

IN THE PRIVY COUNCIL

No. 26 of 1976

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT
OF QUEENSLAND

B E T W E E N:-

MELWOOD UNITS PTY. LIMITED

Appellant

- and -

THE COMMISSIONER OF MAIN ROADS

Respondent

C A S E F O R T H E R E S P O N D E N T

RECORD

1. This Case is divided into Parts as follows:-

PART A - INTRODUCTION	(Paragraphs 2 - 37)
PART B - THE FACTS AS THEY APPEAR FROM THE CASE STATED	(Paragraphs 38 - 54)
PART C - JUDGMENT OF THE LAND APPEAL COURT	(Paragraphs 55 - 66)
PART D - JUDGMENT OF THE FULL COURT	(Paragraphs 67 - 73)
PART E - SUBMISSIONS FOR THE RESPONDENT	(Paragraphs 74 - 99)
PART F - REASONS	(Paragraph 100)

RECORD

PART A - INTRODUCTION

pp. 99-102

2. This is an appeal from the Judgment and Order of the Full Court of the Supreme Court of Queensland (Wanstall S.P.J., Matthews, Dunn J.J.) delivered on 23rd June 1976 whereby the Full Court on the appeal to it from the Land Appeal Court ordered that the determination by the Land Appeal Court of the appellant's claim for compensation be set aside, and that the Land Appeal Court enter any necessary adjournments and hear and determine the appellant's claim according to law, and that either party have liberty to apply and that the appellant be awarded half the costs of the appeal.

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pp. 1-26

3. The appeal from the Land Appeal Court to the Full Court was by way of case stated pursuant to the provisions of Division VII of Part II (ss. 45-48) of the Land Acts 1962-1968, ("Land Acts").

pp. 103-106

4. An order granting the appellant final leave to appeal from the Full Court to the Judicial Committee was made by the Full Court on 30th July 1976.

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p. 55 ll.39-40

5. The appellant is a duly incorporated company and the respondent is The Commissioner of Main Roads appointed under and pursuant to the Main Roads Acts 1920-1964 (s. 3) ("Main Roads Acts"). The Commissioner representing the Crown is a corporation sole by the name "The Commissioner of Main Roads" (s. 5).

p. 3 ll 30-35

p. 4 ll 11-21

p. 27

6. In December 1964 the appellant entered into five separate conditional contracts with five vendors to purchase five contiguous parcels of land (the "Melwood land") having a total area of 37 acres 2 roods 20.7 perches with frontages to Logan Road, Kessels Road and Wadley Street, Upper Mount Gravatt in the City of Brisbane in the State of Queensland. Each of the contracts was subject to various conditions, which if not fulfilled by 14th December 1965 gave the purchaser the option of rescinding the contracts. The final date for fulfillment of the contracts was 31st December 1965.

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p. 4 l 22 to

p. 5 l 4

p. 5 ll 1-4

p. 54 ll 35-38

p. 54 ll 38-39

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7. Pursuant to the Main Roads Acts (ss. 13 and 26A) and the Public Works Land Resumption Acts 1906-1955 ("Resumption Acts") (ss. 2, 7, 8, 12 and 12A) the respondent is a "constructing authority" with power to take land for the purposes set out in those Acts.

8. In 1960, the respondent commenced the planning of a vehicular expressway proposal commonly referred to as the "Gold Coast Expressway" ("the expressway") portion of which was intended to go through three of the parcels (the "subject land") contained within the Melwood land. The centre line of the expressway proposal through the subject lands was finally fixed in 1962 and no variation was made to it since that date.

p. 3 11 3-4
p. 2 11 16-20

p. 3 11 5-8
p. 27

9. In Queensland, a system of land registration is provided for by the Real Property Acts 1861-1974 ("Real Property Acts"). The Melwood land was at all material times subject to these Acts.

10. The registered proprietors under the Real Property Acts of the subject land at 11th September 1965 were McLaughlin, McMillan and Steindl, each of whom held their respective parcels under a separate registered title.

p. 4 11 17,18 & 2'
p. 10 11 33-35

11. Following notices of intention to resume portions of the subject land having a total area of 4 acres 2 roods 15 perches ("the resumed land") served by the respondent on McLaughlin, McMillan and Steindl, the respondent by a proclamation published in the Queensland Government Gazette on 11th September 1965 duly took the resumed land in accordance with the provisions of the Main Roads Acts and the Resumption Acts. The effect of the resumption was to divide the Melwood land into the "northern severance" containing an area of 25 acres 1 rood 0.5 perches and the "southern severance" containing an area of 7 acres 3 roods 5.2 perches with the land resumed of 4 acres 2 roods 15 perches lying in between.

p. 10 11 31-36

p. 27

p. 11 11 4-7

p. 55 11 32-38

p. 27

p. 2 1 27 to

p. 3 1 2

12. By the City of Brisbane (Town Plan) Act of 1959 ("Town Plan Act, 1959"), it was provided that a Town Plan for the City of Brisbane might be prepared which, on approval by the Governor in Council and publication in the Queensland Government Gazette, would become law (ss. 3, 6, and 9). Section 12 of the Town Plan Act, 1959 empowered the Brisbane City Council (the relevant Local Authority for the City of Brisbane) to make interim development ordinances to have the force of law in the City of Brisbane pending the commencement of the Town Plan.

RECORD

p. 11 ll 8-15

13. Pursuant to the Town Plan Act, 1959, interim development ordinances were made coming into operation on 17th October 1959 and providing that the right to use all land within the City of Brisbane for non-residential purposes was prohibited without a permit first obtained pursuant to Chapter 8 Part VI of those ordinances.

pp. 45-48

p. 5 ll 32-35

pp. 28-44

14. Following application by the appellant to the Brisbane City Council for a permit for a proposed drive-in shopping centre on the Melwood land, the Brisbane City Council by letter dated 15th April 1965 granted a certain approval "in principle" for such a centre upon the Melwood land, subject to various conditions. The approval was expressed to lapse on the expiration of 12 months of 15th April 1965 if substantial commencement of the project had not been effected by that time.

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p. 6 ll 18-19

to

p. 9 l. 24

p. 9 ll 13-19

15. Pursuant to the Town Plan Act, 1959 a Town Plan was prepared under which the Melwood land and many other areas of land in the City of Brisbane were zoned non-urban. This Town Plan came into effect upon publication in the Queensland Government Gazette on 21st December 1965. On the same date, the City of Brisbane Town Planning Act of 1964 (the "Town Plan Act, 1964") came into operation having been assented to on 22nd December 1964. On 21st December 1965 the interim development ordinance of the Brisbane City Council referred to above ceased to have effect (s. 12 Town Plan Act, 1959).

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16. Under the Town Plan, upon land zoned as "non-urban", the purposes for which buildings or other structures could be erected or used and the purposes for which the land so zoned could be used without consent of the Council or its delegate, were restricted to agriculture, forestry, rural industries, dwelling houses erected in conjunction therewith and certain other limited dwelling houses. The erection of any buildings or structures or the use of any land in the non-urban zone for drive-in shopping centres was prohibited and the Council was not empowered to give a consent to such use.

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17. The Melwood land is situated some seven miles from the centre of the City of Brisbane (Brisbane and Suburbs - Map B - Contours and Radial lines, published by the Survey office, Department of Lands, Brisbane, December 1969 publication). Brisbane at June 1966 had an estimated population of

656,612 (Queensland Year Book, 1971 & 1972, No. 32, published by the Bureau of Census and Statistics, Queensland Office).

18. By Part III of the Town Plan it is provided that an existing use inconsistent with the zoning provisions may nevertheless be continued as an existing non-conforming use (Clauses 8-11). "Existing use" is defined (Clause 1).

