

**JURISDICTION** : MINING WARDEN

**TITLE OF COURT** : BEFORE THE WARDEN

**LOCATION** : PERTH

**CITATION** : DIXON, LONGMAN, EUCALYPTUS GOLD MINES P/L & REGAL RESOURCES P/L v LANDTEC P/L [2014] WAMW 16

**CORAM** : WILSON M

**HEARD** : 15 to 18 APRIL 2013

**DELIVERED** : 17 JULY 2014

**FILE NO/S** : APPLICATIONS FOR EXEMPTION 354069-354073, 359604, 364056, 364765-364766 & 364791.  
OBJECTIONS TO EXEMPTION 360715, 355695-355699, 366263-366264, 366278 & 365222.  
APPLICATIONS FOR FORFEITURE 351544 & 351545, 351558 & 351559, 351803-351809.

**TENEMENT NO/S** : AFFECTING MINING LEASES 39/292, 39/914, 39/966, 39/969, 39/991, 39/1064 & 39/480 and PROSPECTING LICENCES 39/4556, 39/4622-39/4623, 39/4636.

**BETWEEN** : **Application for Exemptions**  
**354069-354073, 364765-364766 & 364791**  
**Objections**  
**355695-355699, 366263-366264 & 366278**  
**Applications for Forfeiture**  
**351803, 351805 to 351809, 351544 & 351546, 351558**

Trevor John Dixon  
(Applicant for Exemptions)  
(Respondent to Forfeiture)

&

Exterra Resources Ltd  
(Interested Party)

v

Landtec Pty Ltd  
(Objector to Exemptions)  
(Applicant for Forfeiture)

*Affecting M 39/914, 39/966, 39/969, 39/991, 39/1064, P 39/4622, 39/4623  
& 39/4636*

**Application for Exemption**

**359604**

**Objection**

**359596**

**Applications for Forfeiture**

**351804**

Eucalyptus Gold Mines Pty Ltd  
(Applicant for Exemption)  
(Respondent to Forfeiture)

&

Exterra Resources Ltd  
(Interested Party)

v

Landtec Pty Ltd  
(Objector to Exemption)  
(Applicant for Forfeiture)

*Affecting M 39/292*

**Application for Exemption**

**364056**

**Objection**

**365222**

**Applications for Forfeiture**

**351559**

Murray James & Noreen Joan Longman  
(Applicant for Exemption)  
(Respondent to Forfeiture)

&

Exterra Resources Ltd  
(Interested Party)

v

Landtec Pty Ltd  
(Objector to Exemption)  
(Applicant for Forfeiture)

*Affecting M 39/480*

**Applications for Forfeiture**

**351804**

Landtec Pty Ltd  
(Applicant for Forfeiture)

v

Regal Resources Ltd  
(Respondent to Forfeiture)

&

Exterra Resources Ltd  
(Interested Party)

*Affecting P 39/4556*

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***Catchwords:***

Application – Exemption – Amendment to Register to Record further Expenditure after commencement of Proceedings - Effect of Amendment to Register upon Proceedings – Expenditure Extracted from Amended Form 5 Lodged Contrary to Act & Regulations - Unregistered Interest in Mining Tenement – Metal Detecting as Expenditure – Aggregate of Expenditure as Ground for Exemption – Dispute as to Title - Time to Plan, Evaluate & Raise Capital – Oral Authorisation to Metal Detect – Uneconomic Mineral Deposit

***Legislation:***

*Mining Act* (WA) 1978: s. 50(1), s. 82(1)(c), s. 102(2)(a),(b),(e) & (f), s. 102(3), s. 118A, s. 103F, s. 161(3), s. 162B.

Mining Regulations (WA) 1981: r. 16, r. 32, r. 84C, r. 84F, r. 154(d),

***Result:***

Recommend to the Hon. Minister that Applications for Exemptions for the 2010 Year for M 39/292, M 39/480, M 39/914, M 39/966, M 39/969, M 39/991, M 39/1064, P 39/4622, P 39/4623 & P 39/4636 be refused.

***Representation:***

*Counsel:*

Mr Dixon	:	Mr P Lafferty
The Longmans	:	Mr M Longman (Self Represented)
Eucalyptus	:	Mr M Longman (Director)
Exterra	:	Mr J M Healy
Landtec	:	Mr G Lawton

*Solicitors:*

Mr Dixon	:	Optima Legal
The Longmans	:	Self Represented
Eucalyptus	:	Represented by Director, Mr Longman
Exterra	;	Kings Park Corporate Lawyers
Landtec	:	Lawton Lawyers

**Case(s) referred to in judgment(s):**

*Wilton and Co. v Phillips (1903) 19 TLR 390*

*Re: Warden French; ex parte Serpentine – Jarrahdale Ratepayers Association (1994) 11 WAR 315*

*Downe v Milling & Regal Resources & anor [2011] WAMW 7*

*Grange Resources Ltd v Lee [2006] WAMW 8*

*Re Stollery; Weir v Treasury Solicitor [1926]1Ch 284*

*Pawson v Northwestern Mining Co. P/L and anor [2013] WAMW 8*

*Brosnan v JSW Holdings P/L [2011] WAMW 8*

*Finesky Holdings Pty Ltd v Minister for Transport for WA [2002] WASC 206*

*Landtec Pty Ltd v Dixon & ors [2012] WAMW 36*

*Synergy Equities Group Ltd v Morellini [2003] WAMW 21*

*Ajax Mining Nominees Pty Ltd v Heron Resources NL, Min. for Mines [2001] WAMW 21*

*Berkeley Resources Ltd & anor v Limelight Industries P/L [2013] WAMW 2*

**Background**

1. Landtec Pty Ltd (“Landtec”) is the Objector (“the Objections”) to applications for exemptions from compliance with expenditure conditions (“the Exemptions”) lodged by the holders of a group of mining tenements for the 2010 Expenditure Year (“2010 Year”). Landtec is also the Applicant for Forfeiture (“the Forfeitures”) of the same mining tenements alleging the holders of the mining tenements have failed to comply with expenditure conditions in the 2010 Year. The Forfeitures stand adjourned pending the outcome of the Exemptions.
2. The group of mining tenements are located about 220 km north-east of Kalgoorlie and is known as the Eucalyptus Project (“the Eucalyptus Project”).
3. At the time of the hearing of these proceedings and in the 2010 Year the registered holders of the relevant mining tenements within the Eucalyptus Project were as follows:

Tenement Number	Holder
M 39/292	Eucalyptus Gold Mines Pty Ltd (“Eucalyptus GM”)
M 39/480	Murray James & Noreen Joan Longman (“the Longmans”)
M 39/914, 966, 969, 991, 1064 P 39/4622, 4623, 4636	Trevor John Dixon (“Mr Dixon”) (collectively referred to as “the Dixon Tenements”)

4. Other mining tenements, being P 39/4625 to 4635, held by Russell Geoffrey McKnight (“Mr McKnight”) were also the subject of applications for exemptions and objections to the exemptions and applications for forfeiture by Landtec. However, the mining tenements held by Mr McKnight expired before the resolution

of these proceedings because applications to extend the terms of the mining tenements by or on behalf of Mr McKnight were refused on 17 April 2013, whilst these proceedings were on foot. As a consequence the applications for exemptions and objections to the exemptions and the applications for forfeiture of P 39/4625 to 4635, held by Mr McKnight lapsed.

5. On 13 November 2012, Exterra Resources Ltd (“Exterra”) was joined to these proceedings as an Interested Party. Exterra holds an interest in all the mining tenements that comprise the Eucalyptus Project as a result of unregistered sale agreements with Regal Resources Pty Ltd (“Regal”) who in turn holds an interest in the same mining tenements as a consequence of unregistered sale agreements the registered holders of the same mining tenements that comprise the Eucalyptus Project. (see: *Landtec Pty Ltd v Dixon & ors [2012] WAMW 36*).
6. At the commencement of these proceedings in 2011, the various expenditure conditions, initially reported expenditure and anniversary dates for the mining tenements held by Eucalyptus GM, the Longmans and Mr Dixon in the 2010 Year were as follows:

## Eucalyptus GM

Tenement Number	Minimum Expenditure 2010 Year	Initial Expenditure	Reported 2010 Year	Anniversary date in each Year
M 39/292	\$ 10,000	\$\$ 2094.00		31 August

## The Longmans

Tenement Number	Minimum Expenditure 2010 Year	Initial Expenditure	Reported 2010 Year	Anniversary date in each Year
M 39/480	\$ 13,333	\$ 3,800		26 November

## Mr Dixon

Tenement number	Minimum Expenditure 2010 Year	Initial Reported Expenditure 2010 Year	Anniversary date in each Year
M 39/914	\$ 27,800	\$ 15,470	26 June
M 39/966	\$ 20,300	\$ 12,230	26 June
M 39/969	\$ 10,000	\$ 7,479	26 June
M 39/991	\$ 21,300	\$ 12,662	26 June
M 39/1064	\$ 56,500	\$ 27,869	26 June
P 39/4622	\$ 4,880	\$ 1,385	8 December
P 39/4623	\$ 4,560	\$ 1,121	8 December
P 39/4636	\$ 6,400	\$ 8,146	8 December

7. On 22 & 30 October 2012 and 3 April 2013, the Register (“the Register”) held by the Director General (“the DG”) of the Department of Mines and Petroleum (“the DMP”) was amended to record that further expenditure on the Dixon Tenements had been incurred in the 2010 Year. This occurred, it would seem, because Mr Dixon advised the DG he had discovered the operation Reports (“Form 5 Reports”) lodged for the 2010 Year had not recorded all expenditure on the Dixon Tenements in the 2010 Year. As a result of the amendment to the Register held by the DG it is now recorded in the Register for the 2010 Year the minimum expenditure conditions for the Dixon Tenements have been complied with.

8. The result of the amendment to the Register by the DG reveals the expenditure for the Dixon Tenements in the 2010 Year is at the time of the hearing of these proceedings is as follows:

Tenement number	Minimum Expenditure 2010 Year	Initial Reported Expenditure 2010 Year	Amended Expenditure Recorded in Register	(Amended) Total of Expenditure Recorded in 2010 Year	Date on which Amended Expenditure Recorded in Register
M 39/914	\$ 27,800	\$ 15,470	\$ 22,680	\$ 38,150	30 October 2012
M 39/966	\$ 20,300	\$ 12,230	\$ 19,440	\$ 31,670	30 October 2012
M 39/969	\$ 10,000	\$ 7, 479	\$ 11,070	\$ 18,549	30 October 2012
M 39/991	\$ 21,300	\$ 12,662	\$ 15,120	\$ 23,732	30 October 2012
M 39/1064	\$ 56,500	\$ 27,869	\$ 19,980	\$ 47,869	30 October 2012
P 39/4622	\$ 4,880	\$ 1,385	\$ 11,036	\$ 12,421	22 October 2012
P 39/4623	\$ 4,560	\$ 1,121	\$ 12,099	\$ 13,220	22 October 2012
P 39/4636	\$ 6,400	\$ 1,467	\$ 8,146	\$ 9,613	3 April 2013

9. The effect of the amendments to the Register by the DG is, according to both Mr Dixon and Exterra, the applications for Exemptions by Mr Dixon are unnecessary as the minimum expenditure conditions for the 2010 Year for the Dixon Tenements have been complied. Both Mr Dixon and Exterra submit if the Warden is not satisfied with the argument the Exemptions by Mr Dixon are not warranted then it says the grounds otherwise relied upon pursuant to s. 102(2) and (3) of the Mining Act (“the Act”) should be recommended to the Hon. Minister for Mines (“the Hon. Minister”).
10. The Longman’s and Eucalyptus GM appear because they are the registered holder of M 39/480 and M 39/292. Mr Longman states, in summary, that he and fellow directors executed sale and purchase documents with Regal in 2005 and does not know what has since happened to those documents. Further, he was unaware of the further sale agreement by Regal to Exterra and has declined to sign any further documents produced to him by Exterra as they appear not to reflect the sale and purchase agreements previously signed in 2005.

### **Grounds of the Exemptions**

11. The grounds of the Exemptions, as lodged, by Mr Dixon, the Longmans and Eucalyptus GM are, in parts, similar.
12. The grounds of the Exemptions for M 39/914, M 39/966, M 39/969, M 39/991, M 39/1064 held by Mr Dixon & M 39/292 held by Eucalyptus GM are all in the same terms and as follows:

*“Section 102(2)(b) - that time is required to evaluate work done on the mining tenement, to plan future exploration or mining or raise capital therefore.*

*Section 102(2)(e) - that the ground the subject of the mining tenement contains a mineral deposit which is uneconomic but which may reasonably be expected to become economic in the future or that at the relevant time economic or marketing problems such as not to make the mining operations viable.*

*Section 102(2)(f) - that the ground the subject of the mining tenement contains mineral or which is required to sustain the future operations of an existing or proposed mining operation.*

*Section 102(3) - for any other reason which may be prescribed or which in the opinion of the Minister is sufficient to justify such expenditure. The holders seek the Minister's consideration under section 102(3) of the Mining Act 1978 for an extension from expenditure on the grounds that the impact of the Global Financial Crisis has significantly reduced cash flow and access to finance, thereby limiting the availability of capital required to fulfil the expenditure obligation. Furthermore, the tenement has been hindered by ongoing sale attempts and change of ownership thus limiting time to suitably work on the ground and meet expenditure requirements. The grant of this exemption will benefit the State of Western Australia and the further reasons stated in the statutory declaration made in support of this exemption application."*

13. The grounds of the Exemptions for P 39/4622, P 39/4623 & P 39/4636 held by Mr Dixon and M 39/480 held by the Longmans are all in the same terms as follows:

*"Section 102(2)(a) - that the title to the mining tenement is in dispute  
(Reason – a Complaint was received for the subject tenement on 12 July 2010.*

*Section 102(2)(b) - that time is required to evaluate work done on the mining tenement, to plan future exploration or mining or raise capital therefore.  
(Reason - as tenement was complained in July 2010, capital raising efforts were hampered and development work programs could not be progressed.)*

14. On 9 September 2011, Particulars of Exemption Applications were lodged on behalf of Mr Dixon, the Longmans and Eucalyptus GM in which it stated the grounds of the Exemptions relied upon was pursuant to s. 102(2)(b) and s. 102(3) of the Act.
15. Counsel for Exterra stated at the commencement of the hearing of the Exemptions the grounds relied upon are s. 102(2)(b), s. 102(2)(e) & s. 102(3) of the Act. Nothing turns on the position of Exterra and the parties are prepared to deal with argument based on those grounds.

### **Grounds of the Objections**

16. The grounds of the Objections by Landtec are all the same and say as follows:
1. The Objector denies the truth of the reasons stated by the Applicant as justifying the grant of an Exemption.
  2. The Objector states that in all the circumstances, in respect of the tenement it would be unreasonable for an Exemption to be granted."

### **The Law & Onus of Proof**

17. The holder of a mining tenement, must as a condition of the grant, comply with prescribed expenditure conditions applicable to such mining tenement unless partial or total exemption therefrom is granted in such manner prescribed by the Act.
18. Section 102 of the Act provides the grounds upon which an application for exemption from expenditure conditions may be made.

19. The onus of proving the facts which support of the Exemption is upon the applicant for the Exemption and no onus of any type rests upon the objector.

**Evidence for Mr Dixon**

*Matthew Paul Sullivan*

20. Mr Sullivan has tertiary qualifications in geology and has practiced in that profession since 1986. Between 2005 and 2009 Mr Sullivan was employed by Regal as its geologist. During those same years, Mr Sullivan was for a period of time also the Managing Director of Regal.
21. In summary, Mr Sullivan gave oral evidence when he joined Regal it was a gold exploration company. In 2005, Mr Sullivan said Regal listed on the stock exchange. The listing of Regal on the stock exchange was part of a process to acquire various mining tenements in the Leonora area including those mining tenements at the Eucalyptus Project.
22. Mr Sullivan said he met Mr Dixon in Kalgoorlie in about 2004. He was aware that Mr Dixon was a contractor and prospector who owned a bulldozer and did work the various people. Mr Sullivan was also aware that Mr Dixon did a lot of prospecting and metal detecting.
23. In 2005, Mr Sullivan said Regal entered into an Acquisition Agreement and later a Joint-Venture Agreement with Mr Dixon over the Dixon Tenements. Mr Sullivan said from his memory the effect of the Acquisition Agreement was some cash was paid and shares were to be issued on the listing of Regal on the ASX to Mr Dixon to acquire about 60% interest in the Dixon Tenements. A further 30% interest in the Dixon Tenements could be acquired by Regal on spending further money. According to Mr Sullivan, Mr Dixon had options to retain a 10% interest in the Dixon Tenements and later contribute towards expenditure or reduce his interest in the Dixon Tenements to a royalty payment only.
24. Mr Sullivan said, Regal considered the Eucalyptus Project had reasonable potential for gold discovery. Regal therefore conducted work by establishing an historic database which was then followed up with a couple of drilling programs which resulted in an ore resource being defined. Mr Sullivan said he utilised the help of Mr Dixon to track down some historic data and later conducted sampling of various dumps stockpiles and tailings in and around the Eucalyptus Project. There was also computer modelling and mapping carried out to the area of the mining tenements at Eucalyptus.
25. Mr Sullivan said Regal was initially a small company and he did virtually all of the fieldwork until a small team of two or three other employees were employed to assist exploration. The intention of Regal between 2005 and 2009 was to establish a mining operation on some mining tenements south of the Eucalyptus Project and



then use the resource on the Eucalyptus Project to continue with mining operations when the project was established.

