



Categorisation of Land for Rates under the Local Government Act – An Update

Author: Chloe Howard

The recent Court of Appeal decision of *Mangoola Coal Operations Pty Limited v Muswellbrook Shire Council* [2021] NSWCA 46 has examined the re-categorisation of land for the purpose of rates, pursuant to the *Local Government Act 1993* ("the Act").

Background

Mangoola Coal Operations Pty Limited ("**Mangoola**") was the registered proprietor of various parcels of adjacent land in the Hunter Valley, NSW. The land the subject of this decision, one of parcels of land with an area approximately 6,600 hectares ("the **Adjacent Parcel**") was land that was adjacent to another parcel of land owned by Mangoola which contained an open-cut coal mine ("the **Mine Parcel**").

In 2012, Mangoola granted an access licence to Colinta Holdings Pty Ltd ("**Colinta**"), a cattle-grazing enterprise, in respect of the Adjacent Parcel. Prior to the 2016/2017 financial year, the Adjacent Parcel had been categorised by Muswellbrook Shire Council ("**Council**") pursuant to s 514 of the Act as farmland for the dominant use.

In addition to the Adjacent Parcel being utilised for cattle grazing, the land had an easement over part of it for the purposes of supplying water and electricity to the mine. Mangoola also had, as a condition for the mine approval, designated parts of the Adjacent Parcel to Aboriginal Cultural Heritage Offset and Habitat Enhancement areas, to offset the mine development. Lastly, environmental monitoring devices and mining exploration activities occurred on the land.

In the 2016/2017 financial year and 2017/2018 financial year, the area was in drought and Colinta reduced its cattle grazing on the Adjacent Parcel. Accordingly, Council re-categorised the Adjacent Parcel from farmland to mining land, which led to a significant increase in the rates payable in respect of the Adjacent Parcel.

Mangoola commenced proceedings in the Land and Environment Court in 2018, appealing Council's decision to re-categorise the land. The Land and Environment Court rejected Mangoola's appeal, holding that the dominant use of the land was for mining. Mangoola subsequently appealed to the Court of Appeal, on the following points:

- The relevance of the ongoing drought in determining the dominant use of the land;
- The importance that should be placed on the easement for utilities in determining the dominant use of the land;
- Whether there was any mining use of the land;
- Whether the offset areas could properly be characterised as being "used for a coal mine";
- The significance of the environmental monitoring devices and mining exploration activities in determining the dominant use of the land.

Drought and Grazing

The Court held that, by failing to consider the 2016/2017 and 2017/2018 years in the context of the reason why the grazing activity has ceased, the primary judge misapplied the statutory requirements. Without evidence to conclude that the grazing activity had been abandoned, or that there was any other explanation except for the drought as to why the grazing activity had been reduced, it should have been inferred that the grazing was intended to be resumed when the drought eased.

The Easement

The Court held that the mining use of the land where the easement was located could not be regarded as the dominant use, irrespective of the primary judge's view that the fact the easement provided the mine with water and electricity should be an important factor in determining the dominant use. In coming to this conclusion, the Court stated that:

- the easement occupied only a little over 1% of the easement section of the Adjacent Parcel.
- In the 2016/2017 and 2017/2018 years, the easement section was used for grazing and cropping.
- Colinta's right to graze cattle on the easement section was "interrupted only to a trifling extent" by the presence of infrastructure on the easement.
- the use of land which is a servient tenement is not determined by the use of the easement by which it is burdened

Was there Mining Use?

Whilst the Court determined that there was a mining use in the easement section due to the existence of the easement, it was of limited significance in considering the dominant use of that whole section, which was still utilised for grazing and cropping. The “source of the requirement to carry out the use”, whether that is of a matter of practicality or a legal requirement, cannot be disregarded and is relevant to determining whether there is a use for mining purposes.

The Offset Areas – Mining Use?

Whilst the existence of the Offset Areas was a condition of the mine's approval and operation, the 'use' of the Offset Area was the opposite of mining and are not used 'for a coal mine'. The Court upheld the reasoning in *Peabody Pastoral Holdings Pty Ltd v Mid-Western Regional Council* [2013] NSWLEC 86 that the affectation of land is to be distinguished from use of land.

Monitoring Devices and Exploration Activities

Whilst the importance of the mining monitoring devices and exploration should be considered, they were of minimal significance in determining the dominant use of the land as the devices and personal accessing the devices had little impact on the land the devices occupied, and there was negligible interference with Colinta's farming activities.

Finally, the Court stated that whilst the division of a parcel of land into sections to assist in the assessment of land was permissible, it was critical that councils consider the use of the whole parcel of land rather than just individual sections in determining the dominant use.

If you would like advice about anything in this article, please contact [Greg Lee](#) on 02 8235 1254 or your usual ClarkeKann contact.