LAND AND RESOURCES TRIBUNAL
QUEENSLAND

CITATION:	*Raymond Edward Richardson v. Rodney Keith Barrett* [2001] QLRT 89
PARTIES:	**In the Matter of Application for Mining Lease No. 70190** **Raymond Edward Richardson** Applicant **-and-** **Rodney Keith Barrett** Landholder
FILE NO/S:	MLC00016/01
PROCEEDING:	Determination of compensation
DELIVERED ON:	30 November 2001
DELIVERED AT:	Brisbane
HEARING DATE:	29, 30 March, 5, 6 April 2001, 1, 9 August, 19 September, 10 October and 1 November
PRESIDING MEMBER:	Smith DP
ORDER/S:	**1. I assess the total compensation in this matter at $16,775. (at [35])** **2. I direct that the Applicant pay the total compensation of $16,775 to the Landholder within 1 month of the grant of the mining lease. (at [36])** **3. I allow the parties until 4pm on 6 December 2001 to apply to vary the determination in this matter in the circumstances as set out in paragraph 33. (at [37])**
CATCHWORDS:	MINING LEASE – DETERMINATION OF COMPENSATION – PRINCIPLES TO BE APPLIED – RESTRICTED AREA 1 – CROSS-POLLINATION – ACCESS – VALUATION AND LEGAL FEES *Mineral Resources Act 1989*, ss. 279(3), 279(5), 281 *Land and Resources Tribunal Act 1999*, s. 83 *Environmental Protection Act 1994* s. 590 *Elliot v. Hicks* [2001] QLRT 38, referred to

Re Weir, Rasmussen and Others [2001] QLRT 77, referred to
Zimmerebner v Hawkins & Anor (1999) 20 QLCR 71, referred to
Messer & Anor v. Rossi and Ors [2001] QLRT 6, applied
Director of Buildings & Lands v Shun Fung Iron Works Ltd [1995] 2 AC 111, referred to
Hughes v Doncaster Metropolitan Borough Council [1991] 1 AC 382, referred to

COUNSEL:	Mr A.C. Barlow for the Applicant
SOLICITORS:	Paul Watts & Co. for the Applicant
AGENT:	Mr G.T. Houen for the Landholder

Background

[1] **SMITH DP:** On 20 August 1999 Mining Warden Windridge recommended that Mining Lease Application 70190 be granted over an area of 60.99ha situated on lot 11 on CLM597, County of Clermont, Parish of Keilambete. The property is known as 'Mount Clifford' and the Landholder is Rodney Keith Barrett. Part of the application area was abandoned by the Applicant on 18 October 1999, leaving a balance application area of 41.02ha.

[2] As compensation as between the Applicant and the Landholder was not agreed, the Mining Registrar, Emerald, on 6 June 2000, pursuant to s. 279(5) of the *Mineral Resources Act 1989* (hereinafter "the MRA"), referred the question of the amount of compensation payable in respect of MLA 70190 to the Warden's Court for determination. As the Mining Warden had not heard and determined this matter as at 18 September 2000, the matter became a proceeding in this Tribunal.[1]

[3] The hearing of the matter took place by video link between Emerald and Brisbane on 29 March 2001 (the first video hearing conducted by the Tribunal), by telephone between Brisbane and Emerald on 30 March 2001, and in Emerald on 5 and 6 April 2001, including evidence taken during a site inspection on Mount Clifford on 5 April 2001. The hearing of this matter has also been subject to what the parties

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1 *Land and Resources Tribunal Act 1999* s 83.

refer to as 'cross pollination' with three other proceedings[2], one of which has since been abandoned. In particular, the submissions in this case are directly linked to interlocutory proceedings in *Elliot v Hicks*[3], and the timing of submissions. These interrelated matters and other issues, and the issue of an article sent directly to Chambers by a party, have been the subject of a number of interlocutory points, the last of which (that of the newspaper article) was dealt with by the judgment in this proceeding and the related proceedings on 1 November 2001[4]. It is not necessary for the purposes of this determination to detail all the dates that this and the related matters have been before me on all interrelated issues.

[4] The Applicant relied on the evidence of an expert valuer, Russell Geoffrey Brown. No other expert evidence was called. It is particularly relevant that the Landholder did not rely on the evidence of an expert valuer, despite the fact that as a normal principle the cost of legal and valuation fees incurred in the preparation of a claim for compensation are allowed as items of disturbance. As was said by Trickett P. in *Zimmerebner v Hawkins & Anor*:

> "In my opinion, the claim for such disturbance items is not well founded. In *Smith v Cameron*, the Land Court pointed out that in cases involving the compulsory acquisition of land, legal and valuation fees incurred in the preparation and lodgment of a claim for compensation are allowed as items of disturbance. The Court saw no reason why the principle should not be applied to an application for compensation under the Mining Act. That reasoning was followed by this Court in *Mitchell*. However, in this case there is, of course, no claim for compensation in the same manner as there would be under the Acquisition of Land Act. In the circumstances, it would seem appropriate to allow reasonable legal and valuation costs in preparing a claim for compensation before the Mining Warden."[5]

[5] Evidence at the hearing was also given by the Applicant, Raymond Edward Richardson, and the Landholder, Rodney Keith Barrett. As the only expert evidence as to land values represented as a $ value per ha has been provided by Mr Brown, I prefer his evidence in that regard over that of Mr Barrett. When it is necessary to do so, I have referred to the evidence that I have relied upon with respect to particular aspects of this matter at the relevant parts of the decision.

