

JURISDICTION : MINING WARDEN

LOCATION : PERTH

CITATION : BULLSEYE MINING LIMITED v WOLSKI & Anor
[2023] WAMW 47

CORAM : WARDEN GM CLEARY

HEARD : 28 and 29 MARCH 2023

DELIVERED : 23 NOVEMBER 2023

FILE NO/S : Exemption applications: 560439, 562057, 562561,
561242 and objections: 560813, 562296, 563801,
561270

Exemption applications: 579892, 579659, 580415,
578457, 576320, 584605 and objections: 580943,
580942, 580944, 578573, 578574, 585579

Exemption applications: 559186, 563148, 565510,
566172 and objections: 560251, 563809, 565997,
566829.

TENEMENT NO/S : Exploration licences: 37/801, 37/1249, 37/1290,
37/1301, 53/1611, 37/983, 37/1017, 37/1121, 37/1243,
53/1407, 77/2087, 77/2341, 77/2351, 77/2118,
77/2119, 77/2120

BETWEEN : BULLSEYE MINING LIMITED
(Applicant)
AND
ZYGMUND WOLSKI
AND
WEST AUSTRALIAN PROSPECTORS PTY LTD
(Objectors)

Catchwords: Application for exemption from expenditure under s 102(2)(b) and 102(3); corporate events; objection to exemption; s 79C of the Evidence Act in administrative proceedings

Legislation:

- *Evidence Act (WA) 1906* Section 79C
- *Mining Act 1978 (WA)* Section 102(2)(b), 102(3), 102(4)
- *Mining Regulations 1981 (WA)* Regulation 152, 154

Other References:

Cross on Evidence, 7th and 12th Australian editions, JD Heydon, LexisNexis Butterworths

Result: Recommendation to Minister to grant exemptions on E 37/801, E 37/1249, E 37/1290, E 37/1301, E 53/1611, E 37/983, E 37/1017, E 37/1121, E 37/1243, E 53/1407 and E 77/2087.

Recommendation to Minister to refuse exemptions on E 77/2118, E 77/2119, E 77/2120, E 77/2341 and E 77/2351.

Representation:

Counsel:

Applicant : A Hershowitz and T Masson

Objectors : G Lawton

Solicitors:

Applicant : Ensign Legal

Objectors : Lawton Macmaster Legal

Cases referred to:

Agricultural Land Management Ltd v Jackson [2013] WASC 464.

Atra v Farmers & Graziers Co-op Co Ltd (1986) 5 NSWLR 281.

Carnegie Gold Pty Ltd v Maughan [2018] WASC 366.

Craig v Spargos Exploration NL, unreported, Kalgoorlie Warden's Court, 22 December 1986, noted in (1986) 6 AMPLA Bull 73.

Diamond Rose NL v Hawks unreported, Perth Warden's Court, 26 May 2000.

Donohoe v Director of Public Prosecutions (WA) [2011] WASCA 239.

Forrest & Forrest Pty Ltd v The Honourable William Richard Marmion, Minister for Mines and Petroleum [2017] WASCA 153; (2017) 51 WAR 425.

Great Boulder Mines Ltd v Bailey [2000] WAMW 6.

Haoma Mining NL v Tunza Holdings Pty Ltd [2006] WASCA 19; (2006) 31 WAR 270.

Lang v Davey [2020] SASC 160.

McKay v Commissioner of Main Roads [No 2] [2010] WASC 153.

Nova Resources NL v French (1995) 12 WAR 50.

Poland v The State of Western Australia [2015] WASCA 136.

Re Minister for Resources; Ex Parte Cazaly Iron Pty Ltd [2007] WASCA 175.

Rhodes v De Castro [No 2] [2023] WASC 93.

Riversgold (Australia) Pty Ltd v McPhee in his capacity as Mining Warden [2023] WASC 375.

Siberia Mining Corporation v Thompson [No 3] [2022] WAMW 16.

Siberia Mining Corporation Pty Ltd v O’Sullivan [2020] WASC 214.

Siberia Mining Corporation Pty Ltd v Wilson [2015] WASC 322.

Thompson v Siberia Mining Corporation Pty Ltd [2021] WASCA 115.

1. This case is about need.
2. However, each party differed on what “need” looked like in the context of this case.
3. Bullseye Mining Limited says that while there was cash flowing in and out of the company during the expenditure years, the directors needed to defend the company from hostile takeovers and board spills. This took their cash flow, and their time, and they then needed time to raise capital to work their tenements.
4. The objectors say that Bullseye had sufficient capital in the expenditure years to meet the expenditure obligations under the *Mining Act 1978* (WA), and they made a choice to spend that money on corporate matters, prioritising corporate obligations over the obligations under the Act. Therefore, there was no “need,” and certainly no “need” to raise capital, or circumstances sufficient to justify any exemption from expenditure conditions.
5. Bullseye made a choice, said the objectors and it was the wrong choice.¹

THE APPLICATIONS FOR EXEMPTION AND THE OBJECTIONS

THE TENEMENTS

6. The following information has been taken from the affidavit of Peter Gerard Burns sworn 30 January 2023 for the purposes of these proceedings. While the parties did not produce an agreed set of facts, the general information regarding the locations, mineralisation and overall strategies for the project were not challenged by the objectors.
7. The tenements the subject of this application are tenements in projects located in two different areas: the North Laverton Gold Project and the Bullseye Project. The Bullseye project is then in two separate projects, the Southern Cross Gold Project and the Aurora Project.

¹ T 29.3.23, 54.

North Laverton Gold Project

8. Bullseye's North Laverton Gold Project is located on the Dingo Range Greenstone Belt in Western Australia. Bullseye acquired its first tenements at that project in 2014 and since then, according to Mr Burns, who gave evidence in these proceedings, has drilled extensively at that project following new geological and mineralisation interpretation.
9. The tenements the subject of these proceedings in the North Laverton Gold Project are E 37/801, E 37/983, E 37/1017, E 37/1121, E 53/1407, E 37/1249, E 37/1290, E 37/1301, E 37/1243 and E 53/1611.

The Southern Cross Gold Project

10. The Southern Cross Gold Project consists of a series of satellite tenements surrounding the Hopes Hill mine site in Southern Cross. On these tenements Bullseye's aim is to develop a series of satellite gold deposits, that when mined together, can support the upfront capital costs of an on-site plant at Hopes Hill and through economies of scale, create a low-cost operating cost per tonne for the Southern Cross Gold Project.²
11. This project holds the tenements the subject of these proceedings E 77/2341 and E 77/2351.

The Aurora Project

12. The Aurora Project is located on the Marda Greenstone Belt approximately 100 km north of Southern Cross and the Hopes Hill mine site. The tenements the subject of this application in this project are E 77/2087, E 77/2118, E 77/2119 and E 77/2120.

A TIMELINE

13. To better understand the applications for exemption in this matter it is necessary to understand the timeline of corporate events. That timeline is set out at Schedule 1 to these reasons. This should be read in conjunction with the relevant expenditure years set out in the table at [18] below, which are, in summary, between 16 June 2018, being the earliest

² Affidavit of Peter Gerard Burns, 30.01.20 23 [67]-[69].

commencement of an expenditure year, and 21 June 2020, being the latest completion of an expenditure year.

14. The timeline is largely taken from the submissions lodged in support of the application dated 27 March 2023, but also from other evidence given by Mr Burns. There was no challenge by the objectors to the fact of the corporate events, nor the dates, and other than some clarification or expansion on the events in the hearing, the timeline as submitted by the applicant is, I am satisfied, an accurate reflection of the corporate events which occurred.

THE APPLICATIONS

15. The applicant conceded that the minimum expenditure conditions for the relevant tenement years had not been met.
16. The applicant applied for exemptions for the following reasons, in identical terms on its applications for each tenement:

S 102(2)(b): that time is required to evaluate work done on the mining tenement, to plan future exploration or mining or raise capital therefor.

S 102(3): Bullseye has been severely restricted in raising of capital during the reporting period due to the hostile takeover bid of Red 5 Limited, as well as numerous hostilities and attempts to underhandedly assume control of Bullseye, by the Company's major Chinese shareholder groups and other associated parties. The hostilities that Bullseye and its shareholders have been subjected to during the reporting period are extreme and highly extraordinary, including: 2x attempts to overthrow the Bullseye board via requisitions under section 249D of the Corporations Act, Supreme Court Action/s, Red 5 hostile takeover bid.

17. Where tenements have been subject to an application for forfeiture, and contributed to the difficulties, Bullseye says, of raising capital, that is also noted in the application:

a. E 37/1243: The Tenement has been Subject to Application for Forfeiture #557294 since 27 June 2019.

b. E 53/1407: The Tenement has been Subject to Application for Forfeiture #560280 since 12 August 2019.

- c. E 37/983: The Tenement has been Subject to Applications for Forfeiture #560289 and #571410 since 12 August 2019 & 3 February 2020 respectively.
- d. E 37/1017: The Tenement has been Subject to Application for Forfeiture #560290 since 12 August 2019.
- e. E 37/1121: The Tenement has been Subject to Application for Forfeiture #560292 since 12 August 2019.
- f. E 37/1611: The Tenement has been Subject to Application for Forfeiture #560282 since 12 August 2019.

18. The tenement years for the applications for exemption and the objectors,³ and the amounts recorded as being spent on the tenements in those years, are as follows:⁴

Tenement	Application Exemption No.	Expenditure Year	Objector	Date of application	Amount spent/ Minimum expenditure required
E77/2087	559186	28/5/2018 27/5/2019	WAP	26/07/2019	38,675/105,000
E37/801	560439	16/6/2018 15/6/2019	Wolski	14/08/2019	20,700/50,000
E53/1611	561242	22/6/2018 21/6/2019	Wolski	20/08/2019	10,474/50,000
E37/1249	562057	5/7/2018 4/7/2019	Wolski	30/08/2019	6,112/20,000
E37/1290	562561	11/7/2018 10/7/2019	Wolski	6/09/2019	5,586/15,000
E37/1301	562561	11/7/2018 10/7/2019	Wolski	6/09/2019	7,531/20,000

³ Reproduced from the Applicant's Submissions in Support of Applications for Exemption dated 28.9.22 [1].

⁴ Reproduced from the Applicant's Submissions in Support of Applications for Exemption dated 28.9.22, Schedule 2.

E 77/2341	563148	20/7/2018 19/7/2019	WAP	17/09/2019	10,536/15,000
E 77/2351	565510	29/8/2018 28/8/2019	WAP	25/10/2019	11,190/15,000
E 77/2118	566172	9/09/2018 8/09/2019	WAP	07/11/2019	24,259/62,000
E 77/2119	566172	9/09/2018 8/09/2019	WAP	07/11/2019	5,407/15,000
E 77/2120	566172	9/09/2018 8/09/2019	WAP	07/11/2019	5,442/15,000
E37/1017	579659	12/04/2019 11/04/2020	Wolski	10/06/2020	18,700/29,167
E37/1121	580415	23/04/2019 22/04/2020	Wolski	19/06/2020	11,532/23,333
E37/1243	578457	23/03/2019 22/03/2020	Wolski	21/05/2020	6,413/12,500
E53/1407	576320	19/02/2019 18/02/2020	Wolski	17/04/2020	13,578/35,000
E 37/983	579892	14/04/2019 13/04/2020	Wolski	12/06/2020	16,376/23,333
E53/1611	584605	22/07/2019 21/06/2020	Wolski	20/08/2020	9,632/11,667

19. The particulars of the applications identify that in each application other than for E 77/2351, E 77/2118, E 77/2119 and E 77/2120, under s 102(2)(b), time was required, at the relevant time, to raise required capital to carry out planned exploration activities.⁵

⁵ Particulars of Application lodged 7 February 2020: [17], [23], [29], [35], [41]; Particulars of Application lodged 25 November 2019: [18], [26]; Particulars of Application lodged 12 August 2021: [24], [32], [38], [46], [52], [57].

20. It is not clear from the particulars lodged for the applications for E 77/2351, E 77/2118, E 77/2119 and E 77/2120 the precise ‘limb’ of s 102(2)(b) the applicant relies on, however I note that in its submissions lodged on 27 February 2023 the applicant says that “Bullseye required time during the relevant expenditure year for each of the Exemption Tenements to raise capital for the purpose of future exploration on the Exemption tenements.”⁶
21. The particulars lodged regarding E 77/2087 also rely on reasons for an exemption under s 102(2)(d), however I note that that was not a reason relied on in the application lodged on 26 July 2019 and no submissions were made for an exemption under s 102(2)(d) for any tenement. I will treat that reason as now not being relied on.
22. The particulars lodged on 25 November 2019 regarding application for exemption for E 77/2341 appear to rely on an application to raise capital to carry out planned exploration on E 77/2341 and to plan future exploration drilling,⁷ however, again, I note the general statement contained in the submissions lodged shortly before the hearing of this matter,⁸ and I will treat the reason of needing capital to plan future exploration as now not being relied on.
23. Therefore, by the time of the hearing of these applications, the applicant had narrowed its application for exemption under s 102(2) to an application under s 102(2)(b)⁹ that it needed time to raise capital to conduct exploration on the tenements, and under s 102(3) that Bullseye:
- a. had a good track record of expenditure on the exemption tenements and on its entire portfolio of tenements;
 - b. had a plan for ongoing work and expenditure on the exemption tenements;
 - c. had plans to raise capital for the planned works; and

⁶ Applicant’s submissions in support of Applications for Exemption lodged 27 February 2023, which cover all the tenements for which exemptions have been sought in these proceedings, [21].

⁷ Particulars of Application lodged 25 November 2019 [18].

⁸ Applicant’s submissions in support of Applications for Exemption lodged 27 February 2023, which cover all the tenements for which exemptions have been sought in these proceedings, [21].

⁹ T 28.3.23, 8.

- d. was confronted with special circumstances that prevented and otherwise interfered with the ability of Bullseye to conclude capital raising efforts and planned works on the exemption tenements.¹⁰

THE OBJECTIONS

24. West Australian Prospectors Pty Ltd objected to each application as follows:

- a. It disputes the genuineness of the grounds advanced in support of the exemption application.
- b. It disputes the genuineness of the partial expenditure claimed for the relevant year.
- c. It denies the applicant's entitlement to seek an exemption in respect to this tenement.

25. Mr Wolski objected as follows in objection 561270 to the application for exemption on E 53/1611 in the 2018/2019 tenement year:

- a. He disputes the genuineness of the grounds advanced in support of the exemption application.
- b. He denies the applicant's entitlement to seek an exemption in respect to this tenement.

26. Mr Wolski objected as follows in objection 585579 to the application for exemption on E 53/1611 in the 2019/2020 tenement year:

- a. He disputes the genuineness of the grounds advanced in support of the exemption application.
- b. He disputes that there are any grounds which justify the grant of an exemption under s 102(3) of the *Mining Act* 1978.
- c. He denies the applicant's entitlement to seek an exemption in respect to this tenement.

27. Otherwise, Mr Wolski's objections are in the same terms as West Australian Prospectors.'

¹⁰ Applicant's Submissions in Support of Applications for Exemption, 27.2.2023 [33].

28. In particulars lodged by Mr Wolski on 5 March 2020 and in particulars lodged by the West Australian Prospectors on 9 October 2020, the objectors set out their objections as:

a. In relation to s 102(2)(b):

- i. There were no plans to undertake ground exploration work on any of the tenements for which an exemption is sought;
- ii. Bullseye had sufficient funds to comply with the expenditure conditions at the relevant times but chose not to, and
- iii. The fact that the company was the subject of a takeover offer is not just cause for the grant of an exemption.

a. In relation to s 102(3):

- i. Bullseye had sufficient funds to comply with the expenditure conditions at the relevant times but chose not to, and
- ii. The fact that the company was the subject of a takeover offer, a section 249D notice, or Supreme Court proceedings unrelated to the tenements is not justification for its failure to comply with the minimum expenditure requirements.

29. At the commencement of closing addresses, counsel for the objectors said:¹¹

The substance of this matter is Bullseye claiming that it required capital to comply with the expenditure obligations for all of the exemption tenements for the years that are specified, some of which straddled 2019, some 2020. It doesn't seek to rely upon any of the expenditure claimed for the relevant years because it seeks the full amount of the exemption, and I accept that on that basis the actual claimed expenditure which is in the form 5s is not relevant for your consideration.

30. I have taken it that that was the objectors withdrawing their contention that the Form 5 expenditure reports lodged, as attached to the affidavit of Peter Gerard Burns dated 30

¹¹ T 29.3.23, 48-49.

January 2023 as annexures PGB3, PGB 5 and PGB 7 are in some way not genuine. They are of course relevant to an assessment under s 102(4) of work done on the tenements.

31. In summary, the objectors say that the accounts of Bullseye show that it had capital which met and exceeded the amounts Bullseye did not spend on the tenements, and that takeovers and issues with funding are part of corporate life, not amounting to a satisfactory reason under s 102(2) or 102(3) as to why an exemption should be granted. In effect, they say, there was a decision by Bullseye to divert funds from its exploration program which relate to the corporate control of Bullseye, rather than that diversion being a deliberate or considered approach to the exploration of the tenements.
32. Before I address what is to be determined in these proceedings, I will set out the legislative scheme and the relevant policies of the Act.

THE LEGISLATIVE SCHEME AND POLICY OF THE ACT

THE LEGISLATIVE PROVISIONS

33. Under r 54(1a) an application for exemption must be lodged within 60 days of the end of the expenditure year. I am satisfied that each of the applications was lodged within the requisite time. Under r 54(3) a statutory declaration supporting the application must be lodged within 28 days after the lodgement of the application.
34. There is no specific section of the Act or regulation regarding objections to applications for exemption. Section 102(5) assumes that an objection may be made. Regulation 146(2)(b) provides for objections to be lodged within 35 days after the application being objected to was lodged, and r 146(3) provides that the objection is to be served on the applicant as soon as is practicable. I am satisfied that the objections were lodged within time, and they were served appropriately.
35. Section 62(1) of the Act provides that the holder of an exploration licence shall comply with the prescribed expenditure conditions applicable to such land unless partial or total exemption therefrom is granted in accordance with the Act. Failure to comply with the expenditure condition may result in the forfeiture of the lease on an application for forfeiture made under s 98.
36. The expression 'expenditure conditions' is defined in s 8 as follows:

expenditure conditions in relation to a mining tenement means the prescribed conditions applicable to a mining tenement that require the expenditure of money on or in connection with the mining tenement or the mining operations carried out thereon or proposed to be so carried out[.]

The expenditure condition for an exploration licence is prescribed by r 21 of the *Mining Regulations 1981* (WA).

37. Section 102 of the Act concerns applications for exemption from the prescribed expenditure conditions. Under s 103 the effect of an exemption is that the holder of the mining tenement is deemed to be relieved, to the extent and subject to the conditions specified in the exemption certificate, from their obligations under the prescribed expenditure conditions for the tenement the subject of the exemption.
38. Relevantly, s 102 is in the following terms:

102. Exemption from expenditure conditions

- (1) Subject to this Act, on an application (***an application for exemption***) made, as prescribed, by the holder of a mining tenement (other than a retention licence) or his authorised agent prior to the end of the year to which the proposed exemption relates, or within the prescribed period after the end of that year, the holder may be granted a certificate of exemption in the prescribed form totally or partially exempting the mining tenement to which the application relates from the prescribed expenditure conditions relating thereto, in an amount not exceeding the amount required to be expended –
 - (a) in respect to any mining tenement other than a mining lease, in any one year; and
 - (b) in respect to a mining lease, subject to subsection (7), in a period of 5 years.
- (1a) An application for exemption may relate to more than one mining tenement.
- (2) A certificate of exemption may be granted for any of the following reasons –
 - (b) that time is required to evaluate work done on the mining tenement, to plan future exploration or mining or raise capital therefor; ...
- (3) Notwithstanding that the reasons given for the application for exemption are not amongst those set out in subsection (2), a certificate of exemption may also be granted for any other reason which may be prescribed or which in the opinion of the Minister is sufficient to justify such exemption.

- (4) When consideration is given to an application for exemption regard shall be had to the current grounds upon which exemptions have been granted and to the work done and the money spent on the mining tenement by the holder thereof.
39. The Applicant bears the onus of establishing that an exemption under any part of s 102 from expenditure should be granted.

Timing and relevant evidence

40. In the present case, each of the applications was made subsequent to the relevant tenement year, although within the time prescribed by the regulations.
41. His Honour Justice Tottle acknowledged in *Siberia Mining Corporation Pty Ltd v O'Sullivan*,¹² that each s 102(2) reason is constituted by a state of affairs that exists, relevantly to the present case, at the time the application for exemption is made. His Honour Justice Vandongen, in *Riversgold (Australia) Pty Ltd v McPhee in his capacity as Mining Warden* took the view, without deciding finally, that therefore the relevant question for the warden considering an application for exemption under s 102(2)(b) is whether time was required to raise capital for one of the prescribed purposes at the time the application was made, even if the application was made after the expenditure year.¹³
42. As to an application under s 102(3), Justice Tottle said that when an application for exemption is made under s 102(3), the reason or reasons justifying the exemption must be constituted by reasons that exist in the expenditure year to which the application relates and thus they must exist at the time the application is made.¹⁴
43. That is not to say however that the expenditure year is extended by 60 days; that period provides an opportunity to undertake the necessary accounting and assess whether an application should be made.¹⁵ Therefore, generally, reasons for applying for a certificate of exemption will be grounded in, or constituted by, material facts, or a state of affairs, that exist in the year to which the proposed exemption relates.¹⁶

¹² *Siberia Mining Corporation Pty Ltd v O'Sullivan* [2020] WASC 214 [63].

¹³ *Riversgold (Australia) Pty Ltd v McPhee in his capacity as Mining Warden* [2023] WASC 375 [52].

¹⁴ *Siberia Mining Corporation Pty Ltd v O'Sullivan* [2020] WASC 214 [68].

¹⁵ *Siberia Mining Corporation Pty Ltd v O'Sullivan* [2020] WASC 214 [69(a)].

¹⁶ *Siberia Mining Corporation Pty Ltd v O'Sullivan* [2020] WASC 214 [69(b)] and [69(c)].

Section 102(b)

44. The applicant adopted the following reading of s 102(2)(b):¹⁷

Satisfaction of this ground requires an applicant to establish that:

- (a) time is required during the relevant expenditure year;
- (b) to do one (or more) of the following, in respect of the mining tenement the subject of the application:
 - (i) evaluate work done on the mining tenement;
 - (ii) plan future exploration or mining on the mining tenement; or
 - (iii) raise capital for the purpose of future exploration or mining on the mining tenement.

45. That adoption was attributed to Warden McPhee, who has said: ¹⁸

To make out a case for an exemption under s 102(2)(b), the applicant must establish that it required time to undertake one of the following on the tenements:

- a. Evaluating work done on the tenements; or,
- b. Plan exploration on the tenements; or,
- c. Plan mining on the tenements; or,
- d. Raise capital to permit evaluation of the work done on the tenements; or,
- e. Raise capital to plan or conduct exploration on the tenements; or,
- f. Raise capital to plan or conduct mining on the tenements.

46. Warden McPhee's view was cited on review without challenge,¹⁹ and the objectors in the present case did not seek to challenge that view.

47. However, there are two comments that need to be made:

¹⁷ Applicant's Submissions in Support of Applications for Exemption lodged 27.2.2023 [20].

¹⁸ *Siberia Mining Corporation v Thompson [No 3]* [2022] WAMW 16 [146].

¹⁹ *Riversgold (Australia) Pty Ltd v McPhee in his capacity as Mining Warden* [2023] WASC 375 [33].

- a. His Honour Justice Vandongen has raised the question of the time at which the requirement exists, which I have addressed above, and
 - b. The applicant's construction omits the possibility that capital may have been required to be raised for the evaluation of work done or the planning of future exploration of mining, however, given the applicant accepts that the exemption may be granted for "future exploration or mining on the mining tenement" and that is the crux of the applications under s 102(2)(b), I do not need to comment further on that omission.
48. Therefore, I adopt Warden McPhee's application of s 102(2)(b) in the present case.
49. In *Carnegie Gold Pty Ltd v Maughan* the applicant had spent above the annual minimum expenditure required on the tenements, and yet applied for an exemption under s 102. In determining whether, having met or exceeded the minimum required expenditure, the applicant was precluded from seeking an exemption, Justice Archer noted that, other than perhaps s 102(2)(h), the grounds contained in section 102 do not expressly state that the reason only applies if expenditure on a tenement is less than required under expenditure conditions. They do not rely, she found, on the holder being able to specify the precise amount expended,²⁰ nor to explain any non-compliance.²¹
50. In coming to her view, her Honour considered the purpose of s 102. She found that where an application for an exemption is granted, that is sufficient to mean that the usual requirement for minimum expenditure is not appropriate at all; if the holder still chooses to expend in those circumstances, that is a matter for the holder.²² It appears from that reasoning that her Honour was of the view that therefore the question of actual expenditure is divorced from the question of the need for an exemption. In other words, the exemption not only alleviates the need for expenditure, it results in the relevant expenditure condition being not applicable for the relevant tenement in the relevant tenement year.

²⁰ *Carnegie Gold Pty Ltd v Maughan* [2018] WASC 366 [74].

²¹ *Carnegie Gold Pty Ltd v Maughan* [2018] WASC 366 [74].

²² *Carnegie Gold Pty Ltd v Maughan* [2018] WASC 366 [93].

51. There is no principle found in the Act that where sufficient funding or capital is available to meet prescribed expenditure conditions, and deliberate commercial decisions are made to divert or use the money in some other way, a recommendation for exemption under s 102(2)(b) should not be made.²³ Rejecting the application for exemption may, however, be an appropriate response to particular factual circumstances of a case, such as in *Siberia Mining Corporation v Thomson [No 3]*²⁴ where Warden McPhee found that a decision by a company to maintain a minimum cash reserve rather than work its tenements meant that their need for raising capital was not for exploring the tenements.
52. Having regard to that view, it is my view that the question in the present case is, if Bullseye focused on their hostile takeover, should the Minister be satisfied that for that reason, the usual prescribed expenditure was not applicable? If the usual prescribed expenditure was not applicable, then, should an exemption be granted, having regard to all relevant factors, including the factors in s 102(4)?
53. Further, the requirement of s 102(2)(b) is that time is needed, and that that time is needed to raise capital. The capital cannot be something merely connected with mining, or a mining company. That capital must be for one of the purposes set out in s 102(2)(b).
54. The focus of a warden hearing an application under s 102(2)(b) is on the subjective position of the tenement and its holder at the time of the application. However, that position may be informed by relevant evidence which post-dates the expenditure year²⁵ or pre-dates the expenditure year²⁶ but nonetheless assists to answer the question of whether time is required to, in the present case, raise capital for planned exploration, in the broader context of how the tenement holder was conducting itself.
55. Section 102(2)(b) directs the mind of a Warden to consider the circumstances of the tenement for which the exemption is applied for.²⁷
56. In the circumstances of the present case, the applicant says that the effect of the Red 5 bid during and around the relevant tenement years was that they not only restricted the

²³ *Siberia Mining Corporation Pty Ltd v Wilson* [2015] WASC 322 [68].

²⁴ *Siberia Mining Corporation v Thompson [No 3]* [2022] WAMW 16.

²⁵ *Siberia Mining Corporation v Thompson [No 3]* [2022] WAMW 16 [152].

²⁶ *Siberia Mining Corporation Pty Ltd v Wilson* [2015] WASC 322 [64].

²⁷ *Siberia Mining Corporation v Thompson [No 3]* [2022] WAMW 16 [119].

company financially, but also restricted the board's ability to give its time to the business of the company, being, in relation to the tenements over which the applications have been made, exploration. There is nothing in the wording of s 102 or s 102(2)(b) which restricts an assessment of whether an applicant needs time to raise capital to whether the applicant had the requisite cash to explore during the tenement years. In my view the section is sufficiently wide to include where relevant a consideration of whether the applicant was restricted in time from applying itself to raising capital.

Section 102(3)

57. Under s 102(3) the Minister may grant an exemption where there is any other reason sufficient to justify the granting of that exemption. The reason relied on for the purposes of an application under s 102(3) does not need to be of a different character from the reasons specified or relied upon in an application under s 102(2). A combination of factors, each of which individually may not ground a successful application under s 102(2) nonetheless may justify the grant of a certificate of exemption under s 102(3).²⁸
58. Therefore, the discretion under s 102(3) is wide and unfettered.
59. Similar to an application under s 102(2) the discretion under s 102(3) is not conditioned on a reason which explains non-compliance. The subsection requires a reason that justifies the exemption, not one that justifies non-compliance with the expenditure conditions.²⁹

Section 102(4)

60. Under s 102(4) the Minister must consider two factors. The Minister is not, however, constrained to those 2 factors if there are other factors that are, in the circumstances of the case, relevant to the consideration of the application.³⁰
61. The first factor is whether previously exemptions have been granted in respect of the tenement under consideration on the same grounds as are relied on in the current

²⁸ *Siberia Mining Corporation Pty Ltd v O'Sullivan* [2020] WASC 214 [67], upheld on appeal *Thompson v Siberia Mining Corporation Pty Ltd* [2021] WASCA 115.

²⁹ *Siberia Mining Corporation Pty Ltd v O'Sullivan* [2020] WASC 214 [80], upheld on appeal *Thompson v Siberia Mining Corporation Pty Ltd* [2021] WASCA 115.

³⁰ *Haoma Mining NL v Tunza Holdings Pty Ltd* [2006] WASCA 19; (2006) 31 WAR 270 [61].

application.³¹ The fact of previous similar exemptions may indicate that, as a matter of consistent decision-making, a similar exemption should again be given. Alternatively, the fact of repeated applications based upon the same ground may cast doubt on the ability, or willingness, of the tenement holder to satisfy the prescribed conditions attached to the grant.³²

62. Secondly, consideration must be given to work done and money spent on the tenement by the holder up to the date of consideration of the current application for exemption.³³
63. These mandatory considerations are not reasons for granting an exemption however may result in an application being refused when so considered.³⁴

Plans

64. In relation to its application under s 102(2)(b) the applicant in the present case addressed in its written submissions the need for a plan on the basis that “To establish that an applicant was capital raising with a view to planning future exploration or mining on the tenements... there must be evidence of a plan for the mining tenement.”³⁵ However, at [21] of those submissions the applicant submitted that Bullseye required time during the relevant expenditure year for each of the exemption tenements to raise capital for the purpose of future exploration on the exemption tenements, and therefore not for the planning of that exploration. Further, it identified that an applicant must establish that capital raising must be for future exploration, as opposed to planning.
65. I have taken the submissions in relation to planning, and the evidence provided to me to that effect, including a summation of the evidence in a written document headed “Schedule of References Demonstrating a Plan” lodged 29 March 2023, and attached to these reasons as Schedule 3, as being evidence that I may take into account in considering

³¹ *Siberia Mining Corporation Pty Ltd v O’Sullivan* [2020] WASC 214 [73], citing *Haoma Mining NL v Tunza Holdings Pty Ltd* [2006] WASCA 19; (2006) 31 WAR 270 [57], [60] and upheld on appeal *Thompson v Siberia Mining Corporation Pty Ltd* [2021] WASCA 115.

