LAND COURT OF QUEENSLAND

CITATION:	*Vaughan v Struber & Anor* [2007] QLC 0080
PARTIES:	Matthew Simon Vaughan (applicant) v. Stephen Roy Struber and Dianne Wilson-Struber (respondents)
FILE NO:	MLC00133/2007
PROCEEDING:	Application to determine compensation
DELIVERED ON:	22 October 2007 Revised on 14 November 2007
DELIVERED AT:	Brisbane
MEMBER:	Mr FW Windridge, Judicial Registrar
ORDERS:	**1. Compensation determined at $1000.** **2. Such compensation to be paid by the miner to the landowner within 90 days of notification of the grant of the mining lease.**
CATCHWORDS:	Compensation – mining lease – stream bed – grazing property - *Mineral Resources Act 1989*, s 281 *Smith v Cameron* [1986-1987] 11 QLCR 64 *Shaw v Heritage Holdings Pty Ltd* (1992-93) 14 QLCR 139 *Mitchell v Oakhill and Mitchell* (10 March 1998) unreported
APPEARANCES:	Not applicable - Heard on the Papers

[1] This is an application under section 281 of the *Mineral Resources Act 1989* (MRA) for the determination of compensation for the effect upon the respondent landowners (Struber and Wilson-Struber) of the proposed grant of the applicant's mining lease number 20409 in the Mareeba District.

[2] The lease is located on Lot 1 on CP907719, Lot 2 on CP910619 and access to the lease is through Lot 1 being part of the Palmer river Resources Reserve. Consent by the trustees of the reserve has been given. Compensation to be determined is that part of the mining lease on land held by the respondent landowners Struber and

Wilson-Struber. The actual area of the lease is 45.8306 hectares. For convenience and ease of calculation, I round off the area to 46 hectares.

[3] The parties have been unable to resolve the issue of compensation, and the matter has been referred to the Tribunal (as it then was) for determination. Whilst it is within the power of the parties to come to agreement on any issues, the power of the Court (as it now is), is limited to Section 281 of the MRA.

[4] The Land and Resources Tribunal has given directions in relation to submissions, and this matter has been dealt with on the papers. The landowner has not lodged a submission, but by an undated letter received in the Registry on 13 September 2007 seeks information relating to the size of the dam and certain photographs. It is not the function of the court to seek or provide evidence for any party. The applicant miner has not lodged any written submission, but supplied copies of written offers forwarded to the respondent landowners but not accepted or returned. I have referred to that material in making this determination. I have also referred to some documents supplied by the Registrar namely a copy of the application for grant of the mining lease and the mining lease Public Report for the purpose of accuracy where necessary. No site visit has been conducted. The miner seeks an initial term of 21 years. Given the area involved and the method of operations, this appears to be an appropriate term.

Compensation

[5] Relevantly, section 281(3)(a) requires the Tribunal to settle the amount of compensation an owner of land is entitled to as compensation for:

> "(i) deprivation of possession of the surface of land of the owner;
> (ii) diminution of the value of the land of the owner or any improvements thereon;
> (iii) diminution of the use made or which may be made of the land of the owner or any improvements thereon;
> (iv) severance of any part of the land from other parts thereof or from other land of the owner;
> (v) any surface rights of access;
> (vi) all loss or expense that arises;
> as a consequence of the grant or renewal of the mining lease".

[6] Section 281(4) enables various additional factors to be included in the compensation determination. In the present case, only paragraph (e) is relevant. It provides as follows:

> "**(4)** In assessing the amount of compensation payable under subsection (3)—
> …

> (e) an additional amount shall be determined to reflect the compulsory nature of action taken under this part which amount … shall be not less than 10% of the aggregate amount determined under subsection (3)."

[7] The matters which must be considered by the Court are set forth in section 281(3) of the Act. Although section 281 sets out the matters to be considered, it does not define any method of assessment. Whilst the Court is only bound by the relevant legislation (i.e. section 281), the following past appeal cases offer some guidance as to methodology to be used in arriving at a determination. In *Smith v Cameron* [1986-1987] 11 QLCR 64, the Land Court held at p. 74…

> "The section in my option merely identifies matters which shall be taken into consideration in making the assessment. It does not prescribe a method of valuation. No doubt each case will depend on its own facts and circumstances but it seems to me that either method is open to the valuer."

[8] In *Shaw v Heritage Holdings Pty Ltd* (1992-93) 14 QLCR 139, the Court at p. 146 said:

> "the method of assessment remains a matter which will be governed by the facts and circumstances of each case in which event emphasis may shift from one method to another."

[9] In considering *Mitchell v Oakhill and Mitchell* (10 March 1998) unreported, The President of the Land Court, referring to section 281(3) of the *Mineral Resources Act*, found

> "the latter section does not prescribe a method of assessment. In my view, as long as the amount of compensation finally determined sufficiently accounts for each of the matters referred to in the sub-section, it is not necessary to quantify an amount in respect of each of the matters referred to.:

[10] In this instance, I have no evidence of the area of land contained in the lease that is within the banks of any stream. It is the responsibility of the miner to submit such information for consideration. Normally the bed of a stream would be valued less than adjoining banks. However, I note that part of the surface area is to be used for associated purposes namely living quarters, treatment plant and water supply. I will therefore treat all the surface area as being of equal value for the purpose of this determination, but allow a discounting factor because mining will only disturb the stream beds. I allow a discount of 50 per cent.

