LAND COURT OF QUEENSLAND

CITATION:	*Corella Valley Corporation Pty Ltd v Campbell* [2024] QLC 2
PARTIES:	**Corella Valley Corporation Pty Ltd** (applicant) v **Ian Charles Campbell** (respondent)
FILE NO:	MRA226-23
DIVISION:	General Division
PROCEEDING:	Determination of compensation payable for renewal of mining leases
DELIVERED ON:	19 January 2024
DELIVERED AT:	Brisbane
HEARD ON:	Submissions closed on 22 December 2023
HEARD AT:	On the papers
MEMBER:	JR McNamara
ORDERS:	**1. In respect of the application for renewal of ML 2701, compensation for access through Lot 554 on SP177589 is determined at nil ($0).** **2. In respect of the application for renewal of ML 90106, compensation for access through Lot 554 on SP177589 is determined at nil ($0).**
CATCHWORDS:	ENERGY AND RESOURCES – MINERALS – MINING FOR MINERALS – COMPENSATION – where the applicant applied for the renewal of two mining leases – where part of the access track to the mining leases is located on land held by the respondent – where part of the access track is gazetted road –where the respondent claims for diminution of use made or which may be made of the land caused by the applicant's use of the part of the access track on the respondent's land –

where the respondent claims "loss or expense" of a valuer's report and legal fees pursuant to s 281(3)(a)(vi) *Mineral Resources Act 1989* (Qld)

Land Court Act 2000 s 27A
Mineral and Energy Resources (*Common Provisions) Act 2014* s 91
Mineral Resources Act 1989 s 279, s 281

Corella Valley Corporation Pty Ltd v Campbell [2019] QLC 44
Corella Valley Corporation Pty Ltd v Campbell [2021] QLC 26
Lonergan & Anor v Friese [2020] QLAC 3
Moreton Bay Regional Council v Mekpine Pty Ltd & Anor (No 2) (2014) 35 QLCR 273; [2014] QLAC 5

APPEARANCES: Not applicable

Background

[1] Pursuant to s 279(1) of the *Mineral Resources Act 1989* (**MRA**), a mining lease shall not be granted, or in this case renewed, unless compensation has been agreed between the mining lessee and landowner or otherwise determined by the Land Court. The MRA promotes a cooperative approach between landowners and mining lessees.[1]

[2] Twice before these same mining leases (ML 2701 and ML 90106), these same parties, and the same issue of unresolved compensation have been brought to this Court.[2] On both those occasions, compensation for the renewal of ML 2701 and ML 90106 (first for a 2-year term, and second, for the remaining 3 years of a 5-year term), was determined to be nil. I will refer to these as the **2019 decision** and the **2021 decision** throughout these reasons.

[3] Compensation in this matter is for "access only" through Mr Campbell's property, Rosebud. The mining leases are actually located on another property, Brightlands, to the south of Rosebud, where it appears compensation for access and the impact of the mining leases has been agreed.[3]

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1 *Lonergan & Anor v Friese* [2020] QLAC 3 [55].
2 *Corella Valley Corporation Pty Ltd v Campbell* [2019] QLC 44; *Corella Valley Corporation Pty Ltd v Campbell* [2021] QLC 26.
3 Resource Authority Public Report (ML 2701 and ML 90106) Lot 2547 SP 255326 Compensation finalised 27 April 2023.

[4] The parties to this application have been unable to constructively engage and reach agreement in relation to compensation. As far as I am aware, the parties have not engaged in mediation. If the same issues come before the Court again, I would recommend that mediation be ordered. The Court maintains a panel of mediators well qualified to assist parties in these circumstances.