³² *Haoma Mining NL v Tunza Holdings Pty Ltd* [2006] WASCA 19; (2006) 31 WAR 270 [60].

³³ *Siberia Mining Corporation Pty Ltd v O’Sullivan* [2020] WASC 214 [74], upheld on appeal *Thompson v Siberia Mining Corporation Pty Ltd* [2021] WASCA 115.

³⁴ *Siberia Mining Corporation Pty Ltd v O’Sullivan* [2020] WASC 214 [72], upheld on appeal *Thompson v Siberia Mining Corporation Pty Ltd* [2021] WASCA 115.

³⁵ Applicant’s Submissions in Support of Applications for Exemption lodged 27.2.2023 [22].

whether the capital was in fact required to affect future work, being work that I can be satisfied was planned, and but for the hostile takeover, as it relates to the application under s 102(2)(b), would have been conducted.

66. Having the benefit of the written submissions, I note that the objectors did not raise any matters relating to that submission, that evidence or the Schedule, other than some objections to particular evidence, and therefore I have proceeded on the basis that they are content for the warden to consider that evidence in that way.
67. In relation to its applications under s 102(3) the applicant says that one of the factors to be considered is that Bullseye had plans for ongoing work on the tenements.³⁶
68. Given in my view the relevance of the evidence of planning is not to determine whether the applicant required time to raise capital to plan future works, but that it is evidence of an intention to conduct future works, I do not need to consider the interpretation of the word “plan” under section 102(2)(b). I merely need to be satisfied, in my view, of the applicant’s intention, having regard to any plans it may have had, if I accept that it did.
69. Similarly, under s 102(3), in my view the relevant question in the present case is whether there is any plan, no matter how broad, for the tenement, or the project as a whole. The plan’s detail then leads to a question of weight.
70. However, I have kept in mind that, generally in *Mining Act* proceedings, ‘planning’ and ‘plans’ should be interpreted in a broad manner, encompassing all manner of activities which might reasonably be said to fall into the definitions of mining and exploration contained in the *Mining Act*. Plans are not constrained to plans for physical activity, such as actual mining operations, and nor should the need to raise capital be constrained to plans for actual physical exploration or mining.

THE POLICY OF THE ACT AND S 102

71. Section 102 reflects an object of the Act, which was explained in *Nova Resources NL v French*,³⁷ as:

[To] ensure as far as practicable that land which has either known potential for mining or is worthy of exploration will be made available for mining or exploration. It is

³⁶ Applicant’s Submissions in Support of Applications for Exemption lodged 27.2.2023 [33].

³⁷ *Nova Resources NL v French* (1995) 12 WAR 50, 57-58.

made available subject to reasonably stringent conditions and if these, including expenditure conditions, show that the purposes of the grant are not being advanced, then the Act and regulations make provision for others who have an interest in those purposes on that land to apply for forfeiture so they may exploit the area.

72. However, as was observed in *Forrest & Forrest Pty Ltd v The Honourable William Richard Marmion, Minister for Mines and Petroleum*,³⁸ that is not the only object of the Act. Other objects or purposes that have been identified include:

- a. identifying circumstances in which a tenement holder will be allowed to hold a mining tenement without mining or giving it up for others who may wish to actively mine the land.
- b. protecting tenement holders who have defaulted in compliance with the Act in some minor respect, or because of some circumstances beyond the control of the tenement holder, against loss of the tenement.
- c. providing that, in general, the holder of a mining tenement should carry out the relevant mining activity on the tenement.

73. Therefore, the policy of the Act is that a tenement holder unable to explore for or exploit mineral resources of a tenement should give way for some other person to do so. The Act encourages exploration and mining activity and discourages a tenement holder from going to sleep on his rights and obligations.³⁹ A related purpose is to protect tenement holders who have defaulted in compliance with the Act in some minor way or because of circumstances beyond the control of the tenement holder.⁴⁰

WHAT IS TO BE DETERMINED IN THIS MATTER?

74. The particulars and submissions in this matter have significantly narrowed the issues for determination.

³⁸ *Forrest & Forrest Pty Ltd v The Honourable William Richard Marmion, Minister for Mines and Petroleum* [2017] WASCA 153; (2017) 51 WAR 425 [96].

³⁹ *Craig v Spargos Exploration NL*, unreported, Kalgoorlie Warden's Court, 22 December 1986, noted in (1986) 6 AMPLA Bull 73.

⁴⁰ *Siberia Mining Corporation Pty Ltd v O'Sullivan* [2020] WASC 214 [57], citing *Re Minister for Resources; Ex Parte Cazaly Iron Pty Ltd* [2007] WASCA 175, per Pullin JA [21], [24].

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75. On the case for the objectors, this is a case about competing corporate obligations; what does an explorer do when it must make a choice? Is the primary object of the Act, that ground open for mining must be exploited, paramount to corporate obligations the explorer has? On the objectors' case, it is.
76. It may generally be the case that where there is insufficient money to apportion to expenditure on all of the tenements belonging to a tenement holder, tenements should be surrendered to those who do have funds. The Act does not countenance tenement banking or going to sleep on the tenement. Therefore, generally, simply not having enough time or money to go around is not of itself an excuse not to work the tenements.
77. Bullseye says it effectively did not have a choice. The external reasons, not of its own making, for the disruption to its cash flow and time- the hostile takeover in relation to its application under s 102(2)(b), and the hostile takeover, the Takeovers Panel actions, Supreme Court action and other corporate events in relation to its application under s 102(3), meant that there was not enough time or money to go around to keep the explorer's investors and shareholders satisfied, and the company from becoming insolvent, and to explore some of its tenements, or to continue to explore in the future. So that it could explore in the future, as planned, time and money needed to be applied to those external actions, thereby time being needed to raise further capital to allow future exploration, as planned, once the external disruptions abated.
78. The policies and objectives of the Act and mining regime in Western Australia are therefore finally balanced in this matter. On the one hand, as I have identified, the Act cannot countenance tenement holders going to sleep on their tenements or banking them for when money becomes available. This includes explorers which have taken on more than they are able to manage.
79. On the other hand, it is not an insignificant matter to lose tenements, particularly where there has been work on them by the tenement holder or they are part of a larger, planned and operational venture. Security of tenure is an important factor in maintaining a viable mining industry. However, the more probable it is that the tenement holder has made a choice not to promote the primary objective of the Act that the ground be exploited, even if they are choices which maintain a company, the more probable it is that those choices cannot be excused.

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80. If there are factors which have arisen which have rendered the choices made by the company affectively not a choice at all, then the more probable it is that the Act will protect the tenement holder, and the expenditure conditions for the expenditure year will not have applied. As I said at the outset of these reasons, this case is about need.
81. While much of the objective factual circumstances relied on by Bullseye are incontestable, there are some factual questions that must be determined as they relate to the actions and intentions of Bullseye in relation to the reasons for their application.
82. While the applications under each of s 102(2) and 102(3) are different, they have some central commonalities:
- a. There was a need to raise capital (under the terms of its application under s 102(2)(b)), or Bullseye was restricted from raising capital (under the terms of its application under s 102(3)) over and above the funds held or raised by Bullseye in the relevant tenement years;
 - b. The capital was to conduct exploration;
 - c. That there was a need to raise capital for exploration is supported by the existence of plans of ongoing work on the tenements the subject of the application and that there were plans to raise capital before the corporate events occurred;
 - d. But for the corporate events (the hostile takeover by Red 5 under s 102(2) and the hostile takeover, the attempted board spill, the Supreme Court proceedings and other corporate events, under s 102(3)) that capital would have been raised.
83. For its application under s 102(3) the applicant says that it had a good track record on the mining tenements the subject of the application, and generally. While that is a specific factor I would need to determine in relation to those applications, that factor is relevant under s 102(4) on both types of application, in any event.
84. In my view there is little difference between a need to raise capital and an inability to raise capital when a company has mining regime obligations and plans. Therefore, as far as findings of fact are concerned, the only difference between the two types of application are that under s 102(2)(b) the applicant blames only the hostile takeover, but under s 102(3), the wider corporate events.

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85. As I have addressed above, there is no principle that where an applicant has the funds, an application for an exemption cannot be made. Therefore, in my view, a tenement holder is not bound to apply funds to tenement expenditure if it has those funds, and it is not a question for me in this case simply whether the cash flow was below what was required to meet the minimum expenditure.
86. The objector's submission is that Bullseye had sufficient capital to meet its *Mining Act* obligations, and the circumstances in this case, being the hostile takeover, or a combination of the hostile takeover and other corporate events were not sufficient to justify that choice Bullseye made such that the need for time to raise capital was justified. In other words, having sufficient capital, the need to raise capital was actually for the resistance of the hostile takeover and other actions, rather than exploration, which was the core business of the company, the takeovers simply being part of corporate life.
87. That this was a corporate choice, and not a 'need,' the objectors point to:
- a. Bullseye applying for 2 new tenements around the expenditure years;
 - b. That Bullseye treated the tenements under the application as 'peripheral' tenements;
 - c. Bullseye continuing to pay its directors and staff;
 - d. Takeovers being part of corporate life;
 - e. In any event, the takeovers not preventing capital raising, and
 - f. Public announcements being made that the shareholders supported Bullseye and its board, there being therefore no impediment to capital raising for any reason, during the relevant tenement years or at the time of the applications.
88. I address the factual questions, and the consequences, next, however first I must deal with objections to evidence.

OBJECTIONS TO EVIDENCE

89. The objectors objected to some evidence.
90. In summary there were two principle reasons for the objections:
- a. The objectionable evidence is hearsay, and

b. The documents are not business records admissible under s 79C of the *Evidence Act 1986* (WA).

91. As the parties relied on s 79C in their arguments and I need to consider how, or if, s 79C applies in this case.

THE RULES OF EVIDENCE DO NOT APPLY AND THEREFORE NEITHER DOES S 79C OF THE *EVIDENCE ACT*

92. Under s 4 of the *Evidence Act*, that Act applies, unless the contrary intention appears, to every legal proceeding, a legal proceeding being, under s 3, any action, trial, inquiry, cause or matter, whether civil or criminal, including arbitration, in which evidence is or may be given. Further, ‘court’ is defined as including the warden’s court under the *Mining Act 1978*. Under s 79B, proceedings include arbitrations and references, and s 79C(3)(a) enables certain evidence to be admissible in proceedings notwithstanding the rules against hearsay, or, under s 79C(3)(b) the rules against secondary evidence.

93. Section 102 of the *Mining Act* is in Part IV of that Act. The conduct of proceedings under Part IV of the Act where an objection has been lodged to an application for exemption are governed by Part VIII Division 3 of the Regulations (Objections under the Act Part IV) and 6 (Conduct of hearings). The process undertaken by the warden in hearing the objection and reporting to the Minister is administrative, created by the *Mining Act*. There is no specific section which establishes the warden’s administrative jurisdiction, in contrast to the warden’s court, which is established under Part VIII of the Act, with specific jurisdiction and powers expressly set out in that Part. Nevertheless, under Part VIII of the Act the warden is required to hear, receive and examine evidence and make determinations of fact to assist the Minister to make their relevant determination.

94. Under r 154, which is in Part VIII of the Regulations, in establishing the wardens’ administrative procedure, the legislature provided express provisions on the procedure to be applied, under which the rules of evidence expressly do not apply. However, given the adversarial nature of hearings before the warden, and the formal manner of taking evidence, the legislature has invoked under r 154(1)(b), the rules of natural justice, requiring the hearing to be fair in all the circumstances.

95. While not expressly excluding the *Evidence Act* itself, or s 79C, under r 154, as I have identified, the rules of evidence do not apply. Section 79C is remedial in that it provides exceptions to rules of evidence. In my view, the legislature cannot have envisaged that the warden's administrative proceedings are subject to s 79C, where the rules of evidence expressly do not apply in any event. Therefore, in my view, s 79C of the *Evidence Act* does not apply to wardens' administrative proceeding, both because the administrative hearing is neither civil nor criminal, and because r 154, read with s 79C, expressly excludes its operation.

IF THE RULES OF EVIDENCE AND S 79C DO NOT APPLY, WHAT IS THE STANDARD WHICH THE WARDEN SHOULD APPLY WHEN BUSINESS RECORDS AND OTHER HEARSAY EVIDENCE IS TENDERED?

96. *Cross on Evidence*⁴¹ suggests that where the statute provides little more than a requirement that the tribunal shall act upon the basis of evidence, the general view is that this entitles it, in the absence of special considerations, to act upon any material, including hearsay, which is logically probative. That is, it must be based upon material which tends logically to show the existence or nonexistence of facts relevant to the issue to be determined. That means that the decision-maker may take into account any material which, as a matter of reason, has some probative value in that sense. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom the legislature has entrusted the responsibility of deciding the issue.
97. I have identified the objections, set out in categories, next. The objections were largely based on the strict rules of evidence, and the response from the applicant attempted to meet the objections put in that way. However, given the rules of evidence do not apply, I have considered the objections on the basis that in certain circumstances fairness may dictate that, using the strict rules of evidence as a guide, the evidence cannot carry weight for the purposes which it is intended. In other words, I have considered whether, given risks with the evidence suggested by the strict rules of evidence, the evidence lacks such

⁴¹ *Cross on Evidence*, 12th Australian edition, 2020, JD Heydon, LexisNexis Butterworths [1065].

veracity or reliability that it in fact is not probative of a fact to be determined at all, and is therefore inadmissible.

98. In making that determination, I have taken into account the fact that although these proceedings do not result in the taking away of the applicant's liberty, they do expose the applicant to the risk of forfeiture of the tenement and therefore risk to its business.

HEARSAY

99. Before I proceed to discuss the categories of objections, I should say something about hearsay. The rule against hearsay is that an assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted. At common law:⁴²

- a. the previous assertions of the witness who is testifying are inadmissible as evidence of the facts asserted. Simply because a person repeats assertions they have previously made, does not make them true, and are superfluous to the direct oral testimony, and
- b. assertions by persons other than the witness who is testifying are inadmissible as evidence of the facts asserted where the witness who recounts the out-of-court assertion has no personal knowledge of the facts asserted, and the party against whom the assertion is tendered therefore has no opportunity to cross examine the original maker of the assertion, and test their reliability or credibility.

100. Bearing that in mind, there is an apparent unfairness when a witness produces documents of which they are not the author, but from assertions made in those documents, they urge the fact finder to find particular facts as proved, and where they have no knowledge themselves of the facts so asserted.

101. However, that presupposes that the tenderer is urging the fact finder to use the documents or the out-of-court statements in that way. It is therefore important that I identify the

⁴² *Cross on Evidence*, 12th Australian edition, 2020, LexisNexis Butterworths [1260].

purpose for which the evidence is tendered and referred to by Mr Burns when considering the objections.

CATEGORY 1

102. The objectors submitted that the following passage from Mr Burns' affidavit is "unsupported hearsay":⁴³

[58] Various investors informed me in discussions that they were concerned by these developments and the delays that would likely occur to resolve those applications and I formed the view that those persons were deterred from investing in the company.

103. The passage appears in Mr Burns' affidavit under the heading "Forfeiture Actions Effect on Bullseye Strategy 2019/2020/2021." In examination in chief Mr Burns was asked to clarify:⁴⁴

Which investors are you referring to, Mr Burns?---So there was three investors in particular that - _well, I would call, sort of, major investors in Bullseye. One was ... One was - _so they were all private individuals, or high nett worth investors. Geoff Cribb was one.
Yes?---Steve Sagoulas was another one.
Yes?---A third one was John Clinton.
Yes?---And then there was another overseas party around that time, one of the Irish Investors, a Mr Don Campbell.

104. That evidence was proffered because Bullseye's application is based on the asserted fact that the corporate events precluded it from raising capital, either legally or practically. The affidavit evidence shows that Mr Burns formed the opinion that the investors were deterred, rather than its substantiating any specific and stated refusal to invest as a result of the corporate events. The applicant submitted that the deterred investing was an obvious and concluded fact from the balance sheets.
105. While evidence Mr Burns gave in court may have clarified who Mr Burns spoke to, it gives no context to the conversations, and is a simple report of the general information received from potential investors with Mr Burns' opinion. Mr Burns' conclusions from those conversations are not the determinant of the question of fact. There is no obvious

⁴³ Schedule of Objections to Evidence Maintained, lodged 27.3.23.

⁴⁴ T 29.3.23, 7-8.

connection between the investors named in that paragraph and the subsequent evidence and the balance sheets. The warden, followed by the Minister, are the determinants of that question of fact and, accordingly, the unsupported assertions of other investors, together with the fact that Mr Burns only offered his opinion as to the consequences of those assertions carry no logical probative value. I uphold the objection, and remove that sentence from [58] of exhibit 1, and I have therefore not taken into consideration Mr Burns' evidence that in his opinion some investors were deterred from investing further.

CATEGORY 2

106. This category is an objection to statements made in statutory declarations which are attached to Mr Burns' affidavit, but of which he is not the author. The objectors say that the statutory declarations are:

- a. Hearsay,⁴⁵ and
- b. not business records as they are:⁴⁶
 - i. made by a third party who is not an employee of Bullseye and who has not been called to give evidence, and
 - ii. documents prepared for the Minister for Mines, therefore not business records prepared or used as a book of account or for recording matters relevant to the tenement manager's business.

107. The objectors' submission is based on the proposition that some of the facts set out in Mr Burns' affidavit are based on what is contained in the statutory declarations, drafted by someone else, therefore precluding the objectors from cross examining the person who actually knows those facts, as to the veracity of those facts, and therefore the admission of which would be unfair.⁴⁷

108. The applicant says that the definition of 'business record' is sufficiently wide to qualify the statutory declarations as business records, and accordingly they are admissible and carry weight.

⁴⁵ See Schedule of Objections to Affidavit of Peter Gerard Burns dated 20.3.23, Item 52, 61, 67, 78, 139, 148, 158, 169 and 205.

⁴⁶ See Schedule of Objections Maintained dated 27.3.23, Category 2, T 29.3.23, 53.

⁴⁷ T 29.3.23, 53.

What is the purpose for which the impugned evidence is tendered?

109. The statutory declarations objected to are annexures to Mr Burns' affidavit PGB31, PGB44, PGB47, PGB52, PGB101, PGB107, PGB113 and PGB121 which are declarations which accompanied the applications for exemption the subject of the present case, and the statutory declarations which accompanied exemption applications which have subsequently been granted in relation to other tenements as annexures to Mr Burns' affidavit PGB181A – K.
110. Each of the statutory declarations objected to contains statements of fact regarding the corporate events leading up to the need for an exemption from expenditure, details of the tenement including historical results, work completed on the tenement by the company and Bullseye's future intentions for the tenement including its plans. Some of what is contained in the declarations is repeated by Mr Burns' direct evidence and much of it is repeated in annexures to his affidavit such as applications for extension of licences, for example, annexure PGB53 for E53/1611, and Bullseye's annual reports for the tenements, such as annexure PGB51 for E53/1611 for the year 2016/2017.
111. The statutory declarations accompanying the applications for the current exemptions are relied on by the applicant because they contain facts regarding the work done prior to the applications and information on the corporate events leading to the need for the applications to be made. Predominately, however, each of the declarations features in the applicant's case as substantiating the evidence of the plans Bullseye had in relation to the tenements for which it has sought exemptions. As I have identified elsewhere, it is not a requirement under s 102(2)(b) or (3) that the applicant prove that it had plans, where, as in this case, the application is not based on a need to raise capital to plan. However, that evidence may be relevant in the circumstances of this case because:
- a. If plans are in place, then there is an available inference that there was to be future exploration or mining such that in the circumstances of the present case, time was required to raise capital to put those plans into effect, and
 - b. The conclusion may be drawn that the applicant was not treating the tenements as peripheral, an allegation put to Mr Burns in cross examination, or banking them, a relevant factor in the Minister's discretion.

112. The statutory declarations objected to accompanying the subsequent applications on other tenements are important, according to the applicant, as relevant factors under s 102(4). Bullseye submitted that the fact of the certificates of exemption, and that the applications were grounded in the same facts as the applications currently before the warden, assist the warden in coming to a recommendation to grant the exemptions, because they “give some comfort to” the position that at around the same time exemptions were being granted on other tenements for the same reasons, and this is a factor that I may consider in balancing all the factors.⁴⁸
113. Elsewhere in these reasons I make a finding as to the utility of such a submission, however, at this point, I will consider only whether the assertions made in the statutory declarations are, as is asserted by the objectors, hearsay,⁴⁹ or are otherwise admissible.
114. At the outset, I am satisfied that as an officer of the company Mr Burns may attach to his affidavit documents of the company Bullseye. The fact that they were prepared on instructions from the company mean they are, on their face, documents of the company. However, the fact of their existence, and submission to the Department, is a different matter to the admission of the statements they contain.
115. I am also satisfied that direct oral evidence of the facts and opinions contained in the statutory declarations would be admissible in this matter.
116. As the different statutory declarations are tendered for separate purposes I will consider them separately.

Are annexures PGB181A-K admissible?

117. The effect of these annexures and the submissions made upon them, is that the applications were made for the same reasons as the current applications for exemption have been made, and granted. Therefore, the question for me is whether those applications were made, on what grounds they were made, and whether they were granted. That is, it is not for me to determine whether the underlying facts asserted in the

⁴⁸ T 29.3.23, 59, Bullseye’s closing submissions.

⁴⁹ See Schedule of Objections to Affidavit of Peter Gerard Burns, dated 20.3.23.

applications and statutory declarations, which supported the applications, were true or false, as they relate to those applications.

118. In my view the statements contained in the statutory declarations as relied upon by Bullseye are not hearsay. It is not for the truth of the statutory declarations' contents that they are tendered, but for the fact that the applications were made and the grounds on which they were made. That they were made is supported by the accompanying documents, being the resulting certificates of exemption from the Minister, annexures PGB 182A-K. To consider as a factor under s 102(4) whether I should give weight to the fact that subsequent exemptions were granted for the same reasons does not require an assessment of the truth or otherwise of the assertions made in the declarations, the Minister having already granted the exemptions.
119. Both the documents and the statements contained in them are therefore admissible for the purposes for which they were tendered and I have had regard to them.

Are the statutory declarations supporting the current applications for exemption admissible?

120. As I have identified, the parties focused on whether the declarations are business records, and Bullseye referred me to cases regarding the definition of business records under s 79C of the *Evidence Act 1906* (WA). However, given in these proceedings the rules of evidence do not apply, it may be that I may accept the admission of the declarations whether they fall under s 79C or not.
121. The applicant says that:⁵⁰
- a. Given the objectors did not cross examine Mr Burns on his knowledge of what was contained in the statutory declarations, or its accuracy, they are precluded from now taking issue with the admissibility of the statements contained in them;
 - b. Being an authorised agent, which was not questioned, I can accept what Mr Jeswon, the declarant, has said, and
 - c. The statements in the declarations merely support the evidence of Mr Burns in any event; the statements therefore are not the primary evidence of the facts – Mr Burns' evidence is, and, in any event

⁵⁰ T 29.3.23, 72, 74 and Response to Schedule of Objection to Affidavit of Peter Burns dated 23.3.23.

- d. The statutory declarations are business records.
122. Mr Burns was not the author of the documents, yet Bullseye relies on the assertions of fact and opinion made by Mr Jewson in the declarations. Mr Jewson did not give evidence for the purposes of the hearing. The facts contained in the declarations by Mr Jewson are hearsay before me. I expressed my view above that the evidence of the plans is logically probative. Whether there is any weight to be given to the evidence proffered to support the submission that there are plans is therefore a separate question.
123. The objection relies on Mr Burns not giving that evidence himself, or at least not asserting his knowledge over the facts asserted.
124. Therefore, before turning to any guidance gleaned from s 79C to determine whether the assertions can be tendered, I have considered the evidence given by Mr Burns.

Mr Burns' affidavit

125. Mr Burns swore one affidavit on 30 January 2023. It ran to over 60 pages, and the annexures ran to approximately 2850 pages. In it, Mr Burns identifies that he is a Director of Bullseye, and is authorised to make the affidavit. He specifically identifies that “The facts and matters deposed to in this affidavit are, unless otherwise stated to the contrary, within my personal knowledge and belief...” and that where facts are outside of his personal knowledge, he has identified the source.⁵¹
126. The structure of Mr Burns' affidavit is that after general information about Bullseye's projects and development strategies, a description of each of the exemption tenements and plans for that tenement is set out. Mr Burns sets out facts as to:
- a. The relevant tenement years;
 - b. The acquisition of the tenement;
 - c. Previous work by Bullseye on the tenement,
 - d. Plans for the tenement.
127. That structure is such that where there is a document that either of itself supports an assertion made by Mr Burns, or facts contained within the documents support an assertion

⁵¹ Affidavit of Peter Gerard Burns 30.1.23, [1]-[3].

made by Mr Burns, that document is then referenced and subsequently annexed to the affidavit.

128. For example, in relation to E 37/1249:

E37/1249

116. The relevant expenditure year for E37/1249 is 5 July 2018 to 4 June 2019. Between July 2016 and December 2017, Bullseye carried out the following exploration activities on E37/1249:
- (a) historical data review and compilation;
 - (b) ground reconnaissance work;
 - (c) hydrogeological evaluation; and
 - (d) initial field mapping.
117. As part of Bullseye's exploration strategy, during the relevant expenditure year Bullseye would have completed on ground exploration work including broad surface sampling and geological mapping, with particular interest in the well-defined contact between the granites and the greenstones.
118. Attached and marked **PGB44** is the supporting declaration submitted in support of Bullseye's application for exemption from expenditure 562057.
119. Bullseye had planned to undertake exploration assessment and targeting which would have resulted in soil geochemical sampling and geological field mapping in anticipation of subsequent drilling, resource definition and extension of the NLGP LOM.
120. However, due to the Red 5 Hostile Takeover Bid, Bullseye was severely restricted in its ability to undertake the planned exploration activities which is explained further below.
121. On 21 June 2022, Bullseye was granted a five-year extension of term to 4 July 2023.
122. Attached and marked **PGB45** is a copy of the extension of term application lodged on 16 June 2021.
123. Attached and marked **PGB46** is the extension of term approval letter from DMIRS.

129. From that structure, there is an available inference that Mr Burns was not relying on the document annexed as PGB44 to recount the facts in [116] and [117]. Rather, it was the fact of the application that appears to be the reason for the annexure.

130. However, as can also be seen, evidence of a plan in that section on that tenement, as it is with others, is relatively brief or generic.

Mr Burns' evidence in court

131. Mr Burns was asked in court, in addition to the evidence in his affidavit, what his position in Bullseye was:⁵²

We were a very small, lean executive team in Bullseye. I suppose, if you looked at an executive level, it was essentially myself and Ms Mullan as the two executive directors of the company, and then below that - _so she - _her primary function was to - - -

Just tell us the team - _what it comprised - - -?---Okay. And then below that, we had a junior geologist, we had a second junior geologist, we had a field - _a senior field hand, a junior field hand, and then beyond that, we had brought expertise in as we required, so it would be part-time or consultants, and that sort of thing.

132. He confirmed that he was the director primarily responsible for the financial management of Bullseye between 2017 and 2020.⁵³

Cross examination

133. Under cross examination he said:⁵⁴

So I have a Bachelor of Business degree, with a double-major in Management and Marketing. I am a Fellow of the Institute - _of the Australian Institute of Marketing, and a member of the Australian Management Institute as well.

And have you got any qualifications in mining matters, such as geology?---I have been with Bullseye for over 10 years now. I don't hold a formal qualification in geology, but I have been fairly actively involved in working side by side with my co-executive director, who is a geologist. I have been actively involved in feasibility studies and all the aspects of developing a project, I guess, from exploration all the way through to mining.

But your prime role has been on the financial side?---I would say corporate. So a big part of my role is investor relations, looking after shareholders, raising capital, the

⁵² T 29.3.23, 5.

⁵³ T 29.3.23, 6.

⁵⁴ T 29.3.23, 9.

finance side of things. But I am also actively involved in the operations as well.

And this was your full-time position, with Bullseye, say, in 2019 and 2020?---Yes, it was.

134. He was challenged on his knowledge of the facts to which he was attesting, and he said:⁵⁵

Do you know that statutory declarations have been filed in support of each exemption application?---Yes, I'm aware of that.

Okay. And do you know who prepared those statutory declarations?---Yes.

Who was that?---Typically that would be Ms Mullan as the principal geologist. And then it would be filed by our tenement manager, which is MMWC.

Well, the statutory declarations are primarily in the name of prepared by Mr [J]ewson I put to you?---Yes. The information would be provided to Mr [J]ewson and he would put it into a - a format that would be filed with the department.

And the information for those statutory declarations would come from Ms Mullan, would it not?---Typically, yes.

Not from you?---No.

No. Because I'm just putting to you that your own recollection wouldn't enable you to say on a particular tenement X number of samples were taken at a particular time?---At that time I would be aware of it, but I couldn't recall off the top of my head exactly where it is now.

The detail?---Yes.

Okay. So where for the purpose of preparing this affidavit did you get the information from?---This information would have been typically prepared by Ms Mullan, I believe, and then I would have reviewed it or had it verified by our company geologist.

135. Therefore, he conceded he did not assist in the preparation of or the provision of information for the statutory declarations, although he may have been independently knowledgeable of the facts provided by Ms Mullan to Mr Jewson.

136. Further, he was asked about the structure of his affidavit:⁵⁶

Okay. Mr Burns, we then get on to page 20, where you start giving evidence about specific tenements. How do you know, for instance, that 700 soil samples were collected from this tenement at a particular time?---Well, I would be involved in - so usually - sorry, just let me go back. The soil samples we would usually - we would have maybe one of our full-time field assistants would be involved in that. And then this type

⁵⁵ T 29.3.23, 30-31.

⁵⁶ T 29.3.23, 29-30.

of work we wouldn't have a team dedicated on the - on the payroll, I guess, for soil sampling. So we would either have consultants or we would have a number of uni students that were trained up that we could call in and out as we needed. And I would be across, I guess, paying the - the wages and fees and whatever else for the various parties to go out to the tenements and I would have a log of what - what they did. I presume that you haven't kept in your mind that E37/801 is a specific tenement, the location of which you know and at a certain time 700 soil samples were taken; where did you get the information from?---That the samples were taken? At a particular time from that tenement?---I knew that from my own knowledge working within Bullseye.

137. It was not directly put to Mr Burns that he did not have knowledge of the facts, other than where he so identified, as he had recited in his affidavit.

Mr Burns' re-examination

138. In re-examination Mr Burns clarified to some extent:⁵⁷

You were also asked questions about where you got information from in respect of each tenement that you deposed to in your affidavit, and you gave some answer about that. What company records or documents did you have regard to to satisfy yourself as to that information before you deposed to your affidavit?---Well, we've got all the various geological information within the company. It was put together and I actually had one of the - well, there's the principal geologist at Emerald Resources who now controls the company is also duplicated for Bullseye Mining. Yes?---So I asked him to do a comprehensive review of - of all the information and - and verify I had it correct, and he did that and verified to me it was all as per the company records. Thank you. And did you have regard to any of the company records yourself?---A little bit, yes, I did review some myself.

