

LAND COURT OF QUEENSLAND

CITATION: *The Trust Company Limited v Valuer-General* [2021] QLC 9

PARTIES: **The Trust Company Limited**
(appellant)

v

Valuer-General
(respondent)

FILE NOS: LVA302-19
LVA483-19
LVA720-19

PROCEEDING: Appeal against objection decision on a valuation under the *Land Valuation Act 2010*

DELIVERED ON: 12 March 2021

DELIVERED AT: Brisbane

HEARD ON: 12 & 13 November 2020

HEARD AT: Brisbane

PRESIDENT: FY Kingham

ORDERS: **LVA302-19**

- 1. I allow the appeal for LVA302-19.**
- 2. I find the correct value of the property at 116 Benfer Rd, Victoria Point is \$1,050,000.**

LVA483-19

- 1. I allow the appeal for LVA483-19.**
- 2. I find the correct value of the property at 86-88 Coachwood Drive, Flagstone is \$1,070,000.**

LVA720-19

- 1. I allow the appeal for LVA720-19.**
- 2. I find the correct value of the property at 385-387 Chatswood Road, Shailer Park is \$1,250,000.**

Costs

1. For all three appeals:

- a. **by 4:00pm, Friday 26 March 2021, if any party wishes to make submissions on costs, they must file and serve written submissions limited to three pages and costs will be decided on the papers; and**
- b. **if no party files submissions by that time, each party must bear their own costs of the hearing.**

CATCHWORDS: STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – GENERAL APPROACHES TO INTERPRETATION – where parties did not agree about the operation of s 22 of the *Land Valuation Act 2010* – whether it is necessary to make adjustment to site market value when there is an existing development approval – where the appellants contended a value must be assigned to the development approval so that it may be removed – where the Valuer-General disagreed with this approach – whether the Valuer-General’s approach includes the development approval as part of the unencumbered estate in fee simple – where the Court held that the existing use assumption does not affect the hypothetical estate in fee simple – where the Court considered it incongruent with the plain words used in s 22 to exclude the value of the development approval – where the appellants argued the Valuer-General’s approach wrongly included the value of an intangible improvement as part of the site value – where the Valuer-General did not assert this – where extrinsic material indicates an intention to exclude the added value of a development approval in valuing a property – where the Court considered added value must mean a value other than that inherent in the authorisation of the use – where the Court held that s 22 does not require the valuers to adjust the value of the subject properties to remove the value of their development approval

VALUATION OF LAND – METHODS OF VALUATION – GENERALLY – where the subject properties are used for childcare centres – where the valuers agreed on the direct comparison method but disagreed about whether valuation should be on a rate per square metre of land or a rate per number of approved long day care places – where the *Land Valuation Act 2010* does not prescribe a statutory methodology for arriving at the expected realisation of the land – where the appellant contended that their valuation

methodology was fitting for the subject site's highest and best use and was consistent with industry practice – where the Court found the evidence did not establish that method as an industry practice – where statutory valuation must consider that land may be used for any purpose for which it could be used at the date of valuation – where the method used by the valuer for the respondent was conventional and better suited to assess the potentiality of the land

VALUATION OF LAND – METHODS OF VALUATION – COMPARABLE SALES – where the valuers did not agree upon all the comparable sales for each appeal – where the valuers did not agree upon how the comparable sales should be analysed – where the Court rejected the appellants' valuations because it rejected the methodology used by their valuer – where the Court considered the appellants' valuer's evidence about what sales are comparable and how they should be analysed in assessing the valuations made by the respondent's valuer, whose methodology the Court did accept

Acts Interpretation Act 1954 s 14B(1)

Land Court Act 2000 s 7

Land Valuation Act 2010 s 5, s 7, s 16, s 17, s 17(1), s 17(2), s 18, s 19, s 22, s22(2), s 23, s 23(1)(g), s 170(b)

Valuation of Land Act 1944 s 3(2B), s 3(4)

Valuation of Land Act 1916 (NSW) s 6A

Explanatory Notes, Land Valuation Bill 2010 pp 1, 5, 10, 23 Queensland, *Parliamentary Debates*, Legislative Assembly, 1 September 2010, 2982 to 2983 (Stephen Robertson, Minister for Natural Resources, Mines and Energy and Minister for Trade)

Brewarrana Pty Ltd v Commissioner of Highways (No 2) (1973) 6 SASR 54, cited.

Bronzel v State Planning Authority (1979) 44 LGRA 34, cited.

BWP Management Limited v Valuer-General [2019] QLAC 4, cited.

Chief Executive, Department of Natural Resources and Mines v Kent Street Pty Ltd [2009] QCA 399, cited

Commonwealth Custodial Services v Valuer-General (2007) 156 LGERA 186; [2007] NSWCA 365, cited.

FW Hughes Pty Ltd v Minister for Conservation (1950) 17 LGR (NSW) 275, cited.

GPT RE Limited v Valuer-General (No 2) [2018] QLC 9, cited.

ISPT Pty Ltd v City of Melbourne (2008) 20 VR 447; [2008] VSCA 180, cited.

Mondelez Australia Pty Ltd v Automotive, Food, Metals,

Engineering, Printing and Kindred Industries Union; Minister for Jobs and Industrial Relations v Automotive, Food, Metals (2020) 381 ALR 601; [2020] HCA 29, cited.
Olefines Pty Ltd v Valuer-General of New South Wales [2018] NSWLEC 18, cited.
Olefines Pty Ltd v Valuer-General of New South Wales (2018) 234 LGERA 444; [2018] NSWCA 265, cited.
Raja Vryicherla Narayana Gajapatirjau v Revenue Divisional Officer, Vizagapatam [1939] AC 302, cited.
Royal Sydney Golf Club v Federal Commissioner of Taxation [1955] 91 CLR 610; HCA 13, cited.

APPEARANCES: JD Byrnes (instructed by Colin Biggers and Paisley) for the appellants
JM Horton QC w DA Quayle (instructed by In-House Legal, DNRME) for the respondent

- [1] These three appeals challenge the site valuations issued by the Valuer-General for properties currently used as childcare centres at 116 Benfer Road, Victoria Point, 86-88 Coachwood Drive, Flagstone and 385-387 Chatswood Road, Shailer Park.
- [2] In each appeal, the Valuer-General says the issued site valuation was erroneously made. The parties agree the Court should allow the appeals and “reduce or increase the valuation to the amount it considers necessary to correctly make” the valuations.¹ They say it is not necessary for the appellants to discharge the usual onus of establishing error. That does not mean the Court acts as a third valuer for the properties.² It must evaluate and act on the expert evidence led by the parties in deciding what is the correct value.
- [3] The appeals raise a legal question and a dispute about valuation methodology, both of which are common to all three properties.
- [4] The legal question involves the interpretation of s 22 of the *Land Valuation Act 2010*, which prescribes “existing use” assumptions in arriving at the site value of a property. Specifically, the appellants argue, and the Valuer-General denies, the valuation should exclude an amount attributed to the value of a development approval for continuing the childcare centre use.

¹ *Land Valuation Act 2010* (LVA) s 170(b).

² *Brewarrana Pty Ltd v Commissioner of Highways (No 2)* (1973) 6 SASR 541 (cited with approval by Warren CJ, Kellam JA, and Osborn AJA in *ISPT Pty Ltd v City of Melbourne* [2008] VSCA 180 at [18]–[19]).

- [5] The dispute about valuation methodology is whether the land should be valued on a rate per square metre basis or by the capacity of the childcare centre on the subject site. The appellants argued it should be the latter, assessed by the number of long day care places (LDCP) approved for the properties. The Valuer-General contends that is an unorthodox approach suitable only as a secondary check to valuing on a rate per square metre of land.
- [6] Otherwise, the valuers agree the valuations should be arrived at using the direct comparison method of valuation. This method uses sales of comparable properties to arrive at the market value of the subject sites. In applying that method, the valuers disagreed on several matters. They did not agree on which sales were useful for comparison, or where the subject site sat in relation to comparable sales. Further, they did not agree how some sales should be analysed for the purpose of comparison. This included different treatment of drainage infrastructure and information provided by the purchaser about the sale price. Those disputes are not common to the three appeals or to all of the comparable sales the valuers relied upon. They are conveniently addressed, to the extent necessary, when considering the valuation evidence for each property.
- [7] The reasons address the issues under the following headings:
1. Section 22 and the value of the development approval
 2. Valuation by rate per square metre or approved LDCP
 3. Value of 116 Benfer Road, Victoria Point
 4. Value of 86-88 Coachwood Drive, Flagstone
 5. Value of 385-387 Chatswood Road, Shailer Park

Section 22 and the value of the development approval

- [8] The parties identified the following as a matter in issue:
- “The proper construction of s 22 of the Land Valuation Act 2010 and how to apply the existing use assumptions in valuing the subject property.”³
- [9] The issue arises from their disagreement about whether it is necessary to make some adjustment to the market value for the subject sites to account for the fact that each has a development approval for use of the land for a childcare centre.
- [10] Relevantly, s 22(2) provides as follows:

³ Respondent’s Closing Outline of Submissions at [9].

22 Assumptions for existing uses

...

(2) In deciding land's site value, the following must be assumed (the *existing use assumptions*)—

- (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, (each an existing use) on the valuation day;
- (b) improvements may be continued or made to the land to allow it to continue to be used for any existing use.

- [11] It is common ground s 22 requires the Court to assume that the existing use, on the valuation day, can continue.
- [12] However, the appellants argue a value must be assigned to the development approval so that it can be “stripped out” in arriving at the site value for the property. The Valuer-General says that approach is not correct.
- [13] The approach taken by Mr Ladewig, the valuer engaged by the appellants, was to exclude from the value of the subject properties an amount referable to the time value of money involved in seeking and obtaining development approval and related costs. Mr Ladewig made the same “adjustment” to comparable sales where there was a development approval in place.
- [14] The approach adopted by Ms Wadley, the valuer engaged by the Valuer-General, did not require any “adjustment” to the subject properties, all of which have a development approval. It only required an allowance to be made in analysing a comparable sale which did not have a development approval in place when sold.
- [15] The appellants argue that the Valuer-General's approach includes the development approval as part of the unencumbered estate in fee simple. They also assert the Valuer-General is including the value of intangible improvements in arriving at the site value, contrary to the statutory intention to exclude them.

The unencumbered estate in fee simple

- [16] The appellants say that if the value of the development approval is not removed when assessing site value, the valuer is including the development approval in the hypothetical fee simple.

