

LAND COURT

BRISBANE

28 FEBRUARY 2002

**Re: Appeals against Annual Valuations
Valuation of Land Act 1944
Shire of Calliope
(AV2000/0163, AV2000/0196 and (AV2000/0264)**

Alec E Lucke & Ors (AV2000/0163)

v.

Chief Executive, Department of Natural Resources and Mines

Peter B & Lynette Brady (AV2000/0196)

v.

Chief Executive, Department of Natural Resources and Mines

Arthur W Murphy (AV2000/0264)

v.

Chief Executive, Department of Natural Resources and Mines

(Hearing at Gladstone)

DECISION

These are three appeals by landowners in the Mt Larcom area of the Shire of Calliope against the unimproved values applied to their properties by the Chief Executive, Department of Natural Resources and Mines (the respondent), under the provisions of the *Valuation of Land Act 1944* (the Act).

Background

Mr Alec E Lucke and other members of the Lucke family are the owners of land described as Lot 11 and Lot 12 on Plan MPH14062, Parish of Nolan, containing an area of 64.3 ha (the Lucke property).

Mr Peter B and Mrs Lynette Brady are the owners of land described as Lot 36 on Plan CP881415, Lot 4 on Plan CP889242, Lot 37 on Plan MPH14074 and Lots 1 and 2 and Lot 8 on Plan MPH22996, Parish of Nolan and Lot 43 on Plan CTN260 and Lots 1 and 3 on Registered Plan 608486, Parish of Mt Larcom, containing a total area of 589.83 ha (the Brady property).

Mr Arthur W Murphy is the owner of land described as Lot 41 on Plan CTN256, Parish of Mt Larcom, containing an area of 97.64 ha (the Murphy property).

As at 1 October 1999, following reductions on objections, the respondent had valued those properties under the provisions of s.37(3) of the Act as follows:

- the Lucke property \$30,500
- the Brady property \$144,000
- the Murphy property \$23,500

The landowners appealed to the Land Court against those valuations, advising that their estimates of unimproved values as at the relevant date were:

- the Lucke property \$22,000
- the Brady property \$108,500
- the Murphy property \$18,000

The grounds of each appeal, although somewhat different, have a high degree of commonality, which may be summarised as:

- the adverse effect of the Queensland Cement Limited East End Mine on the community and on land values;
- the general deterioration of the area from lack of services and amenities which has adversely affected the saleability of land.

At the hearing of these appeals the appellants were represented by two of their number, Mr AE Lucke and Mr PB Brady, while Mr R Paterson, of Counsel, appeared on behalf of the respondent.

The appellants are members of the East End Mine Action Group (EEMAG), formed in the mid-1990's. It comprises about 50 landowners in the general vicinity of the mine who have concerns and genuinely held beliefs about the impact of the mine upon their community and particularly the water depletion of streams and water tables in the area, which they contend is the result of mine dewatering activities. However, the owners allege there are other negative impacts, such as those associated with planning and land use constraints which are imposed by the Mines Department and the Council. The members of EEMAG were also concerned at the deterioration of the Mt Larcom area, which they contend has lost much of its population and with the loss of population, has lost its social interaction and the ability to maintain its social fabric. They say that the services and facilities available in Mt Larcom and district are minimal compared with those which were once available.

The East End Mine

Queensland Cement Ltd (QCL) has been mining limestone at its East End Mine south of the town of Mt Larcom since mining leases were granted in 1976. The evidence in these cases is that the mine began dewatering for open-cut operations in

1979, although water monitoring by the relevant Government Department commenced in 1977. There is no dispute that the dewatering activities have had an adverse impact and depleted water on properties within an area of about 30 square kilometres in the East End aquifer. That area was identified by modelling by Dr Frans Kalf and which for convenience will be referred to as the "Kalf zone of water depletion". There is dispute, however, as to the extent to which the mine dewatering activities causes water depletion beyond that zone.

Under a condition of its mining leases, where it can be established that depletion of groundwater has occurred because of mining operations, QCL is required to provide an alternative supply of water. Special covenants and conditions for Mining Leases Nos. 698, 699, 700 and 701, include Condition 11 which states:

"If in the opinion of the Commissioner of Irrigation and Water Supply the operations of the lessee cause depletion of any groundwater supply, other than a supply belonging to the lessee, so as to affect injuriously the owner of such supply, the lessee shall, at his own expense, provide an alternative supply of water to the satisfaction of the Commissioner."

However, QCL will do so only within the 30 square kilometres of the Kalf zone of water depletion. Of the present appeals, only the Murphy property is in that zone. The members of EEMAG, including the appellants, believe that the 30 square kilometre area substantially under-estimates the area of water depletion, which they estimate to be at least twice that area. They contend that the water depletion in the adjoining Bracewell aquifer (where the Lucke property is situated) and the Scrub Creek aquifer (where the Brady property is situated) is caused by the mine dewatering.

EEMAG has expended a great deal of time and money in drilling bores, digging test pits, pump testing and in engaging consultants to produce hydrological reports to attempt to demonstrate what they consider to be the true impact of the mine. However, those efforts have so far been unsuccessful, as the official position of QCL and the relevant Government Departments is that the mine impacts are limited to the 30 square kilometre zone.

The Hydrological Evidence

Dr PM James, an engineering geologist with over 40 years' experience in geo-hydrology, gave evidence for the appellants, while Mr JC Lloyd, Senior Hydrologist with the Department of Natural Resources and Mines, gave evidence for the respondent. I do not propose to discuss the detailed evidence of these two experts,

both of whom have had long experience with the activities of the East End Mine and the issues between EEMAG and the respondent.

The evidence establishes that when mining leases were granted to QCL (or its predecessor company) to authorise the extraction of limestone for cement production, some special conditions were applied which relate directly to groundwater protection. In addition to Special Condition 11, Special Condition 9 required the mining company to put in place a monitoring program over a stipulated area and water levels and water quality have been monitored by the Department in that area since 1977.

There is general agreement that since 1990-1991, the Mt Larcom district has been undergoing a prolonged period of below average rainfall. This drought has been the longest on record and has been quite intense. There are numerous years when rainfall was below average, with severe impacts on local creek flows, spring flows and bore water levels. There was a brief return to above average rainfall in 1998, however the rainfall in the years since 1998 was barely above average and well below average for the year 2001. The groundwater level trend was downwards until the end of 1998. Towards the end of 1998 many bores were recording their lowest levels since monitoring began in 1977.

The most significant point of disagreement between EEMAG on one hand and QCL and the Queensland Government Departments on the other, is the extent of the impact upon water levels caused by dewatering at the East End Mine and the extent that water levels have been affected by drought. Dr Kalf had been engaged by QCL to develop a model of the groundwater system in the Bracewell/East End area. That modelling shows the impact area extends mostly to the north of the mine and largely follows the main East End limestone body.

