

IN THE MINING WARDEN'S COURT
HOLDEN AT SYDNEY
ON 4TH FEBRUARY, 1986
BEFORE J.L. McMAHON,
CHIEF MINING WARDEN.

THE AUSTRALIAN GAS LIGHT COMPANY

v.

MR. P. O'GRADY, MRS. J. O'GRADY & MS. J. BURRELL

BENCH:

On 4th February, 1985, The Australian Gas Light Company (the licensee) approached me by letter of complaint with a view to having an assessment made of compensation in respect of lands said then to be owned by Mr. P. O'Grady which were subject, among other lands, to Petroleum Exploration Licence No. 260.

Petroleum Exploration Licence No. 260, granted by the Minister for Mineral Resources on 9th September, 1981, was at that time current and to the present date remains current until September, 1986 and it is Exhibit 1 in the proceedings which I have conducted subsequent upon receipt of the letter of complaint. Among other things, it authorised the licensee to have the exclusive right to carry out such surveys and other operations as are necessary to test for petroleum in the land the subject of the licence, subject to such right and interest as may be lawfully existing in that land on the date that the licence was granted and to such easements or rights-of-way as the Minister may after that date grant under the Petroleum Act affecting the land. It was also subject to such orders and directions as the Minister may make or give to the licensee in respect of any difference or dispute between the licensee and any person authorised to prospect or mine for gold or any minerals by virtue of the Mining Act, the Coal Mining Act, or has ownership of any minerals or holds an agreement to mine for the minerals under the provisions of the State Coal Mines Act, 1912. There were attaching to the licence certain conditions which are fully set out in Exhibit 1 but which are, inter alia:

Condition No. 1 that the licensee should not interfere with any water well, water pump, dam or water pipe without the consent of the owner or occupier or the Minister first had and obtained and subject to such conditions as the Minister could stipulate.

Condition No. 11 required that the licensee shall not disturb any road or track within the subject area and shall make good any damage caused to such road or track.

Condition No. 14 required that the licensee should conduct operations in such a manner as to not cause or aggravate soil erosion.

Condition No. 16 required that no refuse should be deposited on the land and it should be left in a clean and tidy condition.

Condition No. 19 required that no stock should be endangered by reason of the operations and adequate protection was to be provided.

Condition No. 21 required that the licensee should comply with any direction given by the Minister in respect of rehabilitation conditions.

Conditions Nos. 22 and 23 specified expenditure which the licensee should undertake and the security deposit which it should lodge.

So it is clear that apart from any question of compensation, the rights of landowners and occupiers have some real measure of protection by reason of the conditions of this licence.

Although the complainant's letter of 4th February, 1985 implied only that Mr. P. O'Grady was the owner of the land, a different situation turned out to be the case and in fact it transpired that Mrs. O'Grady, the wife of Mr. O'Grady, was also an owner and that a female called Jenny Burrell was an occupier. These parties are herein called the respondents. In particular, the whole O'Grady property called "Tidappy" is comprised of four lots. As I understand the evidence, through questions by Mr. Margo who appeared for the licensee, Lot 2 is owned by Mrs. O'Grady, Lot 3 by Mrs. O'Grady and Lot 4 is owned by The O'Grady Trading Pty. Ltd. The ownership of Lot 5 is said to be a company called Strath Cab Nominees Pty. Ltd. It is not in dispute that both companies are family companies relating exclusively to the O'Grady family.

Miss Burrell occupies a residence on the property and on 13th June, 1985 when her occupation was brought to my attention, having been informed by Mr. Talbot who acted for Mr. O'Grady, that he was also instructed to appear for Mrs. O'Grady, a notice was directed to Miss Burrell and to a Mr. P. Gardner who was said could have been a joint occupier with Miss Burrell, of the residence. Thereafter it was said that Mr. Gardner had no standing in the matter but Miss Burrell was then also represented by Mr. Talbot.

"Tipaddy" is situated some 50 kilometres south-west of Sydney and some 2 kilometres from the township of Cobbity. It is run as a grazing property, having a total area of approximately 360 acres. There are on the property the residence, sheds, grain silos and substantial water dams have been constructed primarily to cater for the numerous beasts which run on the property in the form of high quality cattle and horses. Mr. O'Grady is a practising pharmacist having interests in more than one pharmacy, a medical centre, and a liquor store, but also describes himself as a grazier and although he takes little active part in the running of "Tidappy" he, along with Mrs. O'Grady, has submitted taxation returns over recent years in respect of that activity. The evidence is that Miss Burrell has the day to day running of "Tidappy", and I accept that to be the case.

