LAND COURT OF QUEENSLAND

CITATION:	*Sawyer v Grabbe & Anor* [2021] QLC 27
PARTIES:	**David Blandford Sawyer** (applicant) v **Anthony Grabbe** (respondent) **Lynette Grabbe** (respondent)
FILE NOs:	MRA496-20
PROCEEDING:	Determination of compensation payable for renewal of mining claims
DELIVERED ON:	13 August 2021
DELIVERED AT:	Brisbane
HEARD ON:	Submissions closed 14 July 2021 Matter allocated on 6 August 2021
HEARD AT:	Heard on the papers
MEMBER:	JR McNamara
ORDERS:	**1. I determine that David Blandford Sawyer must pay Anthony Grabbe and Lynette Grabbe compensation in respect of MC 60239 as follows:** **(a) Four hundred and eighty-six dollars and ninety-four cents ($486.94); plus** **(b) Five hundred and fifteen dollars and fifty-nine cents ($515.59) per year for the term of the renewal, indexed to CPI.** **2. I determine that David Blandford Sawyer must pay Anthony Grabbe and Lynette Grabbe compensation in respect of MC 300330 as follows:** **(a) Nine hundred and fifty-five dollars and ninety cents ($955.90); plus** **(b) Five hundred and fifteen dollars and fifty-nine**

cents ($515.59) per year for the term of the grant, indexed to CPI.

3. **Should either MC 60239 or MC 300330 cease to exist prior to the other, the holder of the live mining claim must provide the combined annual payment identified in orders 1(b) and 2(b).**

CATCHWORDS: ENERGY AND RESOURCES – MINERALS – MINING FOR MINERALS – COMPENSATION – where the Land Court recently determined compensation for small mining grants in *Australian Asiatic Gems Pty Ltd v Grabbe & Anor* [2021] QLC 25 and *Land & Anor v Grabbe & Anor* [2021] QLC 1 – where the valuation report from the Land matter was 'recycled' – where compensation for deprivation of the surface area in respect of the access track should not be reduced or apportioned to the applicant – where there is no other factual basis for the Court to depart from a number of findings in the Australian Asiatic Gems decision and the Land decision

Mineral Resources Act 1989 s 85(5), s 281(3)(a), s 391C

Australian Asiatic Gems Pty Ltd v Grabbe & Anor [2021] QLC 25, applied
Kelly v Chelsea on the Park Pty Ltd [2020] QLC 36, cited
Land & Anor v Grabbe & Anor [2021] QLC 1, applied
Makita (Aust) Pty Ltd v Sprowles (2001) 52 NSWLR 705; (2001) 25 NSWCCR 218, cited

APPEARANCES: Not applicable

Introduction

[1] This matter concerns compensation for two mining claims, one a renewal (MC 60239), the other a fresh grant (MC 300330), over land owned by Anthony and Lynette Grabbe (respondents). This decision is the third recent Land Court decision concerning small mining activity on the Grabbe's property "Nooralaba"[1] near Cunnamulla.[2] Like the applicants in those recent decisions, Mr Sawyer is an opal miner.

[2] The tenures applied for are mining claims. The Small Scale Miners Code (Code)[3] made under regulation,[4] is for the purpose of managing impacts of small-scale

1 *Land & Anor v Grabbe & Anor* [2021] QLC 1 (the Land decision); *Australian Asiatic Gems Pty Ltd v Grabbe & Anor* [2021] QLC 25 (the Australian Asiatic Gems decision).
2 85 km NW of Cunnamulla.
3 Respondents' Compensation Statement filed 1 July 2021, attachment 4.

mining activities carried out under a mining claim. The *Mineral Resources Act 1989* (Qld) (MRA) provides the administrative framework for the grant of mining claims, and the activities of the miner are also subject to land care management arrangements under the MRA, the *Environmental Protection Act 1994* (Qld) and other legislation including the *Mining and Quarrying Safety and Health Act 1999* (Qld).

[3] The criteria I must consider in determining compensation in respect of the grant of a mining claim is found in s 85(5) of the MRA.

