



WARDEN'S COURT
New South Wales

Citation: Applicant: AUSTAR COAL MINE PTY LIMITED

Respondent: ALEXANDRA S. MORPHETT

Hearing dates: 14 August 2008 – Muswellbrook

25 September 2008 - Cessnock

Date of Decision: 15 October 2008

Jurisdiction: Mining

Place of Decision: Sydney (handed down in absence of parties)

Judgment of: Chief Mining Warden Bailey

Decision: Application for permit to enter land granted

Representation at hearing of 25 September 2008: Mr. J Withers of Counsel, instructed by B Tobin of Sparke Helmore for Applicant

Mr. J. Harvey by leave for Respondent

Legislation Cited: Mining Act 1992 – Section 252

Reasons for Decision

On the 30th July, 2008, Austar Coal Mine Pty. Limited filed an application for a permit to enter land to carry out an environmental assessment. The permit was required in respect of CML 2 and EL6598.

The application sought a permit to enter Lot 13 DP 866231. At the Directions Hearing on the 14th August, 2008, that portion of the application was amended to include Lot 100 DP 255530. Both of those portions of land are held by Alexandra Stephanie Morphett.

At the Directions Hearing at Muswellbrook on the 14th August, 2008, the applicant was represented by Mr B. Tobin, Solicitor of Sparke Helmore and the respondent sought leave to have her husband, Mr J. Harvey, speak on her behalf.

The respondent challenged the need of the mining company to enter the subject lands on the basis that an Environmental Impact Study had already been conducted for the purposes of obtaining a development consent. Furthermore, studies had already been undertaken in respect of mine subsidence. In essence, the respondents challenged the need and consequently the right of the applicant to enter upon their land. Directions were made following submissions from the parties and the matter was set down for hearing on the 25th September, 2008 at Cessnock Court House. In accordance with the directions, submissions from each of the parties were filed.

LEGISLATION:

Part 12 >> Division 2 >> Section 252

Mining Act 1992 No 29

252 Environmental assessment

- (1) A warden may, on the application of a person who proposes to undertake an assessment (for the purposes of this Act or the *Environmental Planning and Assessment Act 1979*) of the likely effect on the environment of the activities to be carried out under an authority or a mineral claim, grant a permit to the applicant to enter any land so as to enable the person to undertake the assessment.
- (2) For the purpose of determining an application for a permit, a warden may hold an inquiry into any matter arising under, or in connection with, the application.

- (3) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:
 - (a) enter the land to which the permit relates, and necessary to carry out the assessment
 - (b) do on that land all such things as are reasonably to which the permit relates.
- (4) The rights conferred by the permit may not be exercised within land in an exempted area except with the consent of the Minister.
- (5) Such consent may be given unconditionally or subject to conditions.
- (6) In the case of land within a national park, state conservation area, regional park, historic site, nature reserve, state game reserve, Aboriginal area, protected archaeological area, wildlife district, wildlife refuge, wildlife management area or Aboriginal place within the meaning of the *National Parks and Wildlife Act 1974*, such consent may not be given except with the concurrence of the Minister administering that Act.
- (7) In the case of land within a marine park under the *Marine Parks Act 1997*, such a consent may not be given except with the concurrence of the relevant Ministers within the meaning of that Act.

THE INQUIRY

At Cessnock on the 25th September, 2008, the applicant was represented by Mr J. Withers of Counsel, instructed by Mr B. Tobin, Solicitor of Sparke Helmore. Once again, the respondent was represented, by leave, by Mr J. Harvey.

