



Exploration & Mining Title Services Pty, Ltd.
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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON INDUSTRY,
MINERAL RESOURCES
19 JUL 2002
RECEIVED

House of Representatives Standing Committee
on Industry and Resources
Submission No: 24
Date Received: 19 JULY 2002
Secretary: S. Forbes

NSW02-005
GENERAL
RH/sw/l

18 July 2002

Committee Secretary
House of Representatives
Standing Committee on Industry and Resources
Parliament House
CANBERRA ACT 2600

Dear Ms Forbes

RE: INQUIRY INTO RESOURCES EXPLORATION IMPEDIMENTS

Please accept this covering advice and the enclosed correspondence to the Director-General of the New South Wales Department of Mineral Resources (with Attachments) as this company's submission to the Inquiry Into Resources Exploration Impediments.

In short, the New South Wales Department of Mineral Resources proposes to amend its policy regarding access to documentation and the effect is that any company that is the holder of an exploration or mining tenement (or any company that might be authorised by that holder to act in its stead) will no longer be able to determine whether exploration reports are outstanding, royalties are outstanding etc unless the company proceeds to make application in accordance with the Freedom of Information Act 1989 (NSW).

Both the State Government's and the Department's existing policy, and the Freedom of Information Act 1989, recognise that this information should be readily available to enable the industry to properly function.

If a company is forced to proceed through the Freedom of Information Act 1989 to obtain documents, which it is quite properly entitled without proceeding in accordance with that Act, such an exercise could only be described as "rampant bureaucracy" and lead to increased delays, costs and impediments to accessing capital for the exploration and development of Australia's minerals.

"Government for the sake of Government" is of no benefit to the country or the people Government is meant to serve.

Yours faithfully

for
RUSSELL HETHERINGTON
Sydney Office
encl

11 July 2002

Director-General
Department of Mineral Resources
PO Box 536
ST LEONARDS NSW 2065

Dear Sir

Further to my correspondence of 10 July 2002, I thought it might be useful to bring to your attention the FOI Procedure Manual (Third Edition) published by the New South Wales Premier's Department, which extends to all Ministers and agencies.

Putting aside for one moment that the intention of the Freedom of Information Act 1989 is to make dealing with Government more open and transparent (which is a trend repeated in much recently enacted legislation), the only reason a person needs to make an application under that Act for access to information would be to exercise a "legally enforceable right" (given by the Act) to access that information.

Chapter 1.3 of the FOI Procedure Manual sets out the policy regarding the "Impact on Existing Operations" and states amongst other things that:

The role of the Act in the provision of information is to complement or supplement existing arrangements, not to restrict them.

The Act does not overrule or restrict any obligations to give access to information or amend records under any other Acts or laws to which agencies or Ministers already adhered to.

Where agencies or Ministers have existing procedures for making information available to the public... before this Act was in force, they can continue to follow these. They may have the advantage of being less formal than those imposed by the Act. Members of the public making FOI requests may be encouraged to use the established process rather than the FOI procedure, particularly if it is quicker or easier.

Bearing in mind the above published procedure and policy of your Government, please advise why the Department wishes to amend an existing procedure or operation which has been in place prior to the commencement of the Freedom of Information Act 1989 (and has been working effectively for your Department and industry since at least 1986) for a procedure which is inconsistent with a published policy already relied upon by industry, is inappropriate, more difficult, more time consuming, more cumbersome and will act as a disincentive to investment in New South Wales?

This company is presently preparing its submission to the Federal Government's Standing Committee on Industry and Resources "Inquiry Into Resources Exploration Impediments" which must be completed by 19 July 2002. Whilst this company's concerns clearly come within the Terms of Reference for this Inquiry, now the Department is aware of the procedures which have been in place prior to the commencement of the Freedom of Information Act 1989, I would like to think there should no need to address this issue to the Standing Committee. Accordingly, I look forward to your early reply prior to 19 July 2002.

I trust you find this information of assistance when given consideration to this company's earlier correspondence.

Yours faithfully

RUSSELL HETHERINGTON
Sydney Office

cc Minister for Mineral Resources
Honourable Bob Carr, MP, Premier of New South Wales
New South Wales Minerals Council



10 July 2002

Director-General
Department of Mineral Resources
PO Box 536
ST LEONARDS NSW 2065

Dear Sir

I write in relation to a proposed change in Government policy and procedure which will result in a major disincentive to investment in the exploration and mining industry in New South Wales.

In particular, I refer to correspondence dated 17 June 2002 which this company received from Mr David Agnew, Manager Coal and Petroleum Resources, Petroleum Titles, which notifies that the Department's previous practice and procedures imposed by the same Department in 1988-89 (which this company had no alternative but to adopt for the purposes of conducting due diligence investigations), are now supposedly not in accordance with Government legal and policy requirements (Attachment "A").

I should also have no need to remind the Department that a fundamental requirement for investing in the exploration or mining industry in New South Wales (or any part of Australia for that matter) relates to the need to have sound title to the right to explore or mine any minerals that might be discovered in the course of exploration activities. To be able to attract investment capital to exploration and mining projects the Australian Stock Exchange, various statutory listing requirements and other statutes require by law that investors or shareholders must be satisfied that exploration and mining titles have been properly assessed in accordance with a recognised code and the code currently adopted throughout Australia for this purpose is the Valmin Code.

If the Department of New South Wales is unable to promptly provide sufficient information to enable investors to at least satisfy the basic requirements of the Valmin Code, valuable capital and investment opportunities will go to other states in Australia. In this respect, no other state of Australia has implemented procedures anywhere near as draconian as those now contemplated by your Department and as far as I am aware, no other state would be prepared to forego the long term benefits of this industry for any short term benefit which may exist but in this instance remains unidentifiable to the writer.