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19. By Section 8 of the Resumption Acts it is provided that from and after the day named in the proclamation effecting a resumption the land therein specified becomes vested in fee simple in the resuming authority discharged from all claims estates and interests of whatever kind and the estates claims and interests of persons entitled to the whole or part of the land taken are converted into a claim for compensation under the Resumption Acts and such persons upon asserting a claim as provided in those Acts are entitled, subject to the Acts, to compensation from the constructing authority.

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20. Following the resumption of the resumed land, claims were made against the respondent by the appellant in respect of its interest under the conditional contracts to purchase the subject land. The claims were for a total of \$299,528.75 made up as follows:-

p. 18 11 11-15

p. 53 11 12-18

Value of land resumed	\$195,465.00	
Loss due to severance	<u>\$104,063.75</u>	<u>\$299,528.75</u>

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21. By Sections 37 and 40 of the Land Acts and Section 23 of the Resumption Acts, the Land Court as constituted under the Land Acts has jurisdiction to hear and determine the amount of compensation and interest to be paid to a claimant in accordance with the provisions of Sections 19 and 23(8) of the Resumption Acts and Section 26A of the Main Roads Acts.

22. On 26th October 1966, the appellant filed its claim for compensation in the Land Court, which Court on 11th September 1970 determined total compensation payable to the appellant at \$21,170.00 made up as follows:-

p. 18 11 16-17

p. 18 11 18-22

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Value of land resumed	\$18,170.00	
Damage due to severance	<u>\$ 3,000.00</u>	<u>\$21,170.00</u>

RECORD

23. By Section 44 of the Land Acts and by Section 23 of the Resumption Acts, the Land Appeal Court as constituted under the Land Acts has jurisdiction to hear and determine upon an appeal from the Land Court all matters of compensation arising under the Resumption Acts and the Main Roads Acts.

24. Under Division VI of Part II of the Land Acts the practice in Queensland is that the function and jurisdiction of the Land Appeal Court is to re-hear the appeal made to it from the Land Court, anew on the evidence placed before the Land Appeal Court so that the appeal is in the nature of a re-trial. (The Queen -v- Rigby & Anor (1957) St. R. Qd. 266 at pp. 287-288).

25. The appellant appealed to the Land Appeal Court from the decision of the Land Court. On the hearing before the Land Appeal Court in 1972 each party adduced evidence, and the record of proceedings and evidence before the Land Court in 1970 was tendered as part of the proceedings in the Land Appeal Court. On 4th December 1972 the Land Appeal Court allowed the appeal, set aside the judgment of the Land Court and determined the total compensation payable to the appellant at \$83,340.00, made up as follows:-

Value of land resumed	\$42,490.00	
Damage due to severance	<u>\$40,850.00</u>	<u>\$83,340.00</u>

26. By Section 45 of the Land Acts it is provided that the Crown or any person who feels aggrieved by a decision of the Land Appeal Court on the ground of error or mistake in law on the part of the Land Appeal Court or that the Land Appeal Court had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision may request the Land Appeal Court to state and sign a case setting forth the facts and grounds of decision for appeal thereon to the Full Court, and by Section 47 it is provided that the Full Court, when a case is transmitted under the Land Acts, shall hear and determine every question of law arising thereon.

27. The procedure which applies to appeals by way of case stated to the Full Court under the provision of the Land Acts is that the case should set forth the facts and grounds of the decision of the Land Appeal Court which is appealed from and the authority of the Full Court is limited to

determining from the ultimate facts in the stated case, the legal consequences which should ensue (R. -v- Rigby (supra) at pp. 288-289).

28. The appellant and the respondent each requested the Land Appeal Court to state and sign a case for appeal to the Full Court and the Land Appeal Court after submissions by the parties, (who however failed to agree on a form appropriate for the case) settled a case and annexed questions stated at the respective requests of the appellant (questions (a) to (g) inclusive) and the respondent (questions (h) to (j) inclusive).

p. 72 11 35-39

p. 24 1 12 to

p. 26 1 25

p. 26 11 26-39

29. It is the practice in Queensland to annex to cases stated on appeals from the Land Appeal Court questions put at the request of parties and to annex to the case stated the reasons for judgment of the Land Appeal Court.

30. The respective appeals of each party were heard together by the Full Court on 17th, 18th and 19th November 1975.

p. 101 11 37-42

31. Before the Full Court the respondent contended that it had a right of appeal based upon certain errors of calculation or reasoning as to value made by the Land Appeal Court to the disadvantage of the respondent but that there were no errors or other matters about which the appellant was entitled to complain. The appellant for its part contended that there were errors in principle and errors affecting assessment about which it was entitled to complain.

32. On 23rd June 1976, the Full Court delivered its judgment. By majority (Dunn, Matthews J.J., Wanstall S.P.J. expressing no opinion thereon) the Full Court declined to answer questions (a), (b) and (e) stated at the request of the appellant and questions (h) and (i) stated at the request of the respondent on the basis that the cases stated did not contain or give rise to any question of law which an answer to each question would involve or determine but the Full Court unanimously answered questions (c), (d), (f) and (g) stated at the request of the appellant and made the orders set out in paragraph 2 hereof. For some reason the Full Court omitted to deal with question (j) stated at the request of the respondent.

pp. 99-102

p. 97 1 37 to

p. 98 1 6

p. 69 11 30-32

p. 70 11 5-8

p. 69 11 9-29

p. 70 11 5-8

p. 98 11 7-11

p. 102 11 13-24

RECORD

33. The order of the Full Court and the reasons for its decision do not indicate in detail to the Land Appeal Court the procedure which it should follow on the further hearing upon the case remitted to it by the Full Court but the Land Appeal Court has been held to be a continuing Court (R. -v- Rigby (supra)) (at p. 291) and its decision on the remission to it will remain subject to rights of further appeal under Section 45 of the Land Acts if any errors of law are made by it in the course of reaching that decision.

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34. Before the Full Court, neither the appellant nor the respondent argued that errors in principle or in method of calculating compensation or in reasoning about value could not amount to errors in law.

35. The appellant did not seek leave to appeal from the decision of the Full Court in respect of the response made by the Full Court to questions (c), (d) (f) and (g) stated at the request of the appellant.

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36. When the appellant sought leave from the Full Court to appeal from its decision, the respondent neither consented to nor opposed the appellant's application. For itself, the respondent did not seek to make any appeal from the judgment and orders of the Full Court. Because of the further hearing which had been ordered by the Full Court, the orders of the Full Court would appear to be interlocutory in nature.

37. The order of the Full Court giving the appellant final leave to appeal contains the grounds upon which that leave was given.

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pp. 103-106

PART B - THE FACTS AS THEY APPEAR FROM THE CASE STATED

p. 3 ll 3-8

38. The proposal for the expressway and the planning for it had continued for a number of years and the proposed position of the expressway upon the subject land and in its vicinity had been fixed for a number of years prior to resumption. Before the time that the appellant displayed interest in purchasing, it was well established and a matter of public knowledge just where the resumption would affect the subject land and what land would be taken by the resumption.

