LAND COURT OF QUEENSLAND

CITATION:	*Guernier & Anor v Chelsea on the Park Pty Ltd* [2021] QLC 13
PARTIES:	**Gregory Robert Guernier** (applicant) **Doris Silva Guernier** (applicant) v **Chelsea on the Park Pty Ltd** (respondent)
FILE NO:	MRA719-19
DIVISION:	General Division
PROCEEDING:	Determination of compensation payable for grant of mining lease
DELIVERED ON:	24 March 2021
DELIVERED AT:	Brisbane
HEARD ON:	18 & 19 February 2021 Submissions closed 12 March 2021
HEARD AT:	Mareeba
MEMBER:	PG Stilgoe OAM
ORDERS:	**I determine compensation as:** **1. the cost of two inspections per year in the sum of Three Hundred and Seventy-One Dollars and Eighty-Eight Cents ($371.88) (including 10%);** **2. the sum of Three Hundred and Seventy Dollars and Eighty-Eight Cents ($370.88) (including 10%) for additional administration costs; and** **3. a contribution of 10% to the cost of access track maintenance, payable only on presentation of an invoice after the upgrade has been completed.**

CATCHWORDS: ENERGY AND RESOURCES – MINERALS – MINING FOR MINERALS – COMPENSATION – where the applicant owned a mining lease situated on the land of the respondent – whether and, if so, what compensation was payable under s 281(3) of the *Mineral Resources Act 1989*

Mineral and Energy Resources (Common Provisions) Act 2014 s 91
Mineral Resources Act 1989 s 281

Kelly v Chelsea on the Park Pty Ltd [2020] QLC 36, cited
Lonergan & Anor v Friese [2020] QLAC 3, applied
Richardson v Barrett [2001] QLRT 89, cited

APPEARANCES: G Guernier, the applicant (self-represented)
SS Monks (instructed by Colin Biggers & Paisley) for the respondent

[1] Gregory Robert Guernier wants to reprocess the tailings from an old gold mine on Palmerville Station in far north Queensland. To that end, he has been granted a mining lease (ML 100202) ("ML") which covers a 17 km access track and a mine area of 8.45 ha.

[2] Chelsea on the Park Pty Ltd owns Palmerville,[1] a cattle station of about 134,000 ha.

[3] Although the parties agree on many things, they cannot reach a final agreement about compensation. Mr Guernier suggests that he should pay Chelsea a total of $2,949.[2] Chelsea suggests that compensation of $7,513 p.a. is more appropriate.

[4] I am required to determine compensation pursuant to s 281(3) of the *Mineral Resources Act 1989* ("MRA").

Deprivation of possession of the surface of the land: s 281(3)(a)(i)

[5] I have the advantage of a joint expert report from valuers Max Dickenson and Roger Hill. Mr Dickenson considers that there is no loss to Palmerville arising from the grant of the ML.[3] He says that the land within the ML is inaccessible to commercial livestock, is not being used for commercial grazing and it will have no effect on Chelsea's current or future grazing business.[4]

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1 Chelsea on the Park Pty Ltd is the lessee of a registered rolling term pastoral lease PH 14/5422.
2 Ex 1, page 7, para 38.
3 Ex 6, page 28, para 15.1.
4 Ibid page 28, para 15.2.

[6] Mr Dickenson also says that, due to the number of existing mining leases on Palmerville, the grant of a new ML will have no effect on its overall value.[5] He points out that the ML will not be fenced and stock will have unhindered access to most of the area. He also points out that Mr Guernier will not be working the mining lease on a full-time basis.[6]

[7] In light of these comments, I find that Chelsea is not deprived of the surface of the land. Only 4.3 ha of the ML can be worked.[7] Mr Guernier will be working on a maximum area of 2 ha at any one time.[8] He will only mine for three to five months per year.[9] He does not plan to fence the whole of the ML.[10] He plans to rehabilitate progressively.[11]

[8] The access track will be unfenced, so cattle will be able to traverse it freely and Chelsea staff will be able to use it.

[9] Chelsea is not deprived of possession of the surface of the land, either in the ML or in the access track. No compensation is payable.

