[2022] WAMW 23

JURISDICTION	**:**	MINING WARDEN
LOCATION	**:**	PERTH
CITATION	**:**	UCABS PTY LTD & MIDWEST GOLD PTY LTD v COMPLETE PROSPECTING PTY LTD [2022] WAMW 23
CORAM	**:**	WARDEN T MCPHEE
HEARD	**:**	29 September 2022
DELIVERED	**:**	3 November 2022
FILE NO/S	**:**	Application for Restoration 638808 and Objection 639971
TENEMENT NO/S	**:**	Mining Lease 59/291
BETWEEN	**:**	UCABS PTY LTD (Applicant) AND MIDWEST GOLD PTY LTD (Second Applicant) AND COMPLETE PROSPECTING PTY LTD (Objector)

Catchwords: Restoration, non-payment of fine, forfeiture, identification of proper Applicant, joinder, Agency

Legislation:

- *Mining Act 1978* (WA) (the Act); sections 8, 97A(1), 103C(8)
- *Mining Regulations 1981* (the Regulations) (WA); Regulation 143

Result: ***1) Second Applicant joined;***
2) Objection upheld;
3) Recommendation to the Minister to refuse Application.

Representation:

Counsel:

Applicant	:	No appearance
Second Applicant	:	Mr Kavenagh
Objector	:	Mr Lawton

Solicitors:

Applicant	:	No appearance
Second Applicant	:	Kavenagh Legal
Objector	:	Lawton MacMaster

Cases referred to:

- ***BRGM Nominees Pty Ltd v Hake*** (unreported Kalgoorlie Warden's Court 26 October 1988 Volume 5, Folio 16)
- ***Carnegie Gold v McKenna & McClaren*** [2015] WAMW 7
- ***Dry Creek Mining NL v Mowana Holdings*** (unreported Coolgardie Wardens Court 10 October 1990 Volume 6, Folio 42)
- ***Peak Environmental Pty Ltd v Martinjinni Pty Ltd*** [2017] WAWM 18; [2017] WAMW 16 (4 August 2017) [2017] WAMW 16
- ***Chevron (TAPL) Pty Ltd v Pilbara Iron Company (Services) Pty Ltd*** [2021] WASCA 193 (17 November 2021)
- ***Fairworld Holdings Pty Ltd v Burrup Fertilisers Pty Ltd (Receivers and Managers Appointed)*** [No 2] [2011] WASC 136
- ***AC Minerals Pty Ltd v Cowarna Downs Pty Ltd*** [2022] WAMW 22
- ***Rosebridge Nominees Pty Ltd v Commonwealth Bank Of Australia*** [No 5] [2014] WASC 76

- ***In Maddison v Goldrick*** (1976) 1 NSWLR 651
- ***Amtel Pty Ltd v Ah Chee*** [2015] WASC 341
- ***Barclay Mowlem Construction Ltd v Dampier Port Authority & Anor*** [2006] WASC 281 (30 November 2006)
- ***MCA Nominees Pty Ltd v Nex Metals Explorations Ltd*** [2019] WAMW 11
- ***Commissioner of Taxation for the Commonwealth of Australia v Tomaras*** [2018] HCA 62
- ***Re Nash (No 2)*** (2017) 263 CLR 443
- ***Re Culleton*** [2017] JCA 3; 91 ALJR 302
- ***Federated Engine-Drivers and Firemen's Association of Australasia v Broken Hill Pty Co Ltd*** (1911) 12 CLR 398
- ***Forrest & Forrest Pty Ltd v Wilson*** (2017) 262 CLR 510
- ***A & C Mining Investment Pty Ltd v Wiltshire & Ors*** [2022] WAMW 1

Summary

1 This dispute relates to an application to restore Mining Lease 59/291 (the Application) which had been forfeited as a result of a failure to pay a penalty.

2 An entity called Midwest Gold Pty Ltd (Midwest Gold) appeared at the hearing by counsel and pressed the Application. Midwest Gold is not the named Applicant, nor the registered tenement holder. Prior to the provision of these reasons, it was not formally a party to this action at all.

3 Midwest Gold says it is the rightful owner of the tenement in question as a result of an earlier series of commercial agreements between the named Applicant and Midwest Gold.

4 Midwest Gold says that it should be heard on the Application. It says the cause of the forfeiture, being the failure to pay a penalty in accordance with a penalty notice, arose from an error in its administrative system, and did not constitute gross carelessness.

5 Midwest Gold also says the circumstances are such as to warrant the Application succeeding in any event, even if the system in question was attended with gross carelessness.

6 The Objector says the Application ought to be recommended for refusal, as the Application is in the wrong form, and further cannot be pressed by Midwest Gold. Further and in any event, there was gross carelessness involved in the failure by Midwest Gold, and no relevant circumstances to warrant the success of the Application.

7 For the reasons set out below, the Objector should succeed.

Introduction

8 The Application relates to Mining Lease 59/291 (the Tenement).

9 The named Applicant in the matter is UCABS Pty Ltd. I will from this point refer to that party as UCABS.

10 The Objector in the matter is Complete Prospecting Pty Ltd (the Objector).

11 The underlying tenement was forfeited on 22 December 2021 as a result of a non-payment of a penalty, which was due on 21 December 2021.

12 That penalty was imposed following the late payment of rent due on the Tenement.

13 The Application is dated 23 December 2021 and seeks to restore the tenement by way of a positive recommendation to the Minister.

14 The matter was listed for hearing on 28 September 2022 and proceeded on that day. I reserved my decision. As indicated, I have found for the Objector and propose to make the following orders and recommendations:

a. Midwest Gold is joined as the Second Applicant, and treated as having commenced and conducted Application for Restoration 638808;

b. The Objection ought to be upheld; and

c. The Application is recommended for refusal by the Minister.

Background

15 The following information is taken from the documentary materials tendered and is not in dispute. On the papers, the Applicant is a corporate entity, UCABS.

16 The party appearing and pressing the Application was not UCABS. Counsel appearing clarified during the course of the hearing that he appeared for a further entity, Midwest Gold. Midwest Gold was not at that time a party to the proceedings.

17 In effect, after some discourse, it became apparent (at the hearing) that Midwest Gold sought to appear in the place of UCABS, by virtue of the fact of commercial

agreements between UCABS and Midwest Gold, which were said to have the effect of selling and permitting the transfer of the Tenement to Midwest Gold.

