

LAND COURT OF QUEENSLAND

CITATION: *Hensel v Foote & Anor* [2015] QLC 25

PARTIES: Hans-Dieter Hensel
(applicant)

v

Janelle Florance Foote as Trustee &
Amber Bronwyn Hatfield as Trustee
(respondents)

FILE NO: MRA072-15

DIVISION: General Division

PROCEEDING: Determination of compensation for renewal of mining
lease

DELIVERED ON: 30 July 2015

DELIVERED AT: Brisbane

HEARD ON: Submissions closed on 19 May 2015

HEARD AT: Heard on the papers

MEMBER: G.J Smith, Judicial Registrar

ORDERS:

- 1. Compensation is determined in the total sum of One Hundred and Eighty-Five Dollars (\$185.00)**
- 2. The miner is to pay compensation to the respondents in the amount set out in Order 1 hereof within three (3) months of the renewal of Mining Lease 20043 by the Department of Natural Resources and Mines.**

CATCHWORDS: MINING LEASE – determination of compensation -
renewal - factors to be considered - limited material
provided by either party.

Mineral Resources Act 1989, ss 279, 279A, 281.
Land Court Rules 2000, Rule 36A

Unimin Australia Limited v Freeman [2007] QLC 76
Eacham Abrasive Blasting Pty Ltd v Gundersen & Anor
[2014] QLC 38

Oosen v Emu Creek Bar-Barrum Aboriginal Corporation
(2008) QLC 23
Re Fitzgerald & Anor (2009) QLC 15
Re Fitzgerald and Hughes (2009) QLC 73
Re Kimmoth & Poole (2009) QLC 117
Palmer Gold NQ Pty Ltd v Strathleven WAR(NQ) Pty Ltd
[2014] QLC 42

APPEARANCES: Not applicable

- [1] This matter involves a referral to the Land Court pursuant to s 279A of the *Mineral Resources Act 1989* (MRA) for the determination of compensation in respect of the renewal of a mining lease.
- [2] On 27 August 2013, Hans-Dieter Hensel (the miner) applied for the renewal of Mining Lease 20043 over land located approximately 23 km west south-west of Mount Garnet in the Mareeba District. The land is within the Mareeba Shire local government area. Further renewal is sought for a period of 10 years. The purpose of the proposed renewal is for the mining of stone-granite.
- [3] Access to the mining lease area is partly across a track owned by the respondents, Janelle Florance Foote as Trustee and Amber Bronwyn Hatfield as Trustee and is more particularly described as Lot 2238 on PH2016. Mapping data supplied by the Department of Natural Resources and Mines (DNRM) indicates that the length of the access track on the respondents' property is approximately 3.35 km.
- [4] No specific details regarding the width of the access track have been provided so I will adopt a figure of 10 m, which will result in an access area of 3.35 ha. I consider this to be a realistic assessment which also accords with other Land Court determinations in the Mareeba district.¹

Relevant Legislation

- [5] Section 279 of the MRA provides that a mining lease shall not be granted or renewed unless an agreement in relation to compensation has been filed or, in the absence of such an agreement, a determination of compensation has been made by the Land Court. In this matter, no agreement has been lodged with DNRM and the matter has been referred to the Land Court for determination.
- [6]

¹ *Densyl Sandstone Pty Ltd v White & Anor* [2014] QLC 35; *Eacham Abrasive Blasting Pty Ltd v Gundersen & Anor* [2014] QLC 38

[7] Section 281 of the MRA identifies the matters which must be considered by the Court when determining compensation. In particular, s 281(3)(a) provides that an owner of land is entitled to 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.

[8] 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).”

The Conduct of the Proceedings and Evidence

[9] On 16 March 2015, the Land Court registry wrote to the parties setting out a timetable for the delivery of materials and submissions in accordance with Land Court Practice Direction No. 5 of 2013.

[10] Although no formal additional material or submissions were received from either party the miner advised by email dated 13 April 2015 that “completion of all the requirements to satisfy a very minor (50 meter) change in access (which is itself likely to be variable due to climatic activity and land use) will take several months”. Whilst the possibility of this prospective change is noted there is no reason to delay the determination of compensation given that the expiry date of ML 20043 was 28 February 2014.

[11] In the absence of any additional material from the parties, the determination of compensation can be challenging. In *Unimin Australia Limited v Freeman*,² Member Jones [as he then was] noted as follows:

“I realise that my determination of compensation in this case is the result of little more than calculated guesswork or speculation. However, in circumstances where the parties have elected to provide little or no material to the Court concerning their position about compensation there is not much more that the Court can do.”

[12] Despite this however there are several Court judgments from the North Queensland area provide guidance with the determination of compensation in relation to ML

² [2007] QLC 76 at [14].

20043. These determinations from the Mareeba District range from \$5 per hectare per annum to \$15 per hectare per annum.³ Member Smith in the recent case of *Eacham Abrasive Blasting Pty Ltd v Gundersen & Anor*⁴, allowed the sum of \$10 per hectare per annum for the area covered by mining and \$5 per hectare per annum for access in respect of a renewal of a mining lease.

Determination

- [13] After considering the limited material and the relevant Court determinations cited above, and taking into account all heads of compensation set out in s 281(3) of the MRA, I assess compensation for Mining Lease 20043 at \$5 per hectare per annum in respect of access.
- [14] This results in a total annual amount of \$16.75 per annum in respect of access. Applying this amount over the term of the mining lease (i.e. 10 years) amounts to \$167.50 for the 10 year period of the lease.
- [15] Pursuant to Section 281(4) (e) of the MRA, I will add an additional sum of \$17.50 to reflect the compulsory nature of the grant of the mining lease.
- [16] This results in total compensation for the 10 year extension period of the mining lease of \$185.00.

Orders

1. Compensation is determined in the total sum of One Hundred and Eighty-Five Dollars (\$185.00).
2. The miner is to pay compensation to the respondent in the amount set out in Order 1 hereof within three (3) months of the issue of Mining Lease 20043 by the Department of Natural Resources and Mines.

G.J. SMITH
JUDICIAL REGISTRAR

³ *Oosen v Emu Creek Bar-Barrum Aboriginal Corporation* [2008] QLC 23; *Re Fitzgerald & Anor* [2009] QLC 15; *Re Fitzgerald and Hughes* [2009] QLC 73; *Re Kimmoth & Poole* [2009] QLC 117; *Donovan v Struber & Anor* [2009] QLC 160.

⁴ [2014] QLC 38.