IN THE MINING WARDEN'S COURT
AT ST LEONARDS

J A BAILEY, CHIEF MINING WARDEN

TUESDAY 20 JANUARY 2004

CASE NO. 2003/44

HALFPENNY INVESTMENTS PTY LIMITED (Applicant)

v.

SYDNEY GAS OPERATIONS LIMITED (Respondent)

APPLICATION FOR REVIEW OF ARBITRATOR'S FINAL DETERMINATION UNDER THE PROVISIONS OF SECTION 69R PETROLEUM (ONSHORE) ACT 1991 CONCERNING PEL2

APPEARANCES AT HEARING:

Halfpenny Investments Pty Ltd: Mr Southwick of Counsel instructed by Tribe, Conway & Company

Sydney Gas Operations Pty Ltd: Mr C Ireland, Solicitor of Blake Dawson Waldron

Mr Miller of Counsel instructed by the Department of Mineral Resources appears by leave for a limited purpose.

HEARING DATES: 21 November 2003 at St Leonards
2 and 5 December 2003 at Bowral
8 December 2003 at Picton
11 December 2003 at Bowral

DECISION

HANDED DOWN IN ABSENCE OF PARTIES

Petroleum Exploration Licence 2 was transferred to Sydney Gas Operations Limited on 20 January 2000. It is valid until 28 March 2005. Included in the area covered by the licence is the property belonging to Halfpenny Investments Pty Limited. Before prospecting can commence, the mining company requires an access arrangement with the landholder. It was not able to obtain that by agreement. It was necessary to have an access arrangement determined by an arbitrator in accordance with S 69C(b) of the *Petroleum (Onshore) Act 1991*.

Following a final determination by an arbitrator, an application for a review of that decision, under the provisions of S 69R of the *Petroleum (Onshore) Act 1991*, was lodged with this court on 9 October 2003.

At the commencement of the Review there were submissions by the parties concerning the interpretation of Section 72 of the *Petroleum (Onshore) Act 1991*. Mr Miller of Counsel was given leave to appear for the Department of Mineral Resources as an interested party in respect of this preliminary point.

Section 72 of the subject Act states:

PETROLEUM (ONSHORE) ACT 1991 - SECT 72

Restrictions on rights of holders of titles over other land

72 Restrictions on rights of holders of titles over other land

(1) The holder of a petroleum title must not carry on any prospecting or mining operations or erect any works on the surface of any land:

(a) on which, or within 200 metres of which, is situated a dwelling-house that is a principal place of residence of the person occupying it, or

(b) on which, or within 50 metres of which, is situated any garden, vineyard or orchard, or

(c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work, or other valuable work or structure) other than an improvement constructed or used for mining or prospecting operations,

except with the written consent of the owner of the dwelling-house, garden, vineyard, orchard or improvement (and, in the case of the dwelling-house, the written consent of its occupant).

(2) A consent under this section is irrevocable.

(3) If need be, the Minister is to determine whether any improvement referred to in subsection (1) (c) is substantial or valuable, and may define an area adjoining any such improvement on the surface of which no prospecting or mining operations are to be carried out, or works erected, without the consent of the owner of the improvement.

It is my understanding that Halfpenny Investments Pty Limited argued before the Arbitrator that the Arbitrator had no jurisdiction because of the provisions of Section 72. It was argued that as there is a residence and there are improvements upon this land that, without the written consent of the owner, the holder of the petroleum title must not carry on any prospecting on the land owned by Halfpenny Investments Pty Limited.

Mr Miller submitted to this court that the interpretation given to Section 72 by Halfpenny Investments Pty Limited is an incorrect interpretation.

Mr Miller put to the Court that it is the Department of Mineral Resources submission that the word "land" in Section 72 (1) of the subject Act is to be interpreted as referring to or describing land in a physical or topographical sense as opposed to "land" as a label for a bundle of rights. Mr Miller said *"...there is no impediment under the Petroleum (Onshore) Act to ... determining an access arrangement with respect to a parcel of land on which there might be an improvement so long as that access arrangement does not anticipate prospecting or mining operations or the erection of any works on the surface of any particular physical location which would infringe any of the prohibitions in the sub clauses (a) to (c) inclusive of Section 72."*

It was submitted that the definition section, Section 3, states: **" "land" includes land covered by water."** It can be seen that this definition refers to land in a physical sense and not to it as a parcel of rights or in terms of it being real property. It was further submitted that Section 5 (2) of the *Interpretation Act 1987* states that "this Act applies to

an Act or Instrument except insofar as a contrary intention appears in this Act or in the Act or Instrument concerned." It is clear from that section that the definition of "land" under the *Petroleum (Onshore) Act 1991* takes precedent to the *Interpretation Act*, Section 21, which states that "land" includes "messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate or interest therein."

Mr Miller referred to the High Court Decision in *North Sydney Council v. Ligon 302 Pty Ltd* (1996) 137ALR644. That particular case looked at the provisions of Section 5 (2) of the *Interpretation Act* and the definition of "land" which appeared under the *Environmental Planning and Assessment Act 1979.* The court when referring to the definition of "land" under that last mentioned Act stated: "The definition, though inclusive only, speaks only of land as a topographical entity, not as a bundle of rights. ....the term "land" in ss76 and 77 of the Act....is not defined by Section 21 (1) of the Interpretation Act...".

Mr Miller submitted that any other interpretation of the word "land" would virtually make it impossible for any exploration to be conducted under the *Petroleum (Onshore) Act* without the consent of the owner of any land. To interpret the word "land" to mean the real property of an individual or entity, no exploration could be done without the written consent of the owner thereof. Such an interpretation would make somewhat of a nonsense of Section 6 of the Act which states: *"All petroleum on or below the surface of any land in the State is the property of the Crown."* Although the Crown owns the petroleum, a landholder could simply put a quarantine upon such petroleum by not consenting to any exploration to take place on the land, if Section 72 is given the interpretation placed upon it by Halfpenny Investments Pty Limited.

Halfpenny Investments Pty Limited relies upon the Court of Appeal decision in *Kayuga Coal Pty Ltd v. Ducey* (2000) NSW CA54. It was argued that upon the property of Halfpenny Investments Pty Limited there are "substantial improvements" or "other

valuable works or structures" as outlined in Kayuga's case and consequently there should be no access arrangement, without the consent of the landowner.

