

## **NOTICE OF FILING**

### **Details 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

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: **Susan O'Sullivan**

Address: 685 Kidaman Creek Road, Kidaman Creek 4574

Occupation: Solicitor

Date: 10 September 2024

I Susan O'Sullivan, 685 Kidaman Creek Road, Kidaman Creek Queensland, solicitor, say on oath:

1. I am the solicitor for Yvonne Margarula and the Mirarr Traditional Owners.
2. I make this affidavit in relation to Yvonne Margarula's application to be joined as a party to the proceedings.
3. I have provided advice and acted for Yvonne Margarula and the Mirarr Traditional Owners since 2001. During this period I have been directly involved in many discussions about the Jabiluka mineral lease with the Traditional Owners, with representatives of the applicant (**ERA**), government and the Northern Land Council (**NLC**). The matters to which I depose in this affidavit are from my own knowledge from working with the Mirarr Traditional Owners in relation to the Jabiluka mineral lease. Where I refer to information I

Filed on behalf of (name & role of party) Yvonne Margarula, applicant for joinder  
Prepared by (name of person/lawyer) Susan O'Sullivan  
Law firm (if applicable) \_\_\_\_\_  
Tel 0428 523 917 Fax \_\_\_\_\_  
Email susan\_osullivan@outlook.com, anna@annafalzonlegal.com.au  
**Address for service** 5 Gregory Place Jabiru NT 0886  
(include state and postcode)

have been told by the Mirarr Traditional Owners or others, I believe that information to be true.

4. I do not intend to waive privilege and am not authorised to do so.
5. Exhibited to me at the time of affirming this affidavit is a bundle of document marked "**Exhibit SO-1**". Where I refer to documents in this affidavit I refer to their page number in Exhibit SO-1.

#### **The Mirarr Traditional Owners**

6. I refer to the background in Part B of the Statement of Agreed Facts filed in the proceedings on 4 September 2024 and the annexed agreements at Annexures A to F, concerning the land the subject of Jabiluka Mineral Lease 1 (**MLN1**).
7. In this affidavit, I adopt defined terms used in the Statement of Agreed Facts. I use the description **Jabiluka Project land** to refer to land which is subject to MLN1. NT Portion 2253 was granted to the Jabiluka Aboriginal Land Trust on 29 June 1982. To my understanding, there is also a smaller part of the land subject to MLN1 as depicted in its Second Schedule, NT Portion 2283 (now NT Portion 7461), which was the subject of a grant to the Kakadu Aboriginal Land Trust and a lease to the Director of National Parks on 24 March 2022. A copy of the survey plan for Portions 2253 and 2283 is at pages 1-2 of Exhibit SO-1.
8. The Mirarr People are the traditional Aboriginal owners of the Jabiluka Project land. Within the definition in s 3 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**Land Rights Act**), the Mirarr are the local descent groups of Aboriginals who:
  - (a) have common spiritual affiliations to the sites on the land, being affiliations that place the Mirarr under a primary spiritual responsibility for those sites and for the land; and
  - (b) are entitled by Aboriginal tradition to forage as of right over that land.
9. In this affidavit I refer to the Traditional Owners and the Mirarr interchangeably.
10. In addition, the Mirarr People are the native title holders for the Jabiluka Project land. Their native title rights at common law have not been extinguished by the grant of title to the Jabiluka Aboriginal Land Trust or the grant to the Kakadu Aboriginal Land Trust.
11. The extensive unbroken traditional connection and occupation of Mirarr Traditional Owners to their land was addressed in the Second Report of the Ranger Uranium Environmental Inquiry in 1977. In particular, the Commissioner, Justice R W Fox, found that the Mirarr (including Yvonne Margarula) were the traditional Aboriginal owners of the land and recommended that the land in the region be granted as Aboriginal land. An extract of the report containing these findings is at pages 3-11 of Exhibit SO-1.



