

## NOTICE OF FILING

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MINISTER FOR RESOURCES AND MINISTER FOR NORTHERN  
AUSTRALIA (COMMONWEALTH) &ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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# Affidavit

No. NSD 1056 of 2024

Federal Court of Australia  
District Registry: New South Wales  
Division: General

## Energy Resources of Australia Ltd ABN 71 008 550 865

Applicant

**Minister for Resources and Minister for Northern Australia (Commonwealth)** and others  
named in the Schedule

Respondents

Affidavit of: **Brad Welsh**  
Address: 8/24 Mitchell St, Darwin City NT 0800  
Occupation: Chief Executive Officer  
Date: 7 August 2024

I, Brad Welsh, affirm:

1. I am the Chief Executive Officer of Energy Resources of Australia Ltd (**ERA**), the applicant in this proceeding, and I am authorised to make this affidavit on the applicant's behalf.
2. I make this affidavit in support of ERA's interlocutory application for a stay of the first and third Respondents' decision to refuse to renew ERA's Mineral Lease at Jabiluka (**MLN1**).
3. Except where otherwise stated, I make this affidavit from facts within my own knowledge, information or belief. Where I depose to matters from information and belief, I believe those matters to be true and correct.
4. Nothing contained in this affidavit is intended to waive any privilege that is attached to the work performed by ERA's legal advisors, nor am I authorised by ERA to waive any such privilege.

Filed on behalf of	Energy Resources of Australia Ltd ABN 71 008 550 865, Applicant	
Prepared by	Leon Chung	
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5. Shown to me at the time of affirming this affidavit is a bundle of documents marked "Exhibit BW-1". Where I refer to documents in this affidavit, I refer to their page number in Exhibit BW-1.
6. I was involved in providing instructions for, and have reviewed, the affidavits of Leon Chung affirmed on 6 August 2024 in these proceedings. The agreements I outline in section A below for ease of reference have already been exhibited to Mr Chung's affidavit at LC-1 and I refer to their page number in Exhibit LC-1 and Exhibit LC-2.

**A. MLN1 and related agreements**

7. ERA is a uranium mining company. As explained at page 5 (page 5 of Exhibit BW-1) of ERA's 2023 Annual Report (a copy of which is at page 1 of Exhibit BW-1), ERA formerly operated the Ranger uranium mine in the Northern Territory, operations for which ceased in 2012. The Ranger Project Areas is now being progressively rehabilitated. ERA also holds the title to MLN1 over a uranium deposit at Jabiluka in the Northern Territory of Australia. The Ranger uranium mine and MLN1 are ERA's only two assets, and MLN1 is the only one of these with positive value. The Ranger uranium mine has been fully impaired, and there is an associated provision for remaining rehabilitation obligations of approximately \$2.420 billion in ERA's most recent audited accounts (meaning Ranger's value is effectively negative). MLN1 is valued in ERA's most recent audited accounts at \$89.8 million (which value reflects a number of matters including the requirement for Traditional Owner consent for mining at MLN1). ERA recently receiving a non-binding conditional offer to buy MLN1 for A\$550 million (see paragraph 65 below).
8. On 12 August 1982, the Northern Territory Minister for Mines and Energy granted a mineral lease for the mining of uranium at Jabiluka to Pancontinental Mining Limited and Getty Oil Development Company Limited (**Pancontinental**) for a period of 42 years (**MLN1**). A copy of that agreement is at page 1 of Exhibit LC-1. Condition 2 of MLN1 states that:
 

*The Territory covenants with the lessees that, provided the lessees have complied with the Mining Act and the conditions to which this lease is subject, the Minister at the expiration of this lease and in accordance with that Act will renew this lease for a further term not exceeding ten (10) years.*
9. On 21 July 1982, the NLC entered into an agreement with Pancontinental for the concepts of design and operation of the Jabiluka Project pursuant to section 43 of the *Aboriginal Land Rights (NT) Act 1976 (Cth)* (**Section 43 Agreement**). A copy of that agreement is at page 1 of Exhibit LC-2.
10. In August 1991, ERA purchased the Jabiluka mine project, including MLN1, from Pancontinental. On 24 December 1991, the Northern Land Council (**NLC**) consented to




the transfer of the Jabiluka Project to ERA. A copy of that agreement is at page 80 of Exhibit LC-1.