The groundwater hydrology of the Bracewell and East End areas, including the extent of mine dewatering, have been the subject of many reports. Major reports include the reports of Dr. Kalf, two reports on the numerical groundwater models and a report titled "Interpretation of the Groundwater Situation at East End and Bracewell 2000", and a "Position Paper East End Mine and Environs" produced by the Department of Natural Resources in 1998, which largely supported the findings of Dr Kalf. In 2001 the Environmental Protection Agency (EPA) had an independent review carried out by an experienced hydrologist employed by Golder Associates Pty Ltd to consider all of the reports and to consult with the key groups, including Departmental staff, Dr Kalf, EEMAG and Dr James, the consultant to EEMAG. Dr

James, on behalf of EEMAG, has written dissenting views and Professor Ray Volker has also expressed dissent.

The members of EEMAG contend that the impacts of the mine have extended along Machine Creek upstream of monitoring weir WR2, into the lower Bracewell area. That contention is not supported by the respondent, whose position is that in the vicinity of WR2, hard rock ridges intrude from both sides of Machine Creek and form a narrow gap through which Machine Creek flows. These ridges are comprised of volcanoclastic rock which has very low permeability. The outflow of both groundwater and surface water is constrained to a gap which is less than 150 metres wide. This has a damming effect inhibiting flow down valley and also providing a barrier to the effects of mine dewatering. On the other hand, EEMAG believes that there is a deep alluvial channel which enables the mine impacts to be propagated above WR2. However, that belief is not supported by the Department, which contends that the geomorphology of the area indicates that the alluvium is very narrow and shallow, overlying a shallow bedrock platform. Mr Lloyd contends that a seismic survey across the area supported this view. The seismic survey was followed by drilling two bores which did not encounter any water-bearing alluvium.

Subsequently EEMAG had two test pits dug in the vicinity of the test bores, as there was dispute over materials' identification. EEMAG drilled a further four bores downstream of WR2, but did not encounter any areas of highly permeable alluvium.

The Department considers that the hydrographs for bores upstream of WR2 do not deviate below the Rainfall Mass Curves and do not show any dewatering effects in 1991 and that water level differences show a complete separation of effects between Bracewell and East End. Dr Kalf's modelling indicates that it is unlikely that mine impacts are able to spread upstream of WR2.

The Department's view is supported by the independent review of hydrology conducted by Golder Associates, which was engaged by the EPA to review the hydrology of the area. Essentially Golder Associates agreed with the assessments of the Department and Dr Kalf and concluded that:

"Taking all the information available into account, it is concluded that the effects in these areas (Bracewell particularly Lower Bracewell, the upper part of Hut Creek and Scrub Creek) is caused by the rainfall deficit and not by mine dewatering. This may be difficult to rationalise by those who have observed the progressive loss in surface flow and reduction in groundwater levels in parallel with the mining. Nevertheless, the combined evidence of the hydrogeological assessments (including this review) indicates that the mine dewatering would not affect these areas."

For the purposes of these cases, it is sufficient to say that Dr James concluded that the area of water depletion was greater than shown by the Kalf models in the East End aquifer and also affected the Bracewell aquifer. He also concluded that most of the water depletion in the area was due to the effects of the mine, and that the effect of drought was not as substantial as earlier believed. He concluded that it was likely that there was hydraulic connection between the East End aquifer and the Bracewell aquifer, that is, there was a strong possibility that the limestone linked the two aquifers and that the Bracewell aquifer drained into the East End aquifer. As he put it, when the water level dropped in East End, it was like opening a tap. He was also of the view that there was a direct connection between the Scrub Creek aquifer and the East End aquifer. He concluded that the reduction in water level in Machine Creek was caused in part by drought, but mostly would have been the effect of the mine. Some support for Dr James' conclusions was provided by a report by Professor Volker who thought that this was a possibility.

Mr Lloyd held a contrary view. While he conceded that Mr Murphy's property was suffering impact from the effects of dewatering at the mine, the Brady and Lucke properties were outside the Kalf water depletion zone. It was his opinion that the depletion of water levels in those areas was the result of the extensive drought which began in 1991 and also to a degree was caused by localised usage, which aggravated that effect.

Mr Lloyd endorsed the conclusions expressed in the Golder Associates' report that the reasons for the more extreme behaviour of streams in the study area in the 1990's probably include progressive impacts from the following:

- clearing of forest and scrub vegetation since the pre-war years (although Mr Lloyd thought that in most instances clearing can have the opposite effect as it can result in rising water tables);
- loss of soil structure reducing infiltration rates and causing more rapid run-off;
- local effects of irrigation;
- mine dewatering;
- creeks which are spring fed in their upper reaches will typically dry up from the lower reaches towards the upper reaches;
- steady or increasing rate of transpiration.

There was agreement between the experts that streams such as Machine Creek have been adversely affected and that the water tables in the Bracewell and Scrub Creek aquifers have been substantially lowered. The disagreement between the

experts relates to the cause of those adverse effects. Those areas of disagreement relate to:

- the extent of the impact of the mine beyond the areas of the Kalf zone of water depletion;
- the degree of hydraulic interconnection between the East End and the lower Bracewell areas; and
- the magnitude of the impact of drought in those areas.

For the purpose of these cases, it is not necessary to attempt to resolve these differences between the experts, even if I had sufficient evidence to do so. It is sufficient to say that it is common ground that there has been water depletion on the three subject properties, whatever the cause. Whether that water depletion has had an effect on the market value of these properties and whether the whole area is blighted by other "negativities" as described by the appellants, are matters dealt with by the expert valuers.

The Other Negativities in the Area

The appellants called a number of long-term residents of the Mt Larcom area, who gave evidence of what a vibrant and thriving district the Mt Larcom community used to be. The town itself had everything that was needed in the way of professional services and retail shopping. The rural industries consisted of dairying (up to 83 dairy farms in 1947), agriculture and pigs. Water was never a problem, even during severe and prolonged droughts. The creeks, including Machine Creek, Hut Creek, Robinson's Creek and Scrub Creek, were permanent, mostly running with large waterholes and plenty of fish. The social activities in the district were numerous and diverse, with sporting clubs and up to five community halls in the rural areas. There were seven schools outside Mt Larcom.

Now all that has gone. The town remains, but there are no services, virtually no retail shopping, the population consisting largely of retired people who do not wish to leave the area, or who are unable to do so. The young people leave, because there are no opportunities for them.

The rural area has been profoundly affected. The creeks have dried up; they run for only short periods after floods. There are no permanent waterholes and the water tables have fallen, not only in the Kalf zone of water depletion, but generally throughout the district. Everyone blames the mine. The water problems were first noticed about 1982, a few years after the mine commenced dewatering activities. By 1992, the depletion of the streams and the water tables was widespread.