18 The existence of those agreements is not in dispute.

19 As I understood it at the time of the hearing the position advanced by Midwest Gold was as follows:

a. The proper applicant was actually Midwest Gold, on the basis that the legal and beneficial ownership of the title to the Tenement had passed as a result of private agreements between UCABS and Midwest Gold. As a result, the presence of UCABS upon the record was, perhaps, to be regarded as a mere matter of form. As a matter of substance, Midwest Gold was the applicant party, and entitled to press it in its own right, though not named.

Alternatively,

b. The named applicant was UCABS, however, UCABS was required (as a result of the commercial agreements) to act to protect the interests of Midwest Gold. As a result, UCABS had no role to play, save perhaps for that of a puppet, and Midwest Gold was entitled to commence the Application and conduct the proceedings in all respects on its behalf, in a manner perhaps best described as a form of subrogation. This submission requires a finding that Midwest Gold (and its agents) were at all material times acting as an agent for UCABS, where necessary for the commencement of the Application.

20 Underpinning both of the positions sought to be advanced, was an issue involving an individual known as Mr Lucerne-Knight. Midwest Gold advanced a proposition that he was acting as an agent for UCABS for the purposes of commencing the Application, now pressed by Midwest Gold, for whom he was also an agent.

21 This is relevant, as section 97A of the Act (examined in more detail below) is drafted in terms of granting the tenement holder prior to forfeiture the right to commence an application for restoration.

22 It is also not in dispute that at the time of the Application, the Tenement was registered in the name of UCABS.

23 In this matter, it is not in dispute that Mr Lucerne-Knight was not a director of UCABS, nor was he employed by UCABS.

24 That is of note, as it was Mr Lucerne-Knight who signed the Application pursuant to section 97A of the Act, which identified UCABS as the Applicant, care of Midwest Gold.

25 At the hearing, and in support of the argument referred to at paragraph [19(a)] hereof, counsel for Midwest Gold advanced in oral submissions, a proposition that it was possible to be the legal holder of a tenement, without being the registered holder of the Tenement. That submission appeared to be directed at a notion that Midwest Gold had a right to commence the Application, and did so by way of an Application signed by Mr Lucerne-Knight, identifying UCABS as the Applicant.

26 It was a difficult position to try to hold.

27 As it transpired, that position was abandoned (wisely on reflection) in subsequent written submissions, wherein it was accepted that UCABS was the registered holder and was required to make the Application.

28 Thus, following further written submissions (described below), the position taken by Midwest Gold, at least as I understood it, was solely that detailed at paragraph [19(b)] hereof.

29 In any case, both of the positions sought to be adopted by Midwest Gold had, with respect, a degree of inherent strain. Those matters are canvassed further below.

30 The Tenement itself was the subject of a forfeiture by the Department of Mining Industry Regulation and Safety (the Department) on 22 December 2021 for a failure to pay a penalty notice.

31 It is not in dispute that the penalty notice was sent by the Department, by registered post, to the address contained upon the register as the contact address of UCABS for the Tenement. It was not in dispute that that address, was actually the address of Midwest Gold. It was initially submitted that the penalty notice was also sent by email, though that was not pressed.

32 The registered post letter enclosing the penalty notice was signed for by an individual who noted an identity on the receipt of the relevant registered mail as a "Mr A Bajada".

33 The penalty was not paid on time, and forfeiture followed. The penalty was ultimately paid on 22 December 2021, and amounted to $519.00.

34 The Application for restoration pursuant to section 97A of the Act, was signed by Mr Lucerne-Knight identifying UCABS as the Applicant on 23 December 2021. It was later the subject of a further amended Application, on 6 January 2022, though that further delay and the reason for it is not material.

35 The signature of Mr Lucerne-Knight appears on the Application on behalf of the Applicant (UCABS), but has immediately underneath it, details consistent with the contact details of Midwest Gold.

36 The initial part of the Application itself describes the Applicant as: UCABS Pty Ltd C/- Midwest Gold Resources Pty Ltd, PO Box 1779, West Perth 6872. That address is the postal address of Midwest Gold.

Appropriateness of Joinder

37 As a preliminary matter, in the circumstances, I am satisfied that Midwest Gold has a sufficient interest in the outcome of the matter to be heard, by virtue of the various agreements referred to in more detail below. On their face, those

agreements appear to give rise to a firm basis for Midwest Gold to at least assert an equitable interest in the Tenement at the time of the forfeiture.

38 I note and adopt in this respect (joinder) the discussion of the learned Warden Cleary in ***A & C Mining Investment Pty Ltd v Wiltshire & Ors*** [2022] WAMW 1 [23]–[30].

39 Consequently, and largely to regularize the position where there is a degree of ambiguity in respect of the nature of relationships between Midwest Gold, UCABS, the Tenement, and the outcome of these proceedings, I consider that it is appropriate to make an Order under Regulation 143 of the Regulations for joinder of Midwest Gold to this proceeding as a result of the sufficiency of its interest. I so Order, and make that party the Second Applicant. As UCABS did not appear, the truth of the matter is that the case conducted was that presented by Midwest Gold.

The Application

40 The Application is made pursuant to section 97A of the Act, seeking the restoration of the tenement.

41 The Application is supported by the following Affidavits:

a. Affidavit of Mr Roland Holger Berzins sworn 11 May 2022;

b. Affidavit of Mr Ronald Lucerne-Knight sworn 12 May 2022

42 In brief terms, leaving aside the difficult issue of standing and agency alluded to, Midwest Gold's case is that it is entitled to a restoration of the Tenement as it was entitled to make the Application, and that it should be granted as the penalty notice was not paid due to a reasonable systems error.

43 Notwithstanding the fact of that error, which arose from a fault in a system utilized by Midwest Gold to manage the correspondence and communications

sent in relation to the Tenement to it, Midwest Gold says the error does not rise to the level of gross carelessness, and so a restoration ought to follow.

44 Alternatively, if there is gross carelessness, there are nonetheless cogent reasons why the restoration ought to be granted. They were:

a. The prejudice to Midwest Gold of the loss of the actual tenements, and the associated commercial loss to its broader operations; and / or,

b. The Tenement was otherwise of good standing, and a degree of compliance could be shown.

The Objection

45 The Objector opposes the grant of the restoration.

46 The basis of the objection, as advanced at hearing was as follows:

a. The Application was not brought by the registered tenement holder, and is therefore not compliant; or,

b. If the Application is valid, it ought not be granted, as the "system" relied upon, was no system at all, rather a practice which of its nature displayed gross carelessness; and / or,

c. There is evidence of non-compliance which should militate against the grant of restoration on discretionary grounds.

