

# NATIONAL NATIVE TITLE TRIBUNAL

*Raymond William Ashwin & Others on behalf of Wutha v Diversified Asset Holdings Pty Ltd and Another* [2018] NNTTA 16 (22 March 2018)

**Application No:** WO2017/0298

**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 -

**Diversified Asset Holdings Pty Ltd**  
**(grantee party)**

- and -

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

## DECISION TO DISMISS OBJECTION APPLICATION

**Tribunal:** Ms H Shurven, Member

**Place:** Perth

**Date:** 22 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:** Mr Bob Kozyrski

**Representative of the Government party:** Ms Bethany Conway, Department of Mines, Industry Regulation and Safety

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

### **Background**

- [1] On 3 May 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 E51/1810 to Diversified Asset Holdings Pty Ltd (Diversified Asset Holdings). Approximately 5.52 per cent of the proposed licence area is overlapped by the Wutha claim group's native title claim (WC1999/010). By including an expedited procedure statement in the public advertisement of the licence, the State asserted that the grant can be made without requiring Diversified Asset Holdings or the State to negotiate with the Wutha claim group.
- [2] On 4 May 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] 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.
- [4] The Wutha claim group did not provide contentions or evidence, or request further time to provide the documents, 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.
- [5] On 9 March 2018, the Tribunal wrote to all parties and gave them until 16 March 2018 to respond to the State's request to dismiss the objection. No response was received from Diversified Asset Holdings or the Wutha claim group.

- [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.

### **Decision**

- [8] The objection application against exploration licence E51/1810 is dismissed, according to s 148(b) of the *Native Title Act 1993* (Cth).

**Ms Helen Shurven**  
**Member**  
**22 March 2018**