

LAND COURT

BRISBANE

14TH SEPTEMBER 1995

**Re: VC95-02A
Appeal against a lease categorisation - Land Act
Local Government: Whitsunday**

William J McDonald

v.

Chief Executive, Department of Lands

(Hearing at Proserpine)

DECISION

Special Lease SL 43052 was granted to Mr W.J. McDonald for the purpose of "Reclamation and Business", with a condition of the lease restricting the use to that of a "shore base for fishing operations".

For the rental period commencing 1st July, 1994, the Department of Lands categorised the lease as "4" for the purpose of assessment of rent. In the Land Regulation 1988 category 4 leases are those granted for "Commercial and Industrial" purposes.

Mr McDonald objected to the lease being so categorised on the grounds that category "3" was applicable. Category "3" leases are those granted for "Residential and Rural Residential" purposes. Section 12A(1) of the Regulation states: "A lease that may be used, and is used, solely for residential purposes is a category 3 lease."

The Department disallowed the objection and Mr McDonald duly appealed against that decision. The matter was heard by the Court at the same time as appeals against valuations of the lease. Mr B. Conroy, registered valuer, acted as agent for the lessee.

It is Mr Conroy's submission that the reference to "Business" in the purpose of the lease must be read together with the condition restricting that use to "shore base for fishing operations". The submission is that a shore base is nothing more than what could be achieved from a residential site used for the primary purpose of accommodation of a dwelling and "minor" storage of equipment and materials associated with a fishing operation conducted externally to the site. The leased land accommodates a residence and storage shed. It was seen as important to the submission that the land was not used as a fish processing factory. Mr McDonald's

evidence was that any "value adding" procedures relative to the catch, were conducted on the fishing boat itself, external to the site. He said that the selling of the catch was also conducted from the boat and if that occurred adjacent to the site then fish might be carried from the boat across the site to the street. Mr McDonald said that any refrigeration equipment in the shed was of a domestic nature for the production of ice and not for the storage of fish.

I accept that the actual dominant use of the site is for residential purposes as a shore base providing direct access to the boat used in the fishing operation. On the evidence that another fisherman in the area had obtained a licence for a "fish processing factory" the purposes for which the subject lease was granted would not have precluded such a business operation on this site, provided approval could have been obtained from the relevant authorities. The evidence in this matter is that commercial or industrial activities would not be permitted on the site by the Council. Nevertheless, I do not see that the "shore base" potentialities are restricted to residential use solely. At the very least the storage of equipment and materials necessary in the fishing operation, is permitted. The question of categorisation might have become clearer had there been no residence but merely the shed in which the storage activities took place.

While it is not relevant to the dates involved in this matter, it is observed that in Land Regulations 1995, which was reprinted as in force on 2nd August, 1995, Section 12 now expands on the "Commercial-Industrial" description of category "4" leases as follows:

"A lease is a category 4 lease only if -

(a) under its conditions the lease may be used for, and it is being used for, commercial, industrial or business purposes; and

(b) the lease does not fulfil the requirements for another category."

The appellant's argument here would still remain that the lease is not "being used for commercial, industrial or business purposes". It is clear however that the use is not restricted solely to residential use and for that reason 12(b) above would become relevant. That may of course be an argument for another day.

In the meantime, I have not been convinced that the decision of the Department to categorise the lease as "4" is wrong.

The appeal against that categorisation is therefore dismissed.

**RE WENCK
MEMBER OF THE LAND COURT**