It is agreed that there have been some severe droughts during that period. The 1990's was a period when there was below average rainfall. Some of the witnesses were prepared to concede that drought was part of the cause of the present water problems, but they hastened to add that the streams always remained permanent during the worst of the previous droughts, before the mine commenced dewatering operations.

In addition to their other difficulties, many of the rural properties are affected, or potentially affected, either by mining leases or exploration permits, which adds to the uncertainty felt by the landowners as to their prospects of sale or development. The general consensus of opinion of the witnesses was that the whole area is blighted by mining, or the prospect of mining, even those properties outside the Kalf zone of water depletion, which made them at worst unsaleable, or at best has significantly reduced their value.

Evidence was given that the general area was subject to a number of restricted areas. RA18 covers the proposed Castlehope Dam site on the Calliope River, RA99 is reserved for limestone and clay, RA143 is for the Rockhampton gas pipeline route and RA183 is also for a gas pipeline route. These restricted areas are in addition to the mining leases and exploration permits in the area, which affect individual properties. The purpose of the restricted areas appears to be to restrict the type of development which can occur on those areas. In the present appeals, those restrictions in one way or another affect the whole of the Lucke property, most of the Brady property and about half of the Murphy property.

The appellants were also concerned that any expansion of the Aldoga Industrial Estate (Gladstone Development State Area Strategy) would see their community in the pathway of industrial development and potentially impacted in the same way that the Yarwun/Targinnie area has been. To illustrate this, the appellants called Mr KW McGavin, a farmer in the Yarwun/Targinnie district, who gave evidence that his property is in the buffer area of the Aldoga Industrial Estate, but has existing industry in the vicinity, including the Stuart Shale Oil Plant, the QCL processing works and two chemical factories. The Shale Oil Plant is about 8 km away. Mr McGavin gave evidence that when the plant is operating and the wind is blowing towards his farm, the health of members of his family is affected. They have to relocate to town at the expense of the company, but there is no compensation for the consequent loss of productivity of the farm. He stated that he considers his farm

to be unsaleable, as do many other landowners in the area. He had attempted to sell his property at auction but there was no interest. He considers the area to be blighted.

The Relevant Legislation

These cases are appeals against the unimproved values applied by the respondent to the subject lands under the provisions of the Act as at 1 October 1999.

The responsibilities of the respondent are set out in the various provisions of the Act. The respondent is required to make annually, or periodically, a valuation of all land in a local government area: s.37. For the purposes of the Act, the valuation of each parcel of land is to be the "unimproved value" of that land, which is defined to mean in relation to improved land, the capital sum which the fee simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require, assuming that improvements on that land did not exist: s.3(1). However, the unimproved value shall in no case be less than the sum that would be obtained by deducting the value of improvements from the improved value at the time at which the value is required to be ascertained: s.3(2)

The "value of improvements" means the added value which the improvements give to the land, irrespective of the cost of the improvements. However, the added value shall in no case exceed the amount that should reasonably be involved in effecting improvements of a nature and efficiency equivalent to the existing improvements: s.5.

The Act thus requires the respondent to ascertain the unimproved market value of each parcel of land as at the date of valuation, assuming that the improvements on the land had not been made, but also assuming the existence of all present facilities and amenities external to the land, such as roads, power and other services, and also that the adjoining land and the environs are in their existing condition.

The test of "market value" was laid down by the High Court in *Spencer v. The Commonwealth* (1907) 5 CLR 418. The High Court found that the market value of land at a particular date is the amount that would have been paid for that land if it had been sold by a willing but not over-anxious seller to a willing but not over-anxious purchaser, both of whom are fully acquainted with the land and aware of all the circumstances which might affect its value, either advantageously or negatively.

However, the Act provides for some exceptions to the unimproved market value concept. The relevant exception in the present cases is that where land is used exclusively for purposes of "farming", any enhancement in the value of that land

because of a potential for some other use, must be disregarded when the valuation is made: s.17(1). The word "farming" is defined in detail in sub-s.(2) of s.17 of the Act, but there is no dispute in these cases that each of the subject lands is used for the purposes of "farming" as defined.

It is well settled law that sales of vacant or unimproved land provide the best basis for the assessment of unimproved value: see *Grahn v. The Valuer-General* (1992) 14 QLCR 327. However, where vacant sales evidence is not available, it becomes necessary to analyse sales of improved lands for the purpose of ascertaining what part of the purchase price related to improvements and what part is attributable to the land itself: see *Marano v. The Valuer-General* (1978) 5 QLCR 194 at 200-201.

The Courts have long recognised that there is a difference in the task of the valuer in assessing unimproved values by reference to sales of unimproved land and by reference to analyses of sales of improved land. As the Land Court explained in *Kern Bros Ltd v. The Valuer-General* (1973) 40 CLR 127 at 131, the task of the valuer where he has sufficient sales of unimproved land may be relatively simple. The Court went on to say that "Where, however, there are no such sales, but only sales of improved land, from which to work, the task becomes not necessarily more difficult but more detailed and investigative, because the exercise commencing with 'improved value' within the limits imposed by [the provisions of the Act] has now to be carried out."

The analyses of improved sales is a difficult task for a valuer. There is a degree of subjectivity in the value to be attributed to individual improvements. The accuracy of such analyses depends very largely on the skill and experience of the individual valuer. Courts have recognised that where sales of improved properties are used for the purpose of determining the value of unimproved land, there is always a liability of error in making deductions for the value of improvements by putting their value either too high or too low: *Taylor v. The Valuer-General* (1928) 9 LGR (NSW) 52; and that the method has shortcomings, especially where the value of improvements is high in relation to the land value: *Griffith v. Talbragar Shire Council* (1950) 17 LGR (NSW) 239.

The legislation and principles discussed above have particular relevance for the valuation of the subject lands. It is common ground that there were no unimproved sales available. Therefore, the valuers had to rely on the analyses of improved sales and there were few of these available.

Furthermore, the general area is in close proximity to the rapidly developing City of Gladstone and its surrounding industrial area. The valuers had to be particularly careful not to make use of sales which had some enhancement in value because of a potential for some other purpose, be it for future subdivision, for use as industrial land, or for use as rural residential land.

In similar circumstances, the Court has commented on the difficulties which face valuers in determining whether a sale contains some element of enhancement in value for some other purpose. In *APM Forests Pty Ltd v. The Valuer-General* (1975) 2 QLCR 30 at 39, the Court made the following comments:

" In obtaining evidence to ensure that a sale may be safely used as basic material in subject cases where Section 11(1)(vii) [the predecessor to Section 17] applies the Valuer-General's valuers now face an unenviable and time consuming duty involving extensive enquiry and interview to seek the motivation of the parties and in particular the intentions of the purchaser. They must seek from the parties information establishing that no element of speculation or subdivisional value or other enhancing factor entered into the negotiations or affected the sale price and that the intentions of the purchaser were bona fide to establish or continue a business of primary production. ...

