



Northern Land Council

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18 June 2007

Our Ref LO1:05/854

Hon. Julie Bishop
Minister for Education, Science and Training
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Fax: (02) 6273 4117

Dear Minister

NOMINATION OF ABORIGINAL LAND FOR COMMONWEALTH RADIOACTIVE WASTE REPOSITORY

I am pleased to advise that at its meeting held at Gulkula on 24 May 2007, the Full Council of the Northern Land Council (NLC) nominated a site on Aboriginal land at Muckaty Station for consideration as a Commonwealth repository.

The nomination was made pursuant to s 3B(1) of the *Commonwealth Radioactive Waste Management Facility Act 2005* (the *CRWMF Act*).

A form of nomination is attached, which specifies the Aboriginal land nominated by reference to the portion number of Muckaty Station and geographical coordinates (as required by s 3B(1)(c)).

Pursuant to a site agreement negotiated between the Commonwealth, the NLC and the Muckaty Aboriginal Land Trust, access to the nominated site will be from the Stuart Highway by means of an existing mining haulage road.

The NLC is satisfied that:

- the traditional Aboriginal owners of the site, the Lauder branch of the Ngapa group, consent to the nomination (and understand its nature and effect);
- the traditional Aboriginal owners of the relevant section of the access road, the Lauder branch of the Ngapa group and the Milwayi group, consent to the nomination (and understand its nature and effect); and
- sacred sites will not be at risk of damage or interference as a result of the nomination or subsequent action under the *CRWMF Act*.

As required by s 3B(1) attached are:

- the form of nomination referred to above;
- a copy of the deed of grant of Muckaty Station to the Muckaty Aboriginal Land Trust, this being the only existing interest in the land (s 3B(1)(d));

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Ph: (08) 8987 2602
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TIMBER CREEK
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- an anthropological report regarding the identification of traditional Aboriginal owners, consultations, and existence and protection of sacred sites (s 3B(1)(e) and (g)).

S45.

In accordance with the site nomination agreement the NLC will shortly provide a précis or summary regarding anthropological matters which may be made public.

Naturally the NLC would be happy to provide any further information which may be of assistance regarding your consideration of whether to approve the nominated site for consideration as a repository under s 3C(1).

The NLC looks forward to your positive consideration of the nomination.

Yours sincerely

John Daly
CHAIRMAN

cc Minister for Indigenous Affairs, Hon Mal Brough, (02) 6273 4122 f

NOMINATION OF SITE ON ABORIGINAL LAND AT MUCKATY STATION
SECTION 3B(1) OF THE COMMONWEALTH RADIOACTIVE WASTE
MANAGEMENT FACILITY ACT 2005

1. Pursuant to s 3B(1) of the *Commonwealth Radioactive Waste Management Facility Act 2005*, and by resolution made at Gulkula on 24 May 2007, the Northern Land Council hereby nominates a site on Aboriginal land at Muckaty Station (being freehold vested in the Muckaty Aboriginal Land Trust delineated as Northern Territory portion 5173) for consideration as a Commonwealth radioactive waste management facility (being the site specified in clause 2).
2. The site comprises all land contained within a boundary delineated by a line which commences at point A, and continuing along a straight line to point B, and continuing along a straight line to point C, and continuing along a straight line to point D, and continuing along a straight line to point E, and continuing along a straight line to point F, and continuing along a straight line to point G, and continuing along a straight line to point H. The geographical coordinates for points A to H are as follows:

Point	Easting	Northing
A	380000	7932300
B	380000	7935700
C	378000	7935700
D	376000	7935000
E	375500	7934200
F	376500	7933500
G	377200	7933500
H	377200	7932300

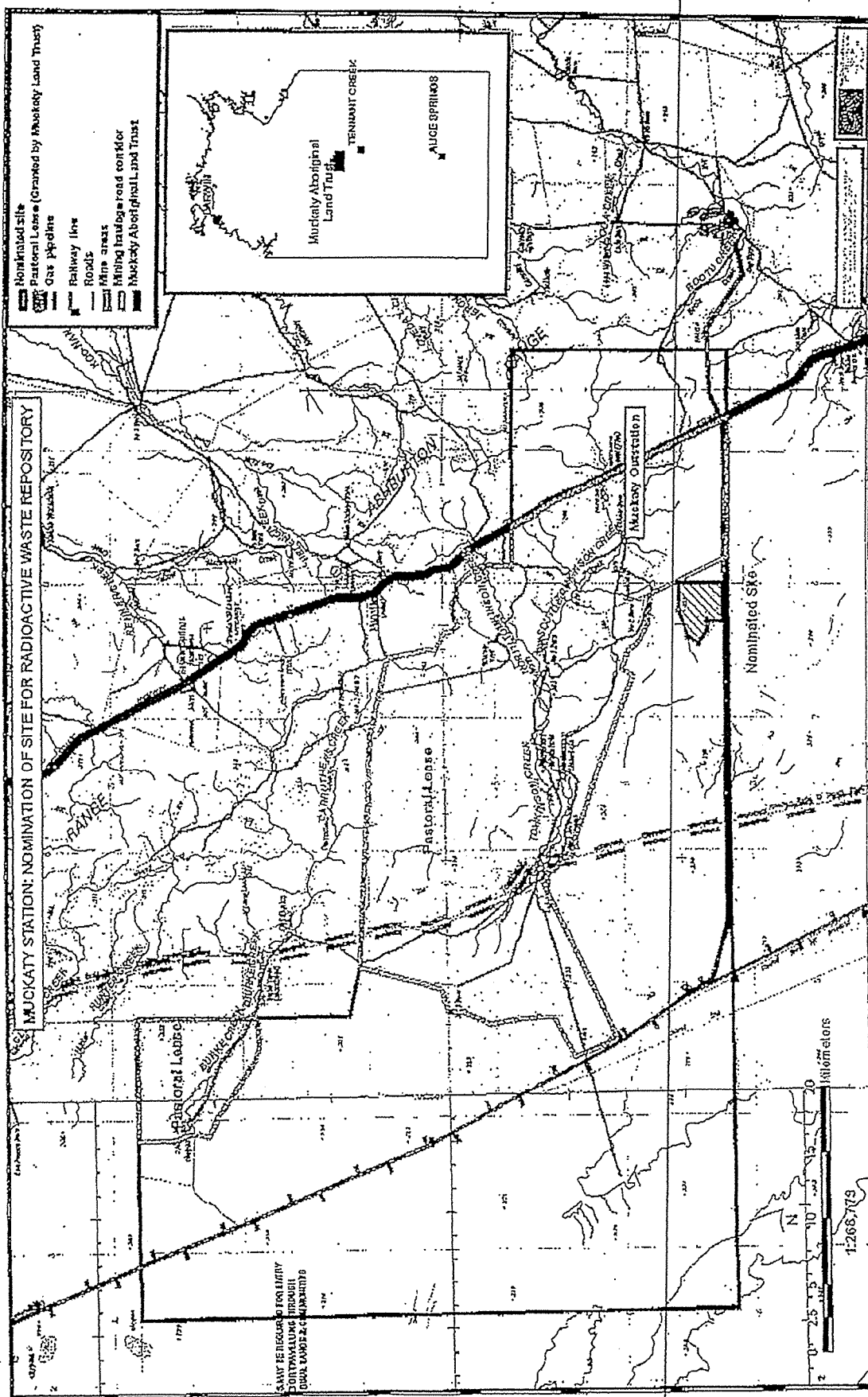
3. The site nominated is generally depicted on the attached map.
4. A copy of the deed of grant to the Muckaty Aboriginal Land Trust is attached.

John Daly

Chairman

Northern Land Council

18 June 2007



REGISTER BOOK
VOLUME FOLIO

COMMONWEALTH OF AUSTRALIA

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY ACT) 1976

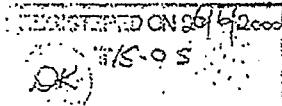
SECTION 12

DEED OF GRANT

WHEREAS an Aboriginal Land Trust by the name of the MUCKATY ABORIGINAL LAND TRUST has been established pursuant to section 4 of the *Aboriginal Land Rights (Northern Territory) Act 1976*

AND WHEREAS the Minister for Aboriginal and Torres Strait Islander Affairs has recommended to me that a grant of an estate in fee simple in the land described hereunder be made to the said Aboriginal Land Trust

NOW THEREFORE I, WILLIAM PATRICK DEANE, Companion of the Order of Australia, Knight Commander of the Order of the British Empire, Governor-General of the Commonwealth of Australia acting in accordance with the said recommendation, DO HEREBY GRANT to the MUCKATY ABORIGINAL LAND TRUST an Estate in Fee Simple subject to the provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976* and subject to the conditions reservations and exceptions hereinafter contained in ALL THAT land in the Northern Territory of Australia containing an area of 221,704 hectares more or less being Northern Territory Portion 5173 and being more particularly shown on Survey Plan S.97/199A which Plan has been lodged with the Surveyor-General, Darwin in the said Territory AND INCLUDING Northern Territory Portion 5475 and being more particularly shown on Survey Plans S.98/185A-C which Plans have been lodged with the said Surveyor-General and Northern Territory Portion 5611 and being more particularly shown on Survey Plans S.97/199J-K which Plans have been lodged with the said Surveyor-General BUT EXCLUDING THEREFROM Northern Territory Portion 1423 and access easement thereto and all that land being both land on which there is at the time of the execution of this Deed of Grant a road over which the public has a right of way, namely one road 200 metres wide as delineated on Survey Plans S.97/199A and S.97/199F-H which Plans have been lodged with the said Surveyor-General



AND I HEREBY RESERVE AND EXCEPT to the Commonwealth of Australia the right to any minerals existing in their natural condition, or in a deposit of waste material obtained from any underground or surface working, on or below the surface of the said land, being minerals all interests in which are vested in the Commonwealth of Australia with full power and authority for the Commonwealth of Australia its officers servants and agents and such person or persons as shall from time to time be authorised by it them or any of them to enter upon the said land and to search for mine dig and remove those minerals and the right of full and free ingress egress and regress into out of and upon the land hereby granted for the several purposes aforesaid or any of them

AND I HEREBY RESERVE AND EXCEPT to the Northern Territory of Australia the right to any minerals existing in their natural condition, or in a deposit of waste material obtained from any underground or surface working, on or below the surface of the said land, being minerals all interests in which are vested in the Northern Territory of Australia with full power and authority for the Northern Territory of Australia its officers servants and agents and such person or persons as shall from time to time be authorised by it them or any of them to enter upon the said land and to search for mine dig and remove those minerals and the right of full and free ingress egress and regress into out of and upon the land hereby granted for the several purposes aforesaid or any of them

AND I HEREBY RESERVE AND EXCEPT to the Commonwealth of Australia the right under section 124 of the Lands Acquisition Act 1989 to grant rights to explore for minerals, and leases or licences to mine for minerals, on or below the surface of the land.

