LAND COURT OF QUEENSLAND

CITATION:	*Body Corporate for 'Nautilus Gold Coast' CTS 5710 v Valuer-General* [2023] QLC 20
PARTIES:	**Body Corporate for 'Nautilus Gold Coast' Community Titles Scheme 5710** (appellant) v **Valuer-General** (respondent)
FILE NO:	LVA039-23
DIVISION:	General
PROCEEDING:	Appeal against objection decision on a valuation under the *Land Valuation Act 2010*
DELIVERED ON:	31 October 2023
DELIVERED AT:	Brisbane
HEARD ON:	22 August 2023
HEARD AT:	Brisbane
MEMBER:	WA Isdale
ORDERS:	**1. The appeal is dismissed. The valuation appealed against is confirmed. The site value of 39 Garfield Terrace, Surfers Paradise, Property ID 461683 and being Lots 1-6 on Building Unit Plan 9617 is $18,500,000 as at 1 October 2021.** **2. The respondent has 14 days from the date of these reasons to make any submissions in relation to costs. The appellant must make any reply within 14 days of those submissions. In absence of any request to make oral submissions being contained in the written submissions, a decision in relation to costs will be given on the papers.**
CATCHWORDS:	REAL PROPERTY – VALUATION OF LAND –

METHODS OF VALUATION – COMPARABLE SALES – GENERALLY – where the land is a building unit plan – where the appellant is appealing against a decision made by the Valuer-General – where the onus of proof is on the appellant – where comparable sales is the best basis of valuation

Land Court Act 2000 (Qld) s 7
Land Valuation Act 2010 (Qld) s 169

A Hudson Pty Ltd v Legal & General Life of Australia Ltd (1986) 66 ALR 70
Appeal by Landholder against Determination of Valuer-General – City of Brisbane [1983] 9 QLCR 44
Appeal by N.R. and P.E. Tow against Determination of Valuer-General, Redland Shire [1978] 5 QLCR 378
Appeal by P.H. Clough against the Determination of the Valuer-General – Shire of Caboolture [1981-82] 8 QLCR 70
Appeals (4) by J.L. and I. Qualischefski and others against Determination by Valuer-General – Shire of Laidley [1979] 6 QLCR 167
Appeals (4) by Landholders against the determination of the Valuer-General – Shire of Monto [1984-85] 10 QLCR 32
Appeals against Determinations of Valuer-General – Shire of Kolan [1977] 4 QLCR 206
Beydoun v Valuer-General [2018] 39 QLCR 34
Harris v Minister for Public Works (1912) 12 SR (NSW) 149

APPEARANCES: Mr G McIlwain (agent), member of the body corporate, for the appellant

Mr P Prasad, Principal Lawyer (instructed by the Valuer-General), for the respondent

Background

[1] In accordance with the *Land Valuation Act 2010* ('the Act'), the Valuer-General carried out a routine valuation of this land, a site, as the Act refers to it. There is no dispute about what was valued. The site is at 39 Garfield Terrace, Surfers Paradise and is Lots 1-6 of Building Unit Plan 9617. It has an area of 1,154m^2. The valuation was $18,500,000 as at 1 October 2021.

[2] The appellant objected to the valuation and the decision on the objection was that the value was not altered. The appellant now appeals to this Court. The grounds of appeal are:

- The valuation is not supported by comparable sales.
- The valuation is not supported by comparison with other applied values.
- The valuation has not been adjusted for the size of the land and for development restrictions under the local government planning scheme.

[3] Section 169 of the Act provides that the appeal must be limited to the grounds in the notice of appeal; the appeal is by way of rehearing, and the appellant bears the onus of proof for each of the grounds of appeal.

The appeal

[4] The appellant relies on the written material which it has provided in support of its appeal. It has not called any expert evidence in support of its appeal.

[5] The notice of appeal discloses that the appellant contends that the site value as at 1 October 2021 should be $17,500,000.

