

# LAND AND RESOURCES TRIBUNAL QUEENSLAND

CITATION: *Re Queensland Gold and Minerals Limited & Batchelor* [2007] QLRT 106

PARTIES: **In the matter of renewal of Mining Lease 1060 – Application by Queensland Gold and Minerals Limited for determination of compensation payable to Ashley Trevor Batchelor**

FILE NO/S: MLC36/07

PROCEEDING: Application for determination of compensation

DELIVERED ON: 10 August 2007

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

MEMBER: Windridge MR

ORDER/S: 

- 1. I determine compensation under s. 281 in the sum of \$3000.00. (at [17])**
- 2. I direct that the miner pay the total compensation in the sum of \$3000.00 to the landowner within 3 months of notification of renewal of the mining lease by the Mining Registrar. (at [19])**
- 3. No order for costs. (at [20])**

CATCHWORDS: MINING LEASE — DETERMINATION OF COMPENSATION — RENEWAL

*Mineral Resources Act 1989, s. 281(3), (4)*

*Carr v Simmovec* [1980] 26 SASR 263 at 268  
*Pacminex v Aust. (Nephrite) Jade Mines* [1974] 7 SASR 4012 at 415  
*QCoal & Others v Watts* referred to  
*Bakhash & Monize* referred to  
*Smith v Cameron* [1986-87] 11 QLCR  
*Shaw v Heritage Holdings Pty Ltd* [1992-93] 14 QLCR

COUNSEL: N/A

SOLICITOR/S: Connolly Suthers, for the respondent  
Macrossans Lawyers, for applicant miner

- [1] The applicant Queensland Gold and Minerals Limited (the miner) seeks the renewal of Mining Lease 1060 in the Charters Towers District. The lease was initially granted for a period of 21 years commencing from 1 June 1986. The current application for renewal is for a term of 20 years commencing from 1 July 2007. The current application for renewal was lodged at the Registrar's office at Charters Towers on 13 November 2006.
- [2] The lease is located on New Hidden Valley Station which is more particularly described as Lot 136 on GHPL5/2129, Parish of Ukalunda, County of Sellheim. Access is through the same property. The property is situated some 240km south-west of Townsville and 100km west of Collinsville. A grazing operation is conducted on the property by the current owner Trevor Ashley Batchelor. The lease is over an area of 211.7 hectare and is granted for the purpose of mining for gold. For the purpose of this determination, I round off the area to 212 hectares. The area taken for some permanent plant site is said to be some 13 hectares and is situated on another lease, but it is indicated that some surface disturbance occurs or will occur on the surface area of this lease (ML 1060).
- [3] Section 279 of the *Mineral Resources Act 1989* ("the Act") provides that a mining lease shall not be granted or renewed unless an agreement in relation to compensation has been filed at the office of the Registrar, or in the absence of such an agreement, a determination of compensation has been made by the Tribunal. In this instance, no agreement has been lodged with the Registrar. The issue of compensation has been referred to this Tribunal for determination.
- [4] The matters which must be considered by the Tribunal are set forth in s. 281(3) and (4) of the Act. Although s. 281 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."
- [5] Neither party sought to appear before the Tribunal nor give oral evidence, and consented to this matter being dealt with on the papers. Neither the miner nor the landowner sought an inspection, and an inspection has not been conducted. I am unfamiliar with the mining operation and the surrounding area, and I feel somewhat constrained in accepting certain views of the parties. In this instance therefore I have relied solely on the material supplied by the parties without a view.<sup>1</sup> The applicant miner, through legal representation has made a written submission supported by written valuation reports and affidavits. The respondent landowner through legal representation filed material based on a valuation of the property by Taylor Byrne, with other material. Some documentation in relation to factual matters i.e. a copy of the renewal application, location map and tenure search was provided by the Registrar. Where necessary I have referred to the material supplied by the Registrar only to confirm technical details e.g. areas, descriptions etc. In these reasons I refer to the salient points but not all the evidence that I relied upon in making my determination.

