

**Independent Person under S24 MD (6B)  
Native Title Act (Commonwealth)  
Western Australia**

INDEPENDENT PERSON 2/16

**HAMOA MINING NL (L45/174)**

**APPLICANT**

AND

**NJAMAL NATIVE TITLE CLAMANTS (WC1999/008)**

**OBJECTOR**

AND

**STATE OF WESTERN AUSTRALIA**

**GOVERNMENT PARTY**

**DECISION**

1. The Objector has a long connection with an area of the East Pilbara which is the subject of their claim for native title in the Federal Court.
2. Within that area is an all-weather landing strip, constructed by unknown parties, which has been used for approximately 20 years. It is a registered landing strip for the Royal Flying Doctors Service.
3. The Applicant is a shareholder in mine operations in the area and has applied for a Miscellaneous Licence over the area of the landing strip. The Applicant has indicated that the only work that will be done within the Miscellaneous Licence is ongoing maintenance to keep the landing strip in good condition.
4. The Objector is concerned about the impact that the grant of the Miscellaneous Licence will have on its native title rights and interests and has objected to the grant of the Miscellaneous Licence. That objection has been referred to me by the Government Party in my capacity as an independent person pursuant to Section 24MD(6B)(f) of the *Native Title Act 1993(CTH)*.
5. Section 24MD(6B) provides that where a State intends to grant a right to mine for the sole purpose of the construction of an infrastructure facility associated with mining, if a registered native title claimant objects to the grant and so requests, the State must ensure the objection is heard by an independent person or body. The Objector argues that as the Applicant is only seeking the Miscellaneous Licence to

maintain the existing landing strip, this is not construction and is therefore not an act to which this section can apply.

6. The role of the independent person only arises upon receipt of the referral and that is all that an independent person need consider in determining whether he or she should hear the objection. Any failure to meet any precondition prior to a referral or if a referral is not one to which the section applies is a matter for a Court. [*Molly Metals Australia Pty Ltd v Kariyarra Native Title Claimants (IND 1/12)*]
7. It is not necessary for me to determine if maintenance constitutes construction.
8. The Objector contends that there has been no proper consultation by the Applicant with the Objector as required by Sub-section 24MD(6B)(e). Whether or not there has been consultation is not a matter which will determine whether an Independent Person can hear a matter [*Moly Metals Australia Pty Ltd, Kariyarra Native Title Claimants and State of Western Australia - 1/12*]. A lack of consultation will mean that parties risk an unfavourable decision because an independent person may not have evidence to assist in determining the objection [*Moly Metals Australia Pty Ltd, Kariyarra Native Title Claimants and State of Western Australia - 1/12*].
9. Although the Applicant advised the Objector of the intended purpose of its application there was an assumption on its part that as it did not intend to change the existing use of the landing strip there would be no impact on the Objector's native title rights and interests.
10. The Objector's response was to seek the Applicant attend and pay for a meeting with the Objector. Although the Objector asked the Applicant how it proposed to minimise the impact of the proposed acts on the Objector's registered native title rights and interests and access to the area covered, it would appear that the Objector did not identify any of the native title rights and interest in the area of the Miscellaneous Licence prior to the filing of the affidavit of Mr Allen after the objection was referred to me.
11. The relevant criteria to be considered by an independent person in assessing any objection include those matters about which the section requires consultation, namely:
  - a. Ways of minimising the act's impact on the registered native title rights and interests;
  - b. Any access to the land; and

c. The way in which anything authorised by the act may be done.

*[Gobawarra Minduarra Yinhawanga People and Innawonga People v Hamersley Iron Pty Ltd (IND3/2004)]*

12. Unfortunately the affidavit of Mr Allen is vague as to the significance of that part of the claim covered by the Miscellaneous Licence. His affidavit speaks of some sites of particular significance which are in the approximate area of the Miscellaneous Licence but which are not contained within the area of the Miscellaneous Licence. He speaks of camping, fishing, hunting and getting bush tucker in and around the Miscellaneous Licence and the use of the Bamboo Creek Road which is used by the Objector to travel through that part of the claim.

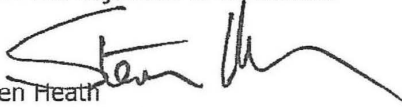
13. The Applicant has indicated that they intend to excise any portion of the Bamboo Creek Road from the Miscellaneous Licence.

14. The grant of the Miscellaneous Licence will impact on the Objector's native title rights and interests in that it will permit the continued use of the area as a landing strip. The use of that area as a landing strip for the past 20 years has already had some impact on those rights. It must have involved some clearing of the land, required some restriction on access and the activities that might otherwise be carried out on that area. Given that these restrictions have been in place for approximately two decades there is nothing apparent to me that the Applicant could be required to do in order to minimise the impact of that continuing use or the way in which any maintenance should be done.

15. The grant of the Miscellaneous Licence to be used in the manner proposed by the Applicant will not create any greater impact on the Objector's registered native title rights and interests or access to the land than currently exist because of the prior construction of the landing strip.

16. The Objector has failed to identify any specific impacts that the current landing strip has caused or steps which might be taken to minimise any new or continuing impacts.

17. The objection is dismissed.

  
Steven Heath  
**Independent Person**

**Independent Person under S24 MD (6B)  
Native Title Act (Commonwealth)  
Western Australia**

Our Ref: IND 2/16  
Your Ref: 3102-16

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Mr J O'Halloran  
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Dear Mr O'Halloran

**Haoma Mining NL (L45/174); Njamal Native Title Claimants (WC1999/008);  
Independent Person Referral IND 2/16**

Please find enclosed a copy of my decision.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Steven Heath', with a long horizontal flourish extending to the right.

Steven Heath  
**Independent Person**

23 December 2016



Registered in SSO	
Records	
On	_____
At	_____
File	_____

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