[6] In considering this matter, I have taken into account all the evidence before me, including material provided to the Tribunal by the Mining Registrar, Emerald, as

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2 *Weir, Rasmussen & Barrett* (matter no. MLC00024/01); *Deeley & Hicks* (matter no. MLC00018/01) and *Elliot and Hicks* (matter no. LXX40066/2000).
3 [2001] QLRT 38.
4 [2001] QLRT 77.
5 (1999) 20 QLCR 71 p91.

part of the referral process, and material from the Warden's Court. These reasons refer to the salient points, but not all the relevant evidence, that I have taken into account in making my decision.

The principles of compensation

[7] It is fair to say that Mr Barlow and Mr Houen both approached this matter as a form of 'test case' as to how the Tribunal would approach mining compensation matters in the Central Queensland gemfields. In their supplementary submissions, both referred extensively to my decision on an interlocutory point in *Elliot v. Hicks*[6] and reached different conclusions on the impact of that decision. In my view, they have both missed the main thrust of that decision.

[8] In effect, although the body exercising jurisdiction under the *Mineral Resources Act 1989* (hereinafter referred to as "the MRA") changed on 18 September 2000 when the Tribunal gained jurisdiction, there were no other relevant changes to s. 281 of the MRA. Thus the principles to be applied by this Tribunal are the same as they have been for some time.

[9] In this regard, I note the comments of Deputy President Kingham of this Tribunal when considering a claim for compensation in a mining claim:

> "Section 85 of the *Mineral Resources Act 1989* ("the Act") defines the landholders' entitlement to compensation and lists a number of matters that must be considered by the Tribunal in assessing compensation. I agree with the observations of Mr Scott of the Land Court in *Wills v Minerva Coal* (unreported 27/11/98) about the equivalent section of the Act dealing with mining leases. He stated that the matters set out in that section were compensation concepts to be taken into account in determining compensation, not a figure accumulated by amounts arrived at following the separate and discrete treatment of them as if they were separate heads of compensation. In determining compensation, the overriding principle is of equivalence, ensuring that, so far as money can do it, the landholders are placed in the same position as if the mining claim was not granted. (*Horn v Sunderland Court* [1941] 2 KB 26 at 43 per Jacobs J)."[7]

[10] I agree with the conclusions made by Deputy President Kingham.

[11] I further note that this matter concerns the determination of compensation on the property Mount Clifford. Mount Clifford is in close proximity to Keilambete which was the subject of a decision of the Land Court, on appeal from a determination of compensation by the Acting Mining Warden under s. 281 of the

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6 [2001] QLRT 38.

7 *Messer & Anor v. Rossi and Ors* [2001] QLRT 6 at 9.

MRA, in *Zimmerebner v. Hawkins & Ors*[8]. In that case, J.J. Trickett, President of the Land Court, considered in some detail the principles applicable in compensation matters. Given the manner in which this case has been argued before me, it is appropriate that I quote extensively from the decision in *Zimmerebner*.

> "In *Mitchell v Oakhill* (10 March 1988, not reported), this Court considered the question of compensation under the provisions of section 281 of the MRA. There it was pointed out that in an earlier case, *Smith v Cameron* (1986) 11 QLCR 64, the Land Court considered provisions similar to those of section 281(3)(a), which were contained in the Mining Act 1968. In that case, the Court had likened the use of land for mining purposes to the compulsory acquisition of land for a limited period and applied the various principles and practices of valuation which were applied in determining compensation for the taking of limited rights over land for public purposes.
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> In *Michell* the Court concluded that the same reasoning can be applied to section 281(3) of the MRA, but it does not prescribe a method of valuation. As long as the amount of compensation finally determined accounts for each of the entitlements referred to in the sub-section, it is not necessary to quantify an amount in respect of each of the matters.
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> More recently, in *Wills v Minerva Coal Pty Ltd* (27 November 1998, not reported), the Land Court undertook an exhaustive comparison of the provisions of the MRA with those of the *Acquisition of Land Act 1967*. In addition, the Court considered the concept of "compensation" as it applies to the compulsory acquisition of land. There the Court came to a similar conclusion, that with regard to the provisions of section 281(3)(a)(i) to (v), it is the compensation concepts referred to in those provisions overall that are to be taken into account in determining compensation, not a figure accumulated by amounts arrived at following the separate and discreet treatment of each of them as if they were separate heads of compensation……."[9]

