

**AFFIDAVIT OF PHILLIP POLLICINA,
2 July, 2015**

COURT DETAILS

Court	NSW Land and Environment Court
Division	Class 4
Registry	Sydney
Case number	15/80405

TITLE OF PROCEEDINGS

Plaintiff	Peter Martin & Others
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Defendant	Hume Coal Pty Ltd
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FILING DETAILS

Filed for	Plaintiffs
Filed in support of	Plaintiffs' Summons dated 12 May 2015
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

AFFIDAVIT

Name Phillip Pollicina
Address 80 Carters Lane, Sutton Forest NSW 2577
Occupation Business man
Date 2 July 2015

I say on oath:

- 1 I own the property at 80 Carters Lane, Sutton Forest NSW 2577 being Lot 9 DP1040207 (**Pollicina property**).
- 2 The Pollicina Property is a property of approximately 160 acres. I purchased the Pollicina Property in May 2001 for approximately \$700,000.
- 3 There is no direct access to the Pollicina property from a public road. I have a right of way on my title from a public road, being Golden Vale Road, via Carters Lane, owned by the Alexanders, to get to the Pollicina property. Annexed and marked **PP1** is a copy of a map of the Pollicina property showing the Carters Lane access from Golden Vale Road.
- 4 Fesen Pty Ltd (**Fesen**), of which I am the sole director and shareholder, purchased an adjoining rural property to the Pollicina property of approximately 350 acres (Lots 29 and 30 DP262738) in June 2003 (**Fesen Property**). **PP2** are 2 aerial photographs showing the location of the Fesen property and its relationship with the Pollicina property.
- 5 To access the Fesen property, one has to travel through the Pollicina property. Fesen cannot be accessed directly from a public road. The only point of access to Pollicina is from Golden Vale Road via Carters Lane.
- 6 The Pollicina and the Fesen Properties make up approximately 510 acres. I operate the properties together as one working property.
- 7 A subdivision into 4 approximately 100 acre blocks on the Fesen property, and a home block on the Pollicina property of approximately 110 acres has been approved by the local council. I have not yet sold the 100 acre blocks due to the impact of the Hume Coal project on property prices in the area.

Brief history of acquisition and development of the Pollicina property

- 8 When I purchased the Pollicina property it was vacant land. It had 7 paddocks and 3 dams. The property had no power, no water, no electricity, no house, no sheds, or outbuildings, no water reticulation system. Initially I made significant investments in upgrading the properties, in fencing to facilitate the subdivision and fencing generally, in water reticulation and supply, troughs for stock watering, in weed control, fertiliser and trees for wind breaks and general ornamentation.

Dwelling House

- 9 There is a dwelling house on the Pollicina property. I regularly spend between 3 and 5 days a week at the Pollicina property. I do have another dwelling house. It is currently on the market to be sold. I do not own any other dwelling houses.
- 10 When I purchased the property it had no dwelling house on it.
- 11 In about 2006 I caused the dwelling house to be built. It has 4 bedrooms, 2 bathrooms, kitchen, dining and lounge area. It has a 2 large patios and a garage.
- 12 In 2004, I engaged an architect to design what will become the main house on the property. It is 1200m² in area. The slab has been constructed and cost approximately \$450,000. I also had installed an envirocycle. This is connected to the slab. Also connected to the slab is a 100,000 litre concrete water tank which is buried in the ground next to the slab. This is for the collection of water from the roof of the main house. Annexed as **PP3** are the plans for the main house, the and the onsite Wastewater Management study which informed the design of the envirocycle and the water tank.
- 13 I have not continued the building of this house, as the property value has diminished so substantially since 2011 because of Hume's activities I believe.