- [17] That misconceives the valuation process provided for by the LVA, because it confuses two concepts: the estate in the land that is being valued (the hypothetical estate in fee simple); and the effect of a law controlling the use to which the land may be put.
- [18] The High Court drew this distinction in *Royal Sydney Golf Club v Federal Commissioner of Taxation*⁴ when construing the valuation provisions of the *Land Tax Assessment Act 1910* (Cth).
- [19] The Court found the Act required a hypothesis of a fee simple “as the highest estate unencumbered and subject to no conditions.”⁵ It drew a distinction between an encumbrance to the fee simple, and laws which affect the use to which the land might be put.
- [20] An encumbrance to the fee simple confers “upon some other person or persons an estate or interest in the land.”⁶ That is different to “a law operating over an area of country within the State which... is chosen independently of all questions of title or ownership and controlling the use to which owners in fee simple... may put the land.”⁷
- [21] The High Court concluded that, in arriving at the unimproved value, the valuer must assume an unencumbered estate in fee simple but must take into account a law affecting the area in which the land lies.⁸
- [22] The LVA maintains that distinction.
- [23] The Valuer-General must decide the value of land as provided for under the Act.⁹ The land is assumed to be granted in fee simple.¹⁰ The value of non-rural land is its site value.¹¹ The site value of improved land,¹² as these properties are, is defined by s 19:

19 What is the site value of improved land

⁴ *Royal Sydney Golf Club v Federal Commissioner of Taxation* [1955] HCA 13.

⁵ *Ibid* p 623.

⁶ *Ibid*.

⁷ *Ibid* p 624.

⁸ *Ibid* p 624–625.

⁹ LVA s 5.

¹⁰ LVA s 16.

¹¹ LVA s 7(a).

¹² LVA Schedule.

- (1) If land is improved, its site value is its expected realisation under a bona fide sale assuming all non-site improvements for the land had not been made.
- (2) However, the land's site value is affected by any other relevant provisions of this chapter.

[24] The site value is the expected realisation for the land under a bona fide sale.¹³ The expected realisation is the capital sum that its unencumbered estate in fee simple might be expected to realise if that estate were negotiated for sale as a bona fide sale.¹⁴ Unencumbered means unencumbered by any lease, agreement for lease, mortgage or other charge.¹⁵ That definition identifies only matters that affect the estate or interest in the land.

[25] It is s 22 that addresses use of the land. It appears in the same chapter of the LVA as s 19. It qualifies as a “relevant provision”, as that term is used in s 19(2), because it directs an aspect of the valuation process.

[26] The existing use assumptions in s 22 require the valuer to assume that any existing or lawful use of the land at the date of valuation may continue. The valuer need not consider the town planning risk of obtaining approval. The lawfulness of the activity is assumed.

[27] The appellants argue that s 22 only operates insofar as to allow the assumption to be made. However, to include the value of the development approval would be to include its value in the hypothetical estate in fee simple. I do not accept that argument. The existing use assumption does not affect the hypothetical estate in fee simple. The plain words used in s 22 render the question of authorisation of an existing or lawful use irrelevant. That is, it must be assumed. It is incongruent with the plain words used to exclude the value of the development approval, at least to the extent that its value lies in the authorisation of the use.

Intangible improvements

[28] The appellants argue the Valuer-General's approach wrongly includes the value of an intangible improvement (the development approval) as part of the site value. As I understand the Valuer-General's submissions, it did not assert a development

¹³ LVA s 19.

¹⁴ LVA s 17(1).

¹⁵ LVA s 17(2).

approval is an intangible improvement that must be included in the valuation. Nor did it ask the Court to consider the actual development approvals for the subject properties, which were not led in evidence by either party.

- [29] The appellants' argument appears to arise from the definition of unimproved value in the *Valuation of Land Act 1944* (VOLA), which was repealed and replaced by the LVA. The appellants argue the Court should have regard to extrinsic material in interpreting s 22. They referred to passages in the explanatory notes and second reading speech about removing intangible elements, including development approvals, from the site value.¹⁶
- [30] The Valuer-General argued the Court need not have regard to the extrinsic material, as there is no basis for doing so. Although the appellants asserted s 22 is ambiguous, they did not identify the ambiguity.¹⁷
- [31] The modern approach to statutory interpretation requires a consideration of context, and the extrinsic materials may have some utility in understanding the legislative intention and what "mischief" a provision is intended to address.¹⁸
- [32] The LVA introduced a significant change to the valuation system. The extrinsic materials can assist in understanding the legislative intention as to the nature and effect of that change.
- [33] Under VOLA, all land was valued using the concept of unimproved value. The definition of unimproved value expressly included the value of intangible elements, including leases and development approvals.¹⁹
- [34] The LVA introduced a system of valuation which drew a distinction between rural and non-rural land. Rural land is valued on its unimproved value, non-rural by its site value.²⁰ Neither terms, unimproved value or site value, refer to intangible elements in general or, specifically, to development approvals.

¹⁶ Explanatory Notes, Land Valuation Bill 2010 pp 1, 5, 10, 23; Queensland, *Parliamentary Debates*, Legislative Assembly, 1 September 2010, 2982 to 2983 (Stephen Robertson, Minister for Natural Resources, Mines and Energy and Minister for Trade).

¹⁷ *Acts Interpretation Act 1954* s 14B(1).

¹⁸ *Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union; Minister for Jobs and Industrial Relations v Automotive, Food, Metals* [2020] HCA 29 [13], [66]–[69].

¹⁹ *Valuation of Land Act 1944* (VOLA) s 3(2B).

²⁰ *Land Valuation Act 2010* s 7.

[35] The Explanatory Notes say this about that change:²¹

The Bill will omit intangible elements from the definitions of unimproved value and site value. This is consistent with the Premier's March 2012 announcement that states that site value would "exclude the valuation of leases which have been so controversial" and is consistent with the NSW definition.

The existence of any agreements for lease, leases, development approvals or infrastructure credits and their added value (if any) will not be considered when determining the value of the property.²²

[36] An important aspect of the definition of unimproved value in the VOLA was not changed materially by the introduction of the LVA. The existing use assumption, which formed part of the definition of unimproved value in the VOLA,²³ has been retained in almost identical terms in s 22(2) of the LVA. That indicates there was no legislative intention to change the way that aspect of the former definition operated. The change to other aspects of the VOLA definition of unimproved value, therefore, must have been directed at something other than the effect of the existing use assumptions.

[37] That would explain the reference to excluding the "added value (if any)" of the development approval. Added value makes sense if read to mean the value which is additional to the value inherent in the authorisation of the existing or a lawful use.

[38] The Explanatory Notes acknowledge there may, in fact, be no added value of the development approval.²⁴

[39] An example of that type of value is infrastructure credits, which reduce the costs of developing the land for that use and, therefore, add value to the land when compared to land approved for the same use without equivalent credits. The valuers appear to have made appropriate adjustments to exclude that type of "added value" in arriving at their valuations. A particular development approval may well bring other types of "added value". The appellants have not suggested the development approvals that apply to the subject properties bring an added value, and neither party relied on the approvals themselves.

²¹ Explanatory Notes, Land Valuation Bill 2010 p 10.

²² Ibid.

²³ VOLA s 3(4).

²⁴ Explanatory Notes, Land Valuation Bill 2010 pp 5, 10.

[40] That interpretation of s 22 is consistent with the way in which an analogous provision in NSW legislation has been interpreted.

[41] The Explanatory Notes state the definition of site value was “closely aligned to other states, in particular NSW.”²⁵ The analogous provision in NSW is s 6A of the *Valuation of Land Act 1916* (NSW):

6A Land value

- (1) The land value of land is 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 the improvements, if any, thereon or appertaining thereto, other than land improvements, and made or acquired by the owner or the owner’s predecessor in title had not been made.
- (2) Notwithstanding anything in subsection (1), in determining the land 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 the improvements, if any, other than land improvements, referred to in subsection (1) had not been made.
- (3) Notwithstanding anything in subsection (1), in determining the land value of any land, being land in relation to which, at the date to which the valuation relates, there was a water right—
 - (a) the land value shall include the value of the right, and
 - (b) it shall be assumed that the right shall continue to apply in relation to the land.
- (4) For the purpose of determining the value of a water right, the value of any water secured by, or referable to, that right is to be ignored.

(emphasis added)

[42] There is a marked similarity in language between s 6A and its counterparts in the LVA (ss 19, 17, 18 and 22), as discussed at paragraphs [21] to [27].

[43] The effect of s 6A was considered by Molesworth AJ in *Olefines Pty Ltd v Valuer-General of New South Wales*.²⁶

²⁵ Explanatory Notes, Land Valuation Bill 2010 p 9.

²⁶ [2018] NSWLEC 18.

[44] His Honour made the following finding:²⁷

“So for the purposes of the valuer’s valuation exercise, those assumptions do not allow the valuer to question the legality of the continuing use and thereby bring into the equation supposed additional requirements which might be said to be necessary in order for the use of the land to continue. In short, the assumption is that the improvements are in place and that all necessary consents have been obtained and requirements met.

...

The acceptance of ‘can continue’ basis upon which the exercise proceeds, means that the continuance of the use does not trigger any of the normal requirements to obtain the requisite approvals via a normal development application process, rather it is to be assumed that all approvals are in place.”²⁸

[45] On appeal, the NSW Court of Appeal found no error in his Honour’s approach on that issue.²⁹

[46] The appellants seek to distinguish this reasoning because it deals with remediation costs for contaminated land, not the value of a development approval. However, as a matter of principle, it is hard to draw a distinction between the cost of remediating land as a requirement to obtain a development approval and other costs associated with obtaining one, such as the time value of money arising from the delay in securing one. Finally, making an allowance for costs associated with the expected time to approval is inconsistent with the statutory assumption the use is authorised on the valuation day.

[47] In conclusion on this issue, s 22 mandates an assumption in arriving at site value, as defined in s 19. That assumption relates to authorisation of use, not the hypothetical title to the land, which is an unencumbered estate in fee simple. The ordinary meaning of the words used in s 22 does not require the valuer to bring the likely costs of obtaining approval into the equation. The extrinsic material indicates an intention to exclude the “added value” of a development approval in valuing a property. Given there is no material difference between the existing use assumptions in the VOLA and the LVA, the “added value” must mean a value other than that inherent in the authorisation of the use. The Valuer-General’s proposed interpretation of s 22 is consistent with the way in which the analogous provision of the NSW Act has been interpreted.

²⁷ Ibid at [131]–[133].

²⁸ Ibid.

²⁹ *Olefines Pty Ltd v Valuer-General of New South Wales* [2018] NSWCA 265.

[48] Section 22 does not require the valuers to adjust the value of the subject properties to “strip out” the value of their development approval.

[49] As result of this finding, I will not consider either valuer’s evidence to the extent it seeks to identify and exclude the value of a development approval for use as a childcare centre, whether on a subject site or in analysing a comparable sale.

Valuation by rate per square metre or approved LDCP

[50] Turning to the valuation issue, the valuers agreed on the direct comparison method, but adopted a different unit of measurement in employing that methodology.

[51] Mr Ladewig undertook his valuation by reference to the number of approved long day care places for the subject properties and the comparable sales (\$/LDCP).

