

SPEAKING NOTES – JABIRU

1. I acknowledge the traditional owners of the land on which we meet today, the Mirarr People, and pay my respects to their elders past, present and emerging.
2. Before the Court makes formal orders and publishes its reasons for judgment for making those orders, I would like to make some general observations about this significant event. What I am about to say does not form part of the Court’s formal reasons for judgment.
3. Most Mirarr land is within the World Heritage listed Kakadu National Park. It includes the uranium mine, the Jabiluka mineral lease, as well as the mining town of Jabiru.
4. As many of you present here know only too well, this hearing today has a long and complex history. Ms Yvonne Margarula, who is one of the applicants in today’s proceeding, is the Senior Traditional Owner and leader of the Mirarr People. The other applicant is Ms Margarula’s younger sister, Nida Mangambarr. Acting on behalf of the Mirarr People, they filed an application in this Court as far back as 1998 for a determination of native title rights and interests over an area of land, which includes the Jabiru Township and the immediate surrounding area. There were eight respondents to that application, including the Northern Territory, the Commonwealth, Energy Resources Australia Limited, the Jabiru Town Development Authority, the Director of National Parks, the Gundjeihmi Aboriginal Corporation and the Northern Land Council. The issue of connection was relatively uncontroversial. The sticking point was the extent to which executive and legislative actions since European settlement had the effect of extinguishing the Mirarr People’s native title rights and interest over the Jabiru land. Those actions are summarised in Justice Mansfield’s decision dated 24 August 2016, including the grant of grazing licences and actions by the Commonwealth under the *Wildlife Conservation and Control Ordinance* (NT) in 1972.
5. As Mansfield J noted, things then became very complicated from 1975 onwards. This was largely because of the Ranger Uranium Mine and the Northern Territory becoming a self-governing territory in mid-1978. From 1979 onwards, after the *Jabiru Town Development Act* (NT) was passed, various works have been constructed over the Jabiru land, including houses and public amenities and public infrastructure and works. When all these matters were taken into account, Mansfield J held the Mirarr People should be recognised as the traditional owners of the land, but the extent of extinguishment meant, however, that this was only a “relatively small area within their traditional country”.

6. The same year as the native title application was made, there was litigation in the Court brought by Ms Margarula, including the Full Court, which raised the question whether the Commonwealth was bound by the *Northern Territory Mining Act 1980* as well as the validity of a mineral lease granted by the Northern Territory. This is the lease which was ultimately acquired by ERA. The Lease permitted the exploitation of deposits of uranium ore at Jabiluka, which land covered more than six and a half thousand hectares. The challenges were unsuccessful both at first instance and in the Full Court. The High Court refused an application for special leave to appeal on 20 November 1998.
7. Separate proceedings were then brought by Ms Margarula in this Court in 1999 in which there was a challenge to the Minister for Environment's decision not to direct an inquiry into the environmental aspects of the proposal to mine and export uranium ore. That application was dismissed by Justice Sundberg in mid-1999 on the basis that the Court lacked jurisdiction under the ADJR Act to review the challenged actions.
8. There was another proceeding commenced by Ms Margarula in 1998 in which Marshall J granted interlocutory relief. The proceeding was then transferred to the Supreme Court of the Northern Territory.
9. Many of these public law proceedings resulted in costs orders being made against Ms Margarula. This highlights one of the primary features of the NT Act, which has a general principle that there be no order as to costs. The legislation also encourages parties to seek to resolve their disputes by means other than costly, lengthy and emotionally draining litigation.
10. This brief history vividly demonstrates the Mirarr People's determination to ensure that their voice is heard and respected about matters which affect their traditional country.
11. That continues to be the case today. Mss Margarula and Mangarnbarr are directors and/or members of the Gundjeihmi Aboriginal Corporation, along with Mss Annie Ngalmirama, May Nango and Ruth Gamarrawu. The Corporation was established in 1995 by Ms Margarula and others to advance the interests of the Mirarr People.
12. I am told that Ms Margarula and Ms Mangarnbarr's father was the Senior Traditional Owner of the determination area and that he strongly opposed uranium exploration and mining on his People's country in the 1970s. His descendants, together with other traditional owners, have carried on his powerful legacy. In 1998, Ms Margarula was awarded the Friends of Earth International Environment Award and the Nuclear-Free Future Award. In 1999, she was the joint winner of the USA's Goldman Environment

Prize, in recognition of her efforts to protect country and culture against uranium mining.

13. The parties are to be congratulated on agreeing to the terms of the native title determination, without further litigation and having regard to Mansfield J's decision.
14. The Court appreciates that there is considerable uncertainty surrounding the future of the Jabiru Township. The nearby Ranger Mine is due to close in 2021. ERA has said that the cost of cleaning up the mine site will take many years and cost one billion dollars. The residents of the town and the Gundjehmi Aboriginal Corporation are understandably concerned about the future of the town, which has been purpose-built for the mine. The Mirarr people and Gundjehmi Aboriginal Corporation have prepared a detailed plan to save the Jabiru Township by turning it into a year-round tourism centre. A few months ago (31 July 2018), the Northern Territory Government unveiled this plan. This will require what the Territory's chief minister described as a "significant financial contribution" from the federal government. The NT government has pledged to keep essential health and education services in Jabiru for another five years i.e. two years beyond the mine's closure date.
15. It is hoped that among all this uncertainty, the recognition today of native title rights and interests brings a little joy to those who benefit from it and rewards the hard work, determination and patience of all who have been involved in its successful prosecution.
16. I acknowledge the perseverance and determination shown by Ms Margarula in bringing this application on behalf of her People and everyone else who has been involved in it. I particularly thank those Mirarr People and anthropologists who gave evidence to the 1977 Fox Inquiry.
17. I also acknowledge the work done by the parties' legal representatives who have worked tirelessly to bring about the determination by consent today.
18. I wish to acknowledge and thank Federal Court staff for their involvement in achieving this result. The proceedings have been on foot for many years and some staff are no longer employed by the Court, but I do wish to acknowledge the dedicated work of Nicola Colbran and Suzie Ladlow from the Northern Territory Registry of the Court.
19. Finally, I thank all of you who have taken the time and effort to come to this Court hearing on country and to witness and be part of this historic occasion. The institution of the Court is honoured by your presence here.

20. I will now formally publish my reasons for judgment and the Court's orders, before adjourning the Court. I understand that refreshments will now be provided. I am happy to distribute copies of the Native Title Determination, together with my reasons for making the formal orders of the Court. I am also happy to join in any photographs to record the occasion if anyone wishes.

21. Please adjourn the Court.

9 November 2018