

NOTICE OF FILING

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 18/10/2024 3:04:09 PM AEDT
Date Accepted for Filing: 18/10/2024 3:04:18 PM AEDT
File Number: NSD1056/2024
File Title: ENERGY RESOURCES OF AUSTRALIA LTD ABN 71 008 550 865 v
MINISTER FOR RESOURCES AND MINISTER FOR NORTHERN
AUSTRALIA (COMMONWEALTH) &ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59
Rule 29.02(1)

Affidavit

No. NSD1056 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

Respondents

Affidavit of: **Gordon Thomas Grieve**
Address: Piper Alderman, Level 23, Governor Macquarie Tower, 1 Farrer Place, Sydney
NSW 2000
Occupation: Lawyer
Date: 18 October 2024

Contents

Document number	Details	Paragraph	Pages
1.	Affidavit of Gordon Grieve sworn on 18 October 2024 on behalf of Zentree and Packer	[1]-[8]	1-2
2.	Email from Piper Alderman to HSF dated 23 September 2024	[4]	3-4
3.	Email from Piper Alderman to HSF dated 15 October 2024	[6]	5-7
4.	Email from HSF to Piper Alderman dated 15 October 2024	[7]	8-11
5.	Letter from HSF to Piper Alderman dated 17 October 2024	[8]	12-14

I Gordon Thomas Grieve, Partner of Piper Alderman of Level 23, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000, say on oath:

1. I am a Partner of Piper Alderman and I act for Zentree and Packer in respect of their interlocutory application filed on 4 October 2024.
2. I make this affidavit in support of the interlocutory application dated 4 October 2024 made by Zentree and Packer for a grant of leave to intervene in these proceedings pursuant to


sections 236 and 237(1) of Corporations Act and rule 9.12(1) of the *Federal Court Rules 2011* (Cth). I am authorised to make this affidavit on behalf of Zentree and Packer.

3. Defined terms in this affidavit have the same meaning as in my affidavit sworn 4 October 2024.
4. On 23 September 2024, I caused an email to be sent to Mr Leon Chung of Herbert Smith Freehills (**HSF**), the solicitor for ERA in these proceedings. The email, in effect, requested a list of court documents that Piper Alderman has been unable to obtain either publicly or pursuant to requests made to the Federal Court registry to access court documents. A copy of the email from Ms Meduri to Mr Chung is annexed to this affidavit and marked "**GTG-2**".
5. I did not receive a response to this email from Mr Chung or anyone on his behalf.
6. On 15 October 2024, I caused a further email to be sent to Mr Chung of HSF requesting additional documents that had been filed in the proceedings and which were not available publicly or pursuant to a request made to the Federal Court registry to access documents. The email, in effect, requested further court documents to be provided, including a copy of the Applicant's submissions filed 4 October 2024, in addition to those listed in the email dated 23 September 2024. A copy of the email from Ms McGinlay to Mr Chung is annexed to this affidavit and marked "**GTG-3**".
7. On 15 October 2024 I was copied into an email from Ms Zhu of HSF, stating, in effect, that the Applicant did not consider it was in a position to provide the documents requested. A copy of the email from Ms Zhu is annexed to this affidavit and marked "**GTG-4**".
8. On 17 October 2024 I received a letter from Mr Chung of HSF stating, amongst other things, that ERA's position remains as set out in their previous correspondence and otherwise notes Zentree and Packer's application to intervene. A copy of the letter from Mr Chung is annexed to this affidavit and marked "**GTG-5**".

Sworn by the deponent
at Adelaide
in South Australia
on 18 October 2024
Before me:

)
)
)
)
)


Signature of deponent


Signature of witness

Solicitor

THOMAS JOSEPH WOOLFORN

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

Respondents

Certificate Identifying Exhibit "GTG-2"

This is the annexure marked "GTG-2" referred to in the Affidavit of Gordon Thomas Grieve sworn on 18 October 2024.

Before me:



Signature of person taking affidavit

Kirsty McGinlay

From: Caterina Meduri
Sent: Monday, 23 September 2024 3:00 PM
To: Chung, Leon
Cc: Gordon Grieve; Zhu, Haiqiu; Kirsty McGinlay
Subject: Request for Documents - ERA v Minister for Resources Proceedings [PA-A.144898.452215.FID1327840]

Follow Up Flag: Follow up
Flag Status: Flagged

Leon,

I refer to our discussions last week where I asked if you would be in a position to provide us with copies of the documents filed in the proceedings which we have been unable to obtain either publicly or pursuant to requests we have sent to the Federal Court registry.

