

# LAND COURT OF QUEENSLAND

CITATION: *Jackson v Department of Natural Resources and Mines*  
[2005] QLC 0018

PARTIES: Peter W and Valerie J Jackson  
(appellants)  
v.  
Chief Executive, Department of Natural Resources and  
Mines  
(respondent)

FILE NOS: AV2003/0097 and V2003/0007

DIVISION: Land Court of Queensland

PROCEEDING: Appeals against valuations made under the provisions of  
the *Valuation of Land Act 1944*

DELIVERED ON: 15 April 2005

DELIVERED AT: Brisbane

HEARD AT: Innisfail

MEMBER: Mr RP Scott

ORDER: **The appeals are dismissed and the valuations of the  
Chief Executive are affirmed.**

CATCHWORDS: Valuation - Sales analysis - Depressed market - "Added  
value" of improvements - Value of clearing - Use of  
grazing land as a basis for arable values - Need to maintain  
highest and best use of subject property

Valuation - Sales analysis - Value of clearing - adoption of  
fixed value for different country types rejected

Valuation - Sales analysis - Value of structural  
improvements - Inconsistencies indicate defective analysis

Valuation - Dispute as to arable area - Subject arable area  
measured precisely - Sales arable area estimated broadly -  
Proper basis for comparison

Valuation - Sales - Adjoining owner sales - No premium paid in declining market

Valuation - Sales - Auction - Not proof that sale at market value

Valuation - Sales - Mortgagee sales not accepted

APPEARANCES: Mr D Turnbull for the appellants.  
Mr K Fisher for the respondent

SOLICITORS: Lee & Co for the appellants  
Crown Solicitor, Crown Law, for the respondent

[1] The appellants own the subject property situated in the County of Cardwell, Parish of Tyson which is described as:

- Lot 2 on SP 123198 28.09 ha
- Lot 3 on RP 749516 135.20 ha
- Lot 4 on RP 803728 70.91 ha
- Lot 50 on RP 859327 73.40 ha  
307.60 ha

[2] Pursuant to the provisions of the *Valuation of Land Act 1944*, the respondent Chief Executive has placed valuations on the subject land as at relevant dates of 1 October 2000 and 1 October 2002. For the 2000 relevant date the Chief Executive's valuation is \$640,000. Whilst the appellants provided an estimate of \$342,500 in the Notice of Appeal, evidence was led to a figure of \$490,000.

[3] For the 2002 valuation the Chief Executive adopted a figure of \$435,000. The appellants' estimate of value provided in the Notice of Appeal was the same as that for the 2000 valuation, however evidence was led to a valuation figure of \$260,000.

[4] By consent, both appeals were heard together. Subject to what I say at [114], the grounds of appeal were expressed in language which was sufficiently wide to encompass the issues addressed before me.

[5] Peter Wayne Jackson, one of the co-owners, provided evidence in support of the appeals, whilst Daniel Patrick Glasson, a certified practising valuer, provided valuation evidence for the appellants. Stephen Allan Cross, also a certified practising valuer, provided valuation evidence in support of the Chief Executive's valuations.

[6] The subject property is a sugar-cane farm comprising four adjoining titles and is zoned "Agriculture" in the relevant Cardwell Shire Council Town Plan. The parties approached the value of the property on the basis of it having a highest and best use for sugar-cane growing. The property is situated about 13.5 km south of the town of Tully in a direct line, according to Mr Glasson, or 16 km by road on Mr Cross' understanding. It lies a

short distance south of the Murray River in an area referred to as Murray Upper. It has a gravel road on its northern boundary, two gravel roads as internal separation and a bitumen road on the southern boundary (Murray Upper Road). A power-line easement traverses the property in a north/south direction.

[7] The property comprises an irregular shaped aggregation of predominantly level to gently sloping coastal forest country which includes low-lying portions subject to periodic flooding. Soils on the land are predominantly poorly drained silty clay loams with a section of heavier low-lying clay soils in the central northern section.

[8] Mr Jackson had lived together with his mother and stepfather on one of the subject lots which he later took over. He added the other three lots over time. In its unimproved state the subject land would have been covered with vegetation including heavy tropical scrub which required significant effort for clearing. The land in that natural state was intersected by some broken gullies, though had no natural permanent watercourses running through it. To develop the land to a stage where it could be used for its highest and best use the land required substantial drainage works.

[9] The appellants progressively carried out significant improvements by way of filling and levelling of broken ground and gullies and the provision of extensive drainage works which included both large drains and silt traps. A neighbour to the north allowed the appellants to discharge water through her land.

[10] Approximately half of the subject land has since the year 2000 been progressively levelled by use of laser levelling techniques. That levelling has been carried out, not for the purpose of facilitating flood irrigation, but to eliminate boggy patches and allow an even and controlled flow of seasonal inundation over the land.

[11] In the appellants' submission an area of 245 ha has been developed to a condition suitable for sugar-cane production, whilst a further 25 ha had potential for such development. That total of 270 ha is 5 ha less than the 275 ha figure said by Mr Cross to be arable. I now turn to deal with this issue.

#### **Available Arable Area**

[12] Mr Glasson's arable area had been based on the Tully Mill plan which plotted and measured the arable land based on assignment to the mill. Mr Jackson interpreted that mill plan and calculated the arable area. In that exercise, areas occupied by headlands and areas under the electricity easement were left out of consideration.

[13] I note that in Exhibit 7 tendered by the appellants which shows soil suitability for sugar cane on the subject property as classified by the Department of Primary Industries, the area of the easement is classified as being suitable with moderate limitations. I note also

Mr Glasson's evidence that an aerial photograph in his valuation report appears to show some cultivation within the easement area and some road. My own inspection of that document shows little road and substantial areas of cultivation.

[14] Mr Cross said that his approach was not to take the area of measured cane paddocks as the start point, nor to provide a separate figure for headlands and drains. His area figure was, as I understand, based on a long-held departmental view of the quality of the arable land on the subject property. He pointed out that Mr Jackson's figures on Exhibit 6 show that in 2003 there was 218.02 ha planted to cane, 27.13 ha fallow and 24 ha yet to be developed. That totals 269.15 ha and appears to be the basis of Mr Glasson's figure of 270 ha. That same exhibit includes an area of 34.82 ha which appears to cover drains, headlands and roads, with the balance up to 307.61 ha being easement much of which, as I have said, appears to have cultivation under the powerlines.

[15] These figures seem to me to support an area greater than 270 ha if it is appropriate to include headlands and drains. The answer to that question lies, I think, in the treatment of sales. In my view, the area covered by headlands and drains can be included if they are treated similarly on the sales to the way they are on the subject. Once included, it would be appropriate to make any necessary adjustments in the comparison process for such matters as shape, broken nature of country or need for drainage. That is what I understand Mr Cross has done. There was no evidence that Mr Glasson had determined the arable content of the sales on a similar basis to that employed in the case of the subject property. In that respect he appears to have adopted the same approach as Mr Cross: that is, by estimating the area of arable land on each sale property by consideration of the quality of the land. In addition to that, I notice that he has taken into account the broken nature of the subject property and the requirement for drainage.

[16] On the basis of the above reasoning, I see no need to adjust Mr Cross' adoption of 275 ha for the arable content of the subject property. He has simply employed a "like with like" comparison between the subject and sales properties, whereas it appears that Mr Glasson has not treated the subject and the sales in a similar manner. Mr Cross' estimate of arable area is further supported by the average recovery rate in the Tully area: that is the average percentage that would be devoted to headland, roads and drains. Mr Cross said that the average is between 5% and 10%, whereas Mr Glasson's arable area of 270 ha indicates a recovery rate outside that range at 13%.

### **The 2000 Valuation**

[17] Mr Glasson based his valuation on the subject property having an arable component of 270 ha which he valued at \$1,750 per ha. He applied \$500 per ha to the balance land (a

figure agreed to by Mr Cross) and totalled the 2000 valuation at \$490,000. Given the conclusions that I draw later in these reasons, I see no need to adjust Mr Glasson's overall value to cater for my conclusion on the issue of the available arable area.

[18] Mr Cross approached his valuation thus:

275 ha poor to fair arable @ \$2,545/ha	\$699,875
Less severance - 25 ha (5%)	<u>\$3,181</u>
	\$696,694
	(\$2,533/ha)
Plus balance land, gullies, timbered areas etc	
32.6 ha @ \$500/ha	<u>\$16,300</u>
	\$712,994
Less size allowance 10%	<u>\$71,255</u>
307.6 ha (Total Area)	<u>\$641,739</u>

He then rounded that figure to \$640,000. For the purpose of comparison between the two valuations I have calculated that, after taking into account Mr Cross' allowances for severance and size, the per ha arable value assessed by him was \$2,280 per ha (\$699,875 less \$3,181 = \$696,694 less 10% size allowance of \$69,669 = \$627.04 or \$2,280 for an area of 275 ha).

[19] The primary issue between the parties was concerned with the level of value in a market that had by 1 October 2000 retreated from its peak of about two years earlier, then fell further to the relevant valuation date in 2002. I will confine my comments at this stage to the 2000 valuation.

[20] The sticking point was the rate and extent of the market value decline, Mr Glasson contending that it was both faster and deeper than Mr Cross thought to be the case. Mr Cross had provided evidence on this issue before the learned President in *Northern Butcheries Pty Ltd and Warringha Pastoral Co Pty Ltd v Chief Executive, Department of Natural Resources and Mines* [2002] QLC 77 in which the opposing valuer, Mr Dickson, had put a view similar in many respects to that which Mr Glasson expressed before me. The relevant date in what I will refer to as the *Northern Butcheries* case was 1 October 2000. I take the following quotations from the judgment in that case:

"[82] Therefore, apart from the Nash sale, there is no evidence to indicate that the market had dramatically fallen prior to the date of valuation ...".

