

LAND COURT

BRISBANE

31 August 1995

**Re: Determination of unimproved value for
conversion purposes -
Special Lease No 35/51342, Rockhampton District.
Lessees: William James Inslay and Rhonda Dawn Inslay**

(Hearing at Rockhampton)

D E C I S I O N

Mr and Mrs Inslay are the lessees of Special Lease No 35/51342, Rockhampton District, which comprises lands described as follows:

Lot 187 on Plan DS396, area 12.9 ha
Lot 48 on Plan DS274, area 7.3729 ha
Lot 167 on Plan DS249, area 2.4736 ha
Lot 192 on Plan DS437, area 3.1363 ha

TOTAL AREA 25.8828 HA

These lands are in the Parish of San Jose in the County of Deas Thompson.

These four separate parcels of land comprise the Special Lease and are spread throughout the north-western part of an aggregation of lands held by the lessees under various tenures, known as "Rochelle Downs" and situated adjacent to the township of Marmor.

Under the provisions of s.207 of the Land Act 1962, the lessees applied to the Minister for Lands for conversion of the lands comprised in the Special Lease to freehold tenure. The Minister received this application on 5 October 1992 and this becomes the relevant date for this purpose. The Minister determined the unimproved value of these lands for conversion purposes at \$37,300 and the lessees have requested that this matter be referred to the Land Court for hearing and determination.

Mr WJ Inslay appeared and gave evidence on behalf of the lessees. He stated that in 1985 they purchased the property which included the blocks comprised in Special Lease No 35/51342 for \$450 per acre (approximately \$1125 per hectare). At the time they were overgrown with rubber vine and brigalow suckers and were poorly fenced. Now, he said, the lessees find that they have to purchase the land all over again at an exorbitant valuation after they have eradicated the rubber vine and brigalow at great expense. He went on to explain that the four blocks comprising the

Special Lease are an integral part of their operation as graziers. If they are forced to pay the Crown's valuation for these blocks, he questions the viability of using the area for grazing purposes.

While Mr Inslay agreed that the valuation of each of the blocks was consistent with prices being paid for similar areas of land in the Marmor District, he felt that the Department of Lands had not taken into account a number of factors.

First, he said that the lands, together with other parts of the aggregation, have salinity and erosion problems. He explained that in 1985 when they purchased the property there was hardly any erosion or salinity. However, since then they have had a succession of dry years and the problems are getting worse every year. The salinity kills the grass and the erosion is caused by heavy rain on the bare ground. Mr Inslay went on to explain that the problem is caused by a rising water table, the result of the clearing of thousands of acres in the valley. As their country is the lowest in the Marmor District, it suffers more than surrounding properties. Mr Inslay is convinced that the problem is not caused through over grazing. He said it is an inherited problem and can only be arrested by the planting of many trees.

Each of the blocks is affected in different ways, Mr Inslay said. On Lot 187 about 5 acres (2 hectares) of the southern most part is affected by salinity with deep erosion. Lot 48 is the worst affected and the salt area is spreading, so that between one-third and one-half of the area is affected by salinity. Lot 167 seems to be clear of salinity, but it is full of mullock heaps, the result of gold mining in earlier days.

Lot 192 has about two-thirds of the area affected by salinity and Mr Inslay described it as "a sort of useless block". He said it has no access whatsoever with a major creek running through the front half of it, which is broken country. Cattle cannot cross the creek, because it is what he described as "bottomless" country, with the creek banks eroded and runners like arteries.

Mr Inslay said that erosion comes hand in hand with salinity. Once the ground was bare, heavy rain washes big drains everywhere. The problem was worse at some times than at others, depending on the water table. However, he said it was spreading.

Second, there was no access to three of the blocks. While Lot 187 had no problems with access as it fronted the old highway, Mr Inslay said that the other three lots presented major access problems. He explained that there is no road and, where the gazetted road meets the Bruce Highway, there is a major culvert with a stormwater drain approximately 2 metres high. In Mr Inslay's opinion, there would be massive costs in constructing access to the three blocks and he thinks that the cost of constructing such a road would outweigh the value of the blocks.

Third, there was difficulty in obtaining water in the area. Mr Inslay said that at the time of purchase the bores on the aggregation were useable, but they are now salty at 6,000 parts per million. He explained that this means they cannot be used for domestic purposes, not even to water the lawn as it kills grass. However, he said the water can be used for septic systems and is quite good for stock. Mr Inslay said that the alternative is to sink dams and, while he has put down a good 12,000 yard dam on MH764, on other parts of the aggregation dams are difficult as the soil is "like chocolate" and erodes away.

