

NATIONAL NATIVE TITLE TRIBUNAL

Buurabalayji Thalanyji Aboriginal Corporation v GTI Resources Ltd [2014] NNTTA 95
(25 September 2014)

Application No: WO2013/1063

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: 25 September 2014

Date of reasons: 25 September 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:

Ms Lydia Brisbout, McMahon Mining Title Services Pty Ltd

REASONS FOR DECISION TO DISMISS OBJECTION APPLICATION

Background

- [1] On 20 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 E08/2099 (AM429589) ('the proposed licence') 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 23 October 2013, the Buurabalayji Thalanyji Aboriginal Corporation (WCD2008/003) determined from 18 September 2008 ('the native title party'), lodged an objection against the application of the expedited procedure to the proposed licence with 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 4 February 2014. At that time the representative for the native title party, Mr Jerome Frewen, and the representative for the grantee party, Ms Lydia Brisbout, advised that parties wished, if possible, to incorporate the proposed licence within an existing agreement between GTI Resources Ltd and the Buurabalayji Thalanyji Aboriginal Corporation. The matter was adjourned to a status conference on 4 June 2014 to allow time for these negotiations to occur.
- [4] On 4 June 2014, parties advised that negotiations were ongoing and the matter was close to resolution. The matter was adjourned to a further status conference on 2 July 2014.
- [5] On 2 July 2014, parties advised that negotiations were still ongoing and timeframes for completion were unclear. In the absence of any agreement, or any clear progress towards agreement, directions were made on 2 July 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 13 August 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.

- [6] Neither contentions nor evidence were received from the native title party by the due date of 13 August 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

- [7] 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.
- [8] The native title party has known that this matter was proceeding to inquiry since 2 July 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 15 September 2014, the Government party requested that this matter be dismissed under s 148(b) of the Act, and the Tribunal wrote to the native title party representative and the grantee party representative, 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 18 September 2014 to respond as to why the matter should not be dismissed. As at the date of this determination, no response has been received from either the grantee or native title 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 2 July 2014, the objection application WO2013/1063 is dismissed pursuant to s 148(b) of the *Native Title Act 1993* (Cth).

Helen Shurven
Member