

KUNGUN NGARRINDJERI YUNNAN – WORK AREA CLEARANCE AGREEMENT

THIS AGREEMENT made on the 30th day of August 2007.

BETWEEN:

COORONG DISTRICT COUNCIL of 95 Railway Terrace, Tailem Bend, South Australia
("Council")

AND:

**NGARRINDJERI TENDI INCORPORATED, NGARRINDJERI HERITAGE COMMITTEE
INCORPORATED AND NGARRINDJERI NATIVE TITLE MANAGEMENT COMMITTEE
FOR AND ON BEHALF OF THE NGARRINDJERI PEOPLE** of PO Box 126 Meningie,
South Australia ("Ngarrindjeri")

BACKGROUND

- A. The Ngarrindjeri People assert their presence and control as Traditional Owners and Native Title Claimants to the land located within the boundary of Claim SC 98/4 being the Ngarrindjeri Native Title Claim ('the Claim').
- B. Council wishes to undertake activities on Nominated Areas within the Claim.
- C. Council and the Ngarrindjeri shall determine whether Council shall be permitted to by the terms of this Agreement undertake the activities on the Nominated Areas in accordance with the terms and conditions of this Agreement.

IT IS NOW AGREED:

1. DEFINITIONS AND INTERPRETATIONS

- 1.1. The Schedules form part of this Agreement.
- 1.2. The terms used in this Agreement are defined in Schedule 1.
- 1.3. The interpretation of any Clause of this Agreement shall be in accordance with the Schedule 1.

2. OBLIGATIONS OF NGARRINDJERI

- 2.1. The Ngarrindjeri will undertake Clearance Surveys of the Nominated Areas on the terms and conditions of this Agreement.
- 2.2. The Ngarrindjeri are contracting parties independent from Council and nothing in this Agreement is to be construed as creating any other legal relationship between them and Council.

3. OBLIGATIONS OF COUNCIL

- 3.1. Council
 - 3.1.1. Will not rely on any authority of the Ngarrindjeri to carry out any of the Activities unless authorised by the Ngarrindjeri under this Agreement.

- 3.1.2. Will comply with all applicable environmental protection, legislation and procedures in carrying out any of Activities.
- 3.1.3. Will not rely on any authority of the Ngarrindjeri to conduct any Activities on any specific location that has not been given Clearance under this Agreement.
- 3.2. Council shall within seven (7) days of the execution of this Agreement nominate in writing the Project Representative to assist in the Clearance Surveys.

4. CLEARANCE SURVEY REQUEST BY COUNCIL

- 4.1. To gain Clearance to the Nominated Areas, Council will request the Ngarrindjeri in writing to organise and conduct a Clearance Survey ("Clearance Survey Request")
- 4.2. The Clearance Survey Request must contain all information required by Schedule 2;
- 4.3. Within fourteen (14) days of the Ngarrindjeri receiving the Clearance Survey Request the Ngarrindjeri must:
 - 4.3.1. notify Council that the information provided is satisfactory and prepare and submit to Council a proposed budget substantially in the form set out in Schedule 3; or
 - 4.3.2. request such further information about the nature and extent of the Activities as is reasonably required for performance of the obligations of the Ngarrindjeri under this Agreement.
- 4.4. Upon the Ngarrindjeri requesting further information pursuant to Clause 4.3.2 Council must within fourteen (14) days of receipt of such request provide the Ngarrindjeri with such further information about the nature and extent of the proposed Activities as the Ngarrindjeri may reasonably require.
- 4.5. Within fourteen (14) days of the Ngarrindjeri receiving information pursuant to Clause 4.4 the Ngarrindjeri must prepare and submit to Council a proposed budget substantially in the form set out in Schedule 3 of this Agreement.
- 4.6. Council must meet with the Ngarrindjeri within fourteen (14) days after receiving the proposed budget pursuant to Clause 4.3.1 or Clause 4.5, as the case may be, to discuss and agree the budget and logistics reasonable to the Parties for the conduct of the Clearance Survey ("Meeting").
- 4.7. The commencement date of the Clearance Survey will be no later than fourteen (14) days after the Meeting ("Commencement Date").
- 4.8. The Ngarrindjeri must use their best endeavours to commence the Clearance Survey on the Commencement Date or as otherwise agreed.
- 4.9. In the event it becomes apparent that the Survey Team will be unable to complete the Clearance Survey within the timeframe allowed in the budget then, subject to prior approval by Council's Project Representative to an extension of time for the conduct of the Clearance Survey, the daily allowances (accommodation, meals) as specified in the budget will be paid by Council to cover any such extension of time.

