

NATIONAL NATIVE TITLE TRIBUNAL

Buurabalayji Thalanyji PBC Aboriginal Corporation v North West Stone Pty Ltd [2015] NNTTA 17 (10 April 2015)

Application No: WO2014/0334

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 PBC Aboriginal Corporation (native title party)
(WCD2008/003)

-and-

The State of Western Australia (Government party)

-and-

North West Stone Pty Ltd (grantee party)

DECISION TO DISMISS EXPEDITED PROCEDURE OBJECTION APPLICATION

Tribunal: Member Helen Shurven
Place: Perth
Date of dismissal: 7 April 2015
Date of reasons: 10 April 2015

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

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

Cases: *Judy Hughes on behalf of Thalanji/Western Australia/Regent Resources Limited; Ochre Resources Ltd*, [2006] NNTTA 18 (*‘Hughes v Regent Resources & Ochre Resources’*)

Representatives

Native title party: Jerome Frewen, Desert Management Pty Ltd

Government party: Bethany Conway, Department of Mines and Petroleum

Grantee party: Steve Millward, Millward Surveys Pty Ltd

REASONS FOR DECISION TO DISMISS EXPEDITED PROCEDURE OBJECTION APPLICATION

Background

- [1] On 2 May 2014, the State of Western Australia ('the Government party') gave notice under s 29 of the *Native Title Act 1993* (Cth) ('the Act') of its intention to grant exploration licence E08/2576 ('the proposed tenement') to North West Stone Pty Ltd ('the grantee party'). The Government party included in the notice a statement that it considered the grant attracted the expedited procedure.
- [2] On 19 May 2014, the Buurabalayji Thalanyji Aboriginal Corporation ('the native title party') lodged an expedited procedure objection application with the National Native Title Tribunal ('the Tribunal') in relation to the notice about the proposed tenement.

Relevant facts

- [3] On 6 August 2014, parties were advised an objection application had been made. At the first preliminary conference on 16 September 2014, the grantee party was not represented as the Tribunal had received no contact details despite having written to the grantee party on 17 June and 6 August regarding the matter. At an adjourned preliminary conference on 30 September 2014, the grantee party representative advised that his client was negotiating with other companies to enter into a joint venture. The grantee party representative also advised that he would seek further instructions from his client.
- [4] At the first status conference on 21 January 2015, the native title party representative advised that he had sent an email to the grantee party in October 2014 but had not received a response. The grantee party representative advised that his client did not wish to incur any further costs and would not be signing the native title party's preferred agreement.
- [5] On 21 January 2015, directions were set for inquiry so that the Government party had to comply with initial submissions on 4 February 2015, and the native title party was required to provide contentions, supported by affidavits and any other documentary evidence, to the Tribunal and all other parties on or before 4 March 2015. On 5 March 2015, the Government party asked that the objection application be dismissed pursuant to s 148(b) of the *Native Title Act 1993* (Cth) as the native title party had failed to comply by 4 March 2015.

- [6] On 10 March 2015, the Tribunal contacted the grantee party and native title party to advise them of the Government party's request and asked both parties to confirm that they had received the Government party's initial submissions which had been provided to the Tribunal on 4 February 2015. Neither party responded to the Tribunal's correspondence. As there was confusion about whether the other parties had received the Government party's initial submissions, further directions were made on 31 March 2015 rather than dismiss the objection application. A springing order was attached to the directions, in that if the native title party failed to comply by 7 April 2015, the objection application would be dismissed.
- [7] On 31 March 2015, the Government party resent their evidence to the Tribunal and the other parties.
- [8] By the due date for compliance for the native title party, no contentions had been received nor had there been any contact from the native title party requesting additional time for compliance.
- [9] As the native title party had not complied with the directions of the Tribunal, nor had any contact been made with the Tribunal, the application is dismissed.
- [10] In making the decision to dismiss this application for non-compliance, I adopt the approach taken by the Tribunal in *Hughes v Regent Resources & Ochre Resources*, where the native title party had failed to comply with the Tribunal's directions, having submitted no contentions or documentary evidence despite having been informed of the possible consequences of a failure to comply.

Decision

- [11] Expedited procedure objection application WO2014/0334 is dismissed pursuant to s 148(b) of the *Native Title Act 1993* (Cth).

Helen Shurven
Member