

# NATIONAL NATIVE TITLE TRIBUNAL

*Tritton Resources Pty Ltd and Another v Ngemba/Ngiyampaa, Wangaaypuwan and Wayilwan* [2022] NNTTA 24 (23 March 2022)

**Application No:** NF2021/0009

**IN THE MATTER of the *Native Title Act 1993* (Cth)**

- and -

**IN THE MATTER of an inquiry into a future act determination application**

**Tritton Resources Pty Ltd**

**(grantee party)**

- and -

**Elaine Ohlsen & Ors on behalf of the Ngemba/Ngiyampaa, Wangaaypuwan and Wayilwan (NC2012/001)**

**(native title party)**

- and -

**State of New South Wales**

**(Government party)**

**DECISION ON WHETHER THE TRIBUNAL HAS POWER TO CONDUCT AN INQUIRY**

**Tribunal:** Mr Glen Kelly, Member

**Place:** Perth

**Date:** 23 March 2022

**Catchwords:** Native title – future act – application for a determination – power to make determination – good faith decision – whether grantee party has negotiated in good faith – grantee party has negotiated in good faith – Tribunal has power to proceed with future act determination inquiry

**Legislation:** [Native Title Act 1993](#) (Cth) ss 29, 30A, 31, 35, 36, 38.

**Cases:** *Brownley v Western Australia* [1999] FCA 1139 (**Brownley**)

*Drake Coal Pty Ltd, Byerwen Coal Pty Ltd/Grace Smallwood & Ors (Birri People)/Queensland* [2012] NNTTA 9 (**Drake Coal**)

*FMG Pilbara Pty Ltd v Cox* [2009] FCAFC 49 (**Cox**)

*Gulliver Productions Pty Ltd/Western Desert Lands Aboriginal Corporation (Jamukurnu-Yapalikunu) & Ors/Western Australia* [2005] NNTTA 88 (**Gulliver**)

*Marjorie May Strickland & Ors v Minister for Lands & Anor* [1998] FCA 868 (**Strickland**)

*North Galanja Aboriginal Corporation & Waanyi People v Queensland* [1996] HCA 2; (1996) 185 CLR 595 (**North Galanja**)

*Placer (Granny Smith) Pty Ltd and Granny Smith Mines Limited/Western Australia/Ron Harrington-Smith & Ors on behalf of the Wongatha people* [1999] NNTTA 361 (**Placer (Granny Smith)**)

*Rita Dempster & Ors (Southern Noongar)/Bayside Abalone Farm Pty Ltd & Anor/Western Australia* [1999] NNTTA 235 (**Dempster**)

*Rusa Resources (Australia) Pty Ltd v Sharon Crowe and Others on behalf of Gnulli* [2018] NNTTA 81 (**Gnulli**)

*Xstrata Coal Queensland Pty Ltd & Ors/Mark Albury & Ors (Karingbal #2);Brendan Wyman & Ors (Bidjara People)/Queensland* [2012] NNTTA 93 (**Xstrata**)

*Western Australia/Arthur Dimer & Ors (Ngadju People); Cyril Barnes & Ors (Central East Goldfields People)/Equis Limited* [2000] NNTTA 290 (**Dimer**)

*Western Australia/Johnson Taylor on behalf of the Njamal people/Garry Ernest Mullan* [1996] NNTTA 34 (**Njamal**)

*Western Australia/Roberta Vera Thomas & Ors (Waljen)/Austwhim Resources NL; Aurora Gold (WA) Ltd* [1996] NNTTA 30 (**Waljen**)

*White Mining (NSW) Pty Ltd, Austral-Asia Coal Holdings Pty Ltd & ICRA Ashton Pty Ltd/Scott Franks & Anor (Plains Clans of the Wonnarua People)/New South Wales* [2011] NNTTA 72 (**White Mining**)

**Representative of the native title party:** James MacLeod, NTSCORP

**Representative of the grantee party:** Elizabeth Harvey, HopgoodGanim Lawyers

**Representative of the Government party:** Caitlin Fegan, Crown Solicitor's Office

## REASONS FOR DETERMINATION

### Background

- [1] On 24 September 2020 the State of New South Wales (**State**) issued a notice under s 29 of the *Native Title Act 1993* (Cth) (**NTA**) that it intends to do the future act of granting ministerial consent to any holder of exploration licence EL4962 (**the licence**) to prospect for minerals for the life of the licence including any subsequent renewals. The current holder of the licence is Tritton Resources Pty Ltd (**Tritton Resources**). As is set out in the notice, the licence comprises 107 units (302.47 square kilometres) located approximately 52 kilometres west northwest of the town of Nyngan in New South Wales (**NSW**).
- [2] The Ngemba/Ngiyampaa, Wangaaypuwan and Wayilwan People (**NNWW**) are the registered native title claimants for an area including the area of the licence (NC2012/001). **NNWW** are represented by NTSCORP, the native title services provider for NSW.
- [3] The negotiation parties are required to conduct a good faith negotiation with a view to obtaining the agreement of **NNWW** to do the future act (NTA s 31(1)). Pursuant to s 30A of the NTA, the State, Tritton Resources and **NNWW** are all negotiation parties. The parties did not reach a s 31(1)(b) agreement and on 13 December 2021, Tritton Resources made a future act determination application (**FADA**) to the National Native Title Tribunal (**Tribunal**) seeking a determination that the future act may be done pursuant to s 38 of the NTA.
- [4] On the same day, I was appointed by the President of the Tribunal to conduct the inquiry in this matter.
- [5] **NNWW** allege that Tritton Resources failed to negotiate in good faith, however they make no such assertion against the State. Per s 36(2) of the NTA, I cannot proceed to make a determination in this matter if **NNWW** satisfy me that Tritton Resources failed to negotiate in good faith as required by s 31(1) of the NTA.
- [6] For the reasons outlined, I am not satisfied that **NNWW**'s allegation against Tritton Resources has been made out.

## **Tribunal proceedings**

- [7] Tritton Resource's FADA was accepted by the Tribunal on 13 December 2021.
- [8] The parties were notified that a preliminary conference to discuss directions for the subsequent inquiry process was to be held on 18 January 2021. Draft directions were circulated to the parties in advance of this conference.
- [9] At the conference, the parties were advised it was my intention to run any good faith inquiry in advance of the s 39 inquiry upon ascertaining whether there were to be any allegations of a lack of good faith. NNWW requested three days to consider whether they would make such allegations. They later confirmed they would allege a lack of good faith on the part of Tritton Resources and directions were made accordingly.
- [10] On 9 February 2022, NNWW provided their submissions alleging Tritton Resources failure to negotiate in good faith. On 16 February 2022, Tritton Resources lodged their submissions and the State also provided a short submission. These dates were one day later than stipulated in the directions, however I took no issue and neither did the parties.
- [11] On 28 February 2022, the parties collectively requested that the matter be determined on the papers without any hearing. I reviewed the parties' materials and decided that the materials adequately addressed the matters in contention and so I decided that no hearing was necessary.

