

**JURISDICTION** : MINING WARDEN

**LOCATION** : LEONORA

**CITATION** : **ROSANE PTY LTD v EAST LAVERTON  
EXPLORATION PTY LTD [2024] WAMW 39**

**CORAM** : WARDEN T MCPHEE

**HEARD** : 19 AUGUST 2024

**DELIVERED** : 13 SEPTEMBER 2024

**FILE NO/S** : Application for E38/3795 & Application for an  
Extension of Time number 706573 to lodge proposed  
Objection 691372

**TENEMENT NO/S** : Application for E38/3795

**BETWEEN** : **ROSANE PTY LTD**  
(Applicant)

AND

**EAST LAVERTON EXPLORATION PTY LTD**  
(Proposed Objector)

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*Catchwords: Application for an Extension of Time to lodge an Objection, matters  
to be considered, redacted documentation, turns on its own facts.*

***Legislation:***

- *Mining Act 1978* (WA) sections 58, 58(1)(b)(iv), 162B
- *Mining Regulations 1981* (WA) Regulation 154(1)(d)

***Result:***        ***Application granted.***

***Representation:***

***Counsel:***

Applicant                                : Mr Lawton  
Proposed Objector                    : Mr Masson

***Solicitors:***

Applicant                                : Lawton MacMaster  
Proposed Objector                    : Ensign Legal

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***Cases referred to:***

- *Alinta Energy Clean Energy Development Pty Ltd v Pilbara Energy Generation Pty Ltd* [2024] WAMW 30
- *Aria Projects Pty Ltd v Australian Stone Group Pty Ltd* [2023] WAMW 7
- *West Australian Prospectors Pty Ltd & Anor v Summit Ventures Limited* [2022] WAMW 9
- *Bella Vista Resources v Hamersley Iron Pty Ltd* [2023] WAMW 49
- *Molopo Australia Limited v Eastern Gold NL* [1989] WAR 270
- *Wyloo Metals Pty Ltd v Quarry Park Pty Ltd* [2024] WASCA 38 (17 April 2024)
- *Jones v Dunkle* (1959) 101 CLR 298
- *Whitelaw v Scorpion Minerals Limited & Anor* [2023] WAMW 58
- *Golden Pig Enterprises Pty Ltd v O’Sullivan* [2021] WASC 396
- *Onslow Resources Ltd v Hon William Joseph Johnston MA in capacity as Minister For Mines And Petroleum* [2021] WASCA 151

## **Introduction**

- 1 I have before me an Application for an Extension of Time in relation to this matter. The Application for an Extension of Time is Extension of Time Application number 706573 (the Extension Application).
- 2 The Applicant for the Extension Application is East Laverton Exploration Pty Ltd. For ease of reference I will refer to that party as East Laverton.
- 3 East Laverton seeks leave to object to the Applicants (Rosane Pty Ltd), Application for Exploration Licence E38/3795 (“the Application”). For ease of reference I will refer to that party as Rosane.
- 4 The Extension Application is brought by East Laverton nearly a year out of time.
- 5 The Extension Application was made pursuant to two limbs, firstly by way of a letter, and what is commonly referred to as a letter submission, made on the 4th of December 2023.
- 6 That is the methodology by which Extension Applications are commonly made in this jurisdiction, though the procedural basis for doing so is opaque.
- 7 In this case in addition East Laverton also filed an Interlocutory Application in the Application, dated the 21st of December 2023, seeking in effect the same order.
- 8 The manner in which Extension of Time Applications are brought before the Warden remains somewhat of a vexed issue. In my view, it is likely going to need to be resolved by way of a Practice Direction.

- 9      The point however is moot in this case, as following some skirmishing between the parties as to the procedural footing, it appears that an agreement emerged that the Interlocutory Application was dismissed on the basis that the Extension Application by way of the letter filed on the 4th of December 2023, with a copy of the Proposed Objection, would be considered by the Warden.
- 10     It is the consideration of that Extension Application by way of the letter dated 4 December 2023 that brought the matter before me on 19 August 2024.
- 11     On the 19th of August 2024 I made the following orders:
- (a)    The decision on the Extension Application be reserved; and
- (b)    The matter be listed for mention only on 20 September 2024.
- 12     Those orders were also made in the context of a comment by me to the counsel appearing, that in the particular circumstances of this case (as described below in more detail) relating to a number of redactions in the materials which were placed before me, that there may be a need for further submissions.
- 13     I indicated to the parties that I may consider exercising a power pursuant to Regulation 154(1)(d) of the Regulations such that I can inform myself as I see fit in relation to such matters.
- 14     I informed counsel appearing on 19 August 2024 that in the event I had come to a view to consider the unredacted documents, which were available to me by way of request to the Department, that I would provide copies to them and further, provide them with an opportunity to be heard in relation to matters arising.
- 15     Shortly after the hearing, I received a communication from the solicitors for Rosane, indicating that they no longer objected to me considering the section 58 statement on the Departmental files.

- 16 After some consideration, I directed a response to that communication (to both parties) by indicating that the evidence in the matter was closed, and having come to the view that I would not exercise the power to inform myself as to the content of the relevant unredacted documents, I would not do so absent a formal application by the parties.
- 17 The reason for those views is set out in more detail below.
- 18 That matter having been determined, and in summary, I am prepared to grant an extension of time to East Laverton in this matter on all of the grounds for which they seek leave to file their objection.
- 19 In all of the circumstances presenting, the Extension Application is reasonable.
- 20 My reasons for coming to that view are as follows.

### **Background**

- 21 The relevant course of events in respect of this matter can be readily ascertained from the content of a chronology, which was helpfully handed up by counsel for Rosane.
- 22 That chronology set out the following, which is not controversial.