Diminution of the use made or which may be made of the land of the owner or any improvements thereon: s 281(3)(b)(iii)

[10] Darren Pearson is a director of Chelsea. He states that mustering on Palmerville is conducted by helicopter,[12] and the ML is the only cleared landing site in this part of Palmerville.[13] He states that the ML is used as a mustering point, a landing and refuelling point for helicopters and a campsite for employees and contractors when mustering occurs.[14] Mr Pearson notes that the ML is particularly useful because it is close to a major dam, meaning that mustered cattle have access to water before they are trucked out.[15]

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5 Ibid page 29, para 15.6.
6 Ibid page 29, para 15.8.
7 Ex 1, page 2, para 6.
8 Ibid page 3, para 14.
9 Ibid page 3, para 18.
10 Ex 6, page 15, para 10.4.
11 Ex 1, page 3, para 17.
12 Ex 4, page 3, para 18.
13 Ibid page 3, para 19.
14 Ibid.
15 Ibid page 3, para 20.

[11] The parties discussed alternative locations for both the mustering point and the helicopter landing point. Eventually, they agreed that the ML is the only practical site for helicopter landings.[16] I understand that Mr Guernier does not object to the use of the ML for mustering and as a helicopter landing site,[17] but there is disagreement about the conditions under which that would occur.[18]

[12] If the parties cannot agree about the use of the ML for mustering and helicopter landing, then the value of the land to Chelsea will be diminished. Mr Hill has assessed this loss.[19] He calculates a full loss of 4.153 ha which he says is poor quality and valued at $15/ha, and a 20% loss of the balance at $30/ha, giving a total of $191.30.[20] I accept this calculation.

[13] There is no evidence that the value of the land covered by the access track will be diminished. The track already exists and, as I have observed, Chelsea's cattle and personnel will not be prevented from its use. There should be no compensation for the access track.

[14] Mr Hill suggests that the ML will result in a diminution of the use of surrounding land as a cattle camp and/or mustering site. He has assessed that 13 beasts camp at the ML for about 20% of the day. Each beast has a value of $570. Mr Hill has extrapolated this out to a loss of $1,853.

[15] The evidence suggests that Mr Hill's assessment of 13 cattle in the vicinity of the ML is correct. However, I do not accept that Chelsea is entitled to compensation based on a percentage of the value of those cattle. Firstly, Mr Hill's calculation of the value of the land in the ML already accounts for the fact that it may not be available for Chelsea's use. Secondly, and more importantly, Mr Hill does not explain how the ML will adversely affect the cattle's use of the ML and how that translates into a loss of condition in the cattle. I decline to award compensation for the diminution in the use of the surrounding land.

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16 T 1-30, lines 18 to 25.
17 Ibid line 25.
18 Ibid lines 25 to 46; T 1-31, lines 1 to 28.
19 Ex 6, page 27.
20 Ibid.

All loss or expense that arises as a consequence of the grant or renewal of the mining lease: s 281(3)(a)(vi)

[16] Chelsea has claimed the following loss and expense:

1. Biosecurity inspections for weed management;
2. Biosecurity management/monitoring;
3. Cost to upgrade the access track;
4. Cost of alternative mustering/landing point; and
5. Legal, valuation and negotiation costs.

Inspections for weed management

[17] I have a report from agronomists Dean Jones and William Thompson.[21] They agree that there are declared weeds on the ML that require control and management strategies from both Mr Guernier and Chelsea.[22] They say that the control program must include a simple half day inspection twice per year, once at the start of the wet season and once at the start of the dry season.[23]

[18] Mr Dickenson questions the need for an inspection at the end of the dry season, noting that weeds will not be actively growing during the dry season and will be difficult to identify.[24] He refers to photos taken by Mr Jones,[25] which show that most of the weed infestation has disintegrated and it is difficult to tell the type or level of weed infestation.

[19] Mr Guernier shares Mr Dickenson's view that an inspection at the end of the dry season is of little use.[26]

[20] I agree that Mr Jones' photos show little active vegetation at the end of the dry season. Unfortunately, the agronomists did not give oral evidence, so I was not able to ask them about this issue. Presumably, they have good reasons for suggesting that both inspections are necessary. Neither Mr Dickenson nor Mr Guernier is an agronomist, although they may have extensive practical experience. I prefer the evidence of the agronomists and find that a twice annual inspection is appropriate.

