



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

2007/32

APPLICATION FOR ENVIRONMENTAL ASSESSMENT

**GLOUCESTER COAL
v
EVAN HOLMES**

DECISION:

On the 5th June 2007 an application was received from Gloucester Coal Limited for a permit to enter land to carry out an Environmental Assessment, pursuant to the provisions of Section 252 of The Mining Act 1992. The mining company needed access to the property of Mr Holmes which is Lot 1, Deposited Plan 595876, Parish of Monkerai, County of Gloucester.

When the matter came before the Warden's Court at Gloucester, the mining company appeared but there was no appearance by or on behalf of Mr Evan Holmes. Mr Holmes had sent in a letter saying he was unavailable on that day and he objected to the mining company coming back on to his land. His reason being that the mining company had failed to comply with its part of a former agreement between the parties wherein the mining company was to enter and perform some exploration. Mr Holmes set out in some detail what he says was the failure of the mining company to meet its obligations under the agreement.

As the mining company was not in a position at the first hearing to inform the Court the precise details of what it wanted to do when it was upon the land, the matter was adjourned to a further date with certain directions being made.

In compliance with those directions, the mining company set out in some detail what it was desiring to do under a permit pursuant to Section 252 of The Mining Act 1992 and Mr Holmes had an opportunity to respond.

Mr Holmes responded in similar detail as in his first letter, indicating that he did not want the mining company to attend upon his land at all.

When the matter came back before the Warden's Court at Gloucester on the 30th August, 2007, the mining company was once again represented but there was no appearance of Mr Holmes. Accordingly, the matter was dealt with ex parte.

The mining company gave evidence in some greater detail as to what they would be doing when they were upon Mr Holmes' land for the purpose of an environmental assessment.

It is regrettable that Mr Holmes was not present at court for he could have indicated to the court any concerns, if any, that he may have had in relation to what the mining company was going to do upon the land pursuant to its permit. Accordingly, any conditions I place on a permit granted to the mining company will be in accordance with the needs of the mining company to conduct the assessment and to the best of the court's ability, in accordance with the concerns held by Mr Holmes.

If there are matters to be resolved between the mining company and Mr Holmes in relation to an agreement between them made earlier, this is not the place to air those grievances. Most probably, if there is an issue, the matters may be dealt with in a separate action before a Warden's Court. I say at this point of time that the mining company denied that it has done any wrong in relation to the agreement which previously existed.

There is no reason as to why the court should not grant the mining company a permit under Section 252. In granting that permit, I will insert conditions which will meet the needs of the mining company to perform its assessment, and I will, to the best of the court's ability in the circumstances, provide those conditions which will satisfy the concerns of Mr Holmes.