

LAND COURT OF QUEENSLAND

CITATION: *Jensen & Anor v Valuer-General (No 2)* [2023] QLC 13

PARTIES: **Matthew Ronald Jensen and Stewart Christian Jensen
as Tte**
(appellants)

v

Valuer-General
(respondent)

FILE NO: LVA198-21

DIVISION: General

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

DELIVERED ON: 29 September 2023

DELIVERED AT: Brisbane

HEARD ON: 5 July 2023
Submissions closed 8 September 2023

HEARD AT: Atherton

A/PRESIDENT: PG Stilgoe OAM

ORDERS: **1. The appeal is allowed.**

2. I determine that the site value is Six Hundred and Fifteen Thousand dollars (\$615,000) as at date of valuation, 1 October 2020.

3. Any submission as to costs must be filed and served within 14 days of the publication of these reasons.

CATCHWORDS: REAL PROPERTY – VALUATION OF LAND – METHODS OF VALUATION – COMPARABLE SALES — where subject property is alleged to have inferior access, services, outlook and vegetation overlays in relation to comparable sales – where the appellants challenge the value of the expert valuer but do not introduce their own valuation evidence – whether the expert valuer’s view should be excepted – whether the valuation should be reduced

REAL PROPERTY – VALUATION OF LAND – ENCUMBRANCES AND RESTRICTIONS – where the subject property has a vegetation overlay preventing clearing – whether area covered by a vegetation overlay should be given a nil value

EVIDENCE – ADMISSIBILITY – OPINION EVIDENCE

EXPERT OPINION – where expert witness is a valuer – where valuer is an employee of the Valuer-General – where valuer was “original valuer” for the mass appraisal valuation – where it is alleged that valuer relied on information shown to be wrong or has failed to take into account relevant and material information – whether expert valuer’s opinion may be impugned

Land Valuation Act 2010 (Qld) s 17, s 45, s 46, s 170

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

Hail Creek Coal Holding Pty Limited & Ors v Michelmore [2021] QLC 19, cited

Mio Art Pty Ltd & Ors v Brisbane City Council [2009] QLC 177, cited

Pratt v Department of Natural Resources and Water [2008] QLC 63, cited

Rodney v Valuer-General [2014] QLC 26, applied

APPEARANCES: M Jensen and S Jensen, the appellants (self-represented)
P Prasad (Principal Lawyer), In-house Legal, Department of Resources, for the respondent

- [1] Matthew and Stewart Jensen own 16.39 ha of land fronting Lake Tinaroo directly opposite the town of Yungaburra. The Valuer-General’s 2020 valuation of the land was \$640,000. The Jensens say the proper value should be \$400,000. They take issue with the valuation methodology. They say the Valuer-General’s expert valuer, Robert Moroney, made errors of law and fact that affected the valuation. They take issue with Mr Moroney’s comparable sales evidence.
- [2] The Jensens did not provide any expert valuation evidence. The Valuer-General suggests that evidence of value can only be given by a qualified expert valuer and, therefore, I should accept Mr Moroney’s report in full.

- [3] The Court has often commented on the difficulty of a party challenging a valuation without having any expert evidence. It is difficult, but not impossible:

Assessment of the unimproved value of land is an enterprise considered to be within the province of a recognised area of expertise. Accordingly, in appeals such as these, a valuer's evidence on matters of opinion relating to his field of expertise would ordinarily be preferred to differing opinions of a lay person. However, it is quite another thing to say that, because the valuation of land is the issue, the valuer's evidence should automatically be preferred to that of a lay person.¹

- [4] An expert valuer's opinion may be impugned if it can be shown that they relied on information shown to be wrong or has failed to take into account relevant and material facts.²

The valuation methodology

- [5] The Jensens' difficulties with Mr Moroney's valuation are expressed to be methodology issues but in essence, they are submissions that Mr Moroney's evidence is unreliable.

