

AFFIDAVIT OF ROSS ALEXANDER, FEBRUARY 2015

COURT DETAILS

Court	NSW Land and Environment Court
Division	Class 4
Registry	Sydney
Case number	14/40998

TITLE OF PROCEEDINGS

Plaintiff	SHCAG Pty Ltd
First defendant	Hume Coal Pty Ltd
Second defendant	New South Wales Minister for Resources and Energy

FILING DETAILS

Filed for	Plaintiff
Legal representative	Marylou Potts Marylou Potts Pty Ltd 113b Carabella st, Kirribilli 2061
Legal representative reference	Marylou Potts Marylou Potts Pty Ltd
Contact name and telephone	Marylou Potts 0411340775
Contact email	ml@mlppl.com.au

[on separate page]

AFFIDAVIT

Name Ross Alexander
 Address 'ROSCOE PARK', 90 Carters Lane, Sutton Forest NSW 2577
 Occupation Beef Cattle Farmer
 Date

I say on oath:

1 I, Ross Alexander, landholder, together with my wife, Margaret Alexander, own the 350 acre property which includes title to Carters Lane known as 'Roscoe Park' at Lot 10 Carters Lane, Sutton Forest NSW 2577 (**Property**).

2 We purchased the Property in 1999 for \$1.7m.

3 Up until 1996, I ran an auto spare parts business in Taren Point NSW trading as Alexanders Auto One.

Business run on the Property

4 From about 1996, my wife and I have run a Limousin stud on the Property focusing on vealers. Hume's proposed activities have already and will continue to significantly interfere with that business.

Phase 3 drilling program is over my property

5 On 5 September 2014, I was copied in on an email and letter from Hume to Mr Neil SC, the arbitrator, arbitrating whether or not Hume should have access to our property. Annexure RA1 contains a copy of that email and letter. In that letter I was notified that Hume's revised amended Review of Environmental Factors for its Phase 3 drilling program (**Phase 3 drilling program**) had been approved by the NSW Minister for Resources and Energy (**Approval**).

Arbitration begun in 2013 for access continues today

6 I understand that the access that Hume is seeking in our access arbitration proceedings, which began in January 2013 with Hume's service of its s142 notice, will be access to holes which are approved and part of its Phase 3 drilling program.

I do not give my consent to Hume to access my improvements

7 I do not and will not give my consent to Hume to access my improvements on the Property. Hume continues to demand access to my property now that it has obtained its Phase 3 drilling program approval. I am determined to continue, as I have since 2012, to resist access.

8 This affidavit will provide some history of improvement of the Property and the history of Hume's demands to have access to the Property.

History of our improvement of the Property

9 When we purchased the property it was vacant land. All the improvements made to this property have been made by us since 1999. From acquisition of the vacant land in 1999 to date, my wife and I have:

- (i) upgraded and maintained Carters Lane surface, gutters, shoulders, culverts, borders. This Lane was constructed to be part of a subdivision;
- (ii) planned, constructed and maintained a driveway from Carters Lane to the house;
- (iii) designed and constructed the house, which is our home, and the gardens which begin at the beginning of Carters Lane and continue up the Lane, up the driveway to surround the house, nearly a kilometre of gardens;
- (iv) built numerous out buildings, sheds, barns;
- (v) fenced the boundaries, and the internal 16 working paddocks with stock proof 6 stranded electrified fences;
- (vi) planned and constructed cattle laneways; and an underground water reticulation system of polypiping to water troughs from the bore and pump house via the laneways to each of the 16 working paddocks;
- (vii) planted and tendered numerous shelter belts and shade trees;
- (viii) undertaken soil conservation and erosion control according to a Land Management Agreement with the Hawkesbury Nepean Catchment Management Authority which expires in 2017;

(ix) fenced off dams, arranged cascading dams with drainage channels between to control erosion, fenced off Wells Creek where it runs through our property;

(x) planted and maintained and improved the pastures and crops and undertaken a major pasture improvement program all the 16 working paddocks.

