



Kimberley Land Council

MEDIA RELEASE

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Traditional Owners triumph in landmark Full Federal Court win

The Kimberley Land Council has welcomed a “landmark decision” by the Full Federal Court of Australia upholding the appeal of the Mount Jowlaenga Traditional Owners against mineral sands company Sheffield Resources Limited and the West Australian Government.

The appeal centred on the application of the good faith obligation in relation to negotiations under the Native Title Act. On Wednesday, Sheffield Resources’ submission that it was no longer required to meet the good faith requirement in its negotiations, after it had applied to the Native Title Tribunal for a determination, was dismissed.

The decision acknowledges for the first time in the history of the Native Title Act that native title parties are protected by the good faith obligation at all stages of the negotiation, even after an application is made to the Native Title Tribunal for a decision on a matter.

The Full Court’s decision is fundamental to native title parties’ ability to give genuine consent to agreements for resource development on their lands.

Kimberley Land Council Chief Executive Officer Nolan Hunter said the KLC had been steadfast in its support of the Mount Jowlaenga Traditional Owners, who have been represented by Arma Legal throughout the Federal Court appeals.

“The Kimberley Land Council will always support and stand up for the native title rights of Traditional Owners in the Kimberley,” Mr Hunter said.

“Today’s decision makes it clear that companies that want to operate on Aboriginal lands must negotiate in good faith at all times.

“The right to negotiate is a bedrock of the Native Title Act and is crucial in redressing the disparity between the strength of a mining company as opposed to a native title party.

“This is a landmark decision that is fundamental to the ability of Traditional Owners to give their genuine consent to agreements regarding use of their traditional lands. “

In October 2017, the Traditional Owners of the Mount Jowlaenga area lodged an appeal with the Full Federal Court following an earlier decision of a single Judge of the Federal Court.

In that decision the Judge found that Sheffield Resources had not been obliged to conduct itself in good faith at a time it engaged in negotiation tactics that the Judge found “flew in the face” of agreed protocols.

Mr Hunter said the case will now be referred back to the National Native Title Tribunal.

“There is still no agreement with the Mount Jowlaenga Traditional Owners for the operation of the Thunderbird mine,” he said.

“This is not about opposing development. This is about making sure Traditional Owners are able to give genuine consent to mining proposals that impact their traditional lands.

“In the past many of the companies operating in the Kimberley have acted in good faith and worked together with Traditional Owners to put an agreement in place.

“We anticipate that the State Government when supporting industry and development understands that mining companies under the Native Title Act have a responsibility and a requirement regarding their conduct when engaging with native title parties.

“The Full Federal Court judgment in this case exemplifies the obligation of companies to act in good faith.”

Sheffield Resources and the State of Western Australia have also been ordered to pay the native title party's costs of the appeal.

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.