Inquiry for assessment of compensation, Private Lands Lease Application 1698, Newcastle, Northern (Rhondda) Collieries Pty. Limited.

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Central Court of Petty Sessions, Sydney, 27th April, 1973.

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Mr. P. Murray representing the applicant.

No appearance of landowners.

WARDEN: On 19th May, 1971, the Minister for Mines gave his consent under Section 57(5) to the applicant to occupy for mining purposes the area applied for, namely portion 37A, Parish of Kahibah, County of Northumberland, of 102 acres, and to mine upon and in the same during the pendency of the application, subject to the observance of certain conditions. On the same day I was directed by the Minister to assess any compensation that may be required in respect of any mining operations to be carried out by virtue of the consent to mine. The direction was made under Section 64(2).

The application was lodged on 12th June, 1970. Assessment of compensation is governed by Section 155(1)(b) which provides that assessment shall be of the loss caused and likely to be caused by damage to the surface of the land, and to any crops, buildings and improvements thereon by works carried on in pursuance of the application, or caused or likely to be caused by deprivation of the possession or of the use of the surface of the land or any part of the surface.

The assessment to be made is to be in respect of operations during the period commencing on 19th May, 1971, and ending upon the determination of the consent, either by revocation by the Minister or the grant or refusal of the application.

It is difficult to estimate the duration of the Minister's consent. I believe I should in this case lean towards a lengthy period, for it appears to me that the indications are that the consent is not likely to be revoked, that procedures for the grant of a lease may take a long time and that the landowners will be prejudiced if a short period is adopted, there being no provision for any further assessment of compensation under the head of "deprivation of possession or use of the surface."

The period in respect of which I intend to make an assessment is the period of 4 years from 19th May, 1971.

Since that date works have been carried out on the surface, causing damage to the surface. Those works include the construction of two drifts, power lines, and an access road. Bush tracks are used by the employees of the company for access to such areas as those upon which there are power lines or a ventilation shaft. There is evidence of some subsidence within portion 37A since May, 1971, but this appears *19th attributable to operations before that date. The evidence of Mr. Harrison, Manager of the Colliery, is that it was planned to mine other adjacent areas before portion 37A and that it would be something like 7 years before portion 37A was further mined.

A deposit of $5,000 was required by special condition 14 of the Minister's consent, as a guarantee that upon revocation of the consent or

upon completion of operations the applicant shall remove all machinery and buildings from the subject area, and restore it and leave it in a clean and tidy condition to the satisfaction of the Minister.

There is no evidence before me from which I could quantify any loss to the landowners through damage to the surface. It appears to me that special condition 14 and the guarantee deposit are adequate to ensure that there will be no resultant loss through surface damage under the Minister's consent. I am conscious that if damage to the surface is not made good the landowners may make application for assessment of further compensation.

I propose to assess compensation for loss caused and likely to be caused by damage to the surface of the land at NIL.

Most of the evidence and submissions in this inquiry has been directed to the other head of compensation - loss through deprivation of the possession or use of the surface.

I am satisfied that any use of the subject land by the landowners would interfere with the use of the land by the applicant for mining purposes under the Minister's consent. The applicant does need the whole of the surface of the land to carry out mining, to have access to the drifts and power lines and for inspections as to subsidence.

Mr. Skelton, a consultant valuer, has deposed that as at 19th May, 1971, he valued the subject land, excluding 18 acres along the foreshore zoned for "Open space - public parks and recreation" under the Northumberland County District Planning Scheme, at $5,000 per acre, or $420,000 for 84 acres. The loss to the landowners deprived of use or possession of that area is, he says, the difference between $420,000 and that figure postponed for the period of deprivation at 10% per annum. For the period of 4 years which I have adopted as the period of the Minister's consent the loss claimed is $420,000 minus ($420,000 x .68301), which equals about $133,000.

