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A HISTORY OF THE MINE SUBSIDENCE BOARD

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In 1799, two years after the Hunter River was discovered, the first coal from the area was exported. Newcastle's coalfields were Australia's main source of energy. Coal mining caused subsidence in Newcastle, damaging buildings either during or after operations. Most inner city suburbs had experienced subsidence by the end of the nineteenth century.¹ Following many complaints from residents, an Act of Parliament was passed in 1928, and the Mine Subsidence Board was established.

The first major problem with subsidence was recorded in 1904 when the old "Merewether homestead" was damaged by the first subsidence. At that time, there were no other buildings in the area. Between 1906 and 1908, three major subsidences occurred in the workings under "The Hill" area, causing extensive damage to roads, buildings, water mains and structural damage to Christ Church Cathedral.² A Royal Commission held in 1908 to investigate the subsidences found that the cause was due to the failure of pillars in the Borehole Seam, which was being mined beneath the area.³

From 1916 to 1927, more subsidences occurred in Merewether, resulting in major damage to houses, water and sewerage connections, roads and a tram line.⁴ It

1 J. C. Docherty, Newcastle, The Making of An Australian City, Sydney, 1983, pp.2-14

2 Author Unknown, Address on the Mine Subsidence Compensation Act, 1961 as amended, Unpublished, p.1

3 W. P. Wilson, A Background to Mine Subsidence Legislation in the State of N.S.W. and the Duties and Functions of the Mine Subsidence Board, Paper presented to Fourth Annual Symposium, Illawarra Branch Aust.I.M.M., 1973, p.1

4 Unknown, Address on the Mine ..., p.1

was considered that these subsidences were also caused by further failures in the Borehole Seam. Property owners approached their insurance companies for compensation, but their claims were refused as the policies did not cover subsidence risk. Approaches were then made to the mining company concerned. The company had acquired title to the surface and the underlying mineral by land grant, which meant that both the surface and the coal were privately owned. After completion of mining, the company had sold some of the surface land, but had indemnified itself, in covenants included in the title to the land, against any claims, under common law, for compensation resulting from subsidence.⁵

As a result of the subsidence problems, financial institutions refused to lend money on mortgage properties within the areas affected by subsidence. Public meetings were held and representations made to Government.⁶ On 10th August, 1928, a public meeting was held in the Merewether Council Chambers. The then Minister for Mines, the Honourable F. A. Chaffey, M.L.A., advised the meeting that it was proposed to introduce a Bill into the State Parliament, which would help the property owners, whose properties had been or could be damaged by mine subsidence. The Bill was passed and the Mine Subsidence Act, 1928 came into operation on 1st March, 1929.⁷ The Act provided insurance against damage to properties only at Merewether. The Act provided for premiums to be paid by

5 Wilson, A Background ..., pp.1-2

6 J. Dixon, History of Merewether, Newcastle, 1935, pp.64-65

7 Unknown, Address on the Mine ..., p.1

each landowner into the Mine Subsidence Insurance Fund, and where improvements were damaged, the Fund would bear the cost of the repairs.⁸ As an Act of Parliament, it took legal precedence over common law provisions, overcoming the covenants in land titles, which prevented claims for compensation for subsidence damage.

The Board appointed to administer the Act comprised the Under Secretary of the Department of Mines as Chairman, the Chief Inspector of Coal Mines, the General Manager of the Government Insurance Office, and two other members appointed by the Governor, one being a representative of mine owners and the other being a representative of owners of properties "affected or likely to be affected by subsidence".⁹ The Board was administered from the Department of Mines Head Office in Sydney until early 1960, when the headquarters of the Secretary of the Board was transferred to Newcastle.¹⁰

The main functions of the Board were to issue insurance certificates to permit conveyancing of property; to determine the premium payable in proportion to the risk involved; investigation of claims and, where necessary, payment of compensation; and the determination of conditions for insuring improvements. The Board also dealt with representations for the proclamation of additional areas to be covered by the benefits and control of the Act. Additional districts at Wallsend and Lambton were proclaimed in 1949.¹¹

Public opinion opposing the Act was very strong, probably because all owners of improvements were obliged