"[87] After considering all the evidence, I have come to the conclusion that the sales before the date of valuation lend more support to the level of values applied by Mr Cross than to the level of values contended for by Mr Dickson. Both valuers agree that at the date of valuation the sales showed a fall in the market from the peak in 1998 or 1999, but there is little evidence to indicate that the market had fallen as sharply as Mr Dickson asserted."

"[94] I have come to the conclusion that the after-date sales do not demonstrate that the values applied by Mr Cross were incorrect at the date of valuation. What they do appear to indicate is that the market had fallen since that date. There is no doubt that the market for cane land has deteriorated since the date of valuation as the circumstances of the sugar industry have worsened. However, I accept the evidence of Mr Cross that at the date of valuation there was still a degree of optimism that the world price of sugar and the profitability of the industry could improve. Unfortunately that has proved not to be the case and the industry is suffering badly. However, the valuations under appeal do not relate to the market today, but at the date of valuation."

[21] It was submitted for the appellants before me that I would not follow the conclusions drawn by the learned President in the *Northern Butcheries* case because of differences in the evidence placed before me from the evidence received in that case and because of what was suggested as being deficient advocacy of the appellants in that case. Those two submissions are largely intertwined. I return to them later.

[22] It is perhaps best to start a consideration of the central issue by outlining Mr Cross' views since they have already received some consideration by this Court. He included six sales in his valuation report and it his selection of his Sale 6 as being the most comparable which reveals his opinion rather starkly. That sale property has an area of 259.06 ha and sold for \$1,450,000 which Mr Cross analysed to an unimproved figure of \$2,856 per ha. The sale took place in July 1996, that is almost 4½ years before the relevant date. In his valuation report he said:

"The mid 1996 date of this sale is considered of little concern, as the market situation at this date was considered more representative of the October 2000 relevant date than the bulk of the 1997 to 1999 evidence, which provides supporting evidence only.

The general market trend for rural land saw the levels of value rise from 1995 to mid 1998, from where it plateaued then commenced a gradual decline through the October 2000 relevant date."

[23] Mr Cross reasoned that by October 2000 the value of cane lands had retreated to the level that had applied in mid-1996. He therefore accepted a contention of the appellant that since the date of his Sale 6 the market had experienced a considerable upward, then downward, movement.

[24] Mr Cross relied on the same six main sales in the *Northern Butcheries* case, with his Sale 6 again being his main sale there, however, whilst in that case his analyses of the sales were not challenged, a number of challenges were made in the present case.

[25] In his valuation report Mr Glasson said that the market for agricultural properties "peaked during 1998, 1999 and the first half of 2000". Both valuers therefore appear to recognise

a market growth and plateau but are not ad idem as to the nature and extent of its decline. Mr Glasson rejected Mr Cross' suggestion that there was a "gradual decline", saying there was a distinct drop, the resultant level in October 2000 being lower than that found in mid-1996, the time of Mr Cross' Sale 6.

- [26] Mr Cross said that the Sale 6 land has poorer quality soils than does the subject property. It does flood in part and requires drainage, but not as extensively as appears on the subject. The sale has permanent water available to it.
- [27] Mr Glasson contends that the market was stronger at the date of this sale than at 1 October 2000, though he accepted that in other material respects the sale was the most comparable basis in Mr Cross' valuation report and did not directly challenge Mr Cross' comparison.
- [28] Sale 1 in Mr Cross' valuation (Sale 5 in Mr Glasson's report) has an area of 94.45 ha and sold in July 2000 for \$850,000 to an adjoining owner who was leasing part of the property to grow bananas. I will refer to this as the Kippin sale. Vendor finance was made available in the sale and Mr Cross discounted the sale price, taking that factor into account and yielded a discounted price of \$792,000, improved. He analysed that price to an unimproved figure of \$3,760 per ha, however the sale was applied by the Chief Executive for valuation purposes at \$2,145 per ha or 57% of the analysed sale price. Both valuers agree that the sale was a high one at the time, given its special circumstances and was not a suitable basis for direct comparison. Mr Glasson analysed the sale to \$7,901 per ha for its arable content which he put at 80 ha.
- [29] The circumstances of this sale are such that it is not a suitable basis for comparison purposes. Too many adjustments would be needed in the comparison process. I concur, however, with the learned President's conclusion that "perhaps the only thing that could be said for the sale is that it is not evidence of a significant fall in the market" (*Northern Butcheries* at [73]).
- [30] Mr Cross made reference in oral evidence to what is included as Sale 1 in his 2002 valuation report. This is an after date sale which was transacted in May 2001, but which Mr Cross said supported his view that the market decline to 1 October 2000 was not as dramatic as Mr Glasson suggested. He said also that this sale (the Forestry Rewards sale) which on a walk-in/walk-out basis took place at \$5,470 per ha indicated that the market at 1 October 2000 was similar to that which obtained at the date of his Sale 6 which walk-in/walk-out showed \$5,600 per ha. The market had declined between October 2000 and the date of the Forestry Rewards sale. Both sales were effectively cleared and fenced, had little in the way of structures and were comparable in most respects, in Mr Cross' opinion.

- [31] The Forestry Rewards property is located in Murray Upper, has an area of 98.34 ha and sold in May 2001 for \$538,000. Mr Cross analysed the sale by deduction of improvements to produce an unimproved figure of \$261,650 or \$2,660 per ha.
- [32] The Chief Executive applied a value of \$152,500 or \$1,555 per ha to the sale property reflecting a 58% application of the analysed sale price. In Mr Cross' opinion that unimproved value was probably too low, being based more on a possible cane production area than on its eventual use as a teak plantation. He said that only 70 ha would have been granted a cane production area under the restricted guidelines.
- [33] Mr Glasson expressed the view that this sale is out of line and that this is demonstrated by the fact that it was the only sale of all of those included by the two valuers in their 2002 valuation reports that was analysed to an unimproved value on a full cost less depreciation approach rather than an added value basis being applied to improvements. I note, however, that all of the other sales referred to by the two valuers for the 2002 case were transacted at later dates than the Forestry Rewards sale when the market had declined further. Mr Glasson said that the purchase of this sale property by a public company for the purpose of growing teak, with possible income tax reduction implications, would have led to the high price paid for the property. He said that he had valued the sale property at a much lower figure than the sale price prior to its sale.
- [34] Mr Cross rejected the suggestion that the Forestry Rewards sale was out of line, saying that it was a value reflective of its date of sale. He said that its purchase for teak growing was not relevant, saying that the vendor had been offered in excess of either \$700,000 or \$750,000 in 1998 and 1999. The sale price of \$538,000 was commensurate with the fall in the market that he understood had occurred. Mr Glasson's suggestion that the Forestry Rewards sale is an out-of-line sale depends on the acceptance of the two main sales in his 2000 valuation report which I consider below.
- [35] Another sale property was referred to by Mr Cross in his oral evidence as supporting his understanding of the market trend. That was a sale in July 2000 of a property in East Feluga (the Feluga sale) with an area of 40.194 ha, 35.5 ha being arable in his opinion. It had no structural improvements and Mr Cross analysed it to \$3,895 per ha unimproved for the arable content. About 16 ha have been converted to banana growing since the sale took place. It is served by a creek and it has superior land to the subject, in his opinion. The Feluga sale was lightly improved only and, according to Mr Cross, it therefore provided better evidence than Mr Glasson's Sales 1 and 2 discussed below on account of that feature. He referred to the sale as supporting evidence only for his valuation, though it is presently of interest with respect to the state of the market.



[36] Whilst Mr Cross considered that this sale lent support to his view that the market for cane land had not fallen steeply by October 2000, the sale was attacked by the appellants as being unsuitable for valuation purposes for a number of reasons. First, it is superior land to the subject. Mr Cross readily conceded that - his applied value for the subject property is much lower than the analysed sale price. Second, whilst the sale took place in July 2000, the date of possession was delayed until February 2004. It was submitted for the appellants that this is an unusual feature of this transaction, which raises doubts as to its validity as a basis for comparison. Mr Cross was aware of the much delayed settlement date, however made no attempt to present an analysis of how that feature might have had an impact on the sale price. I would have thought that a vendor would expect a higher price than market in such circumstances or that acceptance of the price may have been associated with the vendor being anxious to sell.

### **Statistical Evidence**

[37] Mr Glasson said that the fall in value of agricultural properties in the general Tully locality was attributable to reduced profitability for sugar-cane and banana growing which dominate the agricultural industries in the region. Low sugar prices, poor seasons, pests and disease all contributed to the downturn, in his opinion. A Black Sigatoka outbreak in 2000 before the relevant date generated great concern amongst those involved in growing bananas.

[38] A graph provided by Mr Glasson appears to show the sugar price having peaked in 1995 then dropping slightly to a plateau through to 1998 when it dropped heavily through to 2000, after which it rose again to levels a little lower than those experienced in 1995. It then fell again. If nothing more, this data points to a reason why confidence in sugar-cane growing may have been shaken by October 2000, though Mr Cross expressed the opinion that some optimism remained in the industry.

[39] I observe that there is no direct correlation between sugar prices and the prices shown by Mr Cross' Sales 2 to 5 which seem to indicate a strengthening property market between 1997 and 1999; that is, at a time when sugar prices were falling.

[40] Mr Glasson presented in the form of two Gantt charts, data showing the number of properties greater than 10 ha in area which sold in Cardwell Shire over the period January 1995 to December 2003. The charts also show the median gross price of the properties sold and the median price per ha, with the latter being considered by Mr Glasson to be of greater importance in indicating the trend in the property market.

[41] The charts indicate that the number of properties sold had peaked at about 38 during the six month period ending December 1997, whilst the number was lower during the six

month periods ending June 1999 (six sales), December 1999 (nine sales), June 2000 (seven sales) and December 2000 (six sales). The number then rose gradually, but unevenly, to about 15 sales in the six month period ended December 2003. Mr Glasson considered the actual number of sales transacted to be significant, the proposition being that fewer sales equated with a lack of confidence in the market.