### **CHRONOLOGY**

Date	Document
04.11.2022	Application for E38/3795 by Rosane Pty Ltd
24.11.2022	Great Southern Mining Ltd – Application for E38/3801
09.12.2022	Objection closing date
30.11.2023	Proposed Objectors’ FOI Application lodged
04.12.2023	Objection 691372 by East Laverton Exploration Pty Ltd
04.12.2023	Response from DEMIRS to Proposed Objectors’ Objection
20.12.2023	Request by Mining Registrar for a submission

21.12.2023	GSM Interlocutory Application
20.12.2023	Affidavit of Mark Alexander Petricedic
21.12.2023	Affidavit of Matthew Michael Bella Keane
21.12.2023	Proposed Objector lodges Interlocutory Application
28.02.2024	Written Submission by Proposed Objector to Warden Maughan
16.04.2024	Interlocutory Application withdrawn
27.05.2024	Rosane's submission to the Regional Mining Registrar
25.06.2024	Affidavit of Chrisafina Elizabeth Tsolakis
05.07.2024	Affidavit of Christafina Elizabeth Tsolakis

- 23 The above demonstrates the nature of the timeline in question.
- 24 The relevant dates for consideration for the purposes of the Extension Application are the dates of the 9th of December 2022, being the date at which the time for objections closed, and the date of the 4th of December 2023, being the date the Objection by East Laverton was sought to be made.
- 25 That delay is the best part of a year. Another way of looking at it is to state that East Laverton seeks an extension of time from the 9th of December 2022 to the 4th of December 2023, for the filing of Objection 691372.
- 26 The chronology also reveals the underlying reason for the Application for the Extension of Time.
- 27 Rosane was first in time on the relevant ground on the 4th of November 2022. East Laverton filed Application for E38/3801 on the ground effectively identical to that contained in the Rosane Application on the 24th of November 2022.
- 28 It is not in dispute that no objection was lodged by East Laverton within the relevant statutory timeframe.

29 In broad terms East Laverton now asserts two bases in the objection for which it says ought properly be regarded as providing a foundation for a formal objection to be conducted, in an adversarial manner.

30 The intent of the Extension Application is plainly to enable an attack on Rosane's first in time application, which if successful, would leave East Laverton with priority on the ground.

### **Applicable Law**

31 In a number of recent cases I have set out my understanding of the relevant law in relation to section 162B of the Act.

32 I refer in particular to *Alinta Energy Clean Energy Development Pty Ltd v Pilbara Energy Generation Pty Ltd* [2024] WAMW 30 (*Alinta*).

33 In that case I referred to an earlier case of mine *Bella Vista Resources v Hamersley Iron Pty Ltd* [2023] WAMW 49 and in particular paragraphs [8]-[25] therein.

34 It will be noted that both of those decisions also refer to and are reliant upon, the Full Court decision of *Molopo Australia Limited v Eastern Gold NL* [1989] WAR 270 (*Molopo*).

35 I incorporate by reference the comments I made in those two earlier matters and do not repeat them.

36 That is the law which is applicable to the Extension Applications.

37 It is not in dispute in this matter that the appropriate course is to consider all of the circumstances presenting in the case as individual factors which are then weighed, and a subsequent determination made as to whether or not in an overall sense, the Extension Application is able to be considered to be reasonable.

### **East Laverton's Position**

- 38 East Laverton advances two limbs in support of its case that the Extension Application ought succeed as being reasonable.
- 39 The first limb is that there is a sufficient evidentiary basis to come to a view that there is an arguable dispute on a question of compliance in the matter.
- 40 In those circumstances, and particularly having regard to the Court of Appeal determination in *Wyloo Metals Pty Ltd v Quarry Park Pty Ltd* [2024] WASCA 38 (17 April 2024) (*Wyloo*) in particular, per Buss P and Livesay AJA at [414], it is said that a contest of compliance advanced in a positive manner, is a factor which should be in favour of the grant of an extension of time.
- 41 The second limb that East Laverton advances, is an alleged contravention of section 69 of the Act, wherein the East Laverton seeks to allege a breach of that provision, which would potentially invalidate, or render liable for recommended refusal, Rosane's Application.
- 42 East Laverton relied heavily on the comments of His Honour Justice Kennedy in the *Molopo* decision at 274 where His Honour said this:

...

*"the regulation, in my opinion, gives the Warden a wide discretion to determine the time within which an objection may be lodged. I would further observe that, in my opinion, it would be proper, notwithstanding the disavowals of the Applicant before the Warden, for the Warden to have regard to the substance of the objection in determining whether a period of more than 30 days was reasonable. He would be entitled for example, to take into account in this case the fact that one of the grounds of objection is that section 69 of the Act had been contravened. It might be thought to be appropriate to have that issue fully explored in adversarial proceedings before the Application is granted."*

- 43 In this case as indicated, an allegation of a breach of section 69 of the Act is made.

### **Rosane's position**

- 44 Rosane submits there is an insufficient evidentiary basis to ground any view that any aspect of the proposed objection is arguable, and that given the delay, the Extension Application ought be determined to be unreasonable, and refused.
- 45 The evidence, it is said, does not rise above the level of a mere suspicion of non-compliance, nor does it rise above the level of a mere suspicion in respect of the alleged breach of section 69 of the Act.
- 46 Further and noting the period of time which has elapsed, Rosane relies firmly on the prejudice it will suffer from permitting an Extension Application to be granted after so long a period where no objection was on foot.
- 47 Rosane suggested that the evidentiary position advanced in support of the compliance ground did not rise above a mere suspicion, or was otherwise a fishing expedition, and as a result it was not a proper basis to advance a matter to an objection in circumstances where to do so would create prejudice to Rosane.
- 48 The prejudice to Rosane was said to be the requirement to defend the Application by way of a contested proceeding in an adversarial setting.
- 49 As has been set out in a number of authorities and referred to by me in *Alinta*, such is not real prejudiced at all.
- 50 It is simply the functioning of the regulatory environment, support for which may also be drawn from the recent WA Court of Appeal determination in *Wyloo*.
- 51 It seems to me that that is particularly so in the context of questions of compliance, and even more so in the context of a case where a positive case of non-compliance is sought to be run.

### **The Evidence**

- 52 East Laverton filed a number of affidavits in the matter that I set out below:

- a. Exhibit 1 – Affidavit of Mark Alexander Petricedic sworn 20 December 2023.
- b. Exhibit 2 – Affidavit of Michael Bella Keane sworn 21 December 2023.
- c. Exhibit 3 – Affidavit of Ms C Tsolakis sworn 25 June 2024.
- d. Exhibit 4 – 2nd Affidavit of Ms C Tsolakis sworn 5 July 2024.
- e. In addition East Laverton sought to tender copy of a Mining Tenement Register Search Exploration Licence 38/3795 dated the 19th of August 2024, that became Exhibit 5.