The applicant tendered documents to support its claim and Mr F. X. Fulham, General Manager of the subject mine, gave evidence as to the need for the mining company to enter the respondent's land. Principally from the documents tendered, I find the following facts:

- **24th March, 1993:** Consolidated Mining Lease No.2 (CML 2) granted to Austar Coal Mine Pty. Limited. This lease covers land which includes Lot 13 DP 866231 and Lot 100 DP 255530 (the property).
- The respondent – Alexandra Stephanie Morphett - is the registered proprietor of the said property.
- **14th February, 1996:** The Minister for Urban Affairs granted a Development Application for Austar Coal Mine Pty. Ltd (DA 29/95) (The Consent).
- **18th March, 2004:** The Minister for Mineral Resources pursuant to S 239 (2) of The Mining Act 1992, amended CML 2 to include a condition that “the leaseholder shall prepare a Subsidence Management Plan prior to commencing any underground mining operations which will potentially lead to subsidence of the land surface”

- **8th June, 2008:** The Minister of Planning, pursuant to S 96(2) of the Environmental Planning and Assessment Act 1979, modified DA 29/95.
- Condition 3 of Schedule 3 of the Consent, requires the preparation of a Subsidence Management plan (SMP) and states:

Prior to carrying out any underground mining operations (except for Longwall panels A1 and A2" that will potentially lead to subsidence of the land surface, the applicant shall prepare a subsidence management plan (SMP) for those operations in accordance with the following DPI documents) or their latest version or replacements):

- a) New approval process for management of coal mining subsidence policy (SMP Policy Process);
 - b) Guidelines for applications for subsidence management approvals, to the satisfaction of the DPI (DPI Guidance)
- Panels A1 and A2 are not under the above-mentioned property of the respondent; part of longwall panel A4 and A5 are under the subject property.
 - An SMP Approval is limited in duration to a period of seven (7) years and consequently, during the life of a mining lease, the mining company is required to apply for SMP approval on a number of occasions.
 - The methodology accepted by the NSW Department of Primary Industries for the preparation of an application for SMP approval, is the preparation of a Property Subsidence Management Plan (PSMP) for each property within an area to be mined which it is projected will be impacted by subsidence.

Mr Fulham informed the court that a PSMP is required for each property and that will then form part of the Subsidence Management Plan, which is required to be submitted by the mining company. He indicated that the company has lodged a draft Subsidence Management Plan (SMP) and it includes all surrounding properties, other than the two properties, which are held by Ms Morphett. Mr Fulham advised the court that the previous approval to extract the coal by the longwall method only enabled the company to extract a three and a half metre thickness of coal. He indicated that the modification consent now allowed the company to extract somewhere between six and a half to a seven metre thickness of coal; consequently, the anticipated subsidence is expected to be greater than it would otherwise have been if the original extraction of a three and a half metre thick seam was extracted. He advised the court that that particular extraction method has never been used before in Australia, consequently the historical data does not exist to accurately estimate the

subsidence. To that extent, the company needs to undertake more tests as the mining progresses on to each and every property.

He informed the court that the mining company is required to effectively manage the subsidence and put matters in place to reduce the impact. Furthermore, it can more accurately inform the landholder as to the possible effects. It is necessary, according to Mr Fulham, for the mining company to enter the subject property and to obtain details as to the structures on the property that are likely to be affected by the subsidence so that they can more accurately put a Management Plan into place. The applicant needs to study the watercourses etc. upon the property as well as closely inspect flora and fauna to ascertain as to whether or not any threatened species are thereon.

Mr Fulham concluded his evidence in chief by reiterating that if the company did not gain access to this particular land, they couldn't finalise their report and assessment. If the company were unable to give a final assessment, according to Mr Fulham, it would not be able to gain approval to continue mining.

The cross examination of Mr Fulham centred principally upon the need of the mining company to enter the subject land for the purpose of the preparation of a Property Subsidence Management Plan (PSMP). Under cross examination, Mr Fulham was asked as to what particularly he was going to do in respect of this particular property which would be different from other properties. Mr Fulham indicated that the company needed to assess the structural integrity of any buildings or structures upon that particular property. He indicated it would be different from other properties and that is why the applicant needed to look at this particular property.

During the proceedings, Mr Harvey called for 2 documents:

- The Statement of Environmental Effects prepared by the mining company in support of its section 96 modification application.
- The Subsidence Management Plan said by Mr Fulham to have been prepared and forwarded to the DPI recently.