47 Following the receipt of further submissions on 24 October 2022, it was additionally put that the Application did not comply with the requirements of Form 17 and could therefore not succeed.

48 It is to be noted that the Objection as framed, did not refer to the basis of objection I have referred to in paragraph [46(a) or 47] above.

49 The Objection was supported by the Affidavit Mr Matthew James Stratfold sworn 8 June 2022.

Evidence

50 The evidence to be led in the matter was said to be largely agreed as admissible at the outset of the hearing. That consisted of a number of Affidavits.

51 When counsel for Midwest Gold sought to tender the first of the Affidavits an objection was made to some of the content of it. That seemingly, came as a surprise to counsel for Midwest Gold.

52 As a result, I stood the matter down, to enable conferral to occur as to objections.

53 That conferral should have occurred prior to the date of the hearing.

54 Ultimately, the following materials were tendered in evidence:

Exhibit No:	Detail:	Tendered By:
1.	Affidavit of Roland John Berzin Sworn 11 May 2022, save for paragraph [11] thereof, which is struck out.	Midwest Gold
2.	Affidavit of Ronald John Lucerne-Knight Sworn 12 May 2022	Midwest Gold
3.	Tenement Searches - M59/346 - Searched 22 September 2022	Midwest Gold
4.	Tenement Searches - M59/347 - Searched 22 September 2022	Midwest Gold
5.	Affidavit of Matthew James Statfold sworn 08 June 2022	Objector

55 No witnesses gave evidence, nor were required for cross examination.

Comment on Ambush

56 In ***Rosebridge Nominees Pty Ltd v Commonwealth Bank Of Australia*** [No 5] [2014] WASC 76 (14 March 2014), Le Miere J at [50] said:

> a. *The rules and practice of this court do not permit trial by ambush. The plaintiff must lay its cards on the table so that all the true issues are identified and can be fairly tried in due course. The degree of precision required in a pleading, or particulars, will depend upon the particular case. In some cases the delivery of witness statements may obviate the need for greater particularity in a pleading. In other cases a fair trial will require greater clarity, precision and openness in the pleading and particularising of a party's case. In this case it is necessary so that the defendants may know whether and how they are able to resist the plaintiff's damages case. Unless the defendants know how the plaintiff puts its case they will not be able to put on lay or expert evidence in response and will not know how to cross-examine the plaintiff's witnesses. Furthermore, the court will not be able to assess the relevance, and hence admissibility, of evidence, including expert evidence, adduced by the plaintiff.*

57 ***In Maddison v Goldrick*** (1976) 1 NSWLR 651 Samuels JA (Street CJ and Moffitt P agreeing) said at 668:

> a. *But, over recent years, the endeavours of law reformers, in most cases supported by the judges, have been directed to disposing of the last vestiges of trial by ambush, and to enabling each side to start the contest with the greatest possible knowledge of what is going to be alleged against him. It is true that these endeavours proceed upon a basis of mutuality which does not so far exist in criminal procedure, because of*

the proscription upon any procedural rule which might require a defendant to provide evidence against himself.

58 In ***Amtel Pty Ltd v Ah Chee*** [2015] WASC 341 (11 September 2015), Pritchard J said at [34]:

a. *I also granted leave to permit counsel for Ms Ah Chee to tender a witness statement provided by Mr David Ah Chee, dated 14 November 2014. I granted leave notwithstanding the failure by Ms Ah Chee to comply with the orders which had been made for the exchange of witness statements in advance of the trial. Departure from such orders should not be permitted without good reason. Compliance with orders for the exchange of witness statements in good time prior to trial is essential to avoid the prospect of trial by ambush, and with it the risk that hearing dates will need to be vacated to ensure a party has the opportunity to consider, and if necessary to respond to, the evidence of an unexpected witness.*

59 In ***Barclay Mowlem Construction Ltd v Dampier Port Authority & Anor*** [2006] WASC 281 (30 November 2006), Martin CJ said, at [4]–[6]:

a. *It is, I think, important when approaching an issue of that kind to bring to mind the contemporary purposes of pleadings. The purposes of pleadings are, I think, well known and include the definition of the issues to be determined in the case and enabling assessment of whether they give rise to an arguable cause of action or defence as the case may be, and apprising the other parties to the proceedings of the case that they have to meet.*

b. *In my view, the contemporary role of pleadings has to be viewed in the context of contemporary case management techniques and pre-trial directions. In this Court, those pre-trial directions will almost invariably include; firstly, a direction for the preparation of a trial bundle identifying the documents that are to be adduced in evidence in the course*

of the trial; secondly, the exchange well prior to trial of non-expert witness statements so that non-expert witnesses will customarily give their evidence-in-chief only by the adoption of that written statement; thirdly, the exchange of expert reports well in advance of trial and a direction that those experts confer prior to trial; fourthly, the exchange of chronologies; and fifthly the exchange of written submissions.

c. *Those processes leave very little opportunity for surprise or ambush at trial and, it is my view, that pleadings today can be approached in that context and therefore in a rather more robust manner, than was historically the case; confident in the knowledge that other systems of pre-trial case management will exist and be implemented to aid in defining the issues and apprising the parties to the proceedings of the case that has to be met.*

60 The learned Warden O'Sullivan, in ***MCA Nominees Pty Ltd v Nex Metals Explorations Ltd*** [2019] WAMW 11 at [27]–[30], applied the reasoning referred to above in ***Barclay***, to a consideration of the adequacy of particulars in a dispute in this jurisdiction.

61 With respect to the learned Warden, I agree completely with the sentiment expressed.

62 I will add, in the context of this particular case, that the first duty of any court or tribunal is to ensure that it is invested with appropriate jurisdiction to determine the controversy it is faced with.

63 So much cannot be in doubt, see for example, ***Federated Engine-Drivers and Firemen's Association of Australasia v Broken Hill Pty Co Ltd*** (1911) 12 CLR 398 at 415, ***Re Culleton*** [2017] JCA 3; 91 ALJR 302 at [23], ***Re Nash (No 2)*** (2017) 263 CLR 443 and ***Commissioner of Taxation for the Commonwealth of Australia v Tomaras*** [2018] HCA 62.

