NATIONAL NATIVE TITLE TRIBUNAL

Raymond Ashwin and Others on behalf of the Wutha People & Others v Dourado Resources Ltd & Another **[2014] NNTTA 78 (30 July 2014)**

Application No: **WO2013/0590 and WO2013/0675**

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

- and -

IN THE MATTER of an inquiry into expedited procedure objection applications

Raymond William Ashwin, June Rose Ashwin, Geoffrey Alfred Ashwin and Ralph Edward Ashwin on behalf of the Wutha People (WC1999/010) (first native title party)

- and –

Evelyn Gilla, William Shay, Rex Shay and WG (name withheld for cultural reasons) on behalf of the Yugunga-Nya People (WC1999/046) (second native title party)

- and -

The State of Western Australia (Government party)

- and -

Dourado Resources Ltd (grantee party)

DETERMINATION THAT THE ACT IS AN ACT ATTRACTING THE EXPEDITED PROCEDURE

Tribunal: Helen Shurven, Member
Place: Perth
Date: 30 July 2014

Catchwords: Native title – future act – proposed grant of exploration licence – expedited procedure objection applications – whether act likely to interfere directly with the carrying on of community or social activities – whether act likely to interfere with sites of particular significance – whether act likely to involve major disturbance to land or waters - expedited procedure attracted

Legislation: *Native Title Act 1993* (Cth), ss 29, 30, 31, 32, 151(2), 237
Mining Act 1978 (WA)
Aboriginal Heritage Act 1972 (WA)

Cases: *Ashwin and Others on behalf of the Wutha People v Peter Romeo Gianni and Another* [2014] NNTTA 23 (‘*Ashwin v Gianni*’)

Les Tullock and Others on behalf of the Tarlpa Native Title Claimants/Western Australia/Bushwin Pty Ltd [2011] NNTTA 22 (‘*Tullock v Bushwin*’)

Little v Oriole Resources Pty Ltd (2005) 146 FLR 576 (‘*Little v Oriole Resources*’)

Smith v Western Australia (2001) 108 FCR 442 (‘*Smith v Western Australia*’)

Western Australia v Smith (2000) 163 FLR 32 (‘*Western Australia v Smith*’)

Yindjibarndi Aboriginal Corporation RNTBC v FMG Pilbara Pty Ltd & Anor [2014] NNTTA 8 (‘*Yindjibarndi Aboriginal Corporation v FMG Pilbara*’)

Representative of the first native title party:	Mr Paul Tolcon, Mony De Kerloy Barristers & Solicitors
Representative of the Second native title party:	Ms Louise Keepa, Yamatji Marlpa Aboriginal Corporation
Representatives of the Government party:	Ms Carol Walls, State Solicitor’s Office Mr Matthew Smith, Department of Mines and Petroleum
Representatives of the grantee party:	Mr Eldon Stone, Anderson’s Tenement Management

REASONS FOR DETERMINATION

[1] On 27 February 2013, the Government party gave notice under s 29 of the *Native Title Act 1993* (Cth) ('the Act') of its intention to grant exploration licence E57/924 ('the proposed licence') to Dourado Resources Ltd ('the grantee party'). The notice includes a statement that the Government party considers the grant attracts the expedited procedure (that is, that the proposed licence is an act that can be done without the normal negotiations required by s 31 of the Act).

[2] The s 29 notice describes the proposed licence as comprising two graticular blocks (approximately 6.1 square kilometres) with a centroid of 27^{o} 13' S, 118^{o} 59' E, located 85 kilometres south easterly of Meekatharra, in the Shire of Meekatharra.

[3] An objection to the inclusion of the expedited procedure statement may be made to the National Native Title Tribunal ('the Tribunal') by any person who, four months after the notification day, is a registered native title claimant in respect of the relevant land or waters (see s 29(2)(b)(i), s 32(3) and s 30(1) of the Act). The notification date for this matter was 27 February 2013. The four month period for lodgement of objections closed on 27 June 2013.