- 4.10. The Ngarrindjeri must expeditiously complete the Clearance Survey and deliver a report to Council in accordance with Clause 8.

5. SURVEY TEAM

- 5.1. Prior to the Commencement Date, the Ngarrindjeri through the Co-ordinator must identify and organise the members of the Survey Team.
- 5.2. The Co-ordinator will be responsible for the administration of all matters relevant to the conduct of the Clearance Survey including advising Council of the names of those persons nominated to undertake the Clearance Survey, mobilisation of Survey Team members, arranging travel and accommodation, budget involvement, receipt and disbursement of funds and special liaison. The Co-ordinator will also attend on the Clearance Survey.
- 5.3. The Survey Team must comprise:
- 5.3.1. Up to Two (2) but no fewer than One (1) (as the case requires) qualified Specialist appointed by the Ngarrindjeri; and
- 5.3.2. Four (4) representatives of the Ngarrindjeri.
- 5.4. Each Party acknowledges that in certain circumstances the Survey Team may require additional representatives of the Ngarrindjeri, in which case each Party shall discuss the reasons for additional representatives, and agree in writing to any such additional representatives. Further, each Party acknowledges that in certain circumstances the Survey Team will need to consult with the broader Ngarrindjeri Community, and that a Community Meeting may need to be held, in which case each Party shall discuss the need for a Community Meeting, and agree in writing whether to proceed with such a meeting. In the event of agreement to proceed Council shall pay the costs of any meeting or associated activity.
- 5.5. The function of the Specialists shall be to:
- 5.5.1. Assess archival materials relevant to the Nominated Areas;
- 5.5.2. Assess the rights and interests affected by the Activities proposed by Council;
- 5.5.3. Assist the Survey Team to conduct the Clearance Survey;
- 5.5.4. Prepare the report referred to in Clause 8.
- 5.6. The function of the Survey Team will be to assess the Nominated Areas for the purposes of:
- 5.6.1. the law relating to Aboriginal Heritage to determine whether the proposed Activities would be likely to damage, disturb or interfere with any Native Title Rights or Areas of Significance to Ngarrindjeri;
- 5.6.2. Specifying any conditions that may be required prior to any Activities occurring.
- 5.6.3. Nominating conditions which may apply in respect to the granting of access to the Nominated Areas.

- 5.6.4. Assessing alternative Nominated Areas proposed by the Project Representative in lieu of any Nominated Areas not cleared by the Survey Team.
- 5.7. The Survey Team will discharge its functions pursuant to Clause 5.6 by:
 - 5.7.1. Inspecting the Nominated Areas proposed by Council to determine whether a Clearance will be given;
 - 5.7.2. Identifying those Nominated Areas where the Activities will not be permitted;
 - 5.7.3. Providing a report advising which Nominated Areas are cleared or not cleared;
 - 5.7.4. Identifying in the report any qualifications, limitation or conditions which may attach to the proposed Activities in the Nominated Areas which have been cleared;
 - 5.7.5. Considering and advising Council in respect of any alternative Nominated Areas proposed by the Project Representative during the course of the Clearance Survey.

6. COUNCIL'S REPRESENTATIVE

- 6.1. The Survey Team may, at its discretion, be accompanied in the field by Council's Project Representative.
- 6.2. If the Survey Team is not accompanied by Council's Project Representative he/she must be available by telephone, to provide assistance in the identification of the boundaries of the Nominated Areas and explanation of the matters referred to in the Clearance Survey Request.
- 6.3. Subject to Sub-Clause 6.1 Council may at the request of the Survey Team through the Co-ordinator arrange for the Project Representative to accompany the Survey Team, subject to any request by the Claimant or the Survey Team to exclude the Project Representative from any discussions or field inspections that are regarded by the Ngarindjeri on the Survey Team to be culturally sensitive.
- 6.4. In the event that any Nominated Area is not cleared by the Survey Team the Co-ordinator shall advise the Project Representative to that effect during the course of the Clearance Survey and the Project Representative may propose an aggregate of three alternative Nominated Areas during the conduct of the Clearance Survey provided that undertaking any clearance of such alternative Nominated Area the Survey Team is not required to remain in the field in excess of the period specified in Clause 7.2.