## **Good Faith Material**

- [12] Following is a summary of the material provided by the parties for the inquiry into good faith.

### ***NNWW:***

- a) Contentions dated 9 February 2022 (**NNWW contentions**); and
- b) Affidavit of James William MacLeod dated 9 February 2022 (**JM Affidavit**) attaching **Exhibit JWM-1** (comprising 55 documents listed at Appendix 1 of this determination).

***Tritton Resources:***

- a) Contentions dated 16 February 2022 (**Tritton contentions**); and
- b) Affidavit of Paul Barry Maloney (**PM affidavit**) dated 16 February 2022 attaching **Exhibits PBM1-12** (comprising 12 documents listed at Appendix 2 of this determination).

***State:***

- a) Contentions dated 16 February 2022.

**Legal Principles for assessing negotiation in good faith**

*Regard for Right to Negotiate*

[13] The High Court has held that the right to negotiate should not be seen as a ‘windfall accretion’ for native title parties (*North Galanja* at [24]). Further, the negotiation process set out through the right to negotiate provisions of the NTA is a core part of the future act regime, should be effective, not a right in name only (*Njama* at 9) and should be construed beneficially when balancing the rights of the native title party and the broader community (*Njama* at 7 citing *Waljen* at [16]-[22]).

*Defining ‘negotiate in good faith’*

[14] There is no definition of the phrase ‘negotiate in good faith’ in the NTA. The NTA does however seek that ‘every reasonable effort has been made to secure the agreement of the native title holders through a special right to negotiate’ (NTA Preamble) which Deputy President Sumner in *Njama* at 10 noted has been translated into the requirement to negotiate in good faith in s 31(1)(b). Section 31(1)(b) requires that ‘the negotiation parties must negotiate in good faith with a view to obtaining the agreement of each of the native title parties’, or native title party where there is just one.

[15] Although a definition is lacking, it has been established that the term ‘good faith’ is to be interpreted in its natural and ordinary meaning. Notions of both negotiation and good faith are summarised in *Strickland* at [38]:

The words “negotiate in good faith” are not defined in the NT Act and must be given their normal meaning having regard to the statutory context and principles of statutory construction. “Negotiation” involves communicating, having discussions or

conferring with a view to reaching an agreement. Good faith involves both subjective honesty of purpose or intention and reasonableness of effort to negotiate and reach agreement.

[16] In *Brownley*, Lee J set out at [23] that:

The duty to negotiate in good faith imposed by s 31 incorporates, at least, some part of the duty as understood by the general law, namely an obligation to act honestly, with no ulterior motive or purpose, albeit that the negotiation may be conducted negligently or incompetently.

### *Conduct of the Parties*

[17] With this in mind, when seeking to understand whether a party has acted in good faith, assessment is directed towards the quality of the conduct of a party and to their state of mind as manifested by this conduct (see *Cox* at [20]) ‘with a view to obtaining agreement about the doing of the future act’ (*Cox* at [38]).

[18] Acting with a view to reaching agreement has a number of practical effects on the conduct and behaviour of a party. President Dowsett in *Gnulli* at [16] stated the ‘question is not as to the adequacy of the ... party’s negotiation technique or strategy. The question is whether that party’s behaviour *demonstrates* that it has not negotiated in good faith’ (emphasis added).

[19] Deputy President Sumner in *Placer (Granny Smith)* at [30] noted good faith requires a party to:

act with subjective honesty of intention and sincerity but this, on its own, is not sufficient. An objective standard also applies. The Government and grantee parties’ negotiating conduct *may be so unreasonable* that they could not be said to be sincere or genuine in their desire to reach agreement (emphasis added).

[20] Similarly, Lee J observed in *Brownley* at [24] that:

The intention of Parliament is that a Government party engage in negotiation with a native title claimant with an open mind, willingness to listen, and willingness to compromise, to reach an agreement under which the native title claimant will agree to Government doing the act it proposes.

[21] Lee J continued in *Brownley* at [25] by setting out that:

If a Government party ignores the requirement of the Act and seeks to exercise power without considering, and responding to, any submissions put to it by a native title claimant, relevant to the matters referred to in s 39, it will not be negotiating in good faith. Similarly, if a State purports to engage in negotiation, but, in truth, its conduct serves an ulterior and undisclosed purpose antithetical to the making of an agreement with a native title claimant, it will not be negotiating in good faith. Delay, obfuscation, intransigence, and pettifoggery would be *indicia* of such conduct.

[22] This of course means that a party can't just go 'through the motions' with closed minds or rigid or predetermined positions (*Cox* at [24]), engage in disingenuous conduct (*Cox* at [25] and [26]) or fail to advance negotiations by way of deliberate delay, sharp practice, misleading negotiation or some other type of unconscionable conduct (*Cox* at [27]) or with no intention of reaching agreement and then seeking arbitration (*Xstrata* at [59] citing *White Mining* at [33]).

#### *Exercise of statutory rights*

[23] Importantly as to this last point, good faith is 'not evaluated on the basis of the "status", "stage" or "substance" of negotiations' but on conduct' (*White Mining* at [33]). The overall effect of this is that it is not necessary for negotiations to have reached a particular stage in order to demonstrate good faith. As such, the grantee party exercising its statutory right to seek a determination once the six month statutory right to negotiate period has passed is not taken to show a want of good faith (see *Cox* at [19]).

#### *Assessing good faith*

[24] It is generally accepted that when deciding whether a party has conducted itself in good faith it is their overall conduct that must be scrutinised (see for example *Njamal* at 12, *Strickland* at [38] and *Brownley* at [35] and [37]). In *Njamal* at 17-18 a set of indicia were proposed to assist in forming an understanding of whether a party (a Government party in that case) had acted in good faith. These are included in *Strickland* at [35] with apparent endorsement and they are routinely adopted in determinations of this type, including in this one.