[5] The 2019 decision highlighted inadequacies in evidence to support submissions concerning the extent of disturbance claimed by the respondent relevant to the compensation sought. In the 2021 decision, referring to the 2019 decision, I said at [4]:

> "Member Stilgoe made certain findings of fact and conclusions in the earlier decision. In particular she concluded that there was no basis for a finding that Mr Campbell has been deprived of possession of the surface of the land over which the ungazetted 12.8 ha access track passes because there was no valuation evidence to support his claim. Her Honour concluded at [14]:
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> > 'The Court has previously accepted that the presence of miners on grazing country does impose some additional burden on the landowner. It is possible that Mr Campbell has suffered a loss because of this access track but he has provided me with no information that I can use to assess that loss. As I will not determine that Mr Campbell is entitled to payment for the mere presence of the access track, I determine the amount of compensation at nil.'"

[6] This time around, the respondent, Mr Campbell engaged a solicitor, and commissioned and furnished a valuer's report. The report (**the valuer's report**) completed by Acumentis and dated 10 October 2023 was attached to the respondent's written submissions.[4]

The current and proposed continuing access through Rosebud

[7] Fountain Springs Road, as depicted by double lines on the Mines Online map provided by the applicant, traverses Rosebud from the Barkly Highway (about midway between Mt Isa and Cloncurry) in a roughly north to south direction before it leaves Rosebud and enters Brightlands.

[8] The respondent says that the 6.4 km "access track" (which is depicted on the Mines Online map to the east of the double lines) "links up" with Fountain Springs Road, however the respondent says the "access track" is in fact a private road within

4 Respondent's response statement filed 8 December 2023, 10.

Rosebud. The respondent says they do not seek compensation from the applicant for the use of the 4 km gazetted southern section of the track (Fountain Springs Road) which also traverses the respondent's land.[5]

[9] All references to "access track" in these reasons is a reference to the 6.4 km track used by the applicant from the Barkly Highway heading south until it joins the gazetted section of Fountain Springs Road.

[10] To confuse matters, it appears that the access track is denoted on the Mines Online map as Fountain Springs Road.

Condition of the access track

[11] There is no information about how, why and when the access track "came to be". There is no new information provided to the Court concerning the current condition of the access track.

[12] Attached to the valuer's report is a copy of a 2013 letter from the applicant to the respondent concerning compensation.[6] The letter concerned improvements to the access track the applicant proposed to undertake to bring it up to a standard to accommodate "multi combination road trains" to enable the transfer ore from ML 2701 over a 10-month period. At page two of the letter, it says: "The road consists of 5.6 kilometres of unformed track of an average 9 metre width, off the gazetted alignment…". The proposal was to make significant improvements at the applicant's expense including the widening of the track. The applicant expressed the view in the letter that the improvements would deliver an improved road for the respondent's future use and lower ongoing maintenance. The letter also contained an offer of compensation "to cover activities for the next twelve months". The respondent, in submissions, says the offer of compensation was accepted but compensation not paid, however, it is silent regarding the proposed improvements.

[13] A reading of the 2019 decision indicates that the applicant provided the Court with video evidence showing a narrow track which might indicate that the extensive improvements proposed in 2013 were not undertaken.

The "gazetted northern section" v the "access track"

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5 Ibid 3 [11].

6 Ibid 45-6 ('Copy of Letter dated 23 August 2013 from Duane Rush to Mr Ian Campbell').

[14] In the current application, the only statement concerning the gazetted northern section of Fountain Springs Road is found in the respondent's submissions where they say: "The northern section of the road is not a 'realignment' of the gazetted road, but rather, it is a completely separate road."[7] The access track certainly appears to be some distance to the east of the area marked with double lines on the Mines Online map.

[15] An "off-alignment" road is one constructed outside the land dedicated as a road. This is often the result of insufficient survey information, usage over time, and diversions due to topography.

[16] The point of truth for any boundary is a survey. The Digital Cadastre Data Base (DCDB) which is a spatial layer included in the Queensland Globe and Mines Online mapping is indicative, but not necessarily "survey accurate". I raise this only for the purpose of highlighting that the actual location of the Fountain Springs Road can only truly be identified by survey, and maps including Mines Online mapping may not be precise as to the location of a gazetted road or the constructed road.

[17] There is nothing to suggest that the gazetted northern portion of the Fountain Springs Road (the area marked by double lines) is formed and offers suitable alternative access for the applicant and the public.

