

# LAND COURT OF QUEENSLAND

CITATION: *BPI No 1 Pty Ltd v Valuer-General; BWP Management Ltd v Valuer-General (No 2)* [2021] QLC 12

PARTIES: **BPI No 1 Pty Ltd**  
ACN 162 491 072  
(appellant)

v

**Valuer-General**  
(respondent)

FILE NO: LVA008-19

PARTIES: **BWP Management Ltd**  
ACN 082 856 424  
(appellant)

v

**Valuer-General**  
(respondent)

FILE NO: LVA020-19

PROCEEDING: Application for costs

DELIVERED ON: 23 March 2021

DELIVERED AT: Brisbane

HEARD ON: Submissions closed 4 November 2019

HEARD AT: Heard on the papers

PRESIDENT: FY Kingham

ORDER: **1. The appellants must pay the Valuer-General his costs thrown away because the appellants introduced the new sale, as assessed if not agreed.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where the Court decided appeals against the valuation of land – where there was an outstanding issue as to costs of an interlocutory application – where the appellants sought leave to amend

their Statement of Facts, Matters and Contentions in the appeals – where the effect of the amendment was to introduce a new comparable sale – where the Valuer-General sought costs thrown away as a result of new material – where costs are governed by s 171 of the *Land Valuation Act 2010* – where parties are to bear their own costs unless the Court orders costs based on one or more s 171 circumstances – where the Court held that the appellants must pay the Valuer-General his costs thrown away

*Land Valuation Act 2010* s 113(1)(f), s 147, s 150, s 151, s 155, s 171

APPEARANCES: Not applicable

- [1] These appeals against the valuation of 2 parcels of land by the Valuer-General were heard and decided by Member McNamara, who published his decision on 22 January 2021.
- [2] When the decision was delivered, the Valuer-General advised there was an outstanding issue as to the costs of an interlocutory application that I heard in October 2019. I made orders on the application, including for parties to file submissions on costs, which they did. I am not sure why the matter remained outstanding so long and regret that I did not decide the question promptly.
- [3] The interlocutory application was made by the appellants, who sought leave to file an amended Statement of Facts, Matters and Contentions in the appeals. I granted that application. The effect of the amendment was that the appellants relied on two additional sales as comparable sales for the valuers to consider in preparing their joint expert report for the Court. Of those two sales, one was a common sale. That is, the Valuer-General had already nominated that sale as a comparable sale, so it was not a new sale for the appeals. The other sale involved a property that the appellants had already notified in its Statement. However, it had only notified the sale of that property in 2017. The amendment introduced the sale of the same property in 2010.
- [4] The Valuer-General sought an order that the appellants pay his costs thrown away because the appellants introduced the new sale. The appellants resisted that application.

[5] Costs in land valuation appeals are governed by the *Land Valuation Act 2010* s 171.<sup>1</sup>

The effect of that section is that each party must bear their own costs of the appeal, unless the Court orders costs because it considers one or more stated circumstance applies.

[6] The Valuer General relies on the following circumstance to justify a costs order:

**171 Costs**

...

(2)(e) a party incurred costs because the other party introduced, or sought to introduce, new material;

...

[7] The appellants' amendment did introduce new material and this enlivens the Court's jurisdiction to award costs pursuant to s 171(2)(e).

[8] I am satisfied the Court should order the appellants pay the Valuer-General's costs thrown away.

[9] Although a land valuation appeal is commenced by a Notice of Appeal, the Court has a long-standing practice of requiring both the appellant and the Valuer-General to file a Statement of Facts, Matters and Contentions. The parties are expected to provide particulars of their contentions as to value, including which sales of comparable properties are relevant in valuing the site the subject of the appeal.

[10] The parties should be well placed to do this by the time they file their Statement.

[11] An owner of land cannot commence an appeal unless they have objected to the valuation.<sup>2</sup> Their objection must include the grounds of objection and, if it concerns the comparability of the sale of any other land, the following information:<sup>3</sup>

**113 Required content of objections**

...

(f) if an objection ground concerns the comparability of the sale of any other land—

(i) details of the sale; and

(ii) the reasons why the objector contends the sale is comparable to the valuation of the objector's land; and

(iii) the basis of comparison between the objector's land and the land the subject of the sale.

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<sup>1</sup> As a contrary provision, s 171 excludes the operation of s 27A of the *Land Court Act 2000* which would otherwise apply.

<sup>2</sup> *Land Valuation Act 2010* s 155.

<sup>3</sup> *Ibid* s 113(1)(f).

...

- [12] The Valuer-General must consider the objection,<sup>4</sup> decide it,<sup>5</sup> and give the owner notice of the decision and the reasons for it.<sup>6</sup>
- [13] By the time the appeal is filed, then, both parties have had the opportunity to formulate their contentions as to value and, relevantly for this case, to select their comparable sales.
- [14] Despite that, it is an unfortunately common experience that a party will introduce new comparable sales after they have filed their Statement and, sometimes, after the valuers have had their meeting of experts to prepare their joint expert report.
- [15] That practice is contrary to the Court's directions and undermines the Court's objective of adopting a fair and efficient process for the appeal.
- [16] The appellants sought an indulgence from the Court, which was granted. They gave notice of the new sale only one business day before the valuers' meeting, a delay they did not adequately explain.
- [17] The late notice necessarily delayed the valuers' meeting, although that does not appear to have resulted in additional costs. Mr Prasad's affidavit details the additional legal work that was undertaken for the Valuer-General. That should assist the parties to agree upon costs. If not, they will be assessed.

[18] **Order**

- 1. The appellants must pay the Valuer-General his costs thrown away because the appellants introduced the new sale, as assessed if not agreed.**

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<sup>4</sup> Ibid s 147.

<sup>5</sup> Ibid s 150.

<sup>6</sup> Ibid s 151.