Signed and sealed with the

Great Seal of Australia on

25th Nov 1989

Governor-General



Australian Government

SITE NOMINATION DEED

SITE NOMINATION DEED
THE COMMONWEALTH OF AUSTRALIA
AND
THE MUCKATY ABORIGINAL LAND TRUST
AND
THE NORTHERN LAND COUNCIL

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50 Blackall Street Barton ACT 2600
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File reference: 06028249

CONTENTS

Part 1.	Introductory Matters	3
1.	Interpretation	3
1.1.	Definitions	3
1.2.	Meaning of 'Project'	5
1.3.	Meaning of Non-Permitted Action	6
1.4.	Interpretation	6
Part 2.	Site Nomination	8
2.	Nomination of Site by NLC	8
2.1.	Nomination of Aboriginal land	8
2.2.	The Potential Site	8
2.3.	If an Access Road Area may be declared	8
3.	Matters relating to Site Nomination	9
3.1.	Acknowledgments in relation to Site nomination	9
3.2.	Acknowledgements in relation to Commonwealth legislation	10
3.3.	Acknowledgement in relation to the Project	10
3.4.	Acknowledgment in relation to disposal of interests in Selected Site or Access Road Area	10
3.5.	Acknowledgements, releases and undertakings by Land Trust	10
3.6.	Acknowledgements, releases and undertakings by NLC	11
Part 3.	Benefits for agreement	13
4.	Introduction	13
4.1.	Timing of benefits	13
4.2.	Cancellation of Project	13
4.3.	Upfront payment	13
4.4.	Scholarships	14
5.	Payments	14
5.1.	Charitable Trust	14
5.2.	Acknowledgments in relation to payments	16
5.3.	Compensation	16
6.	Goods and Services Tax (GST)	17
6.1.	GST	17
6.2.	Invoices for payment	17

Part 4.	Dealings Between the Parties	18
7.	Access	18
7.1.	Potential Site and proposed Access Road Area	18
7.2.	Areas surrounding the Selected Site and Access Road Area	18
8.	Use of Access Road Area	18
8.1.	Use by Traditional Aboriginal Owners, the NLC and certain third parties	18
9.	Liaison and Consultation	19
9.1	Liaison and consultation arrangements	19
10.	Cultural Heritage Training	19
10.1.	Cultural heritage training	19
11.	Environmental Management	20
11.1.	Commonwealth legislation	20
11.2.	Environmental management	20
12.	Other benefits	20
12.1	Employment, training and business opportunities	20
Part 5.	Administrative matters	21
13.	Dispute resolution	21
13.1.	Disputes	21
14.	Commencement and termination	21
14.1.	Commencement	21
15.	Miscellaneous	21
15.1	Notices	21
15.2.	Assignment	22
15.3.	Entire Deed	23
15.4.	Variation	23
15.5.	Waiver	23
15.6.	Severance	23
15.7.	Execution of Deed and other documents	23
15.8.	Taxes, duties and charges	23
15.9.	Successors and assigns	24
15.10.	Application of laws	24
16.	Confidentiality	24
16.1.	Confidential Information not to be disclosed	24
16.2.	Exceptions to obligations	24
	Schedule 1. Charitable Trust	1
	Schedule 2. Description of Potential Site	1

SITE NOMINATION DEEDDate

This Deed is dated 18 JUNE 2007.

Parties

This Deed is made between the following parties:

- 1 Commonwealth of Australia represented by the Department of Education, Science and Training
AND
- 2 The Muckaty Aboriginal Land Trust, an Aboriginal Land Trust established under section 4(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, of c/- Northern Land Council, 9 Rowling Street, Casuarina, Northern Territory
AND
- 3 The Northern Land Council, an Aboriginal Land Council established under section 21 of the *Aboriginal Land Rights (Northern Territory) Act 1976*, of 9 Rowling Street, Casuarina, Northern Territory

Recitals

This Deed is made in the following context:

- A. The Land Trust has been established to hold certain Aboriginal land.
- B. The NLC has nominated an area of Aboriginal land held by the Land Trust as a Potential Site for the purposes of the CRWM Act.
- C. If the nominated land is subsequently approved as a Site, the Site may be declared as a Selected Site for a Facility under the CRWM Act.
- D. A declaration may also be made under the CRWM Act that particular Aboriginal land held by the Land Trust is required to provide an Access Road to the Selected Site.
- E. Under the CRWM Act, the Commonwealth will acquire the rights and interests in the Selected Site that are specified in the declaration.
- F. Under the CRWM Act, the Commonwealth will also acquire the rights and interests in the Access Road Area that are specified in the declaration.

S45, s47

- H The Parties therefore wish to enter into this Deed for their mutual benefit.
- I Under section 27(3) of the ALRA, the NLC has obtained the Minister's approval to the NLC and the Land Trust entering into this Deed. Under section 5(2) of the ALRA, the NLC has directed the Land Trust to enter into this Deed.
- J The NLC has complied with section 23(3) of the ALRA in relation to this Deed.

S45, S47

Operative provisions

The Parties agree as follows:

PART 1. INTRODUCTORY MATTERS**1. Interpretation****1.1. Definitions****1.1.1. In this Deed, unless the context indicates otherwise:**

'Aboriginal'	means an Aboriginal within the meaning of the ALRA.
'Aboriginal land'	means Aboriginal land within the meaning of the ALRA
'Aboriginals concerned'	has the meaning given by the ALRA.
'Access Road'	means an all-weather access road to the Selected Site
'Access Road Area'	means land that is declared under the CRWM Act to be required for providing the Access Road.
'ALRA'	means the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth).
'ARPANS Act'	means the <i>Australian Radiation Protection and Nuclear Safety Act 1998</i> (Cth).
'ARPANSA'	means the Australian Radiation Protection and Nuclear Safety Agency mentioned in the ARPANS Act.
'Base Date'	means 1 January 2007.
'Bootu Creek Agreement'	means the Land Use Agreement – Memorandum of Lease between Bootu Creek Resources Pty Ltd (ACN 097 091 506) and Groote Eylandt Mining Company Pty Ltd (ACN 004 618 491) and the Land Trust and the NLC dated 18 April 2005.
'Charitable Trust'	means the charitable trust to be established in accordance with clause 4.1.
'Commencement Date'	means the date mentioned in clause 14.1.
'Commonwealth'	means the Commonwealth of Australia, represented by the Department of Education, Science and Training.
'CPI'	means the Consumer Price Index (All Groups) weighted average of 8 capital cities, kept by the Australian Statistician and published by the Australian Bureau of Statistics ('the Index') and in the event that the Index is discontinued or abolished then such price index as the Australian Statistician substitutes for it.
'CRWM Act'	means the <i>Commonwealth Radioactive Waste Management Act 2005</i> (Cth).
'Deed'	means this deed including any schedules and attachments.

'EPBC Act'	means the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).
'Facility'	means a facility within the meaning of the CRWM Act.
'GST'	has the meaning given in the GST Act.
'GST Act'	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
'Land Trust'	means the Muckaty Aboriginal Land Trust, an Aboriginal Land Trust established under section 4(1) of the ALRA, of c/- Northern Land Council, 9 Rowling Street, Casuarina, Northern Territory.
'Liaison Committee'	means the Liaison Committee established under clause 9.1.2 (if any).
Ngapa/Milwayi land	means Aboriginal Land held by the Land Trust in relation to which either the Lauder branch of the Ngapa group or the Milwayi group are the Traditional Aboriginal Owners.
'Northern Land Council' or 'NLC'	means the Northern Land Council, an Aboriginal Land Council established under section 21 of the ALRA, of 9 Rowling Street, Casuarina, Northern Territory.
'Parties'	means the Commonwealth, the Land Trust and the NLC
Potential Site	means the particular Aboriginal land held by the Land Trust and nominated by the NLC, as described in Schedule 2 of this Deed.
'Project'	has the meaning given by clause 1.2.
'Non-Permitted Action'	has the meaning given by clause 1.3.
'Selected Site'	means all or part of the Potential Site which is declared under the CRWM Act to be selected as the Site for a Facility.
'Site'	means a site within the meaning of paragraph (b) of the definition of that term in the CRWM Act.
'Traditional Aboriginal Owners'	means traditional Aboriginal owners within the meaning of the ALRA.

1.1.2. Unless the context indicates otherwise, other words and expressions used in this Deed that are used or defined in the CRWM Act have the same meaning in this Deed as they do in the CRWM Act.

1.2. Meaning of 'Project'

1.2.1. For this Deed, 'Project' means:

- a. the doing of all things necessary or permitted under the CRWM Act or otherwise for the purposes of investigating the Potential Site and if all or part of the Potential Site becomes a Selected Site, establishing a Facility on the Selected Site;
- b. the construction, operation and maintenance of the Facility, and the construction, maintenance and/or use of an Access Road over Ngapa/Milwayi land; and
- c. the doing of all such acts, matters and things in relation to the Facility and Access Road as are necessary for the purposes of the Commonwealth.

1.2.2 Without limiting clause 1.2.1, 'Project' includes the following actions under the CRWM Act:

- a. the nomination by the NLC of the Potential Site;
- b. the approval of all or part of the Potential Site as a Site;
- c. the declaration of the Site as a Site for a Facility;
- d. the declaration of the Access Road Area over Ngapa/Milwayi land.

S45, S47

B. any other person acting for the Commonwealth in relation to the Project

1.4. Interpretation

1.4.1. In the interpretation of this Deed, unless the context indicates otherwise:

- a. the singular includes the plural and vice versa, including that any word or expression defined in the singular has the corresponding meaning if used in the plural and vice versa;
- b. a reference to any gender includes the other gender;
- c. a reference to 'person' includes a firm, company, corporation, authority or body corporate whether incorporated or not;
- d. a reference to an Act or law is to be read as a reference to any Act or law amending, or in substitution for, that Act or law;
- e. a reference to currency is a reference to Australian currency;
- f. a reference to any agreement or other instrument includes a reference to the agreement or instrument as referred to, or as amended, or as replaced, from time to time; and
- g. the headings in this Deed are not part of this Deed and are not to be used in its interpretation or construction.

PART 2. SITE NOMINATION**2. Nomination of Site by NLC****2.1. Nomination of Aboriginal land**

2.1.1. The NLC has nominated an area of Aboriginal land held by the Land Trust for the purposes of the CRWM Act.

2.1.2. Nothing in this Deed prevents the NLC from nominating other areas of Aboriginal land for the purposes of the CRWM Act.

2.2. The Potential Site

2.2.1. The NLC acknowledges that it must comply with the rules about nominations set out in section 3B of the CRWM Act in relation to the Potential Site.

2.2.2. Without limiting clause 2.2.1 the NLC must:

- a. specify the Potential Site, including by reference to portion number (if available), survey points (if available) and geographic coordinates;
- b. identify the Traditional Aboriginal Owners for the Potential Site, and provide a detailed written report supporting the identification, and a précis of that report in a form that can be made public;
- c. provide a written report describing the process by which the NLC consulted with and obtained the consent of the Traditional Aboriginal Owners as a group;
- d. provide a written report identifying any other Aboriginal community or group that may be affected by the nomination and describing how the NLC consulted with those communities or groups, and
- e. ensure that the nomination is made by the NLC in full council, unless otherwise agreed by the Parties.

2.3. If an Access Road Area may be declared

2.3.1. The Commonwealth has notified the NLC that a proposed Access Road Area may be declared under the CRWM Act over Ngapa/Milwayi land. In particular, the Parties acknowledge that the Access Road Area may be all or part of the area comprising:

- a. that part of the Transport Corridor Area (within the meaning of the Bootu Creek Agreement) from the Stuart Highway (including the Stuart Highway Access Road within the meaning of the Bootu Creek Agreement) to the longitude that runs through the south western corner of the Potential Site (Point H, longitude 133.83540903800, as set out in Schedule 2); and
- b. any land between that part of the Transport Corridor Area and the Potential Site.

2.3.2. The NLC agrees to:

- a. provide any reasonable assistance required by the Commonwealth to precisely identify the proposed Access Road Area including by reference to portion number (if available), survey points (if available) and geographic coordinates;
- b. identify the Traditional Aboriginal Owners for the proposed Access Road Area, together with a detailed written report supporting the identification, and a précis of that report in a form that can be made public;
- c. provide a written report describing the process by which the NLC consulted with and obtained the consent of the Traditional Aboriginal Owners as a group; and
- d. provide a written report identifying any other Aboriginal community or group that may be affected by the declaration and describing how the NLC consulted with those communities or groups.

