LAND COURT OF QUEENSLAND

CITATION:	*Hail Creek Coal Holding Pty Limited & Ors v Michelmore* [2021] QLC 19
PARTIES:	**Hail Creek Coal Holding Pty Limited, Marubeni Coal Pty Ltd, Nippon Steel Australia Pty Limited, Sumisho Coal Development Queensland Pty Ltd** (applicants) v **Ian Ferguson Michelmore** (respondent)
FILE NO:	MRA119-20
PROCEEDING:	Determination of compensation payable for grant of mining lease
DELIVERED ON:	27 May 2021
DELIVERED AT:	Brisbane
HEARD ON:	1, 2, 3 & 5 March 2021; 13 & 14 April 2021; 10 May 2021
HEARD AT:	Brisbane
MEMBER:	PG Stilgoe OAM
ORDERS:	**1. I determine compensation in the sum of Five Hundred and Thirty Thousand, Five Hundred and Thirty Dollars ($530,530), inclusive of the statutory 10% uplift, payable within 14 days of the grant of the mining lease.** **2. I order any submissions seeking a costs order in this proceeding must be filed and served within 14 days of the publication of these reasons.**
CATCHWORDS:	ENERGY AND RESOURCES – MINERALS – MINING FOR MINERALS – COMPENSATION – where the applicant has lodged an application for a mining lease situated on the land of the respondent – where the applicant had already constructed an accommodation village in the subject land – where the applicant has a lease of the subject land from the respondent – what compensation was payable under s 281(3) of the *Mineral Resources Act 1989* – what

value can be given to the surface of the land – whether the direct method of valuation should be adopted for the purpose of compensation – whether the net present value method of compensation should be adopted

Land Court Rules 2000 r 24C
Mineral Resources Act 1989 s 281

Allianz Australia Insurance Limited v Mashaghati [2017] QCA 127, cited
Antrim Truck Centre Ltd v Ottawa (City) [2009] OMBD No 1, cited
Bingham v Cumberland County Council (1954) 20 LGR (NSW) 1, applied
Commissioner of Succession Duties (SA) v Executor Trustee and Agency Co of South Australia Ltd (1947) 74 CLR 358, cited
de Gobeo v de Gobeo (2003) MBQB 274, 179 Man R (2d) 200, cited
Estate of James v Valuer-General (1942) 15 LGR (NSW) 110, cited
Leichhardt Municipal Council v Seatainer Terminals Pty Ltd (1981) 48 LGRA 409, cited
Love v Acuity Investment Management Inc (2009) 74 CCEL (3d) 272, cited
McBarnon v Traffic Authority New South Wales (1995) 87 LGERA 238, cited
Seatainer Terminals Pty Ltd v Valuer-General (1974) 29 LGRA 6, cited
Spencer v The Commonwealth (1907) 5 CLR 418, applied
Vyicherla Naryana Gajapatirajup Bahadur Garu v Revenue Divisional Officer, Vizagapatam [1939] AC 302, cited
WM & TJ Fischer v Valuer General (1983) 9 QLCR 44, cited

APPEARANCES: DG Clothier QC (instructed by Allens) for the applicants
GA Thompson QC, with E Morzone QC (instructed by Emanate Legal) for the respondent

[1] There has been a mining camp on Fort Cooper since 2004. Ian Ferguson Michelmore owns Fort Cooper. The applicant, Hail Creek Holdings Pty Limited, manages the Hail Creek Mine, which is on a mining lease adjacent to the camp.

[2] The camp is used solely to accommodate workers at the Hail Creek Mine. It has capacity for 1,056 rooms.[1] Workers are bussed from Mackay to the camp at the start

[1] Ex 1, tab 3, page 4, para 23.

of their work roster, travel to the mine via internal roads while they are in camp, and are bussed back to Mackay at the end of their roster.

