

**IN THE WARDEN'S COURT
HELD AT ST. LEONARDS ON
FRIDAY 9TH MAY, 1997 BEFORE
J.A. BAILEY, CHIEF MINING WARDEN**

CASE NO: 1997/8

NEWBRIDGE SLATE PTY LTD

(APPLICANT)

V

DAPILA MINING LIMITED

(RESPONDENT)

BENCH:

This is an application under Section 265 of the Mining Act 1992 by Newbridge Slate Pty Ltd for assessment of compensation concerning Mining Lease 1390 (Act 1992). The purpose of the lease is to allow the extraction of slate. The land is approximately 133 hectares.

The landowner is Dapila Mining Limited. By way of background, Dapila purchased the land solely for the purpose of mining slate, regrettably, from Dapila's point of view, a mining lease over that site has now been granted to Newbridge. Of more recent time, an administrator was appointed for the landowner and subsequently a Deed of Company Arrangement was entered, placing the control of the company back into the hands of the directors.

During the hearing, both parties produced valuations of the property. One valuation was prepared on 14th March, 1997, by R L Jackson (registered Folio No. 50) of Jackson & Rowe Pty Ltd. The value placed upon the land in that report was \$2000 per hectare for 117 hectares and \$4000 per hectare for 12 hectares of pine trees which are on the property. In all a total value of \$282,000 was placed on the land with an additional \$497,100 for the improvements thereon, i.e. a total of \$779,100. The following general remarks were made in that report:-

We have approached the valuation from the perspective of viable mining land and improvements, development consent, substantially commenced and with a

mining license (mining lease no. 1390 Orange) issued, with land based on rural values but excluding the value of minerals.

We note that the Cadia mine approximately twenty kilometres south of Orange and in the general vicinity appears to have acquired its adjoining land based upon rural values, plus forty percent.

As this valuation is for mortgage purposes we have ignored this factor, preferring to adopt a more conservative approach.

The improvements which exist on the property, I was informed at the hearing, would not be utilised by the mining company.

Evidence was given by Mr R Hamilton on behalf of Newbridge Slate Pty Ltd, that one (1) hectare of land would be required for the quarry, a further one (1) hectare was required for fencing to isolate the area from stock. Another area was required for the storage of waste and another as a short term storage of waste. Two (2) hectares were required for processing and approximately one (1) hectare for storage thereafter. Mr Hamilton indicated that all three separate areas which are required for his mining company are areas which are accessible by the current roads. He indicated that the company in using access roads, would ensure that such roads were kept in good repair in accordance with the conditions of the lease. Further evidence was that the size of the mining operation envisaged that less than one truck load per week would be moving across the road on the property, in addition to a couple of employees using their personal vehicles to turn up for work and the delivery to the site of a back hoe and front end loader and drilling equipment.

Mr Hamilton indicated that he had made an offer of compensation at the rate of \$1000 per hectare to be paid for the life of the lease; a total of 5 hectares would be utilised, so the total compensation offer made was \$5000.

Mr. R. Salisbury, a director of Dapila Mining Co. Limited, produced a valuation of the property prepared by Ian G. Jelley (Registered Valuer #3024) from HTW Valuers,

dated 9th December, 1993. The value placed upon the land by that valuer was based upon a “bare land value in the range of \$2,000 to \$2,200 per hectare”. With the ultimate value being placed upon the land and improvements, excluding minerals, as \$750,000.00.

In that report it is stated that the surrounding development is rural with the main emphasis on sheep and cattle grazing. However, it is noted that the documents makes the following reference to this particular land:

The subject property has ample evidence of earlier mining operations, especially along watercourses and two historical ruins are recorded on topographical maps along a tributary of Coates Creek. Old slate workings are evident on Coates Creek.

Mr. Salisbury makes reference to a letter he received from Newbridge, dated 14th January, 1997, where it states:

2)NBS suggests that compensation be equal to the average grazing return for 10 hectares of comparable land in that region. Approximately \$20/hectare paid on an annual basis i.e. \$200/year to commence when (and if ever) NBS excises the 10 hectares and commences mining

Furthermore, he tenders a document headed “executive summary” which apparently was included in the EIS . Estimation by the company is that there is sufficient slate for over 200 years of production. Under the heading of “The Projects Impact”, the following paragraph appears:

vi) The project would result in the sterilisation of approximately 90 ha of marginal agricultural land for up to 240 years. Following site rehabilitation, virtually all of the Project Site would once again be suitable for agricultural purposes.