[25] It must be noted that the *Njamal* indicia are not legal principles and are not exhaustive. Member Lane at [25] in *Dimer* outlined a useful approach, setting out that the *Njamal* indicia aren't a checklist or series of conditions and that is not necessary for the parties to engage in all the activities described. Failure to engage in one or more parts of the indicia will not, on their own, lead the Tribunal to a finding of lack of good faith. Equally, there may be other indicators that show the indicia of good faith have not been adhered to. One example provided by Nicholson J in *Strickland* at [38] is that negotiation in good faith does not mean a party has an obligation to accept or capitulate to another party's position.



[26] Member Lane in *Dimer* at 30 set out a framework for assessing the conduct of parties based on the *Njamal* indicia:

If we look at those criteria in the light of the kinds of activity that might be undertaken in negotiation, they fall into a series of related, though not necessarily co-extensive obligations. Those obligations appear to me to involve the following:

- an obligation to communicate with other parties within a reasonable time and a reciprocal obligation to respond to communication received within a reasonable time, (*Njamal* (i), (iii), (iv), (v), (vii), (ix));
- an obligation to make proposals to other parties with a view to achieving agreement and a reciprocal obligation on other parties to respond either by making counter-proposals or by way of comment or suggestion about the original proposal, (*Njamal* (ii), (xv));
- an expectation that a party will make inquiry of other parties if there is insufficient information available to make an informed choice about how to proceed in negotiations and an obligation on those other parties to provide relevant information within a reasonable time, (*Njamal* (viii)); and
- an obligation to seek from other parties appropriate commitments to the process of negotiation or in relation to the subject matter of negotiation and a reciprocal obligation to make either appropriate commitments to process, or appropriate concessions as the case may be, (*Njamal* (vi), (x), (xi), (xii), (xiii), (xiv), (xvii)).

The final indicium in *Njamal* seems to express the overarching obligation imposed by s.31(1)(b) to act honestly and reasonably with a view to reaching an agreement on whether or not the act should go ahead.

#### *Assessment is contextual*

[27] When making this assessment of good faith, the overall conduct of a party is to be taken in context with the particular matter and its associated facts. Each assessment will be affected by this context as set out in *Xstrata* at [65]:

When determining whether the parties have negotiated in good faith, a contextual evaluation is required. The approach taken by one party is normally influenced by the approach taken by, or the conduct and actions of, another. The obligation to negotiate in good faith applies to all parties, so the Tribunal will not ignore the relevant actions of others when assessing the negotiation conduct of the party being challenged. For example, as the passage in *Placer (Granny Smith)* quoted above [*Placer (Granny Smith)* at [30]] indicates, lack of good faith in the negotiations by a native title party will be relevant to whether other parties have fulfilled their obligation and may impose a lesser standard on them. Similarly, if a grantee party is a small miner with few resources and limited capacity to make offers or give concessions in relation to a small project, what would be regarded as negotiating in good faith could be different from that of a large mining company with the capacity to make substantial offers and concessions in relation to a large project (see [*Drake Coal* at [85]]).

#### *No authority if a lack of good faith, burden of evidence on party alleging lack of good faith*

[28] In making a determination, s 36(2) provides that if a negotiation party satisfies the Tribunal that another negotiation party (other than a native title party) has not negotiated in good faith, then it must not make a determination on the s 35 application. In terms of showing or

demonstrating a want of good faith, the Tribunal has held that the practical effect of this is that the evidential burden rests with the party making the allegation. This is perhaps best summarised in *Gulliver* at [10] (citing *Dempster* at [4], [21] and *Placer (Granny Smith)* at [21]-[28]) which says:

The Tribunal has said that the practical effect of s 36(2) is to place an ‘evidential burden’ on the party alleging lack of good faith negotiations which would normally require it to produce evidence to support its allegations. The Tribunal is not required to adopt strict rules on burden of proof but any party alleging a lack of good faith negotiations must provide contentions and documents which specify in detail the matters it relies on.

[29] I conduct my assessment of whether parties negotiated in good faith in this matter in line with the above principles.

### **Good Faith Assessment**

*What occurred during the negotiation process?*

[30] From the materials before me, negotiations regarding the licence were characterised more by exchange of written materials than by face to face negotiations. Meetings between the parties did feature of course, however these appeared to be for process and clarification purposes with the majority of the negotiations being performed via the exchange of agreement drafts.

[31] Additionally, NNWW refers to a considerable history relating to the licence between 2014 and early 2020 (NNWW contentions [17]), however I will focus only on that material which relates specifically to negotiations over the future act which is the subject of this decision.

[32] The notification date for the future act was 24 September 2020. From this date to the lodgement of the FADA on 13 December 2021, there were a substantial number of interactions between the parties. These have been placed into a table at Appendix 3 of this determination.

[33] The central issue which arose was that, due to the advent of COVID-19 restrictions, NTSCORP as the representative of NNWW were unable to convene a meeting of the claim group in order to authorise the NNWW applicant (**Applicant**) to enter into the agreement as required by the terms of the claim authorisation (see NTA ss 62A, 251BA and 251B). As a result of this, NNWW contends that in not agreeing to a further delay of lodgement of the FADA, Tritton Resources’ ‘conduct in refusing to provide the NNWW Claim Group the opportunity to consider the agreement that was on the table was unreasonable and demonstrates that it failed to negotiate in good faith’ (NNWW contentions, [56]).

[34] What is clear from the chronology and from the materials provided by the parties is that from the date of notification, the parties had been engaged in meetings and an exchange of agreement drafts until 15 June 2021. This exchange had in fact commenced prior to the notification date although it is noteworthy that the type of agreement being sought by Tritton Resources was modified in March 2020 (from conjunctive mining and exploration to exploration only). Even so, it appears as though a relationship of some type had been established between the parties which was carried forward post notification.

[35] From the materials before me, there does not appear to have been rancour between the parties. In fact, the overall conduct of both NNWW and Tritton Resources appears to have been characterised by a positive approach, with parties working through a series of steps to resolve issues and reach agreement. The parties exchanged several drafts, convened meetings to explain and advance their positions and in general, worked cooperatively towards a resolution. This does not mean there was no tension or difficulty, but it does appear as though communication was appropriate and respectful from both parties and was directed towards seeking to reach agreement.

[36] By June 2021, the agreement looked to have been sufficiently advanced to provide NTSCORP with the confidence to include it as a point for discussion and possible approval at a claim group meeting scheduled for 18-19 of June 2021, an inclusion which Tritton Resources was notified of by NTSCORP on 7 June 2021.