> "As this Court pointed out in *Mitchell*, the piecemeal assessment of compensation by separately quantifying an amount for each of the matters for which section 281(3) provides, is not validly based. In most cases, the accepted method of valuation would be the "before" and "after" method. However, I agree with Mr Morrison that in the present circumstances such an assessment would not provide the necessary sensitivity to accurately assess compensation. It is therefore necessary to resort to a summation, or piecemeal method, taking appropriate care that there is no overlapping, or doubling-up, in the assessment of compensation. However, it seems to me that the piecemeal method is closely related to the "before" and "after" method, because it involves assessing under each of the piecemeal headings the allowance that a hypothetical prudent purchaser would make for each of them……..[10]"

> "The test to be applied in cases such as the present one was set out by the Land Court in *Smith v Cameron* (1986) 11 QLCR 64. There the Court considered provisions similar to those of section 281(3)(a) of the present Act, which were contained in its predecessor, the *Mining Act 1968*. In that case, the Court likened the use of land for mining purposes to compulsory acquisition of land for a limited period and applied the various principles and practices of valuation which are applied in determining compensation for the taking of limited rights over land for public purposes.
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> In this regard the Court said at pages 73-74:
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> > "These similarities are evident in the principles laid down by the Land Appeal Court for consideration in the latter and no better set out than in the case *P Joyce v The Northern Electric Authority of Queensland* (1974) 1 QLCR 171 where in dealing with the taking of an easement for electric line purposes the Court at page 177 said:

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8 (1999) 20 QLCR 71.
9 (1999) 20 QLCR 71 p77.
10 (1999) 20 QLCR 71 p87.

> 'The test is the attitude of the hypothetical prudent purchaser and the extent to which in the opinion of such a person the claimant has suffered diminution in the value of his property resulting from the erection of the transmission line over his land and the creation of the easement including where appropriate severance and injurious affection damage."

And at page 178 –

> 'Each case must be considered according to the terms and conditions of the easement created and the frequency and magnitude of the disturbance likely to result in consequence to the claimant's proprietary rights.'"

Applying the tests enunciated by the Land Appeal Court in *Joyce's case* to the present case, the question arises as to the attitude of a hypothetical prudent purchaser and whether such a person would consider that the property (i.e. the marketable parcel) would suffer diminution in value because of the granting of the mining leases. In this case I have to assume that such a hypothetical prudent purchaser would have regard to each of the matters provided for in section 281(3)(a), but not attribute a separate value to each of them, in determining how much less to pay for the land because of the granting of the five mining leases.

Before proceeding to consider the approach that such a purchaser would take, there are some fundamental facts which such a purchaser would be aware of and there are some assumptions which must be made.

Any potential purchaser of "Keilambete" as a whole, or the 11,013 hectare marketable parcel, would be well aware that there is already significant mining activity in the area. The five subject leases are on the boundary of the Reward Designated Area which has been made available for hand miners and fossickers and upon which there is considerable activity. The environment of the Reward Area is therefore criss-crossed by tracks, many of which may be illegal, but all of which have been tolerated by the respondents. In addition to the activity in the Reward Area, the locality is affected by a number of mining leases, with even more likely to be granted. There is no doubt that a hypothetical prudent purchaser would regard the existing mining activity as diminishing the value of the property and would certainly pay more for it if the mining tenements and activity did not exist.

The real question is the extent to which that diminution in value is increased when the subject five mining leases are granted.

On the other hand, the evidence indicates that as incompatible as grazing and mining are said to be, the owners of "Keilambete" have successfully run cattle in Bush Paddock and they have grazed, apparently relatively undisturbed, throughout the areas of mining activity. There was evidence of some stock losses from cattle falling into pits or becoming bogged in tailings dams, but no evidence of cattle being killed by vehicles or mining machinery. There was, however, some evidence of disturbance of young cattle which were introduced into Bush Paddock without having experienced mining activity. There is also evidence that mining activity would disrupt mustering patterns, particularly the use of the stock crossing to the south of ML2050.

As a matter of law, a hypothetical prudent purchaser must assume that the miner will act lawfully, will comply with the provisions of the MRA and will conform to the commitments in his EMOS.

However, I think it is fair to say that any hypothetical prudent purchaser wishing to use the property for grazing purposes would much prefer to have, and would pay something more for, a property which did not have the additional five mining leases. The difficult question is just how much less such a purchaser would pay for the property if the leases were granted?

As explained in Mitchell, the Land Court in *Smith v Cameron* recognised that compensation can be assessed by either the "before" and "after" valuation method, or the piecemeal or summation method. In this case, I have found that the "before" and "after" method is not appropriate and must resort to a piecemeal assessment, as

did the valuers. However, the fundamental test of the attitude of a hypothetical prudent purchaser remains……."[11]

"As for the blot on title, Mr Brown was of the opinion that the encumbrance would disappear in five years following the expiry of the leases. He considered it adequately compensated for by allowing 20% of the value of the area of 62.73 hectares occupied by the five leases. I do not think that such an approach adequately compensates an owner for the encumbrance. In my view the encumbrance cannot be confined to the area of the mining leases, but extends beyond that to affect the title of that part of the owners' land.