[3] Mr Michelmore's father leased the land for the camp to a predecessor of Hail Creek in 1998. That lease expires on 1 July 2023. Hail Creek has lodged an application for a mining lease ("MLA") over the camp land. The proposed term is 20 years. The area of the MLA is 138 ha. The Fort Cooper aggregation has an area of 14,892 ha.[2]

[4] The parties cannot agree on the compensation that Hail Creek should pay Mr Michelmore, so the task has fallen to me. I must assess compensation in light of s 281(3) of the *Mineral Resources Act 1989* ("MRA") although, in truth, there is only one issue – what is the value to be given to the surface of the land?[3]

[5] The parties agree that, if highest and best use of the land is grazing, its value is $189,475.[4] However, the parties also agree that the highest and best use of the land is for an accommodation village.[5]

[6] Hail Creek engaged Timothy Cavanagh to provide expert evidence of valuation. Mr Michelmore engaged Chris Caleo for the same purpose. They differ about what premium, if any, should be applied to account for the fact that the camp already exists and is operating, and they disagree on which valuation method should be used to calculate the value of the land. Mr Cavanagh says that the value of the subject land is $530,530. Mr Caleo says that the value of the subject land is somewhere around $7,000,000.

[7] Whichever valuation methodology I accept, there are questions of risk that must be factored into the valuation exercise. There is a risk that there will not be a mine camp on the proposed ML for the full term of the ML. There is a risk that the camp may not have the predicted occupancy. There is a risk that the camp will not produce the predicted revenue stream. There is a risk that no other entity will be interested in acquiring the camp. There is a risk that the current development approval will not meet the needs of a different operator. To help in determining these issues of risk, the parties called evidence from economists, engineers and town planners.

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2 Ibid tab 9, page 3, para 13.
3 MRA s 281(3)(a).
4 List of Matters Not in Dispute, 1 March 2021, [15].
5 Ibid [16].

The economists

[8] Ian Shimmin and Gavin Duane provided a joint report to the Court.[6] They agreed that there is an economic need for an accommodation village of equivalent capacity to the existing camp to service the Hail Creek Mine workers. They differ as to whether a camp at this location would be used in the absence of use by the Hail Creek Mine.

[9] Mr Duane thinks there is a 50% possibility that the future Hillalong Mine will use the Hail Creek camp for accommodation,[7] in lieu of the operator constructing a village on the Hillalong mining lease.[8] He says that a prudent purchaser of the land would explore the option of the Hillalong workers using the camp.[9] Ultimately, Mr Duane caveated his assessment of a 50% chance of Hillalong using the camp, acknowledging that the assessment depended on a number of economic and operational considerations about which he had no real information.[10]

[10] Mr Shimmin says that surplus demand for mine related housing in the relevant area, over and above the demand created by the Hail Creek Mine, is unlikely.[11] He thinks it would be "highly unlikely" that any other entity would have a use for the camp.[12] He thinks that a prudent purchaser would be "absolutely reliant" on a contract with Hail Creek and, in the absence of that arrangement, the site would probably revert to agricultural use.[13]

[11] The economists agree that the region of relevance in the assessment of economic need is a 30-minute drive from a mine that requires the workforce.[14] They agree that mining operators prefer their workforce to be within 5 km, or a 15-minute drive.[15] They agree that there is only one known proposed mine and mining accommodation village in the region – Hillalong accommodation camp.[16] The proposed Hillalong

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6 Ex 1, tab 9.
7 T 2-7, lines 30 to 31.
8 Ex 1, tab 9, page 19, para 101.
9 Ibid.
10 T 2-17, lines 1 to 6.
11 Ex 1, tab 9, page 19, para 99.
12 T 2-7, lines 45 to 47.
13 Ex 1, tab 9, page 19, para 99–100.
14 Ibid tab 9, page 17, para 88.
15 Ibid tab 9, page 18, para 93.
16 Ibid tab 9, page 12, para 61.

Mine is more than a 30-minute drive from the camp.[17] However, the economists acknowledge that the proposed access to Hillalong is via the sealed Suttor Developmental Road, the same access to Hail Creek Mine. They say that, if constructed, this access road would link the private haul road to the Hillalong Mine, would have the same entrance off Suttor Developmental Road as Hail Creek Mine and, therefore, Hillalong would be within a 30-minute drive from the camp.

[12] Hillalong's potential use of the camp is dependent on a number of steps and possibilities. The Hillalong Mine is at the EIS stage. Will it ever be approved and, if so, when?[18] What is the cost of building a camp on the ML rather than on the Hillalong mining lease? Is it better for worker safety to locate the camp on the Hillalong mining lease? If Hillalong retains the existing site infrastructure, will it also have access to the infrastructure currently provided by Hail Creek off-site (water, wastewater treatment, power and telephone)?