It seems to me that I should examine the Petroleum Act, 1955, so far as it appears to me to be relevant to these proceedings for assessment of compensation and to the extent that it relates to Petroleum Exploration Licence No. 260.

The Petroleum Act passed in 1955 and amended on several occasions since, sets out in Section 9 that licences or leases may be granted comprising any land within the State whether Crown land or private land or comprised of both types of land. Section 11 provides for the lodgement by a successful applicant for a licence or lease of a security deposit and Section 12 sets out the rights of licensees and in particular that the licensee shall have the "exclusive right" to carry out such surveys and other operations as are necessary to test for petroleum (in) the land comprised in such licence. Section 18 provides

that a licence shall run for an initial term not exceeding two years and there may be successive renewal not exceeding 12 months each in duration. Section 21A provides that a licensee shall "diligently and continuously" carry on prospecting operations in a workmanlike manner and in accordance, inter alia, with the terms and conditions subject to which the licence was granted.

Section 39 provides that the Minister may notwithstanding the grant of any licence, grant such easements or rights-of-way through or upon the land the subject of the licence as are necessary or appropriate for the development of the working of the land the subject of the licence. A similar provision is contained in Section 40 in relation to both Crown and private land for the erection of pipelines or standards, posts, wires and appliances for the transmission of electricity or for the construction of roads for access.

Section 47 provides that a licensee in respect of private land shall conduct operations so as not to interfere with the existing use of such private land to any greater extent than is necessary.

Section 48 provides that without derogating from any other provisions of the Act, a licensee shall be liable to compensate the owner or occupier of the land comprised in that licence for all damages sustained by the owner or occupier to crops and improvements including to permanent artificial water supply by reason of drilling, other operations and construction works carried out or erected by the licensee. Section 51 provides that a licensee who determines or is required to carry out drilling operations on private land shall before commencing such operations notify the owner and occupier of his intentions and may apply to the Warden to determine the amount of compensation payable in respect of such operations unless before commencing such operations an agreement is reached between the parties, which agreement shall be lodged with the Under Secretary. Section 53 provides that a licensee shall be liable to compensate in accordance with the Act every person having an estate or interest in any land injuriously affected by reason of any operations conducted or other action taken by the licensee in pursuance of the licence.

It is clear that Section 53 varies from Sections 48 and 51, among other things, because the earlier sections relate to compensation being payable to the owner or occupier of the actual land the subject of the licence, whereas

Section 53 refers to every person having an estate or interest in any land injuriously affected by the operations. So to apply Section 53 the land need not necessarily have to be the subject of the licence.

Section 54 enables the parties to agree with any person entitled to compensation under the Act as to the amount of compensation which agreement shall be reduced to writing signed by the parties and lodged with the Under Secretary. If within such time as is prescribed - Regulation 22 specifies one month - the parties are unable to agree upon the amount of compensation to be paid then on the complaint of any party the Warden is empowered to hear such a complaint and assess the amount of compensation to be paid. The Warden is required forthwith after such assessment to furnish the Minister with a copy of the complaint and his decision.

Section 55(1) specifies the matters to be taken into account by the Warden in assessing compensation. These provisions are:-

- (a) deprivation of the possession of the surface of the land or of any part of the surface;
- (b) damage to the surface of any land or to any improvements on any land, which has been caused by or which may arise from the carryinon of operations by the holder of a licence or lease under this Act on the land comprised in such licence or demised by such lease;
- (bi) any loss occasioned to the holder of a licence or lease by reason of that holder's operations under the licence or lease being detrimentally affected by the grant under this Act, to the holder of another licence or lease, of an easement or right of way through, upon or in the land comprised in the licence, or demised by the lease, held by that firstmentioned holder, or by the use of any such easement or right of way;
- (c) severance of the land from other land of the owner or occupier;

(d) surface rights of way and easements; and

(e) all consequential damages.

I conclude that whether assessing compensation under Section 48, notwithstanding that Section 48 only refers particularly to crops and improvements including permanent artificial water supply, Section 51 or Section 53, the Warden must take into account and must only take into account the provisions of Section 55 in coming to an assessment as required by Section 54.