I estimate that approximately \$4.5 to \$5 million has been spent improving this property. Annexed and marked RA2 are photos of the property.

Terrain of the property Dams, waterways, drainage channels, Wells Creek

- 10 My Property commences at Golden Vale Road, Sutton Forest. It includes and extends from Golden Vale Road up Carters Lane, which is approximately 1 kilometre, and opens up into a hexagonal block of 350 acres.
- 11 The house sits almost but not quite on the eastern side of the top of a hill.
- 12 The Property's western, southern and eastern boundaries are comparatively low lying and often flood. Wells Creek runs along the western boundary and there is a drainage channel between 4 dams running down the northern boundary. Annexed and marked RA3 is
 - (i) an aerial map of the property with the location of the holes last proposed by Hume
 - (ii) an aerial map of the drainage channels and dams on the property
 - (iii) a topographical map with contours marked of the property
 - (iv) roughly drawn maps of the infrastructure and improvements on the property
 - (v) a paddock map with each of the 16 working paddocks names and numbered, Wells Creek, the Southern Highlands Shale Woodland (**SHSW**), an

Endangered Ecological Community which we have fenced off, the location of the house, the bore, fenced off dams and Carters Lane.

Hume's Phase 3 drill sites - Direct physical impact on the Property

13 The last map we have been provided by Hume was by email on 31 July 2014. I assume that the holes Hume now proposes on my property are at the locations set out on that map. I have marked up on that map:

- (i) the 16 working paddocks on the Property;
- (ii) the dams;
- (iii) the drainage channels;
- (iv) Wells Creek;
- (iv) the water reticulation system in the laneways;
- (v) the 100m radius Hume is allowed to locate its holes within under its Phase 3 drilling program;
- (vi) the 200m protected zone around my house;
- (vii) the 50m protected zone from my gardens;
- (viii) Carters Lane;
- (ix) Golden Vale Road;
- (x) the neighbouring properties; and
- (xi) the 200m protected zone around Mr Pollicina's house.

Annexed and marked RA4 is a copy of that map and the associated email and on a copy of that map the property information set out in this paragraph.

14 No one from Hume or the Department of Resources and Energy has ever asked my permission to go onto my property to assess the impact on my property of the proposed locations of these holes. Yet the Department in its email in Annexure RA9 dated 3 March 2014 states an environmental assessment necessarily involves a site visit.

- 15 There are no existing tracks in any of the paddocks on my property. There are laneways leading to the paddocks. These laneways contain the water reticulation system of polypipe laid under the laneway to the water toughs in each of the paddocks and the electrification of the internal and boundary fences. I have been advised, and consider, that the infrastructure in the laneways constitutes improvements for the purposes of the Mining Act. I will not consent to Hume using any of my laneways to access my paddocks.
- 16 Without being ordered to do so by the Land and Environment Court (LEC), I will not give my consent to Hume to:
- (i) use Carters Lane;
 - (ii) use my driveway or the cattle laneways;
 - (iii) go through my gardens to access any hole;
 - (iv) undertake activities in my paddocks with crops or with improved pastures;
or
 - (iv) cut my fences.

Hole proposed in paddock 15 – South eastern hole

- 17 The hole in paddock 15 is in the Southern Highlands Shale Woodland (**SHSW**), which is listed as an ecologically endangered community and protected.
- 18 I have fenced off the SHSW to protect it from my cattle. I do not give consent for Hume to cut the fence around the SHSW.
- 19 Hume proposes to access paddock 15 by using Carters Lane, my driveway and through SHSW. I have been advised, and consider, Carters Lane and the driveway to be significant improvements for the purposes of the Mining Act. I do not give my consent to Hume accessing that hole across those lands. The only other potential means of access to paddock 15 would involve the cutting of fences either with the Kotlai on the eastern boundary and travelling through paddock 16, or from the McKenzies on the southern boundary and travelling through paddocks 13 and 14.