[13] The Hillalong EIS explicitly states that its workers will be accommodated onsite.[19] The only reference to offsite accommodation, at Nebo, is expressed to be in the early phase of mining works when the onsite accommodation is being constructed.[20] The projected workforce is 436, so Hillalong would not need a camp that can accommodate over 1,000 workers. I find it unlikely that Hillalong would buy an existing camp which is just within the recommended 30-minute drive threshold but almost double the preferred drive time threshold when it has expressed a clear preference for onsite accommodation.

[14] I am not persuaded that the possibility of Hillalong using the camp is anything more than a mere possibility. Further, I am not persuaded that there is any other demand for the camp if Hail Creek workers were not housed there. I note that both parties have assumed that Hail Creek is the only entity likely to have an interest in this camp.[21] Although Mr Michelmore has posited an alternative case of a third party purchaser, the evidence suggests that there is little, if any, demand for accommodation that is not attached to the Hail Creek Mine.

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17 Ibid.
18 See Mr Duane's acknowledgement of the uncertainty at T 2-5, lines 43 to 44.
19 Ex 1, tab 17, page 3.
20 Ibid.
21 T 7-10, lines 44 to 47; T 7-11, lines 1 to 3; T 7-19, lines 4 to 8.

The engineers

[15] I agree with the submission by Mr Clothier QC, Senior Counsel for Hail Creek,[22] that while the differences between the experts is large, I do not need to resolve them. On any view, there are significant sums involved in any use except the present one – as a camp for Hail Creek, using the current facilities.

The town planners

[16] David Perkins and Chris Schomburgk provided a joint town planning report. They agreed that the current development approval ("DA") permits the development of the ML as it is currently constructed.[23]

[17] Currently, the water supply, electricity and telecommunication infrastructure are provided from the adjacent Hail Creek Mine. The water and sewerage treatment plants are located on the Hail Creek mining lease. If the current water supply and sewerage treatment plant is not available, then an application to change the existing approval will be required.[24] If the existing electricity and telecommunication infrastructure is removed or not available, there would have to be an application for a change or a new approval.[25] If vegetation has to be cleared to accommodate the relocation of the water and sewerage infrastructure, that may require approval if the footprint involves the clearing of native vegetation.[26] A replacement development would require Operational Works, Building Works and Plumbing and Drainage Works approvals.[27]

[18] The planners agree that there would need to be changes to the existing DA to permit a camp to be used by workers who are not employed by Hail Creek.

[19] The planners do not agree on whether a change in the DA would be needed for traffic and access. Mr Perkins says that extra traffic on the external road network will conflict with the approved Traffic Impact Assessment.[28] Mr Schomburgk says that, as there has been compliance with Condition 45 – Contributions for External

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22 T 1-15, lines 44 to 45.
23 Ex 1, tab 8, page 16–7, para 4.1.10, 4.1.16.
24 Ibid tab 8, page 18–9, 23, para 4.2.2(b), 4.2.11(b).
25 Ibid tab 8, page 19, 23, para 4.2.2(d), 4.2.11(d).
26 Ibid tab 8, page 20, 23, para 4.2.4, 4.2.11(e).
27 Ibid tab 8, page 18, 22, para 4.2.2(a), 4.2.11(a).
28 Ibid tab 8, page 21, para 4.2.6.

Roadworks, no further approval is necessary.[29] They both agreed that a new traffic impact assessment report will be required.[30]

[20] The difference between the town planners is the level of change application that will be required, the time it will take, the cost and the likelihood of success.

[21] Mr Schomburgk thinks that the changes are a minor change application if the replacement village effectively replicates the existing village,[31] the prospects of obtaining any necessary changes are strong,[32] and the risks are negligible.[33] Mr Schomburgk accepts that if the new village does not use the existing facilities, the change process would be more extensive, more expensive and may involve an appeal to the Planning and Environment Court.[34]

[22] Mr Perkins says the application would not be a minor change application.[35] He says the changes would result in a substantially different development because: it involves a new use; it changes the ability of the proposed development to operate as intended (a camp for the adjacent Hail Creek Mine); it significantly impacts on traffic flow and the transport network; and, it may increase the severity of known impacts.[36] Mr Perkins thinks that the change may involve referral to the Department of State Development, Tourism and Innovation,[37] is an impact assessable development application,[38] and that approval is likely only if it can meet a number of planning scheme guidelines.[39]

[23] Although the planners differ in their estimates of the time and costs required to get the necessary approvals in the context of this dispute, the differences are marginal. What matters is how the planning issues would influence a prospective purchaser.

