

NATIONAL NATIVE TITLE TRIBUNAL

Raymond William Ashwin (dec) & Others on behalf of Wutha v Diversified Asset Holdings Pty Ltd [2017] NNTTA 70 (30 October 2017)

Application No: WO2016/0555

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 (dec) & 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
Place: Perth
Date: 30 October 2017

Catchwords: Native title – future act – proposed grant of prospecting 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

Representative of the Mr Ron Harrington-Smith

native title party:

**Representative of the
grantee party:**

Mr Bob (Boleslaw) Kozyrski, Diversified Asset Holdings Pty Ltd

**Representative of the
Government party:**

Ms Bethany Conway, Department of Mines, Industry Regulation
and Safety

REASONS FOR DETERMINATION

Background

- [1] On 24 August 2016, the State Government of Western Australia gave notice under s 29 of the *Native Title Act 1993* (Cth) of its intention to grant prospecting licence P57/1393 to Diversified Asset Holdings Pty Ltd (Diversified Asset Holdings). The area of the propose licence is wholly 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 5 September 2016, 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 21 August 2017, 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 were directed to provide a statement of contentions, documentary evidence and witness statements for the objection application, verified where possible by affidavit, on or before 27 September 2017.
- [4] The Wutha claim group did not provide contentions or evidence, or request further time to provide the requisite documents, by 27 September 2017. On 4 October 2017, 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 4 October 2017, the Tribunal wrote to the representatives of the Wutha claim group and Diversified Asset Holdings, asking them to respond to the State's request to

dismiss the objection. Parties were given until 11 October 2017 to respond. No response was received from the 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, no response has been received from the Wutha claim group as to why the objection should not be dismissed, nor has any request for extension of directions been received, nor any reason for non-compliance.
- [8] In the circumstances, 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 licences can be granted in an expedited way because I have concluded the objection should be dismissed.

Determination

- [9] The objection application against prospecting licence P57/1393 is dismissed, according to s 148(b) of the *Native Title Act 1993* (Cth).

Ms H Shurven
Member
30 October 2017