- [6] The Jensens' first issue is the identification of the valuation the subject of the appeal. They say that Mr Moroney and Mr Prasad, who appeared for the Valuer-General, have confused and conflated the mass appraisal valuation and the subject valuation. They say the problem arises because Mr Moroney was the "original valuer"³ for the mass appraisal valuation and he then provided a valuation report for the hearing relying on material that pre-dated the objection decision. They point out that the objection decision of 6 October 2021, which is the valuation the subject of this appeal, was a decision of Steve Cross but there is no evidence about what Mr Cross considered in making his decision.

- [7] The Jensens' confusion is understandable, as all three valuations arrived at the same figure - \$640,000.

¹ *Rodney v Valuer-General* [2014] QLC 26 [54].

² *Ibid* [17].

³ Statement of Facts and Issues, *Matthew Ronald Jensen and Stewart Christian Jensen as Tte*, filed 3 July 2023, 2, 5.

- [8] The valuation methodology is set out in section 17 of the *Land Valuation Act 2010* (Qld) (the Act) – 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. Usually, that exercise involves an analysis of comparable sales. That is the process Mr Moroney undertook.
- [9] The Jensens’ objections do not impugn the valuation methodology. They may be relevant to the reliability of Mr Moroney’s valuation report.
- [10] The Jensens’ second submission about the valuation methodology – that it was unsupported by necessary and relevant documentation and contained a number of errors – is also a question of reliability.

The valuation report

- [11] Robert Moroney is a registered valuer who has been employed by the Valuer-General for almost 40 years. In 2019, to prepare for a mass appraisal, he analysed sales in the area and determined that the values had increased by 5%. That figure was used in to compute the mass appraisal valuations, giving rise to the disputed \$640,000 for the Jensens’ land.
- [12] Mr Moroney was later instructed to, and did, provide a valuation report for the Court.⁴ He compared the Jensens’ land to five sales that he thought were sales of comparable land and confirmed the valuation of \$640,000.
- [13] The Jensens question how Mr Moroney can be an independent expert witness when he was the person who prepared the initial valuation and/or entered the data for the mass appraisal.
- [14] The Court has previously commented on the tension that arises when the independent expert evidence is provided by a valuer who is an employee of the party,⁵ or has previously supplied advice to the instructing party as part of preparing

⁴ Ex 7.

⁵ *GPT RE Limited v Valuer-General (No 2)* [2018] QLC 9 [133] - [145]; *Pratt v Department of Natural Resources and Water* [2008] QLC 63 [12]-[13]; *Mio Art Pty Ltd & Ors v Brisbane City Council* [2009] QLC 177 [185] – [187]; for expert witnesses generally see *Lim v Moreton Bay Regional Council* [2019] QLC 2.

for litigation.⁶ It is always preferable that the independent expert be objectively independent, but previous involvement in a case will not necessarily mean that an expert is not bringing an independent mind to the evidence.

[15] Experts are required to expose the facts, assumptions, methodology and reasoning that supports their opinion⁷ and Mr Moroney gave the usual declaration that his report contained reference to all matters that are considered significant.⁸

[16] The Jensens say that Mr Moroney departed from this duty in material ways. They point to eleven factors they say Mr Moroney relied upon in forming his opinion but which were not detailed in his report.⁹

[17] Some of the Jensens' concerns are valid. During the hearing Mr Moroney produced vegetation management information for the comparable properties on which he had relied but did not annex to his report.¹⁰ He produced an agreement to provide a water easement which was not annexed to his report.¹¹ He referred to a certificate of title to explain an easement agreement which was neither produced to the Court nor annexed to his report.¹² When asked about the condition of fencing on a comparable property, he said that his notes showed that the fencing was in poor condition¹³ but he did not annex any notes to his report.

[18] Mr Moroney told the Court that he had spoken to the vendors, purchasers or agents involved in the comparable sales¹⁴ but his report did not refer to any of those conversations, nor did he disclose the content of those conversations or annex copies of any file notes. If those conversations informed Mr Moroney's opinion, they should have been identified and disclosed.