Those documents were not produced. However, on giving an undertaking to produce the documents to the court at a later stage, it was indicated that the applicant would

challenge the relevancy of the documents and objected to the respondent having access to the Subsidence Management Plan Application that was recently filed with the DPI.

Following The conclusion of the hearing, those two documents were forwarded by the applicant to the court. I have perused those documents and have not admitted them into evidence, as they are not relevant to these proceedings. There is nothing further in those documents that would assist this Inquiry.

Also following the hearing, a faxed document was received from Mr Harvey. That document re-iterated many of the matters that were raised in court, as well as and including:

1. Challenging once again my rulings in upholding objections to some of the questions asked by Mr Harvey in cross-examination.
2. Challenging the right of the applicant to tender documents to the hearing, “without our legal representative being in a position to comment on or ask question (sic) of the Applicant”
3. The applicant was denied the opportunity to prepare questions of Mr Fulham and consider calling witnesses.

To these ends, Mr. Harvey sought to re-open the hearing.

There is no indication a copy of that document was sent to the applicant. I have not forwarded a copy for comment, on the basis that I do not intend to re-open the hearing, for the following reasons:

- A great deal of comment was made at the first hearing on 14 August 2008 about quantum of money offered by the applicant to the respondent for the purpose of obtaining legal advice. Following that hearing, the applicant substantially increased that amount.
- Ample time was allowed for the respondent to obtain legal advice;
- Nothing was put to the court on 25th September to have the matter adjourned for legal representation.
- Nothing of any significance was raised by Mr Fulham in evidence, which was not in the submissions filed by the applicant in response to directions given.

- I have not let into evidence the documents subsequently delivered to the court by the applicant and consequently no need for the respondent to answer anything that may be in those documents.
- Extensive questioning of Mr Fulham under cross-examination was undertaken at the court on 25 September 2008.

SUBMISSIONS:

Mr Withers submitted that under S.252 of The Mining Act 1992, a Warden may grant a permit to an applicant to enter any land to enable an assessment to be undertaken and that that assessment must be under the Mining Act 1992 or the Environmental Planning & Assessment Act 1979. He submitted that Exhibit 2 in the proceedings, “Endorsement Schedule”, which was made pursuant to S.239(2) of The Mining Act 1992 places an obligation upon the mining company to comply with Schedule A of that Endorsement Schedule. This application hence comes pursuant to the Mining Act 1992. Clauses D and E of Schedule A of the Endorsement Schedule refers to “Guideline for Applications for Subsidence Management Approvals” and also to “New Approval Process for Management of Coal Mining Subsidence – Policy”.

The Notice of Modification pursuant to S.96 (2) of the Environmental Planning and Assessment Act 1979 (Exhibit 1 in this proceedings) which is dated 8th June, 2008 also refers to, in Schedule 3, Clause 3, to the same two documents as mentioned above which are listed in the Endorsement Schedule which took effect on the 18th March, 2004.

So, according to Mr Withers, the Subsidence Management Plan is being prepared in accordance with those two documents that are mentioned both in the mining lease and the Development Approval.

Mr Withers referred to Exhibit 3 in the proceedings, the document that is headed “New Approval Process for Management of coal Mining Subsidence – Policy”. That document indicates the requirement for a Subsidence Management Plan (SMP) and he submitted that in perusing the document, it is clear that one is required to conduct an

Environmental Assessment before one can complete a Subsidence Management Plan. He then referred to Exhibit 4 which is headed "Guidelines for Applications for Subsidence Management Approvals". He submitted that the applicant does not have the data to prepare the Subsidence Management Plan in accordance with the requirements set out in that document.

Having read that document, I accept that the only way in which certain required information can be obtained is to inspect the subject land closely. For instance, Clause 6.6.2(5) states, inter alia, "*the proponent has a responsibility to ensure the relevance and adequacy of investigations to thoroughly characterise the surface and sub-surface features*". The study of Appendix B of that document outlines surface and sub-surface features that may be affected. Furthermore, Appendix B expressly indicates, "*it is not a full listing of surface or sub-surface features that may be affected..*" and goes on to say that the applicant is responsible for identifying "*all surface or sub-surface features that may be affected...*" These matters have to be considered and included in any Subsidence Management Plan and it is my view that details of some of those items may only be identified by close inspection, in other words, by entry upon the subject land to inspect.