The letter of 4th February, 1985 is not in the form of a complaint which one would normally encounter in judicial proceedings but in my opinion the form of it is not fatal to the proceedings. Further no objection was taken to its form. Following upon its receipt, by Notice of Inquiry dated 13th February, 1985, I specified 1st March, 1985 as a mention date in respect of the Inquiry to assess compensation. It is a matter of record now that on that date the matter was listed for hearing on 29th March, 1985, it proceeded on several subsequent hearing dates during 1985 following which final written submissions were received by me on 27th November, 1985.

As to the proposals of the licensee as to Petroleum Exploration Licence No. 260 evidence from Mr. C. Herbert, the Senior Geologist of The Australian Gas Light Company, is that a particular location had been selected near where there had previously been drilled another hole which had been originally sunk for coal exploration purposes. The geological reports in respect of the original hole showed an encouraging gas flow and the licensee's intention is to test the area for methane gas. With this in mind, the site near the original hole was selected and is in fact within 200 metres of it. It is now intended by the licensee to sink a single hole to a depth of approximately 1150 metres. Such would involve the employment of a drill and the necessary personnel. The land in the vicinity of the proposed hole would be levelled on the surface in an area of approximately 100 metres by 60 metres, but it was later said that an area of no more than one hectare - 100 metres by 100

metres, would be involved. That levelling would necessitate the removal of topsoil which it was indicated by Mr. Herbert would be stockpiled nearby. A drilling rig called a Richter No. 4 rotary rig was intended to be used to sink the hole. Getting the rig on site would necessitate the traversing of a water course called Cobbity Creek. A small wooden bridge allows access across that creek but it was proposed by the licensee to upgrade that bridge and this will be discussed later. After crossing the bridge a distance of approximately 1.3 kilometres would need to be traversed to the proposed drilling site within the property of the O'Gradys. This would be past the house occupied by Miss Burrell and would necessitate the taking of not only the drilling rig but also all other vehicles along a track which runs across the top of a wall which constitutes the holding bank of one of the large dams. Again considerable evidence was given about the capabilities of that wall to withstand the traffic and that will be discussed later. The licensee proposed to conduct continuous drilling operations around the clock in two 12 hour shifts, 7 days a week and in all the whole operation is said to take eight weeks from start to finish.

The eight weeks or 55 days which it is said would be occupied by the licensee is made up of some 20 days required for initial earthworks, some 8 days required for erecting and demolishing the rig, a further 17 days during which it is suggested the drilling operations will be conducted and finally a period of approximately 10 days when it would be anticipated there would be rehabilitation or making good of the area. As far as personnel being on site is concerned, initial indications were that there would be some 18 persons continuously on site. Mr. Herbert later revised that figure and demonstrated it by Exhibit 10 and subsequently produced Exhibit 23. Both exhibits varied from the correspondence contained in Exhibit 3 in which the licensee had indicated that there would be the 18 persons on site. That variation however was explained and I accept the explanation by Mr. Herbert in that between the occasions that he gave evidence he was able more realistically to assess the operations of the rig and associated activities following upon on-going drilling work and therefore he had come up with the revised set of figures. In the final analysis there would be some 18 persons continuously on site, with a total of 9 intermittent specialists visiting from time to time.

It is a matter of record that for the whole of this intended operation initially Mr. O'Grady was offered the sum of \$100. True it is that it was intended by the licensee to make good any disturbance or damage done by reasons of the operation but from a common sense point of view the extent of the operation should have demanded in the first place an offer considerably more than \$100.

I am faced with somewhat of a conflict arising from the testimony of experts. The first of the experts was called by the licensee and was Mr. Richard Victor Ivey. Mr. Ivey is a Senior Consultant with Hassell & Associates Pty. Limited, a firm which specialises in the provision of technical and financial advice to people engaged in primary industry. As an agricultural economist and accountant, Mr. Ivey had studied the O'Grady property and had prepared 2 reports, the first of which dated 18th April, 1985 was admitted as Exhibit 26 and the second one dated 12th June, 1985 was admitted as Exhibit 28. The effect of Mr. Ivey's evidence and the conclusions that he reached were that the O'Grady's would suffer a loss of grazing at the rate of \$90 per year with another method of calculation being the cost of providing alternative feeding in the event of loss of grazing being \$328 with a further total of \$108 per year for the cost of agistment of stock. However Mr. Ivey concluded that the latter strategies were uneconomical and that the maximum reasonable economic loss which the O'Grady's would suffer in terms of loss of grazing was estimated at \$90 per year. In relation to the pipe laying that loss Mr. Ivey estimated to be 23¢ per year and he stated there would be no long term adverse effect on the pasture growth potential of the lots within the so-called compound area. Similarly he felt that provided small trenches were dug around the area to direct water away, no erosion damage would occur. To provide compensation for the areas taken up by vehicular traffic, Mr. Ivey estimated that the loss would be 45¢ and he concluded that there would be no economical loss because of disruption to management. As far as regeneration work was concerned, he felt that \$30 would cover that aspect.

