

NATIONAL NATIVE TITLE TRIBUNAL

Western Desert Lands Aboriginal Corporation (Jamukurnu Yapalikunu) v Goldstone Holdings Pty Ltd[2014] NNTTA 72 (25 July 2014)

Application No: WO2013/1139

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

-and-

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

Western Desert Lands Aboriginal Corporation (WCD2002/002) (native title party)

-and-

The State of Western Australia (Government party)

-and-

Goldstone Holdings Pty Ltd (grantee party)

DECISION TO DISMISS OBJECTION APPLICATION

Tribunal: Member Helen Shurven

Place: Perth

Date of dismissal: 25 July 2014

Date of reasons: 25 July 2014

Catchwords: Native title – future act – proposed grant of prospecting 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 Matthew Kinder, Western Desert Lands Aboriginal Corporation

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

Representative of the grantee party: Ms Sara Winton, McMahon Mining Title Services Pty Ltd

REASONS FOR DECISION TO DISMISS OBJECTION APPLICATION

Background

- [1] On 6 September 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 E45/4223 ('the proposed licence') to Goldstone Holdings Pty Ltd ('the grantee party') and included in the notice a statement that it considered that the grant attracted the expedited procedure.
- [2] On 12 November 2013, the Western Desert Lands Aboriginal Corporation (WCD2002/002) determined from 27 September 2002 ('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] The first preliminary conference for this matter was held on 21 January 2014. Following advice from the native title party that they wished to resolve this objection via agreement if possible, the matter was adjourned to the status conference to allow negotiations to occur.
- [4] Due to the age of the objection application, on 4 June 2014 the Tribunal set dates for the matter to proceed to inquiry. Directions were then made and sent to all parties on 4 June 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 16 July 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 16 July 2014.

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 4 June 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 17 July 2014 the State made an application for the objection to be dismissed under s 148(b) of the *Native Title Act 1993* (Cth). The Tribunal subsequently wrote to the native title party representative, and the grantee party, to note that no contentions or evidence had been received from the native title party by the due date of 16 July 2014.
- [8] Parties were given until close of business on 23 July 2014 to respond as to why the matter should not be dismissed. No written correspondence was provided in response from any party. The Tribunal confirmed on 27 July 2014 that the native title party had received the email with the request for dismissal. As such, I conclude the native title party have been informed of the possible consequences of a failure to comply with the directions of the Tribunal, and have been so aware since the directions were set on 4 June 2014. As at the date of this determination, no reasons have been received from the native title party, and no responses received from the grantee party.
- [9] 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

[10] As the native title party has failed to comply with directions made by the Tribunal on 4 June 2014, the objection application WO2013/1139 is dismissed pursuant to s 148(b) of the *Native Title Act 1993* (Cth).

Helen Shurven
Member