

'ARALUEN'

399 Golden Vale Road,

Sutton Forest NSW 2577

26/6/17

To whom it may concern:

### **SUBMISSION ON THE HUME COAL PROJECT:**

My name is Kathleen Roche. I reside on a property called 'Araluen' in Sutton Forest, which is a small village located in the Southern Highlands of NSW. I own the property jointly with my husband, Dr John V. Roche OAM. It consists of two lots, purchased in 1976 and 1979, in total 160 acres. We have continually improved and maintained the land once it came into our ownership. We have lived continuously at Araluen for the last 40 years.

My husband is now 89 years and I am 81 years old, and despite our age are still actively engaged in the care of our land. Before retiring in 2007, I worked as a Pharmacist for 39 years and my husband as a General Practitioner in the nearby town of Moss Vale, for 49 years. We raised our five children at Araluen, and they remain closely connected. One son, Dr Vincent Roche, is very much engaged in the running of Araluen and its maintenance, particularly in regard to the Equestrian Eventing facilities (see below).

#### **Three-day Eventing:**

Araluen, as it is today, is the product of over 40 years of constant work, carried out by my husband and me, our family members and at times hired help. Over the last 25 years or so we have developed a three-day Equestrian Eventing Course that is one of the best in NSW. It's used by Berrima Horse Trials, a 'not for profit' club, who run major events here three times a year. Training occurs almost every week on the property.

All of Australia's Olympic riders have competed here from one time to the other. Local schools also use the facilities for multi-school equestrian events, at no cost. Any money we raise goes into maintenance and into developing the facilities.

This all came from our kids love of horse riding and has become a lifelong passion for the Roche family. Vince set the 3 Day Eventing Course for the Sydney Olympics and advises other Olympic cities from time to time. Please see the attached Affidavit from Vince that was used in a court case in the Land and Environment Court in which we were a plaintiff regarding s31 'Significant Improvements'. This was the result of Hume's demands which I'll discuss below.

The challenge to transform our land into the beautiful, productive land that it is today was great, but the rewards of living in this very special place are so much greater. A great deal of time and effort goes into maintaining Araluen and all the improvements we have made over the years. Araluen has been our life's work, having brought the soils alive with careful husbandry, by applying only natural fertilisers and with the planting of hundreds of trees over the years, which we still continue today.

#### **Hume Coal:**

We were deeply concerned when we learned of the Hume Coal/Posco mining plans to develop a mine beneath our land and that of our neighbours. We feared the impact that coal exploration, soil test drilling and mining would have on Araluen. We were fearful of the fate of our Well's Creek and its source of pristine water. We are also fearful that it would mean the death of the equestrian eventing venue, as the threatened mining activity would render Araluen as unsuitable given our reliance on bore water which we feared would be destroyed.

The effect of this made us anxious in the extreme. Our life's work was threatened, the legacy of our land likely to be destroyed. We then began to see the impact on our neighbours, being bullied by Hume Coal to gain access to their rural land. We saw the financial pressures that they were suffering, we became fearful that this was to be our fate.

#### **Access for Drilling:**

The first signal of the expected impact was the devaluation of our property. We tightened our belts and prepared for the inevitable, potential destruction, the first hint arriving in the form of an s142 notice, advising of the intention of Hume Coal to obtain an Access Agreement, to explore for coal under our property. We got a notice early on (I've forgotten when) and a second came in early February 2014. This was a few days after I had been discharged from hospital after a right knee replacement.

My phone call, directed to the author of the S142 notice, Hume Coal Project Manager, Tim Rheinberger did not result in contact. He was not available, so I spoke with a member of staff explaining I was undergoing daily, rigorous rehabilitation for some weeks and so unavailable for a meeting at that time. I was told, Mr Rheinberger would return my call. I did not receive any call as promised.

I received an email in mid-March 2014, requesting a meeting to discuss access arrangements. I agreed, but my request to record the meeting for my elderly and deaf husband was denied. We both felt this was unreasonable as he was still very much a part of our threatened property. Despite this we did agree to a meeting, setting the date for 2 April 2014 at 4pm at the office of Hume Coal in Argyle St. Moss Vale. I asked my neighbour and friend, Mr Tim Frost, to accompany me as I needed support in these negotiations, as I was very anxious.

I was taken aback when two young women arrived 10 minutes later and then only after we rang the main office. They stated that they were liaison staff and **were not able to discuss the matter of an Access Agreement!** We were told Mr Rheinberger was not available to meet with us right then! We then submitted our questions in writing to Hume Coal, expecting responses. They were ignored. Hume Coal's response just two days after the aborted meeting, was to serve an s143 Notice. Hume proposed the appointment of an experienced Arbitrator, who is a lobbyist for the Coal Industry. They asked us to agree to his appointment, giving us no choice of arbitrators. It was very clear that Hume Coal were not interested in discussing an Access Agreement. We refused to accept their nominee.