26. Mr Sullivan said the terms of the Acquisition and Joint-Venture Agreements were that Regal was responsible for the payment of rent and rates and the carrying out of the exploration program which he oversaw and conducted with the help of contractors.
27. In March 2009, Mr Sullivan said he resigned from Regal because there was a change in the board of directors and the company decided to go in a different direction by acquiring some brown coal projects in Victoria. Mr Sullivan said in 2009, Regal experience difficulties in meeting expenditure requirements. Regal had purchased a mining project at Menzies from another company and there was a lot of work being done at Menzies resulting in the mining tenements at the Eucalyptus Project becoming a second priority. At that time Mr Sullivan said there were on going fund raising to meet the plan to establish the mining project at Menzies as a gold producer and then use those funds to ‘tackle’ the mining tenements like those at the Eucalyptus Project and other areas. For various reasons, Mr Sullivan said the proposals didn't happen at the speed it was hoped and funding became a problem. The ongoing issues in funding were described by Mr Sullivan as being having two fairly advanced projects on the go at the same time and raising money at different times with the natural order of things being that one became a higher priority than the other. Funds were raised by way of debt funding, convertible notes and equity funding by issuing shares. Some of the issues in 2009 that Mr Sullivan said Regal faced in seeking funding was a gold price of around about \$750 an ounce and the general effect of the global financial crisis (“the GFC”) that meant funds were a little more difficult to obtain.
28. Prior to 2008, Mr Sullivan said Regal was responsible ensuring expenditure obligations were met on the mining tenements at the Eucalyptus Project. He was aware Mr Dixon had a number of prospectors working on the Dixon Tenements over a period of time. Mr Sullivan said he was also aware Mr Dixon had some of his own costs that he would periodically inform Regal about and those costs were incorporated into the Form 5 Reports lodged by Regal.
29. From 2008 forward, Mr Sullivan said Regal failed to keep Mr Dixon readily updated in respect to the maintenance of the Dixon Tenements as Regal had shifted its focus to brown coal and moved interstate. Mr Sullivan said the relationship he had with Mr Dixon was largely personal, as well as a business relationship, and when he left Regal other personnel at Regal weren't interested in communicating with Mr Dixon because their focus was on another project in another part of the country and communications as a whole became quite poor. Mr Sullivan pointed out the very fact he was giving evidence in relation to these proceedings was an indication that Regal didn't meet expenditure on the mining tenements at the Eucalyptus Project.

30. In cross-examination, Mr Sullivan, said in summary, whilst he was at Regal a large portion of the IPO funds went to the mining tenements at the Eucalyptus Project but a further fundraising by way of convertible notes in 2006 of about \$1 million were used on the project at Menzies.
31. Mr Sullivan was shown by Mr Longman a copy of a document entitled Sale and Purchase Agreement Eucalyptus Project between Regal, Eucalyptus GM and the Longman's dated 31 January 2005. Mr Sullivan said he recalls signing such an agreement and believes it was signed some time prior to mid-2005 when Regal listed on the ASX. He was also shown a further unsigned document entitled Sale and Purchase Agreement Eucalyptus Project between Regal, Eucalyptus GM and the Longmans dated 19 July 2006 and asked if he had seen that document before. He said he thought he had seen the document in early 2006 as there are quite a few drafts that went backwards and forwards and he thought that document was one of them. However, Mr Sullivan acknowledged the original Sale and Purchase Agreement Eucalyptus Project was signed before the end of the first half of 2005.

Trevor John Dixon

32. Mr Dixon gave evidence by way of affidavit, witness statement and orally and, in summary, said he is a businessman and prospector and is the registered holder of the Dixon Tenements located at the Eucalyptus Project. Mr Dixon has held the Dixon Tenements since applying for them in about 1997 and following their grant in or about 2002. Prior to becoming the registered holder of the Dixon Tenements, Mr Dixon said he carried out earth moving work on the ground that is now held by him and is aware of other work conducted by the previous holders.
33. Mr Dixon said he has been involved in mining since the early 1980's initially as an earth moving contractor, later as a prospector and later as a mining tenement marketer.
34. Mr Dixon said he understood what expenditure requirements were on mining tenement and that included on ground activities, off ground activities such as office studies and airborne type activities and any other activities he might duly authorised.
35. Between 2002 and 2005, Mr Dixon said he entered into an agreement with Newcrest Mining Ltd ("Newcrest") to carry out work on the Dixon Tenements. Mr Dixon said a total of about \$850,000 was expended on the Dixon Tenements in that time, the majority by Newcrest, with some being expended by him.
36. Mr Dixon said, in 2005, after Newcrest withdrew from the agreement with him, he sought another partner to who could assist him in meeting the minimum expenditure on the Dixon Tenements. In about 2004, Mr Dixon said he began negotiations with Regal who expressed an interest in acquiring an interest in the Dixon Tenements. The terms of the agreement with Regal was conditional upon Regal listing on the ASX, which occurred on 23 June 2005. Upon listing on the ASX, Regal acquired a 60% interest in the Dixon Tenements and Mr Dixon said he retained a 40% interest.

Mr Dixon said further terms of the agreement provided that Regal could earn a further 30% in the Dixon Tenements if it met the minimum expenditure within the terms of the agreement. Regal was also required to spend not less than \$400,000 on the Dixon Tenements from the time listed on the ASX to June 2008.

37. Mr Dixon said during the period from Regal listing on the ASX to about June 2008 he liaised with Mr Sullivan and provided various geological reports and was reassured by Mr Sullivan that Regal was meeting minimum expenditure requirements on the Dixon Tenements.
38. In or about 2010, Mr Dixon said he became aware that Regal had entered into an agreement concerning the Dixon Tenements with a company named OzMay Pty Ltd (“OzMay”). Regal made an announcement to the ASX regarding the agreement with OzMay. To this time, Mr Dixon said he had not been provided with any documents required by the terms of his agreement with Regal to satisfy him that Regal had complied with the terms of its agreement with him and that Regal had earned a further 30% interest in the Dixon Tenements. As a consequence, on about 9 February 2010, Mr Dixon said he wrote to Regal and put them on notice of his concerns regarding the failure by Regal to comply with the terms of their agreement with him concerning the Dixon Tenements.
39. In about June 2010, Mr Dixon said he travelled to Melbourne and met with officeholders of Regal to discuss the status of expenditure on the Dixon Tenements by Regal and its obligations owed to him pursuant to their agreement. Mr Dixon said he was concerned Regal were not meeting the minimum expenditure requirements for the Dixon Tenements. According to the oral evidence of Mr Dixon he first became aware of the failure of Regal to meet the expenditure conditions on the Dixon Tenements because Regal had lodged the Exemptions.
40. Prior to 20 July 2010, Mr Dixon said he did not receive any notification from either Regal or OzMay that Regal had assigned interest in the Dixon Tenements to OzMay as required under the agreement with Regal. The first notification that Mr Dixon said he received of the purported assignment of Regal’s interest in the Dixon Tenements was a letter from OzMay dated 20 July 2010. Mr Dixon said he did not recognize the purported assignment of the Regal’s interest in the Dixon Tenements.
41. Mr Dixon said Regal were obliged under the terms of their agreement to prepare and lodge the Form 5 Reports for the Dixon Tenements. According to Mr Dixon, the only time he had any discussions regarding the preparation of the Form 5 Reports for the Dixon Tenements was a few days prior to when they were due to be lodged when he received a telephone call from a Mr Alec McHenry (“Mr McHenry”). Mr Dixon said the purpose of the telephone call from Mr McHenry was to ascertain from him whether he could provide any further expenditure for inclusion in the Form 5 Reports for the Dixon Tenements. Mr Dixon said he was subsequently informed that Regal would attend to the lodgment of the Form 5 Reports and the Exemptions for the Dixon Tenements with the DMP.

42. According to Mr Dixon, he was reassured by Regal that it would take all necessary steps concerning the maintenance of the Dixon Tenements in good standing. On or about 24 August 2010, Mr Dixon said he received an e-mail from Mr McHenry informing him the Form 5 Reports and the Exemptions for the Dixon Tenements were being attended to. Mr Dixon stated in his witness statement he did not involve himself with the preparation of the Form 5 Reports and the Exemptions for the Dixon Tenements. However, his oral evidence was he prepared Form 5 Reports for the Dixon Tenements for the rent and rates he knew had been expended in the 2010 Year. Mr Dixon said he travelled to Perth from Leonora on 25 August 2010 to lodge with the DMP the Form 5 Reports for the Dixon Tenements within the statutory 60 day period. Mr Dixon said in his oral evidence he was unsure if Regal grasped what they were obliged to do to file the Form 5 Reports for the Dixon Tenements. Mr Dixon also obtained copies of the Exemptions for the Dixon Tenements from the DMP so he could follow their progress. Mr Dixon said in his oral evidence he understood the grounds of the Exemptions for the Dixon Tenements from reading the applications themselves. Mr Dixon said he had no direct knowledge of the basis for the grounds of the Exemptions.
43. In December 2011, Mr Dixon said he caused a facsimile to be sent to Regal informing them that they had failed to maintain the Dixon Tenements by not paying the shire rates. Mr Dixon said from this time until July 2012 he was assured by Mr McHenry of GPU Capital Pty Ltd who purported to act on behalf of OzMay that Maxim Litigation Consultants and later DLA Phillips Fox were representing his interest in the Forfeitures and Exemption for the Dixon Tenements. Mr Dixon said he received no correspondence from either Maxim Litigation Consultants or DLA Phillips Fox and he wrote to each of them in terms of letters dated 9 August 2010 and 23 March 2011.
44. Mr Dixon said he met with OzMay, represented by Mr McHenry, shortly after the Exemptions were lodged and produced a low impact mining operations (“LIMO”) and he informed Mr McHenry the LIMO had been lodged and approved by the DMP on about 3 September 2010. Mr Dixon said he informed Mr McHenry the LIMO permitted drilling to occur on the Dixon Tenements and OzMay should commence drilling without delay in light of the Forfeitures by Landtec.
45. Mr Dixon said at no time did he receive any reports on expenditure on the Dixon Tenements from OzMay although they did contribute to payment of some of the shire rates and annual rent.
46. In or about May 2011, Mr Dixon said he became aware that Exterra made reference to the Eucalyptus Project in its prospectus. Mr Dixon said he became aware at the start of 2012 that OzMay purported to withdraw from its agreement with Regal.
47. Mr Dixon said despite Regal, and later OzMay, being required to maintain the Dixon Tenements by way of meeting the minimum expenditure requirements he was also conducting his own prospecting activities on the Dixon Tenements during the 2009 & 2010 Years. Under the terms of the agreement with Regal, Mr Dixon

said he maintained the alluvial gold rights on the Dixon Tenements and was able to pursue those rights.

48. During the 2009 and 2010 Years, Mr Dixon said he conducted prospecting activities on the Dixon Tenements consisting of, camping, metal detecting the gold deposits, using a bulldozer and low loader on ground where notable gold deposits were located.
49. Mr Dixon said he also had informal arrangements with a number of prospectors in which he granted access to the Dixon Tenements so they could prospect for gold and the prospectors would in return assist him with his own prospecting activities by providing GPS co-ordinates of any finds of gold they made so he could then investigate that area further. Mr Dixon said he would do that by using his bulldozer and low loader. In his oral evidence, Mr Dixon said prospectors would come to him with a request to prospect on the Dixon Tenements and he would duly authorised that request by saying he was happy for them to detect on the Dixon Tenements and recover gold for which he never asked the reimbursement of any of the gold but he did ask everyone who requested his authority to at least give him the GPS coordinates or tell him or show him where they found gold. He said he was then able to later investigate the locations of the gold using his low loader or bulldozer under the terms of the LIMO.
50. Mr Dixon said he authorised approximately 10 to 12 people to prospect on the Dixon Tenements in 2009 & 2010 Years and they included Jim Woods, John Waardenberg, Barry Tussler, Jane Scudds, Peter Pink, Mike Kershaw, Wayne Halloran, Michael McKeenan, Stuart Williamson, David McDonald, Ian & Josie Dundar and Tony Faull. According to Mr Dixon he knew these people were on the Dixon Tenements as he saw them or they would contact him by telephone. He also received some GPS coordinates from some of them. Between 2009 and 2010, Mr Dixon said he went upon the Dixon Tenements definitely between 3 to 5 occasions. On those occasions he carried out metal detecting and spoke with the people then present on the Dixon Tenements.
51. After Landtec lodged the Forfeitures, Mr Dixon said he 'ratcheted up' his activities on the Dixon Tenements by immediately lodging a LIMO and by 22 September 2010, after receiving approval for the LIMO, carrying out work on the alluvial areas.
52. Mr Dixon said he obtained from most of the prospectors who he authorised to work on the Dixon Tenements GPS coordinates of where they had found gold as he considered that to be the purpose of having them out there to locate gold for him to later carry out work.
53. In June and July 2012, Mr Dixon said he began contacting prospectors to obtain details of work that they are conducted on the Dixon Tenements in the 2009 and 2010 Years. He said he telephoned each of the prospectors to discuss with them the work they had conducted and sent e-mails to several of them requesting they provide him with details of when they were on, what they were doing on, how long

they camped on, how much time they spent on and which of the Dixon Tenements they were.

54. In July of 2012, Mr Dixon said, with the assistance of his legal counsel, he prepared a questionnaire and sent a map to each of the prospectors he had authorised to prospect on the Dixon Tenements requesting they mark on the map where they had worked and camped. He received a number of responses from Malcolm Brooks, Ian & Josie Dunbar and John Waardenberg. He also met with Jim Woods and discussed with him his prospecting activities and the locations at which he found gold. The information contained within the returned questionnaire were, according to Mr Dixon, used as the basis upon which to prepare additional Form 5 Reports that were later lodged with DMP outside the 2010 Year and also form the basis of evidence to be given by the prospectors in these proceedings.
55. In summary, Mr Dixon said in cross examination, in 2002 he had the capacity to meet expenditure obligations upon various mining tenements held by him by entering into joint ventures and coming to other arrangements with some other parties to carry out work on mining tenements to meet the expenditure obligations. Those arrangements were similar to the arrangement he made with Newcrest over the Dixon Tenements. Mr Dixon said he currently holds about 108 tenements with minimum annual expenditure conditions totaling several million dollars. Mr Dixon said he does not personally have the capacity to meet the minimum expenditure conditions for all the mining tenement he holds but he does not need to as his various contractual partners are able to on his behalf.
56. Mr Dixon said he obtained the consent from the DMP for the LIMO on the Dixon Tenements in September 2010. A prior LIMO for the Dixon Tenements expired in 2009. Mr Dixon said he sought no other consents from any other entity or land holder or authority in accordance with the LIMO.
57. Upon the ASX listing of Regal, Mr Dixon said he stopped monitoring the expenditure on the Dixon Tenements because it was a term of the contract with Regal that they report quarterly to Mr Dixon. According to Mr Dixon that did not occur every quarter. Whilst Mr Sullivan was involved with Regal much of the reporting was verbal as Mr Dixon said he worked closely with Mr Sullivan. Mr Dixon said he realized in 2010 the expenditure conditions for the Dixon Tenements were not being met when he saw the Exemptions being applied for in the Register held by DMP. As a result, Mr Dixon said he spoke to a representative of Regal about his concerns the expenditure conditions for the Dixon Tenements were not being met. Mr Dixon said he was aware an exemption was sought in the 2009 Year and had also contacted Regal in that regard. When he saw the Exemptions had been applied for in 2010 Year he contacted Regal and asked for details about what they were doing with the Dixon Tenements.
58. As a result of becoming aware the expenditure conditions for the 2009 and 2010 Years for the Dixon Tenements had not been met, Mr Dixon said he attended upon the Dixon Tenements on about 5 or 6 occasions and authorised prospectors to carry

out work. Mr Dixon agreed he had earlier said he attended on the Dixon Tenements on 3 to 5 occasions in the same period. Mr Dixon said he does not keep a diary and could not provide precise dates or times when he attended upon the Dixon Tenements. However, Mr Dixon said in 2009 he went to the Dixon Tenements in May, June and July during which he metal detected and liaised with prospectors he had previously named. During those months Mr Dixon said he would have been on the ground the 3 to 5 days in each of the months but was unable to give any details of the hours spent on each of the Dixon Tenements he claimed he attended to in those times. However, Mr Dixon claimed he would drive his vehicle for a distance, walk and metal detected and take samples for panning before moving on. He claimed he recovered gold on all occasions but was unable to give any details as he does not keep records other than the gold that he sells. When asked how much gold he sold from the Dixon Tenements in 2009, Mr Dixon said he was unsure because he sells from all places.

59. In 2010, before Mr Dixon said he 'ratcheted up' his activities on the Dixon Tenements he said he did much the same as he did in 2009 by speaking to prospectors who he said he had approved requests over the phone to prospect. Mr Dixon said he was definitely on the Dixon Tenements in September because that was when the LIMO was granted. In November of 2010, he spent a fortnight with his son on the Dixon Tenements because that is the time he usually spent prospecting when he takes his bulldozer to the area. Mr Dixon said he spent 12 days on the Dixon Tenements in September 2010. Mr Dixon believes he spent 3 to 5 days on the Dixon Tenements in May and June 2012 doing a bit of a 'recon', going to see Mr Woods and other prospectors and doing a bit of metal detecting. In 2010, Mr Woods said he only recovered three or four little bits, about 3 or 4 grams, of gold from the Dixon Tenements being M 39/914 and that was by metal detecting.
60. Mr Dixon said none of the prospectors who were on the Dixon Tenements had permission from him in writing to be there because his approval was 'a handshake type of thing'. Mr Dixon claims some approvals were in the form of a return e-mail.
61. In 2010, Mr Dixon said he was motivated to apply for the LIMO when he saw the Exemptions had been applied for the Dixon Tenements in the hope that OzMay would see itself in a position to commence drilling.
62. Mr Dixon agreed the Form 5 Reports for the 2010 Year was prepared and lodged by him and also agreed the content are declared to be true and correct. Mr Dixon said the information he completed in the Form 5 Reports for the 2010 Year for the Dixon Tenements were true and correct. He further said he had been assured by OzMay that they were attending to the lodgment of the Form 5 Reports for the 2010 Year for the Dixon Tenements but was not happy with the position there would be nothing lodged. He said he made it clear in his communications with 'Regal or OzMay or whomever it was purporting to manage the Dixon Tenements that they had already lost Mr Longmans mining tenements by simple lack of lodging documents and that he was unhappy with the treatment they had dished out to him.

