[2001] QLC 85

LAND COURT

BRISBANE

21 AUGUST 2001

Re: Appeals against Annual Valuations
Valuation of Land Act 1944
Shire of Taroom
(AV00-626 and V00-658)

Margaret L and Richard S Moffat
v.
Chief Executive, Department of Natural Resources and Mines

(Hearing at Taroom)

D E C I S I O N

These are two appeals by landowners against the unimproved values applied to their properties by the Chief Executive, Department of Natural Resources and Mines, under the provisions of s.45 of the *Valuation of Land Act 1944* (the Act).

Background

Mr and Mrs Moffat are the owners of an aggregation of three non-contiguous properties in the Shire of Taroom known as "Eurombah", "Bauhinia Park" and "Target Downs", all of which are used in conjunction for the breeding, growing and fattening of beef cattle. Under the provisions of s.34(1)(b) of the Act, all three properties have been included in the one valuation.

"Eurombah", the homestead property, has an area of 4,171.9 hectares and is situated about 34 km south-west of Taroom on the Roma-Taroom Road, with about 22 km of bitumen sealed road, the remaining 12 km being formed gravel road.

"Bauhinia Park" has an area of 1,827.56 hectares and is also situated on the Roma-Taroom Road, about 12 km east of "Eurombah" and about 22 km south-west of Taroom, with bitumen sealed road access.

"Target Downs" has an area of 1,775.36 hectares and is situated about 24 km west of Taroom, with about 16 km of bitumen sealed road and 8 km of gravel road. It is situated about 26 km by road north or "Eurombah" on the northern side of the Dawson River which is crossed by means of a low-level concrete crossing which is periodically impassable due to flooding.

As at 1 October 1999, the respondent valued the aggregation of 7,774.82 hectares at $1,050,000. Following an objection by the landowners, the valuation was reduced to $1,000,000. The landowners then appealed to the Land Court, the Notice of Appeal being received in the Land Court Registry on 5 October 2000. This became appeal AV00-626.

For some reason, it appears that the respondent issued another decision on objection in respect of the same land. This resulted in another appeal being lodged by the landowners, the Notice of Appeal being received in the Land Court Registry on 29 November 2000. This became appeal V00-658.

Both appeals are against unimproved values of $1,000,000 for the same land as at the same date of valuation, 1 October 1999. In each case the landowners contended for an unimproved value of $938,000, although the grounds of appeal were somewhat different. At the commencement of the hearing, Mr Zander, who appeared on behalf of the respondent, explained that one of the valuations seemed to have issued in error. Be that as it may, there are two valid appeals before the Court. Without further evidence, I am unable to say which appeal, if either of them, is in respect of a valuation issued in error. Obviously, there is only one valuation of the subject land for $1,000,000 as at 1 October 1999. Therefore, by agreement, the appeals were dealt with as if there was one appeal before the Court.

The landowners' grounds of appeal are to the effect that they are concerned that the areas of various categories of country have been wrongly classified and/or its quality overestimated; the percentage increase in the valuation; the relativity of the valuation with those of neighbouring properties; and the difficulties associated with working an aggregation of three non-contiguous properties.

The Subject Properties

The three properties consist generally of developed brigalow scrub of varying quality, associated with other types of country. All have been developed for grazing purposes with improved pastures. As the description and classification of the country were essentially the principal issues in this case, I will set out in some detail how the parties described the land.

Evidence on behalf of the respondent was given by Mr MC Farrington, a registered valued employed by the Department of Natural Resources and Mines. Mr Farrington described each of the properties as follows:

"The subject property comprises a predominance of mixed brigalow, softwood scrub with a balance of lighter forest ridges, watercourse frontages and flooded coolibah river flats and channels. The property is fully developed for grazing with improved pastures established throughout the better classes of country and limited areas cultivated for fodder crop production.

'Eurombah' has an area of 4,171.9 hectares comprising about 625 hectares (15%) of flooded Dawson River flats and channels with grey clay to brown clay loam soils originally timbered with coolibah; 2,000 hectares (48%) undulating to hilly mixed brigalow softwood 2nd class scrub grazing with variable grey clay loam to lighter sandy loam soils containing surface stone; 1,200 hectares (29%) slopes and ridges of mixed vine and clumpy brigalow, bauhinia 3rd class scrub grazing with generally very shallow, stony soils and including some clay pan areas; and 346.9 hectares (8%) mainly broken and eroded slopes of bauhinia, sandalwood, box and dawson gum 3rd class scrubby forest grazing.

