

# LAND COURT OF QUEENSLAND

CITATION: *Elliott and Kojrowicz v Department of Natural Resources and Water* [2008] QLC 0118

PARTIES: Heather M Elliott and Deborah J Kojrowicz  
(appellants)  
v.  
Chief Executive, Department of Natural Resources and Water  
(respondent)

FILE NO: AV2006/0155

DIVISION: Land Court of Queensland – General Division

PROCEEDING: An appeal against an annual valuation

DELIVERED ON: 12 June 2008

DELIVERED AT: Brisbane

HEARD AT: Barcaldine

MEMBER: Mr JJ Trickett, President

ORDER: **The appeal is allowed, the valuation of the Chief Executive is set aside and the unimproved value of "Highbury" as at 1 October 2005 is determined at Nine Hundred and Ninety-one Thousand Dollars (\$991,000).**

CATCHWORDS: Unimproved value – grazing property at Aramac – comparisons with determinations of selected cases – sales relied upon in the selected cases – classifications of country - carrying capacity – sheep area values – prickly acacia - *Valuation of Land Act 1944*

APPEARANCES: Mr A Boyd, agent, for the appellants.  
Mr W Isdale, Executive Legal Consultant, Crown Law, for the respondent.

[1] This is an appeal by landowners in the Shire of Aramac against the unimproved value applied to their land by the Chief Executive, Department of Natural Resources and Water (the Department) under the provisions of the *Valuation of Land Act 1944* (the *Act*).

## **Background**

- [2] Mrs Elliott and Mrs Kojrowicz are the owners of a grazing property known as "Highbury", containing an area of 8,659 ha, situated approximately 40 km west of Aramac on the bitumen sealed Aramac to Muttaborra Road. As at 1 October 2005, the respondent applied an unimproved value of \$1,100,000, or \$127/ha to that property. The owners appealed against that valuation, stating that their estimate of the unimproved value is \$570,000.
- [3] The appeal was lodged on their behalf by their agent, Mr A Boyd. The grounds of appeal are wide-ranging but of a general nature, essentially contending that the unimproved value is excessive because of the failure by the Department to take into account and make proper allowance for various matters, or to apply the correct principles of valuation.
- [4] This appeal was one of a number of cases tried by fast-track hearing, following the determination of selected cases in the Shires of Aramac and Barcaldine. The parties agreed that the remaining appeals be determined by confining the evidence to comparisons with the decisions in those cases and to the sales relied upon in arriving at those determinations. However, evidence of the differences between individual properties was also heard.

## **The Evidence for the Appellants**

- [5] Evidence for the appellants was given by Mr TN Elliott, the husband of one of the owners. Mr and Mrs Elliott are the owners of the nearby property, "Glenample", which was the selected case for this area of Aramac Shire.
- [6] "Glenample" has an area of 16,406 ha, which the Department had valued at \$2,100,000, or \$128/ha. Following the hearing of that selected case, I determine the unimproved value of "Glenample" at \$1,837,000, or \$112/ha.
- [7] Mr Elliott pointed out that the previous valuation of "Glenample" by the Department as at 1 October 2001, had been \$35.36/ha, while the valuation of "Highbury" was \$32.91/ha. The determination of the 2005 valuation of "Glenample" by the Land Court is \$112/ha. However, the valuation of "Highbury" remains at \$127/ha. In other words, the Department had previously considered that "Glenample" was superior per hectare to "Highbury", while the present valuation has "Highbury" at a higher rate per hectare.
- [8] At the time of the previous valuation, the Department had considered that an allowance of 12.5% should be made for the prickly acacia infestation on "Highbury". According to Mr Elliott, the prickly acacia infestation has spread considerably, with one-third of the property now badly affected. However, there are scattered prickly acacia trees all

over the property. In his opinion, the area affected has doubled in the last 10 years, since the property ceased to run sheep.

[9] Mr Elliott tendered a series of photographs showing the extent of the prickly acacia infestation. Some of those photographs show Mitchell grass growing through the prickly acacia trees. According to Mr Elliott, the infestation is not yet thick enough to affect the grass growth, but as the trees become thicker, the grass and carrying capacity will be affected. He gave the example of the property "Audreystone", near his "Norbert Park" property. The owner of "Audreystone" had pulled prickly acacia with a chain. That had improved the Mitchell grass growth temporarily, but it is now covered with a blanket of prickly acacia trees up to 4 feet high, which are thicker than ever and choke out the Mitchell grass. Mr Elliott said that he has been able to control the prickly acacia on his other properties, "Glenample" and "Norbert Park", but he contends that he will not be able to control the infestation on "Highbury".

[10] Mr Elliott expressed concern that the Department had a higher carrying capacity on "Highbury" at 1 sheep to 1.4 ha, whereas the Court had assessed the carrying capacity of the selected case, "Glenample" at 1 sheep to 1.5 ha. Although Mr Elliott does not think that the carrying capacity of "Highbury" is as yet affected by the prickly acacia trees, he expressed the view that a carrying capacity of 1 sheep to 1.4 ha could not be sustained.