3. Matters relating to Site Nomination

3.1. Acknowledgments in relation to Site nomination

3.1.1. The Parties acknowledge that:

- a. nothing in this Deed requires the Minister to approve or declare an area of land under the CRWM Act; and
- b. the Minister may approve and declare land under the CRWM Act, other than the Potential Site

3.2. Acknowledgements in relation to Commonwealth legislation

3.2.1. The Parties acknowledge that nothing in the Deed affects the operation of the CRWM Act or any other legislation applicable to the Project, including the ARPANS Act and the *Nuclear Non-Proliferation (Safeguards) Act 1987* (Cth).

3.2.2. To avoid doubt, the Parties acknowledge that nothing in this Deed affects the rights of the Commonwealth, a Commonwealth entity, a Commonwealth contractor, or their respective employees or agents, under the CRWM Act or otherwise.

3.3. Acknowledgement in relation to the Project

3.3.1. The Parties acknowledge that if all or part of the Potential Site is the Selected Site, the Commonwealth, or a person on the Commonwealth's behalf, will undertake the Project on the Selected Site.

3.3.2. The Parties also acknowledge that the Commonwealth may cancel the Project at any time for any reason.

- 3.4. **Acknowledgment in relation to disposal of interests in Selected Site or Access Road Area**
- 3.4.1. If as a result of the declaration of the Selected Site, the Commonwealth acquires an estate in fee simple in the Selected Site, the Commonwealth acknowledges that it will not dispose of that interest, except as provided for in the CRWM Act
- 3.4.2. If as a result of the declaration of the Selected Site, the Commonwealth acquires an estate in fee simple in the Access Road Area over Ngapa/Milwayi land, the Commonwealth agrees to use its best endeavours to ensure that it will not dispose of that interest other than as a grant of Aboriginal land to the Land Trust

S45, S47

Folios 19 to 23 exempt in full under s45 (material obtained in confidence) & s47(1)(b) (contain commercial valuable information).

PART 4. DEALINGS BETWEEN THE PARTIES**7. Access****7.1. Potential Site and proposed Access Road Area**

7.1.1. The Land Trust and the NLC agree to facilitate entry by a person mentioned in clause 3.2.2 to the following areas where entry is required for the purposes of the Project:

- a. the Potential Site;
- b. Ngapa/Milwayi land proposed by the Commonwealth as an Access Road Area;
- c. Ngapa/Milwayi land that is adjacent or near to the Potential Site or proposed Access Road Area.

7.2. Areas surrounding the Selected Site and Access Road Area

7.2.1. The Land Trust and the NLC agree to facilitate entry by a person mentioned in clause 3.2.2 to Ngapa/Milwayi land that is adjacent or near to the Selected Site or Access Road Area where access is required for the purposes of the Project.

8. Use of Access Road Area**8.1. Use by Traditional Aboriginal Owners, the NLC and certain third parties**

8.1.1. This clause applies if an Access Road Area is declared under the CRWM Act that is all or part of the area mentioned in clause 2.3.1 a. This clause applies subject to Commonwealth laws.

8.1.2. The Commonwealth will allow Traditional Aboriginal Owners, and the NLC or its agents, to enter the Access Road Area and to use the Access Road. The access and use will be subject to conditions or restrictions as considered necessary by the Commonwealth.

8.1.3. Except for the existing lessee under the Bootu Creek Agreement, the Commonwealth agrees that it will not permit a person to use the Access Road for mining or any commercial purpose (other than for or in relation to the Project) without first consulting with the NLC. The Commonwealth agrees to reasonably consider any proposal submitted by the NLC on behalf of Traditional Aboriginal Owners relating to the use of the Access Road for such mining or commercial purposes as may be negotiated by or on behalf of Traditional Aboriginal Owners. Any access arrangement made by the Commonwealth will be subject to conditions or restrictions as considered necessary by the Commonwealth, including entry by the person into a licence or access deed on terms reasonably acceptable to the Commonwealth.

- 8.1.4 The Commonwealth agrees to ensure that any subsequent access arrangement made by the Commonwealth with the existing lessee under the Bootu Creek Agreement to facilitate its continued use of the Access Road as envisaged by that Agreement will leave the Land Trust in no less favourable position financially as it would have been under that Agreement had the declaration of the Access Road Area not occurred. This obligation is additional to other money paid by the Commonwealth under this Deed.

9. Liaison and Consultation

9.1. Liaison and consultation arrangements

- 9.1.1. The Parties agree to liaise with each other in respect of the operation of this Deed and the conduct of the Project.
- 9.1.2 The Parties may agree to establish a Liaison Committee to facilitate liaison and consultation between the Parties in relation to the Project.

10. Cultural Heritage Training

10.1. Cultural heritage training

- 10.1.1. The Commonwealth agrees to provide, in consultation with the Land Trust and the NLC, appropriate education and training to persons engaged in the Project, for the purpose mentioned in clause 10.1.2.
- 10.1.2. The purpose of the education and training is:
- a. to familiarise people with the traditions and culture of the affected Traditional Aboriginal Owners; and
 - b. to promote an understanding and respect for Aboriginal tradition.

11. Environmental Management

11.1. Commonwealth legislation

- 11.1.1 The Parties acknowledge that, except as provided in the CRWM Act, the Commonwealth is bound to comply with the EPBC Act in relation to the Project.

11.2. Environmental management

- 11.2.1 The Parties acknowledge that, prior to the establishment of a Facility, the Commonwealth will undertake an environmental impact assessment of the Project in relation to the Selected Site
- 11.2.2 Following the conclusion of the Project, the Commonwealth agrees to rehabilitate the Selected Site to ameliorate the environmental effects of the Project, as far as reasonably practicable.

S45, S47

PART 5. ADMINISTRATIVE MATTERS**13. Dispute resolution****13.1. Disputes**

13.1.1 The Parties agree that they will seek to resolve any dispute in relation to this Deed in the first instance through discussions between their respective contact officers nominated for this clause from time to time

13.1.2 If the dispute cannot be resolved in discussions between the contact officers, the Parties agree that they will then seek to resolve the dispute through the Liaison Committee (if any).

13.1.3 If the dispute is unable to be resolved through the Liaison Committee within a reasonable time (or no Liaison Committee has been established), the Parties agree that they will then seek to resolve the dispute through discussions between the General Manager, Science and Technology Policy (for the Commonwealth) and the Chair of the NLC (or his or her nominee).

13.1.4 The Parties may nominate different representatives to undertake the discussions under clause 13.1.3 from time to time. However, the discussions must always include the Chair of the NLC (or his or her nominee).

14. Commencement and termination**14.1. Commencement**

14.1.1 This Deed commences on the date it is signed by the Parties, and if signed on different days, the later of those days.

15. Miscellaneous**15.1. Notices**

15.1.1 A notice, consent or other communication ('notice') under this Deed is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax.

15.1.2 If the notice is sent by mail, it is taken to have been received 5 working days after it is posted. If it is sent by fax, it is taken to have been received when the addressee receives it, as evidenced by a record of transmission from the transmitting fax machine.

15.1.3. The Parties' contact details for notices are as follows:

a. The Commonwealth

Address: Director, Radioactive Waste Management
Department of Education, Science and Training
Location 340
GPO Box 9880
CANBERRA ACT 2601
Fax number: +61 2 6240 9148
Attention: Mr Patrick Davoren

b. The Land Trust

Address: c/- Northern Land Council
9 Rowling Street
Casuarina NT
Fax number: (08) 8931 1875
Attention: Chair

c. The NLC

Address: 9 Rowling Street
Casuarina NT
Fax number: (08) 8931 1875
Attention: Chair

15.1.4. A Party may change its contact details for notices by notifying the other Parties in writing.

15.1.5. In this clause, 'working day' means a day other than a Saturday, Sunday or public holiday in the place where the notice is received.

15.2. Assignment

15.2.1. A Party must not assign its rights under this Deed without the written consent of the other Parties.

15.3. Entire Deed

15.3.1. This Deed constitutes the entire agreement of the Parties in relation to its subject matter and any previous agreements and negotiations on that subject matter cease to have any effect.

15.4. Variation

15.4.1. The Parties may vary this Deed at any time by agreement in writing. No variation is of any force unless agreed in writing and signed by each Party.

15.5. Waiver

- 15.5.1 A waiver by a Party of a provision of this Deed is not binding unless made in writing. A waiver relates only to the specific matter, non-compliance or breach in respect of which it is given and does not apply to any subsequent or other matter, non-compliance or breach.

15.6. Severance

- 15.6.1 If any of the provisions of this Deed are declared or determined by any court to be invalid, unenforceable or illegal at law, those provisions shall be ineffective and severable from this Deed, and the validity of the remaining provisions is not affected by the invalidity of those provisions

15.7. Execution of Deed and other documents

- 15.7.1. Each Party agrees, to the extent permitted by law, to:

- a. sign and deliver such agreements and documents and do such further acts and things as are reasonably required to give full effect to each provision of this Deed; and
- b. refrain from taking any action which is or is likely to be inconsistent with the proper fulfilment of its undertakings under each provision of this Deed.

- 15.7.2. This Deed may be signed in separate counterparts.

15.8. Taxes, duties and charges

- 15.8.1. Subject to clause 6, the Commonwealth agrees to pay all taxes, duties and government charges payable by reason of the making of this Deed.

15.9. Successors and assigns

- 15.9.1 This Deed is binding on and enures to the benefit of the Parties and their successors and assigns.

15.10. Application of laws

- 15.10.1. This Deed is governed by the laws in force in the Northern Territory. Each Party submits to the jurisdiction of the appropriate courts of that Territory and the Commonwealth and any courts competent to hear appeals from them.

16. Confidentiality

16.1. Confidential Information not to be disclosed

16.1.1. The Parties acknowledge that certain provisions of this Deed and certain information provided by the NLC to the Commonwealth for the purposes of this Deed may be confidential to the NLC, the Land Trust or Traditional Aboriginal Owners ('Confidential Information').

16.1.2. In such a case, subject to clause 16.2, the Commonwealth agrees that it will not disclose the Confidential Information to a third party unless agreed by the Parties.

16.2. Exceptions to obligations

16.2.1. Clause 16.1.2 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by the Commonwealth to its officers or advisers solely in order to comply with obligations, or to exercise rights, under this Deed;
- b. is disclosed to the Commonwealth's internal management, solely to enable effective management or auditing of activities related to the Deed;
- c. is disclosed by the Commonwealth to the responsible Minister, or in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- d. is shared within the Commonwealth agency responsible for this Deed or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;
- e. is authorised or required by law to be disclosed; or
- f. is in the public domain otherwise than due to a breach of clause 16.

16.2.2. If the Commonwealth discloses Confidential Information in accordance with clause 16.2.1, the Commonwealth will notify the receiving person that the information is confidential.

EXECUTED by the Parties as a Deed:

EXECUTED AS A DEED for and on behalf of the COMMONWEALTH OF AUSTRALIA by:

S47F

in the presence of:

S47F

16 August 2007

EXECUTED AS A DEED for and on behalf of the Land Trust by:

.....
[signature]

in the presence of:

.....
[name]

.....
[signature]

Date

[insert name]

[signature]

in the presence of

[name]

[signature]

[Date]

EXECUTED AS A DEED for and on behalf of the NLC by:

.....
[name]

.....
[signature]

.....
[position]

in the presence of:

.....
[name]

.....
[signature]

{Date}

[name]

[signature]

[position]

in the presence of:

[name]

[signature]

[Date]

Folios 35 to 37 exempt in full under s45 (material obtained in confidence) & s47(1)(b)
(contain commercially valuable information).

