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 SUBMISSIONS

Part I: Certification

1 These submissions are in a form suitable for publication on the internet.

Part II: Issues

2 This appeal concerns the proper construction of the definition of 'improvements" in s 2(1) of the *Valuation of Land Act 1960* (Vic) (**VLA**) and, specifically, the meaning of the words "but in so far only as the effect of the work done or material used increases the value of the land and the benefit is unexhausted at the time of the valuation".

3 The Court of Appeal of Victoria (**COA**) held that whether there has been the requisite increase in the value of the land is to be assessed as at the time the work was done or material used, which in the present context was 1897. The appellant contends, in contrast, that the assessment is to be made as at the valuation date.

Part III: Section 78B notice

4 A notice under s 78B of the *Judiciary Act 1903* (Cth) is not required.

Part IV: Citations

5 The primary decision is *WSTI Properties 490 SKR Pty Ltd v Valuer-General Victoria (Red Dot) (Land Valuations)* [2023] VCAT 734 (**PJ**). The judgment appealed from is *Valuer-General Victoria v WSTI Properties 490 SKR Pty Ltd* [2024] VSCA 157 (**AJ**).

Part V: Facts

6 The appeal concerns the land at 490 St Kilda Road, Melbourne. On the land is a building, known as "Landene", which was constructed in 1897 (AJ[1], CAB 66).

7 The following unchallenged findings and facts regarding the land are presently relevant:

(a) the land is subject to a site-specific heritage overlay which prevents the demolition of Landene without a permit (PJ[6.4], CAB 10-11; AJ[2], CAB 66);

(b) the heritage overlay affecting the land owes its existence solely to the presence of Landene and in the absence of that building any restrictions imposed by the overlay would be irrelevant: (PJ[95.2], CAB 25);

(c) according to the expert evidence adduced by the respondent, without Landene and the associated heritage overlay restrictions, the site value of the land as at 1 January 2020 and 1 January 2021 would likely have been $15.69 million (PJ[157], CAB 37);[1] and

(d) the capital improved value of the land as at those dates was assessed at $7.2 million (AJ[33], [40], CAB 72) and the market value of the land as at those dates with the building in situ was $8.25 million (PJ[165], CAB 38).

8 The land was valued under the VLA as at 1 January 2020 and 1 January 2021, with a returned site value of $6.2 million (AJ[4], CAB 66).

9 The respondent, as the owner of the land, objected to the two site valuations, on the basis that they were too high (PJ[12], [18], CAB 11-12). The valuer

[1] The expert evidence adduced by the appellant was that the value of the land, on the hypothesis that the current building and works were absent, was $12.825 million (PJ[170], [174], CAB 38-39).

disallowed[2] the objections and the respondent applied to the Tribunal for review (PJ[14], [20], CAB 11-12).

10 The Tribunal set aside the valuer's decisions, allowed the objections and reduced the site value to $2.925 million (AJ[8], CAB 67). The appellant's appeal from those orders was dismissed (AJ[167], CAB 95).

11 The appeal turns on whether Landene was an improvement for the purpose of ascertaining site value under the VLA. If, as the appellant contends, it was not, then:

(a) Landene forms part of the land to be valued, such that the site value of the land is equal to its capital improved value, as defined in s 2(1) of the VLA, namely $7.2 million; and

(b) accordingly, the returned site valuations of $6.2 million were not too high, the respondent's objections ought to have been rejected, and this appeal should be allowed.

Part VI: Argument

The statutory definitions

12 "Site value" is defined in s 2(1) of the VLA as follows:

> "site value" of land, means the sum which the land, if it were held for an estate in fee simple unencumbered by any lease, mortgage or other charge, might in ordinary circumstances be expected to realise at the time of the valuation if offered for sale on such reasonable terms and conditions as a genuine seller might be expected to require, and assuming that the improvements (if any) had not been made.

13 The definition of "improvements" in s 2(1) relevantly provides:

> "improvements", for the purpose of ascertaining the site value of land, means all work actually done or material used on and for the benefit of the land, but in so far only as the effect of the work done or material used increases the value of the land and the benefit is unexhausted at the time of the valuation …

[2] In respect of the 2021 valuation, the valuer was deemed to have disallowed the objection, pursuant to s 22(2) of the VLA (PJ[19]-[20], CAB 12).

