

# NATIONAL NATIVE TITLE TRIBUNAL

*Buurabalayji Thalanyji Aboriginal Corporation v Kalamazoo Resources Pty Ltd* [2015]  
NNTTA 11 (18 March 2015)

**Application No:** WO2014/0335

**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-

**Kalamazoo Resources Pty Ltd**

**(grantee party)**

## **DECISION TO DISMISS OBJECTION APPLICATION**

**Tribunal:** Ms H Shurven, Member

**Place:** Perth

**Date of dismissal:** 18 March 2015

**Date of reasons:** 18 March 2015

**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 ('*Teelow v Page*')

**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:**

Mr Greg Abbott, M & M Consulting

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

### **Background**

- [1] On 9 April 2014, the State of Western Australia ('the Government party') gave notice under s 29 of the *Native Title Act 1993* (Cth) of its intention to grant exploration licence E08/2481 ('the proposed licence') to Kalamazoo Resources Pty Ltd ('the grantee party') and 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 (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 26 August 2014. Mr Jerome Frewen for the native title party was not in attendance, but Mr Greg Abbott for the grantee party advised that his client was looking at negotiating a project agreement as they had more tenements in the same area. The matter was adjourned to a status conference on 17 December 2014 to allow time for these negotiations to occur.
- [4] On 28 October 2014, the native title party and grantee party were requested by the Tribunal to provide an update on how negotiations were progressing. No response was provided by any party, so a status conference was scheduled for 12 November 2014. Parties advised at that conference that they were still negotiating, but Mr Abbott wanted to speak to Mr Frewen about some of the costs.
- [5] At a status conference on 17 December 2014, the grantee party advised they wished the matter to proceed to an inquiry. Directions were made on 17 December 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 4 March 2015.

- [6] Neither contentions nor evidence were received from the native title party by the due date of 4 March 2015. On 5 March 2015, the Government party requested the objection application be dismissed under s 148(b) of the Act.
- [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 17 December 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 5 March 2015, the Government party wrote to the Tribunal and the other parties and requested that this matter be dismissed under s 148(b) of the Act, as no contentions or evidence had been received from the native title party by the due date. On 10 March 2015, the Tribunal asked the native title party and the grantee party to respond to the Government party's request. On 11 March 2015, the grantee party communicated to the Tribunal and all parties its support for the Government party request for dismissal. As at the date of this determination, no response has been received from the native title party, nor any request for extension of directions, nor any reason for non compliance.
- [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 17 December 2014, the objection application WO2014/0335 is dismissed pursuant to s 148(b) of the *Native Title Act 1993* (Cth).

**Ms H Shurven**  
**Member**