[24] Mr Schomburgk's optimism that a replacement village will only require a minor change application is predicated on that village using the existing water, sewerage and telecommunications infrastructure. Although that might be a practical outcome,

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29 Ibid tab 8, page 23, para 4.2.11(f).
30 T 3-37, lines 5 to 16.
31 Ex 1, tab 8, page 22, para 4.2.9.
32 Ibid tab 8, page 23–4, para 4.2.12.
33 Ibid.
34 T 3-50, lines 38 to 40.
35 Ex 1, tab 8, page 25, para 4.3.6.
36 Ibid tab 8, page 26, para 4.3.8.
37 Ibid tab 8, page 26, para 4.3.9.
38 Ibid tab 8, page 27, para 4.3.10.
39 Ibid tab 8, page 27–8, para 4.3.11.

it is not necessarily an assured outcome. In my view, a prudent purchaser would assume this happy outcome is possible, while recognising the many potential impediments to achieving an approval through the minor change process.

[25] By contrast, Mr Perkins has taken a very conservative approach to the issue, factoring in every possible impediment. In this way, I consider Mr Perkins is unduly pessimistic; if there is a demand for this type of accommodation, which justifies the significant construction costs, it is likely that the issues of good quality agricultural land, remnant vegetation protection, conservation of natural values, and minimising environmental harm will not be major obstacles.

[26] In my view, a prudent purchaser's assessment of the planning risk will be somewhere between the two planners' approaches. Water supply, sewerage and wastewater treatment, telecommunications and traffic will be major issues. Given that the land is already degraded to some extent, I take the view that land use, vegetation and conservation issues will not be significant issues.

The valuers

[27] As the Court of Appeal has noted,[40] experts occupy a special position as witnesses. Their primary duty is to the Court. This duty overrides any obligation an expert witness owes to any party or to the person paying their fee or expenses.[41] The independence of experts is a matter of particular importance to the Court.[42]

[28] By an invoice dated 27 February 2021,[43] Mr Caleo's firm charged Mr Michelmore $44,000 for "Work done by Geoff Eales for Cooper Consultations and Inspections 2014 to 2018". That invoice immediately raises a concern that Mr Caleo provided advice to Mr Michelmore and, therefore, may not be an independent expert.

[29] When Mr Caleo was asked why the invoice predated his engagement, he told the Court that the invoice covered work done by a third party, who was not an employee or agent of the firm at the time. Mr Caleo gave evidence that Mr Eales was doing work for Mr Michelmore from 2016 and, although Mr Eales was Mr

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40 *Allianz Australia Insurance Limited v Mashaghati* [2017] QCA 127 [90].
41 *Land Court Rules 2000* r 24C; Practice Direction 6 of 2020, [10].
42 *Love v Acuity Investment Management Inc* (2009) 74 CCEL (3d) 272 [138]–[141]; *Antrim Truck Centre Ltd v Ottawa (City)* [2009] OMBD No 1; *de Gobeo v de Gobeo* (2003) MBQB 274, 179 Man R (2d) 200.
43 Ex 16.

Caleo's subcontractor, not all of the invoiced work was done as Mr Caleo's agent.[44] He told the Court that he invoiced Mr Eales' work because Mr Eales could not.

[30] I took the unusual step of warning Mr Caleo about the potential ramifications of his answers about this invoice. After that warning, Mr Caleo chose to claim privilege.[45] Mr Clothier QC put to Mr Caleo that the invoice was false and was generated specifically to put to the Court as a competent of Mr Michelmore's loss and expense claim.[46] Mr Caleo chose not to answer.

[31] Senior Counsel for Mr Michelmore, Mr Thompson QC, submits that I should not draw any adverse inferences from these facts. He submits that the questions put to Mr Caleo were not directly relevant to the issue of valuation.[47] That may be true, but the questions were relevant to Mr Caleo's independence as an expert witness. Mr Thompson QC also submits that the circumstances of the invoice were not explored in cross-examination.[48] That may also be true, but Mr Caleo's decision to claim privilege is a complete answer to the lack of exploration.