A further expert called by the licensee was Mr. Enricho Lorenzo Beretta. He is a graduate Civil Engineer of the Swiss Institute of Technology with considerable experience in bridge and highway construction. His report is Exhibit 31. He had studied the area from the entrance gate to the proposed drilling site and gave a description of the route of access to be taken. He made recommendations about the timber bridge just inside the gateway and concluded that it should be strengthened by adding additional steel girders to the underside of it in the form of 2 spreader beams over 4 steel section stub columns with 2 further steel girders on the underside of the existing timber planking. He concluded further in relation to the roadway that it was unreasonable to upgrade it to such an extent that it would be useable for heavy truck traffic in all weather conditions including lengthy periods of sustained rainfall because the relatively short period of the drilling operations warranted the taking of some risks so far as the weather was concerned. He recommended an undertaking for reinstatement to its present standard for current use as light farm traffic access. He further concluded that a steep section of roadway needed to be upgraded, that various bare clay patches needed attention, the roadway on the dam wall and the last section of the roadway needed to be upgraded to allow medium weight and personnel vehicles access in light rain conditions. He recommended a 50 mm thick layer of crushed rock or shale to provide 3° of cross fall on either side to ensure that surface water was cleared, the installation of a proper ditch drain and where the road grades exceed 4° the surface gravel should be sealed with a light bituminous spray to prevent the surface being washed away.

He recommended a replacement of the broken pipe near the house and then a twin reinforced concrete pipe culvert near the dam, the wall of which carries the roadway should be, he felt, covered with at least 450 mm depth of compacted gravel. He recommended that the roadway on each side be banked up at a maximum of 4° slope so as to enable traffic to cross the culverts comfortably.

The evidence of a further expert, this one being called by the respondents, Terence James O'Donnell, was in some conflict with that of Mr. Beretta. Mr.

O'Donnell is a member of a company which carries on the business of consulting engineers, town planners and project managers. He holds a certificate as a local government engineer, and has a diploma in traffic engineering and is a member of the Institute of Engineers of Australia. He has considerable experience in the field of roads and drainage. Mr. O'Donnell produced a report which was admitted as Exhibit 48. He too had inspected the property belonging to the O'Gradys and had paid particular attention to the timber bridge, the roadway especially where it traverses the dam wall and the 5 culverts. He concluded that with the proposed number of vehicular movements that there would be considerable damage done to the track and that if wet weather occurred he would even expect considerable damage would be occasioned to the gravel areas of the track and grass areas could become impassible. He was of the view that the road across the dam wall presented safety problems in wet weather and because the existing cover over the culverts was less than normal he would expect that the traffic could damage the culverts and make them inoperative. He recommended that the existing bridge be strengthened, that culverts be relaid and given a minimum cover of 600 mm with a minimum of 100 mm cover of compacted gravel being placed on the track before it was graded. He recommended that there be no passing of heavy vehicles and the construction of temporary passing bays. He recommended special consideration to the dam wall including compaction and monitoring in heavy traffic use.

Although there was conflict between the 2 engineers, Messrs. Beretta and O'Donnell, Mr. O'Donnell did accept the structural specifications of Mr. Beretta. However from their evidence taken as a whole, I do not conclude that the bridge will be less effective after the work, as recommended by Mr. Beretta, is completed and in my opinion it would be strengthened and improved. In regard to the road between the bridge and the dam wall, I noted Mr. Beretta's evidence that the culverts would be excavated and replaced to a greater depth and properly covered and in relation to the road over the dam wall, although it was suggested by Mr. O'Donnell that there would be a safety factor involved, I accept the evidence of Mr. Beretta that, subject to monitoring, the dam wall could withstand the traffic, provided it was treated as recommended by Mr. Beretta. Again, provided aggregate was placed in

position as recommended by Mr. Beretta on the access track, the evidence does not suggest to me any adverse long-term effect on the surface of the track.