63. Mr Dixon acknowledged he certified the content of the Form 5 Reports for the 2010 Year for the Dixon Tenements lodged by him in 2010 were correct but they did not reflect the total expenditure on the Dixon Tenements for that expenditure year because he could not certify the work OzMay or Regal had carried out. Mr Dixon said he was aware exemptions had been applied for the 2009 Year and was confident they would be granted. Mr Dixon further said he did not want to be put into the same position Mr Longman had been placed by OzMay or Regal failing to lodge Form 5 Reports so he thought he could lodge Form 5 Reports for the 2010 Year for the Dixon Tenements that showed at least some money had been expended it being what he knew was rent and rates. Mr Dixon acknowledged he should have been more comprehensive in putting together the Form 5 Reports for the 2010 Year for the Dixon Tenements.
64. Mr Dixon said it was not until 2 years later he was informed by legal counsel he was able to correct the Register held by DMP by having additional information added to the Register. He said he then set about arranging for the additional information to be collected and sent to the Hon. Minister with a request for his consent to extend time to receive the additional information contained within further Form 5 Reports for the 2010 Year for the Dixon Tenements. According to Mr Dixon, the Hon. Minister didn't consent to the extension of time but didn't refuse to put the information on the Register rather referred to r. 84F of the Regulations saying the additional information could be placed on the Register. Mr Dixon said most of the information contained within the further Form 5 Reports for the 2010 Year for the Dixon Tenements was prepared by Exterra. Mr Dixon said he did not sign the further Form 5 Reports for the 2010 Year for the Dixon Tenements and believes the calculations were prepared by legal counsel, Mr House.
65. Mr Dixon said he did not see the further Form 5 Reports for the 2010 Year for the Dixon Tenements and therefore could not say whether its content was true and correct. Mr Dixon denied he discussed the completion of the questionnaire with those that returned them to him. The extent of his discussions with those prospectors was only to the extent a questionnaire and map would be forwarded to them and the reasons for it.

*John Michael Waardenburg*

66. Mr Waardenburg lives in Boulder. He has been prospecting for a hobby on a part time basis for many years but has done so for the last 9 years on a full time basis. That prospecting has been for alluvial gold using a metal detector.
67. The area Mr Waardenberg says he has prospected is the Murchison area, near Laverton, on some mining tenements held by Mr Dixon he referred to as Redcastle and Eucalyptus and more recently in the Kalgoorlie area. Mr Waardenberg said he prospects alone and generally camps in the area he is working.
68. Produced into evidence through Mr Waardenburg were copies of his witness statement dated 27 February 2013, his affidavit sworn 18 October 2012, copies of some maps from 2009 and his completed questionnaire.



69. In summary, the evidence of Mr Waardenberg was he first met Mr Dixon about 4 or 5 years ago in the Redcastle area although in his statement he indicated he had known Mr Dixon for about 6 years. Mr Waardenberg said he does not recall the precise words used but he had a 'gentleman's agreement' on a handshake with Mr Dixon that he could be on his mining leases as long as he let him know where and what he found while prospecting.
70. Mr Waardenberg said he was familiar with the process of allocation of mining tenements and said in prospecting that "*you're just walking the ground and working the ground so the actual differences and that between one tenement from the other doesn't really come into play because you might be crossing borders without even knowing.*" Mr Waardenberg had access to an old map but said he knew where he was on the ground although he didn't know what the number of the mining tenement he was on at any time. According to Mr Waardenberg, Mr Dixon used to pop through and he would show him where he had found gold and they discussed whether Mr Dixon should put a bulldozer over the area.
71. In June 2008, Mr Waardenberg said he was at the Redcastle leases and kept moving along and then went out to the Eucalyptus area where he spent three months with his caravan and set up camp south of Baldy Hill where there was a smooth access along a track for his caravan. According to Mr Waardenberg he spent June, July and August in the Eucalyptus area. Mr Waardenberg described his working routine as going out with a metal detector working an area and when that runs out or becomes unviable moving along and looking around trying to find some more and ultimately picking your patches that are viable and working them. He said he knew exactly where he was on the ground. He further said he could take you there and show you the holes. Mr Waardenberg described the work he did as '*higgledy-piggedly*' in some ways but in some areas he would work for a week or 10 days solid.
72. Mr Waardenberg described his working day as starting at around about 7:30 am and finishing around 3.00 pm. Every fortnight Mr Waardenberg said he would travel into Laverton to shop for supplies, making sure it was not a Sunday when the shops were closed. Mr Waardenberg also said he would prospect for approximately 7 hours per day. During the 2008 and 2009 years, Mr Waardenberg said he saw another prospector, Mr Jimmy Woods, as well as Mr Dixon on the Dixon Tenements.
73. Mr Waardenberg said between June 2008 and June 2009 he followed his usual routine and probably finished in August or September when it started to warm up a bit. He would then go to the Laverton Caravan Park and camp up to catch up with friends. Between June 2008 and June 2009, Mr Waardenberg said from his recollection he spent about 12 to 15 weeks on what he described as the Dixon Tenements. For the same period between June 2009 and June 2010 Mr Waardenberg said he spent a similar amount of time on the Dixon Tenements. However, at the end of his prospecting in 2009 Mr Waardenberg said he left the Dixon Tenements and has been prospecting in the Kalgoorlie area since.

74. Mr Waardenberg was shown a map outlining the various mining tenements held by Mr Dixon that he marked as having been worked by him in 2009 that was prepared as a consequence of these proceedings. He said the map was prepared after Mr Dixon approached him and identified where his camp was and he then, in the presence of Mr Dixon, marked out the areas he prospected in 2009.
75. Mr Waardenberg said from June 2008 onwards he physically saw Mr Dixon on the Dixon Tenements 2 or 3 times in each year. Mr Dixon would arrive unannounced on the Dixon Tenements and *'do what he had to do'* and would then catch up with Mr Waardenberg. Mr Waardenberg said he would show Mr Dixon where he'd been and what he got, discuss it with him and then walk or drive around the Dixon Tenements. Mr Waardenberg was unable to give any specific times or dates as he said he does not keep diaries containing times and places. The only matter he would be conscious of by way of time was to ensure that where he went to town for supplies it was not a Sunday and the shops were closed.
76. The information contained within the questionnaire completed by Mr Waardenberg was on the basis he knows he spent time in the area indicated but the times he spent there are approximate *'give or take a day or two or three here and there'* because he does not keep diaries or calendars although he says his calculations are conservative. Mr Waardenberg was not assisted in the completion of the questionnaire and says its content is true and correct as is the content of his affidavit.
77. Mr Waardenberg confirmed he was paid no money by Mr Dixon to prospect on what he described as the Dixon Tenements but based his calculation of a charge out rate of \$25 per hour as being what he regards as making it viable to him to be prospecting when he took into account what he does and his expenses. Mr Waardenberg described those calculation as *'just a personal thing that I gauge myself on ... if I earn less than that from my time spent well it's not worth doing it for me regardless of anybody else.'*
78. According to Mr Waardenberg's affidavit he stated he spent the following time on the Dixon Tenements in the 2008 and 2009 years:
- a) M 39/914 - for the period 27 June 2008 and 26 June 2009, I spent approx. 20 days prospecting on the tenement.
  - b) M 39/914 - for the period 27 June 2009 and 26 June 2010, I spent approx. 28 days prospecting on the tenement.
  - c) M 39/966 - for the period 27 June 2008 and 26 June 2009, I spent approx. 12 days prospecting on the tenement.
  - d) M 39/966 - for the period 27 June 2009 and 26 June 2010, I spent approx. 16 days prospecting on the tenement. (marked as 2008 and 2009 (sic))
  - e) M 39/969 - for the period 27 June 2008 and 26 June 2009, I spent approx. 5 days prospecting on the tenement.

- f) M 39/969 - for the period 27 June 2009 and 26 June 2010, I spent approx. 6 days prospecting on the tenement.
- g) M 39/991 - for the period 27 June 2009 and 26 June 2010, I spent approx. 8 days prospecting on the tenement.
- h) M 39/991 - for the period 27 June 2010 and 26 June 2011, I spent approx. 12 days prospecting on the tenement.
- i) M 39/1064- for the period 27 June 2009 and 26 June 2010, I spent approx. 16 days prospecting on the tenement.
- j) M 39/1064- for the period 27 June 2010 and 26 June 2011, I spent approx. 22 days prospecting on the tenement.
- k) P 39/4622 - for the period 9 December 2008 to 8 December 2009, I spent approx. 12 days prospecting on the tenement.
- l) P 39/4623 - for the period 9 December 2008 to 8 December 2009, I spent approx. 6 days prospecting on the tenement.
- m) P 39/4636 – for the period 9 December 2008 to 8 December 2009, I spent approximately 14 days prospecting on the tenement.

79. In cross examination, Mr Waardenberg said he has kept no bank or other records to verify dates claimed by him he spent prospecting on the Dixon Tenements in the various years. He claims he may have a receipt for a new metal detector he purchased but has not been referred to for the purposes of this proceeding.

80. Mr Waardenberg agreed the time he spent on the Dixon Tenements in 2008 and 2009 were not identical and varied in that he spent more time in 2009 at the Dixon Tenements in the previous year. In 2008, Mr Waardenberg said he recovered 23 ounces of gold from the Dixon Tenements and in 2009 he recovered 18 or 19 ounces with a new metal detector.

81. The questionnaire, the affidavit and the witness statement of Mr Waardenberg were shown to him and he was unable to explain how the days and times he said he spent on the Dixon Tenements were calculated given the questionnaire is vague as to specific dates. Mr Waardenberg said he was unable to say with any precision when it was he arrived and finished nor the days and times he worked metal detecting in the periods he was on the Dixon Tenements. For example, Mr Waardenberg agreed the questionnaire says he was at the Dixon Tenements in 2009 July, August & September yet he says in his affidavit and statement of time spent on the particular mining tenements being from 27 June 2009. Mr Waardenberg also agreed he had not spent time on any of the Dixon Tenements in 2010 or 2011 and had not been there since 2009.

82. Mr Waardenberg confirmed the boundaries of the Dixon Tenements he was prospecting on are not marked on the ground and he would not be aware of their specific numbers. However, Mr Waardenberg said he knew where he was on the ground from various landmarks but conceded he paid little attention to locations on maps that verify specific mining tenement boundaries. He also agreed he may move from one mining tenement and onto another and be unaware he had done so in the course of his prospecting activity. The maps Mr Waardenberg marked with crosses

were sent to him in the post already marked with the location of his camp in 2009, apparently inserted by Mr Dixon although its location was said by Mr Waardenberg to be approximately correct.

83. Mr Waardenberg confirmed the amount of \$25 per hour he says he charges himself out at is not a rate agreed with Mr Dixon but is his yardstick stick rate for his purposes to measure the viability of he is prospecting activities.

Barry Stephen Tussler

84. Mr Tussler is a caretaker on pastoral stations who also spends time prospecting with his partner, Jane Scudds (“Ms Scudds”), who is also a witness in these proceedings.
85. Produced into evidence by Mr Tussler is a questionnaire, an affidavit and a witness statement. Attached to the questionnaire completed by Mr Tussler is a map of the Dixon Tenements marked to indicate where Mr Tussler said he prospected in 2008, 2009 and 2010.
86. In summary, the evidence of Mr Tussler is he has metal detected, sampled and loamed on the Dixon Tenements since 2001. He first met Mr Dixon in 2003. According to Mr Tussler the oral ‘gentleman’s agreement’ he made with Mr Dixon in 2003 was for him to prospect on the Dixon Tenements and if he found any gold on them to take some GPS readings, *“but not little tiny bits, but if the ground’s deep.”*
87. Mr Tussler said in 2007, 2008 and 2009 he lived off the land continuously for 12 months barring going to town for some supplies. According to Mr Tussler in 2007, 2008 and 2009 years he recovered from the Dixon Tenements 24 to 25 ounces of gold each year by metal detecting which he said worked out to be like a basic wage.
88. The gold Mr Tussler said what he recovered in 2007, 2008 and 2009 was very small gold. Mr Tussler confirmed the arrangement with Mr Dixon was if he found any gold that was *‘all the small stuff, because most of them have been graded, and Trevor is interested in the deep ground. He said if you start to find any bigger nuggets or like a heap of nuggets is to keep the GPS reading and let me know.’* Mr Tussler said he did let Mr Dixon know of his finds of gold because *‘I told Paul Rowland , another friend of ours, a few times, and I think he wanted to have a look himself so I started giving the readings to Mr Woods which I knew was in contact with Trevor a lot of the time.’*
89. Mr Tussler said he saw Mr Dixon on the Dixon Tenements *‘a few times’* in the 2007, 2008 and 2009 years on his bulldozer. Mr Tussler was asked to be more specific as to the number of times he saw Mr Dixon in the period he stated to which Mr Tussler said 3. According to Mr Tussler he kept his canvas camper well camouflaged in the bush so it wouldn’t blow down. Mr Tussler said he saw the bulldozer being driving by once by Mr Dixon but he didn’t disconnect his vehicle to go and drive after it nor did he run after the bulldozer to see Mr Dixon, but he did

wave and Mr Dixon did wave back. Mr Tussler agreed they were quite short visits in which he saw Mr Dixon.

90. Mr Tussler said whilst he was working on the Dixon Tenements in each of the years he would see about 20 prospectors on the Dixon Tenements. He said he referred to most of as 'mate' or 'bud' as they were from Queensland and New South Wales. He also said there were some old blokes including Viv and Stan, 5 people from Albany way and a person named Rick Edwards and his mates. There was also a prospector he knew named Jim Woods who he had seen from time to time on the Dixon Tenements.
91. Mr Tussler said he was requested to assist Mr Dixon in these proceedings by letting him know how much time he spent on the Dixon Tenements. To that extent he completed a questionnaire and a map sent to him by Mr Dixon. That questionnaire was completed by Mr Tussler about 6 to 8 months prior to the hearing of these proceedings. Mr Tussler said the information within the questionnaire and on the map was the result of Mr Tussler and Ms Scudds sitting down and conservatively working out when they were on the Dixon Tenements prospecting, excluding times when they returned to their house in Broomehill and were watching football or going into town for supplies.
92. Mr Tussler also agreed he completed an affidavit in which he stated the times he had spent prospecting on each of the Dixon Tenements in various years. The times Mr Tussler stated in his affidavit he spent prospecting on the Dixon Tenements are as follows:
- a) M 39/914 - for the period 27 June 2008 and 26 June 2009, I spent approx. 15 days prospecting on the tenement.
  - b) M 39/914 - for the period 27 June 2009 and 26 June 2011, I spent approx. 30 days prospecting on the tenement.
  - c) M 39/966 - for the period 27 June 2008 and 26 June 2009, I spent approx. 15 days prospecting on the tenement.
  - d) M 39/966 - for the period 27 June 2009 and 26 June 2011, I spent approx. 30 days prospecting on the tenement.
  - e) M 39/969 - for the period 27 June 2008 and 26 June 2009, I spent approx. 14 days prospecting on the tenement.
  - f) M 39/969 - for the period 27 June 2009 and 26 June 2011, I spent approx. 28 days prospecting on the tenement.
  - g) M 39/991 - for the period 27 June 2008 and 26 June 2009, I spent approx. 17 days prospecting on the tenement.
  - h) M 39/991 - for the period 27 June 2009 and 26 June 2011, I spent approx. 34 days prospecting on the tenement.
  - i) M 39/1064 - for the period 27 June 2008 and 26 June 2009, I spent approx. 19 days prospecting on the tenement.
  - j) M 39/1064 - for the period 27 June 2009 and 26 June 2011, I spent approx. 38 days prospecting on the tenement.

- k) P 39/4622 - for the period 9 December 2008 to 8 December 2011, I spent approx. 45 days prospecting on the tenement.
  - l) P 39/4623 - for the period 9 December 2008 to 8 December 2011, I spent approx. 51 days prospecting on the tenement.
  - m) P 39/4636 – for the period 9 December 2008 to 8 December 2011, I spent approximately 42 days prospecting on the tenement.
93. According to the affidavit of Mr Tussler he spent 5 hours per day prospecting on the Dixon Tenements. Mr Tussler also deposed in his affidavit he met other prospectors on the Dixon Tenements who he named as Viv and Mike from Queensland, Carol and Stan from Queensland, Robert and Jan from Victoria and Mr Edwards and 5 mates from Albany. He deposed he would generally see 15 to 20 prospectors each year on the Dixon Tenements.
94. In completing the affidavit, Mr Tussler said he understood the dates from June to June in a 12 month period related to the financial year. The dates he said he placed in his affidavit between those months was the time he spent detecting for the number of weeks he worked out he was metal detecting in that 12 month period.
95. Mr Tussler deposed every time he went on to the Dixon Tenements he would always go onto the Internet and get GPS readings of each boundary to make sure that he was always on the Dixon Tenements as he did not wish to go onto another person's mining tenements.
96. In cross-examination, Mr Tussler said, in summary, he could not write down on a blank map all the numbers for the Dixon Tenements. He further said, he would obtain GPS co-ordinates for each corner of the Dixon Tenements and write them down. He and his partner would enter them into the GPS on their metal detectors. If other prospectors came along stating they were lost he would give them a copy so they knew that they should be on the Dixon Tenements.
97. Mr Tussler confirmed seeing Mr Dixon drive his bulldozer on one of his mining tenements on 1 occasion. Mr Tussler said he would not be able to identify where each of the Dixon Tenements are on a blank map.
98. According to Mr Tussler his charge out rate of \$250 per day is what he would charge his time out if he had to charge somebody for his time. He confirmed the arrangement he had with Mr Dixon was he could keep the gold he found. Mr Tussler said he has never been paid \$250 per day to metal detect on a mining tenement by any person.
99. Mr Tussler was asked to identify on a map of the Dixon Tenements where he camped in 2010 and where he found gold in the same year. Mr Tussler was unable to do so. According to Mr Tussler, when he received the questionnaire and the map it already showed the Dixon Tenements and their numbers. After discussing the request from Mr Dixon with his partner he completed the questionnaire and returned it to Mr Dixon. His affidavit was then prepared for him.

