

Pastoralists & Graziers Association
1st Floor Pastoral House
277 Great Eastern Highway
Belmont WA 6104

Our Ref: JS:848
Your Ref:

Attention: Dr Henry Esbenshade

16 March 2009

Dear Henry

**NW Goldfield Native Title Matters
WAD 6064 of 1998 – Wutha
Briefing Note for Pastoralists**

This is a briefing note for the Pastoralists and Graziers Association (the '**PGA**') in relation to the Directions Hearing held before Justice Siopis in the Federal Court on 11 March 2009 regarding the Wutha native title claim.

Attendances

- Applicants – Mr Vincent;
- The State of Western Australia – Mr T Crawl;
- PNTS – Ms C Tan;
- Mining – Mr M McKenna; and
- Pastoralists – Mr J Graham of Cornerstone Legal.

Summary of Claim

The Wutha claim is a low priority claim within the Northwest Goldfields Region. It is overlapped by several other similar competing claims. In the *Wongatha* decision, Wutha was held by Lindgren J not to be a properly authorised claim.

Directions Hearing

The directions hearing on 11 March concerned the effect of the *Wongatha* decision on the status of the Wutha claim, and the action to be taken by the Court under section 84D of the Native Title Act 1993.

Mr. Vincent submitted that, given the uncertain status of the Wutha claim following Justice Lindgren's judgment, the appropriate course of action was for the Court to set a hearing date to determine the effect of the *Wongatha* decision on the question of whether the applicant's native title claim was properly authorised.

It was further submitted that the Court must consider whether to exercise its discretion under section 84D of the Native Title Act 1993 (Cth) to hear and determine the applicant's claim irrespective of whether the claim is found to be properly authorized.

Mr Vincent also stated that any request to bring the Wutha people to the Court to present relevant evidence would be premature as long as the above matters remained undetermined. He referred specifically to the geographical and logistical difficulties involved in organising the Wutha people to attend a hearing in Perth.

None of the attending parties raised any objections to the orders sought by Mr Vincent. However, it was suggested by Mr. Crewel that the applicant be required to file written submissions 28 days before the hearing date rather than the 21 day period sought in the applicant's proposed orders.

Mr McKenna stated that his clients' primary concern was ensuring the continued operation of their mining rights and interests in the claim area, and that his client was happy to consent to the orders sought to the extent that those rights and interests remained unaffected.

Accordingly, Justice Siopis ordered that:

1. There be a hearing limited to the questions of the effect of Lindgren J's findings and judgment concerning the authorisation of the Wutha application in *Harrington-Smith v Western Australia* (2007) 238 ALR 1; [2007] FCA 31 and whether it is appropriate to make orders under s 84D in this case as sought by the Yugunga-Nya applicant.
2. The Wutha applicant file any affidavits and written submissions concerning the above matters no less than 28 days before the hearing date.
3. Any other parties are at liberty to file any affidavits and written submissions no less than 14 days before the hearing date.
4. The Wutha applicant file any reply no less than 7 days before the hearing date.
5. The matter be listed for hearing on 17 June 2009 at 10.15am.

Action from Here

We will review any submissions made by the GLSC in relation to Wutha and advise the PGA as to whether any submissions should be made on behalf of pastoralists. We will keep the PGA informed of progress.

Conclusion

If you have any questions or comments in relation to this briefing note, please do not hesitate to contact Dr Henry Esbendale of the PGA on **(08) 9479 4599**.

Kind Regards


John Steenhof
PARTNER