The decision below

14 Before the COA, the appellant contended that Landene was not an improvement because — as was "obvious" and "self-evident" (AJ[110], CAB 85) — the value of the land with the building was less than the value of the land without the building (AJ[95], CAB 82).

15 The respondent, in contrast, contended that the relevant question is "whether the improvements enhance the land's value compared with its natural state", and that such enhancement can be satisfied so long as "a purchaser has a use for the 'improvements'" (AJ[102], CAB 84; emphasis in original). In other words, the necessary increase in value does not require an actual increase in monetary value, but rather that the putative improvement provide some utility (i.e. a use) to a purchaser. Accordingly, so the argument went, Landene was an improvement because it "is a substantial and functional heritage building in excellent repair and condition … [and] has value to potential purchasers, including for beneficial occupation and long-term capital growth" (AJ[105], CAB 84).

16 The COA accepted neither approach.

17 The COA accepted the proposition — advanced by both parties (AJ[95], CAB 82; AJ[102], CAB 84) — that the test requires a "comparison to the hypothetical unimproved 'natural' state of the Land" (AJ[147], CAB 93). The COA also accepted the proposition — advanced only by the appellant (AJ[95], CAB 82) — that the test requires an increase in value in the ordinary financial sense, rather than the utility-value abstraction for which the respondent contended.[3]

18 However, the COA proceeded to hold — albeit that neither party had advanced any such submission — that whether there is the requisite increase in value is to be assessed as at the date the work was done or materials used (AJ[145]-[146], CAB 92-93).

19 According to the COA, that conclusion followed from the fact that the definition of improvements stipulates two qualifications which refer to "two points in time"

[3] So much is apparent from the COA's bifurcation of the requirements of an increase in value and an unexhausted benefit, and its holding that the latter is conceptually distinct from the former (AJ[146], CAB 93).

(AJ[145], CAB 92). The first is "the time the work is actually done or the material is used", in respect of which the qualification imposed is that "at that time, the work or material must increase the value of the land" (AJ[146], CAB 93). The second point in time is "the time of valuation", when the other qualification, that the benefit must be "unexhausted", applies (AJ[146], CAB 93).

20 The COA made clear that, on its conception, the two qualifications are distinct, such that the requirement of an unexhausted benefit at the time of the valuation "is not a requirement that the improvement increase the market value of the land" at that time (AJ[146], CAB 93). That distinction was essential for the COA's disposition of the matter, given the evidence that Landene did not increase the value of the land at the time of the valuation.

21 Whether Landene was an improvement as defined was thus reduced to two distinct questions, both of which the COA answered in the affirmative. Specifically, Landene was held to be an improvement because (a) it increased the value of the land at the time of construction in 1897 and (b) its benefit was unexhausted at the time of the valuations, for the stated reason that it "continued to serve a variety of economic purposes" (AJ[147], CAB 93).

22 On that basis, the Court dismissed the appeal (AJ[155], [158], [167], CAB 94-95).

The COA erred

23 With respect, the COA erred in its construction of the relevant part of the VLA's definition of "improvements". Upon a proper construction, 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 date the work was done or material used, whenever that might have been.

<u>The COA's construction is at odds with the statutory text</u>

24 The COA's construction is inconsistent with the ordinary and natural meaning of the statutory text.

25 ***First***, in construing the definition as requiring an increase in value at the time the work was done, the COA effectively substituted the present tense "*increases* the

value of the land" with the past tense "*increased* the value of the land". It reached that outcome by use of the temporally ambiguous phrase "must increase" (AJ[146], CAB 93).

26 ***Secondly***, the COA's construction severs the syntactic link between the predicate "increases the value of land" and its temporal modifier "at the time of the valuation". The approach of the COA implicitly interposes the words "at the time the work was done or material used" after the word "land" into the unpunctuated clause "but in so far only as the effect of the work done or material used increases the value of the land and the benefit is unexhausted at the time of the valuation".

27 ***Thirdly***, in stating that the provision "refers to the time the work is actually done or the material is used [and] … imposes the qualification that at that time, the work or material must increase the value of the land" (at AJ[146], CAB 93), the COA conflated the words "all work actually done or material used" with the subsequent words "the *effect* of the work done or material used". In doing so, the COA drew a false equivalence between the legislature's distinct references to the doing of the work, which is fixed in time, and the *effect* of that work, which persists through time.