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<sup>1</sup> See *Carr v Simnovec and Pacminex v Aust (Nephrite) Jade Mines* [1980]26 SASR 263 at 268.

- [6] The offer of compensation by the applicant miner (based on the valuation prepared for the miner) is in the sum of \$2950.00.<sup>2</sup> Total compensation sought by the landowner (based on the valuation prepared on his behalf, at page 21) is in the sum of \$35,000. Both valuations were based on s. 281 of the Act and both valuers made reference to other sales. Each valuation was relevant and focused, the variation being the result of the different approach in respect of location of part of the mining lease, and proposed activities which may or may not be conducted on this part of the property in the future.
- [7] This matter, in at least one material issue, is distinguished from the “normal” compensation scenario. Each case is determined on its own merits, and the approach to determine compensation may vary even for leases or claims on the same property, subject to such evidence as is tendered or information that is available. Of some considerable relevance here is the area of surface land in the lease that is to be utilised, and the land in the area of the lease known as “Rutherfords Table”.
- [8] From my reading of the material, it appears that mining operations are conducted on several leases in the immediate area. It appears some plant and equipment is located on another lease, and of the total mining lease area of about 112 hectare of this lease (ML 1060), some six hectares of this lease is fenced off and used (or will be used) in the mining operation.<sup>3</sup> It appears that up to about one hectare of the lease outside the fenced area might be used and unavailable for a short time for grazing purposes, and generally otherwise the area of Rutherfords Table would be available for grazing, but according to the miner’s submission, seldom used for that purpose. The miner’s interest in the surface are of Rutherfords Table might be to put down drill holes as part of exploring the deposit for future underground operations. There is therefore no total loss of surface area, as in an open cut operation. Disturbance of the greater part of the surface area justifies an award for total loss.<sup>4</sup> Where there is proposed to be exploration drilling which will have a minimal impact on the surface area, with any mining to be underground, I consider the loss is very minimal, and the award must reflect this point. I accept this mining operation is different from the “norm” and does not involve total loss.
- [9] The term of the renewal is 20 years. The loss of land through a mining tenure of lengthy duration has been accepted by the Land Court as similar to permanent acquisition for a limited time.<sup>5</sup> In this instance, the renewed lease is over an area of about 212 hectares. There is no permanent acquisition, but in effect the landowner has notionally lost production from the lease area for a lengthy term. However, as indicated above, the “loss” is not actually total due to the nature of the mining, and therefore I consider a “split determination” is warranted.
- [10] In making this determination I take into account that the only viable use of the land is low intensity grazing. The lease has been in existence since 1986. I consider the effect of mining operations on this lease would have little effect on the operations conducted on the property. This effect would include the noise of machinery and the movement of people and vehicles on or about the lease area and access road. There is no evidence of severance of one part of the property from any other part and I can

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<sup>2</sup> Page 23 of the assessment by Mr Eales.

<sup>3</sup> See affidavit of Nethery.

<sup>4</sup> See *QCoal & Ors v Watts*...para 12 and *Bakhash v Monize* [2003] QLRT 133.

<sup>5</sup> *Smith v Cameron* (1986-87) 11 QLCR.

find no evidence which would persuade me to make any allowance for injurious affection of the balance of the property.

