

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

RECORD OF PROCEEDINGS

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O N A P P E A L

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1	Notice of Motion (for conditional leave to appeal)	23/6/76
2	Order of Full Court adjourning Motion	23/6/76
3	Affidavit of Graham Donald Macdonald	filed 23/7/76
4	Affidavit of Vincent Louis Brett	filed 26/7/76

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5	Affidavit of Charles Henry Carter	filed 26/7/76
6	Affidavit of Ernest Craig Miller	filed 26/7/76
7	Affidavit of Anthony Terence Cocks	filed 26/7/76
8	Affidavit of Ian Duncan Robinson	filed 26/7/76
9	Affidavit of Graham Charles Fenwick	filed 26/7/76
10	Affidavit of Gregory Cope McNamara	filed 26/7/76
11	Order of Full Court (conditional leave to appeal)	30/7/76
12	Notice of payment into Court of security for the prosecution of the appeal	30/7/76
13	Notice of Motion (for final leave to appeal)	30/7/76
14	Affidavit of Graham Donald Macdonald (compliance)	30/7/76
15	Draft Index to Record of Proceedings	

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

RECORD OF PROCEEDINGS

No.1

CASE STATED BY THE
LAND APPEAL COURT

In the
Supreme
Court of
Queensland

Appeal No.32 of 1975

No.1
Case Stated
by the Land
Appeal
Court

IN THE MATTER of "The Main Roads Act 1920 to
1965" and "The Public Works Land Resumption
Acts 1906 to 1955"

- and -

IN THE MATTER of the determination of the
compensation payable under the taking of
land with an area of 4 acres 2 roods
15 perches by the Commissioner of Main
Roads being part of land described as
Resubdivision 2 of Subdivision 1 of
Portion 291 and Resubdivision 1 of
Subdivision 2 of Portion 291 and Sub-
division 2 of Resubdivision 2 of

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Subdivision 2 of Portion 291 in the
County of Stanley Parish of
Yeerongpilly owned by MELWOOD UNITS
PTY. LIMITED

No.1
Case Stated
by the Land
Appeal Court
(continued)

BETWEEN :

MELWOOD UNITS PTY. LIMITED Appellant

- and -

THE COMMISSIONER OF MAIN
ROADS Respondent

Case stated by the Land Appeal Court for the 10
opinion of the Full Court pursuant to Section 45
of "The Land Acts 1962 to 1971"

1. In this case stated -

(a) "Commissioner" means the Commissioner of Main
Roads;

(b) "expressway proposal" means the route proposed
as the Pacific Highway No.12 Brisbane-
Coombabah to be known as the south-east
freeway and commonly referred to as the
Brisbane to Gold Coat Expressway; 20

(c) "Melwood" means the appellant Melwood Units
Pty. Limited;

(d) "Melwood land" means the whole of the land
enclosed by the solid black line on the plan
marked "A" annexed to and incorporated in this
special case;

(e) "northern severance" means that part of the
Melwood land which lies north of the resumed
land;

(f) "resumed land" means that part of the Melwood 30
land within the expressway proposal and
enclosed by the solid red line on the said
annexed plan "A";

(g) "southern severance" means that part of the

Melwood land which lies south of the resumed land.

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2. The Main Roads Department commenced planning the expressway proposal in 1960.

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10

3. The centre line of the expressway proposal through the resumed land and in its vicinity was finally fixed in 1962 and no variation was made to it since that date. No part of the expressway proposal on the resumed land or in its vicinity had been constructed or commenced to be constructed.

4. From 1962 onward it would have been a reasonable assumption by any interested member of the public that the expressway proposal if it proceeded as planned would go through the Melwood land in conformity with that centre line.

5. In 1962 pencil caveats were entered by the Commissioner on the title deeds relating to those parts of the Melwood land being -

20

(a) Resubdivision 1 of Subdivision 2 of Portion 291 (the land bought by Melwood from McMillan); and

(b) Subdivision 2 of Resubdivision 2 of Subdivision 2 of Portion 291 (the land bought by Melwood from McLaughlin).

Those pencil caveats were entered in relation to a widening of Logan Road then under consideration by the Commissioner but subsequently abandoned by him and were not entered in relation to the expressway proposal but were re-entered in relation to it.

30

6. In December 1964 Melwood entered into conditional contracts with several vendors to purchase the Melwood land for the purpose of establishing a major drive-in regional shopping centre (being that centre now known as Garden City).

7. At the time when the contracts for the purchase of the Melwood land were signed in December 1964 Melwood knew about the proposed location for the expressway proposal upon the resumed land.

40

8. At the time when the contracts for the purchase of the Melwood land were signed in December 1964

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(continued)

the vendors knew of the proposed drive-in regional shopping centre to be built by Melwood on the Melwood land but they could not take advantage of this knowledge as the prices for the land had been fixed in option agreements executed a little earlier that year and when the options were executed the vendors were not made aware of the fact that it was proposed to seek a permit for a drive-in regional shopping centre on the land.

10

9. The contracts of purchase related to five parcels of land having a total area of 37 acres 2 roods 20.7 perches, this being the Melwood land.

10. The vendors, areas and prices of those five parcels were as follows :

Vendor	Area	Price
McLaughlin	10 a. 1 r. 27.4 p.	\$52,000
McMillan	13 a. 0 r. 1.6 p.	\$86,000
Wegner	4 a. 1 r. 6.7 p.	\$51,320
Hewton	4 a. 1 r. 7.0 p.	\$51,300
Steindl	5 a. 2 r. 18.0 p.	\$50,000

20

11. The contracts of purchase were subject to conditions including :

"(i) The Brisbane City Council granting site approval and approving plans and specifications as required by and to the satisfaction of the Purchaser for the use of the said land and adjoining land as a major drive-in shopping centre any condition attached to such approval to be to the satisfaction of and approved by the Purchaser;

30

(ii) The Purchaser concluding negotiations with a major Department Store for it to occupy premises and carry on business in the said drive-in shopping centre under a long term lease and the execution of a binding agreement for lease pursuant thereto."

12. Each of the contracts of purchase was further conditional upon Melwood effecting settlement with

each of the other vendors concerned and in the event of any of the conditions not being fulfilled by 14th December 1965 Melwood had the option of rescinding each of the contracts.

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10

13. Each of the five parcels purchased by Melwood in 1964 was sold to it on an in globo basis for a single price in each case and from this the Court concluded that in the case of the lands bought by Melwood from McMillan and from McLaughlin no more was paid for the land closer to Logan Road than for the resumed land and the land in the southern severance and in the case of the land bought by Melwood from Stendl the same price was paid for the resumed land as for the unresumed area.

20

14. The Court concluded that the prices paid for the Melwood land in December 1964 can be accepted as the fair market value of the land at that date unaffected by proposals for the use of the Melwood land as a drive-in regional shopping centre and in reaching this conclusion the Court had regard to the fact that when the options were executed the vendors were not aware that it was proposed to seek a permit for a drive-in regional shopping centre on the Melwood land.

30

15. At the time when the contracts for the purchase of the Melwood land were signed in December 1964 and at the date of resumption Melwood was aware that because of the expressway proposal the only portion of the Melwood land which could be available for it for use as a drive-in regional shopping centre was the northern severance.

40

16. On the fifth day of January 1965 Melwood applied to Brisbane City Council (being the relevant local authority) for a permit for the proposed drive-in regional shopping centre on the land. It did so by the letter and the five applications which are marked "B" annexed to and incorporated in this special case. In respect of each of those applications the solid black line on the plan accompanying and forming part of the application encloses the whole of the land comprised in the real property description set out in that application.

17. In February 1965 Melwood received a letter dated 23rd February 1965 from Brisbane City Council

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in the following terms :

"I refer to your application of the 5th ultimo to establish a drive-in shopping centre at Kessells Road, Mt. Gravatt, and to advise that the Greater Brisbane Town Planning Committee has decided to recommend the scheme in principle to the Registration Board.

It is noted from your letter of the 8th ultimo that your principals are prepared to pay the costs of installation of a three point synchronised traffic control system to the requirements of the State Traffic Commission for the control of traffic entering or leaving the site on Pacific Highway and Kessells Road and any permit issued will contain this requirement."

10

18. In April 1965 Melwood received a letter dated 15th April 1965 from Brisbane City Council in the following terms :

20

"I take pleasure in advising that, as an outcome of your application on behalf of Hooker Projects Pty. Limited, the Council Registration Board has granted the necessary permission, in principle, to use land with frontages to Logan Road, Kessells Road and Wadley Street, Upper Mount Gravatt, and described as Subdivision 2 of Resubdivision 1 of Subdivision 1 of Portion 291 and Resubdivision 1 of Subdivision 2 of Portion 291 and Resubdivision 2 of Subdivision 1 of Portion 291 and part of Resubdivision 2 of Subdivision 2 of Portion 291 and Subdivision 1 of Resubdivision 1 of Subdivision 1 of Portion 291, Parish of Yeerongpilly, and to erect buildings on such land for the purpose of a Drive-in Shopping Centre, subject to the following conditions :-

30

(a) The submission of a plan of layout satisfactory to the Council Registration Board, this plan to clearly show the facilities to be provided within the curtilage of the site for the loading and unloading of service vehicles and for the parking of not less than 2,500 vehicles within the curtilage of the site.

40

- 10 (b) The corners of Kessells Road and Wadley Street and Logan Road and Kessells Road to be truncated in accordance with a design to be prepared by the Council's Communications Officer; the land required for road purposes to be dedicated free of cost to the Council and all expenses incidental thereto, including the cost of survey and the removal of all obstacles from the new road areas, to be met by your clients.
- (c) The removal of all existing improvements from the site before any building work is commenced on the new proposal.
- (d) The proposed buildings to be constructed of approved fire resisting materials to the satisfaction of the Council's Building Surveyor.
- 20 (e) In the event of awnings being contemplated, such awnings to be of the cantilever type to the satisfaction of the Council's Building Surveyor.
- (f) All wastes, whether liquid or otherwise, to be disposed of to the satisfaction of the Council's Chief Health Officer.
- (g) The installation of a suitable septic system with method of disposal of effluents arising therefrom to the satisfaction of the Chief Engineer and Manager, Department of Water Supply and Sewerage.
- 30 (h) Parking to be provided for 2,500 vehicles and the areas on which vehicles are to be driven or parked to be surfaced or sealed to the satisfaction of the Chief Engineer and Manager, Department of Works, before the proposed use is commenced.
- (j) Your clients to meet the cost of constructing :-
- 40 (i) Truncation and channelisation schemes to a design to be prepared by the Council's Communications Officer.

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- (ii) Type "B" concrete kerb and channelling for the full length of all frontages and on the line of the truncations obtained under (b) above.
- (iii) Full width metalled and bitumen surfacing of Wadley Street for the full length of the frontage of the site to that street, to the satisfaction of the Chief Engineer and Manager, Department of Works. 10
- (iv) Metalling and bitumen surfacing of the road shoulders on Logan Road and Kessells Road for the full frontage of the site to those roads between the lip of the channelling to be constructed under (j)(ii) above, to the through pavements on both roads, to the satisfaction of the Chief Engineer and Manager, Department of Works. 20
- (v) Full width concrete footpaths fronting the area of development which will be decided when plans are submitted and approved.
- (vi) Such drainage works as the Chief Engineer and Manager, Department of Works, considers necessary at this location in connection with this development. 30
- (k) Your clients to meet the cost of installing synchronised traffic signals at three points to be determined.
- (l) Vehicular ingress to and egress from the site to be to the satisfaction of the Council's Communications Officer.
- (m) Your clients to meet the cost of all alterations to public utility mains and services involved in the construction of the works set out above. 40
- (n) Your clients to pay to the Council the

cost of all the works set out in (b), (h), (g), (j), (k) and (m) above before any building approval in connection with this proposal is issued.

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(o) Compliance with all relevant Council Ordinances.

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10

Before commencing building operations, you must submit plans and specifications of the proposed structure to the Manager, Department of Planning and Building, City Hall, as required by Chapter 23 of the Council's Ordinances and obtain his approval thereof.

This consent shall lapse and cease to have effect upon the expiration of a period of twelve (12) calendar months from the date hereof, if the use of the land or the erection or use of the building has not been substantially commenced prior to the expiration of such period.

20

You are also advised that this approval give permission to use and erect buildings on only that part of the land north of the proposed arterial road, as determined by the Main Roads Department."

30

19. The Land Appeal Court concluded that the first paragraph of the letter dated 15th April 1965 gave permission in principle to use only the northern severance and to erect buildings on only that part for a drive-in regional shopping centre.

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20. In May 1965 Melwood received a letter dated 12th May 1965 from Brisbane City Council in the following terms :

"I refer to previous correspondence relative to the Council Registration Board's approval to develop as a Drive-in Shopping Centre land, with frontages to Logan Road, Kessells Road and Wadley Street, Upper Mount Gravatt, and described as Subdivision 2 of Resubdivision 1 of Subdivision 1 of Portion 291 and Resubdivision 1 of Subdivision 2 of Portion 291 Resubdivision 2 of Subdivision 1 of Portion

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291 and part of Resubdivision 2 of
Subdivision 2 of Portion 291 and
Subdivision 1 of Resubdivision 1 of
Subdivision 1 of Portion 291, parish
of Yeerongpilly.

A recent check carried out has brought
forward information from the Chief
Engineer and Manager, Department of
Water Supply and Sewerage, that the
property can be served by the Mimosa
Creek Sewerage Scheme, which necessitates
the construction of a sewer extension
external to the Estate at an estimated
cost of £3,000, and as the sewer
extension is required exclusively for
the Shopping Centre, the Registration
Board holds the view that the owners
should be responsible for same.

10

The Board has, therefore, decided to vary
its previous approval as conveyed to you
in my letter dated 15th April 1965, by
the deletion of condition (g) and the
substitution of the following :-

20

(g) Your client to pay to the Council the
sum of £3,000 to cover the cost of
external sewerage work and to be
responsible for the full cost of all
internal reticulation work, thereby
ensuring the satisfactory sewerage of
the whole of the property."

30

21. On 5th August 1965 Notice of Intention to
Resume the resumed land was served by the
Commissioner on the vendors McLaughlin, McMillan
and Steindl (being the registered proprietors
of their respective parcels) and copies were
sent to Melwood.

22. On 5th August 1965 the Commissioner entered
a pencil caveat on the title deed relating to
Resubdivision 2 of Subdivision 1 of Portion 291
(the land bought by Melwood from Steindl). That
pencil caveat was entered in relation to the
expressway proposal.

40

23. (a) A pencil caveat has no statutory authority.

(b) The Titles Office will not furnish any

information to the public about a pencil caveat except to refer a person enquiring to the appropriate department which lodged it.

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24. By a proclamation published in the Queensland Government Gazette on 11th September 1965 the Commissioner resumed the land herein referred to as the resumed land.

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10 25. At the date of resumption the right to use the land (including the Melwood land) in the City of Brisbane for non-residential purposes was governed by Chapter 8 of the Brisbane City Council Ordinances the relevant part of which (as in force at the date of resumption) is marked "C" and is annexed to and incorporated in this special case.

20 26. By September 1965 it would have been fairly widely known that the Brisbane City Council had given permission in principle to the development of a drive-in regional shopping centre on part of the Melwood land and this would have caused a rise in excess of the normal rise in the market value of the land beyond the prices paid by Melwood in December 1964 and in excess of the normal rise in value of Brisbane suburban property during the period since December 1964.

30 27. At the date of resumption the northern severance in Melwood's view was adequate for the purposes of a drive-in regional shopping centre.

28. With regard to what was at the date of resumption regarded by Melwood's witnesses as the optimum area for drive-in regional shopping centres evidence of those witnesses called by Melwood in 1970 before the Land Court showed such area did not exceed 30 acres. The Court was not convinced that there is any optimum area for a drive-in regional shopping centre.

40 29. As populations grow and the general level of prosperity rises it must be expected that drive-in regional shopping centres will expand. If their land areas are limited and cannot be enlarged they will expand upwards. Upward expansion by the provision of decked parking

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would have cost approximately \$120,000 per acre at the date of resumption.

30. As from the time the Brisbane City Council gave its consent in principle on 15th April 1965 for the development of a drive-in regional shopping centre on the Melwood land the necessary change in zoning was assured and the value of the land at date of resumption would have been higher than it would have been if it had been resumed as non-urban land which had no expectation of an early change of zoning.

10

31. The best use of the southern severance at date of resumption would have been for residential development which after resumption remained its best use but as a result of the resumption it would suffer the detriment of being close to an expressway which for residential land is a very real detriment particularly because of the noise nuisance.

20

32. On 6th December 1965 Melwood submitted to the Brisbane City Council a plan showing the proposed drive-in regional shopping centre on that part of the Melwood land north of the resumed land and by a letter dated 20th December 1965 the Brisbane City Council replied :

"Reference is made to your letter dated 6th December, 1965, and previous correspondence dealing with the proposal of your Clients to develop for drive-in shopping purposes and a service station, land with frontages to Logan and Kessells Roads and Wadley Street, Upper Mount Gravatt, described as Subdivision 2 of Resubdivision 1 of Subdivision 1 of Portion 291; Resubdivision 1 of Subdivision 2 of Portion 291; Resubdivision 2 of Subdivision 1 of Portion 291 and part of Resubdivision 2 of Subdivision 2 of Portion 291 and Subdivision 1 of Resubdivision 1 of Subdivision 1 of Portion 291, Parish of Yeerongpilly.

30

40

This proposal has received the consideration of the Council Registration Board, and I take pleasure in advising that the Board has approved the use of the above-described land

for development as a drive-in shopping centre and a service station, and the erection of the necessary buildings thereon in connection with the joint project, subject to the following conditions :-

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- (a) The development to be carried out in accordance with the layout depicted on Plan No. 385A40 submitted with your letter dated 16th December, 1965.
- 10 (b) The corners of Kessells Road and Wadley Street and Logan Road and Kessells Road to be truncated in accordance with a design to be prepared by the Council's Communications Officer, and the land required for road purposes to be dedicated free of cost to the Council and all expenses incidental thereto, including the cost of survey and the removal of all obstacles from the new
- 20 road areas, to be met by your Clients.
- (c) The removal of all existing improvements from the site before any building work is commenced on the new proposal.
- (d) The proposed buildings to be constructed of approved fire resisting materials to the satisfaction of the Council's Building Surveyor.
- (e) In the event of awnings being contemplated, these are to be of the cantilever type.
- 30 (f) All wastes, whether liquid or otherwise, to be disposed of to the satisfaction of the Council's Chief Health Officer, Department of Health.
- (g) Your Clients to pay to the Council the sum of £3,000 (~~£6,000~~) to cover the cost of external sewerage work and to be responsible for the full cost of all internal reticulation work, which contribution is to be the full cost of carrying out such sewerage works for the Company's
- 40 two projects at this location, thereby ensuring the satisfactory sewerage of both

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properties, these being shown on the
plan of layout and known as Pacific
Fair Shopping Town.

- (h) Facilities to be provided within the
site for the parking of vehicles at the
ratio of 4:1 car parking spaces to retail
floor space, and the area so allocated
and upon which vehicles are to be driven
or parked to be provided with a flexible
or other pavement, surfaced with 10
bituminous seal coat, asphaltic or other
concrete, properly constructed and
maintained to good engineering standards,
such construction to be completed prior
to the new use being commenced.
- (i) Your clients to meet the cost of
constructing :-
- (i) Truncation and channelisation
schemes to a design to be prepared
by the Council's Communications 20
Officer.
- (ii) Type "E" concrete kerb and
channelling for the full length
of all frontages and on the line
of the truncations obtained under
(b) above.
- (iii) Full width metalled and bitumen
surfacing of Wadley Street for
the full length of the frontage of
the site to that street, to the 30
satisfaction of the Chief Engineer
and Manager, Department of Works.
- (iv) Metalling and bitumen surfacing
of the road shoulders on Logan Road
and Kessells Road for the full
frontage of the site to those roads
between the lip of the channelling
to be constructed under (ii) above,
to the through pavements on both
roads, to the satisfaction of the 40
Chief Engineer and Manager, Department
of Works.