On the other hand, I do not agree with Mr Compton that the diminution in value of the land occupied by the mining leases should be almost total loss. It must be assumed that under the EMOS no more than 3 hectares of land will be disturbed at any one time. That will include the areas undergoing rehabilitation. Since under the EMOS only rehabilitation areas will be fenced, cattle will be free to graze over most of the mining lease area. The difficulty for the owners of the property as I see it, is that the miner has the right to work any part of the 62.73 hectares. This may be haphazard, depending on where the best wash is situated. From the granting of the leases, the owners will lose control of what happens on that land. The miner will have the right to mine it or not as circumstances dictate. An example of the lack of owners' control of the miner's activities on the leases was the digging of 18 test pits and two of them left unfilled.

However, this is not a case where the landowner will lose the use of the land for a lengthy period. Because of the total area of the subject leases and the small area that can be mined at any one time, a hypothetical prudent purchaser may well assume that the leases will be further renewed. However, there is no certainty that all or any of them will be renewed. Indeed, there is evidence from another miner, Mr Salmon, that the area occupied by his three leases was worked out within a five year period and he did not seek renewal. I would think that it is the uncertainty of the extent of the use and of the period of the occupation and of the length of time necessary for effective rehabilitation, which would occupy the mind of a prudent purchaser. In my view, a prudent purchaser would tend to regard the subject leases as effectively depriving the owners of possession of the surface of the land, even though their stock may from time to time graze on that area. However, having regard to the fact that the land will be returned to the owners at the end of the five year term and rehabilitation will be complete in a year or so after that, I think that it would be reasonable for such a purchaser to discount the purchase price for that aspect alone, by 25%……."[12]

"As for the diminution in value of the other lands of the owner, and of the use which may be made of those lands (s 281(a)(ii) and (iii), they are analogous to injurious affection. Severance (s 281(3)(a)(iv) can be dismissed from consideration, as only the rehabilitation areas will be fenced. The evidence is quite clear that cattle will have free access to the unworked areas and that if mining operations or rehabilitation affect the property tracks then it is relatively simple to create new tracks around the worked areas.

Before turning to the effect of mining on the other lands of the owners from the grant of the five mining leases, there is the "blot" or encumbrance on title of GHPL 202173, particularly Lot 23. However, this must be kept in perspective, as it is merely an additional encumbrance on the title of a property which is already significantly encumbered, and it is only for a limited period.

However, in my view Mr Brown's assessment of $1,255 is not sufficient. Although the property was encumbered by eight mining leases, either granted or pending, the granting of the subject five leases will increase the number to thirteen. These leases in total must create a significant encumbrance on the title of Lot 23. While the

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[11] (1999) 20 QLCR 71 p88-89.
[12] (1999) 20 QLCR 71 p89-90.

> proportion to be attributed to the subject leases is debateable, I feel that a hypothetical prudent purchaser would consider it to be greater than assessed by Mr Brown.
>
> On the other hand, Mr Compton's assessment of $9,000 would seem to include compensation for "blot" on title as well as "injurious affection" and he did not express an opinion of the effect on value for "blot" on title. In the circumstances, I can do no more than recognise that there is an additional encumbrance on title which a prudent purchaser would certainly prefer not to have. If the granting of each additional lease diminished the value of the land by $1,000, then in my opinion it would not be unreasonable to allow a total of $5,000 for the additional encumbrance that the granting of the five subject leases will impose.
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> I turn now to the effect on the surrounding lands when mining activity commences. I accept Mr Compton's evidence that there will be a certain amount of disruption of the cattle using the three bores and, from time to time, in mustering. Notwithstanding that there is other mining activity in the area and that the disruption will be relatively localised to the proximity of the leases, the fact that additional mining activity is to take place on the land close to three bores and to a strategic creek crossing, must be of concern to any landowner and would certainly affect the price that a hypothetical prudent purchaser would pay for the property.
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> Mr Compton was of the opinion that an area of 600 hectares would be affected from the time of granting of the mining leases, with a loss of value in perpetuity of 20 percent (20%) on 300 hectares on Lot 23 and of ten percent (10%) on 300 hectares of Lot 22 respectively for the GHPL and the freehold. He recognised that the value of each of those lands was already diminished by the existence of other mining leases.
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> However, in my view, an assessment of loss in perpetuity is not appropriate in this situation where mining activity will occur for a limited period only, even if the subject leases are further renewed. It is more appropriate to determine that element of compensation by assessing the diminution in value which will result from mining activity on the five subject leases each year.
>
> On the other hand, I accept Mr Compton's opinion that the area between the three bores will be disrupted by mining activity on the subject leases, but not to the extent that he has assessed. Based on the evidence, I would think that when mining commences the balance lands of the owners will be affected and that such "injurious affection" would amount to $2,000 each year that mining continues. Over the five year period this would amount to $10,000.
>
> In my opinion, that compensation would adequately cover the diminution in value of the balance land of the owners because of the disturbance of stock, the disruption to mustering and the potential for the occasional loss of use of the stock crossing over Retreat Creek……"[13]
>
> "With regard to the claim for loss of time and expenses incurred by Mr Hawkins, it is well established in cases of compulsory acquisition that such items are not compensable. (See *Thirty-fourth Philgram Pty Ltd v The Crown* (1993) 14 QLCR 13 at 45-52 and the cases referred to therein.) In my view, similar reasoning should apply in this case."[14]