Kayuga Coal was concerned specifically with the interpretation of Section 62 of the *Mining Act 1992* and although there can be some similarity between Section 62 of the *Mining Act 1992* and Section 72 of the *Petroleum (Onshore) Act 1991,* Kayuga's case was concerned principally as to the interpretation of what constituted an "improvement". At no time did either the Warden's Court, the Supreme Court, or the Court of Appeal consider the meaning of the word "land" which appears in Section 62 of the *Mining Act 1992.*

Consequently I cannot see where Kayuga's case is relevant in this particular instance. In his submission Mr Southwick referred to the definition of "landholder" which appears in Section 3 of the *Petroleum (Onshore) Act 1991* and submits that the Act is looking at "the owner of an Estate in fee simple".

With respect I do not agree with the submission of Mr Southwick that one can look at the definition of landholder and extend that to interpret the meaning of "land" under Section 32 to mean the whole of the fee simple which is held by Halfpenny Investments Pty Limited in this particular instance. The definition of "landholder" was added to both the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* in more recent times to encompass a fuller definition of various individuals or entities which have certain rights, and/or obligations, under both the *Mining Act* and the *Petroleum Onshore Act.* It refers as I say to individuals or entities and it cannot be utilised, in my opinion, to interpret Section 72 in the manner in which Mr Southwick presses the court.

In relation to the interpretation of Section 72 of the *Petroleum (Onshore) Act 1991* it is my opinion that if there is an "improvement" upon the land held by Halfpenny Investments Pty Limited, then exploration cannot take place on the land on which that particular improvement is located, or within the distances specified in Section 72, without the written consent of the landholder. In other words if there is a contour bank or a dam

on the property then an exploration well cannot be constructed upon such improvement. However it can be constructed on the property of Halfpenny Investments Pty Limited so long as it is not upon the improvement or within the requisite statutory distance of a principal residence, garden etc as outlined in Section 72. I do not interpret Section 72 to mean that if there is any "improvement" upon the land which is owned by Halfpenny Investments Pty Limited that consequently there can be no exploration at all upon that parcel of land.

Accordingly, Sydney Gas Operations Limited has the right, in accordance with PEL 2, to enter and explore upon the property of Halfpenny Investments Pty Limited, without the consent of the landholder, but subject to appropriate statutory constraints and arrangements.

Sydney Gas Operations Pty Limited is the holder of Petroleum Exploration Licence No. 2 which is currently due to expire on the 28th March 2005. Under the *Petroleum (Onshore) Act 1991*, the holder of such a licence has a right, subject to an Access Arrangement which also involves compensation, to enter and explore upon the land over which the exploration licence covers. The land which is owned by Halfpenny Investments Pty Limited is within the area over which PEL 2 covers.

Under the licence it is the intention of Sydney Gas Operations Pty Limited to sink 10 test sites on the property of Halfpenny Investments Pty Limited, which is called Mt Taurus. At these sites a drilling rig will be set up to drill to a depth of approximately 800 metres to a point where they will intersect a gas bearing coal seam. At that point of time hydraulic fracturing will occur in that drilled hole. This involves pumping large volumes of water and sand down the well and into the coal seam. The coal is fractured in several directions for up to 500 metres. Sand is then deposited in the fractures which prevents them from closing once the water pressure is released. The sand in the coal acts as a porous pathway enabling gas to flow back to the well bore.

If the licence holder is successful in obtaining a gas flow from a well site, it is necessary to determine as to whether or not this gas flow is of a sufficient quality and quantity that will ensure a commercial enterprise is viable. To that end the licence holder will install a gas gathering system in respect of each well which successfully releases gas.

The gas gathering system will be buried in trenches some 750 millimetres underground.

Sydney Gas Operations Pty Limited informed the hearing that the 7,000 square metre area in which drilling and fraccing will take place will be occupied by them for a period of about two months. The area will then be reduced to 32 square metres, which will then be securely fenced. It will remain that way until the conclusion of the petroleum exploration licence. Once the well site is established, an area around that site consisting of 25 metres by 25 metres, referred to as the "workover area" will be utilised by the licence holder for a period of 1 week each year.

It is necessary for the holder of PEL 2 to use roads which will be 3.5 metres wide around the property so that they can gain access to each well site.

Although the current licence expires in 2005, it is the intention of Sydney Gas Operations Pty Limited to apply for an extension of the PEL. If successful it will mean that the company will be upon the property known as Mt Taurus for a period of 6 years under such extended licence.

Following a view of the site, and the evidence of Mr John-Brett Halfpenny the company tendered to the court an amended plan as to the location of well sites upon the subject property, together with access roads, which included some alternatives, together with the location of the gas gathering lines. This plan which is an amendment of the one tendered to the arbitrator has been admitted as exhibit 9 in the review hearing before me. This alternative plan was devised by the licence holder to meet some of the concerns of Mr Halfpenny as to the location of some of the well sites and access roads upon his property.

The site of the access roads is dependent upon the licence holder gaining approval from local council to enter the subject land from specific points off adjoining public roads. If such approval is not given, there is noted upon exhibit 9 an alternate access road.

In addition to the concerns as to various access roads and the positioning of some well sites upon the property, Mr John-Brett Halfpenny gave evidence as to a number of other concerns that he has in respect of Sydney Gas Operations Pty Limited exploring upon the property known as "Mt Taurus".

Mr Halfpenny made it very plain that his concerns were of such nature that he preferred Sydney Gas not have the right to enter upon the subject property at all. However he outlined his principal concerns as follows:

1. He was concerned that workers and vehicles entering onto his property could bring with them both disease and weeds from other properties.

2. He was concerned that whenever he did deep raking of his land, it would interfere with the gas gathering lines which were hidden 75 centimetres below the surface.

3. He wanted all internal gates to be padlocked. These gates were to be unlocked and locked as every person and/or vehicle went through them.

4. He wanted adequate notification on each and every time a vehicle or person from the Sydney Gas Operations were to enter upon his land.

5. He was concerned about pipes which were currently under the ground on the property which were buried at various differing depths around the property. His concern is that heavy vehicles driving over those pipes may fracture them.

6. In relation to the access roads upon the property he preferred that no foreign material be used to construct those roads. He indicated to the court that he was concerned

about what might be brought upon his property if foreign material is utilised to construct the access roads.

7. Mr Halfpenny wanted a speed limit of 10 kilometres placed upon all vehicles utilising the access roads across his property. He wanted that limit imposed for safety reasons.