28 Had the legislature intended the meaning adopted by the COA, language clearly expressing it was readily available.

<u>The COA's construction overlooks relevant context</u>

29 The COA's construction does not sit with the broader statutory context.

30 ***First***, the COA's construction subverts the structural relationship between capital improved value and site value under the VLA. The former phrase is defined in s 2(1) of the VLA as follows:

> "capital improved value" means the sum which land, if it were held for an estate in fee simple unencumbered by any lease, mortgage or other charge, might be expected to realize at the time of valuation if offered for sale on any reasonable terms and conditions which a genuine seller might in ordinary circumstances be expected to require

31 The only presently relevant difference between the definitions of capital improved value and site value is that the latter includes an assumption "that the improvements (if any) had not been made". Thus, in its essence, site value is the

value of land without its improvements and capital improved value is the value of land with its improvements. On any sensible approach, it must be that the improvements (if any) enhance value at the time of valuation. So much is emphasised by the defined term being "capital *improved value*".[4] However, the COA's construction contemplates that improvements may have no effect on or may reduce present value. Thus, on the COA's approach, the site value of land with improvements may be equal to or greater than its capital improved value. Such an outcome is anomalous, and incompatible with the design of the VLA so far as concerns capital improved value and site value.

32 ***Secondly***, and relatedly, s 2(2) of the VLA provides as follows:

> In estimating the value of improvements on any land for the purpose of ascertaining the site value of the land, the value of the improvements is the sum by which the improvements upon the land are estimated to increase its value if offered for sale on such reasonable terms and conditions as a genuine seller might in ordinary circumstances be expected to require.

33 The provision permits the value of improvements to be estimated by taking "the sum by which the improvements upon the land *are estimated to increase its value* if offered for sale …" (emphasis added). Consistently with the structural relationship between capital improved value and site value, the provision presupposes that improvements confer a present increase in value (cf AJ[152], [153], CAB 93-94).[5] This is uncontroversial on the construction advanced by the appellant, which entails that improvements definitionally confer a present increase in value.

34 However, on the COA's construction, s 2(2) proceeds from a false premise because — as in the present case — improvements may not confer any increase, and may cause a decrease, in the present value of land. Thus, on the COA's construction, the methodology established by s 2(2) stands to miscarry, and the explicit legislative understanding is invalidated.

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[4] Emphasis added. Recourse may be had to a defined term in the assessment of statutory context: see *SkyCity Adelaide Pty Ltd v Treasurer of South Australia* [2024] HCA 37; 419 ALR 361 at [32] (per curiam).

[5] See *ISPT Pty Ltd v City of Melbourne* [2007] VCAT 652 at [45] (Morris J).

35 ***Finally***, the appellant places reliance on ss 13DF and 13L, which permit the making of supplementary valuations in certain circumstances, including where:

(a) the destruction or removal of improvements materially decreases the value of the land (ss 13DF(2)(h) and 13L(2)(g));

(b) the erection or construction of improvements materially increases the value of the land (ss 13DF(2)(j) and 13L(2)(i)).

36 These provisions rest upon and convey a legislative premise that the removal of improvements stands to decrease land value, and their construction to increase it. However, if Landene is an improvement as the COA found, it is its removal that would materially increase the land's value, an outcome which ss 13DF(2) and 13L(2) do not contemplate. That outcome is not accounted for in the VLA because it cannot be reconciled with the legislature's evident conception of what constitutes an improvement.

The legislative history is at odds with the COA's construction

37 The COA's construction, and in particular its treatment as distinct of the words "increases the value of the land" and "the benefit is unexhausted", is inconsistent with the history of the VLA's definition of "improvements", to which the COA was not taken and did not advert. The legislative history makes plain that the two phrases were not intended to, and did not, import two distinct qualifications; they were, rather, a composite phrase.

38 The current land tax scheme was first introduced in Victoria by the *Land Tax Act 1910*, which taxed the owner of land by reference to unimproved value or unimproved capital value.[6] That concept, which was the precursor to site value, was defined in s 3 of the 1910 Act as the value of land "assuming that the improvements (if any) had not been made". The definition of improvements in the 1910 Act provided that work or material which otherwise met the statutory criteria was an improvement:

[6] See further *Port of Melbourne Corp v Melbourne City Council & Valuer General Victoria* (2015) 213 LGERA 152 at [132]ff (Emerton J, as her Honour then was).