SCHEDULE 2. DESCRIPTION OF POTENTIAL SITE

The site is on Aboriginal land at Muckaty Station (being freehold vested in the Muckaty Aboriginal Land Trust delineated as Northern Territory portion 5173).

The site comprises all land contained within a boundary delineated by a line which commences at point A and continuing along a straight line to point B, and continuing along a straight line to point C, and continuing along a straight line to point D, continuing along a straight line to point E, and continuing along a straight line to point F, and continuing along a straight line to point G, and continuing along a straight line to point H, and continuing along a straight line back to point A. The geographical coordinates for points A to H are:

Point	Latitude	Longitude
A	-18.69714653050	133.86195931400
B	-18.66642344350	133.86216442100
C	-18.66630760260	133.84320332600
D	-18.67251511320	133.82419877100
E	-18.67971422140	133.81940832700
F	-18.68609888960	133.82884605900
G	-18.68614020090	133.83548316300
H	-18.69698353040	133.83540903800

Reference Datum: Geocentric Datum of Australia 1994

Folios 39 to 41 exempt in full, exemptions claimed s45 (material obtained in confidence), s47(1)(b)(commercial valuable information) and s47F (personal information).

Folios 42 to 44 exempt in full, exemption claimed s45 (material obtained in confidence), s47(1)(b) (commercial valuable information) and s47F (personal information).



Minister for Action

Min ID: MS14-000765

By [16 June 2014] [A settlement offer expires on 16 June]

RADIOACTIVE WASTE - MUCKATY COURT CASE AND NATION-WIDE PROPOSAL

Recommendation: That you agree to

1. settlement of the federal court case requiring you to cease to consider the Muckaty site; and

S34(3)

Key Points:

- The Federal Court trial regarding the Muckaty Station nomination commenced on 2 June 2014. On 1 June 2014 the Applicants provided a 'settlement offer' on a no fault no cost basis if the Northern Land Council (NLC) and/or the Commonwealth undertake not to proceed with the 2007 nomination. The offer is valid until 5pm 16 June 2014.
- The NLC has advised divisions within the local Aboriginal community have arisen since the 2007 nomination was made and have been worsened by the court proceedings. The NLC can't withdraw the nomination and is requesting through our solicitors that no further steps are taken by the Commonwealth in respect of the nominated site. The NLC's letter to the Commonwealth and draft terms of settlement agreed between the NLC and Commonwealth's legal teams are at Attachment B and C.

S45

Traditional Owners may still wish to proceed with an additional nomination however, given the NLC concerns about community division the Department considers any site on Muckaty may bring with it the same level of community concerns and litigation.

- The *National Radioactive Waste Management Act 2012* provides for a nation-wide process if it is unlikely that a facility will be able to be constructed and operated on Aboriginal land. If a nation-wide process is initiated you may seek nominations from freehold land owners and the department could consider releasing a tender to obtain sites.

S34(3), S42

S47C

S34(3)

Michael Sheldrick (02) 6243 7384
General Manager
Uranium, R&E International
Resources Division
16 June 2014

Consultation: :Legal Services
AGS, NLC
PM&C – Land Rights Policy
PM&C – Resources and Energy

APPROVED / NOT APPROVED

Contact: Nicholas Vazenios (02) 6243 7179

Ian Macfarlane 25/6/14

Sensitive

copy



THE HON IAN MACFARLANE MP

MINISTER FOR INDUSTRY

25 JUN 2014

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

MS14-000765

Mr Gibson Farmer Illortaminni
Chairman
Tiwi Land Council
PO Box 442
Palmerston NT 0831

Dear Mr Illortaminni

I am writing to all Aboriginal Land Councils in the Northern Territory regarding the possible volunteering of a site under the *National Radioactive Waste Management Act 2012* (Act) that came into effect on 4 April 2012.

The Act provides for two volunteer processes for the selection of a site for a national radioactive waste management facility. Under the first process, Aboriginal Land Councils in the Northern Territory are able to volunteer a site for consideration under section 5 of the Act.

The Act requires that any such nomination must contain evidence;

- of all interests in the land,
- that the Land Council has consulted with the traditional Aboriginal owners of the land,
- that the owners as a group have consented to the proposed nomination and,
- that any Aboriginal group or community that may be affected has been consulted and has had adequate opportunity to express their view to the Land Council.

I will only consider nominations to which the relevant traditional owners have consented in accordance with the *Aboriginal Land Rights (Northern Territory) Act 1976* and that are not disputed by any Aboriginal community or group that may be affected.

This opportunity to nominate a site has been open to Aboriginal Land Councils for two years and I now invite you to submit any formal nominations by 30 September 2014.

If it is unlikely that a facility nominated by a Land Council under section 5 of the Act can be constructed and operated in that way, I intend to initiate a nation-wide site selection process.

Yours sincerely

Ian Macfarlane

Phone: (02) 6277 7070 Fax: (02) 6273 3662

CONFIDENTIAL



Attachment A

THE HON IAN MACFARLANE MP
MINISTER FOR INDUSTRY

25 JUN 2014

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

MS14-000765

Mr Maurie Ryan
Chairman
Central Land Council
PO Box 3321
Alice Springs NT 0871

Dear Mr ^{Maurie}Ryan

I am writing to all Aboriginal Land Councils in the Northern Territory regarding the possible volunteering of a site under the *National Radioactive Waste Management Act 2012* (Act) that came into effect on 4 April 2012.

The Act provides for two volunteer processes for the selection of a site for a national radioactive waste management facility. Under the first process, Aboriginal Land Councils in the Northern Territory are able to volunteer a site for consideration under section 5 of the Act.

The Act requires that any such nomination must contain evidence;

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- that the Land Council has consulted with the traditional Aboriginal owners of the land,
- that the owners as a group have consented to the proposed nomination and,
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If it is unlikely that a facility nominated by a Land Council under section 5 of the Act can be constructed and operated in that way, I intend to initiate a nation-wide site selection process.

Yours sincerely

Ian Macfarlane

Phone: (02) 6277 7070 Fax: (02) 6273 3662

COPY



Attachment A

THE HON IAN MACFARLANE MP

MINISTER FOR INDUSTRY

25 JUN 2014

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

MS14-000765

Mr Tony Wurrumarrba
Chairman
Anindilyakwa Land Council
PO Box 172
Alyangula NT 0885

Dear Mr Wurrumarrba *Tony*

I am writing to all Aboriginal Land Councils in the Northern Territory regarding the possible volunteering of a site under the *National Radioactive Waste Management Act 2012* (Act) that came into effect on 4 April 2012.

The Act provides for two volunteer processes for the selection of a site for a national radioactive waste management facility. Under the first process, Aboriginal Land Councils in the Northern Territory are able to volunteer a site for consideration under section 5 of the Act.

The Act requires that any such nomination must contain evidence;

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- that the owners as a group have consented to the proposed nomination and,
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Yours sincerely

Ian Macfarlane

Phone: (02) 6277 7070 Fax: (02) 6273 3662

CONFIDENTIAL



Attachment A

THE HON IAN MACFARLANE MP

MINISTER FOR INDUSTRY

25 JUN 2014

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600
MS14-000765

Chairman
Northern Land Council
GPO Box 1222
Darwin NT 0801

Dear Mr Bush-Blanas

I am writing to all Aboriginal Land Councils in the Northern Territory regarding the possible volunteering of a site under the *National Radioactive Waste Management Act 2012* (Act) that came into effect on 4 April 2012.

The Act provides for two volunteer processes for the selection of a site for a national radioactive waste management facility. Under the first process, Aboriginal Land Councils in the Northern Territory are able to volunteer a site for consideration under section 5 of the Act.

The Act requires that any such nomination must contain evidence;

- of all interests in the land,
- that the Land Council has consulted with the traditional Aboriginal owners of the land,
- that the owners as a group have consented to the proposed nomination and,
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This opportunity to nominate a site has been open to Aboriginal Land Councils for two years and I now invite you to submit any formal nominations by 30 September 2014.

If it is unlikely that a facility nominated by a Land Council under section 5 of the Act can be constructed and operated in that way, I intend to initiate a nation-wide site selection process.

Yours sincerely

Ian Macfarlane

Phone: (02) 6277 7070 Fax: (02) 6273 3662

Folio 52 -59 exempt in full. section 42, 45, 471(b) and 47F.

30 May 2013

Mr Wali Wunungmurra
Chairman
Northern Land Council
PO Box 1222
DARWIN NT 0810



Australian Government
Department of Resources,
Energy and Tourism

51 Allara Street, Canberra City ACT 2601
GPO Box 1564, Canberra ACT 2601
Phone (02) 6276 1000
www.ret.gov.au

ABN 46 252 861 927

NOMINATION PROCESS - NATIONAL RADIOACTIVE WASTE
MANAGEMENT ACT - WITHOUT PREJUDICE

Dear Mr Wunungmurra

I refer to your letter of 17 October 2012, expressing the support of traditional Aboriginal owners for an additional nomination under the *National Radioactive Waste Management Act 2012*.

Since this time the Northern Land Council (NLC) has held formal consultations with traditional Aboriginal owners, interested Aboriginals, and Aboriginal communities or groups that may be affected by a proposed nomination. These consultations included a visit to ANSTO's research reactor and most recently the NLC's inspection of Spain's El Cabril radioactive waste management facility.

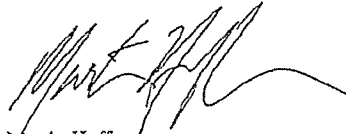
This has provided traditional Aboriginal owners and relevant parties with the opportunity to obtain information on Australia's radioactive waste inventory, broad radioactive waste management practices, and the effect of a potential nomination and the things that might be done on or in relation to nominated land.

The *National Radioactive Waste Management Act 2012* provides that the Commonwealth is liable to pay a reasonable amount of compensation to a party whose rights or interests have been acquired, extinguished or otherwise affected for the purposes of a national radioactive waste management facility.

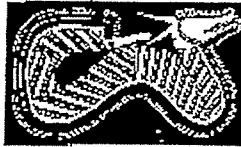
S45, S47(1)(b) & S47G

S45, S47(1)(b) & S47G

I would like to thank the NLC for its approach on this issue and look forward to a positive outcome in the near future.

A handwritten signature in black ink, appearing to read 'Martin Hoffman', with a long horizontal flourish extending to the right.

Martin Hoffman
Deputy Secretary



Northern Land Council

Address all correspondence to:
CHAIRMAN
GPO Box 1232
DARWIN NT 0801

ABN 56 327 515 283

45 Mitchell Street, Darwin NT 0800
Phone: (08) 8920 5100
Fax: (08) 8945 2833
Freecall: 1800 515 283

19 December 2013

Mr Michael Sheldrick
Department of Resources, Energy and Tourism
GPO Box 1564
Canberra ACT 2601

Dear Sir

NATIONAL RADIOACTIVE MANAGEMENT WASTE FACILITY ACT: PROPOSED ADDITIONAL NOMINATION OF LAND AT MUCKATY STATION

I refer to a letter dated 31 May 2013 from Martin Hoffman, Deputy Secretary, in relation to the above matter.

The letter followed on from the successful visit last April by traditional owners and other Aboriginal persons from across the NLC region to the El Cabril radioactive waste facility in Spain.

The El Cabril visit was an important opportunity for the participants to observe first hand an operating facility, and form their own views on the basis of accurate information regarding scientific and environmental issues.