There was some contest and confusion about the truck movements. Exhibit 20 came into existence relating to the recorded vehicle movements at another of the licensee's drilling projects, which is called Victoria Park No. 1. During the site preparation period, it was suggested that 3.5 movements on the average per day during rigging up, a total of 17 vehicle movements during drilling, a total of 13 vehicle movements for rigging down, and during restoration an average of 4 each day. It was suggested that the movements would be similar in respect of the O'Grady property, and I accept that evidence as being a reasonable estimation based on the recorded movements of a similar undertaking.

In his evidence Mr. O'Grady outlined the arrangement which he has with Jenny Burrell who occupies the house on the property. Her responsibility is the running of the property and although she was not employed full-time there because she is able to get regular work at the stockyards at Camden and with other people, she has the responsibility in respect of the O'Grady property to carry out a daily inspection of the stock and to do what was necessary to be done in respect of that stock. I assume by this, the necessary marking, treatment, assistance in calving, drenching, branding and preparation for sale. Mr. O'Grady said that he was endeavouring to build an elite herd of Charolais cattle. He had purchased a Charolais bull from New Zealand with this in mind and that currently on the property there were some 150 head of cattle including the Charolais and the calves. He said he believed that the future of the beef industry lies in animals that produced lean meat quickly and which were suitable for Australian conditions. In April of 1985 there were 29 cows with steer calves, there were 9 adult steers, 22 cows and 22 heifer calves. There was a further herd of 8 cows with their calves and there were some 22 heifers which were running with an Angus bull and there were 3 Charolais bulls. He agreed that he did not have a great deal of experience in grazing but claimed to have a great interest in cattle producing but he had no personnel capacity to manage the property. For this reason he had employed Miss Burrell for her skills in management and stock control

Mr. O'Grady laid out in evidence the management plan and how the paddocks were used on a rotating basis. He was then asked some questions about the horses that were running on "Tipaddy" and in April of 1985 there were some 5 mares, 2 of which were in foal. There were some 5 racehorses which were involved in active racing and which were geldings. There was a thoroughbred mare and a foal and some 9 other horses which could be described as stock ponies and one draft mare. There were a further 2 horses which Miss Burrell owned. Part of the arrangement with her was that in addition to being provided with free personal accommodation, her horses were agisted free of charge.

Mr. O'Grady stated that Miss Burrell had a responsibility to care for the horses on a daily basis and in particular to watch their feeding and to care for their leg problems. Care also was taken by Miss Burrell of mares which were about to foal. Again in respect of the horses there was a rotation system.

Mr. O'Grady raised no objection to Mr. Gardner occupying the residence with Miss Burrell, preferring to have a man on the place to deal with any untoward situation.

Mr. O'Grady said that having had some conversations with Miss Burrell concerning the drilling operations, he had formed the opinion that she would not feel happy about staying on the property during the period of work and would have to seek alternative accommodation, probably at a motel, during the period over which the work was conducted. If Miss Burrell were to leave the property as had been suggested, the consequences to Mr. O'Grady would be that he would be deprived of the services of the person whom he could trust with the responsibility for the conduct of the farm. Management would be left in turmoil and the property just could not function. The stock would have to be removed from the property and agisted elsewhere. He explained this reason by saying that the cattle were divided into different groups and there was no possibility of observing disease in them, that if gates were left open and they become mixed in this could cause breeding troubles. There would be similar problems with the location of the horses. The traffic to the drilling

site would disturb the stock which were not used to that activity and certainly not used to traffic at night. Similarly, the horses would be affected and they could be startled by the traffic.

Mr. O'Grady gave evidence about the right-of-way to his property stating that it was the only access carriageable at the present time.

As far as the fencing of the property was concerned, provision had been made for that to be improved in the 1984/85 financial year but that could not be carried out. Some dams areas are not fenced at all and the fences were such where they did exist that any additional pressure on them from the stock would cause them to be able to get through and stray. Mr. O'Grady complained that he would have no control of people coming onto the property and he felt that beasts could die because of this intrusion. Cows would be disturbed while calving and this was a most unsatisfactory situation because it was necessary for calving cows to be observed twice daily and this was another reason why they should be moved to some position where they could be watched. He had maintained a policy of security on his property and when strangers were able to enter without being identified this was also unsatisfactory. The only way that he could properly police the situation was to have a watchman-type security person on site.

