

IN THE MINING WARDEN'S
COURT, SYDNEY.

BEFORE

J.L. McMAHON,
CHIEF WARDEN.

DATED THE 27TH
OCTOBER, 1977.

BENCH: This is an assessment of compensation under the Mining Act, 1973.

The Morgan Mining & Industrial Company Pty. Limited are the lessees of Mining Purposes Lease No. 73 (Act 1973) which was granted on the 30th March, 1977, for a period of 21 years.

The lease is over a very small strip of land some 14 metres in width and some 88 metres deep adjacent to other lands held by the lessee company and owned by that company near Wallsend, New South Wales. The owner of the land the subject of MPL 73, however, is Mr. W.W. Norris who lives at 102 Lake Road, Wallsend.

On the 16th September, 1977, I conducted an Inquiry relative to the assessment of compensation in the matter, the parties being unable to agree and I heard evidence from Mr. S.J. Coffee, Superintendent of Collieries of the Peko Wallsend Group of Companies which in fact is associated with the Morgan Mining & Industrial Company Pty. Limited. In addition to that witness Mr. J.M. Monteath, Consultant Surveyor and Town Planner gave evidence together with a Mr. W.H. Potts, Chief Surveyor, Coal Mining of the Peko Wallsend Company. Those witnesses gave evidence for the lessee company while Mr. Norris, landowner, gave evidence himself.

The general effect of Mr. Norris' evidence was that the land the subject of MPL 73 is only a short distance from his residence. When he had purchased the land in 1947 from the Wallsend Coal Company he had a conversation with a Mr. Hill, the Manager of that company, which was to the effect that Mr. Norris had been told that the mine shaft on MPL 73 was Mr. Norris' responsibility. As a result of that conversation, Mr. Norris said, he had not erected any buildings on the property with the exception of his home believing that a road would be placed through the land. He had applied for subdivision approval from the City Council of Newcastle but his applications had been rejected. On the property of some 63 acres, Mr. Norris said that he was paying substantial rates around \$800 a year and that, coupled with water rates presented a heavy burden upon him. He felt that had he not run cattle on the land or his horses his rates would almost double.

In the final address on behalf of Mr. Norris his solicitor, Mr. Broad advised that Mr. Norris would sell the subject land to the lessee company for \$6,000.00.

For the lessee company Mr. Coffee outlined that an existing mine shaft on the Mining Purposes Lease No. 73 was needed for his company's operations for ventilation purposes. The ownership of the coal had been reserved to the lessee when the land was sold. Depth of the workings at this particular point are some 180 feet.

Mr. Monteath swore that he had examined the land the subject of MPL 73 and that in view of the planning schemes of the Newcastle City Council he felt that it would be somewhere around 15 years before any development took place in relation to Mr. Norris' land. It seems from his evidence that there is a great deal of land elsewhere around Wallsend for proposed development before the subject area has to be considered and such a course would take some 15 years. He felt that the value of adjacent land was some \$600 per acre and submitted a written valuation made by Valuers M.J. Martin Simpson Pty. Limited dated 6th June, 1977, indicating ^{the} value of Mining Purposes Lease No. 73 at \$335.00. Mr. Potts outlined the proposed installation of a ventilation fan in the shaft and confirmed the evidence of Mr. Monteath as to the availability of other land in the Wallsend area which would be developed before Mr. Norris' land.

On the 20th October, 1977, I inspected the land over which MPL 73 has been granted. It impressed me as being grazing land with a reasonable coverage of grass but with an abundance of lantana. Built on the land and adjacent to the land were old disused structures, relics of by-gone days, going back to the turn of the century when ^{at the} coal mining took place on the area.

The claim of \$6,000.00 for the land by way of sale was rejected at Court by Mr. Barnett, Solicitor, for the lessee company.

Mr. Norris submitted that the value of his land on an unimproved basis was at the moment \$45,000 and bearing in mind that MPL 73 occupies some 1,232 square metres or some 1 acre 0 roods and 35 perches the value of the subject area would be, on Mr. Norris' calculation, some \$800. On the other hand he has not substantiated his claim with any evidence from a qualified valuer and I feel bound to accept the valuation by Martin Simpson Pty. Limited which puts the value at \$335.00.

Mr. Norris has suggested that the proposed development of the area will be hampered by the existence of the mining purposes lease and that therefore he requires adequate compensation.

The criteria guiding a Warden in assessing compensation is set out in Section 124 (1)(b) of the Act and provides -

"Where compensation is by this Act directed to be assessed by the Warden the assessment shall, except where the assessment is to be made for the purposes of section 123, be of the loss caused or likely to be caused by -

- (i) damage to the surface of land, and damage to the crops, trees, grasses or other vegetation on land, or damage to buildings and improvements thereon, being damage which has been caused by or which may arise from prospecting or mining operations;
- (ii) deprivation of the possession or of the use of the surface of land or any part of the surface;
- (iii) severance of land from other land of the owner or occupier of that land;
- (iv) surface rights-of-way and easements;
- (v) destruction or loss of, or injury to, or disturbance of, or interference with, stock on land; and
- (vi) all consequential damages."

As can be seen deprivation of possession or of use of the surface of the land or any part of the surface is a ground for the Warden to rely upon in assessing compensation.

In the light of the evidence I am unable to see where it has been established that there should be, at the present time, any compensation for deprivation and in the circumstances that will be deleted from consideration. A similar situation applies, in my view, to grounds (i), (iii), (iv)^{and} (v) ~~and (vi)~~.

On behalf of the lessee it was suggested that a period of fifteen years would see all mining activity in the area near completion and in view of the fact that it has been said that it could be fifteen years before development will take place, it seems that this land could well be the subject of an application under Section 126 of the Act which reads:-

"Where, after an assessment has been made in accordance with the provisions of section 124, it is proved to the satisfaction of the warden that the whole of the amount paid into court pursuant to subsection (3) or (4) of that section has been duly paid out, and that since the date of the payment out, or the last payment out, as the case may be, further loss has been caused to the land to which the assessment relates, or to other land, being loss arising from any one or more of the causes referred to in subsection (1)(b) or (c) of that section, the warden shall, subject to section 125 (2), assess that loss and order that the amount so assessed be paid by the registered holder of the claim or the authority, to which the assessment relates, within the time and to the persons specified in the order."

In other words, either party can make a subsequent application for compensation.

In arriving at a fair and reasonable assessment of compensation at the present time it is in my opinion satisfactory to turn to a calculation of a value of \$335 invested at 10% over 21 years.

This figure would be $\$335 \times 7.400$, being an actuarial calculation of \$1 invested at 10% over 21 years. The result is \$2,479.00. Dividing that by 21, which is the number of years over which the lease is granted, I find that the fair and reasonable compensation is \$118.05 per annum.

I direct the sum of \$118.05 be paid to the Warden's Court, Sydney, by the lessee company within one month of today and that subsequent payments of compensation of \$118.05 be made on the 1st December of each year, second payment to take place on the 1st December, 1978.

There will be no order as to costs.