8 Author Unknown, Mine Subsidence, Unpublished, p.1

9 Ibid.

10 Unknown, Address on the Mine ..., p.2

11 Wilson, A Background ..., p.2

to insure. While the scheme benefited those owners whose properties were undermined, there were many owners whose land was not affected by mining, but they were still compelled to insure against a nil risk. Mine subsidence also occurred in areas outside the proclaimed areas, and property owners were not eligible for compensation. This, of course, raised more complaints. Another complaint was that the property owners resented having to finance the scheme, when it was the coal company who extracted the coal that caused the problem.¹²

The scheme in that form was not suitable for state-wide expansion. It was obvious that amendment was necessary to meet the enlarging area of mining activity. A new proposal put forward in 1961, resulted in the Mine Subsidence Act, 1928 being repealed on 1st July, 1961 and the Mine Subsidence Compensation Act, 1961 being effective from the same day.¹³

Major reforms of the new Act were to change the financing source for the Compensation Fund, from the property owners to the coal industry - an early form of "user-pay"; to provide for compensation cover to the whole of New South Wales; to increase the Mine Subsidence Board's ability to mitigate future damage, by providing for proclaimed Mine Subsidence Districts, in which the Board could control surface development, consistent with risk of damage from mine subsidence.¹⁴

12 Ibid.

13 Ibid.

14 Ibid.

Changes were made to the Board to include representation of Local Government and Planning. An engineer from the Department of Public Works was included, because of the Board's wider powers regarding surface development and expertise in construction of surface improvements. The Government Insurance Office representative was no longer needed because the source and method of financing was changed.¹⁵

Changes to the Act since 1961 provided the Board with corporate status so that it could own property; bestowed power in the Board to review its earlier decisions¹⁶; extended protection of the Act to damage caused by prospecting for coal and shale as apart from its recovery¹⁷; and later, provision for compensation for damage caused by subsidence and preventive measures to mitigate damage from subsidence.¹⁸

Today's Mine Subsidence Board is a statutory authority, subject to the control and direction of the Minister for Mineral Resources, which reports through the Minister to the New South Wales Parliament. The Board consists of The Secretary of the Department of Mineral Resources as Chairman, the Chief Inspector of Coal Mines and four people appointed by the Governor. They are: a person nominated by the proprietors of colliery holdings; a

15 Ibid., pp.2-3

16 Report of the Department of Mines for 1966, Sydney, 1968, p.61

17 Report of the Department of Mines for 1967, Sydney, 1969, p.62

18 Report of the Department of Mines for the Year Ended 30 June, 1970, Sydney, 1971, p.59

representative, nominated by the Minister, of owners of improvements situated within mine subsidence districts, not being improvements connected with the winning of coal or shale; a representative of local government or of the Department of Environment and Planning and nominated by the Minister for Local Government; and an officer of the Public Works Department eligible to be a corporate member of the Institution of Engineers, Australia, nominated by the Minister for Public Works.¹⁹

The Act provides for payment of compensation for damage to improvements, anywhere in New South Wales, caused by mine subsidence, following the extraction of coal or shale. It enables the Mine Subsidence Board to regulate surface development within proclaimed Mine Subsidence Districts (of which there are twentyone). The Board may grant approval conditionally or unconditionally, or refuse its approval, for all land subdivisions and proposals to erect or alter improvements in proclaimed mine subsidence districts.

In those districts, the Board has developed surface development guidelines, which vary according to the risk of subsidence, to mitigate future damage. If a building is approved by the Board and constructed in accordance with the approval, the owner is indemnified against damage caused by mine subsidence. All improvements in areas outside proclaimed mine subsidence districts are automatically covered for compensation.

19 Mine Subsidence Board Annual Report, June, 1986,
Newcastle, 1986, p.5

The Mine Subsidence Compensation Fund established under the Act is financed by annual contributions from colliery proprietors. The contributions are levied at rates based on the land value of the colliery holdings as recorded by the Valuer-General at 30th June each year. This money funds the total cost of the Board's operations, including staff salaries and office costs, as well as compensation claims. Surplus funds are invested to generate additional income.

The Mine Subsidence Board's Head Office is located in Newcastle, with District Offices at Wyong, Picton and Singleton. The Board is an organisation servicing the community in New South Wales, particularly mining areas, and provides expert advice on surface development relating to protection from mine subsidence in proclaimed mine subsidence districts and provides compensation to property owners whose properties have been damaged by mine subsidence.²⁰

20 Ibid., p.1

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