Disease and Weeds onto Property

In giving evidence about his concern of disease and/or weeds being carried onto his property, he indicated that he has been farming for many years and has seen an instance of disease being carried onto a property. One can understand his concern as to this issue. If his cattle were to be infected from a disease being carried from another nearby farm, via a motor vehicle or personnel, he would undoubtedly stand to lose a considerable sum in addition to the massive inconvenience of dealing with the problem.

Mr Halfpenny during cross-examination conceded that easement holders come upon the property to carry out work and are not required to wash vehicles.

By way of explanation he said that the easements were in place before his company acquired the property and he could not enforce washing of vehicles so far as that was concerned. Although he conceded that there are weeds upon the property at the moment, he said he did not want different types of weeds being conveyed onto the property via vehicles of the mining company.

It is obvious that the mining company should take all reasonable precautions to ensure there is no transmission of diseases from other areas onto Mr Taurus. There has, however, been no evidence of the possibility of vehicles transmitting disease or weeds, nor has there been any basis put to the court, for the complete washing of all vehicles each and every time one enters the property.

In that regard, I intend to impose the following condition:

The mining company shall be aware of the problems associated with vehicles carrying noxious weeds and possible plant and livestock diseases and shall take all practical measures to minimise the risk of exotic weeds and disease introduction onto the property. Reasonable precaution may include cleaning the underbody of vehicle and tyres, before entry into the property to minimise the risk of infectious material or disease being carried in mud etc., which may be dislodged on the property.

Depth of Gas Gathering Lines

There appears to be a problem from Mr Halfpenny's point of view, concerning the deep raking of his land. Mr Halfpenny indicated that deep raking has occurred on his property and it could be to a depth of one metre. His concern was that it could rip up the gas gathering lines, which are located 750mm below the surface. The mining company gave evidence that this depth is what is required by the Australian standards. Furthermore, the machinery they use to bury the gas gathering lines is designed to dig to that particular depth. It would require a great deal of further effort to lay the lines deeper than 750 millimetres.

Mr Halfpenny gave no indication as to how often it would be necessary to deep rake his land. There appears to be no program in place by Mr Halfpenny to systematically deep rake parts of the land. I gained the impression that deep raking was done on an ad hoc basis. It is unknown whether or not the area where the gas gathering lines are to be located, will be deep raked during the time Sydney Gas Operations Limited utilises the land.

To my mind, a requirement that the mining company bury gas gathering lines to a depth greater than 1 metre would be an unnecessary imposition.

The only practical solution is for the mining company to clearly mark the gas gathering lines location, so that it can be avoided during deep raking. This will make deep raking inconvenient, no doubt, to Mr Halfpenny, but as I said earlier, I know of no plan where deep raking will be carried out on that area in the time when the lines are down.

Padlocking of Internal Gates

The reason given by Mr Halfpenny for padlocking the internal gates is that he will be able to determine, due to the configuration of the locking system he will devise, who has not secured the gate (if it occurs). It is difficult to conceive that a landowner, especially one of Mr Halfpenny's experience, would not secure his own gates for the protection of his cattle. If a gate is found to be unsecured while the mining company is on the land, one could draw a strong inference that it was left open by the mining company employees.

During the cross-examination of Mr Barker, the mining company gave a concession that it would padlock internal gates. However, in final submission, the company opposed that proposition.

I see no point in padlocking the internal gates, however, if the mining company wishes to do so, it may. I will not include it as a condition of the Access Arrangement. I consider it an unnecessary burden to impose a condition such as that at this stage.

Notification of Entry

Mr Halfpenny has a right to know when the mining company will be entering his land. There is no justification, however, for unreasonable notification standards to be imposed. I make further comment on this issue on page 12.

The condition I have imposed in the attached access arrangement, concerning notification is, I consider, reasonable.

Security of Existing Underground Pipes

Clearly heavy vehicles travelling over land under which pipes are already located, will be a hazard to those pipes. The concern of Mr Halfpenny that the pipes may be broken is real. It will be necessary for the mining company to ensure it places a protection barrier over any underground pipes, before driving heavy vehicles over the pipes.

Construction of Access Roads

Mr Halfpenny was concerned as to what might be brought onto his property if foreign material was used to construct the access roads. He conceded under cross examination that foreign material had previously been brought onto his property. However, he emphasised that he was aware of the property from which the material came and consequently was not concerned about possible contamination. There was no offer for the use of material already existing upon the property and no suggestion as to how the roads could be constructed without the introduction of foreign material. A generic clause will be inserted into the access arrangement concerning this issue.

He wàs also concerned about the compaction of the soil in those areas where the access road would be constructed. The mining company intends to use, if practicable, any existing road across the property and to the best of its ability to construct any further roads along fence lines. To the extent that existing roads are utilised, the impact will be minimal. For new areas that are turned into roads, the compaction concern is justified. A clause will be inserted ensuring the restoration of those areas is adequate so that compaction that accrues during use will not hamper growth in the area after rehabilitation.

Speed Limit of 10kph

Out of concern for the safety of both his family and cattle, Mr Halfpenny wants a condition imposed that all vehicles on the property travel at a speed no greater than 10kph.

A speed limit of 10kph is generally applicable to car parking areas, such as those in shopping centres. The reason for this is clearly safety. Those areas consist of a large number of pedestrians, including small children, moving out from between parked vehicles onto the driveway, as well as motor vehicles reversing out of parking spaces. The purpose of the slow speed limit is to allow for a sufficient braking time when a pedestrian or vehicle appears suddenly in the path of a moving vehicle.

A similar speed precaution would not be necessary for vehicles travelling upon Mt Taurus. Unlike a car parking area, any person or cattle near the roadway would be clearly seen for some distance, enabling any heavy vehicle, travelling at a reasonable speed, to slow or stop to avoid an impact.

Evidence has been given that a limit of 40kph has been imposed on another nearby property. That speed limit appears more reasonable in the circumstances. I do not intend to place a speed limit of 10kph on vehicles driving on Mt Taurus.

CONDITIONS OF ACCESS

At the very outset, the mining company attempted to have the landholder enter into an access agreement. This was not successful. However, the document which was used on that occasion is still the document the parties rely upon as being the skeleton of the determination by the court.

Submissions have been received from both parties as to the acceptance, amendment or rejection of certain clauses and addition of further clauses.