139. Giving evidence in matters such as these should not be merely a memory test. That would be unfair, given the substantial nature of such businesses, and the length of time since the facts occurred.
140. Under r 152, there is a general power given to the warden to do anything that in the warden's opinion will or may facilitate proceedings being conducted and concluded efficiently, economically and expeditiously. While that power exists in relation to

⁵⁷ T 29.3.23, 44.

interlocutory orders and directions, read in the context of the absence of rules of evidence and, also under r 154, that hearings must be conducted with as little formality as possible, there is a general overarching principle that warden's administrative proceedings as a whole, including hearings themselves, are to be conducted efficiently. It would not be an efficient and expedient manner of dealing with applications such as this where a company has a number of different officers, employees, consultants and agents, to have them all tender evidence of their part, however small, in the business of the company.

141. There must be a balance between a need for the efficiency of such proceedings and the appropriate method of correctly ascribing weight to evidence gathered.
142. Therefore, I am satisfied that Mr Burns was aware of his obligations in relation to giving evidence, as he has set out in the affidavit. I am also satisfied that where he gives evidence in his affidavit about facts, and has not attributed the knowledge of those facts to someone or something else, given his involvement in Bullseye, he has given evidence from his own knowledge.
143. However, the Schedule provided to me as evidence demonstrating a plan, as is annexed to these reasons as Schedule 2, makes significant reference not only to Mr Burns' evidence itself, but more so to the documents annexed to his affidavit, and specifically the statutory declarations objected to. As I have identified, in relation to plans, Mr Burns does not refer to those annexures as if he was describing their contents in relation to plans, however overall, his personal evidence contained in the body of his affidavit on plans is limited.
144. Therefore, I am satisfied the statements contained in the statutory declarations are relied on by the applicant as assertions of fact separate to Mr Burns' evidence. As I am satisfied that that evidence is logically probative, I must determine whether it would be unfair to the objectors to accept those assertions as true in the circumstances of this case. Section 79C of the *Evidence Act* is remedial of that unfairness in certain circumstances, and, given the parties both addressed me on its application to this case, it seems appropriate that I consider that section, as a useful guide to the acceptance of documents containing hearsay assertions in this case.

Section 79C

145. Under s 79B of the Evidence Act:

business means any business, occupation, trade or calling and includes the business of any governmental body or instrumentality and of any local government;

business record means a book of account or other document prepared or used in the ordinary course of a business for the purpose of recording any matter relating to the business;

derived means derived, by the use of a computer or otherwise, by calculation, comparison, selection, sorting, consolidation or by accounting, statistical or logical procedures;

qualified person, in relation to a statement, means a person who —

(a) had, at the time of making of the statement, or may reasonably be supposed to have had at that time, personal knowledge of the matters dealt with by the statement; or

(b) where the statement is not admissible in evidence unless made by an expert on the subject of the statement, was at the time of making of the statement such an expert.

146. Under s 79C(1) where oral evidence of a fact or opinion is admissible, a statement in a document and tending to establish that fact or opinion shall, on production of the document, be admissible of that fact or opinion. However, the fact or opinion is only admissible if made, relevantly by a qualified person, or is derived from statements made by a qualified person, and, under s 79C(2), that person is called to give evidence unless there is a reason for them not being called.
147. Neither party made submissions to me that the documents would be admissible under s 79C(1). Even if they had, such a submission may require Ms Mullan to have given evidence, or for her evidence to be excused. Ms Mullan was not called to give evidence. As I have case managed this matter to hearing, I am aware from past appearances by the parties leading to this hearing that Ms Mullan was to give evidence when the hearing was originally listed in 2022, however became unavailable. Both parties told me, from the bar table, that they wished to locate her. The hearing date was vacated, and set for March 2023, prior to which the affidavit of Mr Burns was produced, with no evidence adduced from, or about, Ms Mullan.
148. Accordingly, I would not have been able to make a finding as to why Ms Mullan was unavailable to give evidence such that I could excuse her under s 79C(2).

149. Under s 79C(2a) where oral evidence of a fact or opinion is admissible, a statement in a document and tending to establish that fact or opinion shall, on production of the document, be admissible of that fact or opinion. However, the statement is only so admissible where it is, or directly or indirectly reproduces, or is derived from, a business record and only if the court is satisfied that it is a genuine business record. Under s 79C(2b) where the statement is made by a qualified person, that qualified person is not required to give evidence. There is no question that the documents are genuine statutory declarations.
150. Under s 79C(3) the document may be authored by the witness seeking to rely on the assertions, or by someone else.
151. Under s 79C(5) the court determining whether a statement is admissible as evidence may draw any reasonable inference from the form of contents of the document which the statement is contained, or from any other circumstances. Under s 79C(6), relevantly, notwithstanding a statement meets the requirements of the section, the court may reject the admission of a statement if it is of the view that the probative value of the statement is outweighed by its undue prejudice or that it confuses the issues.
152. Once admissible, under s 79D the weight to be given to the evidence is at the discretion of the fact finder, having regard to inferences that can reasonably be drawn as to the accuracy or otherwise of the statement in all of the circumstances of the case. S 79D provides a list of factors to be considered in particular:
- (1)
 - (a) to the question of whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated; and
 - (b) to the question of whether or not the qualified person or any person concerned with making or keeping the document containing the statement, had any incentive to conceal or misrepresent the facts; and
 - (c) to the question of whether or not the information in the statement was of a kind which was collected systematically; and
 - (d) to the question of whether or not the information in the statement was collected pursuant to a duty to do so; and
 - (e) where the statement wholly or in part reproduces or is derived from information from one or more devices, to the reliability of the device or devices; and
 - (f) where the statement reproduces or is derived from any information, to the reliability of the means of reproduction or derivation.

153. Therefore the admission of a statement under s 79C does not of its self prove conclusively the truth of the statement. The weight to be accorded to the statement remains an issue at large. There is nothing to prevent a party from undermining the correctness of the statement by the ordinary processes of litigation.
154. Therefore, s 79C(2a) makes admissible statements in a document notwithstanding the rule against hearsay, and notwithstanding the rule against secondary evidence. It permits second hand or double hearsay.⁵⁸ It does not necessarily render the document itself admissible,⁵⁹ and is not restricted to statements made by a qualified person or derived from such a statement.⁶⁰
155. Section 79C removes the difficulties of proving certain business facts by admitting material which in common experience is likely to be accurate.⁶¹ The legislation should be construed liberally⁶² and not pedantically.⁶³
156. For a document or an assertion in a document to be admissible under s 79C(2a), once the court is satisfied that it contains an admissible fact or opinion, it must be satisfied that it is a document prepared or used in the ordinary course of business.
157. Therefore, in the present case the statutory declarations must be either prepared in the ordinary course of a business for the purpose of recording a matter relating to that business, or used in the ordinary course of business for the purpose of recording matters relating to its business.⁶⁴ However there is no requirement under s 79C that the officer of the business tendering the document is an officer of the business which prepared the document.
158. Generally, the term business record is focused on documents which truly might be regarded as internal records kept by or for that company in respect of its business, such

⁵⁸ *Rhodes v De Castro [No 2]* [2023] WASC 93 [22].

⁵⁹ *Poland v The State of Western Australia* [2015] WASCA 136 [243] and [246].

⁶⁰ *Rhodes v De Castro [No 2]* [2023] WASC 93 [26].

⁶¹ *Cavill v The State of Western Australia* [2008] WASCA 108 [208] citing *Cross on Evidence* (7th Aust ed) J D Heydon at [35195].

⁶² *Donohoe v Director of Public Prosecutions (WA)* [2011] WASCA 239; cited by Edelman J in *Agricultural Land Management Ltd v Jackson* [2013] WASC 464 [36].

⁶³ *Rhodes v De Castro [No 2]* [2023] WASC 93 [20].

⁶⁴ See the two questions proposed by his Honour Justice Beech in *McKay v Commissioner of Main Roads [No 2]* [2010] WASC 153 [30], [31].

as books of account, ledgers, employment records, stock records, postage books, its own correspondence, internal memoranda and so on.⁶⁵ That is, documents which are internally prepared.⁶⁶

159. The preparation or use must be for the purpose of recording any matter relating to the business, however, it need not be the sole or even the dominant purpose; it is enough that it is a substantial purpose.⁶⁷

The documents

160. Each of the statutory declarations commences with:

I [name] of [address] in the state of Western Australia, Mining Title Consultant, **DO SINCERELY DECLARE as follows:**

That I am an authorised agent of Bullseye Mining LIMITED (“Bullseye”) and that I am responsible for the management of the company’s mining tenements....

That this declaration is submitted in support of application for exemption from expenditure [number] for the mining tenement tabulated below, under **Section 102 (2) (b) & 102 (3)** of the *Mining Act 1978* (WA).

161. The declaration then sets out the reasons under which the exemption is sought, largely in the same terms as the formal applications, and then the facts supporting the reasons for the application.

162. At their completion, the declarant says:

Accordingly, there are sufficient grounds for the grant of the exemption under **Section 102 (2) (b) & 102 (3)** of the *Mining Act 1978* (WA).

⁶⁵ *Atra v Farmers & Graziers Co-op Co Ltd* (1986) 5 NSWLR 281, 288, endorsed in *McKay v Commissioner of Main Roads [No 2]* [2010] WASC 153 [61] and cited with apparent approval in *Agricultural Land Management Ltd v Jackson* [2013] WASC 464 [33].

⁶⁶ *Agricultural Land Management Ltd v Jackson* [2013] WASC 464 [33].

⁶⁷ *Rhodes v De Castro [No 2]* [2023] WASC 93 [28], summarising the principles from *Agricultural Land Management Ltd v Jackson* [2013] WASC 464 and *McKay v Commissioner of Main Roads [No 2]* [2010] WASC 153.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.
This Declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*.

163. The declarant does not say how he knows the facts are true.
164. The address of the tenement manager is not the registered address of Bullseye, and I note that some of the statutory declarations are witnessed by a person from the same address, citing their business name as All Mining Legal Pty Ltd. From that fact, and from the description given by the tenement manager as being a ‘consultant’ and ‘agent,’ the inference is that this is not a document prepared by Bullseye, but by an independent agent engaged by Bullseye to do so. It seems an obvious inference that the declarations are prepared from information provided to the agent by Bullseye, whether for the purposes of preparing the applications for exemption, or from information provided for other purposes, but becoming relevant when asked to prepare the applications for exemption. In my view nothing turns on the difference.

Would the statutory declarations be business records under s 79C?

165. Bullseye submitted that the definition of business record is sufficiently wide to capture the statutory declarations.
166. A useful comparison in determining whether the statutory declarations would be admissible under s 79C can be found in the circumstances of *Rhodes v De Castro [No 2]*.⁶⁸ In that case, a party was required to show the value of units in a trust, the principal asset of which was a hotel. The value of the hotel, therefore, was a key issue.
167. The party produced a valuation report of the hotel, a lengthy and comprehensive document relying on and analysing information from a wide variety of sources, including information regarding the hotel industry generally and in particular comparable sales and the analysis of those sales. The other party objected to documents relied on by the valuer of the hotel in that analysis, and therefore also parts of the valuation itself.

⁶⁸ *Rhodes v De Castro [No 2]* [2023] WASC 93, a summary of the relevant facts at [2]-[7].

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168. The valuer incorporated an assessment of whether the terms of the management agreement for the hotel were consistent with other similar hotels in the market. In particular, the valuer reviewed sales of hotels for which large reputable real estate agencies had prepared ‘Information Memorandum,’ comprehensive documents, self-evidently prepared by the agent for the purpose of providing a summary of information regarding the hotel to potential buyers. The Information Memorandum contained a summary of key features of the hotel and an overview of the financial information of the sort used by the valuer in their analysis, such as the management fee, occupancy rates and historical and projected profits and yields. They generally included photos of the hotel, it’s accommodation and other facilities and general surrounds. In some of the information memorandum, the source of the information was expressly stated to be the hotel owner, but it was otherwise reasonable to infer from the document as a whole in the circumstances of it’s preparation that the agent had collated the content from the information provided by those who owned and managed the hotel based on documents held by the owner or the manager.
169. The valuer gave evidence and provided evidence as to his qualifications, his professional memberships and years of work as a valuer.
170. The information memoranda were objected to on the basis that they contained hearsay.
171. His Honour found the following:⁶⁹
- a. The information memoranda were prepared by a person employed by each of the relevant real estate agent companies and that they were prepared in the ordinary course of that real estate agent’s business. The real estate agent company’s business included the collation of information regarding the property for the marketing and sale of that property.
 - b. While the dominant purpose for preparing the Information Memorandum was marketing and selling of the relevant hotel property, it was reasonable to infer that the document served other substantive purposes. One of those purposes was that the document and the statements it contained served as a convenient repository and reference point for information regarding the hotel property to be

⁶⁹ *Rhodes v De Castro [No 2]* [2023] WASC 93 [37]-[39].

used by the real estate agency in the ordinary course of its business, both for its own reference and to respond to enquiries for information.

172. In that way, his Honour found that the requirement that the purpose be for the recording of any matter relating to the business was not confined to the making of a formal or internal record, or for internal record keeping purposes.⁷⁰ The reference to recording, he found, embodies broadly the preservation of things in writing as knowledge or information, rather than the notion of the written preservation for some more formal internal or official process or the recording of the performance of a business function.⁷¹
173. On that basis, his Honour determined that the Information Memoranda were prepared by the relevant real estate agent company for purposes that included the substantive purpose of recording matters relating to the business of that company and that therefore each of the statements in the Information Memorandum was admissible as a business record under s 79C(2a).
174. In the present case the tenement manager's business is, by inference from the title, to manage tenement business of mining companies. The preparation of applications and other documents regarding the extension of the tenement or application for an exemption from an expenditure condition on the tenement is part of the tenement manager's business. The tenement manager carries out that part of its business by collating facts and recording them in prescribed forms, submitting them as required to the Department on behalf of the tenement owner.
175. A document produced in support of such an application is a document of that tenement manager, connected with its business, because it is in the business of collating facts on behalf of the mining company and submitting the document containing those facts on behalf of the mining company. The purpose of the statutory declarations is to support the application, however in my view the statutory declarations collate and preserve matters in writing as knowledge or information, being the recording of the reasons instructed by the mining company as to why an exemption is required, to be lodged and preserved with

⁷⁰ *Rhodes v De Castro [No 2]* [2023] WASC 93 [39].

⁷¹ *Rhodes v De Castro [No 2]* [2023] WASC 93 [40] and [47].

the Minister for Mines as those reasons. Therefore, a purpose of the production of the document is to record matters relating to the business of the tenement manager's business.

176. Therefore, in that wide sense, on the face of it, a statutory declaration prepared to support the application for an exemption under s 102 is a document prepared for the purpose of recording matters relating to the business, being the reasons why the engaging company seeks an exemption. In my view, in the present case, and having regard to the circumstances in the matter of *Rhodes v De Castro*, that the document is ultimately provided to the Minister for Mines does not render the document not for the purposes of recording matters relating to the business.
177. However, I am not satisfied that the statutory declarations in the present case, despite appearing to fit with the definition of business records in its very widest sense, would be classed a business record. While Justice Solomon was satisfied that the information memoranda were business records in *Rhodes*, there were some important features of those documents that do not exist here:
- a. The underlying documents in *Rhodes* were prepared by someone with no interest in the case and with, presumably, no thoughts as to the potential use of their information in particular legal proceedings. The information was prepared therefore by someone apparently truly at arms length from the parties to the proceedings.
 - b. The information from the various contributors to the information memoranda was largely based on a combination of information and publicly and objectively verifiable facts, such as photos, documents otherwise in existence, published financial information, documents in contracts and the physical aspects of the hotel and its surrounds, with conclusions either being obvious, or easily inferred from the type of information collated.
 - c. In *Rhodes*,⁷² his Honour specifically noted that the real estate agent businesses were international and reputable.

⁷² *Rhodes v De Castro [No 2]* [2023] WASC 93 [17].

- d. It appears that none of those specific facts contained in the memoranda were the subject of the legal proceedings before Justice Solomon, rather, it was the valuer's analysis of those materials that was at issue.
178. In summary, therefore, and reading in to the definition of business records the purpose and context of the section, it appears to me that in that case there was a plausibility to the facts asserted in the information memoranda and, in any event, the facts themselves were not under attack.
179. In comparison, in the present case Bullseye is relying on a document the content of which was prepared by, effectively, Bullseye, to prove assertions that there were plans, with no clear inference as to how the statutory declarations were prepared and from what, neither Ms Mullan nor Mr Jewson giving any evidence, in either the statutory declarations themselves or otherwise, Mr Jewson knows those facts to be true. Neither is there an objective quality to the information, either from the way it was collected, collated or presented.
180. As I have identified, the fact that a person has written down something somewhere does not mean that assertions in the document are automatically taken to be true. In my view, even s 79C imports some form of ability to accept that what is being tendered is, as *Cross* identified, accurate. The example of the information memoranda in ***Rhodes*** shows that even where a wide definition of business record is applied, there is in that definition an assumption as to accuracy over and above the discretion of the fact finder to attribute weight, depending on the level of satisfaction as to that accuracy.
181. The difficulty with the statutory declarations tendered in the way that they have been, is that the applicant is seeking to tender as true assertions made in a document which has collated assertions from the very entity which is attempting to prove those assertions as true, under specific attack from the objectors that the assertions contained in them are not true.
182. I am not satisfied that in the present case, that assumed accuracy is available. Given the lack of evidence on the providence of the information contained in the statutory declarations, whether that providence is obtained by inference having regard to all of the circumstances of the case, including the documents themselves, or from a particular

witness, in my view these documents may not have satisfied the definition under s79C of a business record.

Is the maker a qualified person?

183. Part of the objectors' objection to the evidence is that the declarant is a third party not employed by the company. They also complain that he was not made available for cross examination. Having regard to **Rhodes** it is not a requirement that the author of the statement be an employee of the business for that person to be a qualified person in relation to business records. As the definition in s 79B requires, where the declarant is a qualified person, the declarant must simply be a person who had, at the time of making the statement, personal knowledge of the matters in the statement, or the declarant must be available to be called to give evidence.
184. However, I am not satisfied that the declarant of the statutory declarations would be, under s 79B, a qualified person in the present case and would therefore not be required to give evidence. While I note that each of the statutory declarations is declared as being true, before a legal practitioner, it is not possible, from the content of the statutory declaration, to determine or infer exactly what Mr Jewson is attesting to as true. The contents do not refer to how he came by the knowledge contained in the documents. From Mr Burns' evidence, it was not Mr Jewson but Ms Mullan who prepared the information, Mr Jewson simply putting the information in the requisite form, being merely an 'authorised agent.' It was not for the objectors to clarify what that means. In my view, it does not of itself mean that Mr Jewson had personal knowledge of the assertions made in the declarations.
185. Accordingly, while that does not render the assertions made in the statutory declarations automatically inadmissible, it does mean that Mr Jewson is not excused from being called as a witness. Given he is an agent of Bullseye's, and presumably would give evidence favourable to Bullseye, I do not consider it appropriate that it would be for the objectors to call him as a witness, or in some way attribute credit, or a lack of credit, through Mr Burns.

If I am wrong: the discretion

186. If I am wrong and the statutory declarations would be classed as business records made by a qualified person, I am nevertheless of the view that in the circumstances of the present case, weighing all relevant factors, it would be unfair to the objectors for Bullseye to tender the assertions made in the statutory declarations. Under section 79C(6) I would be satisfied that despite their probative value, that value is outweighed by undue prejudice to the objectors not having the ability to cross examine Mr Jewson or Ms Mullan, having regard to the fact that the information contained in the statutory declarations is under direct attack, and the evidence is tendered to some extent to supplement Mr Burns' limited evidence of plans for the specific tenements.
187. Further, while there is nothing before me to suggest that Mr Jewson has done anything more than faithfully reproduce information provided to him by Bullseye, or that Mr Jewson had any incentive to conceal or misrepresent the facts, information provided to him for the purposes of the statutory declaration is, as I have identified, under attack, and was most likely to be under attack, given the available process of objections to applications for exemption. While the statutory declaration may be, from the point of view of Mr Jewson, a systematic application of information provided by Bullseye to the form of the statutory declaration, the information itself is not systematically collected, given the wide range of facts, analysis and subjective planning information contained in them. Neither could it be said that the information was collected by Mr Jewson or by Bullseye pursuant to a duty.
188. Therefore, having considered all of the factors that I have raised, including the principles in relation to hearings in the wardens court, the fact that the wardens proceedings are administrative, that the rules of evidence do not apply, that the fact of plans is logically probative to the present case, the consequences of the proceedings, the requirement of fairness to both parties and the factors set out in s 79D, I would have come to the conclusion that even if s 79C rendered admissible as evidence the assertions made in the statutory declarations, I could not be reasonably satisfied that on the face of the statutory declarations, the assertions contained in them were accurate such that I could give them any weight.
189. Therefore, in the circumstances of the present case, as an administrative proceeding where the rules of evidence do not apply, I am of the view that despite the logically probative

nature of the assertions contained in the statutory declarations, giving any weight to the assertions, particularly as to plans, in the statutory declarations of Mr Jewson, would be unfair to the objectors. The statutory declarations of Mr Jewson therefore carrying no weight, they are inadmissible.

CATEGORY 3

190. This category is also an objection to statements made in various documents which are attached to Mr Burns' affidavit, but of which he is not the author. They are annexed at PGB32, PGB34, PGB36, PGB38, PGB39, PGB40, PGB42, PGB43, PGB45, PGB48, PGB51, PGB53, PGB61, PGB63, PGB70, PGB72, PGB78, PGB79, PGB87, PGB92, PGB98, PGB103, PGB108, PGB130, PGB132. The documents are largely applications for, or supportive of, applications for extensions of licence, other than PGB51, which is the annual report for the year 2016-2017 for E 53/1611.

191. The objectors say that the statements are:

- a. Hearsay,⁷³ and
- b. not business records as they are:⁷⁴
 - i. submissions compiled by an "assumed employee" of the company who has not been called to give evidence and be cross examined, and
 - ii. summaries of facts for presentation to a third party, namely, the Minister for Mines.

192. The applicant says they are business records and I can have regard to them.

193. The discussion I have set out in the previous category regarding the admission of hearsay in these proceedings is relevant to this category.

194. The documents objected to contain statements as to the history of the tenements, work done on the tenements and the company's intentions, or plans for the tenements in the future. While Mr Burns merely refers to these annexures as evidence of particular

⁷³ See Schedule of Objections to Affidavit of Peter Gerard Burns dated 20.3.23, Item 54, 55, 56, 57, 58, 64, 69, 76, 80, 86, 88, 99, 101, 109, 111, 121, 127, 129, 134, 143, 152, 182 and 190.

⁷⁴ See Schedule of Objections Maintained dated 27.3.23, Category 3.

applications being made and granted, as one of the aspects of Bullseye's case is that there were plans for the tenements, and these documents and reports reference plans for the tenements, I have anticipated that I may have regard to those documents to determine whether there were such plans, and the veracity of those plans.

195. The author of the documents in this category is R Cooke. While Mr Burns did not give evidence of who R. Cooke is, a review of the documents attached to Mr Burns' affidavit, not including those under objection in this category, reveal that:

- a. A Rob Cooke wrote emails in 2018 on behalf of Bullseye, with an address of Rob.Cooke@BullseyeMining..." etc, signing them as "Geologist, Bullseye Mining" and referring to "our tenement" in relation to access of a haul road, at the annexure to Mr Burns' affidavit PGB102;
- b. Quarterly reports prepared by Emerald Resources NL, the company now in control of Bullseye,⁷⁵ such as the report at annexure PGB43 of Mr Burns' affidavit cite Mr Rob Cooke, employee of Bullseye Mining Limited and a member of the Australian Institute of Geoscientists, as a Competent Person in relation to the reporting contained therein.

196. While accepting that the reports and emails are contained in documents which is hearsay and secondary evidence, and having regard to all of the factors relevant to determining whether a document would be a business record, or should otherwise be admissible, or given no weight, I am of the view that neither of those documents I have referred to, and the other quarterly reports of Emerald contained as annexures in Mr Burns' evidence also citing Mr Cooke, can be seen as being inherently lacking in weight or veracity, particularly regarding their author. Accordingly, I am satisfied that Mr Cooke was an employee of Bullseye at the relevant times in relation to the documents objected to.

197. I am therefore satisfied that the documents in this category have been compiled by a person who would reasonably be supposed to have had at the time of making the statements, personal knowledge of the matters dealt with in the statements, given his position from at least 2018. For the purposes of s 79C of the Evidence Act, he would, in my view, be a qualified person. Mr Cooke did not give evidence.

⁷⁵ Affidavit of Peter Gerard Burns sworn 30.1.23 [474].

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198. Further, and having regard to the wide application of the definition in *Rhodes*, I am of the view that the documents objected to under this category are documents prepared in the ordinary course of Bullseye's business, that course of business being to mine and explore its tenements, part of that business being to apply for and make supporting submissions on extensions of ownership of the licence allowing it to undertake that mining and exploring, and recording the reasons why the extensions are sought. While a substantive purpose is the application of an extension, another substantive purpose is the recording of the reasons for the application.
199. They were prepared by a person with, by inference, knowledge and understanding of the business of Bullseye and the need for the extension, for a purpose separate to these proceedings. These factors add weight to the inference that the documents are accurate in their collated and recorded information.
200. There is no question over their genuineness.
201. Therefore, I am satisfied that the documents in category 3 would be genuine business records made by a qualified person.
202. While Mr Cooke did not lodge any evidence nor was he made available for cross examination, given the inference of some accuracy to the documents, I am not of the view that the admission of the assertions contained in the documents would prejudice or be unfair to the objectors in the present case. Further, having regard to the factors in s 79D I am satisfied that while the documents are not collected systematically, nor pursuant to a duty, and while it might be suggested that any attempt to extend the licence, similar to making an application for an exemption, there may be some incentive of the maker of the statements to conceal or misrepresent the facts, they are documents that are put before the Minister and maintained on record at risk of the licence not being extended with the reputation of the company being at risk if the information is inaccurate, but unlikely to be challenged on objection.
203. Therefore I am satisfied that the facts recited in each of the documents listed as objected to by the objectors are admissible, under the guidance of s 79C of the *Evidence Act*, and without the need for the author to give evidence.

CATEGORY 4

204. This is a letter prepared by lawyers Murcia Pestell Hillard written “in support of [Bullseye and its subsidiary Broken Hill Metals Pty Ltd and EGF Nickel Pty Ltd]’s position regarding its Tenements.” It is annexed to Mr Burn’s affidavit as PGB109, and has attached to it a document entitled “Update-Takeover Bid for Bullseye Mining Limited” dated 17 April 2018 on the letterhead of Red 5 Limited and a Bidder’s Statement dated 29 March 2018.
205. Mr Burns’ evidence at [278] of his affidavit is that this is a letter lodged in support of the extension of term application for E77/2341. Similar to the statutory declarations annexed by Mr Burns in support of subsequent applications for exemptions, from Mr Burns’ affidavit it appears the letter and accompanying documents are annexed simply to confirm that an application for the exemption was lodged, and ultimately granted. If that was the intention, similar to those statutory declarations, in my view they are not hearsay.
206. However, the objectors have taken the view that the letter and accompanying documents are tendered for the assertions of fact contained in them. They object to the production of the letter because it is not a business record, being correspondence to a third party setting out facts which are not able to be cross examined on.
207. The author of the letter is not identified, other than the general Murcia Pestell Hillard insignia, and the letter is not from Bullseye.
208. In *Rhodes*, Justice Solomon considered some South Australian cases, one of which determined that a letter of advice from a solicitor was a business record.⁷⁶ In *Lang v Davey*⁷⁷ the court determined that a solicitor’s letter to a client providing advice is a document prepared or used in the ordinary course of business, and records legal advice which is a matter related to the business of a solicitor’s practice.⁷⁸
209. Being lawyers, it is assumed Murcia Pestell Hillard wrote the letter in the ordinary course of their business, however I am not satisfied that it is a document for the purpose or use of recording any matter relating to their business. The letter records matters relating to the business of Bullseye, not the lawyer’s business, and does not contain any advice. Similar to the statutory declarations I have determined to be inadmissible in Category 2, it

⁷⁶ *Rhodes v De Castro [No 2]* [2023] WASC 93 [45]-[47].

⁷⁷ *Lang v Davey* [2020] SASC 160.

⁷⁸ *Lang v Davey* [2020] SASC 160 [53].

simply recites facts apparently told to it by Bullseye. The statements of the facts, including those contained in the attachment to the letter, are so removed from those who have first hand knowledge of those facts that no weight can be given to those facts as set out in the documents and therefore neither the statements of the facts nor the documents themselves are admissible.

210. The assertions contained in Annexure PGB109 are therefore not admissible as to the truth of the assertions and facts contained therein, and I have had no regard to them for that purpose.
211. I note however that the Bidder's Statement attached to that letter is recorded in a number of other annexures to Mr Burns' affidavit, and he gives evidence of it at [361] and annexes it at PGB136, which are in admissible form, and have not been objected to.

CATEGORY 5

212. Each of the paragraph numbers referring to specific exhibits in this category are, according to the objectors, inadmissible on the basis that other objections have been upheld. In relation to each of the exhibits PGB61, PGB70, PGB78, PGB92, PGB98, I have found them admissible, and therefore the references to information from those exhibits by Mr Burns in his affidavit is also admissible.
213. In relation to [324] of Mr Burns' affidavit, I have ruled that annexure PGB121 is inadmissible. I am not satisfied that in that paragraph Mr Burns is relying on that document to report, in the earlier and the latter paragraphs, the plans of Bullseye in relation to E 77/2119.
214. In any event, as the objectors' objection is simply to [324], and I have ruled that annexure referred to therein as inadmissible, I will strike [324] from Mr Burns' affidavit.

SHOULD BULLSEYE BE GRANTED EXEMPTIONS?

215. Having dealt with those objections to the evidence, I now turn to the admissible evidence in this matter, and its consequences.
216. The evidence of Bullseye comprised the affidavits of Peter Gerard Burns sworn 30 January 2023 and Timothy Iren Masson sworn 28 January 2022. The latter annexed tenement searches, and was not required for cross examination.

217. Mr Burns was cross examined, and the categories of cross examination covered the areas I have identified as issues raised in the objector's case at [86] and [87].

218. First I will say something about the background to this application – the corporate events.

THE EXTERNAL CORPORATE EVENTS

219. At the outset, I am satisfied that the external corporate events as set out in the timeline annexed to these reasons occurred as they are recorded in that schedule. I am satisfied as to the existence of those events from:

- a. Mr Burns' qualifications to give evidence about those matters, because, and I am satisfied that:
 - i. He has been a director of Bullseye since 2012.⁷⁹
 - ii. He has "been fairly actively involved in working side-by-side with his co-Executive Director, who is a geologist" and having "been actively involved in feasibility studies and all the aspects of developing a project... from exploration all the way through to mining."⁸⁰
 - iii. His main role being in investor relations, looking after shareholders, raising capital, "the finance side of things," but also being actively involved in the operations as well.⁸¹
 - iv. He has been with Bullseye full time.⁸²
- b. There is objective confirmation from:
 - i. The publicly available documents relied on by the applicant and annexed to Mr Burns' affidavit from PGB133-PGB179, such as annual reports, company announcements during the bids and Takeovers' Panel public announcements;
 - ii. Publicly available decisions of the Supreme Court of Western Australia relating to the oppression accusation by one of the shareholders against

⁷⁹ Affidavit of Peter Gerard Burns sworn 30.1.23 Annexure PGB1.

