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JS/lw

Mining Wardens Court,
State Office Block,
SYDNEY. NSW.

17th August, 1973

BEFORE: MR. ANDERSON, S.M.

ASSESSMENT OF COMPENSATION IN RESPECT OF PRIVATE LANDS LEASE APPLICATION 1698 NEWCASTLE BY NORTHERN (RHONDA) COLLIERIES PTY. LTD.

APPEARANCES:

MR. FERGUS appears for the applicant.

MR. LOCKHART for the land owners.

(RECORDED IN SHORTHAND)

BENCH: On the 27th April, 1973, at Central Court I announced that I intended to make an assessment along certain lines and at certain figures. I adjourned that matter to enable the parties to consider the situation and by consent the case has been adjourned from time to time until today. What is the situation now?

MR. FERGUS: I understand Mr. Lockhart's client would like the matter to be formally dealt with, I have no opportunity - my clients would perhaps prefer a little extra time but I can't urge anything against Mr. Lockhart if he wishes the matter to be concluded today.

BENCH: I formally make an assessment in the amount set out on p. 5 of my written decision of the 27th April, 1973 and I make orders in accordance with what I indicated then would be my orders. I did previously reserve the question of costs, is there anything to be said regarding costs.

MR. LOCKHART: This was a matter in which your Worship was directed by the Minister to assess compensation pursuant to a consent given by the Minister to allow Northern (Rhonda) to mine land owned by the land owners. As your Worship has heard the application for consent was made by the applicant, therefore the land owners had no alternative but to appear

in this matter and that benefits arising from this application are, I would submit, without doubt, of benefit to the applicant. I would refer your Worship to p. 4 of your Judgment where you said, "There is no evidence of any other use of the land other than for mining at the present time" and your Worship has further noted that Mr. Jenkyn submitted to the contrary in this particular matter. The main substance of argument was Mr. Jenkyn's submission, however it is noted that your Worship's words were that the applicant's use of the land for mining purposes does effectively deprive the land owners of the opportunity to use the surface of the land even for restricted purposes available under the present heading. It is the land owners submission that, as your Worship has ruled in favour of the land owners in this matter, costs should follow such ruling and costs should be awarded to the land owners apart from any benefit to be achieved by the applicant pursuant to his application.

MR. FERGUS: I oppose the application for costs. In my submission this is a proper case where the fairest and most appropriate order is that each party pays its own costs. I appreciate your Worship has discretion in matters of costs but here is an inquiry which is by way of application to the Minister to assess compensation. There are no litigious matters, the applicant is an applicant for release, not an applicant for compensation and it is a direction of the Minister to assess compensation. If in fact the result had been that the compensation was assessed at nil I think I would have been fairly able to lodge an application for costs against the land owner and it would appear from that so far as the actual decision is concerned, I think it is fair to say that practically all of your Worship's time and the costs of these proceedings were taken up by the land owner in endeavouring to establish compensation under various heads all of which were

unsuccessful, and indeed your Worship did assess compensation on the basis of $200 an acre reducable over 4 years and that was a valuation which was put on it more in answer to a question by Mr. Jenkyn for a ruling for uses of agriculture, forestry and the rest. Now, there wasn't any time spent at all on that issue, and indeed at p. 85 I think it was, Mr. Skelton said that they just would not be economical and indeed the land owners at no time claimed that they had either used or intended to use the land for those purposes, agriculture, forestry or county dwellings. I simply say that, not by way of canvassing your Worship's finding, but simply to indicate that practically the whole of cost in time was taken up with valuation of land on a potential residential basis. The question of whether the land was affected by mine subsidence, the question of the ultimate planning scheme of the land, all of these matters were matters which took up a great deal of the Court's time and as your Worship has found, all of those restrictions didn't flow from the Minister's restrictions at all and indeed, the only basis that your Worship arrived at was a basis of $250 a week, and the only source of that, the only time it was mentioned in answer to a question by Jenkyn, and the question was, "If you take away from the $5,000 residential development the balance would be attributable to -- (READS) -- . I say that that type of land, agriculture, forestry or rural industry, you are thinking of land in the range of $200 a week but if I am thinking in terms of industrial uses I am thinking in terms of $5,000 or $6000 an acre." Now, that is the only evidence of valuation of the land on the basis of agriculture, forestry or rural industry, and indeed the land owners never claimed that they either had or intended to use that land for any of those purposes, and in fact, as Mr. Skelton said, it would not be an economical proposition. So, so far as the evidence in cost of the proceedings is concerned I think that it is

fair to say that practically the whole time was spent in the land owners attempting to set up a case on value based upon either its potential residential uses and that evidence, as your Worship found, could not be successful in regard to their application because all the x restrictions in regard to all of those purposes and uses were such that they were not imposed directly or indirectly by R.W. Miller but they derived from some other source. So it can be said first of all that one party was successful and the other party not successful, this was an enquiry on which your Worship arrived at a decision for compensation, and secondly if one does look at whether the parties were in litigation the land owner ~~xx~~ obviously succeeded on an issue which occupied very little of the Court's time and failed on most of the other issues. But the main basis for my opposition to Mr. Lockhart's application is that by the nature of this inquiry it is only fair and reasonable that the order should be that each side should pay its own costs. And, I do notice in a case that your Worship was good enough to let me have - Jones Acep Pty. Ltd. against Rutile and Zircon Mines (Newcastle) Ltd., this was a similar sort of matter which went before the warden under some section of the act and ultimately went to Arbitration, probably is the only one really that has gone the full distance. But, I do notice in that case the arbitrators made a certain award which was not the same as the original award but they directed that each party pay its own and their own costs of the appeal and in ~~xx~~ my submission that is the proper basis upon which the costs should be dealt with in this case. I think it is analagous to many similar proceedings in the Local Government sphere enquiries and the land and other Court boundary disputes and the like. The order usually is unless there are special circumstances that where there is anything which is not brought about

directly by the action of one party or the other, it is a matter of an enquiry in the public interest under the Statute and, therefore, it is fair to expect that no side should be penalised on costs.

BENCH: I find that I agree generally with Mr. Fergus' remarks, it is a matter where I think each party should bear its own costs and I make no order for costs.