- 20 There is no gate providing access between these properties. I will not consent to the cutting of my fences to allow Hume access to my property from these neighbouring properties.

Hole proposed in paddock 9 - Western hole

- 21 The Western Hole is proposed in paddock 9 which to date has always contained my oats crop. I am advised and I consider that my oats crop is a significant improvement protected under the Mining Act. I do not consent to Hume undertaking any activity on my land which contains my crops.
- 22 This hole is very close to Wells Creek. The ground where the hole is currently proposed to be located is very boggy. In the past, I have tried to drive a 4WD through that area, at a time when it was not that wet, I was nearly bogged. Since then I do not drive any vehicles close to that fence line. As outlined below, further along that same fence line a bridge across Wells Creek was washed away in 2007, we have not been able to collect that bridge (which was caught in the fence in the billabong boundary with the Pollicina property) with a tractor until 2014 because the ground had been too boggy and soft for our tractor to get across.
- 23 The western boundary fence of the property is sitting just on the eastern side of Wells Creek. That fence has no gate it in to Hume's property, Wongonbra.
- 24 I will not consent to the cutting of that fence to give Hume access to my Property.

Hole proposed in paddock 6 – North western hole

- 25 The north western hole is in paddock 6 which we call the Marsh paddock. We call it the Marsh paddock because with rain it becomes wet. It is a very wet paddock even in the dryer months. It was in this paddock 6 that in 2007 our bridge across Wells Creek had been washed away in 2007 and became caught in the boundary fence with the Pollicina property. That bridge we were unable to retrieve until after an extended dryer period in 2014 because the ground was too soft and boggy for our tractor before then.
- 26 We have fenced off the lower part of that paddock because Wells Creek runs into the lower half. It is generally too wet to access it even in a four wheel drive. Having once gotten bogged in the 4WD in about 2001 higher up from this paddock we no longer drive the 4WD in that area of the paddock unless we are in drought.

Hole proposed in paddock 4 – Northern hole

- 27 The most northern hole is in paddock 4 next to 2 shelter belts. This is where the cattle get their shelter. We would require that this hole be moved as the cattle must have shelter from the sun and wind. Moving this hole will push it either up a slope or into the middle of the paddock. Hume in its REF stated it would not drill in the middle of a paddock or excavate land on a slope.
- 28 Hume has assumed that it will access this paddock via Carters Lane and existing tracks. I will not give my consent to access Carters Lane. The only other access to this hole would be through the Pollicina land. Mr Pollicina has told us he will not allow Hume to access his land.
- 29 I will not consent to the cutting of the fences between our property and the Pollicina property.

Hole proposed in paddock 2 –Northern hole

- 30 Paddock 2 has 2 dams and a drainage channel to a third and fourth dam running between these dams down a steepish slope.
- 31 The hole is proposed very close to this drainage channel on a slope.
- 32 Using the map provided by Hume I have measured the distance between that eastern hole and Mr Pollicina's house on Mr Pollicina's land. That hole appears to be within the 200m protected zone of Mr Pollicina's house on Mr Pollicina's land which is protected by the Mining Act.
- 33 Mr Pollicina has said to me he will not give his consent to Hume to drill within the protected zone of his house or access his property. Mr Pollicina is also in arbitration with Hume.

Issues with an access track and each drill site on a slope

- 34 Even assuming that the LEC was ultimately to determine that the improved pastures which I claim to be an improvement were not in law an improvement, and assuming that Hume can get onto the property in some fashion, which we dispute, Hume would need to construct a length of track between the proposed holes because there is no existing track between those locations in the paddocks. Using the scale on Hume's maps I have estimated that length of track to be approximately

5 -6 kilometres. I have drawn the location of the proposed track on the map of the hole locations provided by Hume. This map with the proposed length of track drawn is set out in the annexure marked RA5.