Finally, there was the cost of providing power to each of the blocks. Mr Inslay estimated that it would cost between \$4,000 and \$5,000 to connect electricity to each of them.

Evidence for the Crown was given by Mr GG Kelsey, a senior valuer employed by the Department of Lands. Mr Kelsey explained that he was not the valuer originally responsible for the valuation for conversion purposes. However, when that valuer had been transferred from the district, he had taken over responsibility for the valuation.

After inspection and investigation, Mr Kelsey altered the valuations of each of the lots and arrived at a total valuation of \$37,500. However, he adopted the figure of \$37,300 arrived at by the original valuer as that had been the offer to the lessees.

Mr Kelsey explained that it was necessary to value each of the lots separately because, after they had been converted to fee simple tenure, each one was capable of separate sale. He said that separate titles would be issued upon freeholding. He felt that an experienced person would be prepared to pay for each separate lot because of the demand for homesites in the area.

Mr Kelsey was aware that the lessees were genuine primary producers who operated their property as a single entity. However, he felt that it was his duty to value the land at its highest and best use and, as each of the lots would be given separate title, he felt he had to approach the valuation accordingly.

Mr Kelsey explained how he had valued each of the separate lots. Lot 187 has an area of 12.9 hectares, is comprised of easy sloping cleared forest ridges, well situated in relation to Marmor, has easy access, is elevated and has a good outlook over the surrounding area. He said that its biggest problem is its shape, being long and irregular, but he said there was a good site available at the front of the block. He acknowledged that there is salt intrusion at the rear, but he did not believe that to be of great consequence.

Mr Kelsey valued Lot 187 at \$22,500 by direct comparison with three sales. Sale No. 1 has an area of 8.488 hectares and sold in October 1992 for \$25,000. The sale was analysed to show an unimproved value of \$20,300. This land is situated to

the west of Marmor with a frontage to the Bruce Highway, being located between the highway and the railway line. It is described as being cleared brigalow scrub, broken by a creek and watered by a well and small dam. However, Mr Kelsey said that the well had gone salty. In comparing it with the subject land, Mr Kelsey said that the latter had superior access, was better situated, was larger, elevated, had a good outlook and overall he considered it to be superior to the sale property.

Sale No. 2 has an area of 20.89 hectares and sold in February 1992 for \$26,000, which analysed to an unimproved value of \$21,700. This land is situated to the north of the town of Marmor on a formed gravel road. Mr Kelsey describes it as comprising cleared scrub, with an easy to moderate slope, steep at the rear. It is watered by a small dam. Comparing the sale with the subject land, he said that the latter has superior access, superior location and outlook. However, the sale is larger. Overall he considers that the subject is superior to the sale.

Sale 3 has an area of 18.54 hectares and sold in July 1993 for \$29,000, which analysed to an unimproved value of \$23,800. Mr Kelsey describes this land as comprising easy to moderate sloping cleared scrub, with some brigalow and forest influence. It is watered by a small dam. In comparing it with the subject land he said that the latter has superior access and location, although the sale is larger, has a better shape, is elevated and has a good outlook. Overall he considers the sale to be superior to the subject land.

Mr Kelsey valued Lot 48, which has an area of 7.3729 hectares, at \$10,000. He describes it as predominantly cleared brigalow scrub, developed to grass. He agrees that there would be about 2½ hectares affected by salinity, which leaves a 5-hectare site with the advantage of less noise than the sales but with access problems. He feels that the valuation of \$10,000 in comparison with the sales, allows for the access problems and salt intrusion.

Lot 167 has an area of 2.4736 hectares and Mr Kelsey valued this land at \$4,000. It is also predominantly cleared brigalow scrub, developed to grass and has no present salt problem, but has the access difficulty.

Lot 192 has an area of 3.1363 hectares and Mr Kelsey valued this land at \$1,000. Once again he sees it as predominantly cleared brigalow scrub, developed to grass, but he states that he was very unimpressed with its country and access. He saw it as a flooded block, the high ground having no access as it would require a creek crossing. He said that it was not feasible to value it as a rural homesite. It was heavily eroded and of relatively low grazing value, but he thought it could be used as a horse paddock by somebody from the town. However, he conceded that there was the problem of flooding. Therefore, he valued it at a nominal \$1,000.

Mr Kelsey said that he had considered applying a multiple holding (or bulk) allowance to the total value, but since he had applied conservative values he felt that this was not necessary.