In simple terms, if this company is unable to promptly obtain sufficient fundamental information to properly satisfy the requirements of the Valmin Code, lawyers, accountants and geologists are subsequently unable or are delayed in completing independent assessments that are otherwise required by law for raising capital. Furthermore, in the event that any company is considering acquisition of a corporate entity holding tenements and/or purchase of a substantial shareholding in such company, due diligence investigations (at least to the level required by the Valmin Code) are also required by law.

It is submitted that it is not the role of your Department to prevent or delay companies investing to New South Wales by causing those companies to miss market opportunities while your Department requires compliance with an Act which is not even applicable in the circumstances.

The importance of being able to conduct independent arm's length investigations to demonstrate the validity of title is basic and paramount requirement of law, if New South Wales wishes to attract investment in the mineral sector in New South Wales. In this respect, it is noted that the statute and this Department's Mission Statement recognises this requirement and it is noted that even the Honourable Bob Carr, MP, Premier of New South Wales will shortly be a key note speaker at a New South Wales Minerals Portfolio and Investment Conference which addresses the question "how attractive is the State's mining sector to investors?". The message from the Minister for Mineral Resources on the Department's website boldly suggests the Department leads the world in the release of information, but neglects to mention this latest policy proposal.

It is suggested that if your Department wants to "lead the world", a positive, more helpful and cooperative attempt to work with the industry it supports would be a good start, rather than devoting time and efforts to means to avoid the Department's duties and obligations.

By way of background, I enclose a Company Profile for Hetherington Exploration & Mining Title Services Pty Ltd (Attachment "B") which sets out the scope of activities conducted by this company and am pleased to advise that this company represents a large number of Australian and overseas companies conducting substantial exploration and mining activities throughout Australia.

Due diligence investigations conducted by this company comprise a substantial portion of this company's turnover, and business growth in this area relies upon the Government's previously existing legal and policy requirements.

At this point, it must be stressed and understood by your Department that the so-called Government legal and policy requirements now proposed for change have been relied upon by this company since incorporation in 1986. On the basis of these previously existing legal and policy requirements, this company has grown to be one of the most respected and efficient tenement consulting companies in Australia.

I should also mention that when this company conducts due diligence investigations in all states of Australia, it does so by the same authority of the holder of the exploration or mining tenements and the holder authorises this company to have access to any information that would otherwise be available to the holder. This authority is not a consent to be provided with copies of documents, but is instead, authorisation for this company to act in the place of the holder of the exploration or mining tenements and to be provided with any information that the holder submitted or would otherwise be entitled to in accordance with Section 365 of the Mining Act 1992.

Does the Department's proposed change of policy therefore mean that notwithstanding Section 365 of the Mining Act 1992, an exploration or mining company must now proceed through the FOI Act to obtain copies of information it lodged with the Department, or, if a company has misplaced correspondence or material from the Department, it will have to proceed through the FOI Act to obtain a copy?

It is also relevant to mention at this point in this advice that one of the reasons that due diligence investigations comprise such a significant portion of this company's business relates to the fact that unless a person is experienced in interpreting the Register and the Mining Act 1992, it is almost impossible for anyone to be able to form any sensible conclusion as to the validity or otherwise of title from the facts contained in your Department's Register, which is widely acknowledged as being the least "user friendly" of any Register maintained by similar Departments within Australia. Furthermore, the Register contains numerous errors which this company identifies and brings to the attention of your Department. Therefore, the ability and services provided by this type of company are critical to mining investment in New South Wales.

In the majority of instances, investigations being conducted by this company are being conducted on behalf of a law firm and/or a company looking to acquire an interest in an exploration or mining tenement. Accordingly, investigations into title need to be conducted at arm's length. This requires that the holder of the title issues this company with the necessary authorisation so that an independent assessment of the exploration or mining tenement can be conducted without any question of withholding pertinent details, interference or influence by the holder of the exploration or mining tenements.

The Department has complained that its officers are "preoccupied with your company's search requests" however the Department should be reminded that whether the requests for information come from this company, or its various clients, the volume of search information required by industry from your Department would still be the same. That said, I suggest that the experience of this company enables requests for information to be confined and hence the Department's workload is most likely less when this company acts for its clients. Furthermore, to fetter this company's activities, is to delay, restrict or adversely influence investment in New South Wales.

It is also proper that I refer to this company's advice of 10 June 2002 (Attachment "C") which was forwarded to the Department subsequent to discussions with Mr Agnew on or about 10 June 2002 and prior to receiving Mr Agnew's correspondence dated 17 June 2002.

Attachment "C" sets out the provisions of Section 365 of the Mining Act 1992 which the writer worked with your Department to include in the Mining Act 1992 for the specific purpose of avoiding the Department being burdened by the requirements of providing all requests for information in accordance with the requirements of the Freedom of Information Act 1989 (the FOI Act). In 1988-89 your Department identified that its resources would be substantially burdened by what it stated to be the unnecessary requirement to deal with such requests for information in accordance with the FOI Act and instead, implemented a policy and procedure requiring that persons could be provided with any information that would otherwise be available to the holder, provided that person had the necessary authority from the particular company.

That is, in the knowledge that the FOI Act permitted information to be made available with the consent of the person from whom the information was obtained, your Department implemented a policy which was subsequently reflected at law in Section 365 of the Mining Act 1992.

As a result of the policy that was adopted by your Department in 1988-89, the writer (when reviewing the Mining Act 1992 with the Department on behalf of the then New South Wales Chamber of Mines and Extractive Industries and various clients) concurred with the Department that Section 365 of the Mining Act 1992 should be inserted to accommodate that practice, procedure and policy which had been adopted and successfully implemented by the Department since 1988-89.