[12] Although the above quotes from *Zimmerebner* offer a useful guide in determining compensation in this matter and were heavily relied upon by both the Landholder and the Applicant, great care needs to be taken when apportioning the various dollar amounts to various components as was done in *Zimmerebner* so that there is

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[13] (1999) 20 QLCR 71 p90-91.
[14] (1999) 20 QLCR 71 p91.

no doubling up of compensation. In this regard, I note the comment of Lord Nichols in the Privy Council case of *Director of Buildings & Lands v Shun Fung Iron Works Ltd* where he said:

> "In practice it is customary and convenient to assess the value of land and the disturbance loss separately, but strictly in law, these are no more than two inseparable elements of a single whole in that together they make up the value of the land to the owner: see *Hughes v Doncaster Metropolitan BC* [1991] 1 All ER 295 at 301; [1991] 1 AC 382 at 392 per Lord Bridge of Harwich."[15]

[13] I also note the comments of Lord Bridge in the House of Lords case of *Hughes v Doncaster Metropolitan Borough Council* where he said:

> "Thus, although compensation in respect of the market value of land acquired and compensation for disturbance must in practice be separately assessed, the courts have consistently adhered to the principle, both before and after the present rules were first introduced by the Act of 1919, that the two elements are inseparable parts of a single whole in that together they make up 'the value of the land' to the owner, which, unless he retains other land depreciated by severance or injurious affection, was the only compensation which the 1845 code awarded to him."[16]

[14] Accordingly, in determining compensation in this matter, in accordance with s. 281 of the MRA, whilst making reference to various components that I have taken account of and considered in reaching my conclusion as to the quantum of compensation, the ultimate award of compensation will not be an aggregate of all previous figures, but a figure arrived at by taking into account those figures, considering the issue of doubling up, and, in all the circumstances, arriving at a sum which I believe properly compensates the Landholder taking into account all issues as set out in s. 281 of the MRA.

Evidentiary Issues

[15] Before turning to specific details of the quantum of compensation, there are 2 evidentiary issues that I need to deal with. The first relates to material received by me in Chambers subsequent to the close of argument in this matter. The facts and circumstances surrounding such material are set out in my Reasons for Judgment in *Re Weir, Rasmussen and Others*[17].

[16] Although the newspaper article was received into evidence, in reaching my decision in this matter I have not given any weight to the newspaper article or, in particular,

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15 [1995] 2 AC 111 at 125G-H.
16 [1991] 1 AC 382 at 392.
17 [2001] QLRT 77

its reference to statements attributed to Mr Barrett, the landholder in these proceedings.

[17] I now turn to the second evidentiary point raised in this matter. This issue is set out in some detail in Mr Barlow's submission of 30 April 2001 in the following terms:

> "Objections
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> 20. Objection was taken on Day 1 of the trial, at Emerald, to the Tribunal viewing land not successfully rehabilitated. The view was said to have been of land the subject of past mining by Crystal Mining Company (Mr Richardson's company). The view was allowed in the absence of submissions being made on a transcript of earlier evidence taken from Mr Brown in Brisbane; the view was also allowed on the basis that the objection would be dealt with at a later time.
>
> 21. The view was only allowed on the limited basis that it was preferable to take the view, while the Tribunal was in Emerald, and on the further basis that it was in fact the respondent, Mr Barrett's position that the land, the subject of Mr Richardson's application, ML70190, was not capable of being fully rehabilitated. See generally Emerald transcript p 10, ll 40-50.
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> 22. The applicant persists with the objection on the following grounds:
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> (a) the grounds on which Mr Barrett put forward the view, generally, that being that the view of the "*Sebera*: was evidence that Mining Lease application ML70190 could not be fully rehabilitated to its former state is in fact a false ground for the view in that it is not Mr Barrett's position that the state of "*Sebera*" mining land would in any way approximate or reflect the rehabilitation expected to be undertaken on ML70190 (see Emerald transcript p 46 ll 16-48, in particular Emerald transcript p 48 ll 17-28, Emerald transcript p 48 ll 48-49, ll 50-60, 1-8);
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> (b) the land at "*Sebera*" is in no way comparable to the land, the subject of Mining Lease application ML70190 on "*Mount Clifford*";
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> (c) the actual area viewed was in fact mined many times and, according to Mr Richardson (which was uncontested evidence) his company Crystal Mining Company left the land in a better state than when they began mining on it;
>
> (d) there is, in fact, no relationship between the land viewed at "*Sebera*" and any potential for complete rehabilitation on the "*Mount Clifford*" mining lease;
>
> (e) in any event, there is no value placed on the potential for inability to completely rehabilitate by the applicant's value Mr Brown; and
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> (f) in fact, Mr Brown's evidence was that he had seen land fully rehabilitated and in better condition than land which has not been mined (Brisbane transcript, p 91 ll 28-48).
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> 23. It is respectfully submitted that the Tribunal, on the above grounds, should disregard its view of the mined land on "*Sebera*"."

