

IN THE MINING WARDEN'S COURT
HOLDEN AT SYDNEY
ON 2ND AUGUST, 1983
BEFORE J.L. McMAHON.

BOYD PRATT & ASSOCIATES v. E.G. & J.R. McINNES

ASSESSMENT OF COMPENSATION

By application dated 9th June, 1983 Boyd Pratt & Associates, on behalf of G. Whitburn Pty. Ltd., made an application for compensation to be assessed concerning the lands of Mr. E.G. & Mrs. J.R. McInnes being part of the area covered by a title granted by the Governor under the Mining Act, 1973, namely a Prospecting Licence. This Licence had been given the No. 621. By Notice of Inquiry under Section 122 the parties were advised that a hearing would take place at the Warden's Court, Inverell on 14th July, 1983 and on that day Boyd Pratt & Associates appeared through Mr. Cohen, Solicitor of Sydney, while Mr. Collins, Solicitor, appeared for Mr. and Mrs. McInnes.

Mr. Pratt, on behalf of the applicant, stated in evidence that approximately 30 hectares of the land of Mr. and Mrs. McInnes was affected by the Prospecting Licence. That was an irregular shape but included natural bushland, some commercially valuable forest trees, a cleared area of land, a shearing shed and some yards. In his evidence Mr. McInnes disputed that the area to be affected was some 30 hectares only and was of the opinion that between 40 and 42 hectares were involved. Whatever the situation it is obvious that on behalf of G. Whitburn Pty. Ltd., Boyd Pratt & Associates desire to conduct prospecting work in three stages on the land by virtue of the Prospecting Licence. The first stage is geological mapping involving a geologist walking across the area taking samples of rocks and soil for analysis, the second stage involved a setting out of a survey grid involving the insertion of some wooden posts at 25 metre intervals along specified lines. This may involve some clearing activity and was necessary for the laying down of lines for future percussion drilling. The third stage was the percussion drilling involving the bringing to the sites of a drilling rig. This was self propelled and had a track of some 2.5 metres towing its own compressor. Drill holes would be sunk at regular intervals involving a surface cavity which could be up to 10 to 15 centimetres in diameter.

After such work was completed it is normal for a rock to be dropped into the hole to prevent stock injuring themselves. Mr. Pratt indicated that on an adjacent property his company had drilled some 200 such holes. If an attractive ore body were encountered it would be necessary to sink larger holes and in fact subject to the ore body some costeans could be dug to take bulk samples. Mr. Pratt swore that there were two types of costeans, one dug with a backhoe which was 1 to 2 metres in width. He was unable to say the length of the costeans but it would normally be up to 4 metres wide, being the width of a bulldozer blade. The second type of costeaning would be the taking out of samples with a front-end loader. This also would involve surface damage by wheel tracks and the digging by a bucket of the loader.

As far as damage was concerned, Mr. Pratt felt that the geological mapping would involve no timber or other surface damage coming within Section 124, the access track and grid lines could involve the destruction of some small trees but not mature trees, it being possible to run the lines around the mature trees. Similarly the percussion drilling activities could be done around mature trees but the costeaning may mean that mature trees would have to be removed. He felt that the drilling or costeaning activities would be some 1 kilometre away from habital buildings. There was produced as exhibits 3, 4 and 5 in the applicant's case three compensation agreements which had been signed between G. Whitburn and other landowners. I note the compensation provisions of those agreements. Mr. Cohen advised that these provisions should be the basis upon which I assess compensation in respect of Mr. and Mrs. McInnes' land.

Mr. McInnes stated in evidence that his property had been owned by he and his wife for some 18 or 19 years and that the area the subject of the licence was only a small part of the overall property. However it contained some shearing sheds and another shed. He stated that his occupation was one of a grazier and developer of a tourist resort and he stated that having taken over the heavily timbered property several years ago he had set about clearing some of it and now intended to establish motel type units on it with a view to establishment of residential units. Already a two storey amenities block had

been built which included also a recreational room, shop, kitchen and two garages. Some units had been constructed and the motel had been open for some eighteen months. During this time personnel from another mining company had occupied the units but now they had vacated them. He intended therefore to attempt to attract overseas visitors who might be interested in living on a remote property and to establish a zoo there where the natural wildlife could be seen in both captivity and in the wild state. He swore that apart from the personnel of the mining company some thirty people had stayed there over the last six months. Mr. McInnes already owned some eleven horses which had been used for riding by holiday-makers and some nine trail bikes had been purchased for the same purpose.