[42] Whilst the lowest volume of sales took place in the six month period ending December 2000, my reading of the charts is that that period also revealed the highest median price per ha. Following that period, the median price per ha fell away markedly from its peak of about \$9,000 per ha to about \$5,000 per ha for the period ending December 2002. My reading of the charts does not accord with the submission for the appellants that what is shown is a sharp decline in price which commenced during the six month period to December 2000.

[43] I note Mr Glasson's comment that the charts confirm a "significant down trend in the market around the date of valuation", though on first blush the charts appears to indicate that the downturn did not take place until the first half of 2001. Neither valuer supported that thesis. An average price per ha is calculated for a six month period with that average price being marked on the charts at the conclusion of each period. All one can say from this is that the downturn in median price per ha indicated by the charts took place during the 12 month period June 2000 to June 2001. Even if that were accepted, it does not address the core issue between the parties.

[44] Mr Glasson said that the underlying demand fell in 1999, but that it took a while for the market to fall. He then said that his charts showed that "it fell rapidly right at the date of valuation as I would contend this graph shows". In apparent reliance on the charts, Mr Glasson said in cross-examination that the market started to fall steeply and dramatically at the end of 2000. He said that his Sales 1 and 2 give an indication of the market level, but that at the relevant date the market started to fall rapidly.

[45] Analysis of this charted data in support of either Mr Cross or Mr Glasson and their opinion as to market movements is fraught with difficulty for a number of reasons.

[46] First, the median price per ha is apparently arrived at on the basis of the walk-in/walk-out price. That is, the price does not take into account the level of improvements or the individual features of the property such as the quality of the land, the highest and best use and the terms of the particular contract of sale. It could be, for example, that the later sales included a predominance of lightly improved properties.

[47] Second, the median price per ha takes into account a greatly varying number of sales during each of the relevant six month periods. I would have thought that a minimum

number of sales would be required before a conclusion could be drawn that the adoption of a median price per ha was statistically significant.

[48] Third, the attempt to discern a trend in values in the manner proposed by Mr Glasson, assuming for the moment that a single thesis appeared to be supported, suffers some of the defects of the approach to valuation referred to as the averaging of sale prices (*Commonwealth v Milledge* (1953) 90 CLR 157 at 161). The best evidence of a movement in values is the sale and resale of the same property, not the adoption of an average per ha price of a number of properties whose only known characteristic is that each had an area greater than 10 ha.

[49] Having said that, I must also say that the statistical evidence creates a clear impression that the market for the class of property represented in the charts was in decline at 1 October 2000. The data cannot be understood, however, to show the extent of decline at that date from its earlier peak.

### **Mr Glasson's Sales**

[50] Mr Glasson included five sales in his 2000 valuation report, two of which (his Sales 3 and 5) I discuss with Mr Cross' sales as they are sales common to the two valuers. He analysed each of his five sales to an unimproved figure which gave him a range between \$1,148 per ha and \$7,901 per ha of arable land. He said, however, that it was the range shown by his Sales 1 and 2 that should be focused upon, as these were the best sales for valuation purposes. These sales showed a range of \$1,148 per ha to \$2,183 per ha for arable land. He adopted a midpoint of \$1,750 per ha which I calculate to actually be 5% above the mathematical midpoint. He said that the balance of his sales were greatly superior in country and were included only as supporting evidence.

[51] Sale 1 has an area of 199.4 ha and sold in September 2000 for \$628,700. He assessed 90 ha of the sale property as being suitable for growing sugar cane and analysed that component to have sold at \$1,148 per ha unimproved. In his valuation report he said that at the time of sale about 56 ha was planted to cane and also said "approximately 32 ha was irrigated by underground mains which formerly watered bananas however is now fallow". In Mr Glasson's opinion the sale property has comparable location and land classification to the subject property, though is slightly inferior owing to its broken nature. He understood the property had been sold together with a licence permitting irrigation. Mr Glasson contends that this is the most comparable sale and that it should be relied on as the main basis of valuation.

[52] In his analysis of the sale Mr Glasson arrived at an overall unimproved figure of a rounded \$160,000. Initially he applied \$250 per ha to the non-arable or balance land

component and \$1,148 per ha to the arable land. Mr Glasson adopted a lower figure for the balance land than the \$500 per ha standard agreed to by the valuers, his reasoning being associated with the large size of the balance land in the sale property. Mr Cross saw no difficulty with the adoption of \$250 per ha for the balance land in this sale.

[53] Mr Glasson said at one point that the arable component was 122.4 ha of which 90 ha was cleared and the balance land was 77 ha which included some grazing and some riparian land of nil value. Elsewhere he said that the 77 ha of balance land should be increased by 32.4 ha. This apparent conflict was not addressed in re-examination. That point could have been clarified if he had produced a sale analysis in a form suitable for tender rather than making reference to notes, some of which he had difficulty in understanding.

[54] I asked him at the conclusion of re-examination about this issue. He said that the 32.4 ha would be included in the balance land owing to the doubt in the purchaser's mind as to whether clearing would be approved, given the enactment of the *Vegetation Management Act 1999* soon after the date of the contract of sale. He put this at a very high risk. Based on that answer, it seems to me that his sale analysis had initially been:

Arable 122.4 ha @ \$1,148 per ha	\$140,515
Balance 77 ha @ \$250 per ha	<u>\$19,250</u>
Analysed sale price	<u>\$159,765</u>

[55] Once the 32.4 ha is included in the balance land, the arable area is reduced to 90 ha and the balance land increased to 109.4 ha. The analysed sale price would be distributed thus:

Arable 90 ha @ \$1,471 per ha	\$132,415
Balance 109.4 ha @ \$250 per ha	<u>\$27,350</u>
Analysed sale price	<u>\$159,765</u>

The adoption of 90 ha as arable is generally consistent with Mr Glasson's understanding that there was 56 ha of crop and 32 additional ha of land lying fallow. Those areas are not consistent, however, with Mr Cross' evidence that only 56 ha or 58 ha was cleared and an additional 30 ha was crashed but not fully developed. That was not, however, specifically put to Mr Glasson in cross-examination. He was asked generally about the issue, but apart from varying his arable area from 122.4 ha down to 90 ha, was not able to take the matter further without a complete sale analysis in a form suitable for tender.

[56] If I were to adopt the midrange figure between his Sale 1 and Sale 2 based on his mathematics and [55], the arable value of the subject property would be \$1,918 per ha, that is about 5% above the actual midpoint between the adjusted analysed figures.

[57] Mr Glasson considered this sale to be a good basis, given its proximity to the subject property and the date of sale. It is similar in size and superior in land quality, though broken with gullies and creeks, therefore inferior overall.

- [58] This is the Nash sale referred to in the *Northern Butcheries* case at [82] (see [20] herein). In that case it was the only sale that showed a lower unimproved value than applied by the Chief Executive at October 2000 (see [60] herein).
- [59] Mr Cross was aware of this sale but had not used it in his valuation for various reasons which I will now consider. He also had some criticisms of Mr Glasson's reliance on the transaction. The first criticism raised by Mr Cross related to vendor finance having been provided in the sale to the extent of \$128,700 secured by mortgage over a separate property. Mr Glasson was not aware of that aspect of the transaction, though in an annexure to the contract tendered in evidence, it is clear that such a mortgage arrangement was part of the contract.
- [60] In the *Northern Butcheries* decision at [76] this appears:
- "Mr Cross conceded the resale of the Nash property to Piper and Eaton in September 2000 for \$628,700, was the only sale that showed a lower unimproved value than he applied as at 1 October 2000. He analysed that sale to show \$120,000, but at the date of valuation had applied an unimproved value of \$255,000, as he did not feel it reflected market value at that time. His investigations of the sale revealed that the property was sold for reasons of ill health and there were other complications involving farm planning and clearing, which had resulted in the loss of assignment."
- [61] There was no evidence placed before me as to the loss of assignment. Whilst the issue of suggested ill health affecting the vendor was raised with Mr Glasson in cross-examination, no evidence on that issue was adduced through Mr Cross. Mr Glasson said that Mr Jackson had made inquiries of the vendor who did not say that health concerns had motivated the sale. Detail of Mr Jackson's inquiries was not given in his evidence, but was outlined by Mr Glasson.
- [62] Mr Cross said that contrary to Mr Glasson's understanding, a crop was not included in the sale. A crop was, he said, considered as part of an intended sale negotiated earlier in 2000, but given the protracted nature of those negotiations, the vendor had in due course harvested the crop himself. The appellants complained that Mr Cross' understanding of the history of the crop was not put to Mr Glasson. Whilst that complaint is a matter of concern, it is not conclusive in this case for two reasons. First, annexure to the contract of sale makes no mention of the crop, whereas it does go into detail concerning what I would think would be less important matters. Second, the contract took place in September, some three months after the normal date of harvest in the area.
- [63] Counsel for the appellants submitted that Mr Cross appeared to disagree with a contention of Mr Glasson that in addition to the 56 ha that at one stage was said to be planted to

cane, there was 32 ha irrigated by underground mains. I have quoted what Mr Glasson said at [51].

[64] Mr Cross agreed that the sale analysis should take into account irrigation infrastructure of about \$5,000 in value, but he did not clearly say where that irrigation plant was located. As I read Mr Glasson's valuation, the irrigation plant was on an area of 32 ha which was additional to the 56 ha he understood to be planted to cane. That understanding comes from the proposition that the 32 ha was, he understood, fallow at the time of sale. In other words, it was not included in the area he understood to be crop.

[65] Mr Cross said that in addition to what he understood to be 60 ha under cultivation, there was 30 ha that had been crashed only, that is not fully prepared for cultivation. His total of 90 ha is, therefore, similar to what I understand to be Mr Glasson's final estimate of arable area, however the degree of land preparation differs.

[66] Now in Mr Glasson's sale analysis he allowed \$2,040 per ha only for clearing of 90 ha. For the 56 ha, which he understood was under a crop of cane, he added about \$2,000 per ha for cultivation, planting and stools, that is a total cost of \$4,000 per ha approximately, but less if one were to deduct planting and stools costs. It was common ground that the cost of development from green state to seed bed stage for cane was about \$3,500 per ha.

