

Use of the Mineral Resources Development Act

Beattie & Ors v Perseverance Exploration Pty Ltd Supreme Court Case No 6985 of 1998

In 1997 Slater & Gordon were approached by 11 residents of the Fosterville/Axedale subdivision east of Bendigo.

The subdivision consisted of semi-rural allotments. At the time of purchasing the residents were unaware that the plans were to extend the mining activities of the Fosterville mine site operated by Perseverance Exploration Pty Ltd (PEPL).

After unsuccessfully attempting to stop the mine itself the claimants sought the advice of Slater & Gordon as to what further action could be taken.

Slater & Gordon advised the residents that they had a statutory right to claim compensation from PEPL pursuant to Section 85 of the *Mineral Resources Development Act 1990* (MRDA) which states:

- (1) Compensation is payable by the licensee to the owner or occupier of private land for any loss or damage that has been or will be sustained as a direct, natural and reasonable consequence of the approval of the work plan or the doing of work under the licence including –
 - a) deprivation of possession of the whole or any part of the surface of the land; and
 - b) damage to the surface of the land; and
 - c) damage to any improvements on the land; and
 - d) severance of the land from other land of the owner or occupier; and
 - e) loss of amenity, including recreation and conservation values; and
 - f) loss of opportunity to make any planned improvements on the

- land; and
 - g) any decrease in the market value of the owner or occupier's interest in the land.
 - (2) The amount of compensation payable under sub-section (1) –
 - a) must, if it is necessary for the owner or occupier of the land to obtain replacement land, take account of the reasonable incidental expenses incurred in obtaining and moving to that land; and
 - b) may be increased by up to 10% by way of solatium to compensate the owner or occupier for intangible and non-pecuniary disadvantages that are not otherwise compensable and that result from the approval of the work plan or the doing of work under the licence.
 - (3) Compensation is not payable for the value of any mineral in or under the surface of land covered by a licence.
 - (4) Any amount of compensation paid, agreed to be paid or determined under this Part is not affected by any subsequent change in the ownership or occupancy of the land.
 - (5) A licensee is not liable to pay any greater total amount of compensation because of a change in the ownership or occupancy of the land.
 - (6) Compensation is not payable in respect of any land which only became private land after the commencement of work on that land under the licence.
- No known case has been reported on the operation of this section since its enactment.
- A claim can be made in the circumstances set out in Section 86, namely

within 3 years after loss and damage has occurred or after the licence expires.

A Notice of Claim was duly served upon PEPL and, after an unsuccessful conciliation required by the MRDA, the matter was issued in the Supreme Court of Victoria.

In the initial five weeks of trial commencing in 1999, including a week in Bendigo before Her Honour Justice Balmford, extensive evidence was dealt with from the Claimants and experts regarding the effects of mining upon them and their property value.

An adjournment over Christmas allowed further discussions with PEPL to continue and the matter was successfully resolved on the basis that PEPL would purchase the properties of the Claimants at pre-mining valuations, together with relocation costs.

The settlement provides a solution to competing land uses that arise when mining occurs near residential allotments.

On the open market of the properties at pre-mining market values, a value that would be unattainable at this time due to the effects of mining provides a useful benchmark for future claims.

The case provided the first opportunity to explore the operation of Section 85 of the *Mineral Resources Development Act*. Unfortunately, for future reference, no judgment has been handed down given the settlement and further litigation will be necessary before any authority on the operation of this section will be provided. ■

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