'Bauhinia Park', with an area of 1,827.56 hectares, comprises about 725 hectares (40%) easy undulating brigalow softwood 1st class scrub grazing with grey to brown clay loam soils; 800 hectares (44%) mixed brigalow, bauhinia, sandalwood, wilga 2nd class scrub grazing with mainly shallow grey/brown clay loam soils containing surface stone; and 302.56 hectares (16%) 2nd class forest grazing country comprising broken sandy clay soil flats and low rises adjacent Paddys Creek originally timbered with poplar box, gum and silverleaf ironbark.

'Target Downs' has an area of 1,775.36 hectares comprising about 440 hectares (25%) easy undulating 2nd class brigalow scrub grazing with dark clay loam soils; 960 hectares (54%) of mixed box, sandalwood creek flats and low rises of box and ironbark interspersed with clumpy brigalow, bauhinia and wilga; and 375.36 hectares (21%) of lighter stony forest slopes and ridges originally timbered with ironbark and box.

'Eurombah' is watered by eight earth dams, an excavated lagoon and permanent natural supplies in the Dawson River.

'Bauhinia Park' is watered by five earth dams and three bores.

'Target Downs' has one equipped bore and two earth dams.

The carrying capacity of the subject property improved to district standard is estimated at 2,050 head of mixed branded cattle on a breeding and fattening basis. About 1-3.8 hectares overall."

Mr RS Moffat appeared and gave evidence on behalf of the appellants. He agreed with Mr Farrington's description of "Target Downs". However, he did not agree with the classifications or descriptions of the other two properties. He explained that he relied on previous classifications by departmental valuers which had been agreed upon. Now, he said, they appear to have been changed for no apparent reason.

In his opinion, "Eurombah" consisted of 625 hectares of Dawson River flats; 1,000 hectares of 2nd class scrub grazing; 1,000 hectares of somewhat inferior brigalow, with stony country, gullies and steep areas, merging between the better brigalow and 1,200 hectares of marginal stony ridges; and 346.9 hectares of 2nd and 3rd class forest grazing. In other words, he considered that "Eurombah" comprised 14% river flats, 24% 2nd class brigalow, 29% stony country, 24% merging off the stony country, and 9% forest.

The principal issue between Mr Moffat and Mr Farrington was in the location of the various qualities of scrub and the fact that Mr Farrington had included the 2,000 hectares of scrub in one classification.

In Mr Moffat's opinion, "Bauhinia Park" consisted of 1,628 ha of scrub grazing, about half of which was 1st class and half 2nd class; the remaining 200 hectares comprising clay sandy creek flats. Through the scrub grazing there are pockets of inferior stony areas.

It seems that Mr Moffat and Mr Farrington were not far apart as regards the classification of "Bauhinia Park" and in the end, Mr Moffat appeared to accept Mr Farrington's classification of "Bauhinia Park".

Percentage Increase in Valuation

Mr Moffat was concerned that the valuation of the subject lands had increased by 50%, whereas the average increase in valuation for lands in the Taroom Shire had been 34%. He attributed this to the fact that there had been many sales of properties in the southern part of the shire, whereas there had been few sales in the tightly held northern part, where valuations had not increased to the same extent. He felt that the 50% increase was not justified. He referred to the sale of "Illuka" in the area north of the river, which he thought confirmed that the value of land in the northern area was higher for the better country. However, "Illuka" was sold long after the date of valuation and no evidence was presented which would have made it relevant to these matters.

Of the sales referred to by Mr Farrington, Mr Moffat commented that "Shiro" is a pure scrub block, which had been sold on several occasions and which had been extensively blade ploughed. He thought that "Annamaroo" does not have the extensive undulating hill country of the subject land. He described "Brookfield" as having a large area of river country like "Eurombah" and he commented that it had also been sold on other occasions.

Relativity

Mr Moffat argued that the valuation of "Eurombah" was out of relativity with the valuation applied to the neighbouring property "Bridge Creek", which was valued at $134.20 per hectare, compared with $140 per hectare on "Eurombah". In Mr Moffat's opinion "Bridge Creek" is superior to "Eurombah", as it has a greater proportion of better class brigalow scrub country, with only a small area of stone; it is a flatter block and does not have the broken 3rd class scrub grazing of the subject land.

