

JURISDICTION : MINING WARDEN
TITLE OF COURT : OPEN COURT
LOCATION : KALGOORLIE
CITATION : OWEN v SANDHU [2021] WAMW 15
CORAM : WARDEN S WILSON
HEARD : 12 to 16 JULY 2021
DELIVERED : 17 SEPTEMBER 2021
FILE NO/S : APPLICATIONS FOR FORFEITURE 569410, 569411 & 569412
TENEMENT NO/S : EXPLORATION LICENCES 16/393, 16/396 & 16/449-1
BETWEEN : TRISTAN DAVID OWEN
(Applicant)

AND

TANVANTH SINGH SANDHU
(Respondent)

Catchwords:

Application for Forfeiture – Whether Tenement Holder Complied with Expenditure Conditions in Expenditure Year – Turns on own facts.

Legislation:

Mining Act (WA) 1978: s.62(1), s.98, s. 114(5),

Mining Regulations (WA) 1981: r. 21(1), r.21(3)

Result:

Applications for forfeiture 569410, 569411 & 569412 affecting E 16/393, E 16/396 & E16/449-I are dismissed.

Representation:

Counsel:

Applicant : Mrs CA McKenzie
Respondent : Mr GD Cobby SC & Mr TJ Kavenagh

Solicitors:

Applicant : McKenzie & McKenzie
Respondent : Kavenagh Legal

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

Craig v Spargos Exploration NL: unreported Kalgoorlie Wardens Court; 22 December 1986

Commercial Properties Pty Ltd v Italo Nominees Pty Ltd Unreported Full Court of Sup Ct of WA, unreported delivered 16 December 1988: Lib No 7427

Report to Hon. Minister for Mines pursuant to s. 98(6) of the Mining Act

Introduction

1. Mr Tanvanth Singh Sandhu ('Mr Sandhu') was in the 2019 Expenditure Year ('2019 Year') the holder of 3 exploration licences, E 16/393 ('393'), E 16/396 ('396') & E 16/449-I ('449') located in the Kunanalling Mining District within the Coolgardie Mineral Field. The 3 Exploration Licences form part of a group of mining tenements held by Mr Sandhu in the 2019 Year known as the Credo Project ('Credo Project').
2. On 1 December 2018, Mr Sandhu authorised Gold Tiger Resources (Australia) Limited ('Gold Tiger'), in writing, to conduct exploration and small mining activities on the 3 Exploration Licences¹. Mr Andrew John Hawker ('Mr Hawker') is a geologist and the director of Gold Tiger during the 2019 Year.
3. As a consequence of the written authorisations, Mr Sandhu reported in 2019 Annual Expenditure Reports, Form 5 ('Form 5'), for each of the 3 Exploration Licences that the minimum expenditure had been met and exceeded.
4. By agreement dated 6 February 2019, Mr Sandhu sold all 3 Exploration Licences to Gold Tiger Holdings (Australia) Pty Ltd ('Gold Tiger Australia') a wholly owned subsidiary of Gold Tiger. The sale of the 3 Exploration Licences was finalised on 23 April 2020 and Gold Tiger Australia became the registered holder of all 3 Exploration Licences on that day.

¹ Ex 17 at page 207 annexure AH 18.

5. The details of the Form 5 lodged with the Department of Mines ('the Department') for each of the 3 Explorations Licences for the 2019 Year is as follows:

Tenement Number	Anniversary Date Expenditure Year	Minimum Expenditure	Expenditure Claimed
E 16/393	12 August 2019	\$70,000.00	\$152,557.00
E 16/396	9 December 2019	\$70,000.00	\$357,863.00
E 16/449-1	17 August 2019	\$20,000.00	\$ 23,770.80

6. Mr Tristan David Owen ('Mr Owen') is a prospector and lives in Kalgoorlie. On 20 December 2019, Mr Owen lodged applications for forfeiture against 393, 396 & 449.
7. Mr Owen claims in respect to 393, with the exception of payment of Annual Rent, Rates, and Native Title Clearances totalling about \$16,900.00, the expenditure claimed by Mr Sandhu is in dispute as having not been incurred during the 2019 Year or the work claimed was not carried out.
8. Further, Mr Owen claims in respect to 396, with the exception of payment of the Annual Rent, Rates, Administration Expenses and Aboriginal Heritage Surveys, the amount claimed to have been expended in the 2019 Year by Mr Sandhu is in dispute and/or has not been incurred or carried out.
9. In relation to 449, Mr Owen claims, with the exception of payment of Annual Rent and Rates, the balance of the amount claimed to have been expended by Mr Sandhu in the 2019 Year is in dispute and/or has not been incurred or carried out.
10. Mr Owen says the non-compliance with the expenditure condition by Mr Sandhu on each of the 3 Exploration Licences during the 2019 Year is, in all the circumstances of the case, of sufficient gravity to warrant a recommendation to the Honourable Minister for Mines ('Hon. Minister') that each of the 3 Exploration Licences held by Mr Sandhu should be forfeited.
11. Mr Sandhu denies the claims by Mr Owen that during the 2019 Year the work done and expenditure claimed upon the 3 Explorations Licences has not been carried out or expended and the minimum expenditure conditions have not been met. Further, Mr Sandhu says, even if the minimum expenditure conditions have not been met, which he denies, any non-compliance with the minimum expenditure conditions for the 3 Exploration Licences in the 2019 Year is not of sufficient gravity, in all the circumstances, to warrant a recommendation for forfeiture to the Hon. Minister.

Legislative Framework

12. Section 62(1) of the Mining Act ('Act') provides that during the currency of an exploration license the holder shall comply with the prescribed expenditure conditions unless a total or partial exemption is granted from doing so. It is not in contention that

Mr Sandhu was not granted and nor did he seek any exemption from compliance with the expenditure conditions relevant to the 3 Exploration Licences the subject of these applications.

13. Regulation 21(1) of the Mining Regulations ('Regulations') provides the amount the holder of an existing exploration license shall expend, or cause to be expended, in mining on or in connection with mining on the exploration license during each expenditure year during the term of the license.

14. Regulation 21(3) of the Regulations provides:

'If during a particular year of the term of an exploration license or any period referred to in sub-regulation (1b) the holder of the licence is directly engaged part-time or full-time in mining on the land the subject of the license, an amount equivalent to the remuneration that the holder would be entitled to if engaged, under a contractual arrangement, in similar mining activity elsewhere in the district is to be deemed to have been expended during that year or. As the case requires.'

15. A primary object of the Act is to ensure that land the subject of a mining tenement is made available for the purposes of mining or exploration purposes. The policy of the Act is that a tenement holder unable to explore for or exploit the mineral resources of a mining tenement should give way to 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 obligations² under the Act. Regulation 21(3) recognises mining activity itself, and not merely expenditure, per se, as a means by which the value can be attributed to the activity.

16. Section 98 of the Act provides:

98. Application for forfeiture on other grounds

- (1) *Where the requirements of this Act are not being complied with in respect of the expenditure conditions applicable to an exploration licence or a mining lease, any person may apply for the forfeiture of such licence or lease as provided in this section.*
- (2) *An application for forfeiture under this section shall be made, during the expenditure year in relation to which the requirement is not complied with or within 8 months thereafter, in such form and manner as may be prescribed and shall be accompanied by the prescribed fee.*
- (3) *The application for forfeiture shall be heard by the warden.*
- (4A) *When the warden finds that the holder of an exploration licence or lessee of the mining lease has failed to comply with such requirements as are mentioned in subsection (1), the warden may recommend the forfeiture of such licence or lease, or*

² Craig v Spargos Exploration NL: unreported Kalgoorlie Wardens Court; 22 December 1986

impose a penalty not exceeding \$10 000 as an alternative to the forfeiture or dismiss the application.

- (4B) *Where a penalty is imposed under this section the warden may award the whole amount of the penalty or any part thereof to the applicant.*
- (5) *A recommendation shall not be made under subsection (4A) unless the warden is satisfied that the non-compliance with such requirements is, in the circumstances of the case, of sufficient gravity to justify the forfeiture.*
- (6) *As soon as practicable after the hearing of the application the warden shall forward to the Minister the notes of evidence, with a report and the warden's recommendation, if any, on the application and the Minister may, before acting on the recommendation, require the warden to take such further evidence or rehear the application as the Minister directs.*
- (7) *No exploration licence or mining lease shall be forfeited for non-compliance by the holder or lessee thereof with the expenditure conditions, if the holder or lessee satisfies the Minister that the non-compliance therewith has been occasioned by a strike.*
- (8) *If the applicant fails to proceed with his forfeiture application, the warden may award the holder or lessee such sum for costs and expenses as he thinks fit.*
- (9) *Where any penalty imposed by a warden as an alternative to forfeiture under subsection (4A) is not paid within the time specified by the warden, or within 30 days after the penalty is imposed where no other time is specified, the warden shall make a recommendation to the Minister as to whether or not the licence or lease should be forfeited.*

General Principles-Forfeiture

17. In *Commercial Properties Pty Ltd v Italo Nominees Pty Ltd*³, the Full Court held the applicant for forfeiture must establish, on the balance of probabilities, that the tenement holder failed to meet the minimum expenditure required in the relevant expenditure year for the mining tenement. Further, it was held that in the case of failure to comply with expenditure conditions being established the legislation contemplates forfeiture. Hence, upon prima facie proof of non-compliance with expenditure conditions, the plaintiff establishes a prima facie case for forfeiture. In such circumstances, the evidentiary burden is on the defendant to satisfy the warden that the case for forfeiture is otherwise not of sufficient gravity to justify forfeiture.

Evidence called by the Applicant

Mr Owen

18. Mr Owen resides in Kalgoorlie and is a prospector. The evidence of Mr Owen is in 3 affidavits, being one for each of 393, 396 and 449⁴ all sworn on 10 December 2020, and his oral testimony.

³ Unreported Full Court of Sup Ct of WA, unreported del 16 December 1988: Lib No 7427

⁴ Exhibits 1, 2 & 5

19. It is not in dispute Mr Owen has conducted prospecting activity, including panning, sluicing and detecting for gold, in both Queensland and Victoria before moving to Kalgoorlie in 2014. Mr Owen is currently employed in the mining industry in Western Australia working a week on and week off roster which enables him to prospect on mining tenements held by him in the Dunnsville area near the 3 Exploration Licences the subject of these applications for forfeiture. Further, Mr Owen has worked for short periods in each year since 2017 as a full-time prospector in and around the Kalgoorlie, Kambalda and Broad Arrow areas.

Affidavit of Mr Owen sworn 10 December 2020 – E 16/393

20. In the above affidavit⁵, Mr Owen deposed prior to lodging the application for forfeiture he conducted a search of the Register for 393 and obtained a copy of the Form 5 for the 2019 Year. Mr Owen deposed the Form 5 for the 2019 Year claimed drilling had occurred on 393. Mr Owen deposed in August and September 2018, he had traversed and inspected the area the subject of 393 and observed historic drilling had been carried out. Further, Mr Owen deposed on 16 December 2019 he travelled in a north-westerly direction from E 16/415 and E 16/365 along one of a number of tracks to 393. He deposed he did not observe any additional drilling carried out in the area before 16 December 2019. He further deposed he has since observed drilling has occurred in very close proximity to the access track he drove along on 16 December 2019. Mr Owen concluded he did not believe the drilling was conducted on 393 in December 2018 as claimed by Mr Hawker.
21. Further, Mr Owen deposed the reference by Mr Hawker, in his affidavit sworn 14 April 2020⁶, that the cost of the 2018 drilling on 393 was \$6,600.00 per day was unusual as drilling was generally charged by the metre and in any event the amount claimed per day was excessive for air core drilling. Mr Owen deposed the reference by Mr Hawker, in his affidavit sworn 22 November 2019⁷ that a drill rate of \$26.00 per metre was a reasonable price for air core drilling. Mr Owen also deposed it was not feasible to drill in excess of 18 separate holes of 10 metres deep per day as it would require the drill rig to be packed up and moved on at least 18 occasions each day to achieve a total of 110 holes of 10 metres in the time claimed in the Form 5 for the 2019 Expenditure Year⁸.
22. Mr Owen further referred to an Approved Programme of Works ('POW') for 393 and an Independent Geologist Report dated 8 March 2019 by Kraken Rocks that indicated drilling was to be conducted on the Credo Project in 2018⁹. Mr Owen deposes the approved POW only refers to 393 and the map attached to the Kraken Rocks Report

⁵ Exhibit 1

⁶ Exhibit 41 annexure AH3

⁷ Exhibit 1 at [12b]

⁸ Exhibit 1 at [12]

⁹ Exhibit 1 at [13] & [14]

depicts only air core drilling occurred on 396 and no reference was made to drilling on 393 as at March 2019.

23. Mr Owen also deposed in the Form 5 for the 2019 Year claimed \$36,611.00 had been expended on prospecting upon 393. Mr Owen deposed he had traversed and inspected 393 in August and September 2018 and December 2019. It was Mr Owen's opinion to have expended \$36,611.00 on prospecting would require a very significant amount of activity to have been undertaken. Mr Owen also deposed if prospecting activity included metal detecting he would have expected to see ground disturbances, tracks and other evidence of 393 having been traversed. He deposed he had not seen any evidence of those types of activities during his trips in August, September 2018 and December 2019. Mr Owen therefore deposed he did not believe \$36,611.00 was incurred in prospecting on 393 in the 2019 Year.

Affidavit of Mr Owen sworn 10 December 2020 – E 16/396

24. Mr Owen deposed prior to lodging the application for forfeiture he conducted a search of the Register for 396, monitored the Department's Tenograph and Mineral Titles online for 396 and attended upon 396 on 16 December 2019. Mr Owen also deposed he had previously attended 396 in August and September 2018¹⁰.
25. Mr Owen deposed he holds mining tenements in the same area as 396 located in the Dunnsville area north of Coolgardie. Mr Owen deposed that on 16 December 2019, he was prospecting in the Dunnsville area and travel to E 16/415 and E 16/365 where he took photographs of alleged drilling. He also travelled north-west through 393 and onto 396. He also deposed he drove on the north-south haul road the subject of L 16/62 held by Siberian Mining Corporation. According to Mr Owen, the roads and tracks used to access 396 are unsealed and appeared to him on that day to not have had any recent vehicle traffic.
26. Mr Owen further deposed that on 16 December 2019 he carried out a detailed inspection on both a quad bike and on foot of the area known as Nyborg's Pit located on 396. He also deposed he was aware it is claimed a surface miner had conducted works on 396 in November 2019. Mr Owen deposed he is aware how a surface miner operates as he had worked at mine sites where they were utilised. He also deposed he knows a surface miner has tracks rather than tyres.
27. Mr Owen deposed that on 16 December 2019 he did not observe evidence of surface miner tracks to indicate a surface miner had operated in the area. He further deposed he observed in the area old drilling activity he estimated was about 10 years old during his inspections of 396 in August and September 2018. During the inspection of 396 on 16 December 2019, Mr Owen deposed he saw no field camp activities.

¹⁰ Exhibit 2

28. Mr Owen deposed he carried out further field inspections on 396 on 20 April and 14 June 2020. He noted there was a costean located on 396 about 300 metres from Nyborg's Pit that was not there on 16 December 2019. Mr Owen further deposed during his two field inspections of 396 in 2020 he inspected the costean located 300 metres from Nyborg's Pit. He held the opinion the costean was not created by a surface miner.
29. Mr Owen observed photographs attached to an affidavit of Mr Hawker of the surface miner. He deposed a 50 tonne float would be required to transport the surface miner to 396. He further deposed the main access road to 396 is by the track on application for L 16/132 and it would not allow a 50 tonne float to traverse it. Further, Mr Owen deposes there was too much overgrowth to allow access for a truck of the size needed to move the surface miner and significant damage would be evident to overgrowth had a float and surface miner accessed the area. He also deposed he observed no track marks from a surface miner driven through the area. He also referred to photographs taken of the access road that showed low hanging trees that would have been broken or damaged if the surface miner had been floated onto 396.
30. Following inspections of the costeans in April and June 2020, Mr Owen deposed they had not been created by a surface miner. Mr Owen deposed a surface miner would create a square edge and what he observed was not square. He also deposed the photographs in Mr Hawker's affidavit depicts tyre marks on the ground consistent with loader tyre marks and no evidence of tracks from a surface miner. Further, Mr Owen deposed there were no tracks or imprints from a surface miner reversed out of the costean.
31. Mr Owen deposed he had worked in mining operations where surface miners have operated and observed the footprint they leave when creating an edge and how they operate. He confirmed he inspected 2 costeans on 396, observed the POW approved in November 2019 for the removal of an additional 20,000 tonnes of dirt. Mr Owen deposes he measured both costeans and diggings near Nyborg's Pit and calculated approximately 7500 tonnes of dirt had been removed from the 2 costeans and a further 500 tonnes of dirt removed from near Nyborg's Pit. On his calculations, Mr Owen deposed a surface miner has capacity to move between 2,300 and 3,000 tonnes of dirt per hour. He deposed it therefore would take a surface miner about 4 hours to remove 8000 tonnes of dirt from both costeans and the excavation at Nyborg's Pit. He questioned claims by Mr Hawker the surface miner worked between 7 and 25 November 2019 digging 2 costeans and surface mining at Nyborg's Pit.
32. Mr Owen referred to photographs he took in June 2020 of the southern costean on 396. He deposed his observations were no track marks consistent with the use of a surface miner were present in the costean. He also deposes the edge of the costean consisted of a rill of dirt consistent with the costean having been dug by a loader. Mr

Owen also deposed the area cleared near the southern costean exceeds 2 ha approved in the POW.

33. Mr Owen also referred to photographs taken 20 June 2020 and described the northern costean as having been dug by being stepped in by a loader and not dug by a surface miner.
34. Mr Owen deposed during his attendance at 396 on 16 December 2019, he observed no field camp activities, recent prospecting activities or air core drilling as claimed in the Form 5 for the 2019 Year.
35. On 16 December 2019, Mr Owen deposed he did not see any vehicle tracks to evidence field trips on 396. Mr Owen claims if field trips and air core drilling had occurred he would expect to see wooden pegs, steel posts, pin flags or geochemical soil sampling, holes filled or unfilled in some kind of grid pattern, damages to vegetation and tracks from four drive vehicles, quad bikes or heavy vehicles including drill rigs and support vehicles, excavations or costeans, drill pads, rows of drill bags and drill cuttings, drill collars and evidence of drilling mud/water, drilling sumps, rubbish including the presence of drums of drill fluid or drill or, excess foam, foam drums, pieces of PVC pipe and ground disturbances either filled or unfilled from metal detecting.
36. Mr Owen also deposed if prospecting that included metal detecting had been occurred as claimed in the Form 5 for 2019 Year on 396 he would expect to have seen during his inspection on 16 December 2019 wooden pegs, steel posts, pin flags or geochemical holes filled or unfilled in some kind a grid pattern, metal detecting holes filled or unfilled, chaining marks, freshly broken rocks and other ground disturbances, damage to vegetation and tracks for four-wheel-drive vehicles or quad bikes and ground disturbances either filled or unfilled from metal detecting. Mr Owen deposed he saw no sign of these type of activities on 396 on 16 December 2019.

Affidavit of Mr Owen sworn 10 December 2020 – E 16/449-1

37. Mr Owen deposed that prior to lodging the application for forfeiture he searched the Register, monitored Tengraph and Mineral Titles online, obtained a copy of the Form 5 for the 2019 Year, examined public domain data for 449 and travelled to the area of 449 on 16 December 2019.
38. Mr Owen deposed the Form 5 claimed \$19,059.80 had been expended on general exploration activities, geology, computer applications databases, exploration geological interpretations, geological mapping, GIS, literature reviews, prospecting, review of exploration results and structural geology during the 2019 Year on 449. Further, Mr Owen deposed the public domain data for 449 suggested there was little historical exploration work or drilling carried out to justify the expenditure claimed.

39. Mr Owen further deposed public domain information produced by Gold Tiger Australia did not support the exploration activity claimed on 449 in the 2019 Year. Mr Owen deposed he traversed 449 on 16 December 2019 and did not observe any signs of recent prospecting activity in the preceding 16 months such as recent tyre tracks, disturbance of ground, recent rock chips and impact on the vegetation.
40. Mr Owen also deposed if prospecting had occurred on 449 he would expect to observe evidence of metal detecting including the presence of wooden pegs, steel posts, pin flags or geochemical holes filled or unfilled in some kind of grid pattern, metal detecting holes filled and unfilled, chaining marks, freshly broken rocks and other ground disturbance, damage to vegetation and tracks from four-wheel-drive vehicles or quad bikes and ground disturbance either filled or unfilled from metal detecting. He deposed he saw no signs of any of those activities on 449 on 16 December 2019.
41. Public domain information published during the 2019 Year for the Credo Project, of which 449 is a part, did not identify that mining tenement as having exploration potential. Mr Owen deposed he inspected 449 in August and September 2018 and observed no activity. He deposed he was a regular visitor to 449 during the 2019 Year and on 16 December 2019. During that time, he deposed he observed no signs of activity. Further, Mr Owen deposed he had accessed the area south of the haul road where it has been cleared and he has not observed any activity in the 2019 Year. Mr Owen deposed he was keeping an eye of land that is now the subject of prospecting licence applications with the intention of pegging the land when it became available. During that period, Mr Owen deposed he observed no recent activity or signs vehicles had entered or left from 449 in the 2019 Year.