Below is a list of the documents we have been unable to obtain:

1. Outline of Submissions filed by Minister for Resources and Minister for Northern Australia (Commonwealth) dated 27 August 2024;
2. Submissions filed by Northern Territory on 27 August 2024 dated 27 August 2024;
3. Notice to Admit issued by Energy Resources of Australia (ERA) dated 5 September 2024;
4. Notice to Admit issued by ERA dated 5 September 2024;
5. Notice to Admit issued by ERA dated 5 September 2024;
6. Notice to Admit issued by ERA dated 5 September 2024;
7. Notice to Admit issued by ERA dated 5 September 2024;
8. Notice to Admit issued by ERA dated 5 September 2024;
9. Notice to Produce filed by Northern Land Council dated 12 September 2024;
10. Notice to Produce filed by ERA dated 13 September 2024;
11. Notice to Produce filed by ERA dated 16 September 2024;
12. Notice to Produce filed by ERA dated 16 September 2024;
13. Subpoena Request to GPN filed by ERA dated 16 September 2024;
14. Subpoena to Produce Documents filed by ERA dated 16 September 2024;
15. Notice to Produce filed by Minister for Resources and Minister for Northern Australia (Commonwealth Respondents) dated 17 September 2024;
16. Notice to Produce a Document in a Pleading or Affidavit filed by the Commonwealth Respondents dated 17 September 2024;
17. Interlocutory Application filed by ERA dated 17 September 2024;
18. Affidavit filed by ERA dated 17 September 2024;
19. Notice of Dispute filed by Northern Territory dated 19 September 2024;
20. Notice of Dispute filed by Northern Territory dated 19 September 2024;
21. Notice of Dispute filed by Northern Land Council dated 19 September 2024;
22. Submissions filed by the Commonwealth Respondents dated 20 September 2024;
23. Submissions filed by the Northern Land Council dated 20 September 2024; and
24. Submissions filed by ERA dated 20 September 2024.

Are you able to provide us with a copy of these documents? We would appreciate having a copy of interlocutory application and affidavit regarding the proposed amendments to the Originating Application.

Regards

Caterina Meduri
Partner

T: +61 2 9253 3836 **M:** +61 408 295 673
E: cmeduri@piperalderman.com.au
W: piperalderman.com.au **W:** [View My Profile](#)

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

Respondents

Certificate Identifying Annexure "GTG-3"

This is the annexure marked "GTG-3" referred to in the Affidavit of Gordon Thomas Grieve sworn on 18 October 2024.

Before me:



Signature of person taking affidavit

Kirsty McGinlay

From: Kirsty McGinlay
Sent: Tuesday, 15 October 2024 9:13 AM
To: Chung, Leon
Cc: Gordon Grieve; Zhu, Haiqiu; Caterina Meduri; Tom Woolford; Milica Lazarevic
Subject: RE: Request for Documents - ERA v Minister for Resources Proceedings [PA-A.144898.452215.FID1327840]

Dear Mr Chung,

I refer to Caterina Meduri's email to you below to which we have received no response.

As we previously stated, we are currently unable to obtain a number of documents filed in the above proceedings.

In addition to the documents previously requested, could you please provide us with copies of the following documents:

1. Affidavit filed by Northern Land Council on 23 September 2024 at 17:10;
2. Affidavit filed by Minister for Resources and Minister for Northern Australia (Commonwealth) on 23 September 2024 at 17:10;
3. Affidavits (x2) filed by Yvonne Margarula on 23 September 2024 at 21:56;
4. Affidavit filed by Northern Land Council on 23 September 2024 at 14:53;
5. Affidavit filed by Energy Resources of Australia Ltd on 1 October 2024 at 19:31;
6. Notice to Produce filed by Energy Resources of Australia Ltd on 2 October 2024 at 12:52;
7. Affidavit filed by Energy Resources of Australia Ltd on 2 October 2024 at 15:20; and
8. Outline of Submissions filed by Energy Resources of Australia Ltd on 4 October 2024 at 15:57.

We look forward to hearing from you.

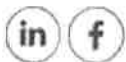
Kind regards

Kirsty McGinlay
Lawyer

T: +61 2 9253 3873

E: kimcginlay@piperalderman.com.au

W: piperalderman.com.au



From: Caterina Meduri <cmeduri@piperalderman.com.au>
Sent: Monday, 23 September 2024 3:00 PM
To: Chung, Leon <Leon.Chung@hsf.com>
Cc: Gordon Grieve <GGrieve@piperalderman.com.au>; Zhu, Haiqiu <Haiqiu.Zhu@hsf.com>; Kirsty McGinlay <kimcginlay@piperalderman.com.au>
Subject: Request for Documents - ERA v Minister for Resources Proceedings [PA-A.144898.452215.FID1327840]

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Regards

Caterina Meduri
Partner

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W: piperalderman.com.au W: [View My Profile](#)



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

Respondents

Certificate Identifying Annexure "GTG-4"

This is the annexure marked "GTG-4" referred to in the Affidavit of Gordon Thomas Grieve sworn on 18 October 2024.