100. Mr Tussler said the same amount of time was spent on the same mining tenements prospecting in each of the 3 years because he and his partner either like the camping area they had chosen or they were creatures of habit and did the same thing in each year. No diaries or other records were kept by Mr Tussler for his activities on the Dixon Tenements.
101. Mr Tussler said he informed Mr Paul Rowlands he was working on the Dixon Tenements. Mr Tussler said because Mr Rowland was a close friend of Mr Dixon he asked Mr Rowlands to tell Mr Dixon he was on the Dixon Tenements. Mr Tussler said he was informed by Mr Rowlands he would do so.

Heather Jane Scudds

102. Ms Scudds is the partner of Mr Tussler and is currently on a pension. Ms Scudds also prepared for the purposes of these proceedings an affidavit, sworn 29 October 2012. Ms Scudds stated she conducted prospecting activities for approximately the same periods of time on the Dixon Tenements as deposed by Mr Tussler.
103. In summary, the oral evidence of Ms Scudds was she has been prospecting since about 2000 mostly on the Dixon Tenements. However, Ms Scudds said she prospected on other mining tenements identified by Mr Tussler. Ms Scudds said she first met Mr Dixon in about 2003 and commenced to prospect on mining tenements held by him in about 2007 to 2008. The arrangement Ms Scudds said she had with Mr Dixon was that Mr Tussler and her were to inform Mr Dixon if they found anything decent so he could go and look at it using a machine.
104. Ms Scudds said she regarded 2008 as a standard year in which she and Mr Tussler camped, metal detected and conducted loaming and sampling on the Dixon Tenements. Ms Scudds said she and Mr Tussler spent about three months every year, probably more, on the Dixon Tenements, prospecting spending anything from 5 to 6 hours per day metal detecting depending on the weather. Ms Scudds said she and Mr Tussler also prospected on other mining tenements that were not registered to Mr Dixon.
105. Ms Scudds said in the past she has been actively involved in metal detecting although of recent years her health has started to slow her down. Ms Scudds indicated she is involved in many of the domestic issues around the campsite that from time to time is shifted to other areas to take advantage of shade and to be closer to where prospecting is taking place.
106. In each of 2008, 2009 and 2010, Ms Scudds said she and Mr Tussler located between 17 to 20 ounces of gold from their prospecting activity. Ms Scudds said she understands the prefixes used for mining tenements but could not name the numbers allocated to the Dixon Tenements due to her illness and, in any event, that was the realm of Mr Tussler. The co-ordinates of the boundaries of the mining tenements being prospected by Ms Scudds were programmed into her GPS but other than that Ms Scudds was unfamiliar with the numbers of the mining tenements upon which she was prospecting.

107. From 2007 onwards, Ms Scudds said she saw Mr Dixon 2 or 3 times driving the bulldozer and she waved to him. Ms Scudds was unable to identify which mining tenement she was on when she saw Mr Dixon.
108. Ms Scudds said she was asked in 2012 by Mr Dixon to assist in providing details of their expenditure on the Dixon Tenements. Ms Scudds further said she and Mr Tussler had previously held a mining tenement and were aware of what was required to meet expenditure conditions for a mining tenement. Ms Scudds provided details of hours of work, expenditure on infrastructure including metal detectors, fridges, campers, tyres, oil and the like used for running the equipment and also the time for walking around the mining tenements metal detecting and loaming. Receipts have been retained by Ms Scudds for most of their expenditure while prospecting over the years.
109. Further, Ms Scudds said she and Mr Tussler were provided with a map by Mr Dixon on which was marked various mining tenement numbers. Additional details were hand written on the map by Mr Tussler to indicate the year she and Mr Tussler prospected on the Dixon Tenement.
110. Ms Scudds said, after reference to the calculations of the times Mr Tussler said they had spent prospecting on the Dixon Tenements, she was confident to the best of their memories they were reasonably accurate entries compared to what could be ascertain from reading maps. Ms Scudds said she does not keep a diary. Ms Scudds confirmed seeing the people noted by Mr Tussler on the Dixon Tenements over the years.
111. In cross examination, Ms Scudds said, in summary, the days she spent on the Dixon Tenements she stated in her affidavit were calculated by Mr Tussler as she has no accurate recollection of the precise dates or days and she is confident Mr Tussler is correct. Ms Scudds said the details of the dates and day calculations contained within her affidavit were as they arrived back from Mr Dixon's lawyer as the information she sent to Mr Dixon was only that contained within the questionnaire.
112. Ms Scudds confirmed she and Mr Tussler would spend about 3 months per year on the Dixon Tenements. They would spend time on other peoples ground to make up in total approximately 8 or 10 months prospecting in any year.

Ronald James Woods

113. Mr Woods is retired, aged about 84 years and has been prospecting in Western Australia for about 34 years. Mr Woods has sworn an affidavit, provided a statement of evidence and completed a questionnaire and map in these proceedings.
114. The evidence of Mr Woods, is in summary, he has known Mr Dixon for about 35 or 36 years and has prospected on the Dixon Tenements quite often. Mr Woods said the Dixon Tenements were in the Eucalyptus District about 110 km east of Leonora.



115. According to Mr Woods, in 2006 an oral arrangement was entered into with Mr Dixon to prospect on the Dixon Tenements. Mr Woods stated the terms of the agreement were *'we had a mutual agreement that I could detect on Trevor Dixon's leases. Anything I found I was able to keep, but he would like me to let him know where any gold was found, or any specimens.'*
116. Mr Woods said he spends 4 to 5 months in each year, generally May, June and July, on the Dixon Tenements prospecting for gold. According to Mr Woods between 2008 until about 2010 he has found about 36 ounces of gold and on the Dixon Tenements. Mr Woods is unable to state the mining tenement number of the mining lease upon which he found the gold but said he can take people to it.
117. Many people have been seen by Mr Woods prospecting on the Dixon Tenements between 2008 and onwards including 1 occasion when there were about 10 people metal detecting, some according to Mr Woods illegally.
118. Mr Woods said Mr Dixon has come to the Dixon Tenements that Mr Woods had been working *'quite often'*. Mr Woods said *'quite often'* was about 3 to 4 times over the years. On some occasions, Mr Woods said he observed Mr Dixon working on his mining tenements using a machine and on other occasions he came to see him. Mr Woods said he showed Mr Dixon the gold he had found and its location.
119. Mr Wood said Mr Dixon appeared not to be interested in small amounts of shallow gold but was more interested in ground where he can push the soil with his machine. Mr Woods says he does not use GPS coordinates in his prospecting very often.
120. About 2 years ago, Mr Woods said he was approached by Mr Dixon to assist him by giving evidence in these proceedings. As a result, Mr Woods said he attended upon lawyers and had a discussion with them. Mr Woods said he informed the lawyers he had worked on the Dixon Tenements over a period of a few years of up to 4 months at a time working patterns of 12 days on the mining tenements and 2 days in Leonora to obtain stores and fuel before repeating the cycle again. Mr Woods identified his sworn affidavit of 17 October 2012 as the document prepared in the office of Mr Dixon's lawyer.
121. The affidavit of Mr Woods deposed to the best of his recollection that he tried to break down the time he spent prospecting on the Dixon Tenements into days and arrived at the following:
- a) M 39/914 - for the period 27 June 2009 and 26 June 2010, I spent approx. 30% of my time at Eucalyptus, being 14.4 days prospecting on the tenement.
  - b) M 39/966 - for the period 27 June 2009 and 26 June 2010, I spent approx. 30% of my time at Eucalyptus, being 14.4 days prospecting on the tenement.
  - c) P 39/4636 – for the period 9 December 2008 to 8 December 2009, I spent approx. 20% of my time at Eucalyptus, being 9.6 days prospecting on the tenement.

- d) M 39/991 - for the period 27 June 2009 and 26 June 2010, I spent approx. 10% of my time at Eucalyptus, being 4.8 days prospecting on the tenement.
  - e) M 39/1064 - for the period 27 June 2009 and 26 June 2010, I spent approx. 10% of my time at Eucalyptus, being 4.8 days prospecting on the tenement.
  - f) M 39/914 - for the period 27 June 2010 and 26 June 2011, I spent approx. 30% of my time at Eucalyptus, being 14.4 days prospecting on the tenement.
  - g) M 39/966 - for the period 27 June 2010 and 26 June 2011, I spent approx. 30% of my time at Eucalyptus, being 14.4 days prospecting on the tenement.
  - h) P 39/4622 - for the period 9 December 2009 to 8 December 2010, I spent approx. 20% of my time at Eucalyptus, being 9.6 days prospecting on the tenement.
  - i) P 39/4623 - for the period 9 December 2009 to 8 December 2010, I spent approx. 20% of my time at Eucalyptus, being 9.6 days prospecting on the tenement.
122. In cross examination, Mr Woods said, in summary that, in 2009 and 2010 he did most of his prospecting on the Dixon Tenements in May and June. Mr Woods conceded there may be some different times as he spent longer on some. Mr Woods said he may have an estimated the time he spent on the Dixon Tenements.
123. Mr Woods stated in 2009 he spent a minimum of eight weeks but up to 10 weeks prospecting on M39/914. On M 39/966, Mr Woods conceded in 2009 about 2 weeks prospecting. Again Mr Woods conceded he was only up at the tenements for 8 weeks in 2009. He said he may have only worked those two leases in 2009.
124. Mr Woods was taken by Counsel for Landtec to a number of the Dixon Tenements in the area known as Eucalyptus. Mr Woods was asked to explain discrepancies in the number of days he claimed he worked on the Dixon Tenements in a period of approximately 2 months he claimed he spent working in each year. Mr Woods conceded the time he claimed to have worked on the Dixon Tenements were incorrect. Mr Woods said he was confused in his attempts to explain the time he claimed to have spent as it simply did not meet the amount of time he stated he spent there.
125. Mr Woods also conceded it was not difficult to cross the boundaries of 1 mining tenement and prospect into an adjoining mining tenement and be unaware it had happened. Mr Woods agreed he is unable to say with precision what time he spent on which tenement going back '*a few years.*' Mr Woods also agreed the specific time period he spoke about in his affidavit was in the majority some guesswork.
126. It was claimed by Mr Woods he provided to the lawyer for Mr Dixon the date of 27 June but he could not say the significance of that date other than it was the first day he spent on the Dixon Tenements in the middle of the year. Similarly, Mr Wood

was unable to explain the significance of the date of 9 December 2008 and agreed he simply wasn't at the Dixon Tenements in December and suggested a mistake was made somewhere or it may have been an oversight.

127. Mr Woods also conceded he claimed to have worked for 2 weeks on mining tenements that were not registered to Mr Dixon in 2009 and 2010. He did not consider the information within his affidavit is made suspect by his or evidence in these proceedings.

Josephine Mary Dunbar

128. Mrs Dunbar provided 2 statements of evidence and because she lives in Canada and was unable to be called to give evidence in these proceedings they were admitted into evidence. As a consequence, Mrs Dunbar was not subject to cross-examination.
129. In summary the affidavit of Mrs Dunbar dated 26 September 2012, states during the 2010 she prospected using metal detectors over the Dixon Tenements.
130. Mrs Dunbar stated to the best of her recollection she has tried to break down time spent prospecting into days on particular mining tenements in particular tenement years as follows:
- a) M 39/914 - for the period 27 June 2009 and 26 June 2010 I spent approx. 6 days prospecting on the tenement.
  - b) M 39/914 - for the period 27 June 2010 and 26 June 2011 I spent approx. 8 days prospecting on the tenement.
  - c) M 39/966 - for the period 27 June 2009 and 26 June 2010 I spent approx. 6 days prospecting on the tenement.
  - d) M 39/966 - for the period 27 June 2010 and 26 June 2011 I spent approx. 8 days prospecting on the tenement.
  - e) M 39/969 - for the period 27 June 2009 and 26 June 2010 I spent approx. 4 days prospecting on the tenement.
  - f) M 39/969 - for the period 27 June 2010 and 26 June 2011 I spent approx. 2 days prospecting on the tenement.
  - g) M 39/991 - for the period 27 June 2009 and 26 June 2010 I spent approx. 5 days prospecting on the tenement.
  - h) M 39/991 - for the period 27 June 2010 and 26 June 2011 I spent approx. 7 days prospecting on the tenement.
  - i) M 39/1064- for the period 27 June 2009 and 26 June 2010 I spent approx. 8 days prospecting on the tenement.
  - j) M 39/1064 - for the period 27 June 2010 and 26 June 2011 I spent approx. 12 days prospecting on the tenement.
  - k) P 39/4622 - for the period 9 December 2009 to 8 December 2010 I spent approx.. 4 days prospecting on the tenement.
  - l) P 39/4623 - for the period 9 December 2009 to 8 December 2010 I spent approx. 4 days prospecting on the tenement.

131. Mrs Dunbar stated she worked approximate 6 hours per day. At various times, Mrs Dunbar stated she met with other prospectors while working on the Dixon Tenements including Malcolm Brooks, Jim Woods, someone by the name of Girt and several other prospectors from Victoria whose name she does not know.
132. Mrs Dunbar provided a further witness statement dated 2 March 2013 in which she elaborated on her affidavit of 26 September 2012. Mrs Dunbar stated she and her husband had travelled periodically to West Australia to prospect for gold as a hobby since approximately 2002. Mrs Dunbar stated she first met Mr Dixon in about 2003 while prospecting on mining leases she knew as the Eucalyptus Tenements. According to Mrs Dunbar it was at that first meeting Mr Dixon authorised her to prospect on the Eucalyptus Tenements.
133. Mrs Dunbar stated she could no longer recall the precise words spoken by Mr Dixon to her but recalls he said he did not mind them prospecting on the Eucalyptus Tenements on the condition if any gold deposits of note was found he was to be informed of the GPS coordinates so he could explore on that particular part of his tenement. Mrs Dunbar stated Mr Dixon said it would also assist him to meet his minimum expenditure requirements.
134. Mrs Dunbar stated she and her husband usually spent between May and early September prospecting on the Eucalyptus Tenements by metal detecting and traversing the terrain looking to any indication of gold deposits or previous work on the ground. On arriving in Western Australia, Mrs Dunbar stated her usual practice was to call Mr Dixon and inform him of her arrival. Mr Dixon would inform her to advise him of any gold finds and provide him with the GPS co-ordinates. Mrs Dunbar stated she would prospect for 10 to 12 days before heading to either Leonora or Laverton to obtain supplies including fuel and provisions. If she had found any gold she would either call Mr Dixon to arrange to meet with him and provide him with details of the gold find including GPS coordinates or alternatively she would type the location of the gold and either hand it personally to Mr Dixon or posted to his letterbox in Leonora.
135. Mrs Dunbar confirmed her attendance in Western Australia in the period between 27 June 2009 to 26 June 2010 by reference to some Visa card payments between 17 May 2010 and 25 October 2010.

Ian Dunbar

136. Mr Dunbar is the husband of Mrs Dunbar and also lives in Canada. He also swore an affidavit dated 26 September 2012 in similar terms to that of his wife. Mr Dunbar claimed he had spent the same amount of days on the same mining tenements prospecting as his wife.
137. Mr Dunbar also provided a witness statement dated 2 March 2013 in which he adopted the witness statement of his wife that he said was dated February 2013 and confirms the evidence stated therein. It is assumed the statement Mr Dunbar claims

his wife made in February 2013 is in fact the witness statement of Mrs Dunbar dated 2 March 2013.

138. The affidavit and statement of Mr Dunbar were admitted into evidence because he lives in Canada. Mr Dunbar was not able to be cross-examined.

### **Evidence for Exterra**

#### *John Maxwell Davis*

139. Mr Davis is a geologist of 30 years and the managing director of Exterra. Mr Davis gave both oral evidence and evidence by way of a written statement dated 20 February 2013.
140. The evidence in chief of Mr Davis is, in summary, that Exterra is a small exploration company with mining tenement holdings near the Eucalyptus Project that it aims to bring into production.
141. In 2010, Mr Davis was introduced to the Eucalyptus Project in which Regal held an interest. Mr Davies stated he reviewed the Eucalyptus Project documents and discovered that Regal had a joint-venture with OzMay over the Eucalyptus Project mining tenements. The terms of the agreement between Regal and OzMay were noted by Mr Davis. As a result of negotiations, Mr Davis stated Exterra entered into a term sheet on 23 November 2011 with Regal and OzMay to take over the rights of OzMay under the terms of the joint-venture arrangement 'subject to the tenements being returned to good standing.' Exterra had no interest in the mining tenements that comprise the Eucalyptus Project until the mining tenements were in good standing.
142. In the first part of 2012, Mr Davis stated he formed the view OzMay was failing to act promptly to put the mining tenements that comprise the Eucalyptus Project into good standing. Accordingly on 12 January 2012, Mr Davis stated he spoke with Mr McHenry at OzMay and was informed by Mr McHenry that OzMay had withdrawn from the joint-venture with Regal. As a consequence, Mr Davis stated he commenced discussions with Regal to again attempt to obtain an interest in the mining tenements that comprise the Eucalyptus Project.
143. In conducting its research, Mr Davis stated Exterra noted the mining tenements that comprise the Eucalyptus Project were not held by Regal or OzMay but by various other persons. Mr Davis stated he had satisfied himself that Regal were entitled to deal with the mining tenements that comprise the Eucalyptus Project and commence to negotiate with Regal to acquire an interest in those mining tenements.
144. Mr Davis further stated despite enquiries with Regal he was unable to ascertain why transfers of the mining tenements that comprise the Eucalyptus Project had not been registered from the various registered holders to Regal. Further, Mr Davis stated Exterra was aware of the existence of the Exemptions, the Objections and the Forfeitures.