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p. 3 ll 11-15

RECORD

39. While the appellant itself was in the process of acquiring the subject land for the purpose of establishing a drive-in shopping centre it knew of the resumption proposal and of the location of the resumption proposed from within the subject land. p. 3 11 30-38

10 40. When the appellant in December 1964 signed the contracts to purchase the Melwood land, they being in the first instance conditional contracts, it knew that the only part of the Melwood land which could be available to it for its proposed drive-in shopping centre was the northern severance. p. 3 11 30-34
p. 4 1 22 to
p. 5 1 4
p. 5 11 25-31

20 41. The appellant with the knowledge that it possessed and after it had entered into the conditional purchase contracts, made an application in writing to the Brisbane City Council for such permit as was necessary to cover its proposed user of the Melwood land for a drive-in shopping centre and to erect buildings for such a centre upon that land. The application was made by a covering letter with individual applications for the five separate parcels of land involved and these documents are part of the special case and are Annexure B to it. At that time any proposal to use land or to erect structures on land within the area of the City of Brisbane for any purpose other than a residential purpose required (as is mentioned above in paragraph 13) the sanction of a resolution of the Brisbane City Council or, more precisely, its delegate, the Council Registration Board. pp. 5 11 32-43
pp. 28-44

30 p..11 11 8-15
pp. 45-48

40 42. In response to the application for a permit, the appellant by letter dated 15th April 1965 received from the Council Registration Board an approval, "in principle", to use the land of the northern severance for a drive-in shopping centre and to erect buildings upon that severance for that purpose. The Land Appeal Court concluded that this was the effect of the letter in question. This conclusion is not under question in this appeal. p. 6 1 18 to
p. 9 1 24
p. 9 11 25-30
p. 59 11 1-5

43. The Land Appeal Court was apparently able to conclude that the purchase price which in December 1964 was contracted to be paid for each of the five parcels comprising the Melwood land was a price which could be regarded as fair market value for that land considered as residential land and the further conclusion of the Court was reached that the p. 5 11 15-24

RECORD

price paid could be taken in each case as unaffected by the appellant's intention, at the time of entering into its conditional contracts, to make use of the land for a shopping centre.

- p. 4 1 22 to
p. 5 1 4
44. The conditions in the contracts to purchase in each case included conditions that the Brisbane City Council should grant planning approval for the use of the parcel concerned and land adjoining it for a drive-in shopping centre upon terms, if any, satisfactory to the appellant and that the appellant should conclude negotiations with a major general retailer to occupy and conduct business under a long term lease in the proposed shopping centre. 10
- p. 10 11 31-36
- p. 10 11 37-42
45. On 5th August 1965 the notices of intention to resume were served by the respondent acting under his statutory powers upon the vendors of the subject land, McLaughlin, McMillan and Steindl and pencil notings called "caveats", were entered by the respondent upon the land under contract of purchase from Steindl. The resumption proclamation was published on 11th September 1965. 20
- p. 11 11 4-7
- p. 11 11 27-30
- p. 11 11 32-38
46. The appellant regarded the northern severance of the Melwood land as adequate for the purposes of a drive-in shopping centre and in particular, it held this view at the date of resumption. Witnesses called by the appellant at the first hearing of its compensation claim before the Land Court in 1970 regarded the optimum area for such drive-in shopping centres as being an area not exceeding 30 acres, but the Land Appeal Court was not itself convinced that there is anything which can truly be regarded as an optimum area for drive-in shopping centres because as populations grow and circumstances change it is to be expected that such centres will expand and if need be this will occur by an expansion upwards. 30
- p. 11 11 39-43
- p. 11 11 4-7
- p. 3 11 30-34
47. At the date of resumption in September 1965, the appellant's interest in the Melwood land in question remained that which was held under its conditional contracts which it had not at that date declared unconditional so rendering itself bound to complete, but subsequently, the appellant made its decision to complete the contracts, and completed them on 17th December 1965 although at that date no final planning approval of the kind referred to in the conditional contracts had been given by the Brisbane City Council and negotiations with a major 40
- p. 17 11 21-31
p. 55 11 23-25

department store in terms referred to in the conditional contracts had not been concluded.

48. As stated, the Town Plan for the City of Brisbane became law and came into operation on 21st December 1965.

49. The Land Appeal Court appears to have found that because of the approval which the delegate of the Brisbane City Council had granted on 15th April 1965 permitting the development of a drive-in shopping centre on the northern severance, future approval for that use could be regarded as assured. The result was that the value of the land having the benefit of that approval was at the date of resumption in September 1965 higher than it would have been had it merely been land the right to use which was subject to the general restriction under Chapter 8 of the Ordinances of the Brisbane City Council. On the other hand, the greatest potential of the southern severance was, at the date of resumption, for use for development for residential purposes and after resumption this remained its best potential use although the expressway which was proposed would, to an extent, impair that potential.

p. 12 ll 3-12

p. 12 ll 13-20

50. After the date of resumption but just before the Town Plan came into operation, by a letter dated 20th December 1965, the Brisbane City Council, subject to a number of conditions, granted final approval for the use of and erection of buildings upon the part of the Melwood land which was unaffected by the proposal for the expressway, meaning the northern severance. The approval was expressed to lapse at the expiration of 2 years from 20th December 1965 if substantial commencement of the project had not been effected by that time.

p. 12 l 21 to
p. 17 l 9

p. 17 ll 1-6

p. 16 ll 34-41

51. The Land Appeal Court determined the value per acre of the land in the southern severance after resumption and the amount per acre by which the land had decreased in value as a result of the resumption. The figures were respectively \$4,000.00 and \$5,250.00.

p. 17 ll 16-20

52. In the year following the resumption, on 30th June, 1966, the appellant sold the northern severance to a company conducting a business as general retailer, David Jones Limited. The Land Appeal Court did not regard the price paid on this sale as a reliable guide to value of the resumed land at the date of resumption.

p. 17 ll 40-41

p. 18 ll 4-10

RECORD

p. 19 l 11 to
p. 23 l 32

53. Amongst the evidence introduced before the Land Appeal Court there was evidence from various witnesses relating to topics such as:-

The proportion of the Melwood land appropriate for approval as a drive-in shopping centre had a suitable application been made to the Brisbane City Council;

What areas, had they been freely available, would have been desirable to bring in as extra parking area;

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How much of the total area of the Melwood land one would expect a developer of the site to seek to acquire had it all been freely available for a drive-in shopping centre;

How much the actual purchaser, David Jones Limited, would have sought to acquire had it been available;

The build-up over a period of pressures for expansion of parking areas associated with drive-in shopping centres;

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That at the date of the hearing before the Land Appeal Court the shopping centre was actually short of parking space and that as it had been constructed in the years following the resumption, the parking areas available at the centre did not conform with the requirements of the Brisbane City Council.

p. 23 l 33-34

54. Following the resumption, the drive-in shopping centre opened on 1st October 1970.

PART C - JUDGMENT OF THE LAND APPEAL COURT

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55. On the appeals respectively brought by the parties on Case Stated to the Full Court arguments were presented designed to show that there were errors in the method of calculation of compensation adopted by the Land Appeal Court and errors in principle affecting the assessment of that Court. The Full Court as appears from its reasons for judgment, came to no conclusion upon these arguments but, notwithstanding that neither party contended it, the Full Court held that errors of the kind in question could not amount to errors of law so as to be open to correction by the Full Court. The approach adopted by the Judges in the Full Court and also the arguments which had been advanced by the parties in that Court make it necessary to analyse the method of assessment actually adopted by the Land Appeal Court. Its reasons are included in the

pp. 69-98
p. 69 l 30-32
p. 70 l 5-8
p. 83 l 5-25

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RECORD

Record and are incorporated as part of the case stated.

p. 24 11 8-11
pp. 52-68

56. The Land Appeal Court noted the claim which under the Resumption Acts the appellant had filed in the Land Court on 26th October 1966. The claim was for a total of \$299,528.75 comprised of separate totals computed under the headings of "land resumed" and "loss due to severance".

p. 53 11 12-18

10 57. In the Land Appeal Court, the appellant sought by amendment to increase the amount of its claim to \$1,800,000.00. The Land Appeal Court held that under the Resumption Acts there was no jurisdiction in the Court to allow the amendment of the claim, so that the application therefor should be refused. This decision does not appear to have been a material fact in the assessment of compensation made by the Land Appeal Court and both the total assessment made by it of \$83,340.00, and the constituent items allowing for value of "land resumed" and "loss due to severance" were very much less than the corresponding individual figures contained in the original claim for compensation.

