



Kimberley Land Council

MEDIA RELEASE

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Traditional Owners lodge appeal after Sheffield conduct condemned

Kimberley Traditional Owners of the Mount Jowlaenga area have lodged an appeal with the Full Federal Court of Australia against mineral sands miner Sheffield Resources Ltd and the State of Western Australia.

The appeal comes after Justice Barker of the Federal Court ruled that Sheffield Resources was no longer obliged to conduct itself in good faith at a time it engaged in negotiation tactics that the Judge condemned in strong terms.

Justice Barker found that Sheffield's conduct "flew in the face" of an agreed protocol which was designed to ensure Traditional Owners "would not be taken advantage of" by the company in its negotiations.

Kimberley Land Council Chief Executive Officer Nolan Hunter said there should be no loss of the good faith protection at any point of the negotiation process.

Mr Hunter said if the decision was not challenged it would set a concerning precedent for future native title negotiations and would pave the way for companies to circumvent the requirement for formal agreement making. In the past many of the companies operating in the Kimberley have acted in good faith and respected that they need to have an agreement in place with Traditional Owners.

"The Mount Jowlaenga Traditional Owners are not opposed to development, but they are opposed to a mining company that is seeking to operate on their traditional lands without an agreement in place," Mr Hunter said.

"If this mine is allowed to go ahead it will mean 40 years of operation without an agreement with the Mt Jowlaenga Traditional Owners.

"Sheffield Resources does not have a social licence to operate its Thunderbird mine in the Kimberley."

In relation to the proposed Thunderbird mine, there is no agreement in place to protect the Mount Jowlaenga Traditional Owners cultural heritage, to compensate them for the impacts on their native title, or to ensure their participation in the project via employment or contracting.

In a statement released by the Named Applicant for the Mount Jowlaenga people on whose native title area the Thunderbird mine is proposed to be built, Traditional Owners said:

“The Judge said that Sheffield Resources treated us in a way that “flew in the face” of the agreed negotiation protocol that is supposed to make sure our “best interests would not be compromised” and that we “would not be taken advantage of”. But the judge also said that at that time, we no longer had the good faith protection under the Native Title Act.

What this decision means to us is that instead of it protecting us, the Native Title Act has been used by Sheffield Resources to take advantage of us.

We have the responsibility of looking after our native title and cultural heritage for our old people and for our future generations. We should be able to rely on the good faith law under the Native Title Act to protect us from companies using bad faith negotiation tactics to get our consent for their project.

What shield does the Native Title Act give us if it allows companies to lie and trick us into giving them our consent? It’s one thing that the Native Title law doesn’t allow us to stop a company from mining our native title lands without our consent. But it is another thing to see the Native Title Act be used to let a company act in bad faith and still be allowed to get its licence to mine.

Sheffield can say it has the ‘overwhelming support’ of the local community for its project. But we don’t know how it can say that when it plans to go ahead and mine the Mount Jowlaenga people’s native title lands for the next 40 years without the Mount Jowlaenga people’s consent. We’re trying to stay strong in the face of bad faith tactics, with or without the protection of the Native Title Act.”

Mr Hunter said the latest ruling of the Federal Court highlights the increasing inability of the Native Title Act to protect and look after the interests of Aboriginal people.

“The Native Title Act is failing the people whose rights it was created to protect. The Australian Government must commit to a thorough overhaul of this legislation.”

Good faith is imposed by the Native Title Act 1993 on parties seeking to reach an agreement relating to activities that may affect native title rights and interests. It is intended to ensure parties can negotiate on an equal footing, to redress the disparity between the bargaining strength of a mining company as against a native title party which may lack capacity to do this.