145. In March 2012, Mr Davis stated he considered the mining tenements that comprised the Eucalyptus Project would be worthwhile purchasing, despite the stated problems, if they could be obtained at the right price. Exterra agreed to attempt to negotiate a deal with Regal to purchase the mining tenements that comprise the Eucalyptus Project. Between March and May 2012, Regal and Exterra negotiated a conditional purchase agreement of the mining tenements that comprise the Eucalyptus Project with Regal until agreement was reached on 3 May 2012.
146. Upon entering into the conditional purchase agreement with Regal, Mr Davis stated he set about meeting the terms of the agreement and engaged with solicitors and the registered holders of the mining tenements that comprise the Eucalyptus Project to resolve what he called an '*untidy tenement situation left over by Regal.*'
147. Mr Davis stated Exterra was unable to negotiate the transfer of the interest held by the Longmans and Eucalyptus GM in 39/292 and M 39/480. Some difficulty was also experienced in dealing with Mr Dixon but Mr Davis stated he believes that is now resolved. Further, other difficulties have been met in complying with various statutory requirements and Exterra continues to deal with those issues.
148. Exterra undertook technical due diligence and a review of data over the mining tenements that comprise the Eucalyptus Project and lodged a Programme of Works with the DMP that was granted on 30 November 2012. Exterra assessed the tenements that comprise the Eucalyptus Project to have a JORC compliant resource of 88,000 ozs of gold with the potential for further discoveries. Mr Davis stated the mining tenements that comprise the Eucalyptus Project could be incorporated into Exterra's nearby project to form a combined development project.
149. Mr Davis stated Exterra is considering the economic viability of combining Exterra's nearby project with the Eucalyptus Project. Exterra has the financial resources to undertake the further exploration required to develop mining tenements in the vicinity of the Eucalyptus Project.
150. In cross-examination, Mr Davis stated, in summary, he first became aware of the Exemptions, the Objections and the Forfeitures for the mining tenements that comprise the Eucalyptus Project for both the 2009 and 2010 Years in early 2011. Despite that, Mr Davis stated Exterra still considered the Eucalyptus Project was worthwhile being pursued if an appropriate arrangement for the acquisition of the project could occur.
151. Mr Davis agreed Exterra has absolutely no liability to anyone, other than its solicitors, in the event the Forfeitures are upheld and the mining tenements that comprise the Eucalyptus Project are forfeited.
152. Further, Mr Davis agreed Exterra has not been able to find an agreement between Regal, the Longmans and Eucalyptus GM could be considered to be the final agreement.

153. Mr Davis stated Exterra caused Form 5 Reports to be lodged for the mining tenements held by the Longmans and Eucalyptus GM for the 2011 Year despite the fact they haven't satisfied themselves that Regal had the right to deal with those mining tenements or that Exterra was the agent of the Longmans or Eucalyptus GM. The Form 5 Reports were lodged, according to Mr Davis, because Exterra had access to the mining tenements of the Longmans and Eucalyptus GM in that year.

### **Evidence for Eucalyptus GM and the Longmans**

154. Eucalyptus GM and the Longmans did not call or submit any evidence in this proceeding matter. However, Mr Longman did read a statement to the Court in closing. The statement by Mr Longman alluded to the whereabouts of the sale and purchase agreement by the Longmans & Eucalyptus GM with Regal. That issue was put to Mr Sullivan in cross examination by Mr Longman and raised by Mr Davis in his evidence.
155. In summary, the statement made by Mr Longman on behalf of Eucalyptus GM and the Longmans was the mining tenements held by the Longmans and Eucalyptus GM were the subject of a sale agreement with Regal in 2004. In 2005, after Regal was 'floated' on the ASX consideration for the sale exchanged hands and transfer documents for the transfer of registered proprietors from Eucalyptus GM and the Longmans to Regal were signed in the offices of Regal in Perth and duly stamped by the State Revenue Department and collected by legal representatives for Regal.
156. Mr Longman stated on behalf of Eucalyptus GM and the Longmans that they were not made aware of any farm in agreement between Regal and OzMay in 2010. Further, Mr Longman stated attempts to draw together the content of the sale purchase agreement with Regal concerning the mining tenements held by Eucalyptus GM and the Longmans have raised concerns that the contents of what was produced was in potential conflict with the original January 2005 document.
157. In conclusion, Mr Longman stated that since Regal purchased the mining tenements held by Eucalyptus GM and the Longmans in January 2005, other than to change the registered address for notices to the tenement holder, neither Eucalyptus GM or the Longmans have made any contribution to the management or administration of the mining tenements nor have they been informed by Regal or any other party of any dealings with the mining tenements.

### **Evidence for Landtec**

158. Landtec elected not to call or submit any evidence in respect to the Exemptions in these proceedings.

### **Findings of Credibility of Witnesses and Findings of Fact**

159. The credibility of much of the evidence given by witnesses called by Mr Dixon and Exterra plays an important role in the determination of the recommendations to be made to the Hon. Minister. That is so because the arguments of expenditure

sufficient to meet the minimum expenditure requirements on the Dixon Tenements have no supporting documents and are the product of reconstruction of days and times from memories dating back years.

160. I accept Mr Woods, Mr Waardenberg, Mr Tussler and Ms Scudds all prospected with metal detectors on the Dixon Tenements in the years stated by them in accordance with an oral agreement with Mr Dixon. However, I do not accept their evidence is accurate as to days, times and hours. The evidence of Mr Woods, Mr Waardenberg, Mr Tussler and Ms Scudds was, on their own admissions, not documented, inaccurate and a reconstruction from memory in response to a questionnaire from Mr Dixon sent some years later. The cross examination of each of Mr Woods, Mr Waardenberg, Mr Tussler and Ms Scudds simply confirmed the utter unreliability of their attempts to reconstruct the dates, times and hours they conducted their metal detecting on the Dixon Tenements. All of the above witnesses agreed in cross examination their evidence was inaccurate and no more than an estimation and speculations of the dates, times and hours they were on the Dixon Tenements.
161. Further, Mr Woods, Mr Waardenberg, Mr Tussler and Ms Scudds all lacked details of when they arrived and when they left the Dixon Tenements, what days they did not metal detect and all did not keep any form of record of what they did on what day.
162. I do accept the evidence of Mr Woods, Mr Waardenberg, Mr Tussler and Ms Scudds that they saw Mr Dixon on the Dixon Tenements on no more than a few occasions in the years they spent on the Dixon Tenements. I do not accept the visits of Mr Dixon to the Dixon Tenements could be referred to as regular or frequent. I find the visits by Mr Dixon to the Dixon Tenements were rare and very infrequent.
163. I also find the written evidence of Mr and Mrs Dunbar, notwithstanding they were not subject to cross examination, to be also utterly unreliable and not credible as to dates, times and hours for precisely the same reasons expressed in relation to Mr Woods, Mr Waardenberg, Mr Tussler and Ms Scudds.
164. I find the evidence of Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar to be no more than, at best, speculation and, at worst, guesses in their attempts to reconstruct their past visits and activities on the Dixon Tenements by reference to general practices and what they normally did such that their evidence is not credible and totally unreliable as to dates, times and hours.
165. I find it follows the attempted translation by Mr Dixon and Exterra of the inaccurate and speculative dates, times and hours claimed by Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar to have been spent metal detecting on the Dixon Tenements are utterly unreliable and forms no basis upon which any reliance can be had in the completion of a Form 5 Report that requires accuracy and a declaration as to the truth of its content.



166. Further to the above, I do not accept for the reasons that will follow, the amended, replacement or additional Form 5 Reports should have been received by an officer of the DMP and then used to amend the Register pertaining to the Expenditure on the Dixon Tenements in the 2010 Year as they were based upon information provided by Mr Dixon, Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar that formed the basis of the evidence given by them in these proceedings when the evidence is utterly unreliable and inaccurate.
167. I find the evidence of Mr Dixon to be inaccurate and not credible as to date, times and hours he spent on the Dixon Tenements as it was unsupported by any documentary evidence and consisted of attempts at reconstruction of memory and the reliance upon the reconstructed memory of other people including Mr Dixon, Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar. I find Mr Dixon was credible as to the sequence of events that unfolded regarding the transaction between Mr Sullivan and Regal and himself and his contact with OzMay and Exterra.
168. I accept the evidence of Mr Davis as to the action of himself and Exterra in their dealing with Mr Dixon, the Longmans, Eucalyptus GM, OzMay and Regal. I also accept the evidence of Mr Davis that Exterra has plans to develop the mining tenements at the Eucalyptus Project.
169. I accept the evidence of Mr Sullivan as credible regarding his dealings with Mr Dixon and the mining tenements at the Eucalyptus Project and his actions whilst working for Regal. I also accept the knowledge of Mr Sullivan of the actions of Regal after he left Regal.
170. Accordingly, I make the following findings of fact:
- i. In or about 2002, Mr Dixon became the registered holder of the Dixon Tenements. Between 2002 and 2005, Mr Dixon entered into an agreement with Newcrest to carry out work on the Dixon Tenements. During that period Newcrest carried out work and incurred expenditure on the Dixon Tenements.
  - ii. In 2005, Newcrest withdrew from the agreement with Mr Dixon. In 2005, Mr Dixon entered into a conditional sale and purchase agreement with Regal subject to the listing of Regal on the ASX. Regal listed on the ASX in June 2005 and Mr Dixon stopped monitoring expenditure on the Dixon Tenements. In accordance with the terms of the sale and purchase agreement Regal incurred expenditure on the Dixon Tenements until about 2009. No transfer of the interests of Regal in the Dixon Tenements was registered the DMP. Regal were required under terms of the agreement with Mr Dixon to meet the expenditure conditions on the Dixon Tenements.
  - iii. In about 2005, Regal also entered into a conditional sale and purchase agreement with the Longmans and Eucalyptus GM in respect to the mining tenements held by them at the Eucalyptus Project. The agreement Regal entered into with the Longmans and Eucalyptus GM was reduced to writing

and signed by all parties including the execution of transfer forms under the provisions of the Act. The transfer of the registered holder of the mining tenements held by the Longmans and Eucalyptus GM has never been registered with the DMP. Regal incurred expenditure on the mining tenements held by the Longmans and Eucalyptus GM until about 2009.

- iv. During the period between 2005 to about June 2008, Mr Sullivan regularly communicated with Mr Dixon regarding work being conducted and expenditure being incurred on the Dixon Tenements by Regal.
- v. In about 2010, Mr Dixon became aware as a result of an announcement to the ASX by Regal that Regal had entered into an agreement concerning the Dixon Tenements with OzMay. Mr Dixon received no notification from Regal or OzMay of the nature of their agreement. In early 2010, Mr Dixon informed Regal they appeared to be in breach of the terms of their agreement concerning the Dixon Tenements. In about June 2010, Mr Dixon travel to Melbourne and met with Regal to discuss the status of the expenditure on the Dixon Tenements and the obligations owed to him under the terms of their agreement.
- vi. In July 2010, Mr Dixon received a letter from OzMay regarding their agreement with Regal. Mr Dixon did not recognize the agreement. Mr Dixon conducted discussions with Regal regarding their obligations to meet the expenditure obligations on the Dixon Tenements and their obligation to lodge with the DMP the Form 5 Reports. Mr Dixon was assured by Regal it would lodge the Form 5 Reports, lodge exemption applications and take all necessary steps to keep the Dixon Tenements in good standing.
- vii. In August 2010, Mr Dixon lodged a Form 5 Reports for the Dixon Tenements with the DMP and obtained copies of these Exemptions. Mr Dixon had no direct knowledge of the basis for the Exemptions. The Form 5 Reports for the 2010 Year reported the expenditure for the Dixon Tenements was less than the minimum expenditure required.
- viii. In December 2011, Mr Dixon sent a facsimile to Regal informing them they had failed to maintain the Dixon Tenements by not paying the shire rates. Part of the shire rates for the Dixon Tenements were paid by Mr Dixon and part by OzMay. Mr Dixon was informed at various times until about July 2012, 2 firms of solicitors were representing his interests in the Forfeitures and Exemptions for the Dixon Tenements. Despite writing to the 2 firms of solicitors Mr Dixon received no response.
- ix. In about August 2010, Mr Dixon lodged an LIMO with the DMP that was approved in September 2010 that authorised drilling on the Dixon Tenements. A copy of the LIMO was given to OzMay by Mr Dixon in the hope that they would commence a drilling program and thereby meet the expenditure conditions for the Dixon Tenements in light of the Forfeitures bought by Landtec.

- x. At no time did Mr Dixon receive any reports on expenditure by OzMay on the Dixon tenements but some payment was made by OzMay towards shire rates.
- xi. In or about May 2011, Mr Dixon became aware OzMay had withdrawn from its agreement with Regal and a company named Exterra had taken an interest in these Dixon Tenements at the Eucalyptus Project
- xii. The mining tenements held by the Longmans and Eucalyptus GM at the Eucalyptus Project was also subject to a similar course of agreements between Regal, OzMay and Exterra between the same time periods as the agreements regarding the Dixon Tenements. The mining tenements held by the Longmans and Eucalyptus GM at the Eucalyptus Project were also subject to the same failure to meet expenditure conditions and applications for Exemptions, Objections and Forfeitures in the 2009 and 2010 Years.
- xiii. In the 2010 Year, Mr Dixon attended at the Dixon Tenements with a bulldozer for periods of time that cannot be reliably or credibly established.
- xiv. For a number of years prior to 2010, Mr Dixon has had oral informal agreements with about 10 to 12 prospectors, including Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar to enter upon the Dixon Tenements to prospect for gold using metal detectors. The oral agreements do not comply with the requirements of s. 118A of the Act and any expenditure claimed on the Dixon Tenements is not allowable expenditure under the Act. No fee or charge or share of gold found was made to be paid or given to Mr Dixon by the prospectors he orally agreed could prospect upon the Dixon Tenements. However, Mr Dixon requested the prospectors inform him of the location of any large deposits of gold they found on the Dixon Tenements.
- xv. Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar attended upon the Dixon Tenements at various times in the 2010 Year for the purposes of prospecting by metal detectors. The evidence of Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar as to the date time and hours spent prospecting on the Dixon Tenements is unreliable and not credible as it consists of reconstructions from memory of estimations and at worst guesses of the periods and time spent on the Dixon Tenements.
- xvi. The evidence of Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar is unsupported by reliable or credible written or documentary material.
- xvii. Mr Dixon received from some of the prospectors who he orally authorised to attend upon the Dixon Tenements for the purposes of prospecting by metal detecting including Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar some details of finds of gold. Mr Dixon was seen on only a

few occasions at the Dixon Tenements in the 2010 Year either visiting some of the prospectors he orally authorised to prospect by metal detecting or on a bulldozer. The number of times that Mr Dixon was observed on the Dixon Tenements by some of the prospectors who he orally authorised to prospect is small.

- xviii. Between June and July 2012, Mr Dixon contacted a number of prospectors including Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar and provided them with a questionnaire and a map to establish when and what work when they were on the Dixon Tenements in the 2009 and 2010. The responses received from Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar were used as the basis to prepare various evidence for use in these proceedings and to establish an amended, substituted or a replacement Form 5 Report for the 2010 Year on the Dixon Tenements.
- xix. The information contained within the responses received from Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar and used in their evidence and for the establishment of an amended, substituted or replacement Form 5 Report for the 2010 Year on the Dixon Tenements and was formed by reconstructions, estimations and in some cases guesses as to the work carried out and date, times and hours spent on the Dixon Tenements and is utterly unreliable and not credible.
- xx. Mr Dixon holds approximately 108 mining tenements with a minimum annual expenditure conditions totaling several million dollars that he admits he does not have the capacity to meet personally but does so through his various contractual partners.
- xxi. In 2010, Exterra was introduced to the Eucalyptus Project by Regal. Exterra became aware of an interest held in the Eucalyptus Project by OzMay. Exterra entered into a terms sheet with Regal and OzMay in January 2012 that is subject to the mining tenements at the Eucalyptus Project remaining in good standing.
- xxii. Exterra has been unable to reach any written agreement with the Longmans and Eucalyptus GM for the transfer of their interests in the mining tenements at the Eucalyptus Project. Exterra has undertaken a review of the Eucalyptus Project and has been granted a Programme of Works by DMP in November 2012 and has assessed a JORC compliant resource of 88,000 ozs of gold. Exterra has no liability to any one in these proceedings. Exterra has the financial capacity to develop the Eucalyptus Project.