⁶ *GPT RE Limited v Valuer-General (No 2)* [2018] QLC 9 [133] - [145]; *Hail Creek Coal Holding Pty Limited & Ors v Michelmores* [2021] QLC 19 [28] - [36].

⁷ Land Court of Queensland, *Practice Direction 6 of 2020: Expert Evidence in the Land Court*, Amended 6 April 2022, 4 [11(h)].

⁸ Valuation Report of Robert Grant Moroney, *Valuer-General*, filed 26 May 2023, 3.

⁹ Statement of Facts and Issues, *Matthew Ronald Jensen and Stewart Christian Jensen as Tte*, filed 14 August 2023 [57].

¹⁰ T1-75.

¹¹ T1-92 to T1-95.

¹² *Ibid.*

¹³ T1-85.

¹⁴ T1-70, T1-71.

[19] Mr Moroney’s report falls short of what is required by this Court.

Were there errors of law?

[20] The Jensens submit that the Valuer-General failed to consider that their property was either a single dwelling house or a farming property contrary to section 45 of the Act.

[21] Section 45 states that Subdivision 2 of the Act applies for deciding the value of land used only as a single dwelling house or for farming. If Subdivision 2 applies, then a valuation must disregard any enhancement in its value because of its subdivision potential.

[22] Sections 45 and 46 only require that the valuer ignore any subdivision potential of the subject land. Mr Moroney accepted that the subject land was zoned rural and he specifically stated that he adopted the statutory valuation required for rural land. There was no suggestion in the material that he had considered the subdivision potential of the subject land when giving his opinion.

[23] The highest and best use of the subject property is a different question. A property can be rural in zoning and its actual use, but the potential use is relevant when deciding which sales are comparable. As the Valuer-General points out, the Jensens conceded that the highest and best use of the subject property is rural residential.¹⁵ They now want to resile from that position, claiming that the highest and best use is “a rural property capable of being supported by primary production”.¹⁶ A property that can be supported by primary production can still have a highest and best use as rural residential.

[24] There are no errors of law in the valuation methodology.

Were there errors of fact?

¹⁵ T1-21.

¹⁶ Appellant’s Outline of Submissions, *Stewart Christian Jensen and Mathew Ronald Jensen As Trustees* filed 14 August 2023 at [80].

- [25] The Jensens say that Mr Moroney's report is infected by errors of fact and that the true position materially alters the analysis of the comparable sales.

Condition of the access road

- [26] Mr Moroney's report states that the subject property has full bitumen access to Yungaburra. In fact, there is a 450m strip of road that is not bitumen. At the hearing, Mr Moroney amended his report to state that the subject property has 'all weather access' to the village of Yungaburra, rather than full bitumen access.¹⁷
- [27] Mr Moroney told the Court that this change to his report did not affect his overall valuation of the subject property.¹⁸
- [28] Having viewed the access in question the day before the hearing, I have some difficulty accepting that proposition that the error having been amended, would not have some effect on the valuation. As the Jensens point out, gravel roads are prone to erosion during periods of high rainfall.

Remnant vegetation

- [29] Mr Moroney's valuation states that there is no endangered, of concern, no concern at present nor any remnant vegetation on the subject property.¹⁹ He notes that the subject property has a Local Government environmental overlay on a section of the northern boundary to protect any remaining vegetation in the area. He also notes that there are Tableland Regional Council Overlays for Matters of State Environmental Significance Regulated Vegetation and water catchment setbacks.
- [30] The Jensens submit that Mr Moroney failed to acknowledge the Protected Plants Survey Trigger Map which imposes restrictions on their ability to clear significant areas of vegetation on the subject land.

¹⁷ T1-42.

¹⁸ T1-41, T1-42.

¹⁹ Valuation Report of Robert Grant Moroney, *Valuer-General*, filed 26 May 2023, 3.