11. The benefit of the Section 43 Agreement was assigned by Pancontinental to ERA along with MLN1, as confirmed by Recital B of a **Deed Poll** between the NLC and ERA dated 26 May 1998, a copy of which is at page 107 of Exhibit LC-1. That Deed Poll set out amendments to the Section 43 Agreement for the design and operation of the Jabiluka Project.
12. The Section 43 Agreement provided that the NLC consented to the grant of mining interests and titles to the Joint Venturers (ie, Pancontinental) to facilitate the mining of Jabiluka (per cl 5). In exchange, the Deed Poll and Section 43 Agreement imposed various obligations on ERA, including to:
  - a. make payments to NLC for any period of time that operations in respect of the Jabiluka project are suspended (cl 10.2(b));
  - b. invest in various initiatives, including inter alia, the creation of tertiary education scholarships and work opportunities for the Indigenous communities (cl 16);
  - c. pay the NLC to undertake 'Social Impact Monitoring' in respect of the Jabiluka mine (item 8 of the Deed Poll); and
  - d. invest in educational funding for the local Indigenous community (items 36-38 of the Deed Poll).
13. On 25 February 2005, ERA, the Traditional Aboriginal Owners of Jabiluka, the Mirarr People (**Traditional Owners**) and Northern Land Council entered into an agreement titled "Jabiluka Long Term Care and Maintenance Agreement" regarding a number of matters relating to rehabilitation and environmental works to be carried out by ERA at Jabiluka (**LTCMA**). A copy of the LTCMA is at page 131 of Exhibit LC-1. By this agreement:
  - a. under cl 4, ERA agreed to carry out rehabilitation and environmental works in relation to the Jabiluka Project. Although no mining activities are currently being conducted by ERA at Jabiluka, ERA conducts remediation activities at the site consistent with the LTCMA, including managing vegetation and removing material such as cement from the former mining operations;
  - b. under cl 5.1(a), the NLC and the Traditional Owners agreed that compliance by ERA with certain payment obligations in the Deed Poll and Section 43 Agreement as listed in cl 5.1(a) of the LTCMA are waived;
  - c. under cl 5.1(d), the Traditional Owners "acknowledge that ERA holds and is entitled to continue to hold MLN1 and that they will not initiate, fund or allow to be brought in

their names any action which seeks the result that MLN 1 is forfeited, cancelled or otherwise prejudicially affected, otherwise than for breach by ERA of [the LTCMA]"; and

- d. under cl 6.1, ERA agreed not to undertake any mining development or apply for any authorisation to do so without first obtaining the approval of the Traditional Owners.
14. The LTCMA expires upon the expiry of the Section 43 Agreement, in accordance with cl 5.1. The Section 43 Agreement expires with the expiry of MLN1 (in accordance with cl 24.1 of that Agreement). This means that the LTCMA will conclude with the expiry of the Section 43 Agreement. Consequently, ERA's obligations with respect to the rehabilitation of the land at Jabiluka and any potential future right to undertake mining activity will conclude concurrently with the expiry of MLN1.
15. On 23 December 2009, the Northern Territory Government entered into a **Waiver Agreement** with ERA by which it acknowledged that the Traditional Owners' consent was required under the LTCMA for any mining development, and in exchange it waived ERA from compliance with s 66(a) of the *Mining Act 1980* (NT) and the terms of MLN1 which required that ERA use the Jabiluka Project Area continuously and exclusively for the purposes for which MLN1 was granted (Recital D and cl 3.1). A copy of the Waiver Agreement is at page 160 of Exhibit LC-1.