53 The Applicant did not call any evidence on the Application for an Extension of Time.

**Comment on the election of the Applicant to lead no evidence on the Application for an Extension of Time**

54 Rosane in this matter did not defend the Extension Application with an evidentiary basis.

55 An election was made by Rosane to not call any evidence on the Extension Application itself.

56 I do not understand that to be an election not to call evidence in the broader dispute if indeed the matter gets that far, however it was an election not to call evidence on this aspect of the dispute.

57 It is important to note what the consequence of that is.

58 In the matters of *West Australian Prospectors Pty Ltd & Anor v Summit Ventures Limited* [2022] WAMW 9 and *Aria Projects Pty Ltd v Australian Stone Group Pty Ltd* [2023] WAMW 7, I made a number of comments in relation to the effect of an election in a civil case to decline to call evidence in this jurisdiction.

- 59 I consider those comments are also applicable to the context of the Interlocutory Application.
- 60 What that means in the context of this dispute is that the decision of Rosane to decline to call any evidence does not result in a situation where inferences may be drawn from the absence of any evidence. The absence of evidence is not evidence of absence.
- 61 Rather the outcome is that there is no evidence proffered by Rosane which may be put in opposition to inferences sought to be drawn by the East Laverton.
- 62 Whilst *Jones v Dunkle* (1959) 101 CLR 298 (*Jones v Dunkle*), and an associated inference may enable in a more favourable view of one of a number of arguable inferences over others, the fact of a *Jones v Dunkle* inference, is not evidence in and of itself which may be independently relied upon.
- 63 However, in this case, at this time, I do not consider I need to call *Jones v Dunkle* in aid in any event. There is simply no need at this time, to come to a concluded view as to which (if any) of the inferences which are open, is the correct one to draw.
- 64 That view is expressed in the context of this Extension Application, and against the backdrop of a determination I made in *Alinta* that in order for an objection to be regarded as reasonably arguable for the purposes of an extension of time, there is a requirement for there to be a sufficient evidentiary basis to advance a prima facie case as might be alleged to arise.
- 65 The result is that an inference which is open on the evidence which is before me, which is then not met with any contrary evidence, seems to me to be arguable to the required prima facie level, for the purposes of an extension of time application without the need to determine which is preferable by resort to *Jones v Dunkle*.

- 66 Ultimately, the outcome might be different (in the sense the position may be revealed in the fullness of time to have been unarguable, or otherwise erroneously put), however for the purposes of the Extension Application, it is sufficient for East Laverton to advance a sound evidentiary basis, in support of its allegations detailed in the proposed objection to enable a view to be reached that the proposed objection is arguable to the prima facie level.
- 67 Again, if, on consideration of the evidentiary materials raised in the relevant legal context, a view is able to be reached that the proposed objection is prima facie arguable – or in the words of the learned Warden Cleary (as her Honour then was) in *Whitelaw v Scorpion Minerals Limited & Anor* [2023] WAMW 58 at [67] “*a fairly low threshold*” - than that view, may be regarded relevantly as a factor in favour of a grant of an extension of time.

### **The Relevant Factors**

- 68 Having regard to this matter, in my view the particularly pertinent factors are:
- a. The length of time of the delay to file an objection;
  - b. The explanation proffered for the delay;
  - c. Whether the proposed objection is arguable or not;
  - d. Prejudice to Rosane;
  - e. Prejudice to East Laverton.
- 69 In seeking to come to a view as to the reasonableness or otherwise of the Extension Application, I consider each of those factors in turn below, and then conduct an overall review to arrive at a concluded view.
- 70 I remind myself that in accordance with *Molopo*, none of the relevant factors or circumstances are individually more important than any other per se, though it seems to me that the weight they be afforded in the overall determination of whether the Extension Application is reasonable, is a matter for the Warden.

### **The Length of the Delay**

- 71 A delay of almost a year, is lengthy. The context of the delay as shown in the chronology is also relevant. East Laverton is second in time on the contested ground. Notwithstanding that, a decision was seemingly taken not to object within time.
- 72 The length of the delay, in and of itself, is a weighty factor against the grant of the Extension Application.

### **The Explanation for the Delay**

- 73 East Laverton submits that its explanation for the delay, arises out of the time between the time to object, and a conversation had between the officer of East Laverton, Mr Keane, and Mr Wiederman as agent of Rosane.
- 74 The detail of that conversation is set out below.
- 75 Relevantly, it is submitted that it was only at the point of that conversation that East Laverton's suspicions were truly aroused, and steps taken to investigate whether there was a basis for an objection to be taken.
- 76 Those steps resulted in a situation where East Laverton now advances the two possible limbs of objection I have described above.
- 77 In my view however, what that evidence also reveals, is that East Laverton did not take steps to investigate the first in time application on the ground they had subsequently applied for at the most relevant time.
- 78 East Laverton, as part of its position, seeks to rely on evidence (as to the timing of the application), which was available to it then. However, East Laverton

appears to have assumed the validity and probable grant of the Rosane Application, without doing anything.

79 That, it seems to me, was a choice. It was a tactical choice to not explore their rights.

80 It follows that the explanation for the delay is not, objectively, a reasonable one. That is a factor against the grant of an extension of time.

**Evidentiary Issues for consideration**

81 As I have indicated, the evidence in the matter was largely documentary.

82 The evidentiary issues for determination in respect of the matter are therefore these:

- a. Is there an arguable objection advanced on the material in the context of the alleged breach of compliance of section 58(1)(b)(iv) of the Act?
- b. Is there an arguable case arising on an evidentiary basis, for the allegation of the breach of section 69 of the Act?

83 If the answer to either or both of the two of the above questions are ‘yes’, the following step is to determine whether those factors when considered in light of the length of the delay and other relevant factors, result in a conclusion that the Extension Application is reasonable and ought be granted, or no.

**My Refusal to Exercise a power to inform myself of the unredacted section 58 Statements**

84 At this juncture, it is timely to provide reasons as to why I have determined not to exercise my power under Regulation 154(1)(d) of the Regulations, to call for the unredacted section 58 statement material.