12. The Mirarr Traditional Owners' traditional connection and occupation of the land was also confirmed by the Alligator Rivers Stage II Land Claim Report in 1981. A copy of extracts of this report are at pages 12-23 of Exhibit SO-1.
13. Pursuant to ss 4 and 5 of the Land Rights Act, the Jabiluka Aboriginal Land Trust and the Kakadu Aboriginal Land Trusts hold title to the Jabiluka Project land for the benefit of the Mirarr People.
14. The Gundjeihmi Aboriginal Corporation (**GAC**) was established by the Mirarr in 1995. A copy of the certificate of incorporation for GAC is at page 24 of Exhibit SO-1. The GAC supports the traditional Aboriginal owners to exercise and protect their rights under the Land Rights Act and other legislation, including by representing the views of the Mirarr. A copy of a page on GAC's website explaining its role, which I accessed on 9 September 2024, is at pages 25-26 of Exhibit SO-1.

#### **Background to relevant agreements concerning MLN1**

15. The Section 43 Agreement was entered between the NLC, Pancontinental Mining Limited and Getty Oil Development Company Limited in relation to the Jabiluka Project land on 21 July 1982, pursuant to s 43 of the Land Rights Act as then in force. A copy of the Section 43 Agreement is at pages 27-178 of Exhibit SO-1.
16. The negotiations for the Section 43 Agreement were conducted amid great controversy. Negotiations commenced almost immediately after the approval of the adjacent Ranger Uranium Mine also on Mirarr Country. The validity of the Section 43 Agreement was contested by the Mirarr, who maintain it was negotiated under extreme duress. [REDACTED]  
[REDACTED]  
[REDACTED]
17. In the late 1990s, when ERA commenced construction at Jabiluka, the Mirarr initiated and led a major national and international campaign against the development. The campaign involved an eight-month blockade of the site by the Mirarr including Yvonne Margarula, supported by over 5000 peaceful protesters. Yvonne Margarula has received international awards in recognition of her role in cultural protection including the 1999 US Goldman Environmental Prize.
18. In 1998 and 1999, Ms Margarula was the applicant in a number of proceedings challenging the validity of MLN1, and then challenging approvals given for mining:
  - (a) *Margarula v Minister for Resources and Energy* [1998] FCA 48;
  - (b) *Margarula v Minister for Resources and Energy* (1998) 157 ALR 160;
  - (c) *Margarula v Minister for Resources and Development* (1998) 147 FLR 377;



(d) *Margarula v Minister for Environment* [1999] FCA 730.

19. On 25 February 2005, the Long Term Care and Maintenance Agreement (**LTCMA**) was entered between the Traditional Owners, the NLC and ERA. Yvonne Margarula executed the LTCMA on behalf of the Traditional Owners. A copy of the LTCMA is at pages 203-231 of Exhibit SO-1. Under the terms of the LTCMA, ERA agreed not to mine Jabiluka without Traditional Owner consent, and the Traditional Owners agreed not to take certain actions in relation to MLN1. By cl 2.1 of the LTCMA, that agreement will end upon the expiry of the Section 43 Agreement. Section 43 Agreement expires with the expiry of MLN1 (cl 24.1).
20. Since about December 2022, the Traditional Owners have been preparing for the expiry of MLN1 to ensure that the Jabiluka Project land is properly protected, including to prevent future mineral lease applications. By correspondence between 18 January 2024 and 14 March 2024, Yvonne Margarula and the Gundjeihmi Aboriginal Corporation sought that the Northern Territory Minister for Mining and Industry give a notice under s 114 of the *Mineral Titles Act 2010* (NT) that the Jabiluka Project land will become special reserved land on the day MLN1 ceases to be in force. Copies of that correspondence are at Annexure T to the Statement of Agreed Facts, pages 265-278.
21. On 5 June 2024, the Northern Territory published the *General Reservation of Land on Cessation of Title (RL 33778)* in the Government Gazette. A copy of that document appears at Annexure I to the Statement of Agreed Facts, pages 128-129. This provides, under s 114 of the *Mineral Titles Act*, that, when MLN1 ceases to be in force, the Jabiluka Project land will become reserved land and a person is not entitled to apply for the grant of any mineral title in relation to that land.

