

For Landholders – Email Alert Case Note

May 2014

This week the Land Appeal Court released its decision in *Glencore Coal Queensland Pty Ltd & Ors v Keys & Ors* [2014] QLAC.

In this case the appellant mining companies challenged the determination of compensation awarded by the Land Court to landowners of five properties north-west of Wandoan affected by the grant of open cut coal mining leases.

The mining companies argued their valuer's evidence should have been accepted and the Land Court did not take the correct approach in determining compensation, particularly by taking into account sales evidence of a sale of a property to QGC Pty Ltd, saying that because it was a sale to a resource company the sale didn't reflect market value.

The determinations of compensation by the Land Court for the landowners was upheld by the Land Appeal Court. The Court dismissed the appeal by Glencore and others.

The Land Appeal Court:

1. Confirmed that in some cases sales to mining resource companies can be taken into account when valuing a property as those sales may well reflect market value, depending on the professional judgment of the valuer;
2. Confirmed the Land Court's approach of applying sales evidence in a "generous and not niggardly spirit" and said it is justified due to the potential movement in the market for land between the date of the determination and the date when compensation is paid. It is **not** to compensate for a market that may or may not be depressed;
3. Noted that the parties agreed the appropriate valuation methodology for the determination of compensation was the "before and after" methodology and that compensation should be assessed on the basis that the land the subject of the leases was gone forever;
4. Confirmed the approach that the value of the "balance lands", those lands not intended to be the subject of a mining lease, were to be assessed in the "after" situation by offering the whole of the land for sale subject to the mining leases. The Land Appeal Court confirmed the finding of the Land Court that the value of the balance lands in the "after" situation was nominal as in this matter the mining leases were for large open cut coal mines.

The decision is a useful precedent for all landowners involved in mining, CSG and easement negotiations.

If you want further information about this decision please contact **p&e Law** on Freecall 1300 303 866.

Regards