HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

ON APPEAL FROM THE COURT OF APPEAL OF THE SUPREME COURT OF VICTORIA

BETWEEN: VALUER-GENERAL VICTORIA
Appellant

and

WSTI PROPERTIES 490 SKR PTY LTD
Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

1. This outline of oral submissions is in a form suitable for publication on the internet.

Part II: Outline of propositions to be advanced by the appellant in oral argument

2. **The Court of Appeal erred (AS [23]):** The Court of Appeal's interpretation (AJ [143]-[147], **CAB 92-93**) of the relevant phrase in the definition of "improvements" (**JBA 17**), which it adopted without any submissions on the matter and without notice to the parties, is erroneous. Upon a proper interpretation, whether the effect of the work done or material used "increases the value of the land" is to be determined as at the valuation date, not as at the time when the work was done or material used.

3. **Text (AS [24]-[28]):** The interpretation below is inconsistent with the statutory text. It wrongly treats the present tense ("increases") as referring to the past; bifurcates the clause, reading language that refers only to one point in time – the valuation date – as if it referred to two different times; and conflates words concerning the effect of the work and material with the work and material *per se*.

4. **Statutory context (AS [29]-[36]):** Other aspects of the Act stand against the adopted interpretation, namely the definitions of "capital improved value" and "site value" (**JBA 14, 22**), s 2(2) (**JBA 25**) and ss 13DF and 13L (**JBA 61, 76)**.

5. **Legislative history (AS [37]-[47], Reply [20])**: The legislative history and extrinsic materials are powerfully against the Court of Appeal's interpretation. They make clear that the statutory phrase is a compound one, relating only to the time of valuation; that the insertion of the words "increases the value of the land" was not intended to alter the operation of the definition; and that (contra RS [36]) any surplusage of wording on the appellant's interpretation is fully explained (**JBA 242, 561, 277, 282, 549, 272, 545-547, 552-558, 559**).

6. **Authority (AS [48]-[58]):** The impugned interpretation is in tension with previous decisions of this Court concerning cognate legislation. Those decisions identify improvements as directed to the present enhancement of value; and, in treating the notion of exhaustion of benefit as the inverse of an increase in value, are inconsistent with bifurcating the statutory phrase as the Court of Appeal did: *Morrison* (**JBA 345-6**), *Campbell* (**JBA 317-8**), *Kiddle* (**JBA 323-4**), *Brisbane City Council* (**JBA 293**).

7. **Other considerations (AS [59])**:

   (a) The Court of Appeal's interpretation is **unworkable**. Determining whether works increased land value historically, when undertaken, would frequently be impossible or unreliable; would be administratively onerous (especially in the context of annual municipal valuations); and, in respect of structures resulting from works undertaken at different points over time, is not a viable enquiry.

   (b) The interpretation would also produce anomalous and irrational **outcomes**. As the present matter exemplifies, "worsements" would stand to be treated as improvements, and hence disregarded, thereby distorting and overstating the resultant site value. Conversely, structures that did not add value when created, but later came to do so, could not be improvements.

8. **Disposition:** At the valuation dates, "Landene" did not increase land value: the heritage overlay was of no effect in Landene's absence (PJ [95.2], **CAB 25**), and it was "obvious" and "self-evident" (AJ [110], **CAB 85**) that the Land, without any

effect of the overlay, was worth more. As such, Landene was not an improvement. Accordingly, site value equated to capital improved value, which had been assessed at $7.2m, and thus the returned site value of $6.2m was not too high.

9. **Respondent's disposition contentions (Reply [3]-[12]):** There is no substance in the respondent's contentions (RS [23], [52]-[53]) that the Court of Appeal and Tribunal each found that, at the valuation dates, Landene increased the Land's value. The Court of Appeal made no such finding, as is plain from the paragraphs on which the respondent relies (AJ [147], [155], **CAB 93, 94**). As to the Tribunal, the passages of its reasons cited by the respondent (PJ [136]-[138], [153], [162], **CAB 32, 37, 38**) do not stand following the Court of Appeal's judgment (with the result that the respondent needed a notice of contention). Those passages depended upon the Tribunal's erroneous analysis that, to assess whether Landene increased land value, it was necessary to first determine the highest and best use with Landene present, and to then make the assessment on the basis of that use. That approach injected the heritage overlay as operative whether or not Landene was present (PJ [162], **CAB 38**). The Court of Appeal rejected all of this (AJ [158], **CAB 94** and **CAB 61** ground 1). ***Further***, and in any event, the passages are not on point, as they are directed to the third stage inquiry (determination of value), as distinct from the earlier inquiry, at the first step, as to identification of improvements. The passages are also inconsistent with other parts of the Tribunal's reasons (PJ [151], [163], **CAB 36, 38**).

Dated: 6 March 2025

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David Batt

Senior Counsel for the Appellant