Section 365 of the Mining Act 1992 states that:

"A person must not disclose any information obtained in connection with the administration or execution of this Act, unless the disclosure is made with the consent of the person from whom the information was obtained".

For the reasons above, this company is obviously astounded by the suggestion that information which this company has obtained from the Department on a daily basis since 1988-89 is supposedly not now in accordance with Governmental legal and policy requirements.

Even more astounding is the Department's extremely narrow interpretation of Section 365 of the Mining Act 1992 and its officer's subsequent verbal advice that "Section 365 of the Mining Act 1992 does not say that the Department has to provide you with the information if you have consent from the holder of the exploration or mining tenement, it only provides that the disclosure will not be made unless you have consent". With the Department's knowledge of the purpose of providing for Section 365 in the Mining Act 1992, clearly such a response is absurd.

It is relevant to direct your attention to the objects of the Freedom of Information Act 1989, and in particular, Section 5(4) of that Act which states that:

*"Nothing in this Act is intended to prevent or discourage the publication of information, the **giving of access to documents as permitted or required by any other act of law**" (emphasis added).*

It is respectfully suggested that in circumstances where this company acts in the place of the holder of an exploration or mining title and does so with the authority of that holder, then the FOI Act does not intend to prevent or discourage the giving of access to documents as permitted by any other Act (see Section 365 of Mining Act 1992). Accordingly the FOI Act has no application in this instance.

In any case, I again direct your attention to this company's correspondence of 19 June 2002 and in particular, your Department's Statement of Affairs prepared in accordance with Section 14 of the Freedom of Information Act 1989 which clearly contemplates that information can be provided with the concurrence of the provider of the information or the approval of the Minister.

By way of further background to this matter, I enclose examples of requests for information this company has recently lodged with your Department with the authority of the holder of the exploration or mining tenements (Attachment "D"). From a cursory review of this documentation, it will become very clear this company's requests for information have been deliberately precise to ensure that only the necessary documentation required for the purposes of conducting due diligence investigations is requested. I should also mention that it was these requests (some of which have been outstanding since February 2002 and still remain unanswered) which appear to have given rise to the Department's advice at Attachment "A".

From the papers at Attachment "D" it will also be noted that the Department will retain an accurate record of any information which may be provided to this company, or more precisely, the holder of the exploration or mining title. It is simply a matter of filing the request for information on the relevant exploration or mining title file.

At this stage, I must reiterate that the failure of your Department to promptly provide the information requested above not only prejudices the business interests of this company and the holder of the exploration or mining tenement which may be seeking to dispose of its interest, but also acts as a substantial disadvantage to investment in New South Wales.

It is with respect that I hesitate to suggest that the Department's recent advice seems to be as a consequence of either the Department's staffing levels, restructuring or its proposed relocation to Maitland. That is, the FOI Act is being relied upon to camouflage the apparent failure by your Department to provide sufficient resources to adequately and properly comply with the legal requirements of companies operating within New South Wales or companies seeking to invest in this State. On the contrary, I remind you that the object of the FOI Act is not to "prevent or discourage" access to documents. It is with much regret that I also note that, recent dealings with staff suggest that the proposed change of policy is being used simply as an excuse by certain officers not to comply with their duties.

Having made the statement above, I cannot help but direct attention to the fourth paragraph of your Department's advice at Attachment "A" which reads:

"Consequently, any future requests for information other than direct printouts from TAS and copies of authority documents will require an application under FOI legislation. It should be noted that under this legislation (FOI), if the request is extensive and would require an "unreasonable diversion of staff resources" to deal with it, the Department's FOI coordinator may refuse access in the requested form and ask that the applicant to re-clarify their requests so it can be processed.

Already the Department appears to be anticipating that it may refuse or delay access to information which this company is authorised by the holder to be provided. In this respect, I direct attention to the requests at Attachment "D" and suggest it would be impossible to be more precise or to re-clarify such requests for information.

Recently, the writer had the opportunity of attending a forum where representatives of your Department went to some considerable length to illustrate the Department's capabilities to provide information to the public. At the forum it was impressed on the participants that the Department's procedures and the imminent relocation to Maitland will not prejudice any parties' right to information provided by the Department of Mineral Resources. On the contrary, the Departmental representatives advised that the Department would work more with industry to ensure that all information would be more readily available.

It is pleasing to note that Mr Agnew did state that he would "comply with legislation and policy in respect to the Department's internal records". This being the case, Mr Agnew was obviously not aware of the objects of the current policy and law. Accordingly, I must again direct your attention to the policy which has been in place since 1988-89 and the legislative requirement for Section 365 which has been in place in since commencement of the Mining Act 1992.

This company has amended the authorisation pursuant to which it will in future seek information for and on behalf of the registered holder of any exploration or mining tenement and I enclose a copy of same for your information (Attachment "E").

I must respectfully state that if the staffing levels of the Department's Registration Division are or will be reduced to such an extent that the Department is not otherwise able to service or provide the most fundamental of information required by industry, then such a cutback is short-sighted and takes no account of the significant long term affect on the investment in and the future development of exploration and mining industry in New South Wales.

The proposed changes have no real basis at law and have already had a significant effect on the business of this company, insofar as the proposal has already resulted in financial loss and loss of reputation, not to mention how the client company has perceived the Department's refusal to provide information in accordance with Section 365 of the Mining Act 1992. If such policy or losses persist, this company will have no alternative than to instruct a lawyer in this matter.

Having addressed all the issues above, this company recognises that in certain isolated instances requests will be made for internal documents however this will be the exception and procedures under the FOI Act will be followed. In all other instances where documents related to a holder's tenements and the holder has authorised this company to act in its stead, it would be expected that the Department will assist by providing information to enable this company to undertake an independent arm's length due diligence investigation.