[67] Mr Cross suggested that there was some doubling-up of costs in Mr Cross' analysis of his Sale 1 on the basis that his costing included clearing costs as well as costs of preparation for crop. That was not put to Mr Glasson. It seems to me, however, that Mr Glasson's land preparation cost must be too high as he allowed for crop establishment costs in circumstances where I have concluded that a crop was not part of the sale. Had this matter been squarely raised with Mr Glasson, an alternative cost scenario could have been extracted.

[68] Mr Cross allowed a cartage allowance in his consideration of the sale of property whose assignment he said is to Mourilyan Mill, not Tully Mill, as was thought to be the case by Mr Glasson. Mr Cross said that the farm is isolated and is not serviced by the Tully Mill line. He said also that because of that the property would not have been attractive as a purchase by Tully canegrowers. Mr Glasson conceded that if Mr Cross was correct as to the Mill, there should be some allowance for cartage but thought that this would not make a substantial difference. Given Mr Glasson's reticence, I accept that Mr Cross is probably correct as to the relevant mill.

[69] Mr Cross said also that allowance be made for the more greatly broken nature of the sale property compared to the subject. In addition, he said that the sale property borders the foothill range country which is a source of pests, especially pigs, kangaroos and

cockatoos and possibly cane grubs. Mr Glasson claims no knowledge of these pests.

[70] If I were to employ this sale as a basis for valuation purposes, the arable value analysed from the sale would need to be adjusted upwards from the figure I calculated at [55]. Adjustment would need to be made for the vendor finance; for the crop and its associated establishment costs; and for mill cartage. There may also be a need for a reduced allowance for clearing the 30 ha, said by Mr Cross to be crashed only, however I can draw no firm conclusion on that given the state of the evidence. In comparison with the subject, some small allowance would also need to be made for pests. The number of adjustments that need to be made and the absence of expert opinion as to how those adjustments should be treated compromises the suitability of this sale as a basis.

[71] Sale 2 in Mr Glasson's valuation took place in June 2000 and involved the sale of 30.94 ha for \$260,000. He analysed the sale to an arable content of \$2,183 per ha unimproved on the basis that most of the land was arable. He concluded that the sale property was superior to the subject in land classification and location and that the value of the subject property ought to be less than \$2,183 per ha for its arable content.

[72] Mr Glasson said that the sale property was purchased for grazing but was fully cleared and could readily be used for cane growing. He said that it had an arable area of about 30 ha.

[73] Whilst Mr Glasson said that most of the sale land is class 1 and 2, Mr Cross relied upon a DPI sugar suitability map which indicated that there was 9 ha of class 3 land on the sale land. Notwithstanding such evidence and evidence of a similar type regarding other properties, neither valuer provided evidence which revealed a complete understanding of the nature of the land classification and what it represented. In this context I prefer the broader language such as poor, fair, etc, used by Mr Cross to precise references to land classifications which was employed by Mr Glasson in his valuation, notwithstanding his apparently limited understanding of the classification system.

[74] Mr Glasson said that this sale is a suitable basis because of its sale date. It provided him with a property of slightly superior land, but given its smaller size it would, all other things being equal, show a higher value per ha than would the subject property, in his opinion. His adopted value of \$1,750 per ha for arable land for the subject land favoured the Chief Executive, he said, as his midrange value did not allow for the smaller size of his Sale 2.

[75] Mr Cross did not include the property, the subject of Mr Glasson's Sale 2 in his valuation report, but had inspected and analysed the sale. In his view the arable area was 27 ha. He said that the balance area would not be cleared as it is both low-lying and provides shade

for cattle. He said he analysed the sale to a figure of \$91,500, however he is recorded in the *Northern Butcheries* case at [75] as analysing the sale to \$83,000. He was perplexed by the apparent discrepancy which was brought to his attention during cross-examination. The figure of \$83,000 was the value applied to the sale land for the purposes of the October 2000 valuation.

[76] On the basis of an analysed value of \$83,000, the component values would be:

Balance land 3.94 ha @ \$500 per ha	\$1,970
Arable land 27 ha @ \$3,001 per ha	<u>\$81,030</u>
	<u>\$83,000</u>

[77] Mr Cross said that 27 ha was cleared, based on his inspection of aerial photography in conjunction with his physical inspection of the land. He valued that clearing at \$2,000 per ha, that is \$54,000 in total, whilst Mr Glasson allowed \$2,040 per ha for 30 ha of clearing or \$61,200 in total. On the evidence I heard, Mr Cross' area appears the more reliable, whilst the difference of \$40 per ha for clearing does not invite serious consideration. Clearing costs would therefore come to \$54,000 to \$55,000.

[78] It is with structures that the major difference lies. There was a high-set brick residence, a number of sheds, stables and stockyards on the sale property. Mr Cross allowed \$90,000 in the analysis outlined before me, whilst Mr Glasson placed a figure of \$116,000 on these improvements, that is a difference of \$26,000. Given the detailed evidence Mr Cross provided with respect to timber clearing, I suspect that it is in the area of structures that the discrepancy lies between the analysis he presented in the *Northern Butcheries* case and that presented before me.

[79] Whilst Mr Cross was prepared to say that the sale land should be treated as having a highest and best use as sugar-cane land, he said also that given its size and location, it appeared to represent a lifestyle block. That contention appears to be supported by the level and nature of structural improvements on the land.

[80] It was suggested to Mr Cross that the improvements would be of greater value if the land was viewed as a lifestyle block. He accepted that whilst that may be so, to analyse the sale on that basis would be to give it a highest and best use quite different from a grazing or arable value. It was primarily because of this difficulty that Mr Cross had not included this sale in his valuation. He said that the Feluga sale, which sold ex structures, demonstrates that in Mr Glasson's analysis of this sale he has applied too great a value to structures.

[81] Mr Glasson's Sale 2 has the advantage of proximity in location and time to the subject property, but its highly improved condition with a high proportion of structures and its small size render any analysis subject to error and therefore unreliable in my opinion.



[82] I have concluded at [183] that Mr Glasson demonstrated a tendency in these cases of applying values to structures that were too high. The manner in which the sales analysis contest was joined was not sufficiently precise for me to do other than draw general conclusions on this issue.

[83] The tendency to which I have referred, compounds the difficulty of drawing a conclusion in favour of the appellants that this sale demonstrates a market decline of the order of that described by Mr Glasson. The adoption of a high level of value for structural improvements can only be supported if the highest and best use is taken to be a lifestyle block. And that highest and best use, in which I know judicially the price is more usually influenced by the value of the site than its value per ha, does not supply a direct comparison with the subject property. Nor does it provide a useful indication of the market trend for sugar-cane lands. For the latter use the value of structural improvements would be lower than in the case of a lifestyle use.

### **The Remaining Sales**

[84] The property, the subject of Sale 4 in Mr Glasson's valuation, has an area of 78.61 ha, is located at Lily Creek, Kennedy (the Hilltop sale), and sold in October 1999 for \$500,000, then resold on 6 April 2001 for \$380,000. Mr Glasson analysed the 1999 sale to an unimproved arable value of \$5,644 per ha for the 50 ha he considered to be arable and the 2001 sale to \$3,588 per arable ha. He said that the property sold with a 22 ha water licence and was purchased to grow bananas, though was not specific as to which sale this applied. I assume it was the resale. He expressed the view that the sale land is superior to the subject on a per ha basis.

[85] This sale and resale after date were referred to by Mr Glasson as supporting his view of the market trend. His analysis of the sale indicates a value reduction of 24% between the two sale dates. It does not, however, support a view that a steep decline occurred shortly prior to the relevant date in October 2000 nor, for that matter, that it occurred after that date.

[86] Mr Cross accepts that there was a decline in value after the first sale, but not that the whole of the decline evidenced in the resale took place near and before the relevant date. Mr Cross said that assuming a straight line graph, the decline would have been 17% by 1 October 2000. That may be interesting as a calculation, but cannot be taken as accurately representing the actual market trend as there was no evidence to say that the trend was mathematically even.

[87] Mr Cross said that Mr Glasson was in error in including a 22 ha water licence in the sale. He said that there had been a water licence for a larger area, but that the purchaser applied

for and received a licence for 22 ha. He conceded, however, that the purchaser would have reasonably been of the view that the prospect of gaining such a water licence would have been high at the time of purchase. The purchaser was an adjoining owner who purchased with the intention of growing bananas on the arable area capable of irrigation.

[88] Mr Cross raised a concern as to Mr Glasson's opinion that the property had 50 ha which was properly classified as being arable. He acknowledged that the 22 ha, the subject of the water licence, was able to be cultivated to support a crop, but said that the balance of the suggested 50 ha would not support bananas even with irrigation and was doubtful for sugar cane. The property is not serviced by the Tully cane tramline. It seems that South Johnstone Mill has decided that the road servicing the area of the sale property was not sufficiently safe for the trucking of cane. That situation would change with a suitable road upgrade. Scientific classification of land as being of arable quality is not relevant unless the land is so positioned to take advantage of its attributes. It seems that much of the arable quality land on the sale property has a potential that is suspended until the property is suitably serviced.

[89] This sale was referred to in the *Northern Butcheries* case at [80]:

"Mr Cross had analysed both sales of the Hilltop property. After deducting the value of improvements, the first sale showed an unimproved value of \$267,000. As at 1 October 2000, the respondent had applied an unimproved value of \$180,000 to that property. Mr Cross analysed the resale to show \$152,000."

[90] The \$180,000 figure calculates to \$2,290 per ha overall, that is a value higher than that applied to the subject property by the Chief Executive before me. Mr Glasson's analysis of the 1999 sale I understand to be:

50 ha arable @ \$5,644 per ha	\$282,200
28.61 ha balance land @ \$500 per ha	<u>\$14,305</u>
	<u>\$296,505</u>

[91] For the 2001 sale his analysis would be:

50 ha arable @ \$3,588 per ha	\$179,400
28.6 ha balance land @ \$500 per ha	<u>\$14,305</u>
	<u>\$193,705</u>

[92] Mr Glasson's analyses reveal figures much higher than the analysed figures arrived at by Mr Cross in striking his valuation of \$180,000 as at October 2000. Yet Mr Glasson seized on that applied value in arguing that the value which ought to be applied to the subject property should be lower and supports his valuation of \$490,000. That suggestion appears to me to jettison his own sale analysis and seek to rely on relativity as the basis.