In relation to his concern for the care of his topsoil, contour banks would have to be constructed and having the area cut into, as envisaged at the drilling site, could lead to disturbance to the soil which would not reconsolidate. Mr. O'Grady was also concerned that his property would become non-productive notwithstanding that his major outgoings in respect of the property were over \$5,000 per annum, being mostly for rates and insurance policies, and not including wages and depreciation.

Mr. O'Grady stated that he had planned to retire during 1986 and he proposed to live on the property and that a home could be constructed near where the proposed drilling site was. Mr. O'Grady agreed that during the drought he had had fodder delivered to the land in heavy vehicles, some of which was taken

across the road across the dam wall and the bridge by truck. He was concerned also that there be no repetition of damage which had occurred to a neighbour's property, a Mr. Henderson, which Mr. O'Grady felt could occur to his own property by reason of a drilling programme.

The above sets out a reasonable summary of Mr. O'Grady's expressed fears as to what would occur should the drillhole be sunk. I gained the very distinct impression from his evidence that he would be very much happier if the licensee went elsewhere to put down its hole but if it insisted on sinking it where it was intended then Mr. O'Grady would be seeking substantial compensation; and it would be very much more than the figures suggested by the licensee.

Jenny Burrell was not called as a witness. No explanation was given as to why this was so. Coming from Mr. O'Grady, I allowed the evidence that he believed that Miss Burrell would leave the property should the personnel associated with the drilling rig and drilling operation come to it. This evidence would have been much better coming from Miss Burrell, and Mr. Margo relied on the decided case of *Jones v. Dunkel* (1959) 101 C.L.R. at 298, a decision of the High Court of Australia. The High Court decided in effect that where a party has within his power to produce a witness who can give evidence of facts that he claims to exist, and fails to do so, that is indicative that the witness is unfavourable to that party. Mr. Gardner also was not called.

I should now discuss the alternatives to the small amounts of compensation suggested by Mr. Ivey as being appropriate and the substantial claims made by Mr. O'Grady. The licensee in its initial negotiations offered the sum of \$100 and to my subsequent surprise indiscreetly wrote out to Mr. O'Grady the following words contained in a letter dated 16th January, 1985, part of Exhibit 3, "We therefore anticipate with certainty that the Mining Warden will decide that an amount similar to \$100 as advance compensation for any inconvenience that our drilling operations may impose upon you" and again by letter of 22nd February, 1986, "In our experience he would be likely to decide on compensation rates far lower than we have offered herein." How anyone could

assess at that stage with certainty a figure similar to \$100 as being appropriate compensation in this case or could say that experience indicated that I would be likely to decide on compensation rates lower than offered, is beyond me and without doubt those statements were highly inappropriate.

Mr. Ivey after seeing the property on 18th April and again on 12th June, 1985 has suggested the sum of \$90 for loss of grazing and the sum of \$108 for the cost of agistment, with a further 23c in respect of the pipeline and 45c for disruption to management. He also had arrived at a figure where alternative feeding might be carried out of \$328. As against that, Mr. Talbot on behalf of Mr. O'Grady, has suggested that the court take into account the number and variety of personnel, the absence of direct relationship between all personnel, the hours of operation, the period of time, the location of the property, the situation of the access track, the severance of the property by the access, the location of the drill site, the isolation of the drill site, the doubt in relation to the strength of the dam wall, the value of the property itself and the value of the improvements on it as being factors to take into account and in arriving at a figure he has sought the sum of \$26,500 for the upgrading of the road, \$7,000 for the bridge works, \$150 for the surfacing of the top of the dam, and then a security-guard charge at \$12 per hour for normal hours, \$16.50 for Saturdays and \$19 per hour for Sundays and public holidays, a figure which over the 55 days of operations totals approximately \$18,326. He seeks further the sum of \$9 per day for each horse, \$3 per day for each bovine beast, totalling approximately \$576 per day. Over the 55 day period, these figures represent \$31,680. It is then sought on behalf of Mr. O'Grady a figure in respect of his proposed supervision activities and the sum of \$10,000 against the possibility of slippage of the dam wall. It was also sought that some sort of public liability or occupier liability insurance policy be taken out to cover the situation should there be any injury suffered by any person.

