

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

IN THE MATTER OF: **DETERMINATION OF COMPENSATION IN
RESPECT OF MINING LEASE APPLICATION
NUMBER 95271 PURSUANT TO SECTION 281 OF
THE MINERAL RESOURCES ACT 1989.**

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

APPLICANT: **HOLGER PAUL LEINUNG and EDELTRAUT
LEINUNG**

RESPONDENT: **PETER NAYLOR**

CATCHWORDS: **MINING – COMPENSATION – SMALL LEASE –
DISTURBANCE**

Mineral Resources Act 1989 s. 281

DETERMINATION:

The landowner and the miners having failed to reach an agreement in respect of compensation this matter was listed for hearing at Winton on 6 December 1999.

The applicant miner Holger Paul LEINUNG was the only party to appear and give evidence. Both parties were notified in writing (of the hearing) by the Registrar on 3 November 1999.

This determination will be made on the basis of the evidence adduced from the applicant miner and the relevant details obtained from the Registrar's office file.

The applicants applied for a mining lease on 27 April 1999. The lease is required for the purpose of mining for OPAL. The lease was recommended for grant by the Warden's Court on 29 July 1999. The term recommended was ten (10) years. The lease area is 4 hectares and is situated on Lot 3698, PH 47 County of Brighton, Parish of Warrenne.

Under the provisions of the *Mineral Resources Act 1989* (as amended), 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 miner gave evidence regarding each head of claim under s.281 (3) of the Act. He stated to the effect that he had offered the landowner \$20.00 for the lease area on an annual basis however he had received no response from him.

It would appear from the information available that the land is only capable of low intensity grazing.

The miner also gave evidence that he had no idea of the amount of stock on the land and it would appear from his evidence that there will be no loss to stock livelihood. He went on to say that the only heavy machinery used would be an excavator and that this would not scare the cattle away. Access is to be gained through Lot 3698 on PH 47, County of Brighton Parish of Warrenne as well as through Lot 4129 on PH 830 County of Woodstock Parish of Middleton. The applicant stated that the method of access will not affect the landowner. The applicant intends to use the usual route which is a dirt track.

The term of the lease is 10 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 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.

Having regard to all the circumstances 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 ten (10) years (Total \$400.00).

In relation to the terms, conditions and times when payments should be made I take into account the quantum of the order, the size and the term of the lease as well as the evidence of the applicant miner.

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