[52] Ms Wadley used a rate per square metre of land (\$/m²), although, in response to Mr Ladewig’s valuation approach, she also considered the \$/LDCP as a secondary check method.

[53] The LVA does not prescribe a methodology for arriving at the expected realisation of the land, on the statutory assumptions. There can be different ways to approach that task, which are equally rational. More than one method may be adopted, as Ms Wadley demonstrated in her valuation. The Court should be slow to exclude a rational mode of valuing land.³⁰

[54] Mr Ladewig justified using the \$/LDCP method because the agreed highest and best use for the subject properties is their current use – childcare centres. Mr Ladewig accepted his approach was not usual and sought to distinguish this asset class from others. The only example he could offer of an asset class calling for a discrete metric was cemeteries. That did not persuade me there is a reasoned basis for his selected method.

[55] Mr Ladewig also called upon industry practice to support his method.

[56] The appellants sought to tender affidavits from valuers and property agents/developers about their method of valuing property sold with the intended use

³⁰ *Commonwealth Custodial Services v Valuer-General* (2007) 156 LGERA 186 at 189 (cited with approval by Keane JA in *Chief Executive, Department of Natural Resources and Mines v Kent Street Pty Ltd* [2009] QCA 399 at [15]).

of a childcare centre.³¹ The Valuer-General objected to their admission and, if admitted, argued they should be given little or no weight.

[57] The Court is not bound by the rules of evidence.³² Given the importance of the question of methodology in these appeals, I have admitted the affidavits into evidence so I may consider the appellants' argument at its highest.

[58] The Valuer-General did not wish to cross-examine the deponents. Their evidence is, therefore, uncontested.

[59] In my view, the evidence provides little support for Mr Ladewig's approach.

[60] Each deponent exhibits an email from Mr Ladewig, which contains their "in-line" responses to several questions. The pertinent one for this issue is this:

"When purchasing/valuing a site, do you consider the \$rate/m² or \$rate/Long Day Care Place to be the most reliable method of determining the value?"³³

[61] As a preface to the questions, Mr Ladewig said they relate to the value of vacant land with a highest and best use as a childcare use and all other things being equal. Nevertheless, the responses are evidence of the deponent's practice, presumably in the market. Mr Ladewig did not ask them to describe how they would undertake a statutory valuation under the LVA. As such, the deponents have addressed a different question to the one the Court must answer in determining the dispute about methodology in these appeals.

[62] In any case, the affidavits do not establish an industry practice of sole reliance on \$/LDCP, the method Mr Ladewig adopted in valuing the subject properties. While all nominated \$/LDCP as appropriate, and some deponents suggested that would be their sole reference point, not all deponents said that. Two experienced childcare valuers, Ms McCleary and Mr Schultz, who is also a Director of Mr Ladewig's firm, said they would consider value determined by reference to both \$/LDCP and \$/m².

[63] It makes sense that of a purchaser of land to be used for a childcare centre would be concerned about the number of LDCPs that could be achieved on a property. But a

³¹ Affidavit of Paige McCleary; Affidavit of Benjamin McPhee; Affidavit of Stuart Bishop; Affidavit of Brett Schultz; Affidavit of Nicholas Anagnostou.

³² *Land Court Act 2000* (LCA) s 7.

³³ Affidavit of Paige McCleary Ex PM-01; Affidavit of Benjamin McPhee Ex BM-01; Affidavit of Stuart Bishop Ex SB-01; Affidavit of Brett Schultz Ex BS-01; Affidavit of Nicholas Anagnostou SB-01.

statutory valuation, an artificial and hypothetical exercise, is different to an actual market sale, and involves prescribed assumptions which must be given effect.

- [64] One important assumption for the statutory valuation is that the land may be used for any purpose for which it could be used at the date of valuation.³⁴ Although neither valuer addressed an alternative highest and best use, a \$/m² rate, as a conventional method of valuing commercial land, would have utility for a range of potential uses, not just a childcare centre.
- [65] None of the deponents was asked whether they would use that metric as the sole point of reference if valuing land with a highest and best use for childcare, but also considering its potential to be used for other lawful uses. Mr Schultz described \$/LDCP as “less wide ranging” than \$/m².³⁵ It is reasonable to assume a valuer asked to consider the land’s potentiality would look for a more wide-ranging metric than \$/LDCP, which is useful only for a childcare use.
- [66] The Valuer-General submitted the valuers had been unnecessarily specific in identifying the highest and best use and this had led Mr Ladewig into error. That submission has some force.
- [67] The highest and best use is a description of a purpose. It is sufficient to identify that purpose in general terms.³⁶ Mr Ladewig’s approach was to descend to the number of places in defining the highest and best use. During evidence he went so far as to say that a different number of LDCPs for a property would constitute a different highest and best use.³⁷
- [68] The danger in that degree of specificity is demonstrated by Ms Wadley’s evidence. Even though she agreed to a highest and best use by reference to the number of approved LDCPs, she considered one of the subject properties, 86-88 Coachwood Drive, Flagstone, was underutilised. Sole reliance on approved LDCPs could skew the analysis. This demonstrates the advantage of incorporating a more wide-ranging metric, as she did.

³⁴ LVA s 22(2)(b); *Raja Vryicherla Narayana Gajapatirjau v Revenue Divisional Officer, Vizagapatam* [1939] AC 302 at 313 (Romer LJ); *FW Hughes Pty Ltd v Minister for Conservation* (1950) 17 LGR (NSW) 275 at 277 (Sugerman J).

³⁵ Affidavit of Brett Schultz Ex BS-01.

³⁶ *ISPT Pty Ltd v City of Melbourne* [2008] VSCA 180 at [9].

³⁷ T 2–156, lines 14 to 18.

- [69] Ms Wadley has used a conventional method of valuing commercial land as the primary method. Further, she has had reference to more than one metric, using the \$/LDCP as a secondary check.
- [70] The appellants submitted Ms Wadley's use of this method as a check was irrelevant because it did not lead to her changing her valuation using her primary method. The purpose of a secondary method is to check the primary assessment. In some cases it will lead to refinement of a primary valuation, but it does not need to in order to have utility. Ms Wadley said that, having undertaken the check, she remained comfortable with her valuations on a rate \$/m². Although the appellants noted the difference in her valuations of one of the subject properties using the two rates was in the order of 8%, this does not demonstrate that Ms Wadley's valuation of that property is incorrect. Ms Wadley said she did not consider the difference to be significant. The appellants have not demonstrated why the Court should consider it is, or why it should cause the Court to accept Mr Ladewig's method over Ms Wadley's.
- [71] I prefer Ms Wadley's valuation method because it is conventional when valuing land, rather than an ongoing concern, and better assesses the potentiality of the land, as well as the very specific highest and best use adopted by the valuers. I reject Mr Ladewig's reliance on the sole metric of \$/LDCP.
- [72] Although Mr Ladewig accepted a rate of \$/m² is an acceptable valuation method, he did not offer an opinion on value on that basis. This is contrary to the Court's expectation that an expert witness will explain how their conclusions would differ if the Court resolves a disagreement about, for example, methodology, against their view of the matter.³⁸ It would have assisted the Court had he done so.³⁹
- [73] I raised this during the hearing, but the appellants did not seek leave to lead evidence of his assessment on a rate of \$/m².⁴⁰ Counsel for the appellants submitted I could devise a rate per m² by taking Mr Ladewig's valuation and dividing it by the area of the land. I do not consider that methodology appropriate as the valuation figure arrived at by Mr Ladewig has been reached using a method I have rejected. Mr Ladewig's failure to address Ms Wadley's primary valuation method leaves a void in

³⁸ Land Court of Queensland, Guidelines for Expert Evidence 30 April 2018 [57].

³⁹ *Bronzel v State Planning Authority* (1979) 44 LGRA 34 at 45.

⁴⁰ T 1-7, lines 3 to 36.

his evidence which the Court cannot fill by speculation. Necessarily this affects what use the Court can make of his evidence.

[74] I reject Mr Ladewig's valuation of the subject properties because it arises from a methodology I reject. However, I can and will have regard to Mr Ladewig's opinions on subsidiary matters in assessing Ms Wadley's evidence. I will consider Mr Ladewig's views about Ms Wadley's selection of comparable sales and her analysis of those sales, including his view about site and non-site improvements and, where relevant, the use that should be made of evidence from the purchaser for the comparable sales.

[75] I will now consider the evidence about each subject property.

LVA 302-19 Appeal against the valuation of 116 Benfer Road, Victoria Point

[76] This property is in the established coastal suburb of Victoria Point. The valuers agree its current use for a childcare centre is the highest and best use of the land.

[77] It is an irregular shaped parcel, with a near level building pad. It has a 70 m frontage to Benfer Road, and a 105 metre frontage to Bambara Close. Benfer road is a main three lane trunk collector road which serves as an important east-west connection for the Victoria Point community. Benfer road transforms into a road with a single lane in each direction 380 m to the east of the subject property.

[78] The subject is also close to Cleveland Redland Bay Road, an arterial road comprising two lanes that Mr Ladewig contends carries a high volume of traffic, and Ms Wadley contends carries a moderate volume of traffic. Both valuers agree that the road carries approximately 25,700 cars daily.

[79] Benfer Road and Colburn Avenue (3 km to the north of Benfer Road) are important east-west connections for the Victoria Point community which connects to the Redland Bay community to the south and Thornlands community to the north via Cleveland Redland Bay Road.

[80] With the subject property near the main business district for the suburb, public transport is conveniently located; there is a bus stop located at the south eastern boundary on Benfer Road for east bound commuters and opposite the subject property for west bound commuters.

Property Address	Area of Land	Rate /m ²	CL	EW	EW Comments
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- [81] Victoria Point is dominated by established and detached 1980s and 1990s dwellings. Approximately 1.1 km north west of the subject property is Victoria Point Shopping Centre, a large neighbourhood shopping centre. Approximately 80 m west of the subject site is a large retirement village. The subject property is adjacent to a service station, directly opposite a state high school, and there are two primary schools in the vicinity (a private school within 800 m and a state primary school within 2 km).
- [82] Mr Ladewig notes a low growth rate for the suburb. Ms Wadley concurs with this, observing that the low growth rate is reflective of the established population.
- [83] The subject site has 4 competing childcare centres in Victoria Point, with a total of 476 approved places when including the subject. Ms Wadley described the existing competition as moderate. Although Mr Ladewig described the competition as high in the joint expert report, during oral evidence he said it was moderate.⁴¹
- [84] The issued valuation of this property was \$1,050,000, which the Valuer-General now says is incorrect, based on Ms Wadley's evidence.
- [85] The owner contends its value is \$930,000, applying a \$/LDCP rate of \$7,500/LDCP. I have rejected Mr Ladewig's valuation on that sole metric but will consider his evidence about this property in the way identified at paragraph [74].
- [86] The Valuer General's contention is that the correct value is \$1,290,000, based on a rate of \$419/m².
- [87] Ms Wadley identified 4 sales as comparable. Mr Ladewig accepted 2 of them as comparable – Park Ridge and Springwood. He rejected the other 2 chosen by Ms Wadley – Bryants Rd and Timor Ave, both in Loganholme. Mr Ladewig identified 3 other sales as comparable, which Ms Wadley rejected - Flagstone, Yarrabilba and Ripley.
- [88] The table below includes information about the comparable sales referred to by either valuer and the relative position of the subject property. It notes Ms Wadley's analysis on a rate/m², assuming the value of a development approval need not be stripped out (Ms Wadley's Sales Analysis 2). It also includes Ms Wadley's observations about those sales.

