

# LAND COURT OF QUEENSLAND

CITATION: *Cowen v Department of Natural Resources and Water*  
[2009] QLC 0123

PARTIES: Peter Gary Cowen and Jan Christine Cowen  
(appellants)  
v.  
Chief Executive, Department of Natural Resources and  
Water  
(respondent)

FILE NOS: AV2007/0612

DIVISION: Land Court of Queensland

PROCEEDING: Appeal against annual valuation under *Valuation of Land Act 1944*

DELIVERED ON: 21 August 2009

DELIVERED AT: Brisbane

HEARD AT: Brisbane

MEMBER: Mr PA Smith

ORDERS: **The appeal is dismissed.**

CATCHWORDS: Valuation – Factors in valuation – presumption in favour  
of correctness of valuation – allegations of bias –  
correctness of previous valuation – relativity - *Valuation of  
Land Act 1944*

APPEARANCES: Mr P Cowen on behalf of the appellants  
Mr Isdale of Counsel, Crown Law, for the respondent

SOLICITORS: Crown Solicitor for the respondent

## Background

- [1] This is an appeal by the appellants against a valuation by the respondent, pursuant to the *Valuation of Land Act 1944* (the VLA) which valued the appellants property situated at 20 Derby Street, Highgate Hill in the sum of \$1,300,000 as at 1 October 2006. By their Notice of Appeal the appellants contend for a valuation of \$852,585. Curiously, by Exhibit 2, page 6, the appellants contend that the value of the subject land should be \$754,000 as at 1 October 2006.
- [2] The subject land is described as Lot 210 on Registered Plan 12103, County of Stanley, Parish of South Brisbane. The subject land has an area of 1,346m<sup>2</sup>, of which 581m<sup>2</sup> is affected by

the Brisbane River Waterway Corridor and the Environmental Protection Area. The subject land is situated approximately 3 km south-west from the Brisbane Central Business District.

- [3] The subject property is a riverfront allotment which overlooks the Brisbane River and the University of Queensland Campus, St Lucia. Derby Road is a bitumen road with concrete kerbing and channelling. The subject land has reticulated water, sewerage, stormwater drains, mains power and telephone services available. There is dispute between the parties as to the suitability of the sewerage access to the subject land.
- [4] The subject land is a residential lot which is essentially rectangular in shape with a frontage to Derby Street of 20.11 m and a depth of the western boundary of 67.4 m and on the eastern boundary of 66.3 m. The land slopes from Derby Street to the Brisbane River. The land is classified 'Low Medium Residential' under the provisions of the Brisbane City Plan 2000 effective 30 October 2000. The subject land is currently used for residential purposes by the appellants.
- [5] The appellants were represented by Mr Cowen, who gave evidence at the hearing. Mr Cowen has no legal or valuation qualifications. The respondent was represented by Mr Isdale of Counsel, and relied on the evidence of a registered valuer, Mr McGarry.

### **Relevant legislative provisions**

- [6] Pursuant to s.13 of the VLA, the respondent is required to determine the unimproved value of the land. Relevantly, s.3(1) of the VLA says as follows:

#### **3 Meaning of unimproved value**

(1) For the purposes of this Act—

**unimproved value** of land means—

- (a) in relation to unimproved land—the capital sum which the fee simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require; and
- (b) in relation to improved land—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, at the time as at which the value is required to be ascertained for the purposes of this Act, the improvements did not exist.

- [7] I note that the subject land in this matter is improved. Accordingly, put simply, the task is to find the market value of the land on the assumption that none of the improvements are on the subject land. An assessment is then undertaken as to the highest and best use of that land.
- [8] As then President Trickett said in *Fairfax v Department of Natural Resources and Mines*:<sup>1</sup>

“The principles for determination 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 441).

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<sup>1</sup> [2005] QLC 0011 at paras [11] and [12].

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:

‘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 land were bringing in the market on the relevant date – and that is evidenced by sales.’ ”

I respectfully agree with these observations.

### **Presumption of correctness of valuation**

[9] I now turn to section 33 of the VLA, which states as follows:

#### **33 Status of valuation**

Any and every valuation, or alteration of the valuation, of any land made, or purporting to be made, under this Act by the chief executive shall be deemed to be correct until proved otherwise upon objection or appeal or until altered or further altered.

[10] This section was considered by the High Court in the case of *Brisbane City Council v The Valuer-General for the State of Queensland*<sup>2</sup> where Justice Gibbs (as he then was) made the following observation at page 56:

“In my opinion once it is shown that in making the valuation the Valuer-General acted upon a wrong principle, or made a serious error of fact, the presumption created by s. 13(7) is rebutted.”

It should be noted that s.33 of the VLA is in essentially the same terms as what was then s.13(7) of the Act.

### **The issues in the appeal**

[11] The appellants lodged their notice of appeal<sup>3</sup> in this matter by post on 8 August 2007 following the respondent’s decision on objection dated 26 June 2007. The appellants grounds of appeal are as follows:

#### **“Grounds of Appeal**

1. SPECIFIC UNFAIRNESS (including, but certainly not limited to, the Department’s specific ‘black-ban’ of Peter Cowen regarding enquiries about the valuation in question)
2. SPECIFIC INCONSISTENCY of the valuation of 20 Derby St compared with the valuation of the similar and comparable allotments, (including the Department’s comparable valuations of those properties).
3. GENERAL INCONSISTENCIES in the relevant valuation treatment and outcomes/results and many admitted valuation errors.
4. Insufficient allowance and adjustment was made for the disabilities impacting on the valuation of 20 Derby St. These were PREVIOUSLY RECOGNISED by the Chief Executive of the Department of Natural Resources and Water last year as a result of the “Land Court Supervised Preliminary Conference” regarding the 2004 valuation of 20 Derby St..
5. The valuation officers of the Department of Natural Resources and Water have FAILED TO RECOGNISE, or perhaps properly interpret, the significance and hence valuation

<sup>2</sup> 1977-78 140 CLR 41.