[6] The parties, in pursuance of the Court's orders, exchanged statements of the facts and issues and of their contentions. By this means they made their respective positions known to each other so that there would be no surprises at the hearing.

[7] After this, again pursuant to orders of the Court, the parties notified the names of the expert witnesses they would be relying on at the hearing. The appellant advised that it did not intend to engage any expert witnesses for the hearing. The respondent advised that it would be relying on the evidence of a valuation expert, Mr Phillip Smith.

[8] The parties then exchanged their material to be relied upon at the hearing. The respondent provided the valuation report of Mr Smith and the appellant, in accordance with Order 4 made on 30 May 2023, provided its reply to that valuation report.

[9] In accordance with Order 3 made on 30 May 2023, Mr Smith's report was his evidence in chief at the hearing. Order 5 makes the appellant's reply its evidence in chief at the hearing. Both of those orders could be changed by the Court, but this did not occur.

The law

[10] The determination of value is a question of fact that must be decided on the evidence of expert witnesses.[1]

[11] Attacks on valuations by analysis of the text of the report are not encouraged.[2]

[12] As has been mentioned, the appellant has the onus of proof for each of the grounds of appeal.[3]

[13] In *Appeals (4) by J.L. and I. Qualischefski and others against Determination by Valuer-General – Shire of Laidley*, the Land Appeal Court said:

> "In appeals of the nature of the subject, the onus which the appellant must assume is not an easy one to discharge without the assistance of a registered valuer who can lead evidence as to sales analyses and/or comparison with valuations made by the Valuer-General in respect of comparable properties."[4]

[14] In *Appeal by N.R. and P.E. Tow against Determination of Valuer-General, Redland Shire,* the Land Appeal Court said:

> "Courts of the highest authority have laid down that the best test of value is to be found in the sales of comparable properties, preferably unimproved, on the open market round about the relevant date of valuation and between prudent and willing, but not over-anxious parties.
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> Subject to certain statutory requirements as to the onus of proof and the restriction of the appellants to the grounds of appeal specified in their notice of appeal, the duty of the Land Court and of this Court is to make determinations of unimproved values based on the evidence presented to it by the parties and conforming to the aforementioned statutory formula.
>
> It follows that a large increase over and above the previous valuation is in itself not a relevant issue provided bona fide sales of comparable parcels support the new valuation."[5]

[15] In *Appeal by P.H. Clough against the Determination of the Valuer-General – Shire of Caboolture,* the Land Appeal Court said:

> "It has been judicially laid down many times and in many jurisdictions that in ascertaining unimproved value, sales of unimproved land of comparable quality, situation, etc., to the subject parcel, if they are available are to be preferred as the best guide for arriving at unimproved value. The reason is

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1 *Harris v Minister for Public Works* (1912) 12 SR (NSW) 149, 155.
2 *A Hudson Pty Ltd v Legal & General Life of Australia Ltd* (1986) 66 ALR 70. A decision of the Privy Council.
3 *Land Valuation Act 2010,* s 169(3).
4 (1979) 6 QLCR 167, 172.
5 (1978) 5 QLCR 378, 381.

obvious. In applying such sales there is no room for error in analyzing the value of improvements."[6]

[16] In *Appeals (4) by Landholders against the determination of the Valuer-General – Shire of Monto,* the Land Appeal Court said:

> "Relativity between properties or parts of shires may vary from valuation period to valuation period. It is not a matter of mere mathematical calculation or progression. The revaluation of a shire does not involve the application of a more or less uniform increase (or decrease) in the various types of land comprising the shire. What has to be determined is the unimproved value of each parcel of land within the shire at the relevant date. The task set the Valuer-General and the Court is to determine the capital sum which the fee-simple of the land, assuming it were in an unimproved state, might realise if offered for sale on the open market (section 12). The best method or basis for making such determinations is the use of properly analysed comparable sales conforming to the test of the *Spencer* case."[7]

[17] In *Appeals against Determinations of Valuer-General – Shire of Kolan,* then President Smith said:

> "The difficulty of analysing sales of improved properties, especially highly improved properties, has often been the subject of judicial comment. When there are many and varied improvements including as in the subject cases, crops, cane stools and multifarious items of plant, the possibility of error or mis-description leading to the adoption by the analysing valuer of an unreal market value for any particular item is increased and such errors or misdescriptions compound to adversely affect accuracy of the ultimate analysed land value derivable from the sale in question. The ascertainment of the correct age and state of maintenance or condition of an improvement or item of plant at sale date, the care and time taken by the valuer in arriving at its fair replacement cost at the relevant date and the fairness of the rate of depreciation applied or the "spot on" second hand market value allotted, are all factors affecting the reasonableness of the result and afford a fruitful ground for skilled counsel in cross-examination."[8]

[18] In *Appeal by Landholder against Determination of Valuer-General – City of Brisbane,* the Land Appeal Court said:

> "It is indeed a fundamental principle of valuation that the best basis for assessment of unimproved value is the use of sales of vacant or lightly improved parcels. Whilst maintenance of correct relatively is also of considerable importance for rating or revenue type valuations, we cannot prefer in the circumstances of this case, the use of the principle of relativity to the exclusion of the sales evidence."[9]

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6 (1981-82) 8 QLCR 70, 76.
7 (1984-85) 10 QLCR 32, 38.
8 (1977) 4 QLCR 206, 211.
9 (1983) 9 QLCR 44, 46.

[19] The Land Appeal Court, the decisions of which are binding on this Court, in *Beydoun v Valuer-General*[10] considered a ground of appeal where comparison was sought to be made with another parcel of land using the Valuer-General's value of that other parcel. The land Appeal Court said:

> "[9] This ground of appeal suffers from the difficulty that the valuation of the adjoining land is simply another valuation performed by the respondent. It would only be of use to the appellant if it was shown to be correct and the land properly comparable to the subject land. The appeal ground is based on relativity; how the appellant's land compares to its neighbour's value, both figures arrived at by the respondent. This is not the question that was before the Land Court which, under section 170(b) of the *Land Valuation Act 2010,* may amend the valuation so that it is "correctly" made.
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> [10] As this Court said in *Bignell v Chief Executive, Department of Lands*:
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> > What has to be decided in this case is the proper value of the subject land by reference to sales evidence about comparable unimproved properties. … If a proper valuation of the subject land makes it inconsistent with the relative value of neighbouring blocks then so be it. The question before this Court is 'the correct valuation of the subject land, not the correct valuation of the area'.
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> [11] The Land Court has said, in relation to the use of relativities with other valuations as a means of valuing land:
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> > A valuation deduced from relativities with other valuations made by the Valuer-General and that were not themselves tested in the present proceedings by reference to sales evidence cannot safely be relied upon. Where, as in the present case, the subject valuation is said to be incorrect, it would not be safe to rely on other valuations and to assume that they are correct so as to draw a conclusion about the valuation of the subject land."[11] (Citations omitted).

[20] In the same decision, the Land Appeal Court went on to say:

> "[12] In *Hans and Else Grahn v Valuer-General,* this Court considered the then applicable *Valuation of Land Act 1944.* The Court's comments are equally applicable to the current Act. The Court said:
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> > The decision of the High Court of Australia in *Brisbane City Council v the Valuer-General* ((1978) 140 CLR 41, 5 QLCR 283) and the decisions of the Land Appeal Court in cases such as *WM and TJ Fischer v The Valuer-General* ((1983) 9 QLCR 44) and *R and MM Barnwell v The Valuer-General* (1989) 13 QLCR 13) are authority for the following propositions:
> > (a) It is desirable that valuations made for the purposes of the *Valuation of Land Act 1944* of comparable lands should bear proper relativity, one to the other, so long as the valuations are soundly based. It is, however untenable to

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10 (2018) 39 QLCR 34; [2018] QLAC 1.

11 *Beydoun v Valuer-General* (2018) 39 QLCR 34, 37.