I do not propose to canvas those issues in any detail. My response will be evident in the determined arrangement. However, I will make reference to two matters raised. It was requested by the landholder that notice not only be sent to Mr Halfpenny, who has limited reading capacity, but also to his solicitor. I do not propose to make that a condition, it is simply not necessary. It is envisaged notices will simply be advising times, dates etc when the Company will be on site. It will be quicker and simpler for Mr Halfpenny to have a family member, friend or neighbour read the document to him rather than his solicitor attempt to catch him on the telephone and read it to him. If any document is not able to be understood, it is up to Mr Halfpenny to pursue advice through his solicitor if he so desires.

The landholder objects to any confidentiality clause being inserted into the determination, the Company is seeking one. Confidentiality clauses occur in instances where parties agree on a conclusion. Such clauses have no place in a matter which has been determined in open court.

COMPENSATION

Under the provisions of Section 69D (2) of the *Petroleum (Onshore) Act 1991*, an Access Arrangement determined by an Arbitrator must specify compensation which a landowner is entitled to under the provisions of Part 11. Section 109 of the *Petroleum (Onshore) Act 1991*, which is within Part 11 of the Act, states:

PETROLEUM (ONSHORE) ACT 1991 - SECT 109

Measure of compensation

109 Measure of compensation

(1) If compensation is assessed under this Act by the warden, the assessment is to be of the loss caused or likely to be caused:

(a) by damage to the surface of land, and damage to the crops, trees, grasses or other vegetation on land, or damage to buildings and improvements on land, being damage which has been caused by or which may arise from prospecting or petroleum mining operations, and

(b) by deprivation of the possession or of the use of the surface of land or any part of the surface, and

(c) by severance of land from other land of the landholder, and

(d) by surface rights of way and easements, and

(e) by destruction or loss of, or injury to, or disturbance of, or interference with, stock on land, and

(f) by damage consequential on any matter referred to in paragraphs (a)–(e).

(2) Without affecting the generality of subsection (1), where:

(a) the holder of a petroleum title is liable to compensate another holder of a petroleum title, and

(b) the compensation is assessed under this Act by the warden,

the assessment is to be of the loss caused or likely to be caused by the operations of the other holder being detrimentally affected, or being likely to be so affected.

(3) In determining the amount of compensation, the warden must take into consideration the amount of compensation which any person entitled to it, or the predecessor in title of any such person, has already received for or in respect of the damage or loss for which compensation is being determined and must deduct the amount already so received from the amount to which the person would otherwise be entitled for such damage or loss.

In the proceedings before the Arbitrator and the proceedings before this court the landholder has relied upon the evidence of a Mr Terry M Dundas, a certified practicing valuer, for the purpose of a compensation sum and the mining company has relied upon a compensation figure which was assessed by Mr Maurice Higgins.

Each one of those valuation reports sets out the provisions of Section 109 of the *Petroleum (Onshore) Act 1991*. Yet in making an assessment of compensation reference is made to various decisions given by the Land and Environment Court. Compensation awarded in the Land and Environment Court was awarded in accordance with the provisions of Division 4 of the *Land Acquisition (Just Terms Compensation) Act 1991*. Section 55 of that Act provides:

55. Relevant matters to be considered in determining amount of compensation

In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only (as assessed in accordance with this Division):

(a) the market value of the land on the date of its acquisition,

(b) any special value of the land to the person on the date of its acquisition,

(c) any loss attributable to severance

(d) any loss attributable to disturbance,

(e) solatium,

(f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

There is, to my mind, a large distinction between any compensation awarded under the *Land Acquisition (Just Terms Compensation) Act 1991* and the compensation pursuant to Section 109 of the *Petroleum (Onshore) Act 1991*. The former Act at Section 54 states: *"The amount of compensation to which a person is entitled...will justly compensate the person for the acquisition of the land"* whereas Section 109 states: *"If compensation is assessed...the assessment is to be of the loss caused or likely to be caused."* It is clear that the two Acts are compensating individuals in respect of entirely different circumstances. The cases quoted to the court have no relevance to the provisions of Section 109 of the *Petroleum (Onshore) Act 1991*, they may however, be utilised to assist the court if there is no other relevant material available.

I should make reference to the decision of *Tregoyd Gardens Pty Ltd v. Jervis and Anor*, a Decision of Hamilton J in the Supreme Court of New South Wales on the 25th September 1997.

That case concerned the provisions of S.88K of the *Conveyancing Act 1919*. The main purpose of the action was an application for the court to grant an easement. If the court grants an easement, S88K(2)(b) provides: *"the owner of the land to be burdened by the easement... ...can be adequately compensated for any loss or other disadvantage that will arise from imposition of the easement..."* Although a compensation sum given to the court in that instance was $3,500, for the proprietary rights which will be taken from the landholder, His Honour suggested to counsel that a figure of $10,000 might be more appropriate. This was to include other matters which he suggested would be appropriate and come under the heading of "or other disadvantage", as outlined in the legislation. Counsel agreed with His Honour.

In referring to the decision of Hamilton J, Mr Southwick submitted that the words "or other disadvantage" are sufficiently similar to Section 109(f) that the court ought to make a similar adjustment of the kind referred to by Mr Dundas as "blot on title" and assessed at $10,000.

In suggesting the figure in Tregoyd's case, His Honour said: "This figure I had in mind as compensating for the loss of the proprietary right taken by the grant of the easement; the disturbance effected by the carrying out of the initial work upon the defendants' land; and the more minor disturbance that would occur thereafter from time to time from the plaintiff or its successors in title entering upon the defendants' land to repair or maintain the line."

One must remember that the original valuation put before that court was $3,500 for the loss of the proprietary right. So in effect, the court in Tregoyd's case suggested the addition of $6,500 for the disturbance in carrying out the original work and the minor disturbance thereafter in entering the land to effect repairs.

I accept Mr Southwick's submission that S109(f) allows for matters which are consequential to those matters outlined in the sub paragraphs before, but I do not accept in this instance that the landholder is entitled to any compensation for "blot on title". I cannot infer the words of Hamilton J in Tregoyd's case to extend to a "blot on title".

To give compensation for a "blot on title" is to give something which is confined to a prophecy. The fact is that if there is a "blot on title", the landholder could only be disadvantaged if the property was sold whilst the exploration lease was current. To award a sum for a "blot on title" when the subject property is not being sold, would be to give an unjust enrichment to the landholder.

Nothing was put to the court by either Mr Halfpenny or by any of the valuers as to compensation under Section 109 (1) (a) (b) (c), (d), or (e).