[18] As quoted earlier from *Zimmerebner*, as a matter of law, a hypothetical prudent purchaser must assume that the miner will act lawfully, will comply with the provisions of the MRA and will conform to the commitments in his environmental conditions. An extract from the Applicant's EMOS[18] is as follows:

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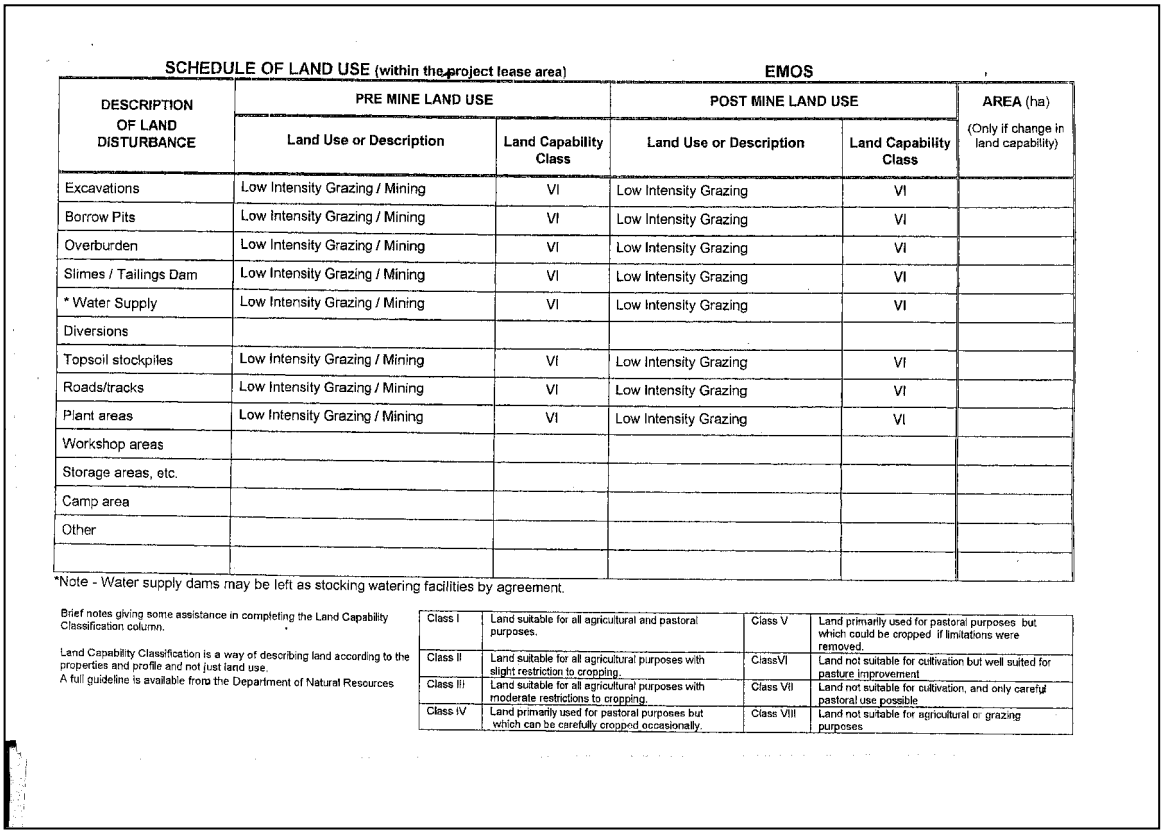
[18] Note this matter is an "unfinished application' and s 590 of the *Environmental Protection Act 1994* applies.



SCHEDULE OF LAND USE (within the project lease area) EMOS

DESCRIPTION OF LAND DISTURBANCE	PRE MINE LAND USE		POST MINE LAND USE		AREA (ha) (Only if change in land capability)
	Land Use or Description	Land Capability Class	Land Use or Description	Land Capability Class	
Excavations	Low Intensity Grazing / Mining	VI	Low Intensity Grazing	VI	
Borrow Pits	Low Intensity Grazing / Mining	VI	Low Intensity Grazing	VI	
Overburden	Low Intensity Grazing / Mining	VI	Low Intensity Grazing	VI	
Slimes / Tailings Dam	Low Intensity Grazing / Mining	VI	Low Intensity Grazing	VI	
* Water Supply	Low Intensity Grazing / Mining	VI	Low Intensity Grazing	VI	
Diversions					
Topsoil stockpiles	Low Intensity Grazing / Mining	VI	Low Intensity Grazing	VI	
Roads/tracks	Low Intensity Grazing / Mining	VI	Low Intensity Grazing	VI	
Plant areas	Low Intensity Grazing / Mining	VI	Low Intensity Grazing	VI	
Workshop areas					
Storage areas, etc.					
Camp area					
Other					

*Note - Water supply dams may be left as stocking watering facilities by agreement.

Brief notes giving some assistance in completing the Land Capability Classification column.