- [93] The benefit of the Hilltop sale in the task before me does not lie, I think, in a comparison between that property and the subject. Apart from Mr Glasson's reference to its relativity with the subject applied value, neither valuer treated the sale as a direct comparison property. Its probative value lies in its indication that between the two sale dates the market for sugar-cane land declined. In that respect, however, it is not evidence in support of there being a steep decline around the date of valuation - the proposition advanced by Mr Glasson.
- [94] I will include details of Mr Cross' sales apart from Sales 1 and 6 which I have mentioned earlier. No benefit can be served in my inclusion of other than the basic sales facts in the case of Sales 2 to 5 inclusive, given their dates of sale when the market was at a much higher level. Sales 2, 3, 4 and 5 in Mr Cross' valuation was said by him to clearly represent the higher market position of 1997 to 1999, a viewpoint agreed with by Mr Glasson.
- [95] Sale 2 in Mr Cross' valuation (included as Sale 3 in Mr Glasson's valuation) was a property with an area of 139.6 ha which sold in September 1999 for \$1,106,000. Mr Cross analysed the sale property to an unimproved value of \$553,000. Both valuers considered the sale to have taken place at a much higher market level than applied at the relevant date.
- [96] In his analysis of the sale Mr Glasson calculated an arable land price of \$5,772 per ha for what he considered to be 110 ha classified as arable. I calculate that his overall unimproved price of this sale would have been \$649,720, that is about \$100,000 higher than that analysed by Mr Cross. This is a sale in which there were no structural improvements and in which, according to Mr Cross, 116 ha had been cleared, though only 70 ha to a cultivation standard, whilst Mr Glasson said that 78 ha was planted to cane. It seems to me then that their basic information was similar, however different analysed figures emerged. I mention this only because of the dispute between the two valuers concerning the analysis of other sales to which I refer below. This is an example against the trend whereby Mr Glasson tended to analyse sales to lower values than did Mr Cross. Whilst there is some difference between the two valuers on the value of clearing, it appears that the more significant difference lies in the area of structures.
- [97] Mr Cross' Sale 3 has an area of 189.2 ha and sold in October 1998. He analysed the sale price of \$1,025,000 to \$550,000 or \$2,900 per ha. In Mr Cross' opinion the sale property is superior to the subject on a rate per ha basis given the sale's smaller area and better quality arable land. The sale property is badly severed by gullies.

- [98] Sale 4 in Mr Cross' valuation has an area of 306.6 ha and sold in August 1998 for \$2,300,000. Mr Cross analysed the sale price to a figure of \$4,045 per ha, however the applied valuation as at 1 October 2000 was \$2,935 per ha. The applied value calculates to \$3,166 per ha for 280 ha of arable land and \$13,300 for the balance area of 26.6 ha.
- [99] The Sale 4 property has 280 ha considered to be of good quality arable land, in Mr Cross's opinion, and has a good natural water supply in Davidson Creek. Mr Cross said that the sale property has a better quality arable land than does the subject property. Mr Glasson said that the sale land is very superior to the subject property, though it should be considered as background evidence only as it is an adjoining owner sale and took place at the peak of the market.
- [100] Sale 5 in Mr Cross' valuation has an area of 283.2 ha and sold in November 1997 for \$2,000,000. The analysed unimproved sale price was \$3,440 per ha, whilst the applied value was \$3,000 per ha.
- [101] In Mr Cross' opinion the sale property has approximately 260 ha of good quality arable land which is superior in quality to that found on the subject. The sale property enjoys a good natural water supply in Davidson Creek.
- [102] Mr Cross included this sale in his valuation in spite of its contract date on the basis that the price paid was lower than the height of the market at that time and was therefore more reflective of what would have been expected in October 2000.
- [103] Whilst in examination-in-chief Mr Glasson challenged the relativity of the applied values of Mr Cross' Sales 4 and 5 in comparison with the subject property, in cross-examination he said that he was not able to provide a comparison between these sales and the subject as he was not in command of the detail.

### ***Northern Butcheries Case***

- [104] The valuer and agent for the appellants in the *Northern Butcheries* case was director of both appellant companies, as well as being a qualified accountant and valuer, though was not a lawyer. The appellants were critical of the conduct of the case for the appellants in the *Northern Butcheries* case, citing four aspects. First, counsel referred to the apparently critical comments of the President at [95]:
- "The exercises undertaken by Mr Dickson to arrive at the unimproved value of each of the subject lands have no validity. They seem to rely on the proviso to the definition of "unimproved value" in s.3(2) of the Act. However, apart from other failings, there is no evidence to establish the improved value or value of improvements in each case, simply Mr Dickson's opinions."
- [105] Second, the appellant submitted that the agent for the appellants in the *Northern Butcheries* case relied on what is before me as Mr Glasson's Sale 4 as demonstrating that

the market had fallen before the relevant date, whereas it could not be relied on to show that. If that criticism applies, then it also applies to Mr Glasson, who expressly relied on this sale as demonstrating that the market had fallen by the relevant date (Transcript p.35). Indeed, Mr Cross also appeared to accept that the sale and resale prices were consistent with a fall in the market having taken place before October 2000.

[106] Third, the appellant observed that in the *Northern Butcheries* case the appellants there had not appropriately challenged any of the sales analyses presented by the Chief Executive. That is clearly the case, however I have considered and dealt with as appropriate the criticism of the sales analyses of both valuers as agitated before me. I note, however, that in the *Northern Butcheries* case the appellants did challenge the relevance of Mr Cross' sales and the comparison of each with the subject land there (at [32]).

[107] Fourth, the appellant submitted that apart from the Chief Executive's Sale 6, the sales relied upon by the Chief Executive in the *Northern Butcheries* case should have all been challenged as being superior to the subject property or, as in the case of Mr Cross' Sale 1 before me, being a high sale.

[108] Mr Cross conceded that his Sales 2 to 5 represent a higher market position than prevailed at the relevant date. He also said with respect to his Sale 1 that it was "not an ideal basis of valuation" for a number of reasons including that it was a high sale.

[109] It is clear to me from the learned President's reasons that the appellants before him did not mount a persuasive case, nor one based on accepted valuation practice. They put forward a case based on evidence other than sales evidence - an approach held by the learned President to be invalid.

[110] Having said that, I also need to take note that the learned President drew a conclusion on the evidence before him that Mr Cross' view of the market trend should be adopted. Whilst I am not bound by that conclusion, I would not lightly depart from it.

### **2000 Valuation Conclusion**

[111] Whilst the valuers' opinions support the proposition that there had been a market decline in sugar-cane land leading up to the valuation date of 1 October 2000, the weight of evidence does not support the contention for the appellant that the decline was steep.

[112] The conclusion of the learned President in the *Northern Butcheries* case, the after-date Forestry Reward sale, the Feluga sale and the Kippin sale all indicate that a level of optimism remained in the market as at 1 October 2000. The single Nash sale must be seen as an example that is against that trend if one is to accept the analysis of the sale to unimproved value put by Mr Glasson. As I have said, however, that analysis is defective on the evidence. I cannot conclude that Mr Glasson's Sale 2 is against the trend or

otherwise given the difficulties in using it as a basis.

- [113] I cannot therefore conclude that the appellant has shown the Chief Executive to have "acted upon a wrong principle or made a serious error of fact" (*Brisbane City Council v Valuer-General* (1978) 140 CLR 41 at 56-57). No direct conflict emerged with respect to the comparison between Mr Cross' main sale (his Sale 6) and the subject land. Accordingly, the presumption of correctness provided for in s.33 of the Act must apply and the appeal be dismissed.

### **Relativity**

- [114] In his oral evidence Mr Glasson made a range of comments concerning the relativity of the Chief Executive's applied value of the subject land in comparison with the applied values of sales relied upon by Mr Cross. That issue was not taken up by the appellants in submissions and properly so, in my opinion. There was no ground of appeal in either matter directed at that issue and s.45(4) of the Act provides that "the appeal shall be limited to the grounds" stated in the Notice of Appeal.

### **2002 Valuation**

- [115] Mr Cross valued the subject land as at 1 October 2002 as follows:

275 ha poor to fair arable @ \$1,635/ha	\$450,000
Less severance - 25 ha (5%)	<u>\$2,000</u>
	\$448,000
Plus balance land, gullies, timbered areas etc	
32.6 ha @ \$400/ha	<u>\$13,040</u>
	\$461,040
Less size allowance 5%	<u>\$23,050</u>
307.6 ha (Total Area)	<u>\$437,990</u>

- [116] He then rounded the valuation down to \$435,000. This figure represents a 32% or approximately one-third reduction from his valuation as at 1 October 2000. Mr Cross reduced the size allowance from the 10% employed in his 2000 valuation to 5% in the 2002 case. He said that this was done because of the further decline in the market by October 2002. Had he maintained a 10% discount, the subject property would have gained a benefit which would be disproportionate in comparison with the smaller properties, in his opinion.

- [117] Mr Glasson also perceived a further market fall from the year 2000 in striking his value for the subject land in this manner:

270 ha of available agricultural/grazing land	
@ \$900/ha unimproved grazing	\$243,000
37.6 ha of unavailable balance lands @ \$500/ha	<u>\$18,800</u>
Total land	\$261,800
Total Valuation	\$261,800

[118] He rounded the valuation down to \$260,000 or about \$845 per ha, representing a reduction of almost 47% from his 2000 valuation. Putting aside the differences between the two valuers as to the calculated percentage difference between the 2000 and 2002 market levels, it is clear that both valuers consider that there was a substantial decline in the market between the two valuation dates.