[37] The requirement to consider an agreement in a claim group meeting is an important part of the context of this decision. When the claim was authorised (see NTA ss 62A, 251BA and 251B), part of the terms of authorisation of the Applicant was that:

The Applicant must not execute any future act agreement, Indigenous Land Use Agreement or any other agreement that has the effect of extinguishing, impairing or otherwise affecting native title or confirming prior extinguishment, impairment, or effect on native title in the area under claim, unless they are expressly authorised by a resolution of the Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan native title claim group. (NNWW contentions [13])

[38] This is a relatively routine feature of claim authorisation which ensures the Applicant continues to act with the authority of the group. NTSCORP had notified Tritton Resources of this feature at the meeting held between NTSCORP and Tritton Resources on 1 December 2020, with Mr McLeod attesting that he stated words to the effect of '[t]he Applicant isn't authorised to sign an agreement without the authority of the claim group. That should be factored into your timings for this project' (JM affidavit [28]).

- [39] While NTSCORP had included discussion and potential approval of the agreement on the claim group meeting agenda, there does appear to have been some outstanding issues between the parties. This is reflected in the correspondence from Tritton Resources of 8 June 2021 outlining 4 points where agreement had not been reached. In response, on 9 June 2021, NTSCORP communicated its views on these 4 points and invited Tritton Resources to provide a 'version of the LAA [agreement] that represents the final offer from Aeris/Tritton. I will seek instructions on that version from the Applicant and the claim group at the meeting on 18 to 20 June' (Exhibit JWM-1 p 266). As requested, Tritton Resources provided a final agreement on 15 June 2021.
- [40] Also communicated by Tritton Resources in its 8 June 2021 correspondence was that while it was prepared to continue negotiating, it intended to file a FADA with the Tribunal, the reasons for this being 1) it was of the view the heritage provisions offered were of a reasonable standard; 2) that efforts to access the area were long standing overall and there was a need for commercial certainty; 3) that progress needed to be demonstrated to the State and 4) the parties would not be precluded from further discussion (Exhibit JWM-1 p 263).
- [41] On June 15 2021, following the receipt of the 'final offer' version of the agreement from Tritton Resources, NTSCORP requested Tritton Resources hold off filing a FADA until after the claim group meeting scheduled for 18-20 June 2021, a request to which Tritton Resources agreed (Exhibit JWM-1 p 313 and 314).
- [42] Due to reasons beyond the control of NTSCORP, the claim group meeting was postponed and rescheduled. NTSCORP rescheduled this meeting to 30-31 July 2021, however COVID-19 restrictions were put in place by the NSW government and so this could not proceed in person. During this time, Tritton Resources deferred action until October 2021 (PM affidavit [38]) after which it reinitiated contact with NTSCORP. On 18 October 2021 it sought an update from NTSCORP on a rescheduled claim group meeting (PM affidavit [39], Exhibit PMB9). NTSCORP corresponded with Tritton Resources indicating it was unlikely a claim group meeting would be able to be held prior to the new year (Exhibit JWM-1 p 657).
- [43] As the claim group meeting never occurred, it cannot be confirmed whether the agreement would have been approved, however the advanced state of the drafting would indicate that it was likely to. Irrespective of this, it does indicate that, consistent with previous communications, NTSCORP were intent on seeking instructions from the claim group as a whole and ensuring the terms of authorisation were fulfilled. Having done so, it seems likely that approval or at least some form of conditional approval may have been granted.

- [44] On 27 October 2021, NTSCORP and Tritton Resources convened a meeting. At this meeting, as attested by Mr Maloney, three options were discussed. The first option was to proceed to a FADA with the agreement forming a condition of the determination. This option was not agreed to by NTSCORP because it viewed this course of action as a breach of the terms of the claim authorisation (PM affidavit [41]) given the claim group would not have been able to provide their approval.
- [45] The second option discussed was for Tritton Resources to continue with the FADA without NNWW's agreement, but to commit to the terms of the agreement for a period of 12 months, thereby providing NNWW with sufficient time to meet as a group and decide on the agreement. In this, Mr Maloney states that he 'put to Mr MacLeod that the Grantee Party was not planning to walk away from the agreement' (PM affidavit [42]).
- [46] The third option discussed was for the claim group to conduct a hybrid or virtual meeting in late November or early December 2021 so the FADA could perhaps be avoided. This looks not to have been favoured due to a stated preference for the claim group to hold in-person meetings (PM affidavit [43]) although it does not appear to have been dismissed by NTSCORP entirely.
- [47] Following the 27 October 2021 meeting and prior to the FADA lodgement, there were several further rounds of correspondence (as set out in the chronology of events). On 8 November 2021 Tritton Resources corresponded with NTSCORP noting its acceptance of the challenges of coordinating a claim meeting, reiterating the options outlined above at [44] and [45] and stating it was 'not in any way proposing or planning to walk away from the agreement terms' (Exhibit JWM-1 p 768).
- [48] On 12 November 2021, NTSCORP responded to inform Tritton Resources they would be seeking instructions from an Applicant meeting (Exhibit PBM10). However, on 19 November 2021, NTSCORP further informed Tritton Resources that this meeting was not able to proceed due to it being inquorate and so it was to be rescheduled for 26 November 2021. NTSCORP also requested that Tritton Resources not file the FADA until after instructions had been sought at this meeting (Exhibit PBM11). Tritton Resources agreed to hold off lodging a FADA until after this date (Exhibit PBM12).
- [49] On 29 November 2021, following the Applicant meeting, NTSCORP further corresponded with Tritton Resources. NTSCORP acknowledged the commitment of Tritton Resources to enter into the agreement but stated the Applicant 'is unable to make a joint application to the NNTT ... as to do so would have the same effect as entering into a Land Access Agreement.

To do so would be a breach of the Applicant's authority' (JM affidavit [72] Exhibit JWM-1 p 855). NTSCORP also made two requests to Tritton Resources; 1) delay the lodgement of the FADA; or 2) develop a timetable that would allow for contentions and evidence for the FADA to be lodged after a possible March claim group meeting (which might obviate any need to provide such material if the agreement was approved).

[50] On 1 December 2021, Tritton Resources replied to NTSCORP's two requests. It advised it did not agree to NTSCORP's first request to delay FADA lodgement for what it cited were 'commercial timeframe reasons' (Exhibit JWM-1 p 888). This correspondence further expressed the desire to avoid the costs of preparing materials for a FADA and for a claim group meeting to be held as soon as possible so as to enable the FADA to be withdrawn should the agreement be authorised (Exhibit JWM-1 p 888). The FADA was subsequently lodged on 13 December 2021.