Mr. Skelton also gave his opinion that at 19th May, 1971, the value of the 84 acres as "Residential A" land, realising 350 lots, after allowing full hypothetical subdivisional costs, would be $840,000. He said that the best use of the land from a town planning point of view and on the assumption that no mining operations were carried out on the land would be as "Residential A."

The land is zoned as "Non-Urban A." The purposes for which buildings or works may be erected or carried out or used without the consent of the responsible authority are: agriculture; forestry; country dwellings; rural industries.

Buildings or works may not be erected, etc., as dwelling houses or residential flat buildings.

Buildings or works may be erected, etc., for purposes other than those already mentioned only with the consent of the responsible authority.

Mr. Skelton has said that in arriving at his valuation of $5,000 per acre he took the sales of land zoned for "Non-UrbanA" purposes throughout the area and formed the opinion from those sales that this land would have a value of $5,000 per acre, compared with the nearby lots, which were not quite as good and which sold for $4,500 per acre. He had in mind that land of this type and in this position would be suitable for light industry. He also had in mind that at some time in the future it could well be a residential area. He did not value the land for any of the purposes permitted without consent of the responsible authority. As light industrial land he arrived at a value of $4,000 per acre. The balance of his valuation of $5,000 per acre represented what a purchaser would be prepared to pay in view of the possibility that at some time in the future he might be able to put houses on it.

Mr. Skelton was examined and cross-examined at some length. I have considered the whole of his evidence, but I would mention particularly what he said in these passages -

(1) at page 95 of the transcript,

> "Without consent, I say with that type of land - agricultural, forestry or rural industry, you are thinking of land in the range of $200 per acre, but if I am thinking in terms of industrial or permissible uses, I am thinking in terms of $5,000 or $6,000 per acre."

(2) at page 100 -

> "Q. Is your valuation based upon the assumption that the surface of 37A as at 19th May, 1971, is unaffected by mining underneath the surface? A. Yes." He thought that prior mining beneath the surface in two seams would make the land unsuitable for certain types of light industrial buildings. Nevertheless he considered that his valuation "would not be far off it", on the assumption that the land <u>was</u> so affected by mining. He had in mind light steel-framed industrial structures being erected on the land. He had in mind that they might later be dismantled and the land used for residential purposes.

(3) at page 103 -

> "Q. You know that you cannot subdivide land that is in a mine subsidence district unless you get consent of the board? A. That is correct.
>
> Q. But you disregarded that in your valuation? A. At this stage, yes; because the basis of my valuation was to value the land as 'unaffected.'"

(4) at page 104 -

> "Q. Well, come to that, that is upon the basis that here you have this virgin land surface, in no way restricted, and by what has gone on before, (sic), and you've assumed that this mining started on 19th May, 1971, has come into that virgin situation, is that right? A. Yes."

It is relevant to look at the history of this land. Portion 37A contains a number of seams of coal. The two uppermost are the Great Northern and Fassifern seams. They lie between the surface and a depth of 250' below the surface. The Minister's consent is restricted to the surface and the land below to a depth of 250'. The underlying seams, below 250', are within the area granted to The Broken Hill Proprietary Company Limited in Private Lands Lease 1016 for 20 years from 13th August, 1969, and are part of the John Darling Colliery Holding.

The present applicant previously conducted mining operations within portion 37A by virtue of a lease from H.M.I. Street and A.S.I. Braye, executors of the Will of T.A.I. Braye, S.P.P. Lamb, J.P. Lamb and H.P. Lamb. The lease was for a term of 5 years from 6.3.1965 with an option of renewal for a further 5 years. The lease was not renewed. The lease provided for a royalty of 10c. per ton on all saleable coal and shale, plus 2.5 cents per ton allowance for wastage. Way leave was payable at 2.5 cents per ton on all coal and shale won from other areas and brought to the surface through or by means of portion 37A. Rental was payable at $600 per annum plus $8 per acre per annum of surface used. The lease extended to 250' below the surface. The lease appears to have given the lessee full surface rights for the purpose of transporting coal and shale to the nearest public road, and for the construction of air shafts, bores, pipe lines, power lines and sludge ponds. Insofar as the sinking of tunnels etc. was concerned, the lease provided that the lessee could select an acre of 5 acres out of a 20 acre area in the north east corner of the land, but not immediately adjacent

to a 3 chain strip against Lake Macquarie, and drive tunnels, sink shafts and erect structures thereon. The lessors and lessee covenanted "that it and they will in such fashion and practice during the said term get win dig out and obtain all marketable coal in or under the said leased land hereby demised..."