p. 18 11 23-27
p. 53 11 24-25

p. 53 1 28 to
p. 54 1 4

p. 67 1. 47 to
p. 68 1 3

p. 53 11 12-18

20 58. The Land Appeal Court referred to what it described as "historical details". These were the dates of the steps and the steps themselves which were taken in the planning and implementation of the proposal for an expressway, the means available for public knowledge of relevant details of the proposal, the extent of public knowledge gained and the extent of knowledge actually gained by the appellant, as an intending developer, during the course of its negotiations and investigations. Thus the Land Appeal Court noted that the planning of the expressway commenced in 1960, that the route it was to follow was publicly exhibited in 1961 and 1962, that the centre line of the route was finally fixed in 1962, and that certain pencil caveats were entered on relevant title deeds so that one might expect that interested persons would thereby be induced to commence a line of inquiry leading them to knowledge of the location of the expressway, if they did not otherwise know of it.

p. 56 1 24 to
p. 57 1 3

p. 56 11 29-30

p. 56 11 30-31
p. 56 1 36

p. 56 1. 42 to
p. 57 1 3

30 59. Various servants or agents of the appellant acquired knowledge of details of the expressway proposal in the period prior to the date in December 1964 when the appellant entered into conditional contracts to purchase the Melwood land and from this

p. 56 1 42 to
p. 58 1 4

RECORD

p. 57 11 4-10

p. 58 11 8 -37

p. 58 11 30-37

p. 58 11 5-18

p. 54 1 12 to
p. 55 1 31
p. 55 11 8-17

p. 55 11 25-31

p. 59 1 15 to
p. 60 1 8

the Land Appeal Court concluded that when the conditional contracts were executed, the appellant knew or should have known "that there was every likelihood" that portion of the land under purchase by it would be resumed for expressway purposes. The Land Appeal Court further pointed to events occurring after the date of execution of the conditional contracts but prior to the resumption, including the evidence of the appellant's Architect Job who prepared Plans which in January 1965 were lodged with the Brisbane City Council in support of the application for approval to use the site for a drive-in shopping centre. The Land Appeal Court concluded that the drive-in shopping centre was designed to fit upon the northern severance only and noted that Job's plan showed the centre line of the proposed expressway in its final position. The Land Appeal Court accepted the evidence of Guthrie, an employee of the Brisbane City Council who dealt with site approval applications and who had discussions with the appellant's agents in the period after December 1964 but prior to resumption. Guthrie's evidence was to the effect that in those discussions the appellant's agents revealed no uncertainty about the location of the expressway upon the Melwood land and that they gave no indication at all of any proposal to develop or use the land south of the expressway.

60. The Land Appeal Court considered the five conditional contracts to purchase entered into by the appellant and noted that the appellant chose to complete those contracts although the important terms on which they were made to depend had not been fulfilled and although the resumptions had then actually been made from the subject land and the Land Appeal Court concluded that the decision of the appellant was that the Melwood land with whatever disability was caused by the resumption was satisfactory for development by the appellant as a drive-in shopping centre.

61. The Land Appeal Court noted the valuation method which had been adopted by Brett, a witness for the appellant, in the valuation that he made in 1970 for the first proceedings in the Land Court and the method adopted by him in the revised valuation which he made for the further proceedings in the Land Appeal Court in 1972. There was a change

RECORD

10 appearing in the view advanced by Brett in these valuations from initially contending for 30 acres as the "optimum area" for a drive-in shopping centre of the type under consideration to contending subsequently for 34 acres as being the "optimum area". The Land Appeal Court thought that greater weight should be given to the views of the appellant's witnesses in 1970 on the matter of "optimum areas", but as stated in paragraph 46 above the Court was not convinced that there was such a thing as an "optimum area" for a shopping centre.

p. 59 11 29-33

p. 60 11 1-5

p. 60 11 40-47

p. 60 1124-26

20 62. The appellant's valuer, Brett, had in arriving at his valuation relied upon the sale by the appellant to David Jones Limited of the shopping centre site in June 1966 and the two subsequent purchases in April 1969 and June 1970 by David Jones Limited of additional adjoining lands. He applied to his "optimum area" of 30 acres adopted in 1970, a value of \$40,000.00 per acre which he derived from these sales. He valued the southern severance prior to resumption at a price of \$15,000.00 per acre, deriving this figure from prices paid for industrial land in the neighbourhood. He then, in 1970, made an assessment of compensation applying what is known as the "before and after" method of valuation, and arrived at a total figure of \$280,968.00. However, in his subsequent revised valuation placed before the Land Appeal Court in the further hearing in 1972, Brett increased his "optimum area" to 34 acres and increased his assessment of compensation to \$378,369.00. The Land Appeal Court rejected even the lower figure calculated in 1970 by Brett as being "far too high". The Land Appeal Court noted that the total purchase price under the conditional contracts of December 1964 for the five parcels of Melwood land comprising just over 37½ acres was \$290,620.00. The Land Appeal Court mentioned, without further analysing his method, the assessment of compensation made by a valuer, Kidston, on behalf of the appellant who arrived at a total of \$464,206.00. The Land Appeal Court also rejected as being "too low" a valuation of \$14,840.00 put on the resumed land by a valuer, Figgins, called on behalf of the respondent and, in particular, it rejected Figgins conclusion that the southern severance had suffered no detriment as a result of the resumption.

p. 59 11 20-22

p. 59 11 29-33

p. 63 11 7-17

p. 59 11 40-45

p. 59 11 18-19

p. 60 1 1 to

p. 60 1 8

p. 63 11 3-6

p. 54 11 11-12

p. 63 11 17-19

p. 63 11 19-33

RECORD

p. 64 1 38 to
p. 65 1 12

63. The Land Appeal Court expressly rejected as being of assistance to it in fixing the value of the resumed land at the date of resumption in September 1965, the sale of the shopping centre site made by the appellant to David Jones Limited in June 1966 and also the two subsequent sales of adjoining lands which had been relied on by Brett. This was because of the Court's view of the circumstances surrounding each of these sales and also because in the case of the first of them a comparison could not directly be made with the resumed land under the circumstances existing in September 1965, when there existed only an approval "in principle" subject to a number of conditions which had not been carried out.

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p. 64 11 44-45

p. 64 1 22 to
p. 65 1 22

64. The Land Appeal Court stated that during the period between December 1964 when the parcels comprising the Melwood land were purchased at prices which the Court regarded as reflecting fair market value for residential land without the benefit of any planning approval and the later date, September 1965 when the resumption took place, there would, due to the passage of time, have been a rise in value affecting the Melwood land in common with other Brisbane suburban property. The Land Appeal Court stated that the extent of such general rise was said by some persons engaged in the real estate business to be approximately 10% per annum. The Land Appeal Court also said that there would have been a rise in value of the Melwood land to a further extent because of the fairly widespread knowledge prior to September 1965 that the Brisbane City Council had granted approval, in principle, for development of a drive-in shopping centre site "on part" of the Melwood land. The likelihood then was, according to the Land Appeal Court, that in the period of nine months in question up to September 1965 the value of the Melwood land would, "overall" have increased by substantially more than 10%. From the date of resumption onwards until the purchase of the shopping centre site from the appellant by David Jones Limited in June 1966, there would, according to the Land Appeal Court, have been an accelerating increase in value of the site due to increasing public awareness of the likelihood that a drive-in shopping centre would come into being.