<sup>3</sup> Exhibit 1.

impact of the materials previously submitted and willingly provided by us to assist the valuation process. The materials included, but were not limited to, surveyor's plans of original natural ground levels commissioned by ourselves, photographs, copies of Brisbane City Council maps/plans and correspondence from Brisbane City Council in regard to 20 Derby St as well as RELEVANT market sales data and statistics.

6. The VALUATION METHODOLOGY and PRACTICES (sic) adopted by officers of the Department of Natural Resources and Water are significantly flawed.
7. EXPERT OPINIONS and supporting case law regarding the above.
8. Any other matter or material considered relevant following our current investigations and/or material/information not previously available or provided to us.

5 August 2007'

[12] There are a few points which should be made about the appellants grounds of appeal. To begin with, after the respondent objected to Ground 8 during the hearing, I formally ruled that Ground 8 be struck out as it was essentially an attempt to raise additional grounds of objection after the time limited for making objection had closed<sup>4</sup>.

[13] The next point is rather more difficult to particularise. By Ground 1, the appellants essentially complain that they have been singled out by the respondent for unfair treatment in the valuation process. This complaint effectively permeates its way through the other grounds of appeal. Clearly, the Land Court is not an investigatory body<sup>5</sup>, and cannot of itself undertake any form of investigation or search as to the motives and actions of the parties in any proceedings. However, the appellants having raised the specific objection, this ground then became the subject of significant evidence before the Court, and it would be remiss of the Court not to make findings based on the evidence presented.

[14] To put this issue into perspective, reference should be made to a number of excerpts from the transcript where Mr Cowen was being cross-examined by Mr Isdale as follows:

“Mr Cowen, you said yesterday in your evidence that you were angry. Could you just tell the Court what you're angry about?-- How long have you got?

Well, could you answer the question substantively, please, because we'll take a lot less of the Court's time if you can just get to answering the question?-- To be as brief in the circumstances as possible, I guess, I think of the valuations that are done. Basically, if you argue your rights and get a fair reduction, that reduction is completely ignored subsequently. That would be the overriding issue, if you want me to put it succinctly. If you wanted the anger that kicked me to be here today is the fact that a valuer decided to - I should phrase this carefully - I understand a valuer wanted to have internal access to my parents' house and I didn't understand why they'd want to do that if they were valuing the land; why they wouldn't have told me beforehand as I was recognised at any objection; why they wouldn't bring any material with them that I thought relevant; why they wouldn't give a card; all those sort of things. I guess if you want the crux of why I'm here today, that's one of the reasons.

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<sup>4</sup> See T 4

<sup>5</sup> See *Qualischefski & The Valuer General* 6QLCR167 @172

Well, do you think someone is out to get you or to disadvantage you in some way?-- I would have thought the 72% valuation rise from 2004 to 2006 compared to 13% and I think 16% on my immediate neighbours - I might be a little bit out there - but, yes, I do.

Well, why would that be?-- I should actually say that I don't actually think, I actually know that someone is out to get me, yes. I shouldn't say "someone", but that's the system, if you like....<sup>6</sup>

"BY MR ISDALE: Well, you don't know or you can't say the name of any specific person you say is out to disadvantage you. Isn't that the case?-- I could list several, if you like.

You go right ahead?-- Okay. I've been threatened with libel by one of your directors - sorry, not of your - one of the department's directors, been threatened with libel, which I thought was - well, I don't understand what the threat was over and I've asked that to be clarified or get an apology. I never had an apology. That was, I believe, Mr Pat Gallagher. What else? I can't remember the valuer's name, I think it was Mr Ross Creighton, came to my parents' property without any consultation with myself, without any objection being actually submitted at the time when valuers had been to that property some three times before, as I understand. Who else would you like?

Well, you say that that is somehow something done maliciously to disadvantage you - going to your parents' house? Is that what you're telling the Court?-- Could you rephrase the question?

Are you saying to the Court that some person going to your parents' house was an act done to disadvantage or harm you in some way? Is that what you're telling the Court?-- Certainly, yes, yes.

Well, how could that be?-- Although I'm not paid to be here, I'm paid to be home, my mother rang me up quite frantically and said, "Can you down here quick? There's a valuer here wants to come inside." You don't call that being disadvantaged?

Well, do you believe that that was done in some way to disadvantage you?-- Oh yes, without a doubt.

How could that be so?-- Basically what happened is I complained to - on my parents' behalf, I complained to my local Member, Anna Bligh, and the letter I sent to Anna Bligh was actually given to - I get the feeling you're smirking at me - the letter I sent to Anna Bligh was actually, I understand, given to the very valuers involved. That's what prompted the visit.

And you believe that was done in some way to harm you?-- Whether that was done for that purpose, that was the result, yes. It harmed my parents far more than myself, yes.

Well, how did it harm you?-- I don't know how you feel about your parents, but I don't like seeing my parents being upset.

Well ---?-- That would be - do you want me to answer the question or ---

Witness, you can answer the question. That's what you're there for. Could you try and avoid digressing or making smart comments. Just answer the question and you'll be there for less time?-- In financial terms, probably no harm done. Mental anguish is probably quite considerable.

And do you feel a lot of mental anguish about this valuation?-- Yes, I do, yes.

Well, do you believe that the valuation figure that's been arrived at is a figure which has been arrived at for the purpose of upsetting you? Is that what you believe?-- Yes, given the nature of the valuation report, that's what I believe, yes.....<sup>7</sup>

"Well, just to make it very clear, do you have any accusations against Mr McGarry at all?-- To make to who, sorry?