Oral Evidence of Mr Owen

Examination in Chief

42. Mr Owen confirmed his 3 affidavits sworn on 10 December 2020¹¹ in respect to 393, 396 and 449 are true and correct. Mr Owen also confirmed his history of gold prospecting in Queensland, Victoria and Western Australia and his work in the mining industry in Queensland and Western Australia. He said since about 2016 he has held 8 mining tenements located mostly in the Dunnsville area near the Credo Project. He also has a pending exploration license application.
43. He deposed most of his mining tenements are located predominantly to the south or south-east of the Credo Project. According to Mr Owen, 393 is about 15 km from his nearest mining tenement and 396 is a further 4 km beyond that. He holds a mining tenement about 2½ km to the west of 449. Mr Owen said he has a s. 40E permit to prospect on all mining tenements held by Mr Sandhu.

¹¹ Exhibits 1, 2 & 5

44. According to Mr Owen, in August and September 2018, he inspected 393 whilst on a quad bike by driving around and looking for any signs of work or activity. He said there were barely any vehicle tracks and the tracks that existed were not well worn, fairly grassy in the middle and sometimes in the wheel tracks. The only drill bags he said he saw were very old, decayed and decrepit and had blown around the paddock and are were in no sense of uniform to indicate they were anywhere near being recent.
45. Mr Owen said he visited 393 and 396 in August, September and December 2019 and drove to the Nyborg's Pit area and observed no recent activity but saw old tracks '*but they're not – not showing a great deal of indication that it had been heavily used*¹²,' He also said he saw a old decrepit drill bags in the Nyborg's area on 396.
46. On 16 December 2019, Mr Owen said he accessed 393 & 396 by driving a car from the north off the Coolgardie North Road onto 449 and through to Nyborg's Pit area passing the broken dam near the boundary with 396. On 396, Mr Owen said he saw the same as he had seen in August and September, the very old drill bags and not much traffic on the tracks. He said he travelled down the middle of 396 and through the mining tenements operated by Mr Poole and others near the boundary of 396 and 393.
47. Mr Owen was referred to the 3 Volume report ('the Report') by Mr Darren Scattini¹³ ('Mr Scattini'), in particular, a map of the boundaries of 393 and 396. Mr Owen said on 16 December 2019 he attended to the south of tenements worked by Mr Poole and observed some old prospects to the south of where Mr Sandhu claimed to have drilled as he wished to look around. He said it looked '*pretty average*' with some old drill sample bags further south by about 1 km from where it was indicated in the map in the Report. He also said there were other drill bags significantly further north and to the west but from what he could see of those drill bags they probably had been blown from the side. He said some of those drill bags had perished and could not hold any dirt. He said he observed a patch of ground that had been slightly pushed with the loader and rehabilitated.
48. Mr Owen said on his 3 visits to 393 and 396, in August, September and 16 December 2019, he observed that nothing had changed in the area near where Mr Poole works his mining tenements. In fact, Mr Owen said he had also visited that area on day trips on multiple occasions when he had nothing else to do but he did proper tenement inspections in August, September and December 2019. Mr Owen further said his first visit to the Nyborg's area was in late November or early December 2017 with a person who he understood had found Nyborg's Patch 20 years before.

¹² TS page 47

¹³ Exhibit 39 Part 1 page 133

49. Mr Owen was shown the Report and photographs taken on 393¹⁴. He said he did not observe any of the drill pegs or drill bags depicted in those photographs on his visit to 393 on 16 December 2019. Mr Owen said of some photographs at page 166 of the Report: *'I wouldn't say that they're specifically the ones that I did observe, but they did look a lot like that. There wouldn't have been as many of those bags around, just sort of two or three in the middle that were very well perished, perhaps more perished than that, slightly. But the bags as you can see, the bags that have been placed outside of the perished bags weren't anything like that. There was they seemed to be recently placed there'¹⁵.* He said he didn't see the bags on the left-hand side of the first picture on page 166 and went on to say *'there had been nothing like that. Like new bags placed beside bags that are perished. I'm not saying that I saw that exact location on that day, I'm saying that some of the bags - or the sites that I saw in the August, September and December visits, had significantly perished bags with the soil now coming out of the top because the top of the bag was perished'¹⁶.* He further went on to say *'I didn't specifically observe that exact location, I was just saying that what I did observe look somewhat like - smaller part in the right-hand side as in the perished but there was no new bags place beside them'¹⁷.* He also said he observed the same on all 3 visits and observed no drilling or changes from his previous visit.
50. Mr Owen said there were 2 ways to access 396. He said there are tracks that come through E 16/415 and off the haul road he thought was either L 16/58 or 62. He said L 16/58 goes north-west to south-east and E 16/62 goes in an east – westerly direction. He said to access 396 from the south would require to drive through 393. He described the tracks as average and hard to do in a car but not too bad on a quad bike which allows you to get around a bit more and have a look at more things. Access from the North is gained by travelling along the Coolgardie North Road and turning left or east-west, along a track past Credo Station and turn left at E 16/499 that then travels through and into the Nyborg's Pit area.
51. On 16 December 2019, Mr Owen said he entered 396 from the north and drove to an area of interest that contained a visible quartz stringer he had located south of the waste dump at Nyborg's Pit. He said he drove around the area as he was of the view that area would be somewhere drilling would take place and saw nothing at the former Nyborg's Pit such as new drill holes, *'just old drill bags and that sort of stuff'*.
52. Mr Owen said he then travelled back through the Nyborg's Pit area to see if they had developed it in any way as there were old, perished drill bags there. He said he then travelled east through the driller's camp to do some work on the ridges in that area. He described the ridge area as having old sample bags and some old reef lines and an old fellers dry blowing and diggings. He further said he thought the tenement holder

¹⁴ Exhibit 39 Part 1 pages 137 to 224

¹⁵ TS pages 55 to 56

¹⁶ TS page 56

¹⁷ TS page 56 to 57

would be chasing up what previous work being done in that area if there was going to be any work done. However, he said he saw nothing other than a bit of rubbish.

53. Mr Owen said on 20 June 2020 he attended 396 and took photographs of the northern and southern costeans and other areas near 396¹⁸. On 16 December 2019, Mr Owen said the costeans on 396 weren't there, there was still bushland in the respective areas of the costeans, the ground had not been cleared and there was no drilling.
54. Mr Owen was taken to a series of pages in the Report¹⁹ on 396 and asked if he observed anything such as depicted in the photographs on the pages and he said he had not. He said the drill bags depicted in these photographs were still competent. However, the drill bags he observed were unable to hold anything and would disintegrate if picked up.
55. Mr Owen said none of the drill holes or drill bags noted in Report as observations points 62 to 133²⁰, 153 to 168²¹, 181 to 195²² and at Nyborg's Pit were observed by him on his inspection on 16 December 2019. He also said e did not observe any of the drill holes or drill bags as shown at observations points 153 to 168 in the Report.
56. Mr Owen said each of the drill lines referred to in the Report at page 231 has one of the tracks he used to traverse the length of 396 to 393 via the mining tenements worked by Mr Poole on 16 December 2019 and the tracks either cross the drill lines or are within 100 metres of it. He said he did not see any of the drill holes or drill bags on 16 December 2019 notwithstanding the close proximity to the track he used. He said if they were there he would have seen them.
57. Since 16 December 2019, Mr Owen said he has visited 396 on multiple occasions to check on information provided by Mr Hawker. He said he believes drilling has been conducted at Nyborg's area and near observation points 062 to 133 as noted in the Report²³ and the 133 drill holes close to the quartz reef he was interested in.
58. Mr Owen said the first time he returned to 396 on 20 June 2020 and he observed the costeans and what was left of the wet gravity circuit being a stacker. He said he also observed on 449 a diesel generator that ran a submersible pump connected to poly pipe to pump water to the Nyborg's area. He said he made enquiries to ascertain if the works he observed in the Nyborg's area were compliant with any POW or other permits that had or should have been issued. He said he subsequently made reports to various agencies as to what he determined.

¹⁸ Exhibit 2 annexures TDO 2 to TDO 13

¹⁹ Exhibit 37 Part 2 pages 259 to 262

²⁰ Exhibit 39 Part 2 pages 231 & pages 259 to 329

²¹ Exhibit 39 Part 2 pages 231 & pages 330 to 345

²² Exhibit 39 Part 2 pages 231 & pages 358 to 372

²³ Exhibit 39 Part 2 pages 259 to 329

59. On 9 November 2020, Mr Owen said he became aware that Mr Scattini would be in the area, so he travelled out towards the Credo Project to mark some of the tracks. He said he crossed paths with Mr Scattini, who had Mr Kavenagh as a passenger, in his vehicle on L 16/58. They both stopped and briefly spoke to one another before going about their business. Mr Owen said he drove off to a hill some distance away and watched Mr Scattini and Mr Kavenagh go about their business.
60. Mr Owen said on 9 March 2021 he received a copy of the Report and read it quickly. A result of its content, Mr Owen said he decided he would go out and replicate what Mr Scattini had reported on and take photographs as he thought there were a lot of drill bags and other things out there where there never was anything. He said when he went to the various places in the Report all of the drill bags had been cleaned up and removed except for some old rotten drill bags from Delta. Mr Owen was taken, by his counsel, to page 325 of the Report being observation point 129 on 396. He said he did not go to that location. He said he went to E 16/365 and E 16/415 and observed drill bags had been moved off those mining tenements and he didn't bother pursuing it further. He also said he did not go to 393 or 396 for the same reasons.
61. Mr Owen said his experience with wet gravity circuits or wash plants was in Queensland at a copper mine that used an alluvial wash plant. He said he owns a small continuous flow mill and has purchased a 35 to 50 tonne per hour wet plant and crushing circuit together with various supplementary crushing circuits, conveyor circuits and recovery of gold devices. Mr Owen said on 20 June 2020, he inspected the wash plant on 396 and all that was left was the trommel with the sluice runs taken off it. He said he observed the dirt left in the recirculation dam was not a lot at about less than 500 tonnes at his estimation.
62. According to Mr Owen, his experience in the mining industry included periods of time when he organised grade control drilling and supervision and removal, replacement and storage of drill sample bags. It is through this work, Mr Owen said he has gained experience in determining, through observation, the age of drill bags.
63. Mr Owen said in February 2021, he attempted to obtain from Mr Brock McCarty ('Mr McCarty') at Apollo Mapping ('Apollo') in the USA some satellite images of various mining tenements the subject of these and other proceedings. He said over a short period of time he had an exchange with Mr McCarty by email as to the cost, size of images, resolution of images, coordinates of areas required and other technical details to complete the request. Mr Owen acknowledged he asked a lot of questions of Mr McCarty as he did not have knowledge of the technical details of the satellite mapping images. He further said understood from the email exchanges with Mr McCarty that he was able to assist him in fulfilling the order he required. However, Mr Owen said when he provided the coordinate information to Mr McCarty that identified the Gold Tiger tenements, he received a response from Mr McCarty that said *'Thanks. We are going to pass on this order. Apologies.'* Mr Owen said he sent an email to Mr

McCarty to enquire why he passed on the order, as he was concerned the size of the images he ordered were too big and he could be more specific with coordinates and remove the need for such a large area. Mr Owen said Mr McCarty responded by email saying 'You can pick your image here if you find any. Other than that, we cannot help.'

Cross examination of Mr Owen

64. In December 2019, Mr Owen said there was sunlight with reasonable visibility to work with from about 4.30 am to 5 am until about 8 pm to 8.30 pm subject to cloud cover.
65. Mr Owen said in December 2019, he had a mobile telephone but it was recently smashed and he now owns an iPhone with Apple maps on it for directions. He said all information held in the icloud was transferred from his old mobile phone to his new mobile phone including details of where he had pegged mining tenements in 2017. Mr Owen said his movements for 16 December 2019 deposed to in his 10 December 2020 affidavit come from an app on his mobile phone called Trilobite. Mr Owen said Trilobite can be turned on and off, it turns itself off after a period of time or if the movements, such as in town, were too much it also turns off. He said he didn't know if Trilobite was turned on for December 2019.
66. Mr Owen said he first worked in the mining industry in 2009 in Queensland as a driller's offsider and later as an excavator operator. In his days off he continued to work as as a driller's offsider. He said he been employed since late January 2021 as an excavator operator. Prior to that he was self-employed prospecting and before that, Mr Owen said he was employed for about 8 or 9 months from June 2019 as an excavator operator. Further, before that he had been employed as an excavator operator for various companies in both the gold and iron ore industry. He also said he was a supervisor for a period of time but didn't like that position and returned to being an excavator operator.
67. Mr Owen said he has never hired or operated a surface miner but has worked beside one operating an excavator, but not removing dirt the surface miner dug as the dirt was loaded directly into a truck. Further, Mr Owen said he has never engaged or paid anyone to carry out air core drilling.
68. Mr Owen was referred to his affidavit in respect to 396²⁴. He agreed the title search of 396 conducted through Mineral Titles Online²⁵ was not the document attached to his affidavit but was a watered-down version.
69. Mr Owen confirmed he inspected 396 in August, September and December 2019 immediately prior to lodging the application for forfeiture. He said the reference in his

²⁴ Exhibit 2

²⁵ Exhibit 2 annexure TDO 1

affidavit to an inspection was a reference to 16 December 2019. Further, he said his reference in his affidavit to the period '*relevant to the application for forfeiture*' he means the period 10 December 2018 to 9 December 2019.

70. Mr Owen said his monitoring of the mining tenements through inspections means inspections he carried out in August, September and 16 December 2019 amongst others. He said he carried out multiple other inspection all year around of the mining tenements. He agreed he had not given evidence of that before²⁶.
71. According to Mr Owen, the monitoring of 393 and 396 was through working in the area despite 393 and 396 being kilometres long. Mr Owen also said he was able to monitor 393 and 396 when he was working in the Dunnsville, Dunnsville North and Credo area by actually going onto those tenements.
72. Mr Owen said he conducted an inspection of 396 in August 2019 as it was near the end of the 2019 Year. He further said he expected if nothing had been done in the earlier part of the year then something would be done in a rush if there was to be compliance with expenditure conditions. Mr Owen said he was alone during his inspections of 393, 396 and 449 in August, September 2019 and 16 December 2019.
73. A map of the mining tenements of the Credo Project was shown to Mr Owen²⁷. Mr Owen drew on the map the route he took on 16 December 2019 when he carried out the inspection of 393, 396 and 449. Mr Owen said on 16 December 2019 he drove his Navara Ute and did not have his quad bike. He drew on the map the route he took to an area south of the boundary between 393 and 396. At the point marked 'A', he said he stopped and alighted from his ute and walked around the area for about 1½ hours²⁸. He also said he stopped his ute on multiple other times on 393, alighted and looked and walked around²⁹. He then re-entered his ute and drove north and onto 396.
74. Mr Owen said he drove his ute for about half an hour towards the north and through 396 until he reached the main road or the Credo Station Road. He said he did not stop on the way to the top of 396 as he passed through Nyborg's Pit³⁰. Mr Owen said he stopped his ute in 2 places near the Credo Station Road and attempted on each occasion to make a telephone call with one of those attempts made from on top of a small ironstone hill. Mr Owen marked the map with 'B1' and 'B2' where he stopped to make the telephone calls. Mr Owen said he could not recall the time he was unable to connect his calls.
75. Mr Owen said he then drove back to Nyborg's Pit where he parked his ute north of the old waste dump, marked 'C' on the map, and climbed about 15 metres to the top

²⁶ TS page 108

²⁷ Exhibit 6

²⁸ TS page 112

²⁹ TS page 112

³⁰ TS page 115 & 116

where he walked around for about 10 to 20 minutes and again unsuccessfully tried to make a telephone call. Mr Owen also said he wasn't checking for drill holes or see any drill bags from on top of the old waste dump.

76. Mr Owen said while on 396, he didn't see or walk past the coastline to the north of the old waste dump or the wet gravity circuit in operation as described by Mr Higham. He said he didn't think Mr Higham's affidavit was the truth. Mr Owen said on 16 December 2019, it would have been impossible to miss seeing the northern coastline on 16 December 2019 if it was there at that time. He denied he was not telling the truth but said no one else was telling the truth.
77. Mr Owen said after he climbed down from the old waste dump, he drove his ute for about a minute about 200 metres west of the old Nyborg's Pit where he wandered around the area he marked as 'D' on the map for about 20 minutes trying to find an old fella's diggings. He said he then drove east of the waste dump to an area he marked on the map as 'E' where he had seen the digger's camp in June 2020. He spent about 20 to 30 minutes there before driving to a quartz reef with visible gold stringers, marked 'F' on the map and spent a few minutes there before leaving.
78. Mr Owen said he did not see the Camp in June 2020 but saw where someone had camped, like a mess, an old campfire, a water trailer and a few pods but no caravans or anything similar to that. Mr Owen denied he saw the Camp or the wet gravity circuit on 16 December 2019, but was sure if both were there, he would have seen them.
79. After leaving the quartz reef, Mr Owen said he travelled south, without stopping, and off 396 and through an area on 393 known as the Old Fella's Pushings. He then followed a very old fence line to L 16/58 until he turned onto L 16/62. As he travelled down to L 16/62 from 396 as he said he drove at 5 to 10 km/hr on the rough tracks and 60 to 70 km/hr on the good tracks.
80. Mr Owen said did stop earlier in the day of 16 December 2019 on the way to 396 near where L 16/62 crosses E 16/415, marked 'G' on the map, to take a photograph of a drill hole.
81. Mr Owen was asked why in his evidence in chief he said he first entered 396 on 16 December 2019 from the north when his evidence was, he entered that tenement via 393. He said the first time he ever entered 396, some years before, was off the Credo Station Road to the north. He confirmed his evidence he entered 396 on 16 December 2019 from the south.
82. Mr Owen was shown his affidavit for 396 and asked why he refers an inspection of that tenement in August and September 2018 and makes no other reference to 2018 in

that affidavit.³¹ Mr Owen said he had previously inspected 396 in August and September 2018 but as those inspections were in the previous expenditure year he could not rely on them in these proceedings.

83. On 16 December 2019, Mr Owen said he did not stop on 449, but had stopped on multiple times in the past. However, he later said he stopped on 449 to check if any cars had gone over a scrap mark he had earlier made on the track. He said the publicly available information he had regard to for 449 was magnetic structure information and some very limited soil sampling. He said there was also other documents from various exploration companies that he needed to be deciphered³².
84. Mr Owen was unable to give any reasonable estimation of how long his trip to the Credo Project on 16 December 2019 took as it was not a race and he could not recall where he stayed on that evening or whether he returned to Kalgoorlie.
85. Mr Owen said his opinion was a surface miner could not be 'floated' onto 396 as it would have hit low hanging dead branches and caused damage. However, he said it was possible for the surface miner to drive under its own power onto 396. Mr Owens also said it was his opinion possible for a surface miner to windrow ore behind it and for a loader to remove that windrow and stack it in piles. He considered it unreasonable to operate the surface miner using a loader when ore could be 'shot' straight out from the surface miner to a conveyor into a truck thereby eliminating the loader.
86. On 20 June 2020, Mr Owen said he saw the northern costean, located about 300 metres from the waste dump, and the southern costean both on 396. The northern costean was observed by Mr Owen to have loader tracks inside the costean and piles of dirt on the northern edge.
87. On 19 December 2019, Mr Owen said he did not see drill sample bags and pegs on 396. He disagreed over 1000 drill sample bags were present on 396 on that same day. He did say he saw in December 2019 the old drill sample bags he had seen on 396 in August and September 2019. Mr Owen said he did not see any drill pegs or drill holes. Mr Owen said on 19 December 2019 he had a mobile phone with him. He further said he was looking for evidence that no work had been carried out on 396 but he did not take a photograph of what he observed as it was the same as he had seen in 2018 and it was outside the 2019 Year.
88. Mr Owen said his email requests to Mr McCarty at Apollo were not the only request he made to Mr McCarty and he had not produced the remainder of the emails. He agreed his initial requests to Mr McCarty were for satellite images taken in October 2017 of a size Mr McCarty considered would be very expensive. He said he was

³¹ Exhibit 2 at [37]

³² TS page 131

requested to provide coordinates in and latitude and longitude and not in UTM. Mr Owen said he responded by email to Mr McCarty indicating he could reduce the search area and provided dates in November 2019 and the required latitude and longitude. However, he received from Mr McCarty advice he would pass on the order. Mr Owen said he sent a further email to Mr McCarty to ask him why he would pass on the order but received no response.