85 The power to undertake my own investigations is at first glance, an attractive one. It is also, in my view, a dangerous and beguiling one.

- 86 The Wardens Court, both administratively and judicially is by and large, a viciously adversarial arena. In general, I am very reluctant to undertake evidentiary investigations of my own initiative, save in exceptional circumstances.
- 87 I might have done so had one of the parties been unrepresented, or I considered that breach of natural justice or due process, or gross inefficiency in the conduct of the proceedings in the Court might occur.
- 88 None of that will occur in this matter, at this time. Both parties appear by way of very experienced counsel in this jurisdiction.
- 89 In this matter, a conscious decision has been made by the Rosane to decline to formally adduce the relevant evidence in the face of the Extension Application.
- 90 That is a tactical decision made by the Rosane, and it is required to bear the consequences of that, save to the extent that other, formal tactical decisions and appropriate formal procedural steps are taken.
- 91 Correspondence is not an appropriate manner in which to seek to adduce evidence after a matter has been reserved for decision, even had that occurred in this case. In this case, Rosane merely withdrew their objection.
- 92 There are sufficient difficulties already in this jurisdiction, in respect of the management of information flows (see the *Alinta* addendum) without adding to them by permitting represented parties to alter the evidentiary foundation of a contested matter after hearing, without a formal application.
- 93 The Application itself is either compliant or it is not.
- 94 That will be determined on the merits of the unredacted section 58 material. Rosane has declined to furnish me with that material, and has not, as at the date of publication (insofar as I am aware) made any interlocutory application to adduce it.

95 As a result, the question of the assessment of whether the proposed objection is arguable or no, in the context of the Extension Application will be made on the basis of the material placed into evidence before me. I decline to exercise my power pursuant to Regulation 154(1)(d) of the Regulations to have regard to the unredacted section 58 material filed in support of the Application.

### **Additional Matter**

96 There also was one further evidentiary matter which requires a further comment.

97 Attached to Rosane's submissions, was a document purporting to be a screenshot of the EMITS system relating to the Application itself.

98 Whilst I consider that I have the power to accept into evidence documents and other materials which do not comply with the rules of evidence, I will say that in a situation where both parties are represented by experienced solicitors and counsel, that I am not likely to do so save where there is consent.

99 Contested documentation, which is sought to be adduced in a manner inconsistent with the rules of evidence, is unlikely to be able to be properly determined to carry any weight. Whilst all such matters where such circumstances are being considered must be determined on their merits, in my view the better course is to take a starting point, that such materials ought be excluded as irrelevant.

100 In this case, the attachment was also directly contradicted by Exhibit 5.

101 In this matter, I have not had regard to the document attached to the submissions of Rosane.

### **The Proposed Objection – the Compliance Ground**

102 In this matter a positive case of non-compliance is raised by East Laverton.

- 103 The evidentiary basis advanced by East Laverton in support of the proposed non-compliance ground included the contents of some of the section 58(1)(b) Statement material filed by Rosane.
- 104 That material was provided by the Department to East Laverton, in answer to a freedom of information request, the process of which is found in Exhibits 3 and 4.
- 105 Some of the content of the section 58 statement as referred to in the evidence, and before me, is annexed to these reasons and marked as Schedule 1.
- 106 It will immediately be seen that the documentation has been the subject of significant redaction.
- 107 East Laverton points to significant coherency difficulties in the content of some of the section 58 statement, as well as the fact of the redaction, to advance a contention that the section 58 Statement may well be inadequate to satisfy the requirements of the Act in section 58(1)(b)(iv).
- 108 In this respect, particular attack is made upon the section 58 statement as they pertains to the technical and financial capability of Rosane, as required by section 58(1)(b)(iv) of the Act.
- 109 Applying *Golden Pig Enterprises Pty Ltd v O'Sullivan [2021] WASC 396 (Golden Pig)*, a failure to meet those requirements, results in the invalidity of the Application.
- 110 At the commencement of the hearing counsel appearing for the East Laverton indicated that it may be that I could express a view as to invalidity of the entirety of the Application at this point.
- 111 That position appears to have been advanced, simply because of the failure of the Applicant to adduce any evidence on the Application for an Extension of Time, as to the complete content of the section 58 statement.

- 112 I will say immediately that that will not occur. What is before me is the Extension Application. The arguable invalidity of the section 58 statement is a factor to take into account on the Extension Application at this time.
- 113 In a circumstance where it is not clear to me (given the redactions), that the section 58 statement is compliant or no, it is not appropriate to express a concluded view as to the substantive invalidity or not, in the context of the interlocutory question currently before me.
- 114 On the first of the evidentiary issues referred to above, the most relevant evidence is contained in Exhibits 3 and 4, being the affidavits of Ms Tsolakis.
- 115 Ms Tsolakis deposes to be a solicitor in the employ of the solicitors for East Laverton. Ms Tsolakis deposes to work done and information gathered, from the Department by way of Freedom of Information requests.
- 116 Relevantly, it appears that the Department in response to a Freedom of Information request, provided the solicitors for East Laverton with a number of documents, redacted some and declined to provide others.
- 117 For the purpose of the compliance argument, and the most relevant of these is the document referred to as CET4 of Exhibit 3, which is then largely replicated as CET1 of Exhibit 4.
- 118 The relevant distinction between the two Exhibits from Ms Tsolakis, was that the initial response from the Department as to the Freedom of Information request was challenged, or a review was sought, seemingly in relation to the redactions which had been made, as well as the refusal by the Department to provide certain supporting documentation which appears to have been provided in conjunction with the section 58 statements.
- 119 In Exhibit 4, slightly more information was provided to East Laverton in respect of the program of works as referred to in the Application.