It was further submitted on behalf of the applicant, that although S.252 of The Mining Act 1992 does not expressly refer to a Subsidence Management Plan, it however, refers to the Mining Act and a broad interpretation must be adopted in relation to that section.

In his final submission, it was put to the court that there have been no specific objections to the particular terms of entry, which were attached to the application before the court. Accordingly, he submitted, the court should grant an application for the applicant to enter upon the land of the respondent in the conditions set forth in the application.

Mr Harvey submitted on behalf of the respondent that there is a difference between a Subsidence Management Plan (SMP) and a Property Subsidence Management Plan (PSMP). He submitted that the applicant wants to conduct a PSMP and that there is nothing in any of the documents before the court which would allow them to do that.

He has suggested earlier in the proceedings that perhaps the applicant should amend its application to include the words "Property Subsidence Management Plan". The applicant did not seek to amend its application upon the suggestion of Mr Harvey.

In respect of that issue, I am of the opinion that Section 252 enables a person, once a permit is given, to enter land and perform whatever functions that are necessary for the applicant to obtain information/material which will enable the applicant to attend to its obligations under either the Mining Act 1992 or the Environmental Protection Act 1979. The broad nature of section 252 does not require an applicant to outline, in its application, the precise goal it hopes to achieve. It is necessary however, in the interest of natural justice, to outline to a respondent what it in fact intends to do when upon the land. That was in fact done by means of an attachment to the application and was also given in evidence in court by Mr Fulham. I am of the opinion that a Property Subsidence Management Plan is part of an "Environmental Assessment" as requested in the application before the court.

Furthermore, Mr Harvey submitted that Mr Fulham stated that an SMP has already been submitted, covering all properties except the respondent's. He inferred that that was sufficient for the company to comply with the Endorsement Schedule and the Notice of Modification. Yet no evidence was produced by the Respondent to show that any existing SMP would be adequate to cover the applicant's obligations in respect of mining under the land of the Respondent. Mr Harvey repeated the words of Mr Fulham in giving evidence in that a PSMP is to be used by the Mining Company for the benefit of both the landholder and the miner. He submitted that it has nothing to do therefore with the Act or Regulations. He further submitted it has nothing to do with Environmental Protection.

It was submitted on behalf of the respondent that all necessary things have already been done by the mining company and there is simply no need for it to enter upon the respondent's land. The court was urged not to grant the permit.

In reply, it was submitted by Mr Withers that if the court accepts the submissions of the respondent, then that would give the landholder the veto over the right of the

mining company to mine that particular land. He submitted that that right does not exist at law.

THE COURT'S DISCRETION:

It is clear from the provisions of S.252 of The Mining Act 1992 that there is in the court, a discretion as to whether or not it would grant a permit to an applicant. Nothing in the section or the Act prescribes circumstances as to when a court may not grant a permit to an applicant to enter any land. So it would appear the court has a very wide discretion in relation to the section. There is no point in this instance to place on the record hypothetical circumstances as to when a court may not issue a permit. The issue before the court now is whether or not to grant a permit in these circumstances.

Putting it simply, the respondent states that there is simply no need for the mining company to enter its land for the purpose of undertaking a PSMP. It is the respondent's opinion that either the SMP that was conducted previously or the SMP, which has been filed recently by the mining company in response to recent endorsement schedules to the mining lease, is sufficient for the purposes of the mining company continuing on with its mining project.

That submission is completely at odds with the evidence from the mining company that it will not be able to continue its longwall operations under the land of the respondent without putting forward a current SMP which would incorporate a PSMP for the respondent's land.