[4] Again, considerable material was 'recycled' by the respondents for the purposes of these matters. That is not a criticism. The valuation report of Mr Dennis Cupitt provided to the Court in the Land matter, and then in the Australian Asiatic Gems matter, was again filed. The report was not presented as expert evidence,[5] and it was not submitted that the evidence would qualify as expert evidence as described in *Makita (Aust) Pty Ltd v Sprowles*.[6] However, the report was completed recently and is of assistance in considering key components of compensation to be assessed.

[5] There was some disagreement about the relevance and admissibility of material included in the respondents' compensation statement concerning the content of negotiations between the parties. What the parties might discuss and negotiate in an attempt to settle compensation is of little relevance to my consideration of the statutory criteria.

The tenements

[6] The Resource Authority Public Report informs me that MC 60239, over an area of 11.72 ha, was first granted in 2015 for 5 years.[7] Mr Sawyer has applied for a 10 year renewal. The applicant's compensation statement says, "Measurements of the open pit, shafts and internal roads on MC 60239 indicate that a total area of 1 hectare is currently disturbed, restoration and rehabilitation on the open pit area is underway."[8]

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4 *Mineral Resources Act 1989* (Qld) s 391C.
5 The respondents do not contend otherwise.
6 (2001) 52 NSWLR 705.
7 Applicant's Compensation Statement and Supporting Documents filed 28 May 2021, attachment 6.
8 Applicant's Compensation Statement and Supporting Documents filed 28 May 2021, page 1.

[7] The Resource Authority Public Report informs me that the term sought for MC 300330, over an area of 8.17 ha, is 10 years.[9] The applicant's compensation statement says:

> "The activities proposed for MC 300330 allow for up to 0.5 hectares of open disturbance on the mining claim at any one time. The activities as described in the work program submitted at time of application consist of drilling activities and underground excavations, leaving very little surface disturbance."[10]

[8] Imagery of the two mining claims show them to be adjoining one another.[11] The applicant says that of the combined area of 19.89 ha, it is anticipated a maximum of 1.5 ha would be open at any one time with rehabilitation and backfilling ongoing.

[9] The applicant says that access from the point of entry onto Nooralaba to MC 60239 is 2.87 km.[12] As the mining claim areas are adjoining, the applicant says the same access track will be used to access MC 300330. The respondents say that the access road to MC 60239 is approximately 2600 m long and 4 m wide which is estimated to be 1.04 ha in area.[13] The respondents say that the applicant is the only user of that access road, other than by the respondents to monitor the applicant's mining activities.

[10] The applicant says in respect of both tenements that: the mining operation is part-time with seasonal access between April and October, and is weather dependent; that there is a mine site biosecurity plan in place to meet obligations under the *Biosecurity Act 2014* (Qld); and that the tenements are subject to the Code and other applicable legislation.

The property - Nooralaba

[11] Three Lots make up Nooralaba, with a combined area of 21,238.28 ha. The tenement application areas fall within the external boundaries of Lot 11.

[12] The applicant says that a Land Title Search shows no record of a registered Emissions Reduction Fund Project (ERF project), and that they have not been provided with a biosecurity plan for the property. If there was any doubt about that,

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9 Applicant's Compensation Statement and Supporting Documents filed 28 May 2021, attachment 7.
10 Applicant's Compensation Statement and Supporting Documents filed 28 May 2021, page 1.
11 Applicant's Compensation Statement and Supporting Documents filed 28 May 2021, attachment 8.
12 Applicant's Compensation Statement and Supporting Documents filed 28 May 2021, page 5.
13 Respondents' Compensation Statement filed 1 July 2021 [17]-[19].

the respondents in submissions provided documentation including the Emissions Reduction Fund Contract and the Nooralaba Biosecurity Plan.[14]

[13] The respondents say that the property has been used for an ERF project since 8 November 2016, is subject to drought recovery and is intended to be used for cattle grazing and sale.[15]

Compensation

[14] As noted already the criteria for compensation are set out in s 85(5) of the MRA. Those criteria were also the subject of consideration in the Land matter, while the similarly worded s 281(3)(a) criteria was the basis for considering compensation in the Australian Asiatic Gems matter.