64 In this matter counsel for the Objector opened his closing submissions with a submission that the application was misconceived, as it had been commenced by a party other than the tenement holder. He urged a conclusion that the application was a nullity.

65 That position is in my opinion, an argument as to a jurisdictional fact, as that phrase is used in ***Forrest & Forrest Pty Ltd v Wilson*** (2017) 262 CLR 510.

66 Section 97A of the Act, states as follows:

> a. *(1) Subject to subsection (2), where a mining tenement is forfeited under or by virtue of section 96, 96A or 97* ***a person who was, immediately prior to the forfeiture, the holder of the tenement concerned may apply*** *for the mining tenement to be restored to him and the forfeiture cancelled.*

67 The relevant issue in this matter was whether the application signed by Mr Lucerne-Knight for Midwest Gold, is a sufficient basis to meet the requirements of the words in bold above.

68 Again, no issue in this regard was identified in the particulars of objection, nor the Objector's written submissions.

69 That state of affairs is, with due respect to counsel appearing in this matter, regrettable.

70 Counsel for Midwest Gold was able to address the matter to a degree, as notwithstanding that it was not raised as a formal objection, it was plainly live on the papers, and concerned my capacity to hear the matter. Further, counsel appearing for Midwest Gold had clearly turned his mind to addressing that thorny issue. In any event, I raised it squarely with counsel for Midwest Gold at the outset, and the argument developed in the manner in which it did.

71 Nevertheless, the written submissions of the parties did not touch upon the matter, which is a difficult one involving the possible application of agency

principles. As a result, parties were given leave to file further written submissions.

72 The Applicant's submissions were filed on 21 October 2022 and advanced a case on the basis of that outlined in paragraph 19(b) above. The novel approach detailed at paragraph 19(a) was abandoned.

73 The Objectors submissions were filed on 24 October 2022, and, relevantly to this issue, made a further submission that the Application was misconceived, on the basis of the requirements of Form 17 of the Regulations not being met.

74 Counsel for the Objector declined to engage further on the agency argument, taking the view it could not arise given the issue identified in respect of Form 17.

75 As that matter had not been canvassed at the hearing, nor in the Applicant's original written submissions, nor supplementary submissions, I made a further order, providing a further period of time to the Applicant to address me on those matters raised if it wished to do so, which whilst similar, carried a degree of novelty.

76 That was then done on 31 October 2022, with the Midwest Gold objecting strongly to the point being heard, given it was a further new issue, raised after the completion of the hearing. I address that submission later in these reasons.

77 There is no doubt that rather convoluted process occasioned additional cost to the parties, as well as delay in the determination of the controversy.

78 In my opinion, those additional costs and the delay, ought not to have occurred.

79 The comments of their Honours Chief Justice Martin, Justice Le Miere, and various other judicial officers referred to above, are apposite in this matter.

80 To place any such notions beyond doubt, I will say clearly that the principles outlined above which are uniformly critical of notions of trial by ambush as an approach, are applicable in this jurisdiction.

81 Given this is a jurisdiction of first instance dealing with an exceptionally high caseload,[1] there is necessarily a requirement for a degree of robustness in the conduct of matters, however, that robustness cannot displace the requirement to ensure fairness.

82 In turn, fairness requires a matter to be determined on its merits. A matter cannot be determined on its merits if the parties are not prepared to meet the case raised against them, or at least, be reasonably able to be said to be on notice of such matters.

83 In a recent decision of mine, in ***AC Minerals Pty Ltd v Cowarna Downs Pty Ltd*** [2022] WAMW 22, I stated at [58], that where there is a jurisdictional issue identified, it should be plainly advanced so as to ensure matters are able to be determined efficiently. I reiterate those comments in this matter.

84 Parties appearing in this jurisdiction before me ought to pay greater heed to Nelson's dictum in respect of discernable intent:

a. *". . . no captain can do very wrong if he places his ship alongside that of the enemy.*[2] *"*

85 The inference to be drawn should be clear.

Applicable Law

86 The law relevant to Applications for Restorations is set out in section 97A of the *Mining Act 1978*.

[1] As at 26 October 2022, there were 5,925 active matters in the Warden's jurisdiction in Western Australia, administered by 2 full time Wardens in Perth, and the sitting regional Magistrates in Kalgoorlie and Carnarvon (who are also required to attend to their general duties in those regions as well).
[2] Vice Admiral Horatio Nelson, on the eve (20 October 1805) of the Battle of Trafalgar to the Captains under his command.

87 That provision provides that the holder of a mining tenement which is forfeited by the Department can apply for the mining tenement to be restored, and the forfeiture cancelled.

88 Section 97A(1) says as follows:

a. *Subject to subsection (2) where a mining tenement is forfeited under or by virtue of section 96, 96A or 97 a person who was immediately prior to the forfeiture the holder of the tenement concerned may apply for the mining tenement to be restored to him and the forfeiture cancelled.*

89 It was submitted to me, and I accept, that the role of the Warden in a restoration proceeding in relation to a mining lease, is to make the recommendations to the Minister as to whether the restoration application should be refused or approved. The ultimate decision remains with the Minister.

90 There is no guidance in the *Mining Act* or the *Mining Regulations* as to what may be considered by the Warden in deciding whether or not to recommend a restoration application.

91 Unsurprisingly, it follows that the relevant approach to take is to examine all of the circumstances of the case presented and come to a view as to whether or not there is a reasonable and just explanation for the failure which has resulted in the forfeiture, and secondly, consider whether that failure ought to be cured.

92 That proposition is borne out in the authority of ***BRGM Nominees Pty Ltd v Hake*** (unreported Kalgoorlie Warden's Court 26 October 1988 Volume 5, Folio 16) (***BGRM***) at pages 3–5:

a. *The Act is silent on matters to be taken into account when determining whether a mining lease should be restored or not. Not wishing to be exhausted it seems to me that consideration should be given to the explanation for non-payment of rent, the degree of lack of care if any on*

the part of the holder when attending to payment of the rent, and the existence of any special circumstances.

93 In my opinion the decision whether to restore or not involves weighing those considerations mentioned, as well as any other which might be considered relevant.

94 As a matter of general principle at the outset none of those considerations should be given any greater priority than the other. The facts of each particular case will determine where the emphasis should be placed.

95 Where there is no good explanation, a gross lack of care and no special circumstances, then restoration should be refused.

96 Where there is no good explanation and a gross lack of care it may be appropriate for the tenement to be restored if there are special circumstances.

