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

RESPONDENT'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: Propositions to be advanced in oral argument

Topic One – The principal issue in the Court of Appeal

2. The principal issue in the proceeding below, both in the Tribunal and the Court of Appeal, was whether the building 'Landene' was an improvement for the purposes of calculating the site value of the land on which the building is located. Specifically, the issue was the appropriate method for determining whether Landene was an improvement: **RS [10]-[21]**. There were two competing methods for determining an improvement, being *natural state* and *highest and best use*. The Court of Appeal found for the *natural state* test: **AJ [148]**; *Commonwealth Custodial Services Ltd (as Trustee for Burwood Trust Fund) v Valuer-General (NSW)* (2006) 148 LGERA 38*; Trust Company of Australia Ltd v Valuer-General* (2007) 154 LGERA 437. It found that a building is an improvement if it adds value to a purchaser who has **a use** for the building. This is not confined to a particular use, nor the highest and best use: **AJ [138]**, **[141]**.

3. **Most importantly**, the appellant's method for determining an improvement was rejected by the Court of Appeal by reference to the *natural state* test: **AJ [128]**. The Court of Appeal held that the authorities cited by the appellant were not helpful to his case, and the appellant led no evidence as to whether Landene was an improvement by reference to the applicable test - *natural state* of the land: **AJ [139]**. The ground of appeal raised by the appellant, being an issue of *timing* of the increase in value, does not seek to interfere with the Court of Appeal's findings set out above and which are contained in paragraphs 1 to 142. The timing issue is dealt with at the end of the reasons for judgment, being paragraph 143 and following.

Topic Two – The appeal in this Court is directed only to the issue of timing

4. The appeal in this Court is confined to a relatively narrow issue – being whether the assessment of determining an increase in value is to be undertaken at the time the work is done or material is used, or at a later date on which the site value is being determined: **RS [51]-[64]**. The appellant does not raise any ground of appeal that seeks to disturb the Court of Appeal's findings that:

   (a) Landene is to be determined as an improvement having regard to the *natural state* of the land (as opposed to a specific *highest and best use* of the land advanced by the appellant below): **AJ [147]**;

   (b) the appellant's method did not satisfy the test for an improvement: **AJ [128]**, **[139]**; and

   (c) the benefit of Landene was unexhausted at the time of valuation, as it continued to serve a variety of economic purposes at the time of valuation: **AJ [147]**.

5. The appellant's assertion that there was a finding that Landene did not add value to the land because it was "obvious" and "self-evident" that the value of the land was less than the value of the land without it" (**AS [14]; Reply [12]**) is not an accurate characterisation of the Court of Appeal's reasons: **AJ [110]**, and is inconsistent with the Court of Appeal's actual findings set out above.

6. **It follows that the appeal is arid**. It does not grapple with the principal reason that the appellant was unsuccessful in the Court of Appeal – which was a rejection of the

appellant's method of determining whether the building is an improvement for reasons quite apart from the timing of the valuation. On this basis, the Appeal should be dismissed.

Topic Three – There is no error in the Court of Appeal's reasoning regarding timing

7. The Court of Appeal undertook a conventional assessment of seeking to give an ordinary and natural meaning to the words of the definition of *improvements* in the Act in determining *timing*.

8. *First*, the plain and ordinary meaning of the words of the statute are consistent with the Court of Appeal's judgment. In particular, the words "unexhausted benefit" require a comparison between two points in time. That comparison is necessary to determine whether the benefit (which accrued when the work is done or the material is used) is exhausted at a latter point in time (the time of valuation): **RS [32]-[41]**.

9. *Second*, the appellant's construction would give the words *"and the benefit is unexhausted at the time of valuation"* no work to do. The appellant appears to concede this is the consequence of his construction: **Reply [20]**. It is particularly problematic to contend that the reference to *benefit,* which is used repeatedly in the definition of *improvements,* is surplusage in only one instance.

10. *Third*, the appellant's construction would have the effect that the Victorian legislation would be given an identical construction to the equivalent legislation in New South Wales and Queensland, but in circumstances where those statutes do not have the specific language found in the Victorian Act: **RS[50]**.

Dated: 6 March 2025

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