> … in so far only as the effect of such work or material used is to increase the value of the land, and the benefit thereof is unexhausted at the time of the valuation …

39 In the second reading speech for the 1910 Bill, it was said "in this Bill we go directly to New Zealand" and that the Victorian parliament had "gone to New Zealand to get our land taxation scheme".[7] At that time, the scheme in New Zealand included the *Land and Income Assessment Act 1900* (NZ) and the *Government Valuation of Land Act Amendment Act 1900* (NZ).[8] Both defined improvements as relevantly being subject to the identical proviso as adopted in Victoria in 1910:[9]

> … in so far only as the effect of such work or material used is to increase the value of the land, and the benefit thereof is unexhausted at the time of valuation …

40 In turn, the definition of improvements in the New Zealand Acts of 1900 derived from earlier iterations in the *Land-Tax Act 1878* (NZ) and the *Land and Income Assessment Act 1891* (NZ). The 1891 Act (Sch A, s 1) defined improvements as follows:

> "Improvements" include houses and buildings, fencing, planting, draining of land, clearing from timber, scrub, or fern, laying down in grass or pasture, and any other improvements whatsoever, the benefit of which is unexhausted at the time of valuation.

41 The definition of improvements in s 2 of the 1878 Act was similar.[10] Those earlier provisions referred to benefit being unexhausted, but *not* to an increase in value.

42 The requirement that the effect of the work or material "is to increase the value of the land" was introduced in New Zealand by the two Acts of 1900. Importantly, the preface to the *Land and Income Assessment Bill 1900* stated that: "'Improvements' are redefined with a view of making the previous law clearer, *not with a view of any alteration*" (emphasis added). In other words, when the reference to an increase in value was introduced into the definition of

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[7] Victoria, *Parliamentary Debates*, Legislative Assembly, 29 November 1910 at 2718.

[8] That Act amended the *Government Valuation of Land Act 1896* (NZ).

[9] *Land and Income Assessment Act 1900* (NZ), s 3; *Government Valuation of Land Act Amendment Act 1900* (NZ), s 3.

[10] "Improvements mean houses and buildings, and include fencing, planting, draining of land, laying down in grass or pasture, and any other improvements the benefit of which is unexhausted at the time of valuation".

improvements, that effected no alteration to the law as it stood when the definition referred only to unexhausted benefit.

43 Accordingly, as a matter of legislative history, the premise of the COA's construction — that the definition comprises two qualifications which refer to "two points in time" (AJ[145]-[146], CAB 92-93) — is unsound.

44 Further, the explanatory memorandum to the *Government Valuation of Land Act 1896* (NZ) as amended in 1900 and 1903, dated 15 February 1905, makes clear that benefit exhaustion is *not* conceptually distinct from increased value, but is merely its inverse.[11] The point is explicit from an example provided:

> English grass may take well and improve by time on some farms, in which case it would be valued at full value. It may, however, on other lands, become choked with noxious weeds, or native grass may take its place, in which case it becomes more or less exhausted, and must be valued accordingly.[12]

45 The memorandum also makes clear that improvements require a present increase in value: "Improvements can only be valued *to the extent to which they increase the selling-value of the land*".[13] It goes on to explain:

> With regard to land which is known to have been in bush very many years ago but upon which there is no vestige of its former condition now apparent, it becomes a question for the valuer to determine as to whether the land would not sell *at the present day* at a higher price with the timber on it than it would without the timber …[14]

46 To similar effect, in the debates concerning the Victorian *Land Valuation Bill 1908*,[15] it was said of buildings that had been burnt that "they come under the heading of exhausted improvements, and their value has disappeared …".[16]

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[11] The document is contained in a paper presented to both Houses of the British Parliament in 1906: see Great Britain Colonial Office, *Australasia, Papers relative to the working of taxation of the unimproved value of land in New Zealand, New South Wales, and South Australia* (London: Darling & son, 1906) at 36.

[12] Ibid at 39, and see also at 40 in respect of an example of a drain.

[13] Ibid at 39 (emphasis in original).

[14] Ibid at 39-40 (emphasis added).