> adopt a value for one parcel on relativity with another which has no sound basis. (R and MM Barnwell v The Valuer-General (1989) 13 QLCR 13, at p. 16 and cases cited in it).
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> [13] The Land Appeal Court has consistently recognised that relativity of valuations is desirable. It has also recognised that the relativity of valuations to each other does not establish that a valuation pointed to for the purpose of showing correct relativity is itself an accurate valuation."[12] (Citations omitted).

[21] The Land Appeal Court also referred to well-established authorities which are relevant to the present case. The Court said:

> "[18] This Court said in *Grahn v Valuer-General*:
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> …
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> (b) The best basis for assessment of unimproved value is the use of vacant or lightly improved parcels of land *(WM and TJ Fisher v The Valuer-General* (1983) 9 QLCR 44, at p. 46; *R and MM Barnwell v The Valuer-General* (1989) 13 QLCR 13, at p. 17).
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> …
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> (e) Whilst maintenance of correct relativity is of considerable importance for rating valuations, the use of the principle of relativity should not be preferred to the exclusion of relevant (even if not ideal) sales evidence (*WM and TJ Fisher v The Valuer-General* (1983) 9 QLCR 44 at p. 46).
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> (f) If possible, the Valuer-General should obtain uniformity between different blocks in the same land category or type, but should do so (preferably by reference to sales of comparable land) by correcting inaccuracies rather than by making an inaccurate assessment in order to secure uniform error (*R and MM Barnwell v The Valuer-General* (1989) 13 QLCR 13, at pp. 16-17 and cases cited in it).
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> [19] The superiority of sales evidence when valuing land is illustrated by the words of then President Trickett in the Land Court in *Fairfax v Department of Natural Resources and Mines:*
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> > The principles for determining of the "market value" of land were established by the High Court in *Spencer v The Commonwealth* (1907) 5 CLR 418. In that case, the High Court found that the value of land is determined by the price that a willing but not over-anxious buyer would pay to a willing but not over-anxious seller, both of whom are aware of all the circumstances which might affect the value of the land, either advantageously or prejudicially, including its situation, character, quality, proximity to conveniences or inconveniences, its surrounding facilities, the then present demand for land and the likelihood of a rise or fall in the value of the property. (See Griffith CJ at 432 and Isaacs J at 411).

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12 *Beydoun v Valuer-General* (2018) 39 QLCR 34, 37.

> It has been well established that the unimproved value of land is ascertained by *reference to prices that have been paid for similar parcels of land. In Waterhouse v The Valuer-General* (1927) 8 LGR (NSW) 137 at 139, Pike J said that:
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> > "Land in my opinion differs in no way from any other commodity. It certainly is more difficult to ascertain the market value of it but – as with other commodities – the best way to ascertain the market value is by finding what lands comparable to the subject and were bringing in the market on the relevant date – and that is evidenced by sales.""[13] (Citations omitted).

[22] The Land Appeal Court additionally discussed the role of the Land Court. It said:

> "[29] This Court is not an investigating body and must rely on the evidence put before it by the parties. In *J.L. and I. Qualischefski v Valuer-General*, the Land Appeal Court said:
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> > Neither this Court not the Land Court in the subject jurisdiction may assume the role of an investigating tribunal requiring the Valuer-General to substantiate his case. This role is in contradistinction to jurisdiction conferred under the *Land Act*."[14]

[23] The *Land Valuation Act 2010* has not changed the situation in relation to the role of this Court.

The case for the appellant

[24] The appellant has the burden of proof and the right to begin. No expert evidence was called in support of the appeal. The appellant relied on detailed written submissions which took the form of a reply to the valuation report prepared by Mr Phillip Smith, the Registered Valuer called by the respondent, the Valuer-General. This became Exhibit 1.

[25] The reply is argumentative in nature and examines Mr Smith's report in detail. The appellant drew attention to the net developable area of the subject and the sales, considered the gross floor areas said to be achievable as of right under the planning scheme and contended that the development potential of larger parcels was not correctly allowed for by the respondent.