#### **Rights affected by the proceeding**

22. The Mirarr People reside on their own country in permanent settlements that are between 10 – 60km from the Jabiluka mineral lease land. They hunt, camp and fish across their traditional lands. They frequently traverse the Jabiluka mineral lease as the public road between their communities transects the mineral lease.
23. Under s 71(1) of the Land Rights Act, the Mirarr People are “entitled to enter upon Aboriginal land and use or occupy that land to the extent that that entry, occupation or use is in accordance with Aboriginal tradition governing the rights of that Aboriginal or group of Aboriginals with respect to that land”. Those rights are curtailed in respect of the area the subject of MLN1 while the lease remains in effect, by operation of:
  - (a) s 71(2) of the Land Rights Act, which provides that s 71(1) of “does not authorize an entry, use or occupation that would interfere with the use or enjoyment of an estate



or interest in the land held by a person not being a Land Trust or an incorporated association of Aboriginals"; and

(b) the terms of the Section 43 Agreement. In particular, cl 17 limits the access of the Traditional Owners to the Jabiluka Project land.

24. The entire mineral lease area is controlled by ERA. Locked gates are located around the area which was previously disturbed by the construction works that were undertaken on the mine in the 1990s. Significant sacred sites are located in the locked area. The Mirarr must seek the permission of ERA before they can access their traditional country.
25. In relation to areas of the site that are not fenced, the Mirarr are required to seek permission from ERA before entering. While permission is usually granted, it means that access is highly regulated and Mirarr cannot freely enter the area.
26. A further effect is that the Mirarr are unable to monitor who else may be accessing the area, including on cultural sites.
27. Jabiluka is an area of high cultural significance to the Mirarr. The sacred sites on the mineral lease area form part of a highly significant cultural landscape that is dense with sacred sites, rock art galleries and artefacts. The Madjedbebe archaeological site is located on MLN1, and is the earliest known site of human occupation on the Australian continent. The Boyweg-Almudj site complex located on MLN1 is believed by Aboriginal people across the region to be a very powerful site, and which is recognised as being the responsibility of the Mirarr. [REDACTED]  
[REDACTED]  
[REDACTED]
28. The Mirarr have been actively and directly involved in the protection and management of the Madjedbebe archaeological site. This activity has been subject to the requirement to obtain permission from ERA.
29. At no time has ERA had a cultural heritage management agreement with the Mirarr in respect of the Jabiluka Project land. There is no agreed access protocol that would allow for visiting sacred sites, maintaining rock art or cultural heritage, or for hunting or camping.
30. The Jabiluka Project land is excluded from the management arrangements in place for the surrounding Kakadu National Park and World Heritage area, as set out in the *Kakadu National Park Management Plan 2016-2026*, including for environmental and cultural heritage management.
31. The Mirarr have waited 42 years to resume their traditional occupation and enjoyment of this highly significant area. This includes an expectation of resuming important cultural



responsibilities for the sacred sites and globally significant archaeological site located on the land. The Mirarr have a proposal for a cultural connection project, which is currently on hold pending access to the land.

**Notice of the proceeding**

32. I became aware of these proceedings at 5.40pm on 6 August 2024 when a copy of an ASX announcement by ERA was sent to me by email by a colleague. A copy of the ASX announcement is at pages 262-263 of Exhibit SO-1.

33. [REDACTED]

34. [REDACTED]

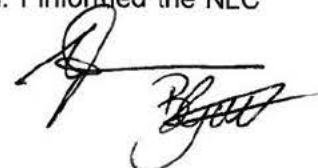
35. [REDACTED]

36. On 20 August 2024, I read an article published the previous day in the Australian Financial Review which referred to the affidavit of Brad Welsh filed in the proceeding. A copy of that article is at pages 267-272 of Exhibit SO-1.

