

# NATIONAL NATIVE TITLE TRIBUNAL

*Raymond William Ashwin & Ors on behalf of the Wutha People v Heavy Metal Exploration Pty Ltd* [2015] NNTTA 18 (1 May 2015)

Application No: WO2014/0435

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

-and-

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

**Raymond William Ashwin & Ors on behalf of the Wutha People** (native title party)  
(WC1999/010)

-and-

**The State of Western Australia** (Government party)

-and-

**Heavy Metal Exploration Pty Ltd** (grantee party)

## DECISION TO DISMISS EXPEDITED PROCEDURE OBJECTION APPLICATION

**Tribunal:** Member Helen Shurven  
**Place:** Perth  
**Date of dismissal:** 15 April 2015  
**Date of reasons:** 1 May 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 and Ochre Resources’*)

### Representatives

**Native title party:** Ron Harrington-Smith

**Government party:** Bethany Conway, Department of Mines and Petroleum

**Grantee party:** Hong-Jim Saw, Hetherington Exploration & Mining Title Services Pty Ltd

## **REASONS FOR DECISION TO DISMISS EXPEDITED PROCEDURE OBJECTION APPLICATION**

### **Background**

- [1] On 12 February 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 E20/830 ('the proposed licence') to Heavy Metal Exploration 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 9 June 2014, Raymond William Ashwin and others on behalf of the Wutha People ('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 licence.

### **Relevant facts**

- [3] On 25 June 2014, parties were advised an objection application had been made. At the first preliminary conference on 8 July 2014, the grantee party representative advised that his client would review the alternative agreement.
- [4] At a status conference on 24 September 2014, the grantee party representative advised that there were two other objection applications over the proposed licence and that he would be speaking to the representatives of all the native title parties as his client would not be signing three alternative agreements.
- [5] At a status conference on 12 November 2014, the native title party representative advised that his client would be happy to execute the Regional Standard Heritage Agreement (RSHA).
- [6] At a status conference on 10 December 2014, the grantee party representative advised that the native title party needed to make some minor amendments to the RSHA (for example, amending the native title claim group referred to in the agreement to refer to Wutha, and adding the correct names of the claim group applicants).
- [7] At a status conference on 28 January 2015, the grantee party representative advised that he had sent the amended RSHA to his client in the eastern states for execution,

- [8] At a status conference on 11 February 2015, the grantee party representative advised that the native title party required a Goldfields version of the RSHA and that he would send a signed copy of this agreement to the native title party representative.
- [9] At a status conference on 18 March 2015 the Tribunal was advised that the native title party were yet to sign the agreement.
- [10] On 18 March 2015, directions were set for inquiry so that 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 15 April 2015. A springing order was attached to that direction, in that if the native title party failed to comply by 15 April 2015, the objection application would be dismissed. 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.
- [11] As the native title party has not complied with the directions of the Tribunal, the application is dismissed.
- [12] In making the decision to dismiss this application for non-compliance, I adopt the approach taken by the Tribunal in *Hughes v Regent Resources and 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**

- [13] Expedited procedure objection application WO2014/0435 is dismissed pursuant to s 148(b) of the *Native Title Act 1993* (Cth).

**Helen Shurven**  
**Member**