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p. 64 11 15-21

p. 64 11 26-27

p. 64 11 27-38

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p. 65 11 13-22

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65. Proceeding to do what it described as the best it could on the whole of the relevant evidence, the Land Appeal Court concluded that the value of the Melwood land at the date of resumption should be placed at about \$9,250.00 per acre which represented an appropriate increase from the average price of \$7,700.00 per acre calculated at December 1964.

p. 65 11 40-46
p. 63 1 45 to
p. 64 1 1
p. 65 11 22-24

66. The Land Appeal Court adverted to the fact that at the date of resumption a Town Plan was proposed for the City of Brisbane and amongst the zones controlling land use provided in it, there was a "non-urban" zone which would apply to the Melwood land as well as to other lands in the City of Brisbane. The effect of the approval "in principle" granted by the Brisbane City Council in April 1965 was, in the terms used by the Land Appeal Court, that "the necessary change in zoning" was assured. By this phrase the Land Appeal Court appears to have meant that land use approval for the northern severance as a drive-in shopping centre site under Chapter 8 of the existing ordinances of the Brisbane City Council could as from April 1965 be regarded as a foregone conclusion if the appellant completed the conditional contracts and complied with the terms of the approval in principle. The consequence, in the Court's view appears to have been that in all the circumstances including the ordinance, the Town Plan and the legislation which introduced the Town Plan and provided for its effect when introduced, the value of the Melwood land was higher than it would have been if it did not have the benefit of a resolution or planning approval at the date of resumption and did not have a virtual assurance of future approval for use as a drive-in shopping centre.

p. 66 11 25-40
p. 66 11 30-31
p. 66 11 32-33
p. 66 11 34-37

PART D - JUDGMENT OF THE FULL COURT

67. The principal reasons for judgment delivered in the Full Court were those of Dunn J. who grouped the appellant's questions in the case stated into two categories. The presiding Judge, Wanstall S.P.J. agreed with the reasons of Dunn J. in respect of those questions grouped as Category 2 and also with the answers proposed by Dunn J. to questions (c), (d), (f) and (g) but he refrained from expressing any opinion on the questions which were grouped as Category 1. The remaining Judge, Matthews J.,

pp. 71-98
p. 69
p. 69 11 30-32

RECORD

p. 70 ll 5-8

concurring entirely in the reasons for judgment and the form of orders proposed by Dunn J. so that these then became the reasons and orders of the Court.

p. 73 l 23 to
p. 76 l 6

68. Dunn J. considered the cases stated in the appeals brought by the parties. The judgment of Dunn J. omits reference to question (j) but because of the nature of that question it seems possible to say with fair confidence that he would have adopted an approach to that question consistent with his approach to the other questions appended to the case and answered it accordingly.

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p. 76 ll 20-25
p. 73 l 24 to
p. 74 l 27
p. 75 ll 11-26
p. 104 l 16 to
p. 105 l 31

69. Dunn J. grouped as Category 1 questions, those with the letters (a), (b), (e), (h) and (i) since he said they related in different ways to the assessment or calculation of land value made by the Land Appeal Court. The questions (a), (b) and (e) referred to in Dunn J.'s judgment are identical with the questions (a), (b) and (c) in the present appeal.

p. 77 l 11 to
p. 78 l 19

70. Dunn J. noted the arguments which were advanced for the appellant before the Full Court to the effect that the Land Appeal Court did not as it should have done, make use of the mental process commended by Griffith C.J. in Spencer -v- The Commonwealth (1908) 5 C.L.R. 418 at 432 and in particular that the Land Appeal Court concerned itself with the "actual" knowledge of events which the appellant possessed rather than with the knowledge and attitudes which could properly be imputed to a hypothetical purchaser and also that the Land Appeal Court, did not, as it should have done, assess compensation upon a basis which excluded recognition of the existence of an acquiring authority with powers of compulsory acquisition. Dunn J. noted the argument for the appellant to the effect that the Land Appeal Court permitted the likelihood of compulsory acquisition to operate as a circumstance limiting the use to which the land in question could be put and therefore limiting the value of that land.

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p. 77 l 41 to
p. 78 l 1

p. 78 ll 2-15

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p. 79 ll 24-26

p. 78 ll 20-23

p. 83 ll 26-34

71. Dunn J. noted arguments which were adduced on behalf of the respondent to the effect that certain conclusions and calculations of the Land Appeal Court included errors which operated solely to the disadvantage of the respondent and which called for correction. With reference to the matters of argument raised by the appellant and by the respondent, Dunn J. did not find it necessary to decide whether the Land Appeal Court had, as

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claimed, reasoned wrongly or calculated incorrectly, since he did not think that any of the Category 1 questions gave rise to questions of law or that the case stated gave rise to questions of law which called for an answer to the Category 1 questions. p. 83 11 5-25

72. Dunn J. arrived at his conclusions upon the Category 1 questions upon the basis that errors in method of assessing compensation could only amount to errors in law if it could be said that the common law prescribes methods of determining value in compensation cases or if the statutory jurisdiction to assess compensation given under the Resumption Acts involves a reference to principles of law which have to be applied by the assessing Court. Although Dunn J. thought that there was a "necessity" that principles applicable to the assessment of compensation should be observed and although he thought that those principles were "authoritative" and although he thought that they were required to be applied by all valuers and tribunals he did not think that those principles were part of the common law. In a comparable way he did not think that the words "value" and "damage" which appear in Section 19 of the Resumption Acts were any more than "ordinary English words" or that they possessed any special "legal meaning". For these reasons Dunn J. concluded that the Category 1 questions did not involve any questions of law from whatever standpoint they were considered.

p. 79 1 33 to
p. 80 1 3
p. 81 1 43 to
p. 82 1 2
p. 80 1 20
p. 80 11 4-21
p. 83 1 41 to
p. 84 1 2
p. 81 11 39-42
p. 82 1 9 to
p. 83 1 4
p. 82 11 18-20
p. 83 11 5-18

73. An order was made by the Full Court to the effect that the appellant should have an award for some of its costs of the hearing before the Full Court that is for one half of its taxed costs. p. 102 11 22-24

PART E - SUBMISSIONS FOR THE RESPONDENT

74. Certain matters were disputed below but they are no longer relevant on this appeal:-

- (a) The appellant raised certain matters which turned upon the obligation of the Land Appeal Court to observe the rules of natural justice. After the conclusion of the hearing before the Land Appeal Court, the members of that Court made inspections of parking conditions then current at the drive-in shopping centre and at other shopping centres without informing the parties of their intended inspections. Whatever
- p. 18 11 35-42
p. 61 1 21 to
p. 62 1 43
p. 84 1 3 to
p. 92 1 9

RECORD

p. 62 ll 22-43

p. 102 ll 13-19

p. 84 l 41 to

p. 85 l 11

p. 78 ll 20-23

p. 79 ll 24-28

p. 26 ll 28-39

p. 83 ll 10-18

use was made by the Land Appeal Court of these observations in the process of arriving at its assessment of compensation does not appear from its reasons, but the complaint which the appellant made in respect of these matters was dealt with by the Full Court with the result that the proceedings were remitted to the Land Appeal Court for further hearing according to law. The appellant also advanced some argument upon the Land Appeal Court's reference to what was said by some real estate men to be the extent of the rise in value of Brisbane suburban property (cf para 64 of this case), but the Full Court decided that this matter was not properly raised on the case and no appeal is made against this decision.

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(b) Upon the case stated the respondent had called into question the method of calculation adopted by the Land Appeal Court to determine the value per acre allowed to the appellant for the resumed area and for the drop in value of the southern severance due to the effect of resumption after the deduction had been made. These matters did not operate adversely to the interests of the appellant in the assessment but only adversely to the interests of the respondent. No appeal now arises in relation to them. The respondent takes the view that should it be determined that the Land Appeal Court will hear further argument on the remission then the respondent is free to argue before the Land Appeal Court that a re-assessment should be made avoiding errors in calculation and reasoning about value of which the respondent complained before the Full Court. Dunn J. did not record these arguments of the respondent before the Full Court, presumably for the reason that he did not find it necessary to decide whether any errors in principle or errors affecting the assessment of compensation had occurred.

