

LAND COURT,

BRISBANE

12 November 1998

**Re: Determination of Unimproved Values -
City of Townsville -
(Refs. AV97-353, AV97-354, AV97-355 and AV97-356).**

Estate Blanche E Kennedy

v.

Chief Executive, Department of Natural Resources

D E C I S I O N

These appeals are against the determination by the respondent Chief Executive of unimproved values as at the relevant date of 1 October 1996, for four parcels of land situated within the suburb of North Ward, Townsville. Brief details are:

Appeal Ref. AV97-353 - Lot 5 on Plan T118261, Parish of Coonambelah, containing an area of 1085 square metres - Chief Executive's valuation \$140,000 - appellant's estimate of value as contained within the notice of appeal \$50,000 - situation 42 Rose Street.

Appeal Ref. AV97-354 - Lot 2 on RP 735078, Parish of Coonambelah, containing an area of 1078 square metres - Chief Executive's valuation \$110,000 - appellant's estimate of value as contained within the notice of appeal \$50,000 - situation 29 Ryan Street.

Appeal Ref. AV97-355 - Lot 1 on RP 735078, Parish of Coonambelah, containing an area of 937 square metres - Chief Executive's valuation \$110,000 - appellant's estimate of value as contained within the notice of appeal \$48,000 - situation 8 The Esplanade.

Appeal Ref. AV97-356 - Lot 54 on Plan T118160, Parish of Coonambelah, containing an area of 1012 square metres - Chief Executive's valuation \$90,000 - appellant's estimate of value as contained within the notice of appeal \$48,000 - situation 40 Rose Street.

The appellant was represented in the cases by counsel who did not call valuation evidence. But tendered in evidence was an affidavit sworn by Karyn Michelle Forzatti, who is a solicitor and member of the legal firm, Messrs Boulton, Cleary and Kern, which firm acts for the appellant estate in the matters. Included within the documents attached to the deponent's affidavit are:

- (a) A lengthy unsworn statement of Duncan Alexander Robert Kennedy dated 20 October 1998.
- (b) A copy of correspondence from Duncan Kennedy to the Deputy Registrar of the Land Court dated 13 June 1997.
- (c) A copy of a statement by Duncan Kennedy supporting previous objections to the valuations of these properties dated 27 March 1997.
- (d) Copy of notices of appeal (Court References V78-566 and V78-567) together with a copy of a decision of the Land Court dated 14 December 1979 in relation to these appeals referred to in the statement of Duncan Kennedy.
- (e) A copy of two photographs labelled “annual king tides - 42 Rose Street” and “42 Rose Street (no protection)” respectively referred to in the statement of Duncan Kennedy.
- (f) A copy of a storm tide warning map of the City of Townsville.
- (g) A copy of correspondence from Suncorp Insurance and Finance to Mr and Mrs BE and DA Kennedy dated 19 October 1998, advising of the exclusions in their home insurance policy.

Mr Duncan Kennedy was not called in evidence to support his statement which was admitted for what it was worth. Counsel for the appellants indicated that Mr Kennedy had expressed the desire not to give evidence in the cases, nor to be cross-examined. I have perused the unsworn statement in which Mr Kennedy raises a number of matters relating to the same grounds of appeal in each case. But of major concern to Mr Kennedy is that the subject lands are subject to inundation in possible future tidal surges, and that the owners are unable to secure insurance against future possible damage to their properties in such tidal surge events.

Included within Mr Kennedy’s statement is a comprehensive list of unimproved values placed by the respondent Chief Executive on sites in many suburbs of Townsville which are suggested by Mr Kennedy not to be vulnerable to tidal surges.

It is Mr Kennedy’s opinion that a sea-wall is required along The Esplanade in Townsville extending to Rowes Bay to protect lands along and in the vicinity of the foreshore of Cleveland Bay from the possible effect of tidal surge.

It is the submission by counsel for the respondent Chief Executive that each appeal be dismissed as there is no valuation evidence, or even sworn evidence, placed before the Court on behalf of the appellants. With this submission I cannot but agree, especially as section 45(4) of the Valuation of Land Act 1944 places upon owners the burden of proof in appeals

of this nature. But if it was Mr Kennedy's main objective to have his statement admitted into the Court records, then I should say this desire, at least, has been satisfied.

In the result then, all appeals are dismissed and the following determinations are made:

Appeal Ref. AV97-353 - The unimproved value of Lot 5 on Plan T118261, Parish of Coonambelah, as determined by the respondent Chief Executive in the sum of \$140,000 is affirmed.

Appeal Ref. AV97-354 - The unimproved value of Lot 2 on RP 735078, Parish of Coonambelah, as determined by the respondent Chief Executive in the sum of \$110,000 is affirmed.

Appeal Ref. AV97-355 - The unimproved value of Lot 1 on RP 735078, Parish of Coonambelah, as determined by the respondent Chief Executive in the sum of \$110,000 is affirmed.

Appeal Ref. AV97-356 - The unimproved value of Lot 54 on Plan T118160, Parish of Coonambelah, as determined by the respondent Chief Executive in the sum of \$90,000 is affirmed.

(CH Carter)

Member of the Land Court