

LAND COURT OF QUEENSLAND

CITATION: *Alphadale Pty Ltd v Dore and Ors* [2016] QLC 15

PARTIES: Alphadale Pty Ltd
(applicant)
v
MJ Dore, GF & EA Lyons, DJ & MA Turley, RJ Mann and
Atkinson Developments
(respondents)

FILE NO: MRA112-15

PROCEEDINGS: Determination of compensation payable for renewal of mining
lease.

DELIVERED ON: 26 February 2016

DELIVERED AT: Brisbane

HEARD ON: Submissions closed 3 July 2015

HEARD AT: Heard on the papers

JUDICIAL REGISTRAR: GJ Smith

ORDERS:

- 1. In respect of ML 10175 compensation is determined in the total sum of \$2700.00 per annum for the first year and that sum as adjusted in accordance with the Consumer Price Index in each subsequent year of the tenure.**
- 2. The miner pay compensation to the landowners the amount set out in order 1 within three months from notification of the renewal of the mining lease by the Department of Natural Resources and Mines and thereafter annually on the anniversary of the renewal of the mining lease.**

CATCHWORDS: MINING LEASE – renewal – access – determination of
compensation – use of Court judgments for determination
purposes.

Mineral Resources Act 1989 ss 279A, 281

Alphadale Pty Ltd v Dore & Ors [2014] QLC 25

Unimin Australia Limited v Freeman [2007] QLC 0076

Wills v Minerva Coal Pty Ltd [No.2] (1998) 19 QLCR 297

APPEARANCES: Not applicable

[1] These proceedings concern a referral to the Land Court by the Chief Executive, Department of Natural Resources and Mines (DNRM) pursuant to s 279A of the *Mineral Resources Act 1989* (MRA) for the determination of compensation in respect of the grant of Mining Lease 10175.

Background

[2] The applicant, Alphadale Pty Ltd (the miner) seeks the grant of a mining lease located on land described as Lot 602 on PH1444 when the referral documents were lodged with the Land Court which subsequently has changed to Lot 1 on SP272205. The Mining Lease comprises an approximate 305 ha mining area and a 5.3 km access track across land owned by the respondents MJ Dore, GF & EA Lyons, DJ & MA Turley, RJ Mann and Atkinson Developments (the landowners).

[3] The property is located in the Charters Towers Regional Council local government area and is used for grazing purposes.

[4] The specific Land Court reference and tenure details are set out as follows:

Court Reference	Tenure ID	Area	Term	Lease Purpose
MRA112-15	10175	305 ha	9 years	Gold-Silver

Relevant Legislation

[5] Section 279 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] Section 281 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.”

[7] 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).”

[8] The assessment to be undertaken in accordance with s 281 was discussed in *Wills v Minerva Coal Pty Ltd*¹ as follows -

“It is beyond question as I have written above that the primary source of law is the statute under consideration and it seems to me that the learned Member acknowledged this when he said:

‘The section in my opinion merely identifies matters which shall be taken into consideration in making the assessment. It does not prescribe a method of valuation.’

Section 281 MRA neither prescribes nor suggests a method of assessment or valuation either. The selection of an appropriate method is a matter for the relevant expert, however, there is one warning that I should post. If the expert was to approach the assessment of compensation by simply accumulating figures assessed independently under each of the items listed in s.281(3)(a)(i) to (vi) and without regard to the prospect of a matter being dealt with under more than one item, the chance that there will be a duplication of items assessed will be high.”

The Conduct of the Proceedings and Evidence

[9] On 1 May 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] On 27 May 2015 the Court received email correspondence from Mr Perkins of Curtin Brothers Pty Ltd on behalf of the Miner seeking an extension of time for compliance with the timetable referred to in [9] to enable a compensation agreement to be finalised. Mr Perkins was advised by return email that the Court would not make any determination prior to 3 July 2015 and that the consent of all parties would be required prior to any extension being considered.

[11] To date the Court has not received any response or confirmation concerning the finalisation of a compensation agreement and no material or submissions have been filed by the parties.

Determination

[12] Neither party has sought to rely upon expert or other evidence and no submissions have been received regarding a contended amount of compensation. In such cases the observations of

¹ *Wills v Minerva Coal Pty Ltd [No.2]* (1998) 19 QLCR 297 at 315.

Member Jones [as he then was] regarding the nature of the assessment process in *Unimin Australia Limited v Freeman*², are relevant:

“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.”

- [13] In such cases an appropriate approach to adopt in assessing compensation is to consider any relevant Court judgments within the local area that might assist with the determination of compensation.
- [14] A 2014 Land Court judgment involving the same parties, namely, *Alphadale Pty Ltd v Dore and Ors* [2014] QLC 25 is considered instructive for this determination of compensation for ML 10175. In this judgment, Mr BR O’Connor, Judicial Registrar, determined compensation at \$75 per ha in respect of a mining lease area of 10.125 ha over grazing land. The renewal was for a period of 9 years.
- [15] The current determination of compensation in respect of proposed ML 10175 concerns both mining and access areas. Mapping data provided by DNRM confirms that the area of the mining lease is 305 ha with an access track approximately 5.30 km in length. For the purposes of this determination I have rounded the length of the access track to 6 km and have assumed a width of 5 m.
- [16] Based on the earlier judicial determination between these same parties I consider that \$8/ha per annum in respect of the mining area and \$4/ha per annum in respect of the access area is appropriate compensation.
- [17] The final determination in respect of ML 10175 is set out as follows:
- | | | |
|--|---|-----------------------------|
| Area covered by mining lease – 305 ha @ \$8/ha | = | \$ 2440.00 per annum |
| Area covered by access – 3 ha @ \$4/ha | = | \$ 12.00 per annum |
| add s 281(4)(e) re: compulsory nature of grant | = | \$ 248.00 per annum |
| Total | = | \$ 2700.00 per annum |
- [18] In light of the duration of the term of the mining lease and the amounts assessed, I intend to order that the compensation determined be adjusted in accordance with the Consumer Price Index in each subsequent year of tenure.

ORDERS

1. In respect of ML 10175 compensation is determined in the total sum of \$2700.00 per annum for the first year and that sum as adjusted in accordance with the Consumer Price Index in each subsequent year of the tenure.
2. The miner pay compensation to the landowners the amount set out in order 1 within three months from notification of the renewal of the mining lease by the Department of Natural

² *Unimin Australia Limited v Freeman* [2007] QLC 0076.

Resources and Mines and thereafter annually on the anniversary of the renewal of the mining lease.

GJ SMITH
JUDICIAL REGISTRAR