## Conclusion

### The Amended Form 5 lodged for the Mining Tenements of Mr Dixon

171. It is appropriate to deal with the submission of Exterra and Mr Dixon that the Exemptions for the 2010 Year for the Dixon Tenements are unnecessary as the Register now reveals minimum expenditure conditions have been complied with as a result of the lodgment of amended, additional or substituted Form 5 Reports for the 2010 Year.
172. It should be borne in mind the provisions of r. 16 and r. 32 of the Mining Regulations (“the Regulations”) have been amended as a consequence of the provisions of the Mining Amendment Act 2012 that came into effect on 2 February 2013. Those amendments resulted in the removal of various extensions of time provisions for the doing of various acts under the Act and Regulations and created one provision for extensions of time pursuant to s. 162B of the Act. Having said that, it is my opinion, the definition of ‘prescribed period’ in r. 84F of the Regulations and what I have to say about the extracting of information from amended, substituted or additional Form 5 Reports is unaffected.
173. Exterra and Mr Dixon submit the need to consider the Exemptions for the Dixon Tenements is unnecessary because s. 82(1)(c) (mining lease) and s. 50(1) (prospecting licence) of the Act that prescribes a requirement to comply with the applicable expenditure conditions has been complied with by the amendments to the Register.
174. The manner in which compliance with the applicable expenditure conditions is required to be complied with under the Act is contained within r. 16 (prospecting licence) and r. 32 of the Regulations. The provisions of r. 16 and r. 32 of the Regulations are in similar terms and, relevant to these proceedings, state as follows:
- “(1) A report required under section (51 or 82 as applicable) is to be in the form of Form 5 and is to be filed –*
- a. Within 60 days after each anniversary date of the commencement of the term of the licence or within any extension of that period under sub regulation (1a); and*
- b. within 60 days after the surrender, forfeiture, expiry or other cancellation of the licence or within any extension of that period under sub regulation (1a).*
- (1a) The Minister may, in response to a request made before the expiry of the 60 day period referred to in sub regulation (1)(a) or (b), extend that period.*
- (2) A person who, in a report required under section (51 or 82 as applicable) of the Act gives information that the person knows is false or misleading in a material respect commits an offence.”*
175. Further, Exterra and Mr Dixon submit that s. 103F of the Act provides the DG is to cause the Register to be compiled and maintained and to contain such particulars, relating to mining tenements and application for mining tenements as are prescribed. Section 161(3) of the Act provides that in any proceeding a document purporting to be certified by a person authorised by the DG as a correct copy of an extract of the

Register kept under the Act is, without proof of that person's signature, evidence of the matter contained in the document. Exterra and Mr Dixon submit the Warden can therefore, in these proceedings, rely upon the content of the certified copy of the Register as proof of the contents recorded in the Register with respect to the mining tenements the subject of these proceedings.

176. It is further submitted by Exterra and Mr Dixon the Warden conducting Part IV Proceedings is entitled to rely upon the certified copy of the mining tenements contained within the Register informing him of the recorded content of any Form 5 Reports because the Warden may in accordance with r. 154(d) of the Regulations inform him or herself of any matter and in any manner considered appropriate.
177. The binding nature of the information contained within the certified copy of the Register was, it is submitted by Exterra and Mr Dixon, analyzed in *Synergy Equities Group Ltd v Morellini [2003] WAMW 21*. In that case it is claimed by Exterra and Mr Dixon although a certificate of exemption had been granted prior to a recommendation by the Warden to the Hon. Minister it was to be regarded as an irregularity the Warden was bound under s. 161(3) of the Act to accept the grant of an exemption had been made and he could not go behind the Register when he was sitting in his administrative capacity.
178. It is further submitted by Exterra and Mr Dixon that r. 84C of the Regulations provides the Register is to contain details of all rental payments and money expended or deemed to be expended in mining or in connection with mining on mining tenements. Further it is submitted, r. 84F of the Regulations provides an officer of the DMP may extract information from a Form 5 Reports for the purposes of including it in the Register despite the fact the Form 5 Reports were received at the DMP after the expiry of the prescribed period (being the 60 days following the mining tenement anniversary date). Regulation 84F of the Regulations provides as follows:

***“84F Inclusion of Information in Register despite Late Lodgment of Report***

(1) *In this regulation –*

***prescribed period***, in relation to report, means the period within which the report is required to be filed or lodged under regulation 16, 22, 23E, or 32 as the case requires.

(2) *An officer of the Department may extract information from a report referred to in regulation 16, 22, 23E, or 32 for the purpose of including it in the register despite the fact that the report was received at the Department after the expiry of the prescribed period.*“

179. Exterra and Mr Dixon submit r. 84F of the Regulations expressly provides approval for the lodgment of supplemental Form 5 Reports. It follows, submits Exterra and Mr Dixon, the DMP's acceptance of the additional, amended or substituted Form 5 Reports and a subsequent amendment to the Register is not contrary to law and reflects the necessity of maintaining correct figures and information in the Register, which is a public information site, should accurately reflect all administrative

matters in relation to a mining tenement. The DMP accepted the additional expenditure figures, amended the Register and as a result the expenditure conditions for the Dixon Tenements have been satisfied.

180. It is further submitted by Exterra and Mr Dixon that Landtec has not advanced any proceedings under the Act to correct the Register despite being aware of the amendments to the Register for some time. Accordingly, it is submitted that Landtec is bound by its decision not to challenge the content of the Register.
181. Exterra and Mr Dixon submit their interpretation of the Act and Regulations is also expressly supported by the Hon. Minister as expressed by him in a letter (Exhibit 8) to Mr Dixon dated 10 April 2013 regarding some of the mining tenements the subject of these proceedings that states:

*“I refer to your letter dated 12 February 2013 addressed to the previous Minister for Mines and Petroleum requesting an extension of time in which to lodge amended/additional Form 5 Reports on Operations in respect to these tenements.*

*Regulation 104 of the Mining Regulations 1981 provides that the time required by the regulations for any Act to be done by the holder of any mining tenement may be extended by the Minister or a Warden, as the case requires, for reasonable cause, proof of which lies on the holder.*

*However, regulations 16 (for prospecting licences) and 32 (for mining leases) of the Regulations require that a Form 5 Report on Operations is to be filed within 60 days after each anniversary date of the commencement of the term of the licence or lease or within any extension of that period. These regulations also provide that the Minister may, in response to a request made before the expiry of the 60 day period, extend that period.*

*Regulation 104 has no application in this instance and I am unable to exceed to your request.*

*I am advised, however, that regulation 84F allows for information to be extracted from a report referred to in regulation 16 or 32 for the purposes of including it in the register, notwithstanding that the report was received after the expiry of the prescribed period. In this particular case the information you provided in your Form 5 report has been recorded in the register.”*

182. Exterra and Mr Dixon also referred to ***Ajax Mining Nominees Pty Ltd v Heron Resources NL, Minister for Mines [2001] WAMW 21*** at page 15 in which Form 5 Reports were lodged outside of the time prescribed in the Regulations. It is submitted the Warden found the acceptance by the DMP of the late Form 5 Report was a practice of the DMP that would likely to continue and said the following:

*“It seems to me to be an arguable possibility that the declaration of the filing of a Form 5 contrary to law does not necessarily produce a conclusion that there has been a prime case of non-compliance with the expenditure conditions of the tenement. It seems to me to be arguable that the evidence constituted by the late Form 5 could be accepted as sufficient to displace any prima facie conclusion of non-compliance.”*

183. Finally, Exterra and Mr Dixon submit that other important policy grounds which support their interpretation of the Act and Regulations which permit the Register to be updated are:
- a. *The policy of the Act is that work is done on mining tenements. In this instance, work has been done on the mining tenements and the work is recorded as expenditure and the Register has been appropriately updated to reflect this;*
  - b. *The ability to update the Register is entirely consistent with how the mining industry in Western Australia operates, in that a tenement holder remains primarily responsible for ensuring expenditure conditions are satisfied but in practice such obligations are often farmed out to a third party under a farm in or joint-venture arrangement. In circumstances where the farm in or joint-venture partner fails to lodge a Form 5 showing that expenditure has been satisfied, it is entirely appropriate and consistent with the objectives of the Mining Act that the registered tenement holder may lodge a Form 5 showing that expenditure is being undertaken on the tenements in question;*
  - c. *It will not be in every instance were an exemption application is granted that will be possible to lodge an amended Form 5, because what must be established is that actual mining operations were undertaken on such tenements. Registered tenement holders, can therefore protect themselves from the risk that their farm in or joint-venture partner does not undertake expenditure by ensuring that they cause mining operations to be undertaken on the relevant tenement.*
184. To that extent, Exterra and Mr Dixon submit, the acceptance by the DMP of additional, substituted or amended Form 5 Reports and a subsequent amendment to the Register is not contrary to law and reflects the necessity of maintaining correct figures and information in the Register, which as a public information site, should accurately reflect all administrative matters in relation to a mining tenement. The DMP accepted the additional expenditure figures, amended the Register and as a result the expenditure conditions on the Dixon Tenements have been satisfied in the 2010 Year.
185. I do not accept the interpretation by Exterra and Mr Dixon of the provisions of r. 84F of the Regulations, their submission the content of the Register is proof of the matters contained within it, the Warden is not entitled to go behind the Register when sitting in his administrative capacity, the Register can be ‘updated’ outside the provisions of the Act or the expenditure for the Dixon Tenements has been complied with in the 2010 Year.
186. The copy of the extract of the Register certified by the DG as being a correct copy of the Register is, pursuant to s. 161(3) of the Act, evidence of the matters contained within the Register. I do not accept the content of the certified copy of the Register is absolute proof of its content and not capable of being rebutted by other evidence. In *Wilton and Co. v Phillips (1903) 19 TLR 390*, Phillimore J stated ‘*a public document coming from the proper place or a certified copy of it is sufficient proof of every particular stated in it.*’ The words ‘sufficient proof’ means no more than sufficient in the absence of other credible evidence to the contrary.



187. In *Re Stollery; Weir v Treasury Solicitor [1926] 1 Ch 284* the Court dealing with whether birth and death certificates were admissible as evidence of child's parentage and whether her parents were married concluded the documents were evidence of the matters they contained but were not conclusive evidence of any of the matters stated therein. Sargant LJ said in *Re Stollery; Weir v Treasury Solicitor* at [327-328];

*'It does not seem to me that every part of the entry in the register is necessarily of equal weight as evidence with every other part of the entry. The whole is admissible as evidence, but it may very well be that with regard to one part there is greater certainty than with regard to another part. For instance, the date of registration practically must be assumed to be conclusive. On the other hand, with regard to the date of the birth, there may be some mistake. The registrar is acting only on the information of other persons. With regard to the description of persons, or the place of abode, or matters of that kind, in all those cases, although the evidence is admissible as evidence, it may very well be that the weight of the evidence of the evidence varies.'*

188. The information extracted from a Form 5 Reports and entered into the Register by a duly authorized officer of DMP is done so by that officer acting upon the information provided to him or her by the holder of the mining tenement or its agent. The content of the Form 5 Reports may be correct or it may be incorrect. The place at which the content of the Form 5 Reports, that has been extracted and entered into the Register, is tested to determine if it is '*sufficient proof of every particular stated in it*' is in proceedings such as the Exemptions, the Objections and the Forfeitures.
189. That is to be contrasted with the issue in the case of *Synergy Equities Group Ltd v Morellini* in which the powers of the Warden to hear an application for exemption from expenditure conditions were unable to be concluded because the Hon. Minister granted the exemption before the hearing of the application for exemption and the objection thereto. The Warden was notified of the grant of the exemption by the production of a certified copy of the Register. In effect, the power of the Warden to hear the exemption and report to the Hon. Minister had been brought to an end by the actions of the Hon. Minister such that it rendered the continuation of the proceeding before the Warden pointless.
190. The role of the Warden in administrative proceedings, such as hearing of the Exemption, the Objections and the Forfeitures, has been described as a 'filtering role'. (see: *Re: Warden French; ex parte Serpentine – Jarrahdale Ratepayers Association (1994) 11 WAR 315*). As part of the filtering role the Warden is obliged to air, consider and bring to the attention of the Hon. Minister as many matters as is reasonable and practical that may impact upon the considerations of the Hon. Minister in the proceedings he is required to make a determination. In my opinion, that also includes issues such as the veracity of the content of the Register where the proceeding before the Warden is based upon the accuracy of the information provided to the DG by the holder of the mining tenement and the impact it may have on the outcome of the proceedings.

191. I do not accept the submission by Dixon and Exterra that the Act and Regulations permits or encourages the lodging or receiving of Form 5 Reports other than in accordance with the Act. I do not accept the Act or Regulations permits the extraction of information from any Form 5 Report or other source other than in accordance with the Act.
192. The provisions of r. 84F of the Regulations are not, in my opinion, standalone provisions that empower an officer of the DMP to receive and extract information from a Form 5 Report for inclusion in the Register maintained by the DG outside the provisions of the Act. There is, in my opinion, no provision within the Act or the Regulations that permits or authorizes the holder of a mining tenement to lodge a Form 5 Report in substitution or amendment or addition to any Form 5 Report that was lodged in compliance with the Act. The Act and Regulations does permit, in accordance with r. 16(1a) and r. 32(1a) of the Regulations and now s. 162B of the Act, the lodgment of a Form 5 Report outside of the prescribed time period.
193. The Act provides upon the grant of a prospecting licence or mining lease the registered holder is required to comply with various conditions including the conditions to meet specific annual expenditure obligations. The registered holder of a prospecting licence or a mining lease is obliged to demonstrate compliance with the expenditure obligations by lodging with the DMP reports detailing expenditure on the prospecting licence or mining lease in the manner and time prescribed. (see: s. 50(1) & s. 82(1)(c) of the Act).
194. The requirement for the lodging of a Form 5 Report was considered in ***Brosnan v JSW Holdings P/L [2011] WAMW 8*** at [10] to [14] in which the warden said:

*“The completion of the Form 5 by the holder of a mining lease is an important task. It is the method prescribed by Parliament by which the Honourable Minister can satisfy him or herself that a condition of grant of a mining lease, to meet a minimum prescribed level of expenditure on the mining lease, has been complied with in each expenditure year. The failure of the holder of a mining lease to either lodge a Form 5 or to expend the prescribed minimum level of expenditure “in mining on or in connection with mining operations” may result in the forfeiture of the mining lease.*

*The task of completing the Form 5, in my opinion, goes further than merely reporting the amount of expenditure in an expenditure year on the mining lease. The registered holder of a mining lease is required to not only show the amount expended in dollar value but must also provide sufficient particulars of the activity undertaken on the mining lease such that the Honourable Minister can determine the amount expended was “in mining on or in connection with mining operations” on the mining lease.*

*It is not the case, from the plain reading of the Mining Act or Regulations, that the Honourable Minister should be required to speculate or infer whether the expenditure claimed by the holder of a mining lease in a Form 5 was expended “in mining on or in connection with mining operations” on the mining lease.*

*A Form 5 contains 2 pages of detailed instructions on how a Form 5 is to be completed. The detailed instructions on how to complete a Form 5 are prescribed to assist the registered holder of a mining lease to provide accurate details of activity conducted upon a mining lease. Further, the detailed instructions on how to complete a Form 5 are explicit in the need for there to be particulars or details of not only how much was*

*expended but also the activities that were carried out on the mining lease in expending the amount claimed. In my opinion, the purpose of the 2 pages of detailed instructions in a Form 5 is to inform the Honourable Minister the minimum expenditure has been met, but also the expenditure has a link or nexus “in mining on or in connection with mining operations” on the mining lease.*

*The completion of a Form 5 in accordance with its detailed instructions will also aid a registered holder of a mining lease to resist applications for forfeiture for non-compliance with expenditure conditions brought by “jealous neighbours” who Parliament has “cunningly co-opted as an enforcement agency for the conditions imposed by the Act.” (see: **Roberts v Hugill (unreported, Mt Magnet Warden’s Court, 26 February 1997 and noted in 16 AMPLJ 115)**)”*

195. The Regulations prescribe the manner and time frame in which the holder of a prospecting licence or a mining lease is to report annual expenditure. The manner annual expenditure is reported is by way of a Form 5 Report and time in which it is to be lodged is within 60 days of the anniversary date of the grant of the prospecting licence or mining lease. (see: r.16(1) & r. 32(1) of the Regulations)
196. The Act recognizes the preparation and filing of a Form 5 Report for a mining tenement may take time beyond the 60 days prescribed by the Regulations. Accordingly, the Hon. Minister may approve the lodgment of the Form 5 Report after the prescribed period of 60 days provided an application is made to the Hon. Minister for an extension before the expiry of the 60 days after the anniversary date. (see: r. 16(1a) & r. 32(1a) of the Regulations and now s. 162B of the Act).
197. Thus Parliament has prescribed the holder of a mining tenement has 60 days, subject to any extension, in which to demonstrate it has complied with its expenditure obligations by the lodging of a Form 5 Report.
198. Regulation 84F(2) of the Regulations defines ‘prescribed period’ to be “*in relation to report, means the period within which the report is required to be filed or lodged under regulation 16, 22, 23E, or 32 as the case requires*” (my emphasis). The Regulations requires the Form 5 Report to be filed or lodged within 60 days of the anniversary date of the grant of the prospecting licence or mining lease.
199. In my opinion, the reference to the ability of an officer of the DMP to extract information from a Form 5 Report for the purpose of including it in the Register despite the fact the Form 5 Report was received at the DMP after the expiry of the *prescribed period* of 60 days relates to the receiving of the Form 5 Report after the ‘*prescribed period*’ of 60 days for the filing or lodging the Form 5 Report has expired but before the expiry of the period the Hon. Minister has extended to the holder of the mining tenement to file or lodge the Form 5 Report pursuant to r. 16(1a) or r. 32(1a) of the Regulations.
200. It follows, in my opinion, that a Form 5 Report cannot be received by the DMP other than in accordance with the Act and Regulations. The content of the Register should only contain information prescribed by r. 84C of the Regulations that is sourced from the filing or lodgment of documents or information with the DMP in accordance with the Act and Regulations.