Generally, within New South Wales, landowners own what is beneath the surface of the land other than the minerals that are reserved for the Crown. The purpose of the Mining Act 1992 is to allow the Crown to authorise some other person or body to extract the mineral which is owned by the Crown and dispose of it accordingly. For its efforts in extracting the mineral, the mining company obtains profits for the sale of the same and the Government for its ownership of the minerals receives Royalties from the mining company.

Other than some statutory rights to object in certain circumstances to a mining lease application, a landholder has no rights to object per se to minerals being extracted from his/her land. Once a mining authority is granted, the mining company has a statutory right to enter the land and extract the mineral. This, however, is subject to certain rights of the landholder such as the right to be compensated and the right to enter into agreements with the mining company as to the conditions which the mining company will enter the land. There is nothing, once a mining authority has been granted, which allows a landowner to negative the power of the Minister in granting a mining authority.

Having regard to that spirit and intent of the Mining Act 1992, the question then posed in this instance is whether the respondent has the right to exclude the mining company from entering their land to comply with its obligations under its mining lease.

I accept the evidence from the mining company that, in respect of the respondent's land, it will be unable to proceed further with its mining authority unless it has satisfied the Minister for Mineral Resources, that it has complied with its Subsidence Management Schedule. To that end, I accept that a complete Subsidence Management Plan cannot be prepared without doing an individual property Subsidence Management Plan in respect of the respondent's land.

I reject the submissions of the respondent that it is not necessary for the mining company to undertake this project. Furthermore, I should add that it is clear from the documentation that was tendered to the court, that if, for instance, mining has not been completed on the respondent's property within the next seven years then it will be necessary once again for the mining company to satisfy the Minister before proceeding further (See Exhibit 3 – “New Approval Process for Management of Coal Mining Subsidence Policy”) Page 2, second column, point 5 where it says: *“If the full domain or other area subject to the SMP approval has not been mined out within seven years, an application to extend the term of the approval will be required”*. Depending upon what transpires in the meantime, that could possibly require the applicant to update its SMP.

Accordingly, I am satisfied that there is a need for Austar Coal Mine Pty. Limited to enter the lands of Alexandra Stephanie Morphett for the purposes of outlining the likely effect on the environment of the activities to be carried out in accordance with Consolidated Mining Lease No.2 (The Mining Act 1992).

Nothing has been put forward by the respondent, challenging any of the terms of entry that have been suggested by the mining company in its application. At the conclusion of the case, that proposition was put to the court by Mr Withers; the respondent was given the opportunity to reply and simply indicated that the mining company should not have the right to enter upon its land at all.

Accordingly, I propose to grant a permit under the provisions of S.252 of The Mining Act 1992 on the conditions and terms as suggested by the mining company in the application filed. A copy of the permit is attached.



MINING ACT 1992

SECTION 252

PERMIT TO ENTER LAND

I, John Anthony Bailey, Chief Mining Warden for the State of New South Wales, having held an Inquiry into an application by the undermentioned holder, hereby grant to the holder a permit to enter land as outlined hereunder, pertaining to Consolidated Mining Lease No. 2 and Exploration Licence No. 6598 to undertake an assessment of the likely effect on the environment of the activities to be carried out under any lease or leases referred to herein.

HOLDER: AUSTAR COAL MINE PTY LIMITED
ACN111 910 822

ADDRESS: C/- Sparke Helmore Lawyers
PO Box 266
MUSWELLBROOK NSW 2333

LANDHOLDER: ALEXANDRA STEPHANIE MORPHETT

ADDRESS: 1346 Sandy Creek Road,
Quorrobolong NSW 2325

LAND: LOT 12 DP 866231
LOT 100 DP 255530

See within for terms of access and access fee

Dated at Sydney in the State of New South Wales
this 15th day of October 2008.

Annexure A - Terms of the Access Permit

1

1.1 Hours

The Applicant must only access the Land between the hours of 7.00 am and 5.00 pm except in the case of emergency or in respect to nocturnal fauna studies.

1.2 Days

The applicant must access the Land only during weekdays except with the prior consent of the Landholder.

Periods of access provided in Item 6 of the Permit need not be on continuous days.

