NOTICE OF FILING

Details of Filing

Document Lodged:	Submissions
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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

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.

Submissions of the NLC Parties (Fifth and Sixth Respondents)
on interlocutory application by Zentree Investments Limited and Packer & Co Pty Ltd

Federal Court of Australia No. NSD1056 of 2024

District Registry: New South Wales

Division: General

Energy Resource of Australia Ltd

Applicant

Minister for Resources and Minister for Norther Australia (Commonwealth) and Others (named in the Schedule)

Respondents

1. Pursuant to the direction made on 9 October 2024, the NLC Parties submit that the interlocutory application made by Zentree and Packer on 4 October 2024 should be refused, with costs.

2. The stated purpose of the interlocutory application is that Zentree and Packer seek to ensure that ERA advances, or that they be allowed to intervene to advance, three arguments at the trial that is to commence on 28 October 2024, being:

   (1) The Territory Minister's refusal of ERA's application to renew ML N1, on the advice of the Commonwealth Minister, is a wrongful derogation from grant.

   (2) The seventh respondent should be precluded (estoppel, *Anshun* etc) from submitting that covenant 2 in ML N1 is invalid.

   (3) If any respondent seeks relief to the effect that covenant 2 is invalid, that relief should be declined as a matter of discretion on the ground of delay.

3. The interlocutory application should be refused, at least for the following reasons.

4. *First*, the application does not actually seek an order to bring a proceeding on behalf of ERA or to take responsibility on behalf of ERA for the proceeding or for a particular step in the proceeding, so as to engage the power in s 236(1) of the *Corporations Act 2001* (Cth) to permit a derivative action or intervention. Nor does the application meet the five mandatory criteria in s 237(2). If any one of the five is not made out, leave must

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be refused.[1] The evidence filed with the application does not make out the five criteria. No general law derivative action or right of intervention is otherwise available: s 236(3).

5. *Second*, to resort to rule 9.12(1) of the *Federal Court Rules 2011* (Cth) is to attempt circumvention of s 236(3). *Third*, Zentree and Packer do not hold a legal interest that may be directly or indirectly affected by the proceeding to engage the power in r 9.12(1) to give leave to intervene.[2] The relevant interest (ML N1) is held by ERA of which each of Zentree and Packer is a shareholder.

6. *Fourth*, even if Zentree and Packer could bring the application within r 9.12, it is plain from the exhibited correspondence (exhibit GTG1) about their disagreement with ERA that the proposed intervention would unreasonably interfere with the ability of the parties to conduct the proceedings as the parties wish: r 9.2(2)(b).

7. *Fifth*, even if within r 9.12, the submissions that Zentree and Packer would seek to make (or wish ERA to make), would not be a contribution that is useful and different from the contribution of the parties to the proceeding: r 9.12(2)(a). Putting aside the evident weakness in the arguments, no regard has been had to the constitution of the proceeding as an application for judicial review of actions by the Commonwealth Minister and the Territory Minister, and:

   (1) The derogation from grant argument is no different in substance to ERA's argument that ERA had a right to have ML N1 renewed that prevails over s 187 of the *Mineral Titles Act 2011* (NT): submissions 4 October 2024 at [5], [72].

   (2) The so called estoppel or *Anshun* points could not be taken against any other respondent who could make a submission, or adopt a submission by the seventh respondent, that covenant 2 is invalid.

   (3) No respondent seeks relief by cross-claim that covenant 2 is invalid.

8. *Fifth*, on case management principles (*Federal Court of Australia Act 1976* (Cth) s 37M), the interlocutory application should be refused given its lateness and disruption.

18 October 2024

Sturt Glacken
Alexander Solomon-Bridge

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1 *Huang v Wang* [2016] NSWCA 164; 114 ASCR 586 at [57] (Bathurst CJ); *MG Corrosion Consultants Pty Ltd v Gilmour* [2012] FCA 461 at [30]-[32] (Barker J).

2 *Roadshow Films Pty Ltd v iiNet Ltd (No 1)* (2011) 248 CLR 37 at [2]-[3] (the Court).

Schedule of Parties

Federal Court of Australia No. NSD 1056 of 2024

District Registry: New South Wales

Division: General

Respondents

Second Respondent	Commonwealth of Australia
Third Respondent	Minister for Mining and Minster for Agribusiness and Fisheries (Northern Territory)
Fourth Respondent	Northern Territory
Fifth Respondent	Jabiluka Aboriginal Land Trust
Sixth Respondent	Northern Land Council
Seventh Respondent	Yvonne Margarula