- 120 As I understand the position advanced by East Laverton here, the attack is made squarely on the basis of alleged non-compliance with section 58(1)(b)(iv) of the Act, and the binding effect of *Golden Pig*. Thus, the provision of additional information by the Department as evidenced in Exhibit 4 is of no moment to me in this matter.
- 121 Relevantly, the material placed before me as part of the section 58 statement included a copy of a letter which is referred to as the letter of guarantee for Rosane Pty Ltd.
- 122 A copy of that letter is contained as Schedule 2 (the Guarantee). The Guarantee appears to have been put by Rosane as part of the section 58 materials filed with the Application, as part of the statement of the financial resources available to Rosane.
- 123 Counsel for East Laverton submitted that the Guarantee on its face gives rise to serious questions of compliance and arguably non-compliance with the requirements of section 58 of the Act as it pertains to the requirement to state the financial resources available to the Applicant.
- 124 If regard is had to Schedule 1, it is clear on its face why that is so.
- 125 East Laverton draws particular attention to the fact that the Guarantee appears to be under a letterhead of Rosane itself, referring to itself as a wholly owned entity of an unknown party (unknown due to the redactions).
- 126 Something which is not redacted however (but is most concerning in context), is the date of the Guarantee, which is 22 August 2017.
- 127 At that point regard may be had to the content of annexure MAP-2 of the Affidavit referred to as Exhibit 1, which is a company search of Rosane.
- 128 As at the date of 19 December 2023 there is no capacity to say that the Applicant is a wholly owned entity of any other entity, as it is a company with two shares

and has two real persons as the individual shareholders. What the structure of Rosane was in 2017 is not known.

129 On the face of the materials provided to me the redactions make it impossible to clearly discern the content of the Guarantee, the obligations to which it refers, and the parties to it.

130 In this respect, and taken on its face, it appears though that Rosane is seeking now (to answer the section 58(1)(b)(iv) of the Act requirement) to rely on a Guarantee from an unknown party (at least before me), when that Guarantee is dated the 22nd of August 2017 and purports to be provided by a former parent company, which is no longer the parent company, all under the letterhead of Rosane itself.

131 The Application was in fact lodged on the 4th of November 2022. Precisely what effect the Guarantee which is referred to would have, is at the very least, an open question.

132 On the face of document itself as presented to me, I cannot escape a view that an inference arises in the form of a serious concern as to whether the material provided to me is in fact a statement of the financial and technical capability of Rosane, on or about the time of the Application.

133 In an effort to counter this difficulty, counsel for Rosane sought to rely upon the content of a letter dated the 4th of November 2022.

134 That letter is part of the documents filed in support of the section 58 Statement and is found at CET4 of Exhibit 3 (Agents Letter).

135 Relevantly the following passage is relied upon:

*(a) Attached for immediate registration is an Application for a 58 block Exploration Licence in the Mount Margaret mineral field a Statement in accordance with section 58 of the Mining Act 1978 is also attached together with a shareholder of director of a letter of guarantee and as a*

company search extract and various bank share portfolio statement evidencing the Applicant's financial capability.

(Emphasis added by me)

- 136 In answer to the concern raised by counsel for East Laverton in respect of the Guarantee, which counsel for Rosane quite properly accepted was problematic, counsel for Rosane relied upon the purported provision with the Agents Letter of financial information contained in the emphasised passage above.
- 137 That is, reliance was placed upon the purported provision of “. . . *various bank/share portfolio statement evidencing the Applicant's financial capability*”, as being a sufficient answer to the issue raised by East Laverton and accepted as being problematic. It is clear that Rosane provided with the Application, some material which answered that description, as the evidence from the FOI request process included evidence of a refusal by the Department to provide material that answered that description to East Laverton.
- 138 At the hearing on 19 August I raised with counsel for the Applicant as to what one might make of that statement beyond that it was referring to the Applicant's financial capability as demonstrated by the relevant documentation attached, where those same documents were not provided to East Laverton in the FOI request, and not been placed before me.
- 139 In my view, it may well be that the various bank and share portfolio statements as provided in conjunction with the letter, when considered together, do not give rise to any concern as to compliance with section 58(1)(b)(iv) of the Act.
- 140 However, in respect of this matter I have not had regard to the various bank and share portfolio statements referred to, as they were not put before me.
- 141 Counsel for the Applicant urged me to accept that the plain and ordinary meaning of the words contained in the letter meant that there must have been compliance.

- 142 With respect I disagree. On the evidence before me, the Agent’s Letter itself does not provide the detail of the information relied upon as the technical and financial resources available to Rosane. It merely asserts them. The absence of the annexures is fatal to that proposition.
- 143 Looked at in another manner, had the letter been provided unredacted, but without annexures, it could not sensibly be read as a statement of the technical and financial resources available to Rosane.
- 144 The annexures are what potentially give the Agent’s Letter the necessary quality as such a statement (see the applicable reasoning of the Court of Appeal in *Onslow Resources Ltd v Hon William Joseph Johnston MA in capacity as Minister For Mines And Petroleum* [2021] WASCA 151 at [35] – [45]), and absent them, the Agents Letter by itself is potentially noncompliant with the requirements of section 58(1)(b)(iv) applying *Golden Pig*.
- 145 Taken together, the material before me, at this time, leaves a real question as to whether the requirements of section 58(1)(b)(iv) of the Act has been satisfied.
- 146 That is also to say nothing at all at this stage of the requirements of section 57(3) of the Act in the context of this dispute. That question, one of sufficiency, is one for another day.
- 147 At this point, and having regard to the evidence led, the inferences open on the evidence at this time appear to be these:
- a. The section 58 statement is not compliant, in that it does not adequately state the financial and technical resources available to the Applicant, in the manner required, and therefore jurisdiction ought be declined applying *Golden Pig*; or,
  - b. The section 58 statement is compliant, in that it does adequately detail the financial and technical resources available to the Applicant, in the manner

required, and therefore jurisdiction ought be affirmed applying *Golden Pig*.

- 148 Having reached that point nothing further need be said about this factor.
- 149 East Laverton has a prima facie case on a question of compliance, alleging positive non-compliance with the requirements of section 58(1)(b)(iv) of the Act.
- 150 On the evidence presented to me at this time, I would go so far as to state that East Laverton's compliance case is strong, with particular reference to the difficulties created by the Guarantee, which self evidently, cannot be an accurate representation made on or about the time of the Application.
- 151 However, the question of whether it succeeds or not is a question for another day.
- 152 The presence of a strongly arguable objection on compliance grounds, is a matter in favour of the grant of the Extension Application.