⁸⁰ T 29.3.23, 9.

⁸¹ T 29.3.23, 9.

⁸² T 29.3.23, 9.

Bullseye, the latest apparently being *Hong Kong Xinhe International Investment Company Limited v Bullseye Mining Ltd* [No 6] [2023] WASC 131.

- c. While there was not agreed by the parties a set of facts, the fact that the corporate events occurred was not challenged by the objectors.

220. Those events being well set out in that schedule, I will not repeat them here.

221. Where the corporate events relate to internal attempts to organise finance, negotiate with other parties or make internal decisions, I will discuss that evidence in the determinations below.

WAS BULLSEYE LACKING IN CAPITAL?

222. While I am satisfied that the corporate events occurred, their effect on the company is what is important in this matter. Prior to determining that question, it is useful to look at the company's cash flow, firstly because the objectors say that the applicant had the money to spend on its tenements, but just did not, and, secondly, it will assist in determining whether, even if there was money to spend on the tenements, time was needed to raise capital (s 102(2)(b)) or capital raising was required, and prevented (s 102(3)).

223. Once I have determined that, I will determine whether Bullseye could meet its *Mining Act* obligations, and, if it couldn't, or even if it could, whether the corporate events were such that not spending the minimum required expenditure on the tenements was not a choice, but an imperative.

Did Bullseye have plans to raise capital prior to the corporate events?

224. Mr Burns gave evidence that:⁸³

- a. Following successful drilling results at the North Laverton Gold Project, Bullseye decided that it would attempt to source \$20 million in funding to:
 - i. Facilitate the development of the North Laverton Gold Project;
 - ii. Undertake drilling campaigns at other Bullseye projects including the Southern Cross Gold Project and Aurora Project, and

⁸³ Affidavit of Peter Gerard Burns sworn 30.1.2023 [345]- [359].

iii. Provide working capital to the company.

225. As a result, between May 2017 and January 2018 the directors of Bullseye were in discussions with third parties regarding a potential \$20 million capital raise, with a following \$20-\$30 million capital raising. The discussions were initially between Mr Sam Cheng, Mr Qiyuan Wu, a director of Bullseye at the time, and Mr Desmond Mullan.
226. In November 2017 Ms Mullan told Mr Burns and the board that investors had made commitments to her to participate in a \$20 million capital raising.
227. The letter from Red 5 submitting a confidential, indicative and non-binding proposal to make a takeover to acquire up to 100% of the issued shares in Bullseye was received on 7 December 2017.
228. In January 2018 Mr Burns and two other directors went to China where Mr Qiyuan Wu undertook on behalf of Hong Kong Xinhe International Company Limited to Mr Burns and the other directors that he would make a \$20-\$30 million investment in Bullseye to match the investment that was secured by Ms Mullan.
229. However, Bullseye's directors continued to run the operations of Bullseye on the basis that, subject to restrictions caused by the Red 5 takeover bid, the Mullan and Chinese investor groups would each be investing at least \$20 million in Bullseye. Red 5 announced its intention to make a conditional off market takeover bid for the fully paid ordinary shares in Bullseye on 19 February 2018. Upon notification of the Red 5 offer, discussions regarding funding were placed on hold as, on Mr Burns' view, Bullseye was prevented from raising finance pending closure of the bid or completion of a period of optionality where shareholders could be deemed to be fully informed under the bid. While discussions regarding funding continued, delivery of funding was then placed on hold.
230. None of those facts, nor the genuineness of the plans for the capital raising were challenged by the objectors, and I accept that that was the course taken by Bullseye as to their plans for capital raising prior to the relevant tenement years. This adds weight to a finding that there were plans to raise capital (s 102(3)) and there were, generally, plans for ongoing work on the project tenements (s 102(2)(b) and s 102(3)).

Was there any other money coming in to Bullseye during the period of the corporate events ?

231. Delivery of the planned funding being on hold, Mr Burns gave evidence that:

-
- a. In May 2018 Mr Mullan provided a working capital facility for \$745,000, and advanced that sum.⁸⁴
 - b. Also in May 2018 Bullseye and Mr Mullan entered into a share subscription agreement whereby Mr Mullan agreed to subscribe for \$3 million of Bullseye shares at an issue price of \$0.30 per share.⁸⁵
 - c. In July 2018 Bullseye announced that it had agreed to conduct a new capital raising through the issue of convertible notes to raise up to \$26.79 million. The convertible notes proposal was to cover both exploration and development, including at the Southern Cross Gold Project and the Aurora Project and the extension drilling works at the North Laverton Gold Project. This proposal replaced the working capital agreement and the share subscription agreement.⁸⁶
 - d. Following Takeovers Panel proceedings, in September 2018 Bullseye agreed to withdraw its proposal to its shareholders regarding the issue of the convertible notes,⁸⁷ and in October 2018 the Takeovers Panel made a declaration of unacceptable circumstances with respect to that proposal, Bullseye being prohibited from issuing convertible notes and a related gold pre-payment financing facility without prior shareholder approval.⁸⁸
 - e. In November 2018 Bullseye announced that it had entered into a loan facility agreement with RDGL for the advancement of \$1.5 million for general corporate purposes, including working capital requirements, until longer term funding arrangements could be put in place.⁸⁹
 - f. In March 2019 Bullseye sought approval from its shareholders to proceed with an interim financing approval, seeking \$13.6 million in funding to meet exploration and general working requirements, including \$1.5 million for the exploration and drilling works at Southern Cross Gold Project and Aurora Gold Project and \$2 million for

⁸⁴ Affidavit of Peter Gerard Burns sworn 30.1.2023 [370].

⁸⁵ Affidavit of Peter Gerard Burns sworn 30.1.2023 [371].

⁸⁶ Affidavit of Peter Gerard Burns sworn 30.1.2023 [378]-[380].

⁸⁷ Affidavit of Peter Gerard Burns sworn 30.1.2023 [406].

⁸⁸ Affidavit of Peter Gerard Burns sworn 30.1.2023 [419] and [421].

⁸⁹ Affidavit of Peter Gerard Burns sworn 30.1.2023 [410] and [425].

tenement commitments and general working capital requirements. The proposal was approved by shareholders in April 2019.⁹⁰

g. However, that subscription agreement being subject to qualifications, only \$2.1 million was raised between 1 July 2019 and 13 May 2020. Mr Burns raised the prospect that between 27 June 2019 and 2 June 2020 73 applications for forfeiture and 14 objections to exemption applications were lodged against tenements held by Bullseye being one of the reasons for the shortfall, causing a period of “instability in exploration investment.”⁹¹

h. Most of the money actually raised between 2018 to 2020 was spent on legal costs in defending the Red 5 offer and “other hostilities and proceedings against Bullseye” as well as repaying the \$1.5 million to RDGL.⁹²

232. The fact of these efforts to raise capital or income was uncontested and therefore I accept that evidence.

The balance sheets

233. A significant portion of the applicant’s case is that while there was some cash flow, it was not sufficient to satisfy all the obligations of the company during the expenditure years, albeit, some of that cash was apportioned to the tenements.

234. I have set out the amounts spent on the relevant tenements in the table at [18]. Schedule 3 attached to these reasons is a table constructed from the tenement searches attached to the affidavit of Mr Masson and annexed to the applicant’s written submissions lodged 27 February 2023 showing that Bullseye spent over its entire tenements in the 2019 expenditure year \$1,579,817 against an expenditure commitment of \$1,853,930.

235. The table also shows that in the 2020 expenditure year, Bullseye spent \$818,688 against a commitment of \$823,385.

236. The objectors having abandoned for the purposes of this proceeding their objection that the reported expenditure was not accurate, I accept those figures.

⁹⁰ Affidavit of Peter Gerard Burns sworn 30.1.2023 [444] and [445].

⁹¹ Affidavit of Peter Gerard Burns sworn 30.1.2023 [449], [450], [452], [454].

⁹² Affidavit of Peter Gerard Burns sworn 30.1.2023 [453].

237. Mr Burns was questioned about the following entry in the accounts of Bullseye in cross examination:⁹³

**CONSOLIDATED STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED 30 JUNE 2020**

	Note	Consolidated 30 June 2020 \$	Consolidated 30 June 2019 \$
CASH FLOWS FROM OPERATING ACTIVITIES			
Payments to suppliers		(1,936,313)	(2,878,932)
Interest received		1,850	38
Interest paid		(12,830)	(333)
Other income received		26,237	2,045
Net cash inflow/(outflow) from operating activities	22	(1,921,056)	(2,877,182)
CASH FLOWS FROM INVESTING ACTIVITIES			
Payments for plant and equipment		(309,344)	-
Payments for exploration & evaluation costs		(780,640)	(567,548)
Net cash (outflow) from investing activities		(1,089,984)	(567,548)
CASH FLOWS FROM FINANCING ACTIVITIES			
Proceeds from share issues (net of transaction costs)		1,978,950	672,970
Proceeds from Borrowings		817,798	3,036,668
Repayment of lease liabilities		(43,097)	-
Proceeds from funds received and share not yet issued		523,597	-
Net cash inflow from financing activities		3,277,266	3,709,638
Net increase/(decrease) in cash & cash equivalents held		266,226	264,908
Cash & cash equivalents at beginning of year		365,153	100,245
Cash & cash equivalents at end of year	8	631,379	365,153

The above Consolidated Statements of Cash Flows should be read in conjunction with the accompanying notes.

Page 2280?---Yes.

That shows that Bullseye had for that financial year \$3.277 million through its bank account?---Yes. That's correct.

Yes. And at the end of the year, if you turn back to 2278, it still had \$631,379 sitting in cash?---...

\$631,000?---At the end of the financial year.

End of the financial year?---Yes, correct.

So it had 2.7 for - _at the beginning of the financial year it had 365,000, as we can see from page 2278?---Yes.

Okay, so it started with 365, it ended with 671, and through the company flowed 3.277 million?---Correct.

And of that 3.277 mill, 800 roughly went on directors fees and payments?---Possibly, and - _and staffing. So the 3277, there's a line item there, proceeds received from shares not yet issued which is \$523,000. Those funds can't be utilised until the shares are issued, so you can knock those out. Then you look at the various provisions - _this is before we even start the year. If we move forward to note - _note 14, page 2301, so before we even start the year there's - _there's trade and other payables of nearly a million dollars payable. This is

⁹³ From the affidavit of Peter Gerard Burns sworn 31 January 2023, annexure PGB 170; cross examination: T 29.3.23, 33-34.

before the year has even started; that's note 14. Then we go back - - -

You're just talking about the 801,000 figure, are you?---

No, I'm just trying to - - -

14 on page 2301, you've talked about a figure of a million dollars?---That's in - _in payables. I guess you're - _you're trying to look at a very simplistic way of saying that there's \$3.2 million available and we only chose to spend X on - _on tenure.

No, I'm not. I'm saying there are \$3.2 million or thereabouts which came through the company during that financial year?---Correct.

That's all I'm seeking to say?---Okay.

238. Mr Burns also explained the apportionment in the financial statements of funds to exploration.⁹⁴

For the year ending 30 June 2019 and as exemplified by exhibit 165, Bullseye had income of \$3.7 million roughly; would that be correct? Look at 165 if you like, which is think is in volume 4. It's page - - -?---2211, I think. Yes, 2211 is probably the best. Point 709 million dollars. Yes, cash inflow from financing activities?---Yes. So about \$3 million from borrowings or loans and about 672,000.

And did Bullseye have any other source of income? For instance, it wasn't producing any gold at that time?---No.

No. So that's the total. And as I understand it, it spent \$567,548 on exploration and evaluation costs, so that's its expenditure on tenements; is that right?---No. No, that's not the case. So I assume the 570,000 you're referring to is under note 12.

Page 2211, where it says "payments for exploration and evaluation costs"? _---2211.

The same page, 2211?---5-6 - _I guess that's a flow of cash that's captured under a particular classification within our accounts, but it doesn't encompass all cash outflow spent on tenements or what has ultimately been allocated or filed under form 5s.

No. The question was whether that figure reflects the actual amount that Bullseye spent on its tenements, on exploration on its tenements. And I think you're referring to expenditure, maybe deemed or something of that nature. That's the cash that Bullseye paid out to maintain and have work done on its tenements; is that not correct?---No, that's not correct.

⁹⁴ T 29.3.23, 31-32.

All right. What did Bullseye then spend on its tenements for that financial year?---Okay. ...so let's say, for example, there's a category under salaries and wages. Part of that would encompass exploration staff, geological staff, field staff, so you need to add the various classifications up to give you a more accurate picture of - _of the total expenditure on tenure. I'm happy to walk you through that if you would like me to. To be an accurate report on the affairs of the company for that year, all of the expenditure that has been made by the company must be reflected in that statement, must it not?---No. No.

So that's not an accurate report of the expenditure by the company for that financial year?---It's an accurate report under that account classification. Okay?---And in conjunction with the other classifications, it details what was expended on the tenure.

239. In closing, the objectors gave as an example of the lack of need to raise capital, the fact that, in their submission, the company had a surplus of cash on hand at the end of 2019 and 2020. In their view, the crucial figure is the amount of money that flowed through the company in each of the years. On their accounting, the funds on hand in the 2020 year had increased by over \$300,000.⁹⁵

240. In re-examination, Mr Burns explained the question of available cash further:⁹⁶

Now, you were asked some questions about the amounts of money that came through the company and where you were allocating and where the money went, and it was suggested to you that you had more than the capacity to meet the expenditure obligations in any year, and you said, "No, that's not correct. Bullseye didn't have the capacity." _Can you explain to the warden why you gave that answer that you didn't - _Bullseye didn't have the capacity to meet them?---Yes, so I might need to just jump around a few of these line items in the report. So if we say we had - _it was approximately 3.7 million we said at the - _the start of the year. So before the year starts, we have trade and other payables, so if we go to page 2232, you will see in note 13 carried forward from the 2018 year we had payables of about \$652,000, and that includes PAYG, for example, with - _with staff and that sort of thing.

Yes?---Then in addition to that, if we go over the page to 2233, we have certain provisions that the company

⁹⁵ T 29.3.23, 51.

⁹⁶ T 29.3.23, 45-46.

needs to account for. So if we look at note 15, provisions carried forward from the 2018 year, we have superannuation contributions. We've got provisions for annual leave. We've got provisions for long service leave. There's approximately a quarter of a million dollars there that needs to be provisioned for. And then in addition to that, we have note 16 which is our other current liabilities which is our accrued wages, payroll tax payable. So before we even start the 2019 year, there's in excess of a million dollars of provisions and - _and things that need to be accounted for and paid. And then if we work through the year as - _as we said, we looked at the salaries and wages that have gone out was about 900,000. The consultants was about another 700,000. There's then the additions that we actually spent on the - _that's classified as spent on the tenure is about another 570,000, where all that money is already gone, the 3.7 million. And then we still had - _if we go to our other expenses, which is page 2229, note 6, there's still 1.2 millions worth of legal fees to pay. There's all these finance costs to pay, and we - _we - _we literally had to borrow money and directors had to put money in to try and meet all these outgoings. And the backdrop of that while - _with all this going on, we still spent - _I think it was 1.53 million on our portfolio. Our expenditure total commitment I think was about 1.8, so we only fell - _fell short by the - _the exemption amounts because we just didn't have the money to - _to pay it. Thank you. Is that the same position as to 2020 - - -?--- Yes.

- - - financial report?---Very similar.

241. Mr Burns also explained the overall expenses and their method of recording in the financial reports further:⁹⁷

You were taken to page 2211, the financial statements in volume 4. That's the '19 financial report?---Yes.

And you were asked questions about the cash flow of exploration costs and referred to as a figure of 567,548 and - - -?---Yes.

- - - you said that wasn't an accurate reflection of what was spent on tenements in that particular year, and you said there were other classifications which show the expenditure. Can you point us just by way of reference in the financial statements to other classifications that you referring to?---Yes. So probably the most accurate amount of tenement additions is if we go to note 12 which is page 2232.

⁹⁷ T 29.3.23, 44-45.

...

Yes?---You will see that under note 12 there's an exploration and a valuation asset.

Yes?---The next line has additions, so for that year it's about 570,000 that sits within that particular classification, but then there's also additional costs or expenditure recorded elsewhere in the annual report, and this is the way our annual report has been prepared since inception. ...so additional - _if we were looking at tenement spend that year, the additional line items, you would need to go to page 2229 which is note 5 which has employee benefit expenses. Now the classifications for salaries and wages, that would include Ms Mullan and the principal geologist. It would include - _or does include our junior geologist, our lead field hand, second field hand, and then other exploration personnel that have been out in the field, so - - -

Yes, I think that makes it clear, thanks, Mr Burns?---

And then the - _the next one is that, I think I mentioned before, we don't have full-time staff for everything so we bring consultants or part-time personnel into the company at times.

And where do we see that expense?---So we need to go back to - _I think it's the consolidated - _sorry, it's a little bit further forward. So if we just go to page 2208.

Yes. Third item?---The third item is consultant fees.

Yes?---There's an amount there of 729,000. Now, that would include the consultant's portion of my salary, but the rest of it - _well, not the rest of it. The bulk of it would be external consultants that we may have brought in to do resource modelling, work on feasibility studies, assist in planning, exploration and those sorts of things.

Thank you?---And then the final main headline classification would be to jump forward to page 2229.

It's just under note 6, other expenses. There's - _there is a line item called other expenses which, I think I mentioned earlier, would include vehicle expenses, field expenses, fuel - - -those sorts of things.

242. If the objectors are correct, and Bullseye had over \$3.7 million flowing through the company in 2019, and slightly more in 2020, and a surplus at the end of each year, the question is how did the applicant choose to apply those funds, and any choice not to expend on a tenement on the face of it infers an ability to meet *Mining Act* obligations, and a choice not to do so such that the applicant did not require time to raise capital to carry out exploration nor deserve the protection of security of tenure under the Act.

243. As the objectors confirmed in closing, their case is that Bullseye had the funds, and chose to spend them on “corporate issues.”⁹⁸
244. I am satisfied that Bullseye had funds coming into the company in the relevant tenement years, despite some of the aborted attempts set out by Mr Burns, and commenced 2019 and 2020 with a surplus. As the financial papers Mr Burns was taken to show, over \$3 million came through the company each year. However, that finding does not automatically mean that there was capital available to meet the minimum expenditure required on the tenements, such that Bullseye did not require time, and therefore an exemption, to raise capital, or that they were not prevented from raising capital during those years. Another factor to consider is the effect on the company of the corporate events, and Bullseye’s reaction to it.

The effect of the corporate events on the cashflow and available capital

245. As I have set out at [231h] most of the incoming funds were spent on ‘defending’ the Red 5 offer and other ‘hostilities.’ In court Mr Burns gave evidence generally about his view of his ‘choices’ and the ‘choices’ of Bullseye:⁹⁹

Okay. So it had the capacity to meet its expenditure obligations on the exemption tenements where the financial year for the tenement for the expenditure year fell within that financial year?---No. It didn’t have the capacity. It had other obligations that had to be expended, which I’m happy to walk you through if - - -

Well, it had discretionary - - -?---No.

- - - payments that it made for various matters which you’re going to say related to the hostile takeover bid, shareholders meeting requisitions, etcetera?---I don’t deem that expenditure was discretionary at all.

Right. But you had a choice as to where you directed your funds?---Yes.

And the choice was to meet your statutory obligations on your tenements or - _and it’s not an all or nothing choice - _or make substantial payments in relation to these other corporate machinations?---The - _the discretion, if I could put it that way, the obligation of the board is to act in the best interests of the shareholders. That’s the duty of the directors. We have a fiduciary duty. Fiduciary duties also and in the

⁹⁸ T 29.3.23, 51.

⁹⁹ T 29.3.23, 32-33.

circumstances the board had to prioritise funds where we felt they would be best utilised in the best interests of the shareholders.

You had a choice. You say prioritise. You had a choice as to what you spent the money on?---Yes. We had a choice, but we were governed by our legal and statutory duties as well.

And that choice or one of those choices was to make a successful application to the Takeovers Panel in that year and then to take steps which resulted in an adverse finding from the Takeovers Panel in respect to the second application that wasn't taken by you, but was taken to that panel?---Our duty was to act in the best interests of the shareholders. And I will talk from my own personal experience. There was something very, very wrong at this time. And when you've got 300 Mum and Dad retirees who have invested their life savings in the company, you have to act in their interests. And whilst the - the panel application was unsuccessful, I still maintain to this day that I believe there's an association between those parties and I would do it again.

And:¹⁰⁰

I remember two specific times when in the middle of all this the lawyers told us if we don't get payment it's - it's going to be pens down, and there was several hundreds of thousands of dollars each time had to be paid just to try and keep - keep afloat. That's how practically restrictive it was. And - and through that time, to say that we neglected or didn't spend money on our tenements, if we look at the schedule 2 of our submission shows in that 2019 expenditure year, we - we still expended over one and a half million dollars on our tenements while all this was going on. So it was - we only fell a few hundred thousand dollars short which is what these exemptions were for. We just didn't have any additional capital to - to - to outlay to try and meet the commitments.

246. As I have identified, it is not the case that simply because funds are available, or in fact have been expended on the tenement in the relevant tenement year, an exemption is not appropriate. On that basis, there must be further relevant factors to consider when determining whether an application for exemption may be granted, as it is not the case that where there is a finding that funds are available, the application is automatically rejected.

¹⁰⁰ T 29.3.23, 43.

247. It is on that basis that in my view the circumstances of the corporate events must be considered. The applicant submitted that I do not have to find that Bullseye had no option but to defend the various hostilities and incur the legal costs, but that all the Minister will need to find is that Bullseye found itself in a position where it considered it was under attack and its board decided to resist the attack, which the board considered to be in the interests of their shareholders. There is a ripple effect, the applicant pointed out, to all of the hostilities, draining resources and requiring the officers of the company to deal with the funds that they had at the particular time.¹⁰¹
248. Therefore, it appears that Mr Burns accepted that there was a ‘choice.’ However, it appears that the applicant’s submission is that in applying that choice, the board felt it was more important to apply both its financial reserves and time to resolving the corporate events, thus protecting the investments of its current shareholders.¹⁰²
249. In re-examination, when asked about the obligations he referred to in cross examination Mr Burns said:¹⁰³

BURNS: So we - _we probably just covered that now in terms of the - _the provisions I was talking about for accrued wages, superannuation, long service leave, those sorts of things, so - - -
That’s what you were referring to when you said - - -?--
-That’s what I - - -
- - - the statutory obligations you had to continue to meet?--
--Correct, yes. So there was - _there was those upfront had to be met. There was no choice. They have to be paid, and then anything after that in terms of being discretionary or not, we had to pay our legal fees, outgoings. We tried to do our exploration, but we allocated as much as we possibly could to the tenure whilst trying to balance the - _the fiduciary duties, the shareholders best interests, and - _and the solvency of the company as well. We - _we’ve - _we’ve got to keep the company solvent, so it - _it was - _it was a very, very tough period in - _in term - _many sleepless nights in trying to ...keep everything balanced.

250. From that evidence I accept that while there may have been some surplus in funds at the start and finish of each year, and there were funds flowing through the company, the board believed it was incumbent on the company not only to meet its expenditure obligations

¹⁰¹ T 29.3.23, 69.

¹⁰² T 29.3.23, 6-7, as to the make up of the shareholders, and 33.

¹⁰³ T 29.3.23, 47.

under the *Mining Act*, but to ensure all its other obligations, to its shareholders and employees and consultants, would be met. Therefore, for them, it was a question of balance.¹⁰⁴

251. I am satisfied that the effects of the corporate events, in the present case, include both financial and time. I am also satisfied that Bullseye had ongoing corporate events which required cash, such as the payment of its lawyers.
252. On the face of my finding about the cash flow, one inference to draw is that Bullseye then had the capacity to meet its *Mining Act* obligations, however, chose to divert the money elsewhere. Mr Burns acknowledged that there was no income being generated by the company. Accordingly, I accept, it relied on capital to continue its operations. I also accept that Bullseye had corporate obligations it was required to meet to keep the company solvent, although I have not made a finding that they were in fact in danger of becoming insolvent. I am satisfied, however, that Mr Burns' evidence goes to the board balancing competing obligations with enough effort and money to each to attempt to meet both the corporate and *Mining Act* obligations.
253. However, I also acknowledge that some of the 'hostilities' may have been precipitated by Bullseye. For example, the determination by the Takeovers Panel regarding seeking shareholder approval of a financing proposal suggests that it was Bullseye that may have triggered that review. Therefore, in my view, regarding that Takeovers Panel action as 'hostile' may not be reasonable, even though overall events may have appeared to be a step in what Mr Burns has described as "The Chinese Group" proactively seeking to gain control of Bullseye since mid 2018, contrary to the wishes of an overwhelming majority of other smaller shareholders. Neither, then, is his view reasonable that the board 'needed' to defend that action.
254. Similarly, the first Takeovers Panel action in July 2018 was instigated by Bullseye, however the Panel advised that there was insufficient evidence to proceed with the complaint that the "Chinese Group" were acting in association.¹⁰⁵

¹⁰⁴ See counsel's closing submissions at T 29.3.23, 66.

¹⁰⁵ T 29.3.2023, 19-20.

255. That factor detracts some weight from a finding that the board found its self subject to hostilities such that there was an imperative to spend money otherwise available for tenement expenditure on those actions.
256. Bullseye did however expend relatively considerable sums on its tenements in the relevant tenement years and met its minimum expenditure on others.
257. That factor, and the overall finding that Bullseye had competing corporate obligations, weigh in favour of a finding that the applicant did not have sufficient capital in the relevant tenement years to in fact meet its *Mining Act* obligations, such that it required time to raise capital to do so (s 102(2)(b)), or that it could not complete its planned works because of its inability to raise capital (s 102(3)).
258. The next question is, therefore, was time required to raise capital (s 102(2)(b)), or was Bullseye prevented from raising capital during the expenditure years such that they should be granted an exemption (s 102(3))? That requires a consideration of what the capital was needed for.

WAS THERE A NEED OR REQUIREMENT FOR BULLSEYE TO RAISE CAPITAL TO CARRY OUT ITS EXPLORATION?

259. Given Mr Burns' evidence that what appears to be a significant portion of the capital actually raised in 2018 and 2019 went to paying lawyers and other corporate commitments, there is a concern that the capital was being raised to address those needs, rather than the minimum expenditure on the tenements. This question requires a review of Bullseye's plans as to exploration, in comparison with the ongoing consequences of the take over and other actions, and Bullseye's choices regarding that action, and of whether Bullseye were treating the exemption tenements as peripheral, such that they had no intention of applying capital, or the requisite minimum expenditure, to those tenements.
260. This consideration not only falls under s 102(2)(b) and s 102(3), but also incorporates the mandatory relevant factor under s 102(4) - a consideration of whether there has been work done on the tenements. Also relevant are the factors raised by the objectors regarding the ongoing payment of directors' fees and the applications for further tenements during the relevant expenditure years.
261. The contention of the objectors is that Bullseye did not need capital to carry out exploration because it did not have plans for these tenements, it needed more money to

defend the hostile corporate events and, in any event, such hostile corporate events are part of corporate life for which a company should be prepared to address without the need to underspend on its core business, being its tenements.

Did Bullseye have plans for the tenements, or were the tenements seen as peripheral?

262. In my view, a consideration of whether there were plans for each tenement needs to be performed, in this case, in the context of:

- a. The projects as a whole, and plans for them;
- b. Work done on the tenements previous to the relevant tenement years, and
- c. Work done on the tenements, and on the project, in the subsequent tenement years.

263. In that context, both the veracity of Bullseye's claims as to their plans for the tenement years and at application of the exemptions, and the place of the tenements in each project as a whole is relevant.

Plans for and work done on the projects in general

264. In his affidavit, Mr Burns spoke of the work done on and plans for each of the projects.

North Laverton Gold Project

265. In relation to the North Laverton Gold Project¹⁰⁶ he said that a total of over 80,000m has been drilled to date (the beginning of 2023) by Bullseye at that project. In the period 2014 to 2018, Bullseye identified five areas of gold mineralisation within the North Laverton Gold Project and the prospect of establishing an on-site processing plant, based on further work to be completed. In the view of Mr Burns, further and ongoing drilling is required to extend the life of mine of the project and to demonstrate the viability and ongoing throughput of an on-site processing plant.

266. According to Mr Burns, that work is now being undertaken.

267. Bullseye's exploration and development strategy in 2018 and 2019 was to drill at each prospect with the aim of creating a series of satellite deposits, that when mined together,

¹⁰⁶ Affidavit of Peter Gerard Burns sworn 30.1.23 [21]-[66].

could share the upfront capital expenditure requirements and reduce operating costs. Stage 1 of the exploration strategy commenced in 2014 and saw one deposit drilled, stage 2 in 2015 saw the drilling of three deposits to develop the life of mine of the project, stage 3 in 2016 and 2017 saw geochemical soil sampling and drilling at three of the deposits with mineral resource modelling being undertaken and the total mineral resource at the project increasing.

268. In 2017 a Mining Proposal and Mine Closure Plan were granted by the Department for the North Laverton Gold Project offsite processing and stage 4 was to commence in 2018 with further extension drilling of two of the deposits. Drilling was also planned for new targets at five of the deposits. Drilling was planned on an initial 50m x 50m spacing or greater, and if successful, was to be followed by tighter spaced drilling. Drilling was expected to include air core, reverse circulation and diamond with holes also likely to be drilled for metallurgical, hydrogeological and geotechnical purposes.
269. Pending successful extension of the project resource and the life of mine from stage 4, Bullseye planned to investigate proceeding to a Bankable Feasibility Study for a stand alone mining and processing operation at the project. Mr Burns listed what the Bankable Feasibility Study would incorporate. As a result of the Bankable Feasibility Study, Bullseye planned to commence applying for requisite licensing approvals to permit the construction and development of an on-site gold processing facility and investigate financing options for mine development, processing and overall operations. This would enable the North Laverton Gold Project to develop as a standalone gold mining operation. The Bankable Feasibility Study was subject to raising capital.
270. Stage 5 of the exploration strategy was to commence in 2019 and 2020 with further extension drilling. Bullseye expected to have generated additional exploration targets from the on ground geochemical soil sampling and regional mapping that was to be conducted at the project. Bullseye would also undertake works for off-site toll processing. Mr Burns listed the technical works completed by Bullseye for an off-site processing facility.
271. Mr Burns says that due to the Red 5 hostile takeover bid and the other hostilities, Bullseye was severely restricted in its ability to undertake the planned exploration activities in 2018 and 2019, the takeover bid commencing on 19 February 2018.

