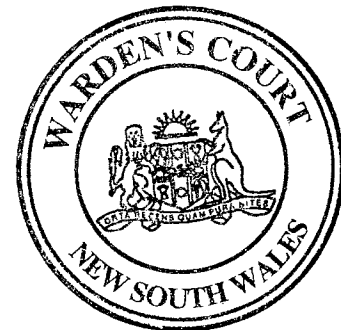


**IN THE WARDEN'S COURT
AT GUNNEDAH IN THE STATE
OF NEW SOUTH WALES**



16 JULY 2009

J.A. BAILEY MINING WARDEN

Case No.	Applicant(s)	Respondent
2009/08	EVANS, Benjamin Arthur EVANS, Neville John EVANS, Gemma Catherine	Coal Mines Australia Limited
2009/09	Rado Ranch Pty Limited	Coal Mines Australia Limited
2009/10	Singletree Pty Limited	Coal Mines Australia Limited
2009/11	Maylan Pty Limited	Coal Mines Australia Limited
2009/12	GRANT, Allan Raymond	Coal Mines Australia Limited

**Applications for review of Arbitrator's Determination.
Section 155 Mining Act 1992.**

Appearances at Hearing at Gunnedah 25-27 May 2009:

Mr P Long and Ms A Weinthal, Solicitors of Long Howland appeared for each of the Applicants

Mr R Beasley of Counsel, instructed by Mr S. Ball Solicitor of MinterEllison appeared for Respondent in each matter.

Judgment Delivered at Gunnedah 16 July 2009

Background

- 1** Exploration Licence 6505 (EL6505) was granted by the Minister for Mineral Resources to Coal Mines Australia Limited (CMAL) on 12 April 2006.
- 2** The exploration that is taking place pursuant to the licence is referred to as the Caroon Coal Project.
- 3** Pursuant to Section 142 of the Mining Act 1992, CMAL forwarded notices to the following:

Benjamin Arthur Evans, Neville John Evans and Gemma Catherine Evans; Allan Raymond Grant; Crown Lands; Maylan Pty Ltd; Rado Ranch Pty Ltd; Single Tree Pty Ltd (the Landholders).

- 4 As no agreement was forthcoming from the Landholders for access, the mining company set in train the arbitration procedures pursuant to Division 2, Part 8, *Mining Act 1992*.
- 5 On 12 January 2009, the arbitrator handed down her final determination and access arrangement in respect of each landholder. Pursuant to Section 155, CMAL lodged an application to the warden's court for a review of that determination.

The Hearing

- 6 The matter came before the court for hearing on 25 May 2009 at the Gunnedah Court House. On that day, following the tendering of statements from Mr Stephen David, the General Manager of the Caroon Coal Project, the court adjourned for a view of the sites.
- 7 It would appear that the Landholders had previously denied CMAL staff onto their land. The first time that any personnel from CMAL had set foot on the properties of the applicants was on the 25 May 2009.
- 8 All parties and the court attended the sites that were nominated by CMAL as a suitable place to perform exploratory drilling.
- 9 The Landholders, whilst on site, put many questions to Mr David, about the proposed drilling. Those questions were varied; the principle concern appeared to be that the drilling process could possibly contaminate either the aquifers under the land or the soil upon the land or both. Other questions centred upon various concerns of individual Landholders.
- 10 In some instances, Landholders indicated an area which was in a different location than that specified by the arbitrator, as being a site preferred by

the Landholder, but at all times indicating that it was the “best of the worst”, as they didn’t want CMAL upon their land at all.

- 11 A constant thread of concern was those areas on the flood plains where CMAL proposed to drill. Each and every one of the Landholders stressed that the possibility of contamination would be reduced if the drilling process utilised above ground storage facilities for the drilling fluid and tailings.
- 12 Some of the matters raised by the Landholders on site were not raised in their statements that had been filed prior to 25 May 2009, pursuant to directions of the court. To this end, the applicant’s solicitor, Mr Peter Long, handed a document to the legal representatives of the mining company, Mr R. Beasley of counsel and Mr. S. Ball of Minter Ellison, on the morning of 26 May 2009.
- 13 That document outlined the additional concerns of the Landholders that were not mentioned in the original statements filed.
- 14 Upon resumption of court on 26 may 2009, Mr Beasley indicated that he had only received the documents a short time prior to court commencing and sought a short adjournment so that he could give consideration to the document and seek instructions from his client.
- 15 Upon resumption of court, the document that was being considered was tendered, without objection and marked exhibit 7 in the proceedings. The document is headed: *Statement of Landholder Concerns Expressed at Site Inspections on 25 May 2009*. A footnote to that heading states: *This document does not constitute a statement of agreed facts but rather a statement of the concerns of the landholder*. This document is to be read in conjunction with other statements from the landholders that were filed prior to the hearing and subsequently tendered at the hearing as exhibits.

- 16 Following upon some questions in cross-examination of Mr David, the remainder of the evidence from the mining company consisted of the tendering of certain documents, some of an "expert" nature.
- 17 No other witness was required to be cross-examined, either by the applicants or the respondent mining company.
- 18 The cases finalised with some oral submissions in court, followed by more comprehensive written submissions, filed subsequent to the hearing.

Relevant Legislation

- 19 Some of the legislation relevant to the application are sections 141 and 155 *Mining Act 1992*:

141 Matters for which access arrangement to provide

- (1) An access arrangement may make provision for or with respect to the following matters:
 - (a) The periods during which the holder of the prospecting title is to be permitted access to the land,
 - (b) The parts of the land in or on which the holder of the prospecting title may prospect and the means by which the holder may gain access to those parts of the land,
 - (c) The kinds of prospecting operations that may be carried out in or on the land,
 - (d) The conditions to be observed by the holder of the prospecting title when prospecting in or on the land,
 - (e) The things which the holder of the prospecting title needs to do in order to protect the environment while having access to the land and carrying out prospecting operations in or on the land,

- (f) The compensation to be paid to any landholder of the land as a consequence of the holder of the prospecting title carrying out prospecting operations in or on the land,
 - (g) The manner of resolving any dispute arising in connection with the arrangement,
 - (h) The manner of varying the arrangement,
 - (i) such other matters as the parties to the arrangement may agree to include in the arrangement.
- (2) An access arrangement that is determined by an arbitrator must specify the compensation, as assessed by the arbitrator, to which each landholder of the land concerned is entitled under Division 1 of Part 13.
- (3) In the event of an inconsistency between:
- (a) a provision of an access arrangement, and
 - (b) a provision of this Act, of the regulations or of a condition of a prospecting title,
- the provision referred to in paragraph (b) prevails.
- (4) If the holder of a prospecting title contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land until:
- (a) the holder ceases the contravention, or
 - (b) the contravention is remedied to the reasonable satisfaction of the landholder.
- (5) Subsection (4) does not affect any proceedings that may be brought against the holder of the prospecting title in respect of the contravention of the access arrangement.

155 Review of determination

- (1) A party to a hearing who is aggrieved by an arbitrator's final determination (other than a determination referred to in section 147 (2)) may apply to a Warden's Court for a review of the determination.
- (2) An application:
 - (a) must be accompanied by a copy of the determination to which it relates, together with a copy of any access arrangement forming part of the determination, and
 - (b) must be filed in a Warden's Court:
 - (i) in the case of an interim determination that has become a final determination—within 28 days after a copy of the interim determination was served on the applicant, or
 - (ii) in the case of a final determination—within 14 days after a copy of the final determination was served on the applicant.
- (3) An application for review may not be made:
 - (a) during the period of 14 days within which an application may be made to an arbitrator, or
 - (b) if such an application is made, until the arbitrator has made a final determination with respect to the application.
- (4) The applicant must cause a copy of the application to be served on each of the other parties to the determination to which the application relates.
- (5) Subject to any order of a Warden's Court to the contrary, an application for review of a determination operates to stay the effect of any related access arrangement in relation to a party to the arrangement from the time when a copy of the arrangement has been served on the party until the decision of a Warden's Court on the review.

10. A request to have around all exploration holes, appropriate bunds.
11. The Court should specify certain drilling procedures in an access arrangement.
12. Various reports concerning the drilling and material used to be supplied to each of the landholders as a condition of any access.
13. A requirement for both water and soil testing in addition to the immediate cessation of drilling (*if testing during the drilling process indicates an increase in the levels of any one of the above salts, heavy metaloids, organics or any other contaminant in drilling muds used on the sites above the base line levels...*).
14. Requirement of 28 days written notice prior to entering upon the land.
15. A suggestion for compensation, which is above that awarded by the arbitrator.
16. A requirement that any person entering upon a landholders land in accordance with the exploration licence, be subjected to a police background check (and working with children).

21 I have not referred in the above, to matters that have been either agreed upon or accepted by the Court, as being an appropriate inclusion in any access arrangement.

22 Before proceeding further with those general objections, it is appropriate at this point of time to attend to a submission, which was specifically applicable to Rado Ranch Pty Ltd.

23 While the Court was having a view on 25 May 2009, the mining company indicated that it desired to move the original site C7 to another location upon the property of Rado Ranch Pty Ltd. The reason for this being was that there was at the time a drilling rig located within a 100m or so of the area, which was notified as C7 in the s 142 notice. It is the mining company's evidence that it will get better results from its drilling data if the

- (6) In reviewing a determination under this section, a Warden's Court has the functions of an arbitrator under this Division in addition to its other functions.
- (7) The decision of a Warden's Court on a review of a determination is final and is to be given effect to as if it were the determination of an arbitrator.

The Submissions

20 The principle written submissions that were made on behalf of the applicant landholders are under the hand of Alice E Weinthal solicitor. They concentrated upon matters, which were applicable to all of the applicants. In addition reference was made to some specific points concerning individual landholders. Her submissions included the following:

1. Concern that the drilling process will damage the aquifers in the region.
2. A request for the Court to refuse access until an independent hydro-geologist examines the available data and consider whether exploratory drilling poses a risk to the aquifers in the Region.
3. The Court has no jurisdiction to entertain the application having regard to non-compliance of sections 142, 143 and 145 of the *Mining Act* 1992.
4. Contamination of aquifers by the drillers mud.
5. Cross contamination of aquifers.
6. A concern about lack of specification of the sumps intended to be used, the above ground or lined ground sumps.
7. As CMAL does not intend to mine under the landholders land, there is no need to prospect upon that land and should not be granted access for that purpose.
8. The Court should look at a wider range of matters than those considered by the Minister when granting the license.
9. A request by all the landholders to have above ground storage vessels installed in lieu of in-ground sumps.

site is located a further distance away from the site that was being drilled on the property next door.

- 24 It was submitted on behalf of the landholder that the company did not have a right to now move the proposed site from that site which was notified in the s 142 notice.
- 25 It is the mining company's submission that s 142 of the Mining Act 1992 does not require of the holder of the exploration license, to state a precise location of the drill hole. It submitted, that very often mining companies will relocate the original drilling site once the mining company gains access to the site and becomes aware of some other factors. It must not be forgotten that the 25th May 2009 was the first occasion when the mining company entered upon the land of Rado Ranch Pty Ltd.
- 26 The submission from applicant landholder hinges upon the interpretation of s 142 of the Act. That section states:

142 Holder of prospecting title to seek access arrangement

- (1) The holder of a prospecting title may, by written notice served on each landholder of the land concerned, give notice of the holder's intention to obtain an access arrangement in respect of the land.
- (2) The notice of the holder's intention to obtain an access arrangement must, in addition to stating the holder's intention, contain:
- (a) a plan and description of the area of land over which the access is sought sufficient to enable the ready identification of that area, and
- (b) a description of the prospecting methods intended to be used in that area.

- (3) The holder of a prospecting title and each landholder of the land concerned may agree (either orally or in writing and either before or after the prospecting title is granted) on an access arrangement.

27 Some of the submission of Ms Weinthal were as follows:

It is well established that "land" means the specific allotment within the registered deposited land. It does not mean all allotments within a deposit of land as some deposited land have dozens to hundreds of allotments.

The "area of land" referred to s 142 cannot mean the whole of the allotment if "land" means the whole of the allotment. As a matter of logic, it must mean some part of the allotment.

CMAL now seeks to argue that "area of land" can be as broad as the license holder wants despite the fact that the s 142 notice initially served on the landholder, CMAL readily identified the C7 site as the desired drill site. If CMAL truly believes that the legislation did not require the license holder to give the landholder a precise location of the drill hole, one must ask why it included the precise drill site on the plan.

If the Court was to hold that "area of land" is to be interpreted broadly as submitted by CMAL, the whole purpose of giving the landholder notice so that the landholder can work out what his response will be becomes otiose. Some allotments within a deposited plan are thousands of acres in area. It is clearly not the intention of legislature that the license holder could give notice of such an ambit area within to drill a 90 mm hole¹.

28 It is true that this Court has held on previous occasions, and that view has been supported by the Supreme Court in the matter of *Ulan Coal Mines Limited v. Minister for Mineral Resources & Anor* [2007]NSWSC 1299 Smart AJ 16/11/2007, that the word "land" as it applies in s 62 of the Mining Act 1992, refers to *that land on which the improvement is situated and no other land*. The question to be determined now is whether or not the word "land" which appears in s 142 ought to have the same

¹ See paragraphs 118,119,124 and 125 of submissions of 29 May 2009

interpretation of “land” as it appears in s 62. Section 142(1) states in part “...give notice of the holder’s intention to obtain an access arrangement in respect of the land”. S.142(2)(a) indicates that the notice must contain “a plan and description of the area of land over which the access is sought...”

- 29 It appears reasonably clear that s 142(1) is referring to the whole of a landholders lot in a specific deposited plan. It may very well be that the license holder would require access to more lots than one particular lot in a deposited plan. The reason being that it may need to drive across a particular lot to gain access to another lot where it intends to drill the exploratory hole, or to drill holes on more than one particular lot.
- 30 However, s 142(2) makes it quite clear that when it refers to the notice indicating the “*area of land over which the access is sought*” then it is referring specifically to only that portion of a lot or lots within a deposited plan the mining company requires access to for the purpose of drilling an exploratory hole. It is clear that the intention of s 142(2)(a) is to identify to the landholder the precise area that the mining company intends to drill. The purpose of that preciseness is to facilitate S.142(3), putting the landholder in a position where he or she can make an informed decision as to whether or not there should be some agreement to an access arrangement.
- 31 In this instance there is no agreement pursuant to S.142(3). The access determination was made by an arbitrator and there is a review of that determination by this Court under the provision of s 155 of the Mining Act 1992. In conducting a review this Court has “the functions of an arbitrator under this division in addition to its other functions” [s 155(6)].
- 32 The revised 3rd addition of the Macquarie dictionary gives the meaning of arbitration as, inter alia, “*the hearing or determining of a dispute between parties by a person or persons chosen*”. Section 141(1)(b) states: an access arrangement may make provision for and with respect to the

following matters: *"the parts of the land in or on which the holder of the prospecting title may prospect..."*.

