

IN THE WARDEN'S COURT
HOLDEN AT ST LEONARDS
ON 18TH JUNE 1991
BEFORE J L McMAHON
CHIEF MINING WARDEN

NORTHERN RIVERS RUTILE PTY LIMITED

v.
LANDBROKERS INC PTY LIMITED

ASSESSMENT OF COMPENSATION

The within is an assessment of compensation following a hearing today into an application lodged by and on behalf of Northern Rivers Rutile Pty Limited (the applicant) in respect of lands owned by Landbrokers Inc Pty Limited (the respondent) relative to the applicant's activities and management of land in the Tea Gardens district of New South Wales pursuant to Mining Lease No 1175. At the hearing the applicant appeared and was represented by Mr Thompson, Solicitor but there was no appearance of the respondent who had communicated with the court by letter and telephone, indicating that he would accept the judgment of the Warden's Court in respect of compensation.

Evidence adduced shows that the applicant has conducted sand mining operations under the lease. Mining activities are normally carried out along a series of parallel strips approximately 250 metres wide and the process is one whereby unused material is contoured back into the mined area with later attempts at re-seeding and encouragement of natural vegetation. The evidence shows that the respondent is entitled to the use and ownership of a right of way which runs across an area of land known as Lot 2, the respondent owning the adjoining Lot 3 and the right of way over Lot 2 is, as the name suggests, the applicant's means of access from the public road to Lot 3 in much the same way as the handle of a battle-axe block is used. It is the right of way which is the subject of this application.

The applicant has now paid rent up to date in respect of the right of way, there having been apparently some initial misunderstanding as to ownership. Leading up to this application, there has been a series of communications between the applicant and the respondent with several letters being written by the applicant and at least one by the respondent. The parties have also communicated by facsimile machine and telephone.

It is proposed by the applicant to mine the area between July 1991 and March 1992. During this period there will be some limited interruption to the use by the respondent of the right of way necessitating, with the undermentioned exception, further travel of between 300 to 400 metres. The exception is that for a period of approximately 10 days in or around November 1991 there will be considerable disruption to the respondent's enjoyment of the right of way, necessitating a journey of 25 kilometres, one way, for the respondent to get access to its land.

Unfortunately no evidence was tendered on behalf of the respondent as to the use to which the respondent puts the land, and I asked questions of the witnesses for the applicant to ascertain the nature and prevalence of the use by the respondent of its land. It seems that the respondent uses the land for the purposes of grazing cattle but that use is not extensive. The respondent has no dwelling house on the land and, according to the evidence on behalf of the applicant, vehicular entrances are made only irregularly into the land, making it casual use only by the respondent of the right of way.

In negotiations the applicant had offered the sum of \$1,000 by way of major compensation with the sum of \$10 for each return trip over the 10 day period.

The respondent replied that he should be entitled to a fee of \$20,000 plus a monthly fee of \$500. Again there is nothing, unfortunately, before the court to substantiate this large claim by the respondent.

On the other hand, the evidence from the witnesses on behalf of the applicant indicated that the applicant has approached this exercise in a reasonable fashion.

While the right of way will be disturbed, it will be encumbent upon the applicant to restore it and working on the basis of the nature of the roads in existence, it is more likely than not that the restoration will result in the same or a better road than that which currently exists over the right of way.

The Mining Act sets out under Section 124(1)(b) the various criteria under which a Warden must work in assessing compensation and I have been addressed by Mr Thompson on behalf of the applicant as to the matters that may fall under these heads. It seems to me that it would be appropriate to adopt as my assessment the lump sum offered of \$1,000 and although I am in some doubt, because of the scarcity of the evidence of behalf of the respondent, I feel that the respondent should be also entitled to an additional payment of compensation over the 10 day period. Bearing in mind that it should be highly unlikely that more than three trips will be made over this time, at 50 kilometres per return trip, I assess compensation at 15¢ per kilometre over 150 kilometres at \$22.50.

I direct that the total compensation of \$1,022.50 be paid by the applicant to the respondent on or before 31st August 1991.