Maintenance and use of the access track

[18] The applicant says although the access track is not a gazetted alignment, the track is maintained by the local authority. They say it is a "publicly used tourist access road". Attached to the applicant's compensation statement is a photograph of a sign identifying the start of the Ballara Mining Heritage Trail stating that the land is private property, and that entry is not permitted outside marked areas. The extent of the usage of the Heritage Trail by tourists or people with a keen interest in mining history or the area more generally, is not described. It is not hard to imagine that a road evidently leading to a place called Fountain Springs is inviting. The creator of the signage is not identified (i.e. the regional tourism agency, the local authority, or

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7 Ibid 4 [16].

some other body), however the quality of the signage suggests some level of authority.

[19] In the 2019 decision it would appear that the same, or a similar photograph was provided to the Court. The following was said at [18]-[21]:

> "The access track is used by at least one other miner. It is available to the public as part of a mining heritage trail.
>
> Corella is, therefore, not the only user of the access track. I agree with Corella's submission that it should only be liable to compensate Mr Campbell for the proportion of loss attributable to its own operations.
>
> I have no information about how often travellers access the mining heritage trail. I suspect it is not a major attraction given the condition of the road and the warnings posted at the entrance; nonetheless, there will be some hardy souls who undertake that trail each year. Given the lack of information about the public use of the track for the heritage tail, I decline to discount the amount payable by Corella for that use.
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> As there is another miner using the access track, and that miner's use must contribute to the diminution of Mr Campbell's use of the access track land, I cannot accept that Corella should bear the full amount of Mr Campbell's loss. Indeed, in similar cases, where the track was used by "any number of persons who have leases, claims or prospecting" the Land and Resources Tribunal had declined to make any award for access. As it appears that Corella's use of the track is comparable to the other miner's use, Corella's contribution to any loss should be no more than 50%."[8]

Evidence of use

[20] Despite the clear statement in the 2019 decision concerning the relevance of information about the use of the track by other miners and tourists, surprisingly the applicant provides no further information or evidence of that kind in their submissions in this matter.

[21] Neither the applicant nor the respondent say whether the track is used for the Rosebud grazing enterprise, or by persons wanting or needing to access Brightlands.

[22] I have already discussed the status of a road or track in the context of alignment, mapping, construction, gazettal, survey, maintenance and use. The process to correct or regularise an off-alignment road is generally not a high priority, until it is. In this matter, it appears to be the case that the access track is commonly known as Fountain Springs Road, although technically it is not. The denotation on the Mines Online map suggests this.

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8 *Corella Valley Corporation Pty Ltd v Campbell* [2019] QLC 44.

[23] That difference (its status as private land as opposed to a public road) does give rise under the MRA to an entitlement of the landowner to pursue compensation for the impact that the applicant's activities might have on land which forms part of the landholding.

[24] A title search for Lot 554 SP177589 (Rosebud) included in the respondent's valuer's report describes the holding as (about) 35,900 ha. The encumbrances identified in the title search include the catch all "Rights and interests reserved to the Crown", two easements to the Commonwealth and one to the North Queensland Electricity Corporation, and some Administrative Advices under the *Mineral and Energy Resources* (*Common Provisions) Act 2014* (**MERCPA**).

[25] It would be the case that the area of Rosebud described in the rolling term lease, is exclusive of the area of the gazetted Fountain Springs Road. For this reason, the applicant says that there is no net loss to the respondent as a result of the existence and use of the access track.

The respondent's compensation claim

[26] In written submissions, the respondent makes clear that the basis of claim is for the impact caused by the applicant as a result of the use of the 6.4 km access track (only). Specifically, the respondent says compensation is assessed with reference to s 281(3)(a)(iii) and s 281(3)(b)(ii) of the MRA being the "diminution of the use made or which may be made of the land of the owner or any improvement thereon". The respondent provided the valuer's report which quantified the claim.