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(c) Apart from the matters referred to in subparagraphs (a) and (b) above the following matters grouped within Category 2 by Dunn J. do not arise on the present appeal.

p. 76 l 36 to
p. 77 l 2

(i) An argument was advanced by the appellant before the Full Court to the effect that the Land Appeal Court wrongly determined that the letter of 15th April, 1965 giving planning permission, in principle, should be considered as giving approval in respect of the northern severance only. Dunn J. doubted whether this raised a pure question of law but in any event he concluded that the construction adopted by the Land Appeal Court was not incorrect. This conclusion is not appealed against.

p. 6 l 18 to
p. 9 l 24
p. 6 l 25
p. 9 l 11 25-30
p. 58 l 39 to
p. 59 l 14

p. 95 l 11 30-3

p. 97 l 11 2-5

(ii) The Resumption Acts contain no provisions for amendment by the Court of claims for compensation, but Dunn J. regarded this absence as immaterial to the obligation of the Land Court and of the Land Appeal Court to assess the full value according to the circumstances without limitation due to the amount of the claim as originally lodged. Accordingly, Dunn J. thought that the question of amendment of the claim could not arise for consideration. This conclusion also is not appealed against. A remission to the Land Appeal Court has in any event been ordered by the Full Court and it is to be remembered that the assessment of compensation and its components originally made by the Land Appeal Court was, as mentioned above, well within the limits of the appellant's original claim.

p. 18 l 11 23-27

p. 97 l 11 6-36

p. 68 l 11 1-3

p. 53 l 11 12-18

75. Following the judgment of the Full Court which dealt with errors found by that Court in respect of what it referred to as Category 2 questions, nothing now remains in the judgment of the Land Appeal Court calling for correction at the suit of the appellant.

p. 102 l 11 9-12

RECORD

76. The respondent did not before the Full Court and does not now contend that questions of law may not possibly be involved in methods of assessment of compensation which may be adopted in the process of calculating compensation or "value".

77. On the procedure of appeal by case stated, the jurisdiction of the Full Court in respect of the case transmitted to it by the Land Appeal Court is to "hear and determine every question of law arising thereon" (Section 47 Land Acts). In the present case there may well be principles of law involved in the method of assessment of compensation adopted by the Land Appeal Court but, within the ambit of the questions raised by the appellant on this appeal the Land Appeal Court is not in contravention of any principle of law in the assessment which it made. This is so, but not for the reasons found by the Full Court (which the respondent did not then advance and does not now contend for) namely that principles of valuation are not principles of law. Rather, it is because the Land Appeal Court in the area of complaint made by the appellant did not contravene any principles, whether called principles of valuation or principles of law. The area of the appellant's complaint is limited to challenging the Full Court's decision not to answer the questions (a), (b) and (c) as they are now lettered, but which before the Full Court were (a), (b) and (e) respectively. The respondent before the Full Court, did not urge that Court to decline to answer those three questions, but the respondent submitted that they should be answered "no".

78. The jurisdiction and function of the Land Appeal Court have to be considered. The Land Appeal Court is a statutory Court possessing the jurisdiction conferred upon it by Statute and reference may be made to the Land Acts and Resumption Acts and especially to the Sections in the reasons for judgment of Dunn J. in the Full Court at pages 78, 79, 85 and 86 of the record. The Land Appeal Court is a fact finding tribunal which is not bound by the strict rules of evidence (Section 44(13)(14) and (15) of the Land Acts) and in assessing compensation, the Land Appeal Court is called upon to make findings of value in areas dealt with also by the opinion of

p. 104 l 16 to
p. 105 l 31

p. 102 l 4-8

p. 83 ll 34-39

p. 104 l 16 to
p. 105 l 31

p. 73 l 24 to
p. 74 l 27
p. 75 ll 11-26

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expert valuers who, under the usual procedures applicable in the Court are called to give evidence before it. As occurs in countless cases, so it occurred in this case that expert witnesses gave evidence of their opinion of value of resumed land and of the extent to which severed land had been adversely affected by the resumption. The proper function of the Land Appeal Court as a Court assessing compensation did not require it merely to choose amongst the opinions of the valuers which were in evidence before it. Here the Land Appeal Court acted as it was entitled to act and as is proper for a Court which is obliged to make the assessment itself (Section 23 of the Public Works Land Resumption Act). Even if it does not have the benefit of expert opinion upon value, one could go so far as to say that its function in this respect would still be the same since it would remain obliged to assess compensation doing the best it can on the other evidence before it. The Land Appeal Court in the present case was quite entitled to reject the whole opinion of any of the valuers which was in evidence before it and it was entitled to accept some parts of such evidence and reject other parts. In the end, the Land Appeal Court quite properly addressed itself to its task when, in arriving at a conclusion upon the value at the date of resumption, it said it was "doing the best (it could) on the whole of the relevant evidence". No doubt what the Court meant by this was that it was doing the best it could by selecting what it chose to act upon from the whole of the evidence before it.

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p. 65 ll 40-45
p. 56 ll 16-23

79. Consideration needs to be given to the method of assessment of compensation adopted by the Land Appeal Court and in doing so, attention must be paid to the case stated but for any necessary amplification of that case one is entitled to look at the Court's reasons for judgment which were annexed to and by "incorporation" actually made part of the case stated.

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p. 2 - p. 26

p. 24 ll 8-11
pp. 52-68

80. The Land Appeal Court's method essentially was to regard as an appropriate starting point the value reflected by the purchase price agreed to be paid by the respondent for the Melwood land under the conditional contracts of December 1964.

RECORD

p. 63 l 45 to
p. 64 l 20

It was entitled to look at the pattern of these prices as its starting point and its conclusion was that the appellant had bought in ordinary market conditions applicable to bulk lands with residential potential pursuant to earlier options which it had acquired.

p. 5 ll 15-24

p. 56 ll 16-23

p. 5 ll 15-24
p. 64 ll 15-21

p. 65 ll 13-17

p. 65 ll 22-46

81. The Land Appeal Court was then entitled to regard the whole of the evidence and decide, as a matter of assessment, upon the extent to which the fair market value as at December 1964 of the Melwood land (which then had an entitlement for use for residential purposes "unaffected by proposals for use as a drive-in shopping centre") should be increased overall to allow for the passage of time to the date of resumption in September 1965 and to allow also for other events which had occurred in those nine months. As a fact finding tribunal with an obligation that it should itself make the assessment, the Land Appeal Court cannot be said to have been in error in its method in choice of starting point or determination of appropriate increase on that starting point. The increase which it applied was one from a value of \$7,700.00 per acre overall in December 1964 to \$9,250.00 per acre in September 1965. Not only is this method unobjectionable but also the conclusion actually reached in applying the method viz that \$9,250.00 per acre overall was appropriate, was a decision upon a matter of mere quantum in a field particularly within the competence of the Land Appeal Court. 10
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p. 63 ll 3-6
p. 64 l 38 to
p. 65 l 12
p. 18 ll 4-10

82. As a fact finding tribunal the Land Appeal Court was also entitled to decide, as it did, to reject as a basis for its assessment of compensation, the purchase by David Jones Limited of the Melwood land in the year following resumption and the two further sales introduced in evidence by the appellant which occurred in 1969 and 1970 respectively. The Land Appeal Court was entitled to find that these three sales advanced in evidence by the appellant were not helpful to the Court. All of the sales occurred after the date of resumption and two of them occurred a very considerable time after. In fact it can be seen that the Land Appeal Court itself specified some of the reasons why it did not accept the first sale as a guide. It appeared to conclude that the 40

p. 64 l 42 to
p. 65 l 9

RECORD

final approval obtained albeit subject to conditions in December 1965 was an important supervening factor affecting value and that the public awareness of the probability of the construction of a drive-in shopping centre upon the Melwood land had an accelerating effect in increasing value from the date of resumption until David Jones Limited purchased in June 1966. Amongst the "circumstances surrounding the sales" referred to by the Land Appeal Court which in the Court's eyes deprived the further two sales of reliability as a basis upon which to make its assessment, one would expect the Court to have had in mind the remoteness in time of those sales from the date of resumption and the fact that the purchase in each case was by David Jones Limited itself, that company then having become the owner of the adjoining Melwood land and desiring to acquire the respective parcels as the time for opening of the centre drew nearer and passed.

p. 64 11 45-47
p. 65 11 13-22
p. 17 11 40-41
p. 65 11 2-3

p. 64 1 48

p. 65 11 3-6
p. 27
p. 60 11 31-33

83. As between two possible methods of assessment which presented themselves, the first involving choice of a base figure prior to resumption and increasing it appropriately and the second involving choice of a post resumption figure and then discounting it appropriately, the Land Appeal Court was free to choose. It cannot properly be criticised for the choice which, as a tribunal of fact, it made and especially is this so when the only standpoint for criticism which is permitted to be levelled against it is an identified error of law. None can be detected.