Hume Coal made another request for a meeting to discuss land access in November 2014. I replied that **the date they selected was prior to the date that the request was made**, so obviously was not possible! Hume Coal's response was to name their alternate choice of arbitrator. Hume Coal claimed we had failed to meet to discuss an access agreement. This was NOT true! Once more we rejected their nominated arbitrator and suggested Mr Peter Neil SC who was arbitrating for other locals, the Alexanders. This request was ignored. It was clear that Hume had no interest in discussing access but were only interested in compelling us into arbitration.

#### **Court Cases:**

In the meantime, a group of landowners including ourselves had taken Hume Coal to court to challenge its ability to access our properties on the basis of Section 31 of the Mining Act relating to 'Significant Improvements'. This followed another case where SHCAG took the government and Hume to court over a Review of Environmental Factors for Hume to drill 25 more exploration holes on a small number of properties, including ours. Both cases were lost much to our horror but we and the other landowners decided to appeal the s31 case. We were using our limited superannuation fund money to pay our share of the legal costs for these cases. We have contributed about \$70,000 to date which we cannot really afford but feel that we have to do it.

We eventually won the appeal on the s31 case and got a costs order against Hume for \$440,000 in total but 12 months later we're still waiting to see our share of any money after the costs are assessed. The win means that Hume will probably never get onto our property, at least that's what we hope.

#### **Bowel Cancer:**

While all this was going on I couldn't participate in any arbitration because I was suddenly diagnosed with a second bout of Bowel Cancer. I communicated the circumstances of my health issues to Hume, requesting that arbitration be deferred on compassionate grounds. This was ignored.

I had begun to experience quite severe upper and lower gastric symptoms in early September 2014, which escalated through November and December. I was decidedly unwell, finally diagnosed as Bowel Cancer in early January 2015 following a colonoscopy. Severe weight loss continued and I remained very concerned about the impending surgery, multiplied by my ongoing concerns of the next move by Hume Coal. The thought of engaging in arbitration whilst in a dubious state of health, pressed heavily upon me. I was very concerned for my elderly husband, his frailty and poor hearing.

Following surgery in early February, followed by 13 days hospitalisation, I was referred for a 6 months course of chemotherapy commencing in early March 2015 and from the very first I.V., chemo side effects were apparent. These would continue for 16 or 17 days of each 21-day cycle as I was also having twice daily dosage of an oral chemo drug and enduring the side effects of this drug. I was able to leave my home only when I knew I could be close to bathroom facilities.

#### **Arbitration:**

What followed was a cascade of phone calls from the arbitrator nominated by the Government advising me that he had been appointed. This happened days before I received a written notice.

It was a physical impossibility for me to attend arbitration in Sydney, given my state of health and continuing side-effects of the chemotherapy, so I requested that Mr Peter Martin be my agent. Mr Martin was rejected as our agent by the arbitrator, who

demanding a signed letter to this effect and would not accept an email from me stating his appointment. This signed letter was sent by next day delivery, but the arbitrator denied receiving it and proceeded to arbitration without any representation for us. This could only be described as bullying. It seemed to be making a mockery of the law when arbitration could take place with only one party present. In my state of health, I felt battered and bruised, sick in my very soul that I was helpless to have our case put forward.

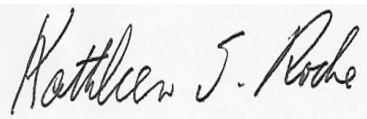
The arbitrator was advised by our solicitor, that a joint appeal from the five landholders was set for hearing in the LEC in May 2015. Despite this he continued with the arbitration and then set a date for Access to our property for 11am, 9 June 2015. On that day I was due to be in the Oncology centre at 9.30am for Pathology followed by IV chemotherapy at 11am. Mr Martin advised Minus that I could not be present for this reason. I wasn't there but my husband told me that the arbitrator and Mr Rheinburger turned up. When standing on the road adjoining Araluen, my elderly husband met with him and told him face to face that Peter Martin was our Agent. He then accepted that 'for the day' Mr Martin could represent us.

Peter Martin then denied Minus and Hume Coal access to Araluen because I wasn't available and it wasn't appropriate in the circumstances. After this confrontation, the arbitrator sent an email saying that on 10 June, the letter from us officially appointing Peter Martin as our Agent, was found in his office. This letter had been there for 10 days!

My anxiety was at a high-level coping with the side effects of the ongoing chemotherapy and these bullying tactics. A letter which was sent by Mr Martin to The Department of Resources and Energy requesting that the arbitrator be terminated. After an 'investigation' by department officers, we were shocked when the request was denied for no good reason that we could see.

Following the LEC Appeal decision, we remain hopeful that common sense will prevail and this plan for coalmining in the Southern Highlands will be permanently rejected by a Government that really cares about maintaining great agricultural areas.

My husband and I will be devastated if our life's work is mutilated by mining. We have always known that we are but custodians of our land. We have overcome life threatening illnesses, in recent years, and continue to give back to our land, so that one day we can pass it on to our next generations, confident that they will continue to care for and love Araluen.

A handwritten signature in black ink, reading "Kathleen J. Roche". The signature is written in a cursive style with a large, stylized 'K' and 'R'.

Kathy Roche

Attachments: