

# NATIONAL NATIVE TITLE TRIBUNAL

*Raymond William Ashwin & Ors on behalf of Wutha/ Western Australia/ Leslie Edward Lowe*  
[2015] NNTTA 10 (16 March 2015)

**Application No:** WO2014/0844

**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 Wutha** (native title party)  
(WC1999/010)

-and-

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

-and-

**Leslie Edward Lowe** (grantee party)

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

**Tribunal:** Member Helen Shurven

**Place:** Perth

**Date of dismissal:** 13 March 2015

**Date of reasons:** 16 March 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*, NNTT WO05/41 and WO05/567, [2006] NNTTA 18 (*‘Hughes v Regent Resources & Ochre Resources’*)

### **Representatives**

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

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

**Grantee party:** Leslie Edward Lowe

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

### **Background**

- [1] On 24 September 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 E37/1198 ("the proposed tenement") to Leslie Edward Lowe ('the grantee party'). The Government party included in the notice a statement that it considered the grant attracted the expedited procedure.
- [2] On 28 October 2014, Wutha ('the native title party') lodged an expedited procedure objection application with the National Native Title Tribunal ('Tribunal') in relation to the notice about the proposed tenement.

### **Relevant facts**

- [3] On 14 November 2014, parties were advised an objection application had been made. At the first preliminary conference on 10 February 2015, the grantee party advised a heritage agreement had been signed and executed, on the basis that the objection would be withdrawn. The native title party stated at the conference that he could not recall the agreement. The grantee party provided a copy of the agreement with all parties and the Tribunal on 10 February 2015, by email, and stated he had provided a copy to the native title party by registered post. On 19 February 2015, the grantee party confirmed to the Tribunal and all parties that he had received a signed receipt from Australia Post that the registered post had been received by the grantee party.
- [4] On 19 February 2015, the Government party proposed this matter be put to inquiry on the basis that the agreement had been signed and executed by both parties but the native title party had failed to withdraw the objection. On 24 February 2015, a further conference was called to ventilate the issue of the signed and executed heritage agreement, and the native title parties undertaking that the objection would be withdrawn on the basis of that agreement. The native title party would not comment on the agreement and sought a further adjournment, which was not granted.
- [5] On 26 February 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 13 March 2015. A springing order was attached to that direction, in that if the native title party failed to comply by 13 March 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.

[6] As the native title party had not complied with the directions of the Tribunal, the application is dismissed.

[7] 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**

[8] Expedited procedure objection application WO2014/0844 is dismissed pursuant to s 148(b) of the *Native Title Act 1993* (Cth).

**Helen Shurven**  
**Member**