

AFFIDAVIT OF RAY CABAN 6 JULY 2012

COURT DETAILS

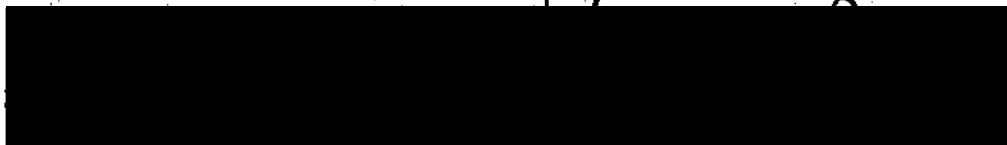
Court	Land and Environment Court of New South Wales
Division	Class 1
Registry	Sydney
Case number	10224 of 2012

TITLE OF PROCEEDINGS


Applicant	Bulga Milbrodale Progress Association Inc
First Respondent	Minister for Planning and Infrastructure
Second Respondent	Warkworth Mining Limited ACN 001385842

FILING DETAILS

Filed for	Bulga Milbrodale Progress Association Inc, applicant
Legal representative	Kirsty Ruddock, EDO NSW
Legal representative reference	1116690
Contact name and telephone	Kirsty Ruddock, Julia Green (02) 9262 6989




AFFIDAVIT

Name Ray Caban
Address 
Occupation Plant Operator, Drayton Coal Mine
Date 6 July 2012

I affirm:

- 1 I am a member of the Bulga Milbrodale Progress Association Inc (**BMPA**), the Applicant in these Proceedings. I have been a member of BMPA for about 20 years. In my capacity as member, I attend meetings and participate in fundraising and community events.
- 2 I am of indigenous decent. My ancestors were the Wonnarua people, the traditional landowners in the Hunter Valley.
- 3 All the facts affirmed in this affidavit are true to my knowledge and belief.

The community of Bulga

- 4 I was born in Bulga in 1963. I have been a resident and member of the community of Bulga my whole life.
 - 5 I currently live with my wife and two of my three sons. My property has a direct view of Saddle Ridge, Mount Thorley Mine and Bulga Mine.
 - 6 I have been an active community member in and around Bulga my whole life.
 - 7 I was a volunteer for the Bulga Rural Fire Service for a number of years, including being a group Captain for 5 years. I no longer volunteer with the service as I work shiftwork, each shift being a 12.5 hour working day. My son has recently joined the service as a volunteer.
 - 8 I am passionate about and have a lot of respect for the history of Bulga. In or about 2006, with the help of my sons, I retrieved the old post and rail fence and relocated it between Bulga community hall and the local service station boundary, with the remainder out the front of the Bulga War Memorial and at the tennis courts.
- 

9 I worked at Warkworth Mine for 20 years, from about 1983 to 2003. I currently work for Drayton Coal Mine. I am not anti-mining, but I do not want the mines to adversely affect my village and my home and friends.

Reliance

10 In or about 1998, I purchased land on which my house is now built on. In or about 1999, I approached Singleton Local Council requesting a subdivision of my property, into five lots.

11 In or about 2000, during the process of approving the subdivision a representative from both the Mine Subsidence Board and Mount Thorley Warkworth came out to my property.

12 In or about the end of 2000, I received written confirmation from Singleton Council that my subdivision was approved. The paper work for the approval contained a copy of a letter from Steve Sneddon of Mount Thorley Warkworth, addressed to Singleton Council. The letter stated Mount Thorley Warkworth consented to the subdivision and confirmed Mount Thorley Warkworth's open cut mining operations would not come any further west than their current operations at that time.

I am in the process of trying to obtain a copy of this letter. I have made the following attempts:

- a) On or about 8 February 2012, I went into the Singleton Council's office and submitted a form to obtain a copy of my subdivision file from the archives department.


In the following two months, I went into Singleton Council's office twice to ask for an update on my application. Both times I spoke to the girl at front desk and she said to me, words to the following effect:

I will pass on your message.

- b) On or about 30 May 2012, I contacted Mark Ihlein, the Director of Planning at Singleton Council, to request he assist in retrieving my subdivision file from archives. He said to me, words to the following effect:

I will do anything I can to assist you.

