

NATIONAL NATIVE TITLE TRIBUNAL

Buurabalayji Thalanyji Aboriginal Corporation v GTI Resources Ltd [2014] NNTTA 65
(10 July 2014)

Applications No: WO2013/0514; WO2013/0515; WO2013/0516

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

-and-

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

Buurabalayji Thalanyji Aboriginal Corporation (WCD2008/003) (native title party)

-and-

The State of Western Australia (Government party)

-and-

GTI Resources Ltd (grantee party)

DECISION TO DISMISS OBJECTION APPLICATION

Tribunal: Member Helen Shurven

Place: Perth

Date of dismissal: 10 July 2014

Date of reasons: 10 July 2014

Catchwords: Native title – future act – proposed grant of exploration licences – expedited procedure objection application – failure to comply with directions – objection applications dismissed.

Legislation: *Native Title Act 1993* (Cth) ss 29, 148(b)

Cases: *Teelow v Page* (2001) 166 FLR 266

Representative of the native title party: Mr Jerome Frewen, Desert Management Pty Ltd

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

Representative of the grantee party: Ms Lydia Brisbout, McMahon Mining Title Services Pty Ltd

REASONS FOR DECISION TO DISMISS OBJECTION APPLICATION

Background

- [1] On 24 April 2013, the Government party gave notice under s 29 of the *Native Title Act 1993* (Cth) ('the Act') of its intention to grant exploration licences E08/2445, E08/2446 and E08/2447 ('the proposed licences') to GTI Resources Ltd ('the grantee party') and included in the notice a statement that it considered that the grant attracted the expedited procedure.

- [2] On 20 May 2013, the Buurabalayji Thalanyji Aboriginal Corporation (WCD2008/003), determined from 18 September 2008 ('the native title party') made an expedited procedure objection application against each of the proposed licenses to the National Native Title Tribunal ('the Tribunal') – this application was accepted by the Tribunal as a valid objection.

Relevant facts

- [3] The representative for the native title party, Mr Jerome Frewen, was not available for the first preliminary conference held on 10 September 2013, however, the representative for the grantee party, Ms Lydia Brisbout advised the Tribunal that the grantee party wished, if possible, to incorporate tenements E08/2445, E08/2446 and E08/2447 within an existing agreement between GTI Resources Ltd and the Buurabalayji Thalanyji Aboriginal Corporation.

- [4] The native title party representative was not available for the adjourned preliminary conference held on 24 September 2013. The grantee party representative stated that there had been no contact with the native title party to date and reiterated the grantee party's wish to incorporate E08/2445, E08/2446 and E08/2447 within an existing agreement.

- [5] At a further adjourned preliminary conference held on 8 October 2013, the native title party representative advised that the existing agreement needed to be revised and updated. The matters were adjourned to a status conference on 29 January 2014 to allow time for this to occur and for negotiations to continue. The native title party representative was not available for this status conference and the grantee party representative stated that the possibility of incorporating E08/2445, E08/2446 and

E08/2447 within the existing agreement was still being considered and they were waiting on comments from the native title party.

- [6] At a further status conference held on 19 March 2014, the Tribunal was advised that some progress had been made and agreement was probable to resolve these matters.
- [7] The native title party was not available at a further status conference held on 9 April 2014. Directions were made and sent to all parties on 11 April 2014, requiring all parties to produce contentions and evidence for the conduct of the inquiry to determine whether or not the expedited procedure was attracted. The native title party was to provide a statement of contentions, documentary evidence and witness statements, verified where possible by affidavits, on or before 28 May 2014. The directions contained a statement that an objection may be dismissed pursuant to s 148(b) of the Act if the objector failed within a reasonable time to proceed with the application or to comply with a direction of the Tribunal.
- [8] Neither contentions nor evidence were received from the native title party by the due date of 28 May 2014. No explanation has been provided for the failure to comply with the Tribunal's directions, despite the native title party having been informed of the possible consequences of a failure to comply.

Decision

- [9] In *Teelow v Page* (at [13]) the Tribunal set out the principles applicable when considering dismissal of an objection application under s 148(b) of the Act, which I have had regard to in this matter. In particular, the Tribunal is required to proceed as expeditiously as possible when conducting an inquiry into an expedited procedure objection application.
- [10] The native title party has known that these matters were proceeding to inquiry since 11 April 2014. It is the native title party's responsibility to ensure that contentions and evidence are submitted in a timely manner and in accordance with the Tribunal's directions. On 24 June 2014, the grantee party requested that these matters be dismissed under s 148(b) of the Act, and the Tribunal wrote to the native title party representative, and the Government party to note that no contentions or evidence had been received from the native title party by the due date. Parties were given until close

of business on 26 June 2014 to respond as to why the matter should not be dismissed. The State responded that they supported the matters being dismissed. Mr Frewen was advised by email on 1 July 2014 by the Tribunal that the State supported the dismissal, and that the Tribunal intended to move to dismiss the objection. As at the date of this determination, no response has been received from the native title party.

- [11] In the circumstances, the native title party has been given sufficient opportunity to comply with the directions of the Tribunal and it would be unfair to prejudice the other parties with further delays.

Decision

- [12] As the native title party has failed to comply with directions made by the Tribunal on 11 April 2014, the objection applications WO2013/0514, WO2013/0515 and WO2013/0516 are dismissed pursuant to s 148(b) of the *Native Title Act 1993* (Cth).

Helen Shurven
Member