33 It is gathered from the submission of the landholder that in determining the dispute between the landholder and the license holder as to where position C7 should be located, an arbitrator may only make a determination that if C7 is to be drilled upon the landholders property, it must only be drilled on the site nominated in the s 142 notice.

34 Paragraph 123 of Ms. Weinthal's submission states:

As is common with these matters, the precise location of the drill site is subject to minor variation of up to 100m or so to take account of any topographical features or manmade improvements at the grid pattern determined site.

35 This statement is in fact true. It is not uncommon that when a view is taken of a particular proposed drill site on a portion of land, discussions between the landholder and the mining company on site often result in the mining company moving its drill site location some distance away from the proposed original site. Generally, from my experience, this is done with the consent of the landholder. In the present situation however, there is a request to remove the original site one or two kilometres further away and it is under objection by the landholder. The issue to be determined whether or not the arbitrator, and consequently this Court, has the power to permit the mining company to come upon the land and drill at a particular site which was not notified under s 142, against the objection of the landholder.

36 Clearly the arbitrator has the power to permit the mining company to come in and drill on the original site against the wishes of the landholder, there appears to be no doubt about that. Considering, for instance, a different scenario which may occur: A Landholder says, *"I don't want you to come onto my land at all, but if you do I would you prefer you to enter via the gate on the western side of the land, not the gate on the southern side as you suggested"*. I cannot accept, in those circumstances, that the

landholder is consenting to the mining company entering the land through the western gate. The mining company clearly prefers to enter through the southern gate, as no doubt would have been indicated in any S.142 notice as well as at the arbitration. However, it appears abundantly clear that an arbitrator has wide powers in relation to “..the means by which the holder may gain access to those parts of the land,²”. An arbitrator, in such circumstances, has the power to made provision for entry through either the western gate, the southern gate or, if need be, through some other part of the perimeter of the land. If the arbitrator did not have that power one wonders what would be the purpose of an arbitrator conducting a hearing

- 37 I am of the opinion, in respect to a particular site for a drill hole, that an arbitrator, and consequently this Court, does have the power to allow access to particular drill site on a particular lot of land notwithstanding that it is an area different from the one nominated in a s 142 notice. In saying that, it is assumed that the relocation of a particular drill hole site by an arbitrator can only be upon a particular lot of land that has been nominated in the s 142 notice.
- 38 The mining company wishes to move its drill site in this instance to an area which is further from the drill site on the neighbouring land. Mr David cites the fact that although useful information would be obtained if the original C7 site was drilled, far more valuable information would be gained by relocating C7 to a distance further from the drilling on the neighbouring land. No other evidence was produced to refute this statement. The landholder makes no comment, other than opposing the site.
- 39 Accordingly, I propose to allow CMAL to drill on the altered C7 site, which is referred on the plan to C7-2.

² Section 141(1)(b) Mining Act 1992.

Jurisdictional Issue

40 Before moving away from Section 142, there is a jurisdictional point that has been raised. Challenges have previously been made in this court to notices sent out pursuant to Section 142. In the matter of *Clive James Duddy and Ian Clive Duddy v. CMAL (Case 2008/06)*, this court held on 28 February 2008 that there was no jurisdiction to determine an application for review under Section 155, as the “landholder” had not been served a notice under Section 142 (consequently, the arbitrator’s determination was invalid). In that matter, notice was served upon *ER & CJ Duddy Pty Ltd* – that entity was not the holder in fee simple, nor, from the evidence, did it have anything to do with the property. In a more recent case of *Alcorn & Ors v. CMAL (Cases 2008/56 etc)*, this court held on the 21 May 2009, that although the mortgagee banks were not notified under S.142, the circumstances were such that it did not invalidate the proceedings.

41 The submission in the present cases by the applicants is that:

- In the matters of *Evans, Rado Ranch Pty Ltd, Single Tree Pty Ltd and Maylan Pty Ltd.*, each has a bank mortgagee and there is no evidence of service of a notice pursuant to S.142 on any of the banks;
- In respect of the matter of *Grant*; Mr Grant is not the owner in fee simple but holds a lease in perpetuity from the State of New South Wales.

42 The applicants submit that there has been no compliance with either Section 142, 143 or 145 and argue that consequently, the arbitration is a nullity.

43 In support of its submission, the applicants cite *Project Blue Sky v. Australian Broadcasting Authority (1998) 194CLR 355*, *Brodyn Pty Ltd v. Davenport (2004) 61NSWLR 421* and the dissenting comments of Basten JA in *Italiano v. Carbone (2005)NSWCA 177*. On paragraph 18 of its submissions, the applicants state:

Where a breach of procedural fairness is established, the Court will not inquire into the consequences in the particular circumstance, unless "it is confident that the breach could not have affected the outcome": Re Refugee Review Tribunal; Ex parte Aala (2000)204CLR82 at [104] (McHugh J); Italiano v Carbone [2005]NSWCA177 at [87]. This Court could have no confidence at all that, had the mortgagees been given notice, the arbitrator's determination would not have been different. There is no evidence at all on that issue.

44 In support of the Grant application, it is submitted that although The Respondent served a notice on the Crown it "*did not serve any of the other required Notices pursuant to the Act*".

45 The Respondent contends, on this issue, that a Mortgagee is not a "Landholder" in respect of the Dictionary of the Act. Its submissions refer to clause (g) of the definition, which states:

(g) *a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, or*

In its submission, the Respondent refers to the Real Property Act 1900 and cites the definition of "mortgage" as being a "*charge on land created merely for securing the payment of a debt*". The Respondent argues that the provision of Section 57, "Procedure on default" states, inter alia, "*(1) A mortgage....does not operate as a transfer of the land mortgaged or charged*". It is then submitted that a mortgage does not create an interest in the land and consequently not come within clause (g) of the definition of "landholder".

46 A similar argument was put forth by the Respondent in the above-mentioned matter of *Alcorn & Ors*. However, the court cited an example of a situation where a mortgagee may be in possession and the injustice that would ensue if that mortgagee were not notified pursuant to Section 142. The court held that mortgagees must be notified as being "landholders" under the definition of the Mining Act 1992. Furthermore,

the court in those cases agreed with the Respondent's submission that the mortgagee banks would have no interest in the proceedings³.

47 Nothing in this case has persuaded me to alter that determination. That being so, I am of the opinion that Parliament did not intend that an arbitrator's determination would be invalidated if a mortgagee bank was not notified pursuant to Section 142.

48 That however, does not resolve the matter of Grant. In that matter, although notification to the owner in fee simple was given under Section 142, no other notice was given under Section 143 or 145. Those Sections provide:

143 Appointment of arbitrator by agreement

- (1) If, by the end of 28 days after the holder of a prospecting title serves notice in writing on each landholder of the holder's intention to obtain an access arrangement, the holder and each landholder have been unable to agree on such an arrangement, the holder may, by further notice in writing served on each landholder, request them to agree to the appointment of an arbitrator.
- (2) The holder of a prospecting title and each landholder of the land concerned may agree to the appointment of any person as an arbitrator.

145 Arbitration

- (1) As soon as practicable after having been appointed, an arbitrator:
 - (a) must fix a time and place for conducting a hearing into the question of access to the land concerned, and
 - (b) must cause notice of his or her appointment, and of the time and place fixed for conducting the hearing, to be given to the holder of the prospecting title and to each landholder.

³ See also below where it refers to exhibit 6, page 49.

- (2) The arbitrator may, by a further notice served on the holder of the prospecting title and on each landholder, vary the time or place fixed for conducting the hearing.
- (3) The arbitrator must, at the time and place fixed under this section, conduct a hearing into the question of access to the land concerned.

49 Concerning the Grant matter, the Respondent referred the court to exhibit 6, of the proceedings, in particular annexure "J" which appears at page 49 of that exhibit. That is a letter from the Department of Lands, dated 18 September 2008. The letter was in response to a letter of 17 September 2008 (annexure "I") forwarded by MinterEllison, outlining that arbitration for an access arrangement with Mr Grant was listed for 22 September 2008. Annexure "I" further says:

As discussed with Mr Ball an access arrangement is also required with the Crown. We understand that you advised under the Mining Act that the Crown would not be seeking to negotiate a separate access arrangement and would agree to access on the same terms as contained in any access arrangement between Mr Grant and Coal Mines Australia Pty Ltd

The letter in response from the Department of Lands (annexure "J"), after expressing an opinion it was not a "landholder" under the Mining Act, states inter alia: *"...the Department would not need to be involved in any Arbitrator hearing or access arrangement."*

50 This letter is important for two reasons. Firstly, one would expect that perhaps in this circumstance the Department of Lands would have a greater interest in any access arrangement than would a mortgagee bank. The Department has, however, clearly expressed that it has no interest. Secondly, what affect, if any, does the letter have upon the lack of notices under Section 143 and Section 145⁴?

⁴ No evidence was produced concerning the section 145 notice. It is assumed no notification was given under that section to the Department of Lands.

- 51 Although no section 143 notice was sent to the Department of Lands, it is clear from the letter of 17 September that MinterEllison had been in telephone contact with personnel from the Department some months earlier; that the subject letter clearly sets out the rights of the Department so far as being a part of the access arrangement proceedings. Notwithstanding that, the Department expressed an opinion as to its understanding of "landholder" and expressly stated that it did not want to be involved.
- 52 Parliament enacted Section 143 and 145 to ensure that parties had requisite notice of any arbitration proceedings, affording that party an opportunity to take part if it so desired. Although formal notices under the sections were not sent to the Department of Lands, I accept that the Department was aware of the proceedings and chose not to take part.
- 53 The issue to be resolved is whether Parliament intended, in those circumstances, whether the proceedings before the arbitrator ought to be invalidated.
- 54 It is the applicants contention⁵ that the relevant sections:
...are in essence requirements that are designed to afford Landholders (as defined) natural justice by ensuring that they are giving (sic) notice of the Licensee's intention to obtain an access arrangement in relation to the property in question. In different statutory contexts, courts have readily found that a breach of the rules of natural justice or procedural fairness renders the decision in question void:

The paragraph goes on to cite: Italiano v Carbone, Brodyn Pty Ltd v. Davenport
- 55 I accept that no notification can lead to a denial of natural justice and in many instances would invalidate certain matters. However, in respect of the Grant matter, I am of the opinion that in so far as the Department of Lands is concerned, from the correspondence mentioned above, there has

⁵ See paragraph 23 of written submissions of 29 May 2009.

been no denial of natural justice. It is not this courts opinion that Parliament in the circumstances would have intended that the arbitration process be invalidated.

56 Considering now the points raised in paragraph 20.

Damage to Aquifers

57 The concern about damage to the aquifers in general will be considered in conjunction with point 4 and 5 of paragraph 20 above. Evidence about the drilling procedures came by way of exhibit 12. That is a document headed *Report on Procedures and Methods of Exploratory Drilling within Exploration Licence 6505* and prepared by Errol H. Briese of Australasian Groundwater & Environmental Consultants Pty Ltd. That document was tendered without objection and Mr Briese was not required for cross examination.

58 At paragraph 4.4 of that exhibit, Mr Briese outlines the procedures for drilling through the highly productive alluvium aquifers as such:

- drill a 178 mm diameter hole to 3 to 6 metres depth and install and cement in steel surface casing of 152 mm diameter. The purpose of this surface casing is to prevent erosion at the top of the hole during drilling;
- Drill a 150 mm diameter hole using a bio-degradable drilling mud "Poly-Bore" (refer section 4.4.3) through the alluvium and underlying weathered bedrock to at least 5 to 6 meters into solid bedrock;
- Run temporary uPVC casing to base of hole and geophysically log hole;
- remove uPVC casing and install 114 mm diameter steel casing of 7 mm wall thickness to bottom of hole;
- pressure cement the annulus of the bore hole and casing using a cementing head attached to the top of the casing. That is a cement slurry with 5% bentonite mix (Aquagel), is pumped down the inside of the casing and back up the annulus until it reaches surface ensuring that all of the

annulus is grouted. This is common practice for water boar and oil drilling.

- 59 The alluvial aquifer is now totally sealed off from any further impact during drilling of the Permian coal measures, that is the sandstone, mudstone, siltstone and coal sequence that underlie the alluvial.
- 60 Mr Briese then goes on to outline the supervision which will take place during such drilling and also highlights on page 10 of his report the drilling products that will utilized. Appendix 5 of his report analyses the products which are utilized in the drilling.
- 61 The report of Mr Briese, which had been tendered to the Court unchallenged, then outlines the procedure for the drilling through the bedrock, outlining the products that are utilized in that situation. He further outlines the procedures in relation to drilling in non alluvial areas.
- 62 On page 14 of Exhibit 12, Mr Briese outlines the comparison between cable tool and slim core drilling. He outlines his reasons as to why a cable tool drilling would not be suitable for the purposes of exploring this particular area.
- 63 In prior proceedings concerning land holders in a Liverpool plains area and CMAL, evidence was tendered by the landholder from a Dr Mudd. Although no report has been tendered in these cases from Dr Mudd on behalf of the landholders, Mr Briese in Exhibit 12 responded to some matters that were raised in evidence by Dr. Mudd in the previous case. In the first instance, Mr Briese indicated that Dr Mudd's statements on the previous occasion were based on assumptions, which were wrong. Consequently, many of his opinions are based upon erroneous assumptions and no weight can be placed upon them. Mr Briese, in giving evidence via exhibit 12 in this case, refers to a Statement of Dr Mudd: *the nature of the gravel can allow very rapid migration of contaminate water and the nature of the drilling process therefore introduces a fluid of mild*

salinity into the sub service. Mr Briese replied as follows: as discussed above the products used for drilling the alluvial aquifer, that is the gravel beds are NSF certified, and any loss of this fluid does not contaminate the aquifer. Dr Mudd implies that the fluid is of mild salinity and that up to 400,000 to 600,000 litres are lost from each exploration hole. As discussed above the volume loss is wrong and potassium chloride which gives rise to increase salinity of the drilling fluid is only used to prevent swelling clays and tuff in Permian sequence, of which the aquifers are naturally brackish to saline. The alluvial aquifer is completely sealed off before potassium chloride is used and therefore it cannot enter the gravel layers and migrate through them as contended by Dr Mudd.

64 The submissions on behalf of the mining company, in respect of the aspect of "risk", outlined that the applicants called no evidence as to alleged risks, "presented to the Court only their 'concern'". Evidence of a "concern" is obviously not evidence of a "risk".

65 It was submitted on behalf of CMAL that prior to granting the exploration licence, the minister was required to take into account section 111 of the *Environmental Planning and Assessment Act 1979* as well as section 237(1) of the *Mining Act 1992*. The submissions go on to outline the conditions that were inserted into the exploration licence by the Minister, to protect the environment generally. Reference was made in particular to conditions 17, 19 and 20 of the EL 6505. Condition 20(d)(e) and 23(b) are set here under:

Condition 20(d)

Precautions must be taken to prevent spills and soil contamination. All chemicals, fuels and oils must be stored in sound containers and kept in spill trays or in a bunded area. A supply of appropriate spill and dust prevention and oil absorbent materials must be maintained at drill sites.