97 At the hearing before me, I did not understand those principles to be in dispute, save in one respect. The Objector advanced a further consideration, which was said to possibly impact upon its position, namely the prejudice to it by the grant of the restoration.

98 Midwest Gold took a position that I ought not consider the prejudice to the Objector, as there was no specific statutory basis to do so.

99 That submission is correct in strict terms, though was made in isolation of the context of the Act and its application. The principles referred to falling from ***BGRM*** above which Midwest Gold embraced, are similarly not found in the language of the Act or Regulations.

100 In my opinion, the relevant discretion is a broad one, and should be interpreted as referred to above. Prejudice to both parties, arising from the outcome, is relevant, though cannot in the context of this Application, be of significant weight.

101 I make that last observation, as from the perspective of both parties, there will necessarily be prejudice arising from an adverse outcome. The possession of a mining tenement is a potentially valuable right, and its loss, or practical acquisition (given that in this matter, the Objector made an application for the tenement ground upon the forfeiture), necessarily will involve considerations of prejudice on both sides. In this case therefore, it is properly regarded as a neutral consideration.

102 In my opinion, the relevant provision is drafted in a non-proscriptive manner, and is not exclusive in operation. That is certainly the approach taken in ***BRGM*** which gave rise to the list of considerations referred to above.

103 I respectfully consider that approach is entirely correct and will follow it.

104 Also relevant in this matter, is section 103C(8) of the Act which says:

a. *A dealing does not pass any legal estate or interest in a mining tenement or in any way charge or encumber a mining tenement until it is registered in accordance with this section.*

105 Relevantly, "dealing" appears in section 8 of the Act and is defined as:

a. *dealing means a transfer or mortgage of a legal interest in a mining tenement.*

Determination of this Matter

106 Considering this matter in light of the principles applicable, and the evidence, there are a number of issues to address and determine.

107 They are as follows:

a. What party made the application pursuant to section 97A of the Act?

b. Assuming the answer to (a), is the Application compliant with the requirements of the Act?

c. Assuming the answer to (b), was there a system in place which fell into error, which was nevertheless not grossly careless?

d. If there was a system in place, and it was attended by gross carelessness, can the Tenement be restored on discretionary grounds?

What party made the application pursuant to section 97A of the Act? And is it compliant?

108 The evidence before me, relied upon to establish one of the positions I have described above at paragraph [19] hereof, relies upon the content of agreements between UCABS and Midwest Gold, which appeared in the evidence of Mr Lucerne-Knight.

109 There is evidenced in the form of company searches that demonstrates (and it was not disputed), that UCABS and Midwest Gold are not related entities.

110 The Applicant advanced in its further written submissions that Mr Lucerne-Knight, by virtue of his position as an agent of Midwest Gold, was empowered to also act for UCABS as a result of the agreements between UCABS and Midwest Gold. That authority was said to be express, or in the alternative, implied.

111 Murphy JA in ***Pourzand v Telstra Corporation Ltd***, [2014] WASCA 14, identified the essential elements of the concept of actual authority, as involving a party being able to establish a consensual relationship. See in particular Murphy JA at [129].

112 In ***Pacific Carriers Ltd v BNP Paribas*** (2004) 218 CLR 451 the High Court described the operation of apparent authority in the corporate context as follows (at 466 – 467):

a. *Where an officer is held out by a company as having authority, and the third party relies on that apparent authority, and there is nothing in the company's constitution to the contrary, the company is bound by its*

> *representation of authority. "The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract." It is not enough that the representation should come from the officer alone. Whether the representation is general, or related specifically to the particular transaction, it must come from the principal, the company. That does not mean that the conduct of the officer is irrelevant to the representation, but the company's conduct must be the source of the representation. In many cases the representational conduct commonly takes the form of the setting up of an organisational structure consistent with the company's constitution. That structure presents to outsiders a complex of appearances as to authority. The assurance with which outsiders deal with a company is more often than not based, not upon inquiry, or positive statement, but upon an assumption that company officers have the authority that people in their respective positions would ordinarily be expected to have. In the ordinary case, however, it is necessary, in order to decide whether there has been a holding out by a principal, to consider the principal's conduct as a whole.*

113 Midwest Gold relied upon ***Fairworld Holdings Pty Ltd v Burrup Fertilisers Pty Ltd (Receivers and Managers Appointed)*** [No 2] [2011] WASC 136, which is entirely consistent with the principles I have outlined immediately above. A determination of the existence of agency, or not, depends entirely on the facts of the case presented in evidence.

114 Given the nature of the submission made by the Applicant, it is necessary to therefore consider in some more detail the agreements relied upon.

115 They were the Farm In Agreement[3] and the Tenement Transfer Agreement[4] (together, the Agreements).

[3] Affidavit of Mr Lucerne-Knight, Exhibit 2 page 22 - 35.
[4] Affidavit of Mr Lucerne-Knight, Exhibit 2 page 36 - 54.

116 In this, in truth, the Applicant's case was really that the Agreements gave rise to the capacity for agents of Midwest Gold or its agents, (ie, Mr Lucerne-Knight) to act for and on behalf of UCABS when it might be necessary to protect the interests of Midwest Gold arising from the Agreements.

117 The evidence led, in the form of Mr Lucerne-Knight's Affidavit, fell far short of providing a foundation for that submission. Indeed, it was silent on the question of on what basis he signed the Application at all.

118 There was no evidence before me of any suggestion of express authority on the part of Mr Lucerne-Knight to act on behalf of UCABS in the manner now asserted.

119 In written submissions filed by Midwest Gold on 21 October 2022, reliance was placed upon the Agreements in evidence between the parties.

120 The Agreements in question were between Midwest Gold and UCABS. Neither referred to Mr Lucerne-Knight.

121 Mr Lucerne-Knight's Affidavit was vague on the nature of his relationship with UCABS, and sparse in detail in respect of his relationship with Midwest Gold. He appeared to hold some kind of ill-defined roving consultancy, the details of which were opaque at the hearing, and are no clearer now.

122 Further, there is no clear representation from Midwest Gold, expressly granting Mr Lucerne-Knight any powers to act on its behalf. At its highest, it might be said that it seemed to have just occurred. The evidence supports that notion to a limited degree, though it is not a foundation to assert the sort of power now relied upon to seek to bind UCABS.

123 There is no basis in evidence (save for Mr Lucerne-Knight's own assertions and conduct) to support the assertion that there was any express grant of agency from either UCABS or Midwest Gold to Mr Lucerne-Knight.

