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Clayton Utz | News | **Impact Of Mining Leases On Valuation Of Surrounding Land**

news article

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Impact of mining leases on valuation of surrounding land

The effect of a mining lease upon the water supply of surrounding land can affect that land's valuation, according to a recent decision of the Queensland Land Court.

In *Lucke, Brady and Murphy v Chief Executive, Department of Natural Resources and Mines*¹, three landowners appealed against the annual valuation of their properties by the Chief Executive of Queensland's Department of Natural Resources and Mines.

None of the properties were subject to a mining lease but all were close to mining leases held by QCL Ltd. The landowners claimed that the operations on the mining leases had affected the water supply in the area which in turn affected the valuation of the properties.

Background

QCL was granted mining leases in the Mt Larcom area in the 1970s. The operation of these mining leases required areas to be dewatered and this was approved by the Department subject to the condition that QCL must provide an alternative supply of water to all persons within a particular area (the Kalf area) whose water supply is affected. It was not disputed that water depletion had occurred in the Kalf area.

The Murphy property lies within the Kalf area, but the properties owned by the other applicants do not. QCL had already installed a new bore on the Murphy property in satisfaction of the obligation in its mining lease.

Valuations

The Chief Executive had initially increased all valuations in the area by 25% on the basis that sales evidence indicated an increase in unimproved values of that amount. The landowners objected and the Chief Executive reduced the initial valuation only on the Murphy property on the basis that "there would be market resistance to the stigma associated with being in "[the Kalf area]" zone". As the other properties were not within that zone, the Chief Executive did not reduce their valuations.

All of the landowners appealed these decisions of the Chief Executive to the Land Court.

Landowners' arguments

The landowners contended that the presence of the mine had detrimentally affected the value of their properties in two ways. The first was that the dewatering caused by the mine diminished the water supply in an area much bigger than the Kalf area and that this larger area included all of the properties. The second was that the presence of the mine near the town of Mt Larcom had diminished the services of the town and affected the quality of life in the area. The landowners claimed that both of these factors were driving down market prices and should also reduce valuations.

The Chief Executive agreed that dewatering at the mine had occurred but said the effect of that dewatering was limited to the Kalf area. The Chief Executive also adduced evidence of an extended period of unusually dry weather in the region that had caused a natural decline in the water supply to the area. The Chief Executive also pointed out QCL's obligation to supply alternative sources of water to the landowners within

the Kalf zone.

Land Court decision

The Land Court decreased the valuation but not to the extent argued for by the appellants. The Land Court limited its inquiry to the proper valuation to be placed on the three properties. In doing so, the Land Court based its inquiry on the only comparable sale in the area. It said that the comparable sale would give a market value that would reflect the concerns of the community in respect of water supply and lifestyle (if any).

The Land Court did not make a determination as to whether the existence of a mining lease on the land would diminish the valuation and did not make any findings as to the cause or extent of the water depletion. The Court proceeded on the basis that there had been water depletion as this was common ground between the parties. The Court also did not make any findings as to the effect of the mine on the services and quality of life in the community.

Application to determination of compensation for mining leases

This case does not mean that mining operations will always affect the valuation of a neighbouring property. Whether mining operations do affect land valuations will always be a matter of fact and will depend on the circumstances of each case.

Equally, this case does not address the issue of whether the mere existence of a mining lease on a property will affect the valuation of that property. The Court made no finding that the existence of a mine was a "blight on the area" as was asserted by several local residents. The Court, by implication, said that if there was a "blight on the area" this would be reflected in sales within the area which could be demonstrated by evidence of those sales.

This case does however give useful guidance as to how courts generally will approach these issues, particularly where water supply is involved.

The other way in which this decision may affect mining lease applications is that it may encourage more people within the area of a mining lease application (and not merely those landowners whose properties will be the subject of the mining lease) to object to the mining lease on the ground that it will affect their water supply. This may see an increased incidence of conditions in mining leases requiring the holder to establish alternative water supplies to affected landowners.

Note

1. Land Court (President JJ Trickett) 28 February 2002. This decision comprised three separate appeals which were heard together. *Alec E. Lucke & Ors (AV2000/0163) v Chief Executive, Department of Natural Resources and Mines*, *Peter B. & Lynette Brady (AV2000/0196) v Chief Executive, Department of Natural Resources and Mines* and *Arthur W. Murphy (AV2000/0264) v Chief Executive, Department of Natural Resources and Mines*.

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