201. The manner in which a Form 5 Report may be lodged and received by the DMP is prescribed, for the purposes of these proceedings, by r. 16 and r. 32 of the Regulations. To interpret the provisions of r. 84F of the Regulations as suggesting information required to be contained within a Form 5 Report can be received and extracted by an authorized officer of DMP for inclusion in the Register outside of the provisions of the Regulations renders nugatory the provisions of r. 16(1) & (1a) and r. 32(1) & (1a) of the Regulations and for that matter any other provision of the Act or Regulations that requires entries into the Register that is limited by time.
202. It is surprising, to say the least, that if a Form 5 Report could not be lodged for the purpose of extracting the information it contains pursuant to any extension of time provisions under the Regulations that it can still be extracted at all. One must ask what is the purpose of the prescribed time limits in which to file reports or comply with obligations if the information can simply be extracted in any event?
203. I do not accept the proposition of Mr Dixon and Exterra that r. 84F of the Regulations authorizes or encourages the filing or lodgment of more than one Form 5 Report in any expenditure year whether it is in the form of substituted, amended or additional Form 5 Reports. The intention of the Act and Regulations is to require the registered holder of a mining tenement to lodge, within the prescribed time or any extension allowed by the Hon. Minister, a Form 5 Report for the purposes of informing the Hon. Minister they have met their obligations to expend on the mining tenements the minimum expenditure required under the conditions of grant. There is nowhere in the Act or Regulations that contemplates, either expressly or by implication, the ability of the holder of a mining tenement to lodge more than one Form 5 Report in or for an expenditure year.
204. The Act and Regulation intends acts required to be done by the holder of a mining tenement are done within time limits prescribed. The failure to do those acts or to wholly meet obligations under the Act and Regulations is exposed for all to see in the Register. The Register is the source of public information from which the Hon. Minister may seek to prosecute those who fail to comply with their obligation under the Act and Regulations or the conditions of grant of the mining tenement.
205. The Register is also the source from which those who Parliament, has "*cunningly co-opted as an enforcement agency for the conditions impose by the Act*", are to find the very information they are entitled to rely upon to take the action Parliament envisaged. As demonstrated by this case, the amendment of the Register outside that contemplated by Parliament, many years after the lodgment of the initial Form 5 Reports, renders uncertain the very certainty the Register is meant to provide.
206. Further, the acceptance of information into the Register contrary to that prescribed by the Act tends to open the floodgates to non-compliance with the Act and Regulations by others and has the potential to undermine the important self-policing aspects of the Act. Information accepted into the Register contrary to the Act and Regulations has the effect of shielding those who do not or cannot comply with the requirements of the Act and Regulations from appropriate enforcement action and is

unfair to those who either comply with or seek to take actions they are entitled to under the Act.

207. I do not accept the submissions by Mr Dixon and Exterra the ability to “update” the Register by lodging amended, substituted or supplemental Form 5 Reports is contemplated by the Act to reflect how the mining industry operates in Western Australia including the use of farm-in and joint venture agreements that may put at risk the mining tenement by not informing the registered holder of the mining tenement of expenditure or not complying with their expenditure obligations.
208. The Act does provide for the reporting of expenditure by the holder of a mining tenement when the expenditure has been incurred by a farm in or joint venture partner by the provision of s. 118A of the Act. However, the Act casts upon the registered holder of a mining tenement the obligation to report such expenditure to the Hon. Minister in the manner and time prescribed.
209. The Act is not concerned with the private contractual arrangements that may exist between the registered holder of the mining tenement or any other person. The grant of a mining tenement is to the registered holder and it is that person who is responsible for meeting all conditions and obligations of the grant of the mining tenement including complying with and reporting expenditure in accordance with the Act. (see: *Finesky Holdings Pty Ltd v Minister for Transport for WA [2002] WASC 206*)
210. The terms and enforcement of the private contractual arrangements between a registered holder of a mining tenement and another person is the province of the registered holder of the mining tenement and not a consideration that should be taken as an excuse for non-compliance with reporting of or compliance with expenditure conditions under the Act.
211. I do not accept the provisions of s. 103F of the Act are intended to be used as a vehicle to correct non-compliance with the Act and Regulations.
212. For those reasons, I do not accept the submissions of Mr Dixon and Exterra that expenditure on the Dixon Tenements have been complied with in the 2010 Year and the Exemptions are not required.

### **The Dixon Tenements**

#### **Expenditure met on Dixon Tenements and Exemptions not Required.**

213. I do not accept the Expenditure on the Dixon Tenements in the 2010 Year has been met as a consequence of the amendment to the Register from the lodging of amended, additional or substituted Form 5 Reports by Mr Dixon.
214. The amendment to the Register for the Dixon Tenements occurred in circumstances which, in my opinion, appear to be contrary to the Act and Regulations. Further, if that conclusion were not correct, I find the basis upon which the amount of expenditure claimed to have been expended on the Dixon Tenements the 2010 Year

that was extracted from the amended, additional or substituted Form 5 Reports and entered into the Register is not allowable expenditure. In any event, the basis upon which the amount claimed to have been expended on the Dixon Tenements in the 2010 Year is wholly inaccurate as it is based on speculation, reconstructions and at worst guesses that are not supported by any documentary or other credible evidence. Accordingly, the amount of expenditure claimed to have been expended upon the Dixon Tenements in the 2010 year within the amended, additional or substituted Form 5 Reports and entered into the Register should be disallowed and ignored.

215. The evidence in the Exemptions for the Dixon Tenements for the 2010 Year clearly indicates Mr Dixon considered he had passed his obligations to meet the minimum expenditure conditions for the Dixon Tenements to Regal upon the signing of their agreement in 2005. On that basis, the evidence is also clear, Mr Dixon monitored the standing of the Dixon Tenements by, predominately, verbal reports from Mr Sullivan and observing the Register of the DMP.
216. The evidence of Mr Dixon was he expended little if any of his own money on the Dixon Tenements while the agreement with Regal was on foot. In essence the evidence demonstrates Mr Dixon had unloaded the obligation to meet the minimum expenditure conditions on the Dixon Tenements that was cast upon him by the grant of those mining tenements to another person. The actions of Mr Dixon accord with his evidence he was unable to meet the minimum expenditure conditions on all of the mining tenements granted to him from his own financial resources and set about seeking others who could meet his obligations.
217. In effect the resignation of Mr Sullivan from Regal and the decision by Regal to move its focus to the Eastern States and a different commodity saw the problems for Mr Dixon escalate. Regal entered into an arrangement with OzMay over its interest in the Dixon Tenements, it would seem, unbeknown to Mr Dixon. Exterra also came onto the scene after OzMay. Rather than take steps to attempt to meet the expenditure conditions upon the Dixon Tenements, Mr Dixon simply sought assurances from either Regal or OzMay that they would keep the Dixon Tenements in good standing.
218. The reality of the situation was by the 2010 Year, Regal had lost interest in the Dixon tenements and had moved elsewhere and sought to ‘offload’ its interest and responsibility under the agreement with Mr Dixon to OzMay. Ultimately, OzMay and Regal sought to ‘offload’ any interest and responsibility to one another or under the agreement with Mr Dixon to Exterra.
219. The obligation to meet to the expenditure conditions on the Dixon Tenements at all times, particularly in the 2010 Year, remained with, Mr Dixon, the registered holder of the Dixon Tenements. The issue of the responsibility to meet expenditure conditions on mining tenements in circumstances where unregistered interests in mining tenements exist was comprehensively dealt with in *Downe v Milling & Regal Resources & anor [2011] WAMW 7*. The Warden concluded the responsibility to meet the expenditure conditions rest at all times upon the registered

holder despite the existence of unregistered interests in the mining tenement that shift by contractual arrangement the obligation to meet the expenditure conditions for the mining tenement.

220. The evidence of Mr Sullivan is very telling in this proceeding. It is clear that Regal upon entering into the agreement with Mr Dixon in respect to the Dixon Tenements met its obligations, including expenditure conditions, in the first few years after 2005. However, the evidence of Mr Sullivan was capital that was raised by Regal in the first few years after 2005 was predominately diverted to the nearby Menzies Project at the expense of the Eucalyptus Project. Eventually, Regal diverted its attention to other commodities and relocated to the Eastern States, effectively 'walking away' from the Eucalyptus Project not before entering into arrangements with OzMay and Exterra over the Dixon Tenements.
221. In the meantime, Mr Dixon continued his practice of orally authorising various prospectors to metal detect, at will, on the Dixon Tenements on the basis they would inform him of any large finds of gold. I find these arrangements by Mr Dixon were, to say the least, uncontrolled by him and appear on the evidence to have been open to abuse by many people including those who were identified by Mr Woods as acting illegally on the Dixon Tenements.
222. The evidence of Mr Dixon that he circulated a questionnaire and map to various prospectors he had orally authorised to metal detect on the Dixon Tenements is reflective of the fact Mr Dixon had no real idea of who was on and what was happening upon the Dixon Tenements in the 2010 Year. I find it extraordinary that Mr Dixon would need to circulate a questionnaire and map to various prospectors to ascertain what they had done, where they had been and how much time they had spent on the Dixon Tenements if he truly believed that their metal detecting and prospecting was part of some activity that was intended to advance or comply with his obligations under the Act. The estimates of gold recovered from the Dixon Tenements by the various prospectors who gave evidence appear not to be insignificant. It beggars belief that Mr Dixon would not wish to know by way of regular updates supported by documentation the activities of those who he orally authorised to prospect and metal detect on the Dixon Tenements if he regarded them to be part of some arrangement with him to meet his expenditure obligations.
223. The issue of use of time spent metal detecting on mining tenements as the basis for meeting expenditure conditions was dealt with in ***Pawson v Northwestern Mining Co. P/L and anor [2013] WAMW 8***. In that decision the Warden said at [59] to [64] the following:

*“The condition of grant of any mining tenement that requires compliance with minimum expenditure conditions and the reporting of that expenditure places upon the holder of the mining tenement an obligation to maintain legible and accurate records sufficient that it can provide in accordance with its obligations an annual report of allowable expenditure that is readily ascertainable, accurate and justifiable. It is not the role of the warden to engage in some form of arithmetic gymnastics to justify an obligation upon the*

holder of a mining tenement who does not keep records in such a fashion that meets those obligations.

Despite that it is necessary to make comment concerning the ascribing of value for the time spent by the holder of a mining tenement in metal detecting. In **Flint v Brosnan [2002] WAMW 20 & 21** the warden held in that case that metal detecting by the holder of a mining tenement is an activity meeting the objectives of the Act. The warden did not accept the evidence of either party that the amount equivalent to the wages they would otherwise be paid if the holder was simply employed elsewhere was the appropriate value to be ascribed to the activity of metal detecting by the holder of the mining tenement. The warden held it to be appropriate to ascribed to the value of the work of metal detecting by the holder of the mining tenement some amount and ascribed that amount provided for under the provisions of the **Minimum Conditions of Employment Act (1993) WA**.

For the purposes of these current proceedings, the amount prescribed under the **Minimum Conditions of Employment Act (1993) WA** from 1 July 2009 was \$569.70 per week or \$14.99 per hour or from 1 July 2010 was \$587.20 per week or \$15.45 per hour.

The cases of **Flint v Brosnan (supra)** appear to have been misunderstood or at least misapplied for some 10 years. What was said by the warden is that the holder of a mining tenement engaged in metal detecting was entitled to claim expenditure for his time based on the provisions of the **Minimum Conditions of Employment Act (1993) WA**.

Unless there is an arrangement in writing in accordance with the provisions of s. 118A of the Act and for the payment by the holder of the mining tenement to a person conducting metal detecting on a mining lease then any time spent by a person conducting metal detecting on a mining tenement is not allowable expenditure. That position is entirely consistent with the case of **Cole v Roberts (unreported, Perth Warden's Court, 4 April 1997)**. Metal detecting conducted by persons on a mining tenement on the basis of sharing of any gold or minerals found is not allowable expenditure and has been so since the decisions in **Surina Pty Ltd v Belcrest Corp Ltd (unreported, Warden's Court 1987)** and **Roberts v Richmond (Perth Warden's Court, 10 March 1997)**.

The decisions in the cases referred to above exist for good reason. The random and unplanned metal detecting of mining tenements by persons who are either unauthorised by the holder of the mining tenement or orally authorised by the holder of the mining tenement on the basis of sharing any gold or minerals found and conducted with no goal or plan for the development of the mineral wealth within the mining tenement does not meet the requirement to "expend or cause to expend in mining on or in connection with mining" pursuant to r. 31(1) of the Regulations, does not meet the provisions of s. 118A of the Act nor does it comply with or promote the intention of the Act to exploit the mineral wealth of the State."

224. In applying the principles in **Pawson v Northwestern Mining Co. P/L and anor**, I do not consider Mr Dixon was in any better or different position in his reliance upon the answers contained within the questionnaire and the maps from the various prospectors who metal detected on the Dixon Tenements in the 2010 Year.
225. Contrary to the content of the Register produced at the hearing of the Exemptions for the Dixon Tenements in the 2010 Year, I am satisfied that any information extracted from an amended, additional or substituted Form 5 Reports for the 2010 Year based on the calculations of time spent metal detecting by Mr Dixon, Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar is not allowable expenditure pursuant to s. 118A of the Act and is, in any event, wholly



inaccurate being based on speculation, reconstructions and at worst guesses that are not supported by any documentary or other credible evidence.

226. For those reasons I consider, Mr Dixon has not met the Expenditure on the Dixon Tenements in the 2010 Year.

Section 102(2)(b) - Time Required to Evaluate Work, Plan, Raise Capital

227. I do not propose to repeat what has been said in the evidence of Mr Dixon, Mr Sullivan and, to the extent it is relevant to this grounds of the Exemptions, the evidence of Mr Woods, Mr Waardenberg, Mr Tussler, Ms Scudds and Mr & Mrs Dunbar on this ground of the Exemptions.

228. In *Berkeley Resources Ltd & anor v Limelight Industries P/L [2013] WAMW 2* at [44] the Warden said of this ground of an exemptions the following:

*“In my opinion, the provisions of s. 102(2)(b) of the Act which, for completeness, states the following:*

*“(b) that time is required to evaluate work done on the mining tenement, to plan future exploration or mining or raise capital therefor; or”*

*is intended to provide an exemption from the obligation to meet the minimum expenditure condition during the expenditure year on a mining tenement where the evaluation of work completed and/or the planning for future exploration or mining **actually occurs** but the expenditure on one or both of those activities is not sufficient to meet the minimum expenditure conditions required under the Act. It is not the case, in my opinion, that the provisions of s. 102(2)(b) of the Act, is intended to be used as a method of excusing complete inaction in the evaluation of work done and/or planning future mining and/or exploration on the mining tenement in an expenditure year.”*

229. The evidence of Mr Sullivan was, in 2009, Regal purchased a mining project at Menzies and was doing a lot of work on that project. As a consequence Mr Sullivan indicated the mining tenements at the Eucalyptus Project, including the Dixon Tenements, took second priority. Further, Mr Sullivan said there were ongoing fundraising to meet the plan by Regal to establish the mining project at Menzies. Some funds were raised by Regal by way of debt funding, convertible notes and equity funding by issuing shares but, according to Mr Sullivan, having two fairly advanced projects on the go at the same time the natural order of things was the one with the higher priority took the funding ahead of the other.
230. Mr Sullivan described the GFC as making funds a little more difficult to obtain but does not describe in his evidence that funds were impossible to raise. The thrust of the evidence of Mr Sullivan was that Regal diverted their attention away from the Eucalyptus Project in 2009 to the Menzies Project and channeled a lot of its funds in that direction.
231. I do not accept the evidence of Mr Sullivan goes so far as to suggest more time was needed by Regal to evaluate work being done on the Eucalyptus Project, including the Dixon Tenements, or to plan and raise capital for the Eucalyptus Project. The evidence of Mr Sullivan was that Regal had its plans in place for the Menzies Project to the detriment of the Eucalyptus Project and channeled its funds

accordingly. I do not accept that Regal were evaluating work done or planning to be done on the Eucalyptus Project because Regal had its focus elsewhere. What funds it had access to were given higher priority to the Menzies Project to the detriment of the Eucalyptus Project.

232. The evidence of Mr Sullivan was when he left Regal, in early 2009, communications with Mr Dixon by other members of Regal failed as by that stage Regal had shifted its focus to brown coal and had moved interstate. The reality of the situation was in the 2010 Year, Regal had lost interest in the Eucalyptus Project, including the Dixon Tenements, and were focused on disposing of any interest it held in the Dixon Tenements to another entity, that would appear to have been, OzMay.
233. The evidence of Mr Dixon does not support, or even suggest, he was evaluating work or planning future work on the Dixon Tenements or attempting to raise any capital for the purposes of conducting mining or exploration in the 2010 Year. Rather, the evidence of Mr Dixon was he spent some time in the 2010 Year attempting to ascertain why Regal was not complying with the agreement with him to meet the expenditure conditions upon him and then sought to ensure that OzMay would comply with the expenditure condition for the Dixon Tenements when Regal made it clear it had entered into an agreement with OzMay.
234. There is no evidence of any work having been evaluated, planned or for the raising of capital for any such work by either Mr Dixon or any office holder from Regal after Mr Sullivan left his position with Regal in early 2009, well before the start of the 2010 Year.
235. I do not accept the interaction by Mr Dixon with any of the prospectors who he verbally authorised to metal detect on the Dixon Tenements in the 2010 Year amounts to evaluating or planning for mining or exploration or the raising of capital.
236. I find, very little, if any activity was conducted upon the Dixon Tenements either by Mr Dixon or Regal that would demonstrate time was needed to evaluate work done or to plan further mining or exploration or to raise capital to allow further work to be conducted on the Dixon Tenements. No expenditure as reported to Mr Dixon by Regal and it would seem he had very little expenditure to report in the initial Form 5 Reports.
237. In adopting the view expressed in *Berkeley Resources Ltd & anor v Limelight Industries P/L (supra)* neither Mr Dixon and Regal on their own evidence did very little if anything on the Dixon Tenements in the 2010 Year that could be categorized as evaluating work done, planning exploration or mining or raising capital therefor.
238. Accordingly, I am not satisfied this ground of the Exemptions for the Dixon Tenements in the 2010 Year has been made out by Mr Dixon on an assessment of the whole of the evidence.
239. I recommend to the Hon. Minister the Exemption in the 2010 Year for the Dixon Tenements on this ground of the Exemptions be refused.