⁴¹ T 2-138, line 40.

109 Timor Avenue, Loganholme	1,983 m ²	\$590/m²	Not used	Comparable - Superior	Established Logan City location of Loganholme, east of the Pacific Motorway. Well situated on the road network, close to employment nodes, short distance to rear entry of State High School and Private Primary School, further to State Primary School. Irregular shaped, allotment with a sloping topography easement affected and requiring earthworks. Good convenience and exposure. High competition and moderate/high 0-5 years population base. Moderate demand.
189-191 Bryant Rd & 18 Osbourne Ct, Loganholme -	4,040 m ²	\$574/m²	Not used	Comparable - superior	Established Logan City location of Loganholme, east of the Pacific Motorway. Well situated on the road network, close to employment nodes, short distance to rear entry of State High School and Private Primary School, further to State Primary School. Irregular shaped, allotment with a sloping topography easement affected and requiring earthworks. Good convenience and exposure. High competition and moderate/high 0-5 years population base. Moderate demand.
276 Fischer Rd, Ripley -	2,090 m ²	\$498/m²	Comparable	Not used	Emerging south west Ipswich City location of Ripley. Situated on the fringe of a new estate. Regular shaped, corner allotment with a gentle sloping topography requiring minor earthworks, fair convenience and limited exposure a distance from State school and shops. Low competition and high 0-5 years population base
232 Springwood Rd, Springwood -	4,077 m ²	\$442/m² (adjusted to \$356 m²)	Comparable	Comparable – slightly superior	Established Logan City location of Springwood, east of the Pacific Motorway. Well situated on the road network, close to employment nodes, short distances to rear entry of State High School and a short distance to State Primary School and private school. Regular shaped, allotment with a moderate sloping topography requiring earthworks. Good convenience and exposure. High competition and moderate 0-5 year population base. Moderate demand.
116 Benfer Rd, Victoria Point	3,081 m ²	\$419/m²	Subject Property LVA		Established location, east of the Pacific Motorway, a coastal suburb in Redland City. Situated opposite a State High School, adjoining a service station. Well situated on the road network. Regular shaped, inside allotment with a good contour, good convenience and exposure. Moderate sized 0-5years population base and moderate level of competition. Moderate demand.
119-123 East Beaumont Rd, Park Ridge -	2,462 m²	\$361 m ²	Comparable – upper end	Comparable – inferior	Emerging western Logan City location of Park Ridge, Situated opposite a park, at the entry to a new estate. Regular shaped, corner allotment with a sloping topography requiring earthworks, poor convenience and exposure. High competition and low 0-5 years population base.
Lot 5055 Woodward Ave, Yarrabilba -	4,806 m ²	\$325/m²	Comparable	Not used	Emerging western Logan City location of Yarrabilba. Situated adjacent to a state high school, a short distance to state primary school. Slightly irregular shaped, corner allotment with a good contour, good convenience and exposure. Large 0-5 years population base and moderate level of competition.
2-6 Branson St, Flagstone -	3,570 m ²	\$269/m²	Comparable	Not a good comparison – inferior	Situated adjacent to established location of Flagstone, in an expanding section of the western Logan City. Situated opposite employment node, a short distance to a State Primary School and State high School. Irregular shaped, corner allotment with a good contour, good convenience and exposure. Large 0-5 years population base and moderate level of competition.

Derived from: Document marked A for identification and using the areas and rates/m² identified for the subject sites and comparable sales and Ms Wadley's comments which appear in "EW sales/subject property summary – section 22 of the LVA 2010 does not require DA process. EW Adopted Method." (Joint Expert Report pages 147-148)

Subject Property Sales in common EW finds comparable CL finds comparable

- [89] Before turning to those sales, there are two general observations I wish to make.
- [90] First, the difference between the valuers in the selection of the sales appears to arise from two related factors – the demographics of the area in which the land was situated and whether the area was established or emerging.
- [91] Mr Ladewig considered the “kicker for this site” is demographics and how that relates to the “economics” of the childcare centre use. There is a high median age in the area, because of the level of retirees. Only 58% of the population are full time workers and only 56% of families with children have both parents working full time. This is offset “a bit” because of its position in relation to the high school, shopping centre, and employment hub.⁴²
- [92] Ms Wadley agreed the demographics are relevant but relied on the established base demand for childcare places. As a newer entrant to that market, this centre was attractive when compared with the older childcare centres with which it competed. I will return to this issue when considering comparable sales proposed by Mr Ladewig that Ms Wadley rejects because they are in emerging areas.
- [93] Second, there are 2 common sales chosen by the valuers as comparable. Importantly, those two sales are also Ms Wadley’s closest inferior and superior sales: Park Ridge at \$361/m²; and Springwood at \$442/m². It makes sense, then, to consider those 2 sales first.

119-123 East Beaumont Road, Park Ridge

- [94] Ms Wadley considered this site inferior to Victoria Point. Mr Ladewig considered it superior, indeed at the higher end of the range of comparable sales.
- [95] Ms Wadley said the land is in an inferior suburb, with a smaller land area. Although it has a superior shape and a larger road frontage, it has less exposure than Victoria Point, on a local street on the rear fringe of the estate. It is some distance to shops and

⁴² T 2-138, line 40; T 2-139, line 4.

schools. The quiet road situation offers no potential for increased demand from outside the estate. The centre is subject to greater competition than Victoria Point.⁴³

[96] Mr Ladewig agreed the Park Ridge sale provided a good comparison, although he put it at the upper end of the range. It is the only childcare centre identified in a master planned community showing strong growth. Mr Ladewig acknowledged the area has an inferior level of full-time workers, families with children and both parents working fulltime. He also noted the higher median age as inferior and the lower level of household income as a negative.⁴⁴

[97] I accept the growth potential is a factor relevant to value, but it seems to me that the locational disadvantages, higher competition, and the low household income of the catchment, support Ms Wadley's view that the sale is inferior to Victoria Point.

[98] Turning to the analysis of the sale, it is necessary to talk about how the sales are analysed in the Joint Expert Report. Ms Wadley has analysed all comparable sales on two bases. Analysis 1 assumes the value of the development approval must be "stripped out". Analysis 2 adopts the Valuer-General's approach, which I have accepted as correct, that there is no need to strip out that value. For this and all other sales analyses, then, my starting point is Ms Wadley's Analysis 2.

[99] Unfortunately, the appellant's submissions on the comparable sales do not engage with Ms Wadley's Analysis 2 for each sale in any detail, perhaps because Mr Ladewig did not do so in his evidence. To be fair to the appellants, I will consider their submissions regarding Ms Wadley's Analysis 1 for each comparable sale, and identify, where I can, any arguments that also relate to Analysis 2.

[100] As best I can make out from their submissions about Ms Wadley's Analysis 1, the appellants took issue with two items of relevance to Analysis 2.

[101] The first is Ms Wadley's allowance of 100,000 for the cost of undertaking site works. Mr Ladewig had allowed \$75,000, being the mid-point of the range of \$50,000 to \$100,000. Ms Wadley adopted the upper end of that range, having regard to the purchaser's information, her own assessment of costs, and some information that she conceded would not have been available to the purchaser. The difference is \$25,000;

⁴³ Joint Expert Report of Mr Coen Ladewig and Ms Elissia Wadley dated 2 September 2020 (JER), pp 29, 185.

⁴⁴ JER pp 78, 185.

of little consequence if that is the sole issue in an analysis of value at \$800,000. In any case, it is consistent with the purchaser's information and Ms Wadley has satisfactorily explained why she preferred \$100,000 over \$75,000.

[102] The second item is Ms Wadley's failure to deduct \$75,000 from the sale price. That is the amount Mr Ladewig allowed for the benefit of a detention tank/basin on site. That figure is the mid-point of the range given by the purchaser about its assessment of the value of that infrastructure.

[103] Ms Wadley did not deduct any amount for the detention tank/basin because she considers it is a site improvement. As such, any benefit it brings to the land is included in its site value. Mr Ladewig considers it a non-site improvement, the value of which must be removed in arriving at the site value.⁴⁵ The same issue arises for four other sales said to be comparable sales in these appeals (Ripley, Yarrabilba, Flagstone and Timor Ave). The finding I make in relation to this sale will apply to those other sales, unless otherwise stated in these reasons.

[104] The definition of site improvements includes underground drainage.⁴⁶ Ms Wadley has approached all underground detention basins/tanks as underground drainage, and therefore site improvements. Mr Ladewig accepts that this detention tank, and those for the other sales, are in fact underground.³⁸ There is no dispute their purpose is stormwater drainage.

[105] Nevertheless, the appellants argue they are non-site improvements because they exist due to the structures on the land.

[106] The appellants rely on Member Smith's reasoning in *GPT RE Limited v Valuer-General (No 2)*.⁴⁷ In that case, his Honour construed the definition of site and non-site improvements by reference to the Explanatory Notes. He decided a river wall was a non-site improvement because it was constructed as part of the building project, formed an integral part of the building and, but for the existence of the river wall as part of its footings and foundations and underground building levels, the building could not stand.

⁴⁵ LVA s 19(1).

⁴⁶ LVA s 23(1)(g).

⁴⁷ [2018] QLC 9 (*GPT*) at [230], [231] and [256].

[107] Although that case went on appeal, there was no challenge to that finding. It does not, however, assist the appellants. A river wall is not work done to the land for underground drainage. The appellants presented no evidence to establish the detention tank/basin on the Park Ridge site, or the other comparable sales for which this issue arises, are in the same category as the river wall in *GPT*. Further, as the Valuer-General observed, in that same case Member Smith decided a detention tank was a site improvement for the purposes of s 23 of the LVA.⁴⁸ The appellants did not draw my attention to any relevant distinction between the detention tank considered by Member Smith in *GPT* and the detention basins/tanks at issue in these appeals. I find the detention basin/tank is a site improvement.