Do you have any accusations you want to make concerning Mr McGarry?-- I don't have anything personal against Mr McGarry at all. I've got to be honest - well, I would question why he was, when he has little knowledge about tides and rivers and pontoons and jetties and knows nothing about the area, I guess I'd question his superiors for putting him - giving him the task, throwing him into this valuation - when he doesn't obviously know much about the area or riverfront, yes. Not him personally, no.....<sup>8</sup>

"So you've got no concern about Mr McGarry. That's the case, isn't it?-- I've got some concerns about the quality of the report he produced, but none about him personally. I've had any issues with him, never raised my voice at him or anything like that.

You're not suggesting he's acted improperly in any way or has got any set against you at all. Is that the case?-- I guess I'd have - from a purely analytical point of view when I look at the report, I'd have to say the report strikes me as being overly biased to the nth degree, yes.

So you now say that he's biased against you to the nth degree?-- No. I think I made it clear going through the report yesterday, I thought the report was quite highly biased in leaving things out that were relevant to 20 Derby Street and putting those same things in another property. I put that down as a fairly significant bias. It could also be due to ignorance of the fact that he doesn't know the difference between a mangrove and a gum tree, which was the case at my parents' place. I don't think the valuer actually knew. The valuer at my parents' place, I don't blame him. He didn't know the difference between a mango and a gum tree...<sup>9</sup>

"Now, witness, isn't it the case that in your evidence yesterday you referred to photographs in Mr McGarry's report as misleading and deceptive. Do you remember that?-- I certainly do, yes.

So you accuse him of being biased against you, of putting misleading and deceptive photos in his report. Why would he do that?-- You'd have to ask him, I guess.

Well, why do you think he'd doing it?-- I don't see that it's relevant, but I guess - even the number of mistakes in the report, I guess it could be through ignorance.

So do you say that he could be ignorant?-- No, "ignorance".

Yes. That he has ignorance in relation to his professional duties?-- No, no. For example, he may not know that you can get photographs off the Net of how places were at a certain date.

Well, the photographs that you referred to were photographs that had been taken by him in his report. You said they were misleading or deceptive. Why, I'm asking you, would you believe that he would put misleading or deceptive photographs in his report? Why do you think, in your mind, that he would do that?-- I think you'd have to ask him. I think through ignorance.....<sup>10</sup>

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<sup>7</sup> T 82-3

<sup>8</sup> T 87

<sup>9</sup> T 87

<sup>10</sup> T 88

“Well, you’ve also said that in his valuation there was material which was mischievous. Do you remember that?-- I sure do, yes.....<sup>11</sup>

“And you said that if you wanted to fudge the levels, you’d do what essentially Mr McGarry had done?-- That’s correct, yes.

Well, witness, I suggest to you that you’ve made the absolutely strongest implication of misconduct on McGarry’s part. Now I suggest to you that there is no basis for that, it is only something which exists in your own mind and that it’s not supported by the evidence at all. Now what do you say about that?-- I’d say that’s your opinion.

Well I suggest to you that your thoughts in relation to McGarry and perhaps others are of a paranoid nature and a fantasy. What do you say about that?-- Again, I’d say that’s your opinion. I wasn’t aware that you’re knowledgeable in those areas, but, no, I wouldn’t say I was paranoid about it, no.”<sup>12</sup>

- [15] From my memory, this is the first case I have handled where a party has been asked, in all seriousness, if they are, in effect, paranoid. In saying this, I do not mean to be critical of Mr Isdale. Given the nature of Ground 1 and Mr Cowen’s answers in cross-examination as detailed above, it was, perhaps, a fair question.
- [16] It is only in understanding Mr Cowen’s answers in cross-examination that the bulk of the case brought by the appellants can be understood. In attempting to come to grips with the evidence, I have read and re-read the transcript and exhibits. I have put this decision to one side for a period of time in order to review it again, from a fresh approach. I have approached the evidence on the theoretical basis of accepting all of the evidence of the appellants and none of the evidence of the respondent, to see what conclusions would flow from that. I have also done the reverse; that is, theoretically accepting all of the evidence of the respondents and none of the evidence of the appellants, to see if different conclusions would flow. This rather exhaustive approach has led me to a number of firm conclusions.
- [17] Firstly, and most importantly for the disposition of this appeal, I am completely satisfied that on the evidence before me Mr McGarry has not acted in any way which can be classified as biased, misleading, deceptive, mischievous, or as misconduct, or anything of the like, directed deliberately against the appellants. That is not to say Mr McGarry has not made errors. Indeed, the transcript is littered with errors made by Mr McGarry. I accept that in Mr Cowen’s view, each of those errors is an indication of the deliberate actions of Mr McGarry. I however do not believe that to be the case. The errors made by Mr McGarry, be they as to the date of an inspection<sup>13</sup>, the wrong description of a jetty<sup>14</sup>, the description of a swimming pool<sup>15</sup>, the parking of trailer boats in Borva Street<sup>16</sup>, or like errors, while certainly

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<sup>11</sup> T 88

<sup>12</sup> T 88

<sup>13</sup> See T121; 129-31; 176

<sup>14</sup> See T120

<sup>15</sup> See T124

unfortunate, are of little or no relevance to the pivotal question which is, what is the unimproved value of the subject land as at 1 October 2006. They are, in my view, simply errors made with no underlying intent.

[18] The second point relates to the circumstances surrounding the valuation of the appellants land as at 1 October 2004. A large amount of evidence was led regarding this. Whatever the circumstances which gave rise to the value of the subject land being set as at 1 October 2004 in the sum of \$754,500, I am in no doubt that the respondent sought in the 2006 valuation to restore what he believes to be the correct valuation to the land, resulting in the very significant increase which the subject property had when compared to similar, nearby properties.

[19] At a theoretical level, clearly it would be inappropriate of the respondent, in any valuation matter, all other things remaining equal, to deliberately raise the valuation of one property out of kilter with other nearby valuations. Clearly, Mr Cowen believes that that is exactly what the respondent has done in this case. In this regard, on the evidence before me, Mr Cowen is in error. The reason is quite simple. Taking all of the evidence into account, the respondent has specifically considered the 2006 valuation of the subject land on the basis that the 2004 valuation was incorrect, having been arrived at on the assumption by the respondent, at the urging of the appellants, that the subject land was subject to the significant inconvenience of a combine sewer.