[4] The proposed licence is overlapped as follows:

- the Wutha people's native title claim (WC1999/010 – registered from 15 June 1999) by 100 per cent; and
- the Yugunga-Nya native title claim (WC1999/046 – registered from 12 June 2000) by 100 per cent.

[5] The following expedited procedure objection applications were made to the Tribunal in relation to the proposed licence:

- on 5 June 2013 by the Wutha people ('first native title party'); and
- on 26 June 2013 by the Yugunga-Nya people ('second native title party').

Background

[6] On 16 July 2013 and 30 July 2013 for the first and second native title parties respectively, preliminary conferences were held at which all parties advised they were

wishing to negotiate agreements in relation to the matters. I was appointed to be the Member for the purposes of determining the inquiry, should that be required, on 24 October 2013. At a status conference on 20 November 2013 the grantee party and the first native title party had not been able to reach agreement, so the Tribunal referred the matter to me to make a determination at inquiry. Accordingly, I set directions for an inquiry in that matter the same day. At status conferences on 4 December 2013 and 18 December 2013, the second native title party and the grantee party advised that they were still attempting to negotiate an agreement. At an adjourned status conference on 12 February 2014, the second native title party and the grantee party had not been able to reach agreement. Accordingly, I set directions for an inquiry in that matter the following day.

[7] In compliance with the directions made in the matter relating to the first native title party, submissions and evidence were provided as follows: the Government party's initial evidence on 13 January 2014 through the Department of Mines and Petroleum ('DMP'); the first native title party contentions on 16 January 2014; the grantee party's contentions on 4 February 2014; and the Government party's contentions on 11 February 2014.

[8] In compliance with the directions made in the matter relating to the second native title party, parties provided submissions and evidence were provided as follows: the Government party's initial evidence on 4 March 2014 through DMP; the second native title party contentions on 1 April 2014; the grantee party's contentions on 15 April 2014; and the Government party's contentions on 28 April 2014.

[9] On 19 February and 7 May 2014, the first and second native title parties respectively, and other parties, were sent the following email by the Tribunal:

> If all parties agree to the following points, this listing hearing can be vacated...
>
> (a) you agree that the matter may proceed to inquiry before the Member on the papers (no further hearing will be scheduled) and
>
> (b) you do not intend to make any further submissions.

[10] In respect of both matters, only the Government party confirmed via email that they agreed the matter could proceed to be heard on the papers. The first and second native title parties and the grantee party did not respond, and in particular did not advise any intention to lodge any further submissions with the Tribunal. On 26

February and 15 May respectively, all parties were advised the listing hearing had been vacated and that they would be contacted once a determination had been made.

[11] A copy of a map prepared by the Tribunal's Geospatial Services relating to this inqury was provided to all parties on 11 June 2014, noting the Tribunal's intention to rely on the map unless any party took issue. No party took issue with the map.

[12] As outlined at [10], no parties objected to the matters being determined 'on the papers' (that is, without a hearing). Having considered the materials, I am satisfied that the objections can be adequately determined in this manner (as per s 151(2) of the Act).

Legal principles

[13] Section 237 of the Act provides:

> A future act is an ***act attracting the expedited procedure*** if:
>
> (a) the act is not likely to interfere directly with the carrying on of the community or social activities of the persons who are the holders (disregarding any trust created under Division 6 of Part 2) of native title in relation to the land or waters concerned; and
>
> (b) the act is not likely to interfere with areas or sites of particular significance, in accordance with their traditions, to the persons who are the holders (disregarding any trust created under Division 6 of Part 2) of the native title in relation to the land or waters concerned; and
>
> (c) the act is not likely to involve major disturbance to any land or waters concerned or create rights whose exercise is likely to involve major disturbance to any land or waters concerned.

[14] In relation to the legal principles to be applied in this matter, I adopt those outlined by President Webb in *Yindjibarndi Aboriginal Corporation v FMG Pilbara* at [15]-[21].