Condition 20(e)

All drill cuttings and fluids must be contained in above ground tanks or in-ground sumps. To prevent contamination of the ground water or soils in-ground sumps must be plastic

lined whenever toxic or non biodegradable drilling fluids are used or when drilling into rock potentially containing high concentrations of toxic metals or metalloids.

Condition 23(b)

If the licence holder drills exploratory drill holes he must satisfy the department that during and after the activity:

- (i) all holes cored or otherwise are constructed and/or sealed to prevent the collapse of the surrounding surface;
- (ii) if any drill hole meets natural or noxious gases it is plugged or sealed to prevent their escape;
- (iii) if any drill hole meets an artesian or sub-artesian flow it is effectively sealed to prevent contamination or cross contamination of aquifers, and is permanently sealed with cement plugs to prevent surface discharge of ground water.

66 The submissions of CMAL refer to the fact that if the Department of Primary Industries take the view that if any conditions in EL6505 are not being complied with, then they can required CMAL to cease drilling immediately. There is also the right of the Minister to cancel EL6505 if the mining company fails to comply with conditions of the exploration licence.

67 From evidence indicated above and also from further material which will be referred to in point 2 of paragraph 20, which will be discussed below, drilling procedure outlined by the mining company is expected to have the effect of ensuring that the mining company complies with the condition of its licence so as to prevent any damage to aquifers in the drilling area. It is submitted by the mining company, concerns about damage to the aquifer by the landholders are "concerns" only. There is no evidence to indicate that there will be any damage occasioned to the aquifers.

68 On the evidence before the Court, a drilling regime is in place to ensure that there is no damage to the aquifers.

Independent Hydrologist

- 69 Point 2 in paragraph 20 makes reference to a submission of the land holder that the Court refuse access until an independent hydrologist exams the available data and considers whether drilling poses a risk to the aquifers.
- 70 In accordance with condition 11 of the EL6505, the mining company engaged Umwelt Environmental Consultants to prepare an exploration environmental management plan (EEMP). A copy of this appears at tab 2 of Exhibit 22 in the proceedings. Paragraph 2.0 of that document outlines the purpose of the plan as being: *the purpose of this plan is to provide the frame work for environmental management of exploration activities in the Caroona EL6505 and to detail the control measures to be implemented to ensure that exploration activities are conducted in an environmentally responsible manner.* In summary this document reinforces various conditions of the exploration licence and outlines further conditions and recommendations that would ensure the environment is protected during the drilling process. That report also makes reference to condition 54 of the exploration licence in question. That conditions states, inter alia: *the licence holder shall..., establish a "Caroona Coal Project - Community Consultative Committee". ... all reasonable costs associated with ... the operations of the committee... are to be borne by the licence holder".*
- 71 Attached to Exhibit 6 of the evidence before the Court, is a document from the Water Research Laboratory of the University of NSW. This document is titled *"Independent Expert Review of Proposed Ground Water Investigations and Monitoring, Regional Exploration Phase of Caroona Coal Project"*. It was prepared for the Caroona Coal Project - Community Consultative Committee. The aim of this document is to provide technical guidance to the Caroona Community Consultative Committee. There are a number of recommendations made in that document. Clearly the document is totally independent. Towards the end of the document, prior to outlining the investigations that have been conducted by the University

of NSW personnel, the following appears: *UNSW Personnel "have been on the ground" in the area for over 15 years... Wendy Timms who currently leads the WRL Groundwater Consulting Group at the water research laboratory has also worked at the DNR Gunnedah Research Centre and with the CSIRO team.* It is clear, that this independent report comes from a body that has been extensively involved in the area upon which it reported upon.

- 72 With all of this information available, I am at a loss to understand as to why the Court should refuse access until another independent hydrogeologist examines the data. I don't propose to refuse access conditional upon another report being prepared.

Drilling Will Cause Contamination & Cross Contamination.

- 73 These matters were referred to in points 4 and 5 of paragraph 20. They are connected to some degree with point 1 of the above mentioned paragraph. The aspect of cross contamination of aquifers has been sufficiently dealt with in the evidence of Mr Briese and as mentioned above.
- 74 The contamination of aquifers by drillers mud is a concern of the land holders. The submission outlines the possible volume of drillers fluid that will be lost into an aquifer and goes on to express concern about the contamination by that fluid and the fact there is, in some instances, insufficient information to establish the type of harm that can be caused by the ingestion of substances that are within the drillers mud.
- 75 In paragraph 43 of the submissions of CMAL, in referring to the report of Mr Briese, states: "further 'polybore', a bio degradable product is of 'low' toxicity even at 100% concentrated form, and is not classified as hazardous according to WorkSafe criteria. On page 19 of Mr Briese's report (Exhibit 12) he states: "... the average water consumption, that is water that is lost per hole is between about 68,000 litres and 84,000 litres

...” and further “as discussed in section 4.4, polybore and N-seal have NSF certification and therefore any minor loss to the alluvium will not present an environmental risk”. It is the evidence of Mr Briese that the diluted drillers fluid is such that any loss into aquifer is such that there can be no possible contamination. Nothing has been produced by the Landholders to refute this.

Specification of sumps

76 In respect of item 6 on paragraph 20, paragraph 35 of the land holders submissions states, inter alia: the land holders desire and are entitled to have plans and specifications of the sumps intended to be used, whether they be above ground or lined ground sumps, so they can consider them with the assistance of experts. I know of nothing in section 141 of the Mining Act 1992 that would enable a Court to insert a condition to satisfy the landholders desire in this aspect. However, I am aware in a previous case of *Brown v CMAL* at this court on 21 May 2009, a condition was inserted in respect of above ground sumps, with a proviso that the design and operation of the sump would be approved by an expert appointed in consultation with the landholder. It should be noted that this clause was inserted with the concurrence of CMAL. (See Section 141(1)(i) Mining Act 1992).

No mining - No access

77 The land owners challenge the reason why the mining company would want to “prospect” in an area where they do not intend to mine. It is clear there is no intention of CMAL to mine upon the flood plains. At paragraph 39 of its submissions it states: *rather, the Court would find that CMAL has not yet demonstrated that what it proposes to do amounts to prospecting and in those circumstances it is inappropriate to grant access.*

78 Paragraph 12 of Exhibit 6, which is the affidavit of Mr Stephen Glenn David, the General Manager, the Caroon Coal Project, states: *the regional exploration phase, which involves drilling of approximately 70 slim*

core bore holes, is aimed at providing CMAL with a thorough appreciation of the nature of the geological units, including the coal seams, generally across the entire area of land covered by EL6505. During this phase bore holes are drilled generally in a grid pattern, with hole spacing that varies between 1 km and 4 km apart. His next paragraph goes to say: The targeted exploration phase will require further drilling another exploration activity to gain a more comprehensive understanding of the geology and hydro-geology of the Caroona Coal Exploration Area, and to also assess if a mine could be economically viable subject to acceptable environmental impacts.

- 79 Other than a submission from the land holders, there is no evidence to suggest that the exploration program which is proposed by CMAL is inappropriate and ought not to take place. Accordingly I don't propose to refuse access upon the grounds that the exploration that it proposed to be performed upon the land holders properties is not required.

Court to look wider than Minister

- 80 The land holders submit that CMAL has not provided:
- Any evidence of what material CMAL provided to the Minister before it obtained the licence.
 - No evidence about what the Minister took into account when granting the licence.
 - When one looks at what the Minister was obliged to take into account into granting and exploration licence there was nothing to the effect that he or she was required to consider the effect of exploratory drilling on aquifers or even to consider water issues generally.
- 81 The land holders challenged the opinion of the respondent mining company that the Court should not revisit the matters that the Minister decided when granting the exploration licence.
- 82 I can only agree with the mining company that there is nothing given in the powers of an arbitrator, nor in the circumstances of an application under

155, in the Court, to allow either to look behind the exploration licence and to consider the matters of that Minister considered. Consequently I don't propose to do so.

In-ground Sumps

- 83 It is the request of all the land holders that in-ground sumps not be utilized in a drilling process upon their land but in lieu thereof, above ground storage tanks be utilized. The concern of the land holders is that it is common for flood conditions to exist on the flood plains, consequently, in-ground sumps will expose their properties to contamination from an overflowing of such sumps in flood conditions; this threat would not occur if above ground tanks were installed.
- 84 Mr David when giving evidence in respect of above ground tanks, indicated that there would be greater amount of traffic movement across the properties if they were utilized. The submissions of the land holders in respect to that evidence is that they would prefer the inconvenience of further truck movements across their property to the possibility of contamination of overflowing of drilling fluids from in-ground sumps.
- 85 A similar issue was raised in a previous matter of *Alcorn & Ors* in this Court in May 2009. The Court formed the opinion that in those areas that were clearly exposed to the possibility to flooding, the mining company should utilize above ground tanks. It would appear that the mining company uses in-ground sumps because they have greater stability.
- 86 Having regard to my observations during the view I propose to make a condition that above ground tanks be used on those properties where it was obvious that the possibility of flooding is greater on those properties than some of the others.

Bunds

- 87 The mining company is not opposed to a clause in respect of bunding surrounding the exploration area. An appropriate clause will be inserted in each access arrangement.

Drilling Procedures

- 88 The landholders outline in the submissions various conditions , which they say are not imposed as a condition of exploration licence 6505, that should be included in any access arrangement. They include:
- The standard of the driller's licence
 - No use of Polybore
 - Hydrogeologist to be present and to report upon all drillings and abandonment of holes
 - CMAL to comply immediately with any direction(s) of Hydrogeologist
- 89 These conditions are necessary, according to the submissions, to protect the aquifers from contamination. The Landholders also require copies of any reports submitted from the Hydrogeologist to CMAL.
- 90 The Licence Holder submits that EL6505 sets out sufficient conditions, in addition to the EEMP approved by the Department of Primary Industries, to cover drilling procedures. Furthermore it submitted, exhibit 20⁶ shows that the conditions are being observed.
- 91 In addition to the conditions set out in the exploration licence and the EEMP, there has been an independent report by Dr Timms of the University of New South Wales. It is not the role of this court, in these proceedings, to indicate what products should or should not be used in the drilling process. This court has, in the past, included conditions as to the minimum standard of licence required by a driller on site. This was done,

as it was not specified in any other documentation, to ensure that an appropriately experienced driller is always employed for drilling. I propose to insert an appropriate condition in respect of these landholders.

- 92 The supply of reports/information to Landholders will be dealt with immediately hereunder.

Information to be Supplied to Landowners

- 93 In addition to reports from hydrogeologists, the Landholders also request a condition that requires the mining company to supply information as to the properties of all fluids and additives used during the drilling process, reports of any hydrogeologist concerning the drilling procedure, all data obtained from any drill hole (other than coal quality) and that such data be supplied within 7 days of receipt by CMAL or its related companies or consultants.
- 94 The submission indicate:
There is no reason not to impose these conditions.... This information assists the Landholders in understanding what chemicals may enter into their land, in understanding what has been done to prevent contamination of aquifers and in understanding what is beneath their properties.
- 95 Mr Beasley, on behalf of CMAL, submits that there is nothing in S.141 referring to the "supply of information" and that *the test for the imposition of a provision in an access arrangement is not centred upon whether 'there is no reason not to' impose such a provision.*
- 96 The Landholders submit that the court has power to impose such conditions under S.141(d) and (e) of the Mining Act 1992, as *they are provisions "with respect to" the conditions to be observed ..whilst drilling ..and.."with respect to" the things CMAL needs to do to protect the environment..*⁷

⁶ Environmental Compliance Audit by DPI, 5 march 2009.

⁷ See paragraph 78 of submissions of Weinthal of 29 May 2009

97 The phrase “with respect to”, or “in respect of” has been considered on a number of occasions judicially⁸. As the High Court⁹ said:

The phrase gathers meaning from the context in which it appears and it is that context which will determine the matters to which it extends.

98 Consequently, the phrase “with respect to” must, in this instance, take its meaning from the context of the sub-paragraphs of S.141(1). The landholders refer specifically to S141(1)(d) and (e).

99 I cannot read into sub-paragraphs (d) or (e), nor any of the other sub-paragraphs of S.141(1), either expressly or inferentially, that Parliament intended, by that section, that an access arrangement should make provision for mining companies to supply information to landholders concerning drilling procedures¹⁰.

100 Accordingly, I do not propose to include a condition that the mining company provides reports and data, in respect of drilling, to the landholders.

Water/Soil Testing – Immediate Cessation of Drilling

101 The landholders stipulated in their submissions that conditions should be inserted wherein water and soil samples are to be tested and they be provided with results thereof. Furthermore, that if those tests reveal an increase in levels of various substances or contaminants that drilling cease immediately.

102 I do not see any basis under S.141 for including such conditions. These matters are provided for in conditions of the exploration licence and other

⁸ See for instance, Trustees Executors & Agency Co Limited v. Riley[1941]VLR110; CSR Limited v Chief Commissioner of State Revenue (2006)68 NSWLR 440; Federal Commissioner of Taxation v Scully (2000)201 CLR 148.

⁹ The Workers' Compensation Board of Queensland v Technical Products Pty Limited (1988)165CLR642.

¹⁰ Excluded from that comment is the provisions of S141(1)(i)

matters, such as the ability of the DPI to conduct an Environmental Compliance Audit (for example exhibit 20). However, in previous matters before this court, CMAL agreed to¹¹the inclusion of a clause concerning water testing. I infer from the comments made in its submissions on this occasion that CMAL is not objecting to certain conditions concerning water testing.

103 Accordingly, I propose to insert an appropriate condition concerning water testing.

Notice Prior to Entry

104 The landholders are seeking 28 days notice prior to CMAL entering upon their land. The submissions indicate that time is necessary for the landholder to *have sufficient time to arrange their affairs in preparation for the drilling*. However, no evidence has been put forward as to why such a long time is required. The submissions were critical of the “broadness” of the notice requirements set by the arbitrator. Nothing has been put to the court, other than submissions, which satisfies me that 5 days notice is not adequate. I will however, amend the notice condition of the arrangement so that there will be greater certainty as to the date of entry.

Compensation

105 Any access arrangement determined by an arbitrator must specify compensation under Division 1 of Part 13¹². The relevant section in respect of that is Section 262:

262 Definition

In this Division:

compensable loss means loss caused, or likely to be caused, by:

¹¹ Section 141(1)(i) Mining Act 1992

¹² Section 141(2) Mining Act 1992

- (a) damage to the surface of land, to crops, trees, grasses or other vegetation (including fruit and vegetables) or to buildings, structures or works, being damage which has been caused by or which may arise from prospecting or mining operations, or
- (b) deprivation of the possession or of the use of the surface of land or any part of the surface, or
- (c) severance of land from other land of the landholder, or
- (d) surface rights of way and easements, or
- (e) destruction or loss of, or injury to, disturbance of or interference with, stock, or
- (f) damage consequential on any matter referred to in paragraph (a)–(e),

but does not include loss that is compensable under the Mine Subsidence Compensation Act 1961.