#### **B. ERA's Renewal Application**

16. The 42 year term of MLN1 expires on Sunday, 11 August 2024. On 20 March 2024, I submitted an application on behalf of ERA to the Northern Territory Mineral Titles Office to renew its title to MLN1. A copy of my covering letter and the accompanying application form is at page 125 of Exhibit BW-1 (**MLN1 Renewal Application**).
17. Page 1 of the MLN1 Renewal Application states that:
- Condition 2 provides ERA with a right of renewal of MLN1 for 10 years.*
- MLN1 does not contain any specific procedural requirements for applying for a renewal of MLN1 pursuant to Condition 2.*
- Condition 2 does not operate to the exclusion of section 43 of the Mineral Titles Act 2010 (NT) (MTA), which additionally empowers the Minister to grant a renewal of MLN 1 for a term of years the Minister considers appropriate.*
18. As confirmed by paragraph 3 of the letter accompanying the MLN1 Renewal Application (at page 126 of Exhibit BW-1), ERA considers that there has been no substantial non-compliance by ERA with the terms of MLN1. As noted at page 2 of the MLN Renewal Application, ERA did not submit an Annual Plan of Rehabilitation for a period from 2016 to 2020 pursuant to the Jabiluka Authorisation 0140-05 issued under the *Mining*




*Management Act 2001* (NT). That obligation is not imposed by the *Mineral Titles Act 2010* (NT) or the conditions of MLN1 itself.

**C. Interactions with Commonwealth Minister regarding MLN1 Renewal Application**

19. In February 2024, I travelled to Canberra to meet with a number of stakeholders in respect of the renewal of MNL1. During those meetings, I met with:
- a. Tania Constable, CEO of the Minerals Council of Australia;
  - b. Georgia Tree, Policy Adviser to the Honourable Madeleine King (**Minister King**) and a person named "Matt", who I also understand worked in Minister King's office;
  - c. Dave McElrea and Charlee-Sue Frail, respectively Deputy Chief of Staff and Senior Adviser to the Honourable Tanya Plibersek;
  - d. Moksha Watts, Adviser on Energy and Resources to the Prime Minister;
  - e. Kim Lockely and Rachel and Zoe (surnames unknown) from the National Indigenous Australians Agency;
  - f. Senator Malarndirri McCarthy and adviser Peter Wellings;
  - g. Matt Denyer from the Minerals Council of Australia;
  - h. Luke Gosling MP;
  - i. Kym Moore, Angela Kratz, Erin Cockram and Peter Chesworth from the Commonwealth Department of Industry, Science and Resources;
  - j. the Honourable Marion Scrymgour MP.
20. I describe some of these meetings below.
21. As mentioned, on 6 February 2024, I met with Georgia Tree, policy adviser for the Honourable Madeleine King. During that meeting, Ms Tree said to me:
- a. the Minister did not want to meet with ERA because she was concerned about bias and wanting to remain at arm's length;
  - b. Peter Garrett had already met with Prime Minister Anthony Albanese in respect of the renewal;
  - c. the Minister's office would be meeting with NLC shortly;
  - d. she was waiting for AGS to advise about what rehabilitation of MLN1 could occur with or without a lease;
  - e. they were seeking advice about how the Minister would make a decision and the role of Cabinet in the decision-making process;



- f. it appeared that Cabinet would be involved, but the extent of involvement was unknown;
  - g. it might be possible to facilitate a meeting between ERA, NLC and the Gundjeihmi Aboriginal Corporation (**GAC**) (who represent the Mirarr Traditional Owners), which would help them to understand what had worked with the current arrangements and the veto. They could arrange a mediator, and it could be in person. This was in response to my comments that ERA had not been able to speak with the Mirarr;
  - h. she would ask NLC about their views on a meeting with ERA.
22. On 6 February 2024, I also met with Moksha Watts, the Prime Minister's adviser on Energy and Resources. Ms Watts confirmed that Peter Garrett had met with the Prime Minister about Jabiluka. I was not informed about what Mr Garrett said.
23. On 7 February 2024, I also met with Kym Moore, Angela Kratz, Erin Cockram and Peter Chesworth from the Commonwealth Department of Industry, Science and Resources. I gave the Department a high-level overview of the engagements I had had so far on Jabiluka. Otherwise, the meeting was primarily about security requirements in respect the Ranger uranium mine.
24. ERA's corporate counsel, Megan Highfold attended these meetings and prepared a summary on 8 February 2024. A copy of that memorandum is at page 138 of Exhibit BW-1. I have reviewed that summary and agree that it is an accurate summary of the meetings, save that in respect of the second dot point relating to the meeting with Ms Tree, I recall that Ms Tree said that the Minister's *office* was meeting with the NLC, as opposed to the Minister personally meeting with the NLC as conveyed by the summary.
25. At the time of the meetings I had on 7 February 2024, ERA had not yet made its renewal application, and there were no discussions of the specifics of the application.
26. During the meetings I had on 7 February 2024:
- a. I was not informed of the content of any submissions made by the NLC or the Mirarr people in respect of the Jabiluka renewal (as I understood it from what Ms Tree told me, Minister King's office had not yet met with NLC);
  - b. no one raised any specific concerns about renewal of MLN1.
27. In early April 2024 I received a call from Kym Moore from the Commonwealth Department of Industry, Science and Resources. I recall that Ms Moore told me to expect a letter from the Minister for Resources and Minister for Northern Australia regarding the MLN1 Renewal Application. In particular, she advised me that the Minister had met with the Traditional Owners of Jabiluka and was proposing to meet with ERA as