1.3 Access Fee

(a) The Applicant must pay the Landholder the Access Fees as set out in Annexure B on account of all rights to compensation of the Landholder arising out of the access to the Land conferred by this permit (excepting any liability for negligence which may arise due to the presence of the Applicant on the Land).

(b) At the end of each month, the Applicant must furnish to the Landholder a schedule of the fees payable.

(c) If requested by the Applicant, the Landholder must furnish the Applicant with a tax invoice for GST purposes for the Access Fee.

1.4 Conditions of Access

(a) The Applicant must not interfere in any way with any fence on or adjacent to the land unless with the consent of the Landholder.

(b) Any gates used by the Applicant to gain access to the Land, as well as any gates within the Land shall be closed or left open in accordance with the requirements of the Landholder.

(c) The Applicant must not interfere with any well, water pump, dam or pipeline on or in the Land without the consent of the Landholder.

(d) The Applicant must take all reasonable precautions against an outbreak of fire.

(e) The Applicant must take all reasonable and necessary precautions to protect persons, property and livestock on the Land from injury or danger arising from the operations.

(f) The Applicant may enter the Land from any convenient gate or roadway, with or without vehicles and machinery (which includes,

but is not limited to, four wheel drive vehicles and exploration equipment).

- (g) The Applicant must use access roads already existing on the Land as far as possible.
- (h) The Applicant shall not access the Land during conditions that are wet to the degree that access might unduly damage the surface of the Land.
- (i) No dogs or firearms shall be taken onto the land by the Applicant, their servants or contractors.
- (j) Any excavations carried out by the Applicant shall be properly fenced off as to avoid stock or persons from falling into same.
- (k) The Applicant must not interfere with any standing crops on the Land without the consent of the Landholder.
- (l) No any contractor, servant or agent of the Applicant to camp or stay overnight on any part of the Land, but the Landholder shall make no objection if any vehicle or machinery is left on the Land overnight (or outside the agreed hours of access), provided that it is left locked and secured so as not to cause any damage or danger to persons, property or livestock on the Land.
- (m) The Applicant must take all reasonable steps to ensure that these conditions of access are observed by employees, agents and contractors of the Applicant.
- (n) The Applicant indemnifies and must keep indemnified the Landholder, its agents, servants, contractors and invitees, for all loss and damage arising from the Applicant's activities on the Land. The Applicant enters on and uses the Land entirely at its own risk.
- (o) The Applicant indemnifies the Landholder against all actions, suits, claims and demands of whatsoever nature and all charges and expenses in respect of any accident or injury to any person or property which may arise out of the works as authorised by this permit.
- (p) The Applicant must maintain insurance in respect of:
 - (1) Public Liability containing a minimum indemnity limited of \$10 million extending to incorporate all contractors and subcontractors and extend to claims for death and bodily injury to third parties (except to the extent this is covered by worker compensation policy referred to below). The Landholder must be noted as a covered party on the policy.
 - (2) Workers Compensation policy in accordance with all applicable Laws (and the Applicant must ensure its

contractors and subcontractors maintain worker compensation policies in accordance with all applicable Laws).

- (3) Motor vehicle and plant policy including third party property cover in respect of its own motor vehicles and plant and that of its contractors and subcontractors.
 - (r) The Applicant must produce to the Landholder evidence of the currency of each policy.
 - (s) Policies must be of an occurrence basis with appropriate automatic reinstatement clauses.
 - (t) The Applicant and its subcontractors must inform the Landholder as soon as practicable details of any occurrence that may give rise to a claim under a policy of insurance. The Applicant must keep the Landholder informed of subsequent developments concerning the claim.
- 1.5 In the absence of gross negligence or wilful damage caused by the Landholder, the Landholder will have no responsibility or liability for any loss or damage to personal property of the Applicant.

