

LAND COURT,

BRISBANE.

20th April, 1990.

Re: **Determination of Compensation -
Resumption for Park Purposes.
A89-30**

P.D. Carnie and D.E. Fegan
v.
Council of the City of Gold Coast

J U D G M E N T

Phyllis Delphine Carnie and Daphne Evelyn Fegan and the Council of the City of Gold Coast came before the Land Court on 26th February, 1990 seeking determination of compensation consequent upon the resumption by Council on 28th January, 1989 for Park purposes of three parcels of land situated at 19 Bilinga Street, Currumbin. The resumed land is described as Lots 412, 413, and 414 on Plan C3315, County of Ward, Parish of Tallebudgera, Town of Currumbin and contains an area of 1.214 hectares. Each resumed lot has an area of 4047 square metres and each is rectangularly shaped with frontage of about 40 metres to Bilinga Street and a depth of approximately 100 metres. Each parcel is zoned "Residential B" under the provisions of the Gold Coast City Council Town Planning Scheme. Erected on the land at resumption date was a dwelling and sundry out buildings. These structures did not stand possessed of any added value as it is common ground between the parties that the highest and best use of the resumed land at resumption date was for redevelopment into 27 three-bedroom home units and/or 27 three-bedroom town houses.

On 11th May, 1989, Solicitors for the claimants filed in the Land Court Registry a claim for compensation dated 4th April, 1989 in the sum of \$1,400,000. At the outset of the case, leave was sought and granted to amend this claim to \$978,658 made up as follows:-

Land

\$972,000

<i>Valuation Fees</i>	<i>\$ 2,000</i>
<i>Legal Costs (to date of claim)</i>	<i>\$ 3,500</i>
<i>Disturbance</i>	<i><u>\$ 1,158</u></i>
<i>Total Claim</i>	<i><u>\$978,658</u></i>

Now the component part of the amended compensation claim for land conforms with a valuation of it made by practising Registered Valuer, Kevin Patrick Walsh, who was called in evidence by the Claimants. Mr Walsh describes the location within which the resumed land is situated as being one of mainly detached housing and holiday homes with some more modern units. It is situated between the Pacific Highway and the waterfront at Currumbin. It adjoins the Currumbin Private Hospital on its northern boundary and is in close proximity to a popular tourist destination known as The Currumbin Bird Sanctuary and Scenic Reserve.

Each of the resumed lots has a westerly aspect and each has reasonably elevated land on the frontage to Bilinga Street from where the land in each lot falls in an easterly direction to predominantly flat land. Ocean views are available from the elevated area. There is room for a building site near the Bilinga Street frontage, with a building platform having been constructed where the dwelling house was erected. A municipal drainage water pipe directs stormwater under Bilinga Street to discharge run-off water from higher land over the flat areas of the resumed land.

Mr Walsh values the land as a redevelopment site for 27 units at the rate of \$36,000 per three-bedroom unit. He is frank in saying it is a difficult task to find comparable sales evidence due to the uniqueness of the resumed land due to its large area and good location. His market research did not unearth any sales of comparable "Residential B" zoned lands within the Gold Coast City Council area. He relies for his valuation upon the sales of a "Residential C" and a "Residential D" zoned site in Gold Coast City and on a "Residential B" and two "Special Residential" zoned sites within the adjoining Shire of Albert.

Brief details are:-

*Sale No. 1 -Lot 5 on RP 136272, parish of Tallebudgera -
2.023 hectares - Bailey to L.A.M.
Investments Pty Ltd on 19th January,
1989 for \$1,900,000 - "Residential B"
zoning (Albert) - developed since sale
with 70 two-bedroom town houses -
reflected land value per unit \$27,142.
Situation 2 Bienvenue Drive, Currumbin*

Waters.

This land was a former caravan park and is a level corner site in a suburban area of the Gold Coast about 3 kilometres from the subject property. Mr Walsh considers this to be in an inferior situation than is the subject land and in an area not suitable for holiday accommodation.

Sale No. 2 -Lot 10 on Plan B70839, parish of Tallebudgera - 759 square metres - Wise to Aquacove Pty Ltd. on 2nd May, 1989 for \$175,000 - "Residential D" zoning (Gold Coast) - developed since sale with 5 units (2 x 3 bedrooms and 3 x 2 bedrooms). Reflected land value per unit \$35,000. Situation - 131 Golden Four Drive, Bilinga.