(v) Full width concrete footpath fronting the area of development which will be decided when plans are submitted and approved.

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(vi) Such drainage works as the Chief Engineer and Manager, Department of Works considers necessary at this location in connection with the development.

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- 10 (j) Your Clients to meet the costs of installing synchronised traffic signals at points to be determined - one being installed on the Logan Road frontage, if and when access to that road is permitted.
- (k) Vehicular ingress to and egress from the site to be to the satisfaction of the Council's Communications Officer.
- 20 (l) Your Clients to meet the cost of all alterations to public utility mains and services involved in the construction of the works set out above.
- (m) Survey plans relating to corner truncations and road improvements to be lodged in the office of the Registrar of Titles prior to any building permit being issued.
- 30 (n) All road footpath and drainage works outlined in condition (i) above to be completed to the satisfaction of the Chief Engineer and Manager, Department of Works, prior to the new use being commenced.
- (o) Your Clients to pay to the Council when so required, the costs to be incurred in carrying out the works covered in conditions (j) and (l) above.
- 40 (p) All petrol pumps to be installed in connection with the service station premises shown on the plan of layout to be set back not less than 25 feet

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from both frontages after truncation,
and the building to be set back not
less than 45 feet from such frontages.

- (q) No spray painting, panel beating or
mechanical repairs of any kind to be
carried out on the site.
- (r) Your Clients to pay to the Council the
sum of £4,000 (~~£8,000~~) which sum has been
offered as a contribution towards the
cost of road and associated works in
connection with the service station
development, the said sum of £4,000
(~~£8,000~~) to be paid to the Council
before any building approval in connec-
tion with the proposal is issued. 10
- (s) Building plans may be submitted for
approval and, if in order approved,
prior to the lodgment of the relevant
survey plan in the Titles Office, but
the Board will not issue a license in
respect of reseller pumps until such
time as all the conditions attached to
this permission have been complied with. 20
- This condition is without prejudice to
the Board's power to rescind such
permission for non-compliance with a
condition.
- (t) All allotments included in the site
hereby approved to be amalgamated by
survey as one block, and the survey
respecting same to be lodged in the
Office of the Registrar of Titles prior
to any building approval being issued. 30
- (u) The consent hereby granted will lapse
and cease to have effect at the
expiration of a period of two (2) years
from date hereof, if the use of the land
or the erection or use of the buildings
proposed to be erected thereon have not
been substantially commenced prior to
the expiration of such period. 40
- (v) Compliance with the requirements of all
relevant Council Ordinances.

Your are further advised that this permission relates to the use of the land and the erection of buildings only on that part of such land not affected by the proposed arterial road as determined by the Main Roads Department, and the approval of the said department will be required for vehicular ingress to and egress from the site by way of Logan Road."

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- 10 33. Evidence was given of the prices paid for residential land in the neighbourhood of the resumed land and this showed a range in prices from ~~\$~~1,426 to ~~\$~~4,950 per acre over a period from 1964 to January 1967 and after examining the prices paid for comparable residential land in the neighbourhood the Court concluded that the post-resumption value of the southern severance was about ~~\$~~4,000 per acre reflecting a fall in value of ~~\$~~5,250 per acre from its pre-resumption value.
- 20 34. Settlement was effected by Melwood with the vendors on 17th December 1965.
- 30 35. At the date of settlement negotiations with a major department store had not been concluded in terms of (ii) of paragraph 11 of this case stated and upon the appropriate construction of the documents referred to in paragraphs 16-18 and 20 of this case stated final approval by Brisbane City Council referred to in (ii) of the said paragraph 11 had not been given.
- 40 36. Prior to June 1965 Melwood commenced negotiations with David Jones Limited for that company to lease the major department store in the drive-in regional shopping centre and prior to October 1965 David Jones Limited had decided that it would seek to become the owner of the shopping centre instead of tenant of the major department store.
37. On 30th June 1966 the northern land was sold by Melwood to David Jones Limited. The land so sold was an area of 25 acres 1 rood 0.5 perches and was sold for a monetary consideration of ~~\$~~1,050,000 plus substantial payments by

In the
Supreme
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Queensland

No.1
Case Stated
by the Land
Appeal Court
(continued)

David Jones Limited to other companies within the Hooker Group of companies of which Melwood was a member.

38. The Land Appeal Court does not think the price paid by David Jones Limited to Melwood is a reliable guide to the value of the resumed land at the date of resumption because at the date of resumption permission had only been granted in principle subject to a large number of conditions which had not been carried out. 10

39. Melwood served on the Commissioner a claim for compensation dated 30th August, 1966 for the sum of \$299,528.75 made up under the headings of land, improvements and compensation for severance.

40. On 26th October 1966 Melwood filed its claim for compensation in the Land Court.

41. The Land Court on 11th September 1970 determined the total compensation payable to Melwood at \$21,170 made up as follows :- 20

Value of land resumed	\$18,170	
Damage due to severance	<u>\$ 3,000</u>	\$21,170

42. At the hearing before the Land Appeal Court Melwood applied to amend its claim to \$1,800,000. The Land Appeal Court has no jurisdiction to allow the amendment sought and accordingly refused to allow the amendment.

43. Upon the completion of the evidence the discussion in relation to a view which appears at pages 379 and 380 of the transcript occurred. Those pages are marked "D" and are annexed to and incorporated in this case stated. Thereafter no further discussion in relation to a view occurred. 30

44. After the completion of the hearing the Land Appeal Court without notice to the parties beyond that (if any) which appears in the said pages of the transcript and in their absence (acting under Section 44 (15)(b) of the Land Acts 1962-1972) carried out inspections of the drive-in regional shopping centre on the Melwood land on 19th and 28th July 1972 and also on 28th July 40

1972 inspections of a Myer Department Store and car parking area at Coorparoo and a drive-in regional shopping centre at Indooroopilly.

In the
Supreme
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No.1
Case Stated
by the Land
Appeal Court
(continued)

10

45. Although the Land Appeal Court was not present it knows that part of the car park at the drive-in regional shopping centre on the Melwood land was out of bounds to shoppers on Saturday 22nd July 1972 (being a date after the completion of the hearing in Court before the Land Appeal Court).

46. Before the Land Appeal Court in the totality of the evidence there was uncontradicted and unchallenged evidence by -

(a) Brisbane City Council Officer Mr. Guthrie (who was called by the Commissioner):

20

"Generally speaking would it be true to say that in a development of this nature - that is, a drive-in regional shopping centre - you as a town planner would regard it as a traffic generator?"

I would, yes.

And generally speaking is it true to say that the Registration Board would in your opinion be likely to want to get as much parking as possible for a traffic generator of this nature?

Yes.

30

I want you to address your mind to the situation as if there were no freeway in that area at all?

Yes.

Suppose there being no freeway at all, no proposal for a freeway at all in that area, the application had come forward to you for the whole 37½ acres for the development of a drive-in regional shopping centre first of all as to so much of the 37 acres as is now in fact occupied by the freeway, merely to

In the
Supreme
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No.1
Case Stated
by the Land
Appeal Court
(continued)

identify the land, but still assuming that there was no freeway proposal at all, would you as a town planner have recommended that parking be allowed as part of the drive-in regional shopping centre on that area of 4 acres or so?

Yes, I would.

And would you as a town planner have recommended that parking be allowed on what we now know as the severance area if there had been no freeway?

10

Yes.

From your experience do you think it likely that the Registration Board would have allowed the parking on what is in fact now of course the freeway area, the resumed area?

Yes, I think they would have.

And from your experience do you think it likely that the Registration Board would have allowed the parking on what is now the severance area on that basis - that is, if there was no freeway.

20

Yes, surely."

- (b) the town planning consultant Mr. Challoner that a town planning authority adequately discharging its town planning functions on town planning principles in relation to the Melwood land would have approved the whole of the Melwood land as a drive-in regional shopping centre if the Main Roads Department had not previously announced its intention to construct an expressway through the Melwood land;
- (c) the town planning consultant Mr. Challoner that the most desirable land for additional parking space is the resumed land and that the severance area would also have been suitable for that purpose;
- (d) the town planning consultant Mr. Barr that

30

40

in the absence of information relating to the location of the expressway proposal it would have been an appropriate decision by the Registration Board of Brisbane City Council to have permitted the whole of the Melwood land to be developed as a drive-in regional shopping centre;

In the
Supreme
Court of
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No.1
Case Stated
by the Land
Appeal Court
(continued)

- 10 (e) the town planning consultant Mr. Barr that inevitably pressures build up for the expansion of a drive-in regional shopping centre and that a reservoir of land should exist to cater for this expansion;
- 20 (f) the town planning consultant Mr. Barr that if the Brisbane City Council figure (in the permit dated 20th December 1965) of 4 sq.ft. of parking space per 1 sq.ft. of retail sales area is applied then the 295,823 sq.ft. of retail sales area at Garden City would require 11.2 acres of parking additional to that already provided;
- 30 (g) the town planning consultant Mr. Barr that the Garden City drive-in regional shopping centre is short of car parking and that in the absence of the expressway proposal the resumed land and the severance area would have been required for car parking to satisfy the requirements of Brisbane City Council for a drive-in regional shopping centre of this size;
- (h) the town planning consultant Mr. Barr that of equal importance in the absence of resumption for the expressway proposal the resumed land and the severance area would have enabled improved access to the drive-in regional shopping centre from Wadley Street and from Doone Street;
- 40 (i) the town planning consultant Professor Ledger that had it not been for the said resumption he would have expected the car parks at Garden City to have been more extensive and to have included the resumed land and the major part if not all of the severance area;

In the
Supreme
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No.1
Case Stated
by the Land
Appeal Court
(continued)

(j) the town planning consultant Professor Legar that had he been advising Brisbane City Council at the time it was considering the application for the permit for the drive-in regional shopping centre he would have urged it to ensure that the whole of the Melwood land was devoted to the drive-in regional shopping centre and additional commercial development with associated car parking;

10

(k) the town planning consultant Professor Legar -

"You know that in September 1965 we had the notice of resumption, the gazettal; but I want you to assume that there was no resumption, no freeway, so we have the area of $37\frac{1}{2}$ acres located, of course, where you know it is - the Garden City corner. As at September 1965 how much land, bearing in mind that the $37\frac{1}{2}$ acres is freely available - no freeway - how much land would you expect a developer of a drive-in regional shopping centre to take in for his drive-in regional shopping centre site? How much of that $37\frac{1}{2}$ acres.

20

I would have expected him to ensure that he had the whole of the site available to him.

And by "site", do you mean the $37\frac{1}{2}$ acres?

Yes."

30

(l) the architect Mr. Job that the Garden City drive-in regional shopping centre does not meet the 4:1 ratio required by the permit of 20th December 1965;

(m) the architect Mr. Job that on the northern land there were 1,971 parking spaces and that the ratio was 2.28:1;

(n) the architect Mr. Job that the acquisition of 2 acres 1 rood 38.1 perches from McLaughlin provided 242 parking spaces

40

additional to the original 1,971 parking spaces.

In the
Supreme
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No.1
Case Stated
by the Land
Appeal Court
(continued)

- 10 (o) Mr. Burnard (a director of David Jones Limited which company bought that part of the Melwood land north of the resumed land) that the whole of the Melwood land should and would have been used for the drive-in regional shopping centre if no part of it had been resumed for the expressway proposal and no part severed by the expressway proposal and that he had no doubt the Board of David Jones Limited would have agreed;
- (p) Mr. Hanson (also a director of David Jones Limited) that had additional land been available David Jones Limited would have purchased it and that he would have recommended the purchase of the whole of the Melwood land but for the resumption;
- 20 (q) Mr. Hanson that at the time David Jones Limited arranged to buy the northern land it desired more land because it knew the business would expand;
- (r) Mr. O'Loan (the resident director for Queensland of David Jones Limited) that he would have recommended that David Jones Limited purchase the whole of the Melwood land if it had been available;
- 30 (s) Mr. Hanson and Mr. O'Loan that purchases were made by David Jones Limited of additional land in April 1969 and June 1970.

47. The drive-in regional shopping centre known as Garden City opened on 1st October 1970.

40 48. The Land Appeal Court determined Melwood's loss on the premise that at all relevant times from 1962 at the latest Melwood was aware that the only land available to it for a drive-in regional shopping centre was the northern severance and that at no time did it have any reasonable expectation of receiving a permit to use the southern severance for purposes of

In the
Supreme
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Queensland

No.1
Case Stated
by the Land
Appeal Court
(continued)

a drive-in regional shopping centre.

49. On 4th December 1972 the Land Appeal Court allowed the appeal and set aside the judgment of the Land Court. It determined compensation at \$83,340.00 made up of \$42,490.00 as the value of the resumed land and \$40,850.00 as the damage due to severance.

50. A copy of the decision of the Land Appeal Court including the reasons therefor is marked "E" and is annexed to and incorporated in this case stated. 10

QUESTIONS STATED AT THE REQUEST OF MELWOOD

(a) Was the Land Appeal Court in error or mistaken in law in the method which it adopted for assessing the value of the resumed land?

(b) Was the Land Appeal Court in error or mistaken in law in assessing the value of the resumed land and the effect of severance -

(i) By reference to the facts that -

(A) at the time when the contracts for the purchase of the Melwood land were signed in December 1964 Melwood knew about the proposed location of the expressway proposal? 20

(B) at all relevant times from 1962 at the latest Melwood was aware that the only land available to it for a drive-in regional shopping centre was the northern land and that at no time did Melwood have any reasonable expectation of receiving a permit to use the southern area for purposes of a drive-in regional shopping centre? 30

(C) the centre line of the expressway proposal through the resumed land and in its vicinity was finally fixed in 1962?

(D) the pencil caveats referred to in paragraph 5 above were entered on the title deeds relating to parts of the Melwood land?

In the
Supreme
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Queensland

(ii) by reference to the market value of the Melwood land unaffected by proposals for its use as a drive-in regional shopping centre?

No.1
Case Stated
by the Land
Appeal Court
(continued)

10

(iii) by excluding from consideration the sale of the northern land by Melwood to David Jones Limited and the payments by David Jones Limited to other companies within the Hooker group of companies of which Melwood was a member?

(c) Is the Land Appeal Court bound by the rules of natural justice?

(d) Was the Land Appeal Court in error or mistaken in law in taking into account -

20

(i) What it observed on its unaccompanied inspections of -

(A) the drive-in regional shopping centre on the Melwood land;

(B) the Myer department store and car parking area at Coorparoo;

(C) the drive-in regional shopping centre at Indooroopilly; without communicating to the parties that it was proposing to inspect that it had inspected or what it had seen on its inspections?

30

(ii) its knowledge that part of the car park of the drive-in regional shopping centre on the Melwood land was out of bounds to shoppers on Saturday 22nd July 1972 (being a date after the completion of the hearings before the Land Appeal Court)?

(e) Having regard to the evidence set out in

In the
Supreme
Court of
Queensland

No.1
Case Stated
by the Land
Appeal Court
(continued)

paragraphs 17, 18, 20, 32 and 46 above
should the Land Appeal Court have assessed
compensation on the basis that but for the
resumption -

(i) a town planning consent would or
would probably have been granted by
Brisbane City Council by its
Registration Board for the whole of
the Melwood land to be developed
as a drive-in regional shopping
centre? 10

(ii) the resumed land and the severance
area would have been used for the
purpose of a drive-in regional
shopping centre?

(f) Was the Land Appeal Court in error or
mistaken in law in deciding that the letter
of 15th April 1965 from Brisbane City Council
to Melwood's architect should not be read as
giving permission to use the severance area
as part of the shopping complex? 20

(g) Was the Land Appeal Court in error or
mistaken in law in holding that it had no
jurisdiction to allow Melwood to amend its
claim?

QUESTIONS STATED AT THE REQUEST OF THE
COMMISSIONER

(h) Was the Land Appeal Court wrong in law
in concluding that all portions of the blocks
purchased by Melwood from McMillan, McLaughlin
and Steindl were of equal value per acre at
December 1964 and at September 1965? 30

(i) Was the Land Appeal Court justified in law
in finding that the southern severance had a
value at the date of resumption of \$9,250.00
per acre?

(j) Was the Land Appeal Court justified in law
in finding that the resumed area had a value at
the date of resumption of \$1,250.00 per acre?

N.S. Stable J.
Judge of the Supreme Court

S. Dodds
Member of the Land Court

D.J. Barry
Member of the Land Court

40

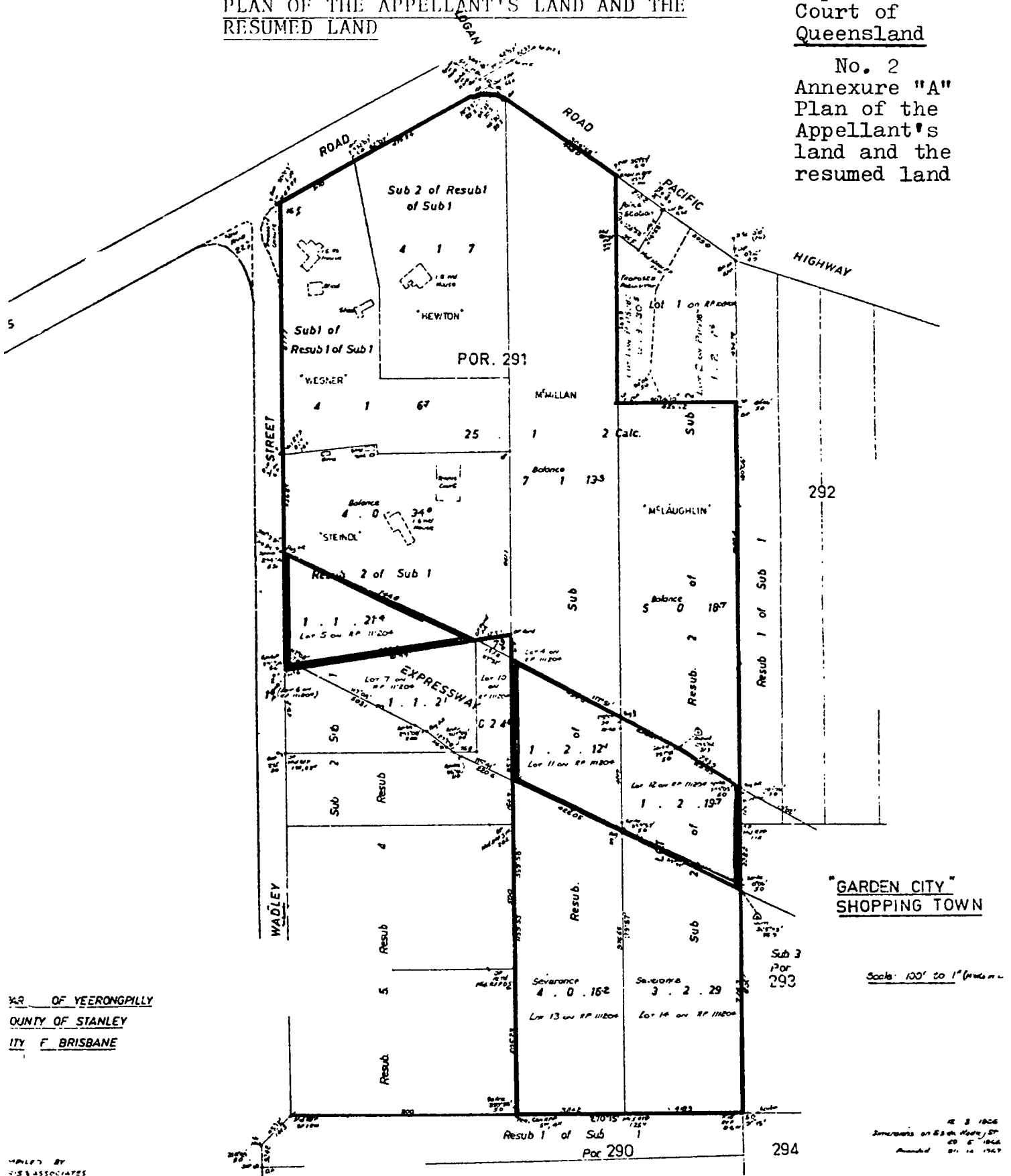
NO. 2

"A"

PLAN OF THE APPELLANT'S LAND AND THE RESUMED LAND

In the
Supreme
Court of
Queensland

No. 2
Annexure "A"
Plan of the
Appellant's
land and the
resumed land



MAP OF YEERONGPILLY
COUNTY OF STANLEY
CITY OF BRISBANE

"GARDEN CITY"
SHOPPING TOWN

Scale: 100' to 1" (approx.)

