Mining & CSG – landholder Update

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NEW CSG OMBUDSMAN–CHANGES TO GASFIELDS COMMISSION

In 2015 the Queensland Government commissioned an independent review of the Gasfields Commission to assess, among other things: whether the Gasfields Commission was achieving its purpose; to evaluate its effectiveness in managing disputes; and to investigate whether an alternative dispute resolution model was required for landholders and gas companies.

Since the review was released in July 2016, the Queensland Government has been working towards reforming the Gasfields Commission.

On 10 May 2017, the *Gasfields Commission and Other Legislation Amendment Bill 2017* was introduced to Parliament, which seeks to:

- remove the commission's dispute resolution functions;
- improve community access to health and wellbeing information relating to the onshore gas industry and facilitating community engagement and participation in health and wellbeing initiatives through the commission; and
- amend the role of the Chief Executive Officer to reflect the broader responsibilities for the position.

On 23 May 2017 the *Land Access Ombudsman Bill 2017* was introduced to Parliament with the purpose of establishing an independent land access ombudsman to assist with disputes between landholders and gas companies relating to:

- breaches of a Conduct and Compensation Agreement (CCA); or
- breaches of a Make Good Agreement.

The functions of the ombudsman will include investigating and facilitating the resolution of disputes and to refer or recommend to relevant State departments the investigation of possible offences being committed under relevant legislation including the *Petroleum and Gas (Production and Safety) Act 2004, Water Act 2000* and *Environmental Protection Act 1994*.

Most agreements entered into between companies and landholders contain a dispute resolution clause setting out how the parties must resolve disputes. The Bill seeks to allow a person to refer a dispute to the Land Access Ombudsman even if a dispute resolution clause applies to their agreement.

REGISTERING CARBON ABATEMENT INTERESTS IN QUEENSLAND

Landowners in Queensland are able to grant rights over the carbon in part or all of their land as a carbon abatement product under the Commonwealth Government's Carbon Farming Initiative. A carbon abatement interest provides for the exclusive legal right to the economic benefits of carbon sequestration on the land. Carbon abatement interests are capable of being registered as interests in freehold, State leasehold, unallocated State land, State forest or reserve and the legislative provisions differ for each tenure.

Once registered, rights will be recognised interests in Queensland that provide for the right to carry out an eligible sequestration project for carbon abatement products on land in Queensland under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth). The Carbon Farming Initiative provides a potential extra revenue for landowners, either by granting the carbon rights to someone else for valuable consideration, or as a grant to themselves to access the carbon credits under the Carbon Farming Initiative.

There are a number of criteria that must be met for the creation and registration of carbon abatement interests in Queensland. The interest can only be registered if:

a) the proposed grantor of the interest is the owner of the land; and

b) the Registrar of Titles is satisfied the owner (proposed grantor) is the holder of the right to deal with the carbon abatement product for the land; and

c) all holders of a registered interest in the land whose interest may be affected by the proposed carbon abatement interest consent to the proposed grant; and

d) there are no existing carbon abatement interests registered for part of the land to which the proposed carbon abatement interest relates; and

e) Documents are stamped with a duty notation evidencing the payment of transfer duties.

Where the grant is only over a portion of the lot, a survey plan showing the secondary parcel would also need to be registered.

For non-freehold land the State of Queensland would need to be a party to the grant.

FIRST LAND COURT DETERMINATION OF COMPENSATION FOR CSG ACTIVITIES

On 13 April 2017, the Land Court made a determination of compensation payable for coal seam gas related activities in the case of *QGC Pty Limited & Ors v Eugenehans Peter Vogt and Anor* [2017] QLC 20.

It is the first case in Queensland in which a determination of compensation has been made for coal seam gas activities.

In our view the decision has little use as a precedent given that the landholder elected to not appear at the hearing or tender evidence to contradict the evidence relied on by QGC.

Background

The land affected comprised of 337.5 hectares of freehold land located west of Dalby and south of Chinchilla. The highest and best use of the land was a rural home site. The land was vacant with no dwellings or businesses operated on the land.

QGC proposed to develop the following infrastructure on the land:

- six coal seam gas covering a total of approximately six hectares;
- approximately two hectares of access tracks; and
- approximately 3.5 hectares of gathering systems, such as buried pipes.

Compensation Assessment

QGC relied upon a compensation assessment performed by Taylor Byrne. The overall assessment of compensation was $30,000.

The landowner did not tender any valuation evidence. In those circumstances, the Court had no other option but to adopt the compensation assessment performed by Taylor Byrne.

The Court accepted the "before and after" valuation methodology applied by Taylor Byrne.

The Court adopted the value of the land assessed by Taylor Byrne because there was no competing evidence. The valuer relied on six sales of comparable properties.

<u>Compensation for areas directly affected by infrastructure</u>

The Court accepted the approach adopted by Taylor Byrne which was to assess:

- the diminution in the value of the land occupied by the wells at 100% of its value;
- the diminution in the value of the land occupied by the access tracks at 100% of its value;
- the diminution in the value of the land occupied by the gathering pipelines at 50% of its value in recognition of the fact this land would be rehabilitated and available for future use.

<u>Compensation for areas indirectly affected by infrastructure</u>

In addition to above amounts, Taylor Byrne applied a 10% diminution of the value of the balance land or the areas of land without infrastructure. That amount was adopted by the Court given that there was

FIRST LAND COURT DETERMINATION OF COMPENSATION FOR CSG ACTIVITIES ... CONT'D

no competing evidence. The valuer did not have reference to sales of gas affected properties in making his assessment of the diminution in land value.

Disturbance payment

The valuer did not make an allowance for disturbance during construction. The Court found that it would be appropriate to award compensation for disturbance, such as noise and dust from workers and machinery on the land. The Court assessed a notional $5,000 for disturbance without knowing the length of the construction period. Accordingly, the overall compensation amount assessed by the Court was $35,000.

Conduct and Compensation Agreement

A Conduct and Compensation Agreement (CCA) is required to authorise a coal seam gas development on private land. QGC contended that the standard Conduct and Compensation Agreement development by the Queensland Government should apply. Given that the landowner did not appear at the hearing, that position was not challenged and therefore the Court was prepared to accept that the standard agreement developed by the Queensland Government in 2010 was suitable.

Summary and Key Points

This decision is unlikely to have much value as a precedent. The landowner did not appear in Court or tender any evidence to counter the evidence relied on by QGC. The decision relates to vacant land with no dwelling or business operating on the land.

The Court was prepared to award the full amount of compensation on an upfront basis rather than paying the amount on an annual basis as is often proposed by coal seam gas proponents.

The decision largely confirms the approach used by valuers in the industry, which is to assess the loss in value of the land relating to, not only the areas of infrastructure, but the balance land. It confirms that an amount for disturbance during construction should be paid. For a cattle operation, this would be disturbance for agistment and associated costs etc.

It is well established that compensation is to be assessed on a case by case basis where landowners are compensated based on the loss and impact to their land value and their business. This decision is therefore unlikely to provide any guidance to valuers in matters where a proposed gas development impacts on a grazing business or an occupied lifestyle property.

If you wish to discuss any aspects of this decision, or be emailed a copy, please contact us.

If you have questions, please do not hesitate to contact

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