

IN THE WARDEN'S COURT,
GLEN INNES, HOLDEN AT INVERELL,
ON 2ND FEBRUARY, 1933
BEFORE J.L. McMAHON, ESQUIRE,
CHIEF MINING WARDEN.

Sundowner Minerals No Liability (Applicant)

v.

Gerald Walter Dunn &
Merilyn Joy Annette Dunn (Respondents)

BENCH: In this matter I have heard only from the applicant, the respondents in this matter, being the land owners and occupiers, not having appeared on this occasion. They were, however, aware of today's proceedings for in their presence at the Warden's Court previously held at Tingha, I adjourned the matter for hearing until today.

The application before the Court is for a right-of-way.

Evidence has been given of two possible routes within the lands owned by Mr. and Mrs. Dunn. I accept that the more practicable of these is the one as described in evidence by Mr. Coote, the authorised agent for the applicant, which holds Dredging Lease No. 1254 and certain prospecting licences in the area, which I have marked and shaded on Exhibit 1. This has a distance of approximately three kilometres within several portions commencing from approximately No. 106 on Exhibit 1, and running north to the titles, with some deviation from the route depicted on Exhibit 1, about which Mr. Coote has given evidence.

There will be a grant of a right-of-way as proposed along the lines of the route requested by Mr. Coote to a width of five metres. This is in accordance with the provisions of Section 175 of the Mining Act which provides that the holder of an authority (and a dredging lease and prospecting licence is covered by the definition of 'authority' in the Act) is entitled to ingress, egress and regress for the purposes of exercising the rights conferred by the Act by a right-of-way to be marked out in the prescribed manner from the land the subject of the authority to the nearest practicable point of a public road. Regulations 40 and 41

to the Act provide among other things for the marking out of a right-of-way and the assessment of rent and compensation. In my view there should be an annual rental of fifteen dollars and a once only payment of two hundred dollars. I make that determination in accordance with the criteria laid down in part VIII of the Act which provides in Section 124(1)(b) for a Warden to take certain specified matters into account when assessing compensation. These are damages to the surface of land, damage to crops, trees, grass or other vegetation on land, damage to buildings and improvements thereon being damage which has been caused by or which may arise from prospecting or mining operations; deprivation of the possession or of the use of the surface of land or any part of the surface; severance of land from other land of the owner or occupier of that land; surface rights-of-way and easements; destruction or loss of, or injury to, or disturbance of, or interference with, stock on land; and all consequential damages. I bear in mind that the evidence before me is that the land comes within none of the categories as outlined in Regulation 41(2) which speaks about agricultural land, garden, orchard, building, dam, reservoir, contour bank, or graded bank or water disposal area for soil conservation purposes, or exempted area, and that the land is in fact stoney ridge type country, which on my experience in this area would be timbered country with any cleared patches being only rough grazing land.

I have sworn evidence that access has been blocked to the applicant by Mr. and Mrs. Dunn by means of the locking of a gate or gates. These obstructions are to be removed by the land owners, and if they do not do so within forty eight hours from today, I authorise and permit the District Inspector of Mines, the Mining Occupations Officer or personnel from the applicant company to take whatever steps are reasonable and necessary to remove those obstructions, including the cutting of chains and locks, on this occasion, or on any subsequent occasion.

As far as the marking out is concerned, in the brief time that I have taken the adjournment for the purposes of preparation of this judgment, I have been unable to make contact with the Mining Occupations Officer at this centre, or the District Inspector of Mines, so no marking out could be arranged. However I would

invite Mr. Coote to present a copy of this judgment to either of these officers, with a view to arrangement of a mutually convenient time for marking out. A copy of this judgment is also to be sent to the respondents at their last known address.

I direct that the rental of fifteen dollars be paid within twenty one days from today, and on the anniversary of the same day in each subsequent year, and the sum of two hundred dollars by way of compensation be paid within three months from today. These payments are to be made by the applicant to the Mining Registrar, Glen Innes, for payment out to the respondents or to such other persons who may be at law entitled to receive such payments.