Mr Walsh points out that this sale land is, like the subject, between the Pacific Highway and the beach. It does suffer from noise pollution being opposite the Coolangatta Airport.

Sale No. 3 -Lot 2 on RP 132265, parish of Tallebudgera - 721 square metres - Moore to Gietzel on 11th May, 1988 for \$151,500 - "Residential C" zoning (Gold Coast) - developed with low set brick house. Capacity to develop 5 x 2 bedroom units. Sale reflects a land value of \$30,300 per unit. Situation - 6 Teemangun Street Currumbin.

Mr Walsh says this sale property is the closest of his sales and is also between the Highway and the beach. It is elevated and in a busier location than is the resumed land. A sea view would be available if the site was redeveloped with units.

Sale No. 4 -Lot 8 on RP 187893, parish of Gilston - 16.08 hectares - Teleview Corporation Pty Ltd to D and S Mulgrave Properties Pty Ltd on 9th May 1988 for \$6,015,000. "Special Residential" zoning (Albert) - developed since sale with 172 x 3-bedroom town houses - site adjoins golf course and a creek - reflected land value \$34,970 per three-bedroom site. Situation Nerang-Broadbeach Road, Merrimac.

Mr Walsh comments that the development of this site involved substantial

earthworks. The land is about 3 kilometres from the beach.

Sale No. 5 - Lot 3 on RP 224202, parish of Gilston - 4.55 hectares - Robina Land Corporation Pty Ltd to Lionstar Pty Ltd on 17th March, 1988 for \$1,800,000 - zoning "Special Residential" (Albert) - developed since sale with 64 town house style units. Reflected land value \$28,125 per unit. This is canal frontage land. Situation Ron Penhaligon Way, Robina.

Mr Walsh says that this is largely a man-made site with a maze of canals. It too is well removed from the beach.

The respondent Council of the City of Gold Coast called in evidence practising Registered Valuer Lloyd Sydney Parsons who values the resumed land at \$730,000. He applies a value of \$30,000 per unit and makes an allowance of \$80,000 for the cost of installing a drainage scheme to carry the stormwater entering the land in the north-west corner. This drainage cost estimate has been provided by Keith Harris, who is a Civil Engineer employed by the Gold Coast City Council. Details of Mr Harris' costings are in evidence. Although Mr Harris also indicated that the cost of filling the resumed land to raise it to a level above flood height was \$27,000, Mr Parsons elected not to make allowance for this cost since he felt he should weigh any doubt in favour of the dispossessed owners.

Mr Parsons is as one with Mr Walsh in so far as his description of the type of land resumed and as to its unique nature but proffered the opinion that the ocean view from it is not great. He too had difficulty in locating strictly comparable sales evidence. He opted to rely on sales of similarly zoned ("Residential B") land within the Gold Coast City Council area at Labrador. He recognises that the subject land had many advantages over the Labrador sites, including its proximity to the beach, and its aesthetic and physical quality as a potential home unit site. I also briefly tabulate details of Mr Parsons' sales evidence:-

Sale No. 1 -181 Central Street, Labrador - 1.731 ha - site sold on 1st February, 1989 for \$861,450 - or \$19,444 per unit. Mr Parsons sees the resumed land to be superior to the sale site due to its situation and that it is located in a quiet residential area. The sale land is of good quality.

Sale No. 2 -35 Usher Avenue, Labrador - 1.176 hectares - site sold on 4th February, 1989 for \$432,841 - or \$16,647 per unit. This sale land adjoins Mr Parsons' sale No. 1 land. It was purchased to be developed

conjointly with sale No. 1 land. Mr Parsons sees its lower reflected unit value as being due to its narrow road frontage. There are no stormwater problems with either the Sale No. 1 or the Sale No. 2 land.

Sale No. 3 -8 McMillian Street, Labrador - 9621 square metres - site sold on 20th April, 1989 for \$435,000 - or \$20,714 per unit. Mr Parsons also sees the subject land to be superior to this sale land and for the same reasons.