The valuer's report and methodology

[27] The respondent operates a grazing enterprise. The respondent claims that the applicant's use of the access track will cause noise and dust impacts on and adjacent to the access track affecting productivity, giving rise to a compensable loss.

[28] The respondent describes their compensation methodology as a "loss in productivity approach" specifically, weight gain loss because the access track and areas adjacent to it will be underutilised for grazing.[9]

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9 Respondent's response statement filed 8 December 2023, 10 'Acumentis Preliminary Desktop Compensation Assessment' dated 10 October 2023, Section 8.

[29] The inputs adopted by the valuer are as follows:

Period:	12 months/365 days
Weight gain loss:	50% in a 200 metre zone centred on the access track
ADWG:	0.5kg/day
LWG value:	$3/kg
CC:	1AE:12ha

[30] Using these inputs compensation is calculated at $3,200 pa. Because the track is used by other parties who would contribute to the impact of noise and dust, the amount is discounted by 50%. The compensation claimed is $1,600 pa.

[31] Once again evidence is in short supply. The report does not inform me of the instructions the valuer was given or the assumptions the valuer made in determining the values adopted, and as a result, the claimed compensation. There is no information regarding the number of vehicles the applicant might operate on the track per day, week or month; the type, size and scale of vehicles (e.g. 4WD, mining equipment, road train, or other); the steps, if any, the applicant takes to minimise noise and dust impacts (whether, for example, dust suppression is practiced, speed limits imposed and adopted etc.). Nor is there information regarding the respondent's enterprise such as the paddock configuration in the affected area (which might for example make it difficult for cattle to distance themselves from disturbance); the quality of the grazing land in or around the access track (as opposed to elsewhere on Rosebud); the location of fences or water points that might be relevant to the behaviour of cattle, and the impact that the use of the access track by the applicant might have.

[32] There is no information regarding other users of the track – in particular, tourists.

[33] When the matter was before the Court leading to the 2019 decision, it is apparent that the respondent submitted that dust and vegetation disturbance from use of the access track "renders the vegetation unpalatable for a distance of 100 metres on both sides of the track". Her Honour in that case said she was unable to accept those submissions because the evidence of the applicant was: that the track had been in use since the early 1970's and "any initial effect on cattle behaviour must have dissipated…"; that the track was not extensively used noting the applicant submitted that "it will only be using the track a couple of times per month"; a conclusion

based on video evidence submitted by the applicant said to show a narrow track with "reasonably vigorous vegetation on both sides"; and "no evidence of dust deposits on the surrounding vegetation, even close to the road."[10]

[34] I am not presented with similar evidence from the applicant in this matter; nor am I presented with evidence from the respondent to the contrary – other than the valuer's report which is based on the same concerns (rather than evidence) expressed by the respondent in 2019.

[35] I appreciate that a valuer was engaged, however the conclusions reached require acceptance by me of certain facts for which no evidence was provided.

"…All loss or expense that arises…": s 281(3)(a)(vi) MRA

[36] Apart for a claim for compensation for diminution of use made or which may be made of the land, the respondent makes a claim for "loss or expense". This comprises the cost of the valuer's report, and reasonable legal costs.

[37] Attached to the respondent's submissions is a "letter of offer" which had been sent to the applicant on the respondent's behalf. The letter included a draft compensation agreement and a breakdown of the compensation sought. In particular, the respondent makes a claim for expenses incurred, being the valuer's fees and the reasonable legal fees. They say:

> "We note that Practice Direction 3 of 2019 – Procedure for deciding Compensation Disputes and Conduct and Compensation – provides that when determining appropriate compensation, the Court may include the landowner's costs including any 'accounting, legal or valuation costs necessarily and reasonably incurred to negotiate or prepare the agreement'."

[38] Practice Direction 3 of 2019 deals with compensation matters under the MRA, and "conduct and compensation" matters under the MERCPA. Appendix A – Guide to Proposal and Response says landholders and eligible claimants should look at the factors contained in the legislation when calculating compensation. It then lists "some factors to bear in mind" which blends MRA and MERCPA considerations. The costs identified in the respondent's letter of offer refers to costs that might be recoverable under s 91 MERCPA, rather than "loss or expense that arises as a consequence of the grant" under s 281(3)(a)(vi). The relevant "factor" in the list

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10 *Corella Valley Corporation Pty Ltd v Campbell* [2019] QLC 44 [19].

contained in the Practice Direction under s 281 is found at paragraph (e) "any consequential loss".

