

# NATIONAL NATIVE TITLE TRIBUNAL

*Raymond William Ashwin (dec) & Others on behalf of Wutha v Ross Alan Neve and Another* [2017] NNTTA 68 (27 October 2017)

**Application No:** WO2016/0958

**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 -

**Ross Alan Neve**  
**(grantee party)**

- and -

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

## DECISION TO DISMISS OBJECTION APPLICATION

**Tribunal:** Ms H Shurven, Member

**Place:** Perth

**Date:** 27 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 (*Teelow v Page*)

**Representative of the native title party:** Mr Ron Harrington-Smith

**Representatives of the grantee party:** Mr Colin Neve and Mr Ross Neve  
with  
Mr Brett Anderson, Anderson's Tenement Management

**Representatives of the Government party:** Mr Michael McMahon and Ms Bethany Conway, Department of Mines and Petroleum (now Department of Mines, Industry Regulation and Safety)

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

### **Background**

- [1] On 14 December 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 P51/3007 to Ross Alan Neve. An expedited procedure statement was included in the public advertisement of the licence, and the proposed licence is wholly overlapped by the Wutha claim group's native title claim (WC1999/010). If the expedited procedure is held to apply to the grant of the licence, neither Mr Neve nor the State are required to negotiate with the Wutha claim group.
- [2] On 29 December 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 11 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 was directed to provide a statement of contentions, documentary evidence and witness statements, verified where possible by affidavits, on or before 21 September 2017. Parties were advised the objection may be dismissed if the objector were to fail, within a reasonable time, to progress the application or comply with a direction of the Tribunal.
- [4] The Wutha claim group did not provide contentions or evidence, or make any request for further time to provide the requisite documents, by 21 September 2017. On 3 October 2017, the State wrote to the Tribunal 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 representative of the Wutha claim group Mr Neve, and Mr Neve's representative, asking them to respond to the State's request

to dismiss the objection. Parties were given until 11 October 2017 to respond. There was no further communication from any party concerning the request for dismissal.

[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. In the circumstances, the Wutha claim group has 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**

[7] The objection application against prospecting licence P51/3007 is dismissed, according to s 148(b) of the *Native Title Act 1993* (Cth).

**Ms Helen Shurven**  
**Member**  
**27 October 2017**