[15] The statutory definition in the *Land Tax Act 1910* was relevantly identical to that which was contained in the *Land Valuation Bill 1908*, the *Land Valuation Bill (No. 2) 1908* and the *Land Tax Bill 1909*, none of which were enacted. When the 1910 Bill passed, it was said that the 1910 Bill was the "same" as the 1909 Bill, the provisions of which were "practically a replica" of those contained in the earlier Bills: Victoria, *Parliamentary Debates*, Legislative Council, 16 December 1910 at 3369.

[16] Victoria, *Parliamentary Debates*, Legislative Assembly, 21 July 1908 at 235.

47 When regard is had to the above history, the COA's construction cannot be maintained.

The COA's construction is in tension with prior authority

48 The COA's construction is also in tension with prior authority. In particular, that is so as regards decisions of this Court in respect of the *Land Tax Assessment Act 1910* (Cth), whose provisions bore certain similarities to the VLA. Specifically, the concept of unimproved value was relevantly defined in s 3 of the Commonwealth Act as the value that the land would have "assuming that the improvements (if any) thereon or appertaining thereto … had not been made". Section 3 also defined value of improvements as meaning "the added value which the improvements give to the land at the date of valuation irrespective of the cost of the improvements".

49 Several themes emerge from the judgments of this Court.

50 ***First***, the term "exhausted" in the context of improvements is used in relation to value, and typically the inverse of an increase in value.

51 For example, in ***Morrison*** *v Federal Commissioner of Land Tax*, Griffith CJ said: "…the value of the improvements may, of course, increase from year to year, just as, in the case of some improvements, it may be *exhausted*".[17]

52 The Chief Justice adopted that same language shortly thereafter in *Campbell v Deputy Federal Commissioner of Land Tax*, describing a situation where the original value of an improvement "had disappeared or become *exhausted*".[18] And, in *Kiddle v Deputy Federal Commissioner of Land Tax*, when dealing with ascertaining the value of improvements, Knox CJ set out a valuation method

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[17] *Morrison v Federal Commissioner of Land Tax* (1914) 17 CLR 498 at 504 (Griffith CJ, Barton, Isaacs, Powers and Rich JJ agreeing) (emphasis added). It is of note that the COA appeared to overlook that aspect of the decision, instead relying (erroneously, it is submitted) on *Morrison* for the proposition that the value of improvements is constant (AJ[150], CAB 93).

[18] *Campbell v Deputy Federal Commissioner of Land Tax* (1915) 20 CLR 49 at 52 (Griffith CJ, Isaacs and Rich JJ agreeing) (emphasis added).

which included a deduction for "a proper allowance for depreciation or partial *exhaustion* of the improvements".[19]

53 Such observations, which are consistent with the legislative history set out above, were not mentioned by the COA and are incompatible with its bifurcation of the statutory phrase referring together to an increase in value and an unexhausted benefit.

54 ***Secondly***, in the context of the Commonwealth regime, this Court has said that improvements are directed to the present enhancement of the value of land[20] and, accordingly, that unimproved value and value of improvements "together … make up the improved value which represents the price which an actual purchaser in fee simple would give for the land".[21]

55 While the Commonwealth legislation and the VLA are not identical, including because the former does not contain a definition of improvements, the two are relevantly the same: both define unimproved value or site value as importing an assumption that improvements had not been made, and both address the value of improvements in a similar way.[22]

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[19] *Kiddle v Deputy Federal Commissioner of Land Tax* (1920) 27 CLR 316 at 320 (Knox CJ) (emphasis added).

[20] *Commissioner of Land Tax v Nathan* (1913) 16 CLR 654 at 662 (per curiam); *Morrison v Federal Commissioner of Land Tax* (1914) 17 CLR 498 at 503; *Campbell v Deputy Federal Commissioner of Land Tax* (1915) 20 CLR 49 at 52; *McGeoch v Federal Commissioner of Land Tax* (1929) 43 CLR 277 at 290 (Knox CJ and Dixon J).

[21] *Campbell v Deputy Federal Commissioner of Land Tax* (1915) 20 CLR 49 at 51; see also *Kiddle v Deputy Federal Commissioner of Land Tax* (1920) 27 CLR 316 at 319.

[22] While it is only the Commonwealth Act that refers to "the date of valuation" in its definition of value of improvements, it is plain that s 2(2) of the VLA, adverted to above, also speaks of the present value of improvements. That point is made express in the parliamentary debates precipitating the enactment of the *Land Tax Act 1910*: see Victoria, *Parliamentary Debates*, Legislative Assembly, 9 December 1910 at 3148-3149 ("The Bill does not take cognisance of the cost of improvements, but of the present actual value of the improvement").