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13 *Beydoun v Valuer-General* [2018] 39 QLCR 34, 38. See also *Body Corporate for 'Nautilus Gold Coast' CTS 5710 v Valuer-General (No 2)* (2019) 40 QLCR 50 at [33] – [34]; [2019] QLC 5, 6-7.

14 *Beydoun v Valuer-General* [2018] 39 QLCR 34, 39. Directly after this, the Land Appeal Court went on to say the words quoted in n 4 (above). Those words were quoted with approval in *Beydoun v Valuer-General* at page 40.

[26] The primary focus of the reply is to refer to the four sales relied upon by Mr Smith. There are no other sales presented. The sales are analysed, and criticisms made of Mr Smith's report. An illustration will suffice to show the nature of the reply. In paragraph 54, it is said that:

> "Mr Smith has analysed the sales by ocean frontage per metre ($/m) in order to compare them to the subject property. The use of ocean frontage per metre is not considered an appropriate valuation methodology as it depends solely on the shape of the block."

[27] The person who has signed this document is Mr Graeme McIlwain, the appellant's agent. He is a retired engineer with long experience in property development. The appellant has not called any expert witnesses. The Land Court, by section 7 of the *Land Court Act,* is not bound by the rules of evidence. It will act consistently with the established precedents, however. An example is that the Court will consider the reply rather than be unable to admit it into consideration at all. However, in view of the authorities which have been referred to, it is of very limited utility. Where it expresses an opinion such as that which has just been referred to, or an opinion on the ultimate question of the value of the land, a matter upon which valuers are permitted to express an opinion, it has no weight.

[28] The purpose and thrust of the reply is, by argument, to express an opinion, namely that the value of the subject site on 1 October 2021 is $17,500,000. Indeed, it specifically states that at paragraph 97. This opinion, and the opinions on which it is based, are contained in the reply signed by Mr McIlwain, who, respectfully, is not a Registered Valuer and not qualified to give those opinions to the Court as an expert. He makes no claim to being qualified to give the opinions within the expertise of a Registered Valuer. He is, of course, perfectly entitled to hold these opinions; they are however of no weight in the present proceeding.

[29] As the authorities referred to already show, this Court is not a body which will investigate the value of this site. It must consider the evidence which the parties choose to put before it.

[30] The respondent has chosen to put before the Court the report of Mr Smith and to therefore expose him to cross-examination. In such a case, the Court, considering the whole of the evidence before it, might be able to be satisfied that a ground or grounds of appeal were made out. The appellant's failure to call expert evidence is

not enough by itself, to be fatal to its case. The entirety of the evidence before the Court must be considered.

The case for the respondent

[31] Mr Smith, a valuer with thirty years' experience in the profession, is employed by the State Valuation Service of the Department of Resources. His report became Exhibit 4, and he was cross-examined and re-examined. He gave evidence in a forthright way and was responsive to questions put to him. The Court accepts him to be a witness of truth who, as an expert, honestly holds the professional opinions contained in his report. He was very clear that, in his opinion, the site value on 1 October 2021 was $18,500,000. The Court accepts his opinion. In cross-examination, he stated that the sales evidence used in this case is probably the best that has been available for years. Mr Smith is properly qualified and experienced to analyse the site value from improved sales. That is a particular skill of a Registered Valuer.

[32] Mr Smith has inspected the subject site numerous times since 2009. It has an area of 1,154m^2 and is zoned High Density Residential under the Gold Coast Planning Scheme. The highest and best use is for high rise residential development. The subject is a regularly shaped rectangle at road level and has 30 metres of direct ocean frontage. The land abuts a park on the northern boundary and has unrestricted views to the East and Southeast and partly restricted ocean views to the Northeast. It has good access directly off Garfield Terrace, a 2-lane bitumen road. Usual services are available.

The subject is situated in an area with a mix of medium and high-rise residential buildings, with some single residential dwellings still there. Older structures in the area are being replaced with higher density, taller ones.