The best course may be to avoid sales within the ambit of expanding centres of population and go somewhat more distant than regarded as acceptable heretofore so as to obtain basic sales in a 'purely' primary producing locality."

In these cases, the valuer for the respondent has attempted to eliminate any possibility of using sales with any enhancement in value for any other purpose by referring to sales which normally would be considered too far away from the subject lands.

Having discussed the principles applicable, I now turn to consider the valuation evidence in the present cases.

The Valuation Evidence

Evidence for the appellants was given by registered valuer, Mr P Turner, while evidence for the respondent was given by registered valuer, Mr T Coe. Mr Turner was familiar with the area, having previously made a valuation to assess compensation for water loss on a property owned by the Lashford family as a result of the East End Mine operations in November 1998.

Mr Turner said that at that time the water loss problem was just beginning to be identified and through 1998 and 1999 there was little sales activity in the locality,

probably as a result of the market recognising that there was a problem in the area. He thought that the market would be aware that there was a dispute as to the cause of water loss outside the Kalf zone of water depletion and while that uncertainty remained unresolved, there would be an effect on the areas where such claims were made.

The Respondent's Valuations

Mr Coe explained that he had been responsible for valuing the rural areas of Calliope Shire on behalf of the respondent, for the area valuation as at 1 October 1999. He had also made the previous valuation of the Shire as at 1 October 1997. Since then he had monitored the sales and for the area valuation as at 1 October 1999, he had come to the conclusion that the sales evidence indicated an increase in unimproved values of at least 25% on the grazing lands. According to Mr Coe, some of the grazing sales showed a much greater increase, but he took the view that he should ignore those higher sales and adopt the 25% increase which the sales at the lower end of the sales spectrum were showing. Those sales included parts of the former "Newry" aggregation at the southern end of the Calliope Shire, which were sold from Bowman to separate purchasers, in October and November 1998.

According to Mr Coe, some years ago there had been a demand for the 80-acre blocks in the Mt Larcom area for rural residential purposes, particularly from people who could commute to the mining areas of Central Queensland. However, with the reorganisation of working practices in the mines, that demand had dissipated by the date of valuation.

Mr Coe could find no reliable sales in the Mt Larcom area itself between the two valuation dates. The only sale that he knew about in the area was the sale from Fraser to McDonald, but he regarded that as more of a rural residential sale than a sale for farming purposes. It supported no change in values to rural residential properties. However, there was little demand for rural residential land. The Mt Larcom area had largely ceased to be a dairying and cropping area and most properties were running some cattle. Therefore, he thought it was appropriate to include the Mt Larcom area with the other grazing areas of the Shire and increase the valuations by a standard 25%.

However, following objections to his valuations by property owners in the area, Mr Coe became aware of the severe water depletion and the owners' other concerns. Several sales had occurred in the area after the date of valuation.

Following further investigations and analyses of those sales, Mr Coe concluded that several of those sales should be disregarded for various reasons. However, he was of the opinion that two sales, Nelson to Archay and Green to Hall, supported the general valuation increase. Mr Coe reasoned that as those two sales were to local purchasers, any effect of the water depletion and other negatives affecting values in the area would be reflected in those sales

The property sold from Nelson to Archay contains an area of 17.6 ha and sold in March 2000 for \$25,000. The only improvements were clearing, water and fencing and Mr Coe analysed the sale to show an unimproved value of \$11,569. The property the subject of the sale Green to Hall contains an area of 212.5 ha and sold in March 2000 for \$305,000. This is a highly improved property and Mr Coe analysed the sale to show an unimproved value of \$65,621.

Although he was confident that those sales supported the general increase of 25% in the valuations, Mr Coe reasoned that there should be some recognition of the problems experienced by individual properties. Therefore, he adjusted the valuations of those properties in the then Kalf zone of water depletion by reducing them by 10%. Furthermore, he reduced the valuation of individual properties outside that zone for proven disabilities, such as severe water depletion, regardless of how caused.

The three subject valuations were reduced at that stage. The valuation of the Murphy property, being mostly in the zone of water depletion, was reduced by 10%; the Lucke property valuation was reduced by 5% because the water level had fallen significantly which had forced the owners to sink deeper bores to maintain their intensive piggery operation; and the Brady property valuation was reduced by about 7% for the loss of irrigation from a permanent creek and irrigation bores which no longer sustained irrigation.

In explaining why he applied the 10% reduction to the Murphy valuation, Mr Coe said as the property was mostly within the zone of water depletion, under Condition 11 of the mining leases, there was an obligation upon QCL to provide an alternative water supply. When the water failed on the Murphy property, QCL had provided a new bore, equipment, power and pipeline to a tank. Mr Coe considered the property to be now adequately watered for stock. However, notwithstanding that the property had been provided with an alternative water supply, Mr Coe said that he had reduced the valuation by 10% because he considered that there would be market resistance to the stigma associated with being in that water depletion zone. However, there was no sales evidence to demonstrate the correctness of this opinion.

The sales originally relied upon by Mr Coe for the 25% increase in grazing values were three parts of the property known as "Newry", an aggregation situated on the Boyne River approximately 120 km south of the subject lands. Mr Coe explained that there were no closer small area grazing sales which could be considered to be genuine farming sales and which were not rendered unsuitable by having some enhancement in value because of potential for some other use: see s.17 of the Act. However, the "Newry" properties were vastly different types of land to those in the subject area, comprising blue gum flats and forest ridges and with access to permanent natural water.

Mr Coe readily accepted the evidence of the Mt Larcom residents that the amenities and services available in the Mt Larcom area had diminished, but he reasoned that any impact of those circumstances would be reflected in the two local sales. He also accepted that the operations of the East End Mine had resulted in water depletion in the area near the mine. He had sought advice from Mr Lloyd as to the hydrological position and was advised that the water depletion caused by the mine was confined to the Kalf zone of water depletion. Following the objections by landowners to their valuations, he had reduced the valuations of those properties in the then water depletion zone by 10% for the stigma of being in that depletion zone. However, he had largely maintained the valuations of those lands outside that area. Only recently had he become aware that the water depletion zone had been extended to the present area of 30 square kilometres on 22 February 2000, and he thought that he would have to adjust the values of those properties within that extended boundary.

However, the appellants contended that the sale of the 17.6 ha property from Robert Nelson to his nephew was not an appropriate basis for the valuation of the subject lands. Mr Coe did not think that the sale Nelson to Archay could be regarded as the sale of a rural homesite rather than the sale of grazing land, because there was no intention on the part of the purchaser to build a house on it. The purchaser used it for grazing in conjunction with the purchaser's property across the road. Mr Coe was aware that the parties were related, that the purchaser did work for the vendor on the property before the purchase and that there was an understanding between them as to the purchase of the land. If anything, he thought that the fact they were related would have resulted in a low sale. However, he conceded that Mr Nelson had told him that as a farming proposition the sale was a bit dear; Mr Nelson thought that \$15,000 would have been more reflective of its price having regard to its productive capabilities.

