

**IN THE WARDEN'S COURT OF QUEENSLAND
HELD AT BRISBANE**

IN THE MATTER OF: **DETERMINATION OF COMPENSATION IN
RESPECT OF RENEWAL OF MINING LEASE
NUMBER 95104 PURSUANT TO SECTION 281 OF
THE MINERAL RESOURCES ACT 1989.**

BEFORE: **A.J. CHILCOTT, ACTING MINING WARDEN**

APPLICANT: **IVAN UZAREVIC**

RESPONDENT: **PETER NAYLOR**

CATCHWORDS: **MINING – MINING COMPENSATION – BRIGHTON
HOLDING**

Mineral Resources Act 1989 s. 281

DETERMINATION:

The applicant miner seeks a determination of compensation in respect of the renewal of mining lease number 95104 in the Winton Mining District.

The matter was listed for hearing in the Warden's Court at Winton on 6 December 1999.

Both the applicant miner and the landowner failed to appear and give evidence. Both parties were notified in writing by the Registrar on 3 November 1999.

This determination will therefore be made on the basis of relevant details obtained from the Registrar's office file. The original applicant Momcilo NEGOVONOVIC applied for a mining lease on 3 November 1993. There was an assignment of the lease to Ivan UJZAREVIC on 28 February 1997.

The lease was recommended for grant by the Warden's Court on 18 January 1994. The term recommended was five (5) years.

This lease area is situated on Lot 3698 on Plan PH 47, in the Parish of WARRENNE, County of BRIGHTON. The lease is four (4) hectares in area.

The method of mining involves the extraction of opal from shallow open pits.

Although there is no direct evidence from the parties, it appears that the land is only capable of low intensity grazing.

Under the provisions of the Mineral Resources Act, the Wardens Court has the jurisdiction to determine compensation in the absence of an agreement.

The matters which must be considered by the Court in determining compensation are set out in s.281 of the *Mineral Resources Act 1989 (the Act)*.

Although section 281 of the *MRA* sets out the matters to be considered, it does not define any method of assessment. In *Shaw v. Heritage Holdings Pty Ltd* (1992-93) 14 QLCR 139, the Court at p.14 said:

“The method of assessment remains a matter which will be governed by the facts and circumstances of each case in which event emphasis may shift from one method to another...”

See also *Smith v. Cameron* (1986-87) 11 QLCR 64 and *Oakhill v Mitchell* – Land Court Appeal (unreported 10 March 1998).

The term of the lease is five (5) years. The loss of land through a lease of this duration has been accepted by the Land Court as similar to permanent acquisition for a limited time (*Smith v. Cameron supra*).

In this instance I am hampered by the lack of any evidence including valuation or expert evidence. Given the nature of the land and the size of the lease, this is not unusual as the cost of a valuation would far outweigh the quantum of any determination.

In making this determination, I take into account that the only viable use of the land is low intensity grazing and that the area of the lease is four (4) hectares.

Whilst no quantum has been advanced in respect of the various heads of claim, I consider that the following award will satisfy the requirements of s. 281 including the compulsory taking of the land for the term of the lease for the limited purposes authorised by the issue of the lease.

I determine after taking into account an additional amount of the aggregate amount determined under all heads of compensation to reflect the compulsory nature of the action taken under part 7 of the Mineral Resources Act 1989, the amount of compensation to satisfy all heads of compensation set forth in paragraphs (i) to (vi) inclusive of section 281 of the Mineral Resources Act 1989 shall be the sum of \$40.00 per annum for 5 years (Total \$200.00).

In relation to the terms, conditions and times when payments shall be made I take into account the quantum of the order, the size and the term of the lease.

In the circumstances, I order that the applicant miner shall pay compensation by way of a payment of \$40.00 within a period of one (1) month of the grant of the renewal of the

mining lease and yearly thereafter unless the lease is surrendered cancelled or forfeited prior to the expiry of the term.

I draw the attention of the parties to section 281 subsection 6 of the *MRA* which provides:

“ (6) An amount of compensation decided by agreement between the parties, or by the Wardens Court or the Land Court on appeal, is binding on the parties and the parties’ personal representatives, successors and assigns.”

Dated at Brisbane this 13 day of December 1999.

A J CHILCOTT
ACTING MINING WARDEN