[108] I accept Ms Wadley's Analysis 2 for this sale, at \$361/m².⁴⁹

232 Springwood Rd, Springwood

[109] Ms Wadley considered this site to be "slightly superior"⁵⁰ to Victoria Point. Mr Ladewig accepted it provided a good level of comparison to Victoria Point.⁵¹

[110] Ms Wadley considered the suburb slightly superior to Victoria Point. The land area is larger, with a superior shape, albeit with a smaller road frontage. She said it has a similar situation, opposite to a State High School and service station, with a slightly superior road network. The topography of the site is inferior. It has more approved places. Although it has higher competition, it has a slightly larger population of children aged 5 or less.⁵²

[111] Mr Ladewig identified several factors that he considered superior to Victoria Point: superior growth; lower median age; higher household income; higher level of full-time workers; and higher level of families with children and both parents working full-time. The site also had a higher number of approved places.⁵³ Nevertheless, he placed this as inferior to Victoria Point in his ranking of comparable sales.⁵⁴ That may well be explained by the way in which he analysed the sale.

⁴⁸ GPT at [121].

⁴⁹ JER p 184.

⁵⁰ MFI A.

⁵¹ JER p 26.

⁵² JER pp 7, 29.

⁵³ JER p 26.

⁵⁴ MFI B.

- [112] In his analysis, excluding the value he attributed to the development approval and the purchaser having a tenant committed resulted in him deducting \$700,000, about half the sale price of \$1,402,000.
- [113] In Ms Wadley's Analysis 2, which does not adjust for the value of the development approval (whether with or without a tenant in place) there remains an issue about the cost of site works and associated holding costs and land tax and rates while the works were performed. In all, those allowances amount to an additional \$396,258, adjusting the sale price upwards to \$1,800,000, rounded up.
- [114] The appellants say the allowance should be \$50,000, resulting in an adjustment to Ms Wadley's valuation to \$1,452,000. That submission relied on information from the purchaser, which Mr Ladewig used in his analysis.⁵⁵
- [115] Ms Wadley did not apply that information, instead performing her own calculations.⁵⁶ In evidence, Ms Wadley said she did this because the purchaser did not confirm the assessment of \$50,000. She referred to the following statement in an email to the valuers to support that conclusion:⁵⁷
- “We are an informed purchaser, however never make specific allowances when purchasing a site as requested below.”
- [116] However, that was in response to the valuers' joint request, with reference to the \$50,000 estimate already given, to specify how that would be allocated to items such as site clearance and earthworks.⁵⁸ That does not suggest to me that the purchaser's representative was walking away from the figure previously given. Rather it explains why he cannot give the degree of specificity the valuers requested.
- [117] This is an example of one of many disputes between the valuers during their preparation of the JER in these appeals about information from a purchaser concerning the sale. It is unfortunate that so much time was taken during the hearing and, apparently during the JER process, in dealing with these disputes. Fortunately, many of them related to the purchaser's view of the value of a development approval, a matter of no relevance when s 22 is applied as I have interpreted it.

⁵⁵ JER p 172; Agreed Court Bundle (ACB) p 338.

⁵⁶ JER p 173; ACB at [525]; T 1-118, line 27.

⁵⁷ ACB p 341.

⁵⁸ ACB p 341.

- [118] Nevertheless, it is worth restating the reason the direct comparison method is the conventional method for valuing a property. It is founded on the assumption that the best evidence of value comes from evidence of the market. That evidence comes from the sale of properties that are comparable, with necessary adjustments to account for differences.
- [119] A valuation appeal is not a forum for second guessing a purchaser's assessment of value in agreeing on a sale price. A purchaser's view can assist the valuers by explaining how the sale price was or was not affected by a factor that the valuers are required to adjust for in their analysis of the sale for comparison with the subject site. In the absence of information from a purchaser, it might be appropriate to draw upon other sources of information.
- [120] However, where the purchaser is asked to, and does, give their assessment on a relevant factor, that should be accepted unless there is some reason to question it. If a party wishes to challenge the information provided by a purchaser, or if they dispute the other party's interpretation of the information from the purchaser, they should call the purchaser to give evidence on the matter.
- [121] For this sale, the purchaser gave an estimate of value of \$50,000. That may well be an underestimate but, on the evidence before the Court, there is no basis for the Court to find that was not a genuine assessment at the time the sale price was fixed.
- [122] I do not accept Ms Wadley's estimate for the cost of site works and associated costs for the following reasons.
- [123] First, as explained above, it is contrary to information provided by the purchaser, which should be accepted, subject to challenge as to its veracity. If the Valuer-General wanted to challenge the purchaser's information about their view on the value of site works in arriving at the sale price, it could have called the purchaser's representative to test that information.
- [124] Second, Ms Wadley does not have the expertise to express an opinion on the likely costs and I am not confident her estimate is accurate for this site. It is derived from quantity surveying reports prepared for different childcare centre appeals. Ms Wadley referred to operational works approvals issued after the sale price was agreed. She did not disclose her workings or fully expose the basis for her analysis.

[125] In the absence of an analysis from Mr Ladewig which is consistent with my finding on the interpretation of s 22, it falls to me to make an adjustment to Ms Wadley's analysis of this sale. I will modify the rate \$/m² in Ms Wadley's Analysis 2 to account for the difference between Ms Wadley's estimate of site works and the purchaser's information. That results in a rate of \$356/m² for a land area of 4,077m², equating to an adjusted sale price of approximately \$1,452,000.

[126] That is a little less than the rate arrived at for Park Ridge of \$361/m².

[127] I will return to the implications of this adjustment to Ms Wadley's analysis of this sale after I address the other sales nominated by each valuer.

Ms Wadley's comparable sales – the Loganholme sales

[128] On Ms Wadley's evidence, these two sales involve sites that are significantly superior to Victoria Point. The points of comparability are that they are in established areas and close to schools. Ms Wadley further notes that, like the subject property, these sites have good convenience and exposure with moderate demand.

[129] Mr Ladewig said the two sales were not comparable at all and should be disregarded. He considered the sites are both vastly superior in terms of location, infrastructure and services. Ms Wadley did not strongly contest that view, just the degree to which they are superior.

[130] Although Ms Wadley includes them as comparable sales, she does not place Victoria Point anywhere near them in her valuation. She analysed them at \$574/m² for 189-191 Bryant Rd & 18 Osbourne Ct, Loganholme and \$590/m² for 109 Timor Ave, Loganholme.

[131] Given that, and the submission by the Valuer-General that they were secondary sales, there seems little utility in resolving the points of dispute about them, whether as to comparability, or how they should be analysed. At best, they fix an upper end of the selected sales and Ms Wadley gives them little weight.

Mr Ladewig's comparable sales – Flagstone, Yarrabilba and Ripley

[132] Mr Ladewig relies on 3 sales that Ms Wadley does not accept to be comparable:

1. 2-6 Branson St, Flagstone;

2. 30-40 Woodward Av, Yarrabilba; and
3. 276 Fischer Rd, Ripley.

[133] Ms Wadley's primary concern about each of these sales was the nature of the area in which they are located and, for some, their distance from Victoria Point. Ms Wadley drew a distinction between established and emerging areas. The parties identified this as the key question in determining the comparable sales for this appeal. Victoria Point is in an established area with an existing demand and level of competition. Ms Wadley considered each of these three sales was in an emerging area.⁵⁹

[134] This point arises repeatedly in the difference between the valuers in selecting comparable sales, and not just for this appeal. I incline to Ms Wadley's view that the nature of the area is a very important consideration. She considers sales within emerging locations are generally at a reduced price point to established locations, which reflects the risks associated with potential future population growth and deferred income. For that reason, Ms Wadley considered sales evidence within emerging locations to be generally inferior to any subject sites in established locations (Victoria Point and Shailer Park). In her opinion, Mr Ladewig puts too much emphasis on projected growth in emerging locations to compare select sales from emerging areas in valuing properties in established areas. This results in lower values.⁶⁰

[135] Mr Ladewig did not disclaim the relevance of the nature of the area, just its importance. Whether an area was established or emerging, his assessment of comparability came down to competition. He thought they were looking at the same factor from different perspectives. He looked to the existing competition and the demographics of the catchment. So did Ms Wadley. However, Mr Ladewig said his approach reflected the primary driver for value for a childcare centre.⁶¹ He relied on census data for making that assessment and identified what he considered to be the relevant indicators in his sales summary tables.

[136] Nevertheless, he agreed that certainty is a critical feature in valuing properties in the childcare market. He also accepted that census data provided only a point in time

⁵⁹ T 2-70, line 27 to 2-72, line 47.

⁶⁰ JER p 141.

⁶¹ T 1-95, lines 1 to 23.

assessment and that, in an emerging area, there may be less certainty about the future demographics than in an established area.⁶²

[137] Although Mr Ladewig analysed these sales, he did so on a \$/LDCP. On that basis, the analysed rate for each of the sales was less than the rate he applied to Victoria Point.

[138] During the hearing, the appellants confirmed that to do a rate of \$/m² I could take Mr Ladewig's analysed sale figure and apply the area of land.⁶³ If I accept Mr Ladewig's analysis of each of the sales, without considering Ms Wadley's views about that, they deliver the following rates on a \$/m² basis: for Flagstone, a rate of \$216 (analysed sale at \$770,000 for 3,570 m²); Yarrabilba, a rate of \$354 (analysed sale at \$1,446,166 for 4,086m²); and Ripley, a rate of \$395 (analysed sale at \$825,000 for 2,090m²).

[139] On Mr Ladewig's own assessment of comparability, his closest comparable is the Park Ridge sale, which returns an analysed rate of \$361/m², not significantly higher than Yarrabilba and less than Ripley.

[140] I accept Ms Wadley's view that these sales are not comparable, but even if I did take them into account, using their analysed sale on a rate/m², they do not support the valuation Mr Ladewig contends for.

Conclusion on LVA 302-19 Appeal against the valuation of 116 Benfer Rd, Victoria Point

[141] Ms Wadley's 2 closest comparable sales to Victoria Point are the common sales of Springwood, which Mr Ladewig said provided a good level of comparison, and Park Ridge, which was his closest comparable sale, albeit superior when analysed on a \$/LDCP rate.

[142] Given that, and my findings about the comparable sales that are in dispute, I look to the common sales in deciding this appeal.

[143] Adopting my findings in relation to the analysis of those 2 common sales, they come out at \$361/m² for Park Ridge and \$356/m² for Springwood.

⁶² T 1-97, line 44 to 1-102, line 23.

⁶³ T 1-7, lines 30 to 36.

- [144] Using the lower rate of \$356/m² from the Springwood sale results in a valuation of Victoria Point at \$1,096,836 (3,081/m²). Accepting Ms Wadley's opinion that the Springwood sale is slightly superior, the correct valuation should be no more than that. The issued valuation, at \$1,050,000, is very close to the amount arrived at applying the rate/m² for the Springwood sale.
- [145] The parties agreed this appeal should be allowed.⁶⁴ It seems the Valuer-General's concession of the appeal was based on Ms Wadley's evidence, not all of which I have accepted.
- [146] In the circumstances, although I will allow the appeal as the parties have agreed, adopting the figure most favourable to the appellants, I find the correct valuation is the amount of the issued valuation, \$1,050,000.

