

## NOTICE OF FILING

### Details of Filing

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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)

**FEDERAL COURT OF AUSTRALIA**  
**DISTRICT REGISTRY: NEW SOUTH WALES**  
**DIVISION: GENERAL**

**NO NSD 1056 OF 2024**

**ENERGY RESOURCES OF AUSTRALIA LTD ABN 71 008 550 865**  
Applicant

**MINISTER FOR RESOURCES AND MINISTER FOR NORTHERN AUSTRALIA (COMMONWEALTH)**  
First Respondent

**COMMONWEALTH OF AUSTRALIA**  
Second Respondent

**MINISTER FOR MINING AND MINISTER FOR AGRIBUSINESS AND FISHERIES (NORTHERN TERRITORY)**  
Third Respondent

**NORTHERN TERRITORY**  
Fourth Respondent

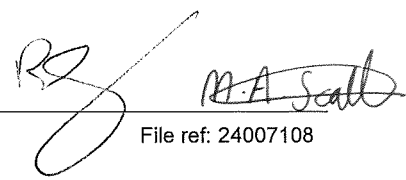
**JABILUKA ABORIGINAL LAND TRUST**  
Fifth Respondent

**NORTHERN LAND COUNCIL**  
Sixth Respondent

**YVONNE MARGARULA**  
Seventh Respondent

**AFFIDAVIT**

Affidavit of: Madisen Anne Scott  
Address: Level 21, 2 The Esplanade, PERTH WA 6000  
Occupation: Lawyer  
Date affirmed: 23 September 2024

  
File ref: 24007108

Filed on behalf of the First Respondent and Second Respondent ,  
Commonwealth Minister for Resources and Commonwealth of Australia  
Prepared by: Madisen Scott  
AGS lawyer within the meaning of s 551 of the *Judiciary Act 1903*  
Address for Service:  
The Australian Government Solicitor  
Level 21, Exchange Tower, 2 The Esplanade, PERTH WA 6000  
madisen.scott@ags.gov.au

Telephone: 08 9268 1797  
Lawyer's Email:  
madisen.scott@ags.gov.au  
Facsimile: 02 6169 3054

Document Number	Details	Paragraph(s) of affidavit referring to annexure(s)	Page
1.	Affidavit of Madisen Anne Scott affirmed 23 September 2024		1
2.	Annexure MAS-1 being a copy of the Minister's Decision Brief	[6]	7
3.	Annexure MAS-2 being a copy of the Transcript of the Case Management Hearing	[8]	82
4.	Annexure MAS-3 being a copy of the Notice to Produce issued to the First Respondent on 16 November 2024	[16]	97
5.	Annexure MAS-4 being a copy of the Notice to Produce issued to the First Respondent on 16 November 2024	[16]	102

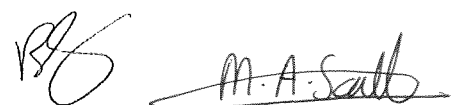
I, Madisen Anne Scott of Level 21, 2 The Esplanade, Perth in the State of Western Australia, Senior Lawyer, affirm:

1. I am an AGS lawyer (within the meaning of s 55I of the *Judiciary Act 1903*). I am one of the lawyers working on this matter on behalf of the First Respondent and the Second Respondent (**Commonwealth parties**).
2. I make this affidavit in support of the Commonwealth parties' opposition to the interlocutory application filed by the Applicant on 17 September 2024.
3. The matters deposed to in this affidavit are true and correct to the best of my knowledge and belief, and are based on matters within my own knowledge, or information and documents provided to me by AGS' instructing officers in the Department of Industry, Science and Resources (the **Department**) and staff in the office of the First Respondent;
4. Where I rely on documents I have identified those documents in this affidavit.
5. Nothing in this affidavit is intended to waive any right of, and claim to, legal professional privilege.

**Materials before the First Respondent and considered when making the Advice Decision**

6. The materials before the First Respondent at the time of the Advice Decision are in Ministerial Brief MS 24-000911.

Annexed hereto and marked **MAS-1** is a copy of the signed Ministerial Brief, as annexed to the Statement of Agreed Facts dated 4 September 2024.



## Case Management Hearing

7. On 22 August 2024, a case management hearing was held to discuss the timetabling of the matter to a hearing. During that case management hearing, Counsel for the Commonwealth parties stated (at TT6.30-6.35):

MR KNOWLES: Court please. In terms of the length of the hearing, my own impression, at the moment, is that three days ought be sufficient, but four days, for an abundance of caution, I don't oppose. I would say that that estimate, and indeed the whole timetable, is built on a couple of assumptions. One assumption is that the grounds articulated in the originating application don't shift, or at least, don't shift in any material way that will delay either the timetable, or extend the hearing...

8. Counsel for the Applicant stated in response (at TT11.8-11.17):

MR LANCASTER: Your Honour, I might say, in answer to, or in addition to what my learned friend, Mr Knowles, said, we, likewise, assume, at the moment, that the grounds won't change, but as your Honour sees from the draft short minutes, there is an ongoing process of production of documents that, in other cases, in a hypothetical sense, means that we can't commit that that will not occur, but as presently advised, those grounds are the ones that will go to hearing. As presently advised, the applicant does not propose to rely on expert evidence. And as presently advised, the statement of agreed facts should mean everything other than the flagged possibility of cross-examination of the applicant's lay witnesses – will be the only issue of fact for the hearing.

Annexed hereto and marked **MAS-2** is a copy of the transcript of the Case Management Hearing.

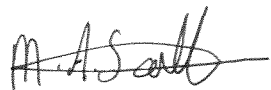
## Prior and current document production

9. Since the commencement of the proceedings, the Applicant has sought production by one or both of the Commonwealth parties of:

- 9.1. 4 categories of documents, pursuant to a Notice to Produce dated 6 August 2024 to the First Respondent;
- 9.2. 6 categories of documents, pursuant to Orders of the Court dated 9 September 2024;
- 9.3. 1 category of documents, pursuant to a Notice to Produced dated 16 September 2024 to the First Respondent; and
- 9.4. 3 categories of documents, pursuant to a Notice to Produced dated 16 September 2024 to the Second Respondent.

10. I am instructed that to produce documents under [9.1]-[9.2], the following repositories have had to be searched:

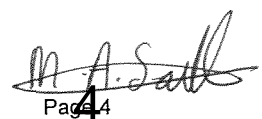
- 10.1. Individual email inboxes of Departmental staff members, persons in the office of the First Respondent and the First Respondent herself, from December 2022 to the present;



- 10.2. Contemporaneous electronic and hand-written notes of individuals who attended meetings with the applicant or in relation to Jabiluka MLN1;
  - 10.3. dochub – the Department’s primary document management system;
  - 10.4. Parliamentary Document Management System – a system used to store, monitor and manage the flow of parliamentary and executive documents; and
  - 10.5. Devices (e.g. mobile phones) of Departmental staff members, persons in the office of the First Respondent and the First Respondent herself, from December 2022 to the present.
11. I am instructed the searches have been conducted primarily by:
- 11.1. 9 employees in the Department, taking an estimated total of 80 hours of their time so far, and
  - 11.2. 4 members of staff in the office of the First Respondent.
12. Documents are then reviewed by AGS for relevance and privilege and public interest immunity claims, and instructions are sought before they can be produced.
13. Approximately 350 pages were produced to the Applicant pursuant to the Notices referred to at [9.1].
14. I am instructed that searches for documents potentially responsive to the Orders of 9 September 2024 were completed on 19 September 2024. Approximately 1,000 documents are presently being reviewed for relevance and ascertaining privilege and public interest immunity claims.

**Factual inquiries that would likely be required by the proposed amendments**

15. Some of the proposed amendments will raise factual matters, not previously raised, which will require investigation.
16. For example, for the Commonwealth parties to respond to proposed Ground 1(b)(vi) and 2(iii)(C), at least the following inquiries would need to be made:
- 16.1. who prepared and provided input into the Prime Minister’s speech;
  - 16.2. when did that work commence and when was it completed;
  - 16.3. what consultation took place, and with whom and involving which Departments.
17. Should it be necessary to prepare affidavit evidence addressing the matters above, the ordinary steps for preparing an affidavit, including conferencing with the proposed witness(es), would need to be undertaken. I am instructed that the Commonwealth parties do not consider taking all of these steps and preparing affidavit evidence to be achievable in the existing timetable, and that if the Applicant



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was to propose to rely upon documents produced in response to the Notices (or the further notices to produce dated 16 September 2024 discussed below), the Commonwealth parties would be prejudiced as such documents alone may not provide the appropriate and sufficient contextual information that is necessary for the proper resolution of the issues raised by proposed Ground 1(b)(vi) and 2(iii)(C).

**The further notices to produce dated 16 September 2024**

18. On 16 September 2024, the Solicitors for the Applicant served 2 different Notices to Produce, one on each of the Commonwealth Parties.

Annexed hereto and marked **MAS-3** is a copy of the Notice to Produce dated 16 September 2024 directed to the First Respondent.

Annexed hereto and marked **MAS-4** is a copy of the Notice to Produce dated 16 September 2024 directed to the Second Respondent.

19. I am instructed that to respond to those Notices, inquiries would need to be made with at least:

19.1. The Office of the Prime Minister;

19.2. The Department of Prime Minister and Cabinet;

19.3. The Office of the Minister for the Environment and Water; and

19.4. The Department of Climate Change, Energy, Environment and Water.

20. I am instructed that the following searches are anticipated to be required:

20.1. Individual email inboxes of:

20.1.1. Staff in each of [19.1]-[19.4];

20.1.2. The Prime Minister;

20.1.3. The Minister for the Environment and Water;

20.2. Devices (e.g. mobile phones) of:

20.2.1. Staff in each of [19.1]-[19.4];

20.2.2. The Prime Minister;

20.2.3. The Minister for the Environment and Water;

20.3. Internal document management systems of each of [19.1]-[19.4]; and

20.4. Hand-written and electronic notes.



21. Documents will need to be reviewed for relevance and privilege and immunity claims, before they are produced.
22. I am instructed it is very unlikely that the Commonwealth parties would be in a position to respond completely to the Notices to Produce served on 16 September 2024 before the close of evidence on 30 September 2024. Given the nature of the documents called for, I am instructed that production may not be able to be completed before 28 October 2024.

Affirmed by the deponent at Perth in the

State of Western Australia on


23 September 2024

  
.....

Before me:

**Brooke Griffin**  
**AGS lawyer within the**  
**meaning of s 55l of the**  
**Judiciary Act 1903 (Cth)**

Signature of witness:

  
.....

Brooke Griffin

An AGS Lawyer pursuant to s 55l of the  
*Judiciary Act 1903 (Cth)*

**ANNEXURE MAS-1**

**ENERGY RESOURCES OF AUSTRALIA LTD ABN 71 008 550 865**

Applicant

**MINISTER FOR RESOURCES AND MINISTER FOR NORTHERN AUSTRALIA (COMMONWEALTH)**

First Respondent

**COMMONWEALTH OF AUSTRALIA**

Second Respondent

**MINISTER FOR MINING AND MINISTER FOR AGRIBUSINESS AND FISHERIES (NORTHERN TERRITORY)**

Third Respondent

**NORTHERN TERRITORY**

Fourth Respondent

**JABILUKA ABORIGINAL LAND TRUST**

Fifth Respondent

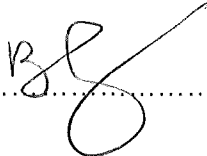
**NORTHERN LAND COUNCIL**

Sixth Respondent

**YVONNE MARGARULA**

Seventh Respondent

The following 75 pages is the annexure marked MAS-1 referred to in the affidavit of Madisen Anne Scott made 23 September 2024 before me:

  
.....

Brooke Griffin

An AGS Lawyer pursuant to s 551 of the *Judiciary Act 1903* (Cth)



To: Minister for Resources (For Decision)

**JABILUKA MINERAL LEASE RENEWAL APPLICATION - ADVICE TO THE NORTHERN TERRITORY MINISTER FOR MINING**

**Timing:** Urgent – Providing your advice by 26 July 2024 gives the Northern Territory (NT) Minister for Mining the option to decide the renewal application before the NT Government assumes a caretaker role (1 August 2024) and before the lease expiry date (11 August 2024).

**Recommendations:** That you:

1. **Note** under section 187(1) of the *Mineral Titles Act 2010* (NT) (the MTA) you are required to provide advice to the NT Minister for Mining on prescribed substances.

- The Hon Mark Monaghan MLA, NT Minister for Mining has requested your advice on the Jabiluka Mineral Lease renewal Application (the Application) (see Attachment A), consistent with section 187(1) of the MTA because the Application relates to prescribed substances.
- In formulating your advice you *must* consider the positions of ERA (see Attachment B), and Mirarr Traditional Owners (as represented by the Northern Land Council (NLC) and the Gundjeihmi Aboriginal Corporation (GAC) (see Attachment C). You *may* consider a range of policy factors (see Attachment D).

**Noted / Please discuss**

2. Choose **one** of the below options for providing your advice:

**Option 1** – advise Minister Monaghan to approve the Application and *renew* the Jabiluka Mineral Lease.

**Agreed / Not agreed**

**Option 2** – advise the Minister Monaghan to refuse the Application and *not renew* the Jabiluka Mineral Lease.

**Agreed / Not agreed**

**Option 3** – advise the Minister Monaghan to make his own decision on whether to approve or refuse the Application.

**Agreed / Not agreed**

**Option 4** – agree to withhold your advice to the Minister Monaghan until the NT Government remakes the *Mineral Titles Act 2010* (NT) (the MTA) as it applies to prescribed substances.

**Agreed / Not agreed**

**OFFICIAL: Sensitive Legal Privilege**

3. **Sign** the relevant letter which aligns with your advice for Options 1-3:

**Sign** the letter at Attachment E (Option 1) if your advice to Minister Monaghan is to approve the Application and renew the Jabiluka Mineral Lease.

**Signed / Not signed**

**Sign** the letter at Attachment F (Option 2) if your advice to Minister Monaghan is to refuse the Application and not renew the Jabiluka Mineral Lease.

**Signed / Not signed**

**Sign** the letter at Attachment G (Option 3) if your advice to Minister Monaghan is that he make his own decision to renew or refuse the Application and that he consider a range of policy factors in making his decision.

**Signed / Not signed**

4. **Note** all options have legal risk and attract significant risk of litigation.

**Noted / Please discuss**

**Minister:**

**Date:**

**Comments:**

<b>Clearing Officer:</b>	Kym Moore	A/g General Manager, Mining Branch	Ph: [REDACTED] Mob: [REDACTED]
<b>Contact Officer:</b>	[REDACTED]	A/g Manager, Remediation Policy	Mob: [REDACTED]
<b>For Parliamentary Services' use only.</b> Date Submitted to the Minister's office in PDMS:			25/7/2024

**Key Points:**

1. Minister Monaghan wrote to you on 23 July 2024 (see Attachment A) requesting your advice on the Jabiluka Mineral Lease renewal Application (the Application), consistent with your role under section 187(1) of the MTA.
  - a. The Lease is held by Energy Resources of Australia (ERA) and has an expiry date of 11 August 2024.
  - b. ERA submitted the Application to the NT Government on 20 March 2024 (see Attachment B).
2. Subsection 187(1) of the MTA requires the NT Minister for Mining to exercise their powers in accordance with your advice when deciding whether to renew the Lease. The MTA does

not specify the form your advice must take. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Policy considerations

4. Your advice relates only to the renewal or refusal of the Lease.
5. In providing your advice you must consider the positions of ERA (see Attachment B), and Mirarr Traditional Owners (as represented by the Northern Land Council (NLC) and the Gundjeihmi Aboriginal Corporation (GAC) (see Attachment C).
  - a. ERA has argued the Lease should be renewed for reasons including:
    - i. mining the site could contribute to lowering global carbon emissions;
    - ii. mining the site would advance the NT's economic development; and
    - iii. ERA has an agreement with the Mirarr not to mine without their consent. Lease renewal would allow more time for ERA to work with the Mirarr to develop an acceptable plan for mining (if the Mirarr were open to such a discussion in future).
  - b. The Mirarr want the renewal of the Lease to be refused for reasons including:
    - i. they do not consider ERA has realistic prospects of mining the site, as it does not have the financial capacity to do so; and
    - ii. the Mirarr will never consent to mining, as the site is culturally and environmentally significant.
6. Attachment D describes the context of the Lease, the history of the site, and a range of policy factors you can consider in formulating your advice.

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<sup>1</sup> [REDACTED]

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- a. If the Application is *approved* and the lease is *renewed*:
  - i. ERA will retain the Lease as an asset, as well as its prospects of mining the site;
    - A. ERA currently values this asset at \$90 million.
  - ii. ERA will remain responsible for site rehabilitation;<sup>1</sup>
    - A. Your response in Attachment E encourages Minister Monaghan to condition any approval to renew the Lease on ERA providing a plan describing how it will fulfill its rehabilitation obligations within the term of the Lease.
  - iii. The Mirarr will oppose and continue to advocate for a permanent ban on mining the site;
    - A. The Mirarr will also likely withdraw from negotiations on the rehabilitation framework for the Ranger Uranium Mine (Ranger) (further detail below).
  - iv. [REDACTED]
- b. If the Application is *refused* and the renewal is *rejected*:
  - i. the Mirarr will have primary control over site access and use;
  - ii. following the NT Government's gazettal notice of 5 June 2024, the land will be classified as general reserve, creating an indefinite, revocable ban on mining activities on the site;
  - iii. ERA may not be able to be compelled to complete rehabilitation at Jabiluka; and
    - A. The site is partially rehabilitated but does not pose a threat to the environment in its current state.
    - B. ERA estimates rehabilitation will cost \$800,000 if completed by ERA.<sup>2</sup> The NT Government holds a \$1 million security for this purpose.<sup>3</sup> The NT Government has advised the security could be used (potentially by the NT Government) to complete rehabilitation.
  - iv. ERA may commence a legal challenge. ERA may argue that the terms of the Lease mean it is entitled to 'automatic renewal' (see Attachment H).

Legal risks

7. [REDACTED]

<sup>2</sup> ERA (2023) *Mine Closure Plan: Mineral Lease Number 1*. Page 8-1

<sup>3</sup> NT Government (2024) *Securities held for mining sites*. Retrieved July 16, 2024.

8.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**OFFICIAL: Sensitive Legal Privilege**

- a. If there is no decision by 11 August 2024, it is likely GAC will make a public statement on 12 August 2024 that the Lease has now expired, the MTA is an invalid instrument (as it applies to prescribed substances), and the Commonwealth should incorporate the site into Kakadu National Park.
  - b. We will work with the NT Government and AGS on two media releases for you:
    - i. a release if Minister Monaghan's makes his decision by 1 August 2024; and
    - ii. a release if no decision is made by 11 August 2024 (responding to GAC's likely announcement that the Lease has expired and cannot be renewed).
16. If the Lease is renewed or you withhold your advice, there is a risk that the GAC and NLC will withdraw from negotiations on the extension of Ranger's regulatory framework (**MS24-000480** refers). We will brief you separately on the options available if there are extended delays on this.
17. If the Lease is not renewed or you withhold your advice, ERA's attempts to raise capital to continue Ranger's rehabilitation may be negatively impacted (**MC24-003311** refers).
18. The letters at Attachments E-G are provided as *draft* for your consideration.

**Consultation with the Cities and Northern Australia Division, Department of Infrastructure, Transport, Regional Development, Communications and the Arts: No.**

19. The sensitive nature of the content in this brief requires limited distribution.

**Other Consultation: YES**

20. NT Department of Industry, Tourism and Trade, ERA, the NLC, GAC and Traditional Owners have been consulted on this matter. Advice and assistance were provided by AGS and the Chief Counsel and Integrity (Legal) Division.

**ATTACHMENTS:**

- A:** Incoming letter from NT Minister for Mining requesting your advice
- B:** ERA renewal application and supporting letter
- C:** Northern Land Council submissions
- D:** Context and key policy considerations
- E:** Draft Letter – Option 1 – approve application
- F:** Draft Letter – Option 2 – refuse application for renewal
- G:** Draft Letter – Option 3 – advice on relevant considerations
- H:** Legal considerations
- I:** Australian Government Solicitor (AGS) advice – 23 July 2024



## MINISTER FOR MINING

Parliament House  
State Square  
Darwin NT 0800  
minister.monaghan@nt.gov.au

GPO Box 3146  
Darwin NT 0801  
Telephone: 08 8936 5547

The Hon Madeleine King MP  
Minister for Resources  
Parliament House  
CANBERRA ACT 2600

Email: [madeleine.king.mp@aph.gov.au](mailto:madeleine.king.mp@aph.gov.au)

Dear Minister

I am writing to you with respect to our respective responsibilities under the *Mineral Titles Act 2010* (NT) (the *Mineral Titles Act*) insofar as these responsibilities relate to the regulation of prescribed substances in the Northern Territory.

On 20 March 2024, Energy Resources of Australia (ERA), as the title holder for the Jabiluka Mineral Lease Northern 1 (the **Jabiluka MLN1**), made an application to renew the Jabiluka MLN1 for a period of ten years pursuant to section 68 of the *Mineral Titles Act*. Section 68 operates to extend the currency of a mineral title until such time as the Northern Territory Minister has decided either to renew or refuse to renew the title, provided the application for renewal was brought prior to the end of the term of the mineral title. The Jabiluka MLN1 would, if not for the renewal application, expire on 11 August 2024. A copy of ERA's application to renew the Jabiluka MLN1 is enclosed (\*) at **Attachment A**.

Pursuant to section 43(2) of the *Mineral Titles Act*, as the Minister for Mining, I have the power to renew a mineral lease for the term I consider appropriate.

With respect to ERA's application to renew the Jabiluka MLN1, section 187(1) of the *Mineral Titles Act* stipulates that in relation to a prescribed substance, in my capacity as Minister for Mining, I:

- (a) must exercise my powers in accordance with, and give effect to, the advice of the Commonwealth Minister; and
- (b) must not exercise my powers otherwise than in accordance with the advice of the Commonwealth Minister.

For the purposes of section 187 of the *Mineral Titles Act*, I now formally seek your advice on the proposed renewal of the Jabiluka MLN1.