2 Environmental Protection Requirements

- 2.1 The Applicant must as soon as reasonably practicable after any area of the surface of the Land is disturbed in any way, restore and rehabilitate any damage done to the surface of the Land whilst present on the land pursuant to this permit.
- 2.2 The Applicant shall provide and maintain efficient means to prevent the activities of the Applicant whilst on the Land causing contamination, pollution, erosion or saltation of any stream, watercourse or catchment area that is on, or serves the Land.
- 2.3 On completion of the Applicant's activities, the surface of the Land disturbed by the Applicant's activities must be rehabilitated and left in a clean, tidy and safe condition by the Applicant.
- 2.4 The Applicant must repair any damage to existing tracks on the Land caused by machinery used in the operations.
- 2.5 The Applicant must at the end of the term of this permit seal all drill holes created using methods and practices generally accepted in the mining industry in a good and workmanlike manner.

3 Dispute Resolution

If a dispute arises out of, or relates to this Agreement, any party may refer the dispute to the Chief Mining Warden for resolution.

4 Notice of Access

- 4.1 Notice in writing must be given to the Landholder or the Landholder's nominated representative at least 5 days in advance of the first date that the Applicant intends to enter upon the Land.
- 4.2 The Applicant must give reasonable notice to the Landholder when requiring subsequent access and must use its best endeavours to minimise disruption to, or interference with, the Landholder's operations on the Land.

5 Applicant's and Landholders Contacts

- 5.1 The Applicant appoints the following persons as the Applicant's Contact for the Purposes to be carried out pursuant to this Permit:

Sarah Harvey
Environmental Coordinator

Austar Coal Mine Pty Limited
Middle Road
Paxton NSW 2325
Locked Bag 806
Cessnock NSW 2325

Phone: +61 2 4993 7334

Fax: +61 2 4993 7302

Email: sharvey@austarcoalmine.com.au

- 5.2 The Applicant must ensure that the Applicant's Contact is available at all reasonable times to liaise with the Landholder concerning the provisions of this Permit.
- 5.3 If the Applicant changes the Applicant's Contact for the operations to be carried out pursuant to this Permit the Applicant must notify the Landholder of the person who will be the new the Applicant's Contact.
- 5.4 The Landholder appoints the following persons as the Landholders Contact for the Purposes to be carried out pursuant to this Permit:

Alexandra Stephanie Morphett

- 5.5 The Landholder must ensure that the Landholder's Contact is available at all reasonable times to liaise with the Applicant concerning the provisions of this Permit and to facilitate access to the Land by the provision of keys and others means of entry.
- 5.6 If the Landholder changes the Landholder's Contact for the operations to be carried out pursuant to this Permit the Landholder must notify the Application of the person who will be the new the Landholder's Contact.

6 Notices

6.1 Any notices may be sent to the Applicant by pre paid post to:

Senior Site Executive
Austar Coal Mine Pty Limited
Locked Bag 806
CESSNOCK NSW 2325

and shall be deemed to have been received by the Applicant 7 days after posting, or by facsimile transmission to:

4993 7326

and shall be deemed to have been received by the Applicant at the conclusion of the successful transmission of the facsimile.

6.2 Any notices may be sent to the Landholder by pre paid post to:

Alexandra Stephanie Morphett
1346 Sandy Creek Road
QUORROBOLONG NSW 2325
Ph: 02 4998 6286
Fax: 02 4998 6168
Email: harveymorphett@bigpond.com

and shall be deemed to have been received by the Landholder 7 days after posting, or by facsimile transmission or email to:

Alexandra Stephanie Morphett

Fax: 02 4998 6168
Email: harveymorphett@bigpond.com

and shall be deemed to have been received by the Landholder at the conclusion of the successful transmission of the facsimile or email.

Annexure B – Access Fee

PURPOSE OF ACCESS	ACCESS FEE PAYABLE
Visual Inspections by one or more person (with or without a 4 wheel drive vehicle)	\$ 80 per day of access
Minor Excavations (i.e. less than 30 cm deep)	\$ 50 per excavation per week it is open
Excavations Other (i.e. greater than 30 cm deep)	\$ 100 per excavation per week it is open
Drill Holes	\$ 80 per hole per week it is open