[119] If I adjust Mr Cross' arable value of \$1,635 per ha to cater for his severance and size allowances, the applied arable rate becomes \$1,547 per ha. That contrasts with Mr Glasson's figure of \$900 per ha.

[120] In the *Northern Butcheries* case the learned President said:

"The evidence indicates that the valuations in this area are now in urgent need of review. There can be no doubt that the market has fallen since 1 October 2000 and substantial adjustments are required." ([97])

[121] Mr Cross said that the differential between Mr Glasson's \$900 per ha for arable grazing land and \$500 per ha for balance country was insufficient. The point is valid, though not decisive, as the adoption of value for balance land by the valuers in both the 2000 and 2002 valuations was largely the selection of a nominal figure, though neither described it as such. I note that Mr Cross adopted \$400 per ha for balance land for his 2002 valuation. He said that he thought a lower figure than \$500 per ha would be appropriate for balance land in the lower market.

### **Value of Improvements**

[122] Both valuers recognised that in the analysis of sales employed by them in their valuations the use of a full cost less depreciation approach in valuing improvements was not appropriate. The use of that approach in analysing sales would lead to the calculation of a land value content of nil or at such a low level to be clearly unacceptable. In these circumstances each adopted what is sometimes referred to as the "added value" approach.

[123] This approach was considered by the Land Appeal Court in *O'Brien Nominees Pty Ltd v Valuer-General* (1979) 6 QLCR 280. At 284 the Court referred to the depressed state of the market relevant to that case and the unsuitability of using the traditional approach of analysing improvement value by the cost less accrued depreciation method. At p.285 to p.286 the court said:

"In times of normal, and above normal, prosperity the added value which improvements give to land generally exceeds their value deduced by the traditional method of replacement cost less depreciation. The 'added value' of the improvements in these circumstances is usually ascertained by the method of adding to their value ascertained by the traditional method, interest for half the period of time it would take to put the improvements on the land and for them to become fully productive - vide Kiddle's case 27 C.L.R. 316.

In the subject circumstances, when economic conditions are depressed, the traditional method ceases to be appropriate because its application results in an entire or substantial absorption of the total sale consideration and, as already discussed, leads to an absurd situation. 'Added value' in these circumstances continues to be a matter of ascertaining what value the improvements add to the land in question at the relevant date irrespective of their cost, but owing to the special circumstances prevailing, there is a change of emphasis and it is a matter of ascertaining the amount which the hypothetical prudent purchaser, fully appreciative of the depressed economic conditions, would give for the actual improvements, irrespective of the cost of making them. In short it is the value the market is prepared to pay for the specific improvements on the property."

- [124] In the case before me the valuers were of the view that the cost of clearing to seed bed stage for cane should be discounted to reflect the added value that each perceived that improvement might attract in the marketplace.
- [125] Mr Glasson approached his task on the basis that clearing and land preparation for cane would be \$3,500 per ha and for preparation to improved pasture level at \$2,040 per ha. He reasoned that land sales for grazing purposes continued to take place at a stable level leading up to the relevant date and that, therefore, it was appropriate to consider the added value of the clearing on all sales on the basis of the cost of clearing for the most probable alternative use of grazing. He therefore adopted a rate of \$2,040 per ha which represents a 40% discount of the cane land development cost of \$3,500 per ha.
- [126] Mr Glasson said that his adoption of 60% of the cost of development to cultivation stage for cane land also included 60% of seed bed development costs. That is mathematically correct, however that 60% figure happens to equate with the full cost of development to improved pasture, therefore takes no account of the additional development to cane-land cultivation standard.
- [127] I accept the valuers' opinions that the maximum discount of actual costs in the matter before me must be to the next highest available use, that is in the case of Mr Glasson's figures, to a figure of \$2,040 per ha.
- [128] One difficulty I have with the adoption of the alternative use cost is that it does not recognise that the higher use, that is as arable land, has existed on the arable quality land



in the past and, when suitable economic conditions emerge, will be available to the land in the future. That is, the land is not simply grazing land, but is land with a higher potential. I would have thought that a prudent purchaser would pay something for that potential and that would be reflected in the price he would be willing to pay for the improvements. Both valuers agreed, however, that the maximum amount that a hypothetical prudent purchaser would pay for improvements, in particular clearing, would be to an improved pasture standard. I must be guided by their opinions.

[129] I should also say at this point that in approaching a valuation of this type one must not confuse the highest and best use of the land being valued simply because in a sale analysis one is not employing the cost less depreciation method in striking the value of improvements. The highest and best use must remain consistent throughout unless one asserts that the arable potential has disappeared.

[130] Another factor to keep in mind is that one need not assume that the improved subject property; or the improved sales for that matter; were never improved and that therefore the *Vegetation Management Act 1999* may apply to inhibit or prevent clearing which has already been undertaken. That is clearly provided for in s.3(4) of the *Valuation of Land Act 1944*:

"3.(4) Notwithstanding anything contained in this section, in determining the unimproved value of any land it shall be assumed that -

- (a) the land may be used, or may continue to be used, for any purpose for which it was being used, or for which it could be used, at the date to which the valuation relates; and
- (b) such improvements may be continued or made on the land as may be required in order to enable the land to continue to be so used;

but nothing in this subsection prevents regard being had, in determining that value, to any other purpose for which the land may be used on the assumption that any improvements referred to in subsection (1) had not been made."

[131] Mr Cross made reference to two decisions of this Court (*Horsford v Valuer-General* unreported Land Court 28 July 1987 and *Nucifora v Valuer-General* unreported Land Court 8 May 1987). He understood the Court had in those cases approved a 25% discount of costs of clearing in depressed market circumstances.

[132] In *Horsford* the relevant cane-land development costs were \$2,000 per ha and the appellant contended in that matter for an added value for such improvements of \$1,750 per ha. The Valuer-General suggested a figure of \$1,500 per ha as being the actual cost level. The learned Member concluded that actual costs would be in the vicinity of \$2,000

per ha. He rejected the \$1,750 per ha added value put forward for the appellant on the basis that he had evidence that a vendor could not recoup that level of cost on sale and that the costs of development to cane cultivation standard on the relevant properties were abnormally high compared with such costs for other country types. He also had evidence that no-one would purchase timbered land for sugar-cane development

[133] I have perused the *Nucifora* decision which I consider adds nothing useful beyond the summary of *Horsford* I have presented above.

[134] Mr Cross acknowledged that development costs to seed bed stage for heavier scrub country which covered part of the subject, on his understanding, would be \$3,500 per ha. He said that in considering *Horsford* he noted that the walk-in/walk-out prices were similar to those of sales near the relevant date in 2002. He observed also, however, that costs of clearing to the seed bed stage had increased from \$2,000 per ha from the time of *Horsford* to \$3,500 per ha on similar country as at October 2002. On that basis, as I understand him, he formed the view that the level of discount should be greater than the 25% adopted in *Horsford*. He adopted a range of 50% to 57% of the cost, however that percentage is a derived figure and is mentioned by him only for the purpose of providing a comparison with the *Horsford* case. The actual added value adopted by him depended on the class of country involved in the property being considered and, therefore, its development costs.

[135] Mr Cross said that costs of clearing to improved pasture standard were from \$1,500 per ha to \$2,000 per ha depending on the class of country, with the higher price being applied to heavy scrub country and the lower rate to medium coastal forest country.

[136] It was urged on me for the appellants that I should adopt a standard of \$2,040 per ha as relied upon by Mr Glasson. I cannot accept that submission. There would be different costs of development for different classes of country. In *Horsford*, for example, the Court pointed out that it was adopting a cost for heavy rainforest country. I am therefore not prepared to reject Mr Cross' approach which is more discriminating than that of adopting a fixed or standard figure.

### **Sales Evidence**

[137] In his 2002 valuation Mr Glasson relied on sales that were close to the subject, though in his 2000 valuation he had gone further afield. Geographic proximity is to be preferred, all other things being equal, but it is not the sole determinant of the suitability of a sale as a basis for valuation.

[138] Mr Glasson's Sale 1 has an area of 3,833.3 ha and sold in February 2002 for \$9,200,000. The sale land has approximately 3,000 ha of good quality agricultural land, well suited to

sugar-cane production in Mr Glasson's opinion and, after the deduction of improvements for structures and other improvements, he deduced an unimproved value for the land component, other than balance lands, of \$371 per ha. Mr Glasson said that the sale land has a generally superior country type with access to permanent natural water, is in a superior location to the subject property and has a larger land area. This was the sale of the old South Johnstone Mill.

[139] Sale 2 in Mr Glasson's valuation has an area of 162.7 ha and sold in June 2002 for \$550,000. This sale is all grazing land. He analysed the sale to an unimproved figure of \$759 per ha for the non-balance component after the deduction of structural and other improvements. In his opinion the sale property has a superior location to the subject property, being closer to Innisfail, a similar carrying capacity on a grazing basis; is slightly inferior in country type, however has access to permanent water and a similar land area to the subject. He said it is good evidence of value on a grazing basis. The sale property has 95% of its area cleared and is planted to improved pastures.

[140] The third sale in Mr Glasson's valuation also appears as Sale 7 in Mr Cross' valuation. The sale has an area of 1,649.17 ha and sold in July 2002 for \$4,686,462. Mr Glasson analysed the sale to show an unimproved figure of \$1,010 per ha for its non-balance content, whilst Mr Cross' analysed figure was \$1,090 per ha overall. In Mr Glasson's opinion approximately 1,380 ha comprised good quality grazing country, a substantial part of which may be suitable for banana production, subject to water availability. Mr Cross thought that about 1,290 ha of the property had been developed and that approximately 1,000 ha had arable potential for sugar cane and/or bananas. Mr Cross considered that the main issue in using this sale as a basis is its size. The sale property formed part of the original King Ranch Cattle Station and was sold for grazing purposes.

[141] Mr Cross said that the sale property was inferior to the subject on an unimproved rate per ha basis, given the significant large area of the sale, its higher balance land component (22%), more broken and severed nature and in spite of its better quality arable land and access to permanent water in Tully River and Davidson Creek.