It is emphasised that the motel activities are some 1 kilometre away from the area of land the subject of Prospecting Licence No. 621 and Mr. Cohen advanced the argument that as the land the subject of Prospecting Licence No. 621 is the only one affected by the proposed activities and the licence then I should disregard any claim for compensation in respect of adjoining lands.

Mr. McInnes was unable during his evidence to put any money value on the effect that the mining activities have had or would have on his business both as a grazier and as a motel proprietor. He therefore left me with a difficult assessment to make bearing in mind that in order for a Warden to assess compensation he must have evidence before him so that he may place certain values on the heads of loss caused or likely to be caused arising out of paragraphs (i) to (vi) of Section 124(1)(b). Very little evidence was forthcoming from Mr. McInnes in this regard although he did reply to me that he considered the value of one shade tree would be \$15 to \$20. He estimated the total value of his land to be \$87,000, the motel building cost \$120,000 and the recreation room \$68,000. Notwithstanding that, the evidence was scanty and indeed in some cases non-existent.

It seems to me clear that compensation can be assessed not only in respect of land the subject of an authority but also private land owned or occupied

by a person or Crown land occupied by a person which is not the subject of an authority. This arises from a reading of Section 122(1) paragraphs (a) and (b). I am of the view therefore that Mr. and Mrs. McInnes are entitled to compensation arising out of activities of the licence holder not only in respect of the land the actual subject of the licence but also land which may be affected by the licence but which is not the subject of it. It is apparent that Mr. and Mrs. McInnes have embarked upon the business venture and I can readily understand that people who go to a remote area at Torrington to try to get away from the hustle and bustle of a city and to see wildlife and the bush in its natural form would not be all that pleased were a drilling rig, bulldozer or front-end loader operate within earshot of them. It might well be that the commercial business of Mr. and Mrs. McInnes would be financially adversely affected by the activities of the licence holder but I have no real evidence yet that this is so.

The Prospecting Licence was granted on 5th September, 1980 and is now subject to a renewal application which could take it through until 4th September, 1983 or some subsequent time. Currently the application for renewal beyond 4th September, 1982 has been lodged and by virtue of Section 72 the title is deemed to continue until the application for renewal is finally dealt with.

The other landowners or occupiers as described in exhibits 3, 4 and 5 were willing to sign compensation agreements containing certain provisions which I accept are in daily use within the mining industry and while Section 124(1)(b) is not honoured by a mention in these agreements I believe that the landowners were willing to take into account all the necessary factors as outlined in Section 124(1)(b) in accepting the amount of compensation as set out in the agreements.

There is no evidence before the court that these other landowners were in a similar position to Mr. and Mrs. McInnes, and I accept that the McInnes' case contains exceptional circumstances which dictate that special provision be made for compensation.

As to drill holes, it seems to me that on the basis of 200 drill holes having been put down in an adjacent property it would be fair and reasonable to speculate that at least the sum of \$1,000 on the basis of \$5.00 per drill hole should be payable in respect of drill holes and that in the event of disturbance to land which is not cultivated the sum of 20¢ per square metre of land disturbed could be paid arising out of costeaning operations. If 10 costeans were put down at a width of 4 metres and a length of 10 metres some 400 square metres of land would be disturbed. At 20¢ per square metre some \$80 would be involved in respect of compensation for costeaning.

I emphasize that at this stage I make no assessment for compensation in respect of cultivated land which I consider to be not the subject of the Prospecting Licence because I am of the view that the provisions of paragraph 3 of the agreements, exhibits 3, 4 and 5 are not in accordance with the spirit of the Act. While I consider that the effect or possible effect that the operations would have on the McInnes' motel business are compensatable I make no assessment at this stage, because of lack of evidence. I am of the view that in addition to what I have said they are compensatable under the provisions of Section 124(1)(b) paragraph (vi) "all consequential damages".

In order that compensation for the motel business can be assessed, I would be willing to re-list the matter once Mr. and Mrs. McInnes have satisfactory evidence to present to me in respect of the period after the payment of compensation. This application could be made under Section 126. In the meantime I direct that the sum of \$1,080 be paid to the Registrar, Glen Innes within one month of today for payment out to Mr. and Mrs. McInnes.