106 The Arbitrator awarded compensation at the rate of \$330 per week per drill hole. This sum was the amount that was offered, by CMAL, to the landholders when there was an attempt to obtain an access agreement. I am unaware of what matters were put to the arbitrator on this issue. However, the evidence produced in this review is provided in exhibit 13, the Valuation Report of Walsh & Monaghan. The writer of that report, Mr John Austin, a Certified Practising Valuer, indicates that he “erred in favour of the Landholder” when considering the range of the market value and assessed compensation at the rate of \$17.50 per week for each drill hole.

107 Mr Austin goes on to say:

This sum does not, in my opinion, adequately compensate the landowner for “deprivation of the possession or of the use of the surface of and or any part of the surface”¹³

108 After indicating that he has read the arbitrators report, together with decisions of this court concerning similar matters where the sum of \$330 per week per drill hole was awarded, the makes the following comment:

In my opinion the determination in respect of "Compensable Loss" for other access arrangements for Exploration Licence 6505 whilst seemingly generous are not unreasonable¹⁴.

- 109 In his report, Mr Austin makes further comment in respect of the proposed establishment of Hydro-geological monitoring sites on two of the drilling sites, C54 and C137. He indicates that the offer by CMAL of \$3,300 per annum to the landholders in respect of the monitoring sites *is fair and reasonable and is an appropriate amount of compensation payable in accordance with Section 262 of the Mining Act¹⁵.*
- 110 No evidence was introduced by the Landholders in respect of compensation and Mr Austin was not cross examined on his report. However, the submissions on behalf of the landholders refer to the fact that if access is granted to CMAL, it will be without the consent of the landholders. *The imposition of an access arrangement...deprives the Landholders of the opportunity to bargain with CMAL for access on arms length terms.¹⁶* That submissions goes on to say that the compensation should be an amount which reflects the value of access to CMAL. It further asserts that as the access determination by the arbitrator was for a period of two years, the court *must approach the matter from the point of view that the Landholders will effectively be deprived of the sites for the entire two year period.... it is appropriate to allow compensation for the entire two year period.*
- 111 It was further submitted by Ms Weinthal that a more appropriate measure of compensation would be an hourly rate for each person who enters the land as well as compensation reflecting the number of vehicle useage upon the land. A suggested figure of \$15.50 per hour plus GST for each person entering upon the land was put forward.

112 The following comments are made in respect of those submissions:

¹³ See page 13 of exhibit 12

¹⁴ Exhibit 13, page 14.

¹⁵ Exhibit13, page 15.

- The fact that Landholders were deprived of negotiating compensation as the result of them refusing to consent to an access agreement, does not allow this court to go outside the provisions of Section 262 *Mining Act 1992*. Nothing in Section 262 permits the court to determine “compensable loss” on the basis of the value of access to CMAL. The “value of access to CMAL” is not *damage consequential on any matter referred to in paragraph (a) – (e) of Section 262*.¹⁷
- There is no evidence before the court which indicates that the sum of \$15.50 (plus GST) per hour per person entering upon the land during exploration is related to any “compensable loss” as outlined in Section 262 *Mining Act 1992*
- The same comment is made in respect of vehicular movements.

113 Accordingly, I propose to award compensation at the rate of \$330 per week per drill hole (as awarded by the Arbitrator and considered “generous, not unreasonable” by Mr Austin) and the sum of \$3,300 per annum for each Hydro-geological monitoring site (considered a “fair and reasonable” amount by Mr Austin)

Soil Compaction

114 Some of the landholders expressed concern about the weight and number of vehicles that will cross their land. In the draft access arrangement filed by the mining company, provision is made to remedy any soil compaction. I propose to include that provision as a condition of the access arrangement.

Working with Children Checks

115 As a condition of any access arrangement, the landholders request that any person who may be involved with the exploration process who enters upon the property of any landholder *undergo police background checks*

¹⁶ Paragraph 97 of submissions of 29 May 2009

¹⁷ Section 262(f) *Mining Act 1992*

and Working with Children checks and that a prohibition be placed upon any person entering properties who has any conviction involving a child.

116 This request is put on the basis that many landholders still have schoolchildren on their properties. Whilst on site, one landholder expressed concern about the safety of his children. I assumed, from what was said at that point of time, that the safety reference was to the heavy equipment, not to any potential child molester.

117 The Commission for Children & Young People Act 1998 outlines, in Section 33, the definition of:

"child-related employment":

(a) means any employment of the following kind that primarily involves direct contact with children where that contact is not directly supervised by a person having the capacity to direct the person in the course of the employment:

(i) employment involving the provision of child protection services,

(ii) employment in pre-schools, kindergartens and child care centres (including residential child care centres),

(iii) employment in schools or other educational institutions (not being universities),

(iv) employment in detention centres (within the meaning of the Children (Detention Centres) Act 1987),

(v) employment in refuges used by children,

(vi) employment in wards of public or private hospitals in which children are patients,

(vii) employment in clubs, associations, movements, societies, institutions or other bodies (including bodies of a cultural, recreational or sporting nature)

having a significant child membership or involvement,

(viii) employment in any religious organisation,

(ix) employment in entertainment venues where the clientele is primarily children,

(x) employment as a babysitter or childminder that is arranged by a commercial agency,

(xi) employment involving fostering or other child care,

(xii) employment involving regular provision of taxi services for the transport of children with a disability,

(xiii) employment involving the private tuition of children,

(xiv) employment involving the direct provision of child health services,

(xv) employment involving the provision of counselling or other support services for children,

(xvi) employment on school buses,

(xvii) employment at overnight camps for children, and

(b) includes any other employment of a kind prescribed by the regulations, but does not include any employment of a kind excluded by the regulations.

118 In essence, the legislation provides that if people are working in child related employment, there should be a police background check to give some comfort to the fact that children may not be at risk.

119 Any person entering upon the land of the landholders for the purpose of exploration is not involved in "child-related employment". Unless a child approaches any of these people, there will be no contact with children.

- 120 All parents have a responsibility to protect their children. This is done each and every day where children are taught the dangers of crossing roads, "stranger danger" etc. Likewise, the landholders have a responsibility to ensure their children do not encroach upon the area where heavy equipment will be used for drilling.
- 121 There is no legislative requirement, expressly or by inference, that police background checks are required for any person entering upon the land for exploration purposes. I do not see any purpose in inserting a clause requiring background checks and do not propose to insert one.

Other "Concerns"

- 122 There were other matters raised in exhibit 7 that could be considered requests for information. I am of the opinion these are not matters to be dealt with in an access arrangement. For instance, one concern of the landholders was: *How long CMAL intends to maintain the piezometers at any site.* On the other hand, Mr Grant on that point has requested the piezometers stay longer than the exploration period of the licence, so that water monitoring can continue. An appropriate clause will be inserted to assist in Mr Grant's request.
- 123 Attached are access arrangements in respect of each landholder involved in these proceedings.

ACCESS ARRANGEMENT

As determined by the Court on 16 July 2009 following the hearing
of Warden's Court Case No. 2009/08

Landholders: Benjamin Arthur **EVANS**, Neville John **EVANS**
and Gemma Catherine **EVANS**

Address: "Burwood", Rossmar Park Road,
Caroona. NSW 2343

Title: Lots 4, 6 12,13 and 201 of Deposited Plan 755494,
Lots 2, 3, 4, 9, 10, 12 and 13 of Deposited Plan
114872

Licence Holder: Coal Mines Australia Pty Limited (formerly known
as
Coal Mines Australia Limited)

Address: 180 Lonsdale Street
Melbourne. Vic 3000
C/- MinterEllison Lawyers
GPO Box 521
SYDNEY NSW 2001

Local Contact: Mr Stephen David Phone: 02 6746 4600

Authority Details: Exploration Licence No. 6505, granted
12 April 2006

Interpretation

1. Interpretation

Where the following words appear in this Arrangement they have the meaning provided below:

'Business day' means any day except Saturday or a Sunday or other public holiday;

'CMAL' means Coal. Mines Australia Pty Ltd, its servants, agents, assigns, successors, employees, contractors and or invitees;

'Date of Judgment' means the date that judgment is handed down *in Benjamin Evans, Neville Evans and Gemma Evans v Coal Mines Australia Pty Ltd, Case No: 2009/08 in the Warden's Court.*

'**Exploration Licence**' means exploration licence No. 6505 granted under the *Mining Act 1992*; 'Emergency' means a period of time that in the opinion of CMAL exists as a result of a threat to:

- (a) the integrity of CMAL's property on the Land;
- (b) the health and safety of persons on the Land and in the community;
- (c) the environment; or
- (d) property on the Land.

'Land' means the land identified in the attached plan, including where the proposed drill hole sites are located.

'**Landholder**' means the individuals or entities listed above.

'**Landholder's Representative**' means Long Howland Lawyers and Advisors of Gunnedah NSW;

The laws of New South Wales govern this Arrangement and each party is subject to the jurisdiction of the Courts of that State.

2. Exploration Activity

CMAL in carrying out its rights under the conditions outlined in Exploration Licence No. 6505, is obliged to adhere to those conditions and must work within the framework of the "Exploration Environmental Management Plan for the Caroona Project – EL 6505" prepared by Umwelt Environmental Consultants and approved by the Department of Primary Industries.

CMAL may access the Land during the term of this Arrangement to conduct prospecting and prospecting operations at the sites identified as C128 and C137 on the map attached hereto and marked "Appendix A".

The prospecting operations that CMAL will access the Land to carry out includes the installation and operation of piezometers at site C 137, This will include the drilling of up to 4 boreholes at site C137 for the piezometers and ongoing access, at approximately 3 monthly intervals, for monitoring of installed piezometers.

3. Notice of Access, Time Routes, and Induction, Personnel Accessing and Vehicles

3.1 Notice

- (a) Notice in writing will be given to the Landholder or Landholder's Representative at least five (5) days in advance of the first date that CMAL intends to enter upon

the Land, provided however the drilling of the exploratory holes shall take place, wherever possible, at a time determined following dialogue between the mining company and the Landholder. Every effort shall be made to access the land after harvesting a crop and prior to the seeding of a fresh crop.

- (b) CMAL shall give reasonable notice of not less than 24 hours to the Landholder when requiring subsequent access and shall use its best endeavours to minimise disruption to, or interference with, the Landholder's operations on the Land.
- (c) In the event of a rain delay of more than 24 hours, CMAL will give the Landholder 24 hours notice of its re-entry to the Land.
- (d) CMAL must notify the Landholder of any Emergency access as soon as is reasonably possible in the circumstances.

3.2 Time

Unless in the case of an Emergency CMAL will only access the Land between 6am and 6pm on Business days, unless otherwise agreed with the Landholder.

3.3 Route

CMAL to only access the Land along the routes shown on the Map *being* the route marked in yellow or as may be reasonably directed by the Landholder from time to time.

3.4 Induction

Prior to commencing work on the land, CMAL personnel will undertake an induction process provided by CMAL concerning requirements whilst on the Land. A copy of documentation used in this process to be made available at the request of the Landholder.

3.5 Landholder

Landholder may provide CMAL personnel an induction process similar to that which the Landholder undertakes with *employees and* visitors to the property.

3.6 Personnel accessing land

CMAL will facilitate access to the log kept at the drill site concerning persons accessing the land. *The* Landholder will maintain required confidentiality of this information consistent with their legitimate use of this information.

3.7 Vehicle Information

CMAL will provide information to the Landholder concerning Logos on vehicles and registration numbers of vehicles prior to their accessing the Land in respect of the Exploration Licence.

4. Compensation

- (a) CMAL Shall pay the compensation to the Landholder for all damage arising from its prospecting on the Land, in particular damage, if any, to crops.

Compensation for such damage shall be in the amount agreed between the parties or, if no agreement, as determined by a Warden's Court.

- (b) In addition, CMAL to pay the Landholder the sum of \$330 per week or part thereof for each drill site. Payment from the time CMAL accesses the Land to erect fencing or do other work, until the fencing is removed. Payment to be made at the completion of each borehole and removal of fencing from that site.
- (c) In addition, in respect of piezometer at site C137, CMAL is to pay the Landholder \$3,300 per year and *pro rata* in respect of a month or part of a month on which the piezometer is on the property, from the date the equipment is installed. The timing of payments to be agreed by the parties and in any case not more frequently than monthly.

Approximately 3 monthly accesses by CMAL to monitor the piezometer are included in this amount of compensation.

Also included is decommission of the site by 'cementing' the hole, cutting it off and rehabilitating the site, with the depth of 'cut off, nature of rehabilitation and other relevant matters, to be reasonably agreed. between the parties.

5. Term

This Arrangement shall commence on the Date of Judgment. It will terminate when the earliest of the following events occurs:

- (i) at the completion of the nominated works;
- (ii) two years form the date of this Arrangement;
- (iii) if the Landholder ceases to be the owner of the Lands, this Arrangement continues to apply to those parts of the Lands that the Landholder still owns;
- (iv) if the Exploration Licence is renewed under the *Mining Act 1992 (NSW)* the Exploration Licence is considered to remain in force and this Arrangement continues to bind the parties;

- (v) CMAL indicates in writing to the Landholder that it wishes to terminate the Arrangement; or the parties agree in writing to terminate the Arrangement.

6. Conditions of Access

CMAL, its employees, personnel, agents and contractors, shall:

- (a) **Weather** – only access the Land in wet weather when it is reasonable to do so.
- (b) **Gates** - leave open gates open and closed gates closed;
- (c) **Camping**--not camp overnight;
- (d) **Fire Protection** -- not light any fire on the Land;
- (e) **Rubbish** not leave any rubbish or refuse on the Land;
- (f) **Fences** - only cross fence lines at gates;
- (g) **Dogs** - not bring any dogs onto the Land;
- (h) **Water** - not use any water, other than in an Emergency, that is on the Land without the agreement of the Landholder; **Guns** - not bring any guns or firearms onto the Land;
- (i) **Guns** – not bring any guns or firearms on the Land;
- (j) **Vehicles** - wash down all vehicles prior to accessing the property according to CMAL and property induction protocols whichever may be most rigorous.
- (k) **Speed** --- vehicles to be driven at a maximum speed of 10km hr or less, as suitable to the conditions.
- (l) **Strata diagrams** similar to that shown in Appendix H to be provided for drill holes on the land.
- (m) **Sumps** – be left overnight with a freeboard of not less than 200mm and at weekends no less than 300mm. If sumps are to be left unattended for longer periods they are to be drained to a sufficient level to ensure that there is no overflow in the event of severe weather;
- (n) **Bunding** - low permeability bunding is to be laid surrounding the exploration bore;
- (o) **Chemicals/fuels** – ensure that the same are placed on a banded pallet;

(p) **Drilling** – shall be conducted by a driller with an Australian Drillers Association Standard class 3 licence for drilling through multiple aquifer systems;

(q) **Set up** - the Landholder or their nominee is entitled to be present during set-up and to inspect set-up prior to the commencement of drilling.