It seems to be common ground that the sale Green to Hall had not suffered water depletion to the extent of the subject lands. Mr Coe said that at the relevant date, there was still some permanent water in Hut Creek just up from the house. There was also some evidence that the water levels in the bores had not been as adversely impacted as some other properties in the area.

Mr Coe explained that the "Newry" sales, his Sales 1 (of 127.6 ha) and 2 (of 262.4 ha) and Sale 5 (of 984.9 ha in the case of the Brady property), provided evidence of grazing levels of value in the only area of the Shire where he had small area grazing sales. He felt that they were supported by Sales 3(Nelson to Archay) and 4 (Green to Hall). However, he admitted that he now relied mostly on Sales 3 and 4, with support from Sales 1 and 2. Sales 3 and 4 are situated in the subject locality and he reasoned that whatever factors influenced the market in that locality should be reflected in those sales. Sale 5, the larger portion of the "Newry" aggregation, was used to support the valuation of the Brady property, as it was much larger than the other two subject properties.

Mr Coe was aware of the restrictions upon certain properties in the area, however he was of the opinion that while such restrictions might well have an effect on property values, they would be general throughout the area. His reasoning is illustrated by the following exchange:

"Mr COE: Now as I understand the restricted area, the main restricted area over the Brady and the Lucke appeals and the Applin sales is restricted for limestone and clay purposes. It's a restricted area. I don't know whether it would have that much effect. ... it's preserving the resource so it's stopping other people – other than QCL by the sound of it – from applying for a mining permit or a mining lease there. It's tying up that resource. I don't see that it would probably have much more effect than what would have been revealed in the Green to Hall sale at the time of valuation. I think it had some sort of mining tenure over it ... and that it's now got an application for an exploration permit over it. So I would say that ... any influences ... would have been reflected in that sale. I don't see much difference in those influences. I suppose it should be stated that, ... the whole area as the maps show is affected in some way by the operations at QCL mine with the tenures. The limestone is quite common through the whole area and ... there's some taint from that to the whole market I would say.

MR PATERSON: But the restrictions themselves, if you were approaching a valuation upon a grazing basis do you see the restrictions as having any effect or ---- ?

MR COE: Well no, they don't restrict the activities of primary production. ... anyone buying that area could still I assume, build a house, operate a farm, but if they went on to do something else that may

impinge on that resource and stop the development of it, well that may be a different case. But I think the sales over the years have illustrated that the ... most likely ... highest and best use ... depending on their country, was dairying. Now with deregulation that's gone, and through the nineties there was an influence of sales which peaked I think – and I would probably agree with what Mr Turner said – around that '94, '96 area, where there was a real peak there were a lot of the buyers – well from my knowledge of the sales – were coming from places like Dysart and those sorts of areas buying lifestyle blocks and coming in for the weekend ... that's stopped. It doesn't happen. With the reorganisation of the mines those have disappeared, and there was a move to that real rural homesite or lifestyle block market. I think that disappeared some time after '96 ..." (Transcript p.372)

The Appellants' Valuation Evidence

Mr Turner considered the three "Newry" sales to be of no relevance to the valuation of the subject lands. In his opinion, they were too far away, in a completely different area, in a different market. He accepted that the "Newry" sales reflected grazing values in the southern end of the Shire, but in his opinion, they did not reflect the circumstances peculiar to the Mt Larcom area.

Mr Turner preferred to rely on the sales of properties from Applin to Hannant and from Applin to Thorogood, his analyses of which showed no increase in unimproved value. He also analysed the sale of a property from Kopekin to Stevenson. His analysis of that sale showed that the value of improvements exceeded the sale price, which reinforced his view that there should have been no increase in the unimproved value of the subject lands.

The properties sold by Applin comprise two parts of an aggregation which sold to separate purchasers in January and February 2001. The property sold to Hannant has an area of 72.51 ha and the sale price was \$50,000. Mr Turner's analysis of that sale resulted in the value of the improvements exceeding the sale price by \$10,284. In other words, the sale showed a negative unimproved value. The property sold to Thorogood has an area of 168.33 ha and the sale price was \$60,000. Mr Turner's analysis of that sale showed an unimproved value of \$11,893.

Mr Turner's other sale, Kopekin to Stevenson, has an area of 101 ha and sold in January 2001 for \$163,000. He commenced to analyse that sale but abandoned the analysis when it became clear that the value of improvements exceeded the sale price.

Of the sales relied on by Mr Coe to support the subject valuations, Mr Turner did not even consider the sale Nelson to Archay, as it was a family sale of a small

area. He thought that it was more likely to be a rural residential type sale than a sale of grazing land.

Mr Turner disagreed with Mr Coe's analysis of the sale Green to Hall. He challenged the depreciation rates which were applied by Mr Coe to several of the improvements, as well as the extent of clearing. The analysis of that sale is crucial to these cases and will be considered in detail later.

Mr Turner explained that he analysed the sales Applin to Hannant and Applin to Thorogood separately and then added the sale prices together to undertake a combined analysis, from which he derived an unimproved value of only \$1,600. He said that he realised sales cannot result in negative unimproved values, but he had not attempted to analyse them on an added value basis as that was not his task. He had been instructed to ascertain whether there was evidence of an increase in unimproved values since the previous area valuation, and his investigation showed that there was no such evidence.

The Issues between the Valuers

Of the sales relied upon by Mr Turner, Mr Coe did not agree with Mr Turner's analysis of the sale Kopekin to Stevenson. However, he had no disagreement with the analyses of the two Applin sales. Mr Coe considered that the vendors in the sale Kopekin to Stevenson were over anxious. He had ascertained from one of the vendors that after a period of very dry years and low profitability, the deregulation of the dairy industry was the last straw. Under severe financial pressure, they were compelled to sell. On the other hand, the purchaser told Mr Coe that he thought that he purchased at a good price. Mr Turner analysed the sale to a negative land value. Mr Coe analysed the sale to show \$39,880, approximately 7% less than the unimproved value of \$43,000 applied to that property as at 1 October 1997.

The sale of the two properties sold by Applin, to Hannant and to Thorogood, were also investigated by Mr Coe. Again, he thought that the vendor was over anxious to sell. Mr Applin had tried to sell the property for some time and eventually sold it in two parts to neighbours for what he could get for them. Mr Hannant told Mr Coe that they were sold too cheaply. Mr Coe thought that the sales did not appear to be market value. While he did not disagree with Mr Turner's analyses of the Applin sales, Mr Coe considered that such sales could not be used as a basis of valuation.