37. I emailed Mr Gomez and Ms Donald on this day [REDACTED] A copy of that email is at page 273 of Exhibit SO-1.

38. On 26 August 2024, I met with Mr Gomez in Darwin. I told Mr Gomez that I had not been contacted since 20 August 2024. [REDACTED]

39. At 8.46am on 28 August 2024, I received a call from Yvonne Margarula asking me what was going on with the Federal Court case. I told her that I had requested an update from the NLC and requested copies of the materials filed so that I could advise her, but that I did not have either. Yvonne Margarula instructed me that she, on behalf of the Mirarr People, wanted her own lawyers and wanted to participate directly in the proceedings. On the same day, I made inquiries as to the availability of counsel. I informed the NLC



that Yvonne Margarula on behalf of the Traditional Owners would seek to be joined to the proceedings.

40. At 10.24am on 28 August 2024, I received [REDACTED] [REDACTED] copies of the originating application, interlocutory application and supporting affidavits filed on 6 August 2024; and the affidavit of Brad Welsh filed on 7 August 2024. [REDACTED]
41. Prior to this time, neither I, nor to my understanding, any of the Traditional Owners, had received any documents filed in the proceeding.
42. On 4 September 2024, at 9.53pm, I sent an email to the NLC requesting a copy of the Statement of Agreed Facts and submissions that I had become aware had been filed in the proceeding. A copy of that email is at pages 276 of Exhibit SO-1.
43. On 4 September 2024, at 11.48pm, I sent a further email to the NLC concerning the Statement of Agreed Facts. A copy of that email is at pages 277-280 of Exhibit SO-1.
44. [REDACTED]
45. On 5 September 2024, I met with Yvonne Margarula and the Traditional Owners in person at Jabiru in the Northern Territory, with Murray Garde OAM who is a NAATI qualified interpreter in the Gundjeihmi language.
46. On 9 September 2024, I received an email from Mr Gomez attaching the affidavit of Brad Welsh affirmed on 9 September 2024. A copy of that email is at page 282 of Exhibit SO-1.

#### **Evidence of interactions with ERA**

47. The Originating Application, the Statement of Agreed Facts and the affidavits filed in the proceedings, raise matters concerning ERA's awareness of the views of the Mirarr Traditional Owners concerning the renewal of the lease.
48. The Traditional Owners are concerned to be able to address any relevant evidentiary matters in this respect, to the extent it may be relevant to the proceedings.
49. The NLC was not present for many of the interactions between the Traditional Owners and/or GAC, and ERA, where the expiry or renewal of MLN1 were discussed.
50. By way of example, the affidavit of Brad Welsh affirmed on 9 September 2024 refers at paragraph [19] to a phone call between him and the Traditional Owners on 8 February 2024. I was present during that phone call. During the phone call, Yvonne Margarula and



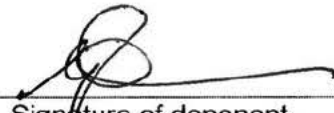


Nida Mangambarr both spoke directly to Brad Welsh about his awareness of their views on the renewal of MLN1.

- 51. By way of further example, on 20 February 2024, GAC sent a letter to Mr Rick Dennis, the Chairman of ERA, by email. This followed a telephone call the previous day between Mr Dennis, Stuart Glenn (an independent director of ERA), Thaila van den Boogaard (the CEO of GAC), Justin O'Brien (the former CEO of GAC) and me. In that letter, GAC expressed (inter alia) the Traditional Owners' concern about ERA's financial circumstances. A copy of this letter and its attachments is at pages 283-309 of Exhibit SO-1.

Sworn by the deponent  
 at Maleny  
 in Queensland  
 on 10 September 2024  
 Before me:

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 Signature of deponent  
 SUSAN O'SULLIVAN

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

BRIETTA GUILLEMET  
 C.DEC 114042

[Name and qualification of witness]