- 35 The track will go through at least 13 of my 16 working paddocks on the Property [that does not include how Hume will get onto the Property].
- 36 I built the deck at the front of the house in order to look across the valley. Currently there is an uninterrupted, and to my mind, beautiful, view of rolling hills. If Hume drills on my property this view will be interrupted by drill rigs, drill sites and an access track. I will have to look at that until it is fully rehabilitated.
- 37 Our experience with this property, is that vehicles even as heavy as a 4 wheel drive cannot drive in the lower lying areas of the paddocks, and no vehicle can after a rain event without damaging the pastures. As examples:
- (i) In around 2001, our land cruiser became bogged on the northern boundary of paddock 2 on the lower side of the dam on the Pollicina boundary. We have never again tried to drive a 4WD vehicle on that lower side of the dam.
 - (ii) In or around 2002 to 2003, we had to use a row boat to put up the fence between the millet paddock 9 and Badgeries paddock 10.
 - (iii) in about 2007 a wooden bridge built to cross Wells Creek in paddock 6 was washed about 200m away onto the boundary fence with the Pollicina property. We were not able to recover it from the fence until 2014 because the ground has been too soft to get the tractor down there to pick it up. We do not use a 4WD along that entire western boundary which is bordered by Wells Creek for the same reason.
- 38 I commissioned an expert agronomist to report on the improved pastures on the Property and the impact on those in relation to Hume's proposed unsuccessful 22 hole REF application. The Report says that the improved pastures will be impacted for at least 2 years from Hume's proposed access tracks and drill sites. The report states that the impact will affect the productivity of those pastures. Annexed and marked RA7 are copies of that report.
- 39 I am very fearful that should Hume get onto my property it will have to construct roads like it had to construct on the Koltai property. I believe that will result in long

term damage to at least 13 of the 16 working paddocks on the Property. Annexed and marked RA5 are photos of the road and the construction of the road on the Koltai property in or about mid 2013 and the resultant constructed road used by Hume to access a drill site on the Koltai property. I have drawn the location of the proposed track/road on the map of our property with the hole locations provided by Hume. The map with the proposed length of track/road drawn is set out in the annexure marked RA5.

- 40 I do not agree that Hume can construct this 5-6 kilometres of access road and the drill site, and drill and rehabilitate the drill site and the access road in 4 weeks per hole. Yet, even at 4 weeks per hole the property will be impacted for 24 weeks, or 6 months.

Direct impact of Hume on our lives: From 2013 Arbitration for access continues

- 41 My wife and I have been impacted by Hume's proposed activities:
- (i) since January 2013 in seeking to gain access to our property;
 - (ii) from Septemebr 2012 to July 2013 to use our Carters Lane to access the Koltai property,
 - (iii) from December 2012 until mid 2013 suing us for abiding by a covenant on our Property's title.
- 42 Almost every day since September 2012, either for short periods or for the entire day, my thoughts and actions have in some way been dictated by Hume's proposed activities on the Property.

Arbitration for access

- 43 On 7 January 2013, Hume served on me a s142 notice seeking an access arrangement to drill 8 holes. On 20 February 2013, Hume served a s143 notice on me seeking to agree upon an arbitrator to arbitrate access. Hume then proposed a list of arbitrators, and in mid 2013, we agreed on Mr Neil SC as our arbitrator. Annexed and marked RA6 are copies of those letters.
- 44 The first day of the arbitration hearing was supposed to take place on 10 September 2013, however on 9 September 2013, the arbitrator vacated the date.

The Annexure marked RA6 contains a copy of that letter dated 9 September 2013 adjourning the arbitration.