[31] I do not agree that Mr Moroney was in error in his assessment of the overlays on the subject land and their effect. He acknowledged that much of the existing vegetation could not be cleared.²⁰

[32] The Jensens seem to be having a bet each way when looking at the significance of the vegetation on site. While they say that these overlays prevent clearing, they also point out that the subject property is currently used for forestry production.²¹

Services

[33] The subject property does not have town water, sewerage, kerbside rubbish collection, postal services or a school bus service. Sale 1 has kerbside rubbish collection, a postal service and a school bus service. Sale 4 has a school bus service. Sale 5 has kerbside rubbish collection, a postal service and a school bus service.

[34] Despite the Jensens pointing out these differences, Mr Moroney maintained that the services between the subject property and the comparable sites are similar and made no allowance to the valuation.²² He told the Court:

But just as a comment, if I was a prudent buyer in the marketplace, the fact that one property had school bus available as opposed to, uh, postal service, um, I don't think that would be a deciding factor in determining whether you'd pay bit more or bit less for a property that did or did not have it. The choice is up to the purchaser. Um, some people would pre-prefer to not to have a postal service, they prefer the security of a post office box...²³

[35] It is true that a purchaser has a choice about whether they want access to these services. With respect to Mr Moroney, that is not the point. The point is whether, if two properties were otherwise similar, a purchaser would be inclined to pay a little more for a property that had access to these services.

²⁰ T1-103.

²¹ Appellant's Outline of Submissions, *Stewart Christian Jensen and Mathew Ronald Jensen As Trustees* filed 14 August 2023 [81].

²² T1-76.

²³ *Ibid*, lines 27 to 37.

Outlook/view

- [36] Even though the subject site abuts Lake Tinaroo, it does not enjoy views of the lake.
- [37] Sale 4 abuts the flood margin reserve of Lake Tinaroo. When Lake Tinaroo is at low capacity, there is not much water to look at. Mr Moroney stated that this view was inferior to the view from the subject site. The Jensens disagree, as they submit that any view of water is preferable to no view of water.
- [38] Sale 5 is similar to Sale 4 in that it abuts a creek inlet section of the flood margin reserve. Again, when Lake Tinaroo is at low capacity, there is not much of a water view. Again, the Jensens say that some water view is better than none.
- [39] Mr Moroney did not accept that there was no lake view from the most likely building pad on the subject property.²⁴ I prefer the Jensens' evidence on that point, supported by the aerial imagery.

I agree with the Jensens that looking at water, even if it is subject to weather variations, is better than the constant view presented by a screen of mature trees, however, I think the point is marginal.

Internal access

- [40] The parties agree that the subject property and Sales 1, 2 and 3 have superior internal access. Mr Moroney states that the internal access to Sale 4 is slightly inferior to the subject site²⁵ whereas the Jensens say that the internal access to the subject site is significantly worse.²⁶
- [41] The internal access to Sale 4 is a gravel track across moderately sloping cleared land. Internal access to the subject site is via a track through the mature vegetation with a sharp left hand turn to access the building platform. The Jensens submit, and I accept, that access to the subject site is more than slightly inferior to Sale 4.

²⁴ T1-103.

²⁵ T1-98 to T1-100.

²⁶ T1-6 to T1-8.

Slope

- [42] The Jensens take issue with Mr Moroney’s statement that the slope of the subject property is similar to the slope of Sale 4.
- [43] Mr Moroney describes the slope of Sale 4 as “An easy sloping ridge traverses the sale property from the north to the south at about mid-point with easy to moderate slopes off that ridge, falling to the west, south-west, south, south-east and east”.²⁷ He describes the slope of the subject property as having an easy sloping ridge for about 13 ha of the property but he records that there are steep banks in about 2.3 ha of the property and moderate to steep slopes in 1.1 ha of the property.
- [44] To the extent that both Sale 4 and the subject property have at least 8 ha of land that can be described as an easy sloping ridge, I think Mr Moroney’s description is fair.

