

NATIONAL NATIVE TITLE TRIBUNAL

Elaine Bullen & Ors on behalf of the Esperance Nyungar People; /Western Australia/Paul Winston Askins & Mining Tenements Investments Pty Ltd [2014] NNTTA 119 (22 December 2014)

Applications No: WO2014/0442, WO2014/0444

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

- and -

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

Elaine Bullen & Ors on behalf of the Esperance Nyungar People (native title party)

- and -

The State of Western Australia (Government party)

- and -

Paul Winston Askins (grantee party)

- and -

Mining Tenements Investments Pty Ltd (grantee party)

DECISION TO DISMISS OBJECTION APPLICATION

Tribunal: Member Helen Shurven

Place: Perth

Date: 22 December 2014

Catchwords: Native title – future act – proposed grant of exploration licence – expedited procedure objection application – ILUA registered – Tribunal has no jurisdiction – objection application dismissed

Legislation: *Native Title Act 1993* (Cth) ss 24EA, 24EB, 29, 148(a)

Cases: *Daniel & Ors/Western Australia/Raymond J T Butler and Stanley A MacDonald*, NNTT WO99/197, [2000] NNTTA 294 (*‘Daniel v Butler & MacDonald’*)

Representative of the native title party: Andrew Burke, Goldfield Land & Sea Council

Representative of the Government party: Ms Bethany Conway, Department of Mines and Petroleum

Representative of the grantee party: Mr Paul Askins & Mr Michael Giles

REASONS FOR DECISION TO DISMISS OBJECTION APPLICATION

- [1] On 12 February 2014 the Government party gave notice under s 29 of the *Native Title Act 1993* (Cth) ('the Act') of its intention to grant exploration licences E63/1679 to Mining Tenements Investments Pty Ltd and E63/1674 to Paul Winston Askins and included in the notice a statement that it considered that the grant attracted the expedited procedure.
- [2] On 10 June 2014, the Esperance Nyungar People lodged expedited procedure objection applications with the National Native Title Tribunal ('the Tribunal') for each of the exploration licences.
- [3] On 21 November 2014, the Tribunal registered an Indigenous Land Use Agreement ('ILUA') made between the Esperance Nyungar People and the State of Western Australia. An ILUA has the effect as if it were a contract among parties to the agreement (as per s 24EA of the Act).
- [4] Clause 5.2 of this ILUA states that all parties consent to the grant of all exploration licences within the agreement area. Both E63/1679 and E63/1674 fall within this area. The ILUA, therefore, satisfies s 24EB(1)(b) & (c) of the Act, validating the future acts, namely the proposed exploration licences E63/1679 and E63/1674.
- [5] On 15 December 2014, the Government party wrote to the Tribunal and all parties suggesting that the Tribunal does not have jurisdiction to determine an objection once the proposed future acts are validated by s 24EB of the Act. As noted in *Daniel v Butler & MacDonald* (at [8]), the Tribunal may dismiss an application if it is satisfied that it is not entitled to deal with the application. On 15 December 2014, the Tribunal wrote to all parties seeking submissions on whether they were content to have the matter dismissed. No submissions were received from any party. I agree that the Tribunal does not now have jurisdiction to deal with this matter.

Decision

- [6] Expedited procedure objection application WO2014/0442 in relation to E63/1679, and WO2014/0444 in relation to E63/1674, are dismissed pursuant to s 148(a) of the *Native Title Act 1993* (Cth).

Helen Shurven
MEMBER
22 December 2014