I urge you to give this matter immediate consideration and provide legal reasons why the Department now seeks to conduct its services contrary to its previous policy and the express purpose or objects of Section 365 of the Mining Act 1992 and Section 5(4) of the FOI Act.

In conclusion I must state that I have worked with the public service in Mines Departments in two states of Australia for 11 years and for the remainder of my career have worked with many Government Departments and instrumentalities. During this period I have never encountered such an inappropriate and uncooperative attitude to stakeholders in this industry.

Yours faithfully

RUSSELL HETHERINGTON
Sydney Office

cc Minister for Mineral Resources (encl)
Honourable Bob Carr, MP, Premier of New South Wales (encl)
New South Wales Minerals Council (encl)

encl



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 www.minerals.nsw.gov.au
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Hetherington Exploration and
 Mining Title Services
 P O Box 765
 Willoughby NSW 2068

C02/0129

Attention: Mr Russell Hetherington

Dear Mr Hetherington

**Requests for Titles Information form the
 NSW Department of Mineral Resources**

Over the years the Department has acted on requests for information from your organisation. The delivery of this information has however been somewhat ad hoc in nature and in many cases has involved staff from your organisation accessing information directly from our internal records.

These practices were recently queried by the Department's Executive Officer and as a result, it became apparent that much of what has been taking place is not in accordance with Governmental legal and policy requirements.

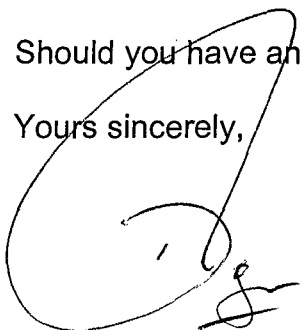
The Department has a statutory obligation to maintain a register of mining titles and related information and this register is our Titles Administration System (TAS). We then have an obligation to provide information from this register to title holders and the public, when requested. We also have an obligation to provide copies of authority documents. However, any information maintained on the Department's internal records, such as files and other physical and electronic storage systems can not be released unless a valid application is made under Freedom of Information Legislation (FOI).

Consequently, any future requests for information other than direct printouts from TAS and copies of authority documents will require an application under FOI legislation. It should be noted that under this legislation (FOI), if a request is extensive and would require a "unreasonable diversion of staff resources" to deal with it, the Department's FOI coordinator may refuse access in the requested form and ask the applicant to reclarify their request so it can be processed. Recent requests lodged by Naomi Simmons would fall into this category. The exact nature of requests should therefore be carefully considered when completing the application. Costs associated with FOI Applications are \$30 per application and processing charges are \$30 per hour.

I will discuss the status of current requests with relevant staff and Naomi Simmons and work out what has been provided and what can still be provided. The Department has always had a productive relationship with your organisation and we would wish to maintain this position. We will however have to comply with legislation and policy with respect to our internal records.

Should you have any queries, please contact me.

Yours sincerely,



17/6/02

David Agnew
Manager Coal & Petroleum Titles

C.C. Naomi Simmons

Website: www.hemts.com.au

HETHERINGTON EXPLORATION & MINING TITLE

SERVICES PTY LTD

(ACN 003 122 996)

COMPANY PROFILE

HETHERINGTON TITLE SERVICES

Exploration and Mining Tenure Management is a complex and specialised field, incorporating Mining Law, Environmental Law, Native Title, Cartography and other disciplines.

Effective Tenure Management needs a specialist.

Hetherington Title Services is the premier specialist Mining Title Company in Australia, in three respects:

1. Expertise
2. Experience
3. Service

Russell Hetherington and his team of consultants bring a breadth and depth of experience and expertise which is the best in the country. They have extensive experience in all aspects of exploration and mining tenure such as carrying out audits of tenements, providing advice about environmental regulations, conducting negotiations with Native Title Claimants, and liaising with Government Departments.

Hetherington Title Services is therefore well placed to help you achieve your broader commercial goals within this exciting industry.

Hetherington Title Services has offices in Sydney, Brisbane and Perth.

EXPERTISE

Our consultants have proven expertise in:

- Preparation/lodgement of Exploration and Mining Titles.
- Negotiation of access with landowners.
- Conducting "Right to Negotiate" negotiations with Native Title Claimants.
- Advice regarding Native Title.
- Title and landholder searches.
- Familiarity with environmental planning legislation.
- Government Relations.
- Preparation of submissions regarding stamp duty.
- Preparation of Exploration Programmes.
- Preparation of Environmental Reports.
- Preparation of Joint Venture Agreements.
- Preparation of reports including pre-acquisition status reports.
- Preparation of Environmental Management Overview Strategy (EMOS), Plans of Operation, Security Calculations and Environmental Audit.
- Environmental services also include on-site Environmental Assessments and Environmental Liability Reports.
- Computer Management of all Titles using the "TMS" software package, specially modified for Hetherington Title Services.
- The option of having direct download of mining title information into client computer records.

EXPERIENCE

Russell Hetherington is widely acknowledged as a prominent authority in Mining and Exploration Title Management. Russell has been working in Mining and Exploration Tenements since 1974. During that period he has had a broad experience in both government and private enterprise.

Russell's staff are also highly trained and experienced, having worked in the industry for as long as 47 years.

Russell and his consultants have been able to assist their clients to achieve their goals in the following ways:

- Direct involvement in first agreement between a Mining Company and a Native Title Claimant in New South Wales.
- Review of Exploration and Tenure System in Eritrea on behalf of the Australian Government, leading to the adoption by Eritrean Government of Proposals made.
- Management of several of Australia's largest coal mines and gold mines.
- Frequent identification of opportunities to acquire prospective land which would not otherwise have been recognised.
- Retained by Government in Australia to review the computer registration system of every Mining Department in Australia.
- Engaged by most of Australia's leading law firms to review mining tenements.