[15] Section 32(3) of the Act allows a native title party to object to the inclusion of the expedited procedure statement. The second native title party objection referred to all limbs of s 237, however, in their contentions they have only pursued their objection in relation to s 237(b). Section 32(4) of the Act requires the Tribunal, as the arbitral body, to determine whether the act is an act attracting the expedited procedure, in the context of s 237 of the Act. The criteria in s 237 define what an act attracting the expedited procedure is. Whether or not the native title party offers contentions on all limbs of s 237, the Tribunal must have regard to each of those limbs in the context of the material before the Tribunal. In this matter, there is no evidence or contentions from the second native title party on which I could base a finding in relation to s

237(a) or s 237(c), that the act is one which does not attract the expedited procedure. On that basis, I find the act is unlikely to interfere directly with the carrying on of community and social activities, and unlikely to cause major disturbance to land or waters in relation to the second native title party. However, I will consider of the information provided by the second native title party in the context of s 237(b) of the Act later in this determination.

Evidence in relation to the proposed act

[16] The Government party provided the following documents in relation to the proposed licence:

- A Tengraph plan with topographical detail, tenement boundaries, historical land tenure and Aboriginal communities within and in the vicinity of the proposed licence;
- Reports and plans from the Aboriginal Sites Database maintained by the Department of Aboriginal Affairs ('DAA Database');
- A copy of the proposed licence application;
- A Draft Tenement Endorsements and Conditions Extract; and
- A Tengraph quick appraisal detailing the land tenure, current and historical mining tenements, native title areas, and relevant services and other features within the proposed licence.

[17] The Tengraph quick appraisal establishes the underlying land tenure within the proposed licence to be pastoral lease 3114/898 (Yarrabubba), overlapping the proposed licence by 100 per cent.

[18] There are currently two live prospecting licences overlapping the proposed licence at 3.5 and 31.6 per cent respectively.

[19] The quick appraisal shows that the proposed licence has previously been subject to the following mineral tenure:

- five surrendered exploration licences active between 1993 and 2008, overlapping the proposed licence between 12 and 100 per cent;

- one forfeited mining lease active between 2000 and 2005, overlapping the proposed licence by 35 per cent;
- nine surrendered or cancelled mineral claims, active between 1970 and 1982, overlapping the proposed licence between 2 and 14.1 per cent;
- two forfeited prospecting licences, active between 1994 and 1996, overlapping the proposed licence by 17.5 per cent; and
- one cancelled temporary reserve, active between 1961 and 1962, overlapping the proposed licence by 100 per cent.

[20] The quick appraisal outlines the following services located on the proposed licence:

- three tracks;
- one fence line;
- one yard;
- one well/bore with windmill (East Mill); and
- one minor non-perennial watercourse.

[21] The report from the DAA Database shows there are no Aboriginal sites or 'other heritage places' located on the proposed licence.

[22] There do not appear to be any Aboriginal communities within the proposed licence or the surrounding areas.

[23] The Draft Tenement Endorsement and Conditions Extract indicates the proposed licence will be subject to the standard four conditions imposed on the grant of all exploration and prospecting licences in Western Australia (see *Tullock v Bushwin* [11]-[12]) and two standard conditions imposed for licences overlapping pastoral or grazing leases. These are:

> 1. All surface holes drilled for the purpose of exploration are to be capped, filled or otherwise made safe immediately after completion.
>
> 2. All disturbances to the surface of the land made as a result of exploration, including costeans, drill pads, grid lines and access tracks, being backfilled and rehabilitated to the satisfaction of the Environmental Officer, Department of Mines and Petroleum (DMP). Backfilling and rehabilitation being required no later than 6 months after excavation unless otherwise approved in writing by the Environmental Officer, DMP.

3. All waste materials, rubbish, plastic sample bags, abandoned equipment and temporary buildings being removed from the mining tenement prior to or at the termination of exploration program.

4. Unless the written approval of the Environmental Officer, DMP is first obtained, the use of drilling rigs, scrapers, graders, bulldozers, backhoes or other mechanised equipment for surface disturbance or the excavation of costeans is prohibited. Following approval, all topsoil being removed ahead of mining operations and separately stockpiled for replacement after backfilling and/or completion of operations.

