

NATIONAL NATIVE TITLE TRIBUNAL

Raymond William Ashwin & Others on behalf of Wutha v Coal First Pty Ltd and Another
[2018] NNTTA 15 (21 March 2018)

Application No: WO2017/0281

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

- and -

Coal First Pty Ltd
(grantee party)

- and -

State of Western Australia
(Government party)

DECISION TO DISMISS OBJECTION APPLICATION

Tribunal: Ms H Shurven, Member

Place: Perth

Date: 21 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 (*Teelow v Page*)

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

Representative of the grantee party: Ms Janet Procak

Representatives of the Government party: Mr Michael McMahon, Department of Mines and Petroleum
Ms Bethany Conway, Department of Mines and Petroleum (now the Department of Mines, Industry Regulation and Safety)

REASONS FOR DECISION TO DISMISS OBJECTION APPLICATION

Background

- [1] On 8 March 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 E53/1927 to Coal First Pty Ltd (Coal First), without requiring Coal First or the State to negotiate with the Wutha native title claim group (the Wutha claim group). The area of the proposed licence is wholly overlapped by the Wutha claim group's native title claim (WC1999/010).
- [2] By including an expedited procedure statement in the public advertisement of the licence, the State has asserted that the grant can be made without such negotiation. That is, they say the grant of this licence can be made expeditiously, without negotiation between the Wutha claim group, the State, and Coal First.
- [3] On 27 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?

- [4] On 24 January 2018, 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 was directed to provide a statement of contentions, documentary evidence and witness statements, verified where possible by affidavits, on or before 7 March 2018.
- [5] Neither contentions nor evidence were received from the Wutha claim group by 7 March 2018. On 9 March 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.

- [6] On 9 March 2018, the Tribunal wrote to the representatives of the Wutha claim group and Coal First, requesting a response to the State's request to dismiss the objection. Parties were given until 16 March 2018 to respond. The Tribunal did not receive any communication in regards to the request for dismissal.
- [7] 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.
- [8] In the circumstances, the Wutha claim group has 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.

Decision

- [9] The objection application against exploration licence E53/1927 is dismissed, according to s 148(b) of the *Native Title Act 1993* (Cth).

Ms Helen Shurven
Member
21 March 2018