

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

IN THE MATTER OF: DETERMINATION OF COMPENSATION IN
RESPECT OF MINING LEASE APPLICATION
NUMBER 90140 PURSUANT TO SECTION 281 OF
THE *MINERAL RESOURCES ACT 1989*

BEFORE: A.J. CHILCOTT, ACTING MINING WARDEN

APPLICANT: CHRISTOPHER MARK DALTON (33.3%)
WARREN REUBEN SMITH (33.3%)
IAN FRANCIS WILLIAMS (33.3%)

RESPONDENT: CALTON HILLS PTY LTD

CATCHWORDS: MINING – COMPENSATION – LACK OF
EVIDENCE – DISTURBANCE – NOMINAL ORDER

Mineral Resources Act 1989 s. 281(3)

DETERMINATION:

The landowner and the applicants having failed to reach an agreement in respect of compensation this matter was listed for hearing on 21 September 1999.

The applicant miner Christopher Mark DALTON was the only party who appeared assisted by his agent, Mr Loderwyk. Under the provisions of the *Mineral Resources Act*, the Wardens Court has the jurisdiction to determine compensation in the absence of an agreement.

The Applicants applied for a mining lease on 1 September 1998. The lease is required for the purpose of mining for gold, silver ore, copper ore, lead ore, zinc ore, ore and associated activities. The lease was recommended for grant by the Warden's Court on 18 February 1999. The term recommended was ten (10) years. The lease area is 13.2 hectares and according to the Applicants, the access area is approximately 19.2 hectares. The lease application area is located on Lot 8/TG 35 County of Tewinga, Parish of Candover and is approximately 5 kilometres north west of Lake Julius dam. For the purpose of this determination, the area will be rounded off to 32 hectares.

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

Submissions were made on behalf of the Applicants regarding each head of claim under s.281(3) of the Act. There was no estimate put forward that would assist me in assessing compensation in this matter. However a draft compensation agreement which was used in

negotiation discussions with the landowner was tendered to the Court on behalf of the Applicants.

Although section 281 *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 land appears to be used for low intensity grazing under favourable conditions. The Applicants submitted that the lease area is in a remote part of the pastoral operation. It would appear that in a good season the area would carry approximately one (1) beast per 100-150 hectares. The lease was previously worked for gold mining. It was also submitted on behalf of the Applicants that there will be very little impact as a result of mining on the grazing operation at Calton Hills. 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 any real 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.

Given all the circumstances I am satisfied that a nominal sum of compensation should be awarded and this sum will adequately compensate for those heads of claim which are set forth in section 281(3) and (4) of the *MRA*. (*Oakhill v Mitchell* supra)

I determine that the compensation payable by the Applicants Christopher Mark DALTON, Warren Reuben SMITH and Ian Francis WILLIAMS to the landowner Calton Hills Pty Ltd shall be the sum of \$1500.00. In this sum, I have taken into account the additional 10 per cent under the provisions of sub-section (4)(e) of s.281 to reflect the compulsory nature of the action taken.

In relation to the terms, conditions and times when payments should be made I have regard to the quantum of the order, the size of the lease and the term of the lease. In the circumstances, I order that payment of the full sum of compensation be made within 60 days of notification of grant of the lease.

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 30th day of September 1999.

A J CHILCOTT
ACTING MINING WARDEN