LVA 483-19 Appeal against the valuation of 86-88 Coachwood Drive, Flagstone

- [147] This property is in the established and expanding community of Flagstone. The valuers agree its current use as a childcare centre is the highest and best use of the land.
- [148] The subject property is an ideal, regular rectangular shaped parcel. Ms Wadley describes the site gradient as an easy slope, whereas Mr Ladewig notes a gentle slope from the southern end of the site toward the frontage.
- [149] The site has a frontage of approximately 39 m to Coachwood Drive, an urban collector road which carries a low volume of traffic on a daily basis. Coachwood Drive connects to Poinciana Drive to the northwest of the subject via a roundabout. Poinciana Drive serves as the main entry for both the local Primary and High Schools. Coachwood Drive also connects to Homestead Drive to the south west.
- [150] Public transport is available, however, not considered ideal with the closest bus stop being a 550 m walk from the subject property. The site is situated adjacent to Flagstone State School, adjoining the rear boundary. Flagstone Community College is located opposite this school.
- [151] Flagstone East is dominated by a mix of parks, schools, and conservation land in addition to dwellings. Immediately surrounding development to the west is Flagstone

⁶⁴ Ex 2, para 1.

City, an emerging residential, commercial, retail and community development constructed since 2016. Mr Ladewig contends that significant growth is occurring further west of the of the subject property. Ms Wadley notes that significant growth is expected in the future.

[152] The site is located 1.8 km from the main shopping precinct of Flagstone Village, with the closest major shopping centre 8.5 km south east at Jimboomba. Completed nearby development includes IGA Flagstone Central, which contains Flagstone Medical Centre, a supermarket, a service station, and other specialty stores. Future development is intended further south and considered a future benefit to the subject property.

[153] Other childcare centres in the catchment compete with this centre. Ms Wadley described the site as having a high level of competition, with one operational competing childcare centre in Flagstone located 1.3 km south east. Ms Wadley noted childcare centres to be completed meant the subject site had 343 competing places at the date of valuation. Mr Ladewig also described the site as having a high level of competition. He analysed the Jimboomba area as having 7 built childcare facilities, with 2 others approved. Mr Ladewig prescribed a total of 798 approved places.

[154] The issued valuation of this property was \$680,000, which the Valuer-General now says is incorrect, based on Ms Wadley's evidence.

[155] The owner contends its value is \$490,000, applying a \$/LDLCP rate of \$6,500/LDLP. I have rejected Mr Ladewig's valuation on that sole metric but will consider his evidence about this property in the way identified at paragraph [74].

[156] The Valuer General's contention is that the correct value is \$1,070,000, based on a rate of \$261/m².

[157] The valuers had 4 common sales: Park Ridge, Flagstone, Yarrabilba, and Ripley. Ms Wadley considered Deebling Heights, but Mr Ladewig did not accept it as comparable. Mr Ladewig considered Springwood, which Ms Wadley did not accept as comparable

[158] The table below includes information about the comparable sales referred to by either valuer, and the relative position of the subject property by reference to those sales. It

Property Address	Area of Land	Rate /m ²	CL	EW	EW Comments
59 Rawlings Rd, Deebing Heights	2,995 m ²	\$531/m ²	Not used	Comparable – Superior	Emerging south west Ipswich City location of Deebing Heights. Situated opposite State Primary School in a new estate. Regular shaped, corner allotment with a moderate topography requiring earthworks, good convenience and exposure. Low competition and high 0-5 years population base.
276 Fischer Rd, Ripley -	2,090 m ²	\$498/m ²	Comparable	Comparable – Superior	Emerging south west Ipswich City location of Ripley. Situated on the fringe of a new estate. Regular shaped, corner allotment with a gentle sloping topography requiring minor earthworks, fair convenience and limited exposure a distance from State school and shops. Low competition and high 0-5 years population base
232 Springwood Rd, Springwood -	4,077 m ²	\$442/m ² (adjusted to \$356 m ²)	Comparable	Not used	Established Logan City location of Springwood, east of the Pacific Motorway. Well situated on the road network, close to employment nodes, short distances to rear entry of State High School and a short distance to State Primary School and private school. Regular shaped, allotment with a moderate sloping topography requiring earthworks. Good convenience and exposure. High competition and moderate 0-5 years population base. Moderate demand.
119-123 East Beaumont Rd, Park Ridge -	2,462 m ²	\$361/m ²	Comparable – upper end	Comparable – Superior	Emerging western Logan City location of Park Ridge, Situated opposite a park, at the entry to a new estate. Regular shaped, corner allotment with a sloping topography requiring earthworks, poor convenience and exposure. High competition and low 0-5 years population base.
Lot 5055 Woodward Ave, Yarrabilba -	4,806 m ²	\$325/m ²	Comparable	Comparable – Superior	Emerging western Logan City location of Yarrabilba. Situated adjacent to a state high school, a short distance to state primary school. Slightly irregular shaped, corner allotment with a good contour, good convenience and exposure. Large 0-5 years population base and moderate level of competition.
2-6 Branson St, Flagstone -	3570 m ²	\$269/m ²	Comparable – best level of comparison	Comparable – Slightly superior	Situated adjacent to established location of Flagstone, in an expanding section of the western Logan City. Situated opposite employment node, a short distance to a State Primary School and State high School. Irregular shaped, corner allotment with a good contour, good convenience and exposure. Large 0-5 years population base and moderate level of competition.
86-88 Coachwood Drive, Flagstone	4,099 m ²	\$261/m ²	Subject Property LVA		Establish and expanding far western Logan City location. Situated adjoining a State Primary School, near to a state high school. Regular shaped, inside allotment with a good contour, good convenience and fair exposure. Large 0-5 years population base and moderate level of competition.

Derived from: Document marked A for identification and using the areas and rates/m² identified for the subject sites and comparable sales and Ms Wadley's comments which appear in "EW sales/subject property summary – section 22 of the LVA 2010 does not require DA process. EW Adopted Method." (Joint Expert Report pages 147-148)

notes Ms Wadley's analysis on a rate/m², assuming the value of a development approval need not be stripped out (Ms Wadley's Sales Analysis 2). It also includes Ms Wadley's observations about those sales.

Subject Property Sales in common EW finds comparable CL finds comparable

[159] Ms Wadley analysed the rate/m² for Coachwood Drive, Flagstone at \$261/m². Of the common sales, the closest sale on a rate/m² was Branson St, Flagstone at \$269/m². Although Mr Ladewig used a different methodology to analyse the sales that he considered comparable, he, too, concluded that Branson St, Flagstone was the closest comparable.⁶⁵

[160] The other common comparable sales are Park Ridge, Yarrabilba and Ripley. On Ms Wadley's evidence, at a rate/m², all are valued more highly than both Coachwood Drive and Branson St. Ms Wadley analysed those sales at \$361/m² for Park Ridge, \$303/m² for Yarrabilba, and \$455/m² for Ripley.

[161] Ms Wadley's other comparable sale, which Mr Ladewig did not accept, is Deebing Heights. Ms Wadley analysed that sale at \$531/m².

[162] None of those sales appears to have been significant in Ms Wadley's valuation of Coachwood Drive.

[163] Mr Ladewig's other sale, which Ms Wadley did not accept as comparable, is the Springwood sale. I have discussed the analysis of the sale at [109] to [127]. On my finding that it should be analysed at \$356/m², it, too, is superior to both Coachwood Drive and Branson St.

[164] There were some disputes between the valuers about how to analyse some of those sales, but there is little utility in resolving them. The valuers agree Branson St is the closest comparable sale. Ms Wadley did not identify any closer comparable sale, when valued on a rate/m².⁶⁶

[165] During oral evidence, Mr Ladewig said that everything about Branson St was comparable to Coachwood Drive save its location in relation to schools and



employment. Coachwood Drive is at the rear of the Flagstone State School and close to the Flagstone State Community College. Branson St is near the employment hub in the suburb. Although further away from the schools, it is near their main access point.⁶⁷

[166] Mr Ladewig took issue with how Ms Wadley placed the subject site in relation to the comparable sale. On a rate/m², she valued Coachwood Drive at \$261 and Branson St at \$269. However, if valued on a rate/LDCP, she considered Branson St inferior to Coachwood Drive. Mr Ladewig challenged that conclusion:

“...if the main driver for income for a site is the number of kids, the subject property cannot be above the sale.”⁶⁸

[167] The appellant also criticised Ms Wadley’s analysis of the rate/LDCP for the Park Ridge, Yarrabilba, and Deebing Heights sales. The appellant submitted her analysis on that basis was flawed, casting doubt on her whole comparability analysis.

[168] That dispute only has relevance if I accept using the LDCP as the sole metric for valuing the subject site. I have already explained why I reject that method.

[169] Ms Wadley explained her assessment of the relativity of the two Flagstone properties:

“After considering the above-mentioned sale attributes, the sale property is slightly superior on a rate/m² basis when considering the sales inferior shape, situation opposite the future employment node, emerging western fringe location and smaller land area.”⁶⁹

[170] That provides a reasoned basis for her conclusion. Further, Ms Wadley’s opinion is consistent with Mr Ladewig’s own view that Coachwood Drive is inferior to the Branson St sale (albeit he made this assessment on a rate/LDCP).

[171] Turning to the analysis of the sale, the only difference between the valuers is whether the sale price must be adjusted to account for the benefit of a detention tank. Ms Wadley made no allowance for it, Mr Ladewig made an adjustment of \$100,000. Although he had no information from the purchaser, the appellant submitted the adjustment was reasonable given the information Mr Ladewig had from purchasers in the context of other sales.⁷⁰ That does not offer a firm foundation for adjusting the sale price for this property.

⁶⁷ T 1-44, lines 7 to 30; T 1-45, lines 38 to 42.

⁶⁸ T 1-45, lines 43 to 47.

⁶⁹ JER at [244].

⁷⁰ Applicants submissions at [247].

[172] In any case, I am not persuaded the detention tank is a non-site improvement that must be adjusted for in arriving at its site value. I apply the same reasoning and conclusion as I reached in analysing the Park Ridge sale at [102] to [108] of these reasons.

Conclusion on LVA 483-19 Appeal against the valuation of 86-88 Coachwood Drive, Flagstone

[173] I accept Ms Wadley's analysis of the Branson St sale at \$269/m² and her opinion that it is slightly superior on a \$/m² to Coachwood Drive. That supports her valuation of Coachwood Drive at \$261/m², for an area of 4,099 m², resulting in a value of \$1,070,000.

[174] That is materially higher than the issued valuation of \$680,000, which the Valuer-General confirmed after considering the appellant's objection. It is troubling an error in the valuation of that magnitude was not identified during the objection process, and prior to this appeal being lodged.