#### *The central issues*

[51] As indicated, the central issue to arise is not that the parties were unable to reach agreement. In fact NNWW says:

This was not a circumstance wherein the parties had reached a stalemate, and no section 31 agreement was likely to be achieved. On the contrary, the Native Title Party intended to put the draft agreement to the NNWW Claim Group in order to seek their consent (or otherwise) to enter into it. However it was not given a reasonable opportunity to do so. (NNWW contentions [48])

[52] Instead, NNWW contend Tritton Resources 'failed to provide the Native Title Party with a reasonable opportunity to comply with its obligations to hold a NNWW Claim Group meeting to enable the Applicant to be expressly Authorised' to make the agreement (NNWW contentions [6]).

[53] In relation to the authorisation conditions, NNWW contends these are not unreasonable, inappropriate or unworkable and describes the reasons these have been put in place (NNWW contentions [49]-[56]), a submission with which Tritton Resources agrees (Tritton contentions [29]). I am also of the view that the authorisation conditions are reasonable and I would agree that neither NTSCORP nor the Applicant acted unreasonably in seeking to ensure they were complied with.

[54] NNWW further contends that Tritton Resources overall conduct in the negotiations was unreasonable and fell below the standard required (NNWW contentions [40]). Additionally, NNWW contends Tritton Resources had formed a singular focus on securing a right to

prospect in an area where native title may exist and this lead to unreasonable conduct amounting to a failure to act in good faith (NNWW contentions [41]). Further to this, while NNWW accepts the lodgement of a FADA is not in itself an indicator of a lack of good faith, ‘in this matter there were unique and pertinent circumstances that existed at the time of lodgement (and in the preceding period) which cast the decision to lodge the FADA in a particular light’ (NNWW contentions [42]), these circumstances being COVID-19 and COVID-19 restrictions applied by the NSW government.

[55] As a result of this NNWW contends Tritton Resources’ ‘conduct in refusing to provide the NNWW Claim Group the opportunity to consider the agreement that was on the table was unreasonable and demonstrates that it failed to negotiate in good faith’ (NNWW contentions [56]).

[56] Tritton Resources contends it acted reasonably in waiting for an NNWW claim group meeting as long as it did prior to lodging the FADA, that it isn’t bound by the claim group’s authorisation conditions, that its overall conduct shows no unreasonable, unexplained or unnecessary behaviour (Tritton contentions [3]) and that it acted reasonably when lodging the FADA (Tritton contentions [25]).

[57] Tritton Resources says that taken alone, the lodging of a FADA cannot be relied upon to demonstrate a want of good faith, which is consistent with the established principle of *Cox* (Tritton contentions [25]). Even though this may be the case, Tritton Resources contends that it did not proceed with the lodgement of the FADA in June 2021 as initially intended due to the circumstances arising from COVID-19, but waited to reassess (Tritton contentions [18]). Tritton Resources also contends it ultimately moved ahead with the FADA due to the inability for the claim group to meet for reasons beyond the control of the parties (Tritton contentions [27]) and due to commercial pressures (Tritton contentions [24]).

[58] One of the central contentions of NNWW is that, taken overall, the conduct of Tritton Resources falls short of what is required. The overall conduct of Tritton Resources then needs to be assessed in what I would frame as the two distinct phases of activity in this matter: the negotiation of the agreement itself and then the attempts at agreement authorisation.

[59] As I have commented previously, the material before me indicates that the parties were seeking to reach an agreement and to resolve the matter. There was open exchange between the parties, there was continuous communication, there was an exchange of ideas and there was modification of position. While this does not mean the exchange was free of tension and

while it is noted that final agreement hadn't been reached, if the claim group had met, they would have been furnished with what may have been a final document for their consideration and possible agreement. As such, it is my view that the conduct of both parties in this phase of activity was credit worthy and displays a state of mind that was focussed on reaching agreement.

[60] As for the second phase of activity, the authorisation of the agreement, I have previously expressed my view that neither NTSCORP nor the NNWW Applicant acted unreasonably in seeking to ensure the terms of the claim authorisation were honoured. Tritton Resources also sets out that it does not contend the authorisation conditions were inappropriate or unreasonable (Tritton contentions [29]).

[61] The issue is whether the conduct of Tritton Resources, in not agreeing to NNWW's request to further delay lodging the FADA, negates conduct during agreement negotiations and overall amounts to a lack of good faith due to the unique circumstances, being an inability for the claim group to meet due to COVID-19 restrictions.

[62] Firstly, all parties seem to be in agreement that the lodgement of a FADA following the conclusion of the 6 month negotiation period does not amount to a lack of good faith. This is an issue that has been well ventilated in the courts and it is widely understood that a party who lodges a FADA is not showing a lack of good faith, they are simply exercising a statutory right they possess. In this case, Tritton Resources' statutory right was enlivened in late March of 2021.

[63] It is unfortunate that it seems reasonably likely that an agreement would have been reached if the claim group meeting had been able to proceed on 18-20 June 2021, however this was not able to occur for various reasons beyond the control of the parties. Even prior to this meeting however, NNWW requested Tritton Resources hold off from lodging a FADA, which it agreed to. It is apparent the agreement not to lodge the FADA also stood for the rescheduled claim group meeting which was to be held in late July 2021.

[64] Upon the advent of COVID-19 restrictions, Tritton Resources decided not to progress with any action until October, re-initiating contact on 18 October 2021 which gave rise to the 27 October meeting at which the three options put forward from Tritton Resources were discussed, that is; 1) to lodge a non-contested FADA with the agreement set as a condition; 2) to lodge a FADA without NNWW's agreement, but to commit to the terms of their 'final offer' agreement for a period of 12 months to allow time for a claim group meeting to



approve; or 3) arrange a hybrid or virtual style claim group meeting in November or December 2021 and try to secure agreement.