- 45 Ever since, some times on a weekly and daily basis, or sometimes within a few weeks, the arbitrator has been calling for submissions on various matters from the parties including myself.
- 46 That arbitration process which began in January 2013 with Hume's serving on us of its s142 notice, continues today.
- 47 We are yet to have an arbitration hearing, let alone an interim determination from the arbitrator.
- 48 This arbitration seeking access began when Hume had its approval for its Phase 1 and Phase 2 drilling programs. Those programs are apparently completed.
- 49 There are approximately 200 pieces of correspondence just between myself, the arbitrator and Hume in relation to this arbitration. It is 3 large ring binders of correspondence.
- 50 Over the period 2013 to 2014 Hume has proposed several different configurations and numbers of drill sites on my property.
- (i) On 7 January 2013, Hume proposed 8 hole locations as shown on the map marked RA8.1;
 - (ii) On 15 July 2013 Hume proposed 7 holes with a different location for 3 of the holes as shown on the map marked RA8.2;
 - (iii) On 17 January 2014 Hume proposed to increase the number of holes to 22 and locate them as set out on the map in RA8.3; and
 - (iv) on 31 July 2014 Hume proposed a new set of 6 holes as set out in the map marked RA8.4.

All of these maps have been provided to me during the process of Hume attempting to get onto the property.

- 51 As a consequence, after January 2013 I based my farm plan, and the rotation of the cattle around the property, on the basis of Hume's proposed 8 holes. Six months

later in July 2013, Hume changed the locations and number of the holes and therefore I had to change my farm plan again, to accommodate this new configuration. Then in January 2014, Hume changed its plan again by proposing 22 holes. With the number of holes proposed it was not possible to viably rotate the cattle numbers we had on the property. I had to change my farm plan. In October 2013 we decided not to increase the stud herd any further as we did not know the impact Hume would have on our farm plans. In 2014, after receipt of Hume's proposed 22 holes, I took the decision to reduce the number of stud cattle on the property. I then planned for and sold most of our Limousin stud cattle at the October 2014 Moss Vale Limousin Stud sale. From 35 stud cattle, we are now down to 4 cows with calf at foot, 2 bulls (these are used in the commercial side of the business as well as the stud) and 5 heifers (these will be sold at the September /October 2015 Limousin sale). We have decided not to increase the stud until we have more certainty in relation to Hume's activities on the property. We were seriously annoyed each time Hume changed its holes, we have had to make investment decisions which we would otherwise not have made as a consequence of Hume's proposed activities on the property.

- 52 What I am concerned about is that Hume may propose another set of holes and I will have to change the farm plan again. This has caused problems in the operation and planning for the farm and has caused me to sell some of my stock when I did not want to sell the stock.
- 53 This creates considerable anxiety and stress in that I cannot plan and have not been able to plan since 2013. In fact, what has happened is that I have decreased the size of the herd when the sales have been on to allow me more flexibility in planning the operations on the property and rotating my herd in the event that Hume does gain access.

Direct Economic impact

- 54 Financially, since 2012 I have outlaid in excess of \$78,000 in engaging legal and professional advice in this dispute. For example, I have had to engage Marylou Potts Pty Ltd to advise me on legal aspects, I have engaged agronomy experts to assess the improved pastures, and provide their assessment of the impact of Hume's proposed activities on the property. Annexure RA 7 contains copies of those reports.

55 Time spent and hours lost in preparation of documentation and submissions over
this period, [not including the running around, the fund raising, the telephone
discussions with my solicitor or senior counsel, the taking of photographs, the
drafting of maps], can only be estimated at well over 600 hours.

56 Peter Martin, David Williamson and Alan Lindsay from SHCAG have all spent many
hours assisting me in the arbitration process with no compensation.

Future economic impact of the arbitration

57 We have not yet had our arbitration before Mr Neil SC.

58 I imagine that the arbitration itself will be expensive. I will have to continue to
engage solicitors to assist me.

59 Then Mr Neil SC has to prepare an interim determination.

60 Then, if there is anything in the interim determination that adversely affects me, I will
ask Mr Neil SC to have a final arbitration hearing and after the hearing I will get a
final determination. That process will be expensive. If I am not happy with the final
determination, which I will not be if Mr Neil SC grants Hume access to the Property,
over my improvements, then I will have to seek a review of that determination in the
LEC.

61 The cost of the review in the LEC, I imagine, will be doubly expensive as it will
involve preparing and restating my case again by solicitors and barristers.