[142] Whilst there was a difference of opinion as to the comparison between this sale and the subject property, Mr Cross saying that the sale property is inferior overall and Mr Glasson saying it is superior - if I were to employ this sale alone, it would point to Mr Glasson's value of \$900 per ha arable as being too low having regard to the comparison of either valuer, but in paying particular regard to the substantial size of the sale property. It would, however, provide support to Mr Cross' figure. Although Mr Glasson said that the sale is superior, I need to make it clear that that was largely on a grazing basis using

grazing criteria, though he did observe that the sale had land suited to banana growing. In support of that comparison, he placed some support on an undated, unsigned statement under the name of JK Teitzel, pastoral consultant. That is not a suitable method of comparison for the reasons discussed above at [129].

[143] Mr Glasson's Sale 1 was analysed by him to \$1,113,000 unimproved for grazing land having an area of about 3,000 ha, in his opinion. If I apply \$200 per ha to the balance land component of 833.3 ha, the overall unimproved value comes to \$1,279,660. His Sale 3 (Mr Cross' Sale 7), on the other hand, was analysed to \$1,010 per ha or \$1,393,800 grazing content. If I apply \$200 per ha to its balance land component of 269.17 ha, the overall unimproved value comes to \$1,447,634. That is, for a property less than half the size of his Sale 1 and less arable land according to both valuers, Mr Glasson's analysis produces a higher figure. I observe an inconsistency here. One explanation lies in the Sale 1 property having been heavily improved with structures and with Mr Glasson having applied higher values to those structures than would be warranted.

[144] Mr Glasson said that his Sales 1 to 3 are background evidence only. He thought his Sale 1 maybe a bit low but did not press that point. He thought it may have been a mortgagee sale but said that it was marketed extensively for a number of years.

[145] Sale 4 in Mr Glasson's valuation appears as Sale 2 in Mr Cross' valuation. The sale property is located on Sparvall Road, Murray Upper, was purchased by the appellants and is now included as part of their aggregation. It has an area of 73.4 ha and was purchased in December 2001 for \$300,000. Mr Glasson analysed the sale to an unimproved figure of \$565 per ha, whilst Mr Cross calculated a figure of \$1,445 per ha. Mr Cross expressed the opinion that about 68 ha of the sale property has arable potential, Mr Glasson including 60 ha approximately under that classification.

[146] In Mr Glasson's opinion the sale property is comparable in terms of location and country type to the overall subject aggregation. Mr Cross disagreed with that view, saying that the sale property is superior on an unimproved rate per ha basis by virtue of its smaller area and because it is not severed.

[147] Mr Cross said that this sale is a low sale. He noted that it is an adjoining owner transaction, but considered that such transactions were simply part of the market in the area of the subject at that time. Mr Jackson appeared to acknowledge that, however Mr Glasson said otherwise suggesting that many farmers bought additional areas in order to expand their operations. The sale took place 10 months before the relevant date which would, on the evidence of the valuers, have been at a time when the market was at a

higher level than at October 2002, though declining and uneven, as I observe from the sales put forward.

[148] The sale was a mortgagee sale. Mr Glasson said that this aspect might have been balanced out by the fact that the purchase was made by an adjoining owner. Mr Cross thought otherwise. Nevertheless, Mr Glasson applied a level of value to the subject land higher than the analysed value of the sale, even though he considered the sale to be a little superior. I think Mr Cross' comparison in this respect is to be preferred.

[149] Mr Jackson purchased the sale property following an auction. The previous owner had "walked off" the property, according to him. About 40 to 50 people attended the auction, only three of whom entered bids. The property was passed in but Mr Jackson, with the under bid, negotiated the price from that point. On the basis of that, the appellants submitted that the sale is a sound one.

[150] The fact that a property is auctioned, particularly in a declining market, is not evidence that it must have been sold at market especially when, as in the case of this sale, it did not sell at auction and was sold by a mortgagee. I notice, for example, the statement by the vendor in respect of Mr Glasson's Sale 5 that the property there was the subject of three auctions and one tender before it was sold by private treaty (see [159]).

[151] Whilst a mortgagee sale is admissible as evidence, the weight to be attached to it is dependent on the material circumstances (*Waterhouse v The Valuer-General* (1927) 8 LGR (NSW) 137; *Re Murray* (1934) 13 LVR 25 and *Dobson v The Valuer-General*, unreported Land Court 22 November 1988). See also "Land Valuation and Compensation in Australia", Rost and Collins (1971 p.95). The material circumstances here are those set out in the previous paragraph. They point to the sale needing to be treated with caution.

[152] In his report Mr Glasson analysed the sale to \$565 per ha after deducting improvements and applying \$500 per ha to his balance area. He said orally that the balance area was 17.4 ha which, unimproved, calculates to a figure of \$8,700. That assumes that the arable area is 56 ha, whereas he said 60 ha in his valuation report. He applied \$91,493 to the residence on the land which Mr Jackson had used little, it seems, though was rentable according to him.

[153] If one were to deduct Mr Glasson's added values of structures only from the sale price of this sale, the net result is \$163,000. In comparison with his Sale 5 which on the same basis shows \$231,000, the calculated unimproved value for his Sale 4 seems low, particularly taking into account Mr Glasson's evidence that his Sale 4 is superior arable country and has a larger area to his Sale 5. Mr Glasson appeared to acknowledge this

difficulty, though suggested that it may have been to do with the level of price of Sale 4. He said also that the variation in levels between that and Sale 5 is catered for by his adoption of a midrange of values. I am not sure that that is so as I have demonstrated at [55].

[154] The calculated unimproved value of Mr Glasson's Sale 4 is about \$41,500 (\$565 per ha x 73.4 ha). Mr Cross said that this is low when one considers that a rural homesite of 2 ha in Bellenden Road in the vicinity of the subject property sells unimproved for \$35,000. A higher figure than \$41,500 does, on the basis of that reasoning, appear appropriate. I am inclined to the view that whilst Mr Glasson's analysed rate is partly influenced by the adoption of too high a figure for improvements, the evidence points to a high probability that the sale was a low sale. I will treat it as such.

[155] Sale 5 in Mr Glasson's valuation is also to be found in Murray Upper Road all but adjoining the subject property. He referred to it as being a sale to an adjoining owner. The Sale 5 property, which also appears as Sale 5 in Mr Cross' valuation report, has an area of 65.015 ha and sold in February 2002 for \$231,000. In Mr Glasson's analysis he applied \$30,000 to a crop, \$5,000 to a bore, \$120,360 to clearing (59 ha @ \$2,040 per ha) and \$500 per ha to the 6 ha of balance land. The result was \$72,640 or \$1,231 per ha for the non-balance land component, whilst Mr Cross came to a figure of \$1,380 per ha overall unimproved for the property. There were no structures on the sale land at the time of sale, improvements comprising a standing crop and stools, banana stools, clearing and drainage. Both valuers settled on the land having an arable area of about 60 ha. On the basis of that, Mr Cross said his arable content for the sale would be worth \$1,460 per ha unimproved, which compares with the \$1,231 per ha settled upon by Mr Glasson.

[156] The evidence did not squarely point to the source of the difference between the analysed values, though part of it would appear to lie in the value of clearing. Mr Cross considered this to be a low sale. He said that this can be demonstrated by reference to his Sale 4 ([168]) which sold at a higher price for a smaller property with poorer quality land. He analysed that sale to \$1,910 per ha overall which equates to \$2,012 per ha for the arable content. Although Mr Cross described this sale also as a forced sale, the applied value was only 81% of its analysed value. In the case of his Sale 5 the opposite applies with the applied value being greater than his analysis by 27%. That is not consistent with an opinion that his Sale 4 is a low sale. Both properties were sold by the same vendor in February 2002.

[157] In Mr Cross' opinion the his Sale 5 property is superior to the subject on an unimproved rate per ha basis given the sale's smaller area and better quality arable content, though

broken in nature. He said Sale 5 has greater drainage issues than his Sale 4. Mr Glasson said in his report that Sale 5 and subject property were comparable in terms of location and country type.

[158] Mr Glasson saw this Sale 5 as a useful basis, given its low level of improvements. I also note the similarity of the analyses and that both valuers view the sale as being slightly superior, notwithstanding that Mr Glasson wrote in his report that they were comparable.

[159] A letter under the name of the vendor dated 29 June 2004 was tendered by the appellants. The letter stated that the sale property, as well as that which is Sale 4 in Mr Cross' valuation, had been on the market for a number of years and had been auctioned three times and put to tender once. The tender process was not fruitful and the auction bids were low. The properties were then sold, as I understand, by private treaty. The vendors were concerned, the letter says, that the sugar market was declining so decided as a business decision to quit sugar-cane farming. The author of that letter was not presented for cross-examination. Had he been, he might have been able to shed light on the apparent inconsistency between the sale prices of Mr Cross' Sale 5 (Mr Glasson's Sale 5) and his Sale 4.

[160] Sale 6 in Mr Glasson's valuation adjoins the subject property, being located in Sparvall Road, Murray Upper. The sale property has an area of 192.69 ha and sold in April 2002 for \$401,949. Approximately 134 ha was cleared at the time of sale and about 20 ha of that was planted to sugar cane. The sale included structural improvements and a sugar-cane crop of about 400 tonne. Mr Glasson employed both sale analyses approaches, however could not generate a land content value. He said that the sale land was comparable in terms of location and country type to the subject property.

[161] The sale analyses for Mr Glasson's Sale 6 which reveal a nil land value area are a matter of concern. That result raises a strong inference that either the sale was low or that the added value sale analysis was defective. I notice that structural improvements are included in the sale and suspect that too high a value may have been applied to those improvements, given what I have observed is a tendency for Mr Glasson to so do. Mr Cross said in examination-in-chief that the sale was a low sale. I set this sale aside.