[32] I note that there are invoices which purport to bill Mr Michelmore for work Mr Eales did prior to 2014.[49] It is odd that Mr Caleo did not invoice for work done between 2014 and 2018 until 2021. It is odd that Mr Caleo has not earlier invoiced for the work he has done. It is concerning that Mr Caleo has, apparently, invoiced for work not done by someone from his firm and, therefore, not payable to his firm. It is odd that Mr Caleo did not issue invoices in the normal course of his engagement by Mr Michelmore, particularly in light of the considerable sum he did, eventually, invoice. It is odd that Mr Caleo issued this invoice just prior to Mr Michelmore submitting a late claim for compensation for loss and expense under s 281(3)(a)(vi).

[33] Mr Caleo said he started advising Mr Michelmore in 2019.[50] He advised Mr Michelmore during negotiations with Hail Creek to sell the subject land.[51] He also

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44 T 6-24, lines 11 to 35.
45 T 6-26, lines 45 to 47; T 6-27, lines 1 to 19.
46 T 6-27, line 3.
47 T 7-10, lines 30 to 31.
48 Ibid lines 31 to 34.
49 Collins and Eales and Opteon Invoice No. 68529 dated 25 May 2011 and Opteon Invoice No. 77293 dated 24 January 2013. These documents are appended to Court Document 26, Affidavit of Venesa Gleeson, 5 March 2021.
50 T 6-44, line 29.

provided advice to Mr Michelmore's lawyers that was incorporated into the compensation statement.[52]

[34] In assessing the value of the land, Mr Caleo referred to the details of a licence,[53] provided to him by Mr Michelmore's lawyers.[54] This information was not publicly available,[55] so it could not have been information that a prudent purchaser would be able to access. The licence contained a confidentiality clause, but Mr Caleo did not ask for permission to use the document in this case.[56]

[35] Mr Caleo conceded that, in the absence of demand from Hail Creek, the subject land would probably only have pastoral value,[57] and yet he persisted in three valuation exercises that gave the subject land a very high value. One explanation for Mr Caleo's commitment to high value for the land might be the anchoring effect of the engineer's estimates of the costs required to facilitate an alternative user,[58] or the offer from the previous mine owner, Rio Tinto.[59] However, Mr Cavanagh was not similarly distracted.

[36] Considering all these factors, I am concerned about Mr Caleo's capacity to give the Court independent advice. Therefore, I have no confidence in Mr Caleo's evidence, and I can give little or no weight to it.

The appropriate valuation methodology

[37] Counsel for Mr Michelmore submit that the appropriate approach to valuation is that expressed in *Vyicherla Naryana Gajapatirajup Bahadur Garu v Revenue Divisional Officer, Vizagapatam* ("Raja");[60] that the potentiality in the acquired land, which can be taken to fruition only by the acquiring authority, is to be considered in valuing that land for the purposes of assessing compensation. Further, if there is an attribute of that land which is only of value to the acquirer, then the

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51 T 6-41, lines 1 to 22.
52 Ibid lines 35 to 46.
53 Ex 15.
54 T 6-21, lines 36 to 44.
55 Ibid lines 19 to 21.
56 T 6-40, lines 13 to 25.
57 T 5-69, lines 12 to 31.
58 D Kahneman, *Thinking, Fast and Slow* (Farrar, Straus and Giroux, 2011) 122.
59 Ex 2.
60 [1939] AC 302.

value of that attribute must form part of the market value.[61] Counsel submit that *Raja* applies because the value of the subject land is enhanced by its proximity to Hail Creek Mine and the fact it has a DA for the accommodation village. The proposition is unexceptional. Clearly, the subject land must be valued having regard to its location and the DA. I am not persuaded that *Raja* advances Mr Michelmore's case beyond that general proposition.

[38] The Land Appeal Court has stated:

> "It has been consistently held by Courts, the decision of which are binding on this Court, that the best test of value is to be found in sales of comparable properties, preferably unimproved or lightly improved, in the open market as close as possible to the date of valuation."[62]

[39] The valuers agree that, usually, the direct comparison method is the preferred method of valuation.[63]

[40] There is a dearth of sales of accommodation villages against which the valuers could compare the subject site. The sales that do exist are dated. They relate to sites co-located with towns and not remote sites like the subject site. The comparable sales had a different highest and best alternative use. Further, the valuers identified sales of sites where there is no demand for accommodation, or they were speculative purchases with no development approval and no current demand.