62 This may involve another year or more of argument.

Lost opportunity

63 As stated, I have had to put on indefinite hold our plans to establish a stud Limousin
breeding programme stocked with high quality cattle.

64 Our plans had been to build a stud quality Limousin stud herd. Since 1996, we have
focused on vealers as the primary focus of beef production. We bought the best
bulls we could find. Later on we made a decision to value add to these bulls and
purchase some top quality stud Limousin females at the Moss Vale Stud Sale.
Each year from then we have added to the stud side of the business working up to
a total of 35 stud cattle in October 2013. We have bought the best Limousin bull of

his age in the Country. This bull may win at the Sydney Royal Easter Show this year. With this bull our intentions were to increase the quality of our Limouson herd. We have abandoned our plan for the development of the Limouson stud as described above.

65 If our plans had not been put on hold in 2013, by this time we would have been ready to down size to a smaller property. We have also had to put that plan on hold unless we wanted to sell the property at a serious discount, which we do not want to do. We know that we would have to sell the property at a serious discount because we know the story of our neighbour Mr Koltai who put his property, similar to ours, on the market in or about 2012 for over \$6 million. Now he has it on the market for \$4.95 million. That is a discount of at least \$1 million dollars.

66 All the time we have had to manage and maintain the property and stock. With the 6 holes the necessary carving up of the property to fence access tracks and drill sites will make managing the herd very difficult.

67 There is also the loss of the increased income from the stud business which could only be estimated as we have had to wait all these years for certainty and resolution.

68 It is an awful situation to be in with the property value diminishing, borrowing capacities correspondingly reduced, and no reason or incentive to improve the property as this is just putting good money after bad.

69 The value of the property has decreased since Hume's activities in the area by approximately 10%. Annexed and marked RA10 are the council's assessment of unimproved land value over the last years.

Physical and mental anguish

70 The change in our physical, mental, and emotional wellbeing can only be measured by how we feel, and how those who know us can see this change. The sad thing these days is that we sit out there on our verandar and look over the rolling country side and have a drink at the end of the day and within an hour we are at each other's throats, about everything. We imagine how horrible it will be to look over at the mine-head which we expect to be on the Evandale property which we can see. We imagine when the north westerly blows we will be covered in coal dust. No one

will be wanting to buy our property then. We wonder how or if we will have to deal with subsidence issues if Hume mines under the house.

71 We do not discuss Hume any more because it is too traumatic. We are uptight all the time. Friends of ours say to us “You’ve changed, you’re not the same”.

72 I now have a complete lack of drive and enthusiasm, not only towards the property and our cattle, but to life itself. Dispirited is probably the best word to describe how I feel. Everything seems too hard to tackle, and every little hiccup seems to be unassailable, and therefore becomes major.

My health

73 In the middle of all of this I was diagnosed with a tumour to my face. In mid 2013 that was operated on. The surgery was extensive. The convalescence has been long.

Wider social impact - History of Hume’s activities in relation to the Property

The chicane and the covenant

74 On 28 September 2012, I had a conversation with Mr Koltai my neighbour. He said words to the effect “*I have entered into an access arrangement with Hume Coal. Here is a copy of that agreement*”.

75 Sometime on or around 2 October 2012, a blockade and chicane was set up on my property at the beginning of Carters Lane, where it meets Golden Vale Road. I saw this chicane prevented any large vehicles or trucks from accessing Carters Lane. I went down to the chicane at all hours of the day and night from the day it was set up until it was dismantled on 6 May 2013. There were always 2 if not more people there. I was amazed and heartened by the number of people from the community who were wanting to help to protect Carters Lane from Hume. This chicane was eventually manned for 7 months by volunteers from the community. Annexed and marked RA11 are photos taken on 3 October and a copy of an article in the Illawarra Mercury on 5 November 2012 which are found on the SHCAG.com.au website.