[39] The loss or expense that often arises in s 281 compensation matters involves, for example, additional management time; or inspections that might be required of a landowner as a consequence of the grant of a mining lease; or the cost of some temporary or permanent fencing etc.

The valuer's report and s 281(3)(a)(vi)

[40] The Originating Application was filed in the Land Court by the applicant on 28 August 2023. The Date of Assessment identified in the valuer's report is 10 October 2023. The respondent's lawyer's letter of offer dated 23 October 2023 says that the valuer had been "recently instructed" to conduct a Compensation Assessment.

[41] Because the engagement of the valuer occurred after proceedings had commenced in the Land Court, the report is a cost of litigation, not an expense incurred because of the applications for renewal. In the circumstances, the cost of the valuer's report is not recoverable under s 281(3)(a)(vi). I address "costs" below.

Legal expenses and s 281(3)(a)(vi)

[42] In relation to legal expenses, only those incurred during negotiation might be recoverable as consequential loss under s 281(3)(a)(vi), while (legal) costs in the litigation could be a matter for a costs application.

[43] There is no submission regarding the loss recoverable under s 281(3)(a)(vi) that the respondent might suffer as a consequence of the grant of the mining leases.

Costs (valuer's report and legal expenses)

[44] The Land Court may order costs for a proceeding as it considers appropriate.[11] If the Court does not make an order, each party must bear the party's own costs for the proceeding. It has been recognized by the Land Appeal Court that although the

11 *Land Court Act 2000* s 27A.

discretion to award costs is unfettered, the rule that costs follow the event may inform the exercise of the discretion.[12]

[45] Submissions have not been made regarding costs under s 27A *Land Court Act 2000*, that is, the cost of the valuer's report and legal expenses as opposed to the claim for the amount outlaid as "loss or expense" incurred because of the applications for renewal under s 281(3)(a)(vi) MRA.

[46] Having considered all aspects of the matter and its conduct, and noting the outcome of the proceeding, I will not make an order as to costs. Accordingly, each party must bear its own costs in this matter.

Conclusions

[47] The 2019 and 2021 decisions of the Court involving these same parties, the same mining leases and the same issues provided the parties with guidance about how they might best present relevant and focussed material to the Court to advance their arguments. In some ways the material is less satisfactory than it was in 2019. Although a valuer's report was provided, in the absence of evidence to support the bases of claim, and without an understanding of the instructions and the assumptions upon which the compensation was assessed, it has been of little assistance to me.

[48] My decision does not mean that a case for compensation is not capable of being made out, however, an award of compensation must be based on evidence. The applicant made an offer of compensation to the respondent in writing in April 2023.[13] The applicant, in submissions filed in the Court said: "The Applicant submits that an acceptable good will figure of $2000 total for the current term…".[14] I would encourage the applicant to enliven that offer in the spirit of goodwill. I cannot, however, make an order to that effect.

[49] Once again, I determine that compensation for the grant of ML 2701 and ML 90106 to be nil.

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12 *Moreton Bay Regional Council v Mekpine Pty Ltd & Anor (No 2)* (2014) 35 QLCR 273; [2014] QLAC 5.

13 Respondent's response statement filed 8 December 2023, 6 ('Copy of Letter dated 12 April 2023 from Mr H J Rush to Mr and Mrs Campbell – Applicant's offer').

14 Applicant's compensation statement filed 24 November 2023, 2 [13].

Orders

1. **In respect of the application for renewal of ML 2701, compensation for access through Lot 554 on SP177589 is determined at nil ($0).**

2. **In respect of the application for renewal of ML 90106, compensation for access through Lot 554 on SP177589 is determined at nil ($0).**