89. Mr Owen said he downloaded a copy of the IPO and the attached Kraken Rocks Report³³ and read most of it except the very technical data. He was referred to his affidavit in respect to 393³⁴. Mr Owen said in his affidavit *'No drilling is referred to as having been carried out on exploration license 16/393 as of March 2019'*³⁵ was based mainly the IPO and photographs of the magnetics explaining Gold Tiger's drilling on 396³⁶ and page 20 of the Kraken Rocks Report³⁷. Mr Owen was again referred to his affidavit in respect to 393 and the Kraken Rocks Report that reads, *'Recent exploration works in 2018 include drilling 220 short air-core holes on 5 lines separated 1 to 2 kilometres apart. Results for the northern most lines of holes have been received but remainder are awaited'*³⁸. Mr Owen said he read that statement in the Kraken Rocks Report, but he did not think sample analysis was still being undertaken from those holes. He further said he had paid a lot of attention to those statements but didn't put any value on them³⁹. He his reason for that was Mr Hawker had contradicted himself in an affidavit by saying the samples were processed in December 2018 and January 2019. He placed 'zero credence' on the statement that they were awaiting further drill results.
90. Mr Owen said he has no geology qualification but, received formal training in a geology related science at every mine site he worked where he was given grade control training in workplaces in the Pilbara and Goldfields in WA and in Queensland. He further said he could not dig anything of grade until he had been placed through a formal training from geologists. He also said he has qualification as a mechanic.
91. Counsel for Mr Sandhu referred Mr Owen to the Kraken Rocks Report attached to the IPO and specifically the diagram marked *'Figure 5 Air-core drilling completed in 2018 for which assay results have been received.'*⁴⁰ Mr Owen said he supposed that diagram could show where drilling had been carried out, however, he did not accept it given on that page alone as he doesn't believe it to be true or a fair characterisation that drilling had occurred as at March 2019 on 393.

³³ Exhibit 3

³⁴ Exhibit 1

³⁵ Exhibit 1 at [14]

³⁶ TS page 145

³⁷ Exhibit 3

³⁸ Exhibit 1 annexure TDO 4 at 35

³⁹ TS page 150

⁴⁰ Exhibit 3 at Kraken Rocks Report page 20.

92. Mr Owen agreed in his oral evidence that during his inspection of 396 on 16 December 2019 he did not have his quad bike with him⁴¹. He also agreed in his affidavit for 396 he deposed he carried out a detailed inspection on both his quad bike and on foot in the area known as Nyborg's Pit⁴². Mr Owen acknowledged his affidavit in that regard was not true⁴³.
93. It was conceded by Mr Owen the distance of the northern costean on 396 is about 880 metres from Nyborg's Pit and not 300 metres as stated in his affidavit⁴⁴. He conceded the southern costean located on 396 was located about 1500 metres south of Nyborg's Pit.
94. Mr Owen was shown Telstra mobile telephone records for his mobile phone for 13 to 16 December 2019⁴⁵. Mr Owen said when he was in the Dunnsville area his mobile telephone signals would bounce off telephone towers either in Coolgardie, Kalgoorlie, Ora Banda, Mount Burgess or Bardoc. He was questioned about the times shown on the Telstra record of telephone calls made on 16 December 2019. Mr Owen said he left Kalgoorlie about 11:35 AM and returned close to 5 or 6 PM on 16 December 2019. Therefore, he said he was on the tenements closer to 3 to 4 hours that day⁴⁶.
95. A photograph of the screen of Mr Owens mobile phone was produced into evidence⁴⁷. Mr Owen said the photograph is of the app known as Trilobite which tracks a person's movements. He said the photograph was not necessarily a true recording of his movements at the Credo Project on 16 December 2019 as the date can be changed and if he were to travel a similar route with his telephone on, the Trilobite app would record over the previous journey. He said he tried to explain that to Mr Kavenagh when he showed the recording of Trilobite it to him.
96. Mr Owen said when he inspected the costeans on 396 on 20 June 2020 most of the sides were battered or sloped and not stepped. Mr Owen agreed the evidence in Mr Nice's affidavit, in Mr Hawker's affidavit and in the invoices of Global that Global had an arrangement with Gold Tiger to provide a surface miner used on 396 in November 2019. He also said he had seen the invoices attached to Mr Hawker's affidavit and they all, on their face, document drilling was carried out on 393 and 396 in 2018. However, Mr Owen said he doesn't accept that was what, in fact, happened.
97. Mr Owen was unaware Mr Higham had taken a video of the wet gravity circuit on 396 in operation on 11 December 2019. He had not seen it. Mr Owen said he thinks Mr Higham is lying about the video and when asked why he said thinks that Mr Owen

⁴¹ TS page 112

⁴² Exhibit 2 at [16]

⁴³ TS page 153

⁴⁴ Exhibit 2 at [23]

⁴⁵ Exhibit 7

⁴⁶ TS at [156] to [161]

⁴⁷ Exhibit 8

said 'How long have we got? I've got multiple records and multiple things that show that it's not true'⁴⁸.

98. Mr Owen said when he inspected 393, on 16 December 2019, he did not see drill bags or pegs in reasonably good condition with white paint and text on them that had been placed there a year earlier. Mr Owen further said he has not seen the drill pegs or drill bags referred to in the Report because when he went to check the content of the Report all the drill bags had been removed from 393, 396 and E 16/415 and he didn't bother going to other places when nothing would be there.
99. On 16 December 2019, Mr Owen said when on 396 and 393 he chose where to inspect by reference to where he thought people would be doing work as that would be a good place to start. He said he then travelled further north and did a few laps and saw some old drill bags blown across a paddock and walked around and back for a bit.
100. Mr Owen said in his opinion all the invoices created in 2018 and 2019 have been fabricated. He also said he considers all people coming to give evidence including Mr Hawker, Mr Higham and Mr Nice are all liars and the court should accept his evidence. Mr Owen denied his evidence of what occurred on 16 December 2019 was fabricated.

Re-Examination

101. Mr Owen said he took photographs on 16 December 2019, for other proceedings, which recorded their location and time⁴⁹. According to Mr Owen, the photographs were taken at 'G' marked on the map⁵⁰ on L 16/62 near the boundary of E 16/415 and E 16/365.
102. Mr Owen said the Kraken Rocks Report attached to the Gold Tiger IPO⁵¹ shows the 2018 air core drilling occurred on 396 and no drilling occurred on 393.
103. It was the opinion of Mr Owen, the use of the surface miner in a manner that created windrows to be removed by a loader and then transported to be stockpiled would affect the grade sampling of the dirt by mixing it when placed in piles at the sides of the costeans.

Lawrence Robert Poole

104. Mr Lawrence Robert Poole ('Mr Poole') is a retired Fisheries Officer and holds an interest in mining tenements in the Credo area being, P 16/3066, P 16/2917, P 16/2918 and P 16/3022. All of the Prospecting Licences are located near the southern boundary of 393 and 396.

⁴⁸ TS pages 168 & 169

⁴⁹ Exhibit 9

⁵⁰ Exhibit 6

⁵¹ Exhibit 3 Kraken Rocks Report page 20

105. Mr Poole gave oral evidence in these proceedings and produced an by affidavit sworn 29 June 2020⁵².

Affidavit of Mr Poole sworn 29 June 2020

106. Mr Poole deposed that on 12 October 2018 he was at P 16/3066 and observed that very recently somebody, without authorisation, had pushed and scraped the creek on that prospecting licence with earth moving equipment, a loader. He also observed there had been very recent similar activity on the adjoining mining tenements, 396 adjacent to the north-east corner of P 16/3066. He followed the tracks of the loader to the south onto 393 and located the loader in a boggy crab hole flat at GPS co-ordinates 30 degrees 29 minutes 17 seconds south latitude and 120 degrees 45 minutes 0 seconds east longitude, about 220 metres from the southern boundary of P 16/2918. He took a photo of the loader on 12 October 2018⁵³. Mr Poole deposed he made a complaint to the Department alleging unlawful mining had taken place on P 16/3066 during the performance of POW authorised by the holder of 396. Mr Poole deposed that complaint was investigated by the Department. Since that date, Mr Poole said he has maintained consistent observation of works being conducted on 393 and 396 on each occasion he attended his Prospecting Licences. Mr Poole attached to his affidavit a copy of an email chain between himself, Mr Hawker and the Department of February 2019⁵⁴.
107. Mr Poole further deposed that on 14 November 2018 he observed the same loader had been used for minor earth moving at the same location on 393. During his attendance at his prospecting licences in November 2018, Mr Poole deposed the Credo area had a significant fall of rain of about 115 millimetres of rain that made the ground jellylike to travel across by vehicle and he did not believe the area was largely accessible to heavy machinery. He deposed he considered a drill rig would not be able to access 393 for at least six weeks.
108. Mr Poole deposed that he returned to his prospecting licences on 14 April 2019 and observed no one was in attendance carrying out works on 393 although he was expecting to see some activity taking place. He also deposed he observed there had been more disturbances on the ground at 393 using earthmoving equipment and observed it appeared a bulldozer had been walked to the location and he believed that had occurred within the month of March 2019 just before his arrival in April 2019. He also deposed he observed fresh vehicle tracks covered the area and a large heap of earth pushed up and clearing of a large flat area of 2-3 hectares had occurred. Mr Poole deposed he had not observed any drilling had taken place, had not observed any costeans or evidence of dry blowing at that time and was curious as to the activities

⁵² Exhibit 19

⁵³ Exhibit 19 annexure LP1

⁵⁴ Exhibit 19 annexure LP2

taking place on 393. Mr Poole also deposed in mid-April 2019, he observed the loader he had observed the previous year had been shifted to works on top of a hill with the GPS co-ordinates of 30 degrees 25 minutes 35 seconds south latitude and 120 degrees 45 minutes 21 seconds east longitude, which is located about 5 kilometres north of his prospecting licences in an area he believes is known as Nyborg's Pit on 396.

109. Mr Poole deposed that he attended his prospecting licences on 7 October 2019 and observed no drilling had been carried out on 393 as depicted in a photograph taken 23 June 2020⁵⁵. Mr Poole deposed it was his observation that between mid-April and early October 2019 the activities said to be depicted had not occurred on 393. Further, Mr Poole deposed a drill line 4, shown in a Drilling Plan for 393, is a short distance from works carried out on 393 and were adjacent to P 16/2918.

Oral Evidence of Mr Poole

Examination in Chief

110. Mr Poole confirm the truth of his affidavit and its annexures.
111. Mr Poole was referred to the Report of Mr Scattini⁵⁶. Mr Poole was particularly referred to photographs, maps and observation made by Mr Scattini pertaining to 393⁵⁷. Mr Poole confirmed on his return to his prospecting licences on 14 April 2019, he observed a lot of recent work upon 393 including significant piles of dirt having been pushed up and lots of tracks in the area. Mr Poole said he saw no signs of drilling.
112. Mr Poole further said he returned to his prospecting licences on 7 October 2019 and saw no signs of drilling on 393 in the locations depicted in the Report of Mr Scattini at pages 137 to 142.
113. Mr Poole said the observation numbers 197-200 inclusive on page 135 of the Report of Mr Scattini showing drilling had taken place on 393 were not observed by him during his visit to his prospecting licences in October 2019.
114. Further, Mr Poole said the 2 photographs attached to his affidavit marked LP3 and LP4 were taken respectively on 22 & 23 June 2020 about 200 metres south of the midpoint of the southern boundary of P 16/2918. According to Mr Poole, drill bags and drill posts depicted in photograph LP 4 attached to his affidavit were not present in April or October 2019.
115. Mr Poole referred to attachment LP5 to his affidavit, an overview of various drill lines in the vicinity of 393 and P 16/2918. Mr Poole said that photograph LP4 is located

⁵⁵ Exhibit 19 annexure LP4

⁵⁶ Exhibit 39

⁵⁷ Exhibit 39 Volume 1 annexure DS2 pages 135-142

about 200 metres below the mid-point of the southern boundary of P 16/2918 and the drill line 4 is located to the left of that point.

116. In cross examination, Mr Poole described his relationship with Mr Sandhu as not a good one because of the people who had been operating on his leases over the years and very little consultation. Mr Poole confirmed he made a complaint to the Department about activity on some of Mr Sandhu mining tenements near his prospecting licences and had also commenced civil proceedings against Mr Sandhu in the Fremantle Magistrates Court.
117. Mr Poole said he took the photographs attached to his affidavit with his digital camera that does not record the meta data of the GPS location of where it was taken. Mr Poole said he is a master mariner and if he says were something is, it is where it is, unless it is disputed by another master mariner. Mr Poole said he took the photograph marked LP3 about 100 metres south of the midline of P 16/2918 in a south-westerly direction. Further, Mr Poole said when he took the photograph marked LP4 he was facing south, south-west. By using a Google Earth app, Mr Poole was able to calculate he was 151 metres from the southern boundary of P 16/2918 when he took the photograph. The document marked LP5 attached to Mr Poole's affidavit was given to him by counsel for Mr Owen in about June 2020.

Evidence called by the Respondent

Mr Hawker

118. The evidence of Mr Hawker comprised of the 2 affidavits sworn by him on 25 June 2021⁵⁸ and 7 January 2021⁵⁹ and oral testimony. A further affidavit sworn by Mr Hawker on 14 April 2020⁶⁰ was also produced into evidence.

Affidavit of Mr Hawker sworn 7 January 2021

119. Mr Hawker has held a Bachelor of Science in Mineral Exploration and Mining Geology Degree from the WASM for over 25 years. He has been employed in the gold mining and exploration industry in Western Australia for most of his working life. He is the Director and Principal Geologist of Hawker Geological Services Pty Ltd ('HGS') and Managing Director of Gold Tiger. Gold Tiger owns all the shares in Gold Tiger Australia.
120. Mr Hawker deposed 393, 396 & 449, with other mining tenements, were at the relevant time owned by Mr Sandhu and form part of the Credo Project. The Credo Project is the subject of a combined reporting status pursuant to s. 115(4) of the Act, being C3/2013, that requires annual technical reports to be lodged for the year ending

⁵⁸ Exhibit 18

⁵⁹ Exhibit 17

⁶⁰ Exhibit 41

30th June in each year. Mr Hawker attached to his affidavit annual technical reports for the years ending 30 June 2018⁶¹, 2019⁶² & 2020⁶³.

121. Mr Hawker further deposed the Credo Project is located about 47 kms north-west of Coolgardie and north of the abandoned mining town called Dunnsville. The Credo Project is accessible off a public road along L 16/62 & L 16/58 being tracks that pass through various mining tenements within the Credo Project.
122. Mr Hawker deposed he has known Mr Sandhu since March 2014. In December 2015, Mr Hawker deposed Mr Sandhu authorised HGS to undertake exploration activities on the Credo Project. As a result of that authorisation, Mr Hawker deposed he made an application for a POW to the Department to undertake drilling on E 16/365, 396 and E 16/415 which was approved and valid for a period of 4 years. In 2016, Mr Hawker deposed he and Mr Brad Green ('Mr Green') attempted to raise capital for exploration on the Credo Project but were unsuccessful. Mr Hawker deposed a Mr Hill also attempted to raise capital for exploration of the Credo Project
123. Mr Hawker further deposed between August 2017 and about April 2018, HGS conducted various field trips to mining tenements within the Credo Project explore and identify mineral resources. Further, Mr Hawker undertook literature reviews of historical drilling results and other material to identify resources on the Credo Project. During that time, Mr Hawker deposed he suggested a drilling program be undertaken on mining tenements within the Credo Project. That drilling program occurred but did not return promising results. Mr Hawker deposed between that 15 to 19 October 2017, an air core drilling program was conducted by Orbit Drilling on E 16/365 and E 16/415. As a result of the assay results of samples from this drilling program a decision was made by Mr Hawker not to drill the land the subject of M 16/524 as had been planned.
124. Mr Hawker deposed he identified various inaccuracies in his description of the number of drill holes drilled during October 2017 and the location of those drill holes drilled in affidavits sworn by him in 2019. He deposes he has visited the site of each drill hole and identified its location and provided maps and photographic evidence of their existence⁶⁴.
125. In the months of January, February, March and April 2018, Mr Hawker deposed he conducted a further field trip, prepared a report and conducted a further review of the Credo Project with the aim of examining potential drill programs, and to advance the project by geochemical soil sampling.

⁶¹ Exhibit 17 annexure AH 14

⁶² Exhibit 17 annexure AH 15

⁶³ Exhibit 17 annexure AH 16

⁶⁴ Exhibit 17 at [37] to [47] & annexures AH 28 to AH 32

126. Mr Hawker deposed that he was informed by Mr Sandhu and later saw documentation confirming on 16 August 2018 Mr Sandhu authorised Mr Paul Larwood ('Mr Larwood') to undertake prospecting on 393⁶⁵. Copies of an approved POW from the Department for Mr Larwood to carry out prospecting on 393 were also seen by Mr Hawker⁶⁶. Invoices rendered by Mr Larwood for works carried out under the approved POW and the authorisations by Mr Sandhu were attached to Mr Hawker's affidavit⁶⁷.
127. It was deposed by Mr Hawker, that towards the end of 2018 he spoke with Mr Sandhu and was told Mr Hill was '*getting nowhere*' raising capital. Mr Sandhu suggested they should try and run the Credo Project them self. As a result of that conversation, Mr Hawker deposed he was introduced by Mr Sandhu to 2 Asian businessmen who initially invested \$500,000.00 to fund exploration of the Credo Project and in late 2018 a further \$4 million was invested.
128. Mr Hawker deposed that on 7 November 2018, HGS applied to the Department and received approval for a POW to undertake RAB or Aircore drilling on 393 and 396⁶⁸. Further, Mr Hawker deposed on or about 6 November 2018 he obtained from Mr Bruce Strapp ('Mr Strapp') of Gulnair Enterprises Pty Ltd ('Gulnair') a verbal quote to undergo take drilling on 393 and 396 which he accepted. That drilling was undertaken by Gulnair on 393 on 12, 13, 14, 15, 16 and 17 December 2018 and on 396 on 17, 18, 19, 20 and 21 December 2018. An invoice rendered by Gulnair to HGS for the drilling and half the cost of repairs to 2 hydraulic trams hoses were paid in January 2019.⁶⁹ Mr Hawker deposed the 8 days of drilling by Gulnair (plus transport days) achieved a total of 2,200 metres with an average of drill rate of 275 metres per day. According to Mr Hawker, the invoice for the 2018 drilling programme by Gulnair for \$6,000.00 per day plus GST, was cheaper than the quoted rate of \$26.00 per metre and therefore not unreasonable.
129. Mr Hawker deposed that between 12 and 31 December 2018, HGS provided drilling support and technical services for the drilling by Gulnair on 393 and 396. An invoice rendered for that work was paid by Gold Tiger and apportioned between the 2 exploration licenses on the basis of the number of metres actually drilled on each tenement⁷⁰.
130. Mr Hawker deposed he engaged Intertek Testing Services (Australia) Pty Ltd ('Intertek') to analyse the drilling samples from the 2018 drilling on 393 and 396. The drilling samples were delivered to Intertek between 17 December 2018 and 3 January

⁶⁵ Exhibit 17 annexure AH 49

⁶⁶ Exhibit 17 annexure AH50

⁶⁷ Exhibit 17 annexure AH51

⁶⁸ Exhibit 17 annexures AH 41 & AH 42

⁶⁹ Exhibit 17 annexure AH 43

⁷⁰ Exhibit 17 at [67]

2019 for analysis. Analysis of those samples were conducted by Intertek between 3 and 16 January 2019 and various invoices were rendered to and paid by HGS⁷¹.

131. Mr Hawker deposed that in January 2019, he and a geological crew from HGS, consisting of a senior geologist and field assistance, travelled to 449 to investigate particular magnetic anomalies, map surface outcrops and collect samples for petrological analysis and portable XRF analysis. Invoices were rendered by HGS to Gold Tiger for expenses and costs incurred in carrying out of geological work in January 2019 on 365, 449 and other land. Those invoices were paid by Gold Tiger and allocated between the respective mining tenements⁷².
132. Mr Hawker deposed that by agreement of 6 February 2019, Gold Tiger Australia purchased, amongst other things, the mining tenements of the Credo Project⁷³. The purchase was completed and registered by the Department and the tenements transferred to Gold Tiger Australia on 23 April 2020. As a result of that agreement, HGS was engaged by Gold Tiger to undertake exploration of the Credo Project with the fees to be charged by HGS agreed verbally between Mr Hawker and Mr Green of Gold Tiger.
133. Mr Hawker deposed that on 8 March 2019 he obtained, on behalf of HGS, a quote from Gyro Drilling ('Gyro') to undertake a drilling programme on 396⁷⁴. Further, Mr Hawker deposed on 8 May 2019, HGS lodged an application for approval of a POW to undertake a drilling program on 396 which was approved by the Department on 6 June 2019⁷⁵. On 12 July 2019, Mr Hawker deposed he spoke with Gyro and an agreement was reached that Gyro would conduct the drilling programme on 396 on 3 August 2019. Mr Hawker deposed between 2 and 6 August 2019, Gyro mobilised its drilling rig to site and conducted drilling on 6 August 2019. Copies of quotes, daily drill logs, photographs of Gyro's drill rig and invoices from Gyro to HGS were produced by Mr Hawker⁷⁶. The invoices from Gyro were paid by HGS.
134. Mr Hawker deposed that on 18 July 2019, Gold Tiger and Magspec Airborne Surveys Pty Ltd ('Magspec') entered into an agreement for Magspec to conduct an airborne geophysical survey of the Credo Project and other land that encompassed a total of 17 mining tenements⁷⁷. The airborne survey was conducted by Magspec between 28 August and 16 September 2019 and an invoice issued to Gold Tiger was paid⁷⁸.