To assist you in providing your advice, I note the following matters:

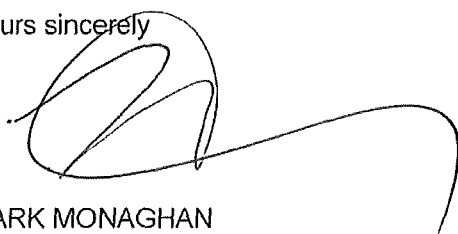
- (a) the *Mineral Titles Act* requires a person making a mineral title application (including a renewal application) to meet certain necessary criteria, including whether the applicant has complied substantially with the conditions of the mineral title (or titles), to the extent required by the Minister;
- (b) ERA has complied with the *Mineral Titles Act* and the conditions of the Jabiluka MLN1;
- (c) ERA has complied with the requirements of the agreement between the Northern Territory of Australia and ERA entered into on 23 December 2009;
- (d) following lodgement of the renewal application on 20 March 2024 and notwithstanding it is not a requirement of the *Mineral Titles Act*, the Northern Territory committed to consulting with affected stakeholders and provided opportunity for submissions to be made in relation to the application to renew the Jabiluka MLN1. The identified stakeholders were the Northern Land Council, the Jabiluka Aboriginal Land Trust and the Gundjeihmi Aboriginal Corporation;
- (e) by letter dated 8 May 2024, the Northern Land Council on behalf of the Jabiluka Aboriginal Land Trust, surrounding Aboriginal land trusts and traditional Aboriginal owners of the area within which the Jabiluka MLN1 is situated, wrote to the Department opposing any decision to renew the Jabiluka MLN1. A copy of the correspondence from the Northern Land Council is enclosed at **Attachment B**;
- (f) similarly, by letters dated 9 July 2024, 9 April 2024 and 14 March 2024, the Gundjeihmi Aboriginal Corporation, on behalf of the Mirarr traditional Aboriginal owners, wrote to, variously, you and I opposing any decision to renew the Jabiluka MLN1. A copy of the correspondence from the Gundjeihmi Aboriginal Corporation is enclosed at **Attachment C**.

Lastly, I advise that the writ for the 2024 Northern Territory General Election, scheduled for 24 August 2024, will be issued on 1 August 2024. This means that the Legislative Assembly will be prorogued from this date, and we will enter into the Caretaker period.

During the Caretaker period, the functions of Cabinet and the Executive Council generally cease and do not resume until the incoming government is formed. Governments should avoid making any major policy decisions and significant appointments or enter into major contracts or undertakings that would make commitments or limit the freedom of the incoming government.

In light of this, I seek your advice as a matter of urgency such that the decision to renew or refuse to renew the Jabiluka MLN1 may be made and communicated to ERA prior to 1 August 2024.

Yours sincerely



MARK MONAGHAN

23 JUL 2024

# Renewal Application

## Mineral Lease, Extractive Mineral Permit, Extractive Mineral Lease or Mineral Authority

Mineral Titles Act 2010 – Section 43, 52, 56 &amp; 118

Approved Form 9

Title details			
Mineral Lease	MLN1	Extractive Mineral Permit	
Extractive Mineral Lease		Mineral Authority	
Titleholder details - for more than two title holders, please attach a separate sheet showing full details for each additional holder			
Titleholder one			
Full name	Energy Resources of Australia Limited (ERA)		
Principal or residential address	24 Mitchell Street, Darwin City NT 0800		
Postal address	GPO Box 2394 Darwin NT 0801		
ACN	008 550 865		
Telephone	+61 (0) 8 8924 3500	Email	Brad.welsh@riotinto.com

<p><b>Title holder profile</b></p>	<p>ERA is a uranium mining company listed on the Australian Securities Exchange and with a head office located in Darwin. Its majority shareholder is Rio Tinto.</p> <p>It is the long term operator of the former Ranger uranium mine, located near Jabiru, Northern Territory. ERA has been operating in the Northern Territory since 1980, when it acquired the Ranger mine. All of ERA's key assets and mining tenements are located in the Northern Territory.</p> <p>ERA ceased the mining of uranium at Ranger in 2012 but continued to process stockpiled ore at Ranger until 8 January 2021, when the project's authorisation, issued under the <i>Atomic Energy Act 1953 (Cth) (Ranger Authority)</i>, required all mining and mineral processing to cease. Under the terms of the current Ranger Authority, ERA's rights to access, occupy and use the Ranger Project Area continue until 8 January 2026, but are limited to undertaking rehabilitation activities. The <i>Atomic Energy Act</i> was recently amended to allow for ERA to apply for a further "Rehabilitation Authority" that would allow it to continue rehabilitation at Ranger beyond 2026, and it is ERA's intention to apply for such a further authority to allow for rehabilitation of the site to continue through to completion.</p> <p>ERA is also the long term title holder of MLN1 (the <i>Jabiluka Mineral Lease</i>), which is the subject of the renewal application. The Jabiluka Mineral Lease is, amongst other agreements, subject to a Long Term Care and Maintenance Agreement with Traditional Owners and the Northern Land Council.</p>		
<p><b>Titleholder two</b></p>			
<p><b>Full name</b></p>			
<p><b>Principal or residential address</b></p>			
<p><b>Postal address</b></p>			
<p><b>ACN</b></p>			
<p><b>Telephone</b></p>		<p><b>Email</b></p>	
<p><b>Title holder profile</b></p>			

Nomination of contact			
Please nominate a contact (if different from title holder 1) to whom all correspondence is to be addressed.			
Full name of contact/agent			
Postal address			
Telephone		Email	
Authority to act as nominated contact			
A nominated contact will also be deemed to have ongoing authority to undertake all statutory requirements relating to this title. Please note:			
<ol style="list-style-type: none"> <li>1) It is the responsibility of the title holder to advise the department, in writing, of any changes to your contact. (section 98)</li> <li>2) This authority relates to statutory requirements only - i.e. payment of rent and administration fees, nomination of blocks. If you wish to also have authority for the lodgement of dealings, amalgamations, withdrawal or surrenders you must attach a letter of authority that clearly identifies all matters that you will have responsibility for.</li> <li>3) Any changes to the authorisation must be made in writing, signed by the title holder and lodged with the department.</li> </ol>			
Particulars of area			
Area retained	100% - approximately 7275 ha	Area relinquished	0 ha
Particulars of term			
Term applied for	10 years		
Reason for seeking renewal			
State the reason for seeking renewal. Max 500 words ~ one page, information may be entered here or attached separately.			
See supporting document.			

**Details of activities during previous term**

State the activities completed during the previous term. Max 1000 words ~ two pages, information may be entered here or attached separately.

See supporting document.

**Proposed future activities**

State the proposed future activities. Max 1000 words ~ two pages, information may be entered here or attached separately.

See supporting document.

**Signatures of title holder/s - not required for e-mailed applications**

Title holder one		Date	
Title holder two		Date	

Payment / lodgement methods	
<p><b>Mail</b> Make a cheque payable to Receiver of Territory Monies. GPO Box 4550, Darwin NT 0801</p> <p><b>In person</b> Mineral Titles 5<sup>th</sup> Floor, Paspalis Centrepoint Building, 48-50 Smith Street, The Mall, Darwin Eftpos available – no cash out facilities</p> <p><b>By phone</b> Please call (08) 8999 5322 to pay by phone.</p>	<p><b>By Email</b> Email application to <a href="mailto:titles.info@nt.gov.au">titles.info@nt.gov.au</a></p> <p><b>Direct deposit</b> Department of Industry, Tourism and Trade BSB: 085-933 Account: 187960924</p> <p>Please include a reference (e.g. title number) in your electronic transaction to ensure your payment is easily identifiable. A remittance advice (confirmation of payment) must be emailed to <a href="mailto:titles.info@nt.gov.au">titles.info@nt.gov.au</a> to enable payment to be receipted.</p> <p>Failure to provide the remittance advice at the time of lodgement will result in the refusal of the application.</p>
<p><b>Further information</b> Email your completed form to <a href="mailto:titles.info@nt.gov.au">titles.info@nt.gov.au</a> For more information see <a href="http://www.nt.gov.au/mining-energy">http://www.nt.gov.au/mining-energy</a> or phone (08) 8999 5322</p>	
Privacy statement	
<p>The Department of Industry, Tourism and Trade (the department) is seeking information from you for the purposes of assessing your application under s79 of the Mineral Titles Act 2010 (the Act). This information will be kept confidential except as required by law.</p> <p>The department is required to keep a register of mineral titles under s121 of the Act. The information contained in this register includes the details of all applications for mineral titles, including the name of the grantee, the term of the mineral title and a description of the land the subject of the mineral title. Any person may obtain copies of this information under s121 and s128 of the Act, on payment of the prescribed fee.</p> <p>Section 121 of the Act also provides for the Minister to publish information from this register on the department's website, if it is considered appropriate to do so.</p>	



Head office  
Level 8, TIO Centre, 24 Mitchell St, Darwin, NT 0800  
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Ranger project  
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T +61 8 8938 1211 F +61 8 8938 1203

[www.energyres.com.au](http://www.energyres.com.au)

20 March 2024

Mineral Titles Office  
Department of Industry, Tourism and Trade  
5<sup>th</sup> Floor, Paspalis Centrepoint Building  
48-50 Smith Street, The Mall  
DARWIN NT 0801

Dear Sir/Madam

**Energy Resources of Australia Limited (ERA) supporting information to renewal application for MLN1**

---

ERA is the holder of Mining Lease No.1 (*MLN1*). MLN1 is due to expire on 11 August 2024.

ERA requests a renewal of MLN1 for 10 years from the date of expiry of the current term of MLN1.

ERA has completed a renewal application form for MLN1 that accompanies this letter. This letter is provided in support of ERA's renewal application and also includes ERA's response to some of the questions in the renewal application (and where that is so, the renewal application makes reference to this letter).

#### 1. MLN1 renewal condition

Condition 2 of MLN1 reads as follows:

*"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."*

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.

#### 2. LTCMA and Waiver Agreement

There are two agreements that ERA is a party to that provide important context to this renewal application.

Firstly, ERA, the Northern Land Council (*NLC*) and the traditional owners of the Jabiluka Project Area, the Mirarr People (the *Mirarr Traditional Owners*), entered the 'Jabiluka Long Term Care and Maintenance Agreement' on 25 February 2005 (*LTCMA*). The LTCMA provides that despite the Mirarr Traditional Owners' formal consent to the grant of MLN1, the Mirarr Traditional Owners

opposed any development of the Jabiluka project area, and the parties agreed that ERA would not develop or mine MLN1 without the consent of the Mirarr Traditional Owners to that development.

Secondly, in acknowledgment and recognition of the LTCMA, the Northern Territory of Australia (the *NTG*) subsequently entered into an agreement with ERA on 23 December 2009 (the *Waiver Agreement*). Under the Waiver Agreement, in order to support ERA's commitment to the Mirarr Traditional Owners in the LTCMA, the NTG agreed to waive, suspend, and exempt ERA from, among other things, any condition or requirement to use the Jabiluka project area continuously and exclusively for the purpose for which MLN1 was granted.

There are some requirements under the Waiver Agreement, notably:

- ERA was required to use reasonable endeavours, having regard to the circumstances at the time, to obtain the consent of the Mirarr Traditional Owners to develop Jabiluka (but it was acknowledged that circumstances may be such that consent should not be sought or requested at a given time); and
- ERA was to provide an annual written report to the NTG on whether the Mirarr Traditional Owners' consent had been sought and whether it was given or refused, and efforts made to obtain that consent or reasons why it was not sought.

ERA has complied with the Waiver Agreement.

Throughout the term of MLN1, and as at the date of ERA's renewal application, the Mirarr Traditional Owners' consent to any mining or development of Jabiluka has not been forthcoming.

### 3. Compliance with conditions of MLN1

ERA has materially and substantially complied with the conditions of MLN1.

ERA has paid all rents and administrative fees required by the MTA.

ERA has generally complied with all reporting requirements in respect of MLN1.

ERA did not lodge 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) (MMA)*. However, it is relevant that at the time the reports in question were not lodged, the LTCMA and the Waiver Agreement were in effect, and MLN1 was in a phase of long term care and maintenance pursuant to those arrangements at the time. As the Mirarr Traditional Owners had not provided consent to the mining of MLN1, ERA was not undertaking any activities of any note on MLN1, and nor was ERA required, or permitted, to do so. Therefore, there were no activities taking place on MLN1 to be reported on during these years.

Notably:

- no issue was raised at the time, or since, by the Minister or the government in relation to those reports not being provided, and nor was any notice issued to ERA requiring the reports to be provided or asserting that ERA was not in compliance; and
- ERA nevertheless recommenced filing such reports from 2021 despite it remaining the case that no mining activities were taking place on MLN1, as it remained the case that the Mirarr Traditional Owners' consent to mining had not been received.

ERA has otherwise received certificates of compliance from the Department of Industry, Tourism and Trade confirming that all statutory requirements under the MTA have been assessed as



satisfactory in respect of MLN1. ERA's most recent certificate of compliance in respect of operational year 41 was received on 23 June 2023 and is attached.

#### **4. Reasons for seeking a renewal of MLN1**

The renewal application requires ERA to state reasons for seeking the renewal.

##### **a. Renewal is contemplated under the conditions of MLN1**

Pursuant to condition 2 of MLN1, ERA is permitted to seek a renewal of MLN1 for a further term not exceeding 10 years. ERA is only seeking a renewal for 10 years, which is consistent with the term of a renewal that was contemplated from the very time of MLN1's initial grant.

##### **b. The arrangements under the LTCMA are the best arrangements for all parties**

ERA believes that the current set of arrangements are the best set of arrangements for MLN1. ERA has complied with the wording and intent of the LTCMA and the significant cultural heritage of the area has been protected. The LTCMA provides the Mirarr Traditional Owners with a right of veto which might not be granted again should the existing lease not be renewed.

Regardless of the outcome of the existing MLN1 lease, the orebody will remain. Uranium's utility in a carbon constrained world has grown and will likely grow significantly in the future. Accordingly, there remains the prospect of future national Governments or mining companies seeking the development of Jabiluka in the national or commercial interests. If the Mirarr Traditional Owners retain their rights under the LTCMA, supported by the Waiver Agreement, they will retain the highest level of control over the future of the Jabiluka orebody.

##### **c. The strategic importance of Uranium**

Uranium is a significant resource for both Australia and the world as the key ingredient for nuclear energy production. Nuclear energy can assist greatly in the attempts to lower global carbon emissions. On 2 December 2023 at COP 28 in Dubai, a partnership of 20 countries (including the USA, UK, Canada and France) committed to tripling nuclear energy generation by 2050.

New legislation in the USA (National Opportunity to Restore Uranium Supply Services In America Act of 2022), along with other supply constraints, has increased demand for Uranium from stable supplier nations.

Jabiluka has approximately 137kT of measured and indicated uranium resources.

In 2022-23, Australia exported 7.1% of world uranium requirements, placing it as the fourth largest producer of uranium producer after Kazakhstan, Canada and Namibia, despite having almost 30% of reasonably assured resources.

Jabiluka's uranium resources could deliver 2,843 TWh of low emissions energy. By way of comparison, this is more than 10 times Australia's entire 2020–2021 electricity generation of approximately 264 TWh.

##### **d. The potential contribution to the Northern Territory economy**

A lease renewal allows ERA the time to meaningfully collaborate with the Mirarr Traditional Owners to reach a mutual understanding of the full range of possibilities relating to maintaining the ongoing protection of significant cultural heritage and through this protection understanding what / if any

culturally appropriate development pathways may exist to enable the Mirarr Traditional Owners to make a fully informed decision.

The Northern Territory Government has a long-term aspiration to be a \$40 billion economy by 2030. To achieve this aspiration, the Territory Economic Reconstruction Commission (*TERC*) recommended in 2020 that the Government focus on the rapid growth of the energy and resources sector including targeting new mines and expanding existing foundations. The Mineral Development Taskforce (*MDT*) echoed the importance of taking immediate action to expand the mining sector by stating 'speedy development of new mines is critical to achieving targeted economic outcomes'.<sup>1</sup>

There are not many major mines in the Northern Territory, so every mine will make a significant difference. MDT reported in December 2022 that for the Government to achieve its economic goal, in 10 years' time there would need to be 5 or more new operating mines. As at 31 October 2023, data provided by the Government confirms that there are currently 8 major operating mines in the Northern Territory<sup>2</sup> and growth has faced economic headwinds. With a significant royalty revenue shortfall on the horizon following the expected closure of three major mines after 2030, TERC recommends the Northern Territory Government start 'urgently working with existing operators to open new or expand existing mines will help address [this] economic impact'.<sup>3</sup>

Subject to reaching a mutually acceptable and beneficial outcome with the Mirarr Traditional Owners, Jabiluka presents an opportunity to implement key TERC recommendations including, securing broader economic outcomes for the Mirarr Traditional Owners, building local skills and growing the mining industry. Jabiluka is a known and undeveloped deposit which can provide jobs, apprenticeships and traineeships for Territorians as well as economic benefits for the Mirarr Traditional Owners as outlined above.

## 5. Details of the activities undertaken during the previous term of MLN1

During the initial term of MLN1, ERA has undertaken the following activities:

- 1991 - ERA purchased MLN1 from Pancontinental with the agreement of the NLC, and subsequently the Rehabilitation Deed assigned to ERA;
- 1992 - ERA commenced further drilling in Mine Valley (total of 31 holes);
- 1996 - ERA EIS submission for an underground mine at Jabiluka and milling at Ranger Mine (Ranger Mill Alternative (*RMA*));
- 1998 – Submission of Public Environment Report on Jabiluka Mill Alternative (*JMA*) with 50-50 option for disposal of tailings underground and in surface pits. Minister for Resources and Energy gave ERA conditional approval for the JMA, with 100 percent underground disposal of tailings; NT Government authorised construction of common elements of the RMA and JMA proposals. Construction phase of Jabiluka commenced with the installation of the Interim Water Management Pond (*IWMP*), blasting and excavation of the tunnel and installation of site support infrastructure;
- 1999 - Completion of portal, decline and box-cut and Stage 1 of Jabiluka. Project entered Standby Environmental Management and Planning Phase. Included covering of the mineralised stockpile with reinforced PVC fabric to minimise volume and load of sulphide oxidation products that could be produced;
- 2003 - ERA applied to NT Government for approval to backfill decline with mineralised stockpile and waste rock, and emptying and cleaning of IWMP. Following approval

<sup>1</sup> 2022 Mineral Development Taskforce Final Report p. 8.

<sup>2</sup> <https://resourcingtheterritory.nt.gov.au/minerals/mines-and-projects/operational-mines> (1 February 2024).

<sup>3</sup> Territory Economic Reconstruction Commission Final Report p.18

Mineralised material trucked underground to backfill decline, pumping water and sludge / sediments from IWMP into decline, non-mineralised material backfilled into decline, all surface and subsurface infrastructure was removed from Jabiluka and the box-cut was backfilled;

- 2005 – ERA, NLC and Mirarr Traditional Owners enter into the Long Term Care and Maintenance agreement;
- 2005 - Revegetation of disturbed areas at Jabiluka footprint began with the planting of local native tree seedlings. Works to decommission and rehabilitate Djarr-Djarr commenced, including removal of infrastructure;
- 2006 - Commencement of revegetation works at Djarr-Djarr;
- 2008 - Djarr-Djarr wildfires through revegetated area (several fires reported between 2008 and 2009);
- 2009 - Integrated program of works to progress Djarr-Djarr towards a condition consistent with draft restoration criteria and entry into the Waiver Agreement with the Territory;
- 2013 - Reshaping of stockpile area and removal of IWMP completed; and
- 2013-present - Long Term Care and Maintenance.

Due to the arrangements with the Mirarr Traditional Owners under the LTCMA, no mining or development activities have been undertaken within the area of MLN1 since 2004.

## 6. Proposed future activities to be undertaken on MLN1

In accordance with the LTCMA and the Waiver Agreement no mining activities can occur without the approval of the Mirarr Traditional Owners. ERA proposes to continue to work with the Mirarr Traditional Owners and the NLC to determine if support could be obtained from the Mirarr Traditional Owners for mining on MLN1 in accordance with the LTCMA.

Should the Mirarr Traditional Owners' consent be forthcoming, ERA will notify the NTG accordingly and advise the NTG of proposed activities to be carried out on MLN1 during the remainder of the renewed term. Any such activities will necessarily be dependent on the point in time during the renewed term that any Mirarr Traditional Owner consent was received.

## 7. Necessary criteria

ERA :

- (a) has given the Minister all the information to make a proper decision;
- (b) has complied with the requirements under the MTA;
- (c) has complied substantially with the conditions of each mineral title it holds, to the extent required by the Minister;
- (d) in respect of mineral titles which were held by ERA but are no longer in force, it has paid all outstanding fees and rent payable in relation to the titles and complied with the rehabilitation requirements of the title area;
- (e) has substantially complied with the rehabilitation requirements for each title area it holds; and
- (f) has been actively negotiating in good faith in relation to the grant of other mineral titles the subject of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).



ERA also maintains that it is a fit and proper person to continue to hold MLN1.

#### 8. Rent

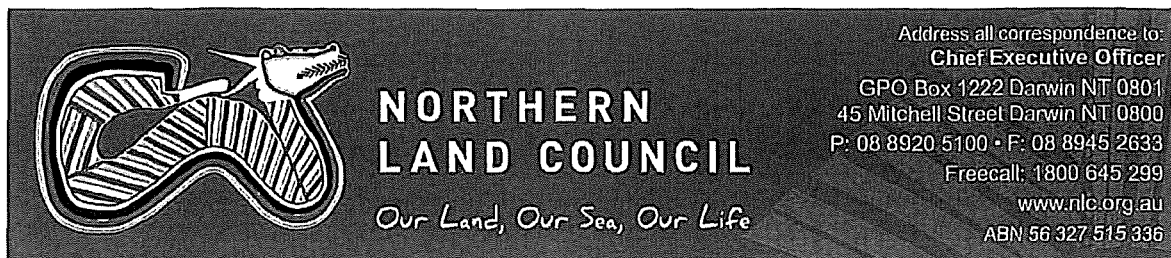
In accordance with section 67 of the MTA and regulation 77(1) of the *Mineral Titles Regulations*, ERA provides the rent prescribed for the first operating year after renewal.

Please do not hesitate to contact myself if you have any questions or require additional information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brad Welsh', is written over a horizontal line.