5. The Licensee notifying the holder of any underlying pastoral or grazing lease by telephone or in person, or by registered post if contact cannot be made; prior to undertaking airborne geophysical surveys or any ground disturbing activities utilising equipment such as scrapers, graders, bulldozers, backhoes, drilling rigs; water carting equipment or other mechanised equipment.

6. The Licensee or transferee, as the case may be, shall within thirty (30) days of receiving written notification of:-
    - the grant of the Licence; or
    - registration of a transfer introducing a new Licensee;

   advise, by registered post, the holder of any underlying pastoral or grazing lease details of the grant or transfer.

[24] The following draft endorsements (which differ from conditions in that the licensee will not be liable to forfeit the licence if breached) are also noted:

1. The Licensee's attention is drawn to the provisions of the *Aboriginal Heritage Act 1972* and any Regulations thereunder.

2. The Licensee's attention is drawn to the Environmental Protection Act 1986 and the Environmental Protection (Clearing of Native Vegetation) Regulations 2004, which provides for the protection of all native vegetation from damage unless prior permission is obtained.

In respect to Water Resource Management Areas (WRMA) the following endorsements apply:

3. The Licensee's attention is drawn to the provisions of the:
    - Water Conservation Act, 1976
    - Rights in Water and Irrigation Act, 1914
    - Metropolitan Water Supply, Sewerage and Drainage Act, 1909
    - Country Areas Water Supply Act, 1947
    - Water Agencies (Powers) Act 1984
    - Water Resources Legislation Amendment Act 2007

4. The rights of ingress to and egress from the mining tenement being at all reasonable times preserved to officers of Department of Water (DoW) for inspection and investigation purposes.

5. The storage and disposal of petroleum hydrocarbons, chemicals and potentially hazardous substances in accordance with the current published version of the DoWs relevant Water Quality Protection Notes and Guidelines for mining and mineral processing.

In respect to Artesian (confined) Aquifers and Wells the following endorsement applies:

6. The abstraction of groundwater from an artesian well and the construction, enlargement, deepening or altering of any artesian well is prohibited unless a current licence for these activities has been issued by DoW.

In respect to Waterways the following endorsement applies:

7. Advice shall be sought from the DoW if proposing any exploration within a defined waterway and within a lateral distance of:
   - 50 metres from the outer-most water dependent vegetation of any perennial waterway; and
   - 30 metres from the outer-most water dependent vegetation of any seasonal waterway.

In respect to Proclaimed Ground Water Areas the following endorsement applies:

8. The abstraction of groundwater is prohibited unless a current licence to construct/alter a well and a licence to take groundwater has been issued by the DoW.

First native title party's statement of contentions

[25] The first native title party's contentions appear to be based on a pro forma document submitted in previous expedited procedure matters before the Tribunal. As with previous matters, the first native title party has not provided any material in support of its contentions and contemplates that witnesses (Ms Ashwin and Mr Ashwin) for the first native title party will give evidence in support of its contentions. As with previous matters, the first native title party did not prosecute this intention in any way, either directly or through their representatives. As such I make no further comment about the evidence the first native title party would or would not have given should an oral hearing have been granted.

[26] I refer to my decision in *Ashwin v Gianni* where the native title party contentions are identical to this matter (at paragraphs [26]-[32]), and adopt those paragraphs for the purpose of this matter rather than re-stating those identical contentions.

Second native title party's statement of contentions

[27] The second native title party has provided very broad and limited submissions which address only s 237(b) of the Act (see [15]). I also note the second native title party has provided no evidence to support their contentions.

[28] The second native title party submits that as the grantee party has not provided full details of its proposed exploration, the Tribunal should assume that the grantee party will exercise the full suite of rights available to it under the *Mining Act 1978* (WA) ('Mining Act') (at 14).

[29] The second native title party also contends that the proposed licence may include areas of particular significance to members of the second native title party (at 17), and that without proper Aboriginal heritage site avoidance procedures being undertaken

(including consultation with the second native title party), any such sites may be negatively impacted by the actions of the grantee party on the proposed licence (at 18).