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272. In the 2019/2020 financial year he says that Bullseye was unable to raise sufficient funds to develop the North Laverton Gold Project, largely it seems, due to the forfeiture applications combined with the Red 5 hostile takeover bid and other hostilities.
273. The company entered into a binding term sheet with Blue Cap Mining on 2 June 2020 to establish a joint venture mining operation first focusing on one of the gold deposits on M 37/1167, being part of the North Laverton Gold Project. It produced a total of 20,365 ounces of gold across three toll processing campaigns from that deposit.
274. In May 2022 Emerald Resources assumed control of Bullseye and the overall development strategy of Bullseye was reviewed. The team formulated a substantial drilling program for the North Laverton Gold Project with a view to ultimately developing the project as a standalone mine with its own processing plant. The drilling program commenced in July 2022, initially focusing on two of the mineralised zones. Once completed, it is anticipated that this program, combined with results from other recent drilling programmes, will provide around 150,000m of new drilling.
275. Subsequent to Emerald Resources assuming control, in May and June 2022, \$6.2 million was raised. With that funding, Bullseye intends:
- a. to continue with the ongoing drilling program at the North Laverton Gold Project;
 - b. having ceased association with the Blue Cap joint venture, meet the costs associated with that cessation;
 - c. to meet the costs associated with the continuing legal actions and complaints over the company's tenements; and
 - d. to repay short-term loans, general working capital and the costs of the offer.
276. There was a further plan for an entitlements issue, which was to take place in the first calendar quarter of 2023 to advance ongoing development works.

Southern Cross Gold Project

277. In relation to the Southern Cross Gold Project¹⁰⁷ Bullseye's aim is to develop a series of satellite gold deposits that when mined together can support the upfront capital costs of an on-site plant at Hopes Hill and through economies of scale, create a low-cost operating cost per tonne for the Southern Cross Gold Project.
278. Between 2016 and 2018, Bullseye geologists collected over 2261 soil samples at the project to support and enhance drill targeting. Bullseye had planned to commence drilling on the project in 2017 and 2018 and were granted a program of work, although as Mr Burns conceded in cross examination, at least in 2016, none of the programs of work granted were over the expenditure tenements the subject of these proceedings.¹⁰⁸
279. Mr Burns said that Bullseye were unable to complete the exploration programs during 2018 and 2019, including the drilling proposed in the program of works due to a delay in funding, the Red 5 hostile takeover bid and the other hostilities.
280. At the completion of the 2017 drilling at the North Laverton Gold Project, the plan was to commence drilling at the Southern Cross Gold Project. However, delays in securing funding for the drilling at the North Laverton Gold Project meant that drilling was not concluded until June 2017. This funding delay was caused by investors committing funds in November 2016 but not producing the funds until May 2017.
281. As a result of the successful drilling results at the North Laverton Gold Project, it was then that the board of Bullseye decided that the company would attempt to source the \$20 million in funding to allow accelerated development of the North Laverton Gold Project and new funding for the Southern Cross Gold Project. It was this decision which led Ms Mullan to travel to Ireland to secure funding as is reported in Schedule 1 attached to these reasons.

Aurora

282. In relation to the Aurora project, Mr Burns said¹⁰⁹ that Bullseye planned to collect over 3500 geochemical soil samples at that project and pending positive results from the soil sampling program, Bullseye intended to undertake target drilling. In anticipation of

¹⁰⁷ Affidavit of Peter Gerard Burns sworn 30.1.23 [67]-[81].

¹⁰⁸ T 29.3.23, 28.

¹⁰⁹ Affidavit of Peter Gerard Burns sworn 30.1.23 [85]-[89].

receiving funding in early 2018, Bullseye geologists collected 899 soil samples at the Aurora project including from tenements E 77/2118, E 77/2119 and E 77/2120 to support and enhance drill targeting and of which 656 samples have been sent to the laboratories for testing.

283. However, further sampling and assaying at the Aurora project was delayed due to a lack of funding, the Red 5 offer and the other hostilities.

Cross examination over plans and work generally

284. I am satisfied, having regard to Schedule 3 and the other evidence that some work occurred on the exemption tenements, and the others, before, during and after the relevant tenement years. Indeed, the objectors did not appear to take issue with the work as recorded.

285. In cross examination, Mr Burns was asked whether the priority of the company was to progress the projects containing its mining leases, as compared to the tenements under the application for exemption, which are exploration tenements. He said:¹¹⁰

I couldn't definitively say that some of those more peripheral targets don't sit on the exemption tenements.

286. He was challenged on his use of the word "peripheral":¹¹¹

Well, you use the word "peripheral" _and I suggest to you that all of the exemption tenements are peripheral targets. They're away from Bungarra. They haven't been drilled and they're not the company's priority at that time?---I wouldn't say they're not the company's priority. They probably had a - _a lesser degree or level of exploration work done on them at that point. And again, we as a board have to try and prioritise our - _our limited funds to try and achieve a - _I suppose you would know that exploration is a - _I suppose, a game of chance, I suppose, and - _and we have to sort of use the information that we have to try and prioritise funds as to the best defined targets that we - - -

Yes. I accept that, but the fact remains that none of this activity that was foreshadowed/planned was on the exemption tenements?---Sorry, when you say "planned"?

Well, at 34 you said stage 4 of the exploration strategy was commenced in 2018. None of that was planned on an exemption

¹¹⁰ T 29.3.21, 25.

¹¹¹ T 29.3.21, 25 - 26.

tenement. And I want you to look - _sorry, I will let you answer that first?---So - - -

And to be fair to you, you say you don't know if any of the peripheral tenements were included in that?---Well, so the strategy is just referring primarily to - _to drilling, which is more advanced targets, but every year we have a field program where soil sampling teams go out, sample and then as targets are identified they, I guess, move up the - _the - _the chain, if you like, in terms of justifying more advanced exploration.

Mr Burns, I then want you to look - _I won't take you right through each one, but if you have a look right through from paragraphs 35 to 45 [of his affidavit], I suggest to you that none of the work that's identified there, the planning, the bankable feasibility study, etcetera, none of it relates to the exemption tenements?---No, there - _there would be quite a bit of that work. So things like flora and fauna studies, for example, would have been undertaken across virtually all tenure. Hydrology, hydrogeological studies would encompass a lot of the tenure. Native title heritage would be on numerous tenements, environmental impact, those sorts of things would apply generally to most of the - the portfolio there.

287. Further, he said:¹¹²

I'm just identifying and getting you to identify the fact that none of those programs of works relate to the exemption tenements?---At that time in 2016, yes. As I said before, that all the tenements are at different stages of development. If we had drilled them or explored them, we probably wouldn't be applying for exemptions on them.

288. In relation to the sampling, he confirmed that that would be surface sampling.¹¹³

289. Under cross examination Mr Burns was challenged as to the apparent lack of work on the exemption tenements, irrespective of the need for capital. He confirmed that there was no drilling on any of the exemption tenements but said "That's why we applied for exemptions."¹¹⁴ However he went on to explain that the different tenements were at

¹¹² T 29.3.23, 28.

¹¹³ T 29.3.23, 28.

¹¹⁴ T 29.3.23, 24.

different stages of exploration and Bullseye would not have proceeded to a tenement and commenced drilling before other work. He said:¹¹⁵

We would do soil sampling works first. We would do geological interpretations, we do aeromagnetics, geophysical studies, those sorts of things to identify anomalies and drill targets and then we would proceed with a drill program.

290. He confirmed that from [23] of his affidavit there were five areas of gold mineralisation within the North Laverton Gold Project but that none of the exemption tenements fell within those mineralised areas.¹¹⁶

291. In explanation Mr Burns said in cross examination:¹¹⁷

The exemption tenements are all exploration licenses, aren't they, whereas your activities for progressing the project are on mining leases?---Essentially. The whole project is at varying stages of development. There's some greenfield, sort of brownfields, I guess, and then defined resources, so we're progressively exploring, I guess, the area in terms of with a systematic, I guess, and - and prioritising, I suppose, limited funds as to the best way to do that.

292. In relation to the Southern Cross Project, Mr Burns was asked to identify what he described as the flagship tenement in that project being M 77/551, the Hopes Hill mining lease, and then confirmed that the two exemption tenements, E 77/2351 and E 77/2341 are some distance from the Hopes Hill tenement and to the south of Southern Cross. He agreed they were at less advanced stages of development. He believed that there were possible anomalies on those exemption tenements but there had been nothing drilled as yet to define a mineral resource.¹¹⁸

293. He also confirmed that whenever in his affidavit he referenced samples having been taken on tenements he meant surface samples, not samples being collected from drilling,¹¹⁹ and in some cases samples were collected, however not sent to the laboratory because around 2018 Bullseye were starting to feel some funding issues and so the geologist, he assumed, prioritised the samples to limit the cost.¹²⁰

¹¹⁵ T 29.3.23, 24.

¹¹⁶ T 29.3.23, 24.

¹¹⁷ T 29.3.23, 25.

¹¹⁸ T 29.3.23, 27.

¹¹⁹ T 29.3.23, 28.

¹²⁰ T 29.3.23, 29.

294. The inference from the questioning is that seeing the exploration tenements as ‘peripheral’ detracts weight from the submission that the total minimum expenditure was not attributed to those tenements because they were being banked or slept on pending the success of the mining tenements on other parts of the project. In closing the objectors said that the evidence showed that the activity had been on the core tenements, with the exemption tenements being peripheral, giving an understanding of why the money has not been spent on these tenements.¹²¹ That is, it was not because of the corporate events that Bullseye did not meet its minimum expenditure on these tenements, but that while they may have been part of an overall project, they were being ‘banked’ until the project needed them.
295. That this is the case is strengthened, according to the objectors, by the fact that Bullseye continued to pay its directors, applied for 2 new tenements and had the support of its shareholders, all of which I discuss next.
296. Bullseye says that in the overall need for a project, the limited work done on each of the exemption tenements was reasonable, and the fact that some expenditure occurred on each of them, together with the corporate events taking away time and money adds strength to the applicant’s case that it is not banking its tenements until a time that it may need them to support its core tenements.
297. At Schedule 2 to these reasons is a Schedule of References Demonstrating a Plan provided by Bullseye on 29 March 2023. Each entry relates to a specific exemption tenement. As I have ruled some of the evidence contained in that schedule inadmissible, I have marked the schedule to these reasons accordingly. I address each tenement separately below, according to the Schedule and my review of the admissible evidence.

E 37/801

298. In his affidavit Mr Burns says:¹²²
- a. Bullseye received mapping, drilling and soil sampling data from the previous registered holders after it acquired the tenements in July 2016.
 - b. Between July 2016 in July 2017 Bullseye undertook a review of the historical data and used 3D modelling software.

¹²¹ T 29.3.23, 53.

¹²² Affidavit of Peter Gerard Burns sworn 30.1.2023 [91] – [98].

- c. Bullseye collected 700 soil samples, the majority of which were collected in July 2018.
 - d. The soil samples were not sent to a laboratory for testing as a result of delays to available funding, the subject of this application for exemption.
 - e. The intention was to undertake further geological interpretation and targeting and air core and RC drilling programs to further identify the resource and define the economic potential subject to soil sample results. It was anticipated that drilling would likely be on a 40m x 40m with infill to 20m x 20m in areas of significant mineralisation.
 - f. Subject to achieving positive drill results, Bullseye intended to undertake the necessary geological activities to establish a JORC compliant resource on the tenement and to extend the LOM for the North Laverton Gold Project.
299. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan of some detail in relation to this tenement. Accordingly, this evidence can be given some weight.

E 37/1249

300. In his affidavit Mr Burns says:¹²³

- a. Between July 2017 and July 2018, Bullseye conducted the following exploration activities:
 - i. historical data reviews and compilation;
 - ii. ground reconnaissance work;
 - iii. hydrogeological evaluation; and
 - iv. initial field mapping in preparation for soil sampling.
- b. As part of Bullseye's exploration strategy, during the relevant tenement year Bullseye would have completed on ground exploration work including broad surface sampling and geological mapping, with particular interest in the well-defined contact between the granites and the green stones.
- c. Bullseye had planned to undertake exploration assessment and targeting which would have resulted in soil geochemical sampling and geological field mapping in

¹²³ Affidavit of Peter Gerard Burns sworn 30.1.2023 [116] – [119].

anticipation of subsequent drilling, resource definition and extension of the North Laverton Gold Project LOM.

301. Mr Burns blames the Red 5 hostile takeover bid in restricting its it ability to undertake that planned exploration activity.
302. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan of some detail in relation to this tenement. Accordingly, this evidence can be given some weight.
303. However, I note that the reported plan is relatively general and the document annexure PGB45 is the extension of term application dated 7 March 2021, and therefore lodged some time after the expenditure year. While it may be that the plans are ongoing, that document provides only limited use as to future intentions at the time of the application, or before the relevant tenement year commenced in relation to this tenement, that application being lodged several years after the relevant year.
304. Therefore, I have not given much weight to the plan on this tenement.

E 37/1290

305. In his affidavit, Mr Burns says:¹²⁴

- a. Between July 2017 and July 2018, Bullseye conducted the following exploration activities:
 - i. historical data reviews and compilation;
 - ii. ground reconnaissance work;
 - iii. hydrogeological evaluation; and
 - iv. initial field mapping in preparation for soil sampling.
- b. As part of Bullseye's exploration strategy, during the relevant tenements year Bullseye would have completed except exploration assessment and targeting, which would have resulted in soil geochemical sampling and geological field mapping in anticipation of subsequent drilling, resource definition and extension of the North Laverton Gold Project LOM.

306. Mr Burns blames the Red 5 hostile takeover bid in restricting its inability to undertake that planned exploration activity.

¹²⁴ Affidavit of Peter Gerard Burns sworn 30.1.2023 [125] – [126].

307. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan of some detail in relation to this tenement. Accordingly, this evidence can be given some weight.
308. However, I note that the reported plan is relatively general and the document annexure PGB48 is the extension of term application dated 30 June 2022, and therefore lodged some time after the expenditure year. While it may be that the plans are ongoing, that document provides only limited use as to future intentions at the time of the application, or before the relevant tenement year commenced in relation to this tenement, that application being lodged several years after the relevant year.
309. Therefore, I am not satisfied that there was much of a plan such that much weight can be given to the future intentions of Bullseye in relation to this tenement.

E 37/1301

310. In his affidavit, Mr Burns says that:¹²⁵
- a. Between August 2017 and August 2018, Bullseye conducted the following exploration activities:
 - i. historical data reviews and compilation;
 - ii. ground reconnaissance work;
 - iii. hydrogeological evaluation; and
 - iv. initial field mapping in preparation for soil sampling.
 - b. As part of Bullseye's exploration strategy, during the relevant tenements year Bullseye would have completed except exploration assessment and targeting, which would have resulted in soil geochemical sampling and geological field mapping in anticipation of subsequent drilling, resource definition and extension of the North Laverton Gold Project LOM.
311. Mr Burns blames the Red 5 hostile takeover bid in restricting its ability to undertake that planned exploration activity.
312. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan of some detail in relation to this tenement. Accordingly, this evidence can be given some weight.

¹²⁵ Affidavit of Peter Gerard Burns sworn 30.1.2023 [133] – [134].

313. However, I note that the reported plan is relatively general and the document annexure PGB53 is the extension of term application dated 30 June 2022, and therefore lodged some time after the expenditure year. While it may be that the plans are ongoing, that document provides only limited use as to future intentions at the time of the application, or before the relevant tenement year commenced in relation to this tenement, that application being lodged several years after the relevant year.
314. Therefore, I'm not satisfied that there was much of a plan such that much weight can be given to the future intentions of Bullseye in relation to this tenement.

E 53/1611

315. In his affidavit, Mr Burns says that:¹²⁶
- a. Between March 2016 and December 2017, Bullseye conducted the following exploration activities:
 - i. historical data reviews and compilation;
 - ii. ground reconnaissance work;
 - iii. hydrogeological evaluation; and
 - iv. initial field mapping in preparation for soil sampling.
 - b. As part of Bullseye's exploration strategy, during the relevant tenements year Bullseye would have completed except exploration assessment and targeting, which would have resulted in soil geochemical sampling and geological field mapping in anticipation of subsequent drilling, resource definition and extension of the North Laverton Gold Project LOM.
316. Mr Burns blames the Red 5 hostile takeover bid in restricting its ability to undertake that planned exploration activity.
317. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan of some detail in relation to this tenement. Accordingly, this evidence can be given some weight.
318. However, I note that the reported plan is relatively general and the document annexure PGB53 is the extension of term application dated 30 June 2022, and therefore lodged some time after the expenditure year. While it may be that the plans are ongoing, that

¹²⁶ Affidavit of Peter Gerard Burns sworn 301.2023 [139] – [141].

document provides only limited use as to future intentions at the time of the application, or before the relevant tenement year commenced in relation to this tenement, that application being lodged several years after the relevant year.

319. Adding some strength to the fact that there were plans, at least prior to the tenement year, is the annexure PGB 51, the annual report for this tenement for the period 20 to June 2016 to 21 June 2017 setting out the initial on ground exploration work and the particular interests of that work.
320. Therefore, I'm satisfied that there was some plan such that some weight can be given to the future intentions of Bullseye in relation to this tenement.

E 37/983

321. In his affidavit, Mr Burns says that:¹²⁷

- a. Between 7 July 2016 and 13 April 2019, Bullseye conducted the following exploration activities:
 - i. historical data review and compilation;
 - ii. ground reconnaissance work;
 - iii. hydrogeological evaluations;
 - iv. initial field mapping and geological targeting; and
 - v. Soil sampling.
- b. During the 2018 to 2019 expenditure year, Bullseye collected 711 soil samples from a planned 1844 samples. The collected samples were not sent to the laboratory for testing and upon completion of the soil sampling program, the samples will be processed and analysed. The suggestion was that it would be more efficient and cost-effective to have all of the samples processed and analysed at the same time.
- c. During the 2020 expenditure year, Bullseye planned to undertake the following activities on the tenement:
 - i. further soil sampling and testing of soil samples;
 - ii. geological mapping;
 - iii. drilling; and

¹²⁷ Affidavit of Peter Gerard Burns sworn 301.2023 [158] – [161].

- iv. if results were encouraging, resource estimation and mine planning for the North Laverton Gold Project life of mine.
- 322. PGB58 is a map showing the location of samples collected from the tenement and PGB59 is an extract of an Excel spreadsheet detailing the sample locations with comments. PGB60 is a photograph of the samples in storage.
- 323. Mr Burns also annexed PGB61, a table containing the proposed exploration program and budget for the period of two years after the 9 April 2019, when that annexure, being the application for extension of licence, was written.
- 324. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan of some detail in relation to this tenement. Accordingly, this evidence can be given some weight.
- 325. Further, I note that the evidence provided is both timely and detailed, strengthening the submission that the applicant had a detailed plan for this tenement, and therefore clear intentions to use it as part of its overall North Laverton Gold Project. The plan can be given significant weight.

E 37/1017

326. In his affidavit, Mr Burns says that:¹²⁸
- a. Between 19 May 2014 and 11 April 2019, Bullseye conducted the following exploration activities:
 - i. historical data review and compilation;
 - ii. ground reconnaissance work;
 - iii. hydrogeological evaluations;
 - iv. initial field mapping and geological targeting; and
 - v. Soil sampling.
 - b. During the 2016 to 2017 expenditure year, Bullseye collected approximately 500 soil samples and planned a sampling program on the tenement to test previously discovered gold and identify new gold and soil anomalous prior to drilling.
 - c. Due to positive results from the soil sampling, Bullseye planned to drill on the tenement on a 50m x 50m and 100m x 100m space drilled collars.

¹²⁸ Affidavit of Peter Gerard Burns sworn 30.1.2023 [170] – [183].

- d. On 29 June 2017 was granted a POW for drilling on the tenement.
 - e. During the 2020 expenditure year, Bullseye planned to undertake the following activities on the tenement:
 - i. further soil geochemical sampling;
 - ii. geological mapping;
 - iii. drilling; and
 - iv. if results were encouraging, resource estimation and mine planning for the North Laverton Gold Project life of mine.
327. PGB66 is a map showing the location of samples collected from the tenement and PGB67 is a cover letter showing lab reference numbers for the samples.
328. Mr Burns also annexed PGB70, a table containing the proposed exploration program and budget for the period of two years after the 9 April 2020, when that annexure, being the application for extension of licence, was written.
329. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan of some detail in relation to this tenement. Accordingly, this evidence can be given some weight.
330. Further, I note that the evidence provided is both timely and detailed, strengthening the submission that the applicant had a detailed plan for this tenement, and therefore clear intentions to use it as part of its overall North Laverton Gold Project. The plan can be given significant weight.

E 37/1121

331. In his affidavit, Mr Burns says that:¹²⁹
- a. Between 30 July 2014 and 22 April 2019, Bullseye conducted the following exploration activities:
 - i. historical data review and compilation;
 - ii. initial field mapping and geological targeting; and
 - iii. Soil sampling.
 - b. During the 2016 expenditure year, Bullseye planned a sampling program on a 100m x 100m grid in the north east section of the tenement to test previously discovered

¹²⁹ Affidavit of Peter Gerard Burns sworn 30.1.2023 [192] – [201].

- gold in soil anomalies and to sample and identify new gold in soil anomalies prior to drilling. It also conducted geological assessment and historical data compilation works and subsequently collected 64 for soil samples on the licence.
- c. During the 2020 expenditure year, Bullseye planned to undertake the following activities on the tenement:
- i. further soil geochemical sampling;
 - ii. geological mapping;
 - iii. drilling; and
 - iv. if results were encouraging, resource estimation and mine planning for the North Laverton Gold Project life of mine.
332. PGB76 is a map showing the location of samples collected from the tenement and PGB77 is a cover letter showing lab reference numbers for the samples.
333. Mr Burns also annexed PGB78, a table containing the proposed exploration program and budget for the period of two years after the 7 April 2017, when that annexure, being the application for extension of licence, was written.
334. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan of some detail in relation to this tenement. Accordingly, this evidence can be given some weight.
335. Further, I note that the evidence provided is both timely and detailed, strengthening the submission that the applicant had a detailed plan for this tenement, and therefore clear intentions to use it as part of its overall North Laverton Gold Project. The plan can be given significant weight.

E 37/1243

336. I note that Mr Burns, in his affidavit, references the supporting declaration for exemption from expenditure in relation to this tenement, however, it was not subject to an objection by the objectors. I suspect that may have been an oversight, as, as far as I can tell, there is little difference between this statutory declaration and the declarations supporting the other applications. In any event, I am of the view that, for the reasons I have outlined in relation to the other such statutory declarations, this statutory declaration carries no weight.

337. In his affidavit, Mr Burns says that:¹³⁰

- a. Between 23 March 2016 and 22 March 2019, Bullseye conducted the following exploration activities:
 - i. historical data review and compilation;
 - ii. ground reconnaissance work;
 - iii. hydrogeological evaluations;
 - iv. initial field mapping and geological targeting; and
 - v. soil sampling.
- b. During the 2017 expenditure year, Bullseye collected over 759 soil samples and then 415 samples to further explore the license and to delineate the extent of gold animalism.
- c. On 20 October 2016 was granted a POW for drilling on the tenement.
- d. During the 2020 expenditure year, Bullseye planned to undertake the following activities on the tenement:
 - i. further soil geochemical sampling;
 - ii. geological mapping;
 - iii. drilling; and
 - iv. if results were encouraging, resource estimation and mine planning for the North Laverton Gold Project life of mine.

338. PGB82 is a map showing the gold soil geochemistry results PGB85 is a map showing the results of samples collected on the tenement in the 2017 expended year. PGB67 is a cover letter showing lab reference numbers for the samples.

339. Mr Burns also annexed PGB87, including a table containing the proposed exploration program and budget for the period of two years after the 11 March 2020, when that annexure, being the application for extension of licence, was written.

340. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan of some detail in relation to this tenement. Accordingly, this evidence can be given some weight.

341. Further, I note that the evidence provided is both timely and detailed, strengthening the submission that the applicant had a detailed plan for this tenement, and therefore clear

¹³⁰ Affidavit of Peter Gerard Burns sworn 30.1.2023 [210] – [218].

intentions to use it as part of its overall North Laverton Gold Project. The plan can be given significant weight.

E 53/1407

342. In his affidavit, Mr Burns says that:¹³¹

- a. Between 20 March 2017 and 18 February 2019, Bullseye conducted the following exploration activities:
 - i. historical data review and compilation; and
 - ii. initial field mapping and geological targeting.
- b. As part of the initial field mapping and geological targeting, in or about 2017, Bullseye geologists assessed the aeromagnetic signatures on the tenement associated with potential mineralisation.
- c. During the 2020 expenditure year, Bullseye planned to undertake the following activities on the tenement:
 - i. soil geochemical sampling;
 - ii. geological mapping;
 - iii. drilling; and
 - iv. if results were encouraging, resource estimation and mine planning for the North Laverton Gold Project life of mine.

343. Mr Burns annexed PGB92, including a table containing the proposed exploration program and budget for the period of two years after the 12 November 2018, when that annexure, being the application for extension of licence, was written.

344. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan of some detail in relation to this tenement. Accordingly, this evidence can be given some weight.

345. Further, I note that the evidence provided is timely and has some detail, strengthening the submission that the applicant had a plan for this tenement, and therefore intentions to use it as part of its overall North Laverton Gold Project. The plan can be given some weight.

¹³¹ Affidavit of Peter Gerard Burns sworn 30.1.2023 [229] – [236].

E 53/1611

346. In his affidavit, in relation to the second application for exemption on this tenement, Mr Burns says that:¹³²

- a. Between 16 March 2016 and 21 June 2019, Bullseye conducted the following exploration activities:
 - i. historical data review and compilation;
 - ii. ground reconnaissance work;
 - iii. hydrogeological evaluations; and
 - iv. initial field mapping and geological targeting.
- b. As part of the initial field mapping and geological targeting, in or about 2017, Bullseye geologists assessed the aeromagnetic signatures on the tenement associated with potential mineralisation.
- c. During the 2020 expenditure year, Bullseye planned to undertake the following activities on the tenement:
 - i. soil geochemical sampling;
 - ii. geological mapping;
 - iii. drilling; and
 - iv. if results were encouraging, resource estimation and mine planning for the North Laverton Gold Project life of mine.

347. Mr Burns also annexed PGB98, including a table containing the proposed exploration program and budget for the period of two years after the 15 May 2017, when that annexure, being the application for extension of licence, was written. He also annexed PGB51, the annual report for the tenement from June 2018 to June 2019.

348. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan of some detail in relation to this tenement. Accordingly, this evidence can be given some weight.

349. Further, I note that the evidence provided is both timely and with some detail, strengthening the submission that the applicant had a plan for this tenement, and therefore intentions to use it as part of its overall North Laverton Gold Project. The plan can be given some weight.

¹³² Affidavit of Peter Gerard Burns sworn 30.1.2023 [245] – [251].

E 77/2087

350. The evidence of Mr Burns in relation to this tenement in his affidavit has been somehow truncated, however, I will assume that [256] refers to work done some time in or before the expenditure year. In his affidavit, Mr Burns says that:¹³³
- a. At some point Bullseye conducted the following exploration activities:
 - i. Geological mapping and assessment of the area for plant soil programs; historical data review and compilation; and
 - ii. Considering access routes for drill rigs.
 - b. In February 2018, to access the tenement, Bullseye engaged in discussions with companies to use a haul road so that I could undertake the plant soil sampling. The Burns has an extra PGB102, an email chain over 2 days (according to the emails provided) between the parties.
351. While not detailed in his affidavit, PGB103, the application for extension of 22 May 2020 says that in May 2020 parts of the tenement were surrendered, given a proposed use of the land for a national park. This, the document says, created further uncertainty around Bullseye's ability to explore that area.
352. While not deposed to in his affidavit, that document effectively concedes that no work was performed on the tenement in 2019 and 2020, largely due to the Red 5 takeover bid and the applications for forfeiture.
353. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan of some detail in relation to this tenement. Accordingly, this evidence can be given some weight. However, in PGB103, at p 1520 of Mr Burns' affidavit, Bullseye admit that the work done has been over the extended Aurora Project tenements, as opposed to on this tenement itself. The extent of work on this tenement appears to be a brief discussion about access.
354. Therefore, while the tenement may be part of a larger project, with an overall strategy, it is difficult to tell from the material whether there was a specific or even overall plan for this tenement. In my view it is difficult to give much weight to this factor on this tenement.

¹³³ Affidavit of Peter Gerard Burns sworn 30.1.2023 [256] – [260].

E 77/2341

355. In his affidavit, Mr Burns says that:¹³⁴

- a. In March 2019 Bullseye conducted the following exploration activities:
 - i. ground reconnaissance work;
 - ii. Initial geological mapping and assessments of the area for plant soil sampling programs; and
 - iii. Considering access routes for drill rigs.
- b. Following the geological site works, geologists planned to use the information to design geochemical sampling for gold mineralisation. Pending target generation results, the next stage of exploration would include MMI soil geochemical and pending positive results, air core and/or RC drilling would be undertaken.

356. Mr Burns blames the Red 5 hostile takeover bid as meaning those plans were not carried out.

357. While not deposed to by Mr Burns, annexure PGB108 to his affidavit, being the application for extension of term on E 77/2341 dated 6 July 2021 effectively concedes that no work was performed on the tenement in 2019 and 2020, largely due to the Red 5 takeover bid and the applications for forfeiture, complaining that effectively Bullseye have had just two months available to conduct exploration on this tenement since December 2017. It is the view of Bullseye that there is a sufficient gap in exploration which still warrants investigating on this tenement.

358. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 it appears that neither much work or planning has taken place in relation to this tenement. Accordingly, this evidence can be given only a little weight.

E 77/2351

359. In his affidavit, Mr Burns says that:¹³⁵

- a. Since 2016 Bullseye has conducted the following exploration activities:
 - i. historical data review and compilation;
 - ii. ground reconnaissance work;

¹³⁴ Affidavit of Peter Gerard Burns sworn 30.1.2023 [270] – [272].

¹³⁵ Affidavit of Peter Gerard Burns sworn 30.1.2023 [284] – [290].

- iii. initial field mapping;
 - iv. and geological targeting; and
 - v. soil sampling.
- b. Around 1 February 2018 Bullseye geologists collected 347 soil samples which were sent for multi element analysis, and in February 2019, Bullseye geologists conducted a site visit to assess potential access routes for drill rigs and general accessibility for further exploration works.
- c. Following the geological site works Bullseye geologists planned to use the information to design geochemical sampling for gold mineralisation. Pending target generation results, the next stage of exploration would include MMI soil geochemical and pending positive results, air core and/or RC drilling would be undertaken.
360. Mr Burns blames the Red 5 hostile takeover bid as meaning those plans were not carried out.
361. Mr Burns annexed PGB114, a photo of the Bullseye field crew on site in February 2019 and PGB112, a photo of field crew collecting samples on one February 2018.
362. While not deposed to by Mr Burns, annexure PGB116 to his affidavit, being the application for extension of term on E 77/2351 dated 19 August 2021 effectively concedes that no work was performed on the tenement in 2019 and 2020, largely due to the Red 5 takeover bid and the applications for forfeiture, complaining that effectively Bullseye have had just 7 months available to conduct exploration on this tenement since December 2017. It is the view of Bullseye that there is a sufficient gap in exploration which still warrants investigating on this tenement, and that given the Southern Cross tenements are part of a combined reporting group and the project has been assigned one common exploration budget, exploration has been and will be undertaken across the entire project area on a systematic and campaign style basis.
363. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan in relation to this tenement. Accordingly, this evidence can be given weight.
364. However, the plan appears to be general in nature in relation to this tenement, and can only be given a little weight.