Brad Welsh  
Chief Executive  
Energy Resources of Australia Limited  
[Brad.Welsh@riotinto.com](mailto:Brad.Welsh@riotinto.com)  
T: +61 (0) 8 89423500



Our ref: NLC000357

8 May 2024

Denise Turnbull  
Director Mineral Titles  
Department of Industry Tourism and Trade

By email only: [titles.info@nt.gov.au](mailto:titles.info@nt.gov.au)

Dear Denise

#### **RENEWAL OF JABILUKA MINERAL LEASE NORTHERN 1**

I refer to your letter dated 15 April 2024 addressed to the Jabiluka Aboriginal Land Trust regarding Energy Resources Australia's (ERA's) application to renew Mineral Lease no.1 ("the mineral lease"). This submission is made on behalf of the Jabiluka Aboriginal Land Trust, surrounding Aboriginal Land Trusts which are potentially impacted, and the Traditional Aboriginal Owners of the area.

The NLC requests that that the Northern Territory (NT) Minister:

1. refuse the application to renew the mineral lease;
2. immediately advise the Commonwealth Minister that the NT Minister's executive power to either renew the lease or rely on s.68 *Mineral Titles Act 2010* is disputed and there is a significant risk that the mineral lease either will expire on 11 August 2024 or has already expired;
3. proceed by Gazette notice with a statement that the land will become special reserved land on the day the mineral title ceases to be in force in accordance with s.114 *Mineral Titles Act 2010*. This will achieve a bare minimum level of protection of the land pending proper arrangements for protection for the known significant cultural heritage on the land.

#### Relevant considerations that support the decision to refuse the application

The NLC submits that the below are some of the relevant considerations which support the decision to refuse the application, but these are not intended to be exhaustive:

1. There is a risk that the Minister has no executive authority under the *Mineral Titles Act 2010* with respect to prescribed substances (with or without the advice of the Commonwealth) due to the operation of the *Northern Territory (Self-Government) Act 1978*.<sup>1</sup> Any purported extended mineral lease will be susceptible to being set aside. This would leave the land available for other mineral title applications, without the governments having discharged their respective responsibilities with respect to World Heritage areas, cultural heritage and protection of the environment. It is inappropriate for the NT Minister for Mines to proceed with any decision-making under the *Mineral Titles Act 2010*. The Commonwealth cannot take steps to deliver executive authority to the Northern Territory over uranium mining in this location without discharging all of its responsibilities including its responsibility for World Heritage areas, cultural heritage and protection of the environment.
2. Given that the executive authority of the NT Minister is in doubt, there is a risk that the mineral lease will expire on 11 August 2024 or has already expired. The mineral lease was approved by the NT Minister under the *Mining Act NT 1980* on 12 August 1982 and the maximum term that the lease could be granted for under the Act was 25 years.<sup>2</sup> Therefore the maximum term of the mineral lease was until 12 August 2007 and it was not extended under the *Mining Act*. Accordingly, there remains doubt about whether the mineral lease is valid.
3. There is a risk that granting a renewal to the mineral lease would be an improper exercise of power under the *Mineral Titles Act 2010* in circumstances where ERA has publicly disclosed that the company has no plans to mine the area. ERA has stated that the purpose of the mineral lease renewal is to protect cultural heritage. The Minister must take into account the public statements made by ERA.
4. The granting of the application, or continuation of the mining lease under s 68 of the *Mineral Titles Act 2010*, would constitute an inexplicable refusal of both Commonwealth and NT Governments to appropriately exercise their executive powers to protect cultural heritage. The land contains globally and nationally significant cultural heritage and the proposed lessee does not dispute this and has explicitly acknowledged that cultural heritage. The fact that the area the subject of the application is not already protected is due to the failure of governments to respond to requests for protective measures which were made prior to this application having been lodged. Further material can be provided to substantiate the heritage significance of the land, if required. The minimum courses of action required of governments to respond to the requests before them are for:
  - a. the NT Mining Minister to urgently publish a notice of a special reservation in the Gazette pursuant to s114 of the *Mineral Titles Act 2010* over the area subject of the

<sup>1</sup> *Northern Territory (Self-Government) Act 1978* s35; *Northern Territory (Self-Government) Regulations 1978* regulation 4. The Intergovernmental Agreement dated 2000 which conferred power on the NT Executive under s35 of the *Northern Territory (Self-Government) Act 1978* only applied to the *Mining Act 1980*, the *Uranium Mining Environmental Control Act 1979* and the *Mine Management Act*. The *Mining Act*, the *UMEC Act* and *Mine Management Act* have been repealed.

<sup>2</sup> This was noted by Sackville J in *Yvonne Margarula v Minister for Resources and Energy & ors* NG 448 of 1997.

application which would, pursuant to that provision take effect on the day the mineral title ceases to be in force; and

- b. the Commonwealth Minister for the Environment and Heritage to include the land in the surrounding World Heritage listing.
5. The Minister must take into account that this location is demonstrably unsuitable for mining or mineral processing due to its proximity to the World Heritage listed wetlands of Kakadu National Park. This is demonstrated at the adjacent Ranger Project Area where both governments are aware that rehabilitation to the required standards is prohibitively costly and extraordinarily complex. The Minister must conclude that no further applications for mining any mineral should be approved in this location.
6. There is clear evidence that ERA is not a fit and proper person<sup>3</sup> to hold an renewed mineral lease:
- a. The NLC and Traditional Aboriginal Owners are concerned about ERA's compliance with the conditions of the mining lease, authorisation granted under the *Mining Management Act 2001*, and the terms of the agreement entered into under the *Aboriginal Land Rights (Northern Territory) Act 1976*. This is unsurprising given that most of the requirements are decades old and have not been fully implemented or reviewed. The Commonwealth Office of the Supervising Scientist is aware of the lessee's non-compliance with the requirements of the authorisation. Further, under the terms of the mineral lease, an extension is only available if the lessee has complied with the *Mining Act* and the conditions of the mineral lease. The Minister has not made any enquiries in this regard, nor has ERA made any representations about compliance over the period of 42 years.
  - b. ERA does not have financial capacity to comply with the conditions of the mining lease and authorisation given its dire financial circumstances. There is an unacceptable risk that ERA will go into receivership either prior to or during the period of any extended mineral lease term. The NT Minister is on notice of the dire financial circumstances of ERA as a result of reporting to the Australian Stock Exchange that the company only has sufficient cash resources to operate until September 2024. Again, the proper construction of this application to renew is that it has been made by a financially unstable lessee holding a moribund historic tenement that it has no capacity to maintain for the period sought. Any decision to renew the mineral lease in the hands of ERA would be made in the full knowledge that it is highly likely that the mineral lease will most likely become an asset for disposal in a winding up of the company and the truth is that the Minister cannot know who the holder of the mineral lease will be.

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<sup>3</sup> See s70(4) of the *Mineral Title Act 2010*.

7. The original mineral lease was granted subject to the terms of an agreement entered under the *Aboriginal Land Rights (Northern Territory) Act 1976*. Given the passage of time, the terms and conditions are now superseded in almost every respect. Any continuation or renewal of the mineral lease should be treated as a new grant of a mining interest requiring a renegotiation of the agreement. This renegotiation would need to occur prior to any grant of a mining interest.
  
8. A failure by the NT Minister to make a decision by 11 August 2024 will cause uncertainty about whether the mineral lease would continue to be in force by operation of s.68 of *Mineral Titles Act 2010*. Any purported extension on this basis would be unsupportable as a reasonable discharge of the Minister's obligations as the Minister must take into account that the mineral lease was granted 42 years ago under repealed legislation with conditions that are no longer relevant or fit for purpose. Any failure to make a decision prior to the expiry date would not excuse either Minister from their responsibilities for cultural heritage protection and to properly determine the status of the land. Further, as the NT Minister may not have executive authority under the *Mineral Titles Act 2010* with respect to prescribed substances, any continuation of the mineral lease on this basis will be susceptible to challenge.

Should you have any questions regarding this matter, please contact Dominic Gomez, at GomezD@nlc.org.au or on 0419 446 213.

Yours sincerely,



Jessie Schaecken  
INTERIM CHIEF EXECUTIVE OFFICER



**GUNDJEIHMI**  
ABORIGINAL CORPORATION



09 July 2024

The Hon Madeleine King MP  
Minister for Resources  
Minister for Northern Australia  
Parliament House  
CANBERRA ACT 2600  
Email : [Minister.King@industry.gov.au](mailto:Minister.King@industry.gov.au)

Hon. Mark Monaghan  
Minister for Mining  
Parliament House  
DARWIN NT 0800  
Email : [Mark.Monaghan@nt.gov.au](mailto:Mark.Monaghan@nt.gov.au)

Dear Ministers,

**JABILUKA MINERAL LEASE EXPIRY 12 AUGUST 2024: Update**

I refer to correspondence received from Minister King dated 10 May 2024 and correspondence received from Minister Monaghan dated 3 June 2024.

As you are aware, I have been writing since late 2022 about the impending expiry of the Jabiluka mineral lease requesting both governments to provide certainty about both Jabiluka and Kakadu National Park. I gratefully acknowledge the important step taken by Northern Territory Minister Monaghan to declare a special reserve over the Jabiluka mineral lease area on 5 June 2024 and applaud the Northern Territory government for this.

However, as we are now entering the final month of the mineral lease term there is an emerging related crisis at the former Ranger uranium site. The ongoing uncertainty about the status of the Jabiluka mineral lease extension is having a serious and destructive impact on the important task of raising funds for rehabilitation of the former Ranger uranium mine site and must be addressed.

On 31 May 2024, ERA shareholder Zentree Investments applied to the Takeovers Panel, unsuccessfully, to delay the necessary fundraising required for the continuation of rehabilitation works by Energy Resources of Australia Ltd (ERA) beyond September of this year. This minority shareholder, who is not a uranium miner, also commenced a public campaign for mining at Jabiluka without any financial, technical or environmental proposition to justify his demands. This appears to be a strategy to maximise a premium price for the shareholding upon eventual takeover but demonstrates no concern for the increasing risk of potential insolvency.

I again request both governments to urgently resolve the status of the mineral lease and thereby end the speculation that is derailing ERA's approach at Ranger. No mining company has presented a proposal to mine at Jabiluka to justify the extension. ERA's public position advanced by management is that the company wishes to retain the mining lease in order for it *not* to be mined. However, this is contradicted by both the public position of the minor shareholders who say the extension is needed to allow uranium mining in order to address the global challenge of climate change and is also

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• PH: 08 8979 2200 • PO BOX 245 JABIRU NT 0886 • FAX: 08 8979 2299 •  
Email: [gundjeihmi@mirarr.net](mailto:gundjeihmi@mirarr.net) Internet: [www.mirarr.net](http://www.mirarr.net)  
ABN 55 881 818 247 ICN 2458

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contradicted by the position of the major shareholder, Rio Tinto, who publicly supports the wishes of my people as Traditional Owners for permanent protection by inclusion of the site in Kakadu National Park. Put simply, this is not a legitimate application to extend a mineral lease.

The dysfunction within ERA is having a catastrophic impact on rehabilitation planning at Ranger. ERA is unable to raise further funding for rehabilitation works while this continues. Negotiations with ERA about the agreed standard for eventual rehabilitation are also at a standstill as the company heads toward insolvency.

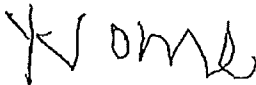
This could be averted if the Jabiluka mineral lease extension was resolved allowing for a realistic valuation to be agreed between all the shareholders that would then guide the capital raising needed for rehabilitation works at Ranger. I note that Rio Tinto reports no value for the so-called 'Jabiluka asset' whereas the minor shareholders are making public statements citing unverified valuations of up to \$50Bn. As is well understood, the area in question is part of our irreplaceable cultural heritage and contains extensive rock art and sacred sites. In addition, Rio Tinto is a reputable global mining company that has carefully considered the technical, commercial and environmental constraints affecting Jabiluka over a period of years and has concluded that Jabiluka is not feasible.

In the absence of a decision, which we expect to be a decision to refuse the application to extend the lease, my advice is that judicial guidance is needed. An application for orders including a declaration that the mineral lease cannot validly be extended beyond 11 August 2024 will be costly to all parties and will further distract resources from rehabilitation of Ranger. It is my firm view that such litigation can and should be avoided.

As it is open to the government to resolve this matter without the need for litigation, I reserve the right to rely on this correspondence in any potential application for costs.

I look forward to hearing from you as a matter of urgency.

Yours sincerely,



Yvonne Margarula  
Mirarr Senior Traditional Owner

# GUNDJEIHMI

ABORIGINAL CORPORATION



09 April 2024

The Hon Eva Lawler  
Chief Minister  
Parliament House  
DARWIN NT 0800

Dear Chief Minister,

## JABILUKA MINERAL LEASE EXPIRY 12 AUGUST 2024

I refer to my previous correspondence sent 14 March 2024.

As you are aware, Energy Resources of Australia Ltd has now applied for a ten-year extension of the mineral lease granted by the Northern Territory in respect of the Jabiluka land. This has occurred despite the explicit objections of the Traditional Owners and the lack of support from the major shareholder Rio Tinto.

My previous correspondence sets out reasons the application for an extension of the mineral lease should not be entertained and I refer again to those.

In addition, the reasons announced by ERA for the extension demonstrate the application itself is disingenuous. ERA has made clear it has no plans to mine at Jabiluka. Consequently, there is no economic benefit or prospects of increased employment on offer. The Mirarr do not accept ERA's mistaken argument that a mineral lease under the *Mineral Titles Act (NT) 2010* (MTA) can be characterised as a legal mechanism for the protection of globally significant cultural heritage.

Protection of the globally important archaeological site of Madjedbebe, extensive rock art and sacred sites at Jabiluka is more appropriately the province of the *Heritage Act NT, Northern Territory Sacred Sites Act 1982*, the *Commonwealth Aboriginal Land Rights (Northern Territory) Act 1976*, *Environmental Protection and Biodiversity Conservation Act 1999* and now, as a result of this ill-advised application, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* as well as pursuant to international heritage obligations.

The position of the Mirarr is that the Commonwealth should have commenced preparations for the inevitable expiry of the mineral lease and inclusion of Jabiluka in Kakadu National Park well before now. Had that occurred, the sole focus of ERA and its major shareholder would now be on funding rehabilitation at Ranger rather than on this attempt to manipulate speculation over uranium in the full knowledge that the deposit will never be mined. We understand the major shareholder Rio Tinto supports the wishes of the Mirarr for inclusion of Jabiluka in Kakadu National Park.

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Meanwhile, the dire financial status of ERA has worsened. The recent announcement by the company that its major shareholder, Rio Tinto, will take over management of the Ranger Rehabilitation Project reflects the seriousness of the situation. While this announcement responds to the crisis at Ranger, it does not address the vulnerability of the Jabiluka site to a further term of mineral lease in the hands of a moribund company.

On behalf of Mirarr Traditional Owners, GAC now urgently requests the Northern Territory to seek the advice of the Commonwealth Minister to refuse the extension and end this irresponsible speculation. Separately, and more urgently given the financial circumstances of ERA, the Northern Territory should now advise the Commonwealth that the Territory will or has given notice of a special reservation pursuant to s.114 *Mineral Titles Act (NT) 2010* (MTA). The reasons for this course of action were set out in my previous correspondence.

GAC acknowledges that the Commonwealth is the primary decision-maker in relation to the mining of prescribed substances in the Northern Territory and that Territory decision-making on this issue is circumscribed and conditional on compliance with the Northern Territory (*Self-Government Regulations*). Further, we note the explicit requirement at section 187 (1)(b) of the MTA for the Territory Minister to act in accordance with the advice of the Commonwealth pursuant to the agreement referred to in the regulations. See attached brief of legal advice for further details.

We now have advice that questions whether the Northern Territory has authority to exercise any powers under the MTA with respect to prescribed substances due to limitations imposed by the inter-governmental agreement entered between the Commonwealth and the Territory on 17 November 2000. Our advice is that should the Territory seek to rely on MTA section 43 to grant the extension of the current mineral lease or seek to rely on section 68 for the mineral lease to continue past the expiry date pending the decision of the relevant Minister, these actions would be beyond the scope of the current agreement.

Therefore, Mirarr Traditional Owners would be very concerned if the Territory delayed its response to the application for an extension in the mistaken assumption that the *Mineral Titles Act* would operate as a de facto extension via s.68.

We are also advised that there are other issues with the terms and conditions of the current mineral lease which need to be addressed before there could be any extension either by way of a decision or by way of continuation under section 68.

Given that there is no legitimate proposal that would justify an extension and given the uncertainty as to whether there is sufficient authority for the Territory to either extend or continue the lease past the current expiry date, it is imperative that both the Commonwealth and the Territory prepare for the expiry of the mineral lease by the making of the special reservation. This would provide a safety net in the event the Territory purported to extend or continue the mineral lease and that decision was later found to be ineffective.

We would be happy to discuss this urgent matter with you and your advisors as a matter of priority.

Yours sincerely,

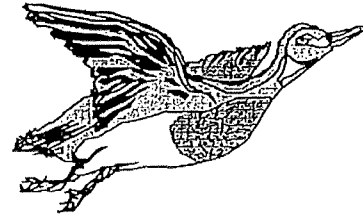


Thalia van den Boogaard

C.C. Hon Anthony Albanese Prime Minister of Australia  
Hon Madeleine King MP Minister for Resources  
Hon Tanya Plibersek MP Minister for Environment  
Hon. Mark Monaghan, Northern Territory Minister for Minin

# GUNDJEIHMI

ABORIGINAL CORPORATION



14 March 2024

The Hon Eva Lawler  
Chief Minister  
Parliament House  
DARWIN NT 0800

Dear Chief Minister,

## JABILUKA MINERAL LEASE EXPIRY 12 AUGUST 2024

Thank you for your response to Yvonne Margarula, Senior Traditional Owner regarding this now urgent matter. Ms Margarula has requested that I reply to seek further clarification of the actions that will be taken in relation the Jabiluka Mineral Lease in the first half of 2024.

In correspondence to the former Minister for Mining and Industry on 22 December 2022, Ms Margarula explained the cultural significance of the site in question.

*The JML is located within the Mirarr Gundjeihmi estate. It contains the resting place of Boywek, Almudj and other ancestral beings that we Bininj have kept undisturbed since the time of creation.*

*The JML is djang andjamun (dangerous and restricted). We Mirarr are responsible for this place. We are responsible for the consequences of any damage that might interfere with the ancestral beings. This responsibility is at the heart of our beliefs, our culture and our lives.*

For this reason, Ms Margarula requested ERA not to apply for an extension of the mineral lease and requested both the Northern Territory and the Commonwealth, as regulators, to prepare for the expiry of the mineral lease.

There are many reasons why an application to extend the mineral lease would not be entertained by any regulator. These include the threat to known cultural heritage, the unacceptable risk to World Heritage listed Kakadu National Park, previous non-compliance with the terms of the lease and Authorisation, no plan or operations, a demonstrated lack of financial capacity, and importantly the unaddressed rehabilitation shortfall at Ranger.

However, we understand from the response from the former Minister dated 28 March 2023 that there is no established process for the regulator to follow should an application for an extension be made. Ms Margarula was advised as follows:

*Should a renewal application be made by ERA within the prescribed timeframe, as the Minister for Mining and Industry, I am required in exercising powers under the Mineral Titles Act 2010 (MTA) to give effect to the advice of the Commonwealth Minister where prescribed substances are involved.*

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Email: gundjeihmi@mirarr.net Internet: www.mirarr.net  
ABN 55 881 818 247 ICN 2458

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*This requirement applies to Jabiluka as the Jabiluka mine is for uranium which is a prescribed substance.*

*I assure you that engagement and consultation with all key stakeholders, including the Traditional Owners of the land, the relevant Land Council and the Australian Government as appropriate, will be undertaken and considered before a decision is made on the renewal application.*

In recent meetings with two independent directors, including the chairperson, ERA has confirmed to us that no decision has yet been made to apply for an extension of the mineral lease. This does not mean that the regulator can simply do nothing. The mineral lease will expire if no application for extension is made, and we have formally applied (via correspondence to Ms Denise Turnbull of the Department of Industry, Tourism and Trade dated 1 March 2024) for a special reservation pending the Commonwealth taking steps to include the area in Kakadu National Park.

In this regard, Ms Margarula has been in communication with the Commonwealth Minister for Resources since December 2022. Her most recent correspondence addressed to the Prime Minister has previously been provided to you.

Regrettably, the Commonwealth Resources Minister has not as yet indicated her position with respect to the Jabiluka Mineral Lease land. This is not satisfactory given the dire financial circumstances of ERA are a matter of public record. Whether the mineral lease was extended or not, the Minister cannot assume that the company will continue to operate past September of this year or until August 2024.

ERA has reported total cash resources of \$726 million as at 31 December 2023, comprised of \$217 million in cash at bank and \$509 million of cash held by the Australian Government as part of the Ranger Rehabilitation Trust Fund. At the same time, ERA requires at least \$2.44 billion for rehabilitation costs at Ranger as announced by the company on 27 February 2024. ERA also reported that the cost and timeframe for activities post 2027 remain highly uncertain, so the amount required is likely to be materially higher.

Of greater relevance and concern is the announcement by ERA that it currently has sufficient capital to fund planned rehabilitation expenditure through to Quarter 3, 2024 but that further funding is expected to be required by ERA in 2024. The method by which further funding would be raised is entirely dependent on the willingness of shareholders to contribute capital while being under no obligation to do so.

The future of ERA beyond September 2024 is therefore highly uncertain and the ability of ERA to operate until September 2024 must also be regarded as potentially uncertain.


This publicly reported circumstance must be taken into account by both Ministers immediately as it indicates the need for an urgent response to both scenarios – whether an application to extend the lease is made or not. As the company cannot guarantee its ability to operate past September 2024, it would be unconscionable for a regulator to defer its response until after an application is made knowing that the company may not be able to continue operating.

The special reservation pursuant to s.114 *Mineral Titles Act (NT)* is urgently required prior to the company going potentially going into administration. As stated, we have written directly to Ms Turnbull in this regard.

We would appreciate an opportunity to discuss this important matter directly with you. Kakadu National Park is an icon of the Northern Territory and there is growing interest in what regulators will do in the next three months. This is regardless of whether an application to extend the mineral lease is made or not. There is also increasing scrutiny on the financial difficulties of ERA and the threat this poses at Ranger to the surrounding Kakadu National Park. It would be helpful if the position of the government were known as early as possible so that the responses to public interest groups are accurate.