Mr Farrington had inspected "Bridge Creek" about 10 years ago. He described it as comprising 69% 2nd class scrub grazing, comparable to that on "Eurombah", 10% 3rd class scrub grazing similar to that on "Eurombah", 21% 2nd class forest grazing inferior to the river flats on "Eurombah", but comparable to the 2nd class forest on "Bauhinia Park". He considered "Eurombah" to be slightly superior to "Bridge Creek" overall.

Mr Moffat disagreed, contending that "Bridge Creek" did not have the same proportion of stony hilly country and had far better brigalow country.

Working Difficulties

Mr Moffat contended that more allowance should be made for the difficulty of working three non-contiguous properties, particularly as "Target Downs" was separated from the other two by the Dawson River. During flood periods, the crossing could be inaccessible for two to three weeks and was frequently cut by storm rains. On such occasions alternative access was available by way of Taroom, where the river can be crossed by means of a high level bridge. However, that journey was 65 km instead of 26 km directly across the river. At times even that alternative access is cut. Mr Moffat said that for that reason the appellants do not farm for sucker control on "Target Downs", but have been using more expensive blade ploughing for sucker control.

Mr Farrington's Valuation

Mr Farrington valued the aggregation as follows:

"Eurombah" 4,171.9 hectares @ $140 per hectares	$584,066
"Bauhinia Park" 1,817.56 hectares @ $165 per hectares	$301,547
"Target Downs" 1,775.36 hectares @ $120 per hectares	$213,043
Total	$1,098,656
Less physical separation allowance 7.5%	$82,399
Total	$1,016,257
Rounded to	$1,000,000

Mr Farrington said that he checked that result by the beast area method of valuation; for a total carrying capacity of 2,050 head, that valuation equates to a beast area value of $488.

Mr Farrington's Reasoning

In making the valuation on behalf of the respondent as at 1 October 1999, Mr Farrington had regard to some 30 sales of rural properties in the Shire of Taroom. Those sales indicated that over the 10 years prior to the valuation there had been a shift from farming the smaller scrub areas to grazing. This had meant that the valuations of the smaller blocks which were already carrying values for grain growing, were not increased to the same extent as the larger properties, such as the subject land. The sales had shown that as at the date of valuation, the larger properties had much the same value per hectare as the smaller properties.

Mr Farrington relied on the sales of three properties in the general vicinity to support his valuations of the subject lands.

Sale 1 is a property known as "Annamaroo", of 2,966.75 hectares which sold in November 1997 for $1,759,400, or $593 per hectare. Mr Farrington analysed the sale to show an unimproved value of $603,235, and as at 1 October 1999 the respondent had applied an unimproved value of $550,000, or $185 per hectare to that property. With a carrying capacity of one beast to 3 hectares that equates to a beast area value of $555.

"Annamaroo" is situated about 19 km south-east of Taroom via the bitumen sealed Leichhardt Highway, with 3 km of formed gravel/earth road. The country is generally 1st and 2nd class scrub grazing with a small area (6%) of 2nd class forest.

The country is generally superior to that of the aggregation and it is better situated, therefore Mr Farrington considered the sale to be superior to the subject land.

Sale 2 is a property known as "Brookfield", of 2,787.98 hectares, which sold in April 1999 for $1,500,000, or $538 per hectare. Mr Farrington analysed that sale to show an unimproved value of $380,646 and as at 1 October 1999 the respondent had applied an unimproved value of $365,000, or $131 per hectare to that property. With a carrying capacity of one beast to 4 hectares, that equates to a beast area value of $524.

"Brookfield" is situated about 56 km south-west of Taroom on the Roma-Taroom Road, with 22 km of bitumen sealed road and 34 km of gravel/earth road. The country consists of 23% 2nd class scrub grazing, 50% 1st class forest grazing flats and channels and 27% of 2nd class forest grazing slopes and ridges.

Because of its situation and as the country is generally inferior in quality to that of the subject land, Mr Farrington considered the sale to be inferior to the aggregation, but taking into account its fragmented nature and size, he thought the values per hectare were similar overall.

Mr Moffat knew "Brookfield" to be a broken type property like "Eurombah", with 60% of river flats similar to those on "Eurombah". The undulating brigalow scrub he thought would be similar to or better than the better brigalow on "Eurombah".

Sale 3 is the property known as "Warrawoona", of 2,065.921 hectares, which sold in May 1999 for $1,250,000, or $593 per hectare. Mr Farrington analysed the sale to show an unimproved value of $335,840 and as at 1 October 1999 the respondent had applied an unimproved value of $310,000, or $150 per hectare to that property. With a carrying capacity of one beast to 3.6 hectares, that equates to a beast area value of $540.