### **The Evidence for the Department**

[11] Evidence for the Department was given by registered valuer, Mr PD Schefe, who assessed "Highbury" by reference to the Department's historical record, with the assistance of the WARLUS land system mapping, regional eco-system mapping and satellite imagery. He described "Highbury" as consisting of all downs country, with a carrying capacity of 1 sheep to 1.4 ha.

[12] Mr Schefe stated that the Department's historical record describes "Highbury" as follows:

"Open Mitchell and some blue grass brown soil downs with feathertop and a small area (about 100 ha) of open pebbly gidyea scrub in the south east corner. With some vinetree and whitewood shade throughout."

[13] According to Mr Schefe, previous inspections by the Department had identified about 25% (or 2,150 ha) of moderate to thick prickly acacia, predominantly in the southern and middle parts of the property.

[14] In defending his valuation of \$127/ha for "Highbury", Mr Schefe referred to the selected case "Glenample", with a carrying capacity of 1 sheep to 1.5 ha, which was determined by the Court at \$112/ha, and which comprises a mixture of downs and developed scrub

country. He also referred to the sale property "Brendallan", which has an area of 7,351 ha and a carrying capacity of 1 sheep to 1.41 ha, to which the Department had applied an unimproved value of \$126.50/ha. He pointed out that while "Highbury" is directly comparable to the downs country on those properties, it has no developed scrub country. However, neither of those properties has a prickly acacia infestation. While Mr Schefe recognises that "Highbury" has a problem with prickly acacia, he contends that by maintaining the previous relativity he has continued to recognise the allowance made for prickly acacia in the previous valuation.

### **The Prickly Acacia Issue**

- [15] The principal issue in this case is the extent of the prickly acacia infestation and how that should be recognised in the unimproved value of "Highbury". I accept Mr Elliott's evidence that one-third of the property is heavily infested with prickly acacia while there are scattered trees throughout the property. Although the Department's historical record recognised that 25% of the area is heavily infested, Mr Schefe was in no position to refute Mr Elliott's estimate. Although Mr Elliott did not think that the prickly acacia was yet thick enough to affect the carrying capacity of the property, from the photographs that were tendered, it seems to me that it must have some impact, even though the Mitchell grass appears to be growing through the trees.
- [16] Although Mr Schefe made no separate allowance for the presence of prickly acacia, he said that by maintaining the relativity, the previously applied allowance of 12.5% for prickly acacia had been continued.
- [17] In the Winton Shire selected case "Bonnie Downs", I discussed the issue of prickly acacia infestation.<sup>1</sup> Although no evidence has been produced as to the effect which an infestation would have on the mind of a prudent purchaser, the departmental valuers have clearly recognised the impact of prickly acacia in various ways.
- [18] Mr Schefe did not think that the prickly acacia was adversely affecting the carrying capacity of "Highbury" and that opinion was supported by the evidence of Mr Elliott. However, it will impact on the carrying capacity in the future. There are also working difficulties. Mr Elliott gave evidence that the prickly acacia was so thick that it was not possible to cross some of the gullies on the property.
- [19] In my view, a prudent purchaser of the property would be aware that unless the infestation was controlled at considerable cost, it would eventually choke out the grass. That must affect the price that such a purchaser would pay. In the circumstances, it

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<sup>1</sup> *Fawckner v Department of Natural Resources and Water* [2008] QLC 0036 at [58] to [61].

would seem appropriate to recognise that a prudent purchaser would pay less than for a clean property. I propose to make further allowance for the prickly acacia infestation.

### **The Other Issues**

[20] If it was not for the prickly acacia trees, it seems to be common ground that "Highbury" could be described as open to lightly shaded downs. The evidence is that the most appropriate comparisons are the selected case "Glenample", determined at \$112/ha and the sale property "Brendallan", to which the Department has applied \$126.50/ha. Both those properties comprise downs country with developed scrub, but in different proportions. "Glenample" is directly opposite "Highbury", separated only by the Aramac to Muttaborra Road. On the other hand, "Brendallan" is better situated on the outskirts of Aramac, but the small proportion of developed scrub must be taken into account. Furthermore, there is some evidence of flooding on "Brendallan".

### **Conclusion**

[21] In my view, without allowance for the prickly acacia infestation, Mr Scheffe's value of \$127/ha for "Highbury" would appear to be appropriate. However, I accept the evidence that a greater proportion of the property is now heavily infested with prickly acacia and that there are scattered trees over the whole of the property. Unless treated, that infestation will only increase.

[22] In Mr Elliott's opinion, the infestation on "Highbury" is beyond control. He gave evidence that a Department of Primary Industries' scientist had suggested that the property be sold and a clean property purchased. Mr Elliott expressed the view that people with experience of prickly acacia would avoid buying such country, but on the other hand, anyone desperate to save their stock would buy the grass and not mind the prickly trees.

[23] In the circumstances, I am of the view that a prudent purchaser would make an allowance for the presence of prickly acacia on "Highbury". In the absence of any market evidence, I propose to allow a further 10% to recognise the infestation and reduce the value to \$114.50/ha which, when rounded, amounts to \$991,000.

### **Order**

The appeal is allowed, the valuation of the Chief Executive is set aside and the unimproved value of "Highbury" as at 1 October 2005 is determined at Nine Hundred and Ninety-one Thousand Dollars (\$991,000).

**JJ TRICKETT  
PRESIDENT OF THE LAND COURT**