We remain confident that your government understands the seriousness of the situation and will take action to protect the interests of the Northern Territory in coming months.

Yours sincerely,



Thalia van den Boogaard  
Chief Executive Officer

C.C. Hon. Mark Monaghan, Northern Territory Minister for Mining

Hon. Madeline King, Federal Minister for Resources

Mr Matthew Ryan, Chairperson, Northern Land Council

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## Ravann Franciscus

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**From:** Ravann Franciscus  
**Sent:** Tuesday, 23 July 2024 10:19 AM  
**To:** 'madeleine.king.mp@aph.gov.au'  
**Subject:** Correspondence from the Hon Mark Monaghan MLA

Dear Minister

Please find attached correspondence from the Hon Mark Monaghan MLA, Minister for Mining.

Regards

**RAVANN FRANCISCUS**  
**Ministerial Assistant**  
Northern Territory Government  
Parliament House, Darwin  
GPO Box 3146, Darwin NT 0801

t. +61 8 8936 5500  
e. [ravann.franciscus@nt.gov.au](mailto:ravann.franciscus@nt.gov.au)



## 8 FINANCIAL PROVISION FOR REHABILITATION

### 8.1 Annual Rehabilitation Bond

ML N1 rehabilitation costs are estimated on the basis of this MCP, in particular the planned rehabilitation works in Section 6 and environmental monitoring detailed in Section 7. This section outlines the cost estimate that forms the basis of the annual rehabilitation bond which provides financial security to regulatory authorities in the event of ERA being unable to meet its obligations as outlined in clause 11 of the Deed of Rehabilitation. A bond in the value of \$1,000,000, which is the minimum value allowed by the Deed of Rehabilitation, has been lodged by ERA. The estimated cost for ML N1 under this MCP is \$800,279 and is current as at December 2023. A summary of this estimate is provided in Table 8-1 with details in the following sections.

The ultimate cost of rehabilitation is uncertain and can vary in response to many factors. Where possible costs have been based on current rates, otherwise Consumer Price Index (CPI) increases have been applied based on the latest figures from the Australian Bureau of Statistics and the Reserve Bank forecasts.

The costs outlined in this section represent a maximum estimate as monitoring requirements may be reduced on the basis of the expert reports and infrastructure may be retained.

Table 8-1 Estimated cost of ML N1 rehabilitation

Item	Rehabilitation activity	Cost A\$
1	Infrastructure Decommissioning	\$58,522
2	Vent Raise Earthworks	\$25,372
3	Revegetation, Weed and Fire Management	\$214,668
4	Environmental Sampling & Analysis	\$244,645
5	Management, Supervision and Monitoring of Rehabilitation Activities	\$100,976
6	Rehabilitation Costs of Djarr-Djarr	\$67,534
7	Allowance for vent raise borrow area rehabilitation	\$15,810
8	Contingency 10%	\$72,753
<b>TOTAL ESTIMATED REHABILITATION COSTS - ML N1</b>		<b>\$800,279</b>



**ERA** Energy  
Resources  
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20 March 2024

Mineral Titles Office  
Department of Industry, Tourism and Trade  
5<sup>th</sup> Floor, Paspalis Centrepoint Building  
48-50 Smith Street, The Mall  
DARWIN NT 0801

Dear Sir/Madam

**Energy Resources of Australia Limited (ERA) supporting information to renewal application for MLN1**

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ERA is the holder of Mining Lease No.1 (**MLN1**). MLN1 is due to expire on 11 August 2024.

ERA requests a renewal of MLN1 for 10 years from the date of expiry of the current term of MLN1.

ERA has completed a renewal application form for MLN1 that accompanies this letter. This letter is provided in support of ERA's renewal application and also includes ERA's response to some of the questions in the renewal application (and where that is so, the renewal application makes reference to this letter).

**1. MLN1 renewal condition**

Condition 2 of MLN1 reads as follows:

*"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."*

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.

**2. LTCMA and Waiver Agreement**

There are two agreements that ERA is a party to that provide important context to this renewal application.

Firstly, ERA, the Northern Land Council (**NLC**) and the traditional owners of the Jabiluka Project Area, the Mirarr People (the **Mirarr Traditional Owners**), entered the 'Jabiluka Long Term Care and Maintenance Agreement' on 25 February 2005 (**LTCMA**). The LTCMA provides that despite the Mirarr Traditional Owners' formal consent to the grant of MLN1, the Mirarr Traditional Owners

opposed any development of the Jabiluka project area, and the parties agreed that ERA would not develop or mine MLN1 without the consent of the Mirarr Traditional Owners to that development.

Secondly, in acknowledgment and recognition of the LTCMA, the Northern Territory of Australia (the **NTG**) subsequently entered into an agreement with ERA on 23 December 2009 (the **Waiver Agreement**). Under the Waiver Agreement, in order to support ERA's commitment to the Mirarr Traditional Owners in the LTCMA, the NTG agreed to waive, suspend, and exempt ERA from, among other things, any condition or requirement to use the Jabiluka project area continuously and exclusively for the purpose for which MLN1 was granted.

There are some requirements under the Waiver Agreement, notably:

- ERA was required to use reasonable endeavours, having regard to the circumstances at the time, to obtain the consent of the Mirarr Traditional Owners to develop Jabiluka (but it was acknowledged that circumstances may be such that consent should not be sought or requested at a given time); and
- ERA was to provide an annual written report to the NTG on whether the Mirarr Traditional Owners' consent had been sought and whether it was given or refused, and efforts made to obtain that consent or reasons why it was not sought.

ERA has complied with the Waiver Agreement.

Throughout the term of MLN1, and as at the date of ERA's renewal application, the Mirarr Traditional Owners' consent to any mining or development of Jabiluka has not been forthcoming.

### **3. Compliance with conditions of MLN1**

ERA has materially and substantially complied with the conditions of MLN1.

ERA has paid all rents and administrative fees required by the MTA.

ERA has generally complied with all reporting requirements in respect of MLN1.

ERA did not lodge 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) (**MMA**). However, it is relevant that at the time the reports in question were not lodged, the LTCMA and the Waiver Agreement were in effect, and MLN1 was in a phase of long term care and maintenance pursuant to those arrangements at the time. As the Mirarr Traditional Owners had not provided consent to the mining of MLN1, ERA was not undertaking any activities of any note on MLN1, and nor was ERA required, or permitted, to do so. Therefore, there were no activities taking place on MLN1 to be reported on during these years.

Notably:

- no issue was raised at the time, or since, by the Minister or the government in relation to those reports not being provided, and nor was any notice issued to ERA requiring the reports to be provided or asserting that ERA was not in compliance; and
- ERA nevertheless recommenced filing such reports from 2021 despite it remaining the case that no mining activities were taking place on MLN1, as it remained the case that the Mirarr Traditional Owners' consent to mining had not been received.

ERA has otherwise received certificates of compliance from the Department of Industry, Tourism and Trade confirming that all statutory requirements under the MTA have been assessed as

satisfactory in respect of MLN1. ERA's most recent certificate of compliance in respect of operational year 41 was received on 23 June 2023 and is attached.

#### **4. Reasons for seeking a renewal of MLN1**

The renewal application requires ERA to state reasons for seeking the renewal.

##### **a. Renewal is contemplated under the conditions of MLN1**

Pursuant to condition 2 of MLN1, ERA is permitted to seek a renewal of MLN1 for a further term not exceeding 10 years. ERA is only seeking a renewal for 10 years, which is consistent with the term of a renewal that was contemplated from the very time of MLN1's initial grant.

##### **b. The arrangements under the LTCMA are the best arrangements for all parties**

ERA believes that the current set of arrangements are the best set of arrangements for MLN1. ERA has complied with the wording and intent of the LTCMA and the significant cultural heritage of the area has been protected. The LTCMA provides the Mirarr Traditional Owners with a right of veto which might not be granted again should the existing lease not be renewed.

Regardless of the outcome of the existing MLN1 lease, the orebody will remain. Uranium's utility in a carbon constrained world has grown and will likely grow significantly in the future. Accordingly, there remains the prospect of future national Governments or mining companies seeking the development of Jabiluka in the national or commercial interests. If the Mirarr Traditional Owners retain their rights under the LTCMA, supported by the Waiver Agreement, they will retain the highest level of control over the future of the Jabiluka orebody.

##### **c. The strategic importance of Uranium**

Uranium is a significant resource for both Australia and the world as the key ingredient for nuclear energy production. Nuclear energy can assist greatly in the attempts to lower global carbon emissions. On 2 December 2023 at COP 28 in Dubai, a partnership of 20 countries (including the USA, UK, Canada and France) committed to tripling nuclear energy generation by 2050.

New legislation in the USA (National Opportunity to Restore Uranium Supply Services In America Act of 2022), along with other supply constraints, has increased demand for Uranium from stable supplier nations.

Jabiluka has approximately 137kT of measured and indicated uranium resources.

In 2022-23, Australia exported 7.1% of world uranium requirements, placing it as the fourth largest producer of uranium producer after Kazakhstan, Canada and Namibia, despite having almost 30% of reasonably assured resources.

Jabiluka's uranium resources could deliver 2,843 TWh of low emissions energy. By way of comparison, this is more than 10 times Australia's entire 2020–2021 electricity generation of approximately 264 TWh.

##### **d. The potential contribution to the Northern Territory economy**

A lease renewal allows ERA the time to meaningfully collaborate with the Mirarr Traditional Owners to reach a mutual understanding of the full range of possibilities relating to maintaining the ongoing protection of significant cultural heritage and through this protection understanding what / if any

culturally appropriate development pathways may exist to enable the Mirarr Traditional Owners to make a fully informed decision.

The Northern Territory Government has a long-term aspiration to be a \$40 billion economy by 2030. To achieve this aspiration, the Territory Economic Reconstruction Commission (*TERC*) recommended in 2020 that the Government focus on the rapid growth of the energy and resources sector including targeting new mines and expanding existing foundations. The Mineral Development Taskforce (*MDT*) echoed the importance of taking immediate action to expand the mining sector by stating 'speedy development of new mines is critical to achieving targeted economic outcomes'.<sup>1</sup>

There are not many major mines in the Northern Territory, so every mine will make a significant difference. MDT reported in December 2022 that for the Government to achieve its economic goal, in 10 years' time there would need to be 5 or more new operating mines. As at 31 October 2023, data provided by the Government confirms that there are currently 8 major operating mines in the Northern Territory<sup>2</sup> and growth has faced economic headwinds. With a significant royalty revenue shortfall on the horizon following the expected closure of three major mines after 2030, TERC recommends the Northern Territory Government start 'urgently working with existing operators to open new or expand existing mines will help address [this] economic impact'.<sup>3</sup>

Subject to reaching a mutually acceptable and beneficial outcome with the Mirarr Traditional Owners, Jabiluka presents an opportunity to implement key TERC recommendations including, securing broader economic outcomes for the Mirarr Traditional Owners, building local skills and growing the mining industry. Jabiluka is a known and undeveloped deposit which can provide jobs, apprenticeships and traineeships for Territorians as well as economic benefits for the Mirarr Traditional Owners as outlined above.

## 5. Details of the activities undertaken during the previous term of MLN1

During the initial term of MLN1, ERA has undertaken the following activities:

- 1991 - ERA purchased MLN1 from Pancontinental with the agreement of the NLC, and subsequently the Rehabilitation Deed assigned to ERA;
- 1992 - ERA commenced further drilling in Mine Valley (total of 31 holes);
- 1996 - ERA EIS submission for an underground mine at Jabiluka and milling at Ranger Mine (Ranger Mill Alternative (*RMA*));
- 1998 – Submission of Public Environment Report on Jabiluka Mill Alternative (*JMA*) with 50-50 option for disposal of tailings underground and in surface pits. Minister for Resources and Energy gave ERA conditional approval for the JMA, with 100 percent underground disposal of tailings; NT Government authorised construction of common elements of the RMA and JMA proposals. Construction phase of Jabiluka commenced with the installation of the Interim Water Management Pond (*IWMP*), blasting and excavation of the tunnel and installation of site support infrastructure;
- 1999 - Completion of portal, decline and box-cut and Stage 1 of Jabiluka. Project entered Standby Environmental Management and Planning Phase. Included covering of the mineralised stockpile with reinforced PVC fabric to minimise volume and load of sulphide oxidation products that could be produced;
- 2003 - ERA applied to NT Government for approval to backfill decline with mineralised stockpile and waste rock, and emptying and cleaning of IWMP. Following approval

<sup>1</sup> 2022 Mineral Development Taskforce Final Report p. 8.

<sup>2</sup> <https://resourcingtheterritory.nt.gov.au/minerals/mines-and-projects/operational-mines> (1 February 2024).

<sup>3</sup> Territory Economic Reconstruction Commission Final Report p.18

- Mineralised material trucked underground to backfill decline, pumping water and sludge / sediments from IWMP into decline, non-mineralised material backfilled into decline, all surface and subsurface infrastructure was removed from Jabiluka and the box-cut was backfilled;
- 2005 – ERA, NLC and Mirarr Traditional Owners enter into the Long Term Care and Maintenance agreement;
  - 2005 - Revegetation of disturbed areas at Jabiluka footprint began with the planting of local native tree seedlings. Works to decommission and rehabilitate Djarr-Djarr commenced, including removal of infrastructure;
  - 2006 - Commencement of revegetation works at Djarr-Djarr;
  - 2008 - Djarr-Djarr wildfires through revegetated area (several fires reported between 2008 and 2009);
  - 2009 - Integrated program of works to progress Djarr-Djarr towards a condition consistent with draft restoration criteria and entry into the Waiver Agreement with the Territory;
  - 2013 - Reshaping of stockpile area and removal of IWMP completed; and
  - 2013-present - Long Term Care and Maintenance.

Due to the arrangements with the Mirarr Traditional Owners under the LTCMA, no mining or development activities have been undertaken within the area of MLN1 since 2004.

## **6. Proposed future activities to be undertaken on MLN1**

In accordance with the LTCMA and the Waiver Agreement no mining activities can occur without the approval of the Mirarr Traditional Owners. ERA proposes to continue to work with the Mirarr Traditional Owners and the NLC to determine if support could be obtained from the Mirarr Traditional Owners for mining on MLN1 in accordance with the LTCMA.

Should the Mirarr Traditional Owners' consent be forthcoming, ERA will notify the NTG accordingly and advise the NTG of proposed activities to be carried out on MLN1 during the remainder of the renewed term. Any such activities will necessarily be dependent on the point in time during the renewed term that any Mirarr Traditional Owner consent was received.

## **7. Necessary criteria**

ERA :

- (a) has given the Minister all the information to make a proper decision;
- (b) has complied with the requirements under the MTA;
- (c) has complied substantially with the conditions of each mineral title it holds, to the extent required by the Minister;
- (d) in respect of mineral titles which were held by ERA but are no longer in force, it has paid all outstanding fees and rent payable in relation to the titles and complied with the rehabilitation requirements of the title area;
- (e) has substantially complied with the rehabilitation requirements for each title area it holds; and
- (f) has been actively negotiating in good faith in relation to the grant of other mineral titles the subject of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*.



ERA also maintains that it is a fit and proper person to continue to hold MLN1.

## 8. Rent

In accordance with section 67 of the MTA and regulation 77(1) of the *Mineral Titles Regulations*, ERA provides the rent prescribed for the first operating year after renewal.

Please do not hesitate to contact myself if you have any questions or require additional information.

Yours sincerely

Brad Welsh  
Chief Executive  
Energy Resources of Australia Limited  
[Brad.Welsh@riotinto.com](mailto:Brad.Welsh@riotinto.com)  
T: +61 (0) 8 89423500



**ATTACHMENT**

**Annual Review Notice Yr41 – Certificate of Compliance**



**From:** Drew Sarhen on behalf of Tmt ITT  
**To:** Nolan, David (RIOTINTO-ASHURST); Prest, Richard (ERA)  
**Cc:** Creed, Lisa (ERA)  
**Subject:** [External] Annual Review Notice Yr41 - Energy Resources of Australia Ltd - MLN1  
**Date:** Friday, 23 June 2023 10:19:35 AM  
**Attachments:** image001.jpg  
**Importance:** High

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Some people who received this message don't often get email from tmt.itt@nt.gov.au. [Learn why this is important](#)

Good Morning,

The annual review for year forty one (41) in respect to Mineral Lease (Northern) 1 has been completed.

Title	Operational Year	Rent	Administration Fee	Annual Reports
MLN1	42	Paid	Paid	Received

Please be advised that all statutory requirements have been assessed as satisfactory.

Should you have any enquiries please contact Mineral Titles on (08) 8999 5322.

Kind regards

**Drew Sarhen**

Titles Officer, Titles Management Team

t. +61 8 8999 5322

e. [tmt.itt@nt.gov.au](mailto:tmt.itt@nt.gov.au)

Department of Industry, Tourism and Trade

Northern Territory Government of Australia

Level 5, Paspalis Centrepoint Building, 48-50 Smith St Mall, Darwin NT 0800

GPO Box 4550, Darwin NT 0801

[nt.gov.au](http://nt.gov.au)



# Renewal Application

## Mineral Lease, Extractive Mineral Permit, Extractive Mineral Lease or Mineral Authority

Mineral Titles Act 2010 – Section 43, 52, 56 & 118

Approved Form 9

Title details			
Mineral Lease	MLN1	Extractive Mineral Permit	
Extractive Mineral Lease		Mineral Authority	
Titleholder details - for more than two title holders, please attach a separate sheet showing full details for each additional holder			
Titleholder one			
Full name	Energy Resources of Australia Limited (ERA)		
Principal or residential address	24 Mitchell Street, Darwin City NT 0800		
Postal address	GPO Box 2394 Darwin NT 0801		
ACN	008 550 865		
Telephone	+61 (0) 8 8924 3500	Email	Brad.welsh@riotinto.com

<p>Title holder profile</p>	<p>ERA is a uranium mining company listed on the Australian Securities Exchange and with a head office located in Darwin. Its majority shareholder is Rio Tinto.</p> <p>It is the long term operator of the former Ranger uranium mine, located near Jabiru, Northern Territory. ERA has been operating in the Northern Territory since 1980, when it acquired the Ranger mine. All of ERA's key assets and mining tenements are located in the Northern Territory.</p> <p>ERA ceased the mining of uranium at Ranger in 2012 but continued to process stockpiled ore at Ranger until 8 January 2021, when the project's authorisation, issued under the <i>Atomic Energy Act 1953 (Cth) (Ranger Authority)</i>, required all mining and mineral processing to cease. Under the terms of the current Ranger Authority, ERA's rights to access, occupy and use the Ranger Project Area continue until 8 January 2026, but are limited to undertaking rehabilitation activities. The <i>Atomic Energy Act</i> was recently amended to allow for ERA to apply for a further "Rehabilitation Authority" that would allow it to continue rehabilitation at Ranger beyond 2026, and it is ERA's intention to apply for such a further authority to allow for rehabilitation of the site to continue through to completion.</p> <p>ERA is also the long term title holder of MLN1 (the <i>Jabiluka Mineral Lease</i>), which is the subject of the renewal application. The Jabiluka Mineral Lease is, amongst other agreements, subject to a Long Term Care and Maintenance Agreement with Traditional Owners and the Northern Land Council.</p>		
<p>Titleholder two</p>			
<p>Full name</p>			
<p>Principal or residential address</p>			
<p>Postal address</p>			
<p>ACN</p>			
<p>Telephone</p>		<p>Email</p>	
<p>Title holder profile</p>			

<b>Nomination of contact</b>			
Please nominate a contact (if different from title holder 1) to whom all correspondence is to be addressed.			
Full name of contact/agent			
Postal address			
Telephone		Email	
<b>Authority to act as nominated contact</b>			
A nominated contact will also be deemed to have ongoing authority to undertake all statutory requirements relating to this title. Please note:			
<ol style="list-style-type: none"> <li>1) It is the responsibility of the title holder to advise the department, in writing, of any changes to your contact. (section 98)</li> <li>2) This authority relates to statutory requirements only – i.e. payment of rent and administration fees, nomination of blocks. If you wish to also have authority for the lodgement of dealings, amalgamations, withdrawal or surrenders you must attach a letter of authority that clearly identifies all matters that you will have responsibility for.</li> <li>3) Any changes to the authorisation must be made in writing, signed by the title holder and lodged with the department.</li> </ol>			
<b>Particulars of area</b>			
Area retained	100% - approximately 7275 ha	Area relinquished	0 ha
<b>Particulars of term</b>			
Term applied for	10 years		
<b>Reason for seeking renewal</b>			
State the reason for seeking renewal. Max 500 words ~ one page, information may be entered here or attached separately.			
See supporting document.			

**Details of activities during previous term**

State the activities completed during the previous term. Max 1000 words ~ two pages, information may be entered here or attached separately.

See supporting document.

**Proposed future activities**

State the proposed future activities. Max 1000 words ~ two pages, information may be entered here or attached separately.

See supporting document.

**Signatures of title holder/s – not required for e-mailed applications**

Title holder one		Date	
Title holder two		Date	

### Payment / lodgement methods

**Mail**

Make a cheque payable to Receiver of Territory Monies.  
GPO Box 4550, Darwin NT 0801

**In person**

Mineral Titles  
5<sup>th</sup> Floor, Paspalis Centrepoint Building, 48-50 Smith Street, The Mall, Darwin  
Eftpos available – no cash out facilities

**By phone**

Please call (08) 8999 5322 to pay by phone.

**By Email**

Email application to [titles.info@nt.gov.au](mailto:titles.info@nt.gov.au)

**Direct deposit**

Department of Industry, Tourism and Trade  
BSB: 085-933  
Account: 187960924

Please include a reference (e.g. title number) in your electronic transaction to ensure your payment is easily identifiable. A remittance advice (confirmation of payment) must be emailed to [titles.info@nt.gov.au](mailto:titles.info@nt.gov.au) to enable payment to be received.

**Failure to provide the remittance advice at the time of lodgement will result in the refusal of the application.**

### Further information

Email your completed form to [titles.info@nt.gov.au](mailto:titles.info@nt.gov.au)

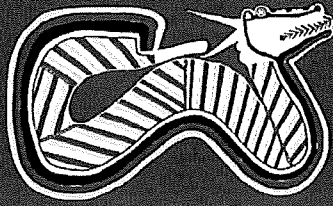
For more information see <http://www.nt.gov.au/mining-energy> or phone (08) 8999 5322

### Privacy statement

The Department of Industry, Tourism and Trade (the department) is seeking information from you for the purposes of assessing your application under s79 of the Mineral Titles Act 2010 (the Act). This information will be kept confidential except as required by law.

