JURISDICTION : MINING WARDEN

LOCATION : PERTH

CITATION : ALLISON V SANDSTONE EXPLORATION PTY LTD [2019] WAMW 7

CORAM : WARDEN J O'SULLIVAN

HEARD : 11 December 2018

DELIVERED : 29 April 2019

FILE NO/S : Application for Special Prospecting Licence 57/1422; Objection No.517052

TENEMENT NO/S : Exploration Licence 57/1033

BETWEEN : **JAMES DAVID ALLISON**
(Applicant)

AND

SANDSTONE EXPLORATION PTY LTD
(Objector)

Catchwords: *Special Prospecting Licence; turns on own facts.*

Legislation:

- *Mining Act 1978 (WA) s70*

Result:

1. Special Prospecting Licence 57/1422 is refused.

Representation:

Counsel:

Applicant	:	In person
Objector	:	Mr DR Chandler

Solicitors:

Applicant	:	In person
Objector	:	All Mining Legal Pty Ltd

Cases referred to:

- ***Levy & Lowe v Bronze Wing Gold NL*** del 20 August 1999, Vol 14 No. 4
- ***Wolfgang Michael Lorentz v Navigator Mining Pty Ltd*** [2013] WAMW 23

Introduction

1 On 20 September 2017 Mr Allison applied for a Special Prospecting Licence 57/1422 (the "SPL Application") over land the subject of an Exploration Licence 57/1033 held by the Objector, Sandstone Exploration Pty Ltd.

2 Sandstone's grounds of objection[1] are confined to two matters:

> "(1) Grant of the application shall unduly prejudice and result in undue detriment to current and future exploration by the Objector on Exploration Licence 57/1033.
>
> (2) Mining operations undertaken as consequence of grant of the application will result in contamination of geochemical assays subject of the Objector's current and future exploration proposals on Exploration licence 57/1033."

The Legal Framework

3 Section 70(1) of the *Mining Act 1978 (WA)* provides that a special prospecting licence for gold can be granted over land that is already the subject of an exploration licence.

4 Section 70(5) deals with objections. It provides that the Warden may refuse the application for the special prospecting licence on the ground that prospecting for gold on the land to which the application relates would result in undue detriment to the exploration being carried on by the holder of the primary tenement.

5 Alternatively, the Warden may recommend the application to the Minister who may refuse the application or, subject to the Act, grant it as provided in sub-section (6) which includes the power to impose conditions.

The Law

[1] Sandstone did not press grounds 3 and 4.

6 In ***Levy & Lowe v Bronze Wing Gold NL*** [2], Warden Calder identified the question posed by s70(5) to be:

> *"[w]hether or not the granting of the special prospecting licence, with appropriate conditions, could be made without the prospecting which that grant would allow resulting in undue detriment to the [exploration] being carried out by the primary tenement holder, and if the answer to that question is in the negative the Warden should refuse the application".*

7 In considering that question Warden Calder [3] referred to a number of matters it was incumbent on the Warden to consider:

> *"23. The warden is to consider, among other things, the following (Levy & Lowe at 13, 14):*
>
> *(a) the exploration, if any, which has been done in the past on the tenement, whether by the current holder or by a previous holder;*
>
> *(b) the use, if any, which the primary tenement holder has made of the results of such previous exploration;*
>
> *(c) the exploration work which the primary tenement holder has in the past carried out and which the primary tenement holder has planned to carry out in the future on the whole of the primary tenement;*
>
> *(d) the work, if any, which has previously been carried out and which is planned to be carried out on or in the vicinity of the ground the subject of the special prospecting licence application;*
>
> *(e) the likelihood or otherwise of the primary tenement holder carrying out any proposed work, which could properly include a consideration of the present or future capacity of the primary tenement holder, both technical and financial, to carry out proposed exploration operations;*
>
> *(f) the nature of the application for the special prospecting licence in terms of the area applied for and the size of the area applied for relative to the size of the primary tenement;*
>
> *(g) the proximity of the ground applied for to work done or proposed to be done by the primary tenement holder;*

[2] Perth Wardens Court, del 20 August 1999; Vol 14 No. 4
[3] At 13 & 14

(h) the nature and extent of the work proposed to be done by the applicant; and

(i) the present and future technical and financial capacity of the applicant to prospect for gold."

The Evidence

8 Mr Allison's case can be summarised as follows:

- He is a prospector with 35 years' experience.
- He has identified an area of interest on E57/1033 in relation to which he intends to "scrape and detect" for alluvial gold using a small track loader. Mr Allison says that he will probably only dig to a depth of five metres as the ground is too hard after that. [4]
- Mr Allison [5] says he will only disturb a small area at any given time; restoring it before he moves on to the next area.
- E57/1033 is 200 square km and he is seeking access to only .2 of a square km. [6]
- Only 62% of the land the subject of the application the SPL Application falls inside the target area (TR028) identified by Sandstone. [7]
- Sandstone only propose to drill two holes within the boundaries of the SPL Application. [8]
- He conceded that the scrape and detect method negates the possibility of carrying out further soil sampling on the same ground. [9]

[4] t/s 11/12/18 at 3
[5] Affidavit of James David Allison; sworn 8 August 2018 (Allison Affidavit)
[6] t/s 11/12/18 at 50
[7] t/s 11/12/18 at 50
[8] t/s 11/12/18 at 30
[9] t/s 11/12/18 at 40