As I have already commented, only the criteria laid down in Section 55 is to be taken into account. That is not to say however that I am not able to look at earlier matters decided of compensation. For instance, in a matter heard

at the Warden's Court, Sydney of the Electricity Commission v. Reynolds on 5th December, 1978 I had to consider what compensation was payable to the owner of a rural property which was the subject of an Authorisation granted to Electricity Commission of N.S.W. under the Coal Mining Act. The Commission was sinking scout drillholes at various positions on the property of Mr. Reynolds and in an endeavour to set down guidelines I established a formula into which was fed various figures. That somewhat complicated formula took into account a number of factors, one of which was the number of drillholes and another was the number of kilometres travelled within the property. In the matter presently before me, however, only one drillhole will be sunk and there will be no divergence of vehicles away from the set track from Chitticks Lane, the nearest public road, to the drill site.

I am of the view notwithstanding this, that a simplified formula ought be established and I propose to lay one down, but before doing so would discuss the provisions of Section 55 as it applies to the respondents' property and the proposals by the licensee. Section 55(1)(a) to the Petroleum Act allows for compensation to be assessed for deprivation of possession of the surface of the land or any part of the surface. There can be no doubt that the respondents would be deprived of some possession that is of the area of approximately one hectare upon which the drillhole would be sunk and attendant facilities housed and also they will be deprived possession of the surface to the track in that while vehicles relating to the project are on it, it would be highly unlikely that the respondents or anyone on their behalf could have use of it, or at the highest their use would be restricted. Under paragraph (b), damage to the surface of the land or to any improvements, again the drill site area of approximately one hectare will be damaged and disturbed and so also will there be some disturbance to the surface of the track although if Mr. Beretta's recommendations are implemented then the surface to the bridge and track will have minimal damage only. There is also the prospect of the need to place a pipe for water from an outside water source to the drilling site and if that pipe is buried in a trench there would be some surface damage. Such surface damage whether to the drilling site, the track or the route of the pipeline would obviously result in some reduction

in grazing value of the land although such damage might well not be long-term. Under paragraph (bi), compensation may be assessed for any loss occasioned to the holder of a licence or lease by reason of that holder's operations under the licence or lease being detrimentally affected by the grant under the Petroleum Act to the holder of another licence or lease of an easement or right of way through, upon or in the land comprised in the licence, or demised by the licence holder by that firstmentioned holder or by the use of any such easement or right of way. There would be no circumstances, as I understand the evidence, where there would be any loss occasioned as envisaged by the other paragraphs within the subsection. Under paragraph (1)(c), severance of the land from other land of the owner or occupier, it would be obvious that the use by the licensee of the access track might well cause the property to be divided and cause some inconvenience because of that severance in the movements of stock or the carrying out of other farming activities. Under paragraph (d), surface rights of way and easements, I believe that the provisions as above referred to cover the compensatable matters relative to the track which may be termed a right of way. As to paragraph (e), all consequential damages, I am of the opinion that there would be a need in the respondents to supervise the activities and incur losses or damages as a result of that. There would also be some inconvenience flowing to the respondents and I am of the view that any assessment of compensation could have built into it a figure for inconvenience, as difficult as it might be to assess, compared to a supervision fee.

I turn now to the proposed formula. It seems to me that the features of the formula ought to be based on the number of persons on the average who are daily on site whether employed on the site or visiting it whether as inspectors or government employees or otherwise, the average number of vehicles making trips to the site and the number of days over which, in all, activities in connection with this operation take place. I accept the evidence that the number of days will be 55. A constant figure for supervision ought also to be included and this will be discussed later. If for instance the average daily number of persons were 18 one could allow a set figure say of

\$1 per person per day leading to a calculation of $18 \times 1 \times 55$ and there could be allowed a figure of \$4 per vehicular movement irrespective of the size of the vehicle and the reason why it is attending the site. By one vehicular movement I mean a trip in or a trip out; so a trip to and from the site by the one vehicle represents 2 movements. If therefore there were a average of 15 vehicular movements per day and allowing \$4 for each of these, then the calculation would be $15 \times 4 \times 55$.