7. Lining of Sumps

So that there is no confusion in respect of condition 20(e) of EL 6505, as a condition of this access arrangement, CMAL shall ensure that each and every in-ground sump is plastic lined to prevent contamination. Furthermore, regular checking of the integrity of the lining between the drill hole and the sump is to take place and if ruptured, due to shovelling of slurry, the same lining is to be rectified forthwith.

8. Water Testing

Prior to drilling any exploration holes CMAL will take water samples from any private bores which are upon the Landholder's property and within 100 metres of exploration holes and have the water quality tested by a NATA, accredited laboratory. However, if there is no bore within 100 metres, then the sample should be taken from the nearest borehole upon the Landholders property.

Water testing shall take place according to the following timetable:

- (a) First test to be conducted one (1) week prior to the commencement of drilling.
- (b) Testing once per week during the drilling process.
- (c) A further test four (4) weeks after the completion of drilling.
- (d) A final test twelve (12) months after the completion of drilling.

This timetable for testing is subject to the Landholder giving permission to CMAL to access the Land for these purposes.

CMAL to inform the Landholder when samples are to be taken so that they can be present and countersign the samples for 'chain of custody' purposes.

Results of these tests shall be provided by the laboratory directly to the Landholder

9. Restoration

On completion of prospecting operations on the Lands, CMAL will:

- (a) **Equipment** - remove all equipment;
- (b) **Repair** -- repair any damage to the Lands or any fence, building or other improvement on the Lands as near as practicable to its original condition;
- (c) **Access Track** repair any access track as near as practicable to its original condition;
- (d) **Seed** - seed and fertilize any area as may be reasonably requested by the Landholder;
- (e) **Boreholes** - fill all boreholes on drilling sites with cement, cut off to a depth of 1 m, then cover with topsoil or as agreed by the parties;
- (f) **Soil Compaction** - in accordance with best practice and remedies applicable to local conditions such as those contained in the Report of GMC dated 26 February 2008 by Charles R, Bentley.'

Such works are to *be* completed as soon as practicable after prospecting operations have been completed and shall only be undertaken during the hours of access.

10. Supervisor

CMAL will appoint the following person as the CMAL Contact for the prospecting operations to be carried out pursuant to this Arrangement:

Mr Darren Swain, field Supervisor Mobile telephone: 0427662508

CMAL will ensure that the CMAL Contact is available at all reasonable *times to liaise with* the Landholder concerning the provisions of this Arrangement.

If CMAL changes the CMAL Contact for the prospecting operations to be carried out pursuant to this Arrangement they will notify the Landholder of the person who will be the new CMAL Contact.

11. Indemnity / and Insurance

In respect of the prospecting activities conducted by CMAL, CMAL *shall be the party* in control of all parts of the Lands accessed by it and any workplace thereon for the purposes of the *Occupational Health & Safety Act 2000*, and shall comply with the provisions of the said Act in relation to its prospecting activities conducted thereon.

CMAL shall reimburse the Landholder for any monies the Landholder may be ordered to pay by way of fines or costs in respect of any breaches of the said Act by CMAL or any employee, agent, contractor, invitee or licensee of CMAL (not including the Landholder) occurring on or in relation to *the* prospective activities on the lands during the term of this Arrangement.

12. Ownership of Infrastructure

Whilst this Arrangement has effect, infrastructure and equipment installed on the Lands by CMAL, in accordance with the terms of this Arrangement, remains the property of CMAL.

13. Exercise of Rights, Assignment or Rights and Novation

CMAL may exercise its rights hereunder by itself or through its employees, agents, servants and contractors.

CMAL may assign its rights hereunder at any time during the term of this Arrangement.

CMAL may novate this Arrangement to any body corporate of CMAL, to the holder or holders from time to time of the Exploration Licence and any mining lease which may affect the Lands.

14. Third Party Rights

The Landholder will not grant any *right to a third party that is inconsistent with CMAL's rights under this Arrangement*

15. Vary Arrangement and Resolution of Disputes

Upon notification by either party seeking to vary this Arrangement or to resolve a dispute, the parties will attempt to resolve issues within 21 days themselves, or with the assistance of an Australian Standards Accredited Mediator. If this does not result in a resolution, then the variation or dispute will be resolved under the *Mining Act 1992 (NSW)*.

16. Force Majeure

CMAL is not liable for a breach of the conditions of this Arrangement to the extent that the breach is caused by circumstances outside the control of CMAL, its employees, servants or agents and for the period those circumstances continue.

If CMAL becomes aware of a breach it must:

- (a) immediately notify the Landholder; and
- (b) try to remedy the cause quickly.

CMAL must notify the *Landholder* when the cause has been remedied.

17. Notices

Any notices may be sent to CMAL by pre paid post to:

The General Manager

Caroona Coal Project

PO Box 124

CAROONA NSW 2343

and shall be deemed to have been received by CMAL 7 days after posting or be at the time of successful facsimile transmission to 02 6746 4601 and shall be deemed to have been received by CMAL at the conclusion of the successful transmission of the facsimile.

Any notices may be sent to the Landholder's representative by pre paid post to:

Long Howland Lawyers and Advisors

PO Box 731

GUNNEDAH NSW 2380

and shall be deemed to have been received by the Landholder's representatives 7 days after posting or by facsimile transmission to 02 6742 5678 an shall be deemed to have been received by the Landholder's representative at the conclusion of the successful transmission of the facsimile.

Any notices may be sent to the Landholders by pre-paid post to the individual addresses noted at the beginning of this Determination and shall be deemed to have been received by the Landholders 7 days after posting.

Changes to these means of notification must be made by prior agreement between the Landholder and CMAL.

ACCESS ARRANGEMENT

As determined by the Court on 16 July 2009 following the hearing of Warden's Court Case No. 2009/08

Landholders: Rado Ranch Pty Ltd

Address: "Colorado"
QUIRINDI NSW 2343

Title: Lots 1 and 2 in Deposited Plan 1110519 and Lot 82 in Deposited Plan 755529.

Licence Holder: Coal Mines Australia Pty Limited (formerly known as
Coal Mines Australia Limited)

Address: 180 Lonsdale Street
Melbourne. Vic 3000
C/- MinterEllison Lawyers
GPO Box 521
SYDNEY NSW 2001

Local Contact: Mr Stephen David Phone: 02 6746 4600

Authority Details: Exploration Licence No. 6505, granted 12 April 2006

Interpretation

1. Interpretation

Where the following words appear in this Arrangement they have the meaning provided below:

'Business day' means any day except Saturday or a Sunday or other public holiday;

'CMAL' means Coal. Mines Australia Pty Ltd, its servants, agents, assigns, successors, employees, contractors and or invitees;

'Date of Judgment' means the date that judgment is handed down in *Rado Ranch Pty Ltd v Coal Mines Australia Pty Ltd, 09/2009* in the Warden's Court.

'Exploration Licence' means exploration licence No. 6505 granted under the *Mining Act 1992*; **'Emergency'** means a period of time that in the opinion of CMAL exists as a result of a threat to:

- (a) the integrity of CMAL's property on the Land;
- (b) the health and safety of persons on the Land and in the community;
- (c) the environment; or
- (d) property on the Land.

'Land' means the land identified in the attached plan marked "Appendix A", including where the proposed drill hole site C7-2 is located.

'Landholder' means the individuals or entities listed above.

'Landholder's Representative' means Long Howland Lawyers and Advisors of Gunnedah NSW;

The laws of New South Wales govern this Arrangement and each party is subject to the jurisdiction of the Courts of that State.

2. Exploration Activity

CMAL in carrying out its rights under the conditions outlined in Exploration Licence No. 6505, is obliged to adhere to those conditions and must work within the framework of the "Exploration Environmental Management Plan for the Caroona Project – EL 6505" prepared by Umwelt Environmental Consultants and approved by the Department of Primary Industries.

CMAL may access the Land during the term of this Arrangement to conduct prospecting and prospecting operations at the site identified as C7-2 on the map attached hereto and marked "Appendix A".

3. Notice of Access, Time Routes, and Induction, Personnel Accessing and Vehicles

3.1 Notice

- (a) Notice in writing will be given to the Landholder or Landholder's Representative at least five (5) days in advance of the first date that CMAL intends to enter upon the Land, provided however the drilling of the exploratory holes shall take place, wherever possible, at a time determined following dialogue between the mining company and the Landholder. Every effort shall be made to access the land after harvesting a crop and prior to the seeding of a fresh crop.
- (b) CMAL shall give reasonable notice of not less than 24 hours to the Landholder when requiring subsequent access and

shall use its best endeavours to minimise disruption to, or interference with, the Landholder's operations on the Land.

- (c) In the event of a rain delay of more than 24 hours, CMAL will give the Landholder 24 hours notice of its re-entry to the Land.
- (d) CMAL must notify the Landholder of any Emergency access as soon as is reasonably possible in the circumstances.

3.2 Time

Unless in the case of an Emergency CMAL will only access the Land between 6am and 6pm on Business days, unless otherwise agreed with the Landholder.

3.3 Route

CMAL to only access the Land along the routes shown on the Map being the route marked in yellow or as may be reasonably directed by the Landholder from time to time.

3.4 Induction

Prior to commencing work on the land, CMAL personnel will undertake an induction process provided by CMAL concerning requirements whilst on the Land. A copy of documentation used in this process to be made available at the request of the Landholder.

3.5 Landholder

Landholder may provide CMAL personnel an induction process similar to that which the Landholder undertakes with *employees and* visitors to the property.

3.6 Personnel accessing land

CMAL will facilitate access to the log kept at the drill site concerning persons accessing the land. *The* Landholder will maintain required confidentiality of this information consistent with their legitimate use of this information.

3.7 Vehicle Information

CMAL will provide information to the Landholder concerning Logos on vehicles and registration numbers of vehicles prior to their accessing the Land in respect of the Exploration Licence.

4. Compensation

- (a) CMAL shall pay the compensation to the Landholder for all damage arising from its prospecting on the Land, in particular damage, if any, to crops.

Compensation for such damage shall be in the amount agreed between the parties or, if no agreement, as determined by a Warden's Court.

- (b) In addition, CMAL to pay the Landholder the sum of \$330 per week or part thereof for each drill site. Payment from the time CMAL accesses the Land to erect fencing or do other work, until the fencing is removed. Payment to be made at the completion of each borehole and removal of fencing from that site.

Also included is decommission of the site by 'cementing' the hole, cutting it off and rehabilitating the site, with the depth of 'cut off, nature of rehabilitation and other relevant matters, to be reasonably agreed. between the parties.

5. Term

This Arrangement shall commence on the Date of Judgment. It will terminate when the earliest of the following events occurs:

- (i) at the completion of the nominated works;
- (ii) two years form the date of this Arrangement;
- (iii) if the Landholder ceases to be the owner of the Lands, this Arrangement continues to apply to those parts of the Lands that the Landholder still owns;
- (iv) if the Exploration Licence is renewed under the *Mining Act 1992 (NSW)* the Exploration Licence is considered to remain in force and this Arrangement continues to bind the parties;
- (v) CMAL indicates inn writing to the Landholder that it wishes to terminate the Arrangement; or the parties agree in writing to terminate the Arrangement.

6. Conditions of Access

CMAL, its employees, personnel, agents and contractors, shall:

- (a) **Weather** – only access the Land in wet weather when it is reasonable to do so.
- (b) **Gates** - leave open gates open and closed gates closed;
- (c) **Camping**- not camp overnight;

- (d) **Fire Protection** -- not light any fire on the Land;
- (e) **Rubbish** not leave any rubbish or refuse on the Land;
- (f) **Fences** - only cross fence lines at gates;
- (g) **Dogs** - not bring any dogs onto the Land;
- (h) **Water** - not use any water, other than in an Emergency, that is on the Land without the agreement of the Landholder; **Guns** - not bring any guns or firearms onto the Land;
- (i) **Guns** – not bring any guns or firearms on the Land;
- (j) **Vehicles** - wash down all vehicles prior to accessing the property according to CMAL and property induction protocols whichever may be most rigorous.
- (k) **Speed** --- vehicles to be driven at a maximum speed of 10km hr or less, as suitable to the conditions.
- (l) **Strata diagrams** similar to that shown in Appendix H to be provided for drill holes on the land.
- (m) **Sumps** – be left overnight with a freeboard of not less than 200mm and at weekends no less than 300mm. If sumps are to be left unattended for longer periods they are to be drained to a sufficient level to ensure that there is no overflow in the event of severe weather;
- (n) **Bunding** - low permeability bunding is to be laid surrounding the exploration bore;
- (o) **Chemicals/fuels** – ensure that the same are placed on a banded pallet;
- (p) **Drilling** – shall be conducted by a driller with an Australian Drillers Association Standard class 3 licence for drilling through multiple aquifer systems;
- (q) **Set up** - the Landholder or their nominee is entitled to be present during set-up and to inspect set-up prior to the commencement of drilling.

7. Lining of Sumps

So that there is no confusion in respect of condition 20(e) of EL 6505, as a condition of this access arrangement, CMAL shall ensure that each and every in-ground sump is plastic lined to prevent contamination. Furthermore, regular checking of the integrity of the lining between the drill hole and the sump is to take place and if

ruptured, due to shovelling of slurry, the same lining is to be rectified forthwith.

8. Water Testing

Prior to drilling any exploration holes CMAL will take water samples from any private bores which are upon the Landholder's property and within 100 metres of exploration holes and have the water quality tested by a NATA, accredited laboratory. However, if there is no bore within 100 metres, then the sample should be taken from the nearest borehole upon the Landholders property.

Water testing shall take place according to the following timetable:

- (a) First test to be conducted one (1) week prior to the commencement of drilling.
- (b) Testing once per week during the drilling process.
- (c) A further test four (4) weeks after the completion of drilling.
- (d) A final test twelve (12) months after the completion of drilling.

This timetable for testing is subject to the Landholder giving permission to CMAL to access the Land for these purposes.

CMAL to inform the Landholder when samples are to be taken so that they can be present and countersign the samples for 'chain of custody' purposes.

