

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

IN THE MATTER OF: **DETERMINATION OF COMPENSATION PURSUANT TO
SECTION 281 OF THE MINERAL RESOURCES ACT 1989
IN RESPECT OF MINING LEASE NUMBER 4134 IN THE
MAREEBA DISTRICT**

BEFORE: **MR F W WINDRIDGE
MINING WARDEN**

APPLICANT: **TIN AUSTRALIA N L**

RESPONDENT: **J E GEISSMANN and JOANN T CULLEN**

CATCHWORDS: **MINING - MINING LEASE – COMPENSATION – TIN –
RENEWAL – FREEHOLD LAND NO RIGHT OF
OBJECTION TO RENEWAL – NIL ACTIVITY –
NOMINAL AWARD – TWO TIER AWARD**

Mineral Resources Act 1989 s. 281

DETERMINATION:

TIN AUSTRALIA N L (the miner) seeks the renewal of Mining Lease 4134 in the Mareeba District. The lease was initially granted on 4 September 1975 for a period of 21 years, and has been held after grant by Tableland Tin Dredging No Liability since 25.6.1974, by Mount Carrington Mines Ltd since 27.9.1994, by Norminco Limited since 3.1.1995 and by the current owner Tin Australia N L since 16.7.1998.

The initial term of the lease was granted under the *Mining Act 1968-1973* for a number of minerals, the principal mineral being tin. The lease was due to expire on 30 September 1995. The former owners lodged an application for renewal for a term of 20 years on 14 August 1995, such term to commence on 1 October 1995.

The lease is 42.73 hectares in area, and is located on Lot 16 on CWL2194, being freehold land. For the purpose of this determination, the area shall be rounded off to 43 hectares.

An inspection was conducted on 14 October 1999.

This determination was listed for mention and hearing in the Wardens Court at Mareeba and Cairns on a number of occasions to allow the parties ample opportunity to appear and give evidence or to make submissions. No person appeared at the last opportunity but the Registrar has made available to the Court copies of correspondence received by his office.

The parties being unable to come to any agreement in relation to compensation, the Court is empowered under the provisions of Section 281 of the *Mineral Resources Act 1989* (the Act) to

determine compensation. The matters that must be considered are set out in Section 281 subsection 3 of that Act.

The inspection revealed that the surface area of the lease is timbered and has thickets of lantana. (Photo 1 and 3). Predominant grass cover is native pasture. There is a dried up swamp that appears to hold water for at least part of the year after rain. (Photo 2) A reasonably new fence runs along the eastern boundary adjacent to the creek (Photo 4). The land is vacant in that no person resides on the land. At the time of inspection, no livestock were sighted. A steep gully runs through part of the land.

The landowners have raised a number of issues such as an objection to the renewal, lack of consultation by the miner, environmental impact, preservation of timber, and devaluation of the land. Most of those issues have been dealt with appropriately by the Registrar and on the other issues, the landowners should seek their own independent legal advice. Currently under the *Mineral Resources Act 1989*, landowners do not have any right of veto over the grant of a lease, and there is no right of objection to the renewal of a term, the miner enjoying an "as of right" renewal if desired.

Access to the lease is off a sealed road. From my inspection, I am satisfied that the land has some available timber resource and is capable of some grazing although no livestock were sighted during the inspection, as mentioned above. The carrying capacity of the area of the lease (42.73 hectares) is unknown.

In *Mitchell v Oakhill and Mitchell* (Land Court unreported Brisbane 10 March 1998) the Land Court found:

"Although section 281 of the present Act directs the Warden to take those matters into consideration and the *Mineral Resources Act* provides that an owner of land is entitled to compensation for those particular matters, the latter section does not prescribe a method of valuation. In my view, as long as the amount of compensation finally determined sufficiently accounts for each of the matters referred to in the sub-section, it is not necessary to quantify an amount in respect of each of the matters referred to.

Therefore the "before" and "after" method of valuation is still open under section 281(3) of the *Mineral Resources Act*. As explained in *Smith v Cameron*, the "before" and "after" method would adequately provide for each of those matters".

In this instance we do not have before and after valuations to consider as evidence. No matter was raised which would necessitate consideration under subsection (4) of s.281. There is little or no information available from the miner as to the method of mining to be adopted, although I note there is a reference to "open cut" by the landowner. Given the general nature of mining adopted in the tin mining industry, the open cut method of mining is highly likely to be employed in this instance, with product being transported off site for further treatment at a central plant.

Assuming this to be the case, the landowners will suffer some loss while mining is in progress and that loss will continue until rehabilitation is completed and the land restored to at least some grazing capability.

However, I note that currently a number of "tin" leases are held in North Queensland and with current prices, these leases are unlikely to be worked for a considerable time. This particular lease for instance, has not been worked at any time during its initial term. While the leases are being held in the present condition, ie no mining activity is taking place, there is little likelihood or no likelihood of loss to the landowner. In those circumstances I consider a nominal award is justified. Should the miner commence full scale mining activities, then the concerns of the landowner might be enlivened, and this would increase the quantum of any award under Section 281. However, it must be borne in mind that the owner does not reside on the land and the land is not or will not be used except for grazing purposes.

There has been no submission from the parties in relation to the terms, conditions and times when payments shall be made, and **I ORDER AS FOLLOWS:**

- a) While M L 4134 is on a care and maintenance basis ie no mining activity or high impact exploration activity is being conducted, compensation shall be at the rate of \$5.00 per hectare per annum;
- b) On the commencement of mining or high impact exploration, compensation shall be at the rate of \$30.00 per hectare per annum until such time as the area mined and rehabilitated is surrendered or cancelled, less any amount paid under (a) for the current year.
- c) The miner shall stack and make available to the landowner any timber of millable quality removed from the lease during mining operations, or, in the alternative, shall pay to the landowner the value of the millable timber destroyed as assessed by an independent person appointed by the Registrar.
- d) Payments in respect of (a) shall be made within 30 days of the date of renewal of the lease, and yearly in advance thereafter on the anniversary of the renewal date.

In respect of arrears, I note that no mining has been conducted on this lease to date. I also note that some 4 years and 3 months have elapsed since the nominal commencement date of the renewed leases. During this period the landowner has not suffered any loss from damage or injurious affection. It seems inequitable that the miner should pay compensation for a period when no mining was taking place, no damage was incurred, and the renewal of the term was in progress but not granted. (*Zimmerebner v Hawkins & Anor* – Land Court Brisbane 30 March 1999 unreported). I make no order in respect of arrears of compensation, payment of compensation in respect of the renewal to commence as in clause (d) above.

IT IS DIRECTED that the Registrar at Mareeba release this determination to the parties at the earliest possible date.

Dated at Brisbane this 2nd day of February 2000.

F W WINDRIDGE
MINING WARDEN

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