- [11] *The valuations.* Given the nature of the mining operation and taking an overview of the operations to be conducted by the miner, I prefer the approach of Mr Eales and I adopt his methodology as suitable and appropriate in this instance. I do not consider a “total loss” situation exists.
- [12] *Rutherfords Table.* The landowner asserts that the mining operations will effectively result in the total loss of use of this area for grazing purposes and this formed the major part of his claim for compensation.<sup>6</sup> I can see no grounds on which to reject the proposal of the miner in that the only likely activity on Rutherfords Table is for exploration drilling to determine the direction of future underground mining. Otherwise, access to this area is not prevented. Being part of the surface area, compensation must be awarded, having regard to “loss” that might eventuate, but I find this loss will have a minimal effect on the landowner. I accept the quantum adopted by Mr Eales as reasonable, and reject the total loss claim advanced by the landowner.
- [13] *Access roads.* Neither the landowner nor the miner takes any issue with access. My understanding is that access is off a public or well used track and nominated access to the mining lease area is common to several leases. The information seems to indicate it is some 4.1 kilometres in length. In the absence of any detailed information, I make no award for access.
- [14] *Injurious affection of balance lands.* I have accepted that there is potential for one part of the property to suffer a greater impact from a mining lease than another. This is principally the Rutherfords Table area. The extent of dust on pastures and the effect is somewhat uncertain, in my opinion, given that the main mining activity is to be conducted underground. The extent or cost attributed to the construction of firebreaks and fencing is uncertain, and was no clear evidence to persuade me that such costs are required to be met by the miner.
- [15] *Management costs.* This claim by the landowner under “injurious affection” is not allowed. A previous award in respect of another lease renewal did acknowledge the time and expense of inspections. This was in the absence of any meaningful submission (in the first instance) by the miner.
- [16] *Status and Use.* There is no evidence of any special features which would indicate a higher status and use attaches to the land. There is no evidence that would suggest that a premium higher than the 10% allowed under section 281(4)(e) is warranted in this instance. Both valuations reflect this finding.
- [17] Having regard to all the circumstances, I consider that the following award will satisfy the requirements of s. 281 for the term of the renewed lease for the limited purposes authorised by the renewal of the lease. I determine compensation under Part 7 of the *Mineral Resources Act 1989*, to satisfy all heads of compensation set forth in subsection 3 and 4 of s. 281 of the *Mineral Resources Act 1989*, shall be as follows:

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<sup>6</sup> See item 7.6 (a) at p.21 of valuation.

(a) s.281(3)(a)(i) Deprivation of possession of the surface area of ML 1060 - 6ha @ \$360.00 per ha	\$2,160.00
(b) s.281(3)(a)(i) Loss of use over rutherfords Table 200ha @ \$90 per ha @ 25%	\$450.00
(c) s.281(3)(a)(i) Loss of use of surface area 5.7ha @ 10% @ \$90.00 per ha	<u>\$51.00</u>
(d) Sub Total	\$2,661.00
(e) s.281(4)(e) Additional 10% - i.e.10% of aggregate of amounts as determined s. 281(3)	<u>\$266.00</u>
<b>Total</b>	<u><b>\$2,927.00</b></u>

- [18] In relation to the terms, conditions and times when payments should be made, I take into account the quantum of the order, the size of the lease and the period of renewal. In these circumstances, I consider payment should be by way of a lump sum. I round off the award to \$3000.00.
- [19] The figures adopted for deprivation represent a crystallised loss upon the renewal of the. Accordingly, I order that the miner Queensland Gold and Minerals Limited pay total compensation to the landowner Ashley Trevor Batchelor the sum of \$3,000.00 within a period of three (3) months from notification of renewal of the mining lease by the Mining Registrar.
- [20] Valuation and legal fees are not recoverable as they are incurred in preparation of a claim against the miner and not as the consequence of the grant or renewal of the lease.<sup>7</sup> I make no award for costs.
- [21] This assessment is made on the basis of information supplied by the miner as to the likely direction of his mining operations. Should such mining operations “materially change” or vary to such an extent that an amended Plan of Operations is required, or an amended environmental plan is required and lodged for approval, and such a change is a material change, (see 283B (1) (b) of the MRA,) the respondent landowner can exercise his rights under s.283B (2) of the MRA for a review of compensation.

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<sup>7</sup> *Minister for the Army v Pacific Hotel Pty Ltd* [1994] St R Qd 112 (HC), 122, 123, 129; *Sullivan v Oil Company of Australia Ltd (No 2)* [2004] 2 QdR 105, 116 (CA).