DRAWN BY
J.S. ASSOCIATES
177-179 BRISBANE
ST. BRISBANE
Q.L.D. 4017

15 3 1906
Amended on 15th March 1907
20 5 1904
Amended 21 10 1907

In the
Supreme
Court of
Queensland

No. 3

ANNEXURE "B" - LETTER FROM
APPELLANT'S AGENT TO PLANNING
AUTHORITY AND FIVE APPLICATIONS
ENCLOSED THEREWITH

No. 3
Annexure "B"
Letter from
Appellant's
agent to
planning
authority and
five applica-
tions enclosed
therewith

"B"

WILLIAM J. JOB & ASSOCIATES ARCHITECTS & ENGINEERS
Ref: WJJ:AJ:385A
Brisbane
5th February, 1965

The Town Clerk,
Brisbane City Council,
Anzac Square,
BRISBANE.

10

Dear Sir,

Summary of Site Applications for Drive-in
Shopping Centre Pacific Highway and Kessells
Road, Upper Mount Gravatt

Five (5) site applications for various properties
are enclosed, together with an overall plan
showing the consolidation of these properties,
with the proposed buildings positioned on the site.

20

With reference to the site applications, the
following information applies to the five
applications submitted :-

(a) Brief description of proposed new buildings:

The buildings shall consist of nine (9)
shopping units combined into a Mall,
connected with covered way, extra services
and service station; all buildings being
constructed of fire resistant materials of
brick and concrete.

30

(b) Intended number of employees on establishment
of industry: 250

Intended maximum number of employees: 350

(c) Brief description of machinery to be installed :

Air conditioning of approximately 1500 h.p. capacity.

(d) Anticipated water consumption: 10,000 gals. per day.

(e) Number of vehicles to be used in the business:

Provision on the site is being made for car parking for 2,500 vehicles.

Yours faithfully,
WILLIAM J. JOB & ASSOCIATES

William J. Job
WILLIAM J. JOB

b/c to
The Lord Mayor
Mr. W.J. Gately

In the
Supreme
Court of
Queensland

No. 3
Annexure "B"
Letter from
Appellant's
agent to
planning
authority
and five
applications
enclosed
therewith
(continued)

10

BRISBANE CITY COUNCIL

SITE APPLICATION
(NON RESIDENTIAL PURPOSES)

20

The Town Clerk,
City Hall,
BRISBANE.

Sir,

Application is hereby made for permission
to -

erect a building on the land

hereinafter described for the purpose of :
Drive-in Shopping Centre

30

1. Location of land: Cr. Kessells Road &
Pacific Highway, Mt. Gravatt

In the
Supreme
Court of
Queensland

No. 3
Annexure "B"
Letter from
Appellant's
agent to
planning
authority and
five applica-
tions enclosed
therewith
(continued)

- | | | | |
|-----|--|---|----|
| 2. | Real Property Description of Land: | Sub.2 of Resub.1 of Sub.1 of Portion 291 Parish of Yeerongpilly | |
| 3. | Rate Assessment Number of Land: | Y'pilly 4443 | |
| 4. | Name and Address of Owner: | E.A.McMillan
Kessells Road
Mt. Gravatt | 10 |
| 5. | Present use of Land: | Residential | |
| 6. | Present use of each building existing on the Land: | Residential | |
| 7. | Brief description of proposed new buildings or additions or alterations to existing buildings: | New brick and concrete shops | |
| 8. | (a) Intended number of employees on establishment of industry: | See Summary | 20 |
| | (b) Anticipated maximum number of employees: | See Summary | |
| 9. | Brief description of machinery to be installed: | Air conditioning | |
| 10. | Brief particulars of industrial wastes involved and intended method of disposal: | Stormwater | 30 |
| 11. | Anticipated water consumption: | See Summary | |
| 12. | Number of Vehicles to be used in the business: | See Summary | |

I/We, as owner/owners of the property described herein consent to this application being made

to the Brisbane City Council.

Signed: E.A.McMillan Signature of Applicant

Date: 5-1-65 Name of Applicant

Date

Postal Address

Phone No.

In the
Supreme
Court of
Queensland

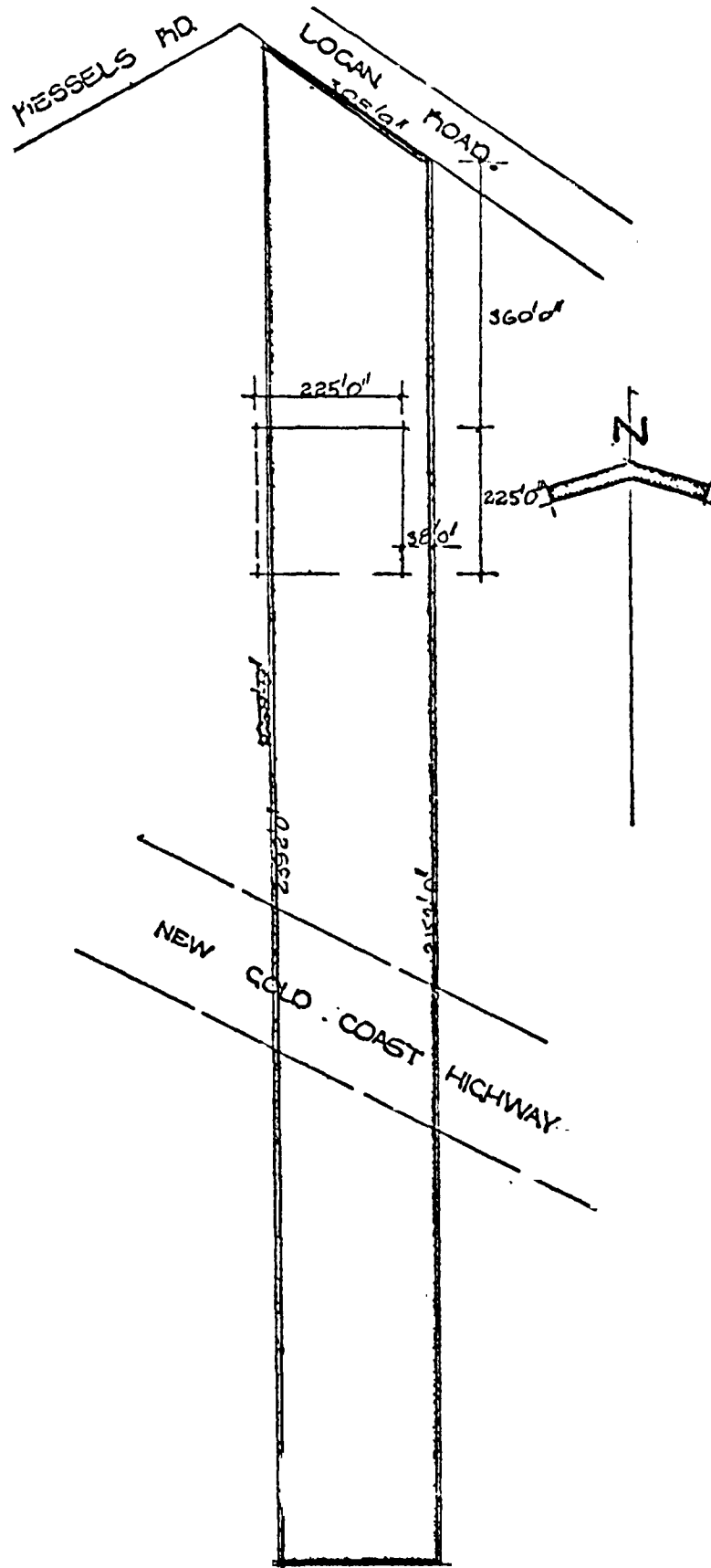
No. 3
Annexure "B"
Letter from
Appellant's
agent to
planning
authority and
five applica-
tions enclosed
therewith
(continued)

NOTES -

- 10 1. The owner's written consent to the application must be supplied. A solicitor, registered architect or chartered engineer may sign as agent for the applicant or the owner but must state the name of his principal.
2. Council's Building Ordinances must be complied with before any building work is undertaken.
- 20 3. The granting of permission to use land for industrial purposes does not commit Council to supply water or electricity beyond its statutory obligations.
4. THE FEE FOR THIS APPLICATION IS THREE POUNDS.

In the
Supreme
Court of
Queensland

No. 3
Annexure "B"
Letter from
Appellant's
agent to
planning
authority and
five applica-
tions enclosed
therewith
(continued)



BRISBANE CITY COUNCIL
SITE APPLICATION
(NON RESIDENTIAL PURPOSES)

In the
Supreme
Court of
Queensland

The Town Clerk,
City Hall,
BRISBANE.

No. 3
Annexure "B"
Letter from
Appellant's
agent to
planning
authority and
five appli-
cations
enclosed
therewith
(continued)

Sir,

Application is hereby made for permission
to -

10

erect a building on the land

hereinafter described for the purpose of:
Drive-in Shopping Centre

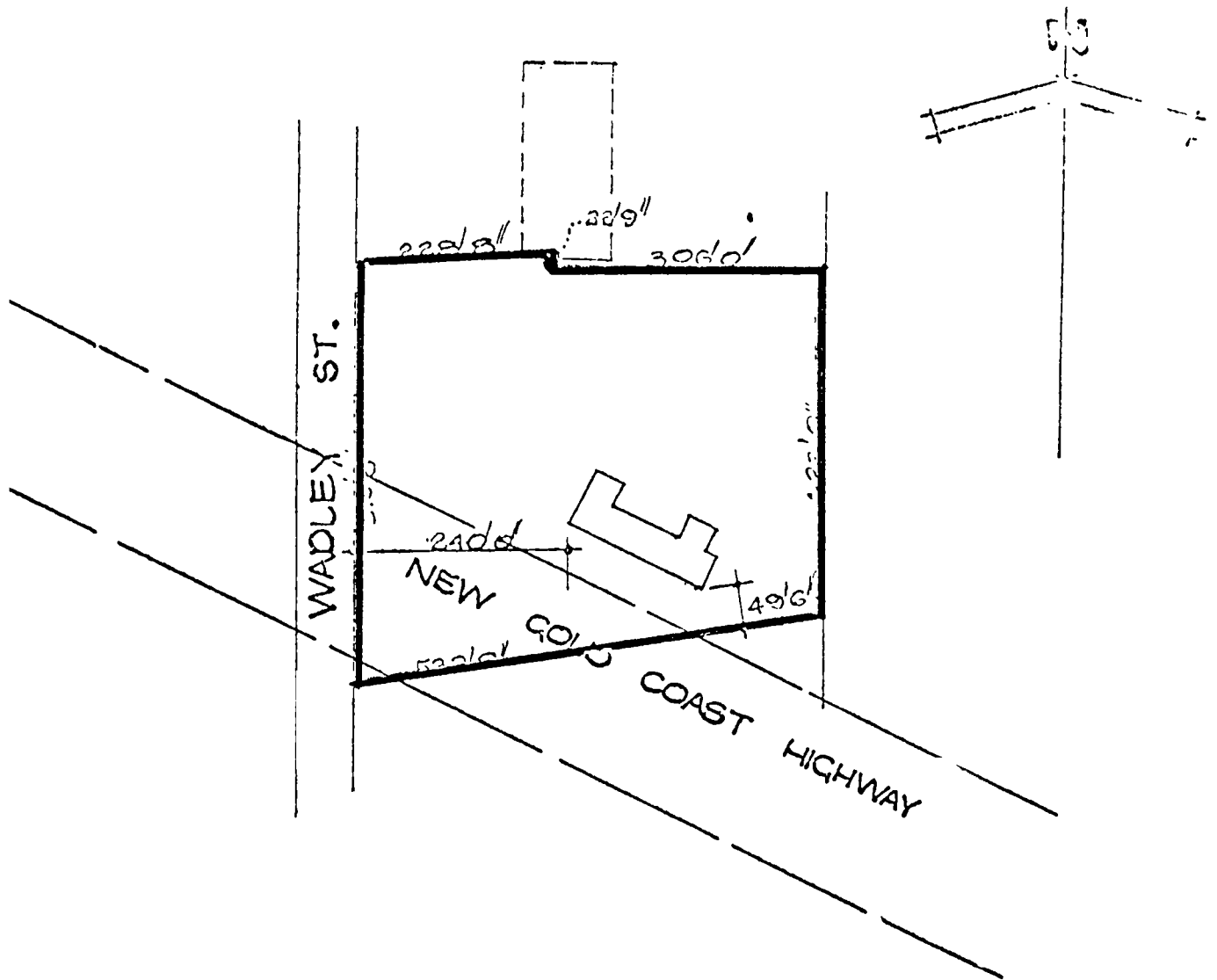
20

1. Location of Land: Wadley Street, Mt. Gravatt
2. Real Property Description of Land: Resub.2 of Sub.1 of Portion 291 Parish of Yeerongpilly
3. Rate Assessment Number of the Land: Yeerongpilly 3792
4. Name and Address of Owner: D.R.L. & A.V.Steindl Wadley Street, Mt. Gravatt
5. Present use of Land: Residential
6. Present use of each building existing on the Land: Residential
7. Brief description of proposed new buildings or additions or alterations to existing buildings: New concrete building
8. (a) Intended number of employees on establishment of industry: See Summary

30

In the
Supreme
Court of
Queensland

No. 3
Annexure "B"
Letter from
Appellant's
agent to
planning
authority and
five applica-
tions enclosed
therewith
(continued)



In the
Supreme
Court of
Queensland

BRISBANE CITY COUNCIL
SITE APPLICATION
(NON RESIDENTIAL PURPOSES)

No.3
Annexure "B"
Letter from
Appellant's
agent to
planning
authority and
five applica-
tions enclosed
therewith
(continued)

The Town Clerk,
City Hall,
BRISBANE.

Sir,

Application is hereby made for permission
to -

use the land

10

hereinafter described for the purpose of:
Car Park (for Drive-in Shopping Centre)

1. Location of land: Pacific Highway
Upper Mt.Gravatt
2. Real Property Description of Land: Part of Sub.2 of
Resub.2 of Sub.2
of Port. 291 Parish
of Yeerongpilly
3. Rate Assessment Number
of the Land: 20
4. Name and Address of
Owner: James Brighton
McLaughlin,
Pacific Highway,
Upper Mt.Gravatt
5. Present use of Land: Agricultural
6. Present use of each
building existing on
the land: Nil
7. Brief description of
proposed new build-
ings or additions or
alterations to
existing buildings: Nil 30
8. (a) Intended number
of employees on
establishment of
industry: See Summary

	(b) Anticipated maximum number of employees:	See Summary	In the Supreme Court of <u>Queensland</u>
	9. Brief description of machinery to be installed:	Nil	No.3
	10. Brief particulars of industrial wastes involved and intended method of disposal:	Nil	Annexure "B"
10	11. Anticipated water consumption:	See Summary	Letter from Appellant's agent to planning authority and five applications enclosed therewith (continued)
	12. Number of Vehicles to be used in the business:	See Summary	

I/We, as owner/owners of the property described herein consent to this application being made to the Brisbane City Council.

Signed: J.B.McLaughlin Signature of Applicant
Name of Applicant
Date

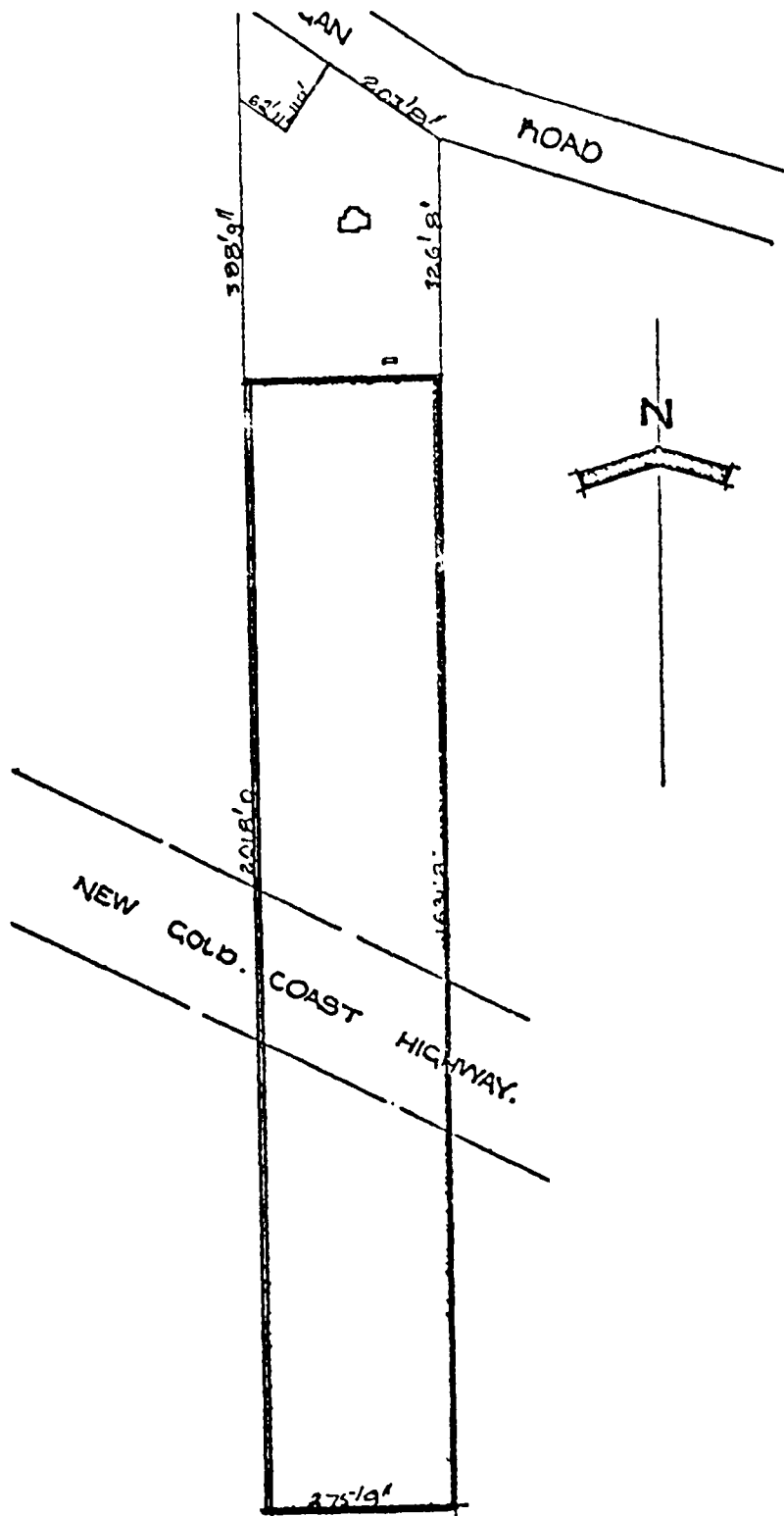
20 Date: 29th Dec.1964 Postal Address
2-4 Old Cleveland Rd.
Stones Corner
Phone No.

