

# NATIONAL NATIVE TITLE TRIBUNAL

*Barada Kabalbara Yetimarala People v Orion Gold NL and Another*, [2014] NNTTA 92 (18 September 2014)

**Application No:** QO2014/0028

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

- and -

**IN THE MATTER of an inquiry into an expedited procedure objection application**

**Amy Lester and Others on behalf of the Barada Kabalbara Yetimarala People (QC2013/004) (native title party)**

- and -

**Orion Gold NL (grantee party)**

- and -

**The State of Queensland (Government party)**

## **EXPEDITED PROCEDURE OBJECTION APPLICATION DISMISSED**

**Tribunal:** James McNamara, Member  
**Place:** Brisbane  
**Date of dismissal:** 18 September 2014

**Catchwords:** Native title – future act – proposed grant of exploration permit – expedited procedure objection application – claim no longer registered – no registered native title claimant – change in Applicant – expedited procedure objection application dismissed.

**Legislation:** *Native Title Act 1993* (Cth) ss 29, 30, 32, 76, 77

**Representative of the native title party:** Ms Kelly Thomas-Greer, Queensland South Native Title Services Ltd

**Representative of the Government party:** Mr Chris Rawlings, Department of Natural Resources and Mines  
Ms Kimberley Steer, Department of Natural Resources and Mines

**Representatives of the grantee party:** Ms Eden Hodson, UTM Global Pty Ltd

## **REASONS FOR DECISION TO DISMISS EXPEDITED PROCEDURE OBJECTION APPLICATION**

[1] The State of Queensland ('Government party') gave notice under s 29 of the *Native Title Act 1993* (Cth) ('the Act') of its intention to grant exploration permit for minerals 25283 ('the proposed permit') to Orion Gold NL ('the grantee party') and included a statement that it considered that the proposed future act attracted the expedited procedure. The notification day was specified on the s 29 notice as 6 November 2013 (see s 29(4)(a) of the Act).

[2] An objection to the inclusion of the expedited procedure statement may be made to the National Native Title Tribunal ('the Tribunal') within 4 months of the 'notification day' (see s 32(3) of the Act). Sections 32(3) and s 30(1)(b) of the Act explain that an objection may be lodged by any registered native title claimant in respect of the relevant land or waters who is registered at four months from the notification day provided the claim was filed before the end of three months from the notification day. The Act also provides for an objection to be lodged by a registered native title body corporate (see ss 32(3) and s 30(1)(a) of the Act).

[3] On 5 March 2014, Amy Lester and others on behalf of the Barada Kabalbara Yetimarala People ('the native title party') lodged an objection application with the Tribunal's Brisbane office in relation to the proposed permit, objecting to the inclusion of the statement on the notice that the expedited procedure applies to the grant of the proposed permit (see s 32(1) of the Act).

[4] The objection application was received within four months of the notification day, as required by s 32(3) of the Act. At the end of the four month notification period, 100 per cent of the proposed permit fell within the native title party's claim (QC2013/004; QUD383/2013) area.

[5] On 21 March 2014, President Webb QC appointed herself as the Member for the purpose of the objection application and she accepted the objection application pursuant to ss 76 and 77 of the Act on 27 March 2014. On 28 April 2014, President Webb QC appointed me as the Member to constitute the Tribunal for the purpose of the objection application.

[6] The objection application was listed as part of the Tribunal's monthly status conference, to be heard on 2 May 2014. On 1 May 2014, the native title party's representative, Ms Thomas-Greer, emailed the Tribunal indicating agreement in principle had been reached and

seeking for the matter to be adjourned to next month's status conference. Ms Thomas-Greer did not attend the 2 May 2014 status conference, during which the grantee party representative, Ms Hodson, confirmed the agreement was ready for execution and the matter was adjourned for one month. At the next status conference on 30 May 2014, Ms Hodson indicate a minor change was being made to the agreement, and the matter was adjourned to the 4 July 2014 status conference.

[7] On 3 July 2014, Ms Thomas-Greer informed the Tribunal of confidentiality concerns surrounding s 66B Federal Court proceedings to appoint a new Applicant for the native title party's claim. She requested the proposed permit be removed from the status conference list; I granted this request and sought written updates from the parties. On 3 July 2014, the Tribunal received a confidential written update from Ms Thomas-Greer regarding the s 66B proceedings.

[8] On 31 July 2014, the Federal Court made orders in the matter of Barada Barna People (native title determination application QUD756/2013) affecting the Barada Kabalbara Yetimarala People (the persons comprising the Applicant for Barada Kabalbara Yetimarala People are the second to twelfth respondents to the Barada Barna People matter) and consequently the subject objection applications. Orders 1-2 of Logan J read as follows:

1. The first respondent's decision of 27 September 2013 to register in the Register of Native Title Claims (the Register), the claim as made by the second to twelfth respondents as applications in proceeding QUD 383 of 2013 is set aside.
2. The first respondent is to amend the Register accordingly.

[9] The effect of these orders was to require removal of the native title party's claim from the Register of Native Title Claims, which took place on 31 July 2014.

[10] On 1 August 2014, the Tribunal wrote to the native title party's representative, Ms Thomas-Greer, to draw attention to the 31 July orders, the claim's removal from the Register of Native Title Claims, s 30(2) of the Act which provides that a person ceases to be a native title party if the person ceases to be a registered native title claimant and s 148(a) which provides that the Tribunal may dismiss an application if the Tribunal is satisfied it is not entitled to deal with it. A confidential update was received from Ms Thomas-Greer regarding the s 66B proceedings on 15 August 2014.

[11] On 21 August 2014, the Federal Court received an amended application on behalf of Barada Kabalbara Yetimarala People. However, this amended claim is not registered. A further confidential update was received from Ms Thomas-Greer on 26 August 2014.

[12] On 26 August 2014, the Tribunal wrote to the parties to the objection applications advising as follows:

On 31 July 2014 Justice Logan ordered that the Native Title Registrar's decision to register the Barada Kabalbara Yetimarala People's claim be set aside. The claim was subsequently removed from the Register of Native Title Claims. I note that an amended Form 1 has been lodged and is currently being registration tested, however, currently, BKY is not a registered native title claimant.

I have today spoken with Member McNamara and the Tribunal's In-house Counsel. Member McNamara has indicated that these matters will be dismissed pursuant to s 148(a) of the *Native Title Act* as there is no longer a native title party for the objections (s 30(2)) and so he no longer has jurisdiction to deal with them.

It is a matter for the parties as to whether they still wish to reach agreement. The option remains for the objections to be withdrawn at any point before the dismissal decision is handed down.

[13] To date, the native title party's representative has not withdrawn the objection applications.

[14] As the Barada Kabalbara Yetimarala People no longer have a registered claim and have ceased to be a native title party under s 30(2) of the Act, I have decided the Tribunal can no longer deal with these objections, as per s 148(a) of the Act.

### **Determination**

[15] The determination of the Tribunal is that the objection application lodged by the Barada Kabalbara Yetimarala People in respect of exploration permit for minerals 25283 be dismissed.

**James McNamara**  
**Member**  
**18 September 2014**