a matter of fairness. Ms Moore told me that ERA did not have to accept the meeting, but I confirmed that ERA intended to attend.

28. On 15 April 2024, I had my Executive Assistant, Lisa Creed, follow up with Ms Moore in relation to the letter and possible meeting time and locations.
29. On 10 May 2024, I received a letter from Minister King inviting me to meet with her office to "discuss [my] views on the Jabiluka Mineral Lease renewal application". A copy of that letter is at 142 of Exhibit BW-1.
30. On 28 June 2024, I travelled to Canberra with Ken Wyatt (a non-executive member of ERA's Independent Board Committee) to meet with Minister King, with whom we had a meeting scheduled for 30 minutes. The Minister did not attend for the first 20 minutes.
31. While we were waiting for the Minister to arrive, Mr Wyatt and I met with Ms Moore and Ms Tree. I recall that Ms Tree asked us to get started with the meeting given the Minister was in the House of Representatives on parliamentary matters. I stated that:
  - a. ERA believes the current set of arrangements remain the best set of arrangements for all parties;
  - b. the LTCMA granted the Traditional Owners the right to veto the mining of minerals at Jabiluka in exchange for acknowledging ERA's right to hold MLN-1. The continuation of this agreement was in everyone's best interests and preferable to forcibly ending a mining lease;
  - c. in light of the above, the current set of arrangements on MLN1 were the best for all parties;
  - d. in the Northern Territory, a national park is a lease arrangement as opposed to an act of Parliament like in some states. Those arrangements could be changed by a future government with a stroke of a pen. We (meaning ERA) believed the Traditional Owners' right of veto was a much stronger position because it would mean a future Government would have to forcibly remove the mining lease in order to remove the Traditional Owners' veto rights over mining;
  - e. given the Jabiluka Resource was more than 100m underground, a national park lease may not extend those arrangements that deep which meant that it might not rule out development of a uranium mine in the future; and
  - f. we had been unable to get a meeting to discuss these matters directly with the Mirarr Traditional Owners.
32. Ms Moore and Ms Tree did not provide any substantive responses and did not ask any questions. I recall that:





- a. Ms Moore said that the Northern Territory Minister had not referred the MLN1 Renewal Application to Minister King yet; and
  - b. Ms Tree said that words to the effect of “you’ve told us that before”. I understood this to be a reference to my earlier meeting with Ms Tree in February as described at paragraph 21 above.
33. Minister King arrived at the meeting after 20 minutes. I recall that I outlined ERA’s position to Minister King to similar effect to what I had already disclosed to Ms Moore and Ms Tree, as outlined as at 31 above.
34. Based on what Ms Moore told me (as at 32a above), I told Minister King that I understood that the MLN1 Renewal Application hadn’t yet been referred to her yet for consideration and that we didn’t expect anything to happen (ie, any decision on the MLN1 Renewal Application to be made) before the Northern Territory Government went into caretaker mode. I also told the Minister that I expected to return to Canberra for meetings in around September of this year in “Minerals Week”, which is an annual conference hosted in Canberra by the Minerals Council of Australia, to discuss the MLN1 Renewal Application further.
35. The Minister said in response words to the effect of “you’ve made good points” but did not make any other substantive comments. She left the meeting after 10 minutes at which point the meeting concluded.
36. The Minister did not:
- a. ask me or Mr Wyatt any questions;
  - b. respond to any particular issues I had raised;
  - c. advise me that the Commonwealth Government was considering extending the Kakadu National Park to include Jabiluka upon the expiry of the initial term of MLN1;
  - d. advise me that the Traditional Owners strongly objected to the renewal of MLN1 and that it was unlikely they would consent to any mining within the proposed term of the MLN1 renewal to which ERA was entitled under condition 2 of MLN1 (as extracted at paragraph 8 above);
  - e. discuss with me the prospects of the Jabiluka site being developed for the purpose of uranium mining within the 10-year renewal period of MLN1 that ERA was seeking.
37. After speaking with Minister King, I met with Ms Moore again and recall that I said to her that I understood that the MLN Renewal Application had not yet been referred to Minister King and that I did not expect any decision until after August 2024 when the Northern Territory Minister went into caretaker mode. I also referred to my expectation that I