Driveways

- 14 When I purchased the property I commissioned driveways to be built from Carters Lane to the dwelling house and to the stud and spelling areas. The area for the driveways was pegged out, the top soil removed, the area leveled by a grader. Road base was laid on the surface and rolled with water and compressed. A sandstone mix was laid on top and subsequently rolled and compressed. These works cost approximately \$16,000. Annexed as

PP3 is the A2 plan and description of the driveway works undertaken in 2003 as part of the subdivision of the Pollicina property from the Alexander property. The driveway is about to be upgraded in order to accommodate the new horse breeding and spelling operations to be conducted at the property.

- 15 At the beginning of 2015 approximately 300 tonnes of blue metal road base was laid on top of the road surface. Initially a grader went across the surface and then the blue metal was laid, shaped with the grader, and then rolled, watered and compressed. I observed these works take place. A 350 mm diameter pipe was laid under the surface of the driveway for drainage purposes. These works cost approximately \$7000. I intend to do further works to the driveway leading to the stud and spelling area.

Garden bordering driveway and around the house

- 16 At the entrance of the Pollicina property with Carters Lane, and continuing either side of the driveway extending over approximately 2 hectares I chose 52 trees to line the driveway. I and a contractor planted the trees, which when planted were approximately 2.5 metres tall. Now they are about 8 metres tall. We put wood chips and mulch around the trees. I put in a water sprinkling system which was linked to a pump from the bore. I regularly weed, mulch and spray around all of the trees.
- 17 I planted 2 cherry trees and a chestnut tree along the side of the driveway leading to the stud and spelling area. Each fruit season I cover the cherry tree with netting to keep off the birds.
- 18 I regularly spray, fertilise and mow the lawns surrounding the driveways.
- 19 I have also planted some red hedging either side of the gate entrance, pine hedging, 3 red blossom trees and agapanthas in the garden. These trees and hedging are mulched and are regularly sprayed and weeded by me.
- 20 I regard these areas as part of my garden.

Business run on the properties

- 21 Since 2002 when I bought the Pollicina property and 2003 when I bought the Fesen property, I have run a black angus cattle breeding business on these properties.
- 22 As at June 2015 I have:

- a) A black angus stud bull
 - b) 65 black angus breeders;
 - c) 48 calves at foot, which calved in February/March 2015;
 - d) 15 black angus breeders which are due to calve in August/September 2015;
 - e) 2 riding horses.
- 23 Generally I carry approximately 120 breeders on the properties. I am in the process of restocking up to 120 breeders.
- 24 I calve twice a year on the properties, approximately 60 breeders calving in February/March and 60 in August/September.
- 25 The calves are kept on the properties for about 6-9 months and are then sold.
- 26 I am currently undertaking works to use part of the Pollicina property for horse breeding and spelling. Fesen currently owns 2 brood mares. These are successful ex racehorses (which means that they have won races; 1 has won over \$300,000 in prize money) . She won 7 races including a listed race in Queensland and placed several times. Fesen intends to purchase a further 6-8 brood mares. I intend to bring these mares onto the property once the necessary facilities are in place.
- 27 Fesen was a part owner of the Melbourne Cup winner in 2013, Fiorente. One of the brood mares will foal around September 2015 with Fiorente as the sire. Prior to foaling she will be transported to a property where she foals, possibly Coolmore Stud. Within 30 days of foaling she will be ovulating again and I intend for her to be "covered" by another chosen stallion, possibly from Coolmore Stud. After a further period of at least 42 days, the brood mare, with her foal at foot, will be transported to the Pollicina property, where she remains for the next 10 months or so. When the foal is 6 months old it is weaned and kept on the property until ready for sale (after a further 10-12 months). At the end of 11 months the mare will hopefully foal again to the second sire. The process repeats itself with all mares.
- 28 Fesen also owns yearlings and racehorses. When these horses are not racing they will be spelling on the Pollicina property.