I have called Mark Ihlein three times in the past month. He was not available to speak to me at any of these times. Each time I called, I left a message for



him to return my call. I have not yet received a reply telephone call or response.

c) On 6 July 2012, I spoke to Julia Green from EDO NSW, who said to me:

I contacted the Mark Ihlein by email on 4 July 2012 enquiring about the document. He replied, by email the same day, that he has been unable to find the document, in your file or on the Council's records management system.

13 In or about late 2000, I began to prepare the subdivided blocks for sale, which took approximately 2 years to complete and involved tarring Noses Peak Road, providing power to each block and fencing and building a dam in each block.

14 In or about 2002, I contacted Sternbeck's Real Estate and listed four of the blocks for sale.

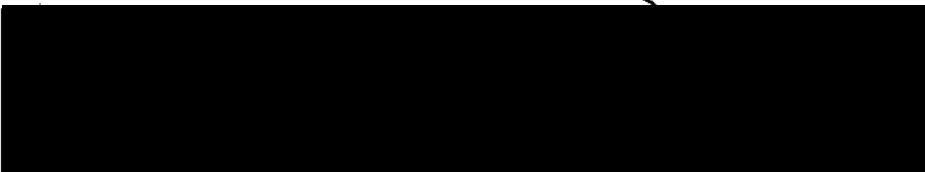
15 In or about 2003, I learnt of the conditions of consent for the 2003 Warkworth Mine extension. At this time, I recall discussing the 2003 approval with Stewart Mitchell at his house, and I attended a BMPA meeting in which the approval and its conditions were discussed. I did not read the approval document, but from speaking to Stewart Mitchell and attending the BMPA meeting I felt I had a good understanding of the conditions.

16 I understood Warkworth Mine was not going to come any closer to my property than Wallaby Scrub Road and Saddle Ridge would remain as a buffer for Bulga. Saddle Ridge was to form part of a non-disturbance area, which would be permanently protected, and open cut mining was prohibited from this area.

17 Based on this knowledge of the conditions of consent for the 2003 approval, I began to build my home. I felt secure in my decision to invest in my new house as I understood that there was no possibility the mine could open cut mine any closer to my property, or Bulga, than Wallaby Scrub Road.

18 In or about 2004, I began construction of my house, which was completed in or about 2005.

19 In or about 2010, I learnt of Warkworth Mine's plans to expand westward, through Saddle Ridge and within 2.6 km of Bulga, under the Project. This made me feel very angry and mislead.



20 In or about 2010, the BMPA obtained a copy of the Deed through a freedom of information application, and I read it. This made me feel more furious.

21 My wife and I made a huge financial investment in building our 'dream home' in reliance on my understanding of the conditions for consent of the 2003 approval. I fear the Project will substantially devalue my property.

Distrust for Mount Thorley Warkworth

22 In or about March 2008, I made a complaint to Mount Thorley Warkworth about cracks that were appearing on the inside of my jiprock walls of my house and on the concrete slab floor of my shed. At the time the cracks began appearing, my house was only 4 years old. Over the following months, I made several further complaints to Mount Thorley Warkworth about the cracking appearing at my house.

23 In or about June 2008, Mount Thorley Warkworth sent out a structural engineer to inspect my property. In or about September 2008, I received the report from the structural engineer which stated the damage was not caused by blasting from Mount Thorley Warkworth but was the result of poor workmanship. The report specifically stated the concreter had done a poor job.

This made me feel angry and frustrated. I feel like I cannot trust anything the mine says or does.

24 From on or about April 2011, the noise from Mount Thorley Warkworth has become increasingly intolerable, particularly since early 2012.

25 I work shiftwork, 12.5 hour working days, and often have trouble sleeping because of the mining noise. Often, I average only a few hours of sleep. I use ear plugs but they don't help when the mining noise is really loud.

26 On or about 21 May 2012, at approximately 9pm my wife rang the Mount Thorley Warkworth complaints telephone line. After she hung up, my wife said to me words to the following effect:

The man on the complaints line said the noise was not coming from Warkworth but was coming from Xtrata (Bulga Mine).

27 My wife then rang the Xtrata complaints line. After she hung up, my wife said to me words to the following effect:

The man on the complaints line for Xtrata said the noise was not coming from Xtrata but was coming from Warkworth.