The comparable sales

- [45] Mr Moroney ranked the subject site and the comparable sales in this way:

<i>Sale No.</i>	<i>Location</i>	<i>Date of Sale</i>	<i>Sale Price</i>	<i>Analysed unimproved</i>	<i>Issued value</i>	<i>Land Area</i>	<i>Comparison</i>
<i>Sale 1</i>	<i>Powley Road, Barrine</i>	<i>16.5.2018</i>	<i>\$880,000</i>	<i>\$763,300</i>	<i>\$680,000</i>	<i>6.98 ha</i>	<i>Slightly Superior</i>
<i>Sale 2</i>	<i>28 Old Boar Pocket Road, Barrine</i>	<i>22.8.2019</i>	<i>\$850,000</i>	<i>\$823,000</i>	<i>\$760,000</i>	<i>16.44 ha</i>	<i>Superior</i>
<i>Sale 3</i>	<i>4 Bruce Road, Barrine</i>	<i>9.9.2018</i>	<i>\$1,120,000</i>	<i>\$973,830</i>	<i>\$850,000</i>	<i>3.216 ha</i>	<i>Superior</i>
Subject	91 Fletcher Road, Yungaburra	1.10.2020			\$640,000	16.39 ha	
<i>Sale 4</i>	<i>83 Blake Road, Barrine</i>	<i>23.8.2020</i>	<i>\$550,000</i>	<i>\$517,953</i>	<i>\$510,000</i>	<i>8.022 ha</i>	<i>Inferior</i>
<i>Sale 5</i>	<i>244 Lloyd Road, Barrine</i>	<i>7.8.2019</i>	<i>\$395,000</i>	<i>\$362,000</i>	<i>\$340,000</i>	<i>9.895 ha</i>	<i>Inferior</i>

²⁷ Valuation Report of Robert Grant Moroney, *Valuer-General*, filed 26 May 2023, 17.

[46] The Jensens analyse the sales in this way:

Comparison	Sale 2	Sale 1	Sale 4	Subject	Sale 5
“Issued Valuation”	\$760,000	\$680,000	\$510,000	\$400,000*	\$340,000
Access	Superior	Superior	Superior		Slightly Superior
Slope	Superior	Superior	Superior		Inferior
Water All similar					
Area	Superior	Inferior	Inferior		Inferior
Outlook	Superior	Superior	Superior		Slightly Superior
Services	Superior	Superior	Superior		Superior
Zoning All similar					
Location All similar					
Ranking	1	2	3	4	5

[47] At the hearing, Mr Moroney didn’t agree that Sale 3 was not a truly comparable sale, but stated that if the Court decided to remove it as a comparable sale, his valuation would remain the same.²⁸ I agree that Sale 3 is an outlier and does not affect the valuation exercise.

[48] The parties agree that Sales 1 and 2 are superior and that Sale 5 is inferior. The question, then, is where the subject property sits in relation to Sale 4.

[49] I accept that Mr Moroney erred in stating that the access, services and outlook for Sale 4 were similar to the subject property whereas they were, in fact, slightly superior. I also accept that these errors should have had some impact on Mr Moroney’s assessment. I do not accept, however, that the accumulation of these factors mean that the subject property is worth much less than Sale 4.

[50] Mr Moroney clearly stated that the main difference between the two properties was that Sale 4 was about 50% of the land area of the subject property.

[51] The Jensens submit that about 3.59 ha (23%) of the subject land is worthless – has no value – because of the vegetation management overlays. They reduced the value of Sale 4 by 23% to arrive at their nominated value of \$400,000 (rounded up).

²⁸ T1-87; T1-109.

- [52] The Valuer-General points to the flaws in this analysis. Firstly, the Jensens rely on Sale 5 as the most comparable sale but take the value of Sale 4. Secondly, they reduce the Sale 4 value by 23% because that is the area they say has zero value due to the vegetation overlays. But Sale 4 is already a smaller parcel of land. If anything, the Jensens should have increased the sale 4 price to account for the additional area of the subject land. On the Jensens' view, even the useable area of the subject land exceeds the total area of Sale 4 (and Sale 5 to the extent that it is relevant).
- [53] The main problem with the Jensens' analysis, however, is that there is no evidence that the land covered by the vegetation overlays is worthless. All land has value. Just as there are people who will pay a little more for kerbside collection, or a postal service, or a school bus service, there are also people who will pay a little more for a bushland aspect and a neighbour-free boundary.