56 It is also to be noted that courts in New South Wales[23] and Queensland[24] have held that improvements must add value to the land at the date of valuation in their respective statutory contexts.

57 ***Finally***, the decision of this Court in *Brisbane City Council v Valuer-General for the State of Queensland*,[25] concerning the *Valuation of Land Act 1944* (Qld), also supports the appellant's construction.[26] The putative improvement in issue was the existence of water which submerged lands that had been converted from grazing lands into a dam. Gibbs J, with whom the other members of the Court agreed, upheld and expressly agreed with the decision of the Land Appeal Court that the water was not an improvement.[27] The Land Appeal Court reached that conclusion, among other reasons, because the valuer gave a higher valuation to the land without the water "than if he had left the water there"; this, it was held, "leaves only one inference open and that is that he regarded such water as a detriment on the land".[28] In other words, the fact that the water effected a reduction to the present value of the land was determinative of the question of whether it was an improvement.

58 There is no reason to suppose that the inclusion of the statutory definition in Victoria was intended to give the VLA any different effect. Indeed, given the

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[23] *Trust Company of Australia Ltd v Valuer-General* (2007) 154 LGERA 437, [10(3)], [68] (Campbell JA, Beazley and Ipp JJA agreeing). The legislative regime, being the *Valuation of Land Act 1916* (NSW), did not contain a statutory definition of improvements. Nevertheless, the Court of Appeal held that the notion of an increase in value is an inherent part of the concept of an improvement: see at [24].

[24] *Surfers Paradise Resorts Hotel Pty Ltd v Department of National Resources and Water* (2007) 163 LGERA 14 at [9] (White J, Members Scott and Jones). The *Valuation of Land Act 1944* (Qld) provided at s 6 that improvements mean "in relation to land, improvements thereon or appertaining thereto, whether visible, invisible or intangible, and made or acquired by the owner or the owner's predecessor in title".

[25] (1978) 140 CLR 41.

[26] Section 12 of the Queensland Act contained definitions of unimproved value and value of improvements. Save for presently immaterial differences in terminology, the definitions were relevantly similar to those in the *Land Tax Assessment Act 1910* (Cth). Section 12 of the Queensland Act also contained a definition of improvements, but it did not refer to any requisite increase in value. As to these matters, see *Brisbane City Council v Valuer-General for the State of Queensland* (1978) 140 CLR 41 at 50.

[27] *Brisbane City Council v Valuer-General for the State of Queensland* (1978) 140 CLR 41 at 55 (Gibbs J, Stephen, Mason, Murphy and Aickin JJ agreeing).

[28] *Brisbane City Council v Valuer-General for the State of Queensland* (1978) 140 CLR 41 at 48.

textual indicia, context, and history, the statutory definition makes express what would otherwise have been inferred.

The COA's policy concern was misplaced

59 The COA held that its approach was the "only sensible one" because (AJ[154], CAB 94):

> It would be anomalous if an increase in the building bulk permissible within a zone (or other relaxation of planning controls) had the capacity to transform entire neighbourhoods of existing buildings into encumbrances (or 'worsements') overnight, despite the fact that they still facilitate substantial economic use of the lands in question.

60 With respect, this consideration is of little if any constructional moment. And the identification of improvements by reference to their present effect on value does not entail a requirement that the works *maximise* the achievable value of the land, but rather only that they *increase* the value of the land. As such, the spectre of an "overnight" transformation of buildings from improvements to "worsements" is misplaced. The question would remain whether the land with its existing buildings is less valuable than the land without those buildings.

61 *Trust Company of Australia Ltd v Valuer-General*[29] and *Surfers Paradise Resorts Hotel Pty Ltd v Department of National Resources and Water*[30] demonstrate the error in the COA's reasoning. In both cases, existing structures effected a present increase in the value of land compared with the land without those structures, and were thus improvements, notwithstanding that the existing structures did not maximise the development potential of the land in question.