shared earlier (as stated at paragraph 34 above) that representatives from ERA would return to Canberra in around September 2024 to continue this discussion.

38. I recall that Ms Moore said that she was not sure whether Minister King might make the decision on the MLN1 Renewal Application herself or whether she would be invited to bring it to Cabinet. The Department was preparing for both eventualities. Ms Moore said that when the Minister received the referral, the Minister could ask ERA for final written submissions.
39. At the end of the day following my meetings, I prepared a file note of those meetings which is at page 144 of Exhibit BW-1. I have caused to be redacted from the file note information relating to other meetings I had on that day.
40. In the period after these meetings until the events described at paragraph 44 below, I was not:
- a. invited to any further meeting with Minister King;
  - b. invited to provide any further written submissions or to comment on specific objections;
  - c. provided with any update as to when the Northern Territory Government would refer the MLN1 Renewal Application; or
  - d. informed as to when ERA could expect a decision on the MLN Renewal Application. However, based on my discussions with Minister King and the Departmental officials, I did not expect any decision to be imminent because I understood that the MLN Renewal Application had not yet been referred to Minister King for consideration.
41. Based on the matters outlined above, I expected that Minister King or Minister Monaghan would contact me if a decision on the MLN1 Renewal Application was imminent, because:
- a. I expected that I would be given the opportunity to make further submissions (whether written or oral) once the MLN1 Renewal Application was formally referred to Minister King for advice; and
  - b. Given that ERA had complied with MLN1, it was entitled to a renewal of MLN1 for a further term in accordance with condition 2.
42. I have not been provided with, and I understand from my inquiries that no one else at ERA has been provided with any submissions from the Mirarr people and the NLC that may have been provided to Minister King relating to the MLN1 Renewal Application.
43. I also do not know what other submissions or comments (if any) Minister King received in respect of the MLN1 Renewal Application.



#### D. The Renewal Decision

44. On 26 July 2024, at about 11:54am AEST I received a phone call from the Northern Territory Minister for Mining and Minister for Agribusiness and Fisheries, Minister Mark Monaghan, advising me that he was going to refuse ERA's MLN1 Renewal Application. He informed that based on the advice he had received from the Commonwealth, he had no choice but to follow the advice of the Federal Minister.
45. Shortly thereafter, I received a letter from Minister Monaghan confirming his decision to refuse the MLN1 Renewal Application (**Renewal Decision**). A copy of that letter is at page 148 of Exhibit BW-1. The letter stated that:

*Consistent with section 187(1), on 23 July 2024, I sought the advice of the Commonwealth Minister, the Hon Madeleine King MP, Minister for Resources and Minister for Northern Australia, in relation to ERA's application to renew the Jabiluka MLN1.*

*I confirm that on 25 July 2024, the Commonwealth Minister advised me to refuse ERA's application to renew the Jabiluka MLN 1. Accordingly, I advise that the application to renew the Jabiluka MLN1 is refused.*

#### E. Correspondence with the Ministers since the Refusal of the MLN1 Renewal Application

46. At 12:59pm on 26 July 2024, I received a text from Marie Illman, the Deputy Chief of Staff to Minister King which stated that: "Hoping to speak to you about the Jabiluka mineral lease advice". A copy of that text is at page 149 of Exhibit BW-1.
47. I called Ms Illman at 1.11pm on 26 July 2024 and she asked what ERA was doing after hearing from Minister Monaghan. I advised that we were in shock and didn't have the reasons or the advice about why the renewal was rejected. Ms Illman advised that we would have to get the advice from Minister Monaghan or the Northern Territory Department of Mining.
48. During the conversation with Ms Illman I asked when they received the referral and she advised approximately two weeks ago.
49. During the course of the day, at my request, ERA followed up with Minister Monaghan's to seek to obtain the reasons for the refusal of the MLN1 Renewal Application and advice received from Minister King. However, they informed me that they were told by Minister Monaghan's office that ERA should seek it directly from Minister King's office. I then called Ms Illman back to relay what ERA had been told by the NT Minister's office about the advice and she said they would get back to me.