[175] Nevertheless, the parties agree that there was an error in the issued valuation, that I should allow the appeal and decide the correct value. There is no evidence to support the issued valuation and, on the evidence before the Court, I accept Ms Wadley's opinion that the correct site value for Coachwood Drive is \$1,070,000.

LVA 720-19 Appeal against the valuation of 385-387 Chatswood Road, Shailer Park

[176] This property is in the established suburb of Shailer Park. The valuers agree its current use as a childcare centre is the highest and best use of the land.

[177] The subject property is a near regular shaped, rectangular parcel. The site is generally level throughout with a slight fall towards the south west corner. It is situated on the corner of Chatswood Road and Floret Street. There is a frontage of approximately 70 m to Chatswood Road and 32 m to Floret Street. Roselea Park adjoins the western boundary. Koolan Park is across the road, opposite the subject.

[178] Chatswood Road is an important two lane urban collector road. It operates as an east-west connection for the Shailer Park community which connects to Lyndale Street (north west) and Kimberley Drive (south east). Chatswood Road is noted to carry a fair to moderate volume of traffic.

- [179] Floret Street is a two lane local road, generally running north to south in orientation. It connects Chatswood Road (north) and Narcamus Crescent (south). Floret Street is noted to carry a low volume of local traffic.
- [180] Public transport is readily available, a bus stop located on either side of Chatswood Road directly outside the bounds of the subject property. The site is situated adjacent to Kimberley Park State School, with Shailer Park State School approximately 1.8 km to the south and Shailer Park State High School approximately 2 km to the south
- [181] Shailer Park is dominated by a mix of established detached circa 1980s dwellings, multi-unit dwellings, a park, conservation parkland, and a school. Surrounding development to the east is an average quality residential development, constructed circa 1980s. To the north is conservation land. The KP Community Centre, containing the Calvary Family Church, Function Rooms, Dance Centre and a number of community and small retail tenants, is located two parcels north west of the subject.
- [182] The site is located approximately 1.3 km from the Hyperdome Shopping Centre, which has a range of commercial and retail uses and is currently the largest shopping centre in Logan City. Additionally, KP Shopping Centre is approximately 100 m to the west.
- [183] Mr Ladewig notes that Shailer park has experienced a low growth rate. Ms Wadley considers the growth rate to be consistent and reflective of a well-established area.
- [184] There are 4 competing childcare centres in Shailer Park, with 430 approved places available when including the subject property. There is a moderate level of competition and moderate level of demand for childcare services in the vicinity.
- [185] The issued valuation of this property was \$810,000, which the Valuer-General now says is incorrect, based on Ms Wadley's evidence.
- [186] The owner contends its value is \$600,000, applying a \$/LDCP rate of \$7,500/LDCP. I have rejected Mr Ladewig's valuation on that sole metric but will consider his evidence about this property in the way identified at paragraph [74].
- [187] The Valuer General's contention is that the correct value is \$1,250,000, based on a rate of \$541/m².

Property Address	Area of Land	Rate /m ²	CL	EW	EW Comments
109 Timor Avenue, Loganholme	1,983 m ²	\$590/m²	Not used	Comparable – Superior	Established Logan City location of Loganholme, east of the Pacific Motorway. Well situated on the road network, close to employment nodes, short distance to rear entry of State High School and Private Primary School, further to State Primary School. Irregular shaped, allotment with a sloping topography easement affected and requiring earthworks. Good convenience and exposure. High competition and moderate/high 0-5 years population base. Moderate demand.
189-191 Bryant Rd & 18 Osbourne Ct, Loganholme -	4,040 m ²	\$574/m²	Not used	Comparable – superior	Established Logan City location of Loganholme, east of the Pacific Motorway. Well situated on the road network, close to employment nodes, short distance to rear entry of State High School and Private Primary School, further to State Primary School. Irregular shaped, allotment with a sloping topography easement affected and requiring earthworks. Good convenience and exposure. High competition and moderate/high 0-5 years population base. Moderate demand.
385-387 Chatswood Road, Shailer Park	2,311 m ²	\$541/m²	Subject Property LVA		Established Logan City location of Shailer Park, east of the Pacific Motorway. Situated adjacent a State Primary School. Regular shaped, corner allotment with a good contour, good convenience and exposure. Well situated on the road network. Moderate sized 0-5 years population base and moderate level of competition. Moderate demand.
59 Rawlings Rd, Deebling Heights	2,995 m ²	\$531 m²	Not used	Comparable – inferior	Emerging south west Ipswich City location of Deebling Heights. Situated opposite State Primary School in a new estate. Regular shaped, corner allotment with a moderate topography requiring earthworks, good convenience and exposure. Low competition and high 0-5 years population base.
276 Fischer Rd, Ripley -	2,090 m ²	\$498/m²	Comparable	Not used	Emerging south west Ipswich City location of Ripley. Situated on the fringe of a new estate. Regular shaped, corner allotment with a gentle sloping topography requiring minor earthworks, fair convenience and limited exposure a distance from State school and shops. Low competition and high 0-5 years population base
232 Springwood Rd, Springwood -	4,077 m ²	\$442/m² (adjusted to \$356 m²)	Comparable	Comparable – inferior	Established Logan City location of Springwood, east of the Pacific Motorway. Well situated on the road network, close to employment nodes, short distances to rear entry of State High School and a short distance to State Primary School and private school. Regular shaped, allotment with a moderate sloping topography requiring earthworks. Good convenience and exposure. High competition and moderate 0-5 years population base. Moderate demand.
119-123 East Beaumont Rd, Park Ridge -	2,462 m ²	\$361 m²	Comparable – upper end	Comparable – inferior	Emerging western Logan City location of Park Ridge, Situated opposite a park, at the entry to a new estate. Regular shaped, corner allotment with a sloping topography requiring earthworks, poor convenience and exposure. High competition and low 0-5 years population base.
Lot 5055 Woodward Ave, Yarrabilba -	4,806 m ²	\$325/m²	Comparable	Not used	Emerging western Logan City location of Yarrabilba. Situated adjacent to a state high school, a short distance to state primary school. Slightly irregular shaped, corner allotment with a good contour, good convenience and exposure. Large 0-5 years population base and moderate level of competition.

[188] The table below includes information about the comparable sales referred to by either valuer and the relative position of the subject property. It notes Ms Wadley’s analysis on a rate/m², assuming the value of a development approval need not be stripped out (Ms Wadley’s Sales Analysis 2). It also includes Ms Wadley’s observations about those sales.

2-6 Branson St, Flagstone -	3,570 m ²	\$269/m ²	Comparable	Not used	Situated adjacent to established location of Flagstone, in an expanding section of the western Logan City. Situated opposite employment node, a short distance to a State Primary School and State high School. Irregular shaped, corner allotment with a good contour, good convenience and exposure. Large 0-5 years population base and moderate level of competition.
Derived from: Document marked A for identification and using the areas and rates/m ² identified for the subject sites and comparable sales and Ms Wadley's comments which appear in "EW sales/subject property summary – section 22 of the LVA 2010 does not require DA process. EW Adopted Method." (Joint Expert Report pages 147-148)					

Subject Property
 Sales in common
 EW finds comparable
 CL finds comparable

[189] The valuers had 2 common sales: Park Ridge, and Springwood. Ms Wadley analysed both of those as significantly inferior to Chatswood Rd.

[190] On a rate/m², Ms Wadley assessed Park Ridge at \$361/m², well below the rate of \$541/m² that she applied to Chatswood Rd. On the other hand, Mr Ladewig considered Park Ridge was at the “upper end” of the comparable sales. On his LDCP assessment, he valued it at \$7,900/LDCP, compared with Chatswood Rd, which he valued at \$7,500/LDCP.

[191] Given this common sale is Mr Ladewig’s closest superior sale, I will consider whether Ms Wadley has correctly related the sale to Chatswood Rd. Ms Wadley noted as key points of difference that the Park Ridge sale is located in an emerging area, opposite a park at the entry to a new estate. It has a sloping topography requiring earthworks, has poor convenience and exposure, high competition and a low 0-5 population base.⁷¹

[192] Mr Ladewig placed it at the upper end because of the strong level of growth. I have already addressed this opinion when considering this sale in relation to the Benfer Rd, Victoria Point appeal at [94] to [97]. For the same reasons, I prefer Ms Wadley’s assessment of the relativity of Park Ridge to Chatswood Rd.

[193] Turning to the Springwood sale, both Ms Wadley and Mr Ladewig valued it as a significantly inferior property. Ms Wadley analysed this sale at \$442/m². At paragraphs [109] to [125] I have given reasons for finding that rate should be adjusted to \$356/m². In any case, both are well below the rate she applied to Chatswood Rd.

⁷¹ JER p 147.

- [194] Mr Ladewig valued Springwood at \$5,357/LDCP, which is a long way from the rate of \$7,500/LDCP he applied to Chatswood Rd. On both analyses, then, this sale must be considered a secondary sale in valuing Chatswood Rd.
- [195] Neither valuer accepts the other's selection of the closest comparable sales in valuing Chatswood Rd.
- [196] Ms Wadley rejected Mr Ladewig's reliance on Branson Rd, Flagstone, Fisher Rd, Ripley and Woodward Ave, Yarrabilba, because they are in emerging locations, unlike Chatswood Rd, which is in established area. That is, she rejected them for the same reason she rejected them as comparable sales for Benfer Rd, Victoria Point.⁷² I have already explained at paragraphs [132] to [140] why I accept Ms Wadley's view about these three sales. I also accept her view that they do not provide good comparison for Chatswood Rd.
- [197] That leaves Ms Wadley's closest comparable sales, all which Mr Ladewig rejected: two in Loganholme and one in Deebling Heights
- [198] Ms Wadley applied rates of \$574/m² for Bryant Rd, Loganholme, \$590/m² for Timor Ave, Loganholme and \$532/m² for Deebling Heights. She placed Chatswood Rd between Bryant Rd and Deebling Heights at \$541/m². If I do not accept those sales, Ms Wadley's closest comparable is Springwood and her valuation may be too high.
- [199] This appeal turns, then, on whether I accept Ms Wadley's selection of the Loganholme and Deebling Heights sales and her analysis of them. I will address each of those sales in turn.

109 Timor Ave, Loganholme

- [200] Ms Wadley said this sale property is in a comparable suburb. It has a smaller land area, similar shape, and a similar road frontage. It has greater exposure than Chatswood Rd. It has an inferior situation, given its distance from schools and retail uses, inferior topography, and a smaller number of approved childcare places. The sale property has a higher level of competition, for the available population base.

⁷² T 2-35, lines 3 to 7; T 2-55, lines 17 to 22.