The department is required to keep a register of mineral titles under s121 of the Act. The information contained in this register includes the details of all applications for mineral titles, including the name of the grantee, the term of the mineral title and a description of the land the subject of the mineral title. Any person may obtain copies of this information under s121 and s128 of the Act, on payment of the prescribed fee.

Section 121 of the Act also provides for the Minister to publish information from this register on the department's website, if it is considered appropriate to do so.



**NORTHERN  
LAND COUNCIL**  
*Our Land, Our Sea, Our Life*

Address all correspondence to:  
**Chief Executive Officer**  
GPO Box 1222 Darwin NT 0801  
45 Mitchell Street Darwin NT 0800  
P: 08 8920 5100 • F: 08 8945 2633  
Freecall: 1800 645 299  
www.nlc.org.au  
ABN 56 327 515 336

Our ref: NLC000357

8 May 2024

Denise Turnbull  
Director Mineral Titles  
Department of Industry Tourism and Trade

By email only: [titles.info@nt.gov.au](mailto:titles.info@nt.gov.au)

Dear Denise

#### **RENEWAL OF JABILUKA MINERAL LEASE NORTHERN I**

I refer to your letter dated 15 April 2024 addressed to the Jabiluka Aboriginal Land Trust regarding Energy Resources Australia's (ERA's) application to renew Mineral Lease no.1 ("the mineral lease"). This submission is made on behalf of the Jabiluka Aboriginal Land Trust, surrounding Aboriginal Land Trusts which are potentially impacted, and the Traditional Aboriginal Owners of the area.

The NLC requests that that the Northern Territory (NT) Minister:

1. refuse the application to renew the mineral lease;
2. immediately advise the Commonwealth Minister that the NT Minister's executive power to either renew the lease or rely on s.68 *Mineral Titles Act 2010* is disputed and there is a significant risk that the mineral lease either will expire on 11 August 2024 or has already expired;
3. proceed by Gazette notice with a statement that the land will become special reserved land on the day the mineral title ceases to be in force in accordance with s.114 *Mineral Titles Act 2010*. This will achieve a bare minimum level of protection of the land pending proper arrangements for protection for the known significant cultural heritage on the land.

#### Relevant considerations that support the decision to refuse the application

The NLC submits that the below are some of the relevant considerations which support the decision to refuse the application, but these are not intended to be exhaustive:

1. There is a risk that the Minister has no executive authority under the *Mineral Titles Act 2010* with respect to prescribed substances (with or without the advice of the Commonwealth) due to the operation of the *Northern Territory (Self-Government) Act 1978*.<sup>1</sup> Any purported extended mineral lease will be susceptible to being set aside. This would leave the land available for other mineral title applications, without the governments having discharged their respective responsibilities with respect to World Heritage areas, cultural heritage and protection of the environment. It is inappropriate for the NT Minister for Mines to proceed with any decision-making under the *Mineral Titles Act 2010*. The Commonwealth cannot take steps to deliver executive authority to the Northern Territory over uranium mining in this location without discharging all of its responsibilities including its responsibility for World Heritage areas, cultural heritage and protection of the environment.
2. Given that the executive authority of the NT Minister is in doubt, there is a risk that the mineral lease will expire on 11 August 2024 or has already expired. The mineral lease was approved by the NT Minister under the *Mining Act NT 1980* on 12 August 1982 and the maximum term that the lease could be granted for under the Act was 25 years.<sup>2</sup> Therefore the maximum term of the mineral lease was until 12 August 2007 and it was not extended under the *Mining Act*. Accordingly, there remains doubt about whether the mineral lease is valid.
3. There is a risk that granting a renewal to the mineral lease would be an improper exercise of power under the *Mineral Titles Act 2010* in circumstances where ERA has publicly disclosed that the company has no plans to mine the area. ERA has stated that the purpose of the mineral lease renewal is to protect cultural heritage. The Minister must take into account the public statements made by ERA.
4. The granting of the application, or continuation of the mining lease under s 68 of the *Mineral Titles Act 2010*, would constitute an inexplicable refusal of both Commonwealth and NT Governments to appropriately exercise their executive powers to protect cultural heritage. The land contains globally and nationally significant cultural heritage and the proposed lessee does not dispute this and has explicitly acknowledged that cultural heritage. The fact that the area the subject of the application is not already protected is due to the failure of governments to respond to requests for protective measures which were made prior to this application having been lodged. Further material can be provided to substantiate the heritage significance of the land, if required. The minimum courses of action required of governments to respond to the requests before them are for:
  - a. the NT Mining Minister to urgently publish a notice of a special reservation in the Gazette pursuant to s114 of the *Mineral Titles Act 2010* over the area subject of the

<sup>1</sup> *Northern Territory (Self-Government) Act 1978* s35; *Northern Territory (Self-Government) Regulations 1978* regulation 4. The Intergovernmental Agreement dated 2000 which conferred power on the NT Executive under s35 of the *Northern Territory (Self-Government) Act 1978* only applied to the *Mining Act 1980*, the *Uranium Mining Environmental Control Act 1979* and the *Mine Management Act*. The *Mining Act*, the UMEC Act and Mine Management Act have been repealed.

<sup>2</sup> This was noted by Sackville J in *Yvonne Margarula v Minister for Resources and Energy & ors* NG 448 of 1997.



application which would, pursuant to that provision take effect on the day the mineral title ceases to be in force; and

- b. the Commonwealth Minister for the Environment and Heritage to include the land in the surrounding World Heritage listing.
5. The Minister must take into account that this location is demonstrably unsuitable for mining or mineral processing due to its proximity to the World Heritage listed wetlands of Kakadu National Park. This is demonstrated at the adjacent Ranger Project Area where both governments are aware that rehabilitation to the required standards is prohibitively costly and extraordinarily complex. The Minister must conclude that no further applications for mining any mineral should be approved in this location.
6. There is clear evidence that ERA is not a fit and proper person<sup>3</sup> to hold an renewed mineral lease:
- a. The NLC and Traditional Aboriginal Owners are concerned about ERA's compliance with the conditions of the mining lease, authorisation granted under the *Mining Management Act 2001*, and the terms of the agreement entered into under the *Aboriginal Land Rights (Northern Territory) Act 1976*. This is unsurprising given that most of the requirements are decades old and have not been fully implemented or reviewed. The Commonwealth Office of the Supervising Scientist is aware of the lessee's non-compliance with the requirements of the authorisation. Further, under the terms of the mineral lease, an extension is only available if the lessee has complied with the *Mining Act* and the conditions of the mineral lease. The Minister has not made any enquiries in this regard, nor has ERA made any representations about compliance over the period of 42 years.
  - b. ERA does not have financial capacity to comply with the conditions of the mining lease and authorisation given its dire financial circumstances. There is an unacceptable risk that ERA will go into receivership either prior to or during the period of any extended mineral lease term. The NT Minister is on notice of the dire financial circumstances of ERA as a result of reporting to the Australian Stock Exchange that the company only has sufficient cash resources to operate until September 2024. Again, the proper construction of this application to renew is that it has been made by a financially unstable lessee holding a moribund historic tenement that it has no capacity to maintain for the period sought. Any decision to renew the mineral lease in the hands of ERA would be made in the full knowledge that it is highly likely that the mineral lease will most likely become an asset for disposal in a winding up of the company and the truth is that the Minister cannot know who the holder of the mineral lease will be.

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<sup>3</sup> See s70(4) of the *Mineral Title Act 2010*.

7. The original mineral lease was granted subject to the terms of an agreement entered under the *Aboriginal Land Rights (Northern Territory) Act 1976*. Given the passage of time, the terms and conditions are now superseded in almost every respect. Any continuation or renewal of the mineral lease should be treated as a new grant of a mining interest requiring a renegotiation of the agreement. This renegotiation would need to occur prior to any grant of a mining interest.
8. A failure by the NT Minister to make a decision by 11 August 2024 will cause uncertainty about whether the mineral lease would continue to be in force by operation of s.68 of *Mineral Titles Act 2010*. Any purported extension on this basis would be unsupportable as a reasonable discharge of the Minister's obligations as the Minister must take into account that the mineral lease was granted 42 years ago under repealed legislation with conditions that are no longer relevant or fit for purpose. Any failure to make a decision prior to the expiry date would not excuse either Minister from their responsibilities for cultural heritage protection and to properly determine the status of the land. Further, as the NT Minister may not have executive authority under the *Mineral Titles Act 2010* with respect to prescribed substances, any continuation of the mineral lease on this basis will be susceptible to challenge.

Should you have any questions regarding this matter, please contact Dominic Gomez, at GomezD@nlc.org.au or on 0419 446 213.

Yours sincerely,


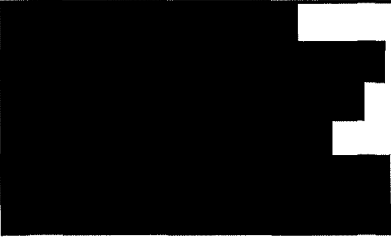


**Jessie Schaecken**  
**INTERIM CHIEF EXECUTIVE OFFICER**

## Attachment D – Context and key considerations

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	<b>Lease Renewal</b>	<b>Lease Refusal</b>
<b>Who primarily controls site access?</b>	ERA.	Mirarr Traditional Owners.
<b>Site rehabilitation</b>	ERA remains responsible for completing rehabilitation.	The NT Government holds a security, which it may be able to use to complete rehabilitation works.  ERA and the Mirarr could enter a voluntary agreement for ERA to complete rehabilitation works.
<b>What happens to the land after the decision?</b>	ERA will continue to seek Mirarr agreement to mining.	An NT general reserve comes into effect, preventing further mineral title applications without the permission of the NT Minister for Mining.
<b>Legal risks</b>		
<b>Other</b>	ERA retains prospects of mining and retains the lease as an asset.	The Mirarr will continue to advocate for the land to be incorporated into Kakadu National Park.

## Context

### Site description

1. The Jabiluka Mineral Lease (the Lease) covers the 73km<sup>2</sup> Jabiluka Project Area (Jabiluka), which is 225km northeast of Darwin - in the Alligator Rivers Region. It adjoins the Ranger Project Area (Ranger) and is surrounded by, but separate from, World Heritage listed Kakadu National Park.
2. The current Lease was granted in 1982 and has been held by Energy Resources of Australia (ERA) since 1991.
  - a. The lease was granted for a period of 42 years and expires on 11 August 2024.
  - b. ERA applied for this renewal (the Application) on 20 March 2024, stating it has complied with relevant requirements and is entitled to renewal for a period of ten years (Attachment B).
3. In June 1982 Jabiluka was recognised as Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (ALRA) and granted to the Jabiluka Aboriginal Land Trust.
  - a. The Mirarr are the Traditional Owners of Jabiluka, the Ranger Project Area, the town of Jabiru, and parts of Kakadu National Park.
4. Jabiluka contains 137,100 tonnes of high-grade uranium oxide (at a cut-off grade of 0.2% U<sub>3</sub>O<sub>8</sub>).<sup>1</sup>
  - a. The price of uranium is currently ~ USD \$90/lb and is expected to steadily increase until 2026 due to persistent structural shortfalls.<sup>2</sup>

### Status

5. Jabiluka was partially developed, but never mined.<sup>3</sup>
  - a. Exploration activities were undertaken in the 1970s – these included the opening of the Djarr-Djarr Exploration Camp and the drilling of bore holes across the site. Development work, including the construction of the exploration decline and Interim Water Management Pond took place in the late 1990s.
  - b. All exploration and construction work ceased in September 1999 when the site was placed into environmental management and standby.
6. Jabiluka is partially rehabilitated. Remaining environmental risks are actively monitored by ERA, with oversight by the Supervising Scientist and the NT Government. Extensive monitoring as part of the long-term care and maintenance phase has provided assurance

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<sup>1</sup> Energy Resources of Australia, (2023) Annual Report.

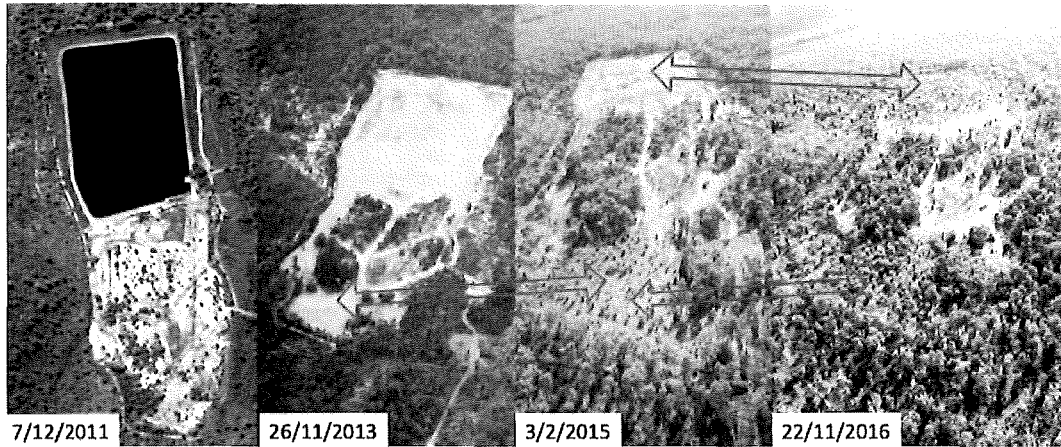
<sup>2</sup> Department of Industry, Science and Resources, (2024) Resources and Energy Quarterly - June, p 90.

<sup>3</sup> Energy Resources of Australia (2023) Mine Closure Plan: Mineral Lease Number 1, p 1-12 – 1-13; Department of Climate Change, Energy, the Environment and Water, Other uranium mines in the Alligator Rivers Region, accessed 16 July 2024.

regarding most groundwater contamination risks. The Supervising Scientist has provided advice to ERA and the NT Government regarding the monitoring and management of remaining risks – for example, the Supervising Scientist has advised some groundwater monitoring can be reduced.<sup>4</sup>

7. Rehabilitation of Jabiluka will not be complete by the end of the current Lease.

*Image 1: Aerial imagery showing the removal of the Interim Water Management Pond and revegetation of Jabiluka between 2011 and 2016.<sup>5</sup>*



*Image 2: Aerial image showing the status of revegetation at Jabiluka as of April 2023.*



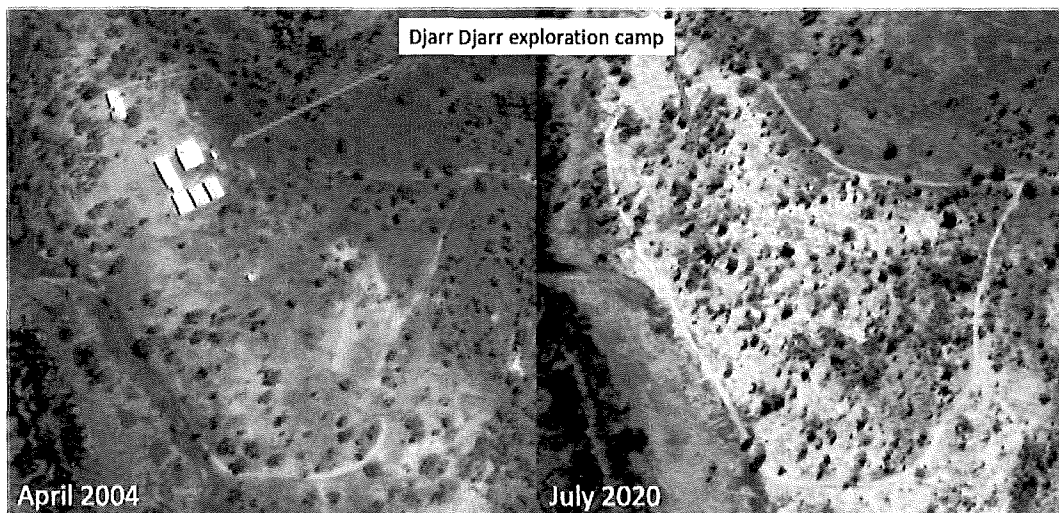
<sup>4</sup> Office of the Supervising Scientist (10 April 2024) Comments on Energy Resources of Australia (2023) *Mine Closure Plan: Mineral Lease Number 1*.

<sup>5</sup> Note – all images are sourced from Energy Resources of Australia (2023) *Mine Closure Plan: Mineral Lease Number 1*.

Image 3: Bore holes pre-rehabilitation (left) and post-rehabilitation (right).



Image 4: Djarr-Djarr Exploration camp pre-decommissioning (left) and post-decommissioning (right).



### Cultural heritage

8. The Mirarr and ERA agree Jabiluka includes areas of cultural importance and *Djang* (sacred sites)<sup>6</sup> including the Madjedbebe rock shelter<sup>7</sup> which is part of the Djawumbu-Madjawarna Sites Complex.

- a. Madjedbebe is a site of major cultural and archaeological significance.<sup>8</sup> It is sometimes cited as Australia's oldest human occupied site, with evidence of

<sup>6</sup> Energy Resources of Australia (2023) *Mine Closure Plan: Mineral Lease Number 1*.

<sup>7</sup> The site was formerly – and incorrectly – known as Malakunanja II.

<sup>8</sup> Clarkson, C., Jacobs, Z., Marwick, B., et al. (2017) Human occupation of northern Australia by 65,000 years ago. *Nature*, 547(1), 306-310; Dortch, J., & Malaspinas, A. (2017). Madjedbebe and genomic histories of Aboriginal Australia. *Australian Archaeology*, 83(3), 174-177; May, S. K., Tacon, P. S. C., Wright, D., Marshall, M., Goldhahn, J., & Sanz, I. D. (2017). The rock art of Madjedbebe (Malakunanja II). In B. David, P. Tacon, J. Delannoy, & J. Geneste (Eds.), *The Archaeology of Rock Art in Western Arnhem Land, Australia* (pp. 87-107). ANU Press.

occupation up to 65,000 years ago.<sup>9</sup> It established a new minimum age of human occupation in Australia and impacted studies on human dispersal out of Africa.<sup>10</sup>

9. The Mirarr hold themselves responsible for the land, including for the consequences of any damage that might interfere with the ancestral beings. This responsibility is a core cultural value.<sup>11</sup> The Mirarr have stated Jabiluka is sacred country,<sup>12</sup> and that it is *djang andjamun* (dangerous and restricted).<sup>13</sup>

#### Regulatory framework and history

10. The Ranger Uranium Environmental Inquiry<sup>14</sup> (the Fox Inquiry) was established in July 1975 to investigate environmental consequences of uranium mining in the Alligator Rivers Region, and to make recommendations about the proposal to establish new mines (particularly Ranger).
- a. The Fox Inquiry found that, if properly regulated and controlled, uranium mining's hazards were not sufficient to prevent the development of the mines.
  - b. The Fox Inquiry also recommended that the proposed national park (Kakadu) should exclude the areas of Ranger and Jabiluka 'if uranium mining proceeds'.<sup>15</sup>
11. When the Lease was approved in August 1982, an agreement with the Northern Land Council (NLC) on behalf of the Traditional Owners, was reached regarding land access as required under ALRA (i.e. the Jabiluka Agreement).
- a. The Mirarr consider the 1982 Jabiluka Agreement should not have been made and was not consistent with their wishes.<sup>16</sup> The Mirarr report a history of 'unrelenting pressure' from governments and mining companies on Aboriginal people in the Alligator Rivers Region.<sup>17</sup>
12. Subsection 187(1) of the *Mineral Titles Act 2010* (NT) (MTA) requires the NT Minister for Mining to exercise their powers in accordance with the Commonwealth Minister's advice when deciding whether to renew the Lease.

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<sup>9</sup> Clarkson, C., Jacobs, Z., Marwick, B., et al. (2017). Human occupation of northern Australia by 65,000 years ago. *Nature*, 547(1), 306-310.

<sup>10</sup> Dortch, J., & Malaspinas, A. (2017). Madjedbebe and genomic histories of Aboriginal Australia. *Australian Archaeology*, 83(3), 174-177.

<sup>11</sup> Margarula, Yvonne, Preface to Energy Resources of Australia (2023) Jabiluka Mine Closure Plan, p i.

<sup>12</sup> Gundjeihmi Aboriginal Corporation (24 April 2024) ERA plans put Jabiluka in jeopardy and Kakadu at risk.

<sup>13</sup> Margarula, Yvonne, Preface to Energy Resources of Australia (2022) Jabiluka Mine Closure Plan.

<sup>14</sup> Fox J (1977) Ranger Uranium Environmental Inquiry First Report.

<sup>15</sup> Fox J (1977) Ranger Uranium Environmental Inquiry Second Report, p 305.

<sup>16</sup> Gundjeihmi Aboriginal Corporation (1997) "We're not talking about mining" The history of duress and the Jabiluka Project.

<sup>17</sup> Gundjeihmi Aboriginal Corporation (1998) The Mirarr People, Submission to the UNESCO World Heritage Committee.



**187 Prescribed substance – Minister's exercise of powers**

- (1) In relation to a prescribed substance, the Minister:
- (a) must exercise the Minister's powers in accordance with, and give effect to, the advice of the Commonwealth Minister; and
  - (b) must not exercise the Minister's powers otherwise than in accordance with the advice of the Commonwealth Minister.
- (2) However, subsection (1) does not prevent the Minister from acting without the advice of the Commonwealth Minister, or require the Minister to take or give effect to the advice of the Commonwealth Minister, in relation to:
- (a) a matter mentioned in Part 3, Division 1; or
  - (b) the exercise of a power under an arrangement in force under section 7 of the Uranium Royalty Act, unless the arrangement requires compliance with subsection (1).
- (3) In this section:

**Commonwealth Minister** means the Minister for the Commonwealth administering the *Atomic Energy Act 1953* (Cth).

Extract from the *Mineral Titles Act 2010 (NT)*

13. *The Intergovernmental agreement on the Principles to be applied in the Regulation of Uranium Mining in the Northern Territory (the Agreement) – 17 November 2000 (the IGA)* is an integral component of the framework for the regulation of uranium mining in the Northern Territory due to the operation of the *Northern Territory (Self Government) Act 1978* (Cth) and associated regulations. The IGA:
- sets out the division of regulatory responsibilities for uranium mining between the Commonwealth and NT Governments; and
  - empowers the NT Government to regulate uranium mining in the NT.
14. The IGA gives the NT legislative and executive power to make decisions on prescribed substances. The IGA is based on the principle that the relevant NT Minister will consult with you and act in accordance with your advice on certain matters.
15. The IGA previously did not cover the MTA, as it only described repealed NT legislation. Per **MS24-000973** Minister King and Minister Monaghan agreed to vary and extend the IGA to ensure references to repealed NT legislation can be taken to refer to the current MTA.