Results of these tests shall be provided by the laboratory directly to the Landholder

9. Restoration

On completion of prospecting operations on the Lands, CMAL will:

- (a) **Equipment** - remove all equipment;
- (b) **Repair** -- repair any damage to the Lands or any fence, building or other improvement on the Lands as near as practicable to its original condition;
- (c) **Access Track** repair any access track as near as practicable to its original condition;
- (d) **Seed** - seed and fertilize any area as may be reasonably requested by the Landholder;
- (e) **Boreholes** - fill all boreholes on drilling sites with cement, cut off to a depth of 1 m, then cover with topsoil or as agreed by the parties;

- (f) **Soil Compaction** - in accordance with best practice and remedies applicable to local conditions such as those contained in the Report of GMC dated 26 February 2008 by Charles R, Bentley.'

Such works are to *be* completed as soon as practicable after prospecting operations have been completed and shall only be undertaken during the hours of access.

10. Supervisor

CMAL will appoint the following person as the CMAL Contact for the prospecting operations to be carried out pursuant to this Arrangement:

Mr Darren Swain, field Supervisor Mobile telephone: 0427662508

CMAL will ensure that the CMAL Contact is available at all reasonable *times to liaise with* the Landholder concerning the provisions of this Arrangement.

If CMAL changes the CMAL Contact for the prospecting operations to be carried out pursuant to this Arrangement they will notify the Landholder of the person who will be the new CMAL Contact.

11. Indemnity / and Insurance

In respect of the prospecting activities conducted by CMAL, CMAL *shall be the party* in control of all parts of the Lands accessed by it and any workplace thereon for the purposes of the *Occupational Health & Safety Act 2000*, and shall comply with the provisions of the said Act in relation to its prospecting activities conducted thereon.

CMAL shall reimburse the Landholder for any monies the Landholder may be ordered to pay by way of fines or costs in respect of any breaches of the said Act by CMAL or any employee, agent, contractor, invitee or licensee of CMAL (not including the Landholder) occurring on or in relation to the prospective activities on the lands during the term of this Arrangement.

12. Ownership of Infrastructure

Whilst this Arrangement has effect, infrastructure and equipment installed on the Lands by CMAL, in accordance with the terms of this Arrangement, remains the property of CMAL.

13. Exercise of Rights, Assignment or Rights and Novation

CMAL may exercise its rights hereunder by itself or through its employees, agents, servants and contractors.

CMAL may assign its rights hereunder at any time during the term of this Arrangement.

CMAL may novate this Arrangement to any body corporate of CMAL, to the holder or holders from time to time of the Exploration Licence and any mining lease which may affect the Lands.

14. Third Party Rights

The Landholder will not grant any *right to a third party that is inconsistent with CMAL's rights under this Arrangement*

15. Vary Arrangement and Resolution of Disputes

Upon notification by either party seeking to vary this Arrangement or to resolve a dispute, the parties will attempt to resolve issues within 21 days themselves, or with the assistance of an Australian Standards Accredited Mediator. If this does not result in a resolution, then the variation or dispute will be resolved under the *Mining Act 1992 (NSW)*.

16. Force Majeure

CMAL is not liable for a breach of the conditions of this Arrangement to the extent that the breach is caused by circumstances outside the control of CMAL, its employees, servants or agents and for the period those circumstances continue.

If CMAL becomes aware of a breach it must:

- (a) immediately notify the Landholder; and
- (b) try to remedy the cause quickly.

CMAL must notify the *Landholder* when the cause has been remedied.

17. Notices

Any notices may be sent to CMAL by pre paid post to:

The General Manager

Caroona Coal Project

PO Box 124

CAROONA NSW 2343

and shall be deemed to have been received by CMAL 7 days after posting or be at the time of successful facsimile transmission to 02 6746 4601 and shall be deemed to have been received by CMAL at the conclusion of the successful transmission of the facsimile.

Any notices may be sent to the Landholder's representative by pre paid post to:

Long Howland Lawyers and Advisors

PO Box 731

GUNNEDAH NSW 2380

and shall be deemed to have been received by the Landholder's representatives 7 days after posting or by facsimile transmission to 02 6742 5678 and shall be deemed to have been received by the Landholder's representative at the conclusion of the successful transmission of the facsimile.

Any notices may be sent to the Landholders by pre-paid post to the individual addresses noted at the beginning of this Determination and shall be deemed to have been received by the Landholders 7 days after posting.

Changes to these means of notification must be made by prior agreement between the Landholder and CMAL.

ACCESS ARRANGEMENT

As determined by the Court on 16 July 2009 following the hearing
of Warden's Court Case No. 2009/08

Landholders: Single Tree Pty Limited

Address: "Springfield", Spring Ridge Road
QUIRINDI NSW 2343

Title: Lots 7, 8 and 9 in Deposited Plan 114873 and Lots
5, 7, 8, 19, 29, 46 and 47 in Deposited Plan
755494

Licence Holder: Coal Mines Australia Pty Limited (formerly known
as Coal Mines Australia Limited)

Address: 180 Lonsdale Street
Melbourne. Vic 3000
C/- MinterEllison Lawyers
GPO Box 521
SYDNEY NSW 2001

Local Contact: Mr Stephen David Phone: 02 6746 4600

Authority Details: Exploration Licence No. 6505, granted
12 April 2006

Interpretation

1. Interpretation

Where the following words appear in this Arrangement they have the meaning provided below:

'Business day' means any day except Saturday or a Sunday or other public holiday;

'CMAL' means Coal. Mines Australia Pty Ltd, its servants, agents, assigns, successors, employees, contractors and or invitees;

'Date of Judgment' means the date that judgment is handed down in *Single Tree Pty Limited v Coal Mines Australia Pty Ltd, 10/2009* in the Warden's Court.

'Exploration Licence' means exploration licence No. 6505 granted under the *Mining Act 1992*; **'Emergency'** means a period of time that in the opinion of CMAL exists as a result of a threat to:

- (a) the integrity of CMAL's property on the Land;
- (b) the health and safety of persons on the Land and in the community;
- (c) the environment; or
- (d) property on the Land.

'Land' means the land identified in the attached plan marked "Appendix A", including where the proposed drill hole site C7-2 is located.

'Landholder' means the individuals or entities listed above.

'Landholder's Representative' means Long Howland Lawyers and Advisors of Gunnedah NSW;

The laws of New South Wales govern this Arrangement and each party is subject to the jurisdiction of the Courts of that State.

2. Exploration Activity

CMAL in carrying out its rights under the conditions outlined in Exploration Licence No. 6505, is obliged to adhere to those conditions and must work within the framework of the "Exploration Environmental Management Plan for the Caroona Project – EL 6505" prepared by Umwelt Environmental Consultants and approved by the Department of Primary Industries.

CMAL may access the Land during the term of this Arrangement to conduct prospecting and prospecting operations at the site identified as C93 on the map attached hereto and marked "Appendix A".

3. Notice of Access, Time Routes, and Induction, Personnel Accessing and Vehicles

3.1 Notice

- (a) Notice in writing will be given to the Landholder or Landholder's Representative at least five (5) days in advance of the first date that CMAL intends to enter upon the Land, provided however the drilling of the exploratory holes shall take place, wherever possible, at a time determined following dialogue between the mining company and the Landholder. Every effort shall be made to access the land after harvesting a crop and prior to the seeding of a fresh crop.
- (b) CMAL shall give reasonable notice of not less than 24 hours to the Landholder when requiring subsequent access and

shall use its best endeavours to minimise disruption to, or interference with, the Landholder's operations on the Land.

- (c) In the event of a rain delay of more than 24 hours, CMAL will give the Landholder 24 hours notice of its re-entry to the Land.
- (d) CMAL must notify the Landholder of any Emergency access as soon as is reasonably possible in the circumstances.

3.2 Time

Unless in the case of an Emergency CMAL will only access the Land between 6am and 6pm on Business days, unless otherwise agreed with the Landholder.

3.3 Route

CMAL to only access the Land along the routes shown on the Map being the route marked in yellow or as may be reasonably directed by the Landholder from time to time.

3.4 Induction

Prior to commencing work on the land, CMAL personnel will undertake an induction process provided by CMAL concerning requirements whilst on the Land. A copy of documentation used in this process to be made available at the request of the Landholder.

3.5 Landholder

Landholder may provide CMAL personnel an induction process similar to that which the Landholder undertakes with *employees and* visitors to the property.

3.6 Personnel accessing land

CMAL will facilitate access to the log kept at the drill site concerning persons accessing the land. *The* Landholder will maintain required confidentiality of this information consistent with their legitimate use of this information.

3.7 Vehicle Information

CMAL will provide information to the Landholder concerning Logos on vehicles and registration numbers of vehicles prior to their accessing the Land in respect of the Exploration Licence.

4. Compensation

- (a) CMAL shall pay the compensation to the Landholder for all damage arising from its prospecting on the Land, in particular damage, if any, to crops.

Compensation for such damage shall be in the amount agreed between the parties or, if no agreement, as determined by a Warden's Court.

- (b) In addition, CMAL to pay the Landholder the sum of \$330 per week or part thereof for each drill site. Payment from the time CMAL accesses the Land to erect fencing or do other work, until the fencing is removed. Payment to be made at the completion of each borehole and removal of fencing from that site.

Also included is decommission of the site by 'cementing' the hole, cutting it off and rehabilitating the site, with the depth of 'cut off, nature of rehabilitation and other relevant matters, to be reasonably agreed. between the parties.

5. Term

This Arrangement shall commence on the Date of Judgment. It will terminate when the earliest of the following events occurs:

- (i) at the completion of the nominated works;
- (ii) two years form the date of this Arrangement;
- (iii) if the Landholder ceases to be the owner of the Lands, this Arrangement continues to apply to those parts of the Lands that the Landholder still owns;
- (iv) if the Exploration Licence is renewed under the *Mining Act 1992 (NSW)* the Exploration Licence is considered to remain in force and this Arrangement continues to bind the parties;
- (v) CMAL indicates inn writing to the Landholder that it wishes to terminate the Arrangement; or the parties agree in writing to terminate the Arrangement.

6. Conditions of Access

CMAL, its employees, personnel, agents and contractors, shall:

- (a) **Weather** – only access the Land in wet weather when it is reasonable to do so.
- (b) **Gates** - leave open gates open and closed gates closed;
- (c) **Camping**- not camp overnight;

- (d) **Fire Protection** -- not light any fire on the Land;
- (e) **Rubbish** not leave any rubbish or refuse on the Land;
- (f) **Fences** - only cross fence lines at gates;
- (g) **Dogs** - not bring any dogs onto the Land;
- (h) **Water** - not use any water, other than in an Emergency, that is on the Land without the agreement of the Landholder; **Guns** - not bring any guns or firearms onto the Land;
- (i) **Guns** – not bring any guns or firearms on the Land;
- (j) **Vehicles** - wash down all vehicles prior to accessing the property according to CMAL and property induction protocols whichever may be most rigorous.
- (k) **Speed** --- vehicles to be driven at a maximum speed of 10km hr or less, as suitable to the conditions.
- (l) **Strata diagrams** similar to that shown in Appendix H to be provided for drill holes on the land.
- (m) **Sumps** – be left overnight with a freeboard of not less than 200mm and at weekends no less than 300mm. If sumps are to be left unattended for longer periods they are to be drained to a sufficient level to ensure that there is no overflow in the event of severe weather;
- (n) **Bunding** - low permeability bunding is to be laid surrounding the exploration bore;
- (o) **Chemicals/fuels** – ensure that the same are placed on a bunded pallet;
- (p) **Drilling** – shall be conducted by a driller with an Australian Drillers Association Standard class 3 licence for drilling through multiple aquifer systems;
- (q) **Set up** - the Landholder or their nominee is entitled to be present during set-up and to inspect set-up prior to the commencement of drilling.

7. Lining of Sumps

So that there is no confusion in respect of condition 20(e) of EL 6505, as a condition of this access arrangement, CMAL shall ensure that each and every in-ground sump is plastic lined to prevent contamination. Furthermore, regular checking of the integrity of the lining between the drill hole and the sump is to take place and if

ruptured, due to shovelling of slurry, the same lining is to be rectified forthwith.

8. Water Testing

Prior to drilling any exploration holes CMAL will take water samples from any private bores which are upon the Landholder's property and within 100 metres of exploration holes and have the water quality tested by a NATA, accredited laboratory. However, if there is no bore within 100 metres, then the sample should be taken from the nearest borehole upon the Landholders property.

Water testing shall take place according to the following timetable:

- (a) First test to be conducted one (1) week prior to the commencement of drilling.
- (b) Testing once per week during the drilling process.
- (c) A further test four (4) weeks after the completion of drilling.
- (d) A final test twelve (12) months after the completion of drilling.

This timetable for testing is subject to the Landholder giving permission to CMAL to access the Land for these purposes.

CMAL to inform the Landholder when samples are to be taken so that they can be present and countersign the samples for 'chain of custody' purposes.

Results of these tests shall be provided by the laboratory directly to the Landholder

9. Restoration

On completion of prospecting operations on the Lands, CMAL will:

- (a) **Equipment** - remove all equipment;
- (b) **Repair** -- repair any damage to the Lands or any fence, building or other improvement on the Lands as near as practicable to its original condition;
- (c) **Access Track** repair any access track as near as practicable to its original condition;
- (d) **Seed** - seed and fertilize any area as may be reasonably requested by the Landholder;
- (e) **Boreholes** - fill all boreholes on drilling sites with cement, cut off to a depth of 1 m, then cover with topsoil or as agreed by the parties;

- (f) **Soil Compaction** - in accordance with best practice and remedies applicable to local conditions such as those contained in the Report of GMC dated 26 February 2008 by Charles R, Bentley.'

Such works are to *be* completed as soon as practicable after prospecting operations have been completed and shall only be undertaken during the hours of access.

10. Supervisor

CMAL will appoint the following person as the CMAL Contact for the prospecting operations to be carried out pursuant to this Arrangement:

Mr Darren Swain, field Supervisor Mobile telephone: 0427662508

CMAL will ensure that the CMAL Contact is available at all reasonable *times to liaise with* the Landholder concerning the provisions of this Arrangement.

If CMAL changes the CMAL Contact for the prospecting operations to be carried out pursuant to this Arrangement they will notify the Landholder of the person who will be the new CMAL Contact.

11. Indemnity / and Insurance

In respect of the prospecting activities conducted by CMAL, CMAL *shall be the party* in control of all parts of the Lands accessed by it and any workplace thereon for the purposes of the *Occupational Health & Safety Act 2000*, and shall comply with the provisions of the said Act in relation to its prospecting activities conducted thereon.

CMAL shall reimburse the Landholder for any monies the Landholder may be ordered to pay by way of fines or costs in respect of any breaches of the said Act by CMAL or any employee, agent, contractor, invitee or licensee of CMAL (not including the Landholder) occurring on or in relation to the prospective activities on the lands during the term of this Arrangement.

12. Ownership of Infrastructure

Whilst this Arrangement has effect, infrastructure and equipment installed on the Lands by CMAL, in accordance with the terms of this Arrangement, remains the property of CMAL.

13. Exercise of Rights, Assignment or Rights and Novation

CMAL may exercise its rights hereunder by itself or through its employees, agents, servants and contractors.