- [201] Mr Ladewig rejected this sale as comparable, arguing that it is significantly superior, and he had not been able to confirm any of the details of the sale.⁷³
- [202] He considered they were superior because the demographic for Loganholme is one step up the scale, and they are in close proximity to retail and employment hubs, with a high level of exposure. Nevertheless, he accepted those aspects could be adjusted for.⁷⁴
- [203] Ms Wadley agrees both Loganholme sale properties are superior.⁷⁵ That is reflected in the lower rate/m² she gives to Chatswood Rd.
- [204] Although Mr Ladewig did not have contact with the purchaser, that is not a reason to reject the sale. Ms Wadley said the sale price is not out of line with the sale of Bryants Rd,⁷⁶ which is nearby. The Valuer-General submits that tends to suggest the Timor Ave sale was at market. In the absence of any indication the sale is not reliable evidence of market value, I accept it should be considered.
- [205] Given its proximity to Chatswood Rd, I accept Ms Wadley's view is a relevant sale for comparison. I also accept her view about its relativity to Chatswood Rd.
- [206] In terms of the analysis of that sale, the issues appear to be Ms Wadley's allowances for site works and a detention tank.
- [207] For the site works, Ms Wadley allowed \$128,000, while Mr Ladewig allowed \$30,000. Neither had information from the purchaser. Ms Wadley did her own costings, based on the Operational Works approval for the site. Although the approval post-dates the sale, Mr Ladewig accepted this was the next best approach in the absence of information from the purchaser.⁷⁷
- [208] Mr Ladewig accepted Ms Wadley's allowance of \$30,000 for demolition and clearing. He did not accept the balance of Ms Wadley's allowance.
- [209] Other than a detention tank, which I will turn to in a moment, the items in dispute related to retaining walls and service connections. Mr Ladewig viewed these as non-

⁷³ JER at [1034].

⁷⁴ T 2-89, lines 14 to line 33.

⁷⁵ JER [400]–[401].

⁷⁶ T 2-85, line 46 to T-86, line 5.

⁷⁷ T 2-103, lines 1 to 16.

site works, assuming they would be undertaken at the time a building was constructed. He characterised them as a sunk cost and did not allocate a value to these works in analysing the sale.⁷⁸

[210] I do not accept that is the proper way to analyse a sale for the purpose of a statutory valuation. As the Land Appeal Court has observed:

‘...in deciding whether to accept an analysis that adjusts for a site improvement, there are two distinct questions. The first is whether there is a material difference between the comparable land when sold and the subject land in its assumed site-improved state. The second is whether that difference demanded some adjustment in analysing the sale to account for the impact of the difference in value of the comparable land.’⁷⁹

[211] In this case, there seems to be no dispute between the valuers on the first question. On the second question, in the absence of evidence from the purchaser, a valuer may make some assumptions about the purchaser taking into account the cost of site works in settling the sale price.⁸⁰

[212] When analysing the Springwood sale, I expressed my concerns about Ms Wadley’s costings. Nevertheless, I prefer her evidence on this point for this sale. Mr Ladewig accepted that the requirements of the Operational Works approval were the type of works a prudent purchaser would anticipate. Unlike the Springwood sale, there is no information from the purchaser that would assist the Court in determining the value to be assigned to the site works.

[213] As for the detention tank, as I observed when analysing the Park Ridge sale, my finding at paragraph [107] that an underground detention tank is a site improvement applies when analysing this sale as well.

189-191 Bryants Road & 18 Osbourne Ct

[214] Ms Wadley said this sale property is located in a comparable suburb, with a larger land area, inferior shape, and a smaller road frontage. It has slightly superior exposure to Chatswood Rd. Although it has an inferior situation, because it is a short distance from schools, it is near a retail use. It has an inferior topography, requiring site works because it is sloping. It has fewer approved places.

⁷⁸ T 2-109, line 42 to 2-119 line 29.

⁷⁹ *BWP Management Limited v Valuer-General* [2019] QLAC 4 at [63].

⁸⁰ *Ibid* at [68].

- [215] The sale property has a higher density of 22m² per child compared to Chatswood Rd, with 29m² per child. It also has a higher level of competition, for the available population base, with 1.49 children per place available in Loganholme compared with Shailer Park which has 2.02 children per place available.
- [216] Ms Wadley considered the sale property is superior on a rate/m² given its larger land area, slightly superior exposure, inferior situation, topography and shape, comparable location, moderate demand but higher competition.⁸¹
- [217] I have already considered Mr Ladewig's view that the sale is not comparable because of its superiority to Chatswood Rd, when looking at the Timor Ave sale. However, he raised an additional concern about the reliability of this sale. He questioned whether it was good evidence of market value because the purchaser said it thought it might have paid a bit of a premium for it.⁸²
- [218] Ms Wadley accepted that was a relevant factor and carefully considered it. The sale property had a development approval for a residential not a childcare centre use. Compared with other residential sales, Ms Wadley saw very little by way of premium. In any case, there was a draft rezoning for the area that would facilitate the childcare use, and that was the purchaser's intention for the property.⁸³ I favour Ms Wadley's view of the comparability of this sale, and its relativity to Chatswood Rd.
- [219] As to the analysis of this sale, Mr Ladewig's criticisms appear to relate to Ms Wadley's Sales Analysis 1. That is based on the owner's interpretation of s 22 of the LVA, which I have rejected. I did not discern any particular concern with her Sales Analysis 2.

Rawlings Rd, Deebing Heights

- [220] Ms Wadley said the sale property is in an inferior suburb, has a larger street frontage, a larger land area and similar shape. It has inferior exposure, being on a less trafficked road in an emerging locality. It has an inferior sloping topography, requiring earthworks. It has a larger approved placement of 112 places, compared with Chatswood Rd with 80 places.

⁸¹ JER [398]-[399]; at the hearing, Ms Wadley corrected an error in the JER, as filed, in which she had initially described the sale as inferior to Chatswood Rd.

⁸² T 85 lines 8 to 15.

⁸³ JER [937] to [941]; T 2-85 line 37 to 2-86 line 5.

- [221] The sale property has the slightly higher density of 27m² per child compared with Chatswood Rd at 29m² per child. The sale property has a lower level of competition with 2.21 children per place available in the suburbs of Ripley/Deebing Heights, where Shailer Park, in which Chatswood Rd is located, has 2.02 children per place available.
- [222] Overall, Ms Wadley considers this sale property is inferior on a rate/m² because of its larger land area, inferior topography, and inferior exposure in an emerging location.⁸⁴
- [223] The owner argued this sale is not an appropriate comparable sale. First, because neither valuer had information from the purchaser. I have already rejected that as a reason to necessarily disregard a sale that appears otherwise relevant.
- [224] Second, the sale was in 2015 and somewhat dated given the valuation as at October 2018. Ms Wadley addressed this issue in the JER. She expressed the view that any market movement was nominal based on the sales evidence at hand between the 2015 and the closest 2016 sale.⁸⁵ In oral evidence, Mr Ladewig said there was a changed market from the peak in 2014-2015, when this sale occurred and late 2016-2018.⁸⁶ However, he did not provide any evidence of a changed market. Nor did he contest Ms Wadley's statement by reference to any of the sales before the Court.
- [225] I accept this sale is relevant for a comparable sales analysis.
- [226] However, Ms Wadley's selection of this sale is interesting because, unlike Chatswood Rd, it is in an emerging area. The primary reason for the selection appears to be its location in relation to state schools. Chatswood Rd is located directly beside a State Primary School, and the sale is directly opposite a State Primary School.
- [227] In evidence, Ms Wadley explained that a primary factor in comparability is the nature of the suburb – whether it is established or emerging. But, for a childcare centre, situation “is really a big key”.⁸⁷ By situation, Ms Wadley appeared to mean its situation in relation to primary schools.⁸⁸

⁸⁴ JER [404]-[405].

⁸⁵ JER at [437].

⁸⁶ JER at [1112].

⁸⁷ T 2-131, lines 14 to 15.

⁸⁸ T 2-131, lines 5 to 15.

- [228] Ms Wadley said she “could make some augments for the superior established area.”⁸⁹ In a hierarchy between emerging and established areas, she put Flagstone at the bottom as an emerging area, Shailer Park as an established area, and Deebing Heights between the two. She would adjust up the rate for Chatswood Rd, Shailer Park to account for its established area. The primary factor in her choice of Deebing Heights was that it was adjacent to a primary school.
- [229] Mr Ladewig thought it unnecessary to consider Deebing Heights, as he had chosen a sale in Ripley, effectively the next suburb. Ms Wadley preferred Deebing Heights above Ripley because the latter was some distance from schools and shops. That is a reasoned basis for choosing Deebing Heights over Ripley.
- [230] The only issue that arises for the analysis of this sale is Ms Wadley’s use of her own costings for the site works. Again, there appears to be no dispute that some adjustment needs to be made for site works; the question is about the amount. Again, as with the Timor Ave sale, there is no information from the purchaser, and Ms Wadley has used an Operational Works approval issued after the date of contract as the basis for her costing. Although I have concerns about Ms Wadley’s expertise in costing the site works, I have no other evidence on the point. Accordingly, I will take the same approach as I did for the Timor Ave sale and act on the best evidence before the Court.

Conclusion on LVA 720-19 Appeal against the valuation of 385-387 Chatswood Road, Shailer Park

- [231] Both valuers consider the common comparable sales (Springwood and Park Ridge) are inferior to Chatswood Rd. Unless I do not accept Ms Wadley’s reliance on the Loganholme and Deebing Heights sales, the common sales have little significance in valuing this property. I have explained why I have accepted her choice of those sales. I have some reservation about Ms Wadley’s costing of the site works in analysing these sales but, as that is the best evidence before the Court, I have accepted her analysis of the sales as well.
- [232] The effect of those findings, is that I accept Ms Wadley’s valuation of Chatswood Rd. As with the Coachwood Drive valuation, there is a significant difference between the

⁸⁹ T 2-121, lines 30 to 31.

issued valuation and the value contended for on appeal. It is not clear why an error of this magnitude was not identified during the objections process.

[233] I allow the appeal and find the correct value of this property \$1,250,000.

Orders

[234] My orders for each of the appeals are as follows.

LVA 302-19

[235] I allow the appeal for LVA 302-19.

[236] I find the correct value of the property at 116 Benfer Rd, Victoria Point is \$1,050,000.

LVA 483-19

[237] I allow the appeal for LVA 483-19.

[238] I find the correct value of the property at 86-88 Coachwood Drive, Flagstone is \$1,070,000.

LVA 720-19

[239] I allow the appeal for LVA 720-19.

[240] I find the correct value of the property at 385-387 Chatswood Road, Shailer Park is \$1,250,000.

Costs

[241] For all three appeals:

1. by 4:00pm, Friday 26 March 2021, if any party wishes to make submissions on costs, they must file and serve written submissions limited to three pages and costs will be decided on the papers; and
2. if no party files submissions by that time, each party must bear their own costs of the hearing.