"Warrawoona" is situated about 50 km south of Taroom, with 26 km of bitumen and 24 km of gravel/earth road and about 32 km north-west of Wandoan, with 28 km of bitumen and 4 km of gravel roads. It comprises about 62% of 2nd class scrub grazing and 38% 2nd class forest grazing flats and low gravelly rises.

Mr Farrington considered the sale to be superior to "Eurombah" and "Target Downs", but inferior to "Bauhinia Park", but because of its fragmented nature and associated working difficulties, he came to the conclusion that the sale was superior to the aggregation per hectare.

Mr Farrington also referred to two other sales. He made it clear that he did not rely on those sales to support the values applied, but had included them as evidence of the substantial increases in unimproved values demonstrated by the sales of larger properties, compared with those shown by the sales of smaller properties.

Sale 4 is a property known as "Shiro", of 3,436.886 hectares, which sold in April 1998 for $2,100,000, or $611 per hectare. Mr Farrington analysed that sale to show $908,924 and as at 1 October 1999, the respondent had applied an unimproved value of $550,000, or $160 per hectare to that property. With a carrying capacity of one beast to 3.4 hectares that equates to a beast area value of $544.

"Shiro" is situated about 60 km south-west of Taroom, with 26 km of bitumen and 24 km of gravel/earth roads; it is also 55 km west of Wandoan. It comprises 2nd class scrub grazing and because of the superiority of the country to that of the aggregation, Mr Farrington considered the sale to be superior to the subject land.

Sale 5 is a property known as "Woodlands", of 3,337.488 hectares, which sold in August 1998 for $829,000, or $248 per hectare. Mr Farrington analysed that sale to show $254,615 and as at 1 October 1999 the respondent had applied an unimproved value of $195,000, or $58 per hectare to that property. With a carrying capacity of one beast to 9 hectares, that equates to a beast area value of $522.

"Woodlands" is situated about 45 km south of Wandoan by 35 km of bitumen and 10 km of gravel/earth roads. It comprises 31% of undulating to steep 2nd and 3rd class scrub grazing, 12% of 2nd class forest grazing and 57% inferior forest range country. Because of the country type, Mr Farrington considered the sale to be inferior to the aggregation.

The Appellants' Case

In these cases the appellants have made it clear that they challenge the valuations of their aggregation because it has increased more than the average for the shire. However, Mr Farrington explained how that occurred in relation to some of the larger properties. During the course of the argument, it became clear that the appellants were also concerned about other aspects of the valuation. The classification of the country, particularly on "Eurombah", by Mr Farrington differed from the opinion of the appellants. In trying to reconcile these differences, the parties seemed to draw further apart by trying to mark the map of "Eurombah". It seems to me they were trying to reconcile the irreconcilable, because they were looking at it from different viewpoints.

There is no doubt that Mr Moffat knew the property far better than Mr Farrington. He had his own ideas of the classification of the country, where the better country stopped and the inferior country started. He also knew where every patch of inferior country intruded into the brigalow scrub. Mr Farrington on a brief inspection could not possibly have that detailed knowledge of the country. He described it as best he could from his impressions during that inspection. He formed opinions which ultimately did not coincide with those of Mr Moffat.

However, despite those differences, I cannot lightly reject the evidence of a valuer of the experience of Mr Farrington. He formed an overall impression of the property. He had also formed an overall impression of each of the sales. He was therefore in the better position to make comparisons between the sales and the subject lands. In my view, it does not matter that he could not delineate precisely on the map where the better country stopped and the inferior country started. He had an overall impression that the best country was in the south-west corner of the property and gradually deteriorated as it fell towards the river flats. That coincides with Mr Moffat's opinion, although he was better able to isolate the differences in the types of scrub country.

As Mr Farrington said: "… at the end of the day I'm required to value the property overall. The classification and relative values are simply a mechanism for me to achieve relativities … and to be able to compare like with like in terms of sales. They're my assessments based on the evidence I have. I'm confident that they support the total valuation that I've made." (Transcript p.28).

A little later he said: "… I don't think it really achieves anything by building on classifications. Any property in Taroom Shire … you could classify into probably 10 different classes of country … My opinion is the market would look at 'Eurombah' and assess certainly two classes of scrub country without classifying it any further than that, so I think it is more important to reflect the features of those two classes … without necessarily … trying to create a separate classification for each paddock on the place." (Transcript p.30).