[15] The applicant in submissions says that there is no deprivation of possession of the surface of the land[16] and therefore no compensation payable on that criteria.[17] The applicant in reply also says (seemingly in relation to criteria relevant to: diminution of the value,[18] diminution of the use,[19] and all loss and expense[20]) that the landholder has no authority to enter the mining claims for any purpose;[21] must seek the consent of the miner to do so, even for biosecurity purposes; and that the Code "allows up to 5 hectares of land on a prescribed mining claim may be disturbed at any one time", although "up to 1.5 ha (is) proposed to be disturbed at any time, while rehabilitation of existing areas can occur."[22]

[16] The respondents adopt the conclusion in the Land decision, including the formula applied by Member Stilgoe, and adjusts the relevant inputs to assess compensation.

[17] In the Land decision at [13] to [19], Member Stilgoe noted that Mr Cupitt's assessment assumes the renewal application (in the Land matter) would result in total loss of possession of the surface of the land,[23] which she did not accept, noting the application for renewal was for a 10 year period only and the productive

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14 Respondents' Compensation Statement filed 1 July 2021, attachments 2-3.
15 Respondents' Compensation Statement filed 1 July 2021 [7].
16 *Mineral Resources Act 1989* (Qld) s 85(5)(a).
17 Applicant's Compensation Statement and Supporting Documents filed 28 May 2021, page 5.
18 *Mineral Resources Act 1989* (Qld) s 85(5)(b).
19 *Mineral Resources Act 1989* (Qld) s 85(5)(c).
20 *Mineral Resources Act 1989* (Qld) s 85(5)(f).
21 Applicant's Response filed 14 July 2021 [9](f)
22 Applicant's Response filed 14 July 2021 [10].
23 *Land & Anor v Grabbe & Anor* [2021] QLC 1 [19].

potential was lost "well before the application was lodged". Member Stilgoe determined that the Lands' liability for deprivation of the surface of the land should be one third of the value. The value accepted by Member Stilgoe was $100/ha in circumstances of total loss. I also accept that value for the same reasons.

[18] Here we have a renewal application (MC 60239), following a 5 year initial term, and a fresh application (MC 300330). The Mining Claim Work Program[24] for both tenements describe activities proposed for the 10 year term of the relevant application. In relation to MC 60239, drilling and prospecting will proceed at roughly two year intervals northerly, then easterly, then southerly and then westerly. In relation to MC 300330, the progress will commence from the boundary of MC 60239 including test drilling in an 'outward' direction from MC 60239, from year 6 in a southerly direction, and from year 8 in a westerly direction.

[19] The applicant, relying on *Kelly v Chelsea on the Park Pty Ltd*,[25] say only the area of disturbance should be subject to consideration rather than the whole surface area. They say that the whole area of the mining claims will not be impacted "at the same time",[26] and that the claims will only be worked for 6 to 7 months of the year.

[20] Based on the work programs the production potential in my view will be significantly impacted by the mining claims.

[21] I have viewed the Queensland Globe imagery[27] and site photographs, and the impact of mining operations on the area of MC 60239 is evident. I accept that liability for deprivation of the surface of the land in respect of the renewal of MC 60239 should (consistent with the Land decision) also be one third of the value of the land.

[22] In respect of MC 300330, there is nothing in the evidence to indicate historical mining or other impacts which would have affected production potential before the application was lodged. The work program, when completed, is likely to significantly impact the production potential of the area. Accordingly, I will not apply a discount for deprivation of the surface of the land. Such a conclusion does

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24 Respondents' Compensation Statement filed 1 July 2021, attachments 8-9.
25 [2020] QLC 36.
26 Applicant's Response filed 14 July 2021, page 7.
27 Respondents' Compensation Statement filed 1 July 2021, attachment 1.

mean however that any future renewal over the same area would not raise a liability for compensation under s 85(5)(a) of the MRA.

[23] In relation to the access track, in the absence of evidence to inform me otherwise, I accept that the applicant is the only user apart from the respondents when inspecting the property. Therefore, compensation for deprivation of the surface area in respect of the access track should not be reduced or apportioned to the respondents. I accept the respondents' quantification of the area of the access track as 1.04 ha. The access track is used for both mining claims.