[33] The site is within 350 metres of the Northcliffe Light Rail Station. A tower in excess of 30 levels could be built there.

[34] The valuation was made by direct comparison to sales. At the date of valuation, market demand for this type of site was very strong.

[35] Mr Smith used four sales to assist his valuation exercise.

[36] Sale 1, 7 Northcliffe Terrace, Surfers Paradise:

This has a larger, 40-metre ocean frontage and a two-street frontage. This was considered superior to the subject and an analysed site value of $43,838,566 was found. It was not fully applied and a conservative $38,500,000 was applied. This yielded a value of $17,103/m^2. This sale is close to the subject and occurred on 7 October 2021. It has an area of 2,251m^2. The sale price was $44,999,999. The existing residential tower was demolished.

[37] Sale 2, 43 Garfield Terrace, Surfers Paradise:

It has an area of 1,619m^2 and a 40-metre ocean frontage. It is located within 30 metres of the subject. It is considered superior to the subject due to its larger size and 40- metre ocean frontage. It sold between February 2021 and January 2022 for $30,466,672. The existing 10-level building was demolished. The analysed site value was $29,867,553. A conservative figure of $27,000,000 was applied as the site value. This is $16,677/m^2.

[38] Sale 3, 9 Garfield Street, Surfers Paradise:

This has an area of 1,037m^2 and has 21.05 metres of ocean frontage. It sold on 29 June 2021 for $19,000,000. It had an older 5-level residential building which is awaiting demolition. The analysed site value was $18,366,420. A conservative $16,000,000 was applied. This is $15,429/m^2.

[39] Sale 4, 75-79 Garfield Terrace, Surfers Paradise:

It is a 1,500m^2 site which sold on 17 June 2021 for $30,000,000. It sold with an older dwelling and flats, which were demolished. It has a 34.3-metre ocean frontage. The analysed site value was $29,842,440. A conservative $26,000,000 was applied. This is $17,333/m^2.

[40] In all cases, the valuer has used a conservative value for the purpose of comparing the sales to the subject. Analysing improved sales is a skill which is peculiarly held by valuers as part of their expertise. As is appropriate in a valuation for present purposes, the sales values have been conservatively applied so that any outcome of that would only be in favour of the landowner; such that if the estimate of value, the operative opinion, is incorrect, it would most likely be too low, to the benefit of the

appellant. This is not regarded as an indicator of error but is rather a prudent and fair practice.

[41] Using these four sales, Mr Smith values the subject site at $18,500,000. The valuation contains the sales analysis of each of the sales and includes photographs and planning overlays and information.

[42] The valuation opinion provided is supported by the sales and a detailed analysis and comparisons have been made. Mr Smith's evidence was the subject of cross-examination, and he did not change his opinion.

[43] The appellant did not provide contrary expert evidence but rather argued that the evidence should lead to a different opinion of value. Mr Smith rejected this. He gave his evidence convincingly and adhered to his opinion. He was present in Court for the entirety of the appeal and heard the evidence given on behalf of the appellant.

[44] The Court has only one body of expert evidence before it and accepts that evidence as it is from a properly qualified expert, is comprehensively explained in the report and was not shaken in the cross-examination.

Conclusion

[45] For the reasons that have been given, the appeal must be dismissed. It was not shown that the respondent's valuation was contaminated by any error. It was not established that the correct site value could not be arrived at by the conventional method applied by the Registered Valuer. The Court is not able in the circumstances to prefer the alternative approach adopted by the appellant to the conventional valuation approach and its result.

Orders

1. **The appeal is dismissed. The valuation appealed against is confirmed. The site value of 39 Garfield Terrace, Surfers Paradise, Property ID 461683 and being Lots 1-6 on Building Unit Plan 9617 is $18,500,000 as at 1 October 2021.**
2. **The respondent has 14 days from the date of these reasons to make any submissions in relation to costs. The appellant must make any reply**

within 14 days of those submissions. In absence of any request to make oral submissions being contained in the written submissions, a decision in relation to costs will be given on the papers.