

NATIONAL NATIVE TITLE TRIBUNAL

Buurabalayji Thalanyji Aboriginal Corporation v Tungsten Mining NL [2014] NNTTA 66
(10 July 2014)

Application No: WO2013/0767

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-

Tungsten Mining NL (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 licence – expedited procedure objection application – failure to comply with directions – objection application 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: Mr Steve Millward, Millward Surveys Pty Ltd

REASONS FOR DECISION TO DISMISS OBJECTION APPLICATION

Background

- [1] On 31 May 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 E08/2448 ('the proposed licence') to Tungsten Mining Pty Ltd ('the grantee party') and included in the notice a statement that it considered that the grant attracted the expedited procedure.
- [2] On 11 July 2013, the Buurabalayji Thalanyji Aboriginal Corporation (WCD2008/003) determined from 18 September 2008 ('the native title party') made an expedited procedure objection application to the National Native Title Tribunal ('the Tribunal') – this application was accepted by the Tribunal as a valid objection.

Relevant facts

- [3] At the first preliminary conference held on 15 October 2013, the representative for the grantee party, Mr Steve Millward, advised the Tribunal that while the grantee party wished to negotiate an agreement to resolve this matter, some time may be needed to do so. The matter was adjourned to the status conference to allow negotiations to continue.
- [4] At the status conference held on 19 February 2014, the grantee party representative advised that Tungsten Mining NL was conducting a review of their tenement holdings however, a draft agreement would be presented for discussion at the next company Board meeting. The matter was adjourned to a further status conference on 19 March 2014. Neither grantee party nor native title party representative was available for this status conference. Directions were then made and sent to all parties on 21 March 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 7 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.

[5] Neither contentions nor evidence were received from the native title party by the due date of 7 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

[6] 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 application.

[7] The native title party has known that the matter was proceeding to inquiry since 21 March 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 18 June 2014 the Tribunal wrote to the native title party representative, and the other parties, to note that the Tribunal had not received contentions or evidence from the native title party by the due date of 7 May 2014. Parties were given until close of business on 20 June 2014 to respond as to why the matter should not be dismissed. As at the date of this determination, no reasons have been received from the native title party, and no responses received from the other two parties.

[8] 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

[9] As the native title party has failed to comply with directions made by the Tribunal on 21 March 2014, the objection application WO2013/0767 is dismissed pursuant to s 148(b) of the *Native Title Act 1993* (Cth).

Helen Shurven
Member