NOTES -

1. The owner's written consent to the application must be supplied. A solicitor, registered architect or chartered engineer may sign as agent for the applicant or the owner but must state the name of his principal.
2. Council's Building Ordinances must be complied with before any building work is undertaken.
3. The granting of permission to use land for industrial purposes does not commit Council to supply water or electricity beyond its statutory obligations.
4. THE FEE FOR THIS APPLICATION IS THREE POUNDS.

In the
Supreme
Court of
Queensland.

No. 3
Annexure "B"
Letter from
Appellant's
agent to
planning
authority and
five applica-
tions enclosed
therewith
(continued)



BRISBANE CITY COUNCIL
SITE APPLICATION
(NON RESIDENTIAL PURPOSES)

In the
Supreme
Court of
Queensland

The Town Clerk,
City Hall,
BRISBANE.

No.3
Annexure "B"
Letter from
Appellant's
agent to
planning
authority and
five applica-
tions enclosed
therewith
(continued)

Sir,

Application is hereby made for permission
to -

10 erect a building on the land

hereinafter described for the purpose of:
Drive-in Shopping Centre

1. Location of Land: Kessells Road,
Mt. Gravatt
2. Real Property Description of
Land: Sub.2 of Resub.10
of Sub.2 of Portion
288 Parish of
Yeerongpilly
- 20 3. Rate Assessment Number of the Land: Y'pilly 3771
4. Name and Address of Owner: A.Hewton & U.L.Hewton
Kessells Road,
Mt.Gravatt
5. Present use of Land: Caravan Park
6. Present use of each building existing
on the Land: As above
- 30 7. Brief description of proposed new
buildings or additions or
alterations to existing buildings: New brick and
concrete shops
8. (a) Intended number of employees on
establishment of industry: See Summary

In the
Supreme
Court of
Queensland

No.3

Annexure "B"
Letter from
Appellant's
agent to
planning
authority and
five applica-
tions enclosed
therewith
(continued)

8. (b) Anticipated maximum See Summary
number of employees:
9. Brief description of
machinery to be installed:
10. Brief particulars of See Summary
industrial wastes
involved and intended
method of disposal:
11. Anticipated water See Summary
consumption:

10

I/We as owner-owners of the property described
herein consent to this application being made
to the Brisbane City Council.

Signed A.Hewton Signature of Applicant
U.L.Hewton Name of Applicant

Name of Applicant

Date

Date 18-8-64

Postal Address

Phone No.

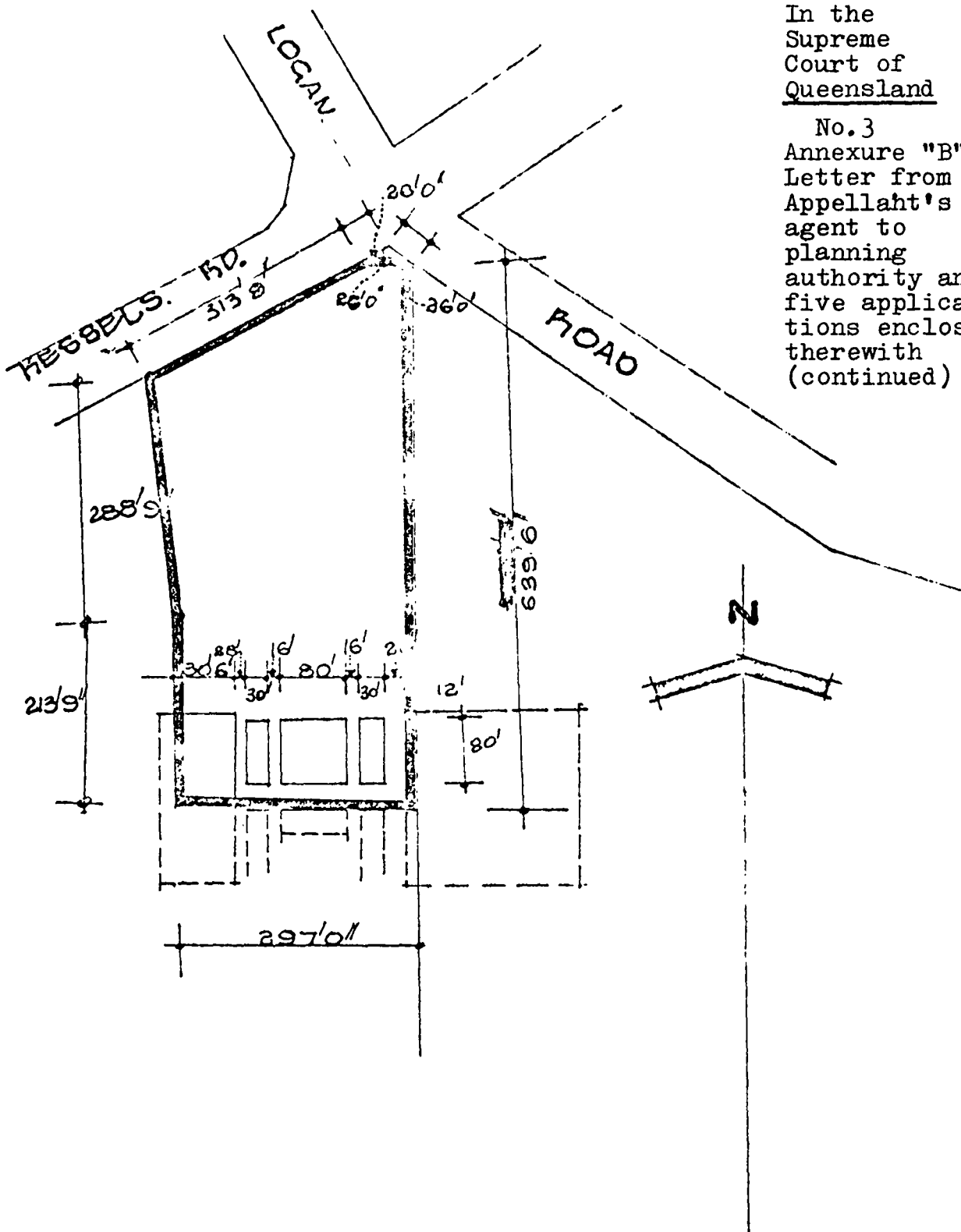
NOTES -

20

1. The owner's written consent to the
application must be supplied.
2. Council's Building Ordinances must be
complied with before any building work is
undertaken.
3. The granting of permission to use land
for industrial purposes does not commit
Council to supply water or electricity
beyond its statutory obligations.

In the
Supreme
Court of
Queensland

No. 3
Annexure "B"
Letter from
Appellaht's
agent to
planning
authority and
five applica-
tions enclosed
therewith
(continued)



In the
Supreme
Court of
Queensland

BRISBANE CITY COUNCIL
SITE APPLICATION
(NON RESIDENTIAL PURPOSES)

No.3
Annexure "B"
Letter from
Appellant's
agent to
planning
authority and
five applica-
tions enclosed
therewith
(continued)

The Town Clerk,
City Hall,
BRISBANE.

Sir,

Application is hereby made for permission
to -

erect a building on the land

10

hereinafter described for the purposes of :
Drive-in Shopping Centre

1. Location of Land: Kessells Road and
Wadley Street,
Mt. Gravatt
2. Real Property Description of
Land: Sub.1 of Resub.1
of Sub.1 of Portion
291 Parish of Yeerongpilly
3. Rate Assessment Number of the
Land: Y'pilly 3771 20
4. Name and Address of Owner: J.A. & D.J.Wegner
5. Present use of Land: Residence and
agricultural
6. Present use of each building
existing on the Land: Residential
7. Brief description of proposed new
buildings or additions or
alterations to existing buildings: New brick and concrete
shops 30

- | | | | |
|-----|--|-------------|---|
| 8. | (a) Intended number of employees on establishment of industry: | See Summary | In the Supreme Court of <u>Queensland</u> |
| | (b) Anticipated maximum number of employees: | See Summary | No.3 |
| 9. | Brief description of machinery to be installed: | See Summary | Annexure "B" Letter from Appellant's agent to |
| 10. | Brief particulars of industrial wastes involved and intended method of disposal: | See Summary | planning authority and five applications enclosed therewith |
| 11. | Anticipated water consumption: | See Summary | (continued) |
| 12. | Number of Vehicles to be used in the business: | See Summary | |

I/We, as owner/owners of the property described herein consent to this application made made to the Brisbane City Council.

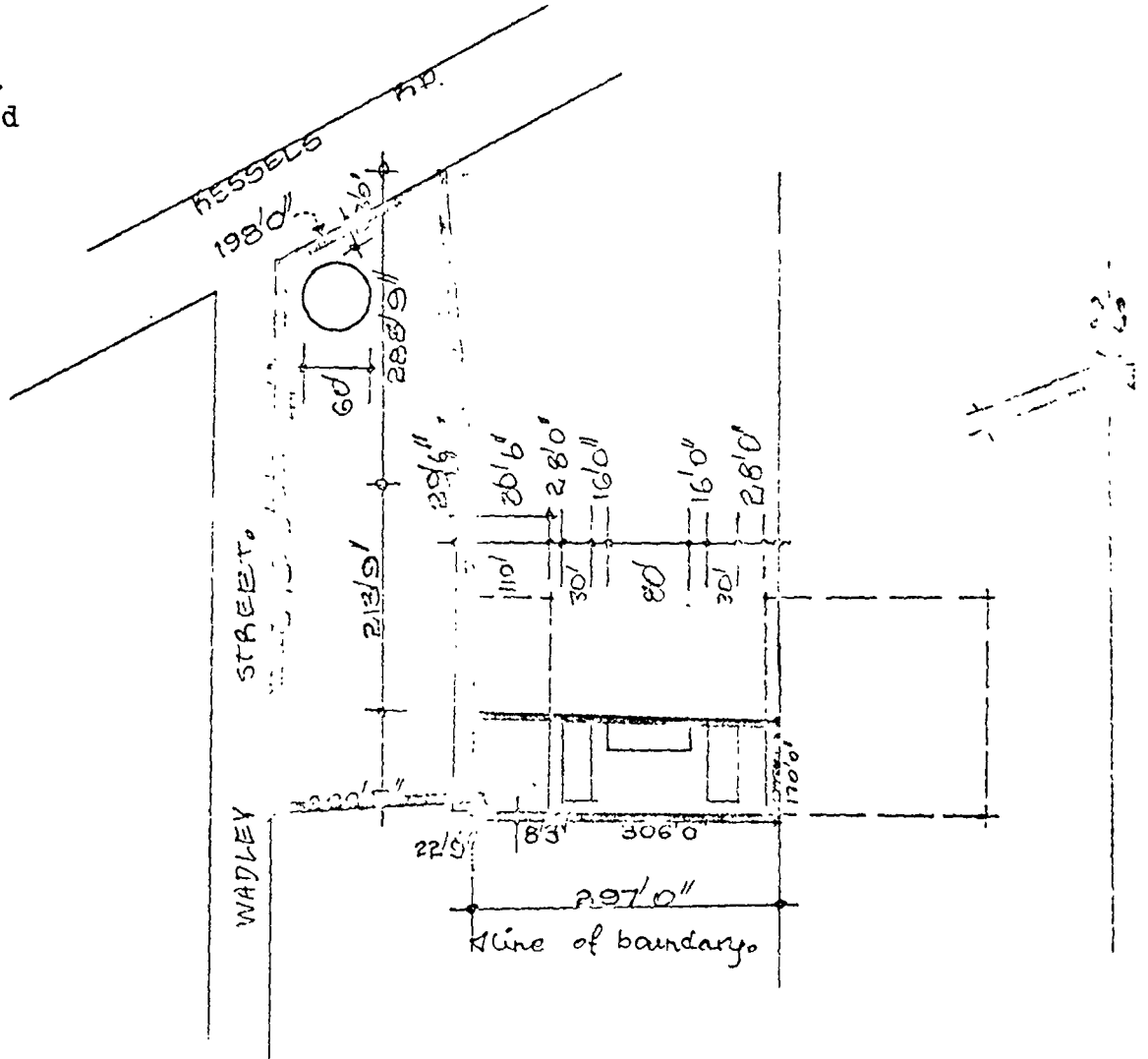
20	Signed: J.Wegner D.J.Wegner	Signature of Applicant Name of Applicant
	Date 20-8-64	Date
		Postal Address: 2-4 Old Cleveland Rd. Stone's Corner Phone No. 97-6104

NOTES -

- | | |
|----|--|
| 30 | 1. The owner's written consent to the application must be supplied. A solicitor, registered architect or chartered engineer may sign as agent for the applicant or the owner but must state the name of his principal. |
| | 2. Council's Building Ordinances must be complied with before any building work is undertaken. |
| | 3. The granting of permission to use land for industrial purposes does not commit Council to supply water or electricity beyond its statutory obligations. |
| | 4. THE FEE FOR THIS APPLICATION IS THREE POUNDS. |

In the
Supreme
Court of
Queensland

No. 3
Annexure "B"
Letter from
Appellant's
agent to
planning
authority
five applica-
tions enclosed
therewith
(continued)



SCALE 1/98" to 1"

No. 4

ANNEXURE "C" - RELEVANT PART
OF CHAPTER 8 OF ORDINANCE OF
BRISBANE CITY COUNCIL (PLANNING
AUTHORITY)

In the
Supreme
Court of
Queensland

No.4
Annexure "C"
relevant part
of Chapter 8
of Ordinance
of Brisbane
City Council
(Planning
Authority)

"C"

CITY OF BRISBANE

Department of Local
Government, Brisbane
15th October, 1959

10

THE Deputy Governor, for and on behalf of His Excellency the Governor, acting by and with the advice of the Executive Council, and in pursuance of the provisions of "The City of Brisbane (Town Plan) Act of 1959", has been pleased to approve of the following Ordinances made by the Brisbane City Council.

J.A. HEADING

20

WHEREAS by section 12 of "The City of Brisbane (Town Plan) Act of 1959", Brisbane City Council is empowered to make Ordinances for the purposes mentioned in the said section of the said Act: It is hereby resolved, by and with the approval of His Excellency the Governor in Council, that the following Ordinances which in the opinion of the Council are necessary to provide for, regulate and control the development and use of land in the City of Brisbane during the period on and from the date of the coming into operation of the said Act and thereafter until the Plan referred to in section 6 of the said Act shall become and be the Town Plan for the City of Brisbane and have the force of law, shall upon publication hereof in the Gazette be in force in the whole of the City of Brisbane for the said period :-

30

CHAPTER 8

USE AND DEVELOPMENT OF LAND

PART VI - USE OF LAND FOR NON-RESIDENTIAL PURPOSES

1. Except as hereinafter provided, no person

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Queensland

No.4

Annexure "C"
relevant part
of Chapter 8
of Ordinance
of Brisbane
City Council
(Planning
Authority)
(continued)

shall use any land (whether having a building thereon or not) or use or erect any building or part of a building on any land, within the City, for any purpose other than residential purposes.

2. "Residential purposes" means the purposes of a dwelling-house. The "purposes of a dwelling-house" do not include the carrying on of a hobby by means of machinery impelled by electricity or other motive power and whether carried on for gain or otherwise. The term "dwelling-house" includes a multiple dwelling (as defined in Ordinance 337 of Chapter 23) but does not include a combined shop and dwelling.

10

3. Notwithstanding Ordinance 1 of this Part, the Council Registration Board (hereinafter referred to as "the Board") may by resolution permit the use of any such land or the use or erection of any building or part of a building on such land, for the purpose stated in such resolution.

20

A resolution granting such permission may in any case extend beyond the scope of the application then before the Board and may include the total final development for the use for the purpose mentioned in the application, which the Board permits of the land or of the building or part of the building referred to in the application or of the land upon which the building or part of the building is or will be erected including the position and size of any future building or part of a building on the land. No further application for permission for the use of the land or for the use or erection of any building or part of a building on such land in accordance with the terms of such resolution shall be necessary.

30

Moreover the building surveyor may upon the delivery to him of plans therefor permit the erection, and the use for a non-residential purpose, of an addition to a building which is being or may be lawfully used under this Part for the same non-residential purpose, and may remit the fee payable under Ordinance 9 of

40

this Part in respect of such addition, if in his opinion the proposed addition is not of such magnitude or type of situation that application for permission for its erection and use should be made to the Board.

In the
Supreme
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Queensland

No.4

Annexure "C
relevant pa
of Chapter
of Ordinanc
of Brisbane
City Counci
(Planning
Authority)
(continued)

10 4. Nothing herein contained shall prevent the use of any land or building or part of a building for the purpose for which such land or building or part of a building was used at the third day of December, 1955, or for such other purposes as the Board may permit.

20 5. Any permission granted under this Part may be subject to any condition, or subject to any limitation as to duration. A person shall not fail to comply with any such condition or limitation. If a person fails to comply with any such condition or limitation the Board may revoke such permission and thereupon the provisions of Ordinance 1 hereof shall apply to such land, building, or part of a building as if it had not been used for any purpose other than residential purposes. The power to revoke such permission shall be in addition to and not in substitution for any penalty imposed by a Court upon a conviction in respect of a breach of this Ordinance.

30 6. If any land, building or part of a building has ceased or shall have ceased for a period of twenty-four (24) months to be used for the purpose for which it was used at 3rd December, 1955, the provisions of Ordinance 1 hereof shall apply to such land, building, or part of a building as if it has not been used for any purpose other than residential purposes.

40 7. Any person who contravenes any provision of this Part or fails to comply with any such provision is guilty of a breach of an Ordinance and shall be liable to a penalty not exceeding fifty pounds.

8. The Ordinance of this Part are in addition to all other Ordinances and do not derogate from the provisions of any other Ordinance.

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No. 4
Annexure "C"
relevant part
of Chapter 8
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(continued)

9. Every person who applies for permission under this part to use any land or to use or erect any building or part of a building for any purpose, shall make his application on the form provided by the town clerk, and shall when making it pay to the Council the fee, if any, applicable under a scale of fees determined from time to time by the Council by resolution. In the scale of fees different fees may be determined in respect of applications for permission for the use of land or the use or erection of buildings or parts of buildings for different purposes. Such fee shall be retained by the Council.

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No. 5
Annexure "D"
- pages 379
and 380 of
transcript of
proceedings
before Land
Appeal Court

No. 5
ANNEXURE "D" - PAGES 379 and
380 OF TRANSCRIPT OF
PROCEEDINGS BEFORE LAND
APPEAL COURT

"D"

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Cross-examination:

BY MR. GIVEN: As I understand it - I do not want to delay things any further - this is your interpretation of the photograph. Is that it? -- Well, I think it's a bit further than interpretation. It's as accurate as I can make of the photograph, not counting cars that are blocked by buildings or unable to be tallied because of trees or something like that.

30

MR. GIFFORD: I had undertaken to do one thing I overlooked before, and that was in relation to Exhibit 15. I did present a torn copy because it contained material my friend had not asked for, and that was torn off and I had undertaken to supply clean copies. I tender those. I have still left Miranda Fair without a date there. Of course, that was the

way Mr. Lake tendered it, but the court will remember that the opening date of Miranda Fair does appear in Exhibit 31, page 4 of Mr. Barr's statement, and it does there appear as 1964.

