a higher per m² yet, in her opinion, were inferior sites. Those sites include, as revealed in Exhibit 15 land located at:
- (1) Swallow Road at Bentley Park
 - (2) Cairns Road at Gordonvale
 - (3) Draper Road at Gordonvale.
- The analysed values per m² for those properties were \$93.80, \$133 and (after some contractual calculations) \$100/m².
- [106] Ms Larkins³² also told the Court that she took into account the potential growth of soldiers at the not distant Lavarack Barracks.
- [107] At the end of the day I, unfortunately, came to the view that Mr Williams' was driven more by his advocacy for a rate of \$70/m² to apply to each lot 777 and lot 804 based upon the calculated rate of \$67/m² for part of the Mount Sheridan sales.
- [108] I came to the view that Mr Williams evidence lacked requisite degree of objectivity required from an expert witness and, on matters of detail and comparable sales where those comparable sales clearly required consideration as was given by Ms Larkins, to the extent they did not support or conform to the valuations Mr Williams contended for then he either ignored or deprecated them.
- [109] I prefer the evidence and approach of Ms Larkins.
- [110] Accordingly, I find that with respect to the appeals relating to lot 777 on SP142949 and lot 804 on SP142949 Mr Williams has failed to discharge the onus placed upon him and accordingly the appeals are dismissed as are the two appeals in respect of lot 801 on SP142949 and lot 802 on SP142949.
- [111] As identified in paragraph [36] herein the requirements of s.3(5) of *VOLA* are relevant here.
- [112] No party to this appeal has provided any direct evidence about any of the matters set out in *VOLA* s.3(5) in relation to either of the two improved sites.
- [113] Ultimately only Lot 777 as an improved lot required consideration of the matters set out in *VOLA* s.3(5).

³² T.1-78 L.10.

[114] I was not addressed on this matter at all by Mr Williams and in respect of the topic Mr Fynes-Clinton for the respondent observed as follows:

“The Court must do the best it can with the evidence before it, and the respondent’s submission is that while the Court cannot determine any specific component of value which is attributable to the improved sites by reason of these matters, the fact that the respondent’s analysis involves direct application of vacant and lightly improved sales without addition for any of these matters means that the respondent’s contended valuation figures are necessarily and inherently conservative in the appellant’s favour if the Court otherwise accepts the reliability of the respondent’s evidence.”

[115] It is clear from the observations above that I have preferred the evidence of the respondent over that of the appellant.

[116] I accept the inherent conservativeness of the respondent’s approach and see no reason to add anything to the value which I find as a consequence of the application of *VOLA* s.3(5).

Orders

- 1. With respect to VLA401-10, the appeal is dismissed.**
- 2. With respect to VLA402-10, the appeal is dismissed.**
- 3. With respect to VLA403-10, the appeal is dismissed.**
- 4. With respect to VLA404-10, the appeal is dismissed.**

**HIS HONOUR WL COCHRANE
MEMBER OF THE LAND COURT**