76 On 8 October 2012, Mrs Keighley, the beneficiary of the covenant at the time, wrote to me advising that if I allowed Hume to use Carters Lane I was likely to be the subject to legal action. Annexed and marked RA12 is a copy of that letter.

77 On 16 October 2012, I received a letter from Minter Ellison acting for Hume, advising it would commence legal action against me if I did not dismantle the chicane. Annexed and marked RA13 is a copy of that letter.

78 On 8 November 2012, I was served with a summons filed by Hume in the NSW Land and Environment Court (**LEC**) seeking a mandatory injunction to dismantle the chicane and grant Hume access up Carters Lane to the Koltai property.

Hume accessed the Koltai property from Golden Vale Road yet continued to use Carters Lane

79 On 23 January 2013, at around 7am I received a telephone call from Matthew Burrows, who also accesses his property from Carters Lane. He said words to me to the following effect: Mr Burrows: *"I can see that there are Hume Coal onsite preparation vehicles and drilling vehicles on Robert Koltai's property."* I said *"How did they get onto his property"*. He said *"I'm not sure"*.

80 On the same day and soon after my telephone conversation with Mr Burrows, I went down Carters Lane and saw:

(a) drilling rigs and onsite preparation vehicles on Mr Koltai's property.

(b) Hume personnel replacing the fencing at the access point to Mr Koltai's property from Golden Vale Road.

(c) Road signs saying "40kms" on Golden Vale Road and near the access point to Mr Koltai's property from Golden Vale Road.

81 Hume was not successful in the LEC in the interlocutory injunction in December 2012. Mr Justice Sheahan said there were real questions to answer and the dismantling of the chicane would not allow for the maintaining of the status quo.

82 We lost the final case and on 6 May 2013 I saw the dismantling of the chicane.

Paying Costs of Hume's injunction proceedings: Carters Lane Defence fund

83 On 9 June 2013, I attended the LEC and heard Mr Justice Sheahan order that my wife and I pay the legal costs of Hume's solicitors, Minter Ellison. On 7 August 2013, Sue Higginson of the EDO who acted for us in the proceedings, wrote to me and advised the costs were \$188,000 but Hume would settle for \$140,000. Annexed and marked RA14 is a copy of that letter.

Community rallies to assist payment of costs

84 On or about late June or July 2013, I had a conversation with Peter Martin, the Convener of the Southern Highlands Coal Action Group (**SHCAG**). In that conversation he said to me words to the effect "*The locals will help you to pay these costs because you're doing it for them too. Some of the neighbours are setting up a fund separate to SHCAG to raise money by holding community events.*"

85 From some time after this date until today, there has been established the Carters Lane Defence Fund to pay the costs of defending Carters Lane. I have worked on raising this money with the community since then. In mid September 2014, I was told by Matt Burrows who manages the books for the fund, that we had managed to raise all the funds to pay the Minter Ellison costs. In fact, we were in profit by \$30k.

86 I have spent hundreds of hours in relation to the fund raising, as have many other people in the community. We have had:

- (i) a Jazz Picnic Fundraiser held at the Montrose Berry Farm in Sutton Forest on 22 September 2013;
- (ii) a Jumble Sale to be held at the Sutton Forest Hall on Saturday and Sunday 16 and 17 November 2013;
- (iii) Melbourne cup day lunches and celebrity lunches;
- (iv) there have been 2 open garden days; and
- (v) we have raffled a car and numerous other items.

There would have been hundreds of people involved in these activities. Annexed and marked RA15 are copies of flyers and rosters related to the Carters Lane defence fund.