Mr Coe conceded that for some time the residents of the area had a perception that the whole area was blighted, but in his view this was not reflected in the sales up

to the date of valuation 1 October 1999. However, he thought that the later sales might be indicating that the blighting was starting to be reflected in the market. He said that the respondent would consider that matter at the time of the next area valuation.

Findings in relation to Sales

In my view, the "Newry" sales are not appropriate as a basis for these valuations. They are too far away, in a different environment, comprising different country types, and with frontage to permanent natural water in the Boyne River. By contrast, these lands in the Mt Larcom area are basically scrub country, with water problems, which had been traditionally used for either dairy farming or agriculture. Although most of those properties run some cattle, they are not traditional grazing lands. Although Mr Coe's best area comparisons tend to show that the best area values of the subject lands are not out of line with the best area values of the sales, this method of comparison can only be used by applying artificial carrying capacities to the subject lands, which were disputed. There is no evidence of interest by traditional cattle graziers in the scrub blocks in the Mt Larcom area. Such a proposition was not even suggested by Mr Coe.

In my view, the lands in the Mt Larcom area cannot be regarded as grazing lands. They have been traditional dairy farming and agricultural lands, but the circumstances experienced by the area have forced most dairy farmers to quit dairying and the lack of water has forced most agricultural properties to abandon agriculture in any significant way. Several of the witnesses spoke of the dilemma as to the highest and best use of the subject lands in the longer term. Their traditional industries were no longer profitable, there was no real interest by purchasers for use as rural residential or for larger scale grazing. As one witness said of his property, it is just a place to live and run a few cattle.

In my view, the appropriate approach is to value these lands by direct comparison per ha with sales in that area. The available sales, admittedly all after-date sales, were the subject of disagreement between Mr Turner and Mr Coe. Mr Turner said that his instructions were to investigate the market and determine if there was any basis for the increase in the unimproved value of 25% since the previous area valuation. His analyses of the sales from Kopekin to Stevenson, from Applin to Hannant, and from Applin to Thorogood, showed either negative or minimal

unimproved values. He concluded that there was no basis for the respondent to increase the valuations of the subject lands above those applied as at 1 October 1997.

On the other hand, Mr Coe analysed the sales relied upon by Mr Turner, but from his analyses and investigations of the background of those sales, he concluded that each of them was a sale by an over-anxious vendor and therefore did not fulfil the *Spencer* case test of market value. He thought that each of those sales was a low sale.

I have come to the conclusion that I should place no reliance on the sales Kopekin to Stevenson, Applin to Hannant, and Applin to Thorogood. I accept Mr Coe's reasoning that the circumstances of those sales indicate that they may well have been forced sales. If further proof was needed of the unreliability of those sales, it is provided by the valuers' analyses of the Applin sales and Mr Turner's analysis of Kopekin to Stevenson.

Mr Turner did not initially have regard to the two sales Nelson to Archay and Green to Hall, upon which Mr Coe relied. He rejected the Nelson to Archay sale. He considered it to be far too small and more appropriate as a rural residential site than as agricultural land; furthermore the sale was between relatives.

I can place no reliance on the sale Nelson to Archay. The background to the sale, its size, and the evidence given by Mr Nelson, make that sale unsafe to be used as a basis for the valuation of the subject lands.

It appears that Mr Turner became aware of Mr Coe's analysis of the sale Green to Hall at the "compulsory conference" ordered before the hearing. He then inspected the property and discussed the age and condition of various improvements with Mr Murphy, who had first-hand knowledge of the property and its improvements. As a result of that inspection and discussion, Mr Turner disagreed with several significant features of Mr Coe's analysis of the sale.

That leaves the sale Green to Hall as the only reliable sale in these cases. All parties seem to accept that the sale was an arm's length transaction, although there was some evidence that the Greens had expected a much higher price for the property. However, it had been on the market for some time and had not realised that price. There is no suggestion that it was a forced sale in the sense that the Greens were imprudent vendors. They wanted to sell, but it was not suggested that they were over-anxious vendors. Rather, the evidence is that the sale price was at the market at the time.

The Green to Hall sale therefore becomes the only reliable evidence upon which to base the value of the subject lands at the date of valuation. Although the sale

occurred five months after the date of valuation, the parties accept that circumstances had not changed. As the sale is so critical to these cases, it is necessary to examine it in detail.

The Sale Green to Hall

The property is described as Lots 73 and 255 on Plan DS103 and Lot 72 on Plan DS124, Parish of Langmorn, containing an area of 212.5 ha. That property sold on 1 March 2000 for \$305,000. Mr Coe analysed that sale to show \$66,532, or \$313 per ha. As at the date of valuation 1 October 1999, Mr Coe had applied an unimproved value of \$63,000 to that property, which represented an increase of 25% over the previous valuation as at 1 October 1997 of \$51,000. He reasoned that the sale supported the increased valuations applied to the subject lands.

The property is situated somewhat to the north of the Lucke and Brady properties and just to the west of the Murphy property. Mr Coe described the land as comprising 135 ha of easy softwood scrub with some blue gum and gum top box influence and 77.5 ha of grey soil, gum top box forest. At that time there was some permanent natural water in Hut Creek.

There is general agreement that the property was well improved with good quality improvements. Mr Coe assessed the total value of improvements at \$212,461, to which he added development interest at 6.5% for 1½ years to arrive at a net unimproved value of \$66,532.

Mr Turner disagreed with Mr Coe's analysis of the sale, particularly the depreciation rates which Mr Coe had applied to the bores, the second set of yards and one of the sheds, as well as the extent of clearing. Mr Turner considered the whole of the property to be cleared, while Mr Coe was originally of the view that 12.5 ha had been left uncleared, being mainly gullies and shade lines.

Mr Turner had spoken to Mr Murphy about the bores and contended that the bores and mills should be depreciated by 40%.

There were two sets of yards on the property. Mr Coe and Mr Turner agreed as to the value which should be attributed to the set of yards near the house, which were newer and in better condition. The second set of yards is situated towards the south of the property, near bore No. 4. Those yards were somewhat older and had a plunge dip and draining pen. Mr Coe reasoned that on a property of only 212.5 ha, the second set of yards was overcapitalisation. He said that the purchaser, Mr Hall, told him that he did not anticipate using the yards very frequently. Mr Coe came to

the conclusion that the plunge dip would no longer be used as the practice in the district was to use pour-on tickicides to control ticks. He concluded that the yards were of no added value to the property and he attributed no value to the dip and yards.

While Mr Turner agreed with Mr Coe about the dip, he considered that the yards themselves added value, as they were used for drafting and handling cattle and were an integral part of the working of the property. He thought that the yards should be depreciated at only 30%.

There were two sheds on the property. There was no dispute about one of those sheds. The second shed Mr Coe described as being constructed of round bush timber posts, part concrete and part earth floor, steel framed, with secondhand corrugated galvanised iron roof and walls. Because of what he thought were secondhand materials on the walls and roof, Mr Coe depreciated the shed by 60%.