124 The Farm In Agreement, on its face is an agreement between UCABS and Midwest Gold dated 26 September 2017.

125 There is no express reference in the Farm In Agreement, to the power to commence a restoration application. There is also no "power of attorney" type clause, expressly granting Midwest Gold an express right to act as an agent for UCABS in certain circumstances, nor was any such document placed into evidence. I find there to be no such express representation.

126 In my view, at its highest it is suggested by Midwest Gold, that the fact of the Farm In Agreement, and certain of its terms, may be relied upon to establish that UCABS impliedly represented the power of agency in question.

127 In the subsequent written submissions advancing this argument, Midwest Gold sought to rely in particular upon clauses 4.3 and 4.4 and 5 of the Farm In Agreement. Those clauses purport to appoint Midwest Gold as the Manager responsible for the conduct of what are referred to as the Farm In operations. On the face of it, that appears to be the mechanism by which Midwest Gold would obtain a right to the transfer of the Tenement.

128 In short, it would expend funds, thereby increasing its beneficial interest to the point where it could call for the transfer of the Tenement.

129 Clause 5 was relied upon to establish that Midwest Gold had an obligation to maintain the tenements in good standing, and it was suggested, read together with Clause 4, necessitated a view that Midwest Gold could therefore do all things required to maintain the tenements (as a general proposition), including acting as an agent to commence the restoration application if that was necessary.

130 One of the difficulties with the submission is that there appears no clause in the Farm In Agreement, granting Midwest Gold power to do all things which might be needed to be done whilst UCABS remained the registered holder.

131 Furthermore, there are no clear rights of subrogation able to be discerned. Further, the circumstances arising before me plainly did not relate to the maintenance of the Tenement. The Tenement had been forfeited. Whether or not that amounts to a breach by Midwest Gold of its obligations to UCABS to maintain the Tenement under clause 5 of the Farm In Agreement is not to the point, and is certainly not able to be relied upon as a basis of power.

132 To rely upon the proposition that as it had an obligation to maintain the tenements, it could act as an agent for UCABS to commence a restoration of the tenement without reference to it in circumstances where it (Midwest Gold) was responsible for the forfeiture, is simply unsustainable when regard is had to the Agreements.

133 The facts in this case simply do not support the proposition that UCABS provided such agency either expressly or impliedly, to Midwest Gold or Mr Lucerne-Knight in the manner asserted.

134 I am fortified in that view, as a result of certain rights which appear to have been reserved to UCABS in the Farm In Agreement. For example, clause 9 prevented an assignment by Midwest Gold of its interests, without the consent of UCABS.

135 That is starkly inconsistent with the submission that Midwest Gold had plenary powers arising from the fact of the agreement. Similarly, the rights contained in clause 10 of that agreement, are not consistent with Midwest Gold's submission.

136 Clauses 11 and 12, also do not support the contention advanced, and I note that no caveat appears to have been lodged by Midwest Gold pursuant to clause 13.

137 Finally, clause 14.1 says as follows:

a. *The Participants shall sign all such further documents, forms and notices and do all such things as may be reasonably necessary to give effect to the terms of this Agreement*.

138 In my opinion, that clause eliminates any possibility of accepting the submission of Midwest Gold as to implied agency arising from the terms of the Farm In Agreement.

139 What that clause does is create a right on the part of Midwest Gold to compel (by proceedings if necessary) the compliance by UCABS on the execution of any required documents. It does not give Midwest Gold any right to act in place of UCABS, and in my view quite the opposite is true.

140 I will add further, that whilst I have concluded the view immediately above on the face of the Farm In Agreement, I do not consider it appropriate to further delve into the terms of the Farm In Agreement, or make any firm determinations as to the rights and obligations arising under it to any particular party, as only one party to it was before me.

141 There was no evidence before me that UCABS had been served with the proceedings, nor was aware that they were even on foot. It was accepted that the Application was not commenced by any officer or agent of UCABS.

142 In those circumstances, I consider that I would be in error in coming to a view Midwest Gold was entitled to act for and on behalf of UCABS in all respects, in their absence as a result of the Farm In Agreement. It is sufficient for my purposes, applying the approach of ***Chevron (TAPL) Pty Ltd v Pilbara Iron Company (Services) Pty Ltd*** [2021] WASCA 193 (17 November 2021), that the submission made by Midwest Gold bears no resemblance at all to the content of the Farm In Agreement. It may therefore be rejected.

143 In addition to the difficulty created by the terms of the Farm In Agreement, the precise position of Mr Lucerne-Knight is far from clear. The Affidavit does not depose to Mr Lucerne-Knight being an agent of anyone, not even Midwest Gold in any formal manner.

144 In effect then, what was sought to be done was to have Mr Lucerne-Knight hold himself out as an authorized agent of the principal UCABS, by virtue of his

opaque relationship with Midwest Gold. Whilst I accept he has some kind of relationship with both entities (as born out by the various actions he seemingly took), there was simply insufficient evidence of it to come to a satisfactory view as to the extent of it, as relevant to the matters in issue in this case.

145 In my view, and in the absence of a satisfactory representation from the principal UCABS, it is not open to any agent to clothe themselves in authority by relying on their own conduct to then bind a principal.

146 As a result, I expressly reject the submission that Mr Lucerne-Knight signed the application on behalf of UCABS. He did not.

147 Midwest Gold, at the hearing, also relied upon clause 3.6 of the Tenement Acquisition Agreement dated 15 June 2019.[5]

148 I also note at this point that there is a reference in Mr Lucerne-Knight's Affidavit of another agreement, which was a Deed of Variation of the Tenement Acquisition Agreement, entered into seemingly after an adverse stamp duty assessment.

149 The Deed of Variation to the Tenement Acquisition Agreement was said to be dated 23 February 2022.

150 The Application for restoration was made on 22nd of December 2021. The completion of the Farm In Agreement and Tenement Acquisition Agreement, appears to have occurred on 1 March 2022, with the payment of the assessed duty, enabling the lodgment of the relevant transfers.

151 Necessarily, UCABS at all material times remained the registered holder of the Tenement.

152 It must follow that the relevant factual matters to consider when coming to a view on the agency question as it bares on the execution of the Application, fall

[5] Affidavit of Mr Lucerne-Knight, Exhibit 2, page 44.

from the first iteration of the Tenement Acquisition Agreement and the Farm In Agreement, not the Deed of Variation.