SERVICE

HEMETS understand the complexities and peculiarities of Mining Title Management. Our consultants approach issues thoroughly and will alert you to angles to a problem of which you may not have been aware.

Our consultants are readily accessible to their clients and understand the importance of carrying out work in an expeditious manner.

We pride ourselves on providing outstanding value for money and cost effective solutions to clients' needs.

RUSSELL HETHERINGTON

Company Principal

Russell Hetherington is acknowledged internationally as an authority in mining and exploration title management.

Russell has worked in mining and exploration tenements since 1974.

From 1974 to 1981, he was employed in the Northern Territory Department of Mines and Energy. A number of promotions provided Russell with an in-depth working knowledge of title registration procedures and administration of mining and related legislation.

For several years prior to starting HEMTS, Russell was Senior Landman for Esso Australia Ltd. In that capacity, he was responsible for the maintenance of Esso's exploration and mining tenements, negotiation of Joint Venture Agreements, dealing with landowners on whose properties Esso conducted exploration, administration of requirements under various State Mining Acts and other related legislation, liaison with governments and public relations.

Whilst in Esso's employ, Russell received further training in Geology, Contract Law, Mining Law, Aboriginal Awareness, Commercial Negotiation and Aboriginal Land Legislation.

Russell was for two years during the early 1980's a Councillor on the New South Wales Chamber of Mines and Extractive Industries Council and he was also a member of the Aboriginal Land Rights Sub-Committee of that Chamber.

In 1996, Russell was engaged by the Federal Government for a month-long AusAid mission to Eritrea in the course of which he reviewed the exploration and mining tenure system in that country. As a result of that review, Russell made a number of recommendations, most of which have been adopted by the Eritrean Government.

Russell has been involved in the review and drafting of mining legislation in Queensland and New South Wales within Australia and has had reason to comment on legislation proposed in Tanzania, Vietnam and the Solomon Islands.

Russell has also applied for, been granted and maintained exploration and mining titles in Papua New Guinea, New Zealand, Fiji and the Solomon Islands.

Currently, Russell is studying for a Bachelor of Law at the University of New England.

Recently, Russell has been directly involved in Native Title negotiations on behalf of a client. As a result of these negotiations, the first agreement between a mining company and Native Title Claimant in New South Wales was signed. This agreement allowed the client to proceed with a significant mining development.

Since the commencement of Native Title legislation in Australia Russell has conducted extensive negotiations with Native Title holders in the eastern states of Australia and the Northern Territory. His skills and experience in this area are recognised in the industry.

Russell is a member of the Resources Energy & Environmental Law Committee, Business Law Section of the Law Council of Australia.

MARK BOLDUAN, B.A, LLB

Manager, Sydney Office

Prior to commencing at HEMTS in January 1997, Mark worked as a lawyer for 4 years in both Melbourne and Sydney, specialising in Commercial Litigation.

In that capacity, Mark advised and/or conducted hearings on behalf of banks, New South Wales' largest insurer and other significant corporations.

Mark's legal training and experience has equipped him to identify his clients' goals and enable them to reach those goals, to conduct thorough research and analysis, and to effectively communicate to and on behalf of clients.

Mark's legal knowledge is of direct assistance in addressing the many legal aspects of exploration and mining tenure, such as drafting Joint Venture Agreements and advising about Native Title.

Mark has a broad ranging and thorough understanding of tenure management in New South Wales. He regularly advises Sydney's major law firms and has on several occasions identified issues leading to savings of up to millions of dollars for his clients.

NAOMI SIMMONS, B.Sc, LLB (Hons)

Mineral Properties Consultant

Naomi commenced work as a Tenement Consultant at HEMTS in March 1999.

Naomi has completed a Bachelor of Science / Bachelor of Law with Honours at the Australian National University (Canberra). After completion of her degree Naomi took up a position with a law firm in Singapore, on a contractual basis for twelve months. Naomi has recently completed College of Law and is preparing to be admitted to practice as a solicitor.

During her employment with HEMTS, Naomi has advised various clients on Mining Law, Native Title Law and Environmental Law and has been involved in the preparation of due diligence reports. Naomi also manages a number of tenements for clients, maintains the HEMTS tenement database and has implemented and utilised Mapinfo for the preparation of applications and reports to clients.

Naomi's experience enables her to address legal and contractual issues and has equipped her with the skills to effectively determine, research and resolve legal issues. Since being employed with HEMTS, Naomi has been able to combine these skills with a new knowledge of the mining and exploration fields to ensure clients legal and practical needs are addressed.

BRIAN MARTIN, B.Sc.Ass.Dip.Cart

Manager, Brisbane Office

From 1986-1992, Brian gained broad experience in the Queensland Department of Minerals and Energy (DME). For the last two years at the DME, Brian was based in Charters Towers as the District Tenures Officer. This included a three-month period as Acting Mining Registrar.

Brian's six years with the DME provided an in-depth knowledge of Departmental policies and procedures, as well as the Mineral Resources Act 1989 and associated legislation. Brian frequently finds that this knowledge is invaluable to his clients.

Brian has a solid computer background and experience with operating systems and database management, from various software packages to programming in three languages. These computer skills add value to the service Brian is able to offer clients.

Brian holds a Bachelor of Applied Science Degree through the University of New England and an Associate Diploma in Cartography from the Queensland University of Technology. These cartographic and environmental qualifications also add depth to the services provided by HEMTS.

Brian has provided environmental consulting services to our clients since 1992 and has an in-depth knowledge of the current and previous environmental regimes in Queensland.

In addition to various industry working groups, Brian is a member of the Environmental Committee of the Queensland Mining Council. Representation on this committee provides our clients with the most up to date information on environmental issues affecting the mining industry.