⁷¹ Exhibit 17 annexure AH 47

⁷² Exhibit 17 at [70] to [72] & annexures AH 52 & AH 53

⁷³ Exhibit 17 annexure AH 40

⁷⁴ Exhibit 17 annexure AH 117

⁷⁵ Exhibit 17 annexures AH 115 & AH 116

⁷⁶ Exhibit 17 annexures AH 117 to AH 122

⁷⁷ Exhibit 17 annexure AH 57

⁷⁸ Exhibit 17 annexure AH 58

135. Mr Hawker deposed he engaged Rountree to assist in the supervision and interpretation of the airborne survey by Magspec⁷⁹. An invoice was rendered on 16 November 2019 by Rountree for work carried out together with an apportionment of the cost of the airborne survey between 393, 396 and 449⁸⁰. Those invoices were all paid by Gold Tiger.
136. Mr Hawker further deposed Gold Tiger arranged for an aboriginal heritage survey of 393 and 396 in areas where costeans were proposed to be established. Mr Hawker deposed he spoke with Ms Marjorie Strickland from the traditional owners the Maduwongga People who recommended the work be conducted by Mr Wayne Glendinning who trades as Indigenous Matters. Mr Glendinning was engaged to prepare the aboriginal heritage survey of the land subject of 393 and 396 with work being undertaken on 24 April and 2 May 2019. Mr Glendinning produced an Aboriginal Heritage Survey Report of the proposed Credo Project in July 2019⁸¹ and rendered various accounts to Gold Tiger in April, August and September 2019⁸² all of which were paid by Gold Tiger.
137. Mr Hawker also deposed a further program clearance heritage survey of 393 and 396 was required by the traditional custodians of the land, the Marlinyu Ghoorlie People, in respect to proposals by Gold Tiger to establish 10 costeans on 393 and 396. In August 2019, Terra Rosa Consulting provided an estimate to undertake the survey and were engaged by Gold Tiger⁸³. The heritage survey was conducted by Terra Rosa Consulting on 22 August 2019 and a report produced in October 2019⁸⁴. Terra Rosa Consulting rendered invoices to Gold Tiger for the Heritage Survey in August and October 2019 all of which were paid by Gold Tiger⁸⁵. The cost of the Heritage Survey was apportioned equally between 393 and 396 as the survey related to 5 costeans on each of the tenement.
138. Between 16 and 18 and 28 and 29 October 2019, Mr Hawker deposed he conducted a field trip to 396 and 449. He prepared a report in October 2019 for that visit⁸⁶. The report contained photographs of his observations of 449, electronic data of the track he utilised and the locations of each photograph taken by him. An invoice was rendered to Gold Tiger by HGS and paid by Gold Tiger⁸⁷. An allocation of the cost of the field trip was divided between 396 and 449⁸⁸.

⁷⁹ Exhibit 17 annexure AH 59

⁸⁰ Exhibit 17 annexures AH 60 & AH 61

⁸¹ Exhibit 17 annexure AH 54

⁸² Exhibit 17 annexure AH 55

⁸³ Exhibit 17 annexure AH 62

⁸⁴ Exhibit 17 annexure AH 63

⁸⁵ Exhibit 17 annexure AH 64 & AH 65

⁸⁶ Exhibit 17 annexure AH 138

⁸⁷ Exhibit 17 annexure AH 139

⁸⁸ Exhibit 17 at [184]

139. It was deposed by Mr Hawker that on 25 September 2019 an application for a POW was lodged with the Department to enable Gold Tiger to undertake costeaning, the construction of 6 tracks and a camp site on 396⁸⁹. The application for the POW was approved by the Department on 7 November 2019⁹⁰. Further, Mr Hawker deposed to carry out the proposed work approved under the POW and to further explore 393 and 396, HGS put together a temporary exploration camp ('the Camp') on 396. The Camp comprised of hired caravans from Fiesta Caravans that provided workers with an ablution van, a kitchen van, 3 and 4 bedroom bunkhouse and a generator for power. Mr Hawker deposed officers from the Department inspected the Camp on 4 February 2020 and some defects were identified with aspects of the Camp. He contacted Fiesta Caravans who sent employees to the Camp and corrected the defects identified by the Department officers. Photographs of the Camp⁹¹ and invoices for the hire of the caravans and other equipment were produced into evidence⁹². The invoices were paid by HGS. Mr Hawker also deposed the Camp was fully operational between 28 October 2019 and about 25 February 2020⁹³.
140. To further advance the exploration of 393 and 396 and to carry out the approved POW, Mr Hawker deposed further services and supplies were required. He deposed a 30,000 litre diesel storage tank was hired by Gold Tiger from Eagle Petroleum (WA) Pty Ltd ('Eagle Petroleum') and supplies of fuel were delivered to 396 on a number of occasions. The tank and fuel were used to supply fuel to vehicles and other machinery being used on 396. Photographs were taken of the fuel tank, a delivery of a supply run of fuel to site and copies of invoices rendered by Eagle Petroleum and paid by Gold Tiger were produced⁹⁴.
141. Mr Hawker deposed that on 29 October 2019 he organised with Hampton Transport Services to provide potable water to the Camp. Water was delivered on 1 November 2019 and an invoice issued to HGS and paid by HGS⁹⁵.
142. Further, Mr Hawker deposed he engaged BW Solar to establish a connection from the water bores situated on E 16/499 to a turkey nest and poly piping on 396 and labour hire. He also deposed in September 2019, he requested BW Solar to test the water bore on E 16/499, located just to the north of 396, to enable water to be drawn from the bore to operate a wet gravity circuit on 396. It was also deposed by Mr Hawker on 25 October 2019 the Department of Water granted a water licence to take water for use on 393 and 396. Mr Hawker contacted BW Solar, All Points Sampling Australia Pty Ltd ('APS') and WA Crushing Services Pty Ltd ('WA Crushing') to advise a water licence had been granted. Mr Hawker deposed BW Solar connected water bore

⁸⁹ Exhibit 17 annexure AH 67

⁹⁰ Exhibit 17 annexure AH 67

⁹¹ Exhibit 17 annexures AH 78 to AH 80

⁹² Exhibit 17 at [110] to [115] & annexures AH 81 to AH 86

⁹³ Exhibit 17 at [109]

⁹⁴ Exhibit 17 at [144] to [151] & annexures AH 108 to AH 114

⁹⁵ Exhibit 17 annexure AH 123

on E 16/499 to a turkey's nest and poly piping on 396. BW Solar rendered invoices to Gold Tiger for services provided, ongoing hire of equipment and maintenance, between September and December 2019 and they were paid by Gold Tiger⁹⁶.

143. Mr Hawker also deposed he engaged WA Crushing to transport a Volvo front-end loader ('the Volvo'), the wet gravity circuit, sea containers, water tanks and miscellaneous equipment. WA Crushing issued to Gold Tiger an invoice on 10 November 2019 and, it was paid⁹⁷.
144. Mr Hawker deposed that on 1 November 2019, HGS engaged Global Civil and Mining ('Global') to undertake costeaning and surface mining at Nyborg's Pit on 396, using a surface miner. The surface miner was transported from Perth on a 100 tonne float to Coolgardie and then along the Coolgardie North Road to near the northern end of 396. Mr Hawker deposed on 7 November 2019, the surface miner was unloaded from the float and under its own power driven along a track to an area on 396 where one of the costeans was to be dug near Nyborg's Pit. Mr Hawker attached photographs and a map of the location of work to be carried out by the surface miner on 396, the drop off point for the surface miner near 396, of the surface miner on the float and on site at 396⁹⁸.
145. Mr Hawker deposed that between 7 and 25 November 2019, the surface miner dug 2 costeans and undertook surface mining at Nyborg's Pit on 396 in accordance with directions given by him. Mr Hawker attached to his affidavit a series of photographs of the surface miner on location at 396 taken by him⁹⁹.
146. Mr Hawker deposed that on 26 November 2019, the surface miner travelled under its own power back along the track to the Coolgardie North Road where it was loaded onto a float and transported back to Perth. Mr Hawker further deposed he was present on site when the surface miner was in operation. Further, Mr Hawker deposed an invoice was issued by Global for the transport and use of the surface miner in the sum of \$137,610.66. That invoice was paid by Gold Tiger¹⁰⁰.
147. Mr Hawker deposed to test the ore obtained by the surface miner from the costeans and surface mining near Nyborg's Pit, a wet gravity circuit was established. The wet gravity circuit comprised of a front-end loader to load ore into a hopper bin that fed the ore onto a conveyor belt and into a trommel. Water ran through the rotating trommel with an old mill ball inside to crush the ore washing ore onto 2 sluice screens into 2 buckets. The spills within the buckets then run through a 12" Nelson concentrator to increase the concentration of gold that was panned off to recover gold. Mr Hawker produced photographs taken between 7 November 2019 and 3 March

⁹⁶ Exhibit 17 at [167] to [180] & annexures AH 68 & AH 127 to AH 137

⁹⁷ Exhibit 17 annexure AH 126

⁹⁸ Exhibit 17 at [94] to [98] & annexures AH 68 to AH 69

⁹⁹ Exhibit 17 annexures AH 70 to AH 74

¹⁰⁰ Exhibit 17 annexures AH 75 & AH 76

2020 of the water used in the wet circuit, the trommel operating and the wet circuit in operation¹⁰¹. Mr Hawker deposed the wet gravity circuit was initially set up in the northernmost costean on 396 and operated from 27 November 2019 until 16 December 2019. He deposed the wet circuit gravity was moved to Nyborg's Pit where it operated from 9 January to 15 February 2020.

148. Mr Hawker deposed that in October 2019, Gold Tiger hired from APS the trommel and a loader operator¹⁰². From 11 November 2019, the loader operator from APS was present on 396 where he assisted in clearing the material cur by the the operation of the surface miner. The loader operator remained on 396 until 23 November 2019. APS also supplied personnel and equipment for the operation of the wet gravity circuit from 25 November 2019. The personnel supplied by APS included Geoff Reemeijer, Mr Bruce Strapp, Mr Darryl Higham and Mr Harry Strapp. Mr Hawker deposed that from 9 October until 18 December 2019, APS rendered invoices to Gold Tiger for the hire of the trommel and wet gravity circuit and the supply of personnel. Those invoices were all paid by Gold Tiger¹⁰³
149. Further, Mr Hawker deposed that in November 2019, HGS contracted with Brooks Hire Services Pty Ltd ('Brooks Hire') to hire a Komatsu WA 470-6A loader ('the Komatsu') to assist with exploration on 396. Mr Hawker further deposed the Komatsu was on 396 between 11 and 22 November 2019. Invoices were rendered by Brooks Hire between 7 November and 31 December 2019 for the hire of the Komatsu and were paid by HGS. Photographs of the Komatsu hired from Brooks Hire were attached to the affidavit of Mr Hawker¹⁰⁴.
150. Mr Hawker deposed that on 2 occasions in November 2019, OTR Tyres in Kalgoorlie repaired damage to tyres on the Volvo loader transported to 396 by WA Crushing. Invoices for the work carried out by OTR Tyres to repair the damaged tyres were rendered to and paid by HGS.¹⁰⁵
151. Mr Hawker also deposed that from time to time he and other staff stayed at Credo Station, owned by the Department of Biodiversity, Conservation and Attractions, located close to 396. Accommodation at Credo Station was organised by email and receipts were issued on 28 June, 20 August and 16 October 2019¹⁰⁶.
152. Local Government rates were levied by the Shire of Coolgardie for the years ending 30 June 2020 for 393, 396 and 449 and paid¹⁰⁷.

¹⁰¹ Exhibit 17 annexures AH 87 to AH 91

¹⁰² Exhibit 17 annexure AH 92

¹⁰³ Exhibit 17 at [126] to [131] & annexures AH 93 to AH 98

¹⁰⁴ Exhibit 17 at [132] to [138] & annexures AH 99 to AH 104

¹⁰⁵ Exhibit 17 at [162] to [164] & annexures AH 124 & AH 125

¹⁰⁶ Exhibit 17 at [139] to [140] & annexures AH 105 to AH 107

¹⁰⁷ Exhibit 17 annexures AH 144 to AH 146

153. Mr Hawker deposed that on 18 December 2018, Gold Tiger engaged Andersons Tenement Management ('ATM') to manage the Credo Project mining tenements¹⁰⁸. Gold Tiger has paid ATM for invoices issued for the management of the tenements¹⁰⁹. Mr Hawker also deposed on 12 March 2019 Gold Tiger engaged Marshall Michael to provide bookkeeping services. Gold Tiger has paid invoices rendered by Mr Michael for his services¹¹⁰.
154. Mr Hawker deposed he briefed Mr Scattini to provide a report on work that had been carried out by Mr Sandhu and Gold Tiger. Mr Hawker deposed all communications with Mr Scattini has been through Gold Tiger's lawyer, Mr Kavenagh. Mr Hawker further deposed he provided Mr Kavenagh with an Excel spreadsheet with coordinates for drilling undertaken in October 2017 and in November 2020 he was informed by Mr Kavenagh the locations of the drill holes on the Excel spreadsheet did not appear to be correct and were different to the location of the drill holes on the 'gpx' files also provided to him. Mr Hawker deposed the cause of the difference was determined to be the importation of the GPS pickup files through the .gpx format was imported into the GIS (ExpertGPS) which was set to the wrong coordinate system at the time and when he exported a spreadsheet of the data it too was exported incorrectly.
155. Mr Hawker further deposed he also provided Mr Kavanagh with various electronic data on the locations of tracks associated with the Credo Project and the location of drill holes drilled in October 2017 on 365 and E 16/415 so that data could be downloaded onto Mr Scattini's GPS device. Mr Hawker deposed he also provided to Mr Kavenagh an excel spreadsheet of what he understood to be the coordinates for drilling undertaken by Delta Gold in 2000. Mr Hawker further deposed he had reviewed this data to design a drilling program in some of the same locations. Further, Mr Hawker deposed he also provided Mr Kavenagh with a map showing the location of the drill holes by Delta Gold, an Excel spreadsheet with coordinates of the drilling undertaken on 393 and 396 in December 2018, a further Excel spreadsheet with the coordinates of the costeans undertaken on 396, a map showing the location of Nyborg's Pit and the costeans and a photograph of the Camp.
156. Mr Hawker responded to the Mr Owen's affidavits sworn 10 December 2020 in respect to 393, 396 and 449. In respect to Mr Owen's affidavit at [13] and marked 'TDO3 regarding 393, Mr Hawker deposed the POW number 78522 was withdrawn. Mr Hawker deposed POW number 76945 is the drilling program and was approved. Further, Mr Hawker deposed the email referred to by Mr Poole does not relate to drilling undertaken by Gold Tiger on 393 and in fact refers to an application for a POW for costeans and when Mr Hawker marked out the existing tracks which run through the prospecting licence operated by Mr Poole the Department marked the costeans as new tracks and informed Mr Poole that Gold Tiger had applied for new

¹⁰⁸ Exhibit 17 annexure AH 147

¹⁰⁹ Exhibit 17 annexure AH 148

¹¹⁰ Exhibit 17 annexures AH 149 & AH 150

tracks. Mr Hawker further deposes Mr Owens affidavit at [194] makes no reference to drilling on 393 in the Kraken Rocks Report. The results for drilling to the south on 393 had not been received by the time of that report and therefore not reported. Further, the prospecting relied upon in the Form 5 for 393 is for work conducted by Mr Larwood and Mr Axon.

157. In respect to Mr Owen's affidavit sworn 10 December 2020 relating to 396, Mr Hawker deposed in relation to [13] that Gold Tiger accesses 396 from the north. In relation to [15] and [21] of Mr Owens affidavit, Mr Hawker deposes the surface miner was transported from Perth on 100 tonne float along the Coolgardie North Road where it was unloaded and walked under its own power to its workplace to establish the costeans on 396. In relation to [24], [25] [26], [32], [33] and [35] of Mr Owen's affidavit, Mr Hawker deposes the Volvo loader in the possession of Gold Tiger and the Komatsu was hired from Brooks Hire when the costeans were to be dug. The surface miner cut into the ground and left behind a windrow of soil before it moved into another costean or Nyborg's Pit. The Volvo Loader and the Komatsu would then clean out the soil dug by the surface miner and stack it beside the costean before the surface miner returned for another cut. At times the surface miner worked more quickly than the loaders and had waiting time. Mr Hawker also deposed the bore was run by a generator hired from BW Solar.
158. In respect to the affidavit of Mr Owen sworn 10 December 2020 relating to 449, Mr Hawker agreed there is little historical exploration work or drilling carried out on 449. He also deposed there is no exploration activity in relation to 449 in the public domain. Mr Hawker further deposed as Gold Tiger is a public company and not listed on the ASX and has no obligation to make available to the public any of its information. Mr Hawker denied, other than his affidavit sworn 7 January 2021, he has sworn any affidavit in relation to 449.

Affidavit of Mr Hawker sworn 25 June 2021.

159. The affidavit of Mr Hawker sworn 25 June 2021¹¹¹ deals with his interactions with Mr McCarty of Apollo. Mr Hawker deposed how he came to download photographs and maps of 393 and 396 from information provided to him by Mr Carty. Particularly, MR Hawker deposed how he was given links by Mr McCarty to access satellite images of the Nyborg's Pit area including the costeans and the Camp on 396 on 25 November 2019¹¹².

Oral Evidence of Mr Hawker

160. Mr Hawker confirmed the content of his affidavit of 25 June 2021 was true and correct.

¹¹¹ Exhibit 18

¹¹² Exhibit 18 annexures AH 5 to AH 9

161. In his affidavit of 7 January 2021, Mr Hawker said there was a typographical error in [59] in that he deposed he ‘was’ present on 393 and 396 when a drilling program was conducted by Gulnair between 12 and 21 December 2018. On review of this affidavit, Mr Hawker said he ‘was not’ present when the drilling program occurred on 393 and 396 between 12 and 21 December 2018 as he was away on a boat cruise¹¹³. Other than that correction, Mr Hawker said the content of that affidavit was true and correct.

Cross Examination of Mr Hawker

162. Mr Hawker confirmed he has operated HGS from 3 addresses over a number of years, he no longer employs secretarial support, he has no full time employees rather has casual employees, that an application had been made to convert part of 396 to a mining lease because it has been identified to contain a resource and E 16/458, a mining tenement that was part of the Credo Project has been forfeited for non-compliance with expenditure conditions.
163. Mr Hawker confirmed the authority from Mr Sandhu and Gold Tiger to HGS were prepared by him and completed by Mr Sandhu particularly the authority dated 15 December 2015¹¹⁴ as it was required for a POW application.
164. Mr Hawker said the 2018 drilling program by Gulnair was planned by him in about November 2018 before he left in December 2018 to go on a boat cruise and returned to Perth about 24 December 2018. Mr Hawker further said he obtained verbal quotes from Mr Strapp of Gulnair, who he has known since the 1980’s, and accepted the quote by text message, but couldn’t recall if he had other communications with Mr Strapp. Mr Hawker acknowledged the error in his affidavit of 7 January 2021 when he said he was present during the 2018 drilling program when he was not. Mr Hawker said he gave instructions to his senior geologist regarding the planned 2018 drilling program and he believes those documents may be still with the geologist. He also said the drilling rig used to conduct the 2018 drilling program on 393 and 396 was owned by Orbit Drilling and dry hired by Gulnair as Orbit Drilling had no workers available to operate the drill.
165. Mr Hawker did not accept the invoice¹¹⁵ from Gulnair for the 2018 drill program had been altered in any way despite the exchange of emails between Mr Green and Mr Strapp in February 2020. Mr Hawker said the invoice produced in his affidavit of 7 January 2021 was, he believes, the original invoice and the email exchange that took place between Mr Green and Mr Strapp¹¹⁶ was to obtain a copy of that invoice and not to alter it.

¹¹³ TS 13 July 2021 at p 235

¹¹⁴ Exhibit 17 annexure AH 17

¹¹⁵ Exhibit 17 annexure AH 43

¹¹⁶ Exhibit 25

166. Despite the fact he was on a boat cruise between Australia and New Zealand in December 2018, Mr Hawker said he was in regular contact with people responsible for the 2018 drilling program and was aware the drilling being conducted was air core drilling. Mr Hawker said he did not receive the daily drilling logs for the 2018 drilling program. He also said the Sample Submission Forms lodged with Intertek with the drill samples from the 2018 drilling program did not have any reference to any project because that drilling was the only drilling being undertaken on the Credo Project. Mr Hawker also said the Kraken Rocks Report makes reference to assays being received in relation to 2018 drilling program on 396 only as they were the only assays received back from Intertek at that time.
167. Mr Hawker denied the 2018 drilling program was not conducted on 393 or 396. He also denied invoices created by HGS relating to geological and drilling support for the 2018 drilling program were created either for the purposes of these proceedings or relate to something else¹¹⁷.
168. Mr Hawker said he was aware of work conducted by Mr Larwood, being surface scrapings on 2 project areas before he joined Gold Tiger. He further said he first met Mr Larwood in around October 2018 and was aware he had a falling out with Mr Sandhu in 2019.
169. According to Mr Hawker, depending on the terms of the contract, damage to drilling rigs may be paid for by the mining company. In the case of drilling done by Gulnair, half the costs of the repair to hydraulic trams hose were met by HGS. The invoice for the repairs to the hydraulic trams hose were not produced by Mr Hawker as the Gulnair invoice stated the additional costs of the repairs. Mr Hawker said the drill rig being used by Gulnair in 2018 drilling program was capable of drilling over 400 m per day and, even with breakdowns, was capable of averaging 275 m per day.
170. It was agreed by Mr Hawker that supporting documentation such as flight tickets, fuel receipts, vehicle hire records, of the expenses incurred have not been produced. He said those supporting documents are available, but as invoices have been issued and paid and he has only produced the invoices.
171. Mr Hawker agreed no drilling has been undertaken on 449 in the 2019 Year and 449 was regarded at that time of no significance. However, when challenged regarding the content of the Form 5 for 449 for the 2019 Year¹¹⁸, Mr Hawker said he and others attended 449 in January 2019 to investigate magnetic anomalies, take rock chip samples, obtain handheld XRF assessments, sampling surface outcrops, conduct mapping and make individual assessments of the area. Mr Hawker said he understood he incorporated a report in an Annual Technical Report for Credo Project. Mr Hawker also agreed there was very little historical exploration work or drilling carried out on

¹¹⁷ Exhibit 17 annexures AH 52 & AH 53

¹¹⁸ Exhibit 5 annexure TDO 1

449. The expenditure claimed for the 2019 Year for 449 captured on the Form 5 under the descriptions of mineral exploration activities, geology computer applications, databases, exploration, geological interpretation, geological mapping, GIS literature review, prospecting, view of exploration results and structural geology are the drop-downs on the Department website when the Form 5 is completed electronically. Mr Hawker said he picked the drop-downs that were relevant to the work he and other members of HGS carried out during their field trips. Mr Hawker confirmed the various invoices from HDS to Gold Tiger for field trips and work conducted on 449 have been paid.

