

NATIONAL NATIVE TITLE TRIBUNAL

Colin Hamlett & Ors on behalf of Wajarri Yamatji v Reed Exploration Pty Ltd and the State of Western Australia [2021] NNTTA 17 (6 May 2021)

Application No: WO2020/0798

IN THE MATTER of the *Native Title Act 1993* (Cth)

- and -

IN THE MATTER of an inquiry into an expedited procedure objection application

**Colin Hamlett & Ors on behalf of Wajarri Yamatji (WC2004/010)
(native title party)**

- and -

**Reed Exploration Pty Ltd
(grantee party)**

- and -

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

DECISION TO DISMISS OBJECTION APPLICATION

Tribunal: Mr Glen Kelly

Place: Perth

Date: 6 May 2021

Catchwords: Native Title – future acts – 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, 31, 32, 148

Cases:

Teelow v Page [\[2001\] NNTTA 107](#); 166 FLR 266

David Stock v Giralia Resources NL [\[2000\] NNTTA 333](#)

Colin Hamlett & Ors on behalf of Wajarri Yamatji #1 v Peter Romeo Gianni & Anor [\[2019\] NNTTA 68](#) (*Wajarri Yamatji v Peter Romeo Gianni*)

Colin Hamlett & Ors on behalf of Wajarri Yamatji #1 v Metals of Australia Pty Ltd & Anor [\[2019\] NNTTA 114](#) (*Wajarri Yamatji v Metals of Australia*)

Representatives(s) of the native title party: Mr Anthony Dann and Ms Sharon Gillon-Grey, Yamatji Marlpa Aboriginal Corporation (YMAC)

Representative(s) of the grantee party: Mr Tim Kavenagh, Kavenagh Legal

Representatives(s) of the Government party: Mr Matthew Smith, Department of Mines, Industry Regulation and Safety

REASONS FOR DECISION

Background

- [1] On 18 November 2020, the State of Western Australia (**State**) gave notice under s 29 of the *Native Title Act 1993* (Cth) (**NTA**) of its intention to grant exploration licence E09/2417 (**application**) to Reed Exploration Pty Ltd (**grantee party**). The s 29 notice included a statement that the State considers the grant of the application is an act attracting the expedited procedure under the NTA (**expedited procedure statement**).
- [2] If the expedited procedure applies, then the State may grant the application without entering into the full right to negotiate procedure under s 31 of the NTA.
- [3] The area of the application is located wholly within the area of the native title determination application made by the Wajarri Yamatji claim group (WC2004/010). On 14 December 2020, the registered native title claimant for the Wajarri Yamatji claim group (**native title party**) lodged an objection with the National Native Title Tribunal (**Tribunal**) against the inclusion of the expedited procedure statement in relation to the application. The objection was lodged by Yamatji Marlpa Aboriginal Corporation (YMAC) on behalf of the native title party. In its covering email, YMAC advised that any future contact should be with both the heritage service provider, Mr Anthony Dann, and YMAC. It appears that there is an arrangement between YMAC and Mr Dann that Mr Dann is to act on behalf of the native title party in all matters pertaining to the conduct of the objection and provide instructions to YMAC.
- [4] The native title party's objection application was lodged within the timeframe required under s 32 (3) of the NTA and therefore, under s 32 (4) of the NTA the Tribunal is required to determine whether the grant of the application is an act attracting the expedited procedure.

Relevant Facts

- [5] Under a delegation from the President of the Tribunal, I was appointed to constitute the Tribunal for the purposes of the inquiry in this matter.
- [6] On 17 December 2020 I made directions requiring all parties to provide contentions and evidence for the conduct of the inquiry. Under those directions, the native title

party were directed to provide the Tribunal its contentions and evidence by 22 April 2021.

- [7] As part of the Tribunal's case management process for expedited procedure matters, I conducted a number of case management conferences. These conferences occurred on 27 January 2021, 17 February 2021 and 24 March 2021. Mr Dann did not attend any of these conferences and the grantee party's representative advised me that he had no contact from Mr Dann, despite attempts to contact him to obtain a copy of the native title party's preferred agreement and to engage in negotiations about the grant of the application. The representative of YMAC advised me that she had also asked Mr Dann on several occasions to contact the grantee party's representative and provide him with a copy of the native title party's preferred agreement.
- [8] The native title party did not provide any contentions or evidence by the due date and did not make a request for an extension of time to do so.
- [9] On 27 April 2021, the Tribunal wrote to all parties advising that the native title party had failed to comply with directions made and the objection was now at risk of dismissal under s 148(b) of the NTA. Parties were invited to provide comment by no later than close of business on 4 May 2021. On 28 April 2021 the grantee party confirmed receipt of the Tribunal's advice and stated that the grantee party had no comment. That same day YMAC wrote to Mr Anthony Dann, copying in the Tribunal and other parties, reiterating the Tribunal's advice. The Tribunal received no response from Mr Dann on behalf of the native title party, nor did he undertake any form of compliance with the directions.

Consideration of dismissal

- [10] Under s 148(b) of the NTA the Tribunal may dismiss an objection application at any stage of the inquiry in circumstances where the native title party fails within a reasonable time to proceed with the application or to comply with a direction by the Tribunal.
- [11] While the Tribunal has a broad discretion to dismiss an objection application, doing so has serious consequences for the native title party and is not an action taken lightly.

- [12] The nature of the expedited procedure and the principles relevant to consideration of dismissal of an objection application for failure to comply with directions are set out in the Tribunal's decision in *Teelow v Page* (at [13]). I have applied those principles in my consideration of this matter. I have also taken account of the native title party's history of non-compliance with directions and failure to communicate with the Tribunal and other parties (as discussed in *Wajarri Yamatji v Peter Romeo Gianni* and *Wajarri Yamatji v Metals of Australia*).
- [13] I am also mindful that the native title party, as the applicant, should be taking steps to progress the objection application within a reasonable timeframe (see s 148(b) NTA and *David Stock v Giralia Resources NL* at page 7). Mr Dann as the representative of the native title party has taken no part in the expedited procedure process before the Tribunal and has not engaged with the grantee party, despite attempts by the grantee party's representative to negotiate with Mr Dann about the grant of the application.
- [14] In this case the native title party has not given any reason for its non-compliance with the directions of the Tribunal nor sought any additional extension of time.
- [15] In the circumstances, the native title party has had sufficient opportunities to comply with directions set by the Tribunal or make request for an extension of time. Having regard to all of the facts and circumstances of this matter, I am satisfied that the objection application should be dismissed. Accordingly, it is not necessary for me to determine whether the grant of the licence is an act attracting the expedited procedure.

Determination

- [16] The expedited procedure objection application in relation to the exploration licence E09/2417 is dismissed pursuant to s 148(b) of the NTA.

Mr Glen Kelly
Member
6 May 2021