[20] I should make my findings in the preceding paragraph clear. As already stated, my role is to ascertain the correct unimproved valuation of the subject property as at 2006, not as at 2004. If there was any nature of an error made in the 2004 valuation which causes the percentage increase of the subject land's valuation to be greater than it would otherwise be, that can have no influence on my decision. The 2004 valuation is not subject to review or appeal. It is what it is. Had the 2004 valuation been arrived at following a decision by this Court which the respondent did not agree with but against which no appeal was lodged, with the respondent simply, in effect, over-riding the Courts decision in the 2006 valuation (again, assuming that all relevant features etc of the land remained unchanged), then Mr Cowen's concerns would be very well justified. The 2004 valuation was however not set by an independent ruling of this Court. Perhaps the 2004 valuation is wrong; perhaps it is not. Perhaps the 2004 valuation was arrived at by the respondent taking into account more adverse factors than just the combine sewer; perhaps it was not. Whatever the truth may be regarding the 2004 valuation, it is simply not relevant to my consideration of the evidence as to what the proper valuation of the subject land should be in 2006.

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<sup>16</sup> See T 197 and Ex 29

- [21] The third point relates specifically to the combine sewer. On the evidence before me, I make no adverse finding against Mr Cowen regarding advice provided by him to the respondent in the years prior to 2006 regarding the existence or otherwise of a combine sewer for the subject property. I accept that, for the 2004 valuation, the respondent acted on the presumption that a combine sewer was in existence, and that for the 2006 valuation the respondent proceeded on the knowledge, clearly correct given the evidence before me<sup>17</sup>, that as at 1 October 2006 there was no combine sewer issue for the subject land.
- [22] Without detailing the process of sifting through all of the evidence, I find that as at 1 October 2006 the subject land was serviced by 2 sewer lines, one at the front of the property, effectively at just below street level, and the second at the rear of the property, at about river level. I also accept the evidence of Mr Cowen that there are significant difficulties to be overcome before the Council would allow a residential sewer line to be cut into the river level sewer main in order to service the subject block, and that the use of the front sewer main, due to its elevation, imposes either site restrictions on the subject land, or necessitates the building of pumping infrastructure should a house site be located below the sewer level.
- [23] Viewed objectively, the current sewerage services to the subject property are sufficient to allow access to a sewerage connection when the block is viewed in a notionally unimproved state. No doubt, Mr Cowen will remain firm in his view that the sewerage service is inadequate. Another person however could very well view the existence of two sewerage lines as offering additional options for building on the subject. I allow no specific discount to the valuation with respect to the sewerage lines.

### **The Respondents Valuation Evidence**

- [24] A direct comparison approach has been adopted by the respondent's valuer to determine the unimproved value of the land. This is reflected in the sales evidence set out in Mr McGarry's report. Mr McGarry's evidence relates to four sales as follows:

<b>Sales</b>	<b>Area Ha</b>	<b>Date of Sale</b>	<b>Sale Price</b>	<b>Analysed U/Value</b>	<b>Applied U/Value 1/10/2006</b>	<b>Comparison</b>
Sale 1 9 Borva St Highgate Hill	1,115m <sup>2</sup>	18.02.06	\$1,460,000	\$1,400,000	\$1,250,000	Inferior
Sale 2 23 Borva St Highgate Hill	1,169m <sup>2</sup>	22.05.06	\$1,400,000	\$1,386,000	\$1,250,000	Inferior
Sale 3 43 Rosecliffe St Highgate Hill	759m <sup>2</sup>	03.09.05	\$1,250,000	\$1,240,000	\$1,000,000	Inferior
Sale 4 123 Ryan St West End	632m <sup>2</sup>	29.10.06	\$1,550,000	\$1,546,000	\$1,475,000	Slightly superior

<sup>17</sup> See, for instance, Ex. 13

[25] Mr McGarry also provided the Court with a relativity table relating to the subject land and various valuation dates and comparisons with surrounding properties.<sup>18</sup> Part of Mr McGarry’s table provides as follows:

Property	Area (m <sup>2</sup> )	2002 UV	2004 UV	2006 UV	Increase 2002-2004	Increase 2002-2006	Frontage
16 Derby St	1265	\$670,000	\$1,050,000	\$1,200,000	56.7%	71.4%	20m
20 Derby St	1346	\$700,000	\$754,000	\$1,300,000	7.8%	85.7%	20m
26 Derby St	1032	\$560,000	\$880,000	\$1,000,000	57.1%	78.6%	15m
45 Rosecliffe	1169	\$540,000	\$770,000	\$1,350,000	42.6%	250%	18m
49 Rosecliffe	1024	\$470,000	\$670,000	\$1,050,000	42.6%	223%	19m

[26] One area of attack that Mr Cowen made on Mr McGarry’s sales and valuation evidence related to an allegation that both his property and other like properties had been valued, not on a site basis, but on a square metre basis. Of course, it is not appropriate to value a residential allotment on a rate per square metre. As the Land Appeal Court said in *McDonald v The Valuer General*<sup>19</sup>

“The appellants fail because the appropriate basis for the valuation of a residential lot is not the application of a rate per square metre but an assessment of the unimproved value of each lot as land used for single unit residential purposes. As the Land Appeal Court said in *H and E Grahn v The Valuer-General*, AV89-246 and 247, 13 December 1990 (not yet reported):

‘for the purpose of valuing residential sites, the preferable method of comparison is on a site to site basis and not on the basis of a unit area value comparison. Site for site comparison should take into comparison such matters as the size of the lots, the situation of and access to the lots, the shape and topography of the lots etc and comparisons on a unit area basis do not necessarily reflect valuation considerations for the above features.’”