[30] A further argument is made that while the State's protective regime is normally sufficient to protect Aboriginal heritage sites, there are some circumstances where it will be insufficient when matters such as the nature of a site, the number of sites present and the intentions of the grantee party are taken into account (at 21). However, I note the second native title party has not contended that this is the case in relation to the proposed licence, nor has it either contended or provided any evidence that specific sites of particular significance exist within the proposed licence.

[31] It is upon these very broad contentions that the second native title party asserts the grant of the proposed licence will result in activities likely to interfere with sites and areas of particular significance to its members (at 23).

Grantee party contentions

[32] The grantee party has provided identical contentions in relation to the matters concerning the first native title party and the second native title party.

[33] The contentions the grantee party has provided largely re-state established law. It has also not provided any evidence or much information in relation to either its proposed exploration program or its intentions in dealing with heritage issues. Such information would have been helpful in assessing the impact the grantee party's activities are likely to have on the proposed licence area in relation to the criteria set out in s 237 of the Act.

[34] The grantee party contends that the grant of the proposed licence will not directly interfere with the carrying on of community or social activities of the first and second native title parties as there are no Aboriginal communities located on the proposed licence (at 3(a)). It further asserts that, as neither of the native title parties have provided any evidence and only made broad assertions, no weight should be placed on any of their contentions (at 11).

[35] In relation to s 237(b) of the Act, the grantee party contends that the grant of the proposed licence is unlikely to interfere with areas or sites of particular significance to

the native title parties because of the protection of the *Aboriginal Heritage Act 1972* (WA) ('AHA') (at 5(a) to (d)).

[36] The grantee party goes on to say (at 15) that its 'proposed condition' adds weight to the effectiveness of the State's protective regime and decreases the likelihood of interference with areas or sites of particular significance, and this is relevant to the Tribunal's task of weighing up the risk of interference. However, there is no other reference to such a condition, nor any explanation or description of what the grantee party's 'proposed condition' actually is. As such, I cannot give it any weight in my deliberations.

[37] In relation to s 237(c) of the Act, the grantee party contends (at 6(a)) that the grant of the proposed licence is unlikely to involve major disturbance to land or waters or create rights likely to cause such disturbance due to the imposition of the conditions (listed at [23]) on the grant of the proposed licence by the Government Party.

Government party contentions and evidence relating to the first native title party's objection application

[38] The Government party contends, among other things, that the rights which will be conferred by the proposed licence (if granted) are set out in section 66 of the Mining Act (and includes an extract), and that the exploration license is for an initial term of 5 years and is renewable (at 13–14).

[39] The Government party argues (at 16) that the grantee party's contentions indicate it is aware of its obligations under the AHA and in particular will not excavate, destroy or damage or conceal, or in any way alter any Aboriginal site or any object on or under an Aboriginal Site.

[40] The Government party states it proposes to impose the endorsements and conditions set out in the Draft Tenement Endorsement and Conditions Extract (at 17) (as outlined at [23] – [24] of this decision).

[41] The Government party states, in the absence of evidence to the contrary, the Tribunal must assume that a grantee party will not act in breach of the relevant statue law, regulations or conditions imposed upon them (at 19).

Government party's contentions in relation to s 237(a)

[42] The Government party submits there is no evidence to support the first native title party's assertions that certain community and social activities are carried out on the proposed licence (at 39–40). The Government party also submits (at 41) there is not likely to be direct interference with such activities given:

- prior mineral exploration activity and the overlap of the pastoral lease are likely to have affected, and continue to affect the extent to which community and social activities can be carried out on the proposed licence;
- there are no Aboriginal communities within the area;
- the grantee party plans low-scale and infrequent exploration activities, which are unlikely to more than occasionally intersect with the community and social activities of the first native title party;
- exploration activities are inherently capable of coexistence with hunting activities of a native title party; and
- grantee party and first native title party activities may intersect but that does not mean a real chance of substantial interference or restriction of access.

[43] I accept most of these arguments in this matter. However, I note there is no evidence provided to the Tribunal that the grantee party's exploration activities on the proposed licence will be low-scale and infrequent. As the grantee party has provided no evidence of their proposed exploration activities, I have made this decision on the basis that the grantee party may exercise the full suite of rights available to it under the Mining Act (*Western Australia v Smith* (at 50–51).