### Pending general reserve (NT)

16. On 5 June 2024, the NT Government declared that a general reserve will apply over Jabiluka when the current lease, or any renewal, expires.<sup>18</sup>
- a. No mining or exploration will be permitted. New applications for mineral titles will not ordinarily be able to be made.<sup>19</sup>
  - b. At any time, the NT Minister for Mining may change or revoke this protection to allow new applications for mineral titles.<sup>20</sup>
  - c. The matter is to be reviewed by the NT Minister for Mining within two years of commencement.<sup>21</sup>

### Broader regulatory and strategic context

#### International uranium markets

17. Demand for uranium is projected to increase due to a range of new nuclear energy projects, reactor life extensions and restart projects.<sup>22</sup> Global consumption is forecast to reach 95.1Kt in 2026, while global production is only forecast to reach 82.8Kt.<sup>23</sup> The International Energy Agency (IEA) forecasts nuclear power doubling globally under their pathway to net zero by 2050; if realised, this can be expected to underwrite robust demand.<sup>24</sup>
18. Uranium exports are concentrated in a small number of countries.<sup>25</sup> Australia is the world's fourth largest uranium exporter and exported 4,809 tonnes in 2022-23 at a value of \$812m.<sup>26</sup> Price and volume growth are projected to lift Australian export values to \$1.7b by 2025-26.<sup>27</sup>
19. Uranium prices have been on a sustained upward trajectory for several years and are projected to remain elevated for the medium term.<sup>28</sup>
- a. Recent uranium price gains reflect a market shortfall linked to years of global under-investment. World supply has picked up and new mines are being considered, but shortfalls in supply are still expected.<sup>29</sup>

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<sup>18</sup> Turnbull D (2024) Government Gazettes – 5 June 2024, Department of Industry, Tourism and Trade, Northern Territory Government.

<sup>19</sup> *Mineral Titles Act 2010* (NT) s 117.

<sup>20</sup> *Mineral Titles Act 2010* (NT), ss 113(4), 117.

<sup>21</sup> Turnbull D (2024) Government Gazettes – 5 June 2024, Department of Industry, Tourism and Trade, Northern Territory Government.

<sup>22</sup> Department of Industry, Science and Resources, (2024) Resources and Energy Quarterly - June, p 88-89.

<sup>23</sup> Department of Industry, Science and Resources, (2024) Resources and Energy Quarterly - June, p 92.

<sup>24</sup> International Energy Agency (2022) Nuclear Power and Secure Energy Transitions, p 43.

<sup>25</sup> Department of Industry, Science and Resources, (2024) Resources and Energy Quarterly - June, p 92.

<sup>26</sup> Department of Industry, Science and Resources, (2024) Resources and Energy Quarterly - June, p 87.

<sup>27</sup> Department of Industry, Science and Resources, (2024) Resources and Energy Quarterly - June, p 88.

<sup>28</sup> Department of Industry, Science and Resources, (2024) Resources and Energy Quarterly - June, p 90.

<sup>29</sup> Department of Industry, Science and Resources, (2024) Resources and Energy Quarterly - June, p 89.

- b. In response to higher prices, production is recommencing at previously closed mines (including the Honeymoon Uranium Project in South Australia).<sup>30</sup>

20. Australia's trading partners – including South Korea, Japan and the United States – rely on nuclear energy as key part of their transition to net zero emissions.<sup>31</sup> They were among the 25 countries at COP28 which signed a declaration committing to 'the development and construction of nuclear reactors' and 'a global aspirational goal of tripling nuclear energy capacity from 2020 by 2050.'<sup>32</sup>

#### Nuclear activities and material

21. Nuclear activities within Australia are highly restricted under the *Australian Radiation Protection and Nuclear Safety Act 1998*, which does not allow for onshore uranium enrichment or construction of nuclear power facilities.<sup>33</sup>

22. In February 1970, Australia signed the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which committed Australia to not acquire nuclear weapons, and to adhere to strong non-proliferation obligations.<sup>34</sup> Australia currently has nuclear cooperation agreements covering 44 countries, allowing for Australian uranium to be exported to those countries without contributing to proliferation of nuclear weapons.<sup>35</sup>

#### **Requirements under the MTA**

23. The NT Minister must consider a range of requirements under the MTA to confirm the Application is valid (for example, the Application fee must be paid). [REDACTED]

[REDACTED] The NT Minister's letter advises ERA has complied with the MTA and the terms of the Lease, and does not indicate any concerns about ERA's compliance with other requirements of the MTA (refer Attachment A).

### **Lease renewal**

#### **Direct implications**

24. If the Lease is renewed:

- a. ERA will have the exclusive option to mine Jabiluka;
- b. ERA will retain an asset it currently values at \$90m;

<sup>30</sup> Department of Industry, Science and Resources, (2024) Resources and Energy Quarterly - June, p 89-90.

<sup>31</sup> Organisation for Economic Co-operation and Development – Nuclear Energy Agency (2023) Countries launch joint declaration to triple nuclear energy capacity by 2050 at COP 28, accessed 15 July 2024.

<sup>32</sup> United States Department of Energy (1 December 2023) At COP 28, Countries Launch Declaration to Triple Nuclear Energy Capacity by 2050, Recognising the Key Role of Nuclear Energy in Reaching Net Zero, accessed 15 July 2024.

<sup>33</sup> Section 10(1); see also Gibson E (30 May 2024) 'Current prohibitions on nuclear activities in Australia: a quick guide', *Science, Technology, Environment and Resources; Law and Bills Digest Sections*, accessed 18 July 2024.

<sup>34</sup> Department of Foreign Affairs and Trade, Nuclear Weapons, accessed 12 July 2024.

<sup>35</sup> Australian Safeguards and Non-Proliferation Office, (2023) Annual Report 2022-23, p 3-15.

<sup>36</sup> [REDACTED]

- c. the Mirarr will strongly oppose, and will continue to advocate for a permanent ban on mining the site; and
- d. ERA will retain responsibility for rehabilitating the site. Otherwise, there are no direct environmental implications.

ERA retains both the current asset and future prospects of mining

- 25. If the Lease is renewed, ERA will retain its prospects of mining Jabiluka. These prospects are limited, as described at paragraphs 25-28, but ERA would retain these prospects to the exclusion of all other proponents.
- 26. There is no consensus on the potential value of the deposit, and ERA's application does not provide its own estimate. As described above at paragraphs 18-19, the price of uranium is projected to increase.
- 27. In its most recent Annual Report, released on 12 March 2024, ERA calculates the value of the existing lease at \$90m, reflecting both the value of the deposit and ERA's assessment of the likelihood of mining it.<sup>37</sup>
  - a. One of ERA's minor shareholders has publicly claimed that if mined, the deposit could generate \$2 billion in revenue per year over 30 years.<sup>38</sup>
- 28. Mineral titles can be sold. ERA could apply for permission from the Northern Territory Minister for Mining to transfer it to a third party.<sup>39</sup>

#### Impact on the Mirarr

- 29. The Mirarr strongly oppose renewal and advise that the ongoing presence of the Lease, which involves the continued prospect that the site could be mined, is a source of considerable distress.<sup>40</sup> The Mirarr have indicated that if the Application is approved they may seek to have the decision overturned in court (refer **MC24-003311**).
- 30. ERA claims renewal would provide the Mirarr with the highest level of control over the deposit, as ERA has committed to not mine the site without Mirarr consent (Attachment B, page 4). ERA claims that if the Application is refused, another mining company could apply for approval to mine without honouring the Mirarr's wishes.
  - a. Concern that other mining companies would apply for the Jabiluka lease was also identified by NLC in its submission.

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<sup>37</sup> Energy Resources of Australia (2023) Annual Report, p 85.

<sup>38</sup> Chanticleer (17 March 2024) 'Rio's reputation faces \$1b test', *Australian Financial Review*, accessed 1 July 2024.

<sup>39</sup> *Mineral Titles Act 2010* (NT), s 123.

<sup>40</sup> See **MC24-003311**, **MC24-001048**, **MC24-000839**, and **MC24-000535**.

- b. As described at paragraph 16, the NT Government's declaration of a general reserve will prevent other miners applying for a mineral title over Jabiluka unless the NT Minister for Mining decides to permit new applications.<sup>41</sup>

ERA remains responsible for site rehabilitation

31. [REDACTED]

32. ERA estimates the cost to complete outstanding rehabilitation works at Jabiluka is \$800,279 (as of December 2023).<sup>43</sup> The bulk of this cost (~\$459,313) relates to revegetation, weed and fire management, and environmental sampling and analysis.<sup>44</sup>

### Indirect implications of lease renewal – future land use (mining)

33. ERA submits that mining would have a range of benefits (Attachment B, page 4). However, renewing the Lease does not necessarily mean Jabiluka will be mined.
- a. ERA has agreed it will not mine the site unless or until the Mirarr give consent (per the 2005 *LTC&M Agreement*). ERA has publicly stated it will uphold this agreement.<sup>45</sup>
- i. Multiple generations of Mirarr have indicated the Mirarr will never consent to mining (including in your meeting with them on 20 March 2024 – refer **MB24-000253**). It is possible future generations will take a different position. However, consent appears unlikely during the proposed term of the Lease (ten years).
- b. If ERA sought to mine the site, a range of Commonwealth and NT development approvals may be required depending on what activities were proposed.
34. Noting that the prospects of mining within the proposed term of the renewal are limited, implications of mining are described briefly below.

### Economic impacts

35. As described above, Jabiluka is a large and high-quality deposit. Successfully mining the deposit could be expected to generate income for ERA, and royalties for other parties (depending on what agreements may be made between ERA, organisations representing the Mirarr, the NT Government, and the Commonwealth Government).
36. ERA has made high-level submissions that mining Jabiluka could advance the economic development of the NT generally, and economic opportunities for the Mirarr specifically

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<sup>41</sup> New applications could be permitted either by the NT Minister for Mining deciding to revoke the general reserve, or issuing a notice that applications will be permitted, per *Mineral Titles Act 2010* (NT) ss 113(4) and 117(1).

<sup>42</sup> [REDACTED]

<sup>43</sup> Energy Resources of Australia (2023) Mine Closure Plan: Mineral Lease Number 1, Page 8-1.

<sup>44</sup> Energy Resources of Australia (2023) Mine Closure Plan: Mineral Lease Number 1, Page 8-1.

<sup>45</sup> Energy Resources of Australia (2023) Annual Report, p 5.

(Attachment B, page 4). It is not possible to quantify or test these submissions based on the information available for this decision.

### Environmental impacts

37. Mining Jabiluka could be expected to have environmental impacts. Considering its location within Kakadu National Park, it can be expected that managing environmental impacts and remediating the site would be complex.

- a. In your meeting with ERA on 26 June 2024 (refer **MB24-000473**), ERA submitted that underground mining would manage environmental risk and have minimal impact on the surface of the land.
- b. NLC has submitted that Jabiluka is 'demonstrably unsuitable' for mining due to unacceptable environmental risks (Attachment C, paragraph 5).

38. Without a description of proposed activities for Jabiluka, it is not possible to meaningfully assess environmental impacts.

## Lease refusal

### Direct implications

39. If the Lease is not renewed:

- a. The Mirarr will gain general control over access and use of the site.<sup>46</sup>
- b. As described at paragraph 16 a general reserve will come into effect to create an indefinite, revocable ban on mining activities on the site.
- c. It is unknown what arrangements can be made for ERA to remain on site to complete rehabilitation. This is a matter for the NT Government.

### Site rehabilitation options

40. The Commonwealth is not liable to complete rehabilitation at Jabiluka if ERA fails to do so.

41.

[REDACTED]

- a. For example, the *Environment Protection Act 2019* (NT) may create rehabilitation obligations which survive the relevant mineral title.<sup>49</sup> Enforcement of any relevant NT laws will be a matter for the NT Government.

<sup>46</sup> The site is recognised as Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). Traditional Owners' rights are limited by both Commonwealth and Territory legislation.

<sup>47</sup>

<sup>48</sup>

<sup>49</sup> *Environment Protection Act 2019* (NT) s 124ZZG.

42. The NT Government holds a \$1 million security for Jabiluka.<sup>50</sup> Under NT legislation, a security can be used to remediate 'environmental harm' resulting from any phase of mining activity.<sup>51</sup>
- a. ERA estimates that the cost for it to complete remaining rehabilitation at Jabiluka is \$800,279 (as at December 2023).<sup>52</sup> This estimate takes into account ERA's expertise and operational capacity.
  - b. 'Environmental harm' is broad and means 'direct or indirect alteration of the environment to its detriment or degradation...whether temporary or permanent'.<sup>53</sup> Making a claim on the security for this purpose is a matter for the NT Minister for Environment, Climate Change and Water Security.<sup>54</sup>
43. ERA has not indicated whether it would seek to complete rehabilitation voluntarily if the Lease is not renewed. If it wished to do so, it would need lawful access to Jabiluka. [REDACTED]

### **Indirect implications – increased advocacy for incorporation into Kakadu National Park**

44. The Mirarr have advocated for the Jabiluka site be incorporated into Kakadu National Park, including during a meeting with you on 20 March 2024 (refer **MB24-000253**). If the Lease is not renewed, it is likely that this advocacy will increase.
45. Refusing the Lease will not necessarily result in the site being incorporated into Kakadu National Park. The decision to include Jabiluka into Kakadu National Park would fall within the portfolio of the Commonwealth Minister for the Environment and Water. This decision would be affected by factors including:
- a. the Department of Climate Change, Energy, the Environment and Water's own assessment of the environmental values of the site and any outstanding rehabilitation requirements;
  - b. the outcomes of consultation;<sup>56</sup> and
  - c. negotiations between the Director of National Parks and the Mirarr for an *ALRA* agreement.

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<sup>50</sup> Northern Territory Government of Australia (2024) *Securities held for mining sites*, accessed July 16, 2024.

<sup>51</sup> *Environment Protection Act 2019* (NT) ss 132B, 309.

<sup>52</sup> Energy Resources of Australia (2023) *Mine Closure Plan: Mineral Lease Number 1*, p 8-1.

<sup>53</sup> *Environment Protection Act 2019* (NT) s 7.

<sup>54</sup> *Environment Protection Act 2019* (NT) s 132E.

<sup>55</sup> [REDACTED]

<sup>56</sup> Consultation would be required consistent with the *Environment Protection and Biodiversity Conservation Act 1999*.

## Stakeholder views

### ERA

46. In its application for renewal, ERA:

- a. Interprets its existing lease as entitling it to renewal for a period of 10 years, conditional on compliance with the requirements of the Lease and the NT Mining Act;
  - i. Submit it has complied substantially with the existing lease, paid all rents and fees, and met reporting requirements. This is substantiated by a certificate of legislative compliance from the NT issued 23 June 2023.
  - ii. Submit that any non-compliance regarding lodging Annual Plans of Rehabilitation was due to circumstance and was not objected to by government.
- b. States renewal would provide the Mirarr with the greatest level of control over the Jabiluka orebody (owing to the *LTC&M Agreement*).
- c. Proposes the national significance of uranium in lowering global carbon emissions should be considered (ERA claims Jabiluka's uranium resources could deliver 2,843 TWh of low emissions energy – 10 times Australia's 2020-21 electricity generation).
- d. Submits that a renewal will allow ERA the time to collaborate with the Mirarr on what, if any, culturally appropriate pathways exist to develop Jabiluka.
- e. Claims that should mining be culturally permissible, it would provide significant economic contribution to the NT.

47. Representatives of ERA's shareholders, including Rio Tinto and Packer & Co, have made varied public statements about the desirability of mining Jabiluka.

### Northern Land Council (NLC)

48. The NLC made a formal submission to the NT Government regarding the renewal application (Attachment C). In its submission, the NLC:

- a. Calls on Minister Monaghan to refuse the renewal and state renewal would be legally challengeable.
- b. Claims Jabiluka is 'demonstrably unsuitable' for mining or mineral processing, owing to its proximity to World Heritage listed wetlands in Kakadu National Park.
- c. Expresses concerns about ERA's financial capacity and potential insolvency; a scenario which could see the lease become an asset for disposal.
- d. Argues that ERA is not a 'fit and proper person' to hold a mineral lease due to concerns regarding prior compliance and financial capacity for future compliance.



Gundjeihmi Aboriginal Corporation (GAC)

49. The GAC and senior Mirarr Traditional Owner Ms Yvonne Margarula did not make a formal submission to the NT Government on this issue. However, they have written to you directly on the issue (refer **MC24-003311**) as well as to the NT Chief Minister (refer **MC24-001048** and **MC24-000839**) and Prime Minister (refer **MC24-000535**). You met with them on 20 March 2024 (refer **MB24-000253**) where they expressed their objection to any renewal of the Lease. In summary both GAC and the Mirarr:
- a. strongly oppose the Application and state they will never support mining or further development of the site;
  - b. state the site is culturally significant and contains sacred sites, and renewal would be a failure to protect this heritage;
  - c. advocate for a whole-of-government commitment to not renew the Lease and for Jabiluka to be incorporated into Kakadu National Park;
  - d. claim there is no legal mechanism via which the Lease can be extended and suggest they will commence legal action to challenge any renewal.

Other interested parties

50. On 17 July 2024 the Hon Peter Garrett AM and Professor Don Henry AM (both associated with the Australian Conservation Foundation) co-wrote a letter to you advocating for refusal of the Application on environmental and cultural grounds (refer **MC24-003421**).
51. The department has received 3 emails from members of the public advocating for the refusal of the Application out of respect for the Mirarr.

**Stakeholder considerations and sensitivities**

52. The Mirarr are also the Traditional Owners of the neighbouring Ranger Uranium Mine (Ranger) site. The regulatory arrangements that permit ERA to continue rehabilitating Ranger will expire on 8 January 2026. This includes the land access agreement under ALRA. If these arrangements are not renewed prior to expiry, the liability for completing rehabilitation will fall to the Commonwealth (refer **MS24-000251**).
53. The department is currently holding good faith discussions with GAC and NLC on the terms of a new land access agreement for Ranger in anticipation of formal negotiations later this year. GAC has advised it has limited resources, and earlier this year temporarily withdrew from Ranger discussions to focus on Jabiluka advocacy. GAC has advised an intention to return to discussions on Ranger in early August.
54. If the Application is approved and the Lease is renewed GAC will likely withdraw from Ranger negotiations, at least temporarily, to focus on litigation regarding Jabiluka. The department is actively managing these risks in conjunction with the National Indigenous Australians Agency and will brief you should such a circumstance occur.
55. If the Application is refused and renewal is rejected, ERA could pursue litigation to overturn the decision. This would likely have a negative impact on Ranger negotiations.



**THE HON MADELEINE KING MP  
MINISTER FOR RESOURCES  
MINISTER FOR NORTHERN AUSTRALIA**

MS24-000911

The Hon Mark Monaghan MLA  
Minister for Mining  
GPO Box 3146  
DARWIN NT 0801

minister.monaghan@nt.gov.au

Dear Minister

Thank you for your letter of 23 July 2024 requesting my advice on the application by Energy Resources of Australia (ERA) for renewal of the Jabiluka Mineral Lease (MLN 1), consistent with section 187(1) of the *Mineral Titles Act 2010* (NT).

I have considered your correspondence, as well as the views of ERA, the Northern Land Council and Mirarr Traditional Owners.

I advise you to approve ERA's application to renew the Jabiluka Mineral Lease, provided you are satisfied that all statutory requirements for doing so under the *Mineral Titles Act 2010* (NT) are met and that ERA's application is valid. I have given weight to the interests directly affected by the decision.

In the event of a renewal, ERA would retain the lease as an asset, and its current prospects of mining the site.

I acknowledge the Mirarr oppose renewal, and consider that refusing the lease would be part of protecting the significant cultural and environmental values of the site and surrounding Kakadu National Park.

I consider it is significant that ERA has committed (through the Jabiluka Long-Term Care and Maintenance Agreement) that it will not mine without the consent of the Mirarr, although I acknowledge the Mirarr state they will never consent to mining.

In approving ERA's application, I request that you consider including a condition that requires ERA to prepare a rehabilitation plan that demonstrates how ERA will fulfil its rehabilitation obligations within the term of the lease request.

Noting the application was submitted on 20 March 2024, I request that you make this decision at your earliest convenience.



**THE HON MADELEINE KING MP  
MINISTER FOR RESOURCES  
MINISTER FOR NORTHERN AUSTRALIA**

Thank you again for writing to me on this matter.

Yours sincerely

**Madeleine King MP**

/ /2024



**THE HON MADELEINE KING MP  
MINISTER FOR RESOURCES  
MINISTER FOR NORTHERN AUSTRALIA**

MS24-000911

The Hon Mark Monaghan MLA  
Minister for Mining  
GPO Box 3146  
DARWIN NT 0801

minister.monaghan@nt.gov.au

Dear Minister

Thank you for your letter of 23 July 2024 requesting my advice on the application by Energy Resources of Australia (ERA) for renewal of the Jabiluka Mineral Lease (MLN 1), consistent with section 187(1) of the *Mineral Titles Act 2010* (NT).

I have considered your correspondence, as well as the views of ERA, the Northern Land Council and Mirarr Traditional Owners.

I have considered that renewing the Jabiluka Mineral Lease would be beneficial to ERA, and have considered its submissions including:

- that mining the site could deliver economic benefits for the Northern Territory, the region, and the Mirarr;
- that 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; and
- the arrangements under the Agreement are the best option for all parties.

However, I consider it is significant that the Mirarr strongly object to renewal. I consider it is unlikely that the Mirarr will consent to mining or development within the proposed term of the renewal (ten years). Noting ERA's commitment not to mine without the consent of the Mirarr, I consider the prospects of the site being developed or mined within the proposed term of the renewal are low.

I acknowledge ERA's submission that if the lease is not renewed, future governments and mining proponents may seek to mine the site without Mirarr consent. Decisions about the

future of the site should be made at the appropriate time, consistent with the regulatory responsibilities of the Northern Territory and Australian Governments.