The matter which the valuers referred to when making their determination was Section 109 (1)(f), which provides for compensation for the loss caused or likely to be caused by *damage consequential on any matter referred to in paragraphs (a) – (e).*

Consequential, according to the Shorter Oxford Dictionary, means, inter alia, "losses or injuries which follow an act, but are not direct or immediate upon it".

Both parties have put a compensation figure to the court. Although they said it was pursuant to subsection (1)(f), they did not outline the specific consequential damage. One can only assume that they both agree there will in fact be a loss under that sub-section. Accordingly, I will proceed on that basis.

It is usual in matters of this nature, having regard to what appears to be the use to which Halfpenny Investments Pty Limited utilises this property, that information is placed before the court as to a sum of money which would be the expected loss caused to the landholder by the deprivation of the use of the surface of that part of the land which is subject to the roads and well sites which are to be utilised by the mining company (see S109(1)(b) for example). There was no evidence as to that in this instance and one can assume that perhaps as a result of that there is not expected to be a loss or alternatively the landholder has chosen to pursue what might very well be a greater compensation figure which has been put forward by the valuer, albeit having regard to court decisions in respect of an Act which is not applicable in these circumstances.

In his report, Mr Dundas includes sums of money for "blot on title", "right to access the land etc." and "right to re-enter". One gains the impression that Mr Dundas was considering the words of Hamilton J in Tregoyd's case when he said compensation for "other disadvantage" includes *The disturbance effected by the carrying out of the initial work upon the defendants' land; and the more minor disturbance...entering upon the defendants' land to repair or maintain the line,* when he included a sum for "right of access.." and "right of re-entry.."

However, the sum suggested by His Honour in Tregoyd's case was a one off payment, made in accordance with the statutory basis of Section 88 of the *Conveyancing Act 1919*, being for *any loss or other disadvantage.* To allow a "one off" payment for the right to enter and re-enter, when one is also claiming a continuing rental sum for the area which will be entered and re-entered, appears to be doubling up on compensation.

As I have said earlier, there is no basis for a sum of money for a "blot on title". I do not propose to allow a claim for a right to access and a right to re-enter (see items 2 and 3 of page 9 of the Dundas report) as well as a sum of money based upon a rental basis of the land to be occupied by the mining company. So, either a sum is allowed for a rental basis, or the sums suggested in items 2 and 3 of page 9 of the Dundas report.

Placed before the court was a land value (agreed upon at $\$2.50m^2$ by both valuers) and an annual rental value (at either 6% or 8%). There is clearly a basis for placing those figures before the court. However, the figures put to the court by Mr Dundas of $70,000 for the right to enter and $10,000 for the right to re-enter, appear to be figures plucked from the air, with no factual basis. For that reason, when striking a compensation figure, the court should allow a sum based upon a rental value. Furthermore, as it is not known how long the mining company will be occupying the land, an ongoing rental basis is more appropriate than a one off lump sum.

Consequently, compensation should be struck in accordance with rental values put to the court.

The amount payable to the landholder on that basis appears to be dramatically reduced compared to the amount originally offered by the mining company when it first made an offer of an agreement. That in itself does not mean to say that the figure initially offered by the mining company is the correct one. When a party offers a suggested sum in an attempt to reach agreement, it is generally inflated compared to the real value, on the basis that the offeror, if there is an agreement, will not have the delay, inconvenience and legal expense of taking the matter to court.

In not entering an agreement and pursuing the matter through the court, a party always runs the risk of obtaining a verdict which is less than the amount originally offered.

As I mentioned earlier, no claim has been made for compensation in respect of the matters outlined in S.109(1)(a) – (e). The legislation provides for compensation for the loss caused or likely to be caused. Because of the somewhat speculative nature of determining a loss likely to be caused Section 111 of the *Petroleum (Onshore) Act 1991* provides for additional assessment of compensation.

Consequently, if it transpires that the amount paid out by the mining company does not meet the ultimate loss to the landholder, then an application can be made in the future for additional compensation. It is not unusual for that to occur in respect of mining matters.

Two different rental percentages have been put to the court by the valuers, one being 6%, the other 8%. I note that the Arbitrator used the 8% figure to determine quantum of compensation. I agree that it would be more just in the circumstances to adopt that higher figure. Accordingly, I propose to do so.

The sums suggested by the valuers are lump sums, upon which there is an assumption that the mining company is going to occupy all of the sites and roads for a period of six years. The flaw in that assumption is that the current exploration licence will expire in 2005 and although one may expect that there will be a renewal, there is no guarantee. Furthermore even if there is a renewal of the exploration licence which will cover a period of the next six years, there is no guarantee that each well site which is drilled by the mining company will be successful so far as the mining company is concerned. It may very well be that it will be necessary for the mining company to abandon one or more well sites after the initial drilling and fraccing is complete. Even if all of the initial well sites have a successful gas flow initially, there is no guarantee that the flow would continue in each and every one for a period up to six years.

It is common practice within the industry that when compensation is agreed for an exploration licence under the *Mining Act 1992*, a sum is agreed generally for the type of individual wells which are drilled and furthermore for the roadways which would be utilised by the mining company. The difference with an exploration under the *Petroleum (Onshore) Act 1991* to an exploration licence under the *Mining Act 1992* is that the drilling in respect of the latter Act takes place for a relatively short period of time, that is it can range from hours through to perhaps a few weeks. That generally is the extent of the intrusion of the mining company upon the land. However under the *Petroleum (Onshore) Act 1991* the wells which will be drilled under the exploration licence in this instance will be in place for up to six years.

I propose to strike a compensation figure which is based upon the area occupied by the mining company, which includes the well site, the drilling and fraccing area, the work over area and the land required for access roads and gas gathering lines. Compensation will be based upon the time spent by the mining company in occupying that space, based upon a rental value of the land.

The land has been valued at $2.50 per square metre. In providing for a rental of 8% per annum, the value is then $0.20 per square metre per annum.

Accordingly, I propose to allow compensation for occupation of the land by the mining company at the rate of $0.20 per square metre per annum.

By way of example, if ten well sites are sunk, each occupying 32m^2, a total sum payable for the well sites would be 32 x 10 x 0.20, which is $64 per annum.

Drilling and Fraccing, if occupied for the stated 2 months – 7000 x 10 x (2/12), which is $2,333.33 (this would be a one-off payment).

Workover area, to be occupied 7 days per year – 625 x 10 x 0.20 x (1/52), which is $24.04 per annum.

Access Roads and Gathering Lines – one suggested figure was that these would occupy about 16,418 square metres. – 16,418 x 0.20, which is $3,283.60 per annum.