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Supreme
Court of
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10 MR. GIVEN: Exhibit 49, letter dated 30 October 1962 with accompanying plan was tendered through Mr. Inglis this morning and we had no copies, you will recall. I do not know whether the court would like further copies. A photo-
stat of the letter, I am sure, would be acceptable. The plans are not all they should be. We are having a lot of difficulty with photostating, but I am quite happy to hand up to the court a copy of the letter and plans for each member.

No.5
Annexure "D"
- pages 379
and 380 of
transcript
of proceed-
ings before
Land Appeal
Court
(continued)

THE CHAIRMAN: We have a carbon copy. We could have copies for the members.

MR. GIVEN: One should supply these photostats, for whatever benefit they may be.

20 THE CHAIRMAN: That is all the evidence?

MR. MACROSSAN: Yes.

30 THE CHAIRMAN: There are only two questions. We were told during Mr. Gidfford's opening address - he used the phrase, "When you see the centre". I do not know whether it is envisaged that the court should have a view or not. The second thing is that it may well be that you gentlemen want a little time to prepare your addresses. First of all, on the question of the view - is one wanted? Would you please tell us? If there is to be a view it is preferable that we should take it before we hear addresses.

MR. GIFFORD: Could we have a moment to speak to each other?

THE CHAIRMAN: Certainly.

40 MR. MACROSSAN: What arrangements would the court be able to make about transport? Obviously this afternoon there would not be much opportunity.

THE CHAIRMAN: What the court usually does is -

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No. 5
Annexure "D"
- pages 379
and 380 of
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(continued)

the Registrar procures for us a Millar's hire car at whatever time is agreed between parties, and we usually fix a place where we meet with Counsel - a place and time.

MR. MACROSSAN: It looks as though, unless otherwise suits the court, tomorrow morning seems to be indicated as the time for inspection if it is to be before addresses.

THE CHAIRMAN: We have discussed this and our feeling is that it should be before addresses if there is to be a view, but we are in your hands as to whether there should be a view or not. 10

MR. MACROSSAN: We would not be asking the court to have a view if it did not otherwise feel some particular necessity for a view. We have heard a lot about it and seen pictures of it.

THE CHAIRMAN: We ourselves see no particular necessity for it.

MR. GIFFORD: May I protect myself?

THE CHAIRMAN: If we were asked by either party to have a view we would have a view. Our policy has been that if one party asks for a view we have one. It helps us to understand that party's case in the view of the counsel conducting the case. 20

MR. GIFFORD: If I may be permitted to leave the court and speak to my instructing solicitors?

THE CHAIRMAN: Very well.

MR. GIFFORD: I had, as you know, opened the matter on the basis that there would be a view. It was an assumption on my part that there would be and indeed I had said to my instructing solicitors that I assumed both parties would be asking for it. In the circumstances, with the sort of evidence now before the court, my learned friend not asking for a view, and my own belief that as the court has so much material before it at this stage, it is not really a case ---- 30

THE CHAIRMAN: Where a formal view is called for.

MR. GIFFORD: If the court will release me from that part of the opening?

HIS HONOUR: Of course. In any event I think I am within bounds in saying that if the Members of the court feel at some future time they could be assisted by a view they could take themselves out and have a look.

10 MR. GIFFORD: I would have thought, with respect, that the evidence in this case is so very detailed it is not the sort of case where it is necessary.

THE CHAIRMAN: We do not feel the necessity for a view ourselves. The second thing is, do you require time for the preparation of your addresses?

MR. MACROSSAN: Thank you for the opportunity, but we feel we are prepared to go on, and the court might appreciate saving a little bit of time in the long run.

20 THE CHAIRMAN: It means we will have to get the tape recorders set up, so the next item will be addresses. We will go away for a few minutes while the tape recorders are set up.

The Court adjourned at 3.11 p.m.

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- pages 379
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(continued)

In the
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No. 6
Annexure "E"
- Reasons for
Judgment of
Land Appeal
Court dated
4th December
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No. 6

ANNEXURE "E" - REASONS
FOR JUDGMENT OF LAND
APPEAL COURT dated 4th
December 1972

"E"

LAND APPEAL COURT
BRISBANE

MELWOOD UNITS PTY. LIMITED Appellant

- v -

THE COMMISSIONER OF MAIN
ROADS Respondent

10

JUDGMENT

This appeal by Melwood Units Pty. Limited follows a determination by the Land Court of a sum of \$21,170 as the compensation payable to the appellant following the resumption for purposes of an expressway from Brisbane to the Gold Coast on 11th September, 1965, by the Commissioner of Main Roads, pursuant to the provisions of the Main Roads Acts, 1920 to 1964, of certain land belonging to the appellant, situated at Upper Mount Gravatt, Brisbane, in the Parish of Yeerongpilly, County of Stanley.

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It is at all times basic to our judgment that what we have to determine is the value of the resumed land to the appellant as at the date of resumption according to the opinion of prudent experienced men then fully aware of every element of value in the land to the owner, including its advantages and disadvantages, for its highest and best use at that date, plus any loss in value to the balance land caused by severance or injurious affection to such balance land flowing from the resumption.

30

The land resumed contained a total area of

10 4-acres 2 roods 15 perches. It comprised parts of 3 parcels of land purchased by the appellant in December 1964, described as resubdivision 2 of subdivision 1 of portion 291 which contained, prior to resumption, an area of 5 acres 2 roods 18 perches, resubdivision 1 of subdivision 2 of Portion 291 which contained 13 acres 0 roods 1.6 perches prior to resumption, and an area of 10 acres 1 roods 27.4 perches which was part of subdivision 2 of resubdivision 2 of subdivision 2 of portion 291.

On 26th October 1966, the appellant filed in the Land Court its claim for compensation amounting to \$299,528.75 made up as follows :-

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

20 Before the Land Court, the appellant sought to establish a claim of \$280,968 and to that end, called a registered valuer, Mr. Brett. In reply, the respondent called a registered valuer, Mr. Figgins, who assessed compensation at \$14,840. Before us, the appellant sought to increase its claim. Having reserved the point, we think it desirable to deal with it before proceeding further with this judgment.

30 In this matter, compensation has to be determined according to the provisions of The Public Works Land Resumption Acts, 1906 to 1955, which contain no provision for amendment of claims. These Acts were repealed by The Acquisition of Land Act of 1967 which was proclaimed on 23rd March 1968. Section 24(4) of this Act provides that the Land Court may give leave to a claimant to amend his claim upon such terms as it deems just. However, this does not assist the appellant as proceedings began before the date of commencement of The Acquisition of Land Act, and section 3(3) of that Act directs that provisions of the repealed Act shall continue to apply to proceedings not completed before the commencement of The Acquisition of Land Act. In our

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(continued)

opinion, we have no jurisdiction to allow the amendment sought and we therefore follow previous decisions of this Court in refusing leave to amend.

In December 1964, the appellant executed 5 separate conditional contracts for the purchase of five parcels of land having a total area of 37 acres 2 roods 20.7 perches. Viewing the land purchased as one parcel, it had frontages to Logan Road, Kessels Road and Wadley Street. The total purchase price was \$290,620. Each contract was subject to identical conditions, two of the most important being :

10

"(i) The Brisbane City Council granting site approval and approving plans and specifications as required by and to the satisfaction of the Purchaser for the use of the said land and adjoining land as a major drive-in shopping centre any conditions attached to such approval to be to the satisfaction of and approved of by the Purchaser."

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"(ii) The Purchaser concluding negotiations with a major Department Store for it to occupy premises and carry on business in the said drive-in shopping centre under a long term lease and the execution of a binding agreement for lease pursuant thereto."

30

Further conditions of each of the five contracts were that each contract was conditional upon the purchaser's effecting settlement for the purchase of the properties covered by the other four contracts and in the event of any of the conditions not being fulfilled by 14th December 1965, the purchaser had the option of rescinding the contract. The final date for fulfilment of the contracts was 31st December 1965. It is a matter of interest and indicative to some extent, of the appellant's desire to acquire the land, that it did not exercise its option to rescind the contracts on non-fulfilment of some of the most important conditions, because, notwithstanding that Crown caveats marked on some title deeds had

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10 not been withdrawn, that the Crown had not
abandoned its plans to resume some of the
land, that final approval by Brisbane City
Council for the use of the land as a major
drive-in shopping centre, had not been given
and that negotiations with a major department
store had not been concluded by the date of
settlement, the appellant nevertheless chose
to fulfil the contracts. Notwithstanding non-
fulfilment of conditions and notwithstanding
the resumption and the severance brought
about by the resumption, the appellant
completed the contracts with the full knowledge
that some of the land had been resumed, that
the land had been severed and that the Brisbane
City Council had not given approval to its
development plans. Indeed, when the approval
was given by the Council in its letter of
20th December 1965, it was not an unqualified
one. It was subject to a large number of
conditions, including parking requirements
which even up to the date of hearing by us,
had not been complied with. However, settle-
ment had already been effected with the
vendors on 17th December 1965. In our view,
this all leads to the conclusion that the
appellant considered the land even with its
reduced area and the disability caused by the
severance, as satisfactory for development as
a major shopping centre and it was prepared
to take some risk in order to acquire it.

The area resumed being 4 acres 2 roods
15 perches, the balance remaining in the
hands of the appellant after date of resumption,
was 33 acres 0 roods 5.7 perches of which 25
acres 1 rood 0.5 perches was north of the
resumed area and 7 acres 3 roods 5.2 perches
south of it.

40 The appellant is an autonomous entity,
being a duly incorporated private company.
No other party was named in any of the contracts
as having a joint or any other interest with
the appellant and benefits expected to flow
to persons or companies associated with the
appellant, upon completion of the purchases
by the appellant, the sale to David Jones
Limited and the development of the regional

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drive-in shopping centre have, in our opinion, no part in the assessment of compensation due to the appellant. At all material times, the appellant was the owner of the resumed land and the severed area and on the evidence before us, only the appellant is entitled under the relevant Statutes, to look to the respondent for compensation. In our view, therefore, the evidence put before us relating to benefits expected to accrue to associated companies of the appellant, from the operations of the shopping centre over a period of years, is not relevant in determining the compensation payable to the appellant.

10

The evidence in this case was voluminous. Some of it, while interesting, has little bearing on the issues facing us and we have accordingly looked for and obtained from the evidence all material which is in our view, relevant and factual and from this material we have made certain deductions and calculations which are reflected in our determination.

20

It is necessary at this time to take note of some historical details. According to one of the witnesses, Mr. Inglis, the deputy Chief Engineer of Research and Planning in the Main Roads Department at the time of the resumption, planning the expressway from Brisbane to the Gold Coast commenced in 1960. The Route was exhibited in 1961 and again in 1962. We have this from another witness, Mr. Guthrie, the Planning and Co-ordination Engineer in the Planning and Traffic Branch, Department of City Administration of Brisbane City Council. The centre line was finally fixed in 1962 and Mr. Inglis said no variation was made to it since that date. From 1962 onwards, it would have been a reasonable assumption by any interested member of the public that the expressway, if it proceeded as planned, would go through the subject land in conformity with the centre line. Further, pencil caveats on relevant title deeds entered thereon in 1962 as noted in November 1964 by Mr. Thompson, an articulated clerk in the employ of the appellant's solicitors, served as a warning to anyone interested in the land that action to acquire the

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land or deal with it in any other manner should be taken with caution and only after proper inquiry.

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10 There can be no doubt that when the
appellant executed the conditional contracts
of December 1964 with McMillan, Wegner, Hewton,
Steindl and McLaughlin, it knew or should
have known that there was every likelihood
that portion of the land purchased would
be resumed for highway purposes, as the
conditions of the contracts which related to
the land likely to be affected referred to
the caveats noted by Mr. Thompson on 27th
and 30th November 1964. The appellant would
also no doubt have been informed by its
solicitors, following Mr. Thompson's search,
that he had been advised by the Main Roads
Department that the highway had been commenced
and, to use Mr. Thompson's words, "as far as
20 they know, the road will definitely go through."

30 In addition to Mr. Thompson's evidence,
we note that before Mr. Thompson made his
searches in November 1964, Mr. Dickson, then
a member of the staff of L.J. Hooker Limited
and presently General Manager of D.J. Properties
Limited, the owner of the Garden City regional
drive-in shopping centre, had made inquiries
in October 1964 as to the feasibility of
developing a regional drive-in shopping centre
at Kessels Road, Upper Mount Gravatt, now the
Garden City site. His inquiries indicated that
the site would be affected by the proposed
south-east expressway. He told us he was
shown a plan, by the Main Roads Department he
thinks, on which the approximate position of
the expressway was located. However, in a
report which he prepared and signed on 24th
October 1964, he said inter alia: "it is
40 firmly established from the Main Roads Board
exactly where the expressway will be located."
Further evidence discloses that before the
contracts of December 1964 had been executed,
the expressway north of Kessels Road had been
planned and surveyed and the land required for
the expressway had been taken, and land on
the eastern side of the present road to the
Gold Coast, in the vicinity of Bulimba Creek,
had also been acquired for expressway purposes.

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We think the evidence is clear that from 1960 onward, all signs pointed to the proposed expressway passing through some of the land purchased by the appellant in December 1964, and we accept the evidence of Mr. Guthrie, who said he dealt with all applications for site approval himself, that, in discussions which he had with the appellant's agents after December 1964, namely Mr. Job, the appellant's architect, and Mr. Gately, presently a real estate consultant but in 1964 and 1965, General Manager of Hooker Projects Pty. Limited, a subsidiary of Hooker Corporation Limited, there was no uncertainty in their minds about the location of the expressway, that no reference was made by them to the area of the land north of the expressway site and no indication was given by them of any proposal to develop or use the land south of the expressway. Mr. Gately confirmed this when he agreed during cross-examination, that as early as October 1964, he was fully aware that all that was available as a shopping centre was the area north of the expressway. Then this question was put to him:

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"You did not ever think you would have available to you as a centre the area south of the expressway?"

Mr. Gately replied :

"Realistically, no."

In so far as the area north of the expressway is concerned, we have no doubt after listening to Mr. Job, that he knew the area was in the vicinity of 26 acres and the shopping complex was designed to fit upon that area only. Indeed, Mr. Job's plans of January 1965 show the centre line of the resumed area in its present position.

30

Before proceeding to consider other aspects of the case, we wish to give our views on the letter of 15th April 1965 from the Town Clerk, Brisbane City Council, to the appellant's architects, William J. Job and Associates. This letter gave approval in principle to Hooker Projects Pty. Limited to develop a drive-in shopping centre at Upper Mount Gravatt. We are

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of opinion that the first paragraph of that letter gave permission to use only that part of the land described in the letter which was north of the proposed arterial road and to erect buildings on that part only. We do not agree with the appellant's submissions that the letter should be read as giving permission to use the severed area as part of the shopping complex. To put this interpretation on the letter would be quite contrary to the history of the negotiations between the appellant's agents and the Council and would amount to a complete about-face, support for which cannot be found anywhere in the evidence.

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Mr. Brett's valuation, made for the purpose of proceedings in the Land Court, was dated 14th July 1970 and purported to estimate the appellant's loss by making use of the "before and after" method of valuation. On the basis of the sale to David Jones Limited in June 1966 for \$1,050,000, and the sales of April 1969 and June 1970, the latter two sales being the sale of about 2½ acres from the estate of J.B. McLaughlin deceased for \$97,000 and the sale of police station land containing 1 rood 0.9 perches for \$55,000, both to David Jones Limited, Mr. Brett adopted a pre-resumption value of \$40,000 per acre to apply to the optimum area of 30 acres for the regional shopping centre site. He said the area of 30 acres was the opinion of the appellant's experts and it was accepted by him. In adopting the value of \$40,000 per acre, he said he took into account the fact that in addition to receiving from David Jones Limited the sum of \$1,050,000 for the area of 25 acres 1 rood 0.5 perches north of the expressway, the vendors were also to receive a percentage of rentals from the shopping centre. He valued the severed area held by the appellant prior to resumption at \$15,000 an acre, basing this on prices paid for industrial land in 1966 near the corner of Kessels Road and Mains Road, Upper Mount Gravatt. After resumption, he valued the severed area at \$3,000 an acre. Deducting the value after resumption from the value before resumption, Mr. Brett arrived at his final figure of \$280,968 as the compensation due to the appellant.

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In the proceedings before us, Mr. Brett said he now considered the optimum area for a regional drive-in shopping centre is 34 acres. He had come to this opinion after hearing experts in that field. He therefore had prepared a fresh and higher valuation of \$378,369, based upon his wider knowledge, and submitted that to us.

With regard to what was at date of resumption regarded by the appellant's witnesses as the optimum area for regional drive-in shopping centres, their evidence in 1970 showed such area did not exceed 30 acres and indeed there are several regional drive-in shopping centres in Australia with areas considerably less than 30 acres. As populations grow and the general level of prosperity rises, it must be expected that shopping centres will expand. If their land areas are limited and cannot be enlarged, they will expand upwards. On the evidence before us, we do not think the expansion of the centres already established has been prevented by the land area limitations of the centres.

We are not convinced that there is any optimum area for a regional drive-in shopping centre. What yesterday was adequate may tomorrow prove to be inadequate. At date of resumption, we are satisfied from the evidence that the appellant's land north of the resumed land was in the appellant's view, adequate for purposes of a regional drive-in shopping centre. It now appears that the centre has been a great success since it opened on 1st October 1970. With the success of the centre apparently assured, it would seem reasonable for all parties sharing that success to look forward to expansion. However, compensation must be determined as at date of resumption and we are of opinion, without departing from our views expressed above on optimum areas generally that the views of the appellant and its expert witnesses in 1970 when they considered that 30 acres was the optimum area for a regional drive-in shopping centre, carry more weight than their views in 1972 when the original venture has proved to be so successful, and ways and means of expanding it are being sought. It was urged upon us that there is not sufficient room to bring in a second major

department store, but the contracts of December 1964 were conditional upon the completion of negotiations with only one major department store to carry on business there and it seems from the evidence that as at date of resumption only one major department store was in contemplation.

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10 We were told by the appellant that there are parking deficiencies because of limited area and that parking is so tight that some shoppers are unable to park in the parking areas of the centre and have to park in Wadley Street and on part of the resumed land. We were told that although Saturday morning is, as is to be expected, the busiest period of the week, Friday and Thursday are also busy with parking areas sometimes full. We therefore decided to visit the centre and see for ourselves what parking problems
20 existed.

Our first visit to the centre was on Wednesday 19th July from 10.30 a.m. to 11.30 a.m. On that day, the yellow car park was completely occupied by caravans, a caravan show having opened there on Tuesday 18th July and being advertised as continuing until the afternoon of Sunday 23rd July. The orange car park was only one third full, the black car park near the incinerator was quite empty and the blue, red and green car parks had a considerable
30 number of vacant spaces.

