

LAND COURT

BRISBANE

30 AUGUST 1995

**Re: Appeal against a categorisation decision -
Land Act - Special Lease 14/41452 -
Local Authority of Cook.**

Kota Bharu Holdings Pty Ltd

v.

Chief Executive, Department of Lands

(Hearing at Cairns)

DECISION

Kota Bharu Holdings Pty Ltd is the lessee of Special Lease 14/41452, Cooktown District, over land described as Portion 34, Parish of Annan, containing 432 hectares. The lease is for a term of 20 years which commenced on 2nd December, 1997, "for Manufacturing, Industrial, Residential and Business purposes".

The wide purposes for which the leased land is permitted to be used, may not have had significance to the lessee at the time when the lease commenced, but now with the categorisation of leases for rental purposes, potential use is the reason behind the dispute.

The Department of Lands, for the billing period commencing 1st July, 1993, according to the definitions in the Land Amendment Regulation (No. 1) 1993, decided that the lease was a Category "3" Lease - Residential and Rural Residential.

Category 3 leases are defined pursuant to section 12A of the Regulations as follows:

"12A.(1) A lease that may be used, and is used, solely for residential purposes is a category 3 lease.

(2) A lease that would otherwise be a category 1 lease or a category 2 lease is a category 3 lease if -

(a) it is located close to a city, township or closer settled area; and

(b) a dwelling house is, or under the lease, could be, erected on it; and

(c) its market value would be based on its value as land able to be used for residential purposes.

(3) A special lease for grazing purposes is a category 3 lease if -

(a) a dwelling house is, or under the lease could be, erected on the land;
and

(b)the lease is not otherwise a category 1 lease."

A Category 1 lease (grazing and agriculture) refers to a lease the primary use of which may be, and is, grazing or broad hectare agriculture.

Mr George Quaid (Junior) a director of the lessee company, submits in support of the grounds of appeal against the Category 3 classification, that the lease is a Category 1 lease. His written submission is as follows:

"Kota Bharu Holdings Pty Ltd is a Pastoral Company and has no other activities.

The company has occupied Green Hills Station, south of Cooktown, since purchasing the property in 1972.

Portion 34 did not form part of the 1972 purchase; a lease of the land was bought at auction from the Crown by the Company in 1977.

The company was obliged to buy Portion 34 because it was situated within Green Hills Station and was a vital water resource area for the station.

On-going negotiations with the Department of Lands for improved tenure over Green Hills Station envisages amalgamation of Portion 34 (SL 14/41452) (being the subject land), with OL 14/553, OI 14/566 and OL 577.

Therefore, although the Portion 34 lease is a lease for special purposes under Section 198-1(A) of the Land Act 1962-1975 the land is a natural component of Green Hills Station and is in fact being used for grazing purposes only."

It is clear that the primary existing use of the land is for grazing, as part of the Green Hills Station aggregation. It is not illogical that Mr Quaid has pursued this appeal. There is no suggestion that the lessee intends to use the lease for residential purposes. The lease is important to the grazing management of the overall property.

Actual use is not however the only criterion to be considered. The State owns the land and under the terms of the lease the lessee is permitted to use the land for the purposes stated.

Section 12A(1) of the Regulations does not apply. Nor does subsection (3) although it is of interest that even if the lease was restricted to use for grazing purposes but with the right to erect a dwelling, it would remain necessary for the lessee to show that it should be included as a Category 1 lease.

In this matter section 12A(2) needs to be considered, for that is the basis of it being categorised as "3". Mr S Aitcheson, a registered valuer employed by the Department, took responsibility for the categorisation decision and was called to give evidence. Through him a report was tendered which included the following reasons for the adoption of Category 3:

a)The land may be used for residential purposes under the lease conditions.

b)The land is in close proximity to Cooktown. It has all weather access and electricity is also available.

c)The highest and best use of the land is a large rural homesite due to its proximity to Cooktown. The attributes which make it suitable as a rural homesite are the rural views, potable water, electricity and all weather access.

If the property was made available for sale it would compete directly with the rural homesite market in the locality.

The property would fetch less on the open market if the lease conditions restricted the use to grazing only."

Reasons why he considered the lease was not a Category 1 were as follows:

1)The area would not be a viable stand alone unit either as grazing or agriculture. Carrying capacity is 1:15 head overall which gives a total carrying capacity of 29 head.

2)The highest and best use of the land is as Rural Residential and associated purposes."

Mr Quaid raised the doubt as to whether the land should be regarded, in the context of this matter, as having all-weather access as stated by Mr Aitcheson. In fact the access is, as I understand the evidence, through freehold and other lands owned or controlled by the lessee company and not necessarily contained within gazetted roads. There is the technical suggestion that if the subject land stood alone, in ownership other than associated with Green Hills Station, that access could be denied and might need to be formally resumed or alternative access provided. A condition of the lease is that the lessee shall "allow the public free and unrestricted access along the roads and tracks existing" but that condition refers to roads within the site, not those which provide external access to it.

Another matter raised by Mr Quaid was that the powerline through the property was what he called a "dedicated" powerline and had been constructed solely to supply the lighthouse at Archer Point. It was his understanding that it could not be "tapped into" by others, and the land could not be regarded as having electricity available. Mr Aitcheson conceded that he may have been in error in assuming that connection could be made.

Finally, Mr Quaid had some doubts as to whether the Department would permit any clearing which might be necessary in association with the erection of a dwelling.

In terms of section 12A(2)(a), the land needs to be considered in context of the locality in which it is located. It could hardly be described as being located in a "closer settled area" but in relation to the local environment, it does not appear to be in dispute that the land could be considered as being in close proximity to Cooktown. There

does not seem to be disagreement that, if the land was available in the marketplace as a separate entity, there would be demand, probably by those seeking an alternative lifestyle, for its use as a rural homesite. Indeed, on Mr Quaid's evidence, it was to deny the perceived problems from lack of control of the site which influenced him to acquire the lease in the first place and then, because of competition, being forced at auction to bid a rental which he believed to contain an unrealistic premium.

Regardless of Mr Quaid's doubts, I accept that a dwelling could be erected on the site and certainly is permitted in terms of the purpose of the lease. The unimproved market value of the land as assessed by the Department for rental purposes has been based on its ability to be used for residential purposes. (See s.12A(2)(b) and (c)).

It is relevant that this is not an appeal against the valuation for rental purposes. Mr Quaid has tendered with his statement a copy of a notice of annual valuation which shows that the land is included as part of the overall holding, for rating purposes. That valuation of course is made pursuant to the Valuation of Land Act, while this matter of categorisation is one pursuant to the Land Act.

It is recognised as Mr Quaid says, that the practical effect of the Department's categorisation is that an excessive rental is being charged for a pure grazing use. It may be seen however that the State, just as any other practical landlord, should seek rental based on potential use as permitted under the terms of the lease and for which there is demand, rather than some less intensive actual use. The lessee seeks rental relief through categorisation. The valuation for rental purposes is the base on which the percentage rental, strictly related to categorisation, is calculated. If the categorisation is correct then it follows the only avenue of relief available would be for the lessee to show, when the opportunity arose, if it was possible, that the valuation for rental purposes is too high. Mr Quaid has been frustrated, it seems, in his negotiations to resolve matters of tenure relative to Green Hills Station as a whole. While those negotiations remain unresolved, the lessee is caught up in this individual rental problem, but those are not matters which can be taken into consideration by the Court.

The lease, in my opinion, is correctly categorised by the Department, regardless of its actual use, and the appeal is dismissed accordingly.

MEMBER OF THE LAND COURT