[27] In support of his contention that the respondent had applied a square metre rate to the valuation of the subject and surrounding properties, Mr Cowen put the following to Mr McGarry during cross-examination:<sup>20</sup>

“The difference in UCV between No.20 and No.26 is exactly proportionate to the area of the land?-No, I’m not saying that at all.

You disagree with that?-I’m not saying it’s in direct proportion. The blocks have been valued individually. They’re not valued on a per square metre basis if that’s what you’re getting to, no.

It certainly appears that way. If you take 26 you’ve got 1,032 square metres and you divide it by Derby Street’s metrage of 1,346, multiply it by Derby Street’s valuation of 1.3 you come out with, if you’re computer rounding, \$1m. which is the UCV?-Purely coincidental.

<sup>18</sup> See Ex. 20.

<sup>19</sup> Land Appeal Court, Brisbane 3 April 1992 at pages 2-3.

<sup>20</sup> T.157.

Okay. What about the other one in your thing there, No.16? That's vastly inferior as well to No.20?- It's inferior, it's not vastly inferior.

Is \$100,000 UCV inferior, it's not vast but it's slightly inferior?-It's a similar sized block, it's slightly smaller, it's got the same sort of frontage, it's lower down the hill but it doesn't receive the same breezes or the same types of views and it's also of course beside the heavily overgrown gully that we've discussed before.

On a square metre basis compared to No.20 it comes out at \$1.221m. which rounds down to \$.2m. which coincidentally is its UCV. That's a coincidence again?-I would say so. These are valued on site areas, not a square metre basis.

In all the notes in the files they all show by a square metre basis. That's in fact how Bob van Hees did the adjustment, well the adjustments were done on a per square metre. That actually shows in the FOI notes, by square metre. You don't do it that way?-No I don't and I don't believe he did either. He may have noted it down as part of the calculations that he was doing but he hasn't valued it that way I'm sure and I don't value it that way."

[28] At first blush, the proposition put by Mr Cowen, that a square metre basis has been used to value relevant properties, appears compelling. However, that situation only arises when one undertakes the rather complex mathematical formula, together with a rounding exercise, as Mr Cowen put to Mr McGarry above. The situation is somewhat clearer if one undertakes a simple mathematical equation for each of the five properties listed for relativity purposes in Exhibit 20. Without doubt, the simplest way of ascertaining what the dollar rate per square metre would be for any particular lot of land is to divide the valuation of the land by the actual area of that land. When this exercise is undertaken, the following rates per square metre emerge for the respective properties as at 2006:

16 Derby Street - \$948.61 per m<sup>2</sup>  
20 Derby Street - \$965.82 per m<sup>2</sup>  
26 Derby Street - \$968.99 per m<sup>2</sup>  
45 Rosecliffe Street - \$1154.83 per m<sup>2</sup>  
49 Rosecliffe Street - \$1025.39 per m<sup>2</sup>

[29] Clearly, when the above actual rates per square metre for each relativity block are taken into account, the respondent has not valued those properties, in my view, using a rate per square metre. I accept Mr McGarry's evidence in this regard.

[30] Unfortunately, the above exercise shows the folly which can follow in an analysis of valuation methodology. I am in no doubt that Mr Cowen, firm in the belief that the respondent is 'out to get him', has used a more complex mathematical formula to support his view that the blocks have been valued on a square metre basis, rather than the more appropriate, straight forward mathematical calculation.

[31] I will leave further analysis of Mr McGarry's sales evidence until after I have detailed the sales evidence of the appellants.

### **The Appellants sales Evidence**

[32] As regards his sales evidence, it is clear that Mr Cowen has put a significant amount of time and effort into preparing his material for the Court. I should add that the respondent, in reply

submissions, contends that Mr Cowen's written submissions should not be considered in full as they contain a large amount of fresh 'evidence'. I accept Mr Isdale's submissions in this regard on behalf of the respondent. However, that said, the thrust of Mr Cowen's submissions, absent the new 'evidence', are clear to me. Further, having read the entirety of Mr Cowen's submissions, including the new 'evidence', I can say that even with that evidence, my conclusions in this matter would not have altered.

[33] The appellants provided a significant amount of material to the Court, not only by way of written material, chiefly contained within Exhibits 2 and 3, but also by way of very extensive evidence in chief by Mr Cowen. Although Mr Cowen's sales evidence was extensive, it is perhaps best summarised by reference to pages 4 to 6 of his Exhibit 2, which is as follows:

**“RELEVANT SALES DATA: INTERPRETATION**

The closest riverside streets to Derby Street are Rosecliffe Street (further upstream) and Fraser Terrace (adjoining downstream) which both have similar elevations and aspect to Derby Street. Other nearby riverside streets with similar elevations and aspects are Borva Street (much further upstream) and Dudley Street (much further downstream). A review of ALL property sales in these five streets indicates there were some 65 sales with contract prices in excess of \$600,000, (Refer Attachment 1). Of those 65 sales there were only 10 sales in the two years leading up to the valuation date of 1 October 2006, (Refer Attachment 2). An analysis of these specific sales by street is provided below together with other sales outside that period that have possible relevance:

**DERBY STREET, Highgate Hill**

There were no sales with contract prices in excess of \$600,000 in Derby Street in the two years leading up to the valuation date of 1 October 2006.

Prior to the valuation period in question, the most relevant sale was 26 Derby Street (1032 sm) was a house next door to 20 Derby Street that sold on 21-06-2003 for \$1,150,000 (although it is probable the price paid was higher than would have been otherwise expected due to the purpose of the acquisition etc).

Subsequent to the 1 October valuation date, the only sale of any possible relevance is the most impressive house at 1 Derby Street (846 sm) for \$1,300,000 (05-06-2007) which has framed river views (but is not a direct riverfront property as it borders parkland that in earlier years had easy river access. It is highlighted that the house in question is widely regarded as being of considerable architectural merit and this would have accounted for a very significant proportion of the sale price.