E 77/2118

365. In his affidavit, Mr Burns says that:¹³⁶

- a. In February 2018 Bullseye geologists collected 243 soil samples on a 100×100m spacing. Planned sampling was amended from an initial 200×200m grid for greater accuracy and detailed response in delineating the granite greenstone contact and the north south striking fault.
- b. As part of the initial field mapping and geological targeting, in or about 2017, Bullseye geologists assessed the aeromagnetic signatures on the tenement associated with potential mineralisation.
- c. Bullseye had planned for the soil samples to be sent to the laboratory for testing, however this did not happen as Bullseye did not have the resources or funds available due to the Red 5 hostile takeover bid and the other hostilities.

366. Mr Burns annexed PGB120, the annual report for the Aurora Project E 77/2118 for the period 9 September 2018 to 8 September 2019. The report says Bullseye has dedicated significant further financial resources toward future exploration of the Aurora Project tenure, including this tenement. It says that Bullseye will commence drilling on the tenement pending successful targeting through soil sampling.

367. While Mr Burns annexed applications for extension of licence for E 77/2118, E 77/2119 and E 77/2120 they were dated 10 August 2018 and therefore give no indication of the work done up until the hearing of this matter on those tenements.

368. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan in relation to this tenement. Accordingly, this evidence can be given weight.

369. However, the plan appears to be relatively general in nature in relation to this tenement, and can only be given a little weight.

E 77/2119

370. In his affidavit, Mr Burns says that:¹³⁷

¹³⁶ Affidavit of Peter Gerard Burns sworn 30.1.2023 [301] – [304].

¹³⁷ Affidavit of Peter Gerard Burns sworn 30.1.2023 [317] – [325].

- a. In January and February 2018 Bullseye geologists collected 384 soil samples on a 100×100m spacing. Planned sampling was amended from an initial 200×200m grid for greater accuracy and detailed response in delineating the granite greenstone contact.
 - b. The soil samples were processed and loaded into 3-D modelling software and analysed by Bullseye geologists.
 - c. Bullseye geologists reported to the board that they found gold in soil anomalies found to exist in the north east of the tenement and it was anticipated the drill targets would be generated from mapping and service sample data. Bullseye plans to drill these targets with the aim of proving up more near mine gold resources and reserves for the Aurora Project.
371. Mr Burns annexed PGB130, including a table containing the proposed exploration program and budget for the period of two years after the 10 August 2018, when that annexure, being the application for extension of licence, was written.
372. Mr Burns blames the Red 5 hostile takeover bid as meaning those plans were not carried out.
373. Mr Burns annexed PGB126, a map of the MMI sample grid and PGB127, a photo of the Bullseye field crew on site in January 2018. He also annexed invoices from the laboratory for the soil samples.
374. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan in relation to this tenement. Accordingly, this evidence can be given weight.
375. However, the plan appears to be general in nature, with the possible deposits being accessed at a later time when required by the project. Therefore, I accept that there were some plans for the tenement, but this factor can only be given a little weight.

E 77/2120

376. In his affidavit, Mr Burns says that:¹³⁸

- a. In January and February 2018 Bullseye geologists collected 272 soil samples on a 100×100m spacing. Planned sampling was amended from an initial 200×200m grid

¹³⁸ Affidavit of Peter Gerard Burns sworn 30.1.2023 [333] – [337].

- for greater accuracy and detailed response in delineating the granite greenstone contact.
- b. The soil samples were processed and loaded into 3-D modelling software and analysed by Bullseye geologists.
 - c. Bullseye geologists reported to the board that they found gold in soil anomalies was found to exist in the north east of the tenement and it is anticipated the drill targets will be generated from mapping and service sample data. Bullseye plans to drill these targets the aim of proving up more near mine gold resources and reserves for the Aurora Project.
377. Mr Burns annexed PGB132, including a table containing the proposed exploration program and budget for the period of two years after the 10 August 2018, when that annexure, being the application for extension of licence, was written.
378. Mr Burns blames the Red 5 hostile takeover bid as meaning those plans were not carried out.
379. Mr Burns annexed PGB126, a map of the MMI Sample grid. He also annexed invoices from the laboratory for the soil samples.
380. Having regard to that evidence and the other admissible evidence referred to in the table in Schedule 2 I am satisfied that there was a plan in relation to this tenement. Accordingly, this evidence can be given some weight.
381. However, the plan appears to be general in nature, with the possible deposits being accessed at a later time when required by the project. therefore, I accept that there were some plans for the tenement, but this factor can only be given a little weight.

Conclusion as to plans

382. Therefore, there were varying degrees of plans for each of the tenements. I am not satisfied that, overall, Bullseye had significant and immediate plans for the individual tenements, although I accept that each of these is an exploration licence, they are part of a larger set of projects which has ‘flagship’ mining tenements, and it appears that at least some of the tenements the subject of these proceedings were to prove up the stocks for projects.
383. When work apparently slowed or stopped because of the corporate events, only some of the samples were sent to the laboratories. I accept that, in the context of dwindling cash

flow, that was a reasonable choice, however, there still must have been, overall, current and future plans for the tenements.

384. While I am conscious that for the purposes of applications for exemption, a plan does not necessarily mean a plan for physical activity on the ground, there must still be some intention to either use the ground or perform some activity that relates to it.
385. I note that under cross examination Mr Burns said that the reason for the exemptions was that there was no drilling on the tenements. In my view, and having had the benefit of seeing him give that answer, that was a concession from him that the tenements were systematically seen as ‘peripheral.’ It sounded like, in that answer, tenements further down the priority list would not be drilled, but simply subject to an application for exemption until they could be. I have taken that into account when assessing the overall plans showing Bullseye’s intentions.
386. In combination, the work done up to and in the expenditure years and the detail of the overall plan and the detail of the individual plan have guided me in relation to the weight I would give to those plans. Therefore:
- a. There were no significant plans, either financially or practically, in relation to the Aurora Project. In that context, one of the Aurora tenements, E 77/2087 had no real plans attached to it. E 77/2119 and E 77/2120 had relatively moderate plans, and E 77/2118 had very little, but more than E 77/2087. In that context I can give them only a little weight.
 - b. There were relatively significant overall systematic plans for the Southern Cross Gold Project as a whole, programs of works having been issued in 2016 to some of the tenements, although not the exemption tenements. In contrast, none of the Southern Cross Gold Project exemption tenements had significant plans over them individually, and, in fact, E 77/2341 had almost none, with the other, E 77/2351 not being much better. In that context I can give them only a little weight.
 - c. There were clearly systematic financial and practical plans for the North Laverton Gold Project before the Red 5 takeover commenced, and the other corporate events. Some of the tenements, E 37/983, E 37/1017, E 53/1407, E 37/1611, E 37/1121 and E 37/1243 had significant plans over them, and E 53/1611 and E 37/801 had slightly less significant plans, but nevertheless, in the context of those factors I have identified, still sound plans, and can be given significant weight. On the other hand, E 37/1301, E 37/1290 and E 37/1249 had only general plans with

a lack of detail, however given the overall significant plans on this project, the plans on those tenements can be given some weight.

387. Therefore, where the plans, in the context of the project plans, were general and lack detail, I can give little weight to the plans Bullseye had in the context of whether capital is needed for their exploration, or whether there are circumstances as such that I should recommend to the Minister that the applicant should be exempt from the expenditure requirements on those tenements for those years.

388. I now turn to factors the objectors say detract from Bullseye's argument that there was a need to raise capital to explore.

Directors' fees

389. In summary, the evidence of Mr Burns in relation to directors' fees was:¹³⁹

- a. In the year ending 30 June 2019, his director fee was \$50,000.
- b. The chairman may usually have received slightly more than that, although Mr Burns did not believe that the chairman was in fact paid a fee in 2019.
- c. Ms Mullan had an all-encompassing salary that included her director fee. In total she would have received a similar amount to Mr Burns.
- d. In addition to his director fee, Mr Burns, through his personal company, billed Bullseye for his services at \$295,000 per year.
- e. Mr Wu nominated another person to receive his director fee which would have been about \$30,000.
- f. Approximately in total, therefore, the directors, either directly or indirectly, received \$800,000 in that year.
- g. The situation in the following financial year was much the same. There were no adjustments to remuneration during 2019 and 2020.
- h. In addition to the chairman, Mr Burns father, not receiving fees into 2019, both he and Ms Mullan forwent contractual bonuses, being 30% of the annual salary. They both elected not to take those bonuses from 2016 or 2017 onwards. This was to assist the company in its cash flow requirements. This also applied to the 2020 financial year.

¹³⁹ T 29.3.23, 10-12.

- i. Neither did Mr Burns seek any review or increase in his salary from approximately the 2017 financial year onwards. That situation remained as at the date on which he gave evidence.¹⁴⁰
 - j. The process of originally setting the contractual salary and arrangements was done by an independent remuneration specialist with a biannual review.¹⁴¹
390. The applicant's submissions are that the directors deserve to be paid, as all those who work are,¹⁴² and the fact that they were paid, at the market rate, does not detract weight from the proposition that the board made a choice between the tenements and themselves, such that that choice was not warranted when the minimum tenement expenditure was not met. Adding weight to that submission is the fact that the chair took no payment, suggesting that the board did make sacrifices in the face of the financial circumstances.
391. In my view this factor is an illustration of the balancing I have identified in the circumstances of the present case. It shows that the directors have been cautious in approaching their obligations and not prioritising their interests over their *Mining Act* and corporate obligations, however, it also shows that there was cash available to pay what some may think are considerable sums in consultancy fees. Weighing up the factors raised by the objectors and Bullseye, in my view this factor is neutral to Bullseye's applications, in that it weighs neither for nor against.

The applications for 2 new tenements

392. On 24 May 2018 Bullseye applied for E 37/1348. That application is yet to be determined. Mr Burns said that at the time of the application Bullseye must have had the capacity to meet expenditure on the tenement for the following five years.¹⁴³
393. On 17 April 2020 Bullseye lodged an application for E 53/2125. That tenement was granted on 15 March 2022.¹⁴⁴
394. Mr Burns agreed in cross examination that he was aware that an application for a tenement represents to the Minister that the company has funds which will enable it to meet its

¹⁴⁰ T 29.3.23, 40.

¹⁴¹ T 29.3.23, 40-1.

¹⁴² T 29.3.23, 66.

¹⁴³ T 29.3.23, 35 and Exhibit 4.

¹⁴⁴ T 29.3.23, 35.

required expenditure commitment were the tenement granted. He also said that “We’re always looking for...” however was interrupted with a question.¹⁴⁵

395. The applicant says that there is no suggestion that Bullseye was misleading the Minister when applying for those tenements. Once the application was made for E 53/2125, the “height of the hostilities” had passed and Bullseye, being an exploration company, could not simply remain in limbo, having to progress the operations. Counsel submitted that this was an example of Bullseye attempting to do so.¹⁴⁶
396. In relation to the earlier application, the applicant said that in May 2018 the hostilities were in their early stages and I can infer from the evidence given by Mr Burns, that it would not have been clear to Bullseye at that stage that they would not be able to raise capital or funding.¹⁴⁷
397. On that basis, while counsel apparently conceded that there may be some force to the objector’s argument that that casts some doubt on the financial difficulties Bullseye were encountering, or at least their view of what they could achieve and accomplish during those hostilities, when looking at the circumstances of the two applications, particularly the dates, the two applications carry such little weight against the applications for exemption that they certainly do not of themselves focus the warden’s discretion in such a way as to not grant an exemption.¹⁴⁸ They do, however, detract a little weight from the applicant’s argument that it required time to raise capital to explore.

Therefore, was there a need to raise capital, and was it to be for the purposes of exploration?

398. I am satisfied that overall there was a need to raise capital, however weighing up the overall plans, the work done on the tenements both before, during and after the expenditure years, the factors raised by the objectors, Mr Burns’ concession that where the tenements had not been drilled, exemptions were sought, and his evidence that the lawyers in particular needed to be paid, along with the other costs of litigation, I am not

¹⁴⁵ T 293.23, 34.

¹⁴⁶ T 29.3.23, 75-76.

¹⁴⁷ T 29.3.23, 75.

¹⁴⁸ T 29.3.23, 76.

satisfied that on E 77/2118, E 77/2119, E 77/2120, E 77/2341 and E 77/2351 Bullseye needed to raise capital to attend to these tenements, as required under s 102(2)(b).

399. Neither am I satisfied that under s 102(3) Bullseye had plans of any weight in relation to those tenements, and that factor weighs against recommending that exemptions on those tenements be granted under s 102(3),

IF THERE WAS A NEED TO RAISE CAPITAL, WAS THAT GOING TO TAKE TIME AND HAD BULLSEYE BEEN PREVENTED FROM RAISING CAPITAL DURING THE TENEMENT YEARS?

400. Consideration of these questions requires consideration of what was occurring during the relevant expenditure years, leading up to the time the applications were made.

Was Bullseye hindered or precluded from raising capital at the time of the applications for exemption?

401. As I have set out earlier, Mr Burns gave evidence that Bullseye sought to raise \$40M for the next phase of their strategy. However, he gave evidence that once the Red 5 bid became public, Bullseye were “prevented” from raising finance.¹⁴⁹ Of course, I must keep in mind that that strategy encompassed all projects.

402. While from the evidence I cannot make a finding as to what Bullseye’s future strategy was to cost, the balance sheets clearly do not show the company had \$40M. Therefore, the next question is, could Bullseye, at the time of the applications, raise that, or any, capital, or did they need time to do so?

403. There were it seems two types of restriction the applicant says the corporate events imposed on Bullseye. Firstly, the applicant says that it was legally restricted from raising capital. I discuss that proposition later in these reasons. Secondly, the applicant says that it was restricted in the following way:

- a. Because its shareholders and others became wary of the company’s future, capital could not be raised;

¹⁴⁹ Affidavit of Peter Gerard Burns sworn 30.1.2023 [359].

- b. Because the corporate events were many and varied, and ‘hostile,’ the board spent significant amounts of time, effort and money focused on resolving those issues, and
- c. The application of available funds, in the context of those issues, meant that the required expenditure on the tenements simply could not be met.

Was Bullseye prevented from raising capital during the takeover period?

Was Bullseye legally prevented from raising capital?

404. In his affidavit, Mr Burns says:

[358] Following the trip to China, Bullseye’s directors and I continued to run the operations of Bullseye on the basis that, subject to the restrictions caused by the Red 5 takeover bid, the Irish and Chinese investor groups would be investing.

405. In examination in chief, he was asked to clarify:¹⁵⁰

What restrictions are you referring to there, Mr Burns?---So this would be the restrictions around the frustrating actions around the Red 5 bid, that essentially caused us some issues in bringing capital into Bullseye. We were aware and concerned of not breaching any of the frustrating actions in relation to the bid. But we were also cognisant that we needed to bring investment into the company as well.

406. In cross examination Mr Burns was asked about [359] of his affidavit, which reads:

On notification of the Red 5 Offer, discussions regarding funding were placed on hold and I was prevented from raising finance.

407. Mr Burns clarified:¹⁵¹

It was particularly in this period when the bid has been lodged, and effectively gone live. So Red 5 has announced to

¹⁵⁰ T 29.3.23, 8.

¹⁵¹ T 29.3.23, 12.

the ASX that the bid has been made, a bidder's statement has been lodged or submitted. During that period then, we, as the target company, have a process that we need to work through, as Mr Hershowitz, I think, outlined yesterday, where we have to prepare a target statement. And in that target statement, we have to ensure that our shareholders are fully informed of what has been put before us. So that particular period - _I can't recall the duration of it - _it was maybe, from start to finish, with the bidder's statement, as probably maybe a couple of months. A couple of months?---Yes.

Okay. So it's a - _should we say, a limitation for a limited period?---Well, if we did anything outside the conditions or the restrictions of the bid during that period, we would immediately have breached a condition, and Red 5 would be entitled to withdraw the bid.

And:¹⁵²

So Bullseye wasn't restricted from putting up a funding proposal. The consequence, however, was that it may cause the Red 5 bid to be withdrawn?---I suppose theoretically or legally speaking we weren't completely restricted. We were still free to try and solicit another offer that we could put to shareholders, but the practicality was the Red 5 bid being put to shareholders at one cent a share when we had been raising capital at 30 cents a share, it effectively - _Bullseye had an implied market capitalisation of about \$80 million. We had received an offer for \$4 million. It caused a lot of confusion and concern with existing shareholders and new investors and that - _that was the hindrance on raising capital.

It stands to reason that Bullseye wouldn't have been concerned about putting a capital raising offer to shareholders even if the effect was to have the Red 5 bid withdrawn, because at all times it was suggesting to shareholders they should reject the bid?---We as a board didn't know whether Red 5 would improve their offer. Anything could happen down the track. Our fiduciary duties to our shareholders are to - _to keep all options open. We couldn't just recklessly put another proposal forward and - _and kill off the bid as we didn't know what was going to happen.

I suggest the board unanimously recommended to shareholders at this early stage that they reject the Red 5 bid?---In - -

That's what the exhibit 11 [PGB11] says "reject the opportunistic and inadequate offer"?_---In its current form

¹⁵² T 29,3,23, 19.

at that time, but the offer could be improved, amended at any point.

408. In re-examination he reiterated that it was in about February 2018, after taking advice from various consultant, corporate and legal advisors, and considering that advice, the board decided to consider the Mullan fundings. He said that that was when the board felt that shareholders were fully informed, and “That strict period of optionality arguably had ceased and, at the end of the day, [the board] were aware that we would potentially breach a condition of the Red 5 bid...”.¹⁵³

409. In effect, therefore, and taken with paragraphs [363] and [364] of his affidavit and the terms of the Red 5 bid contained at annexure PGB133 of Mr Burns’ affidavit, I am satisfied that Mr Burns has given evidence that the board thought that any changes to the company, either in funding or further development of the tenements may have breached or frustrated the terms of the bid. I am satisfied that he gave evidence that while the board were of the view that the initial offer was “opportunistic” and “substantially inadequate,”¹⁵⁴ the board did not know whether Red 5 would improve its bid, the consequences being that if it had intended to, but did not because the board had committed to capital raising which fell under precluded action under the bid, then the board had not acted in the best interests of the company.

410. I do not need to determine whether, however, that is a legally accurate state of affairs Bullseye faced, and that they were legally precluded from raising capital. As Mr Burns admitted under cross examination:¹⁵⁵

I suppose theoretically or legally speaking we weren’t completely restricted. We were still free to try and solicit another offer that we could put to shareholders, but the practicality was...

411. Further, Bullseye’s counsel acknowledged:¹⁵⁶

Now, it was put to you by my friend in cross-examination that Bullseye wasn’t restricted at all in terms of its ability to raise capital even after the Red 5 bid started or with the –
_all the hostilities ongoing, and you said legally that may

¹⁵³ T 29.3.23, 41.

¹⁵⁴ Affidavit of Peter Gerard Burns sworn 30.1.2023 [366].

¹⁵⁵ T 29.3.23, 19.

¹⁵⁶ T 29.3.23, 42.

be so but practically, your answer was that Bullseye was so restricted?---

412. However, I am satisfied that wanting to ensure the board acted in the best interests of the company was in effect a legal impediment to making decisions while under the bid, and while I am not satisfied that the board was legally prevented from raising any capital at all, I am satisfied that this factor can be given some weight as an impediment the board encountered.

Was Bullseye practically precluded from raising capital?

Did the terms of the bid undervalue the company such that shareholders were unwilling to assist?

413. Practically, Mr Burns' evidence was, that the bid did restrict capital raising. That is because:¹⁵⁷

We had raised capital successfully for our company at about 30 cents a share at that time which valued the company at about \$80 million. We now suddenly had a bid for one cent, and effectively valued the company at \$4 million and it just caused absolute hysteria through our shareholder base. A lot - - -

And how do you know that?---From my dealings directly with - _I was primarily responsible in dealing with our existing shareholder base and dealing with a lot of new investors coming into the company, and naturally, new investors coming into the company, were - _we were trying to raise capital in the best interest of shareholders at 30 cents a share, and they would say, "What's wrong here? It's at one cent a share," _and it was - _it was impossible to - _to raise money.

414. The practical effect of that situation was that:¹⁵⁸

the only way we could raise money was through loan funds, either through Ms Mullan's father, a company - _an ASX listed company that we were trying to do a deal with provided us with some loan funds, and then the only other funds that came into the company were through Peter Burns Senior, my father, had some options for the company and I remember two specific times when in the middle of all this the lawyers told us if we don't get payment it's - _it's going to be pens down, and there was

¹⁵⁷ T 29.3.23, 42.

¹⁵⁸ T 29.3.23, 42-43.

several hundreds of thousands of dollars each time had to be paid just to try and keep - _keep afloat. That's how practically restrictive it was.

415. While that answer contains hearsay, and some opinion, I accept from Mr Burns' experience as a director and having control of investor relations for the company that that evidence can be given some weight.

Did the bid, or the bid, Takeovers Panel actions and other court actions take all of the board's time?

416. In relation to the time the board had to spend, Mr Burns said:¹⁵⁹

Can you just tell the warden please in what sense you say Bullseye was practically restricted as a matter of practice and what you as the director experienced during that period of time?---Yes, it was a - _a - _it was a terrible period in particular as a - _as a director of a company. We were just absolutely bombarded with hostilities coming from numerous directions. There was three legal firms at that time. We had Red 5 was represented by HopgoodGanim, Mr Wu was represented by Bennett + Co, and Hongkong Xinhe was represented by Allens Linklaters at that time, and it was just a constant coordinated barrage of letters. It was - _it was a nightmare, to be honest.

417. And further:¹⁶⁰

And in terms that you were talking about the practical restrictions you mentioned on, were there practical restrictions that you encountered because of the hostilities in terms of your daily workload and what you could do? What did you experience?---Yes, it was - _I suppose, myself as the - _as - _as an executive director of the company, my whole focus, I would say, instead of running the business through that time, it would have been probably 80/20 in dealing with lawyers, hostilities, target statements, bidder statements, Takeovers Panels, Supreme Court actions. It just went on and on and on and on.
But when you say 80/20, are you saying 80 per cent of the time was dealing with those - - -?---Correct, with the hostilities.
- - - corporate issues as opposed to operations?---Correct, yes. It was a huge, phenomenal distraction.

¹⁵⁹ T 29.3.23, 42.

¹⁶⁰ T 19.3.23, 43.

418. I note that Ms Mullan, who was the geologist according to Mr Burns, also, according to Mr Burns, took part in capital raising. I accept that there is some weight to be given to the fact of the directors not being able to attend as directors to both operational matters and raising capital, which the company required to continue, it having no income, as Mr Burns' evidence was.

Did Bullseye have the support of its shareholders such that it could have raised capital?

419. In its target's response to the initial Red 5 bid, Bullseye said:

Bullseye has the strong support of its major shareholders and does not require Red 5 to meet its funding requirements.¹⁶¹

420. Each of the further responses contained that statement or in similar terms. Under cross examination, Mr Burns explained what he meant by that, in answer to the objector's proposition that that meant that there was therefore no bar to raising capital from the shareholders in the expenditure years:¹⁶²

If I were to say the company has always had the support of its major shareholders; what would you say? Is that true or not true?---I - _well, I suppose, there's shareholder support, there is financial support, there's lots of different meanings to the word support. But, in general, we had a very strong, cohesive shareholder base, and I would say we always had the support of our shareholders... So that expression is meant to be in terms of finance. It has strong financial support - _shareholder support for finance?---No. I don't accept that, in entirety. In terms of Bullseye's shareholder base, I suppose, either accepting or rejecting the Red 5 offer, they would do so via their shareholding, and, I suppose the support of the major shareholders, we were referring to the support behind the company, behind the board, behind the strategy going forward. In PGB11 it says, "does not require Red 5 to meet its funding requirements." _So it's suggesting that the shareholders, given the strong support - _or having strong support of the shareholders, was going to enable Bullseye to meet its funding requirements?---Under the bid itself, Red 5 was offering shares. It wasn't offering Bullseye funding, per se. They were - _it was a swap for shares. They weren't offering Bullseye funding or cash, as such.

¹⁶¹ Affidavit of Peter Gerard Burns sworn 27 February 2023 annexure PGB11 [8].

¹⁶² T 29.3.23, 14-15.

But in the target's statement, it has equated it to a funding issue; has it not - - -?---I suppose, by that - - -

421. In re-examination he said:¹⁶³

And you gave some evidence about what was intended by the word "support". What support were you referring to there?--- Essentially, it was the support of the shareholder base, I guess, for the - _to remain shareholders of Bullseye and not to accept the Red 5 bid. It also meant it in the sense that it was strong support for the board at that time, and strong support and the board, I guess, ultimately was support for the strategy and direction that we were taking the company forward in.

...By that statement, we were saying that the Bullseye shareholders, up until that point, had significantly funded the company...

I'm not going to dwell on it. But I just say Bullseye has made a connection between the support of major shareholders and the ability to meet its funding requirements in that statement?---Yes. I suppose, I would sum it up by saying it's a twofold thing, in terms of support of the shareholders for the board, the company, the strategy, and at that point in time, we, as a board, had reason to believe our shareholders would continue to fund the company.

422. I accept from that evidence that "support" has two meanings in that context, and I am not persuaded that it only means financial support in this context.

What was the timeframe of the corporate events?

423. The timing of the corporate events relevant to the expenditure years and when the applications for exemption were made are relevant to an assessment of whether time was required to raise capital.

424. As I have identified in the recitation of the evidence, and in Schedule 1 to these reasons:

- a. Funding in the sum of \$40 million was promised between November 2017 and February 2018, and by February 2018 the board appeared to be of the view that that funding would be forthcoming.
- b. On 19 February 2018 the takeover by Red 5 was announced. The board were of the view that the bid was not advantageous to the company.

¹⁶³ T 29.3.23, 42.

- c. The business statement was released on 17 April 2018 and the first target statement followed soon after.
- d. In May 2018 the first extension of the bid was made and limited new funding was organised.
- e. Also in May 2018 the first tenement exemption year commenced, being for E 77/2087.
- f. In July 2018 Bullseye received a requisition notice under S249D of the *Corporations Act*.
- g. The tenement exemption years then continue to commence through June to September 2018.
- h. Also during that time were general meetings, Supreme Court action, Panel action and attempts at gaining more funding until the first board spill attempt in September 2018.
- i. The next tenement exemption years commence in February 2019.
- j. The Red 5 bid closed on 12 April 2019, having been amended eight times, several days after which a further general meeting was held to consider resolutions to remove the current directors and elect new directors.
- k. Funding then appeared to be secured in July 2019 and the final tenement exemption year commenced in July 2019, being E 53/1611.
- l. Despite the funding being secured, not all of it was received.¹⁶⁴
- m. The applications for exemption were made between 26 July 2019 and 20 August 2020.
- n. Between 27 June 2019 and 2 June 2020 73 applications for forfeiture and 14 objections to exemption applications were lodged against Bullseye, five applications for forfeiture against the exemption tenements being lodged on 12 August 2019.
- o. Emerald Resources announced its bid for Bullseye on 8 December 2021 and took control of the company in July 2022.

425. In my view, that time frame shows:

¹⁶⁴ Affidavit of Peter Gerard Burns sworn 30.1.23 [444]-[452].

- a. That despite attempts, capital raising was not immediately forthcoming in the lead up to and during the tenement expenditure years, including up to when the applications for exemption were lodged, and, therefore,
 - b. Bullseye was slow to raise that capital.
- 426. While takeovers and board spills may generally be part of corporate life, I only have Mr Burns' evidence to assist me to understand whether they are part of corporate life such that a company does or does not react to them. While Mr Burns made some concessions under cross-examination, the general impression that he gave was that the number of amendments to the Red 5 bid and necessary responses, the attitude of the board that the bid undervalued the company and should be rejected, and the flow on affect to investors, with the amount of time and money taken to address those issues, and the attempts to expend something on the tenements both subject to this application and others, meant that the bid and its consequences were outside the usual realm of company life. While in particular he conceded that the board may not have been legally precluded from raising money, I am satisfied that there was a practical impediment to raising capital during the expenditure years and at least up until the applications were made.
- 427. I am therefore satisfied that time was required to raise the capital under s 102(2)(b) and that factor weighs in favour of granting the exemptions where there were plans on the tenements.
- 428. I am also satisfied that the Red 5 bid and the consequences as I have found them to be, and the other actions which flowed from Bullseye's actions, such as the board spills, Takeovers Panel actions and the court litigation were such that they prevented capital raising efforts and planned works. While I have identified that it may have been that the Takeovers Panel actions were brought on by the actions of Bullseye, that fact does not detract to any significant amount from the other corporate events and the time frame within which they occurred.
- 429. Having taken into account all of those factors, I am satisfied that there were special circumstances preventing Bullseye from raising capital and completing their planned works under s 102(3), and that factor weighs in favour of granting the exemptions.

CONSIDERATION OF OTHER FACTORS

OTHER EXEMPTION APPLICATIONS

Different tenements but the same grounds in the same year, granted

430. Mr Burns’ affidavit outlined other applications for exemption on Bullseye tenements made in 2019. 14 certificates of exemption were sought, and granted without objection.¹⁶⁵ Each of the exemptions was granted under s 102(3) of the Act, although each sought exemption under s 102(2)(b) and s 102(3).
431. Bullseye conceded that these exemptions did not go to the mandatory relevant factor under s 102(4) relating to past exemptions, however submitted that the fact of the certificates of exemption, and that the applications were grounded in the same facts as the applications currently before the warden, assisted the warden in coming to a recommendation to grant the exemptions, because they “give some comfort to” the position that at around the same time exemptions were being granted on other tenements for the same reasons, and this is a factor that I may consider in balancing all the factors.¹⁶⁶
432. I do not accept that submission. While there is some force in a submission that administrative decision makers should as far as possible, make consistent decisions, I have not had the opportunity to hear evidence on those matters, and I do not know whether, for example, those tenements had similar or other plans on them. In any event, that submission is somewhat neutered by the fact that subsequent applications on different tenements but the same grounds were rejected.

Different tenements but the same grounds in a similar and subsequent year, refused

433. The objectors cross examined Mr Burns on applications for exemption made in 2020 on E 77/2149, E 77/2178, E 77/2340 and E 77/2343, the tenement register searches for which became exhibits 5-8. The extent of the questioning of Mr Burns was:

I put it to you that applications have been - _other applications have been refused, and I just ask you to look at these tenement searches?---Thank you.

¹⁶⁵ Affidavit of Peter Gerard Burns sworn 30.1.2023 [484] – [488] and Annexures PGB180A-180N, PGB181A-180K and PGB182A-180K.

¹⁶⁶ T 29.3.23, 59, Bullseye’s closing submissions.