CMAL may assign its rights hereunder at any time during the term of this Arrangement.

CMAL may novate this Arrangement to any body corporate of CMAL, to the holder or holders from time to time of the Exploration Licence and any mining lease which may affect the Lands.

14. Third Party Rights

The Landholder will not grant any *right to a third party that is inconsistent with CMAL's rights under this Arrangement*

15. Vary Arrangement and Resolution of Disputes

Upon notification by either party seeking to vary this Arrangement or to resolve a dispute, the parties will attempt to resolve issues within 21 days themselves, or with the assistance of an Australian Standards Accredited Mediator. If this does not result in a resolution, then the variation or dispute will be resolved under the *Mining Act 1992 (NSW)*.

16. Force Majeure

CMAL is not liable for a breach of the conditions of this Arrangement to the extent that the breach is caused by circumstances outside the control of CMAL, its employees, servants or agents and for the period those circumstances continue.

If CMAL becomes aware of a breach it must:

- (a) immediately notify the Landholder; and
- (b) try to remedy the cause quickly.

CMAL must notify the *Landholder* when the cause has been remedied.

17. Notices

Any notices may be sent to CMAL by pre paid post to:

The General Manager

Caroona Coal Project

PO Box 124

CAROONA NSW 2343

and shall be deemed to have been received by CMAL 7 days after posting or be at the time of successful facsimile transmission to 02 6746 4601 and shall be deemed to have been received by CMAL at the conclusion of the successful transmission of the facsimile.

Any notices may be sent to the Landholder's representative by pre paid post to:

Long Howland Lawyers and Advisors

PO Box 731

GUNNEDAH NSW 2380

and shall be deemed to have been received by the Landholder's representatives 7 days after posting or by facsimile transmission to 02 6742 5678 and shall be deemed to have been received by the Landholder's representative at the conclusion of the successful transmission of the facsimile.

Any notices may be sent to the Landholders by pre-paid post to the individual addresses noted at the beginning of this Determination and shall be deemed to have been received by the Landholders 7 days after posting.

Changes to these means of notification must be made by prior agreement between the Landholder and CMAL.

ACCESS ARRANGEMENT

As determined by the Court on 16 July 2009 following the hearing
of Warden's Court Case No. 2009/08

Landholders: Maylan Pty Ltd

Address: "Springfield" Spring Ridge Road
QUIRINDI NSW 2343

Title: Lot 1 in Deposited Plan 837358, Lots 1, 2 3, and 4
Deposited Plan 114873, Lots 9, 14, 15, 16, 17, 18,
20, 21, 27, 28, 51, 52, 109, 110, 126, 127, 128,
129,130, 131, 132 and 133 in Deposited Plan
755494

Licence Holder: Coal Mines Australia Pty Limited (formerly known
as
Coal Mines Australia Limited)

Address: 180 Lonsdale Street
Melbourne. Vic 3000
C/- MinterEllison Lawyers
GPO Box 521
SYDNEY NSW 2001

Local Contact: Mr Stephen David Phone: 02 6746 4600

Authority Details: Exploration Licence No. 6505, granted
12 April 2006

Interpretation

1. Interpretation

Where the following words appear in this Arrangement they have the meaning provided below:

'Business day' means any day except Saturday or a Sunday or other public holiday;

'CMAL' means Coal. Mines Australia Pty Ltd, its servants, agents, assigns, successors, employees, contractors and or invitees;

'Date of Judgment' means the date that judgment is handed down *in Maylan Pty Ltd v Coal Mines Australia Pty Ltd, Case 2009/11* in the Warden's Court.

'Exploration Licence' means exploration licence No. 6505 granted under the *Mining Act 1992*; **'Emergency'** means a period of time that in the opinion of CMAL exists as a result of a threat to:

- (a) the integrity of CMAL's property on the Land;
- (b) the health and safety of persons on the Land and in the community;
- (c) the environment; or
- (d) property on the Land.

'Land' means the land identified in the attached plan marked "Appendix A", including where the proposed drill hole site C7-2 is located.

'Landholder' means the individuals or entities listed above.

'Landholder's Representative' means Long Howland Lawyers and Advisors of Gunnedah NSW;

The laws of New South Wales govern this Arrangement and each party is subject to the jurisdiction of the Courts of that State.

2. Exploration Activity

CMAL in carrying out its rights under the conditions outlined in Exploration Licence No. 6505, is obliged to adhere to those conditions and must work within the framework of the "Exploration Environmental Management Plan for the Caroona Project – EL 6505" prepared by Umwelt Environmental Consultants and approved by the Department of Primary Industries.

CMAL may access the Land during the term of this Arrangement to conduct prospecting and prospecting operations at the site identified as C147, C148 and C150 on the map attached hereto and marked "Appendix A".

3. Notice of Access, Time Routes, and Induction, Personnel Accessing and Vehicles

3.1 Notice

- (a) Notice in writing will be given to the Landholder or Landholder's Representative at least five (5) days in advance of the first date that CMAL intends to enter upon the Land, provided however the drilling of the exploratory holes shall take place, wherever possible, at a time determined following dialogue between the mining company and the Landholder. Every effort shall be made to access

the land after harvesting a crop and prior to the seeding of a fresh crop.

- (b) CMAL shall give reasonable notice of not less than 24 hours to the Landholder when requiring subsequent access and shall use its best endeavours to minimise disruption to, or interference with, the Landholder's operations on the Land.
- (c) In the event of a rain delay of more than 24 hours, CMAL will give the Landholder 24 hours notice of its re-entry to the Land.
- (d) CMAL must notify the Landholder of any Emergency access as soon as is reasonably possible in the circumstances.

3.2 Time

Unless in the case of an Emergency CMAL will only access the Land between 6am and 6pm on Business days, unless otherwise agreed with the Landholder.

3.3 Route

CMAL to only access the Land along the routes shown on the Map being the route marked in yellow or as may be reasonably directed by the Landholder from time to time.

3.4 Induction

Prior to commencing work on the land, CMAL personnel will undertake an induction process provided by CMAL concerning requirements whilst on the Land. A copy of documentation used in this process to be made available at the request of the Landholder.

3.5 Landholder

Landholder may provide CMAL personnel an induction process similar to that which the Landholder undertakes with *employees and* visitors to the property.

3.6 Personnel accessing land

CMAL will facilitate access to the log kept at the drill site concerning persons accessing the land. *The* Landholder will maintain required confidentiality of this information consistent with their legitimate use of this information.

3.7 Vehicle Information

CMAL will provide information to the Landholder concerning Logos on vehicles and registration numbers of vehicles prior to their accessing the Land in respect of the Exploration Licence.

4. Compensation

- (a) CMAL shall pay the compensation to the Landholder for all damage arising from its prospecting on the Land, in particular damage, if any, to crops.

Compensation for such damage shall be in the amount agreed between the parties or, if no agreement, as determined by a Warden's Court.

- (b) In addition, CMAL to pay the Landholder the sum of \$330 per week or part thereof for each drill site. Payment from the time CMAL accesses the Land to erect fencing or do other work, until the fencing is removed. Payment to be made at the completion of each borehole and removal of fencing from that site.

Also included is decommission of the site by 'cementing' the hole, cutting it off and rehabilitating the site, with the depth of 'cut off, nature of rehabilitation and other relevant matters, to be reasonably agreed. between the parties.

5. Term

This Arrangement shall commence on the Date of Judgment. It will terminate when the earliest of the following events occurs:

- (i) at the completion of the nominated works;
- (ii) two years form the date of this Arrangement;
- (iii) if the Landholder ceases to be the owner of the Lands, this Arrangement continues to apply to those parts of the Lands that the Landholder still owns;
- (iv) if the Exploration Licence is renewed under the *Mining Act 1992 (NSW)* the Exploration Licence is considered to remain in force and this Arrangement continues to bind the parties;
- (v) CMAL indicates inn writing to the Landholder that it wishes to terminate the Arrangement; or the parties agree in writing to terminate the Arrangement.

6. Conditions of Access

CMAL, its employees, personnel, agents and contractors, shall:

- (a) **Weather** – only access the Land in wet weather when it is reasonable to do so.
- (b) **Gates** - leave open gates open and closed gates closed;

- (c) **Camping**- not camp overnight;
- (d) **Fire Protection** -- not light any fire on the Land;
- (e) **Rubbish** not leave any rubbish or refuse on the Land;
- (f) **Fences** - only cross fence lines at gates;
- (g) **Dogs** - not bring any dogs onto the Land;
- (h) **Water** - not use any water, other than in an Emergency, that is on the Land without the agreement of the Landholder; **Guns** - not bring any guns or firearms onto the Land;
- (i) **Guns** – not bring any guns or firearms on the Land;
- (j) **Vehicles** - wash down all vehicles prior to accessing the property according to CMAL and property induction protocols whichever may be most rigorous.
- (k) **Speed** --- vehicles to be driven at a maximum speed of 10km hr or less, as suitable to the conditions.
- (l) **Strata diagrams** similar to that shown in Appendix H to be provided for drill holes on the land.
- (m) **Sumps** – be left overnight with a freeboard of not less than 200mm and at weekends no less than 300mm. If sumps are to be left unattended for longer periods they are to be drained to a sufficient level to ensure that there is no overflow in the event of severe weather;
- (n) **Bunding** - low permeability bunding is to be laid surrounding the exploration bore;
- (o) **Chemicals/fuels** – ensure that the same are placed on a bunded pallet;
- (p) **Drilling** – shall be conducted by a driller with an Australian Drillers Association Standard class 3 licence for drilling through multiple aquifer systems;
- (q) **Set up** - the Landholder or their nominee is entitled to be present during set-up and to inspect set-up prior to the commencement of drilling.

7. Lining and Type of Sumps

So that there is no confusion in respect of condition 20(e) of EL 6505, as a condition of this access arrangement, CMAL shall ensure that each and every in-ground sump is plastic lined to prevent contamination. Furthermore, regular checking of the integrity of the

lining between the drill hole and the sump is to take place and if ruptured, due to shovelling of slurry, the same lining is to be rectified forthwith.

At site C150, before prospecting operations commence, CMAL shall install above ground tanks/sumps for the storage of water and drill fluids. The design and operation of those tanks/sumps will be the same as utilised on the property of Geoffrey Brown and Sharon Brown (site C22). However, if operations proceed at site C150 prior to installation of above ground tanks/sumps on the Brown's property then the design and operation of the sumps shall be approved:

1. by an expert appointed by agreement reached between the Landholders and CMAL, or, in the absence of such agreement,
2. by an expert recommended by the Australian Drilling Industry Association.

8. Water Testing

Prior to drilling any exploration holes CMAL will take water samples from any private bores which are upon the Landholder's property and within 100 metres of exploration holes and have the water quality tested by a NATA, accredited laboratory. However, if there is no bore within 100 metres, then the sample should be taken from the nearest borehole upon the Landholders property.

Water testing shall take place according to the following timetable:

- (a) First test to be conducted one (1) week prior to the commencement of drilling.
- (b) Testing once per week during the drilling process.
- (c) A further test four (4) weeks after the completion of drilling.
- (d) A final test twelve (12) months after the completion of drilling.

This timetable for testing is subject to the Landholder giving permission to CMAL to access the Land for these purposes.

CMAL to inform the Landholder when samples are to be taken so that they can be present and countersign the samples for 'chain of custody' purposes.

Results of these tests shall be provided by the laboratory directly to the Landholder

9. Restoration

On completion of prospecting operations on the Lands, CMAL will:

- (a) **Equipment** - remove all equipment;
- (b) **Repair** -- repair any damage to the Lands or any fence, building or other improvement on the Lands as near as practicable to its original condition;
- (c) **Access Track** repair any access track as near as practicable to its original condition;
- (d) **Seed** - seed and fertilize any area as may be reasonably requested by the Landholder;
- (e) **Boreholes** - fill all boreholes on drilling sites with cement, cut off to a depth of 1 m, then cover with topsoil or as agreed by the parties;
- (f) **Soil Compaction** - in accordance with best practice and remedies applicable to local conditions such as those contained in the Report of GMC dated 26 February 2008 by Charles R, Bentley.'

Such works are to *be* completed as soon as practicable after prospecting operations have been completed and shall only be undertaken during the hours of access.

10. Supervisor

CMAL will appoint the following person as the CMAL Contact for the prospecting operations to be carried out pursuant to this Arrangement:

Mr Darren Swain, field Supervisor Mobile telephone: 0427662508

CMAL will ensure that the CMAL Contact is available at all reasonable *times to liaise with* the Landholder concerning the provisions of this Arrangement.

If CMAL changes the CMAL Contact for the prospecting operations to be carried out pursuant to this Arrangement they will notify the Landholder of the person who will be the new CMAL Contact.

11. Indemnity / and Insurance

In respect of the prospecting activities conducted by CMAL, CMAL *shall be the party* in control of all parts of the Lands accessed by it and any workplace thereon for the purposes of the *Occupational Health & Safety Act 2000*, and shall comply with the provisions of the said Act in relation to its prospecting activities conducted thereon.

CMAL shall reimburse the Landholder for any monies the Landholder may be ordered to pay by way of fines or costs in respect of any breaches of the said Act by CMAL or any employee, agent, contractor, invitee or licensee of CMAL (not including the Landholder) occurring on or in relation to the prospective activities on the lands during the term of this Arrangement.

12. Ownership of Infrastructure

Whilst this Arrangement has effect, infrastructure and equipment installed on the Lands by CMAL, in accordance with the terms of this Arrangement, remains the property of CMAL.

13. Exercise of Rights, Assignment or Rights and Novation

CMAL may exercise its rights hereunder by itself or through its employees, agents, servants and contractors.

CMAL may assign its rights hereunder at any time during the term of this Arrangement.

CMAL may novate this Arrangement to any body corporate of CMAL, to the holder or holders from time to time of the Exploration Licence and any mining lease which may affect the Lands.

14. Third Party Rights

The Landholder will not grant any *right to a third party that is inconsistent with CMAL's rights under this Arrangement*

15. Vary Arrangement and Resolution of Disputes

Upon notification by either party seeking to vary this Arrangement or to resolve a dispute, the parties will attempt to resolve issues within 21 days themselves, or with the assistance of an Australian Standards Accredited Mediator. If this does not result in a resolution, then the variation or dispute will be resolved under the *Mining Act 1992 (NSW)*.

16. Force Majeure

CMAL is not liable for a breach of the conditions of this Arrangement to the extent that the breach is caused by circumstances outside the control of CMAL, its employees, servants or agents and for the period those circumstances continue.

If CMAL becomes aware of a breach it must:

- (a) immediately notify the Landholder; and
- (b) try to remedy the cause quickly.

CMAL must notify the *Landholder* when the cause has been remedied.