[24] The respondents in submissions make no other claim for compensation other than pursuant to s 85(5)(f) of the MRA of "all loss or expense that arises" for management time and legal fees incurred prior to the commencement of the Land Court proceedings.

[25] The applicant says that the miners' presence on the property does not provide an increased need for management; that the respondents have no right of entry onto the tenement areas; and that the activities are "monitored by the relevant departments".[28] Further, in respect of the ERF project, the tenement areas occupy approximately 20 hectares of a 21,238 ha property, which the applicant asserts is negligible.

[26] The respondents' claim for management costs and owner's time is framed around more frequent routine monitoring of timbers and livestock for a range of reasons.[29] They say that as a result of the proposed activities, the respondents will have increased management requirements in operating their ERF project and pastoral business on the land.[30] Physical inspection is one aspect of undertaking management responsibilities, however, management time will also extend to administrative activities related to any or all of the types of impacts the respondents describe.

[27] My conclusion here is consistent with the Australian Asiatic Gems decision, that is, as the tenements are adjoining each other, the respondents' management time will not be duplicated. I will allow compensation in respect of the two tenements on the basis of 1 hour per month at $78.12 per hour with 10% uplift – accepting the basis

28 Applicant's Response filed 14 July 2021 [9](f).
29 Respondents' Compensation Statement filed 1 July 2021 [53]-[60].
30 Respondents' Compensation Statement filed 1 July 2021 [53].

of the determination of that hourly amount as found by Member Stilgoe in the Land decision at [27].[31] The applicant says compensation under this head ought to be only for the active mining period (that is, 6 or 7 months of the year). I am not satisfied that any management obligations in relation to the tenements while they remain 'live' is limited to the period they are actively mined. As compensation under this head is annualised, it will be apportioned equally to each mining claim. However, should one of the mining claims be terminated before the other, the holder of the remaining mining claim will be liable for the full amount.

[28] In relation to legal expenses, I repeat my consideration of the same issue in the Australian Asiatic Gems decision at [8] to [12] and determine that the claim for legal expenses should be dismissed.[32]

Conclusion

[29] In respect of MC 60239:

Head of compensation	**Calculation**	**Amount**
Deprivation of possession s 85(5)(a)	(11.72 ha x $100/ha/3) + ((50% x 1.04 ha) x $100/ha)	$442.67
Amount to reflect compulsory acquisition s 85(5)(e)	10% x $442.67	$44.27
	Compensation	$486.94
Loss or expense s 85(5)(f)	management time 50% x $1,031.18	$515.59
	Annualised compensation	$515.59

[30] In respect of MC 300330:

Head of compensation	**Calculation**	**Amount**
Deprivation of possession s 85(5)(a)	(8.17 ha x $100/ha) + ((50% x 1.04 ha) x $100/ha)	$869.00
Amount to reflect compulsory acquisition s 85(5)(e)	10% x $869	$86.90
	Compensation	$955.90
Loss or expense s 85(5)(f)	management time 50% x $1,031.18	$515.59
	Annualised compensation	$515.59

Orders

[31] *Land & Anor v Grabbe & Anor* [2021] QLC 1 [27].
[32] *Australian Asiatic Gems Pty Ltd v Grabbe & Anor* [2021] QLC 25 [8]-[12].

1. **I determine that David Blandford Sawyer must pay Anthony Grabbe and Lynette Grabbe compensation in respect of MC 60239 as follows:**

   (a) **Four hundred and eighty-six dollars and ninety-four cents ($486.94); plus**
   (b) **Five hundred and fifteen dollars and fifty-nine cents ($515.59) per year for the term of the renewal, indexed to CPI.**

2. **I determine that David Blandford Sawyer must pay Anthony Grabbe and Lynette Grabbe compensation in respect of MC 300330 as follows:**

   (a) **Nine hundred and fifty-five dollars and ninety cents ($955.90); plus**
   (b) **Five hundred and fifteen dollars and fifty-nine cents ($515.59) per year for the term of the grant, indexed to CPI.**

3. **Should either MC 60239 or MC 300330 cease to exist prior to the other, the holder of the live mining claim must provide the combined annual payment identified in orders 1(b) and 2(b).**