

LAND COURT

BRISBANE

30 AUGUST 1995

**Re: AV94-641 and RV94-0187
Appeals against unimproved valuations -
Valuation of Land Act
Local Authority: Cook**

Michel Bredillet

v.

Chief Executive, Department of Lands

(Hearing at Cairns)

DECISION

As at 30th June, 1993, the unimproved valuation of the "Louisiana Station" aggregation, which lies about 40 kilometres north-west of Cooktown, was assessed by the Department of Lands in the amount of \$75,000.

The aggregation which contains an area of 12,486 hectares is described as follows:

Lot 9/BS26:PLS/217 and Lot 4839/PH1044:Brannighan Holding:PH/14/4839 and Lot 250/BK1573 and Lot 2/BR157118 Parish of Hann and Lot 2/BS96:SL29255 Parish of Pickersgill and Lot 3/BS245 Pryde Holding:PH/14/4840 Parish of Pryde.

Then, as at the same date, separate valuations were required to be issued for rental calculation purposes for the leasehold lands.

Brannighan Holding containing 6,000 hectares was valued unimproved in the amount of \$36,000.

Pryde Holding containing 6,294 hectares was valued unimproved in the amount of \$28,500.

Appeals were lodged against each valuation. Subsequently the Department reviewed the valuations of the leasehold lands and the Court was informed that evidence would be led to a valuation of \$60,000 for Brannighan Holding (RV94-0187). Agreement had been reached between the parties as to the unimproved value of Pryde Holding being \$14,500 and by consent that appeal was allowed and the unimproved value so determined.

The appeals remain against the unimproved valuations of the total aggregation and then Brannighan Holding separately.

Mr Bredillet attended the hearing and tendered plans, maps, photographs, excerpts from reports written by various experts relative to certain soil classifications and then excerpts of reports regarding grazing potential of properties within the Cape

York Peninsula. Mr Bredillet claims that Brannighan and Pryde Holdings have historically been recognised as some of the worst grazing lands within the Cape. It seems that some of the material he tendered regarding the estimates of carrying capacity for many properties in the Cape was related to early Lands Department estimates in connection with rental assessments. Apart from the allegation that the valuations as assessed by the Department greatly exceed the true value of the lands, the grounds of appeal suggest that the following matters have not been taken into account:

- (1) The stock carrying capacity of the land.
- (2) The Zamia infestation of the land.
- (3) The lack of readily accessible areas in the land.
- (4) Poor quality soils.
- (5) The existence of travelling stock routes.
- (6) Poor pastures.
- (7) Thick undergrowth.
- (8) Poor water-retention properties of the soil generally.
- (9) Acid soils.
- (10) Grass tree infestation.
- (11) Poison peach infestation.
- (12) General lack of local services and amenities for the benefit of the property.
- (13) Erosion.
- (14) General low grade of useability and productivity of the land.
- (15) Sickle pod infestation.
- (16) Rubber vine infestation.
- (17) Noogoora burr infestation.

Mr Bredillet spoke of the many disabilities the properties obviously possess. It is clear that management difficulties are many and the rewards from the grazing operation, few. The lands adjoin Hopevale Mission and Mr Bredillet has had problems over the years with trespassers and more recently tourists and the bureaucracy, particularly with regard to public access, official interpretation of the rights of others to the use of stock routes and his lack of control generally over the land. He sees the subject land as being seriously disadvantaged as a grazing property relative to rating and rental charges. In his opinion proximity to Cooktown is of no advantage in terms of grazing use and management costs. Rather he sees the property as disadvantaged in comparison with many other grazing properties with regard to access to Mareeba where cattle now have to be sold and from where service requirements and supplies are generally obtained.

Mr Bredillet is strongly of the opinion that the rental burden imposed on Brannighan as a separate holding then the rating burden on the total aggregation is not related in any way to the productive capacity of the land.