172. Mr Hawker said he was sure he completed a report for the field trip to 449 in January 2019 that contained maps and photographs. He again confirmed that field trip was to examine an area of magnetic significance and to look at areas based on historical reports on previous discoveries. Mr Hawker said the work was completed travelling on quad bikes to take rock chip samples, making field mapping, structural analysis of rock outcrops and performing some XRF assessments. He said he spent about 4 or 5 days on 449 conducting those activities. Mr Hawker agreed there is very little historic exploration work results or drilling activity in the public domain for 449.
173. Mr Hawker said the invoice issued by HGS to Gold Tiger on 30 January 2019¹¹⁹ relates to the January 2019 field trip to tenements, including 449, in the Credo Project. Mr Hawker noted this invoice related to 3 mining tenements being P16/2667, E 449 and E 16/365. It was agreed by Mr Hawker the percentage break downs of the total of the of the invoice did not add up to 100% and showed work carried out was 30% to P 16/2667, 32% to 449 and 40% to E 16/365. He could not explain why work was carried out on P 16/2667 when the certified copy of the Register¹²⁰ for that mining tenement shows it was surrendered on 11 July 2018, the day before it was due to expire. Mr Hawker said he can only say that he was unaware at the time of the field visit in January 2019 that P 16/2667 had been surrendered. Mr Hawker said, having reviewed the invoice issued on 30 January 2019 he allocated direct costs incurred to all 3 mining tenements and not percentages to work carried out. Mr Hawker denied the proposition by counsel for Mr Owen he obtained an old invoice and doctored it to create the 30 January 2019 invoice. He believed he had evidence of being in the region at the time, but it was not produced.
174. Mr Hawker was referred to an invoice from HGS dated 29 January 2019 to Gold Tiger¹²¹. He explained that invoice was for Mr Kelvin Fox and a field assistant to fly to the Credo Project and hire a car to travel to site. The other Invoice of 30 January 2019 included the hire of Mr Hawkers own car as he too travelled to the Credo Project in his own car with a field assistant. He further said he stayed, some of the time at the Coolgardie Motel, and sometimes at Credo Station but, he produced no receipts.

¹¹⁹ Exhibit 17 annexure AH 53

¹²⁰ Exhibit 26

¹²¹ Exhibit 17 annexure AH 52

175. According to Mr Hawker, there was a further field trip he conducted to 449 in July 2019 when he travelled to the Credo Project with a quad bike. An invoice from HGS and paid by Gold Tiger was produced by Mr Hawker¹²². Mr Hawker said he did not claim his time for that field trip in which he conducted further ground investigations using a quad bike. The purpose of this field trip was to follow-up on the January 2019 field trip.
176. Mr Hawker was referred to a copy of his mobile telephone records for the period 15 to 18 October 2017¹²³ being the period of the proposed drilling program on E 16/365, E 16/415 and M 16/524¹²⁴. Mr Hawker was asked to explain why his mobile phone records showed extensive use of his mobile phone originating from Ravenswood between 15 and 18 October 2017. According to Mr Hawker, he was present on the Credo Project while drilling was conducted on E 16/365 and E 16/415. He said he left his mobile phone with his wife at his Ravenswood home so various field staff conducting other work could contact his wife as required. Mr Hawker said he took with him and used a satellite telephone while on site. It was put to Mr Hawker, by counsel for Mr Owen, that some of the telephone calls from his mobile phone were to his wife's mobile phone. Mr Hawker said he was not in Perth during that time and it may have been his wife gave his phone to their son at some time as he did not have a mobile phone.
177. Mr Hawker said he has owned a satellite phone for a number of years and is required to purchase a new sim card every couple of years. He also said he does not know the satellite telephone number as it is written on the phone. The satellite phone is only used to make outgoing calls and does not receive incoming calls.
178. Mr Hawker said in evidence in previous proceedings, he swore an affidavit dated 22 November 2019 and produced 2 Google Earth photographs showing the boundaries of E 16/365 and E 16/415 and the location of the drill holes created during the October 2017 drilling program¹²⁵. He also gave evidence, that in prior proceedings, he gave oral evidence the various photographs he produced in his affidavit of 22 November 2019 and what had been actually drilled on the ground was as shown in the photographs. He now concedes there was an inaccuracy in the area he marked as Area B. He said the photographs he produced in his affidavit of 22 November 2019 showed what was intended to be drilled and there was a discrepancy in the area shown as Area B in that only 2 of the 3 proposed drilling lines were in fact drilled. Mr Hawker explained the preparation of the affidavit of 22 November 2019 was produced from memory and it was not until he went into the field and checked that he realised the error he had made¹²⁶.

¹²² Exhibit 17 annexure AH 56

¹²³ Exhibit 32

¹²⁴ Exhibit 17 at [33] to [47]

¹²⁵ Exhibit 17 at [37] to [39]

¹²⁶ Ts pages 313 to 315

179. Mr Hawker said he instructed his counsel, Mr Kavenagh, to instruct Mr Scattini to attend the Credo Project to prepare a report on the location of the drill holes from the 2017 drilling program¹²⁷. He said provided Mr Kavenagh with data including lists of co-ordinates of drill holes from the 2017 drilling program and a prior Delta Gold drilling program. Mr Hawker was shown maps or photographs which purported to plot the location of each drill hole for the 2017 drilling program and the prior Delta Gold drilling program. He conceded they were inaccurate as to the correct location of some of the drill holes. Mr Hawker said best map to accurately show the location of the 2017 drilling program is on page 236 of his affidavit sworn 7 January 2021¹²⁸.
180. Mr Hawker said became aware in late 2018 that Mr Hill was getting nowhere raising capital and he had a telephone call from Mr Sandhu and they discussed the Credo Project. He said there was sufficient capital for a small drilling program to occur but nothing major as they had hoped to do. Mr Hawker said he did not have access to the financial records for Gold Tiger at that time. Mr Hawker agreed prior to 2018 he carried out some work for Gold Tiger and rendered invoices that have never paid and are outstanding. He said in the early days there was no formality in his relationship with Mr Sandhu other than as a client/contractor but, he could see the potential in the Credo Project. Mr Hawker said he now holds 1,500,000 shares in Gold Tiger. Mr Hawker denied the unpaid invoices rendered to Gold Tiger by him for work before 2017 have been concocted for these proceedings. Mr Hawker said the invoices are true invoices but, he has never pursued payment.
181. Mr Hawker agreed he has lodged and withdrawn a number of applications for POW in 2018 and 2019. Mr Hawker said planning for the use of the surface miner in November 2019 was done well in advance of its arrival on site as it is expensive to both mobilise and demobilise and operate. He also said the application for POW to use the surface miner was approved by the Department subject to an excess tonnage application being made. He said he was told by the Department the approval of the excess tonnage was only a week away and he then began to finalise for the arrival of the surface miner on 7 November 2019. Mr Hawker said he did not know the name of the operator of the surface miner but, he gave directions as to where the costeans were to be dug. According to Mr Hawker, the clearing of the area for where the surface miner was to operate commenced a few days before the surface miner arrived on site. Some of the work was done by the Volvo loader owned by Gold Tiger and a Komatsu loader hired from Brooks Hire.
182. Further, Mr Hawker confirmed he was present when the surface miner arrived and was unloaded on the Coolgardie North Road about 10 am on 7 November 2019 and took a photograph before it was unloaded. Mr Hawker agreed none of the photographs he took of the surface miner had date stamps on them. Mr Hawker said he tried

¹²⁷ Exhibit 17 at [216] to [225]

¹²⁸ Exhibit 17 annexure AH 30

putting date stamps on the photographs but, they weren't very clear. He said he provided the meta data to his lawyer but, it did not form part of the documents before the court. Mr Hawker denied the surface miner was never at 396 or, if it was, it was later then 7 to 25 November 2019.

183. Mr Hawker said he understood Centurion Transport was Global's preferred contractor to transport the surface miner to the Credo Project. However, that did not occur, and he is unaware if Centurion Transport subcontracted the transport of the surface miner or they just did not do it. He also confirmed the surface miner travelled under its own power to the location of the first costean and it left track marks. Mr Hawker denied the work of digging of the costeans on 396 carried out by the surface miner did not commence on 7 November 2019, but rather at some later time.
184. Mr Hawker was referred, by counsel for Mr Owen, to his affidavit in which he deposed he was present on 396 throughout the period when the surface miner was operating¹²⁹. Mr Hawker clarified this answer and said on 396 only during the actual digging of the costeans and not any other time¹³⁰. In that regard, Mr Hawker was referred to the telephone record of his mobile phone for the period 6 to 25 November 2019¹³¹. Mr Hawker agreed his mobile telephone records show telephone calls were being made from his mobile telephone in the Ora Banda/Coolgardie area on 6 & 7 November 2019. He also agreed those same records show telephone calls were made from Mr Hawker's mobile telephone at various towns heading towards Perth on 8 November 2019. Mr Hawker did not dispute the mobile phone records for his mobile phone show calls were made in and around Perth and the South West between 8 to 11 November 2019 when calls were again made at towns heading east from Perth until arriving in the Coolgardie/Ora Banda area on 12 November 2019. Further it was not disputed by Mr Hawker on 14 November 2019, his mobile phone then appears to have returned to Perth before returning to the Coolgardie/Ora Banda area on 19 November 2019. Again, Mr Hawker did not dispute his mobile telephone appears to leave the Coolgardie/Ora Banda area and return to Perth on 21 November 2019 where it remained until the end of the telephone record on 25 November 2019.
185. Mr Hawker said there was a period of time when the surface miner operators were stopped from working by Gold Tiger and were sent home because they were getting too far ahead of them. He was unable to say between what dates that occurred but that it should be in the operator's timesheets¹³².
186. Mr Hawker agreed the mobile telephone record for 6 to 25 November 2019 showed he was in the vicinity of the Credo Project, at the absolute outside, for 7 days during the time the surface miner was on 396. It was not disputed by Mr Hawker he was only on

¹²⁹ Exhibit 17 at [101]

¹³⁰ TS page 331

¹³¹ Exhibit 34

¹³² TS page 334

396 for about 5½ days of the 10 days Gold Tiger were charged by Global for the hire of the surface miner.

187. It was denied by Mr Hawker the costeans on 396 were created after 16 December 2019. He said the trommel was operating and he went to site on 16 December 2019 to put the whole camp on a break¹³³. Mr Hawker agreed photographs taken on 4 February 2020 by Mr Patrick McCluskey ('Mr McCluskey') from the Department some of the equipment on 396¹³⁴. However, Mr Hawker did not agree the photographs of the wet gravity circuit plant¹³⁵ were taken by him after that date.
188. Mr Hawker agreed delays of about 10 to 12 days occurred in the transport of the trommel from Perth to the Credo Project. He said the delay was because the transport company would not do what they were asked to do. He said he was expecting the trommel to arrive on 396 within days of the surface miner starting but the trommel was delayed well beyond that time.
189. According to Mr Hawker, the trommel commenced work in November 2019 on costean 1 and it stopped on that location on 17 January 2020 and was moved to Nyborg's Pit where is operated until about 15 February 2020. He took photographs of the trommel about 4 January 2020. He identified the crusher supplied by Hampton's Transport had arrived about the same time and members of the board of Gold Tiger can be seen in the photograph at a site visit. Mr Hawker agreed the photograph taken of the trommel operating¹³⁶ was not taken on 7 November 2019 as deposed in his affidavit¹³⁷ rather it was taken later on about 25 or 27 November 2019¹³⁸ when the trommel commenced working in late November 2019. Mr Hawker said the trommel had an oversize shute where ore sized greater than 20 mm would be ejected into a small pit that had been dug and was from time to time cleared away.
190. Mr Hawker was asked why the trommel operated for a time without a crusher. According to Mr Hawker, the crusher was hired from Hampton's Transport in January 2020 as the small ball mill at the front of the trommel did not work as planned and the fragment size being processed was not returning good grades. He further explained the surface miner grinds, pits and to a degree crushes rock fragments, based on the size of the teeth, to a size of about 70 mm or less. He said that size ore and with the few mill balls inside the trommel should have been sufficient to break the ore up into smaller fragments but, it did not work. As a result, Mr Hawker said the crusher was hired at the beginning of January 2020.

¹³³ TS page 335

¹³⁴ Exhibit 22 and 23

¹³⁵ Exhibit 17 annexures AH 87, AH 88, AH 89, AH 90, & AH 91.

¹³⁶ Exhibit 17 annexure AH 89

¹³⁷ Exhibit 17 at [119]

¹³⁸ TS at page 340

191. Mr Hawker did not agree Gold Tiger was pumping water illegally. He said Gold Tiger had obtained a water permit to pump water¹³⁹ but didn't have a permit for the wet gravity circuit as it was not required because the tonnage was less than that required for a permit according to meetings he had with the Department of Water.
192. Mr Hawker explained the clearing of scrub from the area where the surface miner first operated commenced before the arrival of the surface miner on 7 November 2019 using the Volvo front-end loader belonging to Gold Tiger. The Komatsu hired from Brooks Hire arrived on about 11 November and was used in conjunction with the surface miner on 396 until 22 November 2019. Mr Hawker said fuel delivered by Eagle Petroleum was used in the operations on 396 by the Volvo, the Komatsu, the generators for the Camp, the pumps, the trommel, the surface miner and 3 or 4 light trucks on site. No fuel log was kept as to the use of the fuel.
193. Mr Hawker denied the photograph taken by Mr McCluskey on 4 February 2020 of a costean depicts it had not been created by the surface miner. Mr Hawker said the wall of the costean indicates it was dug by a surface miner. In any event, Mr Hawker said a front-end loader would be unable to dig that sort of ground otherwise the costean would have been dug by a front end loader. Further, Mr Hawker said Gold Tiger was using the surface miner to grind the ore and deposit it at the same place it was cut. He said marks were placed every 20 m on the wall of the costean and the loaders then put the material left by the surface miner into stockpiles on the side of the costean. Every stockpile represented 20 metres of the costean cut by the surface miner. Mr Hawker said the intention was to put each stockpile separately through the wet gravity circuit and work out the recovered gold so he could establish a grade and then, hopefully, calculate a resource. It was denied by Mr Hawker it was defeating the purpose of the use of a surface miner as the ore cut and stockpiled by the loader was being mixed. Mr Hawker said the cutting blades of the surface miner were depositing the ore directly behind where the ore was cut and using the 20 m marks the position was reasonably accurate as to where the ore was recovered from in the costean.
194. Mr Hawker was referred the Annual Report of Gold Tiger for 1 July 2019 to 30 June 2020¹⁴⁰ and in particular to page 20 of 25 of that Report under the heading of 'Costean Digging' that states *'The costeans, each approximately 500 metres long, were dug using 2 loaders. Photographs 5 and 6 show costeans 1 and 2 respectively.'* Mr Hawker said that Report was prepared by Mr Kelvin Fox who was not present on site during the use of the surface miner. He said the surface miner doesn't in fact dig, although some models do but not the one utilised in this operation. He described the surface miner used on 396 has a big grinding wheel underneath it that grinds the surface and deposits ground ore between its tracks from where the loaders then dug out the material and placed it in stockpiles for processing.

¹³⁹ Exhibit 17 annexures AH 129 & AH 130

¹⁴⁰ Exhibit 17 annexure AH 16

195. Mr Hawker said drilling was conducted by Gyro Drilling on 396 (although the transcripts states 395 I take it he meant 396) and HGS provided geological assistance. No invoice was produced for the geological support and that was described by Mr Hawker as an oversight. The reason drilling took place in August 2019 was stated by Mr Hawker to be *'that was because it was the same guys that we had out there already on the trommel. I had two guys that were doing the gold panning and overseeing, so they actually did part of that, so it will be part of the other invoice. That was just a quick program we got Gyro out to do in about four hours, I think it was.'*¹⁴¹ Aspects of that response by Mr Hawker are at odds in that the trommel did not arrive on 396 until late November 2019 and gold panning appears to have been associated with the wet gravity circuit. The reference by Mr Hawker to 4 hours, I take to be a mis-statement, as invoices from Gyro indicate that drilling took place over 4 days. Further, Mr Hawker said sample results from that drilling are on his computer and assay result were received but had not been produced. He said no report was prepared for that drilling. He denied that drilling was conducted on E 16/365 and E 16/415 to justify drilling claimed in the 2017 Year. Mr Hawker said the photograph of a drill rig in operation was taken in August 2019 on 396 but, he was unable to say precisely where it was as a number of lines had been drilled¹⁴².
196. Mr Hawker agreed the 2019/2020 Annual Report¹⁴³ by Gold Tiger makes no reference to the August 2019 air core drilling programme conducted by Gyro Drilling. He again said Mr Fox had not put that information into the Annual Report. He denied the August 2019 drill programme by Gyro on 396 did not occur.
197. Mr Hawker was asked to explain exactly what BW Solar were engaged to do. He said BW Solar were engaged to investigate an existing water bore on E 16/499. He said that bore was fixed up by putting some piping in and setting up a diesel water pump. Further, he said BW Solar also set up a class 9 poly pipe for water to be pumped to the costean and to Nyborg's Pit. Mr Hawker also said BW Solar provided a labourer to remain on 396 to ensure water was being pumped and to provide labour including operating a front-end loader. He also said equipment was also purchased and hired from BW Solar including a vehicle, a generator, a submersible pump, poly pipe and an electrical system.
198. Mr Hawker was referred to his October 2019 Field Investigation Report and its associated invoice¹⁴⁴. He agreed the dates shown on the invoice are inconsistent and appear to have dates missing.
199. Mr Hawker said a report headed AC Drilling Proposal¹⁴⁵ was one of the first he prepared and went back to 2015/2016. He was also referred to the invoice HGS

¹⁴¹ TS page 350

¹⁴² Exhibit 17 annexure AH120

¹⁴³ Exhibit 17 annexure AH 16

¹⁴⁴ Exhibit 17 at [182] to [184] & annexures AH 138 & AH 139

¹⁴⁵ Exhibit 17 annexure AH 22

rendered to Mr Sandhu for the AC Drilling Proposal Report dated 30 September 2017¹⁴⁶. He said the AC Drilling Proposal was prepared well before that date when he first started conducting reviews for Mr Sandhu. Mr Hawker said the allocation of time in preparing the AC Drilling Proposal to P 16/2790¹⁴⁷ that had been withdrawn on 16 January 2013 as embarrassing and the result of him not checking tenement status.

200. The AC Drilling Proposal is undated and has 2 contact addresses for Mr Hawker, a Wangara address and the other a Ravenswood address. Mr Hawker attempted to establish when he lived at each of those addresses to establish when the proposal was prepared. He explained the two addresses to be the result of him not having changed the addresses on his pro forma on the proposal. Mr Hawker deposed in his affidavit he prepared the AC Drilling Proposal in September 2017¹⁴⁸.
201. Mr Hawker was referred to his Shallow Mining Gold Project Report¹⁴⁹ that was also undated. Mr Hawker said he believed that report was prepared in 2017 or 2018 as the address for him was in Ravenswood. He agreed his reference to the mining tenements marked as pending, being P 16/8366, P 16/8634, P 16/8635, P 16/8638 & P 16/8637 had in fact been granted on 15 August 2016 and marked as commenced in the Department Register¹⁵⁰. He was also referred to the Credo Gold Project Review and Recommendations Report of 13 March 2018¹⁵¹ and shown tenements that had expired or were no longer pending prior to the writing of that Report. He agreed some of the reports he wrote contained information he had cut and pasted without checking the current status of the mining tenements.
202. Mr Hawker said he had dealings with Mr McCarty from Apollo on 2 occasions. Mr Hawker was referred to his affidavit of 25 June 2021¹⁵² and said he obtained high resolution satellite images from Mr McCarty by following instructions and links provided to him by Mr McCarty he was able to produce various satellite image photographs of land as at 25 November 2019. He also said he was able to transport some of the satellite images via a program on his computer such that he could overlay other information such as where he tagged the location of various areas on 396. He further said the overlay he placed on the original satellite image from Mr McCarty was not interfered with. He believed the satellite image was originally obtained from a company called DigiGlobe. Mr Hawker said he does not know of any registration system, either in America or Australia, for the sale of satellite images.