Our second visit was on Friday 28th July from 10.30 a.m. to 11.00a.m. On this occasion, the green car park was about three quarters full, the blue car park less than one third full, the orange car park was about three quarters full, the black car park was less than one fifth full and the yellow car park was about one quarter full. It was interesting
40 to note that notwithstanding hundreds of vacant car spaces in the parking areas, on both days, cars were parked in Kessels Road and Wadley Street as well as some cars parked on the resumed land. Leaving Garden City, we visited the Myer Shopping Centre at Coorparoo. Here there is decked parking and across

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Cavendish Road, additional parking provided by the Myer car park. During this inspection, we noticed that women drivers were using the ramp to the decked parking with every show of confidence. Leaving Coorparoo, we visited the Indooroopilly drive-in shopping centre and inspected the lower and upper level parking areas and observed numerous women drivers using the curved overhead ramp and driveway of the western approach over Moggill Road with apparent skill and ease. During the hearing before us, a suggestion was made that women drivers were reluctant to use ramps and bridges to obtain access to parking areas but we did not see any evidence of this during our inspections at Coorparoo and Indooroopilly nor is it the fact in the light of our general experience in Brisbane. It is noted also that since the hearing before us, the Toombul drive-in shopping centre has been extended, the extensions including a car ramp to a roof top car park to serve the David Jones Store. 10 20

The overwhelming impression we gained from our two inspections at Garden City was that the parking areas were more than sufficient on the days of our inspections for the shoppers attending the centre and although we were not present on a Saturday morning, we do know that the yellow car park, which has a parking capacity of 507 cars, was out of bounds to shoppers on Saturday 22nd July. We also know that, notwithstanding the availability of hundreds of parking areas in the centre's car parks on the days when we inspected, some people preferred to park outside the boundaries of the centre. If the parking areas of Garden City are found to be inadequate in the future it seems space for parking could be acquired on the western side of Wadley Street. It was suggested to us that shoppers do not like parking across a street from a shopping centre but we feel that there is little substance in this suggestion. At all events, the Myer parking area at Coorparoo across Cavendish Road appeared to us to be well patronised. 30 40

Since 1907, Spencer v. The Commonwealth 5 CLR 418, has been the guiding star in matters involving compulsory acquisition. The principles governing the determination of the value of land

resumed are so well-known and have been so frequently stated, that we do not propose to re-state them. Applying those principles, we think the compensation estimated by Mr. Brett, namely \$280,968 (\$378,369 in 1972) is far too high.

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10 He reached his 1970 value by putting
\$40,000 an acre on 30 acres (34 acres in 1972)
and \$15,000 an acre on the balance area of
7 acres 2 roods 20.7 perches (3 acres 2 roods
20.7 perches in 1972), as the valuation of
the appellant's holding prior to resumption
and deducting therefrom his estimated value
of the land remaining in the appellant's
hands after resumption, including the
severed area of 7 acres 3 roods 5.2 perches
values by him at \$3,000 an acre. Another
approved valuer, Mr. Kidston, estimated the
appellant's loss at \$464,206. For the
20 respondent, Mr. Figgins, an approved valuer,
assessed total compensation at \$14,840, that
being the valuation placed by him on the
resumed land at date of resumption. In his
opinion, the resumption did not effect any
depreciation in value of the severed area
which in his view, remains just as suitable
and valuable for residential subdivision as
it was before the resumption. In our opinion,
30 Mr. Figgins' valuation of the resumed land
is too low and his conclusion that the
severed area has suffered no detriment
pursuant to the resumption is not a valid
one. Our reasons for this opinion are set
out below.

40 We propose to determine the appellant's
loss by premising our belief that at all
relevant times from 1962 at the latest, the
appellant was aware that the only land
available to it for a regional drive-in
shopping centre was the area north of the
proposed expressway, and that at no time
did it have any reasonable expectation of
receiving a permit to use the land south of
the proposed expressway for purposes of a
regional drive-in shopping centre. In December
1964, the appellant purchased land, including
the resumed land, for an average price of about

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\$7,700 per acre. At that time, we are of opinion the relationship between vendor and buyer satisfied the tests applied by *Spencer v. The Commonwealth*. It seems that when the contracts were signed in December 1964, the vendors knew of the proposed regional drive-in shopping centre but they could not take advantage of this knowledge as the prices for the land had been fixed in the option agreements executed a little earlier that year and we have it from one of the witnesses, Mr. Gately, that when the options were executed, the vendors were not made aware of the fact that it was proposed to seek a permit for a regional drive-in shopping centre on the land. We think it reasonable to deduce from this that the prices paid for the land in December 1964 can be accepted as the fair market value of the land at that date, unaffected by proposals for the use of the land as a regional drive-in shopping centre.

10

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The resumption took place less than nine months after the sale of the land. At that time, the value of the land would have risen following the normal rise in value of Brisbane suburban property, said by some real estate men to be in the vicinity of 10% per annum, but there were special circumstances contributing to a rise in value of the subject land over and above the normal rise. By September 1965, it would have been fairly widely known that Brisbane City Council had given permission in principle to the development of a drive-in shopping centre on part of the appellant's land. This permission was given on 15th April 1965. We think this would have caused a rise in excess of the normal rise in the market value of the land beyond the prices paid in December 1964. However, we do not think the price paid by David Jones Limited on 30th June 1966, is a reliable guide to the value of the resumed land at the relevant date, 11th September 1965, because at that date, permission had only been granted in principle subject to a large number of conditions which had not been carried out. Indeed, full approval was not given until 20th December 1965 and then only subject to compliance with a long list of 22 conditions. Apart from this however, we think the circumstances surrounding the sales used by Mr. Brett to

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10 establish his basic figure of \$40,000 per acre, namely the sale to David Jones Limited on 30th June 1966, the sale by the Estate of J.B. McLaughlin deceased to David Jones Limited in April 1969 and the sale by the Crown to David Jones Limited in June 1970, prevent these sales and the parties to the sales from complying with the requirements of Spencer v. The Commonwealth. For these reasons, we cannot view these sales or any of them as providing a reliable basis upon which to make our determination.

20 We think it likely that in the period of 9 months from December 1964 to September 1965, the overall value of the land purchased by the appellant would have increased by substantially more than 10%. From September 1965 onward until David Jones Limited purchased in June 1966, the increase in value would have accelerated as public awareness of the probability of a drive-in shopping centre increased. In December 1964, the prices paid averaged about \$7,700 per acre for the five parcels purchased. In the case of McMillan's and McLaughlin's land, no more was paid for the land closer to Logan Road than for the land in the resumed and severed areas. In Steindl's case, the same price was paid for the resumed area as for the unresumed area.

30 Each of the five parcels purchased by the appellant in 1964, was sold to it on an in globo basis and had there been no resumption, we think they would probably have been sold that way at the relevant date had they been offered for sale. Considerations of shape and access would have played a part in this. Therefore, we think the increase we have allowed should apply to the whole of the areas purchased including the resumed land and the land to the north and south of it. Doing the best we can on the whole of the relevant evidence, we think the value of the land at date of resumption would have been about \$9,250 per acres, including the area resumed of 4 acres 2 roods 15 perches, giving it a value of \$42,490.

40

After resumption, the land south of the resumed area would in our opinion, have lost

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some of the value it had at date of resumption. At that date, we do not think it had much value as peripheral land suitable for industrial or commercial development in the foreseeable future. We think there was too much other land in the locality, better situated and more suitable, available for industrial and commercial development. We believe its best use at date of resumption would have been for residential development which is still its best use, but it will now suffer the detriment of being close to an expressway which for residential land is a very real detriment, particularly because of the noise nuisance. After examining prices paid for comparable residential land in the neighbourhood at, or soon after the date of resumption, we think the post-resumption value of the severed area would have been about \$4,000 per acre which reflects a fall in value of \$5,250 per acre from its pre-resumption value. In that event, the loss to the appellant on the severed area of 7 acres 3 roods 5.2 perches is \$40,850.

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20

A further matter which calls for mention relates to the zoning of the appellant's land at date of resumption. At that date, the land was zoned "non-urban" under the proposed Brisbane Town Plan. However, as from the time Brisbane City Council gave its consent in principle on 15th April 1965 to the development of a drive-in shopping centre on the land, we think the necessary change in zoning was assured and the value of the land at date of resumption would have been higher than it would have been if it had been resumed as non-urban land which had no expectation of an early change of zoning. We have taken this into account in determining the value of the resumed land at the relevant date at \$9,250 per acre.

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40

Before arriving at the above basic determination of \$9,250 per acre at the relevant date, we had regard to the authorities relied upon by the parties. The decision in Woollams v. The Minister (1957) 2 L.G.R.A. 338, was based upon Section 124 of the Public Works Act 1912-1952 of New South Wales. This section requires that the

value of resumed land for the purpose of compensating the owner, be determined without regard to any effect on such value of the proposed project for which the land was resumed. The section thus covers both the possibility of an enhanced value and the possibility of a depressed value arising out of any step in the process of establishing the project. In the case before us, Section 26A(5) of The Main Roads Acts, 1920 to 1952, which was operative at the date of resumption, provides that the enhancement or prospective enhancement of the value of land taken for purposes of the Acts, resultant or likely to be resultant on the carrying-out or prospective carrying-out of the works or purposes for which the land was resumed, shall be entirely disregarded in the assessment or fixation of compensation. The section does not refer to a possible depressing effect upon values and thus differs from Section 124 of the New South Wales Act. Apart from that, however, there is no evidence before us that, prior to the resumption, fore-knowledge of the proposed expressway had a depressing effect upon land values in the neighbourhood of the resumed land.

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In Stocks and Parkes Investments Pty. Ltd. v. The Minister (1968) 17 L.G.R.A. 192, Section 124 of the Public Works Act of New South Wales again came under close scrutiny, both by the Land and Valuation Court and the Court of Appeal. In our view, the decisions in Parramatta City Council v. Valuer-General & Anor. (1964) 10 L.G.R.A. 160 and Royal Sydney Golf Club v. Federal Commissioner of Taxation (1957) 97 C.L.R. 379 are not in conflict with our determination. This can also be said of the other authorities referred to, including Nelungaloo Pty. Ltd. v. The Commonwealth (1947) 75 C.L.R. 495 where, in the first paragraph on page 538, Latham C.J. discusses some of the well-known principles applied in assessing the compensation payable in cases of compulsory acquisition of land.

The appeal is allowed and the judgment of the Land Court is set aside. Compensation is

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determined at \$83,340, made up of \$42,490
as the value of the resumed land and
\$40,850 as the damage due to severance.
We direct payment of interest on this amount
at the rate of 6% per annum limited to a period
of two years from date of resumption as
provided by section 23(8) of the Public Works
Land Resumption Acts, 1906 to 1955.

(Signed) N.S.STABLE
Judge of the Supreme Court.

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(Signed) P.F. WRIGHT
President of the Land Court.

(Signed) S. DODDS
Member of the Land Court.

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dated 23rd
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No. 7

REASONS FOR JUDGMENT -
WANSTALL S.P.J. dated
23rd June 1976

IN THE SUPREME COURT OF QUEENSLAND

Appeal No.32 of 1975

20

BETWEEN :

MELWOOD UNITS PTY. LIMITED Appellant

- and -

THE COMMISSIONER OF MAIN
ROADS Respondent

JUDGMENT - WANSTALL S.P.J.

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I agree with the reasons prepared by Mr. Justice Dunn in respect of the Questions he has grouped as Category 2, i.e. those relating to the inspection by the Land Appeal Court after the close of the evidence, and to an observation by the Court as to the "normal" annual rise in value of Brisbane suburban property.

10 I concur in his proposed answers to Question (c) and Question (d) of the case stated, and in the form of order which he proposes in order to remedy the consequential defects in the Land Appeal Court's determination.

In addition to the cases referred to by my learned brother the following authorities are relevant to the consideration of Questions (c) and (d) :-

20 British Imperial Oil Co. Ltd. -v- Federal Commissioner of Taxation (1975) 35 C.L.R. 422, per Isaacs J. at p. 439,

Goold -v- Evans & Co. (1951) 67 T.L.R. 1189,

Tameshwar -v- The Queen (1957) A.C. 476,

Administration of Papua and New Guinea -v- Daera Guba (1972-1973) 130 C.L.R. 353, per Barwick C.J. at p. 402, per Gibbs J. at p. 455.

30 I also agree with the views of Dunn J. as to Question (f) and Question (g) and his proposed answers thereto.

I refrain from expressing any opinion on the Questions which my learned brother has grouped as Category 1.

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No. 8
REASONS FOR JUDGMENT -
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I agree with the answers and the orders
proposed by my brother Dunn and his reasons
published in respect of those answers and
orders.

REASONS FOR JUDGMENT -
DUNN J.

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No. 9
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JUDGMENT - DUNN J.

10 Melwood Units Pty. Limited ("Melwood")
owned certain lands upon parts of which there
now stands a "regional drive-in shopping
centre". Before the shopping complex was built,
parts of the lands were resumed by the Commissioner
of Main Roads ("the Commissioner") exercising
statutory powers under the Public Works Land
Resumption Acts, 1906 to 1955 ("the Resumption
Acts"). The effect of the resumption was that
Melwood's estate or interest in the resumed
land was "taken to have been converted into a
claim for compensation" under those Acts (section
8). Melwood duly made a claim for compensation
claiming \$299,528.75 under the headings of
20 "land, improvements and compensation for
severance". Its claim was heard and determined
by the Land Court, pursuant to s.23 of the
Resumption Acts; the Land Court determined that
the total compensation payable to Melwood was
\$21,170.00.

30 An appeal lies from the Land Court to the
Land Appeal Court, and Melwood appealed. On
the hearing of the appeal, Melwood applied to
amend its claim in order to claim \$1,800,000.00.
The Land Appeal Court held that it had no
jurisdiction to allow the amendment sought and
accordingly refused the application. The Land
Appeal Court made its determination as follows:-

" Compensation is determined at \$83,340,
made up of \$42,490 as the value of the
resumed land and \$40,850 as the damage due
to severance."

40 I should mention, for reasons which will
appear, that when all the evidence that was
tendered had been placed before the Land Appeal
Court (appeals to that Court are re-hearings) there
was discussion as to whether there should be a
view of the subject land. Senior counsel for

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Melwood had suggested when he opened its case that a view might assist the tribunal, and His Honour, the Chairman of the Land Appeal Court, reminded both counsel of this suggestion when the evidence closed, at the same time stating that the members of the Court saw no particular reason for having a view. After brief discussion and, after taking instructions, senior counsel for Melwood did not request a view. In the course of the discussion, His Honour, the Chairman, said this :-

10

" In any event I think I am within bounds in saying that if the Members of the Court feel at some future time they would be assisted by a view they could take themselves out and have a look."

Section 45(1) of The Land Acts 1962 to 1974 provides as follows :-

"45(1) When the Crown or any person 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, the Crown or such person may, within forty-two days after the making of the decision, notify the Registrar and the parties to the proceedings in question of its or his intention to request the Land Appeal Court to state and sign a case setting forth the facts and the grounds of decision for appeal thereon to the Full Court."

20

30

Both Melwood and the Commissioner requested the Land Appeal Court to state a case. The parties were unable to agree on the form of the cases requested, and they were settled by the Land Appeal Court. Each Case Stated sets forth a number of facts, and quotes or refers to a good deal of evidence.

40

The statements of fact include the following:-

"44. After the completion of the hearing

10 the Land Appeal Court without notice to the parties beyond that (if any) which appears in the said pages of the transcript (the reference is to the discussion after the close of evidence which I have already summarized) and in their absence (acting under Section 44 (15)(b) of the Land Acts 1962-1972) carried out inspections of the drive-in regional shopping centre on the Melwood land on 19th and 28th July 1972 and also on 28th July 1972 inspections of a Myer Department Store and car parking area at Coorparoo and a drive-in regional shopping centre at Indooroopilly.

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20 45. Although the Land Appeal Court was not present it knows that part of the car park at the drive-in regional shopping centre on the Melwood land was out of bounds to shoppers on Saturday 22nd July 1972 (being the date after the completion of the hearing in Court before the Land Appeal Court)."

Each Case Stated concludes as follows :-

" QUESTIONS STATED AT THE REQUEST OF MELWOOD

(a) Was the Land Appeal Court in error or mistaken in law in the method which it adopted for assessing the value of the resumed land?

30 (b) Was the Land Appeal Court in error or mistaken in law in assessing the value of the resumed land and the effect of severance -

(i) By reference to the facts that -

(A) at the time when the contracts for the purchase of the Melwood land were signed in December 1964 Melwood knew about the proposed location of the expressway proposal?

40 (B) at all relevant times from 1962 at the latest Melwood was aware that the only land available to it for a drive-in regional shopping centre was then northern

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- land and that at no time did Melwood have any reasonable expectation of receiving a permit to use the southern area for purposes of a drive-in regional shopping centre?
- (C) the centre line of the expressway proposal through the resumed land and in its vicinity was finally fixed in 1962? 10
- (D) the pencil caveats referred to in paragraph 5 above were entered on the title deeds relating to parts of the Melwood land?
- (ii) by reference to the market value of the Melwood land unaffected by proposals for its use as a drive-in regional shopping centre? 20
- (iii) by excluding from consideration the sale of the northern land by Melwood to David Jones Limited and the payments by David Jones Limited to other companies within the Hooker group of companies of which Melwood was a member?
- (c) Is the Land Appeal Court bound by the rules of natural justice? 30
- (d) Was the Land Appeal Court in error or mistaken in law in taking into account -
- (i) what it observed on its unaccompanied inspections of -
- (A) the drive-in regional shopping centre on the Melwood land;
- (B) the Myer department store and car parking area at Coorparoo;
- (C) the drive-in regional shopping centre at Indooroopilly; 40
without communicating to the parties that it was proposing to inspect that it had inspected

or what it had seen on its inspections?

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(ii) its knowledge that part of the car park of the drive-in regional shopping centre on the Melwood land was out of bounds to shoppers on Saturday 22nd July 1972 (being a date after the completion of the hearings before the Land Appeal Court)?

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(e) Having regard to the evidence set out in paragraphs 17, 18, 20, 32 and 46 above should the Land Appeal Court have assessed compensation on the basis that but for the resumption -

(i) a town planning consent would or would probably have been granted by Brisbane City Council by its Registration Board for the whole of the Melwood land to be developed as a drive-in regional shopping centre?

20

(ii) the resumed land and the severance area would have been used for the purposes of a drive-in regional shopping centre?

(f) Was the Land Appeal Court in error or mistaken in law in deciding that the letter of 15th April 1965 from Brisbane City Council to Melwood's architect should not be read as giving permission to use the severance area as part of the shopping complex?

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(g) Was the Land Appeal Court in error or mistaken in law in holding that it had no jurisdiction to allow Melwood to amend its claim?

QUESTIONS STATED AT THE REQUEST OF
THE COMMISSIONER

(h) Was the Land Appeal Court wrong in law in concluding that all portions of the blocks purchased by Melwood from McMillan, McLaughlin and Steindl were of equal value

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per acre at December 1964 and at
September 1965?

- (i) Was the Land Appeal Court justified in law in finding that the southern severance had a value at the date of resumption of \$9,350.00 per acre?"

Section 47 of the Land Acts prescribes the function of the Full Court when a Case Stated is transmitted to it. It "..... shall hear and determine every question of law arising thereon, and may remit the matter to the Land Appeal Court with the opinion of the Full Court thereon, or make such other order in relation to the matter as seems proper, and may make such order as to costs as to the Full Court may seem fit."

10

The questions, all allegedly questions of law, stated at the request of Melwood and the Commissioner, may be classified as follows :-

Category 1

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Questions (a), (b) and (e) (stated at Melwood's request), and questions (h) and (i) (stated at the Commissioner's request) relate in different ways to the assessment or calculation of land value by the Land Appeal Court.

Category 2

Questions (c) and (d) relate to the inspection by the Land Appeal Court of the resumed land and other commercial enterprises after the close of evidence. Question (c), it was argued, also relates to a statement by the Land Appeal Court in its reasons for judgment that "the normal rise in value of Brisbane suburban property" is "said by some real estate men to be in the vicinity of 10% per annum".

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Question (f) raises a question as to the correct construction of a letter from Brisbane City Council.

Question (g) raises the question whether the Land Appeal Court was correct in holding that it

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in Spencer's Case (supra).

