# Expedited procedure - site rich area

## *Sharpe/Ashburton Minerals Ltd/Western Australia* [2004] NNTTA 31

**Member O'Dea, 7 May 2004**

**Issue**
Is the expedited procedure attracted to the grant of exploration licences in a 'site rich' area in circumstances where the grantee party had not indicated either its willingness to comply with the Western Australia Government's *Guidelines for Aboriginal Consultation by Mineral and Petroleum Explorers* (the Guidelines) or its intentions in relation to exploration of the tenement area?

**Background**
The government party proposed to grant two exploration licences. In the relevant s. 29 notices, it was stated that the expedited procedure applied to the grant of those tenements. The native title party objected to the application of that procedure on the grounds that the requirements of s. 237 of the NTA, which defines acts attracting the expedited procedure as those that satisfy the requirements of s. 237(a) to (c), were not fulfilled in this case. If the act in question does not fall within the class of future acts defined in s. 237, then the right to negotiate would apply.

**Meaning of 'site rich'**
'Site rich' is a shorthand term used by the Tribunal to describe an area where the number and nature of sites is, in itself, a 'manifestation of the overall spiritual importance of the land and waters in the relevant locality'. If an area is 'site rich', then the Tribunal is on notice that, even applying the presumption of regularity, there is 'often a real chance or risk that the act in question will interfere with the spiritual fabric of the locality': *Ward v Northern Territory* (2002) 169 FLR 303; [2002] NNTTA 104 at [82]. In 'site rich' areas, evidence as to the grantee party's intentions is important: see *Gilla/Western Australia/Blackjack Resources Pty Ltd* [2002] NNTTA 35 at [20].

**Subsection 237(a) — no likelihood of interference with community and social activities**
The Tribunal was satisfied by the affidavit evidence that the native title party currently utilised the area covered by one of the proposed licences to a significant degree for the purposes of hunting, fishing, camping, collecting bush tucker, conducting ceremonies and as a communal meeting place. However, there were no specific references in the evidence to community or social activities in relation to the second tenement—at [30].

It was determined that the grant of the first tenement in this case was likely to interfere with the carrying on of community or social activities of the native title

holders, contrary to the requirements of s. 237(a), with the Tribunal noting that the grantee party would be entitled to use the exploration licence to its full extent if it were granted and had not given any indication as to its plans—at [31].

**Subsection 237(b) — no likelihood of interference with areas or sites of particular significance**

The native title party said that:

- the area was site rich;
- the *Aboriginal Heritage Act 1972* (WA) (AHA) did not provide for consultation with the native title party; and
- the grantee party had not indicated its willingness to comply with the Guidelines or give any indication of its intentions—at [33].

After summarising the 'detailed depositions' provided by three witnesses on behalf of the native title party, Member O'Dea was satisfied that:

- the area covered by the proposed tenements was 'site rich although not all of those sites have been shown to be of particular significance', as required under s. 237(b); and
- there were sites or areas of 'particular' (i.e. special or more than ordinary) significance in accordance with the traditions of the native title holders in the area covered by both proposed tenements—at [32] to [43].

With regard to the presumption of regularity and the provisions of the AHA, the Tribunal noted that:

> The Grantee party has provided no evidence of his intentions regarding protection of sites of significance and while I accept their undoubted intention to adhere to the provisions of the law there is a real risk of inadvertent interference unless consultation with the Native Title party takes place—at [44].

Therefore, the proposed grant of the tenements was determined to be likely to interfere with areas or sites of particular significance and, therefore, s. 237(b) was not satisfied.

**Subsection 237(c) — no likelihood of causing or creating rights causing major disturbance**

As nothing in the evidence addressed the issue of the likelihood of major disturbance with the requisite degree of specificity, the Tribunal was unable to find that the requirements of s. 237(c) were not fulfilled—at [49].

**Determination**

Member O'Dea determined that the grant of the exploration licences in question were not acts that attracted the expedited procedure under the NTA because s. 237(a), with regard to the first tenement, was not satisfied and s. 237(b), with regard to both, was not satisfied. Therefore, the right to negotiate will apply to the grant of these tenements.