¹⁴⁶ Exhibit 17 annexure AH 23

¹⁴⁷ Exhibit 27

¹⁴⁸ Exhibit 17 at [30]

¹⁴⁹ Exhibit 17 annexure AH 34

¹⁵⁰ Exhibit 28

¹⁵¹ Exhibit 17 annexure AH 36

¹⁵² Exhibit 18

203. Mr Hawker was referred to an invoice from HGS to Gulnair dated 12 October 2018¹⁵³. He said that invoice related to work he performed in or about October 2018. Mr Hawker was also shown the Department Register certified copies for E 59/2175, E 59/1772, E 59/2150 and P 59/1776¹⁵⁴. Mr Hawker said he had not done work for some of the holders of those mining tenements being GNT Resources, Krakatoa Resources and Murchison Gold Mines. He acknowledged P 59/1776 and E 59/1772 were no longer current as at October 2018.

Re-examination of Mr Hawker

204. Mr Hawker said the work he conducted relating to the invoice from HGS to Gulnair of 12 October 2018 was at the request of Mr Bruce Strapp who represented a few prospecting groups. He further said he was asked to conduct a review of historical and current tenements they were looking at acquiring. He said he had no communications at all with the holders of the mining tenements mentioned in that invoice.

205. Mr Hawker was referred to a photograph of a drill rig¹⁵⁵ and said he took that photograph about 16 October 2017 on E 16/415. He was further referred to 2 photographs of the surface miner¹⁵⁶ and said he took those 2 photographs near E 16/449 on 7 November 2019 near where he had marked the map¹⁵⁷ as B2 it being where the surface miner was unloaded and walked onto 396. Mr Hawker was also referred to a photograph of water being pumped into a dam¹⁵⁸ which he said he took on 13 November 2019 just before the trommel commenced working. Further, Mr Hawker was referred to a photograph of caravans¹⁵⁹ he said he took in late October 2019 when caravans were delivered by Fiesta Caravans near Nyborg's Pit on 396. Finally, Mr Hawker was referred to 2 photographs of fuel tanks¹⁶⁰ he said he took about 100 metres from the Camp at Nyborg's Pit on the day Eagle Petroleum arrived to deliver the fuel tanks and fuel.

Mr Brock Adam McCarty

206. Mr McCarty gave evidence by audio link from Boulder, Colorado in the United States of America. No affidavit evidence was obtained from Mr McCarty. In his evidence in chief, Mr McCarty referred to a letter to Gold Tiger dated 29 June¹⁶¹ to which was attached a copy of his resume, a copy of an email chain between him and Mr Hawker in May 2021, a copy of a satellite image taken 25 November 2019 and a copy of a dialogue box with the date 29 November 2019 recorded in it.

¹⁵³ Exhibit 29

¹⁵⁴ Exhibit 31

¹⁵⁵ Exhibit 17 annexure AH 27

¹⁵⁶ Exhibit 17 annexure AH 69

¹⁵⁷ Exhibit 6

¹⁵⁸ Exhibit 17 annexure AH 88

¹⁵⁹ Exhibit 17 annexure AH78

¹⁶⁰ Exhibit 17 annexure AH 79

¹⁶¹ Exhibit 20

207. Mr McCarty's resume' details he has a B.S in Natural Resources and Environmental Sciences, Biological Option (1999) from the University of Illinois and a M.A in Geography (2004) with a focus in GIS, Remote Sensing & International Development from the University of Colorado.
208. Mr McCarty confirmed the letter of 29 June 2021 was written and signed by him and had been sent to Mr Hawker. That letter also stated Apollo has been providing imagery and land information to customers for about 12 years.
209. Further, Mr McCarty said in his letter to Gold Tiger he was contacted by Mr Hawker on 14 May 2021 to enquire if he could provide satellite images of 393 & 396 for the purposes of establishing that trenching and drilling had occurred in about December 2019. Mr Hawker provided to Mr McCarty the tenement outlines and a DXF formats. Mr McCarty responded to Mr Hawker on the same day with requirements for further information and some technical specification for his requirements to assist with the request from Mr Hawker. Mr Hawker provided the 'go ahead' to Mr McCarty and by email of 17 May 2021 Mr McCarty provided a link to the image of the tenements requested with a drop box file to confirm the image provided was created on 25 November 2019.

Evidence in Chief

210. Mr McCarty said Apollo does not create the satellite images, rather they use third parties to access the satellite and provide the imagery. According to Mr McCarty, customers of Apollo identify what images they might want to purchase by sending to him a polygon and check file or kmv format or latitude and longitude coordinates and he then uses Apollo Mapping's online search engines to search from some 54 satellites and 19 companies worth of data. Mr McCarty said based on the date his customer needs and the cloud cover of the location at that time he recommends the data to provide to the customer. Mr McCarty said the satellite images delivered to the customer are in a format known as GeoTiff via either Dropbox, a digital delivery service or a filesharing service.
211. Mr McCarty said the only modification Apollo made to the images he sells is by taking a 16-bit image, being what he described as a quick way to a raw image on a cell phone and it is how all photographs begin, and then stretch it changing it from a 16-bit image into an 8-bit image. According to Mr McCarty, he has had communications with Mr Hawker in the past and more recently to establish the telephone link for him to give evidence and by email as contained in his letter of 29 June 2021.

Cross Examination

212. Mr McCarty said he has previously done business with Mr Hawker on about 6 occasions between 2015 and 2021. That resulted in 3 orders being obtained to provide

services to him from Apollo. Mr McCarty confirmed the most recent communication with Mr Hawker was 14 May 2021 with a confirmed order being made on 17 May 2021.

213. Mr McCarty said he had communications by way of email with Mr Owen in February 2021 and referred to an email trail between them of the same time¹⁶². Mr McCarty appeared to have access to those emails from his computer in the USA and acknowledged he ultimately advised Mr Owen he was not going to help him and suggested he go to Image Hunter where he could seek the data he wanted for himself.
214. Mr McCarty said he commonly turns down requests from people seeking images. He went on to say he receives between 100 to 200 emails a day and as he is a one person sales operation, he picks and chooses who he does business with, as is his right, as the owner of his own business. He said he quite commonly, probably 3 to 5 times a day on average, declines business.
215. Mr McCarty went on to say he did not decline the business from Mr Owen because the order he was asking was too expensive, rather it was because he just didn't have the time to deal with all of the questions, the back-and-forth with Mr Owen. Further, Mr McCarty said he had never worked with Mr Owen before, so he made a decision not to deal with him, as is his right as a business owner. Mr McCarty disagreed with a suggestion it was an unusual way for a business to operate. He said Apollo is a small two-person business that has had a large turnover in the last year and is extremely busy and as they have a limited amount of time, decisions and choices are made not to do business with people.
216. It was denied by Mr McCarty that he indicated he was happy to do business with Mr Owen until he provided coordinates that were consistent with same areas requested by Mr Hawker. Mr McCarty said he did not consider his interactions with Mr Owen suggested he was a legitimate customer as his request had started for images of a ginormous area and it wasn't worth his time to continue to deal with Mr Owen. Mr McCarty also said he doesn't work Australian business hours, he doesn't have lots of Australian clients and he didn't know Mr Owen at all. On the other hand, Mr McCarty said he had developed a working relationship with Mr Hawker, he knew he would be paid by Mr Hawker, and he was provided in a timely manner with the information he required to carry out the work of delivering imagery to Mr Hawker. In any event, Mr McCarty made it abundantly clear he considered it was his right to pick and choose who he did business with.
217. Mr McCarty said his letter of 29 June 2021 contained a screen grab of a black and white satellite image Mr McCarty said he sold to Mr Hawker from Image Hunter, a search engine invented by Apollo. Mr McCarty said he was not responsible for

¹⁶² Exhibit 4

printing that satellite image, but it was the same satellite image he had previously sent to Mr Hawker.

218. It was put to Mr McCarty there was a registration process for the publication of satellite images in Australia. Mr McCarty said he didn't know what that was. He was asked if he was registered to supply images to Australia, but he responded that he simply sells satellite images. Mr McCarty was pressed on whether his supplier of satellite images had a licence to sell images in Australia to which he said he simply purchases images and supplies them to customers. Further, Mr McCarty was asked where he obtains his satellite images from to which he said he had already given an answer to that question. Mr McCarty was pressed on this issue, by counsel for Mr Owen, and he stated he did not intend to answer any more questions and, after a short period of time, hung up the audio link.

Mr Patrick McClusky

219. Mr Patrick McClusky has been an Inspector of Mines with the Department for just over 10 years.

Evidence in Chief

220. Mr McClusky said he attended 396, on 4 February 2020, in response to a complaint received by the Department about some electrical work that was not compliant with Australian Standards. The information he said the Department received was a little vague and he and another officer were tasked with locating the area and investigating the complaint.

221. Mr McClusky said the site was eventually found and he came across a number of people on the site, introduced himself and advised of the reason for his visit. He said on his arrival the first thing he found was a generator and a pipeline to transfer water. He said he followed the pipeline down a track and came across a small processing plant. He observed 3 ponds. There was a small mill and separation system set up and the plant was running. He also observed a little shed which was some sort of office come storeroom. He also observed there were 2 pieces of mobile equipment on site and at various times 3 people who were operating the plant.

222. Mr McClusky said on that day he prepared Inspectors Field Notes of his visit¹⁶³. The 3 people on site named themselves as Mr Geoff Reemeijer, a site manager from APS, Mr Ken Stubbs, a loader operator from BW Solar and Mr Harry Strapp, a dewatering technician.

223. Mr McClusky further said he carried out both an inspection of the area and then drove through to what he referred to as a complex where there was a camp set up with caravans for accommodation, at least two electrical generators set up to supply power

¹⁶³ .Exhibit 21

for both sides of the camp because it straddled across a track, switchboards, extension cables running around the place and a small treatment plant for sampling. He said he also observed a separation plant located practically on the side of the camp area. He also said he observed an off-road vehicle, signs of people living on site, at least 2 caravans and a set up for a meals area.

224. Mr McClusky said he further observed various extension cables running along the ground, up and through trees and along grass in and around the area. As a result of his inspection and observations, Mr McClusky said he issued 7 defect notices to improve the electrical safety and to have the electrical installations comply with Australian Standards.
225. After about 2 hours on the site and at the completion of his inspection, Mr McClusky said he and his colleague left the site travelling in the opposite direction to which he had entered the site. Mr McClusky said he entered the area from the north of the main road and travelled to the south. His colleague who was driving the vehicle was described by Mr McClusky as being more familiar with the area and the POW approval for that mining tenement. He further said on the drive from the site they identified there were four, maybe five costeans each located a few hundred metres apart that had been dug out with the ore stockpiled alongside them. He was unable to say how old the costeans appeared to be.
226. Mr McClusky said he and his colleague travelled back to Kalgoorlie where he wrote a report of the site visit based on notes and photographs he had taken. Mr McClusky's final report was tendered in evidence together with photographs he had taken of the various electrical issues he observed giving rise to the defect and improvement notices¹⁶⁴. He also said he was present and aware his colleague had taken photographs of the visit to the mining tenement.

Cross Examination

227. Mr McClusky and he had also taken photographs of other parts of the mining tenement that weren't attached to his final report. He identified a bundle of photographs as containing some additional photographs taken by him and others taken by his colleague, Mr Jeff Hayles, due to his colleagues' camera having a GPS facility attached to it. Those photographs were produced into evidence¹⁶⁵.
228. Mr McClusky said his visit to this mining tenement was unannounced and when they arrived the mining plant, including the trommel and the processing plant were operating. He did not agree a white generator on the mining tenement appeared to be clean as if it had just arrived on site and described it as being away from the mining area and just a generator that was bright. Mr McClusky went on to describe a pipeline

¹⁶⁴ Exhibit 22

¹⁶⁵ Exhibit 23

running from the processing area and a series of ponds used to hold and reclaim for reuse water from the operating plant.

229. Mr McClusky said part of the original complaint received by the Department was there was an unqualified electrician and an unqualified loader driver on site. He said he was unable to find an electrical logbook to verify whether the electrical installation had been done by a qualified electrician or not. He further said he didn't come across a loader operator while on the site. Mr McClusky also said there were other complaints that the works being undertaken may extend beyond the scope of the POW approvals, but that was a matter for his colleague, Mr Hayles as he would be more familiar with that issue. Mr McClusky said he did not have any water on site tested and believes the water in the camp being consumed was bottled water. He observed water being pumped straight to the operation and didn't observe it being stored in tanks on site.

Mr Damien John Nice

230. Mr Damien John Nice ('Mr Nice') is the Operations Manager and HSE Manager for Global. Mr Nice produced 2 affidavits by him being an affidavit sworn 11 March 2020¹⁶⁶ ('March Affidavit') and a further affidavit sworn 14 December 2020¹⁶⁷ ('December Affidavit'). Mr Nice also gave oral evidence.

Evidence in Chief and Affidavit Evidence

231. Mr Nice gave oral evidence the contents of his affidavits were true and correct. Mr Nice deposed in his December Affidavit, that in October 2019, Global were engaged by Gold Tiger to undertake surface mining in the Credo region north of Coolgardie. Mr Nice further deposed he primarily dealt with Mr Hawker from Gold Tiger and he prepared and forwarded, on 19 September 2019, a proposal by Global¹⁶⁸ to carry out the surface mining at the Credo site. That proposal was accepted by Gold Tiger¹⁶⁹ on 1 November 2019.
232. The proposal was for Global to use a surface miner to dig 2 costeans in the Credo region as directed by Gold Tiger. In his December Affidavit, Mr Nice deposed he had attended the site that Gold Tiger had intended to dig the 2 costeans before he finalised the proposal. In cross examination, Mr Nice said he attended the Credo site on 17 October 2019 and met with Mr Brad Green and Mr Hawker. He further said he was taken to 2 locations by Mr Hawker and was shown areas marked out with survey pegs as being the place at which the surface miner was to operate. According to Mr Nice, the main purpose of his visit to the Credo site was to ensure the surface miner was able to access the area it was intended to be used.

¹⁶⁶ Exhibit 35

¹⁶⁷ Exhibit 34

¹⁶⁸ Exhibit 34-annexure DN1

¹⁶⁹ Exhibit 34-annexure DN2

233. Mr Nice further deposed he attended a start-up meeting at Global's office on 4 November 2019 where in a Start-Up Action Register, showing dates of various task in relation to the Gold Tiger project, was prepared¹⁷⁰. Further, Mr Nice said an Operation Management Plan for the Gold Tiger project was discussed at the meeting and the site at which the surface miner was to operate was depicted in a map¹⁷¹. Mr Nice deposed by way of clarification that the Operations Management Plan referred to the project as 'Gold Finger Resources' when it should have been a reference to 'Gold Tiger Resources'.
234. In the December Affidavit, Mr Nice deposed he was not at the Credo site at the same time as the surface miner. However, he deposed he had determined from the business records of Global the surface miner arrived at the Credo site on 7 November 2019. Further, Mr Nice deposed he had determined from business records of Global, being Daily Record Sheets¹⁷² from employees of Global at the Credo site, the surface miner cut 2 costeans between 7 and 25 November 2019. According to Mr Nice daily record Sheets were produced by his employers for 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 24, 25, and 26 November 2019.
235. Mr Nice further deposed on 27 November 2019, Global rendered an invoice to Gold Tiger for work carried out at the Credo site in the sum of \$137,610.66 which was paid on 13 February 2020¹⁷³.

Cross Examination

236. Mr Nice was referred to the email chain between himself and Mr Hawker and in particular the email of 1 November 2019¹⁷⁴. He was asked if there was a response or further email from Mr Hawker beyond that date. He said he did not believe there was a further email and denied the email had been 'chopped off'. Mr Nice was also referred to the Start-Up Action Register and asked if item 1.1 also included the client. He stated the Start-Up Action Register was only an internal document to Global and was emailed only to Global employees.
237. Mr Nice was referred to item 4.6 on the Start-Up Action Register, a reference to the identification and arrangement for a transport company to move the surface miner to the Credo site from Global's yard. Mr Nice said Global used a transport subcontractor to float the surface miner to site and he believed the company used was Charlie Hull. He also said he was aware a Subpoena to Produce Documents was issued to Global relating to the mobilisation of machinery to the Credo site, float permits and all permits evidencing details of who transported the surface miner. He said he believed

¹⁷⁰ Exhibit 34-DN3

¹⁷¹ Exhibit 34-DN4

¹⁷² Exhibit 34-DN6

¹⁷³ Exhibit 34-DN7 & 8

¹⁷⁴ Exhibit 34-DN2

Global had supplied copies of the invoicing from their subcontractor. He was advised the only document received was an invoice from Centurion Transport to which he said he may have been mistaken as to who transported the surface miner as it was a while ago.

238. Mr Nice said it was Mr Andrew Byrne, the CFO of Global who responded to issues regarding items required under the terms of the Subpoena regarding transport of the surface miner¹⁷⁵. Mr Nice said he was involved in organising the float as he had been out to the Credo site but, there were a number of other people within Global who were also were involved in finalising the float. He said he was aware Centurion Transport were unable to provide the items requested in the Subpoena as it was some 6 months after they had carried out the work. He also said it is possible Centurion Transport may not have been able to provide their own float and might have used somebody else to subcontract the movement of the surface miner. If that had occurred, Mr Nice said the account may have come from Centurion Transport. Mr Nice further said, he was aware Centurion Transport indicated they could not assist with a response to the documents called for in the Subpoena and, as a result, he did nothing more.
239. Mr Nice was referred to a photograph in his March 2020 affidavit, of the surface miner. Mr Nice said he did not take that photograph and it was taken by one of Global's employee's, Mr Jayden Samelko, using a drone. Mr Nice also confirmed he was not physically at the Credo site between 7 and 25 November 2019 but was in touch, on a daily basis, with Global's employees who were on site and received Daily Record Sheets of their work.
240. Mr Nice was asked if it was correct, in his December Affidavit, that he prepared the proposal on behalf of Global to provide the surface miner to Gold Tiger in September 2019 to carry out work on the Credo Project. Mr Nice the proposal he prepared in September 2019 was a general form of proposal that outlined to Gold Tiger the cost of the use of the surface miner and the general costings to carry out the work requested. He said the proposal was subject to him visiting site to ensure the surface miner was able to access the site at which it was to be used. Following his visit to the Credo site he determined the surface miner would be moved on 100 tonne float to a position on a formed road and then unloaded and walked the final 1 km through the bush to where the costeans were to be dug as indicated by the survey pegs put in place by Mr Hawker. He further said there were no properly formed roads that enabled the surface miner to be floated to the exact place where the work was to be done.
241. Mr Nice said he believes he may have had further communications with Mr Hawker regarding other matters, other than those disclosed, on a separate email chain between 19 September and 1 November 2019. He said he had other communications with Mr

¹⁷⁵ Exhibit 37

Hawker regarding attendance at the Credo site but believes that may have been telephone communication.

242. Mr Nice was referred to various entries in the Start-Up Action Register prepared by him for Global's Operation Management Plan meeting following acceptance by Gold Tiger. With respect to counsel for the Applicant, her questions suggested she misconstrued the nature of the entries contained in the Start-Up Action Register as being dates on which the various activities listed were carried out or as confirmed by Mr Nice 'closed out.' The Start-Up Action Register is clearly a date-based checklist prepared by Global to ensure each step necessary to carry out the contract with Gold Tiger is met. The Start-Up Action Register also identified by initial the employee of Global who was to attend to each requirement by the date indicated. That position was made clear by Mr Nice in his response, to counsel for the Mr Owen, question as to the point in the pre-site inspection on 5 November 2019, noted at 4.2 of the Start-Up Action Register, when he had already attended the Credo site on 17 October 2019. Mr Nice said the pre-site inspection by 5 November 2019 was a reference to inspecting the surface miner and other assets that were required to be transported on 7 November 2019 before they left Global's yard in Perth. Further, Mr Nice also made it clear the reference to accommodation bookings in Kalgoorlie by 4 November 2019 was a reference to the booking of accommodation as a contingency for their workers at the Credo site if needed. He said no charge was rendered to Gold Tiger for accommodation used by Global's employees from the Credo site when a bushfire came through the area causing them to evacuate the site and stay in Kalgoorlie.
243. Further, it was put to Mr Nice there was no point in compliance with item 4.70 of the Start-Up Action Register to advise the float company of all site-specific permits and all requirements for site entry when on 7 November 2019 the surface miner would already be on the Credo site. Mr Nice said those items would have already been done by 7 November 2019. It was put to him why it would appear in their Start-Up Action Register if it had already been done. Mr Nice said it would be a mistake that he could not explain. Mr Nice denied the Action Start-Up Register was a document created by him after November 2019. Mr Nice said the printing at the bottom of the Start-Up Action Register that indicated "Revision 4 18 August 2018" was the last time the document had been revised and it was part of the document control system within Global.
244. Mr Nice confirmed the agreement between Global and Gold Tiger was a daily charge for each day the surface miner was on site plus transport costs, accommodation charges and GST. He was asked to explain why Gold Tiger was only charged for 10 days of hire of the surface miner when it was on site for 20 days. According to Mr Nice charges for the hire of the surface miner were not rendered when the Global crew were not on site including when there was a bushfire in the vicinity of the Credo site. He also said Global was not a friendly job and it was being done as a trial for Mr

Hawker and Global were not trying to make a million out of it. He further said Global was trying to help Gold Tiger prove up a concept.

