

**INDEPENDENT PERSON UNDER S24 MD (6B)
NATIVE TITLE ACT 1993 (COMMONWEALTH)
WESTERN AUSTRALIA**

IND 3/2024

IN THE MATTER OF AN OBJECTION TO THE GRANT OF MISCELLANEOUS
LICENCE L09/90

BETWEEN

JAMES ARTHUR MILLAR

Applicant

and

WAJARRI YAMAJI ABORIGINAL CORPORATION RNTBC

Objector

and

STATE OF WESTERN AUSTRALIA

Government Party

DECISION

Introduction

- 1 The Applicant has applied for Miscellaneous Licence L09/90 pursuant to section 91 of the *Mining Act 1978* (WA) on land over the majority of which the Objector holds exclusive possession Native Title. The Miscellaneous Licence is sought for the purpose of constructing mine site accommodation, a pipeline to carry water between existing and future buildings, a road and a power generation and transmission facility and powerline to enable upgrades to existing generators and powerlines. These works are to be constructed to support operations on adjacent mining leases M09/79, M09/131, M09/132, M09/133 and M09/141 held by the Applicant.
- 2 The Miscellaneous Licence covers an area of approximately 11 hectares. The Miscellaneous Licence is in an area that was subject to the first Travellers Wayside Inn previously called Euranna Hotel from 1897 until 1927 which became known as Bangemall Travellers Inn and which was absorbed into the former pastoral lease known as Cobra Station.

- 3 The Objector lodged an objection to the grant on the grounds that the Applicant had failed to engage in proper consultation and that the grant of the Miscellaneous Licence would impact on the registered Native Title Rights and Interests. The Government Party referred the objection to me to determine in accordance with section 24 MD of the *Native Title Act 1993* (Commonwealth).

Is lack of consultation a valid ground of objection

- 4 The Objector asserts that the Applicant has not made any genuine attempts to meet or engage with the Native Title holders as required under section 24 MD(6B) of the *Native Title Act* and therefore the objection should be upheld.

- 5 In *Moly Metals Pty Ltd v Kariyarra Native Title Claimants and The State of Western Australia* (Unreported, IND2/11) I held that there was no specific requirement that consultation occur before a matter can be referred and that a failure to consult did not necessarily result in an objection being upheld. The Objector did not provide any fresh argument as to why that decision should not be followed. I again adopt my reasoning in that case and that ground of objection must fail.

What are the Native Title Rights and Interests

- 6 The Objector contends that the proposed licence would seriously impact on Native Title Rights and Interests including access, use and enjoyment of the area. In order to determine the impact on those rights and interests it is necessary to determine what they are and how they are exercised.
- 7 The Objector has provided no evidence as to what those rights are or how they are currently exercised. The Applicant says that there has been occupation by non-traditional owners in the area since 1894, that there are no heritage sites or places within the lease recorded on the Aboriginal Cultural Heritage System maintained by the Department of Planning, Lands and Heritage and that it is unlikely that the Miscellaneous Licence would cause any further impact on Native Title rights.
- 8 Without evidence of how the Native Title Rights and Interests are exercised it is impossible for me to form any conclusion as to how the grant of the Miscellaneous Licence might impact upon them. I accept the Government Party's submission that if the Miscellaneous Licence is granted the Applicant will be obliged to exercise the

rights granted to him in accordance with all relevant statutory requirements. There are already buildings in the area which would already impact on the Native Title Rights and Interests to some extent.

Are there conditions which should be imposed upon the grant

- 9 The absence of evidence as to the Native Title Rights and Interests and any detailed explanation as to the parts of the Miscellaneous Licence on which the Applicant proposes to construct the infrastructure makes it impossible to consider whether there are conditions which might reduce the impact on the Native Title Rights and Interests. Although the Objector submits that any grant should be conditional upon the Applicant entering into a Wajarri Yamaji Aboriginal Corporation Standard Heritage Agreement I have no evidence as to what that agreement contains and how it might reduce the impact of the Miscellaneous Licences.

Conclusion

- 10 As I am unable to make a finding that the grant of the Miscellaneous Licence would have any impact on the Native Title Rights and Interests of the Objector, the objection will be dismissed.



Steven Heath
Independent Person

18 February 2025