Mining activities were carried on under the lease and between the expiry of the lease and the Minister's consent being granted.

Portion 37A is within the Lake Macquarie Mine Subsidence District, proclaimed on 16th May, 1962, under Section 15(1) of the Mine Subsidence Compensation Act, 1961. One consequence is that by Section 15(2) approval of the Mine Subsidence Board is required for any subdivision of land and for the erection or alteration of improvements.

It appears to me that in considering whether restrictions existing in respect of development of this land flow from the Minister's consent to mine pending the grant or refusal of application 1698, I should take into account

1. This land has been known for many years to contain valuable seams of coal;

2. The land has been in a Mine Subsidence district for many years. There is no evidence of application for subdivision approval or approval for structures;

3. The landowners themselves have lent themselves to the mining of the land, and have in the past profited thereby, by receipt of rents and royalty;

4. The land below 250' has been held under a mining title since 13.8.1969;

5. The restrictions imposed by the zoning under the Planning Scheme have existed for many years. There is no evidence of any application for consent of the responsible authority to use for purposes other than agriculture, country dwellings, etc.

I have come to the conclusion that restrictions on the development of this area flow not from the Minister's consent but from pre-existing circumstances.

The operations which have been carried out or which are likely on the land necessarily exclude the landowners from use or possession of the surface. This is a deprivation for which they are entitled to compensation. In assessing what that compensation should be it is proper to look at what use was made of the land before the Minister's consent was given. There is no evidence of any use other than for mining. In this case, however, despite Mr. Jenkins' submission to the contrary, it appears to me that the applicant's use of the land for mining purposes does effectively deprive the land-owners of the opportunity to use the surface of the land even for the restricted purposes available without consent under the present zoning.

I consider that a proper measure of damages is the difference between the value of the land at 19.5.1971, unaffected by the Minister's consent and that amount postponed for 4 years at 10%, less rent payable in respect of the surface.

I decline to adopt the value of $420,000 placed upon 84 acres of this land by Mr. Skelton. It is clear that he was regarding this land as unaffected by mining, whereas the reality before 19th May, 1971, was that the land, containing large measures of valuable coal, mining of which had commenced, adjoining other mine areas, in a progressively developing coal mining area, in a Mine Subsidence District, was markedly affected by mining.

I intend to adopt a value of $200 per acre, the figure Mr. Skelton used at page 95 for land for agricultural, forestry or rural industry purposes, not needing consent.

The present value of $200 postponed for 4 years at 10% is $137. ($200 x .68301).

I intend to make an assessment per acre at $200 minus $137, which is $63, less the rent for 4 years, $16. The nett figure per acre is $47. The assessment for 84 acres will thus be $3948.

I intend to direct that the amount of $3948 be paid into the Warden's Court at Newcastle within 30 days and that $2268 of that amount, (calculated 84 ((200 - (200 x .82645) - 8))), be paid out forthwith to the landowners as follows :

$1134 to E.K.B. Braye, D.B. Cragg, J.M. Hewson, C.L. Firkin, H.M.I. Street and A.S.I. Braye

$378 to S.P.P. Lamb

$378 to J.P. Lamb

$378 to H.P. Lamb

as compensation for the period of 2 years from 19.5.1971.

As copies of my decision are not available today and as the time for appeal is limited to 7 days, I adjourn until 3.5.1973 at 10a.m. at Warden's Court, State Office Block, Sydney, the making of a formal assessment. I also reserve the question of costs.

K.S. Anderson

K.S. ANDERSON,
WARDEN.

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