

IN THE MINING WARDEN'S  
COURT HOLDEN AT  
SYDNEY  
BEFORE J.L. McMAHON  
ESQUIRE  
CHIEF WARDEN.

DATED THE <sup>2nd</sup> 3RD  
NOVEMBER, 1977.

BENCH: This is an application to fell trees on the area of Special Private Lands Leases 107 and 108 on Portions PML 6 and PML 5 respectively in the Parish of Beranghi, County of Macquarie.

The leases are held by Minerals Deposits Limited over lands owned by McCall Bott & Co. Pty. Limited and are situated on a property between Hat Head and Crescent Head on the north coast of New South Wales near Kempsey.

Section 94 (1)(b) provides -

"Where land subject to an authority includes the surface of any lands, being private lands or Crown lands held under a Crown lease for pastoral purposes or a special lease for pastoral purposes, the registered holder of the authority shall not .... fell trees, strip bark or cut timber on those lands except with the approval of the warden and subject to payment to the owner of the trees, bark or timber of compensation to be assessed by the warden under this Act."

Basically the application before the Court is for approval and for compensation to be assessed under section 94 (1)(b).

The evidence adduced shows that McCall Bott & Co. Pty. Limited around January 1972 purchased an area of some 78 hectares of land which include the areas covered by the two leases. The property was acquired by the company of which Mr. McCall Bott and his wife are the only directors for recreational and rural purposes. It has not been heavily grazed nor is the poor nature of the soil conducive to intense farming. However, the property is somewhat above normal flood plains from the Belmore River and as a result during flood periods is used by stock for shelter.

Mineral Deposits Limited through its Leases Officer, Mr. Jesson, submitted a plan which is Exhibit 3 showing that some twenty (20) holes of some 51 millimetres in diameter and some 5 metres apart were intended to be sunk for prospecting purposes by means of a mobile drilling rig mounted on a table top land rover. In order that the holes be adequately distinguished and identified it was necessary to do some clearing of scrub and sapplings on line 1000S, as in Exhibit 3, and in respect of the other three lines, some similar light clearing. He felt that the largest type of tree to be felled would not go beyond having a trunk of some 15 centimetres in diameter.

Mr. McCall Bott on behalf of the owner objected firstly to the clearing of land saying that even compensation and restoration would not adequately reimburse the owners, the public and the environment. In short he objected to mining activities of all sorts by Mineral Deposits Limited or any other sand mining company on his land saying that often mining follows prospecting and that restoration is never adequate. He added that there was a strong public opinion against spoiling land for sand mining purposes, and felt that the area, having taken such a long time to be able to grow its present cover of vegetation, would be grossly abused if even light clearing took place. Mr. McCall Bott submitted a number of photographs, articles and plans together with a book on wildlife supporting his argument that prospecting and mining should not be permitted to take place on his property.

When Mr. Jesson made the comment that as the leases were granted initially in 1970 and as Mr. McCall Bott's ownership commenced only in 1972, the present owner would have had notice of the existence of the leases. Mr. McCall Bott replied that at the time of purchase of the property he had not realised the significance of the nature of the leases and that only recently had he, along with the public, been informed adequately about the damage that sand miners can do.

It is clear that Mr. McCall Bott was not going to consent to any clearing of his land at all and that therefore the question of compensation in money terms had no significance in his view.

The leases were initially granted for a period of 5 years from 24th April, 1970, but then from 19th December, 1975, were renewed for a further period of 21 years, expiring on 22nd April, 1966. The lease contained many conditions including condition No. 19 which requires rehabilitation of the areas on completion of the operations and No. 42 which prohibits the lessee from destroying or removing timber or vegetative cover excepting in certain circumstances. Additionally condition (i) in Schedule "X" provides -

"Where the registered holder desires to commence prospecting operations in the subject area he shall notify the Under Secretary for Mines in writing and shall comply with such additional conditions as the Minister may impose, including any condition requiring the lodgement of an additional bond or other form of security for rehabilitation of the area affected by such operations."

The particular matter of notification appears to be one for the lessee company to cover by way of application to the Under Secretary and it must be a condition precedent before the exercise of any grant of approval to fell trees in connection with prospecting operations. This means that the Under Secretary must be first notified before commencing prospecting operations and the lessee company must comply with any additional conditions and that this action must precede the putting into effect of any approval that I might grant under section 94 (1)(b).

Whilst I sympathise with Mr. McCall Bott it seems clear that the lessee is entitled, subject to the terms of his lease, to carry out prospecting operations and to this end, it is, in my opinion, a case where approval could be given to the felling of trees to permit prospecting operations to take place.

On the question of compensation I am of opinion that the sum of \$10.00 per borehole is appropriate.

Pursuant to the provisions of section 94 (1)(b) of the Mining Act, 1973, as amended, I grant approval to the lessee company to fell trees the diameter of the trunks of which must not exceed 15 centimetres. The lessee company to pay to the landowner, McCall Bott & Co. Pty. Limited, by way of compensation the sum of \$200.00 within seven (7) days of the commencement of the work.

I make no order as to costs.