[41] Adjustments for comparable sales may be so great that a court may hold that the land is in no sense comparable, and the sale can provide no evidence of value.[64] In the absence of comparable sales, a valuer can look to the return which a purchaser would expect from the land,[65] or the capitalisation of the rental.[66]

[42] Mr Cavanagh maintains that the direct comparison method approach is the appropriate method of valuation. Mr Caleo preferred to value the land using the net present value of the potential rent ("NPV approach"), assessing the subject site's potential rental by reference to the rent obtained in other accommodation villages.

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61 Ibid 306–17.
62 *WM & TJ Fischer v Valuer General* (1983) 9 QLCR 44 [46].
63 T 5-29, lines 20 to 30.
64 *Leichhardt Municipal Council v Seatainer Terminals Pty Ltd* (1981) 48 LGRA 409, 435.
65 *Estate of James v Valuer-General* (1942) 15 LGR (NSW) 110, 111.
66 *Seatainer Terminals Pty Ltd v Valuer-General* (1974) 29 LGRA 6, 12.

[43] The NPV approach has the same problems as the direct comparison approach. The leases are dated. They relate to sites co-located with towns and not remote sites like the subject site and had a different highest and best alternative use.

[44] There are other problems with the NPV approach. The comparable accommodation villages were multi-user villages, whereas the subject site could only be useful for miners and, probably, only for miners at Hail Creek. The "rent" did not always refer only to the accommodation village but sometimes included land used for offices or batching plants.[67] It was not certain whether the lessor or the tenant was paying for outgoings,[68] or what those outgoings covered. Some leases were tied to supply agreements, guaranteeing a certain level of income. Some lease payments had a fixed rent and a rent tied to bed occupancy rates.[69] Most of the sales occurred during a mining boom.[70] These factors make it difficult to adjust the comparable leases with certainty or objectivity. The NPV approach does not cure the problems inherent in the direct comparison method. Instead, it mirrors and amplifies those problems.

[45] Both valuers looked at the capitalisation of rental as a basis for valuing the subject land but, ultimately, neither valuer relied on this approach. This method has the same problems as the NPV approach, and I do not need to consider it.

[46] The valuers were able to agree on the value of the subject land assuming pastoral use relying on dated sales. They had to make adjustments, as valuers often do. The exercise for a highest and best use as an accommodation village is difficult but there is sales evidence available and there are ways that the valuers can adjust the evidence of those sales to reach an opinion. I find that the direct comparison method is the appropriate methodology to apply, although each valuer will also have to:

> "draw upon his general knowledge and experience, including perhaps, experience in other situations which although lacking in complete comparability, may yet provide the experienced valuer with guidance and suggestions as to the general approach which may be made and as to considerations which may become relevant."[71]

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67 Ex 15; T 6-27, lines 45 to 46; T 6-28, lines 1 to 14.
68 T 6-32, lines 43 to 46; T 6-33, lines 1 to 47; T 6-34, lines 1 to 46; T 6-35, lines 1 to 8.
69 Ex 14; T 6-46, lines 41 to 43.
70 T 5-32, lines 28 to 38.
71 *Bingham v Cumberland County Council* (1954) 20 LGR (NSW) 1, 18–9.

The direct comparison method

[47] Mr Cavanagh looked at comparable sales of land with existing accommodation and sales of land bought with the intention of constructing mine accommodation. He found that the sales reflected a premium of between 100% and 250% over and above the value for the alternative use. Mr Cavanagh adopted the highest premium of 250% and applied it to the subject land's value as grazing land, giving a value of $3,500/ha, a total of $482,230.

[48] Mr Caleo criticised the direct comparison approach,[72] but he did analyse Mr Cavanagh's assessment of the premium for each comparable sale. Mr Caleo did not assign a premium to the subject site in that analysis.

[49] I have already noted that I place little or no weight on Mr Caleo's evidence. When I asked him,[73] Mr Caleo thought that, using Mr Cavanagh's approach, he would assign a premium of 500%. That would make the value of the subject site $1,136,850. To arrive at his valuation of $7,000,000, Mr Caleo would have to apply a premium of 3,694%. It would seem that Mr Caleo's primary assessments are grossly overstated, and his assessment of a 500% premium is much more realistic. However, as neither party wants me to rely upon or adopt Mr Caleo's suggestion of 500%, I mention it merely to highlight the difficulties with Mr Caleo's evidence.