The Department's valuations were carried out by Mr S.D. Aitcheson. He had also been responsible for the valuation of Pryde Holding. Mr Aitcheson had adopted

a carrying capacity of one beast to 80 hectares for Pryde Holding. That had been the assessment made by the previous Department of the Valuer-General over the years, when that Department had been responsible for rating valuations. Similarly, he had adopted a carrying capacity of one beast to 30 hectares for Brannighan Holding for the rental valuation and one beast to 45 hectares over the total aggregation for the rating valuation. The valuation of Brannighan Holding, of 6,000 hectares, as a separate entity, was \$10 per hectare then the valuation of the total aggregation of 12,486 hectares was \$6 per hectare.

The classification of the land contained in the total aggregation was as follows:
 550 hectares red undulating sandy forest soils;
 4,900 hectares poor gravelly and sandy forest ridges and poor bastard scrub;
 7,036 hectares inaccessible rough mountains.

The 550 hectares in the first classification is contained within Brannighan Holding. For comparison purposes, the separate reports provided to the Court for both Pryde and Brannighan were as follows:

Pryde Holding:

2,900 hectares of mixed bloodwood, wattle, turkey bush, bracken fern, yellow stringy bark, ti-tree, and grass tree with zamia throughout. Patches of heavy bastard scrub in centre of block and boggy swamps on headwaters of Isabella Creek.
 3,394 hectares inaccessible rough mountains.

Brannighan Holding:

550 hectares easy to moderate undulating red sandy forest soils interspersed with rocky outcrops and poor gravelly ridges. Mainly along Isabella Creek and east of Isabella Creek.
 5,450 hectares mainly poor gravelly and sandy forest ridges and mountains with parts inaccessible. The subject land is affected by zamia.

By comparison of the various reports it would seem that Mr Aitcheson would find about 3,642 hectares of "inaccessible rough mountains" on Brannighan within the 5,450 hectares of secondary classification.

Mr Bredillet said that about 150 head of mixed cattle are carried on Brannighan Holding together with the additional 192 hectares in his ownership. As I understood his evidence, due to the impossibility of keeping fences stock proof and the practice of the local Council in removing grids on public roads, cattle are not contained totally within Brannighan Holding but stray on to adjoining lands.

Mr Aitcheson had considered and agreed with the previous estimates of carrying capacity as recorded in the Valuer-General's records. This suggested about 206 head on the Brannighan section which includes the other lands owned by Mr Bredillet.

Again, as I understood his evidence, Mr Bredillet indicated that about 200 head of mixed cattle were carried over the total Louisiana aggregation. Mr Aitcheson estimated about 284 head as being the potential carrying capacity of the total aggregation.

The primary area of disagreement as to potential relates to the "red soil" component of Brannighan Holding. Mr Bredillet said it is a deceiving soil type. While he accepts that it may look to have potential for improved pastures, it is of ash-type soil structure, which from his experience, is unresponsive to fertiliser, very susceptible to erosion and prone to sickle pod infestation. Mr Aitcheson holds the opinion that with proper management, that type of country in the Cooktown area is capable of being developed with improved pasture.

Mr Aitcheson says that it is the red soil area which sets Brannighan apart from other properties used for comparison of values on a relativity basis.

He had considered three nearby properties in that relativity valuation approach, namely:

- (1) Flaggy Holding of 7,770 hectares with an estimated carrying capacity of one beast to 35 hectares, valued at \$7.50 per hectare. This holding was described as comprising "2,000 hectares of good forest flats and 5,770 hectares poor rough hills".
- (2) Pickersgill Holding of 32,380 hectares with an estimated carrying capacity of one beast to 90 hectares, valued at \$2 per hectare, comprising "13,000 hectares of poor sandy country with some narrow river frontages and 19,380 hectares rough granite and sandstone hills".
- (3) "Alkoomie" of 18,900 hectares, with an estimated carrying capacity of one beast to 80 hectares, valued at \$2.50 per hectare, comprising "mainly poor gravelly ridges and mountainous country interspersed with small hollows".