84. The base price of \$7,700.00 per acre overall reflected by the December 1964 purchases and accepted by the Land Appeal Court, was a value for the Melwood land on the basis of the residential potential which it possessed like all other land in Brisbane at that time which did not have the benefit of a particular planning approval. The Melwood land did not at December 1964 so far as has been found on the evidence, have any generally recognized prospect of a zoning which could give it higher value than mere residential land under the forthcoming Town Plan for the City of Brisbane. It was not until the time when the planning approval "in principle" was given in April 1965 that the Melwood land had, in part, in any event, substantial prospects of approval for a

p. 63 1 45 to
p. 64 1 4
p. 65 11 22-24
p. 64 11 15-21
p. 5 11 15-24

p. 6 11 24-25
p. 66 11 30-31

RECORD

different use which would give a higher market value.

85. There was no evidence accepted that the publicly known proposal for an expressway across the Melwood land had actually depressed the market value of that land considered as land having potential for residential development. The Court specifically mentioned the lack of such evidence in respect of the land in the neighbourhood of the resumed land and one would not, prima facie, necessarily expect publicly known proposals for an expressway to have the effect of depressing the value of bulk residential land, since any resumption which might be made from such land would have to be compensated for on a basis allowing for its full residential potential. Absence of evidence accepted by the Court is a critical factor in this as in other matters.

p. 67 ll 22-27

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86. The precise price paid per acre for each of the five individual blocks comprising the Melwood lands in December 1964 naturally enough did not exactly conform with the price paid for the other four but it is submitted that there was nothing wrong in the Land Appeal Court's noticing the overall average of all five to provide its general starting point.

p. 4 ll 14-21

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87. The Land Appeal Court thought it should allow for some drift upwards in value of the Melwood land considered as bulk residential land to allow for a factor of inflation generally applying in Brisbane at that time. The Court thought unexceptionably, it is submitted, that further particular factors applied in respect of the Melwood land causing additional increase in its value in the eyes of the market. This conclusion was open because an agglomeration of the five parcels under the control of one owner had been achieved and an approval in principle for a drive-in shopping centre, had before the date of resumption, been obtained in April 1965.

p. 11 ll 16-26

p. 64 ll 19-21

p. 64 ll 22-38

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p. 5 ll 5-14

p. 65 ll 30-36

p. 27

p. 6 ll 23-37

88. In adopting a general base value and then increasing it to allow for factors which in the Land Appeal Court's view would have added to the market value up to the date of resumption, the Court had certain evidence which it apparently thought was only of limited assistance to it. From the case stated and especially from the judgment, it appears that the valuation evidence which attracted the

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RECORD

10 Court's closest attention was the evidence of the
valuers Brett and Figgins. Brett, it seems, arrived
at a figure of \$40,000.00 per acre shopping centre
site value, from post resumption sales (which the
Court rejected) and he then applied this figure back
to the date of resumption without apparent discount
while for the southern severance he applied an
"industrial" value (which again the Court rejected).
On the other hand Figgins called for the respondent
in his evidence placed a value upon the resumed land
which the Land Appeal Court thought was "too low".
Figgins also thought that the southern severance did
not, as residential land, suffer any detriment as a
result of the resumption, but the Court rejected this
conclusion. Being relatively unassisted by
acceptable direct evidence as to the extent to which
it should increase the overall December 1964 values
to arrive at the value overall at September 1965 the
Court had to make an assessment as best it could. In
20 this regard, it is submitted that it is not open to
challenge.

p. 63 11 7-17
p. 64 11 38 to
p. 65 1 12
p. 18 11 4-10

p. 59 11 15-45
p. 66 11 2-15
p. 12 11 13-20
p. 63 11 19-33

30 89. Notwithstanding the objection which the
appellant makes to the matters referred to in
paragraph (b)(i) of the order giving leave to appeal
it is submitted for the respondent that the Land
Appeal Court quite properly paid some regard to what
the appellant itself knew and learnt in the course of
its involvement. The Court would need to be
satisfied that its base December 1964 figures
represented fair market value. If, for example, the
appellant held some unjustified expectations in
respect of the Melwood land at the time when it
purchased it under the conditional contracts in
December 1964 or at the time when it was prepared
to complete those contracts in December 1965 the
prices under the contracts would not have been a
reliable guide to market value. If the appellant
did not at those two dates know where the proposed
expressway was to run or what were the limits of
40 the portions of the Melwood land for which it could
hope to receive the planning approval, the effect of
which was to increase the value of the land, the
very prices which the appellant agreed to pay would
have been suspect, since it would have been in the
position of a purchaser buying under a mistaken
apprehension and would not be the willing and not

p. 104 1 20 to
p. 105 1 5

p. 3 11 30-34
p. 17 11 21-22

RECORD

over-anxious purchaser which the Court is obliged to consider. A critical lack of knowledge in the appellant would have made it harder for the Land Appeal Court to accept that its base price overall in December 1964 represented fair market value.

p. 104 l 20 to
p. 105 l 5

pp. 52-68

p. 56 l 24 to
p. 58 l 37
p. 3 ll 30-38
p. 3 ll 11-15

90. With further reference to the matters stated in paragraph (b)(i) of the Order giving leave to appeal, when consideration is given to the judgment of the Land Appeal Court and analysis is made of its method of assessing compensation, it is apparent that the appellant's experience and its knowledge gained from public sources as well as in the course of its negotiations with the Brisbane City Council was not viewed by the Court as being any different from the knowledge and experience that would have been available to and gained by any other intending developer who may have had in mind the purchase of the Melwood land and made application for approval for a shopping centre development at the relevant time. Consideration of the judgment of the Land Appeal Court does not show that the appellant was viewed differently from the way in which a representative of a class of hypothetical purchasers should be viewed or that the appellant's knowledge was regarded as other than representative of the knowledge which would properly require to be imputed to a hypothetical purchaser.

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91. To deal with a different aspect it cannot be a correct principle that a tribunal assessing compensation upon a resumption is required or even entitled to ignore restrictions on user applicable to the land resumed which result from statutes, zoning schemes or ordinances affecting land use. Provisions controlling land use may restrict potential user of resumed land and may and should be regarded by the assessing tribunal, whatever is the reason for the imposition of the planning restrictions. It is submitted that this is so whether the form of the restriction is one which positively prevents any development for specified purposes or whether it prohibits except with particular planning consent a development except for other than specified permitted purposes. It is submitted that this principle still applies whatever are the factors which might be thought to have led to the planning restrictions on user being

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10 imposed or which, it might be argued, have led a planning authority to exercise its discretion in a particular way, when it is asked to grant a discretionary planning approval. Even if one of the factors which induces a planning authority not to grant a discretionary approval is its desire not to impede the prospect of execution of some useful public work by a statutory construction authority, still the planning restriction or absence of planning approval must be regarded. In valuing land taken on resumption the true starting point is not some artificial concept of absolute freedom of user regardless of existing planning restrictions and, in considering the potential of land, it would be misleading and erroneous to adopt such an approach.