[50] Mr Caleo used the direct comparison method to reduce the sale price to a per hectare rate.[74] He notes that, but for the sale of property at Sarina, only two of 11 sales were of approved accommodation villages.[75] However, using these sales, he assessed the market value of the workers accommodation section of the subject land at $50,000/ha and the occupied area rate at $200,000/ha, giving a total value of $7,000,000.[76]

[51] Mr Cavanagh undertook the exercise using only four sales. He thought that the exercise supported his analysis of valuing the site by adding a premium, but he declined to assess the subject site on a per hectare basis.[77]

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72 Ex 1, tab 15, page 15–21.
73 T 5-110, line 11. There is an error in the transcript referring to Mr Cavanagh.
74 Ex 1, tab 15.
75 Ibid tab 21, page 30, para 39.
76 Ibid tab 21, page 30, para 38.
77 Ibid tab 21, page 34–6, para 56–71.

[52] Although I have placed no weight on Mr Caleo's evidence, it is instructive to look at the two sales which both valuers say are the most comparable. The first is the sale in June 2011 at Capricorn Highway, Bluff ("Bluff"). The sale price was $950,000. The site is 141.8 ha, of which 14.46 ha is occupied. It has the potential for 555 rooms. Both valuers valued the total site area at $6,700/ha.[78] Mr Caleo assessed the rate for the occupied area at $87,963/ha.[79] He noted that Bluff was not close to any source of demand for accommodation and did not have a development approval. Therefore, he thought that the subject site's proximity to the Hail Creek Mine and its DA meant that it was superior and justified a rate of between $165,000 and $200,000/ha.[80] Naturally, Mr Caleo chose the higher figure. If he had adopted the lower figure of $165,000, the value of the subject land would be $2,080,500.

[53] Mr Cavanagh assessed the rate for the occupied area at $65,698.[81] Multiplying that figure out would result in the value of the subject land as $2,299,430. Instead of applying an uplift like Mr Caleo, Mr Cavanagh thought there were reasons to conclude that the subject site was not as valuable as Bluff. He noted that the cost to develop Bluff was considerably less than the cost to develop the subject site and the highest alternative use of Bluff was as a large rural homesite close to a town and with direct highway access.[82]

[54] The other sale that is most comparable to the subject site is 72 Golf Course Road, Sarina ("Sarina"). It was sold in July 2014 for $2,000,000, although Mr Caleo contends that the sale price was, in fact, $2,500,000. I will come to that shortly. The site is 22.41 ha, of which 8.85 ha is occupied. It has the potential for 600 rooms.

[55] The transfer document for the sale was stamped at $2,000,000,[83] but the purchaser paid the vendor an additional $500,000. Mr Cavanagh gave evidence that the payment was a donation paid after the contract had been signed and that it related to difficulties with Council in reconfiguring the lot.[84] Mr Caleo thought that the payment was part of the purchase negotiations.[85]

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78 Ibid tab 21, page 30, 32, para 38, 55.
79 Ibid tab 21, page 31, para 44.
80 Ibid.
81 Ibid tab 21, page 32, para 55.
82 Ibid tab 21, page 35, para 67.
83 Ex 14.
84 T 5-76, lines 17 to 32.
85 T 5-51, lines 19 to 46.

[56] Mr Thompson QC was critical of the fact that Mr Cavanagh had no objective evidence for his information and that he did not include the detail of his investigations in the second joint expert report. Equally, Mr Caleo did not produce any evidence to support his assertion that the extra payment was part of the consideration nor did he include details of his conversations in the second joint expert report. Sadly, it is a common aspect of valuation evidence in this Court that valuers do not adequately disclose the details of their investigations. It is also a feature of valuation evidence in this Court that two valuers, asking different questions of a third party, arrive at two completely different sets of facts and/or assumptions. One would have thought that a better approach would be one set of questions, asked jointly by the valuers, with one set of answers.

[57] Mr Thompson QC might speculate that the additional payment was to avoid stamp duty, but it is simply that – speculation. The only objective evidence before me is the transfer and that is the evidence on which I rely to find that the sale price for Sarina was $2,000,000.