- 29 I will need to construct a number of facilities on the Pollicina property to create the horse breeding and spelling facility as follows:
- a) Erection of a 4 bay shed with concrete base for storage of feed and equipment, wash area, power. Annexed and marked **PP4** are the plans for the shed which is now in the process of construction;
 - b) Creation of steel round yard;
 - c) Creation of all-weather hard standing area near shed;
 - d) Erection of approximately 600m of electrified timber rail and mesh fencing creating 4 individual paddocks of approximately 2000m²;
 - e) Removal of existing fencing;
 - f) Erection of shelters in each paddock with water reticulation;
 - g) Planting of pine trees around boundaries creating wind shelters and shade;
- 30 The paddocks will be fertilized, aerated, limed and direct drilled with a mixture of pasture grasses suitable for breeding and spelling horses. I will be advised on what pasture grasses to direct drill.
- 31 Fesen has very recently signed the contract for the erection of the shed. I have budgeted \$85,000 for this project. This is stage 1. As the business grows, and Fesen obtains more brood mares, more paddocks will be created on the Pollicina property.

Fences on the properties

- 32 Following the purchase of the properties I have installed approximately 70% new fencing. The fencing is 5 strand wire or wire and ring locked and electrified internal and boundary stock fences. The electric fences are powered from a main power source which is located on top of the hill in one of the sheds. This electricity source is connected to a strand of wire in the fence in paddock 3 which continues through the fencing throughout the Pollicina property. In order to continue the electric fencing from the fence on one side of a gate to the fence on the other side of the gate, the electrified wire is threaded through a plastic pipe which goes down the side of the fence, is then buried under the gate about 100ml from the surface and it comes up on the fence on the other side of the gate where it is connected the electrified wire which continues around the paddock. The same method

is used on the Fesen property. The power source on the Fesen property is near the bore at the electric pole in paddock 6.

- 33 Over the years I have created new paddocks by the installation of fencing. I regularly repair and upgrade fencing and gates on the properties.

Water reticulation throughout properties

- 34 On each property I have caused to be installed an irrigation system with underground water reticulation through polypipes gravity fed from tanks on a hill to which water is pumped from a bore using a bore pump. The polypiping is connected to above ground taps and the troughs in the paddocks. Each paddock has a watering trough. The pipes are fed by 2 large concrete tanks, one on Pollicina and one on Fesen. Most of the watering troughs are concrete and I have put most of them in. I have installed approximately 5-6 km of 40 mm diameter plastic pipes. In addition, there are 350mm diameter pipes under the laneways which carry surface water between paddocks. I installed those pipes within the laneways. Annexure **PP2** contains an A3 sized map which has drawn on it the locations of the troughs indicated by a "W" in a square, the bores indicated by a "B" in a square and the approximate location of the underground poly piping for the water to get from the bore to the tanks, and from the tanks to the troughs.

Paddocks and pastures

- 35 There are 28 paddocks across the two properties. The cattle are rotated between the paddocks.
- 36 I have worked to improve the pasture on each of the paddocks by organic methods, spreading turkey manure fertilizer, lime, spot spraying. Each paddock is spot sprayed for tussock and gorse. Occasionally some of the paddocks have been aerated and slashed.
- 37 Since I have owned the properties a number of the paddocks have been sown with pasture. Soil testing was undertaken, and the paddock was sprayed and limed and direct drilled with a tractor and a machine that delivers the seed and fertiliser.
- 38 The paddocks have a pasture mixture of phalaris, dandelion, cocksfoot, Yorkshire fog grass, white and strawberry clover, sub-clover, and native perennials in various percentages. The pasture composition of each

paddock is described in more detail in the letter from Mark Lucas annexed at **PP5**.

- 39 Some years I have taken a hay crop of between 70 and 80 bales from 2 of the paddocks which produce the best hay. I employ a contractor who mows the hay, and bales it. Once it is baled, I move the bales to other paddocks within the properties with a tractor and a pair of forks and fence that area off with electric fencing. Some bales have been put in the hay shed.