28 My wife and I waited an hour for the noise to stop. The noise did not stop so at approximately 10pm my wife called Mount Thorley Warkworth again. After she hung up, she said to me words to the following effect:

Warkworth is sending someone up to our property to do a reading.

29 At around 11pm, I saw a vehicle come halfway up Noses Peak Road. I walked out of my house, up to the vehicle and knocked on the window. Inside was a man, with his windows up, holding a noise monitor. It looked like the man was taking a noise reading.

I was shocked he was taking a noise reading inside his car, with all the doors shut and windows up. This made me feel very angry and frustrated.

30 In or about June 2012, at about 9am I walked down to my front gate to get the garbage bins and I saw Robert Carter from Mount Thorley Warkworth holding a noise monitor. We had a conversation to the following effect:

Me: *We never get a true noise reading from you.*

Robert: *As such?*

Me: *On 21 May 2012 I made a complaint to Warkworth. Warkworth sent someone up to do a reading at 11pm. I went out and saw him in his car, with the windows up, doors closed, taking a sound reading. I was furious.*

Robert: *So what?*

I felt frustrated, angry and disgusted by the attitude of Mount Thorley Warkworth and what seemed to me to be a total lack of respect. I am frustrated by the information they feed us and I feel like I can never trust what they say.

31 Since about January 2012, I have regularly made complaints to Mount Thorley Warkworth about the noise from the mines despite having a strong distrust for Mount Thorley Warkworth and I feel like nothing will be done. My wife and son also make complaints. In recent months, Mount Thorley Warkworth has regularly blamed Xtrata (Bulga Mine) for the noise. I feel very frustrated at the responses I keep getting from the mine.

32 On about 13 March 2012, my wife hung up the phone after making a complaint and said to me:

Kathy: *I am furious. I am at my wits' end.*

Kathy was in tears and very upset. I am very worried about my wife. I am worried she won't be able to handle the noise from the mine for much longer.

Impacts to my health and wellbeing

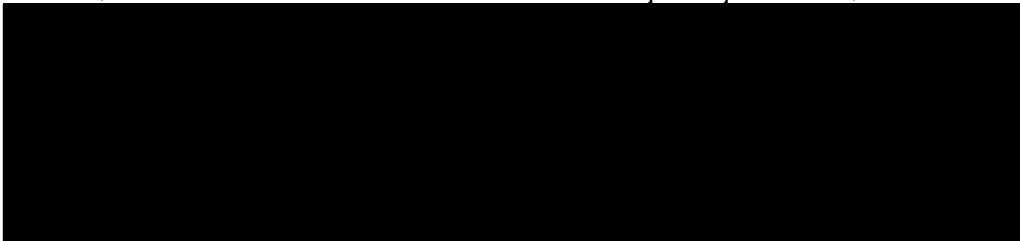
33 Since about 2005, I have noticed the culture of Bulga has changed. Locals are constantly speaking about the mine, and even arguing about the Project. The news of the Project has changed the nature of social functions and topics of conversations within my family and between friends in Bulga.

34 In or about October 2011, my eldest son, his fiancé and their one year old son moved out of our home and into Singleton. When my son was in the process of deciding to move to Singleton, he said to me, words to the following effect:

He said: *I need to move out of home and into Singleton because of the noise and the dust. I am worried about the little bub.*

35 From on or about January 2012, my wife has regularly left our home to go and stay at her mother's place in Rutherford, for a couple of evenings per week when she needs a break from the mining noise. I fear her capacity to tolerate further mining noise is rapidly diminishing and she is becoming increasingly anxious, angry and stressed. This is impacting on our marriage.

36 The dust, blasting impacts and mining noise has already impacted on my family, my marriage, my friendships and the sense of community in Bulga. I fear if the Project is approved, things are going to get worse.



Signature of deponent



Name of witness

THOMAS C. JACKSON, J.I.

Address of witness



Capacity of witness

Justice of the peace

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*~~
- 2 ~~#I have known the deponent for at least 12 months.~~ [OR, delete whichever option is inapplicable]
#I have confirmed the deponent's identity using the following identification document:

DRIVER'S LICENCE

Identification document relied on (may be original or certified copy)[†]

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[†] The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2019) 1