Queensland

Peabody West Burton Pty Ltd & Ors v Mason & Ors [2012] QLC 0023

by Dr Justine Bell

This is the first case concerned with compensation for land access under the *Mineral Resources Act 1989* (Qld) (MRA). Under the MRA, the holder of an exploration permit can enter private land to carry out authorised activities, but must first enter into a conduct and compensation agreement with the landholder. Under the agreement, the landholder must be compensated for several impacts, including deprivation of possession of land surface, diminution of value, and diminution of use of the land. If the parties are unable to agree of the terms of a conduct and compensation agreement, then the matter may be referred to the Land Court for determination.

In this case, the applicants sought to undertake drilling on the landholder's property, which is used for pastoral activities. The drilling would be carried out over several weeks. The parties disputed whether compensation was payable for 'diminution of value'. The respondents argued that the drilling activities would cause prospective purchasers to perceive a risk which would reduce land value, due to a perception that there are likely to be coal deposits under the land. This risk was heightened by the existence of heavy mining activities around the land, and significant government investment in mining-related infrastructure in the area.

Ultimately, Member Smith of the Land Court was not convinced that the drilling activities would result in a diminution in the value of the land. The respondents could not establish a link between diminution of value and the actual exploration activities – the argued diminution related to prospective activities. The range of circumstances in which drilling activities would cause diminution of value are narrower than contemplated by the respondent, with Member Smith noting that:

> In my view, it is easy to conceive of circumstances where the activities undertaken under an EPC [exploration permit for coal] may lead to a diminution in value of the land. One example springs readily to mind. I am of course speaking hypothetically, but if during the course of drilling activities an explorer inadvertently caused a fracture in an aquifer which was the major source of water supply for the subject property, and as a result of that fracture the capacity of that aquifer to hold water was severely diminished, then I would have no doubt that such hypothetical exploration activities would cause an actual diminution in the value of the subject land.

The respondents were awarded compensation for deprivation of possession of the surface of the land, diminution of use of the land, and other costs, totaling $3220.

Brisbane City Council v Brywell Pty Ltd and others [2012] QPEC 49

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This case considered when indemnity costs will be payable in the Queensland Planning and Environment Court. The second respondent was a building certifier employed by the first respondent and engaged by the third respondent to certify building work in relation to a proposed development. Under the *Building Act 1975* (Qld), a certifier must not grant this approval unless they are satisfied that the relevant approvals under the *Sustainable Planning Act 2009* (Qld) have been obtained. The applicant brought proceedings against the second respondent alleging that they had contravened this provision, but proceedings were ultimately dismissed on a technicality.

Later, the applicant brought proceedings under the *Sustainable Planning Act*, alleging that the respondents had carried out assessable development without a permit. The respondents sought a strike out application, as they had not carried out any 'development' within the definition under the *Sustainable Planning Act*. The applicants eventually agreed to the strike out order, and agreed to pay costs. However, the respondents sought indemnity costs, which the applicants did not agree to.

Under the *Sustainable Planning Act*, each party must bear the party's own costs of proceedings, except in certain circumstances, including where a part of the proceeding is frivolous and vexatious. In these circumstances, the Court can award costs. Andrew DCJ noted that the *Sustainable Planning Act* does not indicate a preference for these costs to be awarded on a standard or on an indemnity basis, leaving discretion to the Court. In an earlier case of *Copley v. The Logan City Council and Anor (No 2)* [2012] QPEC 43, the Court had elected not to award indemnity costs, but Andrews DCJ distinguished that case, as it involved an inexperienced litigant, and did not involve allegation of an offence.