S45, S47(1)(b) & S47G

The Northern Land Council (NLC) welcomes the Commonwealth's preparedness to consider an increased offer to that made in 2007 regarding the existing nomination, particularly given the importance that sufficient funds are available so as to ensure a lasting regional benefit to traditional owners and other Aboriginal people.

In that respect, the typical nature of the proposed development inevitably means there is an increased wish by Aboriginal people in the region to be able to appropriately benefit from it.

BOJOLONG T: 08 824 481 F: 08 824 481 F: 08 824 481	DERU T: 08 824 481 F: 08 824 481 F: 08 824 481	KATHERINE T: 08 824 481 F: 08 824 481 F: 08 824 481	MURU T: 08 824 481 F: 08 824 481 F: 08 824 481	AMALURU T: 08 824 481 F: 08 824 481 F: 08 824 481	PARAURICH T: 08 824 481 F: 08 824 481 F: 08 824 481	YERBAST CREEK T: 08 824 481 F: 08 824 481 F: 08 824 481	YERBAST CREEK T: 08 824 481 F: 08 824 481 F: 08 824 481
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As you are aware, the scheduling was given in principle support by the then Coalition Government in 2007, but the timing meant that it could not then be included in the nomination deed (noting that some details were unresolved, including that the land was then owned by a private entity, and the need to involve the Indigenous Land Corporation (ILC) in the matter).


Subsequently the incoming Labor Government gave in principle support to the proposal, and as a first step the land was purchased by the ILC.

The traditional owners also welcomed the Industry Minister's recent commitment to visit Muckaty Station at a convenient time, and look forward to that occurring in the New Year.

The NLC and traditional owners look forward to promptly progressing consultations regarding the proposed additional nomination in 2014.

Yours sincerely



 Ron Levy
Principal Legal Officer



Australian Government
Department of Industry

11 Aileen Road
CAMPBELL CTY ACT 2901
360 822 1464
CAMPBELL CTY ACT 2901
Web: www.industry.gov.au
ABN 72 458 00285

15 January 2014

Dear Mr Levy

**NATIONAL RADIOACTIVE WASTE MANAGEMENT ACT 2012:
PROPOSED ADDITIONAL NOMINATION OF LAND AT MUCKATY STATION**

Thank you for your letter of 19 December 2013 regarding an offer in satisfaction of any Commonwealth compensation liability in relation to the possible acquisition of the additional site at Muckaty Station (the Site).

S45, S47(1)(b) & S47G

The Commonwealth is committed to managing Australia's radioactive waste inventory on a volunteer site. Similarly, the Commonwealth is committed to meeting its obligation to pay a reasonable amount of compensation for the acquisition of a volunteer site consistent with the *National Radioactive Waste Management Act 2012* (NRWM Act).

However, should the Northern Land Council consider that a significant increase to the offer is required, as indicated in your letter of 19 December 2013, it should propose an alternative quantum with justification, noting the requirements of the NRWM Act regarding compensation.

Yours sincerely

Michael Sheldrick
General Manager
Uranium, Taxation and Radioactive Waste Management Branch
Resources Division

B13/435

30 May 2013

Mr Wali Wunungmurra
Chairman
Northern Land Council
PO Box 1222
DARWIN NT 0810



Australian Government
Department of Resources,
Energy and Tourism

51 Allara Street, Canberra City ACT 2601
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NOMINATION PROCESS - NATIONAL RADIOACTIVE WASTE
MANAGEMENT ACT - WITHOUT PREJUDICE

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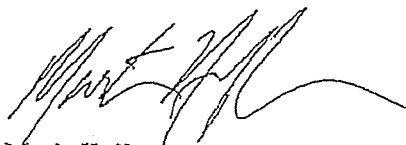
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This has provided traditional Aboriginal owners and relevant parties with the opportunity to obtain information on Australia's radioactive waste inventory, broad radioactive waste management practices, and the effect of a potential nomination and the things that might be done on or in relation to nominated land.

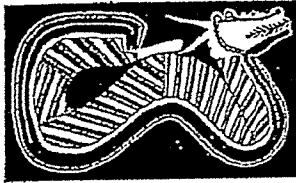
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S45, S47(1)(b) &
S47G

I would like to thank the NLC for its approach on this issue and look forward to a positive outcome in the near future.

A handwritten signature in black ink, appearing to read 'Martin Hoffman', with a long horizontal flourish extending to the right.

Martin Hoffman
Deputy Secretary



Northern Land Council

ABN 56 327 515 336

Address all correspondence to:
CHAIRMAN
GPO Box 1222
DARWIN NT 0801

45 Mitchell Street, Darwin NT 0800
Phone: (08) 8920 5100
Fax: (08) 8945 2633
Freecall: 1800 645 299

19 December 2013

Mr Michael Sheldrick
Department of Resources, Energy and Tourism
GPO Box 1564
Canberra ACT 2601

Dear Sir

NATIONAL RADIOACTIVE MANAGEMENT WASTE FACILITY ACT: PROPOSED ADDITIONAL NOMINATION OF LAND AT MUCKATY STATION

I refer to a letter dated 30 May 2013 from Martin Hoffman, Deputy Secretary, in relation to the above matter.

The letter followed on from the successful visit last April by traditional owners and other Aboriginal persons from across the NLC region to the El Cabil radioactive waste facility in Spain.

The El Cabil visit was an important opportunity for the participants to observe first hand an operating facility, and form their own views on the basis of accurate information regarding scientific and environmental issues.

S45, S47(1)(b)
& S47G

In that respect, the topical nature of the proposed development inevitably means there is an increased wish by Aboriginal people in the region to be able to appropriately benefit from it.

BORROLOOLA
PO Box 453
Borroloola NT 0854
Ph: (08) 8975 6940
Fax: (08) 8975 8745

JABIRU
PO Box 18
Jabiru NT 0826
Ph: (08) 8938 3000
Fax: (08) 8979 2650

KATHERINE
PO Box 396
Katherine NT 0851
Ph: (08) 8971 9899
Fax: (08) 8972 2150

NGUKURR
PMB 65
via Katherine NT 0851
Ph: (08) 8975 4755
Fax: (08) 8975 4501

NHULUNEUY
PO Box 820
Nhulunbuy NT 0881
Ph: (08) 8886 8500
Fax: (08) 8987 1334

PALMERSTON
PO Box 1249
Palmerston NT 0831
Ph: (08) 8931 5500
Fax: (08) 8931 1875

TEHNANT CREEK
PO Box 55
Tennant Creek NT 0861
Ph: (08) 8582 1884
Fax: (08) 8582 1636

TIMBER CREEK
43 Wilson Street
via Katherine NT 0852
Ph: (08) 8975 0789
Fax: (08) 8975 0954

As you are aware, the scheduling was given in principle support by the then Coalition Government in 2007, but the timing meant that it could not then be included in the nomination deed (noting that some details were unresolved, including that the land was then owned by a private entity, and the need to involve the Indigenous Land Corporation (ILC) in the matter).


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The traditional owners also welcomed the Industry Minister's recent commitment to visit Muckaty Station at a convenient time, and look forward to that occurring in the New Year.

The NLC and traditional owners look forward to promptly progressing consultations regarding the proposed additional nomination in 2014.

Yours sincerely



 Ron Levy
Principal Legal Officer

23 June 2014

Hon Ian Macfarlane MP
Minister for Industry
PO Box 6022
Parliament House
Canberra ACT 2600
Fax: (02) 6273 0434
Email: Ian.Macfarlane.MP@aph.gov.au

Dear Minister

**FURTHER NOMINATION OF LAND AT MUCKATY STATION FOR NATIONAL
RADIOACTIVE WASTE FACILITY**

We, the traditional owners of Ngapa country on the northern boundary of Muckaty Station, write to seek your support for the nomination of a site on our land by the NLC under the *National Radioactive Waste Management Act 2012* for a radioactive waste facility.

The site we wish to nominate was found by the Land Commissioner in the 1997 land claim to be core Ngapa country. The site is near an old disused outstation. Nobody disputes that we are the traditional owners of that land. Only Ngapa traditional owners can make decisions about our country.

Access to the site is across Helen Springs Station from the Stuart Highway. Again the access route is on core Ngapa country, and this is not in dispute. Our Ngapa country extends north across Helen Springs Station to Renner Springs, or Purnarrapan, which is a recognised Ngapa sacred site.

The land we wish to nominate is distant from sacred sites. Again, this is not in dispute, and is confirmed by the sacred site map in the 1997 land claim.

The process to nominate Ngapa land started in 2012 and is advanced. We have taken Departmental representatives to the site on a number of occasions as part of NLC consultations. We also took the former Resources Minister, Gary Gray, to the site last year.

The NLC's consultations have included traditional owners from neighbouring groups. Everybody knows we wish to nominate a Ngapa site on the northern boundary of Muckaty Station.

We have been to Lucas Heights nuclear reactor on several occasions and have been briefed by scientists about the disposal and storage of radioactive waste.

We know that the Federal Government wishes to dispose of low level radioactive waste in an engineered near-surface repository, and also wishes to store intermediate level radioactive

waste in secure canisters in a building on the surface. One day in the future those canisters of intermediate level radioactive waste will be removed and buried in a deep repository in another location.

In April last year we travelled with the Department and the NLC to El Cabril in Spain and visited a radioactive waste facility which has been operating for some decades. Traditional owners from neighbouring groups, and NLC Full Council members, participated in this visit. This was a very successful and informative trip.

We are satisfied from the briefings we have received from the Department, the scientists at Lucas Heights, the scientists in Spain, and the NLC, that a radioactive waste facility can be built on our Ngapa land in a way which is safe for the environment and safe for people.

The end of the Federal Court case clears the way for us to finish the process to nominate Ngapa land on the northern boundary of Muckaty Station. That is what we wish to do.

We are grateful for your advice in the media that three months has been provided so that nominations of Aboriginal land can be made. We are sure that the NLC and Department can now finish the process which has been underway since 2012 in that time period.

Also, we wish to invite you to visit Muckaty Station so that we can show you the northern Ngapa site, and so that you can meet with us and other traditional owners.

A copy of this letter has been sent to the NLC Chairman, Samuel Bush-Blanasi, and the Minister for Indigenous Affairs, Nigel Scullion (senator.scullion@aph.gov.au).

We look forward to your response.

Yours sincerely

S47F

Folios 71 to 72 exempt in full under s47F (personal information) of the FOI Act.

s 42, s 45

1145-404267

Ward Keller

A legal practice conducted by Ward Keller Pty Ltd
ACN 030 628 157 ABN 63 667 405 100

MINISTER FOR INDUSTRY AND SCIENCE
☐ VIP Minister reply - 5 days
☐ Minister reply - 6 days
☐ Departmental reply
☐ Adviser COS

DLO: KS 30 SEP 2015

Div: Resources

Our ref: 20141595:GVP

29 September 2015

☐ Replied in the MO
☐ For appropriate action
☐ For Information (INFAI)
☐ Prepare brief advising Minister
☐ Referral to

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Teresa Hall
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Hon Josh Frydenberg MP
Minister for Resources, Energy and Northern Australia
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister

**NATIONAL RADIOACTIVE WASTE MANAGEMENT ACT 2012:
DECISIONS TO ABANDON 2007 NOMINATION OF LAND AT MUCKATY
STATION AND TO DECLARE NATIONWIDE VOLUNTEERED SITE
NOMINATION PROCESS - REQUEST FOR REASONS UNDER S 13(1) OF
THE ADJR ACT**

I refer to previous correspondence from Ward Keller with your predecessor, the Hon Ian Macfarlane MP, and with the Minister for Indigenous Affairs, Hon Nigel Scullion, in relation to the above matter.