50. On 26 July 2024, I sent a letter to Minister Monaghan to express ERA's disappointment at the Refusal Decision, given the fact that MLN1 provided ERA with a right to renewal of the lease for a further term of 10 years. A copy of that letter is at page 150 of Exhibit BW-1.
51. At 6:05pm on 26 July 2024, I texted Ms Illman and stated that:
- I don't quite understand how you said you have had the referral for two weeks. Minister Monaghans letter advises they sought advice from the federal minister on 23 July and got it back on 25 July. Can you confirm the federal government only had the referral for two days?*
- A copy of that text is at page 149 of Exhibit BW-1.
52. In response, on 27 July 2024 at 10:39am, Ms Illman texted me stating that: "*Apologies Brad I misspoke. The letter is correct*". A copy of that text is at page 151 of Exhibit BW-1.
53. I responded to that text and asked: "*Will we be sent the advice*". By this, I was referring to Minister King's advice to Minister Monaghan to refuse the MLN1 Renewal Application. A copy of that text is at page 151 of Exhibit BW-1.
54. Ms Illman responded to my text and stated that: "*Yes, it will come on Monday*". A copy of that text is at page 151 of Exhibit BW-1.
55. On 29 July 2024, I sent a letter to Minister King in which I reiterated my request for a copy of the advice from Minister King to Minister Monaghan and requested that the Minister confirm when the decision on the MLN1 Renewal Application was made. A copy of that letter is at page 152 of Exhibit BW-1.
56. On 29 July at 3:24pm, I texted Ms Illman and asked for "*any update on when the advice might come through*". A copy of that text is at page 151 of Exhibit BW-1.
57. On 29 July Ms Illman responded to my text and stated "*We have just received your letter so are preparing a reply*". A copy of that text is at page 151 of Exhibit BW-1.
58. On 1 August 2024, I wrote to Minister Monaghan to formally request:
- a. a record of the Refusal Decision;
  - b. any reasons for the Refusal Decision; and
  - c. the material before him at the time he made the Refusal Decision, including the advice provided by Minister King.

A copy of that letter is at page 153 of Exhibit BW-1.



59. On 2 August 2024, I received a response from Anne Tan (Deputy Chief Executive Officer Mining and Energy) on behalf of Minister Monaghan in response to my letter of 1 August 2024. Ms Tan stated that:

*While I am unable to provide you with a copy of the advice of the Commonwealth Minister, provided to me on 25 July 2024, advising me to refuse to renew ERA's application, I can advise that Minister Madeleine King MP's advice was based on consideration of a number of matters including, but not limited to, the views of ERA, the Northern Land Council and Mirarr Traditional Owners.*

*Those considerations included ERA's submission that:*

- mining the site could deliver economic benefits for the Northern Territory, the region and the Mirarr Traditional Owners;*
- the site's uranium, if mined, could be used to produce a significant amount of nuclear energy, contributing to global efforts to lower carbon emissions;*
- under the Jabiluka Long-Term Care and Maintenance Agreement (the Agreement), ERA has committed that mining and development will not occur without the consent of the Mirarr Traditional Owners; and*
- the arrangements under the Agreement are the best option for all parties.*

*However, the Commonwealth Minister also advised that she considered it significant that the Mirarr Traditional Owners strongly objected to the renewal of Jabiluka MLN1 and that it was unlikely that the Mirarr People would consent to mining or development within the proposed term of renewal sought. Noting ERA's commitment not to mine without the consent of the Mirarr People, the Commonwealth Minister's advice was that the prospects of the site being developed or mined within the ten year renewal period sought were considered low.*

A copy of that letter is at page 154 of Exhibit BW-1.