A further factor is that of supervision. I am of the view that it is a matter which should properly be taken into consideration and that I should arrive at a figure appropriate in the circumstances. It is a sad fact in our daily lives that one reasonably feels the need, and often sorry experience shows that there is a need, to supervise tradesmen and other workers visiting one's property. I am therefore of the view that the respondents' attitude as to the need for supervision is a reasonable one, although I am conscious that the drilling crews are experienced personnel who might have been with the company for some time. The need that I see for supervision does not necessarily reflect upon the character of the persons attending or working at the site but the respondents are nonetheless entitled in my opinion to supervise the property. On the other hand I do not think that the employment of a full-time or even part-time security guard is justified and the attendance by the respondents or someone for them at irregular times would surely suffice. In the circumstances, over a 55 day period I would assess this figure to be \$550.

The within figures take into account the criteria laid down in Section 55 and would be a realistic and readily calculatable means of arriving at a compensation figure. They take into account the fact that there will be a drill site disturbed and there will be a need to lay a pipe for water to the site. They further take into account that work to the bridge and roads, including the insertion of culverts, laying of metal surface and other means of upgrading, as recommended by Mr. Beretta, would be done by the licensee before work commences; and that should there be any damage done to the property and in particular to the surface of the land or the bridge, then the applicant will make good that damage as far as is reasonably possible.

I am conscious that the respondents' case included in it reference to a need for the stock to be agisted and for the incurrence of certain supervision fees which would be involved in paying a security guard-type person. It requested also payment for substantial sums for the necessary roadworks to upgrade them, and to improve the bridge.

The fact that Miss Burrell was not called as a witness to set out her intentions weighs heavily in my mind. It should have been an easy task had it been intended by her to leave the property during the time of the operation for her to come to court and give evidence to this effect and be open to cross examination. This has not occurred and although I admitted evidence from Mr. O'Grady as to his belief of Miss Burrell's intentions, that is by no means, in my view, satisfactory evidence upon which I could base a conclusion that she would definitely be leaving. Furthermore, Mr. O'Grady's plans to agist the stock elsewhere are in my opinion an unnecessary over-reaction to the proposals as outlined by the applicant. True it is that stock, especially flighty racehorses, could be startled by the presence of vehicles and humans and true it is that there may be some disturbance to calving; but to say that a grazier has to move all his stock from a property of 360 acres in area when only a small part of it is being affected is simply beyond common sense and is not a true reflection of the situation. I would therefore reject any claim by the respondents for agistment fees.

I am of the view that provided the applicant fulfils the requirements as set out in Mr. Beretta's report in relation to the upgrading of the various areas and reinstatement, that compensation is appropriate to be assessed at the rate of \$1 for each person on site on the average daily and \$4 for each vehicle movement on the average daily. To a figure arrived at by means of a calculation in this regard there should be added the sum of \$550 as a supervision factor. In making this assessment I have taken into account the provisions of Section 55 and believe it to be the fairest and most appropriate means of arriving at compensation in accordance with the dictates of the Act. Furthermore, pursuant to the provisions of Section 56 and to the requirements of Regulation 24, I direct that a sum arrived at by calculating a figure,

bearing in mind the assessment as abovementioned, shall be paid by the licensee to the Registrar of this Court for payment out to the respondents in the following manner: \$2,000 at least seven days before work commences and the balance arrived at by calculation of the daily averages and confirmed by Statutory Declaration by a responsible officer of the licensee to be paid within seven days after work is completed.

I leave the question of costs in abeyance at this time although I indicate that it has never been my practice to award costs in compensation matters under the Mining Act or Coal Mining Act but if either party seeks to have the matter relisted to argue the question of costs I would be happy to arrange for a listing.

As required by Section 54, I now forthwith furnish the Minister with a copy of the complaint and my decision herein. However, one further matter needs to be attended to.

Part of the duties of a Warden are administrative and because of this it is often necessary for me to handle and process files of the Department of Mineral Resources. Prior to completion of the draft of this assessment, a departmental file M85/4638 was referred to me. It came into existence because of a letter to the Permanent Head of the Department from Consolidated Petroleum Australia N.L. and was purported to be signed by someone called Battersby on behalf of that company and also on behalf of a party to these proceedings, the licensee.

The third paragraph of the letter makes reference to the hearing of the present matter and states that proceedings have been drawn out "entailing considerable legal costs despite the lack of decision". The complete absence of discretion exercised by the writer on behalf of a party to these proceedings will be obvious to all, especially when the licensee would know that the hearing has proceeded with as much expediency as the extensive evidence, the commitments of the Warden, Counsel and parties have allowed.

I place upon record that I treated the letter as it should be treated, by ignoring it, in completing my assessment herein.