87 The payment of these costs hung over me like a black cloud.

Hume on the Koltai property

- 88 Soon after Hume had won in the LEC, from about May 2013 until about late July 2013, I saw drilling rigs, water trucks, many 4 wheel drives, trucks with drilling rods, compressors, delivery vehicles for tanks and equipment, bob cats, graders, using Carters Lane on a daily basis. Many of the larger 10 tonne trucks would park in the Lane on the lawn outside Mr Koltai's front gate. Annexed and marked RA16 is a copy of a photo of those trucks parked in Carters Lane.
- 89 I saw on many occasions these trucks do U-turns across the lawn of Carters Lane. I observed wheel ruts in my garden outside my gate between Carters Lane and our drive way. Annexed and marked RA17 are photos of those wheel marks and other photos of the state of Carters Lane. I was furious when I saw this disregard for my property.
- 90 On or about June 2013, Hume began the construction of a formed road down to a drill-rig and compressor that appeared stuck on Mr Koltai's property. Annexed and marked RA18 is a copy of a photo of the drill rig which was unable to be got out without the building of the road.
- 91 When I saw the bogg and the rig, I said to my wife words to the effect "*Our property has no hope if a rig gets bogged on it, our paddocks are much lower lying than where the rig is on Koltai's property*".
- 92 From on or about 19 July 2013, I witnessed graders constructing a road on the Koltai property from their gate to the place where the drilling rig was stuck. Annexed and marked RA5 and RA19 are copies of photos of that road construction and the impact of Hume's activities on the Koltai property.
- 93 I watched Hume's activities on the neighbouring Wongonbra property. Annexed and marked RA20 are photos of Hume's drilling activity on the Wongonbra.

Damage to Carters Lane by Hume and the 16 months it took for Hume to agree to pay for its rehabilitation

- 94 Carters Lane, which was a pristine laneway, a delight to drive upon, and return home to, which had always been beautifully maintained, had been trashed by Hume's activities.

- 95 After Hume's use of Carters Lane, it had pot holes and wheel ruts, the contour had been destroyed, there were large rocks in the middle of the laneway, the surface was being washed onto the bordering lawn. It was extremely distressing to drive up the lane each day when it was in this condition. Annexure 17 contains photos taken during Hume's use of Carters Lane of pot holes, loss of road base, ruts, road base on the border lawns, the rutting of the surface of the carriage way, large rocks on the surface, and the outside of the driveway to the Koltai property.
- 96 From July 2013 until after 20 August 2014, for over a year I waited for Hume to repair Carters Lane. I could not invite my friends with cars with low suspension to drive up Carters Lane as I was concerned the car would be damaged.
- 97 On 2 April 2014, I spoke to Andrew Tull and Scott Priestly, members of the NSW Department of Resources and Energy's compliance branch about the repair of Carters Lane.
- 98 On 27 August 2014, I received a letter from Hume concerning the rehabilitation of Carters Lane. Annexed and marked RA21 is a copy of that letter and that email. In that letter Hume proposes to transfer funds to me for the rehabilitation of Carters Lane. Following the transfer of the funds from Hume, I had to engage Moses Grader and Roller Hire to rehabilitate Carters Lane. That rehabilitation involved stripping, leveling and recontouring Carters Lane and cost \$12,999. Annexed and marked RA22 is a copy of Moses Grader Hire quote for the rehabilitation of Carters Lane.
- 99 I was again annoyed that I had to spend my time organizing the rehabilitation of Carters Lane when this should have been done by Hume and should have been done by Hume in July of 2013, 13 months earlier and in the meantime I have had to drive on a road full of potholes and ruts while they refused to fix it.

#SWORN #AFFIRMED at

Signature of deponent

Name of witness

Samantha Jane Bailey

Address of witness

42 Conflict Street, Sutton Forest NSW 2577

Capacity of witness

Justice of the Peace

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 ~~#I saw the face of the deponent. [OR, delete whichever option is inapplicable]~~
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*~~
- 2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]
~~#I have confirmed the deponent's identity using the following identification document:~~

 Identification document relied on (may be original or certified copy)[†]

Signature of witness

 Justice of the Peace in and for the State of New South Wales

Registration No 128586

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7

 [* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[[†] "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see [Oaths Regulation 2011](#) or [JP Ruling 003 - Confirming identity for NSW statutory declarations and affidavits](#), footnote 3.]