Ward Keller acts for Jason Bill, Alice Bill (nee Lauder), Earl Foster, and Sonia Dixon who represent Ngapa traditional owners of Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976 ('ALRA')* at Muckaty Station in the Northern Territory.

Pursuant to s 13(1) of the *Administrative Decisions (Judicial Review) Act 1977*, ('ADJR Act') our clients seek written reasons for two decisions made by your predecessor in 2014 as detailed below.

Background

On 18 June 2007 the Northern Land Council ('NLC'), with the unanimous consent of our clients and Ngapa traditional owners (and the support of various traditional owners from other groups), nominated a site comprising

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Ward Keller

Page 2

225 ha on the southern boundary of Muokaty Station for consideration as the Commonwealth Radioactive Waste Management Facility ('2007 nomination').

In making the nomination the NLC properly considered objections from some Aboriginal persons from other groups who were not traditional owners of the nominated site. In accordance with the ALRA the NLC implemented the position of the acknowledged traditional owners. It did not subvert the statutory scheme to the detriment of the Ngapa group by instead favouring the position of non-traditional owners regarding land, which is not their country.

The nomination was formally approved by the then Science Minister, the Hon Julie Bishop MP, on 25 September 2007. At the same time, a site nomination deed was formally approved by the then Indigenous Affairs Minister, the Hon Mal Brough MP.

The nomination and the Science Minister's approval were made under the *Commonwealth Radioactive Waste Management Act 2005* ('2005 Act'), which was subsequently replaced by the *National Radioactive Waste Management Act 2012* ('2012 Act'). The Indigenous Affairs Minister's approval was made under the ALRA.

In providing their respective approvals, Minister Bishop and Minister Brough properly considered objections from some Aboriginal persons from other groups who were not traditional owners of the nominated site. In accordance with the 2005 Act and the ALRA, the Ministers' approvals implemented the position of the Ngapa traditional owners. The Ministers did not, by withholding their approvals, instead favour the position of non-traditional owners to the detriment of the Ngapa group. That course would have subverted the statutory scheme.

S45

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S45

The final step in the statutory process, a declaration that the 2007 nomination was the selected site (which triggered land acquisition and EPBC Act and other regulatory processes, was delayed; first, from late 2007 to 2012 by the incoming Federal Labor Government policy that the 2005 Act first be replaced by new legislation, and secondly, from 2010 by Ministerial undertakings given in relation to Federal Court litigation brought by four Aboriginal applicants in 2010 with the assistance of anti-nuclear groups who challenged the NLC's consultation process vis-à-vis the 2007 nomination. The four applicants are not traditional owners of the nominated land, albeit that they were consulted by the NLC in 2007 as part of its statutory processes (with the third applicant, Dick Foster, explicitly and actively supporting it). The applicants were represented by Maurice Blackburn Lawyers (Melbourne).

In the meantime, in 2009, Parsons Brinckerhoff reported to the Commonwealth that the site nominated in 2007 was likely to be suitable from an engineering, environmental and economic perspective. Further, in 2014 Jacobs SKM reported to the Commonwealth by reference to overseas experience that the "technical risk associated with the operation of a [repository] is low".¹ Our clients and other supportive Aboriginal persons assisted Parsons Brinckerhoff in their field research which, due to the need for comparative information, indicated that other sites on the northern boundary of Muckaty Station would also be suitable for nomination. One such site had been identified in 2007, but not then processed.

Both reports were prepared in the full expectation by the Commonwealth, the NLC, and our clients and other interested Aboriginal persons that the waste facility would be established on Muckaty Station – either on the 2007 nomination site or via an additional nomination on the northern boundary. In that respect the 2012 Act abandoned an alternative option in the 2005 Act that the waste facility be established on one of three Defence owned sites in the Northern Territory.

Further, the existence of community dispute known to be caused by agitation and misinformation from anti-nuclear groups was properly never seen by the Commonwealth as a basis for rejecting a nomination at Muckaty Station. Ministers Bishop and Brough responsibly dealt with that issue in 2007 by reference to the statutory scheme, as did their successors (ie up until the settlement of the litigation in June 2014). Experience shows that, regardless of where the repository is constructed in Australia, community dispute is inevitable; media reports confirm that this is already the case under the current nationwide process, with anti-nuclear groups actively opposing known nominations.²

¹ Jacobs SKM *Long term Management of Australia's Radioactive Waste Initial Business Case (Revised)* (Public Release Version) commissioned by the Department of Industry, and considered by the Commonwealth in April 2014.

² The media has reported that two sites at Kimba in South Australia, and two sites at Leonora and at Badja Station in Western Australia are now the subject of significant community dispute: Eyre Peninsula Tribune 26 August 2014 *Neighbours totally opposed to waste facility*; <http://www.eyretribune.com.au/story/3306642/neighbours-totally-opposed-to-waste-facility/>; ABC news report 13 May 2015 *Miner, councillor apply to host nuclear waste facility in regional WA*; <http://www.abc.net.au/news/2015-05-13/gindalbie-applies-to-host-nuclear-waste-facility/6466298>

The undertaking given in the litigation did not preclude the conduct of consultations and statutory processes under the 2012 Act in relation to an additional nomination on the northern boundary of Muckaty Station. Accordingly the NLC and the Commonwealth conducted consultations on country from September 2012 (on the basis of anthropological research as to Ngapa traditional ownership), and arranged visits in 2013 by traditional owners from various groups and NLC representatives to both the Lucas Heights nuclear reactor and the Enresa radioactive waste facility at El Cabril in Spain. This professional advice usefully allayed community concerns, particularly by correcting misinformation disseminated by anti-nuclear groups.

S45

Ultimately, although the consultative process was advanced, the imminent trial of the Federal Court litigation in June 2014 precluded completion of the statutory process prior to the hearing.

The Federal Court hearing commenced on 2 June 2014 before North J. Our clients were not joined as parties in their own right to the litigation since, pursuant to its statutory functions, the NLC was required to represent and advance their interests. The NLC was required, *inter alia*, to "have regard to", and "give priority to the protection" of, the "interests" of the acknowledged Ngapa traditional owners (which must include their financial interests in relation to the 2007 nomination),³ and could not "take any action" in connection with Aboriginal land unless satisfied of the traditional owners' informed consent.⁴ The subsequent settlement of litigation was an "action" which required the informed consent of the Ngapa traditional owners.

By the end of the second week of the hearing (ie Saturday 14 June 2014), the applicants had substantially completed calling their evidence. That testimony wholly refuted their claims that the NLC's consultation process in 2007 was deficient.

In that respect in its media statement on 19 June 2014, the NLC not only confirmed its consistent position throughout the litigation that the 2007 nomination "was not affected by any relevant error and that the legal challenge would have failed". The NLC also acknowledged that "the applicants' own evidence" before North J (which was

³ Sections 23(3) (chapeau), 23(1)(b) and 23AA(3) of the *Land Rights Act*.

⁴ Section 23(3)(a) of the *Land Rights Act*. See also ss 11A(3), 19(5), and 42(2).

substantially complete) confirmed that "the NLC had consulted broadly and appropriately", and that that evidence refuted the applicants' claims against the NLC.⁵

S45

The applicants' refutative evidence meant that the Commonwealth's adjourned interlocutory application (first pressed in 2012) that the action be dismissed forthwith (ie without a hearing of evidence) due to deemed validity was ripe for reagitation and judicial determination. In April 2014 North J had deferred further consideration of the application, but indicated that it might be further considered at the time of the hearing (whereby it might shorten the case).

The refutative evidence also exposes the applicants' conduct of the litigation as an abuse of process, since the sole reason for the failure of the Commonwealth's dismissal application in 2012 and 2014 was the applicants' false allegations of impropriety, which they explicitly abandoned in the second week of the trial.

The long anticipated dismissal of the challenge, whether through reagitation of the interlocutory application or after NLC and Commonwealth evidence, would readily have enabled completion of the statutory process for the 2007 nomination and the additional nomination. Our clients were reasonably entitled to expect that a Ministerial declaration of one of those sites as the selected site for the facility would have followed.

This would have fulfilled both the legitimate interests of the Ngapa traditional owners, and the public interest. It also would have enabled the Commonwealth to honour a unique initiative instituted by the Howard Government in 2005 whereby it rightly sought to build relationships with traditional owners and fulfil the public interest on the basis of accurate information and fairness. Significant pecuniary benefits would have flowed to our clients for investment on their cultural lands.

Instead, on 18 June 2014 the Commonwealth and the NLC executed a settlement deed with the applicants dismissing the action through consent orders on 20 June 2014 on the basis of a Commonwealth undertaking to the Court that it would not act upon the 2007 nomination.⁶ Although framed as a dismissal, the settlement was a 'device' whereby for all practical purposes the challenge was upheld since the applicants obtained the outcome sought via a Commonwealth undertaking. As North J observed on the opening

⁵ NLC media statement 19 June 2014 *NLC settles on Muckaty*: <http://www.nlc.org.au/media-releases/article/nlc-settles-on-muckaty>

⁶ The undertaking is enforceable under rule 39.21 of the *Federal Court Rules 2011*, and breach of an undertaking may constitute a contempt of Court.

Ward Keller

Page 6

day of the trial, this outcome was very much a "defeat" for the Commonwealth and the NLC.⁷

It was also a defeat for the Ngapa traditional owners whose interests were flagrantly ignored by the execution of the settlement deed by the Commonwealth and the NLC. The NLC never informed the Ngapa traditional owners and other interested Aboriginal persons of the applicant's refutative evidence, or of its legal effect. In breach of its statutory obligations under the ALRA, the NLC did not adequately consult (or consult at all) with Ngapa traditional owners and other interested Aboriginal persons, and the Ngapa traditional owners never consented to the settlement as required by s 23(3). Consequently the NLC had no power to enter the settlement.

S45

On Monday 23 June 2014, three days after the settlement, traditional owners wrote directly to Minister Macfarlane (copied to the NLC) and expressed their displeasure. In an endeavour to remedy their grievance they confirmed that the Ngapa group wished to finalise the proposed additional nomination on the northern boundary of Muckaty Station within three months (the Minister's initial deadline being 30 September 2014).

⁷ Transcript 2 June 2014 p 13. North J so commented in response to the applicants' counsel identifying possible bases of settlement (with such a settlement offer made by the applicants the previous day).

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The letter was jointly signed by 58 traditional owners from the Ngapa group and neighbouring groups (including Ward Keller's clients).

Subsequently Minister Macfarlane met with the traditional owners including Ward Keller's clients, as well as with non-traditional owners who objected to the 2007 nomination and the proposed additional nomination.

The deadline was extended to 10 November 2014, being the statutory deadline (under 10(1)(a) of the 2012 Act) by which comment was required to Minister Macfarlane's formal notice of his intention to declare a nationwide site nomination process. The NLC did not respond to the Minister's request for comments, or it appears otherwise advise as to its progress in finalising the statutory process for the additional nomination.

On 12 December 2014 Minister Macfarlane declared a nationwide site nomination process under s 6(1) of the 2012 Act. The effect of the declaration included to terminate the statutory process for an additional nomination of land on the northern boundary of Muckaty Station under s 5(1) of the 2012 Act.

Request for written reasons under s 13(1) of the ADJR Act

The ADJR Act was disengaged in relation to the 2005 Act.⁸

However, the application of the ADJR Act was substantially restored in 2012 in relation to conduct and decisions made under the 2012 Act. Accordingly, it applies in relation to our clients' grievances referred to above.