JACKIE SHAKESPEARE

Mineral Properties Consultant

Jackie comes to HEMTS after 8 years at the Queensland Department of Natural Resources and Mines, bringing a comprehensive and detailed understanding of tenures processing and land use issues.

Jackie commenced clerical duties in the Policy Division in Brisbane and after 9 months, transferred to the Mareeba District Office. Following promotion to Tenures Officer Jackie focused on the Mineral Resources Act 1989 and actions related to Mining Leases and Mining Claims, including processing applications, assignments, grants, surrenders, mortgages and sub-leases. Jackie then spent several months as Field Officer in Rockhampton, further broadening her knowledge to include environmental aspects of Mining Leases and Exploration Permits, conducting site inspections, assessments on final rehabilitation reports and Environmental Management Overview Strategies as well as site visits in response to landholder – miner relations. Jackie has also performed Mining Registrar duties at Georgetown and Rockhampton.

During the last 12 months, as Senior Tenures Officer in the Minerals and Petroleum Division in the Department's Head Office in Brisbane, Jackie was processing Exploration Permits and Mineral Development Licences, specialising mostly in coal and oil shale commodities. In this position she was engaged in actions such as relinquishment, grant, assignment, assignment indication, recording joint venture agreements, caveats, competing applications, assessing security and monitoring compliance with both the Native title and environmental provisions of the Mineral Resources Act 1989.

With her detailed understanding of the internal policies and procedures, and wide network of contacts within the Department's District Offices and Head Office, Jackie is well placed to provide quality advice and assistance with tenement related issues. Jackie has completed an Associate Diploma of Business Computing at Bundaberg TAFE, and a Certificate of Science (Geology) from James Cook University, and is a Justice of the Peace.

JOHN THEVISSSEN, FRMIT (Geology), Grad.Dip (Environ.Sci), CP(Env).

Manager, Perth Office

HEMTS has acquired the services of John Thevissen as Tenement Consultant in its Perth Office.

John has some 27 years experience in the mining industry and has degrees in Geology (Royal Melbourne Institute of Technology) and Environmental Science (Murdoch University, WA). John has been principally involved in mineral exploration for Australian-based foreign corporations in WA, NT and SA and as well as managing exploration programs during this time, has had substantial responsibility for tenement management and reporting. The majority of exploration carried out by these foreign companies was carried out within National Parks (Kakadu and Rudall River) and Aboriginal Reserve and Freehold areas such as Arnhemland, the Central and Western Desert Areas and the Pitjantjatjarra Lands. As most of this work was operated under complex Joint Venture arrangements John has had considerable exposure to many of the paralegal aspects of exploration in Australia involving Native Title, foreign ownership and issues relating to exploration in both politically and environmentally sensitive areas.

Most recently John has had responsibility for management of environmental issues, and associated statutory reporting for the Saracen Group of Companies, which involved mine site rehabilitation, groundwater monitoring, tailings facility decommissioning and cyanide management.

John brings to HEMTS special expertise in mineral exploration, Native Title negotiation and issues relating to environmental management of mining projects.

GARY HARVEY, B.Sc. (Applied Science)

Mineral Properties Consultant

HEMETS has acquired the services of Gary Harvey as Tenement Consultant in its Perth Office.

Gary has five years experience as an exploration geologist and has a Bachelor of Applied Science (Applied Geology) (Royal Melbourne Institute of Technology). Most recently Gary was employed at Viceroy Australia's Bounty Gold Mine operations, and amongst other duties was responsible for the project's exploration and mining tenements.

Gary's exploration experience ranges from geological/structural mapping and interpretation, to planning and managing exploration programs from grass roots to resource development.

Gary has the demonstrated ability in project management, generating drilling targets and exploration programs, including project evaluation and recommendations, especially in relation to tenements.

Gary has extensive experience in budgeting and tenement administration, statutory and in-house report writing, GIS/drafting and database management.

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Exploration & Mining Title Services Pty Ltd
A.B.N. 64 003 122 996

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FACSIMILE TRANSMISSION

TO: Mr David Agnew FAX NO: 02 6572 1201
COMPANY: Department of Mineral Resources Singleton
FROM: Naomi Simmons DATE: 29 April 2002
NUMBER OF PAGES: 7 (INCLUDING THIS PAGE) OUR REF: CENT02-038
SUBJECT: POWERCOAL PTY LTD TENEMENT REVIEW

This document is intended solely for the use of the individual or to whom it is addressed and distribution of any information it contains, by anyone but the addressee is strictly prohibited. If you have received this document in error, please contact me by telephone.

Dear David,

This company is currently conducting a review of all tenements in which Powercoal Pty Ltd maintains an interest. The review is required for a due diligence report to be prepared by the end of May this year.

Accordingly, could you please arrange for the following information to be provided, at your earliest possible convenience,

1. A copy of the authority documents and plans showing depth restrictions (in colour if appropriate) for all tenements on the attached Schedule A "Tenements held by Powercoal Pty Ltd"
2. Coal titles and applications 1:25,000 Maps:
 - 8931-3-N Cullen Bullen
 - 8931-3-S Lithgow
 - 9131-1-N Morisset
 - 9131-1-S Dooralong
 - 9131-2-N Wyong
 - 9231-3-N Toukley
 - 9231-4-N Swansea
 - 9231-4-S Catherine Hill Bay
 - 9232-3-S Wallsend

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3. Coal titles and applications 1:100,000 Maps:
 - 9033 Muswellbrook
 - 9131 Gosford
 - 9231 Lake Macquarie
 - 9232 Newcastle

4. A copy of the manual/old colliery holding plan and register for the following Collieries if appropriate:
 - Angus Place
 - Awaba / Newstan
 - Cooranbong
 - Mandalong Mine
 - Munmorah / Endeavour
 - Myuna
 - Newstan
 - Wyee

5. Confirmation that there are no outstanding royalty payments or returns due for any of the tenements listed in Schedule A "Tenements held by Powercoal Pty Ltd".