[162] Sale 7, in Mr Glasson's valuation, has an area of 101.6 ha and sold in November 2001 for \$300,000. Approximately 85 ha of the sale land was cleared and of arable quality, in Mr Glasson's opinion. The sale property was also improved with some structural improvements. The property was purchased by an adjoining owner for banana/sugar-cane production and in Mr Glasson's opinion is superior to the subject property both in country type and location and having access to permanent natural water. I notice, however, that

about 17% of the sale land is balance land compared with about 11% on the subject property. Mr Glasson also noted that the sale property is smaller than the subject which generally would lead to a magnification in price per ha. Mr Glasson analysed the sale to an unimproved figure of \$1,098 per ha for the non-balance component.

[163] Mr Cross said that this sale should be treated with extreme caution for a number of reasons. First, it was a mortgagee sale. Second, he had been advised that the previous owner had an offer of \$850,000 to \$900,000 in 1998 at the height of the market. I note that it took place well before October 2002. Limited reliance can be placed on that offer, given that it took place in a much more buoyant market than prevailed both at the date of sale in November 2001 and at the date of valuation at 1 October 2002.

[164] I have mentioned Mr Cross' Sale 1 at [31] and following. Mr Cross said that this sale is useful as background evidence only, given that it sold much earlier than the 2002 valuation date in a declining market.

[165] I have already dealt with Mr Cross' Sales 2, 5 and 7. His Sale 3 has an area of 51.998 ha and sold in December 2001 for \$280,000. Mr Cross analysed the sale price to an unimproved figure of \$2,100 per ha. In his opinion, the arable area of the sale is about 49 ha. He said that the sale property is severed by the main North Coast rail line which creates a triangular eastern severance of about 12 ha. Mr Cross' evidence was that the sale property was purchased by an adjoining owner, the vendor selling for family and health reasons. The property was purchased subsequent to auction.

[166] In Mr Cross' opinion the Sale 3 property is superior on an unimproved rate per ha basis to the subject property, given the sale's smaller area, its better quality and less flood-prone arable land and notwithstanding its large severance area and formed gravel road access. Mr Glasson was not in a position to comment on Mr Cross' analysis and use of this sale, though he pointed out that it was an adjoining owner sale. Mr Cross said that in a healthy market premiums would often be paid by an adjoining owner, but that in a declining market an adjoining owner would not usually have to pay a premium.

[167] The fourth sale in Mr Cross' 2002 valuation has an area of 59.85 ha and sold in February 2002 for \$250,000. He analysed that sale on the added value approach to \$1,910 per ha.

[168] Mr Cross considered the sale to be a forced sale with the vendor having to sell for financial reasons: a matter addressed in [159] above. The property was purchased in 1997 for \$525,000 and although it was considered a high sale at the time, it gives an indication of the market fall between the height of the market and the market that prevailed in 2002.



- [169] Mr Cross said that the sale property has an arable area of 56 ha and he considered it superior to the subject property on an unimproved rate per ha basis by virtue of the sale's smaller area and better drained arable lands. He said that these benefits are partly offset by the sale property's isolated location from any mill tramline dump points and that a cartage allowance of \$160 per ha over the arable area is inherent in the applied unimproved value of \$1,554 per ha.
- [170] Mr Cross described this sale as being supporting evidence. Mr Glasson was of the view, based on the letter referred to in [159] above (Exhibit 10), that this was not a forced sale. He was generally aware of the sale, but had not analysed it. Mr Cross spoke to the purchaser in each case (Sales 4 and 5) and they were the source of his information that these were forced sales.
- [171] Mr Glasson said that his Sales 4 and 5 in particular are more suitable bases than, for example, Mr Cross' Sale 4 because of proximity to the subject. He acknowledged that Mr Cross' Sale 4 had the advantage of being lightly improved and, therefore, more easily analysed to an unimproved value. Ease of analysis would be particularly important, I would think, given the depressed market in 2002.
- [172] Mr Cross' Sale 4 also has the advantage of being near the subject property, though not as close as Mr Glasson's Sales 4 and 5. Mr Cross considered it to be a forced sale which would depress its price, but I notice that the transaction took place some eight months before the relevant date in a generally declining market.
- [173] Sale 6 in Mr Cross's valuation was that of a grazing aggregation in the neighbouring Johnstone Shire, having an area of 352.112 ha. The sale for \$1,200,000 took place in June 2002 and Mr Cross analysed the sale to reveal an unimproved value of \$1,330 per ha after consideration of structures, fencing, dam, machinery and clearing. As this was not an arable sale, the analysis was carried out on a full cost less accrued depreciation basis.
- [174] Mr Cross said that the sale was included by him to represent a grazing value. In his opinion this sale demonstrates that the overall applied value for the subject property at \$1,415 per ha is not excessive. He considers the sale property to be inferior to the subject on an unimproved rate per ha basis, primarily because of the restrictive use of the sale property, its larger balance land area, poor gravel road access and more isolated location. The applied value for the sale property at \$910 per ha was considered by Mr Cross to be low and requiring review.
- [175] Mr Glasson had not analysed the sale, but again sought to proffer a comparison between that sale property and the subject on the basis of the Chief Executive's applied value of \$910 per ha for the sale property. Mr Glasson's comparison presented in oral evidence

was given solely on a grazing basis without consideration of the arable potential of the subject property. That is not a correct approach, in my view, for the reasons outlined earlier.

[176] The last and eighth sale in Mr Cross' 2002 valuation report is in the Murray Upper area, has an area of 45.35 ha and sold in January 2003 for \$320,000. Whilst this is an after date sale, Mr Glasson proffered the view that for agricultural lands the values after October 2002 would have been static at best.

[177] Mr Cross analysed the sale to an unimproved price of \$1,973 per ha on an added value basis after taking into account structures, bore, fencing, clearing and fruit trees. He said that the sale property has approximately 39 ha with arable potential. He considered the sale property to be superior to the subject property on an unimproved rate per ha basis based on the smaller area of the sale, its better quality arable land with access to permanent water in the Murray River and in spite of its broken nature and distance from mill tramline dump points. Mr Glasson has not inspected the sale so was unable to provide a comparison.

[178] This sale is a little west of Mr Glasson's Sale 2 in his October 2000 valuation. It was highly improved with structures and in my view suffers similar criticisms to Mr Glasson's Sale 2 in that earlier valuation report. In Mr Cross' opinion 39 ha is not a sufficiently large area to allow the economic growth of sugar cane. It was not purchased with the intention that it be devoted to that crop. I will put this sale aside.

[179] Mr Glasson analysed two sales (his Sales 4 and 5) to unimproved values of \$565 and \$1,231 per grazing ha, respectively, and adopted these as his main bases. They are located near the subject.

[180] His other sales were analysed to unimproved values of \$371 to \$1,010 per ha grazing, though it was two of these (Sale 6 at nil analysed value and Sale 7 at \$1,098 per ha grazing) which he initially considered more useful as background evidence. He appeared to retreat from strong reliance on his Sale 6 as the case wore on, though retained the view that it was evidence of a weakening market. The other sales were less directly comparable background evidence.

[181] Mr Glasson considered it important that all of his sales, apart from his Sale 5, revealed unimproved values lower than \$1,000 per ha for grazing land. That appears to have been important in the process of reasoning that led him to adopt \$900 per ha for the arable content of the subject property. The reliability of his sales analyses is therefore a critical matter in the valuation process.

- [182] Mr Cross said that in carrying out a sale analysis on the added value approach, one must view the results from a common-sense perspective rather than slavishly maintaining a fixed approach. He referred, for example, to Mr Glasson's Sale 6 which was analysed to a nil value. That suggested to Mr Cross that Mr Glasson had employed added values that were simply too high. As I observed at [161], that suggestion has merit.
- [183] I am reluctant to place reliance on Mr Glasson's sales analyses given an apparent tendency in the case before me to apply excessive values to improvements, especially structural improvements. I did notice one exceptional example at [96] where in a sale involving no structural improvements, Mr Glasson's analysis yielded an unimproved value higher than did Mr Cross. I raise the issue relating to structural improvements at [80], [82], [83], [96], [143], [153] and [161]. This concern applies to all of his sales, however it is more relevant with respect to his main sales; that is Sales 4, 5, 6 and 7.
- [184] Given the conclusions as to his sales that I have drawn earlier in these reasons, I am left to consider his Sales 5 and 7 only.
- [185] Whilst I have been critical of Mr Glasson's sales analyses, that criticism should be moderated in the case of his Sale 7 as there were limited structural improvements. However, I treat this sale with caution given that it was a mortgagee sale. I do not accept the thesis that the fact that property was purchased by an adjoining owner cancels out the mortgagee element. I doubt that an adjoining owner would be expected to pay any premium in the case of a mortgagee sale in the prevailing market.
- [186] Mr Glasson's Sale 5 is also Sale 5 in Mr Cross' valuation. Although I think that I must treat Mr Glasson's analysis of the sale as producing a land value that is a little low, it would not be too wide of the mark given that there were no structures on the sale land. Whilst I have difficulty accepting that Mr Cross' Sale 4 is a low sale, the value revealed by Sale 5 in comparison with Sale 4 indicates Sale 5 to be a low sale. With that in mind and accepting that the Sale 5 property is superior to the subject land, I cannot conclude that a value of \$900 per ha for arable/grazing land is supported by that sale.
- [187] That conclusion is also indicated by Mr Cross' Sale 6 which, for a restricted use, was analysed by him to an unimproved value of \$1,330 per ha. For the reasons given earlier, I prefer Mr Cross' comparison between this sale property and the subject to that provided by Mr Glasson. The benefit in this sale is not that it provides a direct comparison with the subject property but that it provides a "floor" value. It seems to me that the value of the subject land as at 1 October 2002 must lie somewhere between this Sale 6 and Mr Cross' Sale 3, on the evidence I heard. That justifies a conclusion in favour of the respondent.

**Order**

The appeals are dismissed and the valuations of the Chief Executive are affirmed.

**RP SCOTT**  
**MEMBER OF THE LAND COURT**