153 I have outlined my views of the Farm In Agreement above. I do not accept a submission that there is anything in that agreement which expressly or impliedly empowered Midwest Gold, or Mr Lucerne-Knight, to commence the Application on behalf of UCABS.

154 That leaves for consideration the Tenement Acquisition Agreement. Reliance was placed upon clause 3.6 which stated relevantly, that:

> a. *On and from Completion:*
>
> i. *the Vendor's legal and beneficial interest in the Tenements shall pass to the Purchaser;*
>
> ii. *all property and risk in the Tenements shall pass to the Purchaser; and,*
>
> iii. *the Purchaser shall, as against the Vendor, be entitled to exclusive possession of the Tenements.*[6]

155 Thus, it was submitted that the fact of the passing of the legal and beneficial interest could be established as a basis of agency, either express or implied. There are a number of difficulties with the submission, paramount amongst which is that no legal title can pass until the dealing is registered (see my discussion regarding section 103C(8) of the Act below).

156 Further, that passing of title was said to occur on completion. I note most relevantly clause 3.2[7] of the Tenement Acquisition Agreement dealt with UCABS obligations on completion. All of those matters appeared to have been attended to, with the difficulty encountered by Midwest Gold's effort to then

[6] Affidavit of Mr Lucerne-Knight, Exhibit 2, page 44.
[7] Affidavit of Mr Lucerne-Knight, Exhibit 2, page 43.

register the transfer, and what might be politely said to have been an inconveniently large stamp duty assessment.

157 The further difficulty with the gallant submission by counsel for Midwest Gold, is that the Tenement Acquisition Agreement simply does not grant to Midwest Gold the sort of plenary power asserted.

158 For example, clause 3.2(d) of the Tenement Acquisition Agreement says:

> a. . . . *[the Vendor] do all such other things necessary to enable the Purchaser to be registered as the holder of the Tenements, free from Encumbrances*.

159 Similarly, clause 13.7 of the Tenement Acquisition Agreement says:

> a. *Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.*

160 On their face, the effect of those provisions plainly does not support a contention that Midwest Gold had the capacity to treat UCABS as a puppet for the purposes of the Application. The opposite is true. Similarly to the view I expressed above in respect of the Farm In Agreement, those clauses make it plain that UCABS has an obligation to attend to the necessary formalities, and might be compelled to do so. That is not a right for Midwest Gold to stand in the shoes of UCABS in all circumstances.

161 However, I again note that in the absence of UCABS, I make no firm determination on the rights, duties and obligations of the parties to that Tenement Acquisition Agreement.

162 My view is that I am simply not satisfied that the evidence presented to me supports the proposition that Midwest Gold was acting through Mr Lucerne-Knight as an agent for UCABS in the commencement of the Application.

163 The final point to note, is that Mr Lucerne-Knight indeed appeared to endorse his own signature with a notice that he was doing so for Midwest Gold, not UCABS.

164 In this case, the registered holder was UCABS. None of the agreements relied upon alter that fact for the purpose of the application for restoration, until such time as registration of a transfer is effected.

165 At the hearing, counsel for Midwest Gold sought to make a submission that there was a distinction to be drawn between a registered holder of the Tenement, a legal interest in the Tenement, and a beneficial interest in the Tenement.

166 It was that rather novel submission, which prompted my call for further submissions, given it would, if accepted, have resulted in the rather worrying development of three different species of tenement interest.

167 In the written submissions subsequently filed, that proposition was abandoned, and in my view, rightly so. In my opinion, section 103C(8) of the Act operates in a manner to preclude any kind of notion of an unregistered legal interest.

168 In my view that provision must mean that to hold a legal interest in a tenement, the party in question must be the registered holder pursuant to the Act. The only other possible interest is an equitable interest (however created) which remains, however expressed, unperfected in legal terms (either deliberately or not) until its registration. In my opinion, there is no scope for any other kind of interest.

169 I have referred to section 103C(8) of the Act above.

170 No instrument can pass legal title in a tenement until it is registered. Reading section 103C(8) of the Act, with section 97A of the Act, compels a conclusion that the application for restoration must be made by the registered holder. In my opinion it also means that it is not possible to be the legal holder of a tenement, unless that holding is registered in accordance with section 103C(8) of the Act.

171 Whilst the argument referred to in paragraph 19(a) hereof was abandoned in totality, the effect of section 103C(8) of the Act is still relevant to the balance of Midwest Gold's case, as it necessarily informs Midwest Gold's now primary contention that its agent was able to act on behalf of UCABS, by virtue of the agency said to arise from the Agreements.

172 Those Agreements, by themselves, cannot pass legal title absent registration of the relevant dealing. In my opinion that must mean that the clauses I have referred to relating to the obligation of UCABS to give effect to the Agreements by doing things which might be required, starkly contradicts a submission that the Agreements provided an express grant of agency as asserted, and make the suggestion that there was an implied grant of agency in the manner asserted, untenable.

173 It follows that in my view on the case before me, neither Midwest Gold nor Mr Lucerne-Knight had any power of agency to have commenced the Application on behalf of UCABS, and given the clear words of section 97A and 103C(8) of the Act, no other right to commence the Application.

174 My finding is that the Application was commenced by Mr Lucerne-Knight acting on behalf of Midwest Gold.

175 An application for restoration is, in many respects, akin to an application for a tenement afresh. Where the Act provides for a requirement for a process (without any other mechanism), that requirement must be met. In this case, as UCABS did not make the Application, the requirements of the Act were not met and, on that basis alone, the Application should be recommended to be refused. It is not compliant with the requirements of the Act.

176 Further to the above, the Objector raised, in supplementary submissions, a further argument in respect of asserted non-compliance with requirements of Regulation 90 read with Regulation 108 of the Regulations. It was submitted that

the Form 17, utilized to commence the Application, could only be signed by the applicant, or a solicitor.

177 The Applicant provided a further written submission on 31 October 2022, bluntly stating that it was a novel issue raised very late, and should not be heard. There is force in that submission, for the reasons I have already given above.

178 However, the submission in respect of Form 17 itself relates to a possible argument going to a question of jurisdiction and whether the Application has been validly commenced. In the ordinary course, as late as it may be, it would need to be appropriately addressed, and could not be simply ignored.

179 In the circumstances presented in this particular case however, and as a result of my views as expressed above and below, I do not need to determine that issue on this occasion, as irrespective of the result of it, my view of the substance of the matter (given the below) would not change, nor my view on the question of agency discussed above.