245. Mr Nice said the surface miner used at the Credo site was capable of milling between 100 and 700 cubic metres per hour. He also said in a 12 hour shift there could be all sorts of issues with the surface miner including breakdowns that would dictate the volume milled may not be the maximum rate and it could be the surface miner is walking between sites which is regarded it is mining. The Daily Shift Reports prepared by the surface miner crew have, according to Mr Nice, sufficient information to calculate how much was milled in each day the surface miner was operated on site or the amount had been calculated by the surface miner crew. Again, Mr Nice confirmed he was not on the Credo site while the surface miner was operating for Gold Tiger.

Re-Examination

246. In re-examination, Mr Nice confirmed entries and headings on the Action Start-Up Register indicated, by dates, when each of the actions had to be completed and by whom.

Mr Darryl Redvers Higham

247. Mr Darryl Redvers Higham ('Mr Higham') is an electrical contractor and lives in Hamilton Hill. Mr Higham gave evidence in these proceedings by affidavit dated 11 January 2021¹⁷⁶ and orally.

Affidavit Evidence and Evidence in Chief

248. In his oral evidence, Mr Higham confirmed, in his evidence in chief, that the content of his affidavit was true and correct.
249. Mr Higham deposed in 2019 he did contract work for APS with his contact at that business being Mr Bruce Strapp ('Mr Strapp'). Mr Higham deposed he worked for APS on a trommel system at Gin Gin on 15 and 16 November 2019.
250. Mr Higham further deposed, on 25 November 2019, he was engaged by APS to oversee the operation of the trommel system as part of a wet gravity circuit on mining tenements near Credo Station. He deposed his first shift at the mining tenements were from 25 November to 1 December 2019. He deposed he left the mining tenements and returned for a second shift between 9 and 16 December 2019. He further deposed he again left the mining tenements for the Christmas break on 17 December 2019 and returned on 17 January 2020. While on the mining tenements, Mr Higham deposed he stayed at the mining camp on site and attached a photograph of the Camp¹⁷⁷.

¹⁷⁶ Exhibit 36

¹⁷⁷ Exhibit 36 annexure DH 2

251. Mr Higham deposed when he arrived on the mining tenements for his first shift on 25 November 2019, he was shown a costean that had been dug on the mining tenements. The wet gravity circuit was, according to Mr Higham, first operated next to a costean he referred to as 'Costean 1' by reference to a map and photograph he identified and attached to his affidavit¹⁷⁸.
252. Mr Higham's also attached to his affidavit was a short video he deposed he had taken, using his mobile phone, of the wet gravity circuit operating at Costean 1 on 11 December 2019 at 1.57 pm¹⁷⁹.
253. Mr Higham deposed the wet gravity circuit was moved from Costean 1 to a place on the mining tenements known as Nyborg's Pit while he was absent from the mining tenements between 17 December 2019 and 17 January 2020.
254. Further, attached to Mr Higham's affidavit were photographs of the trommel, a conveyor that conveyed material to the trommel and a photograph of the wet gravity circuit operating in Nyborg's Pit¹⁸⁰. Mr Higham also attached to his affidavit 2 invoices he rendered to APS for his work at Gin Gin on 15 & 16 November 2019, at the mining tenements between 25 November to 1 December 2019, 9 to 16 December 2019 and 17 to 30 January 2020¹⁸¹.

Cross Examination

255. Mr Higham said the trommel was at Gin Gin on 7 November 2019. He also said the trommel operated from 27 November to 17 December 2019 when he left the mining tenements. Mr Higham confirmed he was engaged by APS through its director, Mr Bruce Strapp, who he has known for a long period of time, to do work on the trommel at Gin Gin and later to assist in the operation of the trommel and wet gravity circuit as the site supervisor on the mining tenements during the period between November 2019 to January 2020. Mr Higham said he has been involved in mining for over 30 years and has built 3 other plants and it was that knowledge that Mr Strapp engaged him to work on the mining tenements for APS.
256. Mr Higham said he left Perth on 25 November 2019 and arrived at site at about 3 PM the same day where he was shown around the site of the mining tenements by one of the supervisors, whose name he could not recall. Mr Higham confirmed Costean 1 and the Nyborg Pit was there when he arrived at the site on 25 November 2019. He said his contract included being paid for travel time both to and from the mining tenements. He also said he met Mr Hawker on site at the mining tenements while he was present. According to Mr Higham, Mr Hawker attended the mining tenements on

¹⁷⁸ Exhibit 36 annexures DH 1 & DH 3

¹⁷⁹ Exhibit 36 annexure DH 87

¹⁸⁰ Exhibit 36 annexure DH 4, DH 5 & DH 6

¹⁸¹ Exhibit 36 annexure DH 7

a number of occasions while he was engaged on site. He also said Mr Brad Green, Mr Tan and another investor also attended the mining tenements whilst he was on site.

257. Mr Higham said he had no knowledge of the reference to the surface miner in the photograph of the layout of the mining tenements. He said he was aware of the location of the costeans as he had walked all over them while he was on site on the mining tenements. Further, Mr Higham said he did not take the photographs contained within his affidavit and they were produced to him by the lawyer acting for Mr Hawker. However, Mr Higham said he recognised the Costean 1 and the Nyborg's Pit as he travelled past them every day while moving from the Camp to each site at which the plant was operating. While he was away on his break between shifts at the mining tenements, Mr Higham said the operation was supervised by a person called Jeff, one of the directors of APS.
258. Mr Higham said he was not paid in cash by APS. The invoices for the work he carried out on the mining tenements were prepared by a person associated with him called Mr Ryan Burnell. Mr Higham said he noticed a spelling error in the invoices that referred to the project as the 'Kalcoolgardie Project' he was told to leave it as it was by Mr Burnell.
259. It was denied by Mr Higham that the invoices attached to his affidavit were created by him at the request of Mr Strapp from APS. Further, Mr Higham denied he worked on a wet gravity plant in the Coolgardie region but that didn't happen until after Christmas 2019. Mr Higham said the plant on the mining tenements stop operating in mid-January 2020 and for the period 17 to 30 January 2020 he was working on the mining tenements but doing clean-up work and sampling.
260. Further, Mr Higham said when he left the mining tenements on 17 December to take the Christmas/New Year break the wet circuit and plant was still operating and 2 people stayed on-site but he is not sure whether they ran the plant during that period. He also said, when he returned from the Christmas/New Year break the plant had been shifted to near the Nyborg's Pit near the dams where it was being run down. It was again put to Mr Higham he was not present on the mining tenements in November and December 2019. Mr Higham vehemently denied this proposition and said he was present on the mining tenements during that period in accordance with his invoices.
261. Mr Higham said he was asked by Mr Hawker if he would give a statement for these proceedings and, after he had agreed, a lawyer for Mr Hawker got in touch with him and he provided his affidavit. He denied he had problems recalling what had occurred in late 2019 and early 2020, at the mining tenements. He also denied his evidence in these proceedings is what he was told to say by others. Mr Higham made it clear in his evidence he was engaged by Mr Strapp to work on the trommel and then to supervise the operation of the plant on the mining tenements because of his experience and knowledge of wet plants. Mr Higham said he was not asked to provide the receipts

referred to in his invoices, but he could do so together with other invoices for purchases of fuel etc.

262. Mr Higham denied the video recording of the wet circuit operating was taken in or about late January or February 2020. He said it was taken on the date and at the time shown on his camera being 11 December 2019 at 1.57 pm. He further said he did not know how he could change the date of the video recorded on his phone.
263. A copy of the screen shot was taken of the meta data for the video recording taken by Mr Higham on 11 December 2019 was produced into evidence¹⁸².

Mr Darren Shane Scattini

264. Mr Scattini provided evidence by way of an affidavit sworn 8 January 2021 incorporating a 3 volume report ('Report') with amendments¹⁸³, a statement of his qualifications and experience¹⁸⁴ and oral testimony pertaining to observation he made 393, 396 and 449.

Affidavit of Mr Scattini sworn 8 January 2021 and the Report.

265. Mr Scattini deposed he is a prospector and tenement investigator and lives in Kalgoorlie.
266. It is not in issue Mr Scattini has worked as a driller with Ausdrill for about 4 years from 2009 to 2012 during which time he attained a Certificate III in Exploration Drilling Operations. It is also not in issue Mr Scattini has engaged in pegging mining tenements, attending to relevant paperwork associated with prospecting, collected, crushed and tested reef samples and used a front-end loader. He has not conducted drilling on any mining tenements he holds. In 2020, he deposed he commenced a business called Independent Tenement Investigations in which he takes instruction to provide independent reports on activities he observes to have occurred on mining tenements on behalf of clients.
267. Mr Scattini swore the content of his affidavit which attached his report, with certain amendments advised to the Court, was true and correct.
268. Mr Scattini deposed that on 16 October 2020, he received instructions from Mr Kavenagh, on behalf of Gold Tiger, to prepare a report into certain aspects of applications for forfeiture of E 16/365, 393, 396, E 16/415, 449, E 16/457 and M 16/524. In the preparation of the Report, Mr Scattini deposed he took photographs, prepared maps and diagrams and visited the tenements subject to the applications for forfeiture.

¹⁸² Exhibit 38

¹⁸³ Exhibit 39

¹⁸⁴ Exhibit 40

269. The methodology used in the preparations of the Report, included but was not limited to the first instructions to visit to sites, was outlined by Mr Scattini¹⁸⁵. Relevantly, Mr Scattini made 3 separate visits to the Credo Project with the 1st being 9 to 16 November 2020, the 2nd being 21 November 2020 and the 3rd being 29 December 2020. Mr Scattini took photographs of various observations he made during his visits to the Credo Project and attached many of them to the Report. Mr Scattini also outlined in the Report he used 2 different GPS and a compass to locate the mining tenements on the ground, the method used to locate the mining tenements, the method used to download maps and other data including electronic data and other preparations used by him in compiling his report¹⁸⁶.
270. A copy of the initial instructions and annexures dated 16 October 2020 to Mr Scattini from Kavenagh Legal, on behalf of Gold Tiger, were attached to the Report¹⁸⁷. Kavenagh Legal provided Mr Scattini with background information regarding the forfeiture applications by Mr Owen for the mining tenements within the Credo Project and maps of their general location. Mr Scattini was also provided with an outline of the contentions in response by Mr Sandhu to the forfeiture applications by Mr Owen. One of the tasks requested of Mr Scattini was to locate the position of the mining tenements that comprise the Credo Project 'on the ground' so he could carry out the other instructions provided to him. Specifically, Mr Scattini was asked to carry out various tasks in relation to E 16/365, E 16/415, 393 and 396. Mr Scattini was asked to carry out certain observations in respect to E 16/365 and E 16/415 and to that end was provided with an Excel Spreadsheets marked 'annexure E & annexure 'G' containing coordinates for a drilling program by Mr Sandhu in 2017 and coordinates for a drilling program carried out by Delta Gold in 2000. Mr Scattini was not asked to carry out any other tasks for any other mining tenements in the initial instructions.
271. Relevant to these proceedings, Mr Scattini was instructed to carry out a number of tasks in respect to 393 and 396. Common to both 393 and 396, Mr Scattini was provided with an Excel spreadsheet marked annexure 'J' with co-ordinates (eastings and northings) of drill holes Mr Sandhu says were drilled on both 393 and 396 between 12 and 17 December 2018. Mr Scattini was instructed Mr Owen had deposed he had travelled to 393 and 396 in August and September 2018 and he observed historical drilling had taken place. Mr Scattini was also instructed Mr Owen deposed he returned to both 393 and 396 on 16 December 2019 where he observed the same historical drilling seen in August and September 2018, but observed, no new drilling to have occurred.
272. Mr Scattini was instructed by Kavenagh Legal, on behalf of Gold Tiger, in respect to both 393 and 396 as follows:

¹⁸⁵ Exhibit 39 at Volume 1 pages 3 to 20

¹⁸⁶ Exhibit 39 at Volume 1 pages 7 to 13

¹⁸⁷ Exhibit 39 at Volume 3 Annexure A

'Your brief is to go to the location of each alleged drill hole described in annexure J and determine whether there is any sign or evidence of a drill hole at that location and if so, whether:

- a. the drill hole is on the land the subject of exploration license 16/393 (16/396);*
- b. whether the state of the drill hole is consistent with the drill hole having been undertaken in the period 12 December 2018 to 17 December 2018;*
- c. whether there is a peg in the ground in the vicinity of the drill hole;*
- d. whether the peg is consistent with the peg having been in the ground since December 2018;*
- e. whether there are any sample bags in the vicinity of the drill hole;*
- f. whether the state of the sample bag is consistent with the sample bag having been on the ground since December 2018;*
- g. whether there is a texta mark on the bag;*
- h. whether the texta mark is consistent with the texta mark being on the sample bag since December 2018.¹⁸⁸*

273. Counsel for Mr Sandhu informed the Court, during the proceedings, that Mr Sandhu no longer relied on the opinion answers by Mr Scattini to questions B, D, E, F & H in the Report and only relied on Mr Scattini's observations, as a lay observer, and his answers to questions A, C, E & G¹⁸⁹.

274. Annexure 'J' attached to the initial instructions from Kavenagh Legal, dated 16 October 2020, is an Excel spreadsheet headed '*E16-393 and E16-396 Drill hole pick ups December 2018.xisx*'. That document marked annexure 'J' contains the following headings: *label, easting, northing, RL, Depth, dip, azim, grid, Type, Tenement*. Each of those headings has various information contained within it and, in particular, the details of the labels, the tenant number to which the label relates and the easting and northing data. It also contains similar details in relation to P 16/2790, a mining tenement not specifically the subject of these proceedings.

275. I make this observation about P 16/2790. In the course of cross-examination of Mr Hawker by counsel for Mr Owen, Mr Hawker was shown a copy of the Department Register Search for P 16/2790¹⁹⁰. Mr Hawker was asked to explain why he had claimed expenditure for work carried out on P 16/2790 in invoices within the Credo Project¹⁹¹ when P 16/2790 was dead, it being withdrawn on 16 January 2013. Mr Hawker struggled to answer that question and he suggested the reason may have been he did not check the status of P 16/2790 in a list given to him by Mr Sandhu¹⁹². This same mining tenement, P 16/2790, has again been referred to by Mr Sandhu in the 2018 December drilling program. According to the Report, various drill pegs with labels consistent with those from within the lists provided by Kavenagh Legal were found within 393^{193, 194}. The easting and northing description of the location of the

¹⁸⁸ Exhibit 39 annexure A

¹⁸⁹ TS at page 498 & 499

¹⁹⁰ TS at page 363 & 364

¹⁹¹ Exhibit 18 annexure AH 35 & AH 37

¹⁹² TS at pages 363 & 364 and 367 & 368

¹⁹³ Exhibit 39 Volume 3 Annexure A within annexure J at page 4 of 4

¹⁹⁴ PSL118211 to PSL118224

datum of P 16/2790 and that mining tenement itself appears to be in the location of Mr Scattini's observations of drill pegs bearing labels¹⁹⁵ for the 2018 drilling program on 393 in the vicinity of the locality known as Sea Gull Mine. Further, the eastings and the northings of the datum for P 16/2790 appears to be located in the same vicinity as the drill pegs and labels found by Mr Scattini¹⁹⁶ on 393. It can be inferred, in my opinion, from those observations that part of the 2018 drilling program claimed by Mr Sandhu was conducted on 393 in the vicinity of the late mining tenement P 16/2790, it being incorrectly referred to as if it were still alive. My inference that P 16/2790 was located on 393 is fortified by maps contained within the Aboriginal Heritage Survey by Mr Glendenning¹⁹⁷ and Terra Rosa Heritage Survey¹⁹⁸ where the location of P 16/2790 is noted on maps within those reports as being in the same location shown on maps within the Report.

276. In total, (based on my calculations) the list of drill holes from the 2018 drilling program in annexure 'J' is 220. The Report indicates there are 72 (drill hole) labels in respect to 393, 14 labels in respect to P 16/2790 being a total of 86 labels on 393. There are a total of 134 labels on 396.
277. The Report identifies Mr Scattini found 80 of the labelled drill holes of the 86 labelled drill holes on 393. Of those 80 labelled drill holes Mr Scattini was able to identify and match 43 labelled drill holes to the label numbers off either or both the drill peg or from writing on the drill bags. He made no observations of a label number on 37 labelled drill holes from either a drill peg or drill bag, as they were absent or had no legible writing on them, if present.
278. Further, the Report identifies Mr Scattini found 100 labelled drill holes of the list of 134 labelled drill holes on 396. Of those 100 labelled drill holes Mr Scattini located he was able to identify and match the label on 85 labelled drill holes predominately by writing on the drill peg. Mr Scattini was unable to identify 15 of the labelled drill holes as there was no peg present or no drill bags with writing legible on them. He made no observation of 34 labelled drill holes at all.
279. The Report provided photographs of all the drill holes locations Mr Scattini observed with labelled numbers, if visible and identifiable, and drill bags he located from the labelled drill list marked annexure 'J' to his initial instructions from Kavenagh Legal of 16 October 2020.
280. Under the initial instructions, Mr Scattini was briefed to identify whether on 396 there are 2 large costeans said by Mr Sandhu to have been dug between 7 & 25 November

¹⁹⁵ Exhibit 39 Volume 1 at page 135 & observations within 358 to 372

¹⁹⁶ Exhibit 27 (Description Details) & 39 Volume 3 Annexure A within annexure C

¹⁹⁷ Exhibit 41 annexure AH 7 at page 60

¹⁹⁸ Exhibit 41 annexure AH 9 at pages 69 & 76

2019 and to photograph them. In that regard, Mr Scattini was provided with 2 Excel spreadsheets, marked as ‘annexure K1 & K2’, with coordinates for the costeans¹⁹⁹.

281. Mr Scattini was also instructed in respect to 396 to locate, photograph and provide a general map of the layout of an area known as Nyborg’s Pit and to determine how far each costean is from the southern edge of Nyborg’s Pit. He was provided with a map, marked as ‘annexure L’, showing the location of Nyborg’s Pit and the costeans. Mr Scattini was also instructed to locate a campsite located near Nyborg’s Pit on 396 and to photograph the area and provide a general map of the layout of that area. In the Report, Mr Scattini provided photographs of both the northern²⁰⁰ and southern²⁰¹ costean²⁰². He described the southern costean to be 1530 metres to the south of Nyborg’s Pit with a width of about 3.5 to 4 metres and about 1 metre deep over a length of about 500 metres. Further, he described the northern costean to be 880 metres to the north of Nyborg’s Pit with a width of about 3.5 to 4 metres and about 2 metre deep over a length of about 450 metres. Both the northern and southern costeans were observed by Mr Scattini to have been located on 396. The Report provided various photographs of both Nyborg’s Pit²⁰³ and the Camp²⁰⁴.
282. The Report indicates on 24 & 29 October 2020 and 4 November 2020, Kavenagh Legal had further communications with Mr Scattini²⁰⁵ regarding his instructions that involved queries regarding the number of drill holes contained in the document marked annexure ‘G’ to the initial instructions and in relation to drill holes undertaken in October 2017 on E 16/365 and E 16/415 and the receipt of gpx files for those mining tenements.
283. Mr Scattini was provided, relevant to 396, with further instructions by Kavenagh Legal on 6 November 2020 to identify an area within the campsite where a fuel tank had been left. He was also provided with an overhead photograph of the Camp area said to have been taken on 396. Further, Mr Scattini was instructed to attend the Coolgardie North Road turn off towards 396 to observe trees near the track, marks on the surface of that track, observe any evidence of a surface miner having been driven along the track and whether there was any significant overgrowth along the track that could have provided evidence a surface miner had accessed 396 along the track. In the Report, Mr Scattini provided photographs of the apparent location of the fuel tank²⁰⁶ and photographs of the track off the North Coolgardie Road²⁰⁷ and other observations of the location of use of the machine miner²⁰⁸.

¹⁹⁹ Exhibit 39 Volume 3 Annexure A

²⁰⁰ Exhibit 39 Volume 2 at page 235

²⁰¹ Exhibit 39 Volume 2 at pages 236 & 237

²⁰² Exhibit 39 Volume 2 at pages 462 to 465

²⁰³ Exhibit 39 Volume 2 pages 247-253

²⁰⁴ Exhibit 39 Volume 2 at pages 239 to 243

²⁰⁵ Exhibit 39 Volume 3 Annexure B

²⁰⁶ Exhibit 39 Volume 2 at pages 452 & 453

²⁰⁷ Exhibit 39 Volume 2 at pages 447 to 452

²⁰⁸ Exhibit 39 Volume 2 at pages 456 to 457

284. On 18 December 2020, Kavenagh Legal provided Mr Scattini with further instructions in relation to E 16/415. He was also provided with a photograph of the diesel tank that was situated on 396 and the details of the make and type of surface miner used by Global on 396 together with a copy of the proposal contract between Gold Tiger and Global. Mr Scattini was also instructed to make a calculation of dirt removed from both costeans near Nyborg's Pit.
285. On 19 December 2020, Kavenagh Legal provided Mr Scattini with details of the equipment said to have been used on land on which the costeans were dug, how the costeans were cut and how the surface miner moved, how soil removed from the costeans were placed on or near the costeans and other details of the operation used in digging the costeans.