**FRASER TERRACE, Highgate Hill**

Fraser Terrace is yet to have a sale with a contract price in excess of \$600,000.

**DUDLEY STREET, Highgate Hill**

There were three sales with contract prices in excess of \$600,000 in Dudley Street in the two years leading up to the valuation date of 1 October 2006.

Two of the sales related to a large multi-unit property of 14 units (10 x 2 brm and 4 x 1 brm) at 5 Dudley Street (1371 sm) for \$3,000,000 (22-9-2002) and \$3,500,000 (18-7-2006). I understand part of the 17% increase in price over the 10 month period is explained by a "spruce-up".

The other sale was a non-riverfront house at 18 Dudley Street (546 sm) that sold for \$640,000 (10-06-2005).

**ROSECLIFFE STREET, Part Dutton Park/Part Highgate Hill**

There were four sales with contract prices in excess of \$600,000 in Rosecliffe Street in the two years leading up to the valuation date of 1 October 2006.

21 Rosecliffe Street (1871 sm) was vacant land and sold for \$2,035,760 (16-12-2005). **As this is one of only two lightly developed properties of the 10 recorded sales in the two years leading up to the valuation date of 1 October 2006 it is highlighted that this land was sold for \$2,040,000 (17-01-2003), a decrease in actual sales value over a 23 month period of which the bulk was in the valuation period in question.** A riverfront strata title unit at 5/11 Rosecliffe Street sold for \$680,000 (21-07-2006). It was noted that this same unit was previously sold for \$575,000 (27-8-2003) equating to an **annual increase of just 6% over the 35 months with the second sale date being prior to and close to the actual valuation date of 1 October 2006.** This relatively static price trend over the two years leading up to the valuation date of 1 October 2006 is also consistent with the sale of other units, (eg. 1/9 Rosecliffe Street sold for \$325,000 (29-03-2003) and over some three years later for \$387,000 (11-09-2006), an annual increase of just 5%.

Multi unit (i.e. three large and purpose built flats) at 43 Rosecliffe Street (759 m<sup>2</sup>) sold for \$1,250,000 (03-09-2006).

The other sale was a non-riverfront house at 42 Rosecliffe Street (1012 m<sup>2</sup>) which sold for \$990,000 (13-03-2006).

### **BORVA STREET, Dutton Park**

There were three sales with contract prices in excess of \$600,000 in Borva Street in the two years leading up to the valuation date of 1 October 2006.

23 Borva Street (1169 sm) was vacant land and sold for \$1,400,000 (22-05-2006). Although vacant, it's landscaped terraces etc remain. Due to the circumstances surrounding this sale (relationship of buyer and seller together with the purpose of acquisition) it would be considered a "tainted sale".

9 Borva Street (1115 sm) was a sale of a post 1946 house with recent and very extensive landscaping and riverside improvements, (including substantial slipway and pontoon), for \$1,460,000 (18-02-06). Considered very vastly superior to 20 Derby Street.

The other sale was a non-riverfront house at 2 Borva Street (845 sm) which sold for \$795,000 (17-09-2005).

### **MEDIAN HOUSE PRICE MOVEMENTS**

The sales data analysed above included the adjacent and nearby riverside streets to Derby Street, Highgate Hill and included:

Fraser Terrace, Highgate Hill

Rosecliffe Street, part Dutton Park and part Highgate Hill

Borva Street, Dutton Park

Dudley Street, Highgate Hill

It is noted that the movement of Median House Prices from 2003 to 2006 varied significantly between suburbs and that Highgate Hill had the lowest increase of all the surrounding suburbs. Obviously **comparisons of 20 Derby Street with sales outside of Highgate Hill warrant very careful consideration.** Specifically, the increases for suburbs nearby to Highgate Hill bordered by the Brisbane River were:

<b>Highgate Hill</b>	<b>3%</b>
Dutton Park	33%
West End	18%
Fairfield	24%
Yeronga	24%

**The 3% movement for Highgate Hill appears consistent with the Highgate Hill riverfront sales analysed above.**

## CONCLUSION BASED ON ALL RELEVANT SALES DATA

A review of ALL nearby riverside sales of similar elevations and aspect to 20 Derby Street (both upstream and downstream) does not support an unimproved valuation of 20 Derby Street of \$1,300,000 at 1 October 2006. **The ONLY sale of vacant land (excluding the “tainted sale”) provides very strong evidence that the actual sale price for vacant land in nearby riverside sales of similar elevations and aspect has not increased at all for the majority of the two years leading up to the valuation date of 1 October 2006.** None of the other actual sales data is consistent with this evidence and indeed the two sales relating to 5/11 Rosecliffe Street give added support for such evidence. It is therefore considered that the unimproved value of 20 Derby Street did not significantly increase between 1 October 2004 and 1 October 2006.

It is also highlighted that the for 2006 calendar year there were only two house sales in excess of a \$1,000,000 in the whole of Highgate Hill (source RP Data).

Despite very exhaustive enquiries I have been unable to establish that the unimproved value of \$754,500 at 1 October 2004 is incorrect so I am aware of no reasons or justification as to why the unimproved as at 1 October 2006 should not remain at the unimproved value of \$754,000 for 1 October 2004 as advised by the DNR&W 19 April 2006.

The official DNR&W explanation of how valuations are calculated states:

“The unimproved value is calculated by deducting the added value of any improvements from the sale price. This figure is then compared to determine the market movement in overall land values.” In regard to 20 Derby Street there are no sales within the period 1 October 2004 to 1 October 2006 that support the unimproved valuation of \$1,300,000. **Given the paucity of historical sales data that is comparable for the valuation period in question, it is incomprehensible that a “market movement” of 72% as applied to 20 Derby Street could be substantiated.**

Based on actual sales data the \$1,300,000 valuation of 20 Derby Street as at 1 October 2006 is certainly not reflective of the market value at that date. Indeed there seems little support for increasing the 1 October 2004 valuation. Even the quantum of the considerably lower increases applied to the immediate neighbouring properties to 20 Derby Street appear inflated in the circumstances.”