- [65] It appears as though the option of a hybrid or virtual style meeting was not favoured by NNWW and so was not explored further. Meetings such as this have become more commonplace for native title groups and prescribed bodies corporate since the emergence of the COVID-19 pandemic although it must be acknowledged that even amongst those who participate in such meetings routinely, in-person meetings appear to be preferred.
- [66] Despite the COVID-19 restrictions that native title groups and others are operating in, there may be alternative mechanisms that can be engaged to enable groups to meet and allow for decisions to be made, be they hybrid, virtual or otherwise. Such as in this case, an act may be proposed that affects the rights and interests of a native title claim group or PBC and, but for a want of being able to meet in person, that act might proceed without their input. In circumstances such as these, it would seem alternative mechanisms may be a useful option to explore in order to assist decision making by native title groups.
- [67] Following the 27 October 2021 meeting, NNWW again requested Tritton Resources to hold off lodging a FADA until instructions could be sought from the NNWW Applicant at a 12 November meeting. When this meeting was inquorate and rescheduled to 19 November, Tritton Resources again agreed. At that meeting, the Applicant confirmed its view that, if it agreed to an uncontested FADA with the agreement as a condition, it would be breaching the terms of its authorisation and so a group meeting would instead be required.
- [68] While it was not explicitly agreed to, the decision of the Applicant essentially gives effect to the second option put forward by Tritton Resources in the October 27 meeting. This option is that the FADA proceed and Tritton Resources remain committed to the terms of the agreement for a set amount of time to provide NNWW with an ability to approve the agreement while the FADA progresses.
- [69] This seems to have been the general understanding of NTSCORP who wrote to Tritton Resources setting out that the Applicant acknowledges the commitment of Tritton Resources to enter into the agreement and proposing to set out a timetable for the lodgement of a FADA to negate the need for the parties to prepare contentions and evidence and to provide the opportunity for the claim group to meet (Exhibit JWM-1 p 855). On this occasion, Tritton Resources did not agree to further delay the lodgement of a FADA.

- [70] I agree with NNWW that the COVID-19 conditions they faced were unprecedented and that, in addition to government imposed restrictions, other concerns for community health are both real and justified. I would further infer that a legal representative such as NTSCORP would not want to violate state health measures or provide the mechanism through which COVID-19 would spread amongst their clients' communities.
- [71] Because of the COVID-19 conditions, NNWW contends Tritton Resources did not provide NNWW with a reasonable opportunity to comply with its obligations (NNWW contentions [6]). As Tritton Resources contends however, these obligations are a matter for NNWW and Tritton Resources is not bound by the authorisation conditions of NNWW (Tritton contentions [30]). Neither for that matter, is NNWW bound by the internal decision making processes of Tritton Resources.
- [72] Even so, having effectively arrived at an agreement, Tritton Resources indicated it would lodge a FADA but remained committed to the terms negotiated. Tritton Resources then agreed to delay lodgement on several occasions until this finally occurred on 13 December 2020. When this lodgement did occur, it was within the context of Tritton Resources having put forward a number of proposals that provided options designed to achieve an outcome in which the terms of the agreement with NNWW would be embedded.
- [73] Further to this, the evaluation of good faith is contextual upon the conduct of all the parties and the nature of the project. In my view, whilst the conduct of NNWW and NTSCORP was of a high standard, the lack of exploration of a hybrid or virtual claim group meeting may have been a missed opportunity. I agree with NNWW that the COVID-19 conditions are unprecedented, but so too is the need to find and implement what may be unprecedented solutions.
- [74] Taken as a whole, I do not agree with NNWW that the conduct of Tritton Resources was unreasonable or lacked good faith. It is my view Tritton Resources communicated as would be expected, exchanged views, modified positions and actively worked towards securing the agreement of NNWW as to the doing of the future act. Further, when faced with issues of agreement authorisation, Tritton Resources showed flexibility and provided options for resolving issues faced by the parties in order to facilitate a positive resolution. As a result of this, I cannot find Tritton Resources failed to negotiate in good faith.

## **DETERMINATION**

[75] I am satisfied Tritton Resources negotiated in good faith as required by s 31(1)(b) of the NTA. Pursuant to s 36(2) of the NTA, I have the power to proceed to make a determination on the future act determination application brought in respect of Exploration Licence EL4962.

**Glen Kelly**  
**Member**  
**23 March 2022**

**Appendix 1: List of documents in exhibit JWM-1 of the affidavit of James William Macleod  
dated 9 February 2022**

<b>Page Reference</b>	<b>Description</b>	<b>Date</b>
JWM-1 pp2-39	Registration Test Decision for the NNWW claim application	12 April 2012
JWM-1 pp40-55	Grant of EL4962 to Nord Australex Nominees Pty Ltd for 12 months.	19 March 1996
JWM-1 pp56-57	Media release 'First confirmed case of novel coronavirus in Australia'.	25 January 2020
JWM-1 pp58-62	Letter from Commonwealth Chief Medical Officer to Australian doctors, identifying Aboriginal and Torres Strait Islander peoples as a vulnerable group.	9 March 2020
JWM-1 pp63-68	Commonwealth Governor-General, Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020.	18 March 2020
JWM-1 pp69-82	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Restrictions on Gatherings and Movement) Order 2020.	30 March 2020
JWM-1 pp83-85	Australian Health Protection Principal Committee advice to National Cabinet, identifying Aboriginal and Torres Strait Islander people over 50 with one or more chronic medical conditions as a vulnerable group.	30 March 2020
JWM-1 pp86-101	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Restrictions on Gatherings and Movement) Order (No 2) 2020.	14 May 2020
JWM-1 pp102-103	Mining Exploration and Geosciences Division COVID-19 response suspending the issue of s 29 notices without native title party consent until 1 September 2020.	19 May 2020
JWM-1 pp104-119	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Restrictions on Gatherings and Movement) Order (No 3) 2020.	29 May 2020
JWM-1 pp120-137	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Restrictions on Gatherings and Movement) Order (No 3) 2020 – amended.	12 June 2020
JWM-1 pp138-152	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Restrictions on Gatherings and Movement) Order (No 4) 2020.	30 June 2020
JWM-1 pp153-154	S 29 notice sent to NTSCORP stipulating the notification day as 24 September 2020.	9 September 2020

