

LAND COURT

BRISBANE

12 OCTOBER 1995

**Re: AV94-523 -
Appeal against an unimproved valuation -
Valuation of Land Act
Local Government: Whitsunday**

Andrew R and Marian G McKay

v.

Chief Executive, Department of Lands

(Hearing at Proserpine)

DECISION

As at 30th June, 1993, the Department of Lands' valuation of land described as Lot 12 on Plan S9466, Parish of Conway, containing 708m², is in the amended amount of \$155,000.

The land is situated in Warrain Street, Shutehaven. The bitumen-sealed street terminates as a parking and turning circle near the frontage of the subject land. The land is zoned "Residential A" and services available include water, electricity and telephone. Sewerage is not available.

Mr B. Conroy, registered valuer, represented the appellants. In the Notice of Appeal, the estimate of unimproved value was stated as \$125,000 which is Mr Conroy's valuation. He described the land as being below the level of Warrain Street falling to the rear boundary, featuring good sea views. Those views he said were to the south but were obstructed to the east by the dwelling constructed on Lot 11. It is observed that the dwelling had not been constructed at the relevant date of valuation. In his verbal evidence, Mr Conroy said the fall in the land was fairly steep which had necessitated the construction of "numerous" retaining walls for the full utilisation of the site. He said that the land suffered a drainage problem from run-off water from the street. A significant disability was seen to be associated with the tourist traffic which used the turning circle and parking area and the incidence of illegal overnight camping adjacent to the property.

From the overall scheduled sales evidence in Shutehaven, Mr Conroy selected two sales as offering the best basis of valuation. The site immediately adjoining, Lot 11 of 746m², had sold on 4th October, 1993 for \$155,000. At the earlier date of valuation the Department of Lands had applied a valuation of \$176,500 to that site. Mr Conroy considered the views from Lot 11 to be superior to those available from the subject land and the sale land did not suffer the same degree of disability from the

turning circle in the road. In his mind the sale site was "slightly superior" overall. He had spoken to the vendor of the sale and was not aware of any circumstances which affected the weight which could be given to the evidence provided by that sale.

The second sale was of a 511m² site in Harbour Avenue which had sold on 15th September, 1993, for \$100,000. The Department of Lands' valuation on that sale site was \$128,500. Mr Conroy said that the sale was "possibly low" and agreed that the site was inferior to the subject land.

The Department of Lands' valuation was made by Mr S.J. Whitfield. He described the land as sloping gently to about 20 metres then the slope becoming a "moderate-to-steep grade to the rear boundary". Although Mr Conroy does not accept that in its unimproved state the land had those physical qualities (but more steeply sloping contours), Mr Whitfield was confident that his description provided an accurate appreciation of the land in its unimproved state. He agreed that there was quite steeply sloping land into a gully along the western boundary. He described the views as being "very good" of the passage and Shute Harbour. He referred to the site having been partly filled and retained and made mention of the adjacent cul-de-sac formation of the road, and the potential for noise and occasional overnight parking of vehicles.

From the overall schedule of sales which he provided, Mr Whitfield selected four sales as providing the primary basis of valuation. One of these sales was the sale of the adjoining land to which Mr Conroy had referred and another was a later resale. Mr Whitfield agreed with Mr Conroy in that the adjoining Lot 11 sloped less steeply and its views were a little superior to those available from the subject land, although he saw the wider aspect from the subject land to the south-west as being an advantage which Lot 11 did not enjoy. However, he felt that the first sale of that land was at a level of value well below fair market value. He had no information which suggested there were unusual circumstances associated with the sale. He provided the details of the resale in March 1994 for \$195,000 to support his opinion as to the low level of the earlier sale. The details of these transactions had been discussed in other appeals when Mr Whitfield said that he did not believe that the significant increase in price in the resale was due to an increasing market only, but also reflected a correction of the low level of the earlier.

The other sales referred to by Mr Whitfield were of a superior site in Warrain Street for \$215,000 (applied valuation \$204,500) in January 1994 and of two inferior sites in Harbour Avenue and Neerim Crescent. The Harbour Avenue land had sold for an analysed unimproved value of \$116,500 in January 1993 with an application of value of \$114,500 and the Neerim Crescent land had sold for \$140,000 in June 1993 with application of value of \$127,000.

I have commented in other appeal decisions relative to Warrain Street properties that the Department of Lands valuations in those matters would not be seen to be conservative, although supported by the evidence. It seems to me that in this matter, if for no other reason than relativity with other valuations in Warrain Street, the Department of Lands' valuation of the subject land has benefited from a conservative approach. This seems to be largely as a result of the potential for nuisance from the adjacent road formation. I accept Mr Whitfield's appreciation of the evidence provided by the first sale of the adjoining Lot 11 and find no overall support for Mr Conroy's valuation.

The appeal is dismissed and the valuation of the chief executive affirmed.

**RE WENCK
MEMBER OF THE LAND COURT**