

NATIONAL NATIVE TITLE TRIBUNAL

Barada Kabalbara Yetimarala People v Civil & Mining Resources Pty Ltd and Another,
[2014] NNTTA 93 (18 September 2014)

Application Nos: QO2014/0046, QO2014/0047 and QO2014/0061

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

- and -

IN THE MATTER of an inquiry into expedited procedure objection applications

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

- and -

Civil & Mining Resources Pty Ltd (grantee party)

- and -

The State of Queensland (Government party)

EXPEDITED PROCEDURE OBJECTION APPLICATIONS 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 – expedited procedure objection application dismissed – Tribunal satisfied it is not entitled to deal with the application.

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: Mr Tim Ellis, Environment Land Heritage Pty Ltd

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

REASONS FOR DECISION TO DISMISS EXPEDITED PROCEDURE OBJECTION APPLICATIONS

[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 coal 2460 ('the first proposed permit'), 2392 ('the second proposed permit') and 2390 ('the third proposed permit'), to Civil & Mining Resources Pty Ltd ('the grantee party') and included a statement that it considered that the proposed future act attracted the expedited procedure. For the first and second proposed permits, the notification day was specified as 18 December 2013 and for the third proposed permit, 12 February 2014 (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 four 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 in certain circumstances (see ss 32(3) and s 30(1)(a) of the Act).

[3] On 3 April 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 respect of both the first and second proposed permit, objecting to the inclusion of the statement on the notices that the expedited procedure applies to the grant of the proposed permits (see s 32(1) of the Act). On 11 June 2014, the native title party lodged another objection application with the Tribunal's Brisbane office in respect of the third proposed permit.

[4] All three objections were received within four months of the notification day, as required by s 32(3) of the Act. At the end of each four month notification period, 53.51 per cent of the first proposed permit fell within the native title party's claim (QC2013/004; QUD383/2013) area, 83.56 per cent for the second proposed permit and 24.36 per cent for the third proposed permit.

[5] On 28 April 2014, President Webb QC made a standing appointment for me to be the Member to constitute the Tribunal for the purpose of each objection application lodged at the Brisbane office. On 19 May 2014 (in respect of the first and second proposed permits) and 2 July 2014 (for the third), I accepted each objection application as it met the requirements of ss 76 and 77 of the Act.

[6] The first and second objection applications were heard on 30 May 2014 as part of the Tribunal's monthly status conference; the grantee party representative indicated he didn't foresee any problems with his clients entering into an agreement with the native title party and the matter was adjourned. The third proposed permit was not part of that status conference as the associated objection application had not yet been lodged.

[7] On 3 July 2014, one day prior to the next status conference, the native title party representative informed the Tribunal of confidentiality concerns surrounding s 66B Federal Court proceedings to replace the Applicant for the native title party's claim. She requested that any of the native title party's matters be removed from the status conference list; I granted this request and sought written updates from the parties. During July 2014, the Tribunal received various updates regarding their efforts to progress towards agreement.

[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 Federal Court 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 regarding the Federal Court proceedings.

[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 objection applications have not been withdrawn.

[14] As the Barada Kabalbara Yetimarala People no longer have a registered claim and have thus ceased to be a native title party under s 30(2) of the Act, I have decided that the Tribunal is not entitled to deal with these objections, as per s 148(a) of the Act.

Determination

[15] The determination of the Tribunal is that the objections lodged by the Barada Kabalbara Yetimarala People in respect of EPC 2460, EPC 2392 and EPC 2390 be dismissed.

James McNamara
Member
18 September 2014