[34] Despite other criticisms that may be made of Mr Cowen and the manner in which he presented his case, in my view he deserves some commendation for the detailed manner in which he has approached what he believes to be relevant sales within his area. However, in general terms Mr Cowen’s sales analysis suffers from the difficulties which many lay appellants who represent themselves come across when they attempt to present valuation evidence to the Court.

[35] In his valuation report, Exhibit 12, Mr McGarry, at attachment I, compiled a detailed response to all of the statements made by Mr Cowen in his Exhibit 2. Mr McGarry’s response document made specific reference to pages 4, 5 and 6 of Mr Cowen’s Exhibit 2 relating to Mr Cowen’s sales evidence. Again, as was the case with Mr Cowen’s sales evidence, it is best to let Mr McGarry’s response evidence speak for itself. The relevant parts of attachment I to Exhibit 12 are set out at pages 6 to 8 of Mr McGarry’s response in Exhibit 12 in the following terms:

## **“RELEVANT SALES DATA: INTERPRETATION**

### **Page 4**

The statements made by Mr Cowen cannot be accepted without clarification.

The reference to \$600,000 as a benchmark is irrelevant as many of the sales he relies upon are not riverside properties.

Attachment 2 supplied by Mr Cowen confirms that larger lots (over 1000 m<sup>2</sup>) with riverfront access sold for in excess of \$1,000,000 during the relevant valuation period. The table above confirms this statement. 18 Dudley St, 42 Rosecliffe St and 2 Borva St sales are not riverside properties; hence have no direct access to the Brisbane River. 5/11 Rosecliffe St is a home unit.

21 Rosecliffe St. was purchased by a developer in order to build units (Sold 17/1/2003 Possession: 26/9/2003). This company was wound up due to insolvency in November 2005 by order of the Supreme Court. The property was sold by third party on 16/12/2005 for \$1,850,000 plus GST (Total: \$2,035,760). This sale is not comparable as it was purchased by both purchasers to build a multi unit complex, and the sale in December 2005 was under forced circumstances.

Use of land to be used for multi unit has not been considered by me as a guide to value of the subject in view of the fact that all the sales used are on land that will be used for single unit residential purposes.

The statement made that “Fraser Terrace is yet to have a sale in excess of \$600,000” is true. However, there have been no sales of land in this Street since 1998. Some home units have sold.

The property at 1 Derby St. is on 846 m<sup>2</sup> allotment that has a drainage easement (approximately 145 m<sup>2</sup>) through the middle of the lot. The allotment is not a riverside lot, and is severely restricted with steep banks on either side of the easement, and does not attract prevailing breezes. The unimproved valuation in 2006 was \$660,000. I would seriously question whether this land ever had river frontage as the nearest boundary to the river is over 19 metres in elevation, and according to the Council’s Bimap program, the highest flood level was some 30 metres from the closest boundary of 1 Derby St.

### **Page 5**

I do not agree with most of the statements made on this page. I make the following comments:

Use of non-riverfront land is not preferred evidence when sales of riverside properties exist.

23 Borva St sale is considered a “tainted” sale by Mr Cowen given what he refers to as “relationship of buyer and seller together with the purpose of acquisition”. Departmental records show that the purchaser and buyer are not related parties. I have interviewed Mr Triscott, husband of the purchaser of this property, and the information he supplied confirmed that the purchaser, whilst owner of the adjoining property, did not purchase without advice from local property consultants, and was fully aware of the local market, and confirmed that in the purchaser’s view, that the price paid was fair and reasonable in their view. The land is to be used for residential use, specifically as additional land beside their home. As such, whilst an adjoining owner purchase, this sale is not “tainted” in my view, and given other sales support the purchaser’s view, this sales is considered acceptable in my view to determine the valuation of the subject property.

Whilst the Borva Street properties have had some benching and 9 Borva Street has a pontoon, the improvements were considered in arriving at the applied valuation of \$1,250,000 on each of these lots.

I don’t consider that Median house price movements are relevant to the specific valuation placed on the subject property.

### **Conclusion Based On All Relevant Sales Data**

#### **Page 6 Paragraph 1**

I strongly disagree with this view. The valuation report demonstrates adequate sales evidence to support a valuation of \$1,300,000. Use of improved home unit sales to support the valuation of a large riverfront allotment is not a method of valuation I would consider appropriate when valuing large riverfront land.

**Page 6 Paragraph 2**

I submit this data is not relevant. I note Departmental records show three sales of single unit residential properties in Highgate Hill in 2006 over \$1 million.

**Page 6 Paragraph 3**

I believe that the reduction in the valuation on 2004 from \$950,000 to \$754,500 related to existence of a combine sewer and the associated obligation to maintain the sewer.

**Page 6 Paragraph 4**

I refer to the highlighted section and submit that there are sufficient sales, on a like for like basis, to confirm the valuation placed on the subject of \$1,300,000 is adequately supported by the sales evidence.

**Page 6 Paragraph 5**

I disagree with this statement. I note that the valuation of the subject property in 2003 was \$910,000 and reduced to \$790,000 yet Mr Cowen is claiming that the 2006 valuation should be less than the discounted 2003 valuation. The information available to me suggests that a combine sewer did not exist after it was “broken” in early 2001 by the sub-divider of 18 Derby Street and it was donated to the Brisbane City Council in line with the development approval on or about April 2001. It is my belief that the large discounts provided were based on the issues associated with the existence of a combine sewer in 2003 and 2004.”