6. Confirmation and details of current mining operations plans, second workings approvals or Section 138 approvals for the Collieries listed in 5 above.

7. Confirmation of any securities lodged with respect to the tenements listed in Schedule A "Tenements held by Powercoal Pty Ltd" and/or the current mining operations plans/open cut approvals.

8. Clarification of the Colliery Holding for Consolidated Coal Lease No 756 and details of the Neubecks Creek Colliery Holding if available.

9. Copies or further details of interests held by Powercoal Pty Ltd as per the Department of Mineral Resources Register summarised at Schedule B "Interests held by Powercoal Pty Ltd"

10. Printouts or sketch maps showing the subleases of tenements held by Powercoal Pty Ltd listed on the Department of Mineral Resources Register attached at Schedule C.

This matter is of some urgency and provision of the above information as soon as possible would be appreciated.

If possible could you please arrange for the title documents and plans to be forwarded prior to determining the other matters above. Please contact me if this is not possible.

Thank you for your assistance.

Yours faithfully,

NAOMI SIMMONS
Sydney Office

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FACSIMILE TRANSMISSION

TO: Ms Joy Agnew FAX NO: 0265 721 201
COMPANY: Department of Mineral Resources - Singleton
FROM: Ms Naomi Simmons DATE: 13 May 2002
NUMBER OF PAGES: (INCLUDING THIS PAGE) OUR REF: CENT02-060
SUBJECT: TENEMENT REVIEW – POWERCOAL PTY LTD

This document is intended solely for the use of the individual or to whom it is addressed and distribution of any information it contains, by anyone but the addressee is strictly prohibited. If you have received this document in error, please contact me by telephone.

Dear Joy

Further to my requests with respect to the review on tenements held by Powercoal Pty Ltd could you also please arrange for the following to be forwarded by mail or fax.

1. A copy of Lease conditions 52 to 56 for Mining Lease No 1443;
2. The endorsement schedule with respect to prescribed dams for Consolidated Coal Lease No 704.
3. Exempted area approvals (and other approvals) and associated conditions for:
 - a. Exploration within Awaba State Forest: Authorisation No 399, Exploration Licence No 5138 and Exploration Licence No 4443.
 - b. Large diameter boreholes: Authorisation No 399 and Exploration Licence No 5138.
 - c. Exploration within Olney State Forest: Exploration Licence No 4968 and Exploration Licence No 4969.
 - d. Bulk sampling within Authorisation No 404. (In particular was royalty required for any material extracted by bulk sampling?)
 - e. Exploration within Public Recreation Reserve (Lot 4 DP 86122) for Authorisation No 384.

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4. Copies of gazette notices for the following Mining Reserves:

- MR 3094
- MR 2666
- MR 3001
- MR 3002
- MR 3003
- MR 3205
- MR 3228
- FR 126

If you have any queries, regarding the above, please do not hesitate to contact me. I am available on my mobile phone today (0410 415416) and will be in the office for the rest of the week.

Yours faithfully

NAOMI SIMMONS
Sydney Office

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FACSIMILE TRANSMISSION

TO: Mr David Agnew FAX NO: 02 6572 1201
COMPANY: Department of Mineral Resources, Singleton
COPY TO:
FROM: Naomi Simmons DATE: 22 February 2002
NUMBER OF PAGES: (INCLUDING THIS PAGE) OUR REF: CAO02-024
SUBJECT: HUNTER VALLEY AND LEMINGTON COLLIERY AUDITS

This document is intended solely for the use of the individual or to whom it is addressed and distribution of any information it contains, by anyone but the addressee is strictly prohibited. If you have received this document in error, please contact me by telephone.

Dear David,

I have now been instructed to conduct an audit with respect to the Hunter Valley Operations, Hunter Valley Extended and Lemington Collieries.

Accordingly, could you please arrange for the following information to be provided.

Hunter Valley Extended Colliery

1. A copy of the authority documents and plans showing depth restrictions (in colour if appropriate) for the tenements within the Hunter Valley Extended Colliery listed on the attached sheet.
2. Coal titles and applications 1:25,000 Maps 9033-2-N Muswellbrook, 9033-2-S Jerry's Plains, 9133-3-N Dawson's Hill and 9133-3-S Camberwell.
3. A copy of the manual/old colliery holding plan and register for the Hunter Valley Extended Colliery if appropriate.
4. A TAS 2 printout showing the Hunter Valley Extended Colliery in relation to other collieries in the area.
5. A map or maps showing the current subleases to and from the Hunter Valley Extended Colliery.
6. Confirmation and/or copies of any current compensation agreements lodged with the Department of Mineral Resources for any of the tenements within the Hunter Valley Extended Colliery as per the attached sheet.

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7. Confirmation that there are no outstanding royalty payments or returns due for Consolidated Coal Lease No 708, Mining Lease No 1337 or Mining Lease No 1359.
8. Confirmation of current mining operations plans applicable to the Hunter Valley Extended Colliery.
9. Confirmation of any securities lodged with respect to the tenements within the Hunter Valley Extended Colliery as per the attached sheet and/or the current mining operations plans/open cut approvals.
10. Details of any underground methods approved or Section 138 approvals for the Hunter Valley Extended Colliery.