In my view, Mr Farrington had a suitable basis for the valuation of the subject aggregation. The sale of "Annamaroo" was superior to the aggregation overall. That set the higher limit for the value of scrub country in the area. The sale of

"Brookfield" was the most similar, particularly to "Eurombah", as it had both river country and similar scrub country. The other sales helped to flesh out the basis.

In my opinion, Mr Farrington has applied the sales correctly and they support the increase in the valuation applied to the subject properties.

One of the appellants' major concerns was that the valuation, particularly that of "Eurombah", was out of relativity with the valuation of the adjoining property "Bridge Creek". The appellants are undoubtedly in the best position to assess the relative merits of their own property and the neighbouring property. In their opinion "Bridge Creek" is superior to "Eurombah". However, Mr Farrington had not seen "Bridge Creek" for some years. In his opinion, "Eurombah" was slightly superior to "Bridge Creek".

The appellants have created some doubt in my mind as to whether the relativity is correct. However, having found that the subject aggregation is correctly valued in accordance with the sales, then if the valuations are not out relativity, it is more likely that it is the valuation of "Bridge Creek" that is incorrect. Therefore, it would be contrary to law to alter the valuation of "Eurombah" to better reflect the relativity with "Bridge Creek".

This principle was dealt with in the case *Barnwell v. The Valuer-General* (1989) 13 QLCR 13, where the Land Appeal Court said at pp.16-17, that if possible the Valuer-General should obtain uniformity between different blocks in the same land category or type, but should do so (preferably by reference to sales of comparable land) by correcting inaccuracies rather than by making an inaccurate assessment in order to secure uniform error. Again at p.16, the Land Appeal Court said that it is untenable to adopt a value for one parcel based on relativity with the valuation of another which has no sound basis.

In *Fischer v. The Valuer-General* (1983) 9 QLCR 44, the Land Appeal Court said at p.46, that whilst maintenance of correct relativity is of considerable importance for rating valuations, the use of the principle of relativity should not be preferred to the exclusion of relevant (even if not ideal) sales evidence.

If those principles are applied in the present cases, then it is the valuation of "Bridge Creek" that should be altered if the relativity between the valuation of that property and the valuation of "Eurombah" is incorrect.

In my view, Mr Farrington has successfully answered the appellants' criticisms of his valuation. He was well aware of the quality of the country on "Eurombah" and "Bauhinia Park" and had made adjustments to the valuation of the aggregation following the objection by Mr and Mrs Moffat, in recognition of the larger proportion of forest country on "Bauhinia Park", as well as recognising the greater working disability associated with the physical separation of the three properties.

If I had any doubt about the correctness of the valuation, it was dispelled by the check method adopted by Mr Farrington of the beast area method of valuation. The results obtained from that method equates to $488 per beast overall, which in the circumstances is quite reasonable and confirms that his direct comparison with the sales was soundly based. In my view, it was not necessary to resort to a detailed classification method of valuation. Because of the limited sales evidence, such a method would involve an even greater degree of conjecture on the part of the valuer than the direct comparison or beast area methods.

There is one aspect of these cases that gave me some concern. That was whether sufficient allowance had been made for the working disabilities of three non-contiguous properties, particularly with "Target Downs" being cut off from the rest of the aggregation during periods of flood or after heavy rain. Mr Farrington said he allowed 7.5% discount which he considered to adequately account for those problems. However, Mr Farrington has effectively allowed more than 7.5%. As pointed out earlier, the sum of the valuations of the three properties amounted to $1,098,656. After allowing 7.5% physical separation allowance of $82,399, Mr Farrington arrived at a valuation of $1,016,257, which he rounded to $1,000,000 precisely. By doing so he has allowed a discount of approximately 9% from the sum of the three valuations.

The extent of the allowance that should be made for working disabilities of the three properties is arguable. Here the sales are of no assistance. In the circumstances, I feel that it is appropriate to rely on the skill and experience of Mr Farrington. He has allowed approximately 9% and I am of the opinion that there is no reason to alter that allowance.

Therefore, having regard to the whole of the evidence, I have come to the conclusion that these two appeals must fail.

Order

The appeals are dismissed and the respondent's unimproved value of One Million Dollars ($1,000,000) for the subject land as at 1 October 1999 is affirmed.

JJ TRICKETT

PRESIDENT OF THE LAND COURT