Land Capability Classification is a way of describing land according to the properties and profile and not just land use.
A full guideline is available from the Department of Natural Resources

Class I	Land suitable for all agricultural and pastoral purposes.	Class V	Land primarily used for pastoral purposes but which could be cropped if limitations were removed.
Class II	Land suitable for all agricultural purposes with slight restriction to cropping.	ClassVI	Land not suitable for cultivation but well suited for pasture improvement
Class III	Land suitable for all agricultural purposes with moderate restrictions to cropping.	Class VII	Land not suitable for cultivation, and only careful pastoral use possible
Class IV	Land primarily used for pastoral purposes but which can be carefully cropped occasionally.	Class VIII	Land not suitable for agricultural or grazing purposes

It is to be noted in the above extract from the EMOS that the land capability class in each relevant respect has been assessed as 'VI' both before and after mining. I am accordingly required as a matter of law to accept that the Applicant will honour his commitments and requirements in this regard. Of course, should the miner ultimately not properly rehabilitate the land back to land capability class 'VI' after mining, the Landholder has other remedies available to him. I accordingly agree with the submissions made by Mr Barlow and disregard the view that occurred at Sebera. For completeness, I should add that, had I taken the view into account in making my decision, I would have applied very little, if any weight to what was seen at the view given that the land, the subject of the view, was quite different to the area to be mined under the proposed mining lease in this matter, and had in fact been subject to mining on numerous occasions prior to the Applicant's company mining the land.

The claims for compensation

[19] In submissions dated 17 July 2001, Mr Barlow for the Applicant submits that the determination of compensation should be $200, or, if allowances are made for 'blot on title' and 'injurious affection' (which Mr Barlow argues should not be made), then not more than $700.

[20] On the other hand, the Landholder's position is that the compensation should be set at $52,748 (excluding the Landholder's GST claim) plus access compensation. It is difficult to imagine a further divergence of views in matters such as this. That divergence of opinion also flowed over into the manner in which both sides presented their cases.

Assessing Compensation

[21] Unfortunately, when it comes to assessing the compensation in this matter, I find great difficulty in reconciling the submissions of each party with either each other or the quoted authorities. For instance, different terminology is used throughout by the parties when referring to what appears to be the same issue of compensation. This aspect is made even more difficult when considering the expert evidence of Mr Brown. Accordingly, for the purposes of my decision in this matter, I have adopted my own terminology for assessing the various components applicable to a determination of compensation pursuant to s. 281 of the MRA.

[22] I turn first to the impact of the mining lease on the land the subject of the mining lease. The area of the lease is 41.0365ha. Mr Brown has valued this particular area of land @ $250/ha. The Landholder values this area @ $300/ha. I accept the valuation of Mr Brown in this regard. Therefore, 41.0365ha @ $250/ha is $10,250. Mr Brown suggests a depreciation of the sum of $10,250 of 33 1/3%. In *Zimmerebner*, I note that the amount depreciated under a similar assessment was 25%. Mr Houen, on behalf of the Landholder, seeks a depreciation of 80%. I consider a depreciation amount, given the nature of the land and the five year term of the lease, to appropriately be 33 1/3%. Applying such depreciation, the sum for the lease area is $3,410.

[23] I now turn to consider the impact of the existence of the mining lease on the balance land. Mr Brown gives the nominal amount of $1,000. He also allows the sum of $2,500 for what he terms 'Blot on Title'. He reaches that sum by calculating the percentage of land for the mining lease relative to the total area of land (41ha of 2,771ha) to arrive at a percentage of 1.5%. Assessing the value of the land as a whole @ $150 per hectare for the 2,771ha and reducing such amount by 1.5%, Mr Brown arrives at a sum for 'Blot on Title' of $6,235. As in his view there

is not a permanent loss due to the 5 year term of the lease, he has assessed what he refers to as the 'Blot on Title' in the sum of $2,500.

[24] Under a heading entitled 'Loss or Expense Arising', the Landholder, through Mr Houen claims the sum of $14,750. A key component of this claim is the Landholder's view that 200ha surrounding the mining lease will be reduced in carrying capacity by the equivalent of 13 head of cattle.

[25] In *Zimmerebner*, Trickett P. allowed the sum of $2,000 for each year that mining continued in that case for what he termed 'injurious affection' to the balance lands of the owners. I further note in *Zimmerebner* Trickett P. allowed the sum of $1,000 per mining lease for the additional encumbrance that the granting of each mining lease imposed on the property in that matter.

[26] Turning first to the issue of an additional encumbrance on the title caused by the grant of the mining lease, in my view it is not appropriate in cases such as these to take into account such a component. In many respects, this aspect is compensated by reference to the value of land the subject of the mining lease. I further rely upon the comments that I made in *Elliot v Hicks*[19]. In that matter, I considered as a preliminary issue the impact that land falling within Restricted Area One (hereinafter "RA1") may have on the quantum of compensation payable under s. 281 of the MRA. In my view, a prudent purchaser, when purchasing a property such as Mount Clifford within RA1, would do so knowing that they were buying a property within a known gemfield, within RA1, probably with existing mining leases granted and applied for, and certainly with the expectation that mining leases may be applied for in the future. Given the long history of mining in the gemfields as set out in my decision in *Elliot*, I do not think it appropriate to allow any sum for the additional encumbrance that the granting of a mining lease may impose.