I advise you to refuse ERA's application to renew the Jabiluka Mineral Lease.

Noting the application was submitted on 20 March 2024, I request that you make this decision at your earliest convenience.

Thank you again for writing to me on this matter.

Yours sincerely

**Madeleine King MP**

/ /2024



**THE HON MADELEINE KING MP  
MINISTER FOR RESOURCES  
MINISTER FOR NORTHERN AUSTRALIA**

MS24-000911

The Hon Mark Monaghan MLA  
Minister for Mining  
GPO Box 3146  
DARWIN NT 0801

minister.monaghan@nt.gov.au

Dear Minister

Thank you for your letter of 23 July 2024 requesting my advice on the application by Energy Resources of Australia (ERA) for renewal of the Jabiluka Mineral Lease (MLN 1), consistent with section 187(1) of the *Mineral Titles Act 2010* (NT) (the MTA).

I understand that you propose to exercise your powers under the Act to decide whether to renew the Jabiluka Mineral Lease and, if so, its conditions. I provide the following advice in relation to the exercise of these powers.

I have considered your correspondence, as well as the views of ERA, the Northern Land Council and Mirarr Traditional Owners.

I advise that, in exercising your discretion to decide whether to renew the Jabiluka Mineral Lease you should give weight to the interests directly affected by the decision. In the event of a renewal, ERA would retain the lease as an asset, and its current prospects of mining the site. You should consider ERA's submissions, and the benefit of renewal for ERA. Traditional Owners oppose renewal, and strongly object to ERA (or any other party) holding prospects of mining the site. I consider it is unlikely this position will change within the proposed term of renewal. You should consider Traditional Owners' submissions, and the effect renewal would have on their interests.

Stakeholders have made submissions about the benefits and risks of future land uses (mining or incorporation into Kakadu National Park). I note the scope of this decision is about whether to renew a mineral lease. Any future land uses do not automatically follow from this decision.

ERA submits that under the Jabiluka Long-Term Care and Maintenance Agreement, Traditional Owners hold a veto over mining as long as ERA holds the lease. ERA argues that if the lease is not in place, future governments or other mining proponents could seek to mine the site without having arrangements in place for Traditional Owners to veto mining. ERA submits that therefore, renewing the lease will give Traditional Owners 'the highest level of control over the future of the Jabiluka orebody'. On balance, I do not consider this to be a factor weighing significantly in favour of renewal. In the context of this decision, it is not appropriate to attempt to guard against possible decisions of future governments. Any decisions about the future of the site would be made at the appropriate time, in light of contemporary policy factors, consistent with the regulatory responsibilities of the Northern Territory and Australian Governments.

Whether or not the lease is renewed, arrangements will need to be made for the site to be rehabilitated. If you decide to approve the Application to renew the lease, I recommend that you include a condition in your approval that ERA completes a rehabilitation plan that demonstrates how it will achieve the rehabilitation obligations within the term of the lease. If your decision is to refuse the Application and not renew the lease, the NT Government will need to work with ERA and the Mirarr Traditional Owners on this.

The advice set out above does not preclude consideration by you of any other matter permitted or required to be taken into account in the exercise of your powers under the MTA. I note that if you are minded to approve the Jabiluka Mineral Lease, you will need to be satisfied that all statutory requirements for doing so under the *Mineral Titles Act 2010* (NT) are met and that ERA's application is valid.

Noting the application was submitted on 20 March 2024, I request that you make this decision at your earliest convenience.

Thank you for writing to me on this matter.

Yours sincerely

**Madeleine King MP**

/ /2024

## Attachment H – Legal considerations

### Stakeholders' legal claims

Energy Resources of Australia (ERA)

Per Attachment B (page 1), ERA claims:

1. One of the conditions of the Lease provides ERA with a right to renewal for a further ten years.
  - a. The relevant condition states that the NT Government 'covenants' that if the lessee complies with the *Mining Act*<sup>1</sup> and any other Lease conditions, the Lease will be renewed for ten years.

- b. [REDACTED]

Northern Land Council (NLC) and Gundjeihmi Aboriginal Corporation (GAC)

Per Attachment C, the NLC's key legal claims are:

2. [REDACTED]
  - a. [REDACTED]
3. The Lease may have expired in 2007. Under the NT legislation in force when the Lease was originally granted (August 1982), the maximum term permitted was 25 years.
  - a. However, in past litigation, senior Traditional Owner Ms Yvonne Margarula – represented by senior counsel – agreed that the Lease was validly granted for 42 years pursuant to a now-repealed ordinance, and transitional provisions in the relevant NT legislation.<sup>3</sup> [REDACTED]
4. Approving the Application and renewing the Lease would be an improper exercise of power under the MTA, because ERA has stated publicly that it has no plans to mine the area.

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<sup>1</sup> Since superseded by the *Mineral Titles Act 2010* (NT).

<sup>2</sup> [REDACTED]

<sup>3</sup> *Margarula v Minister for Resource Development* (1998) NTSC 86.



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- a. ERA has not publicly stated it has no plans to mine the area. ERA's position is that mining the deposit would be worthwhile, and it will continue to seek Traditional Owners' consent to mining. ERA's Application is not inconsistent with the purposes of the MTA.<sup>4</sup>
5. The NT Minister for Mining 'must take into account that the location is demonstrably unsuitable' for mining due to proximity to World Heritage listed wetlands, and 'must conclude' that no mining applications should be approved over the site.
  - a. [REDACTED]
6. The NT Minister for Mining 'must take into account that the mineral lease was granted 42 years ago under repealed legislation with conditions that are no longer relevant or fit for purpose'.
  - a. [REDACTED]
  - b. The MTA provides that if a mineral title is renewed, the conditions may be updated.<sup>8</sup> Conditions may also be varied following consultation with the title holder.<sup>9</sup>
7. ERA is not a 'fit and proper person' to hold a mineral lease on the basis of its compliance history, and its poor financial capacity.
  - a. Under the MTA, the NT Minister for Mining may decide to refuse a mineral title application 'if there is clear evidence that the applicant is not a fit and proper person to hold the mineral title'.<sup>10</sup>
  - b. Minister Monaghan's letter (Attachment A) does not indicate a view that it would be appropriate to refuse the Application on these grounds.
  - c. The draft letter at Attachment G notes the NT Minister for Mining should consider all relevant MTA requirements, which will include this issue.
8. The Application 'should be treated as a new grant of a mining interest requiring a renegotiation of the [ALRA] agreement', noting the terms of the current ALRA

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<sup>4</sup> Purposes include to authorise exploration for and extraction of minerals, and to facilitate trading in mineral titles, per ss 3(a) and (b).

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<sup>8</sup> Section 85(4).

<sup>9</sup> *Mineral Titles Act 2010* (NT), s 100.

<sup>10</sup> *Mineral Titles Act 2010* (NT), s 70(4).

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agreement are 'superseded in almost every respect'. Renegotiation of the ALRA agreement 'would need to occur' before any proposed renewal.

- a. ERA and the NLC could voluntarily negotiate amendments to the current ALRA agreement. However, there is no clear legal basis for the argument that renegotiation is strictly required, or that it 'should' or 'would need to' occur before the Application could be approved and the Lease could be renewed.

Stakeholders' options for legal action

9. [Redacted]

Which parties could take legal action

10. [Redacted]

Renewal – litigation risks

11. [Redacted]

12. [Redacted]

11 [Redacted]

12 [Redacted]

13 [Redacted]

14 [Redacted]

15 [Redacted]

Refusal – litigation risks

13. [Redacted]

Other litigation risks

14. [Redacted]

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16 [Redacted]

17 [Redacted]

**ANNEXURE MAS-2**

**ENERGY RESOURCES OF AUSTRALIA LTD ABN 71 008 550 865**  
Applicant

**MINISTER FOR RESOURCES AND MINISTER FOR NORTHERN AUSTRALIA (COMMONWEALTH)**  
First Respondent

**COMMONWEALTH OF AUSTRALIA**  
Second Respondent

**MINISTER FOR MINING AND MINISTER FOR AGRIBUSINESS AND FISHERIES (NORTHERN TERRITORY)**  
Third Respondent

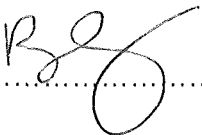
**NORTHERN TERRITORY**  
Fourth Respondent

**JABILUKA ABORIGINAL LAND TRUST**  
Fifth Respondent

**NORTHERN LAND COUNCIL**  
Sixth Respondent

**YVONNE MARGARULA**  
Seventh Respondent

The following 15 pages is the annexure marked MAS-2 referred to in the affidavit of Madisen Anne Scott made 23 September 2024 before me:

  
.....

Brooke Griffin

An AGS Lawyer pursuant to s 55I of the *Judiciary Act 1903* (Cth)



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Email: [nickita.rockey@ags.gov.au](mailto:nickita.rockey@ags.gov.au)

**TRANSCRIPT OF PROCEEDINGS**

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O/N H-1953562

**FEDERAL COURT OF AUSTRALIA**

**NEW SOUTH WALES REGISTRY**

**KENNETT J**

**No. NSD 1056 of 2024**

**ENERGY RESOURCES OF AUSTRALIA LTD**

**and**

**MINISTER FOR RESOURCES AND MINISTER FOR NORTHERN AUSTRALIA  
(COMMONWEALTH) and OTHERS**

**SYDNEY**

**9.34 AM, THURSDAY, 22 AUGUST 2024**

**MR R. LANCASTER SC appears with MR D. HUME for the applicant  
MR P.M. KNOWLES SC appears with MS J.E. DAVIDSON for the 1<sup>st</sup> and 2<sup>nd</sup>  
respondents**

**MR L. SPARGO-PEATTIE appears for the 3<sup>rd</sup> and 4<sup>th</sup> respondents**

**MR S.A. GLACKEN appears for the 5<sup>th</sup> respondent**

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5 MR R. LANCASTER SC: May it please the court, I appear with MR HUME for the applicant.

HIS HONOUR: Thank you, Mr Lancaster.

10 MR P.M. KNOWLES SC: May it please the court, I appear with MS DAVIDSON for the first and second respondents.

HIS HONOUR: Yes, Mr Knowles.

15 MR L. SPARGO-PEATIE: May it please the court, my name is Spargo-Peattie. I appear for the third and fourth respondents.

HIS HONOUR: Thank you, Mr Spargo.

20 MR S.A. GLACKEN: If your Honour pleases, I appear for the fifth respondent, the Jabiluka Aboriginal Land Trust, together with the Northern Land Council that seeks to be joined as the sixth respondent.

25 HIS HONOUR: Yes. Thank you, Mr Glacken. Can I just ask anyone who's on the call who doesn't have a speaking role, to make sure that their microphones are muted.

30 MR LANCASTER: Your Honour, my solicitors have provided to the court and the other parties our proposed orders. They are not by consent, but there is probably two categories of dispute before your Honour this morning. One is simply timetabling questions, as to submissions and preparation for trial, and that will depend in large part on when your Honour is in a position to offer us dates for hearing, and the timetable has dates in it at the moment, but they can, and I think would be adjusted, depending on your Honour's position on the hearing. The second category is orders for document production – some of which are agreed, some of which we don't know the position of the relevant respondent, and others of which are a modest level of contest about.

40 In relation to that category, we're in your Honour's hands how to deal with it. I can, of course, explain the contest in due course, but it may be more convenient to deal with the question of timetabling first, and then I can address on documents.

45 HIS HONOUR: Yes. Is there a – I take it there's a desire for an early hearing in this matter. What's the reason for that? I understand there's a stay of the relevant decisions.

MR LANCASTER: Well, the desire for the hearing to be relatively soon, I think from the government party's perspective, it was to come to a point of clarity about

the ongoing effectiveness of the lease, and certainly from the applicant's perspective, that is a driving concern as well. The challenge, of course, is to the validity of the refusal to renew. The applicant's position is that that refusal should be identified as invalid and the application determined according to law, which, in our submission,  
5 would involve a renewal of the lease for a term.

HIS HONOUR: Has the original term ended?

MR LANCASTER: The identified last date for the original term was 11 August.  
10 There's a provision in the relevant legislation that while-soever there's a pending application for renewal, that the lease remains on foot.

HIS HONOUR: I see.

15 MR LANCASTER: And the effect of the stay before the 11 August was to - - -

HIS HONOUR: To keep that position.

MR LANCASTER: - - - prevent the coming into effect of the refusal.  
20

HIS HONOUR: Yes.

MR LANCASTER: And so the statutory consequence is the continuation of the mining lease.  
25

HIS HONOUR: Yes, and there's no specific end date to that, I take it.

MR LANCASTER: There is no specific end date for that.

30 HIS HONOUR: Yes.

MR LANCASTER: It is tied to the determination of the proceedings.

HIS HONOUR: Yes, I see. Well, I think there's a proposal of 28 October.  
35

MR LANCASTER: That was the opening gambit, if I can put it that way, your Honour.

40 HIS HONOUR: Yes, yes. Well, I think I'm going to have to fix it in that week because I can't give you dates in November at this stage because of the appeal period and then I have a trial listed in December. I will need to swap my duty in the week of the 28th, but I'm sure that can be done.

MR LANCASTER: Thank you, your Honour.

HIS HONOUR: So I think we should work on the basis that it will be listed for hearing commencing on 28 October, and I understand there's a mild disagreement as to how long I should allow.

5 MR LANCASTER: Yes. So again there's a contention on our part that it looks like a three-day case at the moment. It has been put to us by my learned friend, Mr Glacken's client that four days are required to account for no doubt the possibility of cross-examination of the applicant's witnesses. There will be evidence brought by the applicant going to, in particular, the process of decision-making related to the  
10 procedural fairness ground, and there has been at least a possibility mooted that that deponent will be cross-examined. We, for our part, don't see any other major looming issue of fact or evidence for the hearing, but we haven't seen the responses of the government parties to these issues in that respect.

15 Your Honour might have seen that we've proposed in the short minutes – and I think all parties either agree or don't contest it – the utility of a process of a statement of agreed facts being produced, and we, in the usual way, hope that that can be more extensive rather than less and provide your Honour with an agreed basis of fact on which to determine the claims. So as to the duration of the hearing, your Honour  
20 may wish to reserve the forward dates to account for it and perhaps bring the matter back at some point for a clearer picture of how long it's going to take, but our estimate is that it could be comfortably accommodated in three days of the court's time.

25 HIS HONOUR: Yes. I will wait till I hear what the other parties - - -

MR LANCASTER: Yes, your Honour.

HIS HONOUR: - - - have to say about that before coming to a landing on it.

30 MR LANCASTER: Yes. Of course. And then as to the other timetabling issues, there's nothing earth-shattering in this. Our draft orders had some dates for written submissions. We accept that the respondent party should have more than a week to respond to our opening submissions. But we do note that we've provided substantial  
35 submissions on the interlocutory application which do run – did run through the question of a serious question to be tried by reference to the grounds in the application, so it's not as though anybody will be understanding these grounds for the very first time. But we do accept that there's some adjustment warranted in the dates for written submissions. We could offer to bring our written submissions back  
40 to 8 October in order 11 and to bring the date in order 10 – that's our evidence – any evidence in reply – back to 4 October - - -

HIS HONOUR: Just a moment. I - - -

45 MR LANCASTER: - - - if that makes it more manageable from the respondent's perspectives.



HIS HONOUR: I'm looking at a document that has your submissions on the 4th.

MR LANCASTER: Does it? All right. And I will take that as an instruction to do them by the 4th, your Honour. I must be working from a slightly earlier version.

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HIS HONOUR: And then - - -

MR LANCASTER: All right. Well, then - - -

10 HIS HONOUR: And the respondent's on the 18th. And your reply on the 23rd. That's what I've got in front of me.

MR LANCASTER: All right. Well, perhaps I will allow the parties to address that timetable. It seems to have been resolved from our perspective.

15

HIS HONOUR: Yes. All right.

MR LANCASTER: Thank you, your Honour.

20 HIS HONOUR: All right. Perhaps we will deal with the timetabling questions and then come back to documents.

MR LANCASTER: Yes, your Honour.

25 MR KNOWLES: Court, please - - -

MR GLACKEN: Your Honour, is it convenient if I speak?

30 HIS HONOUR: I suppose – well, Mr Knowles have you got any great points of disagreement with Mr Lancaster?

MR KNOWLES: Sorry. Points of mild concern, not of strenuous disagreement.

35 HIS HONOUR: All right, well, I will hear from Mr Glacken first, in that case. Yes, Mr Glacken.

40 MR GLACKEN: I – I apologise, your Honour. And I apologise, Mr Knowles. I'm still getting used to remote connections. But four days, your Honour. The originating application is rather diffuse in the allegations it makes. And there's a – a number of documents that have been produced and are being produced. And there are three sets of respondents who may not necessarily have the same interests. I think experience would tell us, and I'm going to, on the join, to perhaps refer to a case called "Gondarra", which has similar sort of issues. That was a five-day case, with similar composition of parties, without any factual dispute. I refresh my  
45 memory, and I was quite shocked when I saw it was five days, but it turned out to be five days. I think it would be prudent to allow four days, at least, for those reasons, your Honour. And on the programming, we're content with the form of the minutes

that your Honour has. Which, just to be clear, the alterations from yesterday's version, as at paragraph nine, I think, Your Honour, will have a date of 23 September.

5 HIS HONOUR: Yes.

MR GLACKEN: And then paragraph 10. 30 September.

HIS HONOUR: Yes.

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MR GLACKEN: And then paragraph 11. 4 October.

HIS HONOUR: Yes.

15

MR GLACKEN: We're content with that timetable that's been proposed. And the 14-day space, amongst other things, your Honour, apart from what I just mentioned about the rather diffuse nature of the case at the moment, and it could be moving, is that it would allow the respondents some better time to confer, and avoid duplication, for the benefit of the court. That's all I think I need to say on those two matters.

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HIS HONOUR: Yes, I – yes, all right. I noticed there's some highlighted text in relation to the length of the submissions, but that seems to be common ground between you and Mr Lancaster.

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MR GLACKEN: It – it is, and I think some discipline is – is beneficial for the court.

HIS HONOUR: Yes. All right, thank you. I will hear from Mr Knowles on the timetabling questions.

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MR KNOWLES: Court please. In terms of the length of the hearing, my own impression, at the moment, is that three days ought be sufficient, but four days, for an abundance of caution, I don't oppose. I would say that that estimate, and indeed the whole timetable, is built on a couple of assumptions. One assumption is that the grounds articulated in the originating application don't shift, or at least, don't shift in any material way that will delay either the timetable, or extend the hearing. I don't think anyone need respond to that, but it's an obvious assumption that we're working on, and I think should that assumption, or the facts underlying that assumption, change, our position about this timetable might also change. We are broadly content with the date that your Honour indicated would be available for a hearing. I don't wish to be heard on that.

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The other, though, assumption that our agreement to the timetabling aspects of the orders, is that the evidence foreshadowed by Mr Lancaster of evidence of the submission put, is evidence that we anticipate will be the subject of some challenge. So we agree with Mr Glacken that there could be cross-examination of that witness, or witnesses. But that doesn't change the length of the hearing. What may change the length of the hearing, and the timetable, is if there was any suggestion from the

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5 plaintiffs that expert evidence would be relevant. I – for my part, I can't say how it  
would be, but it would help if we had some confirmation of that from the applicants  
because we have now agreed to orders that allow a two-week turnaround between  
their evidence and our evidence, and we think that's sufficient if we're limited to lay  
evidence. We think it would be insufficient if there's any suggestion that expert  
evidence could be relevant in this case. And the only other matter that I would raise  
now is that in orders 2 and 3 there's some dispute over the timetable for production,  
but maybe I should defer comment upon that to that time of this hearing when we  
speak about document production because I don't think it affects the other steps in  
10 the timetable, and there are some other matters which I wish to address on document  
production.

HIS HONOUR: Yes.

15 MR KNOWLES: If the court pleases.

HIS HONOUR: Yes. All right. The other matter, I think, that we shouldn't forget  
– and I might ask Mr Glacken to address me on this next – is the joinder question.

20 MR GLACKEN: Yes. If your Honour pleases, the position is that the respondents  
consent to the joinder of the Northern Land Council and the applicant advises that it  
neither consents nor opposes. In those circumstances, your Honour, we would seek  
to be excused from not putting on an interlocutory application to simply make the  
application orally. Can I make just five short points in support of the joinder  
25 application to satisfy the court that joinder is appropriate. And they're cumulative  
points, if I can put it this way. The first is that the relief seeks to establish whether  
mineral lease number 1 continues in force beyond its expiration date.

30 Second contextual point, the mineral lease covers an area of Aboriginal freehold land  
granted to the fifth respondent land trust under the Aboriginal Land Rights Act.  
Thirdly, the fee simple title held by the Aboriginal land trust for the benefit of the  
Aboriginals concerned is held under the Land Rights Act, and the powers of the land  
trust as an owner of the land can only be exercised at the direction of the relevant  
land council, being the Northern Land Council. That's the effect of sections 5 and 23  
35 of the Land Rights Act. The fourth contextual point is that there are several  
agreements concerning both the terms upon which the mineral lease was granted and  
its continued operation to which the Northern Land Council is a party pursuant to  
statutory functions.

40 So, for example, at the originating application at page five, there's a reference to a  
long-term care and management plan and questions about the construction of clause  
5.1(d) of that particular agreement. So, fifthly, as an upshot, whether or not the  
mineral lease continues in force affects the interests of each of the land trust and the  
Northern Land Council, given that the issues raised concern essentially whether the  
45 mineral lease continues to exist as a burden upon the freehold title of the land trust  
and issues as to the construction of the agreements governing the continued operation  
of the mineral lease. Your Honour, I've provided to chambers a decision of Kenny J

in Gondarra. Perhaps if I could briefly take your Honour to that because we are in similar circumstances.

HIS HONOUR: Yes.

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MR GLACKEN: It's Gondarra v Minister for Families [2011] FCA 1206, which was a joinder application. The ultimate judgment on the issues by her Honour is reported at 220 FCR 302, and that's when I mentioned it was a five-day case. Does your Honour have the joinder decision handy?

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HIS HONOUR: I do. Yes.