Government party's contentions in relation to s 237(b)

[44] The Government party correctly states the native title party has not produced any evidence that any sites or areas of particular significance exist within the proposed licence or even contended that any sites of particular significance exist on the proposed licence (at 50–51). It contends (at 53) that even if there are areas or sites of particular significance within the proposed licence, interference with those areas or sites is unlikely because:

- the activities of the grantee party are likely to be of the same, or no more significant, impact than previous mining and pastoral activities on the proposed licence; and

- the AHA and its associated processes are likely to prevent interference with any area or site of particular significance.

[45] I accept both of these arguments in this matter.

Government Party's contentions in relation to s 237(c)

[46] The Government party quite correctly points out (at 59) that the first native title party's contentions do not point to any form of disturbance to land or waters resulting from the grant of the proposed licence, but rather discusses potential disturbance to the Aboriginal people who use the land, and does not present any evidence in support.

[47] The Government party states this limb of s 237 is only attracted when there is a significant, direct physical disturbance of land or waters (at 60), and that the grant of the proposed licence is not likely to involve such because (at 62):

- the State's regulatory regimes will likely avoid any such major disturbance;

- the Government party intends to impose conditions and endorsements on the proposed licence;

- any authorised disturbance to land and waters caused by the activities of the grantee party may be mitigated by the proposed conditions requiring rehabilitation of the land following the completion of exploration;

- the proposed licence has been subject to previous mineral exploration; and

- it does not appear that the proposed licence area has any physical characteristics that would make the grantee party's activities likely to result in a major disturbance to land and waters.

[48] Again I accept these arguments in the absence of contrary evidence from the first native title party.

Government party contentions and evidence relating to the second native title party's objection application

[49] The Government party contends, among other things, that: the rights which will be conferred by the proposed licence (if granted) are set out in section 66 of the *Mining Act* (and includes an extract) and the exploration license is for an initial term of 5 years and is renewable (at 13–14).

[50] The Government party argues (at 16) that the grantee party's contentions indicate it is aware of its obligations under the AHA and in particular will not excavate, destroy or damage or conceal, or in any way alter any Aboriginal site or any object on or under an Aboriginal Site.

[51] The Government party states it proposes to impose the endorsements and conditions set out in the Draft Tenement Endorsement and Conditions Extract (at 17) (as noted at [23]-[24] of this decision).

[52] It also points out that the grantee party sent a letter of offer to enter into a Regional Standard Heritage Agreement ('RSHA') to the second native title party on 3 December 2012 (at 19). However, I note there is no mention of this in the grantee party's contentions and no evidence of this offer in the grantee or Government party materials.

[53] The Government party states, in the absence of evidence to the contrary, the Tribunal must assume that a grantee party will not act in breach of the relevant statue law, regulations or conditions imposed upon them (at 21).

Government party's contentions in relation to s 237(a) and (c)

[54] As previously discussed at [15], the second native title party has only pursued its objection in relation to s 237(b). For the reasons outlined at [15] I have determined that the grant of the proposed licence is unlikely to interfere directly with the carrying on of community and social activities, and unlikely to cause major disturbance to land or waters in relation to the second native title party.

Government party's contentions in relation to s 237(b)

[55] The Government party correctly states the second native title party has not produced any evidence that any sites or areas of particular significance exist within the proposed licence, or even contended that any sites of particular significance exist on

the proposed licence (at 22 and 48). The Government party argues (at 49) that even if there are areas or sites of particular significance within the proposed licence, interference with those areas or sites is unlikely because:

- the activities of the grantee party are likely to be of the same, or no more significant, impact than previous mining and pastoral activities on the proposed licence;
- the AHA and its associated processes are likely to prevent interference with any area or site of particular significance;
- the grantee party is aware of its obligations under the AHA; and
- the grantee party has offered to enter into a RSHA with the second native title party.

[56] I accept the first three of these arguments, but not the fourth argument as there is no evidence of an RSHA having been offered.