LIVESTOCK

Any destruction or injury to livestock is compensable under the provisions of S109(1)(e). It is not possible, at this point of time, to put a monetary value on such an event occuring. If it is necessary to compensate the landholder under this provision, then the company shall pay all reasonable costs in respect of the treatment and/or loss of the livestock.

ACCESS AND COMPENSATION ARRANGEMENT

Sydney Gas Operations Pty Limited – Halfpenny Investments Pty Limited
Petroleum Exploration Licence 2
20 January 2004

Parties

1. **Halfpenny Investments Pty Ltd** ABN 27 060 079 638, identified in the Schedule to this Determination (Landholder)

2. **Sydney Gas Operations Pty Ltd** (ABN 57 079 838 136 of Level 5, 25 Bligh Street, Sydney, New South Wales 2000 (Company)

Introduction

A. The Landholder owns the Lands.

B. The Company holds PEL 2, which allows the Company to explore the Lands comprised within the area of PEL 2 for Petroleum.

C. The Company's use of the Lands is determined by this arrangement.

Operative clauses

1. Purpose

1.1 This Determination is made in respect of PEL 2 pursuant to Part 4A of the Act for the purposes of recording the details in relation to access to the Land and the compensation for that access by the Company to conduct its prospecting operations.

2. Definitions

In this Determination

Act means the Petroleum (Onshore) Act 1991 (NSW);

Area means the area within the land, being Lot 1 DP954424, which consists of ten (10) gas wells and associated surrounds, including access roads and gas gathering lines, as marked on annexure "A" attached to this Determination and which may be varied in accordance with clause 5.2.1;

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

Company means, for this Determination, Sydney Gas Operations Pty Limited, its successors or assigns, employees, servants or agents;

DMR means NSW Department of Mineral Resources;

Lands means all the lands described in Lot 1, DP954424;

PEL 2 means Petroleum Exploration Licence 2 granted to the Company under the Act;

Petroleum means petroleum as defined in the Act and other related petroleum hydrocarbons, including, but not limited to, coalbed methane or coal seam gas derived from coal;

Work Program means the ten (10) well sites and associated works, to be constructed by the Company at the locations in the Area as indicated on Annexure "A"; the installation of gas-gathering systems and the utilisation of any other equipment necessary for gas exploration and monitoring of all gas exploration equipment as required under the conditions of PEL 2.

3. Interpretation

In this Determination unless the context otherwise requires:

3.1 Singular includes plural and plural includes singular;

3.2 Words of one gender include both other genders;

3.3 Reference to the Act or other legislation includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force.

3.4 Reference to a person includes a corporation a firm and any other entity;

3.5 Reference to a party includes that party's personal representatives;

3.6 If a party comprises more than one person, each of those persons is jointly and severally liable under this Determination;

3.7 Headings do not affect interpretation;

3.8 A provision must not be construed against a party only because that party put the provision forward; and

3.9 A provision must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed.

4. Term

4.1 Unless terminated sooner in accordance with the provisions of this Determination, this Determination operates until the first to occur, either:

4.1.1 The Company plugs and abandons all wells on the Lands that it intends to drill in accordance with the Act and the rules and regulations of the DMR; or

4.1.2 At the expiration of PEL 2 or six (6) years from the date of this Determination, whichever first occurs.

4.2 This Determination terminates if the Landholder ceases to be the Landholder of the Lands or part of the Lands.

4.3 Nothing in this clause affects the Landholder's obligations under clauses 9 and 15.

5. Rights and Obligations

5.1 By this Determination the Company has the right:

5.1.1 Over all roads nominated as access routes on Annexure "A", on the Lands, for ingress and egress to all well sites, gas gathering systems, gas pipelines, water pipelines, electric lines, tank batteries, compressors and other facilities located on the Lands for the conduct of the Company's Work Program. The roads and facilities are shown on the plan annexed and marked "A". The right is non-exclusive;

5.1.2 To construct and use new roads, new well sites, new gas gathering systems, new gas pipelines, new water pipelines, new electric lines new tank batteries, new compressors and other new facilities for the conduct of the Company's Work Program, (see Clause 2).

5.1.3 To occupy defined areas of 7,000 square metres at each well site for the purpose of drilling and fraccing for a minimum period of sixty (60) calendar days during this Determination. Any longer occupation will attract additional compensation as defined in the Schedule.

5.1.4 To occupy defined areas of 625 square metres at each well site as a workover area for the purpose of well inspection and maintenance for a period of seven (7) days in any year of this Determination. Any longer occupation will attract additional compensation as defined in the Schedule.

However, at all times:-

5.1.5 the Company must consult with the Landholder in respect of any operations it wishes to conduct which are not covered by this Determination.

5.1.6 nothing which the Company does may unreasonably interfere with, or impede, the conduct by the Landholder of its farming and livestock operations on the Lands.

5.2 The Company:

5.2.1 Must restrict its operations to those areas which are delineated in annexure "A". However, if it is necessary to make variations to access roads, such variation should be of a minimum nature and done in consultation with the landholder, ensuring minimum disruption to the operations of the landholder.

5.2.2 Must conduct a formal survey of all the proposed developments under clause 5.2.1 and clearly mark their location in the field. The measured areas and lengths determined from this survey are to be used to calculate compensation by applying the rates listed in the Schedule.

5.2.3 Will give the Landholder at least five (5) days notice before constructing a well location, road, gas gathering system, tank battery or any other facility or conducting any geophysical exploration on the Lands;

5.2.4 May drill the number of wells and construct such other facilities as the Company may determine, so long as the wells, and other facilities are in accordance with:-

(a) the applications and plans submitted from time to time by the Company to the DMR; and

(b) this Determination, and

(c) the Company's existing Environmental Management Plan for the Camden Project or any equivalent document that may replace it.

5.2.5 Will use best endeavours to locate roads and facilities so as to minimise interference with the farming and livestock operations of the Landholder;

5.2.6 The Company will use its best endeavours to ensure material used to construct access roads is not material which will be likely to bring on to the property any disease or noxious weeds or which will hinder the rehabilitation process when the Company vacates the area.

5.2.7 Will not construct wider or more roads than reasonably necessary to conduct operations in a prudent manner; and

5.2.8 Will use best endeavours to minimise the noise from their operations where those operations are conducted within the proximity of any

dwelling on the Lands that is the principal place of residence of the person occupying it.