MR GLACKEN: Just to put it in context, if your Honour goes to paragraph 1 of the reasons, it was a slightly different challenge to the present case, but the challenge by Dr Gondarra was to action taken by the Commonwealth Minister under the Land Rights Act to consent to the grant of a lease at the Gove Peninsula bauxite mine. And that lease was granted by the relevant land trust on the direction of the land council, and the – each of the land council and the land trust applied to be joined to that proceeding. And if your Honour goes – and ultimately, I should say – ultimately, Dr Gondarra accepted in the course of argument that joinder should be appropriate, but there was an argument about the terms of the joinder, about cost. But if your Honour goes to paragraph 10, Kenny J summarises the statutory scheme. If your Honour could read paragraph 10.

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HIS HONOUR: Yes.

MR GLACKEN: And then at paragraph 11, if I can paraphrase, her Honour refers to the function of the land council to exercise its powers after consulting with the relevant Aboriginals concerned in the land. And at paragraph 13, her Honour makes this conclusion, and that:

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*The statutory context –*

and –

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*the nature of the relief –*

that is, the relief to challenge the Minister's decision to consent to the grant of the lease, and:

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*...the involvement of the –*

land council:

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*...and the land trust in –*

that:

...process ... the subject matter of the decisions establish that the –

land council:

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...and the land trust are persons whose interests may be affected by the orders and judgment of the court.

And then after referring to authority in the last four lines says:

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...because the orders sought by the applicant would, if made, directly affect their rights and liabilities under the agreement and the lease –

in issue. We say that that's what's occurring here. The relief about whether the mineral lease continues in force will directly affect the rights and liabilities of both the land trust as the fee simple owner and the land council as the party to the relevant agreements governing the mineral lease, and its statutory functions to give appropriate directions to the land trust about how to exercise its powers as the owner of the land.

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And at paragraph 14, although her Honour concludes that joinder would be under paragraph (a) of rule 9.05(1), her Honour makes an observation that it would also be appropriate under paragraph (b). Although her Honour – and her Honour refers to rule (ii) – that the joinder would be:

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...necessary to ensure –

the disputes:

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...are finally determined –

might I add rule (i) would also be engaged, and that is, a joinder is appropriate where – of a person:

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...whose cooperation might be required to enforce a judgment –

So if, for example, the judgment was that the lease continues in force, then given the powers of the land council in its relationship with the land trust its cooperation would be necessary for that judgment. But we put it primarily that our interests are directly affected, that is, the land council as much as the land trust, and we ought to have been joined in the outset, and we come within paragraph (a) of rule 9.05. That's all I wanted to say, your Honour.

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HIS HONOUR: Yes. All right. One thing that struck me is the council, as I understand it, is the solicitor on the record for the trust. Is there anything that I should worry about in the council also being a party in its own right?

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MR GLACKEN: Well, no, it – not in my experience, your Honour. It has been commonplace. It's – Mr Gomez would be – the principal legal officer – would be the solicitor on the record.

5 HIS HONOUR: Yes. I rather thought so, and that seems to have been the case in Gondarra, as well.

MR GLACKEN: It was.

10 HIS HONOUR: Yes.

MR GLACKEN: It was. It has been the case in dozens of cases of this court.

HIS HONOUR: Yes. I thought you might say that.

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MR GLACKEN: Thank you, your Honour.

HIS HONOUR: All right. Well, there being no opposition to the order for joinder, that order will be made. Before I go any further, Mr Spargo-Peattie, I realise I haven't heard from you yet on the questions of timetabling.

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MR SPARGO-PEATIE: Your Honour, I'm happy to endorse what Mr Knowles said. We're generally content with the timetable. We have the same observations about the length of the hearing, and the same observations in relation to new grounds and so forth.

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HIS HONOUR: Yes. All right. Thank you. What I have in mind is to schedule a case management hearing on 1 or 2 October on the basis that that will be vacated if nobody wants it.

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MR LANCASTER: Thank you, your Honour.

HIS HONOUR: Just so that we can, if necessary, have a report back on what's emerged from the evidence process, and - - -

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MR LANCASTER: Yes.

HIS HONOUR: - - - whether that has any implications for the length of the hearing or anything else.

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MR KNOWLES: The court please.

HIS HONOUR: So I think we can move to - - -

45 MR LANCASTER: Your Honour, just myself and my junior both have overseas commitments those days.

HIS HONOUR: I see. Well, it's just that if I make it any later, it will overlap with the due dates of submissions.

MR LANCASTER: Yes. Well, no doubt, somebody can deal with it, your Honour.

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HIS HONOUR: Yes, all right. Thank you.

MR LANCASTER: Your Honour, I might say, in answer to, or in addition to what my learned friend, Mr Knowles, said, we, likewise, assume, at the moment, that the grounds won't change, but as your Honour sees from the draft short minutes, there is an ongoing process of production of documents that, in other cases, in a hypothetical sense, means that we can't commit that that will not occur, but as presently advised, those grounds are the ones that will go to hearing. As presently advised, the applicant does not propose to rely on expert evidence. And as presently advised, the statement of agreed facts should mean everything other than the flagged possibility of cross-examination of the applicant's lay witnesses – will be the only issue of fact for the hearing.

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Now, if I can then address the question of document production, we are a little in the dark, as to the position of each of the parties on some of these categories. One way, of course, is to run through all of this now, your Honour. Another way is for the parties to attempt, in short order, to come to a final landing on what is agreed and what is not agreed, and to the extent there's disagreement, to propose competing short minutes, and, say, very short two-page submission on each side, and your Honour might deal with it in chambers as a potential alternative approach. Of course, I'm happy to go through the categories now, but in circumstances where, for my part, I don't know the extent of the dispute of some of the categories, I don't know how long that process would take.

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HIS HONOUR: Yes, all right. Well, I'm – unless anyone violently disagrees with that course, that's what I will do. Do you want to say anything, at present, about the timing questions, in relation to the timing of production?

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MR LANCASTER: Yes. The general theme of our correspondence with the parties – with the respondents, has been earlier the better, for this documentary production – for the very reason it has been flagged. It is capable of giving rise to new issues. It may well not, but it is capable of doing that, and all of the parties and the court should be in a position where there's clarity about the final condition of the evidence that's likely to be brought on the grounds that are raised in respect of those materials. So we have proposed, in 2 and 3, a week from today. Now, this process of requiring, requesting production of documents from the government respondents started back on 6 August, when we started the proceedings.

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And we now have the core decision-making materials, in terms of the departmental briefs for ministerial decision, but the additional documents we're seeking include quite a raft of documents referred to in those decision briefs not attached to it, and not yet provided to us, and other indications of consultation between, in particular,

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the Commonwealth, Minister and others, that are presently opaque to our understanding, because we don't have the detail of them and when they occurred. So from the applicant's perspective, these are important materials to be able to receive promptly, so that we can make a decision about the path that we take, both in our evidence, and in preparation of the grounds, for your Honour's determination.

HIS HONOUR: Yes.

MR LANCASTER: What – what we suggest is that the Commonwealth and Northern Territory parties identify which of these categories they agree, which they disagree, and the extent of the dispute, in very short order. But, that otherwise, that there be a very prompt regime for production of these documents.

HIS HONOUR: Is this a – fundamentally a judicial review case?

MR LANCASTER: Yes.

HIS HONOUR: Where you have a decision maker, and you need to know what the decision maker looked, at and thought about?

MR LANCASTER: The – there is a procedural fairness ground, and some of this material goes directly to the course of the decision making. Which, as it turns out, from the material we've received from date – to date, was not confined to a departmental brief. There – there were consultations by the Minister with others, evident from the materials we've received, dating back many months. And we, as part of our procedural fairness ground, wish to examine and challenge aspects of that. So if – of course, yes, judicial review. It – it – the core material is the material before the decision maker, at the time it was made, but the procedural fairness ground raises the decision makers' conduct well before that brief was even prepared, as we see it now.

HIS HONOUR: Yes, all right. Well, perhaps I will hear from Mr Knowles, and then Mr Spargo-Peattie. Just if there's anything you want to say at a general level. And also, are you content to have some further discussions and send me some proposed short minutes in the next few days?

MR KNOWLES: The short answer to your Honour's question is, yes. I'm propose – I'm happy to go down that course of conferral, and then short submissions on issues in dispute. I am in a position to outline some areas of dispute, but I would also have to tell your Honour that there was one category, which is category A6, which was only notified to us, I think either late yesterday afternoon, or early evening. Depending on the boundary between afternoon and evening. And I don't have instructions on those, so the course suggested by Mr Lancaster would, at least, give me time to get instruction on that. And it seems a little inefficient for me to go through the areas of dispute, and the other categories, when there is at least some scope for further conferral, and on my part, the taking of instructions. Can I only add, then, two things to the document production issue. In terms of timing, we



understand the desire of Mr Lancaster to get the documents quickly, but we have our own concerns about the scope of production. And I just don't think, until the scope of the production, that is the categories are agreed, we're really in a position to usefully make submissions on the dates for orders two and three.

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Because the dates by which we could produce material, depends upon the categories that are ultimately ordered against us. Some will require searching, as in searching across large amounts of documents. Some are very specific requests for specific documents that could be identified quickly. We will try to do things as quickly as possible, but until we have the categories, we don't think that it's useful to put dates into orders two and three. But we accept that, at some point in time, as part of the conferral and disputes process, those dates should be determined. The only other matter I wish to say on document production is to flag that, without seeking any order, your Honour has heard that there likely is to be some factual contest or cross-examination of the applicant's witnesses. That brings with it – and that issue for factual contest brings with it the possibility that we may also seek document production of our own from the applicant. It goes – at the moment, I anticipate it will go to the issue of procedural fairness as well, in terms of what was known, in terms of issues in dispute, or issues relevant to the decision, I should say. But that is only a matter that need be flagged, that there may be some further document production issues going the other way at a later point in time.

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HIS HONOUR: Yes. All right. Thank you. Mr Spargo-Peattie, do you want to add anything?

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MR SPARGO-PEATIE: Yes, your Honour. We're generally content with the idea of conferring with our learned friends and providing some short submissions, if that's necessary. I just wanted to briefly identify the three areas of dispute from our perspective. The first, your Honour will see in order 4, concerns the notice to produce that was issued on 6 August – or, 7 August, I should say. That concerns one paragraph of that notice, which is wholly subsumed by paragraph 1 of part B, which is the schedule with our production orders. And we simply want to avoid having to produce the same documents twice. We're not certain – we've raised that with our learned friends, but it has not been articulated to us why they oppose that order.

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The second area of dispute is in relation to schedule B and paragraph 1. The only difference between the applicant and us is that the applicant seeks an order for production of all communications to or from the third respondent and the fourth respondent, being the Territory body politic, and we suggest that that be the fourth respondent as represented by the relevant department, the Department of Industry, Tourism and Trade. We do that simply because, if we are to produce these documents within seven days, our instructions are it will not be feasible to conduct searches for every public servant within the body politic.

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And in any event, as your Honour put to my learned friend, the grounds relevant to us are judicial review grounds concerned with an exercise of power by the third respondent, the Minister, and we don't understand how communications which were

not made to or from the Minister or his department could be relevant to those grounds. And for what it's worth, we have considered whether it might be relevant to the grounds concerning the Commonwealth, and we don't appreciate that. And lastly, the third matter concerns the third paragraph, and similarly, we were only  
5 made aware of this yesterday at 4.30 or so, and we haven't had an opportunity to consider that in detail, but my preliminary view is that it's also not relevant to any of the grounds; that we wish to confer with the applicants about that.

10 HIS HONOUR: Yes. All right. Thank you for that. Mr Glacken, do you have any interest in these document production issues?

MR GLACKEN: Not directly, in the sense it concerns the other parties, but we have an indirect interest in the sense of the impact on the proceedings, and can I just only make this contextual remark, your Honour. I'm not entirely sure the direction that  
15 the production is going, but in terms of the pleading at pages 2 and 3 of the originating application, the gravamen of the case put by the applicants, particularly at (iii) on page 3, was an alleged procedural unfairness in not being able to address the views of the Northern Land Council and the Mirrar traditional owners; that's at B. And then at C, that the landowners would not consent to mining during the renewal period applied for. That was a matter of public record, your Honour. So all this, if I  
20 can call it discovery, of what went on earlier would ultimately be of little value. But that's all I have to say, your Honour.

HIS HONOUR: All right. Thank you. All right. Well, can I just ask those with a direct interest in the document issues, are you able to provide me with your proposed orders and short submissions, to the extent of any disagreement, by 5 pm on Monday,  
25 the 26th?

MR LANCASTER: Yes, your Honour.  
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MR KNOWLES: Your Honour, can I just flag, given the nature of my client, that 5 pm on Tuesday is likely to produce more useful conferral than 5 pm on Monday.

HIS HONOUR: Well - - -  
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MR KNOWLES: It's a matter, which you really just said, from experience rather than any specific instruction on this matter, but I fear that there might be greater areas of dispute if the time for consultation is not lengthened.

40 HIS HONOUR: Yes, I suppose that may be a matter on which judicial notice might be taken, yes.

MR LANCASTER: We're happy to send ours by Monday afternoon, your Honour, and I don't oppose Tuesday - - -

45 HIS HONOUR: Yes.

MR LANCASTER: - - - for my learned friend.

HIS HONOUR: All right. All right. Thank you.

5 MR KNOWLES: The court pleases.

HIS HONOUR: All right. Well, so I will make orders 1 and 5 to 16 of the short minutes that have been provided by ERA. I will include in orders 11 and 12 a page limit of 30 pages. That's not an invitation to write that much, but – you don't need  
10 to. And in order 13, a page limit of 15 pages. In order 16, the estimate for the hearing at this stage will be four days. I won't make orders 2 to four 4, but I will direct the parties to confer on the question of production of documents and to provide agreed or competing short minutes of order, together with short written submissions on the areas of disagreement, by 5 pm on 27 August. And I will list the matter for  
15 case management on Tuesday, 2 October at 9.30. As I've said, my chambers will be in contact with the parties before then to ascertain whether that hearing is needed, and if not needed, it will be vacated. Yes, I think I said "Tuesday the 1<sup>st</sup>", which is wrong. I think I said "Tuesday the 2<sup>nd</sup>", which wrong. I meant to say "Wednesday the 2<sup>nd</sup>".

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MR GLACKEN: Your Honour, can I just be heard on one matter?

HIS HONOUR: Yes.

25 MR GLACKEN: The direction for the parties to confer on the production of documents, given we're not directly involved, could that be expressed to be "the parties other than the fifth and sixth respondents", just to be clear?

HIS HONOUR: Yes, yes, I'm happy to make that change.

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MR GLACKEN: Thank you.

HIS HONOUR: All right. Is there anything else I should deal with today?

35 MR LANCASTER: That's all from our perspective, your Honour, thank you.

MR KNOWLES: If the court please.

MR SPARGO-PEATTIE: Nothing further from us. Thank you, your Honour.

40

HIS HONOUR: Yes. All right. The court will adjourn.

45 **MATTER ADJOURNED at 10.18 am UNTIL  
WEDNESDAY, 2 OCTOBER 2024**

**ANNEXURE MAS3**

**ENERGY RESOURCES OF AUSTRALIA LTD ABN 71 008 550 865**  
Applicant

**MINISTER FOR RESOURCES AND MINISTER FOR NORTHERN AUSTRALIA (COMMONWEALTH)**  
First Respondent

**COMMONWEALTH OF AUSTRALIA**  
Second Respondent

**MINISTER FOR MINING AND MINISTER FOR AGRIBUSINESS AND FISHERIES (NORTHERN TERRITORY)**  
Third Respondent


**NORTHERN TERRITORY**  
Fourth Respondent

**JABILUKA ABORIGINAL LAND TRUST**  
Fifth Respondent

**NORTHERN LAND COUNCIL**  
Sixth Respondent

**YVONNE MARGARULA**  
Seventh Respondent

The following 4 pages is the annexure marked MAS-3 referred to in the affidavit of Madisen Anne Scott made 23 September 2024 before me:

  
.....

Brooke Griffin

An AGS Lawyer pursuant to s 55I of the *Judiciary Act 1903* (Cth)

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Notice to Produce - Form 61 - Rule 30.28(1)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 16/09/2024 10:28:10 AM AEST  
Date Accepted for Filing: 16/09/2024 12:29:10 PM AEST  
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  
Reason for Listing: Return of Subpoena  
Time and date for hearing: 25/09/2024, 9:30 AM  
Place: By Web Conference, Level 17, Law Courts Building 184 Phillip Street Queens  
Square, Sydney



*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.



## Notice to produce

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

To the First Respondent

### Definitions

In this Notice to Produce:

- **Communication** includes oral communications and communications in writing (whether electronic or otherwise).
- **Document** has the meaning set out in the Dictionary to the *Evidence Act 1995* (Cth) and includes (for the avoidance of doubt) all correspondence, memoranda, reports, notes, meeting minutes, submissions, computer and smart phone messaging communications (including WhatsApp and Signal) and other records (whether handwritten or electronic).

The Applicant requires you to produce the following documents or things before a Registrar of the Court by 9:30am on 25 September 2024:

1. The original or one copy of all Documents evidencing or recording:
  - (a) draft versions of the Joint Media Release by the Hon Madeleine King MP and the Hon Tanya Plibersek MP titled "Work begins to add Jabiluka site to Kakadu National Park" dated 27 July 2024 (**Joint Media Release**);
  - (b) the date on which draft versions of the Joint Media Release were prepared;

Filed on behalf of (name & role of party) The Applicant, Energy Resources of Australia ABN 71 008 550 865  
Prepared by (name of person/lawyer) Leon Chung  
Law firm (if applicable) Herbert Smith Freehills  
Tel 02 9225 5716 Fax \_\_\_\_\_  
Email Leon.chung@hsf.com  
**Address for service** Level 34, 161 Castlereagh St, Sydney NSW 2000  
(include state and postcode) \_\_\_\_\_

- (c) comments on and proposed amendments to the Joint Media Release; and
- (d) Communications to or from the First Respondent, on or before 25 July 2024, in respect of the Joint Media Release.

Date: 16 September 2024



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Signed by Leon Chung  
Solicitor for the Applicant

*Note*

If this notice specifies a date for production, and is served 5 days or more before that date, you must produce the documents or things described in the notice, without the need for a subpoena for production.

If you fail to produce the documents or things, the party serving the notice may lead secondary evidence of the contents or nature of the document or thing and you may be liable to pay any costs incurred because of the failure.

**Schedule**

No. NSD 1056 of 2024

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

**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
- Sixth Respondent:** Northern Land Council



**ANNEXURE MAS-4**

**ENERGY RESOURCES OF AUSTRALIA LTD ABN 71 008 550 865**  
Applicant

**MINISTER FOR RESOURCES AND MINISTER FOR NORTHERN AUSTRALIA (COMMONWEALTH)**  
First Respondent

**COMMONWEALTH OF AUSTRALIA**  
Second Respondent

**MINISTER FOR MINING AND MINISTER FOR AGRIBUSINESS AND FISHERIES (NORTHERN TERRITORY)**  
Third Respondent

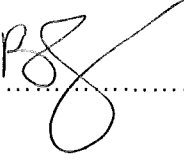
**NORTHERN TERRITORY**  
Fourth Respondent

**JABILUKA ABORIGINAL LAND TRUST**  
Fifth Respondent

**NORTHERN LAND COUNCIL**  
Sixth Respondent

**YVONNE MARGARULA**  
Seventh Respondent

The following 4 pages is the annexure marked MAS-4 referred to in the affidavit of Madisen Anne Scott made 23 September 2024 before me:

  
.....

Brooke Griffin

An AGS Lawyer pursuant to s 55I of the *Judiciary Act 1903* (Cth)

## NOTICE OF FILING AND HEARING

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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  
Reason for Listing: Return of Subpoena  
Time and date for hearing: 25/09/2024, 9:30 AM  
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Square, Sydney



*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.



## Notice to produce

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

To the Second Respondent

### Definitions

In this Notice to Produce:

- **Communication** includes oral communications and communications in writing (whether electronic or otherwise).
- **Document** has the meaning set out in the Dictionary to the *Evidence Act 1995* (Cth) and includes (for the avoidance of doubt) all correspondence, memoranda, reports, notes, meeting minutes, submissions, computer and smart phone messaging communications (including WhatsApp and Signal) and other records (whether handwritten or electronic).

The Applicant requires you to produce the following documents or things before a Registrar of the Court by 9:30am on 25 September 2024:

1. The original or one copy of all Documents evidencing or recording the final version of the text of the speech given by the Hon Anthony Albanese MP at the New South Wales Labor Annual Conference on 27 July 2024 (**Speech**), at which Mr Albanese addressed Jabiluka.
2. The original or one copy of all Documents evidencing or recording:

Filed on behalf of (name & role of party) The Applicant, Energy Resources of Australia ABN 71 008 550 865  
Prepared by (name of person/lawyer) Leon Chung  
Law firm (if applicable) Herbert Smith Freehills  
Tel 02 9225 5716 Fax \_\_\_\_\_  
Email Leon.chung@hsf.com  
**Address for service** Level 34, 161 Castlereagh St, Sydney NSW 2000  
(include state and postcode)

[Form approved 01/08/2011]

- (a) draft versions of the Speech, but excluding draft versions which do not refer to Jabiluka;
  - (b) the date on which draft versions of the Speech were prepared;
  - (c) comments or proposed amendments to the Speech relating to Jabiluka; and
  - (d) Communications to or from the First Respondent, on or before 25 July 2024, in respect of the Speech.
3. The original or one copy of all Documents evidencing or recording:
- (a) draft versions of the Joint Media Release by the Hon Madeleine King MP and the Hon Tanya Plibersek MP titled "Work begins to add Jabiluka site to Kakadu National Park" dated 27 July 2024 (**Joint Media Release**);
  - (b) the date on which draft versions of the Joint Media Release were prepared;
  - (c) comments on and proposed amendments to the Joint Media Release; and
  - (d) Communications to or from the First Respondent, on or before 25 July 2024, in respect of the Joint Media Release.

Date: 16 September 2024



---

Signed by Leon Chung  
Solicitor for the Applicant

*Note*

If this notice specifies a date for production, and is served 5 days or more before that date, you must produce the documents or things described in the notice, without the need for a subpoena for production.

If you fail to produce the documents or things, the party serving the notice may lead secondary evidence of the contents or nature of the document or thing and you may be liable to pay any costs incurred because of the failure.

**Schedule**

No. NSD 1056 of 2024

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

**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

**Sixth Respondent:** Northern Land Council