Considering the Evidence in context of s 237 of the Act – the first native title party

Interference with community or social activities – s 237(a)

[57] The Tribunal is required to make a predictive assessment as to whether the grant of the proposed licence and activities undertaken pursuant to it are likely to interfere with the community or social activities of the first native title party (in the sense of there being a real risk of interference) (see *Smith v Western Australia* at [23]). The notion of direct interference involves an evaluative judgment that the future act is likely to be the proximate cause of the interference and must be substantial and not trivial in its impact on community or social activities (*Smith v Western Australia* at [26]). The assessment is also contextual, taking into account other factors which may have already had an impact on a native title party's community or social activities (such as mining or pastoral activity) (*Smith v Western Australia* at [27]).

[58] I accept the Government party's argument that the first native title party has not made out any likely interference with community or social activities, even assuming the grantee party was to assert the full suite of rights available to it. As such, I conclude it

is unlikely that the grantee party activities will interfere with the community or social activities of the first native title party for the purposes of s 237(a) in this matter.

Interference with sites or areas of particular significance – s 237(b)

[59] In relation to s 237(b), the issue the Tribunal is required to determine is whether there is likely to be (in the sense of a real chance or risk of) interference with areas or sites of particular (that is, more than ordinary) significance to the first native title party in accordance with their traditions.

[60] I accept the Government party's argument that the first native title party has not provided evidence to suggest there are sites or areas of particular significance on the proposed licence. Even had there been such sites, based on the available evidence, I accept the State's regulatory regime in this matter would be sufficient to protect such sites given the previous and current mineral exploration activity over the area and the grantee party's acknowledgment of its responsibilities under the AHA.

[61] As such, I conclude there is not likely to be a real chance or risk of interference with sites or areas of particular significance to the first native title party in this matter for the purposes of s 237(b).

Major disturbance to land or waters – s 237(c)

[62] The Tribunal is required to make an evaluative judgment of whether major disturbance to land and waters is likely to occur (in the sense that there is a real risk of it) from the point of view of the entire Australian community, including the Aboriginal community, as well as taking into account the concerns of the native title party (see *Little v Oriole Resources* at [41]-[57]).

[63] I agree with the Government party that the first native title party has not made out any particular features or aspects on the proposed licence in this matter. I conclude a real risk of major disturbance to land or waters is unlikely to occur, based on the available evidence for the purposes of s 237(c) in relation to the first native title party.

Considering the Evidence in context of s 237 of the Act – the second native title party

Interference with community or social activities – s 237(a); Major disturbance to land or waters – s 237(c)

[64] In its contentions, the second native title party has only pursued its objection relating to s 237(b), and has not addressed s 237(a) and (c). I refer to my reasons at [15] and [54] where I concluded that the grant of the proposed licence is unlikely to interfere directly with the carrying on of community and social activities, and unlikely to cause major disturbance to land or waters in relation to the materials raised by the second native title party.

Interference with sites or areas of particular significance – s 237(b)

[65] In relation to s 237(b), the issue the Tribunal is required to determine is whether there is likely to be (in the sense of a real chance or risk of) interference with areas or sites of particular (that is, more than ordinary) significance to the first native title party in accordance with their traditions.

[66] I accept the Government party's argument that the second native title party has not provided evidence to suggest there are sites or areas of particular significance on the proposed licence. In fact, the second native title party does not contend there are areas or sites of particular significance on the proposed licence, although it does argue that they *may* exist on the proposed licence. This is insufficient for me to conclude that areas or sites of particular significance do exist on the proposed licence.

[67] Even had there been such sites, based on the lack of evidence from the second native title party, I accept the State's regulatory regime in this matter would be sufficient to protect such sites given the previous and current mineral exploration activity over the area and the grantee party's acknowledgment of its responsibilities under the AHA.

[68] As such, I conclude there is not likely to be a real chance or risk of interference with sites or areas of particular significance to the second native title party in this matter for the purposes of s 237(b).

Determination

[69] The determination of the Tribunal is that the act, namely the grant of exploration licence E57/924 to Dourado Resources Ltd, is an act attracting the expedited procedure.

Helen Shurven
Member
30 July 2014