5.2.9 Shall be aware of the problems associated with vehicles carrying noxious weeds and possible plant and livestock diseases and shall take all practical measures to minimise the risk of exotic weeds and disease introduction on to the property. Reasonable precaution may include cleaning the underbody of vehicle and tyres, before entry into the property, to minimise the risk of infectious material or disease being carried in mud etc which may be dislodged on the property.

5.3 The Company must:

5.3.1 Where practicable, bury below the surface all gas gathering lines and water lines and so that none of the gas gathering lines or water lines will unreasonably interfere with, or impede, the conduct by the Landholder of its farming and livestock operations on the Lands;

5.3.2 Backfill all ditches for those lines within two weeks (weather permitting) after the construction, installation or repair of those lines or appurtenant facilities;

5.3.3 Bury at least 750mm below the surface all gas gathering lines across cultivated fields where practicable;

5.3.4 Ensure that buried gas gathering line routes are identified on the surface by line of sight markers installed in accordance with the Company's existing Environmental Management Plan for the Camden Project or any equivalent document that may replace it, or alternatively, by the insertion of star pickets located at a distance of no further than 3 metres apart.

5.3.5 Ensure that all vehicles driven upon the landholder's property are driven at a speed which will not put persons, stock or property at risk.

5.3.6 When rehabilitating areas where compaction of the soil has occurred, ensure that the rehabilitation process remedies the damage which has occurred due to compaction. Thus ensuring growth will be of the same rate and standard as it was prior to the Company compacting the area.

5.3.7 When constructing access roads which are over existing underground pipes and/or cables, install appropriate reinforcement so that damage will not be occasioned to those pipes and/or cables.

5.4 The Company must not allow any officer, employee, agent or contractor of the Company, or any officer, employee or agent of a contractor of the Company to:

5.4.1 Bring firearms on to the Lands; or

5.4.2 Camp on the Lands.

5.5 After plugging and abandoning a well as required by the Act, and at the direction of DMR, the Company must commence within fourteen (14) days to either;

5.5.1 restore the surface of the location to, as near as possible, its condition before the Company commenced operations there. This includes ripping and/or discing and reseeding any disturbed area or access road newly constructed by the Company. Weather permitting, the restoration work must be completed within 3 months from the date of plugging and abandoning a well; or

5.5.2 pay to the Landholder an amount agreed by the parties for the Landholder to use its own equipment and labour to restore the surface of the location to the satisfaction of the rehabilitation requirements of PEL 2. If there is an agreement in accordance with this clause, the landholder shall give the Company an indemnity against its liability, under PEL 2, to restore the surface;

5.5.3 the Landholder will not be liable to the Company for any damage to or destruction of any of the Company's property located on the Lands UNLESS, that damage or destruction is a direct result of the negligent act or omission of the Landholder.

6. Gates and Fencing

6.1 The Company must:

6.1.1 When it cuts a fence to install a gate, install an "H" brace into the fence on each side of the cut to prevent the fence losing tension;

6.1.2 Install steel gates where roads go through fences and ensure that those gates are closed when not in use;

6.1.3 Keep boundary gates locked and ensure all internal gates are closed after passing through the same;

6.1.4 Fence all pits until dry and back-filled;

6.1.5 Fence all wells, and other Company facilities on the Lands;

6.1.6 Temporarily fence all drilling and fraccing areas in such a way as to effectively limit vehicle movement to the nominated 7,000m² area at each well; and;

6.1.7 Install appropriate sediment control fences below all soil stockpiles in accordance with the Company's existing Environmental Management Plan for the Camden Project or any equivalent document that may replace it.

6.2 The Company must, wherever the Landholder reasonably requests, install gates and fencing suitable for cattle.

6.3 When the Company has finally completed its operations on the Lands, all gates and road material left in place on the Lands becomes the property of the Landholder. However the Landholder is entitled to require the Company to remove all gates and road materials at their sole cost, and to restore the Lands to its condition prior to the work carried out by the Company.

7. Water

7.1 If with the consent of the landholder the Company drills a water well specifically for the purpose of the drilling, completion and fracture stimulation operations on any well on the Lands:

7.1.1 The Company need not pay the Landholder for the water from that water well; and

7.1.2 Should the Company decide that it does not need the water well, the Landholder may buy the well bore and casing from the Company for $1.00. If the Landholder buys the well bore and casing, the Company has no further liability to any person (including DMR or any other governmental agency) for the operation or the plugging and abandonment of that well. The Landholder may elect not to buy the well bore and casing, in which case the Company must restore the Lands to its condition prior to the well bore and casing being carried out by the Company.

7.2 The Company must not use the Landholder's water without the consent in writing of the landholder for any pressure maintenance or water-flood operations; and

7.3 The Company may, at the request of the Landholder, allow the Landholder to access water produced from any of the Company's producing wells on the Lands (**Produced Water**) if the Company considers, in its absolute discretion, that the Produced Water is suitable for the purposes of the Landholder. In no circumstances will the Company be liable to the Landholder for any loss or damage arising from the Landholder's use of the Produced Water and the Landholder releases from and indemnifies the Company against all claims, obligations, liabilities, losses, damages, penalties, costs and expenses arising directly or indirectly from the use by the Landholder of the Produced Water.

8. Compensation

The Company must pay to the Landholder the compensation specified in the Schedule to this Determination and any other compensation which may be agreed upon or assessed in accordance with the *Petroleum (Onshore) Act 1991*.

9. Surface Tenants

9.1 If, before the date of this Determination or during the term of this Determination, the Landholder leases or agrees to lease the surface of the Lands to a tenant:

9.1.1 The lease or agreement must be made subject to this Determination.

9.1.2 The Landholder will require the tenant to endorse on this Determination, their consent to its terms;

9.1.3 The Company must pay to the Landholder all amounts due under Clause 8 and the Landholder may pay to the tenant any amount it agrees with the tenant;

9.1.4 The Company is not liable to pay to the tenant any additional amount (other than for livestock under Clause 8); and

9.1.5 The Company may not make any claim of any nature on the Landholder if the tenant will not consent to the terms of this Determination.

10. Insurance

10.1 The Company must effect and maintain a public liability insurance policy in respect of the exploration and drilling program for a minimum amount of $20,000,000.00 (twenty million dollars).

10.2 The policy of insurance must be:

10.2.1 In the name of the Company and the interest of the Landholder noted; and

10.2.2 Effected with a solvent and reputable insurer carrying on business in Australia.

10.3 The Company must give to the Landholder a copy of the policy and certificates of currency of the policy when it is renewed.