A valuation report was prepared for Newbridge Slate Pty. Ltd. by Graeme G. Jones and Associates (registered valuer 1333), dated 22nd April, 1997. The valuation on the land by that valuer works out between \$1502 and \$1652 per hectare.

There is some conflicting evidence as to how much of the land will be set aside for mining, although Mr Hamilton indicates only 5 hectares will be required. When the matter was first listed for hearing, there was request by Dapila that Newbridge supply them with a mining plan so that they could assess the loss that would occur. Newbridge was unable to supply a plan because they were refused access to the property and consequently could not prepare a plan. This of course makes it difficult for the parties to place material before me for assessment of compensation and that in turn makes it difficult for me in assessing compensation.

When questioned as to Dapila's use of the land, Mr. Salisbury indicated the shed on the land is to be leased for other purposes; neighbours are agisting stock on the land and there is some forestry on the land. He was unable to give any evidence as to any income being received or intended to be received from these ventures.

Dapila purchased the land for mining purposes and can no longer use it for that purpose. The following exchange took place between Mr. Salisbury and Mr. Moore (Solicitor for Newbridge):

Q. What purpose can they use the land for? A. I can't answer that.

Q. I put it to you that the land may only be used for very limited farming and grazing purposes? I've been told there can be a wide variety of uses. It is clear from the evidence that Dapila, at this point of time, is unclear as to what purpose it now intends to use the land. In relation to income to be generated from the land, following questions put to Mr. Salisbury concerning the same, one of his replies was:-

A. There has been no cause to look at income potential.

Mr. Salisbury gave evidence that in his opinion there will be a loss of income as a result of the slate mine operations due to the fact that for the landowner there will be a loss of access to the creek. This statement was not substantiated by any further evidence and indeed, no questions were put to Mr. Hamilton as to whether or not the mining operations will cut off access to the creek. It was submitted to me that I should place little weight on that statement by Mr. Salisbury.

In his submissions, Mr. Moore pointed out that the improvements made to the land will not be utilised or interfered with by the mining, consequently, they are still available for Dapila to use, for such purposes as leasing etc. Further, concerning the roadway, if Newbridge complies with the condition of the lease, the roadway will be maintained and Dapila will not suffer any loss. These aspects are not challenged by Dapila. It was submitted by Mr. Moore that the company's offer of \$5,000 was a generous offer.

Mr. Bolduan submitted the compensable loss to the landowner comes under two categories; "S.262(b) deprivation of the possession or of the use of the surface of land or any part of the surface; or
(c) severance of land from other land of the owner or occupier of land..."

and he relied upon the compensable loss being loss "likely to be caused". He submitted that as traffic will be running through the property, this will affect any subdivision in the future. This submission, naturally on the evidence before the inquiry, is just one of speculation. The fact is, at this point of time, Dapila does not know to what purpose it intends to use the land. Any assessment of compensation is one based upon a speculation as to what might be a compensable loss, based upon what the land might be used for in the future. Without having a complete picture before me, the assessment of compensation is not an easy task, however, I must assess the compensation on what is presented to me.

There is cattle being agisted on the land at present, it is to this end that some weight may be placed upon the compensable loss likely to be caused to the landowner, due to mining activities.

Having regard to the matters placed before the court, I accept there will be some deprivation of the possession or of the use of some part of the surface of the land, there will be some severance of the land. The affect of the movement of plant itself

would appear to be minimal. I propose to place greater emphasis upon the possibility that more than less area will be utilised for mining, once the operations commence.

Accordingly, I assess compensation in the sum of \$10,000. This sum is to be paid to the landowner in instalments of \$2,000 annually, the first payment to be made on or before 30th June 1997.

When the matter was adjourned on the 9th April 1997 I reserved on a question of costs concerning that adjournment. Having regard to the circumstances and in the exercise of my discretion I do not propose to order any costs in this matter.

J A Bailey
Chief Mining Warden