

NATIONAL NATIVE TITLE TRIBUNAL

Raymond William Ashwin (dec) and Others on behalf of Wutha v Colin Robert Neve
[2015] NNTTA 35 (25 August 2015)

Application No: WO2015/0320

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

-and-

IN THE MATTER of an inquiry into expedited procedure objection application

Raymond William Ashwin (dec) and Others
on behalf of Wutha (WC1999/010) (native title party)

-and-

The State of Western Australia (Government party)

-and-

Colin Robert Neve (grantee party)

DECISION TO DISMISS OBJECTION APPLICATION

Tribunal: Ms H Shurven, Member
Place: Perth
Date of dismissal: 25 August 2015
Date of reasons: 25 August 2015

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 (*‘Teelow v Page’*)

Representative of the native title party: Mr Ron Harrington-Smith

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

Representative of the grantee party: Mr Colin Neve

REASONS FOR DECISION TO DISMISS OBJECTION APPLICATION

Background

- [1] On 11 February 2015, the State Government of Western Australia gave notice under s 29 of the *Native Title Act* 1993 (Cth) of its intention to grant prospecting licence P21/731 to Colin Robert Neve. The Wutha native title claim overlaps the licence by 99.99 per cent.
- [2] The State has included an expedited procedure clause in the s 29 notice. That is, they say the grant of this licence can be made expeditiously, without the normal negotiations required under s 31 of the Act between the Wutha native title claimants and Mr Neve.
- [3] On 7 April 2015, the Wutha native title claimants lodged an objection with the National Native Title Tribunal against the application of the expedited procedure to the grant of the licence. To answer the question of whether the licence can be granted in such an expedited way, I was appointed by the President of the Tribunal, Raelene Webb QC, to be the Member conducting the inquiry.

Should the inquiry proceed or should the matter be dismissed?

- [4] On 25 June 2015, Mr Neve advised the Tribunal he wanted this matter to proceed to an inquiry. I made directions requiring all parties to produce contentions and evidence for the conduct of the inquiry, to determine whether or not the expedited procedure was attracted to the grant. The Wutha native title claimants were directed to provide a statement of contentions, documentary evidence and witness statements, verified where possible by affidavits, on or before 6 August 2015.
- [5] Neither contentions nor evidence were received from Wutha by that date. On 11 August 2015, the State wrote to the Tribunal, and copied in the representative of the Wutha native title claimants, requesting the objection be dismissed because Wutha had failed, within a reasonable time, to proceed with the objection or comply with a Tribunal direction.
- [6] On 11 August 2015, the Tribunal wrote to the Wutha native title claimants and to Mr Neve, asking them to respond to the State's request to dismiss by close of business 18 August 2015. No response was received.

[7] In *Teelow v Page* (at [13]) the Tribunal set out the principles applicable when considering dismissal of an objection application, which I adopt for this matter. In particular, I am required to proceed as expeditiously as possible when conducting an inquiry into an expedited procedure objection.

[8] As at the date of this determination, no response has been received from the Wutha native title claimants as to why the objection should not be dismissed, nor has any request for extension of directions been received, nor any reason for non compliance.

[9] In the circumstances, the Wutha native title claimants have been given sufficient opportunity to comply with directions I set, and it would be unfair to prejudice the other parties with further delays. I do not need to answer the question of whether the licence can be granted in an expedited way because I have concluded the objection should be dismissed.

Decision

[10] The objection application against prospecting licence P21/731 is dismissed, according to s 148(b) of the *Native Title Act 1993* (Cth).

Ms H Shurven
Member