S45

This was a "final and ultimate decision" under s 14(2) of the 2012 Act to not declare the 2007 nomination as the selected site for the waste facility.⁹

It was also "conduct" (within the meaning of the ADJR Act) in relation to the Minister's subsequent decision to declare a nationwide site nomination process under s 6(1) of the 2012 Act.

Ward Keller's clients are aggrieved by Minister Macfarlane's decision on or about 18 June 2014 that he would not declare the 2007 nomination as the selected site for the waste facility.

⁸ By means of a related statute, the *Commonwealth Radioactive Waste Management (Related Amendment) Act 2005*.

⁹ *Right To Life Association (Nsw) Inc v Secretary, Department of Human Services and Health and Family Planning Inc (Vic)* [1995] FCA 1060; (1995) 128 ALR 238 par 31 Lockhart J.

Ward Keller

Page 8

Our clients are the acknowledged traditional Aboriginal owners of the proposed additional nomination site on the northern boundary of Muckaty Station, and they possess legal rights in relation to it under the ALRA.

S45

Accordingly, pursuant to s 13(1) of the ADJR Act, it is requested that you "furnish a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision."

Secondly, Ward Keller's clients are aggrieved by Minister Macfarlane's decision on 12 December 2014 to declare a nationwide site nomination process under s 6(1) of the 2012 Act.

I would be grateful if you would respond in relation to these two requests within the statutory period of 28 days.

For your assistance, please note that I have written separately to Minister Scullion and requested that he provide reasons under s 13(1) of the ADJR Act in relation to any decision he made to approve the litigation settlement deed.

Further observations

It is evident from the above that our clients' grievances concern not only decisions made by your predecessor, but also actions by both the NLC and the applicants.

Potential remedies to address these grievances include not only a potential action against the Commonwealth and its responsible Minister under the ADJR Act and/or s 39B of the *Judiciary Act 1903*, but also an application for leave to appeal the consent orders made by North J on 20 June 2014, and a compensation claim against the NLC and the Commonwealth.

Our clients propose to make a decision as to what remedy or remedies to appropriately pursue after consideration of your response to their requests for written reasons under s 13(1) of the ADJR Act herein.

For your assistance, I note that a successful application for leave to appeal North J's orders on 20 June 2014 (ie with the appeal upheld) would have ramifications for the nationwide process presently being instituted by the Commonwealth. It would mean that Minister Macfarlane's decision on 12 December 2014 to declare a nationwide site nomination process under s 6(1) of the 2012 Act was invalid.

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Ward Keller

Page 9

Likewise a successful review under the ADJR Act and/or s 39B of the *Judiciary Act 1903* of Minister Macfarlane's decision on 12 December 2014 to declare a nationwide site nomination process may also mean that it is invalid.

In both cases your current consideration of nominations made under that process, reportedly (under your predecessor) with a view to shortlisting, would lapse due to invalidity.

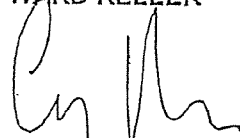
Our clients, and this firm, are aware of our obligations under the *Civil Disputes Resolution Act 2011*, and of the Commonwealth's obligations under that statute and to act as a model litigant.

Our clients look forward to considering their position in light of your response to their requests for written reasons, and to liaising further with you through this firm.

Given the importance and public interest in this matter, I have taken the liberty of providing a copy of this letter to the Prime Minister, the Hon Malcolm Turnbull MP, and to the secretary of his department.

A copy has also been provided to the Indigenous Affairs Minister, and to the secretary of your department.

Yours faithfully
WARD KELLER



GREG PHELPS

Partner

Secretary: Candice Miles

Direct Line (08) 8946 2887

Email gregphelps@wardkeller.com.au

cc: The Honourable Prime Minister Malcolm Turnbull MP,
malcolm.turnbull.mp@aph.gov.au
The Honourable Minister Senator Nigel Scullion, senator.scullion@aph.gov.au

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Ward Keller

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per facsimile: (02) 6273 7096
and per email: senator.scullion@aph.gov.au

Senator the Hon Nigel Scullion
Minister for Indigenous Affairs
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister

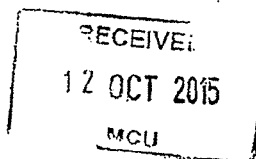
NATIONAL RADIOACTIVE WASTE MANAGEMENT ACT 2012: DECISION TO APPROVE, OR NOT APPROVE, EXECUTION OF LITIGATION SETTLEMENT DEED DATED 18 JUNE 2014 WHEREBY 2007 NOMINATION AT MUCKATY STATION WAS ABANDONED – REQUEST FOR REASONS UNDER S 13(1) OF THE ADJR ACT

I refer to previous correspondence with the former Industry Minister, the Hon Ian Macfarlane MP, and with yourself, in relation to the above matter.

As previously advised, Ward Keller acts for Jason Bill, Alice Bill (nee Lauder), Earl Foster, and Sonia Dixon who represent Ngapa traditional owners of Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976 ('ALRA')* at Muckaty Station in the Northern Territory.

Please find enclosed a copy of my letter of today's date to the Hon Josh Frydenberg MP, Minister for Resources, Energy and Northern Australia.

Office of the Minister for Indigenous Affairs	
<input checked="" type="checkbox"/> Reply by Minister	<input checked="" type="checkbox"/> Brief Req'd
<input type="checkbox"/> Reply by Parl. Sec.	<input type="checkbox"/> Subject:
<input type="checkbox"/> Reply by CoS
<input type="checkbox"/> Reply by Advisor
02 OCT 2015	
<input type="checkbox"/> Reply by Dept	<input type="checkbox"/> NFA
Referral: <i>Land</i>	
Instructions: <i>Branch</i>	



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Released under FOI Act - Department of Industry, Innovation and Science

Folio 83

As explained therein, pursuant to s 13(1) of the *Administrative Decisions (Judicial Review) Act 1977*, ('ADJR Act') our clients have sought written reasons for two decisions made by Minister Macfarlane in 2014. Although the ADJR Act was disengaged in relation to the (now repealed) *Commonwealth Radioactive Waste Management Act 2005* ('2005 Act'),¹ it was substantially restored in 2012 in relation to conduct and decisions made under the *National Radioactive Waste Management Act 2005* ('2012 Act')

S45

I would be grateful if you would clarify whether or not you gave approval under s 27(3) for the NLC and the Muckaty Aboriginal Land Trust to enter the settlement deed dated 18 June 2014.

If approval was given under s 27(3), our clients are aggrieved by your decision.

Alternatively, if you decided to give no such approval (or did not consider your obligations under s 27(3)), I would be grateful if you would explain the basis whereby despite non-compliance with that statutory requirement the NLC nonetheless executed the deed and did so with the full knowledge of the Commonwealth (which also executed it).

¹ By means of a related statute, the *Commonwealth Radioactive Waste Management (Related Amendment) Act 2005*.

Our clients are the acknowledged traditional Aboriginal owners of the nominated site, and they possess legal rights in relation to it under the ALRA.²

Their financial interests under the site nomination deed and ss 35 and 36 of the 2012 Act were directly affected by your decision in relation to approval (or non-approval) of the site nomination deed.

Accordingly, pursuant to s 13(1) of the ADJR Act, it is requested that you "furnish a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision."

Finally, I note correspondence last year to you in which our clients complained, as a matter of urgency, that they were being obstructed by the NLC in relation to a proposed additional nomination of a site at Muckaty Station.

I note that *The Australian* reported on 1 October 2014 your view that the complaint was "of the most serious nature ... and we are seeking advice on how best to investigate and pursue the matter. The traditional owners say they've been aggrieved by the actions of a commonwealth authority".

It was also reported that you considered this to be "a matter of mischief by a commonwealth authority."

I would be grateful if you would advise as to the present position in relation to our clients' complaint, including as to whether it has been finalised and the outcome.

Should it be of assistance, Ward Keller would be happy to provide further information to you in relation to the complaint.

Given the importance and public interest in this matter, I have taken the liberty providing a copy of this letter to the Prime Minister, the Hon Malcolm Turnbull MP, and to the secretary of his department.

A copy has also been provided to the Minister for Resources, Energy and Northern Australia, and to the secretary of his department.

² See *Gondarra v Minister for Families, Housing, Community Services and Indigenous Affairs* [2014] FCA 25; *Wurridjal v The Commonwealth of Australia* [2009] HCA 2.

Yours faithfully
WARD KELLER



GREG PHELPS

Partner

Secretary: **Candice Miles**

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cc: The Honourable Prime Minister Malcolm Turnbull MP,
malcolm.turnbull.mp@aph.gov.au
The Honourable Minister Josh Frydenberg MP, josh.grydenberg.mp@aph.gov.au

Folios 87 to 109 exempt under s42 (Legal Professional Privilege) & s45 (material obtained in confidence)

COPY



THE HON IAN MACFARLANE MP
MINISTER FOR INDUSTRY

25 JUN 2014

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600
MS14-000765

Chairman
Northern Land Council
GPO Box 1222
Darwin NT 0801

Dear Mr Bush-Blanas

I am writing to all Aboriginal Land Councils in the Northern Territory regarding the possible volunteering of a site under the *National Radioactive Waste Management Act 2012* (Act) that came into effect on 4 April 2012.

The Act provides for two volunteer processes for the selection of a site for a national radioactive waste management facility. Under the first process, Aboriginal Land Councils in the Northern Territory are able to volunteer a site for consideration under section 5 of the Act.

The Act requires that any such nomination must contain evidence;

- of all interests in the land,
- that the Land Council has consulted with the traditional Aboriginal owners of the land,
- that the owners as a group have consented to the proposed nomination and,
- that any Aboriginal group or community that may be affected has been consulted and has had adequate opportunity to express their view to the Land Council.

I will only consider nominations to which the relevant traditional owners have consented in accordance with the *Aboriginal Land Rights (Northern Territory) Act 1976* and that are not disputed by any Aboriginal community or group that may be affected.

This opportunity to nominate a site has been open to Aboriginal Land Councils for two years and I now invite you to submit any formal nominations by 30 September 2014.

If it is unlikely that a facility nominated by a Land Council under section 5 of the Act can be constructed and operated in that way, I intend to initiate a nation-wide site selection process.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Macfarlane'.

Ian Macfarlane

Phone: (02) 6277 7070 Fax: (02) 6273 3662



Australian Government
Department of the Prime Minister and Cabinet

ANDREW FISHER BUILDING
ONE NATIONAL CIRCUIT
BARTON

Mr Joe Morrison
Chief Executive Officer
Northern Land Council
GPO Box 1222
DARWIN NT 0801

Dear Mr Morrison

I am writing following correspondence you received from the Minister for Industry, the Hon Ian MacFarlane MP, regarding the current process for volunteering a site for a radioactive waste management facility.

As you are aware, the process for nominating a site under the *National Radioactive Waste Management Act 2012* is currently open only to Land Councils in the Northern Territory. The Minister for Industry has invited you to submit any formal nominations by 30 September 2014.

The Minister for Industry has also indicated that a nation-wide site selection process will be undertaken if he considers it unlikely that a facility can be built on Aboriginal land in the Northern Territory.

The Department understands there continues to be some interest from traditional owners within your Land Council region including at Muckaty Station. I ask you to lead the way in engaging with any interested Aboriginal land owners and affected groups wishing to put forward a site for consideration as a future waste management facility.

As you know, for the Minister for Industry to consider a site on Aboriginal land nominated by a Land Council, he will need to be satisfied that the relevant traditional owners consent in accordance with *Aboriginal Land Rights (Northern Territory) Act 1976* and that the nomination is not disputed by other Aboriginal communities or groups that may be affected.