20 92. At the relevant date, September 1965, the Melwood land, in common with other land within the City of Brisbane, was restricted to a residential usage and in the forthcoming Town Plan which as happened, became law some three months later in December 1965, the use of the Melwood land and other lands was to be restricted even further by a classification as "non-urban", or rather this was the position apart from specific planning permits which may have been obtained by the date of resumption or which there were prospects of obtaining in the limited period before the new Town Plan could be expected to come into operation. The only planning permit in existence at September 1965 applicable to the Melwood land was one which the Land Appeal Court, without challenge on this appeal, has found applied to the northern severance only. These were the circumstances applicable to the Melwood land had it been offered on the market at September 1965.

p. 11 ll 8-15
p. 45 l 40 to
p. 46 l 5
p. 66 ll 25-29

30 p. 9 ll 25-30
p. 59 ll 1-14

40 93. There was no accepted evidence which indicates that the appellant was at the date of resumption dissatisfied with the size of the available northern severance or that it was seeking to enlarge the site of the proposed drive-in shopping centre or that it or anyone else at the date of resumption was seeking to purchase a larger suitable site elsewhere or was willing to pay some specified additional sum for any such larger site available on the market or had prospects of obtaining a planning approval for such larger site in the limited time

RECORD

p. 11 ll 27-30
p. 60 ll 27-31

p. 11 ll 27-38
p. 60 ll 24-47
p. 63 ll 3-6
p. 64 ll 1-21
p. 5 ll 15-24

available. An acceptance of these matters was an essential ingredient in the basis of the claim made by the appellant. Indeed, it has been found that at the date of resumption the northern severance was in the appellant's view adequate for a drive-in shopping centre. The simple fact is that the appellant did not to the Land Appeal Court's satisfaction prove additional market value for a larger site than 25 acres, or even prove that there was a market demand at the date in question for a larger site. It appears that this is the sort of contention which the Land Appeal Court rejected as hindsight. The figure of \$40,000.00 per acre site value has been specifically rejected. In fact the Land Appeal Court has found that the appellant acquired the whole of the 37 acres which included the 25 acres under discussion for nothing more than pure residential value. Before the Court, the onus lay on the appellant as claimant, to discharge the burden of proving the compensation to which it was entitled.

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94. The actions of the appellant in freely choosing the site in question, provide some evidence of the state of the market and of demand and of the general requirements of purchasers which the Land Appeal Court could have regard to in deciding that the appellant was not entitled to additional compensation upon the basis that the northern severance of the Melwood land was not larger than 25 acres. The Land Appeal Court appears to have decided that at the date of resumption:-

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- (a) A demand was demonstrated for a twenty-five acre shopping centre site, but not for a larger one.
- (b) A value per acre of \$9,250.00 was demonstrated for the Melwood land on the basis that twenty-five acres of it had particular prospects of approval for use as a drive-in shopping centre.
- (c) The proposed resumption did not reduce the value of the Melwood land considered as a site for a drive-in shopping centre.

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The Land Appeal Court appears to have decided such matters without making its decision depend as a matter of principle upon the limits of the area likely to be available due to planning considerations. It is submitted for the respondent, however, that any

limit upon available area due to planning considerations is another matter which may be considered and that this provides additional reason for regarding the assessment of the Land Appeal Court as being beyond challenge by the appellant.

10 95. The complaints of the appellant on this appeal demonstrate an attempt to project as matters of principle, matters which eminently called for factual decision by the Land Appeal Court. The appellant's complaint of the rejection of certain evidence tendered to the Court and the Court's decision not to adopt an approach to assessment urged upon it by the appellant and the Court's own determination of an appropriate method of assessment were decisions on matters of fact within its jurisdiction and contained no contraventions of principle and so cannot successfully be challenged.

20 96. It is submitted that there are no errors or mistakes affecting the method which the Land Appeal Court adopted for assessing compensation or at least errors or mistakes of which the appellant is entitled to complain as a person aggrieved (cf. Section 45(1) Land Acts). It can be said accordingly that there are no errors or mistakes in law. It is submitted then that the appeal upon the ground contained in (a) of the order giving leave to appeal will fail.

p. 104 ll 16-19

30 97. With reference to (b) of the order giving leave to appeal it is submitted that the Land Appeal Court cannot be said to be in error or mistaken in assessing compensation by reference to the facts there set out and accordingly cannot be said to be in error or mistaken in law. This submission is made for the various reasons advanced above. Reference to the case itself and to the reasons for judgment show that the pencil caveats were a minor matter to which passing reference was made by the Land Appeal Court and which presumably would have had some effect in causing any interested party to make inquiry but which could not be regarded as adding materially to the state of relevant public knowledge.

p. 104 l 20 to
p. 105 l 16

p. 10 l 37 to
p. 11 l 3
p. 56 l 42 to
p. 57 l 3

40 98. With reference to the matters referred to in (c) of the order giving leave to appeal it is to be noted that the appellant received in April 1965 planning approval only, in principle, in respect of the northern severance, as the Court found. The

p. 9 ll 25-30
p. 59 ll 1-14

RECORD

p. 12 ll 13-20
p. 66 ll 2-11

p. 19 l 11 to
p. 23 l 32

Land Appeal Court specifically rejected the suggestion that the land in the southern severance had at the date of resumption a particular value because of a potential for industrial or commercial development. The appellant did not prior to or even following resumption receive approval or even apply for it in respect of any larger area. The various matters set out in paragraph 46 of the case stated are to be seen as evidence which the Land Appeal Court was not as a tribunal of fact bound to accept and apply. Apart from the objections which might be levelled against the degree of conviction which they carry, they are essentially matters of opinion evidence or hypothetical contention. A number of matters referred to occurred after the date of resumption and they are not relevant to the method of assessment of compensation which the Land Appeal Court, being free to do so, chose to adopt.

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p. 102 ll 22-24
p. 105 ll 36-38

99. With reference to that aspect of the appeal which challenges the order of the Full Court in granting the appellant half of its taxed costs of its appeal to the Full Court, such an order was within the discretion of the Full Court under its powers granted by Section 47 of the Land Acts. Nothing appears from the judgment of the Full Court which would make the discretion open to question.

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PART F - REASONS

100. WHEREFORE THE RESPONDENT HUMBLY SUBMITS
that -

- (i) The appellant's appeal should in substance be dismissed, whether by directing the Full Court to answer (a), (b) and (c) "no" and otherwise dismissing the appeal, or by dismissing the whole of the appeal, with in either case ordering the costs of this appeal to be paid by the appellant to the respondent for the following among other reasons:-

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Because with respect to the subject matters of the appeal:-

- (a) The Land Appeal Court was not in error, but made its assessment upon matters of fact correctly applying relevant principles; and
- (b) The exercise of discretion made by the Full Court in relation to costs did not miscarry.

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or alternatively:-

(ii) If the Judicial Committee should decide that the Full Court was in error in declining to answer (a), (b) or (c) but that it is nevertheless appropriate that the Full Court and not the Judicial Committee should answer those questions, then if the appeal should be allowed to enable this to be done, it should be allowed to the limited extent only of directing the Full Court that the case stated did contain or give rise to questions of law which an answer to those questions (a), (b) or (c) would involve or determine and directing that the Full Court should proceed to determine whether or not errors of law occurred in connection with those questions, and ordering the costs of this appeal to be paid by the appellant to the respondent or otherwise making such order as to costs as the Judicial Committee sees fit for the following among other reasons:-

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Because (neither party below having argued to the contrary) errors in principle and method occurring in the course of calculating compensation and errors in reasoning about value can amount to errors of law.

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No. 26 of 1977

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE FULL COURT OF THE SUPREME
COURT OF QUEENSLAND

B E T W E E N
MELWOOD UNITS PTY. LIMITED

Appellant

- and -

THE COMMISSIONER OF MAIN ROADS

Respondent

CASE FOR THE RESPONDENT

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Solicitors for the Respondent