Conclusion

- [54] Mr Moroney determined that the Jensens land was superior to Sale 5 and slightly inferior to Sale 1. As I have already noted, Mr Moroney conceded that he was wrong about the access to the Jensens' land being bitumen and he was wrong about the provision of services to Sale 1 as opposed to the subject property. He told the Court that, even with these changes, his view of the correct valuation did not change. I have some difficulty accepting that proposition.
- [55] Mr Moroney did not accept that the Jensens had no view of the lake from the most likely site for a home.²⁹ I have already indicated my disagreement.
- [56] Mr Moroney concluded that the Jensens' land was slightly inferior to Sale 1. He valued Sale 1 at \$680,000 and the Jensens' at \$640,000, coincidentally the same value as the mass appraisal. He does not explain why the differences were worth \$40,000.
- [57] The Jensens submit that Mr Moroney's valuation report exhibits apprehended bias. The Court has previously commented on the tension that arises when the

²⁹ T1-103.

independent expert evidence is provided by a valuer who is an employee of the party,³⁰ or has previously supplied an advice to the instructing party as part of preparing for litigation.³¹ It is always preferable that the independent expert be objectively independent. In this case, a valuation arrived at through a mass appraisal survived a supposedly independent examination by Steve Cross, a valuation by Mr Moroney, a preliminary conference and an amended report from Mr Moroney. Not once did the Valuer-General consider that the valuation amount might be different from the mass appraisal, even when Mr Moroney conceded error. The Jensens' submission that Mr Moroney was subconsciously supporting his earlier valuation has some force.

[58] Valuation is not a science³² and the Court must not act as a third valuer.³³ However, having found error, I am required to reduce or increase the valuation to the amount I consider necessary.³⁴

[59] The sale which has the closest value to the subject land is Sale 1. That sale was in 2018, so there must be some allowance for a rise in value from 2018 to the valuation date of 2020. Sale 1 is superior in all ways except for land area and location. The land area is 42% of the land area of the subject land. The useable area of the subject land is greater than the entire area of Sale 1. I agree with Mr Moroney that the value of the subject land is a little less than the value of Sale 1.

[60] Given my findings about Mr Moroney's errors, although minor, the value of the subject land must be less than \$640,000. The Jensens are not valuers, so their evidence of valuation has not assisted me. Doing the best I can, I assess the value of the Jensens' land at \$615,000.

³⁰ *GPT RE Limited v Valuer-General (No 2)* [2018] QLC 9 [133] - [145]; *Pratt v Department of Natural Resources and Water* [2008] QLC 63 [12]-[13]; *Mio Art Pty Ltd & Ors v Brisbane City Council* [2009] QLC 177 [185] - [187]; for expert witnesses generally see *Lim v Moreton Bay Regional Council* [2019] QLC 2.

³¹ *GPT RE Limited v Valuer-General (No 2)* [2018] QLC 9 [133] - [145]; *Hail Creek Coal Holding Pty Limited & Ors v Michelmore* [2021] QLC 19 [28] - [36].

³² *Electricity Commission of New South Wales v Arrow* (1994) 85 LGERA 418; *O'Connor v Valuer-General* [2016] QLC 44 [114].

³³ *Bronzel v State Planning Authority* (1979) 44 LGRA 34, 45; *Brewarrana Pty Ltd v Commissioner of Highways (No 2)* (1973) 6 SASR 541, 545, 578 (Wells J).

³⁴ *Land Valuation Act 2010* (Qld) s 170 (b).

Orders

- 1. The appeal is allowed.**
- 2. I determine that the site value is Six Hundred and Fifteen Thousand dollars (\$615,000) as at date of valuation, 1 October 2020.**
- 3. Any submission as to costs must be filed and served within 14 days of the publication of these reasons.**