The first one we will say is E77/2343. ...Now, it's a tenement held by Bullseye Mining?---Yes, I think so.
 And if we look over on the last page, or back page 6 of 6?--
 -6 of 6.
 We see an exemption application was lodged on 6.4.2020?---...
 for the full amount of the required expenditure?---Yes,
 okay. I'm with you, yes.
 And it was refused on 29.7.2022?---Yes.
 Did you know that?---I know some exemptions more recently
 had been refused?
 Well, this is July of last year?---Well, quite recently,
 yes.
 So you knew of this refusal?---I - _I - _I would have known.
 Yes, I can't specifically recall it, no. I suppose it
 doesn't relate to the - _the periods that we're talking
 about, so - - -
 Well, that's to the 2020 financial year. Just have a look at
 the second one then, 77/2178, the year ending 20 February
 2020, application was lodged on 3.4.20 seeking an exemption
 for the full amount of \$20,000. It was refused on 29 July
 2022?---Yes.
 And exploration licence 77/2340, page 6 of 7, the year
 ending 7 February 2020, exemption application \$12,500 lodged
 on 6.4.2020, refused on 29.7.2022?---Yes, but these would
 have been on different - _I suppose is the - _the whole
 saga, if I could call it that, of Bullseye, it has been
 going since mid to late '1_7 all the way through to the
 present day, and the circumstances at that point in time
 would be what would be submitted for the reasoning of the
 exemption. So to say that they're on the exact same basis as
 something lodged in '1_8 or '1_9 is not correct.
 So 77 - _last one 77 - _exploration licence 77/2149?---...
 Anniversary date is 10 February, and for 10 February 2020
 exemption was lodged on 8 May 2020 for \$16,667 being the full
 amount refused on 29 July 2022?---Yes.

434. Counsel for the objectors submitted that I treat the refusals as representing the current view of the Minister as to exemptions which are being sought on the identical grounds.¹⁶⁷ Further, in relation to the grants I have just discussed, the objectors submitted that I may ignore the outcome of those applications for exemption because the most recent decisions in relation to other Bullseye tenements by the Minister have been refusals, given that the refusals in relation to the refused applications were made in July 2020 compared to the granted exemptions being made between January and May 2020.¹⁶⁸

¹⁶⁷ T 29.3.23, 56.

¹⁶⁸ T 29.3.23, 57.

435. From Mr Burns' evidence:

- a. It was not put directly to Mr Burns what the grounds were for the applications.
- b. Mr Burns appears to pre-empt the proposition that the grounds were the same, however, and at first says the applications would have been on different grounds, but clarifies that what he meant by that is that even if the grounds were the same, the "saga"¹⁶⁹ was ongoing and evolving, and what the reasons were in 2020 were different, in effect, to the reasons which may have formed the basis of an application for exemption in 2017 or 2018.
- c. I am satisfied that some of the applications for exemption in the present proceedings being for expenditure years ending in 2020, the refused applications for exemption do relate to the same years, and therefore may have some relevance to the current proceedings.
- d. Further, Mr Burns' evidence is such that while he speaks of different reasons, I am satisfied from the language he uses that he maintains that the basis for the refused applications for exemptions was the "whole saga" with Red 5. It is my view from that evidence that there is some evidence then that the refused applications were based on the same grounds.

436. As a result, the objectors submitted that while the balancing of both granted and refused applications for exemption on the same grounds on different tenements would be difficult, the refusal was significant, from which I infer that the submission is that the refusal should be given significant weight, and certainly more weight in the balance than the grants in the overall time frame of these applications and the corporate events.

437. Bullseye submitted that Mr Burns' evidence could not be taken that the grounds were the same, that it was not put directly to Mr Burns as to what the grounds were, and in any event, it was open to the objectors to summons Department documents or make an application under Freedom of Information, to have those documents before me, and they did not do so. As the documents are not before me, and Mr Burns' evidence cannot be taken to acquiesce as to the grounds, Bullseye submitted, I cannot give any weight to the refusals.

¹⁶⁹ T 29.3.23, 37.

438. However, I do not have the applications, nor refusals, before me. I queried with counsel whether I can look at the statutory declarations for those refused applications under r 154(1)(d) to determine whether the applications were made on the same grounds as the applications in the present case. Counsel for the objectors was of the view that Mr Burns had acquiesced that the refused applications were on the same grounds, and accordingly there was now no need to resort to department documents not put before me by the parties.
439. Applications for exemption under s 102 of the Act are dealt with by the Warden pursuant to the Warden's administrative functions. Where it is necessary to do so in order to properly carry out the Warden's role in those proceedings, reference may be had to material that has been placed on the Department file in relation to the matter before the Warden.¹⁷⁰ In addition, under r 154(1)(d) the Warden has the power to inform themselves of any matter in any manner they consider appropriate. However, as a general rule, the Warden should not take into account and give weight to material contained within the Departmental file without the parties having the opportunity to be heard on that material.¹⁷¹
440. As I have identified, I am satisfied from Mr Burns' evidence that the grounds were the same. Again, on grounds of consistency, the refusals may have been given some weight.
441. However, there are two reasons why I give the refusals minimal weight in this case:
- a. I do not have the benefit of the applications before me. The statutory declarations supporting the current applications, and the granted applications, are detailed, and while they appear to follow a formula, they are tailored to relevant details of each individual tenement. Having not seen the refused applications, I cannot speculate as to whether they were different, or the same, either in relation to details of the relevant tenement or the reasons substantiating the grounds under which the applications are made. In my view, in consideration of the refused applications, it is not only relevant in the present case that the grounds are the same, I would need to be satisfied that the reasons are the same if I were to place any reliance on the objectors' submission that it gives me an indication of the Minister's current views in relation to Bullseye's applications.

¹⁷⁰ *Diamond Rose NL v Hawks* unreported, Perth Warden's Court, 26 May 2000, 15.

¹⁷¹ *Diamond Rose NL v Hawks* unreported, Perth Warden's Court, 26 May 2000, 15.

- b. While I have identified that consistency in administrative decision-making is a relevant factor, that cannot override the need for an independent assessment, on the circumstances of the case before me, and a recommendation accordingly. I am not satisfied that, without more, I can give any detailed findings on the weight I give the refusals in the present case, other than to acknowledge that there have been refusals, on applications apparently made on the same grounds. The Minister's current views as to applications made by Bullseye on the same grounds will of course be known to the Minister when considering this recommendation. The reasons for the current views will also be known to the Minister. All I can do is point out that there have been some refusals, as, slightly earlier, there were grants of exemptions.
442. On that basis I am not satisfied that the refused applications have weight against the recommendation of grant of the applications, other than, as I have identified, they tend to cancel the effect of the previous grants.

The same tenements over which previous applications have been made on the same grounds

443. This is, of course, the mandatory factor under s 102(4). As I have identified, the effect of previous exemptions, granted or refused, may add or detract weight from an application for exemption, depending on the circumstances of the case.
444. In the present case, none of the tenements have been the subject of previous applications for exemption while being owned by Bullseye,¹⁷² other than the one tenement E 53/1611 where that is the subject of two consecutive applications in the current proceedings. Therefore, there have been no previous grants or refusals for the tenements the subject of the current applications.
445. While the objectors put to Mr Burns in cross examination that the tenements the subject of these proceedings were 'peripheral' to the applicant's overall mining operations, they did not make submissions in closing under s 102(4) that there was anything to suggest that there should be less than full weight given to the lack of previous applications on these tenements, and therefore, in the circumstances of this case, I give the lack of

¹⁷² Affidavit of Peter Gerard Burns sworn 30.1.23 annexures PGB2, PGB4, PGB6.

applications, and therefore grants or refusals, full weight in favour of recommending grant of the applications.

WORK DONE ON THE TENEMENTS

446. This is the other mandatory factor under s 102(4). However, in this case, this is also a relevant factor under s 102(3). I have set out the evidence of Mr Burns elsewhere in relation to the work on the tenements, and annexed the summary at Schedule 3. In summary:

- a. In each of the tenement years, Bullseye completed some work, and many of the tenements were not far short from their minimum expenditure.
- b. Bullseye also worked on and spent money on tenements in the projects not subject to these applications for expenditure during the relevant expenditure year.
- c. While relatively significant work has been completed on some of the tenements in the projects, there are varying degrees of work done on the expenditure application tenements, and while I accept that these are exploration and not mining licences, it is the case that on the majority of them, very little has been achieved since the corporate events commenced.

447. As Bullseye has met its minimum expenditure on these tenements in the past, this factor weighs in favour of the applications, as it assists in coming to a determination that Bullseye is exploiting the tenements and not going to sleep on, or banking them, but also that it has a good track record, as it claimed, in exploiting its tenements.

448. On the whole, however, Mr Burns' evidence on work done on each of the tenements up to the hearing, was limited. It would appear that the inference is that, perhaps in particular in relation to the Aurora Project and Southern Cross Project tenements, there has been no work done. Given his affidavit was sworn in January 2023, about six weeks prior to the hearing of this matter, it would have been possible for him to incorporate work done on those tenements in 2021 and 2022 in his affidavit. He did not, and therefore there is a gap between the documents annexed to his affidavit, as I have described them when I have discussed the plans and work done, particularly on the Southern Cross and Aurora tenements elsewhere in these reasons. That is the reason that I infer that in fact little further work has been performed on the tenements. Work done on the tenements being a

mandatory relevant factor under section 102(4) I am of the view that the applicant was well aware that that information is required.

449. I accept, however, that the inference Bullseye wish to be drawn from the evidence is that the consequences, or ripples as they were described, of the corporate events are still being felt, particularly in relation to the applications for forfeiture, of course then making work on the tenement a risk, as is committing funding to work on tenements when funding may not be forthcoming.
450. It does appear that financial work and planning was performed in relation to the North Laverton Gold Project tenements as a whole and there appears to be an extensive drilling program planned, if not commenced, from Mr Burns' evidence.
451. Further, it is to be accepted that Bullseye has, across its tenements until 2018, met its minimum expenditure, and, as I have identified, met at least some of this expenditure on the exemption tenements in 2018 and 2019 and, despite the applications for forfeiture, 2020.
452. Accordingly, on the whole this factor gives some weight to a recommendation that the exemptions be granted, under either s 102(2)(b) and s 102(3).

CONCLUSION

453. I come back to the question of whether Bullseye had a choice, and, if so, did it make the wrong choice?
454. I am not satisfied that, weighing all of the factors I have considered, in relation to tenements E 77/2118, E 77/2119, E 77/2120, E 77/2341 and E 77/2351, Bullseye needed time to raise capital to conduct exploration on those tenements. While the plans Bullseye had is not a paramount consideration, in the present case, a lack of plans on the individual tenements, in context of the overall limited plans of those projects, and the lack of subsequent work, detract so heavily from a recommendation to grant the exemption on those tenements that that factor outweighs those in favour of grant, including those factors I have considered under s 102(4).
455. Otherwise, in relation to the remaining tenements, E 37/801, E 37/1249, E 37/1290, E 37/1301, E 53/1611 (for both exemption years), E 37/983, E 37/1017, E 37/1121, E 37/1243, E 53/1407 and E 77/2087, I am satisfied that, weighing up all of the factors I have considered, Bullseye needed time to raise capital to conduct exploration on those

tenements. I would therefore recommend granting the exemption in relation to those tenements under s 102(2)(b).

456. If I am wrong about that recommendation to grant under s 102(2)(b), I am satisfied that Bullseye had a good track record in relation to the tenements and its other tenements in these projects, that it had plans to raise capital from about January 2018 throughout the tenement exemption years and at least up to time the applications were lodged but that the combination of the Red 5 bid and its effect on the company and the board, the Takeovers Panel actions, the board spills and the other litigation were of such special circumstances in the present case that capital raising efforts and planned works were prevented such that exemptions may be granted under s 102(3).
457. However, there is nevertheless a difference in relation to the plans for ongoing work on the various tenements, as I have highlighted in relation to my findings under s 102(2)(b). In my consideration of the factors under s 102(3), the existence or otherwise of plans on individual tenements in the context of the overall plans for the projects must be given weight. Given the state of the plans as I have described, on E 77/2118, E 77/2119, E 77/2120, E 77/2341 and E 77/2351, neither am I satisfied under s 102(3) that there were plans on all of the tenements for ongoing work. Again, while not the paramount consideration, it is the case that the lack of plans on some of those tenements, in some of those projects, in the present case, weighs so heavily that it outweighs the factors in favour of recommending granting the exemptions in relation to those tenements, including the factors considered under s 102(4).
458. Accordingly, while I recommend the granting of the exemptions on tenements E 37/801, E 37/1249, E 37/1290, E 37/1301, E 53/1611 (for both exemption years), E 37/983, E 37/1017, E 37/1121, E 37/1243, E 53/1407 and E 77/2087, I recommend refusing exemptions on E 77/2118, E 77/2119, E 77/2120, E 77/2341 and E 77/2351.
459. I direct that upon publication of these reasons, these reasons and evidence are forwarded to the Minister for consideration.



Warden

Schedule 1 – Chronology of Corporate Events

Description	Date	Burns Affidavit/ Transcript/ Exhibit
Bullseye reports successful drilling results at NLGP	30 October 2017	PGB28 T 29.3.23, 62.
Bullseye in discussions with third parties regarding a \$20 million capital raising and a second \$20 million capital raising	May 2017 –January 2018	[81][346][349]
Ms Mullan reported proposed funding to the board from Mr Mullan and others (the Irish Group) of \$20 million	November 2017	[81][349] 29.3.23, T 41.
Bullseye receives a letter from Red 5 submitting a confidential, indicative, and nonbinding proposal to make a takeover offer to acquire the shares in Bullseye	7 December 2017	[82][350] PGB133
Mr Burns travels to China where Hong Kong Xinhe International Company Limited (the Chinese Group) promised a \$20-3 million investment to match Mullan proposal	Late January 2018	[345] PGB134
Red 5 announce its intention to make a conditional off-market takeover bid for the shares in Bullseye @ 1 share in Red 5 for every 5 Bullseye shares	19 February 2018	[356] PGB135
Red 5 release its Bidders Statement and advise that the Offer will close on 14 May 2018	17 April 2018	[360] PGB136
Bullseye release its First Target Statement and recommended that the shareholders reject the Offer	27 April 2018	[365] PGB11
Red 5 announce that the offer is varied and the Offer Period will now close on 14 June 2018	4 May 2018	[368] PGB137
Bullseye and Mr Mullan enter into a Working Capital Facility, Mr Mullan advancing \$745,000 to Bullseye	Formalised 10 May 2018	[370]
Bullseye and Mr Mullan enter into Share Subscription Agreement, Mr Mullan agreeing to subscribe for \$3 million of Bullseye shares @ 30c per share	10 May 2018	[371]
Bullseye announce that it has entered into the Working Capital Agreement and Share Subscription Agreement	14 May 2018	[372] PGB138
Red 5 announce that the offer is varied and the Offer Period will now close on 31 July 2018	23 May 2018	[374] PGB139
Bullseye applies for E 37/1348, application is pending	24 May 2018	Trial Exhibit 4 T 29.3.23, 35
Bullseye release its Supplementary Target Statement	28 May 2018	[376] PGB140
Bullseye announce that it has entered into the Mullan Proposals to replace the Working Capital Agreement and Share Subscription Agreement,	19 July 2018	[379] [380] [382] PGB141

to issue convertible notes to raise up to \$26.79 million with gold prepayment facility and replacing share subscription agreement and working capital agreement		
Red 5 announce that the offer is varied and the Offer Period will now close on 31 August 2018	20 July 2018	[383] PGB142
Bullseye receives a requisition notice from Mr Wu Qiyuan and Fountain Enterprises International pursuant to s 249D of the <i>Corporations Act</i> to call a general meeting to consider resolutions to remove the Bullseye directors	23 July 2018	[389] PGB143
Bullseye lodge an application with the Australian Takeovers Panel claiming Mr Wu Qiyuan is associated with Fountain Enterprises International and other Bullseye shareholders, including Hong Kong Xinhe International Company Limited	27 July 2018	[391] [392] PBG144 29.3.23, T 19.
Bullseye discloses to shareholders that the Board had received notices under section 249D of the <i>Corporations Act</i> to hold a general meeting at which the shareholders would vote on the resolutions for the election of two new directors and for the removal of Dariena Mullan, Mr Peter Joseph Burns, and myself	27 July 2018	[395] PBG145
Australian Takeovers Panel declines to conduct proceedings into whether Mr Wu Qiyuan and Fountain were associated with other Bullseye shareholders due to a lack of evidence	8 August 2018	[397] PBG146 T 29.3.23, 20
Bullseye announces that it will hold a general meeting at which the shareholders will vote on: <ul style="list-style-type: none"> • Funding proposals • Removal and appointment of directors • Removal of Mr Wu Qiyuan 	21 August 2018	[399]
Red 5 announce that the offer is varied and the Offer Period will now close on 2 October 2018	23 August 2018	[401] PGB148
Mr Wu Qiyuan commences an action against Bullseye in the Supreme Court of WA (COR147 of 2018)	28 August 2018	[403]
Australian Takeovers Panel announce that it has received an application from Xinhe relating to resolutions for general meeting regarding Mullan funding proposals	4 September 2018	[406] PGB149 T 29.3.23, 20
Bullseye informs shareholders of the application lodged by Xinhe with the Australian Takeovers Panel and also report that the Board has sought but been unsuccessful in its attempts to source funding	7 September 2018	[408] PBG150

Bullseye announce that it has entered into a binding terms sheet with RDGL whereby RDGL will subscribe for a 30% in a new company holding Bullseye's NLG Project tenements	10 September 2018	[410] PBG151
Bullseye lodges an undertaking with the Takeovers Panel to withdraw resolutions regarding funding from the notice of general meeting	12 September 2018	[410] PBG152
Red 5 announce that the Offer Period will now close on 16 November 2018	19 September 2018	[413] PBG153
Bullseye announce that Mr Wu Qiyuan was removed as a director of the company and the resolutions to remove the other directors of Bullseye were not passed	21 September 2018	[415] PBG154
By order of Master Sanderson, the proceedings commenced against Bullseye are completed (COR 147 of 2018)	25 September 2018	[418] PBG155
Australian Takeovers Panel makes a declaration of unacceptable circumstances in respect to the Mullan Proposals	3 October 2018	[419] PBG156
Australian Takeovers Panel issues orders prohibiting Bullseye from issuing convertible notes and gold prepayment financing facility without first obtaining shareholder approval	23 October 2018	[420] PBG157
Red 5 announce that the Offer Period will now close on 31 January 2019	30 October 2018	[421] PBG158
Bullseye announce that it has entered into a \$1.5 million loan facility agreement with RDG, including advancing \$1.5 million for general corporate purposes, including working capital requirements until longer term funding could be put in place	7 November 2018	[425] PBG159
Red 5 announce that the Offer Period will now close on 15 March 2019	18 January 2019	[427] PBG160
Bullseye announces that it has received another s 249D notice from Xinhe requesting that the directors call a meeting to consider resolutions to remove the directors and elect 2 new directors	22 February 2019	[429] PBG161
Red 5 announce that the Offer Period will now close on 12 April 2019	8 March 2019	[431] PBG161
Bullseye seeks approval from shareholders for interim financing proposal for \$13.6 million to meet exploration and general working requirements	March 2019	[444]
Red 5 Offer closes	12 April 2019	[435] PBG164
Bullseye holds an extraordinary meeting to consider resolutions to remove current directors and elect new directors – resolutions not passed.	15 April 2019	[439] PBG165, PBG166

Resolutions passed were re-election of Ms Mullan, approval to reject Red 5 offer and interim financing proposal		
Application for forfeiture lodged on E 53/1407	12 August 2019	
Application for forfeiture lodged on E 37/983	12 August 2019	
Application for forfeiture lodged on E 37/1017	12 August 2019	
Application for forfeiture lodged on E 37/1121	12 August 2019	
Application for forfeiture lodged on E 37/1611	12 August 2019	
Bullseye announces that it has secured \$13.6 million in interim financing	4 July 2019	[447] PGB167
Application for forfeiture lodged on E 53/1243		
73 applications for forfeiture and 14 objections to exemption applications lodged against Bullseye tenement portfolio	27 June 2019 –2 June 2020	[450]
Application for forfeiture lodged on E 37/983	3 February 2020	
Bullseye apply for E 53/2125, granted 15.3.2022	17 April 2020	Trial Exhibit 3 T 29.3.23, 34-35
ASX listed Emerald Resources NL (Emerald) announced that it had made a bid to take over all of the shares in Bullseye on certain terms (Emerald Bid).	8 December 2021	[460] PGB171
Emerald announces to the market that the Emerald Bid had become unconditional.	6 January 2022	[462] PGB172
Xinhe make an application to the Takeovers Panel alleging unacceptable circumstances regarding the Emerald bid	6 January 2022	[464] PGB173
Notification of an intended cash offer for Bullseye by Xingao Investment Pty Ltd	3 February 2022	[467] PGB174
Takeovers Panel announce receipt of application by Xingao regarding Bullseye	22 April 2022	PGB175
Emerald released an ASX announcement that it had gained control of Bullseye with direct equity in Bullseye of 50.56%	19 May 2022	[475] PGB176
Emerald announced that the recommended and unconditional takeover bid for all of the issued shares of Bullseye Mining Limited(Bullseye) that the Company does not already own (Offer) has now closed with the Company holding a direct equity ownership in Bullseye of 59.32%	21 June 2022	[477] PGB177
Emerald announced that subsequent to the close of the Offer, Emerald directors, Morgan Hart and Mark Clements were appointed to the Bullseye Board, with Mr Hart as Chairman of Bullseye. The administrative, financial and operational functions of Bullseye are being transitioned to Emerald.	29 July 2022	[479] PGB178

SCHEDULE 2

BEFORE THE WARDEN
AT PERTH

Exemption Applications 560439, 562057, 562561, and 561242
and Objections 560813, 562296, 563801 and 561270
affecting Exploration Licences 37/801, 37/1249, 37/1290, 37/1301 and 53/1611

Exemption Applications 579892, 579659, 580415, 578457, 576320 and 584605
and Objections 580943, 580942, 580944, 578573, 578574 and 585579
affecting Exploration Licences 37/983, 37/1017, 37/1121, 37/1243, 53/1407 and 53/1611

BETWEEN

BULLSEYE MINING LIMITED

Applicant

and

ZYGMUND WOLSKI

Objector

BEFORE THE WARDEN
HELD AT PERTH

Exemption Applications 559186, 563148, 565510 and 566172
and Objections 560251, 563809, 565997 and 566829
affecting Exploration Licences 77/2087, 77/2341, 77/2351
77/2118, 77/2119, and 77/2120

BETWEEN

BULLSEYE MINING LIMITED

Applicant

and

WEST AUSTRALIAN PROSPECTORS PTY LTD

Objector

SCHEDULE OF REFERENCES DEMONSTRATING A PLAN

Date of Document: 29 March 2023

Filed on behalf of: The Applicant

Date of Filing: 29 March 2023

Prepared by:

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Ref: 6048/6046

Tenement.	Evidence and Excerpts of Evidence	Reference
WOLSKI 2019		
E37/801	Expenditure Year: 16 June 2018 – 15 June 2019.	PGB Affidavit [90]: Page 20.
	Extension of term application lodged on 15 June 2018.	PGB32: Pages 896 – 925.
	<i>“The remainder of the >3km gold in soil anomaly would be drilled at various spacing with initial 40m x 40m drilling over the most anomalous areas. Figure 10 illustrates the approximate drilling pattern that Bullseye would undertake to assess the economic potential of the currently defined anomaly. Drill patterns and techniques would be adapted and amended by Bullseye based on the initial soil geochemistry program and initial drill results.”</i>	PGB32: Pages 879 - 880.
	Supporting declaration in support of Bullseye’s application from expenditure 560439. INADMISSIBLE	PBG31: Page 854.
	Bullseye’s Exploration strategy.	PGB [27 – 46]: Pages 13 – 14.
	Bullseye’s Target Statement: Further Exploration and Development Work.	PGB11: Pages 328 and 329.
Tenement.	Evidence and Excerpts of Evidence	Reference
E37/1249	Expenditure Year: 5 July 2018 – 4 June 2019.	PGB Affidavit [116]: Page 22.
	Supporting declaration submitted in support of Bullseye’s application for exemption from expenditure 562057 relating to E37/1249. INADMISSIBLE	PGB44: Pages 1075 – 1084. See PGB44: Page 1079 for table showing expenditure.
	Extension of term application dated 7 March 2021 – <i>“Stage 4 of the exploration strategy is to commence in 2021 (following impacts and delays associated with the Red 5 Hostile Takeover attempt and subsequent Applications for Forfeiture against Bullseye tenements) with the further drilling of Boundary, Neptune, Hurleys and exploration of Boundary North, Freemans, St. Francis and Aviary. Stage 5 of the exploration strategy is to commence in 2021/2022 with the further drilling of all deposits including E37/1249 pending successful targeting.”</i>	PGB45: Page 1096.
	Bullseye’s Exploration strategy.	PGB [27 – 46]: Pages 13 – 14.
	Bullseye’s Target Statement: Further Exploration and Development Work.	PGB11: Pages 328 and 329.
Tenement.	Evidence and Excerpts of Evidence	Reference
E37/1290	Expenditure Year 11 July 2018 – 10 July 2019.	PGB Affidavit [124]: Page 22.
	Supporting declaration for exemption from expenditure application 562561. INADMISSIBLE	PGB47 at page 1111 for table showing future expenditure.
	Extension of Term Application dated 30 June 2022. <i>“In the period between the completion of Stage 3 and the commencement of Stage 4, the systematic exploration plan was impacted and delayed due to the hostilities felt by the company. Funds had to be redirected from exploration budgets to cover the considerable legal costs, which are now in excess of \$6million.”</i>	PGB48 pages 1128 – 1129.
	Bullseye’s Exploration strategy.	PGB [27 – 46.] Pages 13 – 14.
	Bullseye’s Target Statement: Further Exploration and Development Work.	PGB11: Pages 328 and 329.

Tenement.	Evidence and Excerpts of Evidence	Reference
E37/1301	Expenditure Year 11 July 2018 – 10 July 2019.	PGB Affidavit [132] - Page 23.
	Supporting declaration for exemption from expenditure application 562561. INADMISSIBLE	See PGB47: Page 1111 table showing future expenditure.
	Extension of Term Application “ <i>In the period between the completion of Stage 3 and the commencement of Stage 4, the systematic exploration plan was impacted and delayed due to the hostilities felt by the company. Funds had to be redirected from exploration budgets to cover the considerable legal costs, which are now in excess of \$6million.</i> ”	PGB48 pages 1128 – 1129.
	Bullseye’s Target Statement: Further Exploration and Development Work.	PGB11: Pages 328 and 329.
Tenement.	Evidence and Excerpts of Evidence	Reference
E53/1611	Expenditure Year 22 June 2018 – 21 June 2019.	PGB Affidavit [139]: Page 24.
	Annual Report Wonganoo Project E53/1611 Reporting Period: 22nd June 2016 – 21st June 2017: <i>“Initial on ground exploration work will include broad surface sampling and geological mapping, with particular interest in features highlighted by historical drilling, as well as the following observed features: - A well-defined contact between the granites and greenstones which trends NE – SW along the western boundary of the tenement - The closure of the Wonganoo anticline within the southern section of the tenement - Disruption of the folded beds of the Wonganoo anticline with isolated magnetic lows close to the anticlinal axis – possibly felsic intrusives - Irregularly shaped magnetic bodies which have previously been interpreted to be ultramafic intrusive bodies - A contact within the tenement between interlayered felsic volcanic and sedimentary rock with mafic rock of the Dingo Range Greenstone Belt.”</i>	PGB51: Pages 1153 & 1154.
	Supporting declaration for exemption from expenditure application 562561. INADMISSIBLE	PGB52: Page 1159 table showing future expenditure.
	Application for Extension of Licence Wonganoo E53/1611 <i>June 2022: Initial on ground exploration work will include broad surface sampling and geological mapping, with particular interest in features highlighted by historical drilling, as well as the following observed features: - A well-defined contact between the granites and greenstones which trends NE – SW along the western boundary of the tenement - The closure of the Wonganoo anticline within the southern section of the tenement - Disruption of the folded beds of the Wonganoo anticline with isolated magnetic lows</i>	PGB53: Page 1182.