Was there a system in place which fell into error, which was nevertheless not grossly careless?

180 Whilst it is not strictly speaking necessary to do so given my view expressed above, I will provide my views on the substance of the matter in the event I am wrong in law on the agency point.

181 I am content to express a view on the merits of the substantive case for restoration as advanced by Midwest Gold.

182 At its heart, Midwest Gold's submission was that the system utilized to manage the inflow of, relevantly, important communications from the Department, was sound, and the fault manifested in this matter does not amount to gross carelessness.

183 In dealing with the matter, consideration must first be given to the relevant system.

184 The Objectors submission was that it was not a system, as a system connotes a sense of order and control, where there was none to be found in this case.

185 In my opinion it is entirely possible to have a grossly flawed system. It is the consideration of how the system is supposed to work when put against how it does work in the context of its intent, which is relevant and required to be assessed in this context, not what it is called.

186 On the evidence before me, Midwest Gold's system for the management of information coming to it, relevant to the Tenement, was a system attended by gross carelessness.

187 The key matters which lead to that view are:

a. The evidence of Mr Berzins, the company secretary of Midwest Gold, included the statement that no mail book was kept by Midwest Gold;

b. In addition, registered mail for Midwest Gold, appeared to be able to be collected by a stranger to Midwest Gold, with no accountability at all, and with no records being kept. The highest it may be put therefore, is that the registered letter from the Department, was collected by a passerby; and

c. Mr Berzin's suggested explanation was that the cleaners might have removed the correspondence.

188 On the first point, for a corporate entity which holds mining tenements to have no record of correspondence, is in my opinion, a grossly flawed manner of attending to the company's affairs.

189 It is entirely unclear to me how a company director may be satisfied he or she was able to meet his or her statutory responsibilities, without any record of communications sent and received.

190 On the second point, similar to the first, the notion that an entity which holds valuable mining tenure interests, would permit a stranger to collect its registered mail in an unregulated manner, is frankly, inexplicable.

191 On the third point, it is difficult to escape a most unkind assessment of that suggestion, suffice to say it is of no evidentiary value at all. Generalised allegations of serious negligence or worse, made against unknown persons are of no weight at all and may be disregarded completely.

192 On the material before me, the root cause of the failed notice of the key document, being the penalty notice, was not the fault of the cleaners, or of the mysterious Mr Bajada, or any other stranger to Midwest Gold. It was the directly caused by the paucity of the processes put in place by Midwest Gold.

193 Further, and as was submitted by counsel for the Objector, the tenement history of the conduct of the Tenement and the communications by the Department to Midwest Gold about the Tenement demonstrated that Midwest Gold had been involved in precisely the same line of communication on at least one occasion previously.

194 As a result, in my opinion, the system relied upon by them was a system attended by gross carelessness on the part of Midwest Gold.

195 Midwest Gold is a corporate entity, meaning it is completely at the mercy of the systems adopted by its officers. Having no record of communication received or sent is in my opinion, grossly careless, as is the adoption of a process whereby strangers collect important mail.

If there was a system in place, and it was attended by gross carelessness, can the Tenement be restored on discretionary grounds?

196 As a result of that view, I need to now turn my mind to the question of special circumstances.

197 It was submitted to me that there were special circumstances in place, in the context of the failure, which should move me to grant that application. Reference was made to the authority of ***Carnegie Gold v McKenna & McClaren*** [2015] WAMW 7 where the learned Warden Maughan considered special circumstances such as the expenditure incurred on the mining lease, the importance of a tenement to the ongoing economic exploitation of resources held by the applicant in that case, as being special circumstances would warrant the grant of the restoration application.

198 That view echoes the authority of ***Dry Creek Mining NL v Mowana Holdings*** (unreported Coolgardie Wardens Court 10 October 1990 Volume 6, Folio 42) per the learned Warden Roberts, and the Wardens Court matter of ***Peak Environmental Pty Ltd v Martinjinni Pty Ltd*** [2017] WAWM 18; [2017] WAMW 16 (4 August 2017), where his Honour Warden O'Sullivan was minded to grant the application for restoration application as amongst other reasons, that the lease has played a significant part on the applicant's ability to earn a living and overall financial viability.

199 In my opinion there are no such special circumstances in the evidence before me. Nothing is put by Mr Berzins to that effect.

200 The evidence of Mr Lucerne-Knight can be of limited weight, given his relationship with Midwest Gold and UCABS remained opaque. Some material was adduced by Mr Lucerne-Knight, and some commentary of the activity provided, however, that material was of a vague nature, and did not amount to a detailed attestation by Midwest Gold as to the commercial importance of the Tenement.

201 Exhibits 4 and 5 demonstrated that Midwest Gold had other tenements, which was used to support a submission from the bar table that the whole of the business of the Midwest Gold might suffer is there was not a restoration of the Tenement.

202 That submission does not follow from the mere fact of holding other tenements and I reject it.

203 A further submission was also made of the risk run by Midwest Gold, in respect of the royalty said to be owed to UCABS by way of the various Agreements I have already referred to.

204 In my opinion, any difficulty encountered by Midwest Gold in respect of its dealings with UCABS in respect of such matters may be safely assessed as being caused entirely by their own practices. In this respect, Midwest Gold is to be properly regarded as being the author of its own misfortunes. It is not a reason to restore the Tenement.

205 In summary, I do not consider that the Applicant has met the evidentiary burden (as it arises in this case), to establish that there are special circumstances which warrant a recommendation to restore the Tenement, in light of the gross carelessness demonstrated, even if there was a compliant application for restoration made.

Conclusion and Orders

206 As a result of the above I will make the following orders and recommendations:

a. Midwest Gold Resources Pty Ltd (ACN 618111023), is joined as the Second Applicant;

b. The Objection should be upheld; and

c. The Application for restoration is recommended for refusal.

207 In the event any party wishes to make any consequential application, and same cannot be agreed in light of these reasons, a Minute of Orders sought and accompanying short submission must be provided within 7 days of the provision of these reasons.

208 In the event such consequential application is made, the matter may be placed into the following Friday list before me, not before 12, for determination of those matters.

209 In the event no such consequential application is made, the matter will stand completed on publication of these reasons, and I direct the Mining Registrar to convey my reasons to the Minister or his delegate without further delay.

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Warden T McPhee

3 November 2022