[11] There is no evidence of the dimensions of access.

[12] *Deprivation of possession*: Technically, grant of the lease does in law deprive the owner of the use of that surface area that is within the lease boundary. Apart from

taking water or exercising the right to depasture stock (if pasture does exist), the surface of the stream bed is of little use by the landowner of the adjoining land.

[13] *Diminution of value*: There is no valuation evidence to consider. It is difficult to find any significant reduction of value if a periodical alluvial operation is conducted in the stream bed.

[14] *Diminution of use*: There is no evidence of diminution of use. Again, if alluvial ground in the stream bed is being worked, there is little diminution of use by the landowner.

[15] *Severance*: There is no evidence that the grant of this lease will cause severance of one part of the property from any other part of the property. I make the assumption that the plan of operations restricts the mining operation to the alluvium confined by the stream banks.

[16] *Surface rights of access*: There is no evidence of any loss of land in the surface right of way. I assess loss of access to be of nominal effect, and award the sum of $10 under this head of claim.

[17] *Loss or expense*: There is no evidence of any other loss or expense that will occur because of the grant of the lease.

[18] *Additional 10%*: In respect of s. 238(4) (e), no submissions were made. There does not appear to be any reason or special circumstance why the premium should be increased, and therefore no more than the statutory 10% should be added to the general award.

Determination

[19] With the material supplied by the Registrar is a Property Details Report from QVAS. This report indicates the total area of the property is 125640 hectares and for rating purposes is valued at $650.000, effective as at 1/10/2005. This equates to a per hectare value of $5.1735. The open market price may well be higher than this valuation. In my opinion, there will be a negligible effect, if any at all, on the management of the pastoral holding. Principally, only the alluvial material in the stream bed will be disturbed. This disturbance will be minimised and returned to natural contours as soon as the stream suffers flooding. I am not satisfied that any award other than a nominal award is justified, given the lack of valuation evidence. However, I am of the opinion that the information gained from the QVAS Report gives some support to a valuation of about $5 per hectare. The applicant miner seeks a lease of about 46 hectares. At $5 per hectare, this equates to $230 per year. For a

term of 21 years, this calculates to a total of $4830. While the rate per hectare may appear to be low, I take into account that only the stream alluvium is to be mined and processed, and some discounting is warranted for this fact. Should the lease be terminated before expiration of the full term, the landowner has the financial benefit of some overpayment. The landowner has some further benefit in that the miner is obliged to pay the rateable value of the land in the lease each year for 21 years. This compensates for other factors and any increase in market value. Having regard to the foregoing, I determine compensation as follows at the rate of $5 per hectare for a term of 21 years on 46 hectares, with discount as referred to in paragraph [10].

(a)	Deprivation of possession (s. 281(3)(a)(i)) 46 ha @ $5.00 per ha per year for 21 years, discounted by 50%	$2415.00
(b)	Access (s.281(3)(a)(v)	10.00
(c)	Additional 10% (s.281(4)(e))	242.50
		$2667.50

[20] There was no submission in relation to the times, terms and manner of payment. Due to the quantum involved, I consider that payment of compensation should be in full and made within 90 days of notification of grant of the lease by the Registrar.

[21] Since the determination was handed down, it has been drawn to my attention that part of the mining lease is Resources Reserve for which no compensation is required, and part of the lease is located on Palmerville Holding. Compensation is required for this part only. Other documents on the file do not indicate how much area is contained in the Reserve portion of the lease or how much is contained in the Palmerville holding part of the lease. The only reference to area is contained in the b/c copy of a letter dated 31 July 2007 to the landowners by the miner offering to pay compensation of $10.00 per hectare for 8 hectares. This is not primary evidence and I would prefer that the respective areas be calculated by an independent source. However, in the absence of any other reliable information, I accept the miner's assessment of area at 8 hectares.

[22] QVAS documents indicate that the total area of the property is 125640 ha and the unimproved value as of 30 June 2005 is $650,000. This equates to a per hectare value of approximately $5.1735.

[23] Whilst it is possible that the value has increased since 2005, there is no evidence before me of this fact.

[24] Therefore, based on the information supplied by the Registrar, I amend the quantum as determined in para 19 by substituting an order that the miner pay to the landowner the sum of $840 (8 hectares @ $5 per ha for 21 years) as compensation with an additional sum of $84 allowed under section 281(4) (e).As it appears access is through the Resources Reserve, I now revoke the award for access. I round off total compensation for the term of the lease to $1000.

[25] I order that such compensation be paid within 90 days of notification of grant of the lease by the Registrar.

FW WINDRIDGE
JUDICIAL REGISTRAR