Terrain of the properties

- 40 Annexed and marked **PP6** is a rough graph of the topographical contours of the Sutton Forest area. Marked on that map are the 2 properties and how they sit in that terrain. This map shows that the low lying areas of the properties form part of a flood plain that disperses rainfall from the surrounding higher ground. Annexed and marked **PP7** are copies of 2 videos taken in 2013:

- (i) the first taken by me on 1 July 2013 at 13.58pm from paddock 12 near the intersection with paddocks 8 and 9;
- (ii) the second taken by me on 3 October 2013 at 2.54pm in the laneway between paddocks 11 and 12.

These videos provide an example of how wet the Wells creek area can get. Since then Wells Creek has run in a similar fashion several times.

Also contained in Annexure **PP7** are photos taken on 24 May 2015 on the Pollicina property at the junction between paddocks 5, 4, 6 and 7, and between paddocks 8 and 9; and photos taken on the Fesen Property in the laneway between paddocks 11 and 12. The photo taken between paddocks 8 and 9 shows the impact of a covered quad bike on the pastures approximately 2-3 days after a rain event of 48ml.

- 41 Wells Creek is the main watercourse draining the area with several minor watercourses taking the water from the hills and discharging the flow across the flat ground. The result is that this land frequently becomes waterlogged and is generally in a soft condition.

- 42 The impact of rain events on the properties is marked. I can give you many examples, but the following three, are examples under differing weather conditions.

- (i) On October 8th 2013 conditions had been very dry for the preceding

3 months, and the ground was mostly firm, but I could not cross the Wells Creek crossing in a 4 wheel drive. I had to use a quad bike.

(ii) On July 3rd and 10th 2014 rainfall in the preceding 3 months had been below average. On this occasion the FWD Landcruiser crossed Wells Creek with some difficulty and in addition we observed other areas of the access tracks that would have been unsuitable for the FWD Landcruiser.

(iii) On January 23rd, 2015 the area had absorbed heavy rainfall in December and the first 12 days of January, but even though the 10 days that preceded our visit had been quite dry, the main access track across the property, the Wells Creek crossing and several paddocks were totally waterlogged. Crossing with the FWD Landcruiser was nearly impossible, with the vehicle fishtailing particularly in the Wells creek crossing area and where the funnel is on the Pollicina property.

Sheds

43 I have caused to be constructed 3 sheds including a hay shed and 2 machinery sheds connected together.

44 The machinery shed stores my tractors, and horse floats and other equipment. The hay shed is used for the storage of hay.

Wind breaks

I have caused to be planted wind breaks or shelter belts within the paddocks of the properties. Over 4000 trees have been planted by me to create these wind breaks or shelter belts. In each area I dug 2 parallel trenches using my tractor and an auger to loosen the soil. I subsequently dug holes, planted the tree and mulched. The trees were initially watered by me using a 1000 litre water tank on the bank of the ute.

Dams

45 There are approximately 9 dams on the properties. I put 2 dams in by digging them out.

Shale track

46 I caused to be laid approximately 1200m³ of shale on the Fesen property track to the tanks on the top of the hill on the Fesen property.

Cattle laneways

47 There are about 1.5 km of cattle laneways on the properties. These are used for moving cattle between the paddocks. The underground water pipes (which lie about 4-6 inches below the surface) to supply the water troughs in each paddock cross the cattle laneways at various locations. There are gates in the laneways. These gates have electric wiring under the surface to continue the electric fencing from paddock to paddock.

Location of the drilling holes generally

48 For the purposes of this affidavit I will assume that the location of the holes is that set out on the maps attached to the finally determined access arrangement for the properties.

Hume's holes proposed on the Pollicina Property

49 Annexed and marked **PP8** is a map of the Pollicina property with the paddocks numbered 1 to 9.

50 The hole in paddock 3 of the Pollicina property is at the base of a quite steep hill quite close to a quite soft and often boggy area.