<b>Page Reference</b>	<b>Description</b>	<b>Date</b>
JWM-1 pp155-158	Media release 'COVID-19 (Coronavirus) Statistics' identifying first two positive COVID-19 cases in Sydney Northern Beaches area.	17 December 2020
JWM-1 pp159-170	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Northern Beaches) Order 2020.	19 December 2020
JWM-1 pp171-175	Media release 'COVID-19 (Coronavirus) Statistics' identifying 38 positive cases in Sydney Northern Beaches area (aka 'Avalon cluster').	19 December 2020
JWM-1 pp176-177	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Northern Beaches) Repeal Order 2021.	10 January 2021
JWM-1 pp178-218	Correspondence from NTSCORP to Tritton Resources attaching draft Land Access Agreement.	19 January 2021
JWM-1 pp219-257	Correspondence from Tritton Resources to NTSCORP attaching revised draft Land Access Agreement.	2 February 2021
JWM-1 p258	Koori Mail advertisement for NNWW claim group authorisation meeting to be held on 18-19 June 2021.	2 June 2021
JWM-1 pp259-262	Correspondence from NTSCORP to Tritton Resources advising NNWW claim group meeting and requesting comments on draft Land Access Agreement.	7 June 2021
JWM-1 pp263-265	Correspondence from Tritton Resources to NTSCORP regarding progressing the agreement and possibility of filing a FADA.	8 June 2021
JWM-1 pp266-271	Correspondence from NTSCORP to Tritton Resources requesting final version of agreement to present at NNWW claim meeting scheduled for 18-19 June 2021.	9 June 2021
JWM-1 pp272-312	Correspondence from Tritton Resources to NTSCORP attaching final draft land access agreement.	15 June 2021
JWM-1 p313	Correspondence from NTSCORP to Tritton Resources requesting it defer lodging a FADA until after NNWW claim group meeting scheduled for 18-19 June 2021.	15 June 2021
JWM-1 pp313-321	Correspondence from Tritton Resources to NTSCORP agreeing to defer lodging a FADA until after the NNWW claim group meeting scheduled for 18-19 June 2021.	16 June 2021
JWM-1 pp322-326	Media release 'COVID-19 (Coronavirus) Statistics' confirming first COVID-19 Delta variant cases in Sydney.	17 June 2021
JWM-1 pp327-328	Correspondence from NTSCORP to Tritton Resources advising NNWW claim group meeting was cancelled.	18 June 2021

<b>Page Reference</b>	<b>Description</b>	<b>Date</b>
JWM-1 pp329-367	COVID-19 weekly surveillance in NSW report for week ending 26 June 2021.	6 July 2021
JWM-1 pp368-388	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Greater Sydney) Order (No 2) 2021 – as amended.	26 June 2021
JWM-1 pp389-406	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021.	26 June 2021
JWM-1 pp407-408	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Amendment (No 2) Order 2021.	7 July 2021
JWM-1 pp409-448	COVID-19 weekly surveillance in NSW report for week ending 10 July 2021.	19 July 2021
JWM-1 pp449-450	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Amendment (No 7) Order 2021.	16 July 2021
JWM-1 pp451-460	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Amendment (No 11) Order 2021.	20 July 2021
JWM-1 pp461-469	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Amendment (No 17) Order 2021.	29 July 2021
JWM-1 pp470-512	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021 – as amended.	11 August 2021
JWM-1 pp513-550	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021 – as amended.	14 August 2021
JWM-1 pp551-600	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021.	20 August 2021
JWM-1 pp601-656	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021 – as amended.	10 September 2021
JWM-1 p657	Correspondence from NTSCORP to Tritton Resources advising an NNWW claim group meeting is unlikely to be held in 2021.	22 October 2021
JWM-1 pp658-693	COVID-19 weekly surveillance in NSW report for week ending 23 October 2021.	4 November 2021

<b>Page Reference</b>	<b>Description</b>	<b>Date</b>
JWM-1 pp694-715	SA4 Vaccination Rates (AIR Indigenous Population) as at 26 October 2021.	27 October 2021
JWM-1 pp716-767	New South Wales Minister for Health and Medical Research, Public Health (COVID-19 General) Order 2021 – as amended.	1 November 2021
JWM-1 pp768-769	Correspondence from Tritton Resources to NTSCORP advising its intention to lodge FADA and commitment to terms of final draft land access agreement.	8 November 2021
JWM-1 pp770-772	NSW Government roadmap to opening NSW.	8 November 2021
JWM-1 pp773-804	COVID-19 weekly surveillance in NSW report for week ending 8 January 2022.	20 January 2022
JWM-1 pp805-835	COVID-19 weekly surveillance in NSW report for week ending 27 November 2021.	3 December 2021
JWM-1 pp836-854	Australian Government COVID-19 Vaccine Roll-out.	27 November 2021
JWM-1 pp855-856	Correspondence from NTSCORP to Tritton Resources regarding timetable for lodging FADA.	29 November 2021
JWM-1 pp857-887	SA4 Vaccination Rates (AIR Indigenous Population) as at 30 November 2021.	1 December 2021
JWM-1 p888	Correspondence from Tritton Resources to NTSCORP advising that it is committed to the land access agreement notwithstanding the FADA.	1 December 2021
JWM-1 pp889-920	COVID-19 weekly surveillance in NSW report for week ending 8 January 2022.	20 January 2022
JWM-1 pp921-942	Australian Government COVID-19 Vaccine Rollout.	2 February 2022
JWM-1 pp943-953	NSW Government Health Statistics - Locally acquired COVID-19 cases and tests up to 4pm 2 February 2022.	2 February 2022

**Appendix 2: List of documents in exhibits PBM1-12 of the affidavit of Paul Barry  
Maloney dated 16 February 2022**

<b>Reference</b>	<b>Description</b>	<b>Date</b>
PBM1	Curriculum Vitae – Paul Barry Maloney.	n.d.
PBM2	ASIC Current Organisation Extract for Tritton Resources.	16 February 2022
PBM3	Extract from Aeris Resources Limited website (parent company of Tritton Resources).	16 February 2022
PBM4	Exploration Licence EL4962 Instrument of Renewal until 19 March 2022.	1 May 2017
PBM5	Correspondence from Tritton Resources to NTSCORP attaching chronology of negotiations, s 29 notice, land access agreement as at 16 March 2020 & list of outcomes from meeting on 25 May 2019.	3 December 2020
PBM6	Tritton Resources Budgery Land Access Agreement Presentation to NNWW and NTSCORP at meeting.	6 February 2021
PBM7	Minutes from above meeting.	6 February 2021
PBM8	Correspondence from Tritton Resources to NTSCORP regarding above meeting.	11 February 2021
PBM9	Correspondence from Tritton Resources to NTSCORP enquiring about date for NNWW claim group meeting.	18 October 2021
PBM10	Correspondence from NTSCORP to Tritton Resources confirming they would discuss the agreement at the NNWW Applicant meeting the following week.	12 November 2021
PBM11	Correspondence from NTSCORP to Tritton Resources advising the NNWW Applicant meeting was inquorate and rescheduled to following week.	19 November 2021
PBM12	Correspondence from Tritton Resources to NTSCORP confirming it would hold off on FADA lodgement until after the rescheduled NNWW Applicant meeting.	20 November 2021