Sale No. 4 -20 Huth Street, Labrador - 9458 square metres - site sold on 19th October, 1988 for \$500,000 - or \$23,809 per unit. Mr Parsons comments that this is a level filled site in close proximity to the Broadwater. He feels that the subject land is slightly superior in situation and sees the creek frontage (Lotus Creek) on the sale site as being an advantage.

Mr Parsons says that the aforementioned sales establish a range in values which have been achieved for "Residential B" density town house unit sites in the Gold Coast region. He envisages that the development of the subject land to its capacity to 27 units would necessitate placing a building and/or buildings on the lower part of the subject land. It is for this reason he says provision to overcome the stormwater drainage problem is necessary.

Mr Parsons does not feel that the sales relied upon by Mr Walsh provide a suitable basis for valuing the subject land. I might here say also that Mr Walsh similarly does not think the Labrador area sales are reliable, mainly since they are well removed from the subject land, in an area used more for permanent housing. Mr Parsons points to the different, and in his opinion, superior use zoning on Mr Walsh's Gold Coast area sales. He also points out that there is higher density unit development in the Albert Shire within which the "Residential B" and the "Special Residential" zoned sales are located. "Residential B" zoning in the Gold Coast area provides for 25 three-bedroom units per hectare after an allowance of 10% for park contribution, whereas "Residential B" and "Special Residential" zoned sites in the Albert Shire provide for 40 three-bedroom units per hectare with no park contribution allowance. In support of his contention about the superior "Residential C" and "Residential D" zonings in the Gold Coast area, Mr Parsons says that "Residential B" population

density within the Gold Coast area is 150 persons per hectare. Within the "Residential C" zoning it is 400 persons per hectare, and within the "Residential D" zoning it is 600 persons per hectare. Mr Parsons is familiar with the circumstances surrounding Mr Walsh's sale No. 1. He says the land was of special value to the purchaser who owned a development on adjoining land. Advantages included his ability to sell units on the sale land "off the plan" using display units on the adjoining site. In addition, certain sewerage lines were in place on the sale land for the caravan park, and the developer made use of them. Mr Parsons says this transaction stood out as a high sale in comparison with others. He points to a sale around the corner in Clives Court in December 1988 of Lot 953 on Plan 223225 with an area of 1.361 hectares for \$1,026,000 from Tebuk Pty Ltd to Bosnyak Investments Pty Ltd. This is zoned "Residential B". The site had a capacity 54 units although there was a proposal to erect 50 town villas on the site. On the proposed number of units the sale reflects a land value of \$20,520 per unit, and on the maximum usage a land value of \$19,000 per unit. This level of value, Mr Parsons suggests, is well out of line with the value of \$27,142 reflected by Mr Walsh's analysis of sale No. 1.

Mr Parsons is not impressed with Mr Walsh's sale No. 2 as basic evidence. It is a fully serviced block with superior "Residential D" zoning which, he says, makes it capable of the development of nine good sized units, not the five which were actually developed. He says Mr Walsh's sale No. 3 land has potential for seven units and as such would reflect a land value of \$21,600 per unit. In addition Mr Parsons sees this sale site as being much superior to the subject land. It is elevated and on the crest of a hill with excellent ocean views from ground level.

Commenting upon Mr Walsh's sale No. 5, Mr Parsons says that this land contained many internal civil works which saved the developer \$320,000 (or \$5,000 per unit). He sees it being analysed to show an unserviced land value of \$23,000 per unit.

Mr Harris also gave evidence in the case. He told us that a Council requirement for development approval would be that water is to be taken and discharged at what is considered the point of legal discharge. He says a drainage scheme is necessary to take the flow from across Bilinga Street and from the naturally formed catchment of the overland flow. His costings provide for the scheme to discharge water into Flat Rock Creek. A facsimile report

by a Mr Hawkes, who is in the employ of the Engineering firm Cardno and Davies Australia Pty Ltd, was placed in evidence by the claimants. Mr Hawkes calculates the cost of the installation of a drainage scheme into Targoo Street to cater for future "Residential B" development of the subject site would be \$29,000. Mr Hawkes was not called in evidence. I notice that the detailed costings of both Engineers is at about the same rates per metre for piping and installation. The principal difference in the estimates is that Mr Harris' workings call for more length of piping to cater for a greater drainage distance.