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21 Ex 8.
22 Ibid page 6.
23 Ibid.
24 Ex 6, page 17, para 11.5.
25 Ex 8, Appendix 2, page 15–24.
26 T 2-21, lines 3 to 7.

[21] Mr Pearson states that the cost per inspection is $750 if Chelsea can conduct the inspections within its normal activities in the area.[27] That figure contemplates two employees, one of whom is a senior employee, and each inspection needing two hours. In another recent case,[28] Mr Pearson calculated the cost of an authorised person conducting an inspection at $92.72/hour. He gave a comprehensive breakdown of the costs in that case whereas here he has not. I prefer Mr Pearson's earlier assessment. Two people for two hours each means four hours at $92.72, a total of $371.88. That figure assumes that both employees are authorised persons whereas it is likely that one of them will be a station hand. Mr Guernier should pay Chelsea $371.88 p.a. for weed inspections, even if that results in a slight windfall to Chelsea.

Biosecurity monitoring

[22] Mr Pearson states that Chelsea's biosecurity obligations require it to minimise the risk of biosecurity breaches and that it does so through a visitor log and encouraging "come clean and go clean" practices.[29] Chelsea intends to install monitoring equipment on the access roads which will enable it to remotely maintain a record of visits.[30] Chelsea claims a cost of one hour per quarter at $100/hour for biosecurity monitoring.[31]

[23] Mr Guernier will be required to complete a Farm Visitor Register Form when he visits Palmerville.[32] Biosecurity monitoring will require Chelsea to match actual visits to the paperwork and identify any visits that are not supported by the Farm Visitor Register Form. Given Mr Guernier's intention to work the ML for only three to five months per year, the workforce is usually limited to Mr and Mrs Guernier,[33] and there is a locked gate on the access track,[34] I find that biosecurity monitoring will be minimal.

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27 Ex 4, page 6, para 30(e).
28 *Kelly v Chelsea on the Park Pty Ltd* [2020] QLC 36 [55].
29 Ex 4, page 6, para 32.
30 Ibid page 6, para 34.
31 Respondent's Statement of Facts, Matters and Contentions, 9 April 2020, Attachment A – Respondent's assessment of compensation.
32 Ex 4, page 6, para 33.
33 Electronic hearing bundle, page 25.
34 Compensation Statement of Gregory Robert Guernier, filed 3 April 2020, 3.

[24] Chelsea has also claimed the cost of monitoring biosecurity in a general claim for administration expenses. The Court should be careful to not give double compensation.[35] Therefore, to the extent that Chelsea is entitled to compensation for biosecurity monitoring, I will factor it into the claim for general administration expenses.

Annual administration expense

[25] Chelsea claims $500 as an annual administration expense for processing Mr Guernier's compensation payment, conducting an annual audit of Mr Guernier's compliance with the requirements of the mining lease, and monitoring biosecurity, erosion and washdown compliance.[36]

[26] Unlike Chelsea's claim for biosecurity monitoring costs, there is nothing in the material that explains how Chelsea arrived at the figure. I cannot assume that it is a claim for five hours at $500/hour because one would have thought that, if it were so, Chelsea could have stated such a simple formula. Therefore, I am forced to conclude that the claim for $500 p.a. is an ambit claim.

[27] Processing Mr Guernier's annual payment should take a matter of minutes. Chelsea can monitor Mr Guernier's compliance with the mining lease conditions and erosion on the track during its monthly visits to the area. Monitoring washdown compliance should be part of the Farm Visitor Register requirements, although I note that Chelsea's form does not ask for a copy of any washdown certificate nor does it foreshadow that a visitor may be required to supply a washdown certificate.

[28] I have already commented that the time required for monitoring biosecurity compliance is minimal. Overall, I find that this work will take an extra two hours per annum. I award $370.88 p.a. – four hours at $92.72 – for additional administration costs.

Track maintenance

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35 *Richardson v Barrett* [2001] QLRT 89 [12].

