

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

IND 1 of 2025

**IN THE MATTER OF AN OBJECTION TO THE GRANT OF MISCELLANEOUS LICENCE
L08/275**

BETWEEN:

REGIONAL RESOURCES NW PTY LTD
Applicant

BUURABALJI THALANYJI ABORIGINAL CORPORATION
Objector

and

STATE OF WESTERN AUSTRALIA
Government Party

Decision

1. The Applicant has applied for Miscellaneous Licence L08/275 for the purpose of a road.
2. The Applicant further clarified to the Department of Mines, Industry and Safety that a very short road of 300m length and 10m wide was required to access the Applicant's adjacent Mining Lease 08/458 from the nearby public road. It indicated that an existing 300m long road resting entirely within the application area had been constructed under previous tenure and remained in good condition so that no construction was required.
3. It indicated that the only operations to be carried out would be the haulage of material via road trains, truck transport of mining equipment and dust suppression activities.
4. The Objector is the native title holder of land pursuant to a determination dated 18 September 2008. Over 95% of the area of the proposed miscellaneous licence is located over that land.
5. The Objector has objected to the grant of the miscellaneous licence on the basis that there has been insufficient consultation by the Applicant with the Objector pursuant to s24 MD(6)(e)(ii) of the *Native Title Act* and that the grant of the miscellaneous licence would affect the exercise of native title rights and interests.

6. The Government Party has requested I determine the objection in accordance with s24 MD(6B) of the *Native Title Act*.

Is Consultation Required?

7. In *Molly Metals Australia Pty Ltd v Kariyarra Native Title Claimants and the State of Western Australia* IND 2/2011, the objector in that case argued that in the absence of consultation the objection should be upheld. I concluded that there was no specific requirement that consultation occur before a matter could be referred or that a failure to consult must lead to an objection being upheld.
8. I again adopt my reasoning in that decision and accordingly I need not make any determination as to whether or not there has been consultation.
9. My role in determining this objection is to determine the impact that the grant of the miscellaneous licence would have on the Objector's native title rights and interests, or access to land and consider ways in which, if granted, those impacts can be minimised. I must then uphold the objection, dismiss the objection or impose conditions of the grant of the miscellaneous licence.

What are the Objector's Native Title Rights and Interests?

10. The Objector has indicated that the Objector's native title rights and interests include to:
 - a. enter and remain on the land, erect temporary shelters, and travel over and visit any part of the land and waters;
 - b. hunt, fish, gather and use the traditional resources of the land and waters;
 - c. take and use water;
 - d. engage in ritual and ceremony on, and in relation to, the land and waters; and
 - e. care for, maintain and protect from physical harm particular sites, areas and ceremonial or other sacred objects connected with the land and waters.
11. The Objector notes that the Ashburton River (Mindurra), which is adjacent to the tenement, is a registered Aboriginal site under the *Aboriginal Heritage Act* and is of special spiritual significance. Another registered Aboriginal site, Artifact Scatter Ashburton River Artifact Scatter is in close proximity to the tenement.

How are those rights and interests currently exercised?

12. In order to assess the potential impact of the grant of the miscellaneous licence it is necessary to determine how the native title rights and interests are currently exercised. The Objector provided no details of this. If I am unable to determine how the rights are currently exercised, I will be unable to determine how the grant of the

miscellaneous licence may impact the current exercise or consider ways in which those impacts could be lessened. I am left with the rights that have been granted by the determination but without any detail as to how they are exercised over the tenement area.

What impact would the grant of the miscellaneous licence have on the native title rights and interests?

13. The Objector says that the grant will impact the Objector's access to the area and their ability to conduct community, social and spiritual activities in the area. The Objector does not provide any information about whether any community, social and spiritual activities have been conducted in the area of the miscellaneous licence in the past or whether it holds any particular significance. The area of the Miscellaneous Licence is relatively small and has an existing road constructed on it which must already place some limitations on the exercise of the rights.
14. The Objector contends that vegetation clearing and construction, especially with heavy machinery, would deter bush animals, destroy plants used for traditional purposes and may also impact heritage sites. Given that the Applicant has indicated that it will use the existing road already constructed on the area of the miscellaneous licence, these concerns do not appear to be justified.
15. The Objector's concern that the Ashburton River Artifact Scatter Aboriginal site would likely be disturbed would not appear to be supported by the evidence.
16. The Objector raises concerns that the actions involved in driving across country and establishing the proposed infrastructure is likely to destroy or damage sub-surface artefacts. Given that the Applicant proposes to use the road already constructed, there should be no driving across country or works necessary to establish the proposed infrastructure.
17. The Objector contends that depending on the nature of the proposed work, there may be impact on the Objector's ability to engage in rituals associated with Mindurru. The nature of the proposed works is specified as using the already constructed road and the Objector has given no indication of how this would impact the Objector's current ability to engage in rituals.
18. While the miscellaneous licence falls within the Ashburton River (Mindurru) registered Aboriginal site, it does not adjoin the actual Ashburton River and an already granted mining lease lies between the miscellaneous licence and the river. The Objector has given no evidence as to how the grant of the miscellaneous licence would add to any impact already created by the grant of the mining lease.
19. In the absence of any specific evidence from the Objector, I conclude that while the grant of the miscellaneous licence might prevent the Objector from camping and erecting temporary shelters on the road on the miscellaneous licence and from

engaging in any ritual or ceremony on that road, those activities have not been able to be conducted for so long as the road has been in existence.

20. I find that the grant of the miscellaneous licence would have no impact on the current exercise of the Objector's native title rights and interests.

Should any Conditions be Imposed on the Grant of the Miscellaneous Licence?

21. Given the limited purpose for which the miscellaneous licence is sought, I am not satisfied that any conditions need to be attached to the grant of the miscellaneous licence.

Conclusion

22. The objection is dismissed.

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

Mr Steven Heath
Independent Person

7 July 2026