60. As stated at paragraph 36 above, Minister King did not refer to the objections of the Traditional Owners or the likelihood of Jabiluka being mined within the ten year renewal period sought by ERA during our meeting on 28 June. Since ERA lodged the renewal application, I have never been asked, and so far as I know ERA has never been asked by the Government, about the prospects of the Jabiluka site being mined or developed with the ten year renewal period sought, by any Minister or representative of the Commonwealth or the Northern Territory.




61. On 3 August 2024, I sent a letter to Minister King attaching the letter from Anne Tan on behalf of Minister Monaghan referred to at paragraph 59 above and requested that the Minister provide a copy of her direction to Minister Monaghan and the materials relied upon in preparing that advice. A copy of that letter is at page 156 of Exhibit BW-1. As at the date of this affidavit I have not received a response to this letter.

**F. Impact of Renewal Decision on ERA**

62. ERA conducted exploration work at Jabiluka in the 1990s and early 2000s. These activities are outlined at page 18 (page 173 of Exhibit BW-1) ERA's MLN1 exploration report dated October 2015 which I obtained from the company records, a copy of which is at page 157 of Exhibit BW-1. No exploration work or mining activity has been conducted at Jabiluka since that time. Rather, consistent with the LTCMA and the Waiver Agreement, ERA has undertaken, and continues to undertake, land management and rehabilitation activities in respect of the land underlying Jabiluka.
63. If the Renewal Decision takes effect, MLN1 ceases to have effect on Monday 12 August 2024 and people start taking steps in reliance on the Renewal Decision, this will have a serious impact upon ERA.
64. As noted at page 85 (page 85 of Exhibit BW-1) of ERA's 2023 Annual Report (a copy of which is at page 1 of Exhibit BW-1), MLN1 is one of only two assets for ERA (the other of these, as noted above, is Ranger which effectively has negative value, as it is no longer mined but is the subject of significant rehabilitation obligations). This means that any steps taken in reliance on the validity of the Renewal Decision will cause ERA to lose the value of its key asset. I am instructed by Mr Nolan that, after the expiry of MLN1, the Register will be updated to reflect the fact that MLN1 would be a 'historical' mineral title. A copy of the Northern Territory Register of Titles showing ERA's title in MLN1 is at page 175 of Exhibit BW-1. Once the Register has been updated, there will be nothing to prevent other parties from dealing with the land underlying Jabiluka in a way which is inconsistent with ERA's current title.
65. In particular:
- a. After the expiry of MLN1, the LTCMA will also expire. ERA will no longer have the right to occupy and access the Jabiluka area to continue the rehabilitation activities currently being undertaken. That work is being completed by ERA employees and contractors who will need to leave the site, subject to any agreements or arrangements that can be entered with the Owners.
  - b. The other agreements which ERA has entered with other parties (as listed at paragraphs 9 and 10 above) will expire concurrently with MLN1. The Section 43 Agreement facilitated the grant of mining rights in relation to Jabiluka in accordance





with the requirements of the *Aboriginal Land Rights Act 1976* (NT) and the Waiver Agreement facilitates ERA's compliance with s 66(a) of the *Mining Act 1980* (NT) and the terms of MLN1. If these agreements expire, I am instructed by Mr Nolan it may be challenging, costly and time consuming for ERA to seek to negotiate new agreements to replace these agreements, if such agreements can be negotiated at all. ERA will also suffer commercial prejudice from the expiry of the other agreements, for example:

- i. As outlined at paragraph 15 above, the Waiver Agreement waives the requirement for ERA to comply with certain conditions imposed by the *Mining Act 1980* (NT) and tenement conditions. Given that ERA has not conducted any mining activities at Jabiluka (consistent with its commitments to the Traditional Owners under the LTCMA), it would not be possible nor financially viable for ERA to comply with those conditions if MLN1 was found not to have expired (or was reinstated) but subsisted without the benefit of the Waiver Agreement; and
  - ii. The Section 43 Agreement is a key precondition under the *Aboriginal Land Rights (NT) Act 1976* (Cth) for the grant of a mining lease at Jabiluka. If that agreement expired but MLN1 was found not to have expired (or was reinstated), it would need to be renegotiated if the Traditional Owners consented to mining at Jabiluka at any stage in the future.
- c. Similarly, the expiry of MLN1 will remove the restrictions on access and activities at Jabiluka which are inconsistent with the mining lease. For example, under cl 1(f) of MLN1, ERA covenanted that:

*unless prohibited by law, to permit and protect completely the exercise of free ingress, egress and regress at all times by, persons who reside in the Jabiluka Project Area or who are from time to time authorized in that behalf under the laws in force in the Territory, to, from and across the leased land except those areas which, because mining, treatment or transport operations being specifically conducted on them and the presence of those persons on them will cause safety hazards to personnel, operations or equipment, are designated by the lessees as restricted areas.*

Once MLN1 expires, this restriction will no longer apply and there will be nothing to prevent the Owners from dealing with the land in a way which is inconsistent with ERA's ongoing title to MLN1.

- d. The Commonwealth has said that the Jabiluka land area may be incorporated into the Kakadu National Park. In particular:

- i. On 27 July 2024, the Prime Minister of Australia gave a speech to the NSW State Labor Conference in Sydney in which he said that:

*Over the past 18 months, Linda, Tanya Plibersek and myself have met with leaders and representatives of the Mirrar people, the traditional owners of the Jabiluka site in Kakadu. They were seeking a guarantee that there would never be uranium mining on their land.*

...

*Today, I am proud to announce that our Government will be working with the traditional owners to make Jabiluka part of Kakadu National Park, once and for all. This means there will never be mining at Jabiluka. The Mirrar people have loved and cared for their land for more than 60,000 years. Our Government will work with them to keep it safe for all time.*

A copy of that speech is at page 178 of Exhibit BW-1.

- ii. On 27 July 2024, by media release Minister King released an announcement stating: *"The Albanese Labor Government has advised the Northern Territory Government that the Jabiluka Mineral Lease should not be renewed, allowing the site to be added to Kakadu National Park"*. The media release also quoted Minister for the Environment and Water, Tanya Plibersek as stating *"That's why today I'm pleased to begin work to incorporate the Jabiluka site into Kakadu National Park"*. A copy of that media release is at page 197 of Exhibit BW-1. I understand from these media releases that the Commonwealth takes the view that the non-continuation of MLN1 is an important factor (and possibly a precondition) to extending Kakadu National Park. As I understand the legal position, if Kakadu National Park is extended to cover Jabiluka, there will be (at least) restrictions on mining activity; ERA will be unable to sell MLN1 to interested third parties.
- e. The refusal to renewal MLN1 has already impacted ERA's commercial interests and prevented it from selling MLN1 to third parties. For example, On 29 July 2024, ERA issued a media release to the ASX (a copy of which is at page 200 of Exhibit BW-1) confirming that:

*it received a non-binding indicative offer from Boss Energy Limited to buy MLN-1 for \$550 million, subject to conditions including ... relevant regulatory and third party approvals. The proposal involved a number of features, including a 10% free carried interest (post recovery of capital) in*

*favour a Northern Territory focussed indigenous foundation to support indigenous communities.*

...

*ERA received notice yesterday evening that the proposal has been withdrawn given the announcement released by the NT government on 26 July 2024, advising that the Jabiluka Mineral Lease will not be renewed.*

There was a steep decline in ERA's market capitalisation following the announcement. I have conducted a search of the ASX website listing for ERA and taken a screenshot (which is at page 202 of Exhibit BW-1) showing the decline in ERA's market capitalisation in late July.

Sworn / Affirmed by the deponent  
at Darwin  
in Northern Territory  
on 7 August 2024  
Before me:

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)  
)  
\_\_\_\_\_  
Signature of deponent

\_\_\_\_\_  
Signature of witness

**ASHLEY THOMAS HEATH**  
**Commissioner for Oaths (NT)**  
**Ward Keller, Lawyers**  
Level 7, NT House  
22 Mitchell Street, DARWIN NT 0800

**Schedule**

Federal Court of Australia

District Registry: New South Wales

Division: Administrative and Constitutional Law

**Respondents**

**Second Respondent:** Commonwealth of Australia

**Third Respondent:** Minister for Mining and Minister for Agribusiness and Fisheries  
(Northern Territory)

**Fourth Respondent:** Northern Territory

**Fifth Respondent:** Jabiluka Aboriginal Land Trust