**Analysis of Sales Evidence**

- [36] In my view, two of the sales referred to by Mr McGarry warrant particular attention. These are sale 2, 23 Borva Street, and sale 3, 43 Rosecliffe Street. I will deal first with sale 2, 23 Borva Street.
- [37] Quite correctly in my view, Mr Cowen has raised issue with the proper applicability of sale 2, arguing that such sale should be treated as a tainted sale as 23 Borva Street was a sale involving a purchase by an adjoining owner. This issue is dealt with in a number of areas of Mr Cowen’s written material as well as in oral evidence.<sup>21</sup> I note in particular the cross-examination of Mr McGarry by Mr Cowen at transcript page 190. The evidence in this regard related to the manner of investigation conducted by Mr McGarry in order for him to ascertain whether or not the 23 Borva Street sale should be treated as a tainted sale. Mr Cowen did quite an excellent job of putting to Mr McGarry in cross-examination relevant questions adopted from the Guidelines for Analysis of Urban Sales and Urban Valuations. The answers given by Mr McGarry at first led me to believe that Mr McGarry had not undertaken all of the appropriate inquiries regarding sale 2, and that accordingly such sale should be disregarded. However, the matter was clarified when Mr Cowen drew Mr McGarry’s attention to Mr McGarry’s interview notes regarding his investigations into the circumstances surrounding Mr McGarry’s sale 2. It is noteworthy that, after viewing the notes of Mr McGarry, Mr Cowen shows not to have those notes tendered in evidence.

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<sup>21</sup> See, for instance, T.p 126, 172 and 188 – 191.

However, Mr Isdale for the respondent required the notes to be tendered and they subsequently became Exhibit 28.

[38] Exhibit 28 sets out in some detail the discussions that Mr McGarry had on 25 November 2007 with the husband of the purchaser of 23 Borva Street. In my view, Exhibit 28 clearly shows that Mr McGarry has properly undertaken his duties and responsibilities as a registered valuer in ascertaining whether or not his sale 2 should be treated as a tainted sale. I am satisfied that, in view of the inquiries undertaken by Mr McGarry, the purchaser of sale 2, although an adjoining owner, made relevant inquiries as to the appropriate price that the market would pay for 23 Borva Street, and a willing vendor was prepared to sell the property for an appropriate sale price. In my view, in those circumstances it is appropriate to have regard to the sale of 23 Borva Street.

[39] I now turn to sale 3, 43 Rosecliffe Street, Highgate Hill. Like sale 2, at first glimpse sale 3 does not appear to be relevant to an assessment of the unimproved value of the subject land. However, I accept Mr McGarry's assessment of this sale. Put simply, at the time of purchase of 43 Rosecliffe Street on 3 September 2005 the purchaser was purchasing an improved block containing an old block of flats. I accept the evidence that the purchaser purchased 43 Rosecliffe Street as an investment, with a clear view that the flats located on 43 Rosecliffe Street would require demolition and that the only building permission that would be given by the Brisbane City Council for a new building on 43 Rosecliffe Street was a single residence. The purchaser's clear intent in acquiring the land as a single residential site is highlighted by the fact that the Brisbane City Council at first refused to give demolition approval for the flats, but that such approval was subsequently obtained after an appeal to the Planning and Environment Court.<sup>22</sup>

[40] Although it is clearly true that the purchaser of 43 Rosecliffe Street, as an investor, continues to derive some benefit from the existing flats located on the land, even if that benefit is to be accepted as only returning sufficient income to cover holding costs, nevertheless I am satisfied that the clear intention of the purchaser in purchasing 43 Rosecliffe Street was to obtain a vacant residential housing block and that, accordingly, it is appropriate for Mr McGarry to have regard to such sale for the purposes of arriving at a valuation for the subject land. Whilst in my view some slight reduction additional to that calculated by Mr McGarry might properly be made to the purchase price in order to take into account the continuing benefit that the purchaser is able to derive from the income from the flats pending demolition, in my view any such discount is minimal at best and not apt to disturb the balance of Mr McGarry's valuation methodology.

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<sup>22</sup> See Ex. 12 p. 11.

[41] As regards Mr McGarry's response to Mr Cowen's sales evidence in Exhibit 2, looked at in its totality I prefer the approach taken by Mr McGarry to that made by Mr Cowen.

[42] As regards Mr Cowen's evidence as to the particular topographical and other features, including vegetation of the subject property, I tend to prefer Mr Cowen's evidence over that of Mr McGarry. My comments in this regard do not relate to the availability of sewerage lines to the subject property which I have separately dealt with. Although it is my view that, generally speaking, Mr Cowen's evidence regarding specific attributes and disabilities of the subject block are to be preferred to those of Mr McGarry, none of those issues are matters of substance which are apt to single out the subject property as being significantly different to other riverside allotments in the vicinity. For instance, if Mr Cowen's evidence as to the level of noise which emanates from the university across the river is to be accepted, it is also my view that any such noise would have a similar impact on surrounding properties. The same applies, in my view, with respect to the operation of the Brisbane City Council's CityCat, as well as issues relating to the blocking of river views by riverside vegetation.

### **Summary**

[43] In summary, I accept the valuation evidence of Mr McGarry. Unfortunately, the appellant's material does not adequately address valuation methodology. Whilst some points made by the appellants are arguable, on the basis of the evidence in its entirety those points are not sufficient to disturb the presumption of correctness.<sup>23</sup>

[44] Having considered all of the evidence before me, and applying the relevant authorities, I am not satisfied that the valuation of \$1,300,000 involves a significant error of fact or was arrived at by a fundamentally flawed method.

### **Conclusion**

[45] For the reasons set out above, I have reached the conclusion that the appellants have failed to establish that the respondent's assessment of the unimproved value should be reduced to \$852,585, or in any amount at all. It follows that the appeal must be dismissed. The valuation of the subject land is accordingly affirmed in the sum of \$1,300,000 as at 1 October 2006.

### **Order**

The appeal is dismissed.

**PA SMITH**

**MEMBER OF THE LAND COURT**

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<sup>23</sup> See paragraphs 9 and 10 above.