

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

Our Ref: IND 1/18  
Your Ref: 1728-18

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Ms Sarah Power  
Solicitor  
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Dear Madam

**APPLICATION FOR MISCELLANEOUS LICENCE L51/96 BY REEF  
MINING PTY LTD; OBJECTION BY WAJARRI YAMATJI #1 UNDER  
SECTION 24MD(6B) OF THE NATIVE TITLE ACT  
INDEPENDENT PERSON: 1/2018**

I enclose my reasons for decision confirming the objection is dismissed.

Yours sincerely



Steven Heath  
**Independent Person**

2 August 2018

cc: Mr Roy Arthur  
Reef Mining Pty Ltd  
PO Box 306  
Melville Post Office  
MELVILLE WA 6956

Mr David Taft  
Yamatji Marlpa Aboriginal Corporation  
Level 8  
12-14 The Esplanade  
PERTH WA 6000

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

**IND 1/2018**

BETWEEN

REEF MINING PTY LTD (L51/96)

**Applicant**

and

WAJARRI YAMATJI #1 (WC2004/010)

**Objector**

and

STATE OF WESTERN AUSTRALIA

**Government Party**

Decision

The Applicant carries on mining activities in the Murchison area of Western Australia and has applied for the grant of Miscellaneous Licence L51/96 under the *Mining Act (WA)*.

The Miscellaneous Licence falls within the area of the Objector's Native Title Claim. The area of the Miscellaneous Licence was the subject of a determination of Native Title made on 19 October 2017 but the determination has not yet taken effect.

The Objector lodged an objection to the grant of the Miscellaneous Licence and the objection has been referred to me pursuant to Section 24MD(6B)(c) of the *Native Title Act (Cth)*. Unfortunately that *Act* gives no guidance as to how an objection should be determined.

Consistent with the approach I have adopted in previous cases, I propose to determine the objection by assessing the extent to which the Objector enjoys their Native Title rights and interests, by taking into account any ways of minimising the impact of the grant of the Miscellaneous Licence on those rights and interests and access to the land and the way in which anything authorised by the Miscellaneous Licence may be done.

The Objector submits that in the absence of comprehensive information from the Applicant about the proposed activities to be conducted on the Miscellaneous Licence, I should determine the objection on the basis that the

rights conferred under the *Mining Act* will be exercised to the fullest extent possible. The purpose of Miscellaneous Licence are listed as for a bore, a bore field, a bridge, a pipeline, a powerline, a pump station, a road, a search for ground water and taking water.

The Government Party point out that under the provisions of the *Mining Act* the Applicant's activities on any Miscellaneous Licence will be limited to those specified in the Licence itself and in addition be limited by other provisions of the *Mining Act* including Sections 46 and 46A.

The Applicant submits that it seeks the Miscellaneous Licence for use as a road to secure access to its interests in the area.

In light of the provision of the *Mining Act* I conclude that I should consider the impact of the Miscellaneous Licence confined to use as a road.

The Objector filed an affidavit from Mr Kevin Walley, a senior member of the Objector. Mr Walley's concerns in relation to the impact of the grant of the Miscellaneous Licence on the Native Title rights and interests are limited to following aspects;

- a) additional vehicle traffic providing dust and noise may impact the amenity of a camping spot approximately 1 kilometre away from the area;
- b) additional vehicles accessing the Miscellaneous Licence could scare away red kangaroo and thereby impact the ability to hunt those animals;
- c) if the roads are not properly dampened and there is a dust problem this may impact the flora and fauna of the area; and
- d) increased vehicle traffic and roadworks may impact on the creek crossings over which the Miscellaneous Licence passes.

In its submission the Objector submits that other rights may be impacted although they are not referred to by Mr Walley and I therefore conclude that although these are potential impacts upon the right of the Objector they are not rights that are exercised by the Objector.