Cross Examination of Mr Scattini

286. Mr Scattini was cross examined regarding the methodology he used when he visited mining tenements for the preparation of the Report. Mr Scattini said his initial instructions from Kavenagh Legal of 16 October 2020, in respect to E 16/415 & E 16/365, were dependent upon annexure 'E' that provided a list of the coordinates for drill holes from a drilling program by Mr Sandhu in 2017 that was identical to a drill program by Delta Gold in 2000.
287. On attending E 16/415 & E 16/365, on about 9 November 2020, to locate the drill holes in accordance with annexure 'E', Mr Scattini said it became apparent there was an error in the coordinates given to him as he was unable to locate the drill holes. Accordingly, he said Mr Kavenagh from Kavenagh Legal instructed him to stop using the coordinates in annexure 'E' and he was later given another set of coordinates via a gpx file. The issue with the coordinates was described by Mr Scattini to be due to the coordinates originally provided having been transferred into a particular program that was set to the wrong coordinate system²⁰⁹. Mr Scattini did not accept he had not complied with his obligation to carry out his instructions independently as he said his original instructions changed and new instructions given to him which he followed. He said he then found some of the drill holes from 2017.

Findings and Outcome

288. Mr Owen bears the onus of proof, to prove on the balance of probabilities, that Mr Sandhu failed to meet the minimum expenditure conditions in the 2019 Year for 393, 396 and 449 before a recommendation for forfeiture of all or any of those mining tenements can be contemplated to be made.
289. For the following reasons, I find Mr Owen has failed to discharge the onus upon him to satisfy me, on the balance of probabilities, that Mr Sandhu has not expended on

²⁰⁹ Exhibit 39 Volume 2 at page 474

393, 396 and 449 the minimum expenditure required for each mining tenement in the 2019 Year. Accordingly, applications for forfeiture 569410, 569411 and 569412 affecting 393, 396 & 449 will be dismissed.

Aide' Memoire of Expenditure claimed by Mr Sandhu

290. Counsel for Mr Sandhu produced an Aide' Memoire of expenditure claimed to have been expended by Mr Sandhu on 393, 396 and 449 in the 2019 Year. That amount appears to be the product of all invoices referred to in the evidence presented by the witnesses for Mr Sandhu. It is apparent the amount of expenditure claimed to have been expended, with the exception of 449, exceeds the amount reported in the Form 5 lodged for each of the 3 Exploration Licences. Below is the Aide' Memoire of expenditure claimed for the 3 Exploration Licences by Mr Sandhu in 2019 Year.

	E 16/393	E 16/396	E 16/449-I
Expenditure Year	13.08.18 – 12.08.19	10.12.18 – 09.12.19	18.08.18 – 17.08.19
Minimum Expenditure	\$70,000.00	\$70,000.00	\$20,000.00
Gulnair Drilling Dec 2018	\$ 41,250.00	\$ 28,050.00	
Interk Sample Analysis	\$ 20,850.95	\$ 28,301.48	
HGS Drilling Support	\$ 26,545.20	\$ 17,696.80	
Prospecting	\$ 36,611.00	\$ 4,284.00	
Glendenning Survey	\$ 10,301.50	\$ 10,301.50	
Airborne survey (Magspec)	\$ 12,127.35	\$ 10,550.70	\$ 3,390.00
Rountree	\$ 1,558.06	\$ 1,355.51	\$ 434.60
Terra Rosa Consulting	\$ 7,032.87	\$ 7,032.87	
Costeaning		\$137,610.66	
Camp-Fiesta Caravans		\$ 49,122.85	
APS-Trommel Hire		\$ 89,661.00	
Brooks Hire		\$ 15,593.60	
Eagle Petroleum		\$ 41,036.44	
Gyro Drilling		\$ 18,285.07	
Hampton Transport Services		\$ 1,650.00	
OTR Tyres		\$ 2,182.84	
WA Crushing		\$ 27,500.00	
BW Solar		\$107,402.46	
HGS Field Investigation		\$ 6,664.20	
Credo Station		\$ 390.00	
HGS Field Trip June/July			\$ 759.01
Field Trip & geological analysis			\$ 15,377.77
Rates	\$ 599.58	\$ 524.64	\$ 437.00
Rent	\$ 4,536.00	\$ 3,969.00	\$ 660.00
Administration	\$ 1,551.71	\$ 2,672.58	
Total Expenditure	\$162,964.22	\$ 611,838.20	\$ 21,058.38

Amounts Expended Not in Dispute

291. Mr Owen has not challenged the expenditure claimed for Shire Rates and Annual Rental for the 3 Exploration Licences. Accordingly, I find expenditure for those items has been made on the 3 Exploration Licences for the 2019 Year.
292. Further, Mr Owen has not challenged the cost of the field visits and preparation of the Aboriginal Heritage Surveys by Terra Rosa and Mr Glendenning in respect to 393 & 396. Accordingly, I find expenditure for those items has been made on the 2 exploration licenses in the 2019 Year.
293. Other than Mr Owen denying any other work was conducted or expenditure incurred on the 3 Exploration Licences in the 2019 Year, no evidence was led by Mr Owen that disputed expenditure claimed for the airborne survey by Magspec and the assistance in interpretation of that airborne survey by Rountree. I accept the evidence of Mr Hawker that he incurred this expenditure with Magspec and Rountree. I find the expenditure for those services were incurred in the 2019 Year and the allocation between the 3 Exploration Licences is appropriate for that type of service.
294. I also find no challenge was made by Mr Owen, other than a blanket denial any other expenditure was incurred, to the claim that expenditure was incurred on 393 & 396 in the 2019 Year on administration services by Anderson's Tenement Management. I have viewed the expenditure claimed, in this regard, and find it is allowable expenditure and was incurred as claimed.

2018 Drilling Program on E 16/393 & E 16/396

295. Mr Owen said he made observations in August and September 2018 of historical drilling on 393 & 396. No photographic or electronic record of the historic drilling was produced by Mr Owen. Further, Mr Owen maintained despite his regular, thorough and detailed inspections of 393 & 396 on foot, by quad bike and by car he saw no signs of any further drilling to have been undertaken between September 2018 and 16 December 2019. No photographic or electronic record of the observation by Mr Owen between September 2018 and 16 December 2019 was produced by Mr Owen. It is surprising that Mr Owen, who clearly had considerations to commence forfeiture proceedings for non-compliance with expenditure conditions when embarking on regular and thorough inspections of 393, 396 and 449, would not utilise a recorded image of those visits to support his claimed observations. That is more so the case when he had obtained a copy of the Form 5's for each of the 3 Exploration Licences and was aware it was claimed expenditure had occurred. It is even more surprising, that on 16 December 2019, Mr Owen did not utilise his mobile phone he had with him while chasing a phone signal on 396 and taken photos of a drill peg near a miscellaneous licence on a haul road as he left the area to make a photographic record of his observations on 393, 396 & 449. I find it unusual, to say the least, that photographs were taken by Mr Owen of 393 and 396 in June 2020, months after he lodged the applications for forfeiture, but no photographs were produced or it seems

taken of 393 and 396 on 16 December 2019, several days before the applications for forfeiture were lodged, to support his claimed observations.

296. I accept the evidence of Mr Hawker of the various drilling and other activity on 393 and 396 undertaken, at his instruction, in December 2018. In accepting Mr Hawker's evidence, I accept he held the belief he was present on 393 and 396 when drilling by Gulnair occurred in December 2018. He acknowledged he was, in fact, on a cruise to New Zealand at that time although in constant contact with his staff assisting the 2018 drilling program. I acknowledge Mr Hawker corrected his mistaken belief after he had observed his telephoned records for that period. I also note Mr Hawker also swore an affidavit on 14 April 2020 in which he also deposed he was present on 393 and 396 during the 2018 Drilling Program. I do not accept the error by Mr Hawker could be described as a typographical error. However, I accept he was mistaken as to his memory of his presence on 393 and 396 at that time. I find that error by Mr Hawker does not diminish the other documentary and oral evidence produced by him and the oral, documentary and photographic evidence produced by Mr Scattini. in as to the 2018 Drilling Program on 393 & 396.
297. I accept the evidence of Mr Hawker that he planned the 2018 Drilling Program on 393 and 396, obtained from the Department approval for the POW, engaged Gulnair to undertake the drilling, engaged Intertek to carry out drill sample testing, took samples to Intertek and provided through HGS geological support service for the drilling. I accept and find the various documentary exhibits produced by Mr Hawker in support of the work carried out and expenditure incurred in conducting 2018 Drilling Program on 393 & 396 as being true and correct.
298. I also accept and find as accurate and through the photographic record of the observations made by Mr Scattini on 393 and 396 of the drill holes he located from the list of coordinates in annexure 'J' of the instructions from Kavenagh Legal of 16 October 2020. Further, I accept and find the labels on the drill pegs, or, in few cases, the drill bags identified by Mr Scattini are identical to the label recorded in annexure 'J' as being the site of drilling in 2018 on 393 & 396. Drill holes were also found in most cases at the same site identified by labels found by Mr Scattini. On my calculations, annexure 'J' recorded 220 drill holes with labels and coordinates. Mr Scattini found signs of either drill bags, drill holes or drill pegs on 180 sites (being 80 on 393 & 100 on 396). Mr Scattini failed to find any drill pegs, drill bags or drill holes on 40 sites (being 6 on 393 & 34 on 396). Further, Mr Scattini was able to match the labels identified from drill bags or drill holes to the annexure 'J' list on 128 sites (being 43 on 393 & 85 on 396). Mr Scattini was unable to specifically identify the annexure 'J' list details to 52 sites he identified (being 37 on 393 a & 15 on 396).
299. I give little weight to the evidence of Mr Poole although his evidence is otherwise honest. He was not present on his mining tenements when the 2018 Drilling Program was conducted and was absent for long periods of time. In his oral evidence, he did

not elaborate on his affidavit evidence he maintained consistent observation of works being conducted on 393 & 396 each time he was on his mining tenement. He did say he had traversed the 393 in the vicinity of his mining tenement before he took any photographs in June 2020. I do not accept the evidence of Mr Poole is reliable.

300. I do not accept the evidence of Mr Owen that he did not see any signs of drilling on 393 and 396 because it is inconsistent with that observed by Mr Scattini. It is difficult to accept Mr Owen was unable to observe any of some 180 drill holes from the 2018 Drilling Program seen by Mr Scattini when one considers the photographic evidence in the Report.
301. I reject the evidence of Mr Owen that Mr Hawker and Mr Scattini are liars and all invoices produced in 2018 and 2019 that relate to 393 and 396 of the 2018 Drilling Program have been fabricated. I find the observation evidence of Mr Scattini of drill holes at locations consistent with labels for drill holes from the 2018 Drilling Program on 393 & 396 corroborates all the evidence of Mr Hawker that the 2018 Drilling Program took place as stated by Mr Hawker in December 2018. I find the invoices for work carried out from Gulnair, Intertek and HGS are true and correct and were incurred and expended on 2018 Drill Program in the 2019 Year on 393 & 396.

Creation of Costeans, Camp & Wet Gravity Circuit—Nyborg's Pit – E 16/396

302. I accept the evidence of Mr Hawker that in 2019 and into 2020 he was responsible for the development of exploration works on 396 in and around an area known as Nyborg's Pit. I accept the evidence of Mr Hawker and find the planned exploration was to establish a camp for workers, establish a wet gravity circuit including a trommel, conveyor belt and crusher, establish electrical power, fuel supplies, water source & supplies, hire a machine miner to establish 2 costeans and other ground works and to establish geological support services to exploration operations on 396.
303. I accept the evidence of Mr Hawker and find he achieved the development of exploration works on 396 as described above and those works commenced in about early October 2019 and continued into February 2020. Specifically, I also find a machine miner was hired from Global to dig 2 costeans and other works on 396. I find the machine miner arrived at 396 on 7 November 2019 and left on 26 November 2019 on both occasions on the back of a 100 tonne float. I find the machine miner carried out the work it was hired to do between 7 & 26 November 2019. I accept the evidence of Mr Nice, both oral and documentary, as being honest, truthful and credible. I also accept the machine miner operator's Daily Record Sheets are consistent with and reflective of the time the machine miner was operational, the work it performed and the time the machine operators were on site and the tonnage of ore dug with the machine miner. I accept and find the evidence of Mr Hawker, both oral and documentary, regarding the hire and use of machine miner on 396 in the 2019 Year was credible, honest and truthful. I accept and find the cost of the hire, transport and

use of the machine miner for the purposes of exploration work on 396 amounted to \$137,610.66 and that sum was incurred in the 2019 Year.

304. I further accept the evidence of Mr Hawker and find to facilitate the establishment of the Camp to support the exploration of the Nyborg's Pit and the operations of the machine miner and the wet gravity circuit various equipment and services were engaged, hired and used at the Camp including caravans hired from Fiesta Caravans, hire of a trommel and wet gravity circuit from AWS, hire of a Komatsu loader from Brooks Hire, purchase of fuel supplies and hire of fuel storage facilities from Eagle Petroleum, hire of a crusher from Hampton Transport with transport by WA Crushing, hire and purchase of various power generation and pumping equipment for water and the establishment and maintenance of a water supply from BW Solar and the carrying out of repairs to tyres on a loader through OTR Tyres. Mr Hawker produced photographs, invoices and reports to support the various work carried out and expenses incurred for the establishment and operation of the Camp and the wet gravity circuit from November 2019 to mid to late February 2020. I accept and find the evidenced produced by Mr Hawker was accurate, credible, truthful and reflective of the work carried out and money expended to achieve the exploration plan that had been established for the area near Nyborg's Pit on 396 in the 2019 Year.
305. I also accept the oral and documentary evidence of Mr Higham and find him to be honest, truthful and credible as to his time and observations while working at the Camp near Nyborg's Pit between 25 November 2019 and 30 January 2020 (excluding a Christmas/New Year break). Particularly, I accept and find as accurate and truthful the evidence of Mr Higham that on his arrival at Nyborg's Pit on 25 November 2019 he was shown 2 costeans that had been dug, a wet gravity circuit and the Camp. Further, I accept the video camera footage taken by Mr Higham of the wet gravity circuit working on 396 near the northern costean at 1.57 pm on 11 December 2019 as genuine and original and taken at the time and placed described.
306. I also accept the evidence of Mr McClusky of his observation of the Camp and the operations at Nyborg's Pit on 4 February 2020 as credible, reliable and truthful. However, his evidence does not assist me in determining the factual matters of expenditure on 393. 396 and 449 in the 2019 Year.
307. I accept and find the satellite photograph of the costean on 396 taken on 25 November 2019 and downloaded by Mr Hawker from links supplied by Mr McCarty as accurate and credible. I reject any suggestion by Mr Owen he was unable to obtain material from Mr McCarty as a result of actions by Mr Hawker. I accept the evidence of Mr McCarty as blunt and to the point but honest and truthful. I find he simply did not want to deal with Mr Owen as he did not have the time to spend on Mr Owen's his requests.

308. I reject the evidence of Mr Owen that he carried out extensive monitoring and ground inspections of 396 in the 2019 Year immediately before and leading up to lodging the application for forfeiture. I also reject the evidence of Mr Owen the 2 costeans, the Camp, the wet gravity circuit, drill holes and associated facilities were not on 396 in the vicinity of Nyborg's Pit on 16 December 2019 during his inspection. In the face of the evidence of Mr Hawker, Mr Higham and Mr Nice and the various documents, photographs, invoices and video recording, I find it is beyond belief that Mr Owen would not have seen the works that had been carried out and the recent activity on 396. It is even more unbelievable that from the top of a waste dump, some 15 metres above Nyborg's Pit, that Mr Owen did not see all that was happening and had happened in and near Nyborg's Pit. Further, it is not believable Mr Owen could travel north through 396 along a track that passed immediately next to the northern costean to the Coolgardie North Road for the purposes of attempting to obtain a telephone signal and return without seeing the northern costean. It is equally beyond belief Mr Owen climbed down from the top of the waste dump where he was also seeking a mobile phone signal to drive to the east and west of Nyborg's Pit to inspect at both places old diggings without observing the Camp and other facilities in the immediate vicinity on 396.
309. I do not accept Mr Owen could properly describe his attendance on 396 or 393 on 16 December 2019 as an extensive on ground field inspection prior to lodging an application for forfeiture. On his own evidence, Mr Owen said he stopped and visited areas he thought people would be working. He said he went to 3 places to try and obtain a mobile phone signal, being 2 near the Coolgardie North Rd and one on top of the waste dump at Nyborg's Pit. On his own evidence, Mr Owen said he took photographs near E 16/415 but made no mention of taking photographs on either 393 or 396 on 16 December 2019 nor did he produce any photographs taken that day. The lack of any photographic or other recorded image of his observations of 393 and 396 on 16 December 2019 is fatal to his application in the face of the evidence produced by Mr Sandhu through Mr Hawker and other witnesses called by him.
310. I reject as without foundation any observation or comments made by Mr Owen as to the manner in which Mr Hawker chose to plan, implement and operate the exploration on 396 including the use of the machine miner, the wet gravity circuit, the use of the loaders and the trommel.
311. I also reject there has been any credible evidence produced by Mr Owen to suggest Mr Hawker and those called by Mr Sandhu have lied or that the invoices or other documents produced have been fabricated by any person or company.

Accommodation-Credo Station-Field Trips-Prospecting to E 16/393, E 16/396 & E 16/449-I

312. I accept the evidence of Mr Hawker and find accommodation was utilised at Credo Station in June, August & October 2019 to house staff visiting 396. I accept and find that expense was allowable expenditure and incurred in the 2019 Year.
313. I accept the evidence of Mr Hawker and find he arranged and attend upon 449 and other tenements in January 2019 with a team of geological staff and support assistants to investigate magnetic anomalies, map surface outcrops, collect samples for analysis and portable XRF analysis. I accept and find about 14 days were spent carrying out that work and an invoice was issued by HGS to Gold Tiger and paid. I also accept the evidence of Mr Hawker and find Mr Hawker attended upon 449 on 30 June to 2 July 2019 for the purpose of a field trip. Mr Owen said he does not believe any of the work was carried out as he expected to see signs of attendance at those tenements and did not. I have no credible evidence from Mr Owen as to what steps he took to look for such signs and when. I do not accept his bold statements of expecting to see certain signs of activity, including tyre marks and disturbance to the ground, and be able to say when it occurred and by whom. He has given no evidence of weather conditions in the area of the Credo Project during the 2019 Year. He has not produced any supporting recorded images of what he did or saw on 449 in 2019 Year. I accept the evidence of Mr Hawker and find the expenditure he claimed to have expended on 449 was incurred and the work carried out in the 2019 Year. I find the nature of the exploration work carried out on 449 by Mr Hawker in the 2019 Year would be difficult to observe.
314. I accept the evidence of Mr Hawker and find Mr Sandhu authorised Mr Larwood and Mr Axon to prospect on 393 and 396. I also find in January 2019, Mr Larwood and Mr Axon applied for and were granted by the Department a POW to prospect on 393 and 396. I find they rendered invoices to Mr Sandhu for the prospecting done and were paid. I find the location of some of that prospecting by Mr Larwood and Mr Axon was indicated in the POW to be near the mining tenements worked by Mr Poole. I accept and find the work was completed by Mr Larwood and Mr Axon in the 2019 Year and has been properly incurred.
315. I accept the evidence of Mr Hawker and find between 2 and 6 August 2019, following the approval by the Department of a POW, he engaged Gyro Drilling to drill a series of drill holes on 396. I find the photographs taken, daily drill logs and invoices are consistent with the evidence of drilling and expense incurred for that drilling on 396 in the 2019 Year. I find the evidence of Mr Hawker that he used people on site operating the wet gravity circuit from Gyro in August 2019 was not consistent with the times of operation of the wet gravity circuit. Mr Hawker did clarify he also drilled some auger holes on 396 using Gyro Drilling at about the time the costeans were dug by the machine miner. I find Mr Hawker became confused between the air core drilling in August 2019 and the auger drilling in or about November 2019. I do find the drilling claimed by Mr Hawker by Gyro Drilling in August 2019 did occur and was incurred

in the 2019 Year. I find Mr Owen has not produced any credible evidence that the expenditure was not incurred as claimed.

316. I accept the evidence of and find, Mr Hawker organised a field trip between 16 & 18 October 2019 to 396 and 449 and produced a field report. I find an invoice for this field trip was rendered to Gold Tiger and paid. I find this expenditure was incurred on the 393 and 449 in the 2019 Year. I find Mr Owen has not produced any credible evidence that this expenditure was not incurred as claimed.
317. The onus to prove that Mr Sandhu did not comply with the minimum expenditure condition in the 2019 Year on 393, 396 and 449 is upon Mr Owen. I find Mr Owen has failed to produce any credible evidence that Mr Sandhu has failed to meet the minimum expenditure conditions in the 2019 Year on 393, 396 and 449.
318. I find, Mr Sandhu, through his witnesses, have produce reliable and credible evidence that the minimum expenditure for 393, 396 and 449 has been met in the 2019 Year and is consistent with that outlined in the Aide' Memoire.
319. Accordingly, for those reason Applications for Forfeiture 569410, 569411 & 569412 affecting 393, 396 & 449 are dismissed.



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Stephen Wilson
Warden