Additionally, it was argued that the Land Appeal Court erred in law in that it departed from the principle, enunciated in many cases, that "value is to be assessed as if the acquiring authority had no powers of compulsory acquisition", per Latham C.J. in Nelungaloo Pty. Ltd. -v- The Commonwealth (1948) 75 C.L.R. 495 at p. 538. It was submitted that the Land Appeal Court repeatedly took into account the likelihood of the compulsory acquisition of the land which was resumed as a circumstance limiting the possibility of the land being used for the purposes of a shopping centre, and therefore as limiting its value.

10

It was urged that these departures from principle had the consequence that the Land Appeal Court's determination of compensation was incorrect in amount.

For the Commissioner, it was submitted that the calculations of the Land Appeal Court included discernible errors susceptible of correction.

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The Full Court has power (and is required by the Land Acts) to determine every question of law arising from a Case Stated. But it is only identifiable questions of law which it may determine. It is therefore essential to determine whether the questions which I have grouped in Category 1 give rise to a question or questions of law.

30

When a "resumption case" governed by the Resumption Acts is dealt with by the Land Court or the Land Appeal Court, "the amount of compensation to be paid" is to be determined by the Court (section 23 (1)).

Section 19 states how compensation is to be estimated, as follows :-

" In estimating the compensation to be paid, regard shall in every case be had not only to the value of land taken but also to the damage, if any, caused -

40

- (a) By the severing of the land taken from other land of the claimant; or
- (b) By the exercise of any statutory powers by the constructing authority otherwise injuriously affecting such other land; and compensation shall be assessed according to the value of the land, estate or interest of the claimant on the date of the proclamation taking the land...."

10

(There follows a provision dealing with enhancement in value of adjoining or severed land which is not in point in this case).

The Land Appeal Court, in determining the amount of compensation, assigned a value of \$42,490 to the land taken; and assessed the amount of damage due to severance at \$40,850.00. In proceeding in this way, it acted in obedience to the Statute.

20

Melwood's objection was not to the components of compensation selected by the Land Appeal Court but to the methods which it was said to have used in forming its opinion as to the value and damage. The Commissioner did not object to the selection of components, but asserted that he had prejudiced by errors in reasoning about value. Does either objection raise or involve a question of law?

30

The Resumption Acts do not contain any statutory command as to the method which is to be followed in determining the value of land taken, or in measuring the quantum of damage to adjoining land. It follows in my opinion that - assuming (which I make clear I do not decide) that the Land Appeal Court was guilty of some error or errors in its method of assessing compensation - it was guilty of an error of law only if :-

40

(a) the common law prescribes methods of determining value, and of determining the quantum of damage when land is severed by resumption or injuriously affected by the exercise of statutory powers; or

(b) the words "value" and "damage" in section 19 ought to be understood to mean "value determined

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'applying the principles enunciated in
Spencer's Case and the Nelungaloo Case" and
"damage assessed applying those principles".

I have found no case which suggests that
"principles of valuation" form part of the
law and custom of England, in other words the
common law. The principles are commended to
valuers and to valuation courts because they
state accurately the matters which such
gentlemen and such courts are asked to consider
in respectively forming opinions as to value or
determining values as matters of fact. Because
distinguished courts have determined value in
the exercise of original jurisdiction, or have
reviewed the valuations of inferior Courts (with
power to correct errors of fact) the principles
have been repeatedly and authoritatively stated,
and it has become acceptable to describe them as
"valuation law". That expression stresses their
importance and the necessity that they be
observed; but they are not part of the common law.

10

20

Federal Commissioner of Taxation -v-
Westgarth (1949-50) 81 C.L.R. 396 was a case in
which the nature of an erroneous estimate of
value was discussed. The case did not necessitate
a comparison between a mistake of law and a
mistake of fact, but it is none the less of
assistance. McTiernan J., at first instance, and
the majority of the High Court on appeal, were of
opinion that an error in valuation was an error
of judgment. Fullagar J., dissenting in this
regard (but not as to what should be the outcome
of the appeal), thought that such an error was
a mistake of fact.

30

In support of the proposition that an error
in valuation is an error of judgment, Williams J.
pointed out that a statement as to value is
"information which is only a fact so far as a
matter of estimation and opinion can be a fact",
referring to Minister for State for the Navy -v-
Rae (1945) 70 C.L.R. 339, Hazeldell Ltd. -v- The
Commonwealth (1924) 34 C.L.R. 442 and Secretary
for State -v- Charlesworth, Pilling & Co. (1901)
A.C. 373.

40

Fullagar J. said (at p.416) :-

10 " Where the value of an asset is in
question we are told by Spencer -v- The
Commonwealth and other cases just what
the question is that has to be decided.
That question is a question of fact. There
is a value, and the value is a fact.
Neither the difficulty of its ascertainment
nor the controversial character of any
finding upon it can affect the position
that he who assesses a value finds a fact.
If he makes a mistake in assessing it, I
think that he makes a mistake of fact
within the ordinary meaning of that
expression....."

A process of reasoning about value may
necessitate the application of a principle of
law, either statute law or the common law.

20 A case in which a determination of value
involved the application of common law principles
was Jenkins -v- Betham 15 C.B. 168 (139 E.R.384).
In that case, it was held that a jury was
misdirected because it was not directed that a
valuer of ecclesiastical property who valued
dilapidations as between an incoming and out-
going incumbent must value in accordance with
the common law. (The common law in this regard
had been declared in Wise -v- Metcalfe 10 B. & C.
299 (109 E.R. 461)).

30 If the principles stated in Spencer's Case
and the Nelungaloo Case are part of the common
law, then a failure to apply them by the Land
Appeal Court is an error of law. But if they
do no more than define the question for decision,
as Fullagar J. said in Westgarth's Case, a bona
fide misunderstanding of the question by the
Land Appeal Court, if it misunderstood it (and
I do not suggest that it did), must be a mere
mistake of fact.

40 In my opinion, the statements of principle
upon which Melwood relied are authoritative and
important definitions of the question fo decision,
but they do not form part of the common law.

Therefore, unless a departue from the
principles stated in Spencer's Case and the

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Nelungaloo Case in some way involved disobedience to section 19 of the Resumption Acts, if it was the case that the Land Appeal Court took an erroneous step in a process of reasoning, it was an erroneous step in a process of reasoning about matters of fact. Such an erroneous step, if there was one, cannot be described as a mistake of law.

If it were correct to attribute to the words "value" and "damage" in section 19 some special legal or technical meaning, then the arguments developed on behalf of Melwood might merit closer examination. Neither word is defined by the Statute and, as I have said, the Statute gives no instructions as to how value is to be assessed or damage quantified. 10

The words "value" and "damage" are ordinary English words. They do not have, and the context does not require that they be given, some special technical meaning (related, for instance, to Court decisions on valuations), so that section 19 may be understood. The section is intelligible if "value" is understood to mean "the material or monetary worth" of land; and "damage" to mean "the sum awarded in compensation for loss or injury sustained". Those are meanings assigned to these words by the Shorter Oxford English Dictionary. 20

It was not suggested, and I do not think that it could have been suggested, that the Land Appeal Court misconstrued either word. In any event, if it had done so it would have erred in fact and not in law. 30

" The question what is the meaning of an ordinary English word or phrase as used in the Statute is one of fact not of law. This question is to be resolved by the relevant tribunal itself, by considering the word in its context with the assistance of dictionaries and other books, and as to the meaning of technical terms; and the meaning of a technical legal term is a question of law." 40

(The quotation is from the judge of Jordan C.J.)

in The Australian Gas Light Co. -v- The Valuer-General (1940) 40 S.R.N.S.W. 126 at p.137. I omit the numerous decisions referred to in support of the propositions enunciated).

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I, therefore conclude that all the questions in Category 1 asked by Melwood relate to or raise questions of fact, and do not involve any question of law, and that we are not empowered to answer any of them.

10 As to the Commissioner's questions, they I think are similarly defective. The question whether or not there has been an error in calculation, or in reasoning about value, is not a question of law. Assuming there to have been some error in calculation or reasoning (and I make it clear that I do not decide that there was one), this Court is powerless to correct it.

20 I would answer each question in Category 1 by saying :-

" The Case Stated does not contain or give rise to any question of law which an answer to this question would involve or determine. The Court accordingly declines to answer this question."

30 Before leaving the questions in Category 1, I should repeat that nothing which I have written is to be taken to imply a conclusion that the Land Appeal Court was guilty of any error in method or calculation. It has not been necessary to consider the criticisms levelled at the reasoning of the Court, nor the arguments answering those criticisms and I pass no judgment upon that reasoning. I also emphasize particularly that the fact that I have explained that the valuation principles mentioned in those reasons are not part of the common law, and are not given the force of law by any Statute with which we are concerned in dealing
40 with this matter, does not mean that they are not of the greatest importance. They are of the first importance and are to be remembered and applied by valuers and tribunals at all times, unless a particular Statute prescribes a

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mode of valuation in which they can find no place.

Category 2(A) Questions relating to the inspection by the Land Appeal Court after the close of the evidence, and to an observation by the Court as to the "normal" annual rise in value of Brisbane suburban property.

I have mentioned that, in the course of discussion after the close of evidence, His Honour the Chairman of the Land Appeal Court referred to a possibility that the members of the Court might "take themselves out and have a look" at the land. Counsel for Melwood responded by saying, "I would have thought, with respect, that the evidence in this case is so very detailed it is not the sort of case where it is necessary." His Honour the Chairman then said, "We do not feel the necessity for a view ourselves," and this part of the discussion concluded. 10 20

It does not appear to me that the discussion can fairly be regarded as resulting in Melwood's consenting to the Court's viewing the land unaccompanied by its legal representatives; or, if the Court viewed the land unaccompanied, to its making its determination without hearing submissions upon what it saw in the course of its inspection.

The Court's reasons for judgment include discussion of what it saw during its inspection. The reasons indicate that the Court used what it saw on the inspection inconsidering questions relating to parking motor vehicles, and to the desirability of elevated parking areas reached by means of ramps and bridges. The subject land was inspected twice, and other lands used for shopping centre purposes were also inspected. The reasons speak of an "overwhelming impression" gained by the Court from its inspections concerning the sufficiency of parking areas of Melwood's land. 30 40

As I said earlier, the reasons include an observation that "the normal rise in value of Brisbane suburban property" was "said by some real estate men to be in the vicinity of 10% per

annum". We were informed by counsel for Melwood that no evidence of any such rate of increase was given in the presence of the parties and counsel for the Commissioner did not dispute this assertion. However, the Case Stated does not set forth that this was the situation. We are in my opinion limited, in our consideration of the questions, to the facts which emerge from the Case Stated, and therefore I do not deal with arguments developed in this regard. General statements of principle which follow may, however, be of assistance to the parties and to the tribunal in any further consideration of the question of compensation which may take place.

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Section 44 of the Land Acts deals with the hearing of appeals by the Land Appeal Court. Sub-section 11 provides for service of a notice of appeal upon all persons directly affected by the decision. Subsection 12 provides that parties to appeals may have legal representation or be represented by an agent. Subsections 13-15 read as follows :-

" (13) The appeal shall be by way of rehearing, and shall be brought and the proceedings shall be had in such manner as may be prescribed by rules of court.

The Land Appeal Court may hear and determine any question which arises in the course of the appeal, including any question so arising which was not brought before or considered or decided by the Commissioner or the Court, or was not contained in any prescribed notice, but in such case any party to the proceedings shall be entitled to an adjournment upon such terms and conditions as the Land Appeal Court thinks just.

(14) Evidence on an appeal to the Land Appeal Court may be taken in the same manner as is prescribed with respect to matters heard and determined by the Land Court, and for the purposes of the appeal the Land Appeal Court shall have the

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same powers as the Land Court has under
this Act.

(15) Land Appeal Court to be guided by
equity and good conscience. Notwithstanding
anything in this Act or in any other Act,
or any rule, process or practice of law -

- (a) the Land Appeal Court in the
exercise of any jurisdiction, duty,
power or function conferred or
imposed upon it shall be governed in 10
its procedure and in its decisions
by equity, good conscience, and
the substantial merits of the case,
without regard to technicalities or
legal forms or the practice of the
other courts;
- (b) the Land Appeal Court in the exercise
of any such jurisdiction, duty, power
or function shall not be bound by 20
any rule or practice as to evidence,
but may inform its mind on any matter
in such manner as the Court deems
just;
- (c) the Land Appeal Court may accept,
admit and call for such evidence as
inequity and good conscience it
thinks fit, whether strictly legal
evidence or not."

The powers of the Land Appeal Court with
respect to evidence include the powers of the Land 30
Court. It may therefore summon witnesses and, if
it thinks fit, take evidence of its own motion.
Section 44, subsections (1) and (2). Rule 16 of
the Land Appeal Court rules shows that, in general,
there will be some degree of formality in
proceedings before the Land Appeal Court; in
general, they will take a course such as is
ordinarily followed in adversary litigation in
which evidence is called.

So ample are the powers conferred on the Land 40
Appeal Court in order to enable it to "inform its
mind" that it seems clear to me that it may use
what it sees on a view as evidence (so long as it

respects the necessity of relevance) and it may make use of hearsay.

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In R. -v- War Pensions Entitlement Appeal Tribunal and Anor, ex parte Bott (1933) 50 C.L.R. 228, the High Court considered an exercise by a tribunal of its power to inform itself, the tribunal not being bound by rules of evidence but being obliged to act "according to substantial justice and the merits of the case".

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10 The Tribunal in question requested two medical specialists to examine the appellant and to report the result to it. The report (which was adverse to the appellant) was received and read, or shown, and a copy was apparently given, to the appellant's representative, and he was asked if he had any comment to make; but cross-examination of the specialists was not permitted.

20 All the members of the High Court, as I read the judgments, thought that the report was admissible, notwithstanding its "hearsay" and "untested-by-cross-examination" qualities. Evatt J., the dissenting Judge, thought that the proceedings miscarried because the hearing was not "according to substantial justice".

The majority of the High Court held that the use of the report was proper.

William J. said (at pp. 249-50) :-

30 "But sec. 45w(2) enacts that, subject to the Act, an Appeal Tribunal shall not, in the hearing of appeals, be bound by any rules of evidence, but shall act according to substantial justice and the merits of the case (cf. Moses v. Parker; Ex parte Moses (1896) A.C. 245). No doubt, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and
40 they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of

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responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same. In the case of a Court of law tradition....has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal' (Local Government Board v. Arlidge (1915) A.C. at p.132.) Rules laid down by the Act must be observed because they are imposed by the Act and for no other reason (1915) A.C. at p.150). Apart from the character of the duty imposed upon the Appeal Tribunal, the provisions of sec.45w(2) make it clear that that tribunal was under no obligation to follow wholly or in any special respects the procedure of a Court of law: it was largely master of its own procedure; its duty was lawfully performed if it observed the express provisions of the Act and did not violate any substantial requirement of justice. The applicant was in fact given an adequate opportunity of presenting his case, and there was no failure of justice in that respect. Evidence was received both for and against him that was not on oath; but the Act imposed no obligation upon the Appeal Tribunal to take evidence upon oath, though it was empowered to do so if that course were considered desirable. Again, obtaining the opinion of independent medical experts is not in any way opposed to substantial justice. The Appeal Tribunal can obtain information in any way it thinks best, always giving a fair opportunity to any party interested to meet that information; it is not obliged to obtain such independent medical opinion, for instance, upon oath, and whether cross-examination shall take place upon that opinion is entirely a question for the discretion of the Tribunal; it is not bound by any rules of evidence, and is authorized to act according to substantial justice and the merits of the case."

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The conclusion that the Tribunal did not violate any substantial requirement of justice resulted, in my opinion, from the circumstance that the contents of the specialists' report were imparted to the appellant's representative, he was specifically asked to comment upon the report, and he thereafter addressed the Tribunal in support of his application.

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10 No such course was followed in this case. If the proceedings in the Land Appeal Court were to be conducted in conformity with notions of "substantial justice" or "natural justice", it was :-

(a) necessary that Melwood be made aware of the matters noted by that Court on its inspections and otherwise learnt of by it, and that it be given an opportunity of commenting on those matters;

20 (b) open to the Court, as a matter of discretion, to allow Melwood to place evidence before it concerning the matters which it had noted and otherwise learnt of.

I have no doubt that the Land Appeal Court must be governed in its procedure and its decisions by notions of natural justice.

30 Section 44(15)(a) provides that it is to be governed in its procedure and its decision by "equity, good conscience and the substantial merits of the case". The word "equity" in this context must mean "substantial justice" or "fairness", and, when compensation for expropriated property is in question, substantial justice and fairness demand that a dispossessed landowner be heard in relation to evidence upon which the Court proposes to act which may affect him detrimentally.

40 It is true that the Courts have in recent years adopted a self-restrained role in relation to administrative tribunals; "the administration ought not to be embarrassed by well-meaning judicial intruders" ("Judicial Review of Administrative Action", by S.A. de Smith, 2nd Edition,

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p.146). But the Land Appeal Court performs much more than an administrative function when it determines compensation; it acts as an arbitrator adjudicating upon private rights, as arbitrators did in England under the Land Clauses Acts, and must obey such basic rules as what might be described broadly as the "fair hearing" rule.

In Cripp's "Law of Compensation", 2nd Edition, the author described the function of arbitrators in compensation matters (at p.160) as follows :- 10

" The arbitrators or umpire have power to regulate the course of procedure in matters before them; but, like other judges, they are bound to observe the ordinary rules which are laid down for the administration of justice, and if they fail to observe these rules, to the prejudice of either party, the High Court will set aside the award." 20

Similarly, the Land Appeal Court must obey ordinary rules such as the "fair hearing" rule, even though it is permissible for it to proceed with a minimum of formality and to make use of hearsay, giving the hearsay such weight as it deserves. If it is shown not to have done so, the Full Court may either remit the matter to the Land Appeal Court with its opinion, or make such other order in relation to the matter as seems proper. 30

Question (c), which asks "Is the Land Appeal Court bound by the rules of natural justice?" should therefore be answered "yes".

Question (d) asks whether the Land Appeal Court was "in error or mistaken in law" in taking into account what it saw on its inspections "without communication to the parties that it was proposing to inspect, that it had inspected or what it had seen on its inspection". 40

This question must likewise be answered "yes", for "a decision arrived at in breach of the rules of natural justice is a nullity and the tribunal making it acts in excess of its

jurisdiction;" per Wanstall S.P.J. in R. -v- Licensing Commission, ex parte McAnalley (1972) Qd. R. 522, at p.535. "The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case", per Lord Reid in Ridge -v- Baldwin (1964) A.C. 40, at p.80.

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10 The power of the Full Court "to make such order in relation to the matter as it thinks proper" may in my opinion be exercised remedially in this case by ordering that the purported determination of compensation by the Land Appeal Court be set aside and by ordering that it enter any necessary adjournments and proceed to hear and determine Melwood's claim according to law, having regard to the opinions which this Court has expressed.

20 It was argued that the outcome of the proceedings could not have been affected by the consideration given by the Land Appeal Court to the matters to which it had regard. That is a debateable matter. In any event, it is not, in my opinion a question with which the Court may concern itself in these proceedings.

30 Royal Commission on the Sugar Supply -v- Trading Society Kwik-hoo-tong (1922) 38 T.L.R. 684 was a case in which arbitrators received evidence (which may have been immaterial) in the absence of the parties. The divisional Court set aside their award, and, being of the opinion that the misconduct of the arbitrators was due to inadvertence, remitted the matter to the same arbitrators for due consideration. I respectfully adopt and apply to the present case what was said by Greer J. in the course of his reasons. He said :-

40 ".....I think it is quite immaterial whether the evidence wrongly admitted helped the arbitrators to a right conclusion or a wrong conclusion. The Court has no right to inquire to what extent their minds were affected by the evidence.

