MINING COMPENSATION DETERMINATIONS*

Re Xstrata Coal Queensland Pty Ltd & Ors v Perry & Anor [2006] QLRT 64 (Windridge MR)

Mining lease – determination of compensation – additional surface area – methodology in determining compensation – solatium – instructions to valuers.

Background

The applicants were the mining lessees over an area adjacent to the respondent's land. The applicants sought additional surface area of some 665 hectares into the respondent's land and applied to the Tribunal for a determination of compensation in accordance with s 275 of the *Mineral Resources Act 1989*.

Determination of compensation

In making a determination as to compensation, Mining Referee Windridge placed great emphasis on the fact that s 281 of the *Mineral Resources Act 1989*, while explicit in the matters to be considered, nonetheless fails to identify a uniform method of assessment.[1] Accordingly, the Mining Referee advocated that a cautious approach was to be adopted to ensure that there are no instances of 'double-dipping' and that the Practice Directions of the Tribunal were to be appropriately adhered to.[2] Specifically, the Mining Referee denied the claim of the landowners under s 281(4)(a) for the cost of obtaining "replacement land of a similar productivity, nature and area" as the proposed lease area would only occupy some 14 per cent of the property and in the circumstances any such award would constitute an unjust windfall profit if replacement land was never purchased or never intended to be purchased.[3]

'Other loss or expense' and the decision in *Sullivan's* case

The respondent had submitted a claim for "accounting/taxation advice, legal fees to prepare claim, and valuation fees to prepare claim" as "other loss or expense" in accordance with s 281(3)(a)(vi) of the *Mineral Resources Act 1989*. In *Sullivan v Oil Company of Australia (No.2)*[4] the Queensland Court of Appeal considering similar compensation provisions under the *Petroleum Act 1923* held that compensation for injurious affection of land was not recoverable as "consequential damage". Applying the reasoning of the Court of Appeal, Windridge MR was of the opinion that expenses for accounting, legal and valuation fees were in preparation of a claim for compensation and did not arise as a consequence of the grant or renewal of the mining lease.[5]

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1 Windridge MR made reference to earlier decisions of the Land Court to the effect that the method of assessment remained a matter to be governed by the facts and circumstances of each case. See further *Smith v Cameron* (1986) 11 QLCR 64, 74; *Shaw v Heritage Holdings Pty Ltd* (1992-93) 14 QLCR 139, 146; *Wills v Minerva Coal* (1988) 19 QLCR 297.

2 *Re Xstrata Coal Queensland Pty Ltd & Ors v Perry & Anor* [2006] QLRT 64, [13].

3 Ibid, [22].

4 [2004] 2 Qd R 105.

5 *Re Xstrata Coal Queensland Pty Ltd & Ors v Perry & Anor* [2006] QLRT 64, [19], [21].

Solatium

The respondent submitted that the solatium under s 281(4)(e) of the *Mineral Resources Act* should be increased beyond the minimum 10 per cent to an amount of 25 per cent on the basis of the increase in cattle property values. Mining Referee Windridge was of the opinion that in the absence of any further evidence of special or exceptional circumstances, the purpose of the provision dictated that the solatium was to "reflect the compulsory nature of the action taken" and that only an amount of 10 per cent was warranted.[6]

Mining Referee Windridge further noted that both the valuations submitted by the applicant and respondent included a claim under s 281(4)(a) of the MRA as part of the aggregate award for the solatium claim under s 281(4)(e). The wording of the provision explicitly states that the solatium is based on the award under subsection (3); matters under subsection (4) need only be considered in the determination of compensation and do not form a separate head of compensation to be considered in the aggregate calculation.

Decision

The Mining Referee determined compensation to be in the amount of $548,625.00 representing 665 hectares at a value of $825.00 per hectare in addition to the solatium of $54,862.50. A direction was also made that the applicant pay the total compensation to the respondent landowners within 3 months.[7]

Practice note

Windridge MR concluded that it is now prudent for legal representatives who give instructions to valuers in relation to compensation issues under the *Mineral Resources Act 1989*, to refer the valuer to the legislative restrictions of ss.281(3) & (4), the practice directions issued by the Land and Resources Tribunal (especially Practice Direction 1 of 2003) and the effect of the decision in *Sullivan v Oil Company of Australia Ltd (No.2)*.[8]

TRIBUNAL JURISDICTION[*]

Teutonic Minerals Pty Ltd v Minister for Natural Resources, Mines and Water [2006] QLRT 101 (Koppenol P)

Mining – exploration permit applications – applications refused – jurisdiction of Tribunal to review or remake decision.

Background

The applicants had made 4 exploration permit applications to the Department for Natural Resources, Mines and Water concerning certain Commonwealth land near Townsville. The land had been transferred to the Commonwealth in 1993, although all mineral and related access rights were reserved to the State of Queensland.

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6 Ibid, [20].
7 Ibid, [24]-[27].
8 [2004] 2 Qd R 105.
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