11. Waste

Any garbage, waste or empty containers brought onto, or generated upon, the Lands by the Company, its contractors or consultants, must be removed from the Lands on a regular basis by the Company at its cost.

12. Default

If any of the parties to this Determination defaults in respect of a material provision under this Determination

12.1 The non-defaulting party must notify the defaulting party about the fact and details of the default and the amount (if any) required to remedy the default; and

12.2 If the defaulting party does not remedy the default within thirty (30) days of receipt of the notice, the non-defaulting party may sue the defaulting party or pursue any other remedy available to the non-defaulting party.

13. Disputes

13.1 If a dispute arises out of or relates to this Determination (including any dispute as to breach or termination, or as to any claim in tort, in equity or pursuant to any statute) a party to this Determination must not (except where the party seeks urgent interlocutory relief) commence any Court or arbitration proceedings relating to the dispute unless the party has first complied with this special provision.

13.2 A party claiming that a dispute ("**Dispute**") has arisen under or in relation to this Determination must give written notice to the other party specifying the nature of the Dispute.

13.3 On receipt of that notice by that other party, the parties to this Determination must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination of similar techniques agreed by them.

13.4 If the Dispute is not resolved using the foregoing provisions, then Part 12 of the Act will apply to the resolution of the Dispute.

14. Assignment

If the Minister consents to the transfer of PEL 2 over all or part of the Lands to a third party, then the Landholder must consent to the Company assigning or transferring the whole of this Determination to that third party assignee or transferee of the Company's interest in the petroleum title.

15. Mortgage

15.1 The Landholder may mortgage, charge or encumber the Lands, PROVIDED THAT the Landholder first procures the agreement of the mortgagee, chargee or encumbrancee that the mortgage, charge or encumbrance is subject to the terms of this Determination, including, but not limited, to the mortgagee, chargee or encumbrancee agreeing to observe the provisions of Clause 14 upon exercising any power of sale it may have pursuant to its security.

15.2 The Company may mortgage, charge or encumber its rights and obligations under this Determination. However no such action by the Company will operate to vary this Determination or to relieve the Company from its obligations pursuant to this Determination.

16. Further Action

The Landholder must execute, and cause any tenant of the Lands to execute, any documents reasonably necessary to give effect to this Determination.

17. Amendment

This Determination may only be amended in writing signed by the parties.

18. No Waiver

18.1 A party may only waive a breach of this Determination in writing signed by that party or its authorised representative.

18.2 A waiver is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past breaches).

19. Force Majeure

19.1 The Company is not liable for a breach of the conditions of this Determination to the extent that the breach is caused by circumstances outside the control of the Company, its employees, servants or agents and for the period those circumstances continue. If the Company becomes aware of a breach it must:

19.1.1 immediately notify the Landholder; and

19.1.2 try to remedy the cause quickly.

19.2 The Company must notify the Landholder when the cause has been remedied.

20. Notice

20.1 Notice must be in writing and may be given by an authorised representative of the sender.

20.2 Notice may be given to a party:

20.2.1 Personally;

20.2.2 By leaving it at the party's address last notified;

20.2.3 By sending it by pre-paid mail to the party's address last notified; or

20.2.4 By sending it by facsimile to the party's facsimile number last notified.

20.3 Notice is deemed to be received by a party:

20.3.1 When left at the party's address;

20.3.2 If sent by pre-paid mail, on the third Business Day after posting; or

20.3.3 If sent by facsimile, at the time and on the day shown in a sending machine's transmission report which indicates that the whole facsimile was sent to the party's facsimile number last notified (or if the day shown is not a Business Day or if the time shown is after 5pm in the party's time zone, at 9am on the next Business Day).

21. Governing Law

This Determination is governed by the laws of New South Wales and each party submits to the jurisdiction of the Courts of that State.

22. Hours of Operation

22.1 The Company, its agents and contractors may access the Lands at any reasonable time, but it shall only carry out drilling, completion, hydraulic fracturing or work over operations during the following hours, (unless such operations are necessary to deal with any emergency situation on the Lands or to preserve any of the Company's property on the Lands):

Monday to Friday	7.00am to 7.00pm
Saturday	7.00am to 1.00pm
Sundays and Public Holidays	No operations permitted

22.2 The Landholder shall consider any request made by the Company to change the hours of operation referred to in Clause 22.1. However, any change in those hours of operation will require the prior approval of the Landholder, such consent not to be unreasonably withheld.

23. DMR

The Company will provide a copy of this Determination to the DMR.

24. Indemnities

24.1 The Company indemnifies the Landholder against all expenses, losses, damages and costs that the Landholder may sustain or incur as a result, whether directly or indirectly, of any breach of this Determination by the Company, or any act or omission on their part that relates to fraud, wilful misconduct, or negligence on the part of the Company.

24.2 The Landholder indemnifies the Company against all expenses, losses, damages and costs that the Company may sustain or incur as a result, whether directly or indirectly, of any breach of this Determination by the Landholder, or any act or omission on its part that relates to fraud, wilful misconduct, or negligence on the part of the Landholder.

Schedule

Name and Address of the Landholder:

Halfpenny Investments Pty Ltd
65 Woodbridge Road
Menangle NSW 2568

Tel No. 4633 8166
Contact: Mr John-Brett Halfpenny

Compensation (Clause 8)

The compensation payable to the Landholder is for land occupied by the Company assessed at the value of $2.50m² and at the rate of 8% per annum. This is, $0.20 per square metre occupied per year.

Assuming a well site occupies 32m², a drilling and hydraulic fracturing area occupies 7,000m² and a work over area occupies 625m², the following rates will be applicable:

Well site:	$6.40 per annum per site
Drilling etc site:	$3.84 per day for each site
Work over site:	$0.34 per day for each site
Access roads and Gas gathering lines:	$0.20 per square metre per annum
Any other land necessarily occupied/used pursuant to PEL 2:	$0.20 per square metre per annum

Compensation will be for the period beginning when the Company commences to occupy any particular AREA (described in Schedule) and finishing when the landholder is able to utilise that AREA after it has been satisfactorily rehabilitated.

Compensation is payable by the company to the Landholder on a quarterly basis, in arrears. However, an initial instalment of $1000 shall be payable to the Landholder prior to the Company entering upon the land.

Livestock

The company shall pay forthwith, all reasonable costs in respect of the treatment of any livestock injured due to the actions of the company, and a fair market value for any livestock destroyed.