51 The hole in paddock 7 of the Pollicina property is at the furthest away spot and the wettest corner of that paddock.

52 The hole in paddock 8 of the Pollicina property also sits within soft and often boggy ground.

Access to these holes on the Pollicina property

53 Hume's planned 'paths of access' diagram is annexed and marked **PP9**.

54 Without being ordered by the Land and Environment Court, I will not give my consent to Hume to:

- (i) use my right of way up Carters Lane from Golden Vale Road;
- (ii) use my driveway; or
- (iii) undertake any activity within 200m of my house; or
- (iv) undertake any activity within 50m of my gardens; or
- (v) cut my fences to allow access from neighbouring properties;
- (v) undertake drilling activities in my pasture land.

There is no other access to the Pollicina property without gaining consent of neighbouring property owners. I will not consent to the cutting of my fences.

I do not give my consent to Hume to cross the Pollicina Property to get to the Fesen property.

55 Nevertheless, if a court rules that I must give Hume access despite these improvements, Hume will need to have access tracks across the flood plain of Wells Creek.

56 Using Hume's maps and the scales in their maps I have measured the length of the Fesen property to be approximately 1.4 kilometres long. The majority of which is low lying land subject to flooding due to Wells Creek.

Fesen Property

57 Using Hume's maps and the scales in their maps I have measured the length of the Fesen property to be approximately 1.3 kilometres long. The majority of the Fesen Property sits within the Wells Creek flood plain.

58 The Fesen property consists of 16 paddocks of improved pastures. Annexed and marked **PP10** is a copy of a rough map of the Fesen Property showing the paddocks, the gates, the dams, the fence lines, Wells Creek.

59 Wells Creek runs through paddocks 10, 11, 12 and 15 of the Fesen Property.

60 These paddocks are always soft and become very water logged and boggy and as a consequence of any rain event.

61 Wells Creek floods on a regular basis. The last time was in December of 2014 and before that in September of 2014.

62 I find it is very difficult to navigate paddocks 10, 11, 12 and 15 with anything heavier than the quad bike for some time after rain events. If I do use the 4 wheel drive, the wheel ruts are deep and also dangerous to navigate and they remain.

Issues with the locations of Humes currently planned holes and access Fesen property

63 Hume's latest proposed bore hole locations for the Fesen property are set out on the map marked as annexure **FP11**.

64 One of Hume's bore holes is within paddock 11 of the Fesen property which is the paddock Wells Creek runs through. This paddock is very soft and often very boggy. I do not travel much in this paddock other than on a quad bike because it is too soft and boggy even after long dry periods.

- 65 The second of Hume's bore holes is in paddock 12 of the Fesen property which wells Creek also runs through. For the same reasons I do not often drive in this paddock with anything more than a quad bike because it is too soft and boggy even after long dry periods.
- 66 The third, fourth, fifth and sixth of Humes bore holes on the Fesen Property are in paddocks 7, 16, 2 and 1 all which sit within the lowest or second lowest lying areas of the contour map.
- 67 The holes in paddocks 16 and 2 are in the middle of the paddocks. These locations will interfere with my ability to use these paddocks.
- 68 There is no existing track to any of these holes on the Fesen Property.
- 69 A number of the holes are located almost on top of the water trough for that paddock and trough water reticulation infrastructure.

Generally

- 70 I fear that Hume will have to construct a formed road through my property to get to its proposed drill sites. I have measured the length of formed track that I think Hume would have to install on the Fesen and Pollicina properties to get from hole to hole at approximately 5.5 to 6.0 kilometres. They would also have to navigate lengthy boggy areas.
- 71 I have seen the damage the construction of such a road does, as I saw Hume building the road on the Koltai property to the drill rig on that property close to the boundary with Carters Lane.
- 72 I fear if Hume does build a road across the flood plain that it could create a barrier to the natural drainage of water across the property and lead to paddocks upstream of the road becoming even more waterlogged than they currently can be and the downstream paddocks drier.
- 73 I have spent millions of dollars purchasing and improving my properties.

#SWORN at

Signature of deponent

Name of witness

Address of witness

Capacity of witness [#Justice of the peace #Solicitor #Barrister
#Commissioner for affidavits #Notary public]

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.¹
- 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)²

Signature of witness

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

[¹ The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[² "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.]