[58] A sale price of $2,000,000 means that Mr Caleo's price/ha for the total site area should be $90,334/ha, not $112,918/ha. This figure accords with Mr Cavanagh's analysis. Mr Caleo's rate for the occupied/useable area should be $225,988/ha, not $282,485. This is still far greater than Mr Cavanagh's assessment of $150,489/ha.

[59] Mr Caleo thought that Sarina was comparable. It is like the subject site in that it had a development approval in place, the accommodation had been built, and it was sold to a sitting tenant. There were also differences which, in Mr Cavanagh's opinion, made Sarina a superior site. The sale was to a commercial accommodation provider in an area of proven demand. Any commercial operator could have exploited that demand, unlike the subject site where the only demand comes from the Hail Creek Mine. It is adjacent to the golf course and there was a project requiring labour situated across the road. The site is close to the town of Sarina, so town services are available. The development approval includes an approval for commercial office. The land is zoned rural and an alternative use for the site is as a large rural homesite.[86]

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86 Ex 1, tab 21, page 35–6, para 68.

[60] Given those factors, I agree with Mr Cavanagh that Sarina is a superior site. Although Mr Caleo says that Sarina is comparable, the rate for the occupied/useable area he applied suggests that it is not so. I also agree with Mr Cavanagh that there is a substantial difference in the rate to be applied.

[61] Mr Cavanagh's approach of assessing the premium a purchaser will pay for the prospect of developing mining accommodation is a more accurate assessment of the decision-making process a hypothetical purchaser is likely to undertake. It does not suffer from an attempt to draw comparable values from incomparable sales. In my view, Mr Cavanagh has accounted for Mr Caleo's criticism by adopting the maximum premium. I prefer Mr Cavanagh's approach.

[62] I therefore assess compensation at $482,300.

Conclusion

[63] Mr Thompson QC reminded me that, where there is a doubt in compensation cases, that doubt must be resolved in favour of the claimant.[87] That principle has two caveats. The first is that its application does not change the test of value to be applied.[88] Therefore, adopting a liberal view does not justify applying a test for value that is otherwise inappropriate. The second is that the resolution of doubt occurs applied in the exercise of my discretion to achieve a just result.[89] That means that if there are two equally plausible results, I should choose the result that favours the claimant. It does not mean that if there is no evidence to support a proposition, or the evidence is doubtful, I should accept it because it will favour the claimant.

[64] The classic definition of value is the *Spencer* test:[90] a sale by voluntary bargaining between the vendor and the purchaser, willing to trade but neither of them so anxious to do so that he would overlook any ordinary business consideration.[91] Put another way, what is the point at which a desirous purchaser and a not unwilling vendor would come together?[92]

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87 *Commissioner of Succession Duties (SA) v Executor Trustee and Agency Co of South Australia Ltd* (1947) 74 CLR 358.
88 Ibid 373–4.
89 *McBarnon v Traffic Authority New South Wales* (1995) 87 LGERA 238, 244–5.
90 *Spencer v The Commonwealth* (1907) 5 CLR 418.
91 Ibid 441.
92 Ibid 432.

[65] It is a mistake to value the land, and assess compensation, through the lens that Hail Creek is compelled to acquire this land because the costs of relocation mean it has no other option. It is a mistake to assume that Hail Creek would buy the land or enter into a commercial lease at whatever price Mr Michelmore might nominate. To do so ignores the *Spencer* requirement that the purchaser is not so anxious to buy that he would overlook any ordinary business consideration. That Hail Creek might be the only purchaser does not justify an extortionate valuation. Perhaps Mr Michelmore once may have been able to persuade the mine owner/operator to pay compensation over the odds for the grant of the ML, but that is not a matter that should factor in my decision.

[66] The compensation payable to Mr Michelmore should, of course, include the 10% uplift to account of the compulsory nature of the acquisition.[93]

Orders:

1. **I determine compensation in the sum of Five Hundred and Thirty Thousand, Five Hundred and Thirty Dollars ($530,530), inclusive of the statutory 10% uplift, payable within 14 days of the grant of the mining lease.**

2. **I order any submissions seeking a costs order in this proceeding must be filed and served within 14 days of the publication of these reasons.**

[93] MRA s 281(4)(e).