[27] In many respects, the methodology adopted by Trickett P. in assessing what he referred to as 'injurious affection' of the balance lands is appropriate to apply in this case. There, Trickett P. was dealing with a total mining area of 63ha over a large property. Mining was for a period of 5 years. I do not believe it is relevant that there were 5 mining leases making up the total of approximately 63ha. In this matter, as mentioned earlier, the total area of the mining lease will be a little over

41ha out of a total area of 2,771ha. The subject land and surrounding land appears from the evidence to be superior to that considered in *Zimmerebner.* The term of 5 years is identical to that in *Zimmerebner*. Applying what Trickett P. said in *Zimmerebner*, I consider it would be appropriate to take into account a sum in the order of $1,500 per year for impact on the balance area of the land.

[28] As set out above, Mr Houen's submissions were based on Mr Barrett's evidence that the carrying capacity of Mount Clifford will be reduced by the equivalent of 13 head as a result of the mining lease.

[29] In my view, the existence of the mining lease on Mount Clifford will reduce the carrying capacity of the property by approximately 10 cattle per year. This is based on the evidence that the subject land has a carrying capacity of approximately 1 beast per 5ha, and that the agistment cost in the district is $2.50 per beast per week. Applying these assumptions, in my view there will be, at any one time, a total loss of 3 beasts for the area of actual disturbance of the mining lease in the area of 14.5ha, being the total area that can be disturbed at any one time. For the balance of the area of the mining lease of 26ha, in my view, as the evidence is that cattle will have access to the balance lease lands throughout the 5 year term of the lease, there will be a loss in carrying capacity of approximately 50% of the normal carrying capacity. As the balance land for the lease is approximately 26ha, this equates to the loss of approximately 3 head per year. As regards the land surrounding the mining lease, in my view there would be an impact for say the surrounding 80ha of the mining lease area, but that impact should be reduced down to one third of the otherwise carrying capacity of the land. This equates to a loss in carrying capacity of 4 head per year for the term of the lease. Taking each of the above into account this equates to the loss of approximately 10 head per year as a consequence of the grant of the mining lease. At an agistment rate of $2.50 per week for 52 weeks for 5 years, this amounts to $6,500.

[30] With respect to the sum of $6,500, it is my view that this figure is substantially reflected in the sums that I have already referred to for both the land to be mined and the surrounding land and is therefore in many, but not all, respects a doubling up.

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[19] [2001] QLRT 38.

[31] As is the case with the bulk of the material presented by the parties in this case, the material is somewhat lacking when it comes to the question of compensation for access to the mining lease. Further, the issue of cross-pollination again arises. Reference was made throughout the hearing to access by the Applicant over the Landholder's property to ML70175.[20] I should note for the record that I have also had before me an application to vary access, with parties common to this matter, relating to ML70175. Ultimately, the applicant in that matter withdrew the application for variation.

[32] Annexure "A" to the Statement of the Applicant dated 5 April 2001 in this matter is a copy of an untitled document in the following terms:

> "I Rod Barrett agree to accept the some of $750.00 per year from Ray Richardson for the duration of the mining operation to use the existing thoroughfare through Mt Clifford as a haul road.
> Date: 1st June 2000
> Signature: (Sgd) R. K. Barrett"

This document does not appear to comply with s. 279(3) of the MRA as it has not been signed by both parties. However, it may be a common law agreement. I have no specific evidence before me to indicate whether or not it is still operative. In the circumstances, and based on the quantum of the document signed on 1 June 2000 by Mr Barrett, I intend to take into account the sum of $750 per annum as compensation for access.

[33] In the event that compensation in the sum of $750 per annum is in fact already being paid as between the Applicant and the Landholder as to compensation for access to the Applicant's mining operation, and such operation includes MLA70190, I allow the parties until 4pm on 6 December 2001 to apply to vary the determination in this matter.

[34] As regards legal and valuation fees incurred by the Landholder in the preparation of the claim for compensation, I note that the Landholder has presented no expert valuation evidence. In evidence, the Landholder confirmed that he had not obtained any expert valuation advice.[21] I also have no evidence before me of either

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[20] Tribunal matter number VOA00064/2001 (previously known as LXX40035/2001)
[21] Transcript 6 April 2001 129 lines 31-35.

the existence or quantum of any legal fees incurred by the Landholder.[22] I accordingly make no allowance in my determination for legal and valuation fees.

Conclusion

[35] Taking full account of the foregoing, and, as previously indicated, assessing compensation in a total sum, it is my view that in the circumstances an award of compensation in the sum of $15,250 is appropriate in this matter. Applying s. 281 4(e) of the MRA which states that an additional amount must be determined to reflect the compulsory nature of the action taken under this part regarding the grant of the mining lease, I award an additional amount of 10% on $15,250. Accordingly, I assess the total compensation in this matter at $16,775.

[36] I direct that the Applicant pay the total compensation of $16,775 to the Landholder within 1 month of the grant of the mining lease.

[37] I allow the parties until 4pm on 6 December 2001 to apply to vary the determination in this matter in the circumstances as set out in paragraph 33.

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[22] Transcript 6 April 2001 135 lines 29-44.