36 Electronic hearing bundle, page 16.

[29] The parties agree that the access track is in very poor condition.[37] Mr Guernier intends to upgrade it using his own machinery.[38] While Mr Pearson is happy with Mr Guernier doing this, he does not agree with the level of upgrade required.

[30] Mr Guernier intends to repair the track to a safe standard.[39] Mr Pearson says that Chelsea wants the track "maintained and modernised to the standard of access tracks of other miners that have come to agreements with Chelsea".[40]

[31] Both Mr Pearson and Mr Guernier refer to the access track to a neighbouring mining lease as being an appropriate standard for the upgrade of this track.[41] Mr Guernier also makes the point that Chelsea personnel already use the track in its current condition.

[32] Mr Pearson says that Chelsea requires:[42]

> "access tracks be constructed in a way which is consistent with the goal of ensuring a safe environment for the operators' employees and others on Palmerville Station, including that:
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> (a) the location of the access track be consistent with the operators' obligations and responsibilities to the Western Yalanji people as native title holders. The operators consult the Western Yalanji people about the location of the proposed access track and necessary firebreak area so that the access track and firebreak areas can be diverted around watercourses, water holes or other places of significance to the Western Yalanji people).
>
> (b) the access track be graded and compacted to minimise the risk of erosion.
>
> (c) the access track be adjoined on both sides by a fire break (ie an area cleared of trees).
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> (d) the curb or edge of the cleared area be reseeded with quickly germinating seeds to create an erosion barrier, followed by seedling with deeper-rooted varieties (eg buffel grass, seca stylo grass, legumes and native grass seeds). The seeding is carried out by either the operators' staff or subcontracted to the Western Yalanji people (via the holders of mining leases or exploration permits where they undertake the construction or improvement of the access tracks).

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37 Ex 1, page 4, para 19–20; Ex 4, page 3–4, para 22, 24; Ex 5, page 2, para 10(b).
38 Ex 1, page 4, para 22.
39 Ibid page 4, para 20–21.
40 Ex 5, page 2, para 10(a).
41 Ex 1, page 4, para 20; Ex 5, page 2, para 10(a).
42 Ex 5.

(e) be at least 20 metres wide (including the width of the track and the fire break) except where such a width would be impracticable having regard to the terrain.

(f) where appropriate and practicable, the operators ensure that a cleared area 100m in length and 100m in width (ie one hectare) is created along each access track at five kilometre intervals (using existing cleared areas for this purpose wherever possible)."[43]

[33] The upgrades that Mr Pearson proposes appear to be responsive to Chelsea's long term plans to upgrade all tracks within Palmerville.[44] While I understand and accept that tracks should be constructed to minimise the risk of erosion, and operate as a fire break, the evidence before me does not justify a finding that a 20 m wide cleared area and 100 m passing lanes every 5 km is a necessary consequence of the grant of the ML. I have no information about the volume of traffic expected on the track except that Mr Guernier says his use will be limited,[45] and Chelsea personnel will be in the area monthly.[46]

[34] The access track nominated in the ML is 6 m wide.[47] Chelsea has not explained how Mr Guernier can be responsible for the cost of works for the 14 m strip of land outside the ML.

[35] I am not persuaded that the cost to upgrade the track to Chelsea's specification is an expense "as a consequence of the grant or renewal of the mining lease".

[36] Chelsea submitted that I should order compensation in the event that Mr Guernier does not upgrade and maintain the access track.[48] That is the correct approach. However, Mr Guernier is not required to upgrade the track to Chelsea's stated standards, nor should he be required to pay the full cost of the upgrade at $34,427.65.[49] In my view, a 10% contribution to the cost is appropriate. This takes account of the wider clearing Chelsea requires, the number of trips Mr Guernier is likely to take, the number of trips Chelsea is likely to take and that Chelsea's use of the track for carting cattle is more likely to affect the surface of the track than Mr

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43 Ibid page 3–4, para 13.
44 Ex 5, page 3, para 11.
45 T 1-42, lines 37 to 39.
46 Ex 4, page 5, para 30(c).
47 Application for Mining Lease, 13 December 2018. This document is appended to Originating Application, 16 October 2019.
48 Respondent's Submissions at Hearing, page 10, para 44.
49 Ex 5, "DAP-19".