The area covered by Miscellaneous Licence is described by the Applicant as being approximately 15.5 hectares with an average width of approximately 50 metres as it traverses approximately 3 kilometres in a north-westerly

direction from its starting point. The southern starting point is within 150 metres of the road T-intersection of the Great Northern Highway and the Meekatharra Ashburton Downs Road. The furthest part of the Miscellaneous Licence is still within approximately 2 kilometres of both the Great Northern Highway and the Meekatharra Ashburton Downs Road. The Great Northern Highway and Meekatharra Ashburton Downs Road are described as high use transport infrastructure assets.

Given the close proximity of the Miscellaneous Licence to the Great Northern Highway the Applicant advises that traffic noise is detectable on the application area. In the Applicant's submission the grant of the Miscellaneous Licence will not have a detectable impact on the current environment given the density of other current traffic movements in the area on both sealed and unsealed roads. The Applicant points out that in Mr Walley's affidavit the southern area described as a good hunting area is separated from the Miscellaneous Licence by one or both major roads.

The Meekatharra Ashburton Downs road is an unsealed public road at the southern starting point of the Miscellaneous Licence and has numerous transport vehicles on it each day as it services a number of operating sites. It is submitted that if the Miscellaneous Licence was used for commercial transportation and dust generated would be substantial less than the dust generated on the Meekatharra Ashburton Downs Road as there would be less transport movements it is only 3 kilometres in length.

The Applicant notes that it would be responsible for maintaining the road and that there is ample water near it to manage dust generation and preserve the road surface.

The Applicant also points out that the existing historical Great Northern Highway over which the application for the Miscellaneous Licence is made, currently crosses two minor creeks as outlined in Mr Walley's affidavit. This was previously of importance to that road and as such the creek crossings have been lined on each side with white stones channelling the water under the road. The Applicant advises that the crossings are currently covered with a small amount of silt as the area is only traversed by tourists, the pastoral owner and other infrequent users and have not been maintained for over 40 years. The Applicant submits that it would be responsible for improving the road surfacing in the event that the Miscellaneous Licence is used for commercial purposes and whilst this would mainly involve improvement of the road surface, it is unlikely to create any erosion.



Given the Applicant's description of the existing road over which the application is made and the other roads in the area, I am not satisfied that the grant of the Miscellaneous Licence would affect the amenity of the camping area to which Mr Walley refers which is approximately 1 kilometre away.

Whilst the Miscellaneous Licence will prevent the Objector erecting shelters or camping or taking traditional resources on the area of the Miscellaneous Licence, there is no suggestion that these rights are exercised currently and it is difficult to envisage how they could be when there is an existing road, albeit that it is used infrequently.

In relation to the right to hunt, it is noted that the area to the south is separated from the area of the Miscellaneous Licence by a busy road and therefore I again conclude that the grant of the Miscellaneous Licence will not impact in any significant way on the Objector's right to hunt and take fauna in the area.

In relation to the Objector's concerns about the impact of dust on the flora and fauna of the area, whilst the grant of the Miscellaneous Licence would increase the amount of traffic that might use the existing road, there will then be an obligation on the Applicant pursuant to the provisions of the *Mining Act* to ensure proper dust control measures. There are already other unsealed roads in the area and I am not satisfied that the grant of the Miscellaneous Licence will have any increased adverse effect upon the plants and animals.

There are already existing creek crossings that have stone wall channelling water under the road which have been in existence for many years. I am not satisfied that the grant of the Miscellaneous Licence will have any additional impact on these crossings given the obligation of the Applicant to maintain the road under the provisions of the *Mining Act*.

I therefore conclude that the grant of the Miscellaneous Licence would not impact in any way on the rights currently exercised by Mr Walley and which are the only rights I am aware are exercised by the Objector.

Given my finding that the grant of the Miscellaneous Licence would not have any impact on the Objector's enjoyment of the Native Title rights and interests I do not need to consider ways to minimise impact, issues of access to land or the way in which anything authorised by the Miscellaneous Licence should be done.