Mr Turner conceded that there was secondhand iron on two sides, but contended that there was new iron on the roof and two ends. Mr Turner said that Mr Murphy had informed him that the secondhand iron was heavy gauge iron which would have an extended life. As the shed was only about 20 years old, Mr Turner considered that the depreciation should be only 25%.

After making those adjustments to Mr Coe's analysis of the sale, Mr Turner arrived at an unimproved value of about \$52,000, if the second set of yards was excluded and about \$44,000, if those yards were included. In either case, he was of the view that the analysis of the sale did not support any increase in the unimproved value over the value of \$51,000 applied to the property as at 1 October 1997.

Mr Coe explained that practically the whole property had been pulled, burnt and seeded, raked and ploughed and was in good condition. However, he had originally estimated that an area of 12.5 ha had not been cleared, comprising uncleared gullies and shade areas. Following the conference with Mr Turner, he had recalculated the uncleared area to about 8.5 ha, in the areas where trees showed and had adjusted his analysis of the sale accordingly.

With regard to the shed, Mr Coe said that he would have applied depreciation of about 30% if all new materials had been used as the shed was only 20 years old. However, because of the secondhand iron which he thought to be on all walls and the roof, he had depreciated its value by 60%. However, he conceded that he could be in error.

Mr Coe had allowed no added value for the second set of yards, even though he readily admitted that the property was one of the most highly developed in the

locality. He reasoned that as the purchaser had told him that he did not intend to make much use of the yards and there was a more centrally located set of yards, a 212.5 ha property did not warrant two sets of yards.

As for the bores, Mr Coe had examined each of the bores and the equipment and had made his assessment of depreciation based on his estimate of its age and condition. He depreciated two of the bores and the windmills thereon by 60%.

The Evidence of Mr Arthur Murphy

Mr Murphy gave evidence which basically supported what Mr Turner said that he had been told about the improvements on the sale property. He had worked on the property from time to time since Mr Green bought it and had been caretaker of the property for the Greens for six or seven years prior to the sale. Mr Murphy therefore knew the property intimately. He said that it was one of the best improved farms in the area. He had built every structure on the place. He built the house in 1979, he built the contentious shed in 1980, saying that it was a particularly well-built shed. Although he had used some secondhand iron on two of the walls, the roof and other walls were of new iron. He commented that the secondhand iron, although showing spots of rust, was heavy gauge galvanised iron and would probably last longer than new iron.

Mr Murphy did not build the second set of yards. They were constructed on the property during the 1960's. However, he had done maintenance work on the yards. In Mr Murphy's opinion they were a very good set of yards. He expressed the view that if the new owner did not want them, they could be dismantled and sold.

Mr Murphy had erected all the windmills on the property. He also knew the dates when each of the bores was drilled. That evidence indicated that some of the bores and windmills were not as old as Mr Coe had estimated.

The Analysis of the Sale Green to Hall

On the whole I prefer the analysis made by Mr Coe to that made by Mr Turner. Mr Coe made the more detailed inspection of all the improvements and estimated the depreciation to be applied to each of them. On the other hand, Mr Turner relied heavily on what he was told by Mr Murphy in arriving at his estimates of the depreciation rates. Therefore, where there is conflict between the two, I prefer the approach of Mr Coe.

However, the evidence of Mr Murphy is crucial and cannot be ignored. He had detailed knowledge of the property and the improvements. That evidence supports to some extent the criticism by Mr Turner that some of the depreciation rates applied by Mr Coe were too severe. However, on the other hand, I think Mr Turner underestimated the depreciation. I am not prepared to accept the depreciation rates suggested by Mr Turner to the full extent.

Considering the individual improvements that were in issue, in view of the evidence, I have concluded that the depreciation rate applied by Mr Coe to the shed should be adjusted.

The second set of yards were constructed during the 1960's and were in good condition at the time of sale. I have come to the conclusion that those yards add value to the property, but not to the extent estimated by Mr Turner. Mr Coe said that he analysed the sale on a traditional cost less depreciation basis. However, it seems that he applied a rigorous added value approach in assigning no value to the yards. From the evidence I am of the view that those yards did have some value to a prudent purchaser.

Mr Turner was of the opinion that the bores and mills on the property should be depreciated by 40% instead of the 60% applied by Mr Coe to some of them, which was based on his observation and estimate of the age of those improvements. However, Mr Murphy's evidence leads me to conclude that those bores and the mills on the bores did not warrant depreciation of 60%.

As for the clearing, Mr Coe originally assessed 12.5 ha of the property as being uncleared. However, he recalculated that area after reference to an aerial photograph. On the other hand, Mr Turner considered the whole property to be cleared. An examination of the aerial photograph (Exhibit 72) indicates that there are areas of timber on the property. Those are either areas left uncleared, or areas of regrowth. Either way, it cannot be said that the whole property was cleared. Therefore, I accept the recalculated area of 8.5 ha of uncleared land on the property as assessed by Mr Coe.

Mr Coe's analysis of the sale arrives at a net unimproved value of \$66,532. On the other hand, Mr Turner's adjustments to Mr Coe's analysis of the sale arrived at a figure of about \$52,000, if the second set of yards was totally excluded, and about \$44,000, if the value of the yards was included.

I have made what I consider to be the appropriate adjustments to Mr Coe's analysis. I have done so reluctantly, as it is difficult to adjust a valuer's analysis with

any degree of precision. In making those adjustments, I make no criticism of Mr Coe. He made his assessments of the value of the improvements based on his observation and estimate of condition. If it had not been for the evidence of Mr Murphy, those assessments would have been largely accepted. However, Mr Murphy's evidence has established that Mr Coe has underestimated the added value of some of the improvements. After making those adjustments, I have come to the conclusion that the net unimproved value derived from the sale Green to Hall is slightly less than \$57,000. In my view, this analysis would justify the application of \$265 per ha to the sale property, or (rounded) \$56,300.

Application to the Individual Appeal Properties

In making a direct comparison between the only reliable sale and each of the subject lands, I am assisted by the comparisons made by Mr Coe, who had undertaken a direct comparison between the sale (which was his Sale 4) and each of the subject lands in his sales schedule in each case.

There was little or no challenge to the comparisons which Mr Coe made between the sale and the subject lands, or between the subject lands themselves. His original approach was to increase the unimproved values of all properties in the area by a flat 25%, which amounts to preserving the previous relativity of values between the properties. After the objection conferences he adjusted the unimproved value of each of the subject properties for their individual disabilities. I propose to adopt the same general approach.

Accepting that the sale Green to Hall would be subject to any blighting effect which might affect properties in the Mt Larcom area, apart from the water depletion, I propose to make comparisons between the sale property and each of the subject properties without considering their water disabilities and then make individual adjustments for those disabilities.

