

# Expedited procedure — areas or sites of particular significance

## *Coolibah/Ashton Exploration Australia Pty Limited/Northern Territory* [2002] NNTTA 220

Member Williamson, 21 October 2002

### Issue

The Northern Territory had issued a notice under section. 29 of the *Native Title Act* 1993 (Cwlth) (NTA). The notice included a statement that the territory was of the view that the expedited procedure applied to the proposed grant. For a future act to attract the right to negotiate, it must satisfy the three criteria found in s. 237 of the NTA. Among other things, the National Native Title Tribunal gave consideration to the second criterion, i.e. was the proposed grant 'likely' to interfere with areas or sites of particular significance — see s. 237(b) of the NTA.

### Background

Ashton Exploration Australia Pty Ltd (the grantee party):

- put into evidence the Community Relations Policy and the Environmental Policy of its parent company, Rio Tinto Exploration Pty Ltd (Rio Tinto); and
- filed an affidavit stating that the Northern Land Council (the native title party's representative) and Rio Tinto had entered into a Memorandum of Understanding (MOU), which set out a co-operative approach to the development of mining and exploration projects and dealt with the recognition of, and respect for, the native title party's rights and responsibilities.

Annexed to the MOU was a model agreement that dealt with a wide range of matters, including co-operation, consultation, cultural clearances and protection of sacred sites and objects. The Tribunal understood that the grantee party had adopted policies and arrangements similar to those of the parent company—see [39] to [45].

The Tribunal rejected the 'precautionary principle' that the mere possibility of interference should be taken into account. The proper test is whether the doing of the future act is 'likely' to interfere with areas or sites of particular significance. It was found that contextual risk evaluation for s. 237(b) should include:

- the regulatory regime in the territory;
- sacred site legislation;
- prior and current lawful activities in the area; and
- the intentions of the grantee party, including the MOU—at [96].

### Decision

The Tribunal held that, in the circumstances, it was extremely likely appropriate consultation would take place to avoid the risk of interference with areas or sites of particular significance. On the evidence, it was found there was no real chance or risk

that the proposed act would interfere with an area or site of particular significance—  
at [100].