9 Sandstone called Dermott Michael Ryan, who is the executive director of Alto Metals Ltd (Sandstone's parent company). Mr Ryan said that he is responsible for the management and execution of the exploration activities of Alto and Sandstone including on E57/1033. [10]

10 Mr Ryan's evidence can be summarised as follows:-

- E57/1033 was granted to Sandstone on 20 September 2016. Along with a number of other tenements E57/1033 forms part of the Sandstone Project.[11]
- A review of historical data carried out prior to grant identified an exploration target on E57/1033. [12]
- Detailed airborne magnetic surveys completed in November 2016 identified some 56 targets within the 800 km^2 area of the Sandstone Project.[13]
- In May 2017 Sandstone commissioned a detailed geological interpretation and targeting exercise which was combined by Sandstone's geologists with airborne magnetics, digital geological mapping, drill hole geology and soil geochemistry.[14] The geological interpretation and targeting exercise identified a geologically interesting lithostructural anomaly, TRO28, which overlaps the SPL Application.[15]
- In April and May 2018 Sandstone collected about 3,000 soil samples across the Sandstone Project including the area of the SPL Application. Based on the results further surface sampling and geological mapping will be required. [16]

[10] t/s 11/12/18 at 18
[11] Ryan Affidavit at 60 & 61
[12] Ryan Affidavit at 70
[13] Ryan Affidavit at 71
[14] Ryan Affidavit at [80]
[15] Ryan Affidavit at [81]
[16] Ryan Affidavit at [89]

- Soil sampling in relation to TR028 produced results of between one and seven parts per billion. Anything over one to two parts per billion is anomalous. On the eastern margin of TR028 the maximum values were around 26 parts per billion. [17]

- On or about 21 June 2018 Sandstone's Programme of Work 72704 was approved. The Programme involves air core drilling, reverse circulation drilling, diamond hole drilling and scrape and detect over the area known as Lightning North (TR028), which covers the area of the SPL Application.[18] It is anticipated air core drilling will commence in the first quarter of 2019.

- During July 2018 Sandstone collected further soil samples, particularly in the area of TR028 which covers (part of) the area of the SPL Application.[19]

- Soil sampling was undertaken by Alto Metals in July 2018 at five areas in TRO28 that overlapped the SPL Application. [20]

- The proposed air core drilling includes two areas in TRO28 that overlap the SPL Application. [21]

- The SPL Application will affect Sandstone's proposed and potential exploration. Sandstone need to carry out further soil sampling in the area. Google Imagery reveals the soils are intact which means Sandstone can go back and do further infill soil sampling as planned.

- Soil sampling is a very inexpensive and a first pass reconnaissance technique. [22]

---

[17] t/s 11/12/18 at 23
[18] Ryan Affidavit at [90]
[19] First Ryan Affidavit at [89]
[20] Affidavit of Dermott Michael Ryan; sworn 24 November 2018 (second Ryan Affidavit); DMR02
[21] Second Ryan Affidavit; DMR03
[22] t/s 11/12/18 at 25

- Scrape and detect using a bulldozer clears all the topsoil and pushes it off to the side. The soil is then pushed back over upon completion. Once the soil is disturbed, no further soil sampling can take place. [23]

- Although there are not many drill holes proposed within the area of the SPL Application, the drilling program is hypothetical. The proposed drill holes can be moved and more drill holes can be identified based on the further soil sampling Sandstone intend to do.[24]

- Mr Allison's observation that there are no major geological structures within the boundaries of the SPL Application is disputed. Major geological structures are not evident in aerial photographs when there is surficial transported cover. Alton has identified litho-structural geological structures using detailed airborne magnet data. [25]

Geological Survey

11 A report from the Executive Director Geological Survey dated 22 November 2017 records that the Form 5 Operations Report for E57/1033 shows mineral exploration expenditure of $456,750.00 for the 2016-17 period.

Conclusion

12 In my view, the SPL Application should be refused on the basis that, if granted, the SPL will cause undue interference to the exploration being carried out by Sandstone. Moreover, there are no conditions that can be imposed that will alleviate the undue interference given the fact that the "scrape and detect" Mr Allison plans to carry out will preclude further soil sampling by Sandstone.

13 Sandstone had identified TRO28 as an area of interest well before Mr Allison lodged the SPL Application. This is not a case where the underlying tenement

[23] t/s 11/12/18 at 27 & 28
[24] t/s 11/12/18 at 28
[25] First Ryan Affidavit at [106]

holder only became interested in the land the subject of the SPL Application to ward off the applicant. [26]

14 Although Sandstone has identified only two drill holes within the area of the SPL Application, at this stage until the results of the drilling and any further soil sampling are known, the possibility that further drilling may occur cannot be excluded.

15 Until Sandstone has completed its analysis of this area, it is not known how much of the land the subject of the SPL Application may prove productive.

16 As was conceded by Mr Allison, the scrape and detect method he employs effectively rules out the prospect of further soil sampling over the same ground. If Mr Allison's was permitted to proceed, it is likely Sandstone would not be able to avail itself of one of the most cost-effective means of exploration.

17 There is no question Mr Allison has the knowledge, resources and experience to undertake the work he proposes. In addition, he seeks only a relatively small area, given the size of E57/1033. However, unfortunately for Mr Allison his SPL Application relates to an area already identified by Sandstone as a priority.

Warden J O'Sullivan

29 April 2019

[26] See for example ***Wolfgang Michael Lorentz v Navigator Mining Pty Ltd*** [2013] WAMW 23 at [40]