	<p><i>close to the anticlinal axis – possibly felsic intrusives</i></p> <p><i>- Irregularly shaped magnetic bodies which have previously been interpreted to be ultramafic intrusive bodies</i></p> <p><i>- A contact within the tenement between interlayered felsic volcanic and sedimentary rock with mafic rock of the Dingo Range Greenstone Belt.</i></p>	
	Bullseye's Target Statement: Further Exploration and Development Work.	PGB11: Pages 328 and 329.
WOLSKI 2020		
Tenement.	Evidence and Excerpts of Evidence	Reference
E37/983	Expenditure Year 14 April 2019 – 13 April 2020.	PGB Affidavit [147]: Page 25.
	Map of planned soil sampling.	PGB57: Page: 1193.
	During the 2018 – 2019 expenditure year, Bullseye collected 711 soil samples on E37/983 from a planned 1,884 samples. The collected samples have not been sent to a laboratory for testing and upon completion of the soil sampling program, the samples will be processed and analysed. The board was advised by the Bullseye exploration team that it would be more efficient and cost effective to have all of the samples processed and analysed at the same time.	PGB Affidavit [152]: Page 25.
	Map showing sampling collected (Collected in green and non- collected in red).	PGB58: Page 1194.
	Extract of excel spreadsheet showing locations of samples referred to above.	PGB59: Page -1195.
	Photographs of samples of E37/983 in storage (note label on sample on bag is NLMMI – 11721 – 11740) matching the sample id in spreadsheet at PGB59.	PGB60: Page 1196
	Extension of Term Application lodged on 10 April 2019.	PGB61: Page 1205.
	<i>The planned exploration program includes sizeable, staged drill programs aimed to deliver critical LOM Resources and Reserves to support and sustain the NLGP. The planned exploration program for 2019/2020 is detailed as follows and shown in Table 2.</i>	PGB61: Pages 1216 – 1217 Table shows budgets for the next 24 Months, outlining soil sampling and drilling.
	Extension of Term approved.	PGB62: Page 1224.
	Bullseye's Target Statement: Further Exploration and Development Work.	PGB11: Pages 328 and 329.
Tenement.	Evidence and Excerpts of Evidence	Reference
E37/1017	Expenditure Year 12 April 2019 – 11 April 2020.	PGB Affidavit [167]: Page 26.
	Map of samples collected from E37/1017 – Cover letter from SGS regarding WM172745 and WM172746.	PGB: Pages 1259 and 1260.
	Maps of proposed drilling on E37/1017.	PGB57 – Page 1193.
	POW application and approval from DMIRS relating to E37/1017.	Page: 1265 – proposed activities outlining drill holes valid from 1 September 2017 to 30 September 2020.
	Extension of Term Application lodged on 9 April	PGB70: Page 1287

	2020.	Table showing budgets for the next 24 Months, outlining soil sampling and drilling.
	Bullseye's Target Statement: Further Exploration and Development Work.	PGB11: Pages 328 and 329.
Tenement.	Evidence and Excerpts of Evidence	Reference
E37/1121	Expenditure Year 23 April 2019 – 22 April 2020.	PGB Affidavit [189] - Page 29.
	Map showing the location planned soil sampling areas for E3/1121.	PGB75: Page: 1322.
	Map of samples collected from E37/1121.	PGB75: Page: 1323.
	Extension of term application lodged on 7 April 2017.	PGB78: Page 1336.
		Table showing budgets for the next 24 Months, outlining soil sampling and drilling.
	Bullseye's Target Statement: Further Exploration and Development Work .	PGB11: Pages 328 and 329.
Tenement.	Evidence and Excerpts of Evidence	Reference
E37/1243	Expenditure Year 23 March 2019 – 22 March 2020.	PGB Affidavit [207] - Page 31.
	POW application and the approval from DMIRS relating to E37/1243.	PGB84: Pages: 1370 – 1384.
	Map of gold soil geochemistry results from E37/1243.	PGB85: Page: 1385.
	Supporting declaration for exemption from expenditure application 578457. INADMISSIBLE	PGB86: Pages: 1387: soil samples collected in 2016/2017 and 2017/2018.
	Extension of Term application lodged on 11 March 2020.	PGB87: Pages 1409.
	Summary of Bullseye Exploration Activity 2018 – 2019 <i>This reporting year, samples from E37/1243 were processed by SGS Laboratories, Perth and were included as a data submission with the 2019 annual report. Gold in soil anomalies have been identified through MMI analyses of 1,174 total samples at E37/1243 (Figure 4). Following this successful targeting through soil sampling, Bullseye will make plans to begin drilling to further increase the Resource and extend the Life of Mine (LOM) at NLGP. Bullseye's exploration strategy is to drill out each prospect into a mineable Reserve thus creating a series of satellite deposits that when mined together can share the upfront capital expenditure requirements and can reduce the operating (mining and processing) costs.</i>	
	<i>Prior to the 2020 reporting year, Bullseye consistently exceeded annual commitment on E37/1243. As Table 1 shows, Bullseye intend to significantly exceed commitment for E37/1243 in the coming 24-month period and beyond</i>	PBG87 – Page 1413 - Table showing budgets for the next 24 Months, outlining soil sampling and drilling.
	Bullseye's Target Statement: Further Exploration and Development Work.	PGB11: Pages 328 and 329.
Tenement.	Evidence and Excerpts of Evidence	Reference

E53/1407	Expenditure Year 19 February 2019 – 28 February 2019.	PGB Affidavit [225]:Page 32.
	Magnetic anomaly map of E53/1407.	PGB91: Page 1423.
	Extension of term application lodged on 14 February 2019. [It appears this should refer to PGB92]	PGB93: Page 1438 and 1439 - Table showing budgets for the next 24 Months, outlining soil sampling and drilling.
	Approval for the extension of term application for E53/1407. [It appears this should refer to PGB92]	PBG93 – pages 1447.
	Bullseye's Target Statement: Further Exploration and Development Work.	PGB11: Pages 328 and 329.
Tenement.	Evidence and Excerpts of Evidence	Reference
E53/1611	Expenditure Year 22 June 2018 – 21 June 2019.	PGB Affidavit [139] - Page 24.
	Annual Report Wonganoo Project E53/1611 Reporting Period: 22nd June 2016 – 21st June 2017: <i>"Initial on ground exploration work will include broad surface sampling and geological mapping, with particular interest in features highlighted by historical drilling, as well as the following observed features:</i> - <i>A well-defined contact between the granites and greenstones which trends NE – SW along the western boundary of the tenement</i> <i>PGB51 1153</i> <i>Page 14 of 14</i> - <i>The closure of the Wonganoo anticline within the southern section of the tenement</i> - <i>Disruption of the folded beds of the Wonganoo anticline with isolated magnetic lows close to the anticlinal axis – possibly felsic intrusives</i> - <i>Irregularly shaped magnetic bodies which have previously been interpreted to be ultramafic intrusive bodies</i> - <i>A contact within the tenement between interlayered felsic volcanic and sedimentary rock with mafic rock of the Dingo Range Greenstone Belt."</i>	PGB51: Pages 1153 - 1154.
	Supporting declaration for exemption from expenditure application 562561. INADMISSIBLE	PGB52: Page 1159 table showing future expenditure.
	Application for Extension of Licence Wonganoo E53/1611 <i>"Initial on ground exploration work will include broad surface sampling and geological mapping, with particular interest in features highlighted by historical drilling, as well as the following observed features:</i> - <i>A well-defined contact between the granites and greenstones which trends NE – SW along the western boundary of the tenement</i> - <i>The closure of the Wonganoo anticline within the southern section of the tenement</i> - <i>Disruption of the folded beds of the Wonganoo anticline with isolated magnetic lows close to the anticlinal axis – possibly felsic intrusives</i>	PGB53: Page 1182.

	- Irregularly shaped magnetic bodies which have previously been interpreted to be ultramafic intrusive bodies - A contact within the tenement between interlayered felsic volcanic and sedimentary rock with mafic rock of the Dingo Range Greenstone Belt."	
	Bullseye's Target Statement: Further Exploration and Development Work.	PGB11: Pages 328 and 329.
Tenement.	Evidence and Excerpts of Evidence	Reference
WEST AUSTRALIAN PROSPECTORS PTY LTD		
E77/2087	Expenditure Year 28 May 2018 – 27 May 2019.	PGB Affidavit [256]: Page 34.
	Map of sample location on E77/2087.	PGB100: Page 1489.
	Supporting declaration submitted in support of Bullseye's application for exemption from expenditure 559186 relating to E77/2087. INADMISSIBLE	PGB101: Pages 1497 -1498 - Table showing budgets for the next 24 Months, outlining soil sampling and drilling.
	<i>In May 2020, Bullseye voluntarily surrendered 28 blocks in the eastern section of E77/2087 (Figure 4). This was in response to the potential government initiative to reserve parcels of land for the purpose of creating the "Helena Aurora National Park" Class A Reserve. Due to Bullseye's awareness of the potential re-zoning of the land the subject of E77/2087, uncertainty has existed around Bullseye's ability to undertake exploration activities in that area. Any exploration on the land the subject of the proposed Helena Aurora National Park would potentially be a lost investment. The Government have already rejected a mining proposal advanced by Mineral Resources Limited within the Helena Aurora Range in December 2017.</i>	PGB103: Page 1519.
	Bullseye's Target Statement: Further Exploration and Development Work.	PGB11: Page 331.
	Bullseye's Exploration strategy.	PGB [84 – 89]: Page 19.
Tenement.	Evidence and Excerpts of Evidence	Reference
E77/2341	Expenditure Year 20 July 2018 – 19 June 2019.	PGB Affidavit [269]: Page 37.
	Supporting declaration submitted in support of Bullseye's application for exemption from expenditure 563148 relating to E77/2341 following analysis of historical exploration, modern geological and aeromagnetic anomaly data, bullseye field crew were on site in March 2019. INADMISSIBLE	PGB107: Page 1532.
	INADMISSIBLE	PGB101: Page 1536, Table showing budgets for the next 24 Months, outlining soil sampling and drilling.
	Bullseye's Target Statement: Further Exploration and Development Work.	PGB11: Page 331.
	Bullseye's Exploration strategy.	PGB [67 – 70]: Page 17.

Tenement.	Evidence and Excerpts of Evidence	Reference
E77/2351	Expenditure Year 29 August 2018 – 28 August 2019.	PGB Affidavit [283]: Page 38.
	Bullseye field crew on site at e77/2351 in February 2019. The Bullseye employee in the photograph is shown placing pegs on the land the subject of E77/2351 for the purpose of assessing access routes.	PGB Affidavit [290]: Page 1662.
	Supporting declaration submitted in support of Bullseye's application for exemption from expenditure 565510 relating to E77/2351.	PGB113: Page 1667 - Table showing budgets for the next 24 Months, outlining soil sampling and drilling.
	Bullseye's Target Statement: Further Exploration and Development Work.	PGB11: Page 331.
	Bullseye's Exploration strategy.	PGB [67 – 70]: Page 17
Tenement.	Evidence and Excerpts of Evidence	Reference
E77/2118	Expenditure Year 9 September 2018 – 8 September 2019.	PGB Affidavit [300] - Page 39.
	Annual report for the Aurora Project E77/2118 for the reporting period between 9 September 2018 and 8 September 2019: <i>"In the past year, Bullseye commenced the scheduled soil sampling on E77/2118 for MMI (mobile metal ion) testing. To date, 243 samples have been collected on E77/2118. Sample spacing was amended from the initial 200x200m grid to a tighter 100x100m spacing to ensure greater accuracy and detailed response in delineating the granite greenstone contact and NS fault. Access is very difficult as there are few existing tracks that access the tenement. The easiest access is via the Cliffs/Mineral Resources privately owned haul road. Bullseye had negotiated a surface access agreement for access to the haul road with Cliffs and staff were permitted to use the accommodation facilities at the Koolyanobbing camp owned by Cliffs. However, this must be renegotiated with the new operators, Mineral Resources. It is anticipated that drill targets will be generated from mapping and surface sample data. Bullseye intend to drill these targets as part of the company's gold Resource development strategy at Aurora."</i>	PGB120: Pages 1712 – 1713.
	Letter supporting extension of Term Application: 7 September 2018.	PGB122: Page 1738.
	<i>Following the historical data compilation and review, along with analysis of modern geological and aeromagnetic anomaly data, Bullseye believes tenement E77/2118 to be located in favourable settings for economic mineralisation of gold and base metals, particularly along the granite greenstone contact and N-S fault to the west of the tenement. Bullseye have already conducted soil sampling on E77/2118 and have dedicated significant further financial resources toward future exploration of the Aurora Project tenure, including</i>	

	<p>tenement E77/2118.</p> <p><i>Pending successful targeting through soil sampling, Bullseye will commence drilling at E77/2118 with the aim of proving up more near-mine gold Resources and Reserves at Aurora.</i></p>	
	<p>Supporting declaration submitted in support of Bullseye's application for exemption from expenditure 566172 relating to E77/2118.</p> <p style="text-align: center;">INADMISSIBLE</p>	PGB121: Page 1721 - Table showing budgets for the next 24 Months, outlining soil sampling and drilling.
	Bullseye's Target Statement: Further Exploration and Development Work.	PGB11: Page 331.
Tenement.	Evidence and Excerpts of Evidence	Reference
E77/2119	Expenditure Year 9 September 2018 – 8 September 2019.	PGB Affidavit [314]: Page 41.
	Letter supporting extension of Term Application: 7 September 2018.	PGB130: Pages 1758 – 1759 - Table showing budgets for the next 24 Months, outlining soil sampling and drilling. - Application for Extension of Licence Aurora E77/2119.
	<p><i>Following the historical data compilation and review, along with analysis of modern geological and aeromagnetic anomaly data, Bullseye believes tenement E77/2119 to be located in favourable settings for economic mineralisation of gold and base metals, particularly along the Koolyanobbing Shear Zone. Bullseye have already conducted soil sampling on E77/2119 and have dedicated significant further financial resources toward future exploration of the Aurora Project tenure, including tenement E77/2119. Pending successful targeting through soil sampling, Bullseye will commence drilling at E77/2119 with the aim of proving up more near-mine gold Resources and Reserves at Aurora.</i></p>	
	<p>Supporting declaration submitted in support of Bullseye's application for exemption from expenditure 566172 relating to E77/2119.</p> <p style="text-align: center;">INADMISSIBLE</p>	PGB121 – Page 1722 - Table showing budgets for the next 24 Months, outlining soil sampling and drilling.
	Bullseye's Target Statement: Further Exploration and Development Work.	PGB11: Page 331.
Tenement.	Evidence and Excerpts of Evidence	Reference
E77/2120	Expenditure Year 9 September 2018 – 8 September 2019.	PGB Affidavit [332] - Page 42
	Letter supporting extension of Term Application: 7 September 2018.	PGB132: Pages 1772 – 1773.
	<p><i>Following the historical data compilation and review, along with analysis of modern geological and aeromagnetic anomaly data, Bullseye believes tenement E77/2120 to be located in favourable settings for economic mineralisation of gold and base metals, particularly along the Koolyanobbing Shear Zone. Bullseye have already conducted soil sampling on E77/2120 and have dedicated significant further financial resources toward future exploration of the Aurora Project tenure, including tenement E77/2120. Pending successful targeting through soil sampling, Bullseye will commence drilling at E77/2120 with the aim of proving up more near-mine gold Resources and</i></p>	Table showing budgets for the next 24 Months, outlining soil sampling and drilling. - Application for Extension of Licence Aurora E77/2120.

	<i>Reserves at Aurora.</i>	
	Supporting declaration submitted in support of Bullseye's application for exemption from expenditure 566172 relating to E77/2120.	PGB121: Page 1722 - Table showing budgets for the next 24 Months, outlining soil sampling and drilling.
	Bullseye's Target Statement: Further Exploration and Development Work.	PGB11: Page 331.

INADMISSIBLE

Schedule 3 - Bullseye Mining Tenement Information

Index

WAP = West Australian Prospectors Pty Ltd
 Wolski = Mr Zygmund Wolski
 Golden Soak = Golden Soak Enterprises Pty Ltd

1st = first in time forfeiture application
 2nd = second in time forfeiture application
 3rd = third in time forfeiture application

2019 Exemption Tenements

2020 Exemption Tenements

WAP Exemption Tenements

2018

Tenement	Minimum Commitment	Actual Expenditure	Exemption No.	Objection to Exemption Application	Forfeiture Application	Combined Reporting	Expenditure and Exemption information page reference in Attachment TIM2
M37/519	\$18,600	\$39,322	N/A	N/A	N/A	CRG - 65/1995	013
M37/1167	\$10,000	\$14,157	N/A	N/A	N/A	CRG - 65/1995	023
M37/1309	\$346,500	\$1,540,219	N/A	N/A	N/A	N/A	030
M37/108	\$10,000	\$21,866	N/A	N/A	N/A	CRG - 65/1995	040
E37/801	\$50,000	\$53,130	N/A	N/A	N/A	N/A	050
E37/983	\$70,000	\$74,975	N/A	N/A	N/A	N/A	057
E37/1007	\$20,000	\$26,877	N/A	N/A	N/A	N/A	063
E37/1017	\$70,000	\$78,284	N/A	N/A	N/A	CRG - 65/1995	071
E37/1051	\$50,000	\$101,735	N/A	N/A	N/A	CRG - 65/1995	078
E37/1052	\$50,000	\$68,651	N/A	N/A	N/A	CRG - 65/1995	085
E37/1067	\$15,000	\$16,525	N/A	N/A	N/A	N/A	091
E37/1121	\$50,000	\$53,641	N/A	N/A	N/A	CRG - 98/2013	097
E37/1130	\$30,000	\$34,728	N/A	N/A	1st - Wolski - 560293	N/A	105
E37/1198	\$10,000	\$12,204	N/A	N/A	N/A	N/A	111
E37/1208	\$15,000	\$16,370	N/A	N/A	N/A	CRG - 65/1995	116
E37/1229	\$20,000	\$22,341	N/A	N/A	N/A	CRG - 65/1995	123
E37/1243	\$20,000	\$23,146	N/A	N/A	N/A	N/A	128
E37/1249	\$20,000	\$21,986	N/A	N/A	N/A	CRG - 65/1995	134
E37/1262	\$15,000	\$15,377	N/A	N/A	N/A	CRG - 65/1995	140
E37/1263	\$15,000	\$16,901	N/A	N/A	N/A	CRG - 65/1995	146
E37/1264	\$10,000	\$12,801	N/A	N/A	N/A	CRG - 65/1995	152
E37/1265	\$15,000	\$18,982	N/A	N/A	N/A	CRG - 65/1995	158
E37/1290	\$15,000	\$16,944	N/A	N/A	N/A	CRG - 65/1995	164
E37/1291	N/A	N/A	N/A	N/A	N/A	N/A	170
E37/1301	\$20,000	\$21,385	N/A	N/A	N/A	CRG - 65/1995	176
E53/1377	\$50,000	\$53,579	N/A	N/A	N/A	CRG - 204/2011	185
E53/1380	\$70,000	\$90,809	N/A	N/A	N/A	CRG - 204/2011	193
E53/1407	\$70,000	\$72,348	N/A	N/A	N/A	CRG - 204/2011	201
E53/1611	\$50,000	\$51,057	N/A	N/A	N/A	N/A	209
E53/1880	\$15,000	\$18,669	N/A	N/A	N/A	N/A	214
E53/1918	\$20,000	\$22,626	N/A	N/A	N/A	CRG - 204/2011	220
E77/2087	\$70,000	\$82,771	N/A	N/A	N/A	N/A	228
E77/2118	\$46,500	\$47,477	N/A	N/A	N/A	N/A	234
E77/2119	\$10,000	\$20,239	N/A	N/A	N/A	CRG - 23/2015	241
E77/2120	\$10,000	\$22,999	N/A	N/A	N/A	CRG - 23/2015	247
E77/2149	\$30,000	\$33,534	N/A	N/A	N/A	CRG - 44/2017	253
E77/2178	\$30,000	\$42,271	N/A	N/A	N/A	CRG - 44/2017	259
E77/2254	\$20,000	\$27,952	N/A	N/A	N/A	N/A	265
E77/2258	\$20,000	\$30,403	N/A	N/A	N/A	CRG - 44/2017	272
E77/2340	\$20,000	\$25,904	N/A	N/A	N/A	CRG - 44/2017	277
E77/2341	\$15,000	\$18,532	N/A	N/A	N/A	CRG - 44/2017	284
E77/2342	\$10,000	\$11,756	N/A	N/A	N/A	CRG - 44/2017	289
E77/2343	\$15,000	\$17,444	N/A	N/A	N/A	CRG - 44/2017	295
E77/2351	\$15,000	\$22,617	N/A	N/A	N/A	CRG - 44/2017	302
E77/2362	\$20,000	\$26,609	N/A	N/A	N/A	CRG - 44/2017	307
M37/349	\$11,900	\$12,348	N/A	N/A	N/A	N/A	318
P77/4349	\$5,400	\$6,233	N/A	N/A	N/A	CRG - 44/2017	325
M77/834	\$59,100	\$69,023	N/A	N/A	N/A	CRG - 44/2017	333
M77/551	\$97,300	\$83,091	534586 - granted on 14/08/2018	N/A	N/A	CRG - 44/2017	345
M77/734	\$10,000	\$16,994	N/A	N/A	N/A	CRG - 44/2017	353
TOTAL	\$1,755,300	\$3,249,832					

Schedule 33 Bullseye Mining Tenement Information

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WAP = West Australian Prospectors Pty Ltd
Wolski = Mr Zygmund Wolski
Golden Soak = Golden Soak Enterprises Pty Ltd

2019 Exemption Tenements
2020 Exemption Tenements
WAP Exemption Tenements

1st = first in time forfeiture application
2nd = second in time forfeiture application
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2019								Expenditure and Exemption information page reference in Attachment TIM2
Tenement	Minimum Commitment	Actual Expenditure	Exemption No.	Objection to Exemption Application	Forfeiture Application	Combined Reporting		
M37/519	\$18,600	\$31,613	N/A	N/A	N/A	CRG - 65/1995		013
M37/1167	\$10,000	\$12,048	N/A	N/A	1st - Wolski - 560286	CRG - 65/1995		023
					2nd - Golden Soak - 571404			
M37/1309	\$337,100	\$343,228	N/A	N/A	1st - Wolski - 560287	N/A		030
M37/108	\$10,000	\$21,629	N/A	N/A	1st - Wolski - 560284	CRG - 65/1995		040
					2nd - Golden Soak - 571405			
E37/801	\$50,000	\$20,700	560439	Wolski - Obj 560813	1st - Wolski - 560288	N/A		050
					2nd - Golden Soak - 571412			
E37/983	\$70,000	\$82,479	N/A	N/A	1st - Wolski - 560289	N/A		057
E37/1007	\$20,000	\$8,742	569686 - granted on 27/02/2020	N/A	Golden Soak - 571409	N/A		063
E37/1017	\$70,000	\$74,022	N/A	N/A	1st - Wolski - 560290	CRG - 65/1995		071
E37/1051	\$50,000	\$28,724	565510	N/A	Golden Soak - 571406	CRG - 65/1995		078
E37/1052	\$50,000	\$25,413	565510	N/A	Golden Soak - 571407	CRG - 65/1995		085
E37/1067	\$20,000	\$26,136	N/A	N/A	1st - Wolski - 560291	N/A		091
E37/1121	\$50,000	\$53,241	N/A	N/A	1st - Wolski - 560292	CRG - 98/2013		097
E37/1130	\$33,333	\$14,405	573165 - granted on 25/05/2020	N/A	2nd - Golden Soak - 571413	N/A		104
E37/1198	\$10,000	\$12,711	N/A	N/A	1st - Wolski - 560294	N/A		111
E37/1208	\$20,000	\$21,483	N/A	N/A	1st - Wolski - 560295	CRG - 65/1995		116
E37/1229	\$20,000	\$21,604	N/A	N/A	Wolski - 560296	CRG - 65/1995		123
E37/1243	\$20,000	\$26,431	N/A	N/A	1st - Wolski - 260297	N/A		128
E37/1249	\$20,000	\$6,112	562057	Wolski - Obj 562296	Wolski - 560298	CRG - 65/1995		134
E37/1262	\$15,000	\$8,067	569687 - granted on 26/02/2020	N/A	N/A	CRG - 65/1995		140
E37/1263	\$15,000	\$7,556	569687 - granted on 26/02/2020	N/A	N/A	CRG - 65/1995		146
E37/1264	\$10,000	\$7,625	569687 - granted on 26/02/2020	N/A	N/A	CRG - 65/1995		152
E37/1265	\$15,000	\$7,828	569687 - granted on 26/02/2020	N/A	N/A	CRG - 65/1995		158
E37/1290	\$15,000	\$5,586	562561	Wolski - Obj 563801	Wolski - 560299	CRG - 65/1995		164
E37/1291	\$15,000	\$16,337	N/A	N/A	1st - Wolski - 560300	N/A		170
E37/1301	\$20,000	\$7,531	562561	Wolski - 563801	Wolski - 560301	CRG - 65/1995		176
E53/1377	\$50,000	\$20,549	566173 - granted on 05/03/2020	N/A	N/A	CRG - 204/2011		185
E53/1380	\$70,000	\$71,578	N/A	N/A	Wolski - 560279	CRG - 204/2011		193
E53/1407	\$70,000	\$73,407	N/A	N/A	1st - Wolski - 560280	CRG - 204/2011		201
E53/1611	\$50,000	\$10,474	561242	Wolski - Obj 561270	1st - Wolski - 560282	N/A		209
E53/1880	\$15,000	\$8,471	567025 - granted on 23/01/2020	N/A	N/A	N/A		214
E53/1918	\$20,000	\$24,876	N/A	N/A	1st - Wolski - 560283	CRG - 204/2011		220
E77/2087	\$105,000	\$38,675	559186	WAP - Obj 560251	WAP - 557293	N/A		228
E77/2118	\$62,000	\$24,259	566172	WAP - Obj 566829	WAP - 565992	N/A		234
E77/2119	\$15,000	\$5,407	566172	WAP - Obj 566829	WAP - 565993	CRG - 23/2015		241
E77/2120	\$15,000	\$5,442	566172	WAP - Obj 566829	WAP - 565994	CRG - 23/2015		247
E77/2149	\$30,000	\$31,250	N/A	N/A	1st - WAP - 557294	CRG - 44/2017		253
E77/2178	\$30,000	\$35,776	N/A	N/A	1st - WAP - 557295	CRG - 44/2017		259
E77/2254	\$30,000	\$34,359	N/A	N/A	1st - Wolski - 560274	N/A		265
E77/2258	\$30,000	\$32,949	N/A	N/A	WAP - 557296	CRG - 44/2017		272
E77/2340	\$20,000	\$22,908	N/A	N/A	1st - WAP - 557297	CRG - 44/2017		277
E77/2341	\$15,000	\$10,536	563148	WAP - Obj 563809	WAP - 557299	CRG - 44/2017		284
E77/2342	\$10,000	\$11,348	N/A	N/A	1st - WAP - 557298	CRG - 44/2017		289
E77/2343	\$15,000	\$16,473	N/A	N/A	1st - WAP - 557300	CRG - 44/2017		295
E77/2351	\$15,000	\$11,190	565510	WAP - Obj 565997	WAP - 565995	CRG - 44/2017		302
E77/2362	\$20,000	\$7,412	568517 - granted on 11/03/2020	N/A	WAP - 565996	CRG - 44/2017		307
M37/349	\$11,900	\$12,375	N/A	N/A	1st - Wolski - 560285	N/A		317
P77/4349	\$5,400	\$5,899	N/A	N/A	1st - WAP - 557303	CRG - 44/2017		325
M77/834	\$58,350	\$61,281	N/A	N/A	WAP - 565991	CRG - 44/2017		333
M77/551	\$97,300	\$99,345	N/A	N/A	WAP - 557291	CRG - 44/2017		345
M77/734	\$10,000	\$12,327	N/A	N/A	1st - WAP - 557292	CRG - 44/2017		353
TOTAL	\$1,853,983	\$1,579,817						

Schedule 3 - Bullseye Mining Tenement Information

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2020

Tenement	Minimum Commitment	Actual Expenditure	Exemption No.	Objection to Exemption Application	Forfeiture Application	Combined Reporting	Expenditure and Exemption information page reference in Attachment TIM2
M37/519	\$18,600	\$164,914	N/A	N/A	N/A	CRG - 65/1995	013
M37/1167	\$1,667	\$51,423	N/A	N/A	N/A	CRG - 65/1995	023
M37/1309	\$196,642	\$159,694	575209 - granted on 25/05/2020	N/A	2nd - Golden Soak - 571403	N/A	030
M37/108	\$1,667	\$11,744	N/A	N/A	N/A	CRG - 65/1995	040
E37/801	\$8,333	\$5,422	584215	N/A	N/A	N/A	050
E37/983	\$23,333	\$16,376	579892	Wolski - Obj 580943	2nd - Golden Soak - 571410	N/A	057
					3rd - Wolski - 579126		
E37/1007	\$5,000	\$5,384	N/A	N/A	N/A	N/A	063
E37/1017	\$29,167	\$18,700	579659	Wolski - Obj 580942	2nd - Wolski - 579127	CRG - 65/1995	071
E37/1051	\$25,000	\$9,283	588954	N/A	N/A	CRG - 65/1995	078
E37/1052	\$25,000	\$7,480	588954	N/A	N/A	CRG - 65/1995	085
E37/1067	\$11,667	\$5,889	575536 - granted on 25/05/2020	N/A	2nd - Golden Soak - 571408	N/A	090
E37/1121	\$23,333	\$11,532	580415	Wolski - Obj 580944	2nd - Wolski - 579128	CRG - 98/2013	097
E37/1130	\$0	\$9,804	N/A	N/A	N/A	N/A	104
E37/1198	\$4,167	\$4,316	N/A	N/A	2nd - Golden Soak - 571411	N/A	111
					3rd - Wolski - 579129		
E37/1208	\$5,000	\$5,369	N/A	N/A	2nd - Wolski - 579130	CRG - 65/1995	116
E37/1229	\$17,500	\$10,142	574464 - granted on 14/05/2020	N/A	N/A	CRG - 65/1995	123
E37/1243	\$12,500	\$6,413	578457	Wolski - Obj 578573	2nd - Wolski - 579131	N/A	128
E37/1249	\$5,000	\$5,240	N/A	N/A	2nd - Wolski - 585562	CRG - 65/1995	134
E37/1262	\$20,000	\$6,188	593124 - granted on 12/02/2021	N/A	N/A	CRG - 65/1995	140
E37/1263	\$20,000	\$5,489	593124 - granted on 12/02/2021	N/A	N/A	CRG - 65/1995	146
E37/1264	\$10,000	\$5,384	593124 - granted on 12/02/2021	N/A	N/A	CRG - 65/1995	152
E37/1265	\$20,000	\$5,955	593124 - granted on 12/02/2021	N/A	N/A	CRG - 65/1995	158
E37/1290	\$2,500	\$4,062	N/A	N/A	N/A	CRG - 65/1995	164
E37/1291	\$3,750	\$4,468	N/A	N/A	2nd - Wolski - 579132	N/A	170
E37/1301	\$3,333	\$5,837	N/A	N/A	N/A	CRG - 65/1995	176
E53/1377	\$50,000	\$9,332	592289 - refused on 03/08/2021	N/A	N/A	CRG - 204/2011	185
E53/1380	\$46,667	\$15,578	573497 - granted on 19/05/2020	N/A	N/A	CRG - 204/2011	193
E53/1407	\$35,000	\$13,578	576320	Wolski - Obj 578574	2nd - Wolski - 579134	CRG - 204/2011	201
E53/1611	\$11,667	\$9,632	584605	Wolski - Obj 585579	2nd - Wolski - 585561	N/A	209
E53/1880	\$20,000	\$6,527	590878 - refused 03/08/2021	N/A	N/A	N/A	214
E53/1918	\$6,667	\$6,966	N/A	N/A	2nd - Wolski - 579135	CRG - 204/2011	220
E77/2087	\$8,750	\$20,269	N/A	N/A	N/A	N/A	228
E77/2118	\$8,333	\$9,836	N/A	N/A	N/A	N/A	234
E77/2119	\$2,500	\$3,025	N/A	N/A	N/A	CRG - 23/2015	241
E77/2120	\$2,500	\$3,015	N/A	N/A	N/A	CRG - 23/2015	247
E77/2149	\$16,667	\$9,082	577528	N/A	2nd - Golden Soak - 573929	CRG - 44/2017	253
E77/2178	\$20,833	\$10,535	575537	N/A	2nd - Golden Soak - 573931	CRG - 44/2017	259
E77/2254	\$10,000	\$5,735	581316	N/A	2nd - Wolski - 579133	N/A	265
E77/2258	\$5,000	\$6,852	N/A	N/A	N/A	CRG - 44/2017	272
E77/2340	\$12,500	\$8,670	575600	N/A	2nd - Golden Soak - 573932	CRG - 44/2017	277
E77/2341	\$0	\$5,571	N/A	N/A	N/A	CRG - 44/2017	284
E77/2342	\$4,167	\$6,283	N/A	N/A	2nd - Golden Soak - 573933	CRG - 44/2017	289
E77/2343	\$18,333	\$6,660	575600	N/A	2nd - Golden Soak - 573930	CRG - 44/2017	295
E77/2351	\$5,000	\$6,593	N/A	N/A	N/A	CRG - 44/2017	302
E77/2362	\$2,500	\$5,038	N/A	N/A	N/A	CRG - 44/2017	307
M37/349	\$6,942	\$7,932	N/A	N/A	2nd - Wolski - 579125	N/A	317
P77/4349	\$2,250	\$2,371	N/A	N/A	2nd - Golden Soak - 573934	CRG - 44/2017	325
M77/834	\$14,400	\$30,558	N/A	N/A	N/A	CRG - 44/2017	333
M77/551	\$16,217	\$58,498	N/A	N/A	N/A	CRG - 44/2017	345
M77/734	\$3,333	\$4,044	N/A	N/A	2nd - Golden Soak - 573935	CRG - 44/2017	353
TOTAL	\$823,385	\$818,688					