**In relation to the alleged breach of section 69 of the Act.**

- 153 There are two limbs upon which East Laverton advances an evidentiary foundation to allege arguable case in respect of a breach of section 69 of the Act.
- 154 The first is having regard to Exhibit 5 it is able to be noted that there was a period of 4 minutes between the surrender of the tenement and the lodging of the new tenement Application. That arouses a suspicion.
- 155 Furthermore reliance is also placed on the content of an affidavit referred to as Exhibit 2, wherein a conversation was had between an officer of East Laverton and the tenement agent of Rosane.
- 156 Paragraph 6, 7, 8 and 9 of Exhibit 2 say this:

6     *On 15 November 2023 at 11:30am I received a phone call from Mr Martin Weidemann, the Tenement Manager of Rosane Pty Ltd.*

- 7     *During the phone call, the Tenement Manager noted that GSM had lodged an application, being E38/3801, and was second in time to the purported Application. (Referring to the Applicant's Application).*
- 8     *The Tenement Manager requested that GSM "be a good corporate citizen" and withdraw its tenement application for E38/3801, directly stating that the second in time application was causing a hindrance to a proposed transaction.*
- 9     *When questioned whether GSM could offer an alternative offer for the tenement, Mr Weidermann insisted that a transaction was already proposed with another party.*

157   Those two pieces of evidence taken together, gives rise East Laverton says, to an inference that there is a common interest held between the surrendering party and Rosane which ought preclude the grant of the Application pursuant to section 69 of the Act.

158   Again no evidence is led by the Rosane in the matter in respect of section 69 of the Act.

159   Rather Rosane's position is to refer to the fact that the East Laverton could have objected on the basis of section 69 of the Act at the time of the initial Application, when regard is had to the extract of tenement showing the previous historical dealings with the parties.

160   In relation to the second piece of evidence, counsel for Rosane indicated that there was nothing wrong with a transaction involving the tenement, as it is entirely open to Rosane, to engage commercial transactions as to sell the tenement (or an incomplete application) as it sees fit.

161   Counsel for Rosane also referred to the absence of any clear linkage between the parties surrendering and applying, and relied upon the authority of ***Korab Resources Ltd v Richmond*** [2007] WAMW 16 (***Korab***), to assert that in the event that there had been a transmission of information from one party to another resulting in the lodgement of the tenement within the timeframes concerned, there was nothing wrong with it.

- 162 As his honour Warden Calder found in *Korab*, the proscription in section 69 of the Act is in respect of a common interest, not the provision of that which in another context might be regarded (and in another regulatory environment) as inside information.
- 163 In respect of this issue, there is a degree more inferential reasoning required on the part of the East Laverton's position. The evidentiary position of the East Laverton, when taken as individual pieces is in my view, insufficient to give rise to an arguable case as to a possible infringement of section 69 of the Act.
- 164 However, in my view, when the evidence is taken together the position is marginally different.
- 165 The timing of the surrender and subsequent Application in the past, when taken with the comments purportedly made by Mr Martin Weidemann as deposed to, are enough to give rise to a prima facie case that there is a breach of section 69 of the Act.
- 166 Whilst the case advanced is weak at the current time, I am of a view that the evidentiary foundation able to be adduced by East Laverton in this matter does give rise to a prima facie basis for an objection at this time on that basis.
- 167 Whether it has reasonable prospects of success is a different question, as is the one as to whether it is able to be made out at trial.
- 168 In my view, the presence of a weakly arguable objection, is a matter in favour of the grant of the Extension Application, when considered with the stronger ground alleging non-compliance.

### **Prejudice of the parties**

- 169 On one hand, Rosane seeks to avoid a hearing and simply advance to grant. On the other, East Laverton seeks to damage or dislodge the first in time application from its priority.

170 In light of the delay by East Laverton, in my view neither party can point to any specific prejudice of any weight greater than that of the other, rather the consequences of having a hearing or not, and what flows from it in this case, are a consequence of the operation of the relevant regulatory regime.

171 Prejudice in this case, is a neutral factor.

**Consequence as to the findings above**

172 As a result of the above it is then necessary to consider all of the factors arising from the case together.

173 It will have been seen from the discussion above that the most relevant factors here are the length of the delay in the provision of the objection, namely nearly a year, on one hand and on the other hand, whether or not there is an arguable objection.

174 The length of time is very significant indeed.

175 The length of time is a weighty basis to refuse the Application for an Extension of Time in and of itself.

176 The explanation for the delay is not objectively reasonable.

177 In all of the circumstances presented however, and weighing the relevant information, in my view East Laverton has advanced an prima facie arguable case as to:

(a) compliance; and

(b) an infringement of section 69 of the Act.

178 In my view the circumstances created for Rosane in respect of compliance with section 58(1)(b)(iv) of the Act arising from the Guarantee, are very difficult to overcome at this point, on the materials provided to me.

- 179 On the materials provided to me, the Guarantee appears to be 5 years out of date in relation to the provision of a financial guarantee from a previous corporate structure.
- 180 Where that information is sought to be relied upon as a statement as to the financial resources available to the Applicant, it appears on the material before me to be erroneous on its face at best. At worst, it may be construed to have been misleading at the time of the Application.
- 181 In either case, in my view the problem created by the fact of it at this point is insurmountable on the material before me.
- 182 In those circumstances in my mind a real question as to compliance arises on the evidence and having regard to the comments in *Wylloo* per Buss P and Livesay AJA at [414], that question ought properly be the subject of an adversarial contest.
- 183 In relation to the second issue, the question is more difficult.
- 184 In all of the circumstances presented, and as indicated above, I have come to a view that it is appropriate that the section 69 argument be regarded as prima facie arguable on the material before me, notwithstanding that it must be considered to be weak case at this time.
- 185 Nonetheless, I consider it appropriate that that matter be permitted to proceed as well. It asserts a serious type of non-compliance (albeit of a slightly different character) with the requirements of the Act as well, and has a sufficient evidentiary basis to support the assertion, at this time.
- 186 As a result, even though there is a very lengthy delay inadequately explained, it is appropriate in this case to come to a view that the Extension Application is reasonable in all of the circumstances presented.
- 187 I therefore grant the extension of time to conduct the objection on the terms as currently filed.