The correct construction

62 The construction which should be adopted by this Court is that which was advanced by the appellant below. It may be stated briefly: work done or material used on and for the benefit of land will be improvements but in so far only as the effect of those works or that material increases the value of the land as at the valuation date. Accordingly, and in contrast to the conclusion reached below,

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[29] (2007) 154 LGERA 437.
[30] (2007) 163 LGERA 14.

work or material "which reduces rather than enhances [the land's] value is not an improvement".[31]

63 That construction conforms with the statutory text informed by its history and considered in context, and is consistent with decisions of this Court concerning similar valuation statutes.

Part VII: Orders sought

64 The appellant seeks the orders set out in the Notice of Appeal.

Part VIII: Estimate

65 The appellant estimates it will need under two hours for oral argument, including reply.

Dated: 20 December 2024

…… …… ……

David Batt
T: (03) 9225 8703
battdj@vicbar.com.au

Geoffrey Kozminsky
T: (03) 9225 7389
gkozminsky@vicbar.com.au

Jacob Waller
T: (03) 9225 8558
jacob.waller@vicbar.com.au

[31] *Brisbane City Council v Valuer-General for the State of Queensland* (1978) 140 CLR 41 at 51.

ANNEXURE TO THE APPELLANT'S SUBMISSIONS

No	Description	Version(s)	Provision(s)	Reasons for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
1	*Government Valuation of Land Act 1896* (NZ)	As enacted		Historical context	Not applicable
2	*Government Valuation of Land Act Amendment Act 1900* (NZ)	As enacted	s 3	Historical context	Not applicable
3	*Land and Income Assessment Act 1891* (NZ)	As enacted	Sch A, s 1	Historical context	Not applicable
4	*Land and Income Assessment Act 1900* (NZ)	As enacted	s 3	Historical context	Not applicable
5	*Land Tax Act 1910* (Vic)	As enacted	s 3	Historical context	Not applicable
6	*Land Tax Assessment Act 1910-1912* (Cth)	*Land Tax Assessment Act 1910* (Cth) (No. 22 of 1910) as amended by the *Land Tax Assessment Act 1912* (No. 37 of 1912)	s 3	This version contained all relevant provisions considered in: • *Commissioner of Land Tax v Nathan*; • *Morrison v Federal Commissioner of Land Tax*; • *Campbell v Deputy Federal Commissioner of Land Tax*; • *Kiddle v Deputy Federal Commissioner of Land Tax*; and • *McGeoch v Federal Commissioner of Land Tax*	1911: relevant period in *Commissioner of Land Tax v Nathan* 30 June 1911: relevant date in *Morrison v Federal Commissioner of Land Tax* 1912: relevant period in *Campbell v Deputy Federal Commissioner of Land Tax* 1914-1918: relevant period in *Kiddle v Deputy Federal Commissioner of Land Tax* June 1925 and June 1926: relevant dates in *McGeoch v Federal Commissioner of Land Tax*

7	*Land-Tax Act 1878* (NZ)	As enacted	s 2	Historical context	Not applicable
8	*Valuation of Land Act 1916* (NSW)	As amended on 1 January 2001 (1 January 2001 to 31 October 2003)		Version in force in *Trust Company of Australia Ltd v Valuer-General*	1 July 2003: date of valuation in *Trust Company of Australia Ltd v Valuer-General*
9	*Valuation of Land Act 1944-1959* (Qld)	*Valuation of Land Act 1944* (Qld) as amended by the *Valuation of Land Acts Amendment Act of 1959* (21 December 1959 to 1 July 1970)	ss 6, 12	Version in force in *Brisbane City Council v Valuer-General for the State of Queensland*	30 June 1970: date valuations took effect in *Brisbane City Council v Valuer-General for the State of Queensland*
10	*Valuation of Land Act 1944* (Qld)	As amended on 2 June 2003 (2 June 2003 to 31 December 2003)	ss 6, 12	Version in force in *Surfers Paradise Resorts Hotel Pty Ltd v Department of National Resources and Water*	1 October 2003: date of valuation in *Surfers Paradise Resorts Hotel Pty Ltd v Department of National Resources and Water*
11	*Valuation of Land Act 1960* (Vic)	Version 154 (20 November 2019 to 15 December 2020)	ss 2, 2A, 13DF, 13L, 22	Version in force on the date of the first valuation	1 January 2020: date of first valuation
12	*Valuation of Land Act 1960* (Vic)	Version 155 (16 December 2020 to 30 June 2023)	ss 2, 2A, 13DF, 13L, 22	Version in force on the date of the second valuation	1 January 2021: date of second valuation