17. Notices

Any notices may be sent to CMAL by pre paid post to:

The General Manager

Caroona Coal Project

PO Box 124

CAROONA NSW 2343

and shall be deemed to have been received by CMAL 7 days after posting or be at the time of successful facsimile transmission to 02 6746 4601 and shall be deemed to have been received by CMAL at the conclusion of the successful transmission of the facsimile.

Any notices may be sent to the Landholder's representative by pre paid post to:

Long Howland Lawyers and Advisors

PO Box 731

GUNNEDAH NSW 2380

and shall be deemed to have been received by the Landholder's representatives 7 days after posting or by facsimile transmission to 02 6742 5678 an shall be deemed to have been received by the Landholder's representative at the conclusion of the successful transmission of the facsimile.

Any notices may be sent to the Landholders by pre-paid post to the individual addresses noted at the beginning of this Determination and shall be deemed to have been received by the Landholders 7 days after posting.

Changes to these means of notification must be made by prior agreement between the Landholder and CMAL.

ACCESS ARRANGEMENT

As determined by the Court on 16 July 2009 following the hearing
of Warden's Court Case No. 2009/08

Landholders: Allan Raymond **GRANT**

Address: "Walla Park" Gunnedah Road
WERRIS CREEK NSW 2341

Title: Lot 135 in Deposited Plan 751032

Licence Holder: Coal Mines Australia Pty Limited (formerly known
as Coal Mines Australia Limited)

Address: 180 Lonsdale Street
Melbourne. Vic 3000
C/- MinterEllison Lawyers
GPO Box 521
SYDNEY NSW 2001

Local Contact: Mr Stephen David Phone: 02 6746 4600

Authority Details: Exploration Licence No. 6505, granted
12 April 2006

Interpretation

1. Interpretation

Where the following words appear in this Arrangement they have the meaning provided below:

'Business day' means any day except Saturday or a Sunday or other public holiday;

'CMAL' means Coal. Mines Australia Pty Ltd, its servants, agents, assigns, successors, employees, contractors and or invitees;

'Date of Judgment' means the date that judgment is handed down *in Allan Raymond Grant v Coal Mines Australia Pty Ltd, 2009/12* in the Warden's Court.

'Exploration Licence' means exploration licence No. 6505 granted under the *Mining Act 1992*; **'Emergency'** means a period of time that in the opinion of CMAL exists as a result of a threat to:

- (a) the integrity of CMAL's property on the Land;
- (b) the health and safety of persons on the Land and in the community;
- (c) the environment; or
- (d) property on the Land.

'Land' means the land identified in the attached plan, including where the proposed drill hole sites are located.

'**Landholder**' means the individuals or entities listed above.

'**Landholder's Representative**' means Long Howland Lawyers and Advisors of Gunnedah NSW;

The laws of New South Wales govern this Arrangement and each party is subject to the jurisdiction of the Courts of that State.

2. Exploration Activity

CMAL in carrying out its rights under the conditions outlined in Exploration Licence No. 6505, is obliged to adhere to those conditions and must work within the framework of the "Exploration Environmental Management Plan for the Caroona Project – EL 6505" prepared by Umwelt Environmental Consultants and approved by the Department of Primary Industries.

CMAL may access the Land during the term of this Arrangement to conduct prospecting and prospecting operations at the sites identified as C54, C155 and C164 on the map attached hereto and marked "Appendix A".

The prospecting operations that CMAL will access the Land to carry out includes the installation and. operation of piezometers at site C 54, This will include the drilling of up to 4 boreholes at site C54 for the piezometers and ongoing access, at approximately 3 monthly intervals, for monitoring of installed piezometers.

3. Notice of Access, Time Routes, and Induction, Personnel Accessing and Vehicles

3.1 Notice

- (a) Notice in writing will be given to the Landholder or Landholder's Representative at least five (5) days in

the Land, provided however the drilling of the exploratory holes shall take place, wherever possible, at a time determined following dialogue between the mining company and the Landholder. Every effort shall be made to access the land after harvesting a crop and prior to the seeding of a fresh crop.

- (b) CMAL shall give reasonable notice of not less than 24 hours to the Landholder when requiring subsequent access and shall use its best endeavours to minimise disruption to, or interference with, the Landholder's operations on the Land.
- (c) In the event of a rain delay of more than 24 hours, CMAL will give the Landholder 24 hours notice of its re-entry to the Land.
- (d) CMAL must notify the Landholder of any Emergency access as soon as is reasonably possible in the circumstances.

3.2 Time

Unless in the case of an Emergency CMAL will only access the Land between 6am and 6pm on Business days, unless otherwise agreed with the Landholder.

3.3 Route

CMAL to only access the Land along the routes shown on the Map *being* the route marked in yellow or as may be reasonably directed by the Landholder from time to time.

3.4 Induction

Prior to commencing work on the land, CMAL personnel will undertake an induction process provided by CMAL concerning requirements whilst on the Land. A copy of documentation used in this process to be made available at the request of the Landholder.

3.5 Landholder

Landholder may provide CMAL personnel an induction process similar to that which the Landholder undertakes with *employees and* visitors to the property.

3.6 Personnel accessing land

CMAL will facilitate access to the log kept at the drill site concerning persons accessing the land. *The* Landholder will maintain required confidentiality of this information consistent with their legitimate use of this information.

3.7 Vehicle Information

CMAL will provide information to the Landholder concerning Logos on vehicles and registration numbers of vehicles prior to their accessing the Land in respect of the Exploration Licence.

4. Compensation

- (a) CMAL Shall pay the compensation to the Landholder for all damage arising from its prospecting on the Land, in particular damage, if any, to crops.

Compensation for such damage shall be in the amount agreed between the parties or, if no agreement, as determined by a Warden's Court.

- (b) In addition, CMAL to pay the Landholder the sum of \$330 per week or part thereof for each drill site. Payment from the time CMAL accesses the Land to erect fencing or do other work, until the fencing is removed. Payment to be made at the completion of each borehole and removal of fencing from that site.
- (c) In addition, in respect of piezometers at site C54 CMAL is to pay the Landholder \$3,300 per year and *pro rata* in respect of a month or part of a month on which the piezometers are on the property, from the date the equipment is installed. The timing of payments to be agreed by the parties and in any case not more frequently than monthly.

Approximately 3 monthly accesses by CMAL to monitor the piezometers are included in this amount of compensation.

Also included is decommission of the site by 'cementing' the hole, cutting it off and rehabilitating the site, with the depth of 'cut off, nature of rehabilitation and other relevant matters, to be reasonably agreed. between the parties. However, if the Landholder wishes the piezometers to remain upon the land at the expiration of the time in which they are required by CMAL, the parties may agree to the piezometers remaining.

If the piezometers remain upon the land, at the landholder's request, then compensation will cease at the point of time when the piezometers are no longer required by CMAL.

5. Term

This Arrangement shall commence on the Date of Judgment. It will terminate when the earliest of the following events occurs:

- (e) at the completion of the nominated works;
- (f) two years form the date of this Arrangement;

- (g) if the Landholder ceases to be the owner of the Lands, this Arrangement continues to apply to those parts of the Lands that the Landholder still owns;
- (h) if the Exploration Licence is renewed under the *Mining Act 1992 (NSW)* the Exploration Licence is considered to remain in force and this Arrangement continues to bind the parties;
- (i) CMAL indicates in writing to the Landholder that it wishes to terminate the Arrangement; or the parties agree in writing to terminate the Arrangement.

6. Conditions of Access

CMAL, its employees, personnel, agents and contractors, shall:

- (a) **Weather** – only access the Land in wet weather when it is reasonable to do so.
- (b) **Gates** - leave open gates open and closed gates closed;
- (c) **Camping--not** camp overnight;
- (d) **Fire Protection** -- not light any fire on the Land;
- (e) **Rubbish** not leave any rubbish or refuse on the Land;
- (f) **Fences** - only cross fence lines at gates;
- (g) **Dogs** - not bring any dogs onto the Land;
- (h) **Water** - not use any water, other than in an Emergency, that is on the Land without the agreement of the Landholder; **Guns** - not bring any guns or firearms onto the Land;
- (i) **Guns** – not bring any guns or firearms on the Land;
- (j) **Vehicles** - wash down all vehicles prior to accessing the property according to CMAL and property induction protocols whichever may be most rigorous.
- (k) **Speed** --- vehicles to be driven at a maximum speed of 10km hr or less, as suitable to the conditions.
- (l) **Strata diagrams** similar to that shown in Appendix H to be provided for drill holes on the land.
- (m) **Sumps** – be left overnight with a freeboard of not less than 200mm and at weekends no less than 300mm. If sumps are to be left unattended for longer periods they are to be drained to a sufficient

level to ensure that there is no overflow in the event of severe weather;

- (n) **Bunding** - low permeability bunding is to be laid surrounding the exploration bore;
- (o) **Chemicals/fuels** – ensure that the same are placed on a bunded pallet;
- (p) **Drilling** – shall be conducted by a driller with an Australian Drillers Association Standard class 3 licence for drilling through multiple aquifer systems;
- (q) **Set up** - the Landholder or their nominee is entitled to be present during set-up and to inspect set-up prior to the commencement of drilling.

7. Lining and Type of Sumps

So that there is no confusion in respect of condition 20(e) of EL 6505, as a condition of this access arrangement, CMAL shall ensure that each and every in-ground sump is plastic lined to prevent contamination. Furthermore, regular checking of the integrity of the lining between the drill hole and the sump is to take place and if ruptured, due to shovelling of slurry, the same lining is to be rectified forthwith.

At site C155, before prospecting operations commence, CMAL shall install above ground tanks/sumps for the storage of water and drill fluids. The design and operation of those tanks/sumps will be the same as utilised on the property of Geoffrey Brown and Sharon Brown (site C22). However, if operations proceed at site C155 prior to installation of above ground tanks/sumps on the Brown's property then the design and operation of the sumps shall be approved:

1. by an expert appointed by agreement reached between the Landholders and CMAL, or, in the absence of such agreement,
2. by an expert recommended by the Australian Drilling Industry Association.

8. Water Testing

Prior to drilling any exploration holes CMAL will take water samples from any private bores which are upon the Landholder's property and within 100 metres of exploration holes and have the water quality tested by a NATA, accredited laboratory. However, if there is no bore within 100 metres, then the sample should be taken from the nearest borehole upon the Landholders property.

Water testing shall take place according to the following timetable:

- (a) First test to be conducted one (1) week prior to the commencement of drilling.
- (b) Testing once per week during the drilling process.
- (c) A further test four (4) weeks after the completion of drilling.
- (d) A final test twelve (12) months after the completion of drilling.

This timetable for testing is subject to the Landholder giving permission to CMAL to access the Land for these purposes.

CMAL to inform the Landholder when samples are to be taken so that they can be present and

countersign the samples for 'chain of custody' purposes.

The laboratory shall provide results of these tests directly to the Landholder

9. Restoration

On completion of prospecting operations on the Lands, CMAL will:

- (x) **Equipment** - remove all equipment;
- (y) **Repair** -- repair any damage to the Lands or any fence, building or other improvement on the Lands as near as practicable to its original condition;
- (z) **Access Track** repair any access track as near as practicable to its original condition;
- (aa) **Seed** - seed and fertilize any area as may be reasonably requested by the Landholder;
- (bb) **Boreholes** - fill all boreholes on drilling sites with cement, cut off to a depth of 1 m, then cover with topsoil or as agreed by the parties;
- (cc) **Soil Compaction** - in accordance with best practice and remedies applicable to local conditions such as those contained in the Report of GMC dated 26 February 2008 by Charles R, Bentley.'

Such works are to be completed as soon as practicable after prospecting operations have been completed and shall only be undertaken during the hours of access.

10. Supervisor

CMAL will appoint the following person as the CMAL Contact for the prospecting operations to be carried out pursuant to this Arrangement:

Mr Darren Swain, field Supervisor Mobile telephone: 0427662508

CMAL will ensure that the CMAL Contact is available at all reasonable *times to liaise with* the Landholder concerning the provisions of this Arrangement.

If CMAL changes the CMAL Contact for the prospecting operations to be carried out pursuant to this Arrangement they will notify the Landholder of the person who will be the new CMAL Contact.

11. Indemnity / and Insurance

In respect of the prospecting activities conducted by CMAL, CMAL *shall be the party* in control of all parts of the Lands accessed by it and any workplace thereon for the purposes of the *Occupational Health & Safety Act 2000*, and shall comply with the provisions of the said Act in relation to its prospecting activities conducted thereon.

CMAL shall reimburse the Landholder for any monies the Landholder may be ordered to pay by way of fines or costs in respect of any breaches of the said Act by CMAL or any employee, agent, contractor, invitee or licensee of CMAL (not including the Landholder) occurring on or in relation to *the* prospective activities on the lands during the term of this Arrangement.

12. Ownership of Infrastructure

Whilst this Arrangement has effect, infrastructure and equipment installed on the Lands by CMAL, in accordance with the terms of this Arrangement, remains the property of CMAL.

13. Exercise of Rights, Assignment or Rights and Novation

CMAL may exercise its rights hereunder by itself or through its employees, agents, servants and contractors.

CMAL may assign its rights hereunder at any time during the term of this Arrangement.

CMAL may novate this Arrangement to any body corporate of CMAL, to the holder or holders from time to time of the Exploration Licence and any mining lease that may affect the Lands.

14. Third Party Rights

The Landholder will not grant any *right to a third party that is* inconsistent with CMAL's rights under this Arrangement

days themselves, or with the assistance of an Australian Standards Accredited Mediator. If this does not result in a resolution, then the variation or dispute will be resolved under the *Mining Act 1992 (NSW)*.

16. Force Majeure

CMAL is not liable for a breach of the conditions of this Arrangement to the extent that the breach is caused by circumstances outside the control of CMAL, its employees, servants or agents and for the period those circumstances continue.

If CMAL becomes aware of a breach it must:

(dd) immediately notify the Landholder; and

(ee) try to remedy the cause quickly.

CMAL must notify the *Landholder* when the cause has been remedied.

17. Notices

Any notices may be sent to CMAL by pre paid post to:

The General Manager

Carrion Coal Project

PO Box 124

CARRION NSW 2343

and shall be deemed to have been received by CMAL 7 days after posting or be at the time of successful facsimile transmission to 02 6746 4601 and shall be deemed to have been received by CMAL at the conclusion of the successful transmission of the facsimile.

Any notices may be sent to the Landholder's representative by pre paid post to:

Long Howland Lawyers and Advisors

PO Box 731

GUNNEDAH NSW 2380

and shall be deemed to have been received by the Landholder's 7 days representatives after posting or by facsimile transmission to 02 6742 5678 and shall be deemed to have been received by the Landholder's representative at the conclusion of the successful transmission of the facsimile.

Any notices may be sent to the Landholders by pre-paid post to the individual addresses noted at the beginning of this Determination and

shall be deemed to have been received by the Landholders 7 days after posting.

Changes to these means of notification must be made by prior agreement between the Landholder and CMAL.