188 It will have been seen above that I listed the matter for the 20th of September 2024.

189 I retain that listing in the event either party wishes to make any submissions as to the form of final orders or as to costs.

190 Absent any contest, I propose to simply grant the extension of time up to and including the 4th of December 2023, and make no order as to costs. If that is agreed, the parties may file a consent Minute to that effect prior to 20 September 2024, listing the matter for further mention in the usual manner.

191 I am grateful to counsel appearing for their assistance.



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Warden T McPhee

13 September 2024

## Schedule 1 – Excerpt of Section 58 Materials obtained by FOI

### SECTION 58(1)(b) STATEMENT IN SUPPORT OF APPLICATION FOR 58 BLOCK EXPLORATION LICENCE

**MINERAL FIELD – MT MARGARET**

**LOCALITY – MOUNT MCKENNA**

**PROPOSED METHOD OF EXPLORATION OF THE AREA IN RESPECT OF THE LICENCE**

**TARGET MINERALS – Gold & Nickel**

**APPLICANT – Rosane Pty Ltd (ACN 102 903 837)**

The application is centred approximately 20kms to the north-east of Laverton in Western Australia.

The basis for making the application is centred on the following criteria:

- 1) Known operations in the vicinity
- 2) Historic exploration results publicly available through WAMEX
- 3) Geological structural setting
- 4) Known mineralised regional structures

The ground has been applied for because of the gold and nickel potential. The whole tenement area covers interpreted rock sequences and prospective geological structures which the applicant believes has potential for hosting gold and nickel resources. Therefore, the whole tenement is prospective and will be explored for gold and nickel mineralisation.

Goals - the area has been selected based on the presence of gold in historical drilling and a large (+4km) diorite intruding a prospective structurally altered greenstone sequence. Mineralisation is postulated to lie adjacent to the contact between the intrusive diorite and greenstone country rock under shallow younger cover. The proposed exploration program focusses on locating economic deposits of gold. Ultramafic sequences in the east of the project area are also prospective for nickel sulphide deposits and PGE mineralization.

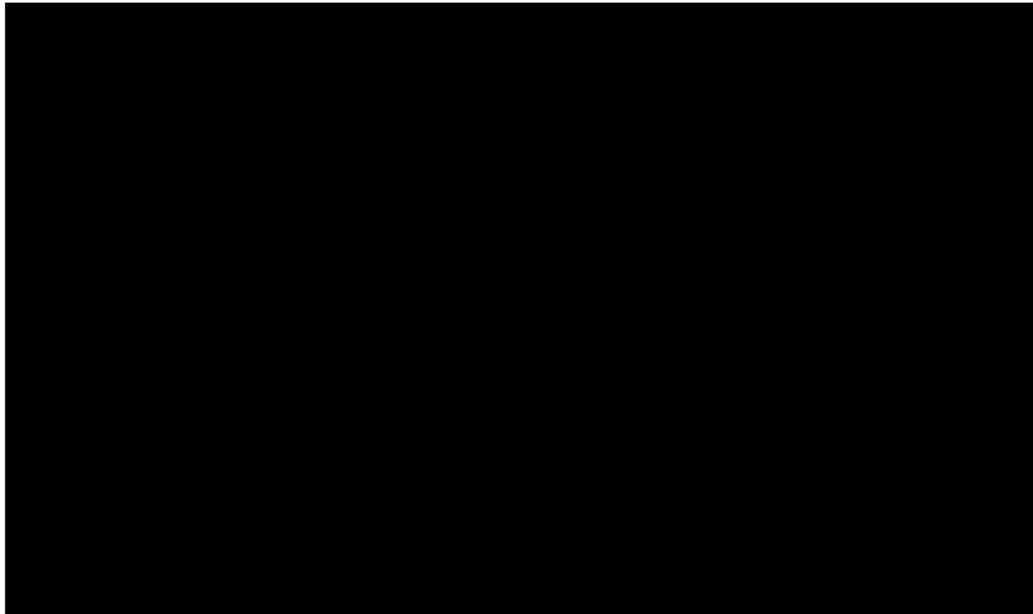
Objectives – An intrusion related deposit model will be used to drive the exploration process for gold. Examples of this type of gold deposit elsewhere in the Laverton district in Western Australia include Granny Smith and Wallaby, each +5m oz Au deposits. A five year exploration program is proposed which will primarily be focused on the collection and application of detailed gravity and aeromagnetic data with geochemical information to define buried targets of significant scale for drill testing.

Activities – the proposed exploration program will commence in Year 1 with research of historic exploration activities and compilation of hardcopy data into a digital database followed by ground reconnaissance to assess access and liaise with local traditional owners. The second year of exploration focusses on collecting detailed 200m x 200m ground gravity data over the entire licence area and processing of that data set. Third year it is proposed to collect detailed 50m line spaced aeromagnetic data over the entire licence area and process that data set along with integration of the aeromagnetic and gravity data to develop undercover targets suitable for ground based geochemical sample collection. Year four includes focused geochemical data collection over selected portions of the licence area with subsequent modelling of these data sets to better spatially define drill targets. An initial reverse circulation drilling program is proposed for Year 5 to test the highest

Page - 1

priority drill targets with geochemical analysis of all drill chips from surface. A summary of the proposed five year work program with budgeted activities is presented in Table 1.

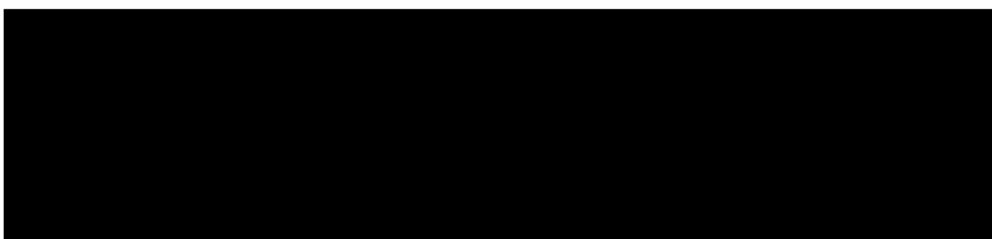
Table 1 – Proposed five year work program and budget

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CLAUSE

It is noted that the proposed expenditure for the proposed activities exceed the minimum annual statutory expenditure obligations for a granted 58 block exploration licence as set by Regulation 21 of the Mining Regulations 1981. Table 2 shows the minimum annual statutory expenditure obligations and proposed annual budgeted expenditure.

