PETROLEUM LEASE COMPENSATION*

Tipperary Oil & Gas (Australia) Pty Ltd v Shelton [2005] QLRT 145 (Koppenol P)

Petroleum lease – compensation application – works proposed but not completed – whether former compensation provisions applied

Background

The applicants were the petroleum lessees over part of the respondents' land. The applicants intended to drill a number of wells and conduct other activities on that land. They applied to the Tribunal in December 2004 for a determination of the compensation payable to the respondents under the *Petroleum Act 1923* (the 1923 Act).

On 31 December 2004, significant amendments to the 1923 Act and new legislation concerning petroleum and gas came into operation (the 2004 Act).[1] In broad terms, the compensation payable to landowners affected by a petroleum lessee's activities was enlarged. In the present case, the applicants submitted that the former legislative regime applied, whereas the respondents contended that the new provisions applied.

The right to compensation

Following the amendments of 31 December 2004, s 162(1)(b)(ii) of the 1923 Act provided that an existing right to compensation under the former regime continued if, relevantly, the right was "about an act done or omission made before the 2004 Act start day". By letter on 3 March 2004, the applicants notified the respondents of their proposed works and offered them compensation. The offer was not accepted. Unsuccessful negotiations ensued and the applicants filed the principal application on 22 December 2004.

The applicants submitted that the 3 March 2004 letter and the 22 December 2004 application constituted "an act done … before the 2004 Act start day" for the purposes of the 1923 Act and that the relevant right to compensation was "about" that act.

The respondents disputed that interpretation, arguing that "act" in section 162(1)(b)(ii) referred to a compensable activity, and that the only compensable activity which had occurred prior to 31 December 2004 was the applicants' construction of a road.

President Koppenol observed that whilst s 162 did not elaborate the meaning of "about" or "act", they were broad terms. He noted the word "about" suggests a less direct relationship between things than might be necessary if the words "as to" had been used[2] and the word "act" was so broad that it could mean "anything" done.[3]

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1 *Petroleum and Other Legislation Amendment Act 2004; Petroleum and Gas (Production and Safety) Act 2004.*

2 *Re The Amalgamated Metal Workers Union of Australia; Ex parte The Shell Company of Australia Ltd* (1992) 174 CLR 345, 357.

3 *The Macquarie Dictionary*, 3rd ed (2000), p. 19.

The President held that the relevant right to compensation needed to have only a broad or perhaps less direct relationship with the particular thing that was done. He saw no reason why that right could not concern the activities which were proposed by the applicants in their 3 March 2004 letter and which underpinned the 22 December 2004 application for the assessment of compensation.

Decision

The President issued a declaration that compensation was to be assessed under the former compensation provisions of the 1923 Act.

ENVIRONMENTAL AUTHORITY*

Re Clark, Bexton, Lane & Ors, Environmental Protection Agency [2005] QLRT 146 (Kingham DP)

Mining lease – environmental authority – criteria for recommendation

Background

The applicants sought a mining lease and environmental authority for a proposed dimension stone mine in Gatton Shire. The site was located in a rural residential area approximately 17km northwest of Helidon. Surrounding land uses comprised isolated detached residences.

The respondents objected to the grant of the applications and also disputed the conditions proposed by the Environmental Protection Agency (EPA) for the environmental authority.

The proposed activities

The applicants intended to commence sandstone mining in the central portion of the subject site. It was proposed that no more than 5ha would be significantly disturbed at any one time, including mine workings, haul roads, overburden and product stockpiles and bund walls. Depending on the quality of the sandstone, the initial workings could extend to 20m below surface level. The applicants estimated that the area contained 1.54 million tonnes of recoverable sandstone, which provided for 15 years of production at 100,000 tonnes per year.

Criteria for deciding whether to recommend grant of lease and authority

The Respondents submitted that, in deciding whether to recommend the grant of the mining lease and environmental authority, the question for the Tribunal was whether the economic, social and environmental benefits of the proposed mine outweighed its economic, social and environmental costs. Kingham DP accepted that those costs and benefits were relevant to the Tribunal's consideration, but held that it did not amount to a test that had to be met before a positive recommendation could be made.

The Deputy President explained that neither s 269(4) of the *Mineral Resources Act 1989* nor s 223 of the *Environmental Protection Act 1994* provided a single definitive test for whether a mining lease or environmental authority, respectively, should be granted. The Acts did not set standards or objectives required in order to obtain a positive recommendation, but instead listed matters the

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