Brief evidence was called from Alfred John Rowland Carnie who is the husband of one of the claimants. This evidence was in support of the claim for disturbance. Mr Carnie says that after resumption, certain costs were involved in shifting furniture in the house and a boat to Brisbane. He and his three sons moved it out over four weekends. A tilt trailer was hired to move the boat, and this cost \$150. Mr Carnie calculates the remaining part of the disturbance claim at the rate of \$7 per hour for 144 man hours. I might here say that this claim for disturbance is not sustainable. The resumed land is valued, and compensation it to be assessed for its loss on the basis of its worth as a redevelopment site. It must be assumed that if the property sold in the market place as such, then the dwelling house would have to be demolished and/or removed, and as a result the dispossessed owners would be obliged to remove the furniture and the boat at their expense. Clearly compensation for disturbance in these circumstances is not to be added to the value of the resumed land.

I turn now to consider the valuation evidence. The difficulty in the matter is readily identified and acknowledged by both valuers. It is the lack of comparable sales evidence due to the uniqueness of the resumed land due mainly to its area and situation between the Pacific Highway and the beach and in close vicinity to the Bird Sanctuary. After careful examination of the evidence, I must say that I attach more weight to Mr Parsons' sales evidence than I do to that provided by Mr Walsh. This is so because it is evidence of similarly zoned land within the Gold Coast City Council area. In *re: Determination of unimproved value - PSL2339 (N.C.L.)* (1978) 5 Q.L.C.R. 21, the Land Appeal Court emphasised that it is a primary rule of valuation that like should be compared with like and that this applies in so far as all relevant factors, including zoning, are concerned.

There is no doubt that the resumed land enjoys many advantages over the

Labrador lands, and this is recognised by Mr Parsons. The real problem however, is to place a monetary value on these advantages when there is no sales evidence to reflect them. Mr Parsons has done his best and applied a premium of about \$8,000 to \$10,000 per unit site.

One problem facing Mr Walsh's use of his sales evidence is that he analyses the sales to reflect unit land values on the basis of the actual development, not on the potential development in accordance with the relevant Town Planning schemes. It may well be reasonably argued that developers set a price for land having in mind their plans for ultimate development, and it could very well be that a hypothetical purchaser of the resumed land at resumption date would not maximise its use for 27 three-bedroom units. If, for example, this hypothetical purchaser would only seek approval for say 24 sites, then, adopting Mr Walsh's approach to the use of his sales evidence, his assessment of compensation is substantially reduced. What should be done is to treat like with like. The subject land and the sales evidence parcels are to be looked at on the same basis of the highest unit yield. It is apparent that if this is done, then Mr Walsh's deduced land values per unit fall substantially. In addition, his sale No. 1 is clearly a high sale due to the adjacent purchaser factor, and is not supported by other sales evidence in the area.

I find that an allowance should be made for the drainage costs. It is clear that approval for development of the subject site would only be obtained if a satisfactory drainage scheme was implemented. I adopt Mr Harris' estimate of \$80,000 in the absence of any oral evidence from Mr Hawkes.

Doing the best I can on the evidence, I find that fair and just compensation for the loss of the land results from the application of a value of \$32,500 per unit site for the agreed 27 sites - or \$877,500. After adjusting this figure for the cost of the drainage scheme (\$80,000), I determine the value of the land resumed at \$797,500.

Legal fees involved in the preparation of the claim for compensation are agreed in the sum of \$750, and the claim of \$2,000 for valuation fees is accepted by the respondent. I add these respective sums to the above compensation for the loss of land, so that compensation under all heads of claim is awarded in the sum of \$800,250.

Section 28 of the Acquisition of Land Act provides that the Land Court may order that interest be paid on the amount of compensation determined by it, and that interest

so ordered shall not be payable in respect of any amount of compensation advanced under Section 23 of that Act. In this case, an amount of \$675,752.62 was advanced to the claimants on 19th June, 1989. I order that the respondent Council of the City of Gold Coast pay interest to the claimants at the rate of 13.75% per annum on the following sums and for the following periods:-

On the sum of \$800,250 for the period commencing on the date of resumption (28th January, 1989) and ending on the date of the payment of the advance (19th June, 1989) and;

On the sum of \$124,497.38 for the period commencing on 20th June, 1989 and ending upon the day immediately preceding the date upon which final payment of compensation is made.

(Signed) C.H. Carter.

Member of the Land Court.