Mr Kelsey introduced another sale situated to the east of the town of Marmor, with an area of 4.047 hectares, which sold in August 1993 for \$17,000 and analysed to an unimproved value of \$15,000. He described this land as easy sloping cleared forest, with part subject to flooding. It had a permanent waterhole and no salt intrusion. He thought it would be inferior to the subject land if the salt intrusion on the latter was set aside.

Mr Inslay knew the three basic sales used by Mr Kelsey. He commented in relation to Sale No. 1 - that the purchaser had paid too much for it and was overstocking it. He thought it was a good block, with all useable land and superior to the subject land because of the latter's salt areas. He did not regard it as an appropriate basis.

Mr Inslay knew Sale No. 2 as he had leased it from the vendor. He said that every bit of it was useful land which had been purchased for grazing. He thought that at the sale price of \$1244 per hectare it was superior to the subject land.

Mr Inslay considered Sale No. 3 to be a really good block with all useful land. This property sold for \$1564 per hectare for 18.5 hectares and he regarded it as superior to the subject land because of the latter's problems.

Mr Inslay went on to say that if it was not for the problems of salinity, access, water and power, he would have no argument with the Lands Department's values. He arrived at this conclusion by comparison with two of the three sales used by the Department. However, compared with those two sales he felt that the subject lands had lost half of their value.

This matter comes within the provisions of s.207 of the Land Act 1962. Sub-section (7) of that section indicates that where a matter has been referred to the Court, the unimproved value is to be determined at the amount that in the Court's opinion experienced persons would be willing to pay for an estate in fee simple in the land if it was offered for sale on the reasonable terms and conditions a bona fide seller would require.

In this case, the Special Lease, the subject of the application for conversion, is somewhat unusually comprised of four separate parcels, only two of which, Lot 167 and Lot 48, actually adjoin. As Mr Inslay has described it, they are scattered across the north-western part of his aggregation which is used solely for grazing purposes.

While Mr Inslay has explained that he intends to continue to use the land for such purposes, Mr Kelsey has reasoned that as freehold land each of the lots will be

given separate title and would be capable of separate sale. He has therefore formed the opinion that the highest and best use of each of the lots is as a separate saleable entity, rather than as part of a grazing aggregation.

While I can sympathise with the argument of the lessees, the sales in the area indicate that there is a market for small hectare properties for various purposes. Therefore, I think that Mr Kelsey is correct in approaching the valuation on the basis of its highest and best use as four separately saleable properties.

However, the evidence in this case has caused me to doubt whether the highest and best use of Lots 48, 167 and 192 is really as separate rural residential sites. Although each of them fronts a surveyed road, the roads are not made and access to the Bruce Highway presents a real problem. If Mr Inslay is correct, the cost of establishing access would outweigh the total value of the three lots.

In addition, Lot 48, which is admittedly a good grazing block, is being seriously affected by salinity problems which Mr Inslay expects to spread even further. While Lot 167 is presently free of salinity and erosion problems, it is covered with mullock heaps. The description of Lot 192 indicates that this land alone would have very little value.

These three lots are situated within the Inslays' aggregation in such a way that it is difficult to comprehend that the lessees would endeavour to sell any or all of them as separate parcels, as separate ownership of these lands would make management of the balance of the aggregation extremely difficult. Taking all these things into account, I have come to the conclusion that the highest and best use of the three allotments is not as three separate saleable lots, but as small areas of grazing land.

However, the same cannot be said of Lot 187, which is on the extreme north-western end of the aggregation fronting the old highway. If any part of the Special Lease could be sold separately, this lot presents the ideal opportunity. I have therefore come to the conclusion that it should be valued as a separate saleable rural homesite. However, after carefully considering the evidence and the comparison with the sales advanced by Mr Kelsey, I have come to the conclusion that although the land has a number of advantages, the salt intrusion on the southern part of the lot and its very awkward shape, render it less desirable than the sales. Giving the benefit of the doubt to the lessees, I have come to the conclusion that a valuation of \$20,000 on Lot 187 would be more appropriate.

I intend, therefore, to approach the determination of value in the following manner:

Lot 187 will be valued as a separate rural homesite at \$20,000; Lot 48 and Lot 167, with a combined area of 9.8465 hectares will be valued as grazing land at \$1,000

per hectare, rounded to \$10,000; Lot 192, which by the description given by both Mr Inslay and Mr Kelsey, is an inferior piece of country will be valued at a nominal \$1,000. Total valuation will therefore be \$31,000.

Accordingly, the unimproved value of Special Lease No 35/51342, Rockhampton District, for the purposes of conversion of tenure is determined at the sum of Thirty-one thousand dollars (\$31,000).

Member of the Land Court