Section 102(2)(e) – Uneconomic Mineral Deposit that may become Economic

240. The principles and nature of this ground of the Exemptions was recently considered in *Berkeley Resources Ltd & anor v Limelight Industries P/L (supra)* at [52] to [54]. The Warden noted that case the following:

*“This ground of the Application, submits Berkeley, can be broken down into three elements:*

- a. The ground the subject of the mining tenement must contain a mineral deposit;*
- b. The mineral deposit must be uneconomic; and*
- c. The mineral deposit may reasonably be expected to become economic in the future.*

*(see: Australian Gold Resources Pty Ltd v Exim Pty Ltd [2005] WAMW 29)*

*In determining whether a recommendation can be made to the Hon. Minister on this ground of the Application, Berkeley submits the single critical issue to determine is whether the mineral deposit is uneconomic. (See: BHP Minerals Ltd v Webtox Pty Ltd (1987) 6 AMPLA Bull 72).*

*This question is to be determined, submits Berkeley, by a detailed and credible approach to objectively proving that a mineral deposit is uneconomic and includes some or all of the following considerations:*

- d. Examining previously prepared reports;*
- e. Discussing the findings of those reports;*
- f. Analysing the fluctuating price of the relevant resource; and*
- g. Considering the feasibility of obtaining the necessary infrastructure to mine the resource.*

*see: Sub-Sahara Resources NL v William Robert Richmond [2004] WAMW 7.”*

241. Finally the Warden in *Berkeley Resources Ltd & anor v Limelight Industries P/L (supra)* said at [90] the following:

*“I agree with the submission by Limelight that for an exemption from compliance with the minimum expenditure conditions on a mining tenement to be granted under a particular ground it must be the case that the reason expressed was in fact the reason for not complying with the expenditure obligation. The evidence of Mr Syme is void of any suggestion the economic or uneconomic nature of the mineral deposit upon the Lease was the reason that expenditure did not occur. That the price of nickel fell significantly before the 2009 Expenditure Year was not expressed by Mr Syme to be the reason for the Application. I find the evidence demonstrates that Berkeley had not considered the falling price of nickel or the economics of further exploration upon the Lease when it failed to meet the 2009 Minimum Expenditure Condition on the Lease in the 2009 Expenditure Year.”*

242. The evidence from Mr Dixon and Mr Sullivan is in essence void of any suggestion Mr Dixon, Regal or OzMay considered the Dixon Tenements to contain a deposit of gold or other minerals and that deposit was uneconomic. No evidence of an objective credible assessment of the economics of mining or exploring for gold or other minerals upon the Dixon Tenements has been produced.

243. The evidence of Mr Sullivan is Regal did not continue to expend upon the Dixon Tenements because its focus shifted to the Menzies Project and then to brown coal before it finally shifted its operations to the Eastern States. Regal then, during the 2010 Year sought to shift its interest in the Dixon Tenements to OzMay. The reference by Mr Sullivan to the price of gold being \$750 ozs was not given in the

context of any elaboration of the economics or otherwise of any deposits of gold on the Dixon Tenements.

244. There is no evidence the actual reason Mr Dixon, Regal or OzMay did not meet the expenditure conditions in the 2010 Year on the Dixon Tenements was because of the uneconomic nature of any deposits of gold or other minerals. Those matters had not been considered by Mr Dixon, Regal or OzMay at that time.
245. I do not accept Exterra can give or gave any credible evidence through Mr Davis of the economics or otherwise of any mineral deposit, including gold, upon the Dixon Tenements in the 2010 Year. That is so because the involvement of Exterra at that time was only beginning to evolve with Regal and OzMay.
246. Accordingly, I am not satisfied this ground of the Exemptions for the Dixon Tenements in the 2010 Year has been made out by Mr Dixon on an assessment of the whole of the evidence.
247. I recommend to the Hon. Minister the Exemption in the 2010 Year for the Dixon Tenements on this ground of the Exemptions be refused.

Section 102(2)(f) – Minerals to Sustain Future Operation of Existing or Proposed Operation

248. No evidence has been given by either Mr Dixon , Mr Sullivan, Mr Davis or any other person that any minerals that may be contained within the Dixon Tenements was to be used to sustain the future operation of an existing or proposed operation.
249. The evidence of Mr Sullivan was Regal intended to use ore from the Dixon Tenements to supplement the Menzies Project. In my opinion, his evidence was scant on detail and lacking in specifics and amounted to no more than a mere expression of intention or hope or expectation. (see: *Grange Resources Ltd v Lee [2006] WAMW 8*)
250. I do not accept the evidence of Mr Davis assists as his evidence does not relate to the period of time the Exemptions are sought and in any event his evidence is likewise no more than a mere expression of intention or hope or expectation for the ore that may be contained on the Dixon Tenements.
251. Accordingly, I am not satisfied this ground of the Exemptions for the Dixon Tenements for the 2010 Year has been made out by Mr Dixon on an assessment of the whole of the evidence.
252. I recommend to the Hon. Minister the Exemptions for the Dixon Tenements on this ground of the Exemptions for the 2010 Year be refused.

Section 102(3) – Any Other Reason the Hon. Minister may Consider Sufficient.

253. Mr Dixon and Exterra submit there are 2 substantive reasons why the Hon. Minister would grant Exemptions to the Dixon Tenements in the 2010 Year being past aggregate expenditure far exceeds the minimum expenditure conditions required

and Exterra has the finances, plans and ability to develop the Eucalyptus Project including the Dixon Tenements.

254. In *Berkeley Resources Ltd & anor v Limelight Industries P/L (supra)* at [102] to [106] the Warden when referring to the submission of the weight that should be given to the aggregation of expenditure on a mining tenement over periods of years said the following:

*“In response, Limelight submits there is no rule that a tenement holder is entitled to an exemption from meeting the minimum expenditure conditions where previous aggregate expenditure exceeds the minimum expenditure conditions prescribed. Each case, submits Limelight, must be looked at individually.*

*In my opinion, mathematical gymnastics with the quantum of expenditure incurred upon a mining tenement is not the basis upon which Parliament intended the policy behind the Act to be administered.*

*The Act is structured in a manner that places an obligation upon the holder of a mining tenement to expend a prescribed minimum amount of money, on a yearly basis, on working a mining tenement. It is in this fashion that the policy behind the Act, that is, to ensure the holders of mining tenements are able to, and in fact do, work the ground with a view to the ultimate recovery of any economic deposits of minerals can be demonstrated and achieved. In **Nova Resources NL v French (1995) 12 WAR 50** the Full Court of the Supreme Court said:*

*“The primary object of the Act so far as it impacts on this case, is to ensure as far as practicable that land which is either known potential for mining or is worthy of exploration will be made available for mining or exploration. It is made available subject to reasonably stringent conditions and if these, including expenditure conditions, show that the purposes of the grant are not being advanced, then the Act and Regulations make provision for others who interest in those purposes on land to apply for forfeiture so they may exploit the area.”*

*Further, in **Craig v Spargos Exploration unreported, Kalgoorlie Warden's Court, 22 December 1986, noted 6 AMPLA Bull 73**) the warden said the following:*

*“The whole policy of the Mining Act is that a tenement holder unable to explore for or exploit mineral resources of a tenement should give way for some other person to do so. The Act encourages exploration and mining activity and discourages a tenement holder from going to sleep on his rights and obligations.”*

*The aggregation of the amount of total expenditure upon a mining tenement divided by the years the mining tenement has been granted to the holder is simply no basis upon which an exemption from compliance with the annual minimum expenditure conditions should be granted. It has, firstly, a capacity to undermine the conditions of grant of a mining tenement to expend a minimum amount on an **annual** basis. Secondly, it is contrary to the provisions of the Act and Regulations. Thirdly, it would undermine the primary object and policy of the Act as outlined in **Nova Resource case** and **Craig v Spargos case** by encouraging holders of mining tenements to fall asleep on their rights and obligations for long periods of time based on one year of substantial expenditure. Fourthly, exemptions granted on the basis of aggregation of expenditure would, in my opinion, undermine the ‘self-policing’ of compliance with expenditure conditions by the ‘jealous neighbour’ who would be unable to determine if or when the holder of a mining tenement has complied with the expenditure conditions pertaining to the grant of the mining tenement.*

*Any submission that suggests merit exists in the aggregation of expenditure over a number of years as a basis for the grant of an exemption from expenditure conditions should be seen as a deliberate attempt to undermine the very object and policy of the Act such that it would tie up land with a potential for mining or worthy of exploration and make it inaccessible for long periods of time to those who should otherwise be given the opportunity to exploit the mineral wealth that may lay in that land.”*

255. I do not accept there is anything in the circumstances of this case or the evidence that has been lead that would persuade me to form some other opinion of the intention of the Act.
256. Accordingly, this ground of Exemption has not been made out. I recommend to the Hon. Minister the Exemptions for the Dixon Tenements for the 2010 Year be refused.

257. I do not accept Exterra has any greater or better ability than Landtec to plan, develop, finance, explore or mine the Dixon Tenements or for that matter the Eucalyptus Project as a whole. The interest of Exterra in the Dixon Tenements and those that comprise the Eucalyptus Project is that it is near other mining tenements held by it and is regarded as an opportunistic purchase if it can be achieved at the “right price.”
258. The evidence of Mr Davis was Exterra had no obligation to any party in these proceedings other than to Exterra’s solicitors. Exterra’s interest in these proceedings is the consequence of it entering into a terms sheet with Real and OzMay in the face of the Exemptions, Objections and Forfeitures now before the Warden.
259. It cannot be the case that any more consideration should be afforded, in these proceedings, to an opportunistic purchaser of the mining tenements that comprise the Eucalyptus Project than to the objector to the Exemptions and the applicant for Forfeitures of the same mining tenements who seeks to pursue the mining tenements through the self-policing provisions of the Act and holds rights of priority to the mining tenements if successful.
260. Accordingly, I am not satisfied this ground of the Exemptions for the Dixon Tenements for the 2010 Year has been made out on an assessment of the whole of the evidence.
261. I recommend to the Hon. Minister the Exemptions for the Dixon Tenements on this ground of the Exemptions for the 2010 Year be refused.

### **Eucalyptus GM Tenement – M 39/292**

#### **Section 102(2)(b) - Time Required to Evaluate Work, Plan, Raise Capital**

262. There is no evidence from Mr Longman, Mr Sullivan or any other person that suggests any evaluation of work, planning or capital raising did occur in respect to this mining tenement held by Eucalyptus GM in the 2010 Year. It is fair to say the evidence of Mr Sullivan directs this mining tenement was treated by Regal as part of the package of mining tenements that comprised the Eucalyptus Project. There is no evidence to suggest this mining tenement was treated in any different manner to those held by Mr Dixon, save to say, Regal simply did not communicate with Mr Longman after the signing of the sale and purchase agreements and the executions of the transfer documents.
263. I do not propose to repeat the principles I referred to in dealing with this same ground of Exemptions for the Dixon Tenement. Those principles equally apply to this mining tenement held by Eucalyptus GM in the 2010 Year. I find the same outcome is repeated in this mining tenement held by Eucalyptus GM in the 2010 Year as those found existed in the Dixon Tenements.
264. In adopting the view expressed in *Berkeley Resources Ltd & anor v Limelight Industries P/L (supra)*, neither Eucalyptus GM or Regal did anything on the Dixon

Tenements in the 2010 Year that could be categorized as evaluating work done, planning exploration or mining or raising capital therefor.

265. Accordingly, I am not satisfied this ground of the Exemptions for Eucalyptus GM mining tenement in the 2010 Year has been made out by Eucalyptus GM, Regal or any other person on an assessment of the whole of the evidence.
266. I recommend to the Hon. Minister the Exemption in the 2010 Year for Eucalyptus GM mining tenement on this ground of the Exemptions be refused.

Section 102(2)(e) – Uneconomic Mineral Deposit that may become Economic

267. There was no evidence produced by Mr Longman, Mr Sullivan or any other person that supports this ground of the Exemptions by Eucalyptus GM. The same matters raised in this ground of Exemptions for the Dixon Tenements applies and I repeat my finding in that regard.
268. It is noted from the statement of Mr Longman there is no evidence produced or that he was aware of in respect to the economics of any mineral deposit within this mining tenement held by Eucalyptus GM as it had been sold to Regal in 2005 and Regal had not communicated with him since that time.
269. Accordingly, I am not satisfied this ground of the Exemptions for mining tenement held by Eucalyptus GM in the 2010 Year has been made out on an assessment of the whole of the evidence.
270. I recommend to the Hon. Minister the Exemption for this mining tenement held by Eucalyptus GM for the 2010 Year be refused.

Section 102(2)(f) – Minerals to Sustain Future Operation of Existing or Proposed Operation

271. No evidence has been given by either Mr Longman, Mr Sullivan or any other person that any minerals that may be contained within the Eucalyptus GM mining tenement was to be used to sustain the future operation of an existing or proposed operation.
272. The evidence of Mr Sullivan was Regal intended to use ore from the Eucalyptus Project to supplement the Menzies Project. In my opinion, his evidence was scant on detail and lacking in specifics and amounted to no more than a mere expression of intention or hope or expectation. (see: *Grange Resources Ltd v Lee [2006] WAMW 8*)
273. I do not accept the evidence of Mr Davis assists as his evidence does not relate to the period of time the Exemptions are sought and in any event his evidence is likewise no more than a mere expression of intention or hope or expectation for the Eucalyptus GM mining tenement.



274. It is noted from the statement of Mr Longman there were no plans or proposals in place by Eucalyptus GM for the future of the mining tenement it held as it had been sold to Regal in 2005.
275. Accordingly, I am not satisfied this ground of the Exemptions for mining tenement held by Eucalyptus GM in the 2010 Year has been made out on an assessment of the whole of the evidence.
276. I recommend to the Hon. Minister the Exemption for this mining tenement held by Eucalyptus GM for the 2010 Year be refused.

Section 102(3) – Any Other Reason the Hon. Minister may Consider Sufficient.

277. Neither Mr Longman nor Eucalyptus GM gave or lead any evidence in support of this ground of the Exemption for the mining tenement held by Eucalyptus GM.
278. The only evidence relevant to this ground of Exemption was given by Mr Davis. That evidence has been referred to in the same ground of Exemptions sought for the Dixon Tenements for the 2010 Year.
279. There is nothing raised in the findings I have made in respect to the Dixon Tenements under this ground of the Exemptions for the 2010 that is different to the Exemptions for the mining tenement held by Eucalyptus GM and accordingly repeat my finding.
280. I am not satisfied this ground of the Exemption for the mining tenement held by Eucalyptus GM for the 2010 Year has been made out on an assessment of the whole of the evidence.
281. I recommend to the Hon. Minister the Exemptions for the Eucalyptus GM on this ground of the Exemption for the 2010 Year be refused.

**The Longmans Tenement – M 39/480**

Section 102(2)(a) – Title to Mining Tenement in Dispute

282. This ground of Exemption by the Longmans misconceived. In my opinion, for this ground of the Exemption to be successful it must be shown by the holder of the mining tenement that during the expenditure year in question the title to the mining tenement was in dispute and that dispute contributed to the inability of the holder to meet the expenditure condition in that year.
283. There is no evidence from Mr Sullivan or any other witness that any dispute existed to the title in the mining tenement belonging to the Longmans in the 2010 Year. The lodgment of the Objections and the Forfeitures did not occur until after the end of the 2010 Year. In those circumstances, it cannot be said the ability of either the Longmans or Regal to comply with the expenditure conditions in the 2010 Year on the mining tenement registered to the Longmans was impeded.

284. Accordingly, I am not satisfied this ground of the Exemptions for the Longmans Tenement in the 2010 Year has been made out by the Longmans, Regal or any other person on an assessment of the whole of the evidence.
285. I recommend to the Hon. Minister the Exemption in the 2010 Year for the Longmans Tenement on this ground of the Exemptions be refused.

*Section 102(2)(b) - Time Required to Evaluate Work, Plan, Raise Capital*

286. I repeat my finding in respect to this same ground of Exemptions sought by Eucalyptus GM of its mining tenement in the 2010.
287. In adopting the view expressed in *Berkeley Resources Ltd & anor v Limelight Industries P/L (supra)*, I find neither the Longmans or Regal did anything on the Longmans Tenement in the 2010 Year that could be categorized as evaluating work done, planning exploration or mining or raising capital therefor.
288. Accordingly, I am not satisfied this ground of the Exemptions for the Longmans Tenement in the 2010 Year has been made out by the Longmans, Regal or any other person on an assessment of the whole of the evidence.
289. I recommend to the Hon. Minister the Exemption in the 2010 Year for the Longmans Tenement on this ground of the Exemptions be refused.

**Report and Recommendation to the Hon. Minister**

290. For the reasons expressed above, I am not satisfied that Mr Dixon, the Longmans or Eucalyptus GM have made out any of the grounds of the Exemptions for M 39/292, M 39/480, M 39/914, M 39/966, M 39/969, M 39/991, M 39/1064, P 39/4622, P 39/4623 & P 39/4636 in the 2010 Year.
291. Accordingly, I recommend to the Hon. Minister that the Exemptions for M 39/292, M 39/480, M 39/914, M 39/966, M 39/969, M 39/991, M 39/1064, P 39/4622, P 39/4623 & P 39/4636 for the 2010 Year be refused.