Guernier's four wheel drive.[50] Mr Guernier should only pay his contribution on presentation of an invoice from Chelsea after the upgrade has been completed.

Cost of alternative mustering/landing point

[37] If the parties cannot agree on the use of the ML for mustering/helicopter landing, Chelsea will have to find an alternative site. Mr Pearson says that Chelsea has not yet identified an alternative mustering point,[51] but he estimates the extra cost as $13,481.52 for additional transport costs, a one-off cost of $59,000 for installing yards and a one-off expense of $120,000 to upgrade the access road from Groganville.[52] These costs are only possibilities at this stage. I decline to make any order about them unless and until:

1. there is a need for an alternative mustering regime;
2. Chelsea identifies that alternative; and
3. the cost of bringing the alternative on-line is fully costed.

Legal, valuation and negotiation costs

[38] Chelsea has claimed $8,887.90 for reasonable legal expenses, $1,500 for reasonable valuation expenses and $4,500 for the costs of negotiating with Mr and Mrs Guernier.[53] The amount claimed for valuation fees is modest. The amount claimed for legal fees is also modest, although I note that the fee note has been redacted to remove some items of work but the claim includes those redacted items.[54] The claim for negotiation is three days of Mr Pearson's time and $1,500 per day. Again, that is a modest claim, but it is not supported by any evidence.

[39] The Land Appeal Court has determined that:

> "the time spent by a landowner negotiating with a mining lessee as to appropriate compensation cannot be properly characterised as "loss or expense that arises as a consequence of the grant of renewal of the mining lease" pursuant to s 281(3)(a) because the grant or renewal of the mining lease cannot occur until, pursuant to s 291, compensation has been determined by agreement or by determination of the Land Court."[55]

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50 T 1-41, lines 26 to 36.
51 Ex 5, page 9, para 41.
52 Ibid page 9, para 42.
53 Ex 4, page 7, para 37.
54 Electronic hearing bundle, page 297.
55 *Lonergan & Anor v Friese* [2020] QLAC 3 [56].

[40] Accordingly, Chelsea's claim for compensation for Mr Pearson's time cannot be the subject of compensation.

[41] I take the same approach for the legal and valuation costs. They are costs incurred in negotiating compensation, they are not costs that arise as a consequence of the grant of the mining lease. The situation under the MRA is very different from the regime for conduct and compensation agreements under the *Mineral and Energy Resources (Common Provisions) Act 2014* which expressly gives a right to claim the reasonable costs of negotiating an agreement.[56] In the absence of an express provision, and in light of the Land Appeal Court's decision, I can find no justification for an order that Mr Guernier pay Chelsea's costs.

[42] No compensation is payable.

[43] Of course, Chelsea is entitled to the usual uplift of 10% in accordance with s 261(4)(e).

Conclusion

[44] Mr Guernier must pay Chelsea compensation as follows:

Head of compensation	**Amount ($)**
Deprivation of possession of the surface of the land: s 281(3)(a)(i)	$0
Diminution of the use made or which may be made of the land of the owner or any improvements thereon: s 281(3)(b)(iii)	$0
All loss or expense that arises as a consequence of the grant or renewal of the mining lease: s 281(3)(a)(vi)	
Inspections for weed management	$371.88/p.a. (including 10%)
Biosecurity monitoring	$0
Annual administration expense	$370.88/p.a. (including 10%)
Track maintenance	10% to the cost of access track maintenance, payable only on presentation of an invoice after the upgrade has been completed

[56] *Mineral and Energy Resources (Common Provisions) Act 2014* s 91.

Cost of alternative mustering/landing point	$0
Legal, valuation and negotiation costs	$0

Orders:

I determine compensation as:

1. **the cost of two inspections per year in the sum of Three Hundred and Seventy-One Dollars and Eighty-Eight Cents ($371.88) (including 10%);**
2. **the sum of Three Hundred and Seventy Dollars and Eighty-Eight Cents ($370.88) (including 10%) for additional administration costs; and**
3. **a contribution of 10% to the cost of access track maintenance, payable only on presentation of an invoice after the upgrade has been completed.**