

NATIONAL NATIVE TITLE TRIBUNAL

Raymond William Ashwin (dec) & Others on behalf of Wutha v Duketon Consolidated Pty Ltd and Another [2018] NNTTA 13 (14 March 2018)

Application No: WO2017/0226

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 (dec) & Others on behalf of Wutha (WC1999/010)
(native title party)**

- and -

**Duketon Consolidated Pty Ltd
(grantee party)**

- and -

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

DECISION TO DISMISS OBJECTION APPLICATION

Tribunal: Ms H Shurven
Place: Perth
Date: 14 March 2018

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* [\[2001\] NNTTA 107](#); 166 FLR 266

Representative of the native title party:

Mr Ron Harrington-Smith

Representative of the grantee party:

Mr Michael Giles

Representative of the Government party:

Ms Bethany Conway, Department of Mines, Industry Regulation and Safety

REASONS FOR DETERMINATION

Background

- [1] On 5 April 2017, the State Government of Western Australia gave notice under s 29 of the *Native Title Act 1993* (Cth) of its intention to grant exploration licence E58/510 to Duketon Consolidated Pty Ltd (Duketon Consolidated). The area of the proposed licence overlaps the Wutha claim group's native title claim (WC1999/010) by 0.03 per cent. By including an expedited procedure statement in the public advertisement of the licence, the State asserted that the grant could be made without requiring Duketon Consolidated or the State to negotiate with the Wutha claim group.
- [2] On 10 April 2017, the Wutha claim group 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 in this matter.

Should the inquiry proceed or should the matter be dismissed?

- [3] At a status conference on 20 December 2017, Duketon Consolidated requested that the matter proceed to inquiry. On 20 December 2017, 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 claim group were directed to provide a statement of contentions, documentary evidence and witness statements for the objection application, verified where possible by affidavit, on or before 7 February 2018.
- [4] The Wutha claim group did not provide contentions or evidence, or request further time to provide the documents, by 7 February 2018. On 12 February 2018, the State wrote to the Tribunal and all parties, requesting the objection be dismissed on the basis that the Wutha claim group had failed, within a reasonable time, to proceed with the objection or comply with the Tribunal's directions.
- [5] On 16 February 2018, the Tribunal wrote to all parties, and gave them until 23 February 2018 to respond to the State's request to dismiss the objection. No response

was received from Duketon Consolidated or the Wutha claim group. On 2 March 2018 all parties were advised a dismissal decision was being drafted for my consideration. No response was received from parties.

[6] In considering this dismissal, I have regard to the applicable principles set out by the Tribunal in *Teelow v Page* (at [13]). In particular, I note the Tribunal is required to proceed as expeditiously as possible when conducting an inquiry into an expedited procedure objection. Once an objection application is made, it is incumbent on the objector to proceed with the application, and to communicate with the Tribunal and all parties about the application.

[7] As at the date of this determination, the Tribunal has not received any response from the Wutha claim group as to why the objection should not be dismissed, nor any request for extension of directions or any reason for non-compliance. In the circumstances, I find the Wutha claim group have been given sufficient opportunity to comply with directions set by the Tribunal, 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

Determination

[8] The objection against exploration licence E58/510 is dismissed, according to s 148(b) of the *Native Title Act 1993* (Cth).

Ms H Shurven
Member
14 March 2018