Before me:


Signature of person taking affidavit

Kirsty McGinlay

From: Zhu, Haiqiu <Haiqiu.Zhu@hsf.com>
Sent: Tuesday, 15 October 2024 4:17 PM
To: Kirsty McGinlay
Cc: Gordon Grieve; Caterina Meduri; Tom Woolford; Milica Lazarevic; Chung, Leon; Varvaessos, Theo; Scott, Nicholas
Subject: RE: Request for Documents - ERA v Minister for Resources Proceedings [PA-A.144898.452215.FID1327840] [HSF-AUS01.FID5952778]

Dear Colleagues

We refer to the request for documents set out in your emails on 23 September and 15 October.

Our client does not consider it is in a position to provide those documents to your clients consistently with its obligations to the Court, and considers that any such request ought appropriately be made to the Court Registry.

Kind regards
 Haiqiu

Haiqiu Zhu
 Solicitor
 Herbert Smith Freehills

T +61 2 9322 4088 M +61 474 637 911 E Haiqiu.Zhu@hsf.com
www.herbertsmithfreehills.com.au

From: Kirsty McGinlay <kimcginlay@piperalderman.com.au>
Sent: Tuesday, October 15, 2024 9:13 AM
To: Chung, Leon <Leon.Chung@hsf.com>
Cc: Gordon Grieve <GGrieve@piperalderman.com.au>; Zhu, Haiqiu <Haiqiu.Zhu@hsf.com>; Caterina Meduri <cmeduri@piperalderman.com.au>; Tom Woolford <TWoolford@piperalderman.com.au>; Milica Lazarevic <mlazarevic@piperalderman.com.au>
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Lawyer

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Subject: Request for Documents - ERA v Minister for Resources Proceedings [PA-A.144898.452215.FID1327840]

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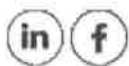
Regards

Caterina Meduri
Partner

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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**

Respondents

Certificate Identifying Annexure "GTG-5"

This is the annexure marked "GTG-5" referred to in the Affidavit of Gordon Thomas Grieve sworn on 18 October 2024.

Before me:



Signature of person taking affidavit



Gordon Grieve and Caterina Meduri
Partners
Piper Alderman
Level 23 Governor Macquarie Tower
1 Farrer Place
ggrieve@piperalderman.com.au

17 October 2024
Matter 82783241
By Email

Dear Colleagues

**NSD1056/2024 Energy Resources of Australia Ltd v Minister for
Resources and Minister for Northern Australia (Cth) & Ors**

We refer to the parties' correspondence concerning the above proceeding, including in particular your letter of 3 October 2024 (**3 October Letter**).

For the avoidance of doubt, our client's position on the matters set out in paragraphs 5 to 24 of your 3 October Letter remains as set out in previous correspondence. Having regard to those matters, we note the following:

- As to paragraph 5 of your 3 October Letter, this misunderstands our client's position. Our client's views about the extent to which the principles concerning non-derogation of grant apply to a situation such as the present are in addition to, and separate from, its views about what logically follows if our client is successful in establishing that the NT Minister wrongly failed to consider and determine the renewal application by applying condition 2. So much is clear from the fact that these points were made separately in our letter dated 27 September 2024.
- As to paragraphs 21 and 22 of your 3 October Letter, our client is conscious of the obligations of the Mirarr Traditional Owners and the Northern Land Council under the "Care and Maintenance Agreement", and those obligations already form part of our client's case.¹ Assuming that cl 5.1(d) of that agreement does operate to estop both of those parties from advancing particular arguments in the proceeding, it nevertheless continues to appear to our client that not all parties to the proceeding would be precluded from adopting those arguments – including for the other reasons set out in our letter dated 27 September 2024.

We do not otherwise propose to write to the present NT Minister for Mining and Energy. Our client remains steadfastly committed to obtaining the relief it seeks via the above proceeding.

¹ See particulars 2(b)(ii)(I) and 2(iii) of the Amended Originating Application dated 25 September 2024 (a copy of which is publicly available on the Federal Court website).



HERBERT
SMITH
FREEHILLS

Otherwise, we note your clients' application dated 4 October 2024 to intervene in the proceeding to advance the foreshadowed arguments themselves.

Leon Chung
Partner
Herbert Smith Freehills
+61 2 9225 5716
+61 407 400 291
leon.chung@hsf.com

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership ABN 98 773 882 646, are separate member firms of the international legal practice known as Herbert Smith Freehills.