Table 2 - Minimum annual statutory expenditure obligations and proposed annual budgeted expenditure for 58 block exploration licence

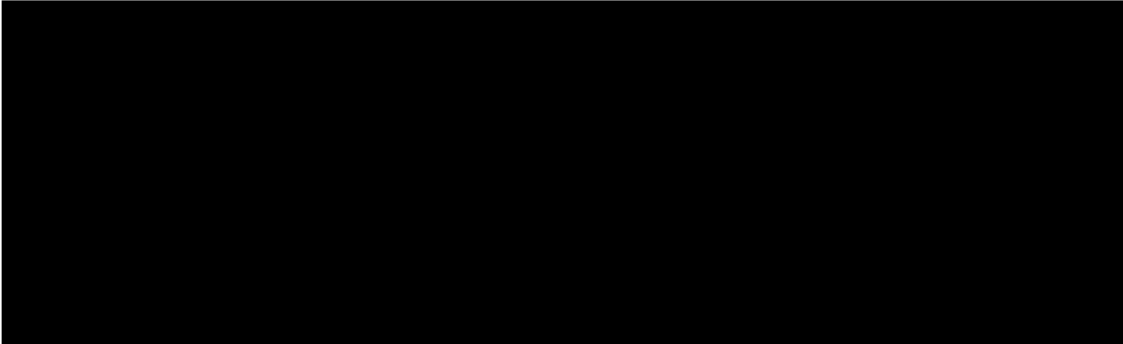
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CLAUSE 4

Additional work may be carried out after year 5 if exploration results justify further activities, and subject to approval of Extension of Term of the licence beyond the initial Year 5 term.

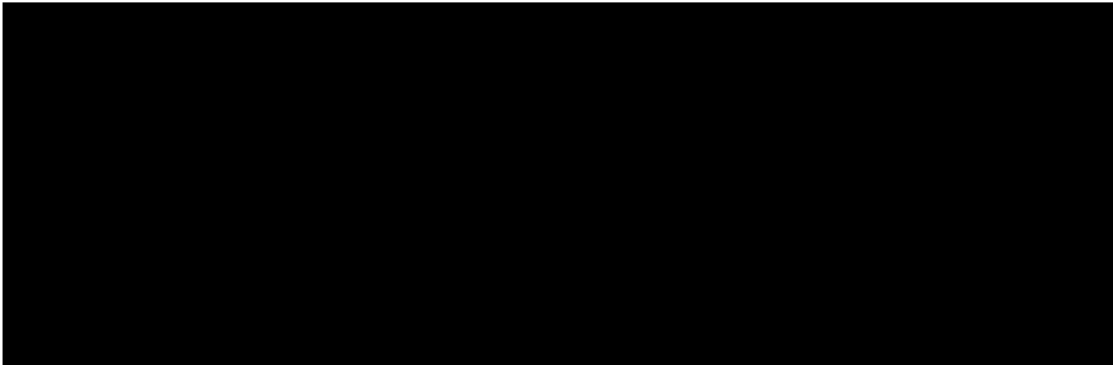
**TECHNICAL RESOURCES**

Out of Scope



**FINANCIAL RESOURCES**

CLAUSE 4(3)



In assessing the applicant Company's current commitments forward obligations for all granted and pending mining tenement applications have been included. Regard has also been had for ongoing programmes of work with desktop geological analysis of exploration results determining retention of exploration ground, within the framework of the company's corporate exploration objectives; including the option for Farmin and Joint Venture participation.

Schedule 2 – The Guarantee Letter

**ROSANE PTY LTD**  
136 Glyde Street  
MOSMAN PARK WA 6012

22 August 2017

Executive Director  
Mineral & Title Services Division  
Department of Mines, Industry Regulation and Safety  
100 Plain Street  
EAST PERTH WA 6004

Dear Sir/Madam,

**LETTER OF GUARANTEE FOR ROSANE PTY LTD**

Out of Scope

Rosane Pty Ltd (**Rosane**) is a wholly owned entity of [REDACTED]. Refer attached ASIC Search Extract showing the current officeholders and Shareholders.

For the purposes of the *Mining Act 1978 (as amended) (WA)* and the *Mining Regulation 1981 (WA)* and in accordance with Australian Accounting Standards adopted for financial reporting obligations in compliance with the *Corporations Act 2001 (Cth)*, [REDACTED] guarantees the financial obligations of Rosane (whilst it remains a wholly owned entity of [REDACTED]).

Out of Scope

Out of Scope

[REDACTED] ratifies all commitments made by Rosane in the course of applying for, or otherwise acquiring and maintaining mining tenement and/or other assets of [REDACTED] vested with Rosane from time to time.

Out of Scope

### Schedule 3 – Agents Letter



MKII CONSULTING PTY LTD  
MINING TENEMENT MANAGEMENT

Our Ref: ELA-RO-2022/11-M

4 November 2022

Executive Director  
Mineral & Titles Division  
Department of Mines & Petroleum  
100 Plain Street  
EAST PERTH WA 6004

Dear Sir,

**RE: APPLICATION FOR A 58 BLOCK EXPLORATION LICENCE BY ROSANE PTY LTD**

This company acts as tenement consultants to Rosane Pty Ltd.

Attached for immediate registration is an application for a 58 Block Exploration Licence in the Mt Margaret Mineral Field. A statement in accordance with *Section 58 of the Mining Act 1978* is also attached together with a Shareholder/Director Letter of Guarantee, an ASIC Company Search Extract, and various bank/ share portfolio statement evidencing the Applicant's financial capability.

CLAUSE 4(3)

The application fees including the first year of rent [REDACTED] has been remitted together with this application.

Please forward the usual letter of compliance to this office at your earliest convenience so that we may attend to the application compliances promptly.

Please do not hesitate to contact me at the above office if you require any further information.

Yours faithfully,  
MKII CONSULTING PTY LTD



Out of Scope

Att.