Locating a waste facility on Aboriginal land will be associated with a comprehensive compensation and benefits package. This has the potential to create significant economic benefits for traditional owners and associated Aboriginal interests in your region. Minister Scullion would like to see that Aboriginal people reap the potential benefits from a facility and is concerned to ensure that the wishes of interested traditional owners are honoured and supported.

Postal Address: PO Box 6500, CANBERRA ACT 2600
Telephone: +61 2 6271 6250 Fax: +61 2 6271 6250 www.pmc.gov.au ABN: 18 108 001 191

I strongly encourage you and your constituents to take advantage of this process while it is still confined to Land Councils in the Northern Territory.

Yours sincerely

S22

Caroline Edwards
Acting Deputy Secretary
August 2014



THE HON IAN MACFARLANE MP

MINISTER FOR INDUSTRY

05 SEP 2014

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

MS14-001177

Mr Samuel Bush-Blanas
Chairman
Northern Land Council
GPO Box 1222
DARWIN NT 0801

Dear Mr Bush-Blanas *Samuel*

Notice of proposed declaration and invitation to comment.

I am writing to all Aboriginal Land Councils in the Northern Territory to inform them that I will publish my intention to declare a nation-wide general process for nominating land as a site for a national radioactive waste management facility under the *National Radioactive Waste Management Act 2012* (the Act). Taking this step does not commit me to proceeding with a nation-wide process. I must consider all relevant factors including any relevant comments received during the 60-day period following publication before making any declaration to proceed.

The Act provides for two volunteer processes for the selection of a site for a facility. Under the first process, Aboriginal Land Councils in the Northern Territory are able to volunteer a site for consideration under section 5 of the Act. In the second process, nation-wide general nominations may be made in accordance with section 7 of the Act.

The opportunity to nominate a site has been open to Aboriginal Land Councils for two years under the current Act and for many more years under the previous Act. I wrote to you on 25 June 2014 inviting you to submit any formal nominations by 30 September 2014. That invitation remains open and is unaffected by the gazettal of my intention to declare a nation-wide process in accordance with section 7.

If I make a declaration to proceed with a nation-wide process, then a person or persons may nominate land in a state, the Australian Capital Territory or the Northern Territory as a potential site, including Aboriginal land. Making a declaration does close the process under section 5 at that point.

If you wish to discuss these matters please contact Mr Michael Sheldrick, General Manager, Uranium & RE International Branch of my department on 02 6243 7384 or at michael.sheldrick@industry.gov.au.

Phone: (02) 6277 7070 Fax: (02) 6273 3662

Released under FOI Act - Department of Industry, Innovation and Science

Folio 113

For the purposes of section 10(1)(a) of the Act, this letter is notice that I propose to make a declaration under section 6 of the Act.

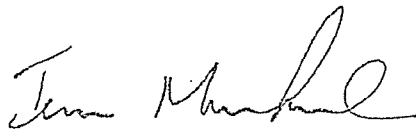
I invite comments on the proposed declaration. Please submit any comments on the proposed declaration through the department's Consultation Hub at <https://consult.industry.gov.au/> or by post to:

The Manager
Radioactive Waste Management Section
Resources Division
Department of Industry
GPO Box 9839
CANBERRA ACT 2601

Comments must be received by Monday, 10 November 2014.

I will consider all relevant comments I have received when making my decision about whether to make a declaration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Macfarlane', written in a cursive style.

Ian Macfarlane



COPY

THE HON IAN MACFARLANE MP

MINISTER FOR INDUSTRY

30 SEP 2014

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

Mr Joe Morrison
Chief Executive Officer
Northern Land Council
GPO Box 1222
DARWIN NT 0801

MC14-003263

Dear Mr Morrison *Joe*

Thank you for your letter of 29 August 2014 concerning the proposed nomination of a site under the *National Radioactive Waste Management Act 2012*.

In my letter to the Northern Land Council (NLC) on 5 September 2014, I advised you of my notice of intent to declare a nationwide nomination process and extended an invitation to comment. I also restated my invitation to bring forward nominations before 30 September 2014.

I note your update on the process for conducting anthropological research and consultation activities and that you will soon provide me with further advice on timing. This process should be used to develop evidence as to whether the site considered for nomination has the consent of all landowners and is free of dispute.

A benefits package can be negotiated and quantified once the details of a nomination have been provided to the Australian Government. This would occur during development of a formal agreement and prior to any acceptance of the nomination. I encourage traditional owners to consider what they would like to see in a benefits package and include this information in any proposal. No action would be taken by the Government on a nomination until a formal agreement is reached.

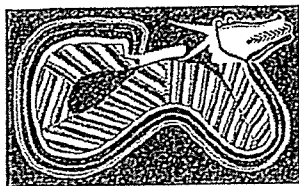
S45, S47(1)(b)
& S47G

I welcome any further update you can provide, as this will assist me in my decision on whether to proceed to a nationwide volunteer process.

Yours sincerely

Ian Macfarlane

Phone: (02) 6277 7070 Fax: (02) 6273 3662



Northern Land Council

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15 October 2014

Our ref: F2014/0777-02

Your ref: MS14-000765

Hon Ian Macfarlane MP
Minister for Industry
PO Box 6022
Parliament House
Canberra ACT 2600

Fax: (02) 6273 3662

Dear Minister

NATIONAL RADIOACTIVE WASTE MANAGEMENT ACT 2012: PROPOSED ADDITIONAL NOMINATION OF LAND AT MUCKATY STATION

Thankyou for your letter dated 30 September 2014 in relation to the possible further nomination of a site on the northern boundary of Muckaty Station under s 5 of the *National Radioactive Waste Management Act 2012* (the Act).

I note also your letter dated 5 September 2014 as to a proposed declaration to open a nationwide volunteer process for nominations under s 7 of the Act.

Anthropological research and consultations for further nomination (s 5)

I confirm, as foreshadowed in my letter dated 29 August 2014, that Mr Jeff Stead, consultant anthropologist, has commenced research in relation to a possible further nomination of a site on the northern boundary of Muckaty Station about 6 km west of the Stuart Highway.

Mr Stead visited Tennant Creek, Elliott and Newcastle Waters between 5 and 9 September 2014 and met with senior Ngapa and other traditional owners known to have an interest in the northern site and potential access routes (particularly from the Ngapa, Milwayi and Wirntiku groups), including Alice Bill (nee Lauder) and her extended family (Ngapa), Dick Foster and his son Earl Foster (Ngapa), Johnny Devlin and Peppy Simpson (Wirntiku), and Mark Brown (Milwayi).

Mr Stead has advised that all of these persons agreed to participate in more detailed field research later this year, as indeed did most persons consulted. The research will include visits to sacred sites, particularly to confirm their precise location so that there can be no suggestion that heritage concerns arise regarding a further nomination (including its access route).

This research is required particularly given the passage of time since the 1993 research for the land claim, and also given the need to consider recent material including the evidence given by Aboriginal persons in the Federal Court litigation. In engaging Mr Stead I was minded to retain the services of a highly experienced anthropologist who was not involved in the 2007 nomination or litigation, thus advancing your emphasis that legal avenues for dispute be minimised.

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Mr Stead will continue to conduct field research throughout October, and will complete his written report regarding traditional ownership during November and submit it to the NLC by 1 December 2014.

The NLC will conduct consultations in light of Mr Stead's professional opinion as to traditional ownership, and I will advise further as to their scheduling upon receiving that opinion.

For the present, by way of indication, I note that the consultations for the 2007 nomination primarily occurred over a four month period (February to May 2007), with three formal meetings attended by the department plus a visit to the Lucas Heights reactor in Sydney. The NLC Full Council considered and endorsed the nomination a few weeks later in June of that year.

Proposed declaration of nationwide process (s 7)

I have set out the NLC's actions in fulfilling the consultative process regarding a further nomination in some detail since – even on a 'best case scenario' – it was never possible to finalise that process by 30 September 2014 (the deadline specified in your letter dated 25 June 2014), or by 10 November 2014 (the date by which comments must be received regarding your notice of a proposed declaration to open a nationwide volunteer process for nominations).

I consider that the timing indicated above for a further nomination at Muckaty Station under s 5 accords with the process agreed with the Commonwealth in 2012 after the passage of the Act, and is reasonable.

It is not accurate to suggest, with respect, that the "opportunity to nominate a site has been open to Aboriginal Land Councils for two years under the current Act and for many more years under the previous Act" (as per your letter dated 5 September 2014) without being actioned. It was the Commonwealth, under the former Labor Government, which declined to process either the 2007 nomination or a further northern boundary nomination (which was foreshadowed in May 2007) under the original statute unless and until it was replaced – not the NLC or traditional owners. And, after the enactment of the current statute in April 2012, it was the Federal Court litigation which prevented the consultative process for the further nomination from being finalised.

In these circumstances it would not be appropriate to declare a nationwide process under s 7 of the Act without first allowing the existing and agreed process for a proposed northern boundary nomination to be completed under s 5.

Compensatory package for nomination

That brings me, for your assistance, to a final observation which concerns both fairness and legal certainty, and regarding which the NLC seeks clarification.

From 2005 to 2007 the Coalition Government proceeded on the basis that a compensatory package would be negotiated and formally agreed at the time of nomination. Likewise the Labor Government took the same approach in 2012 and 2013 regarding the further nomination. This approach accords with that taken by any landowner of any land where development is proposed, including all development agreements in the NLC region since its inception in 1977 (as but one example, the Alice Springs to Darwin railway).

It was never suggested in 2007 that the NLC must first formally nominate Aboriginal land – thus diminishing traditional owners' legal rights, on the basis of an arrangement whereby compensation would subsequently be negotiated prior to Ministerial acceptance. Nor was such a suggestion ever made regarding the agreed process for a further nomination which commenced in 2012.

Your letter dated 30 September 2014 seems to indicate, for the first time, that the Commonwealth now proposes to negotiate a "benefits package" after "details of the nomination have been provided" and "prior to any [Ministerial] acceptance of the nomination." You explained that "[n]o action would be taken by the Government on a nomination until a formal agreement is reached."

With respect, such an approach would be quite unprecedented and would render it unlikely that nominations will be made at all. It is doubtful that any landowner, whether under the current s 5 process or a s 7 nationwide process, would formally nominate land and thus diminish their property rights without also agreeing on compensation at that time.

The fact that the Minister, "in his or her absolute discretion", may approve a nomination (s 9) and subsequently declare it to be the site for the National Radioactive Waste Management Facility (s 14) with acquisition of property then occurring, confirms this concern – noting that parties cannot contract out of a statutory discretion vested in a Minister.

I would be grateful if you would consider my observations regarding this concern with a view to confirming that the Commonwealth will negotiate a compensation package contemporaneously, and as part of, the agreed consultative process for the further nomination at Muckaty Station.

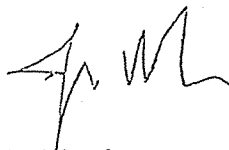
In closing, I propose to write again after Mr Stead completes his field research and further advise as to the time required to complete the consultative process.

I also propose at that time to write separately in response to your letter dated 5 September 2014 which invited comments regarding a proposed declaration of a nationwide process under s 6 of the Act, while noting that some observations herein are relevant to the timing of the proposal.

I have taken the liberty of forwarding a copy of this letter to the Indigenous Affairs Minister, Senator the Hon Nigel Scullion.

I also propose to provide a copy of this letter to Mr Kevin Stephens, Partner, Ward Keller, who represents a number of Ngapa traditional owners who support a further nomination, as part of my response to a letter to the NLC from Mr Stephens dated 26 September 2014.

Yours faithfully



Joe Morrison
CHIEF EXECUTIVE OFFICER