Hunter Valley Operations Colliery

1. A copy of the authority documents and plans showing depth restrictions (in colour if appropriate) for the tenements within the Hunter Valley Operations Colliery as per the attached summary sheet.
2. Coal titles and applications 1:25,000 Map No's 9032-1-N Doyles Creek, 9033-2-S Jerry's Plains, 9132-4-N Singleton and 9133-3-S Camberwell.
3. Coal titles and applications 1:100,000 Map No's 9032 Howe's Valley, 9033 Muswellbrook, 9132 Cessnock and 9133 Camberwell.
4. A copy of the manual/old colliery holding plan and register for the Hunter Valley Operations Colliery if appropriate.
5. A TAS 2 printout showing the Hunter Valley Operations Colliery in relation to other collieries in the area.
6. A map or maps showing the current subleases to and from the Hunter Valley Operations Colliery.
7. Confirmation and/or copies of any current compensation agreements lodged with the Department of Mineral Resources for the tenements within the Hunter Valley Operations Colliery as per the attached summary sheet.
8. Confirmation that there are no outstanding royalty payments or returns due for the Coal Leases or Mining Leases within the Hunter Valley Operations Colliery as per the attached sheet.
9. Confirmation of current mining operation plans applicable to the Hunter Valley Operations Colliery.
10. Confirmation of any securities lodged with respect to the tenements within the Hunter Valley Operations Colliery and/or the current mining operation plans or open cut approvals.
11. Details of any underground methods approved or Section 138 approvals for the Hunter Valley Operations Colliery.

Lemington Colliery

1. A copy of plans showing depth restrictions (in colour if appropriate) for the tenements within the Lemington Colliery as per the attached summary sheet.

2. Coal titles and applications 1:25,000 Map No's 9132-4-N Singleton and 9133-3-S Camberwell.
3. Coal titles and applications 1:100,000 Map No's 9132 Cessnock and 9133 Camberwell.
4. A copy of the manual/old colliery holding plan and register for the Lemington Colliery.
5. A TAS 2 printout showing the Lemington Colliery in relation to other collieries in the area.
6. A map or maps showing the current subleases to and from the Lemington Colliery.
7. Confirmation and/or copies of any current compensation agreements lodged with the Department of Mineral Resources for the tenements within the Lemington Colliery as per the attached summary sheet.
8. Confirmation that there are no outstanding royalty payments or returns due for the Lemington Colliery.
9. Confirmation of any securities lodged with respect to the tenements within the Lemington Colliery and/or the current mining operations plans or open cut approvals.
10. Details of any underground methods proved or Section 138 approvals for the Lemington Colliery.

I would also like to obtain depth restriction plans for the following tenements:

1. Mining Lease Application No 91;
2. Exploration Licence No 5297;
3. Exploration Licence No 5605;
4. Exploration Licence No 5886;
5. Coal Lease No 378; and
6. Mining Lease No 1502.

For the purposes of the above search requests please find enclosed authorities from Coal and Allied Operations Pty Ltd and Novacoal Australia Pty Ltd to obtain information that is not available on the Public Record.

I will be absent from the Sydney office from 25 February 2002 to 18 March 2002. However, if you have any queries regarding the above, please do not hesitate to contact Mr Mark Bolduan at the above number.

Yours faithfully,

NAOMI SIMMONS
Sydney Office

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FACSIMILE TRANSMISSION

TO: Mr David Agnew FAX NO: 6572 1201
COMPANY: Department of Mineral Resources
COPY TO:
FROM: Ms Naomi Simmons DATE: 19 June 2002
NUMBER OF PAGES: 2 (INCLUDING THIS PAGE) OUR REF: CENT02-113
SUBJECT: POWERCOAL SECURITIES

This document is intended solely for the use of the individual or to whom it is addressed and distribution of any information it contains, by anyone but the addressee is strictly prohibited. If you have received this document in error, please contact me by telephone.

Dear David

I refer to my earlier facsimile requesting information with respect to securities lodged against titles held by Powercoal Pty Ltd.

With respect to this matter, I refer you to Section 365 of the Mining Act 1992, which provides that "A person must not disclose any information obtained in connection with the administration or execution of this Act, unless the disclosure is made **with the consent of the person from whom the information was obtained.**"

I also refer you to the Statement of Affairs prepared according to Section 14 of the Freedom of Information Act 1989 provided by the Department of Mineral Resources, Part 5 which states that "under the Freedom of Information Act, the Department is required to make information available whenever possible. However access may be refused ... Exempted information may include **documents subject to secrecy provisions in other legislation. For example, the Mining Act precludes the release of certain information except with the concurrence of the provider of the information or the approval of the Minister.**"

This company provided an authority from Powercoal Pty Ltd to the Department of Mineral Resources on 7 May 2002. That authority permitted access to any information normally available to the holder company and would include information provided to the Department of Mineral Resources by that company. Accordingly, it is respectfully suggested that this authority is sufficient to allow the security information requested to be provided.

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With respect to the letter you have forwarded, this company will be responding to the Department of Mineral Resources upon receipt.

In the meantime, I look forward to receiving the information requested in my earlier facsimile.

Yours faithfully

NAOMI SIMMONS
Sydney Office

(TO BE COMPLETED ON LETTERHEAD)

(Date)

DRAFT

Director-General
Department of Mineral Resources
PO Box 536
ST LEONARDS NSW 2065

Dear Sir

Please let this letter serve as notice that, pursuant to Section 365 of the Mining Act 1992, this company authorises any officer of the Department of Mineral Resources to disclose information and copies of documents obtained in connection with the administration or execution of that Act to Hetherington Exploration and Mining Title Services Pty Ltd. This authorisation is limited to information obtained in relation to all titles or applications held by this company in New South Wales.

It is acknowledged that pursuant to Section 5(4) of the Freedom of Information Act 1989, this information is not required to be obtained in accordance with that Act. Should application be made by Hetherington Exploration and Mining Title Services Pty Ltd under the Freedom of Information Act 1989 for documents which are unavailable pursuant to Section 365 of the Mining Act 1992, this company authorises the release of that information.

Yours faithfully

Name:
Position:

for and on behalf of _____