The objection to an award made is based

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on the principle that an award made by arbitrators who have conducted the arbitration contrary to the well-established principles of justice cannot be allowed to stand, and it is not ad rem to say that the arbitrators either ought to or would have given the same award if they had not heard the evidence."

(B) Question (f) - Was the Land Appeal Court in error or mistaken in law in deciding that the letter of 15th April 1965 from Brisbane City Council to Melwood's architect should not be read as giving permission to use the severance area as part of the shopping complex? 10

In order to understand this question, it is necessary to explain that Melwood had acquired five parcels of land, from people named McMillan, Steindl, McLaughlin, Hewton and Wegner. I shall identify the parcels by reference to the vendors' names. The resumption (for expressway purposes) affected the Steindl, McMillan and McLaughlin parcels which were contiguous; it cut each into two parts. The total area to the south of the resumed land is what is referred to in the above question as "the severance area", and is described elsewhere in the Case Stated as "the southern severance", which is how I shall describe it. There was a considerable area of each of these three parcels to the north of the resumed land; those areas, together with the Wegner and the Hewton parcels, may be conveniently referred to as "the northern severance". 20 30

In January, 1965, Melwood's architects forwarded five separate pro forma documents to Brisbane City Council, each describing itself as a "site application (non residential purposes)".

Four of the applications (those relating to the McMillan, Steindl, Hewton and Wegner parcels), were applications for "permission to erect a building on the land hereinafter described for the purpose of: Drive-in Shopping Centre". "The land hereinafter described" was, in each case, the whole parcel (described by its 40

Real Property Office description); plans which accompanied the applications, however, recognized the resumption by showing the resumed land and describing it as "New Gold Coast Highway". The plans also showed the locations of the proposed buildings (on the northern severance, in each case).

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10 The fifth application (relating to the McLaughlin parcel) was an application for "permission to use the land hereinafter described for the purpose of: Car Park for Drive-in Shopping Centre". The land was described as "part of sub.2 of resub.2 of sub.2 of Por.291 Parish of Yeerongpilly", i.e., part of the McLaughlin parcel as described by the Real Property Office. An attached plan showed the resumed land. Neither the application nor the plan made it clear what part of the land it was desired to use for car park purposes.

20 A covering letter from Melwood's architects included the following :-

"Summary of Site Applications for Drive-in Shopping Centre Pacific Highway and Kessels Road, Upper Mount Gravatt.

Five (5) site applications for various properties are enclosed, together with an overall plan showing the consolidation of these properties, with the proposed buildings positioned on the site

30 (e) Number of vehicles to be used in the business: provision on the site is being made for car parking for 2500 vehicles." (My underlining).

40 The "overall plan" showed only the northern severance. The references to "the site" which I have underlined and reference to the overall plan would I think lead a reasonable mind to conclude that the application to use part of the McLaughlin parcel for the purpose of a car park was an application to use that part of the parcel which lay within the northern severance for the designated purpose.

In February, 1965, Melwood received a letter

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dated 23rd February, 1965, from Brisbane
City Council which included the following :-

" I refer to your application of the
5th ultimo to establish a drive-in
shopping centre at Kessells Road Mt.
Gravatt, and to advise that the Greater
Brisbane Town Planning Committee has
decided to recommend the scheme in
principle to the Registration Board."

The letter from Brisbane City Council dated 10
15th April, 1965 which is referred to in
Question (f), included the following :-

" I take pleasure in advising that, as
an outcome of your application on behalf
of Hooker Projects Pty. Limited, the
Council Registration Board has granted
the necessary permission, in principle,
to use land with frontages to Logan Road,
Kessells Road and Wadley Street, Upper
Mount Gravatt, and described as Subdivision 20
2 of Resubdivision 1 of subdivision 1 of
Portion 291 and Resubdivision 1 of
Subdivision 2 of Portion 291 and Resub-
division 2 of Subdivision 1 of Portion 291
and part of Resubdivision 2 of Subdivision
2 of Portion 291 and Subdivision 1 of
Resubdivision 1 of Subdivision 1 of
Portion 291, Parish of Yeerongpilly, and
to erect buildings on such land for the 30
purpose of a Drive-in Shopping Centre,
subject to the following conditions :-

(a) The submission of a plan of layout
satisfactory to the Council Registration
Board, this plan to clearly show the
facilities to be provided within the
curtilage of the site for the loading
and unloading of service vehicles and
for the parking of not less than 2,500
vehicles within the curtilage of the
site. 40

.....
(h) Parking to be provided for 2,500
vehicles and the areas on which vehicles
are to be driven or parked to be
surfaced or sealed to the satisfaction

of the Chief Engineer and Manager,
Department of Works, before the
proposed use is commenced.

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.....

You are also advised that this approval
gives permission to use and erect buildings
on only that part of the land north of the
proposed arterial road, as determined by
the Main Roads Department."

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10 (The reference in the first paragraph of
the letter to Hooker Projects Pty. Limited is
I think a reference either to Melwood's then
name or to an agent of Melwood. The Real Property
Office descriptions are of course the descriptions
of the parcels of land discussed above).

20 It was argued that the first paragraph of
the letter from Brisbane City Council, being in
general terms, upon its proper construction gave
Melwood permission to use the whole of each
parcel (including the southern severance) for
shopping centre purposes. I cannot accept this
argument. If the letter is construed in
relation to its subject matter (namely, four
applications to erect buildings on the northern
severance and the application to use that part
of the McLaughlin parcel which lay within the
northern severance for parking purposes) it is
immediately seen that the suggested construction
is untenable.

30 In any case, I seriously doubt whether the
question raised by Question (f) is a pure
question of law.

Dealing with the letter under consideration,
the Land Appeal Court said this :-

40 "This letter gave approval in principle to
Hooker Projects Pty. Limited to develop a
drive-in shopping centre at Upper Mount
Gravatt. We are of opinion that the first
paragraph of that letter gave permission to
use only that part of the land described in
the letter which was north of the proposed
arterial road and to erect buildings on that
part only. We do not agree with the appellant's

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submissions that the letter should be read as giving permission to use the severed areas as part of the shopping complex. To put this interpretation on the letter would be quite contrary to the history of the negotiations between the appellant's agents and the council and would amount to a complete about-face, support for which cannot be found anywhere in the evidence".

10

It must be remembered that

"When the legal effect of any transaction is to be ascertained from a number of documents which do not involve the consideration of any technical expressions, the construction, meaning and effect of the documents are matters entirely for the judge to decide; but where it is also necessary to take into consideration the conduct, course of business or oral communications of the parties, it is for the jury to weigh the oral evidence and to decide what was the real intention and meaning of the parties."

20

Halsbury's Laws of England, 3rd Edition, Volume 15, p.276; see also Volume 11 p.383.

A question for determination by the Land Appeal Court was the meaning of the expressions "land...described as...." and "...such land..." in the following part of the Brisbane City Council letter, "...the necessary permission in principle, to use land....described as and to erect buildings on such land for the purpose of a Drive-in Shopping Centre....". Whilst those expressions appear on their face to be free from equivocation, it may well be that a latent ambiguity lurks within them, in that, when an endeavour is made to apply the expressions to the subject matter of the letter, they may be thought to apply either to the whole of the parcels, or to the northern severance only. If this be so, the question, which meaning was intended, was a question of fact for the Land Appeal Court (which was entitled to have regard to all the negotiations of which it spoke in its reasons, in deciding the question); and the

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question is no concern of ours.

I shall assume in Melwood's favour, however, that Question (f) raises a question of law. Making that assumption, I would answer the question, "No."

(C) Question (g) - Was the Land Appeal Court in error or mistaken in law in holding that it had no jurisdiction to allow Melwood to amend its claim?

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No.9
Reasons for
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(continued)

10 The Resumption Acts governed these proceedings, because the subject land was resumed in 1965. In 1967, the Acquisition of Land Act of 1967 was enacted; that Act expressly prohibited amendment of claims for compensation, except by leave of the Land Court (section 24(3)). There was no such provision in the Resumption Acts.

20 The Resumption Acts are imperative when they lay down how compensation is to be estimated - Section 19 (quoted in full earlier in these reasons) states what the Court "shall" do. Regard "shall" be had to the value of the land taken and to damage caused in specified ways; and compensation "shall" be assessed according to the value of the claimant's interest in the land on the date of the relevant proclamation.

30 The Statute must be obeyed. If obedience to it results in an estimate of compensation greater than the amount of compensation which the dispossessed landowner has asked for, that does not matter. He is to be fully compensated, notwithstanding his timidity or error. In other words, there is to be just compensation notwithstanding that some claimants may be prepared to settle for less.

It follows that it is unnecessary to answer Question (g).

Answers and Order

40 In my opinion, the questions set out at length earlier in these reasons should be answered (or left unanswered) as follows :-

Questions (a), (b), (e), (h) and (i) - each

In the
Supreme
Court of
Queensland

No.9
Reasons for
Judgment -
Dunn J.
(continued)

question should be answered, "The Case Stated does not contain or give rise to any question of law which an answer to this question would involve or determine. The Court accordingly declines to answer this question."

Questions (c) and (d) - each question should be answered, "yes".

Question (f) - this question should be answered, "no".

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Question (g) - not necessary to answer.

The orders which I propose are as follows:-

(i) Set aside the purported determination of compensation by the Land Appeal Court;

(ii) Order the Land Appeal Court to enter any necessary adjournments and to hear and determine Melwood's claim according to law.

The parties requested us to hear further submissions as to the form of order which should be made, if any answers necessitated remitting the case to the Land Appeal Court. I suggest that further submissions be received before an order is made. At the same time, submissions with respect to the costs of the Case Stated will be heard.

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No. 10
ORDER OF FULL COURT
dated 23rd June 1976

In the
Supreme
Court of
Queensland

IN THE SUPREME COURT OF QUEENSLAND

Appeal No.32 of 1975

No. 10
Order of
Full Court
dated 23rd
June 1976

BETWEEN:

MELWOOD UNITS PTY. LIMITED Appellant

- and -

10 THE COMMISSIONER OF MAIN
ROADS Respondent

FULL COURT:

BEFORE THEIR HONOURS:

Mr. Justice Wanstall S.P.J.

Mr. Justice Matthews

Mr. Justice Dunn

THE TWENTY-THIRD DAY OF JUNE, 1976

The Land Appeal Court having stated the following questions arising in this matter for the opinion of this Honourable Court namely -

- 20 (a) Was the Land Appeal Court in error or mistaken in law in the method which it adopted for assessing the value of the resumed land?
- (b) Was the Land Appeal Court in error or mistaken in law in assessing the value of the resumed land and the effect of severance -
- (i) By reference to the facts that -
- (A) at the time when the contracts for the purchase of the Melwood land were signed in December 1964 Melwood knew

In the
Supreme
Court of
Queensland
No.10
Order of
Full Court
dated 23rd
June 1976
(continued)

about the proposed location of
the expressway proposal?

- (B) at all relevant times from 1962 at
the latest Melwood was aware that
the only land available to it for
a drive-in regional shopping centre
was the northern land and that at
no time did Melwood have any reason-
able expectation of receiving a
permit to use the southern area for 10
purposes of a drive-in regional
shopping centre?
- (C) the centre line of the expressway
proposal through the resumed land and
in its vicinity was finally fixed in
1962?
- (D) the pencil caveats referred to in
paragraph 5 of the case stated were
entered on the title deeds relating 20
to parts of the Melwood land?
- (ii) by reference to the market value of the
Melwood land unaffected by proposals for
its use as a drive-in regional shopping
centre?
- (iii) by excluding from consideration the sale
of the northern land by Melwood to
David Jones Limited and the payments by
David Jones Limited to other companies
within the Hooker group of companies of 30
which Melwood was a member?
- (c) Is the Land Appeal Court bound by the rules
of natural justice?
- (d) Was the Land Appeal Court in error or mistaken
in law in taking into account -
- (i) what it observed on its unaccompanied
inspections of -
- (A) the drive-in regional shopping centre
on the Melwood land;
- (B) the Myer department store and car
parking area at Coorparoo; 40

(C) the drive-in regional shopping centre at Indooroopilly; without communication to the parties that it was proposing to inspect that it had inspected or what it had seen on its inspections?

In the
Supreme
Court of
Queensland
No.10
Order of
Full Court
dated 23rd
June 1976
(continued)

10 (ii) its knowledge that part of the car park of the drive-in regional shopping centre on the Melwood land was out of bounds to shoppers on Saturday 22nd July 1972 (being a date after the completion of the hearings before the Land Appeal Court)?

(e) Having regard to the evidence set out in paragraphs 17, 18, 20, 32 and 46 of the case stated should the Land Appeal Court have assessed compensation on the basis that but for the resumption -

20 (i) a town planning consent would or would probably have been granted by Brisbane City Council by its Registration Board for the whole of the Melwood land to be developed as a drive-in regional shopping centre?

(ii) the resumed land and the severance area would have been used for the purpose of a drive-in regional shopping centre?

30 (f) Was the Land Appeal Court in error or mistaken in law in deciding that the letter of 15th April 1965 from Brisbane City Council to Melwood's architect should not be read as giving permission to use the severance area as part of the shopping complex?

(g) Was the Land Appeal Court in error or mistaken in law in holding that it had no jurisdiction to allow Melwood to amend its claim?

40 and the matter having on the seventeenth, eighteenth and nineteenth days of November 1975 come on for hearing AND UPON HEARING Mr. Gifford Q.C. with him Mr. Ambrose of Counsel for the above-named appellant, and Mr. Macrossan Q.C. with him Mr. Lee of Counsel for the Respondent this Court is of the opinion

In the
Supreme
Court of
Queensland

No.10
Order of
Full Court
dated 23rd
June 1976
(continued)

that the questions of law submitted in the
case stated be answered as follows :-

Questions (a), (b), (e) :

"the case stated does not contain or give
rise to any questions of law which an answer
to this question would involve or determine.
The Court accordingly declines to answer this
question."

Question (c): "Yes."

Question (d): "Yes."

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Question (f): "No."

Question (g): "not necessary to answer."

IT IS ORDERED that the purported determination
of compensation by the Land Appeal Court be
set aside

AND IT IS FURTHER ORDERED that the Land Appeal
Court enter any necessary adjournments and hear
and determine MELWOOD UNITS PTY. LIMITED's claim
according to law

AND IT IS FURTHER ORDERED that either party have 20
liberty to apply

AND IT IS FURTHER ORDERED that MELWOOD UNITS PTY.
LIMITED be awarded half of the costs of this
appeal.

By the Court

J. Munro
Registrar

No. 11

ORDER GRANTING FINAL LEAVE
TO APPEAL TO HER MAJESTY IN
COUNCIL dated 30th July 1976

In the
Supreme
Court of
Queensland

No.11
Order granting
final leave to
appeal to Her
Majesty in
Council
dated 30th
July 1976

IN THE SUPREME COURT OF QUEENSLAND

Appeal No. 32 of 1975

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IN THE MATTER of the Rules Regulating
Appeals from Queensland to Her
Majesty in Council (Imperial Order in
Council of 18th October, 1909)

- and -

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IN THE MATTER of an Application for Leave
to Appeal to Her Majesty in Council
MELWOOD UNITS PTY. LIMITED from the
Judgment of the Full Court of the
Supreme Court of Queensland in
Appeal No.32 of 1975 between MELWOOD
UNITS PTY. LIMITED, Appellant and
THE COMMISSIONER OF MAIN ROADS,
Respondent

FULL COURT:

BEFORE THEIR HONOURS

MR. JUSTICE LUCAS

MR. JUSTICE DOUGLAS

MR. JUSTICE KNEIPP

THE THIRTIETH DAY OF JULY, 1976

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UPON MOTION this day made unto the Court
by Mr. Ambrose of Counsel for Melwood Units Pty.
Limited (hereinafter referred to as "the
Applicant")

AND UPON HEARING Mr. Lee of Counsel for
The Commissioner of Main Roads (hereinafter
referred to as "the Respondent")

AND UPON READING the Affidavit of Graham

In the
Supreme
Court of
Queensland

No.11
Order granting
final leave to
appeal to Her
Majesty in
Council
dated 30th
July 1976
(continued)

Donald Macdonald filed herein by leave on
the thirtieth day of July 1976 and the Order
of the Full Court of Queensland dated the
thirtieth day of July 1976 giving conditional
leave to appeal from the Judgment and Order
of the Full Court of Queensland in Appeal No.
32 of 1975

THIS COURT DOTH ORDER that the Applicant
have final leave to appeal to Her Majesty in
Council from the said Judgment and Order of the
Full Court of Queensland in the said Appeal
No. 32 of 1975 in this Honourable Court on
the twenty-third day of June 1976 whereby - 10

The Court declined to answer the following
questions -

- (a) Was the Land Appeal Court in error or
mistaken in law in the method which it
adopted for assessing the value of the
resumed land?
- (b) Was the Land Appeal Court in error or mistaken 20
in law in assessing the value of the resumed
land and the effect of severance -
 - (i) by reference to the facts that -
 - (A) at the time when the contracts for
the purchase of the Melwood land
were signed in December, 1964
Melwood knew about the proposed
location of the expressway proposal?
 - (B) at all relevant times from 1962 at
the latest Melwood was aware that 30
the only land available to it for
the drive-in regional shopping
centre was the northern land and
that at no time did Melwood have
any reasonable expectation of
receiving a permit to use the
southern area for purposes of a
drive-in regional shopping centre?
 - (C) the centre line of the expressway
proposal through the resumed land 40
and in its vicinity was finally
fixed in 1962?

(D) the pencil caveats referred to in paragraph 5 of the case stated were entered on the title deeds relating to parts of the Melwood land?

In the
Supreme
Court of
Queensland

No.11

Order granting
final leave to
appeal to Her
Majesty in
Council

dated 30th
July 1976

(continued)

(ii) by reference to the market value of the Melwood land unaffected by proposals for its use as a drive-in regional shopping centre?

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(iii) by excluding from consideration the sale of the northern land by Melwood to David Jones Limited and the payments by David Jones Limited to other companies within the Hooker group of companies of which Melwood was a member?

(c) Having regard to the evidence set out in paragraphs 17, 18, 20, 32 and 46 of the case stated should the Land Appeal Court have assessed compensation on the basis that but for the resumption -

20

(i) a town planning consent would or would probably have been granted by Brisbane City Council by its Registration Board for the whole of the Melwood land to be developed as a drive-in regional shopping centre?

(ii) the resumed land and the severance area would have been used for the purpose of a drive-in regional shopping centre?

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On the ground that the case stated did not contain or give rise to any questions of law which an answer to these questions would involve or determine

AND whereby it was further ordered that the Applicant be awarded half of the costs of the appeal

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AND whereby it was ordered that the purported determination of compensation by the Land Appeal Court be set aside and that the Land Appeal Court enter any necessary adjournments and hear and determine the Applicant's claim according to law

In the
Supreme
Court of
Queensland

No.11
Order granting
final leave to
appeal to Her
Majesty in
Council
dated 30th
July 1976
(continued)

AND THIS COURT DOTH FURTHER ORDER
AND ADJUDGE that the costs of and incidental
to this motion abide the event unless Her
Majesty in Council should otherwise order

AND THIS COURT DOTH FURTHER ORDER
AND ADJUDGE that the costs of and incidental
to this motion be paid by the Applicant in
the event of the said appeal not being
proceeded with or being dismissed for want
of prosecution.

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BY THE COURT

J. Munro
REGISTRAR

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

RECORD OF PROCEEDINGS

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London, WC2A 1PA

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Solicitors for the
Appellant

Solicitors for the
Respondent