The Lucke Property

The Lucke property, comprising 64.3 ha, is described by Mr Coe as being situated about 11 km south-west of the town of Mt Larcom, with access by means of a formed gravel road. The property is described as consisting of about 78% level to easy sloping softwood scrub (red soil east of an intersecting gully and grey brown soil west of the gully), with about 22% moderately sloping softwood scrub with limestone outcrops.

Mr Coe went on to say that the property is outside the water depletion zone caused by the operations of the East End Mine, but the owners feel that the adverse effects extend to their property.

Mr Coe states that the subject property is watered by a bore and dams, but the pumping depths of the bores have been increased in recent years to retain supplies. Evidence was given by Mr Lucke of the failure of his production bores and the need to sink a deep bore to supply water for the intensive piggery.

By comparison with the sale Green to Hall, Mr Coe stated that the sale has similar access and location, but is inferior in country type. Overall he considered the Lucke property to be superior to the sale. The Lucke property is virtually entirely a scrub property, while the scrub on the sale property has forest influence and the sale also has 77.5 ha of gum top box forest.

Aside from the water difficulties on the subject land, in my view, a direct comparison with the sale would indicate an unimproved value of \$440 per ha, or \$28,300.

Mr Coe originally valued the subject land at \$32,000 as at 1 October 1999, being a 25% increase over the previous valuation of \$25,500 as at 1 October 1997. However, Mr Coe adjusted the valuation of the property after the objection conference for the disability of having to drill deeper bores to obtain a reasonable water supply. Mr Coe reduced the valuation by 5% to \$30,500. His reasoning in relation to that adjustment was not attacked and I will adopt the same percentage reduction.

Accordingly, in my view, the appropriate valuation for the Lucke property is \$420 per ha, or (rounded) \$27,000.

The Brady Property

The Brady property comprises a total of 589.83 ha. It is situated about 14 km south of the town of Mt Larcom with access by means of a gravel formed road. Mr Coe described the property as severed into three parcels by constructed roads and consisting of about 5 ha of irrigable blue gum flats, 80 ha of blue gum, broadleaf ironbark and Moreton Bay ash forest, 85 ha of good quality easy sloping softwood scrub, 230 ha of fair quality easy to moderately sloping softwood scrub, 135 ha of steep poorer quality softwood scrub and 54.83 ha of steep narrowleaf ironbark rosewood and gum top box forest. Mr Coe stated that although the property is outside the water depletion zone, the owners feel that the adverse effects extend to their

property. He went on to state that the subject property is watered by bore and dam supplies.

In comparing the subject property to the Green to Hall sale (his Sale 4), Mr Coe stated that the sale has similar access, location and water to the subject land, but is inferior in country type. Overall he considered the sale to be inferior to the subject property.

Mr Coe originally valued the subject land at \$155,000 as at 1 October 1999, being a 25% increase over the previous valuation of \$124,000 as at 1 October 1997. However, after hearing the objections, Mr Coe reduced the valuation to \$144,000, or \$244 per ha (approximately 7%), to make allowance for the fact that the area of 20 ha previously valued as irrigable on the property had been reduced to an area of only 5 ha because of depletion in the available creek and bore water and for the fact that there was no longer any permanent natural water on the Brady property.

Comparing the subject land with the adjusted analysis of the Green to Hall sale, I have come to the conclusion that a valuation of \$230 per ha, or \$136,000, would be appropriate for the Brady property, leaving aside for the moment the adjustments for the water loss.

Mr Coe adjusted the original valuation for the reasons outlined earlier. However, Mr Brady gave evidence that at the date of hearing, instead of having sufficient irrigation water for 5 ha, the water was sufficient to irrigate only 5 acres. In his view, it was not worth setting up the pumps and moving the spray lines to irrigate such a small area. Mr Coe's adjustment amounts to approximately 7% of the applied valuation. Although I accept Mr Brady's evidence in relation to the water, I am reluctant to adjust Mr Coe's percentage allowance. The valuation is to be made at the date of valuation, not the date of hearing. Furthermore, there may be some improvement in the water supply with better seasons. That is something for the respondent to examine at the time of the next valuation of the area.

In the circumstances, I propose to maintain the reduction of 7% as applied by Mr Coe. Accordingly, in my view, the valuation of the Brady property should be \$215 per ha, or \$127,000.

The Murphy Property

The Murphy property, of 97.64 ha, is described by Mr Coe as being situated about 5 km south-west of the town of Mt Larcom, with access by means of the bitumen formed Bracewell Road. Mr Coe described the property as consisting of

about 64% sloping mainly grey soil box forest and about 36% bastard scrub interspersed with box. The property is within the Kalf zone of water depletion and its water supply was affected by the mining activities of the East End Mine. When the original bore on the property went dry, QCL drilled three replacement bores, with only one finding water. That bore has been equipped with an electric submersible pump and now provides stock water to the property.

Mr Coe originally valued the Murphy property at \$26,000 as at 1 October 1999, being a 25% increase on the previous valuation of \$20,500 as at 1 October 1997. Following the objection conference, the valuation was reduced to \$23,500, because the property was mainly situated in the water depletion zone and, notwithstanding the fact that QCL had provided an alternative water supply, Mr Coe was of the opinion that the valuations of all properties within that depletion zone had been reduced in value.

In comparing the subject land with the Green to Hall sale, Mr Coe stated that the sale had similar access and location, but was superior in country type. Overall he considered the sale property to be superior to the subject land.

In comparing the subject land with the adjusted analysis of the sale Green to Hall, but setting aside for the moment the impact of the water depletion, I have come to the conclusion that an appropriate value for the subject land as at 1 October 1999 is \$230 per ha, or \$22,500.

Mr Coe's allowance of 10% for properties within the water depletion zone was not seriously challenged by the appellants. In the absence of any other evidence, I accept his reasoning in that regard and will also adopt an allowance of 10% for the subject property.

Accordingly, I am of the opinion that the appropriate value for the subject land as at 1 October 1999 is \$210 per ha or \$20,500.

Orders

In the case of AV2000/0163, Alec E Lucke & Ors, the appeal is allowed, the valuation of the Chief Executive is set aside and the unimproved value of the subject land as at 1 October 1999 is determined at Twenty-seven thousand Dollars (\$27,000).

In the case of AV2000/0196, Peter B and Lynette Brady, the appeal is allowed, the valuation of the Chief Executive is set aside and the unimproved value of the subject land as at 1 October 1999 is determined at One Hundred and Twenty-seven Thousand Dollars (\$127,000)

In the case of AV2000/0264, Arthur W Murphy, the appeal is allowed, the valuation of the Chief Executive is set aside and the unimproved value of the subject land as at 1 October 1999 is determined at Twenty Thousand Five Hundred Dollars (\$20,500).

JJ TRICKETT
PRESIDENT OF THE LAND COURT