### Appendix 3: Chronology

Date	Description	Source
25 November 2020	Tritton Resources corresponds with NTSCORP requesting meeting.	JM affidavit [28]
1 December 2020	Meeting occurs between Tritton Resources and NTSCORP. Tritton Resources notified of terms of NNWW claim group authorisation and ‘that should be factored into your timings for this project’.	JM affidavit [28], PM affidavit [22]
3 December 2020	Correspondence from Tritton Resources to NTSCORP following from 1 December 2020 meeting including further copy of Tritton Resources revised draft agreement from 16 March 2020.	PM affidavit [23]
19 January 2021	NTSCORP provides revised draft agreement in response to Tritton Resources’ previous draft.	JM affidavit [31]), PM affidavit [27]
2 February 2021	Tritton Resources provides revised draft agreement to NTSCORP in addition to verbal contact between parties.	JM affidavit [32], PM affidavit [27]
6 February 2021	Tritton Resources representatives Mr David Hume and Mr Paul Maloney attend meeting of the NNWW Applicant in Bourke and make presentation on project and agreement.	JM affidavit [33], PM affidavit [27]
11 February 2021	Tritton Resources corresponds with NTSCORP following up from 6 February meeting with the NNWW Applicant.	PM affidavit [28]
7 April 2021	NTSCORP provides revised draft agreement to Tritton Resources.	PM affidavit [29], JM affidavit [34]
13 April 2021	Tritton Resources provides marked up response to previous draft agreement. Meeting via Microsoft Teams with Tritton Resources, NTSCORP and Legal representative for Tritton Resources to discuss agreement.	PM affidavit [29], JM affidavit [34],
19 May 2021	NTSCORP provides response to Tritton Resources with revised draft agreement.	PM affidavit [29], JM affidavit [34]
27 May 2021	Meeting via Microsoft Teams between Tritton Resources representatives and NTSCORP.	PM affidavit [29],
2 June 2021	NTSCORP publishes advertisement for NNWW claim group meeting on 18 and 19 June 2021 to, amongst other things, gain instruction on proceeding with the agreement or otherwise.	JM affidavit [35]
7 June 2021	NTSCORP corresponds with Tritton Resources to inform Tritton Resources of NNWW claim group meeting scheduled for 18-20 June 2021.	JM affidavit [36], PM affidavit [30]
8 June 2021	Tritton Resources corresponds with NTSCORP outlining 4 outstanding points, indicating it intends to lodge a FADA, its reasons for this and its willingness to	PM affidavit [31], JM affidavit [37], Exhibit JWM-1, pp

Date	Description	Source
	continue discussions.	263-265
9 June 2021	NTSCORP corresponds with Tritton Resources seeking a version of the agreement that represents a final offer from Tritton Resources, providing comments on Tritton Resource's 4 outstanding points made in 8 June 2021 correspondence and advising instructions will be sought from NNWW claim group at meeting scheduled for 18-20 June 2021.	JM affidavit [38], Exhibit JWM-1, pp 266
15 June 2021	Tritton Resources provides their final draft agreement to NTSCORP.	PM affidavit [33], JM affidavit [39], Exhibit JWM-1 pp 272-312
15 June 2021	NTSCORP corresponds with Tritton Resources requesting it to delay lodgement of FADA until after June 2021 NNWW claim group meeting.	JM affidavit [40], PM affidavit [34], Exhibit JWM-1 p 313
16 June 2021	Tritton Resources corresponds to NTSCORP agreeing to delay lodgement of FADA.	PM affidavit [35], JM affidavit [41], Exhibit JWM-1 p 314
18 June 2021	NTSCORP corresponds with Tritton Resources advising postponement of NNWW claim group meeting to 30 and 31 July 2021 due to accommodation issues for group members.	PM affidavit [36], JM affidavit [45], Exhibit JWM-1 p 327
26 June 2021- 11 October 2021	NSW implements stay at home orders for 4 local government areas in Sydney (effective until 2 July 2021) (NSW COVID-19 restrictions evolve from here until 11 October 2021 when stay at home orders are lifted but restrictions for gatherings remain in place).	JM affidavit [48]-[61]
Late June/early July 2021	Tritton Resources defers taking action and reaching out to NTSCORP until October 2021.	PM affidavit [38]
18 October 2021	Tritton Resources corresponds with NTSCORP seeking update on rescheduling of NNWW claim group meeting.	PM affidavit [39], JM affidavit [62], Exhibit PBM9
22 October 2021	NTSCORP corresponds with Tritton Resources setting out it is unlikely a NNWW group meeting will be held in 2021 but is intended to be held as soon as practicable in new year due to ongoing COVID-19 concerns in the Aboriginal community.	JM affidavit [63], PM affidavit [40], Exhibit JWM-1 p 657
27 October 2021	Tritton Resources and NTSCORP representatives meet via Microsoft Teams to discuss options moving forward.	PM affidavit [40]-[43]
8 November 2021	Tritton Resources corresponds with NTSCORP indicating its intention to proceed with FADA including options as discussed in 27 October meeting and stating Tritton Resources 'remains fully committed to the terms which have been developed in the Land Access	PM affidavit [44], JM affidavit [67], quote from Exhibit JWM-1 p 768

Date	Description	Source
	Agreement’.	
12 November 2021	NTSCORP corresponds with Tritton Resources advising NTSCORP would further instructions from NNWW Applicants at a meeting the following week.	PM affidavit [45], Exhibit PBM10
14 November 2021	Tritton Resources corresponds with NTSCORP offering to take questions from NNWW Applicants at Applicant meeting.	PM affidavit [46]
19 November 2021	NTSCORP corresponds with Tritton Resources advising the planned NNWW Applicant meeting was inquorate with a further Applicant meeting re-scheduled for 26 November 2021 and requesting Tritton Resources hold off making FADA application until after the re-scheduled Applicant meeting.	PM affidavit [47], Exhibit PBM11
20 November 2021	Tritton Resources corresponds with NTSCORP advising Tritton Resources agrees to hold off making FADA until after the 26 November 2021 NNWW Applicant meeting.	PM affidavit [48], Exhibit PMB 12
29 November 2021	NTSCORP corresponds with Tritton Resources to (in part) request Tritton Resources delay in filing FADA until after NNWW claim group are able to consider agreement, with hope that a meeting will be able to be called in early 2022. NTSCORP also acknowledges commitment of Tritton Resources to enter into agreement.	PM affidavit [49], JM affidavit [72], Exhibit JWM-1 p 855
1 December 2021	Tritton Resources corresponds to NTSCORP advising it could not further delay lodgement of FADA until January 2022 due to commercial pressures, reiterates commitment to enter into agreement.	PM affidavit [51], JM affidavit [74], Exhibit JWM-1 p 888
13 December 2021	Tritton Resources lodges FADA.	