Mr Aitcheson also provided details of two sales. One was of Flaggy Holding (as described in relativity example (1)), which property sold in July, 1992 for \$175,000 showing an analysed unimproved valuation of (on my calculation) \$19 per hectare when the applied valuation had been \$7.50 per hectare. The second sale of a 2,200 hectare property with estimated carrying capacity of one beast to 30 hectares, took place in February 1993, to show an analysed unimproved value of \$73.62 per hectare, when the applied valuation was \$20 per hectare. The sales had not been adopted as a basis for the 30th June, 1993 valuation, because, as I understood it, another sale in another location in the Cape had supported the then adopted level. The sales mentioned above, had they been adopted as a basis, would have involved a significant alteration to existing geographical relativity. It had been decided to take the conservative approach until the upward trend indicated in the changing relativity in the subject locality was more firmly established.

Mr Bredillet was not impressed by the sales evidence. He holds the opinion that most Cape grazing properties are on the market and most of the sales which do take place are to inexperienced or imprudent purchasers. He feels that if anything, pure grazing values are receding as a result of uncertainty caused by such matters as the effect of potential "Mabo" land claims by Aboriginal people.

The sales evidence quoted by Mr Aitcheson had been discarded by the Department for this relevant date valuation. It follows that the primary basis of valuation was one of relativity and these matters require determination on that issue. It was not a matter raised by the Department and only in passing by Mr Bredillet, but the valuation of Pryde and Brannighan Holding as at 31st March, 1989, had been the subject of a previous appeal to the Land Court. These appeals were heard by myself and the decision handed down on 19th June, 1992 (V90-714 and 715). Mr Bredillet's previous arguments and evidence generally remain somewhat consistent. The grounds of appeal in the earlier matters were restricted to relativity issues. Interestingly, another valuer had used the valuations of the same properties as had Mr Aitcheson here but then also referred to another smaller property of 373.9 hectares containing superior red soil country which was valued at a much higher rate. The same values had been applied at the earlier date of valuation to "Flaggy" (\$7.50 per hectare), "Pickersgill" (\$2 per hectares) and "Alkoomie" (\$2.50 per hectare). That valuer, Mr P.J. Haydon, had, however, valued Pryde at \$4.50 per hectare and Brannighan (including the additional land) at \$10 per hectare. He had specifically inspected the subject lands and the comment was made in my decision that "Mr Bredillet during the course of the hearing accepted that the 'ratio' between the two valuations under review was reasonable - it was the quantum of valuation which was not, in his opinion". I was "satisfied on the evidence of Mr Haydon that relativity in the immediate locality of the subject properties had been given specific expert consideration" and that relativity had not been proved to be wrong. The appeals were dismissed. The result of that decision was that the valuations of \$28,000 (Pryde) and \$62,000 (Brannighan including the additional land) totalling \$90,000 were affirmed.

The valuation of the aggregation is now in the amount of \$75,000, which essentially represents a reduction of \$15,000 in total. The valuations of the property used as relativity examples remain constant. The difference lies in the valuation of Pryde Holding. Although not raised during the hearing, the expert opinion of Mr Aitcheson is clearly that Mr Haydon and as a consequence, the Court, got it wrong as at 31st March, 1989. Mr Aitcheson found 2,900 hectares of the first classification and 3,394 hectares of "inaccessible rough mountains" on Pryde Holding, while Mr Haydon had found 3,794 hectares and 2,500 hectares in the two classifications respectively. That might have been one explanation, although it is noted that the opinion of both

valuers remained the same as to the carrying capacity potential of that land - i.e. one beast to 80 hectares over the total area.

The question of carrying capacity, as it should have, seemed to have significance in Mr Aitcheson's considerations. He drew attention to the resultant unimproved beast area values as being of some comfort to him - i.e. Flaggy - unimproved beast area value \$262.50 (one beast to 35 hectares); Pickersgill - \$180 (one beast to 90 hectares); Alkoomie - \$200 (one beast to 80 hectares) then Pryde - \$184 (one beast to 80 hectares) and previously \$360; Brannighan - \$300 (one beast to 30 hectares) and the total aggregation of Louisiana - \$270 (one beast to 45 hectares).

