QUEENSLAND

MINING COMPENSATION DETERMINATIONS*

Watts v QCoal Pty Ltd & Ors ([2007] QLRT 23 (Koppenol P))

Mining Lease – Compensation – Appeal and cross-appeal – Injurious affection – Meaning of balance land – Severance

Background

The appellants were the owners of a 14,500 hectare grazing property near Collinsville, over a portion of which the respondents sought a mining lease for an open-cut coal mine. Pursuant to s 281 of the *Mineral Resources Act 1989* (MRA) the appellants at first instance were awarded compensation of $5.2 million.[1]

On appeal under s 282 of the MRA, the appellants argued that the decision at first instance failed to compensate for injurious affection[2] to the balance of their lands, and that the award should be increased by a further $1.535 million. The respondents cross-appealed on the basis that there was no evidence of severance justifying the award under s 281(3)(a)(iv) of the MRA.

Injurious Affection

At first instance, Deputy President Smith rejected arguments advanced by the appellants that the provisions of the MRA entitled landholders to compensation for injurious affection.[3] However on appeal, President Koppenol noted that the discussion of injurious affection at first instance treated the concept as if it were a separate and distinct head of compensation.

Reiterating the sentiments of the High Court in *Marshall v Director-General, Department of Transport*,[4] President Koppenol stated that "injurious affection" is an expression of wide import only, and while ss 281(3)(a)(ii) and (iii) of the MRA deal with concepts analogous to those embraced by "injurious affection", they do not authorise the Tribunal to award an amount as such.[5] The President concluded that the precise words of the provisions themselves are to be given primacy and that the use of valuation concepts not expressly included, however similar in effect, was erroneous and misleading.

Balance Land

Fundamental to the landowners' appeal was the interpretation to be given to s 281(3)(a) of the MRA insofar as it enabled compensation to be awarded for 'balance land', that is, land other than that which is the subject of the proposed mining lease. At first instance the view was adopted that compensation under s 281(3)(a) of the MRA was restricted to the land actually taken by the grant of the mining lease. The basis of Deputy President Smith's approach was to be found *inter alia* in

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1 *Re QCoal Pty Ltd & Ors v Watts* [2006] QLRT 115.

2 That is, depreciation and adverse effects on the value or use of the land associated with public works, compulsory acquisition or planning changes.

3 *Re QCoal Pty Ltd & Ors v Watts* [2006] QLRT 115, [56].

4 (2001) 205 CLR 603.

5 Compare *Sullivan v Oil Co of Australia Ltd (No 2)* [2004] 2 Qd R 105.

the distinction between the wording of the provisions in the 1989 MRA and its 1968 predecessor. To this end, it was necessary to distinguish the decision in *R v The Land Court; Ex parte Kennecott Explorations (Australia) Ltd*[6] whereby the Supreme Court of Queensland held that under the provisions of the 1968 Act compensation was to be assessed for the "whole property (including the balance land)".[7]

On appeal, President Koppenol held that any distinction between the provisions of the 1968 and 1989 MRA was illusory; the context and wording of both Acts is materially identical. The President also examined the passage from the Minister's second reading speech for the 1989 Act relied upon by the Deputy President at first instance.

As a matter of language, the President held that the phrase "the lands of the owner of which an area of surface has been taken up"[8] denotes that the area of surface could not be the same as the lands of the owner, but is rather a part of that land. In this regard, the term 'land of the owner' utilised within s 281 of the MRA was to comprise the area of surface taken up by the mining lease and some other land, being the balance land, and was therefore consistent with the decision in *Kennecott*. President Koppenol expressed the opinion that were it otherwise, s 281(3)(a)(iv) of the MRA would be rendered nonsensical for it would mean "that the landowners' entitlement to compensation would be for severance of any part of *the mining lease land* from other parts of *the mining lease land* or from other land of the owner, *as a consequence of the grant of the mining lease*".

Severance

It was submitted by the cross-appellant mining company that the Deputy President at first instance had erred in making an award for severance under s 281(3)(a)(iv) of the MRA. While it was acknowledged by both parties that the land in question was adjoined by two further mining leases, it was unclear as to whether such leases were surface or subsurface mining leases. Notwithstanding such an argument, President Koppenol held that valuation evidence presented by both parties established that the grant of the mining lease would affect a severance such that there was no merit in the mining company's cross-appeal.

Decision

President Koppenol allowed the appeal and ordered that the award determined at first instance be increased by $1,535,000 to account for compensation for the balance land. The cross-appeal was disallowed. Costs were ordered to follow the event.

SERVICE AND LATE OBJECTIONS*

Re Australian Finegrain Marble Pty Ltd & Kagara Pty Ltd ([2006] QLRT 123 (Koppenol P))

Mining lease – Application – Service of application documentation – Late objections

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6 [1989] 1 Qd R 335.
7 Ibid, 340 (Thomas J).
8 *Parliamentary Debates*, 7 September 1989, 558.
* Ryan Gawrych BA, LLB (Hons), A/Registrar, Queensland Land and Resources Tribunal.