Although I was persuaded to accept Mr Haydon's opinion as to the relativity between Pryde and Brannighan, as at 31st March, 1989, Mr Aitcheson, as he was perfectly entitled to do, has introduced another opinion. No evidence was led specifically with regard to the Pryde Holding as a separate entity for that appeal was determined by consent. Nevertheless Pryde forms an integral part of the Louisiana aggregation valuation and I am able to accept that Mr Aitcheson did not act rashly in his decision to reduce the valuation of Pryde Holding so significantly. He says that he agreed with the previously existing estimate of carrying capacity of one beast to 80 hectares for Pryde Holding. However, when the overall "unimproved beast area value" is considered, I suspect that a lighter carrying capacity might well be argued if a valuation of \$2.30 per hectare is correct, as has been submitted. Mr Bredillet said that the correct carrying capacity of Pryde Holding was that as suggested by the earlier Lands Department records (as opposed to the later Valuer-General estimates) i.e. one beast to 125 hectares. He sees it as relevant, no doubt with good reason, that the original Lands Department estimates had been adopted in certain studies by the Department of Primary Industries and consultants to the Government. While the purpose of the report was not disclosed, Mr Bredillet tendered an excerpt from a Connell Wagner Pty Ltd report said to be prepared for the Government in which the carrying capacity of Pickersgill was stated as one beast to 90 hectares and for Alkoomie as one beast to 85 hectares. The Department now adopts the same carrying capacity for Pickersgill and a slightly higher capacity (one beast to 80 hectares) for Alkoomie. However the original Lands Department estimates for the subject property, being one beast to 125 hectares overall (also as contained in the Connell Wagner report), have now been increased to one beast to 45 hectares overall. Mr Bredillet says that the only reason he has been able to increase the carrying capacity to 200 head (about one beast to 60 hectares overall) on Louisiana and to about 150 head on Brannighan (about one beast to 40 hectares) is due to his particular efforts in poisoning the zamia which infests the property in its unimproved state. As a result he sees himself as being penalised by having improved the land at significant personal cost.

Nevertheless, on his own figures, the potential carrying capacity of Brannighan is much higher than that originally estimated in the early Lands Department assessments. It seems clear that the estimates of the Valuer-General as now adopted by the Department for rating valuations, while being apparently excessive on actual capacities as suggested by Mr Bredillet, are closer to reality. If the estimate of, in particular, one beast to 30 hectares for Brannighan is excessive then it seems that this would relate to the real potential of the 550 hectares of "red soil" country.

The question of carrying capacity can be largely a matter of opinion, but provided the opinion is consistent reasonable relativity is capable of being maintained. With the history of opinion expressed by the Department, I am entitled to have doubts as to the basis on which relativity is now argued. I am inclined to the view that Mr Bredillet has provided the Court with sufficient support for the ground of appeal which relates to carrying capacity. It is clear that the Department is well aware of the various disabilities as contained in the further grounds of appeal. Having now to consider not only the relativity examples provided by the Department as a basis, but also the determination of the unimproved value of Pryde Holding, I have decided to adopt the following determination:

Louisiana Station aggregation (AV94-641)	
12,486 hectares @ \$4.00 per hectare	Adopt \$50,000
 Brannighan Holding (RV94-0187)	
6,000 hectares @ \$6.00 per hectare	\$36,000

This decision clearly causes a major shift in relativity between Flaggy Holding and Brannighan Holding. No doubt that aspect will require future specific investigation and submission. It may be, of course, that with 2,000 hectares of "good forest flats", Flaggy Holding should be regarded as the superior grazing block.

If as was stated at the outset, the former valuation of Brannighan Holding for rental purposes was \$36,000 then in effect, the evidence which was led to a higher valuation is rejected. The appeal is dismissed, the determination being in the amount of \$36,000.

The appeal against the valuation of the Louisiana Station is allowed, the determination of the chief executive set aside, and the unimproved value of the land contained in appeal reference AV94-641 determined in the amount of \$50,000.

RE WENCK
MEMBER OF THE LAND COURT