7. CLEARANCE SURVEY

- 7.1. A Clearance Survey must not be carried out with less than three (3) Ngarrindjeri present at any one time.
- 7.2. The duration of any Clearance Survey in the field shall not exceed three (3) days unless the particular circumstances require a longer duration and all members of the Survey Team agree to that longer period.

8. REPORT

- 8.1. As soon as practicable and in any event not later than fourteen (14) days after completion of the Clearance Survey, the Ngarrindjeri must provide Council with a report.
- 8.2. The report must:
 - 8.2.1. Identify those parts of the Nominated Areas which are:
 - 8.2.1.1. Given Clearance by the Ngarrindjeri (with or without conditions), and
 - 8.2.1.2. Denied Clearance by the Ngarrindjeri;
 - 8.2.2. Identify any alternative Nominated Areas for which Clearance is given in lieu of the Nominated Areas in accordance with requirements set out in Clause 5.4;
 - 8.2.3. Set out any conditions on which the Ngarrindjeri have provided the Clearance;
 - 8.2.4. Be signed either:
 - 8.2.4.1. By two (2) members of the Survey Team representing the Ngarrindjeri; or
 - 8.2.4.2. The specialists; or
 - 8.2.4.3. The Co-ordinator.

- 8.3. Nothing in this Agreement compels the Ngarrindjeri to disclose to Council the location of significance or any cultural information about areas of significance or any Aboriginal heritage or native title issues in the Nominated Areas.

9. SURVEY TEAM COSTS

- 9.1. Should Council require any member of the Survey Team to utilise his or her vehicle for transportation or does not provide Council transportation then Council shall pay mileage at the usual public service (ATSIC) rate for hire of Ngarrindjeri vehicles, or meet the commercial hire costs for vehicles for such Ngarrindjeri. Council reserves the right after consultation with the Ngarrindjeri to determine the number and type of vehicles required to adequately, and in reasonably comfort, transport the members of the Survey Team in the Nominated Areas;
- 9.2. Council will provide or reimburse the costs of all accommodation, meals, fuel and out of pocket expenses reasonably required and incurred by the

members of the Survey Team in accordance with the agreed budget as provided in Schedule 3;

9.3. Council shall pay:

9.3.1. Each member of the Survey Team (except the Specialist) at a rate of Three Hundred Dollars (\$300.00) per person per day for the period the Survey Team is in the field and for the period included in travelling to and from the Nominated Areas, and

9.3.2. Specialist fees of up to Nine Hundred Dollars (\$900.00) per day per person;

9.3.3. Any reasonable costs in relation to the work of the Specialist in the preparation and production of their report will be paid by Council within seven (7) days of presentation of the report and an invoice from the specialists;

9.3.4. The Co-ordinator at a rate of Three Hundred Dollars (\$300.00) per day for the period required to organise the Clearance Survey and for the period required to undertake the Clearance Survey.

9.4. All payments made by Council pursuant to this Clause 9 (except for specialist fees and costs) shall be made in accordance with the agreed budget and be paid to the Co-ordinator at the conclusion of the field work by the Survey Team, subject to any agreement in writing to the contrary between the parties.

9.5. A receipt signed by the Co-ordinator for funds provided to him by Council shall be evidence of good and sufficient discharge of Council's payments pursuant to this Agreement.

10. COPYRIGHT/CONFIDENTIALITY

10.1. The Ngarrindjeri shall jointly retain the copyright and ownership of all information, reports and maps which may be produced by the Specialist as specified in Clause 5 and Council shall treat as confidential any information (if any) that may come into her possession in relation to any Aboriginal Sites and areas which have been denied clearance pursuant to Clause 8.2.

10.2. No confidential information relating to this Agreement or confidential information of the type described in this Clause shall be disclosed to any third party, except:

10.2.1. To the extent required by law or in the course of legal proceedings;

10.2.2. To professional advisers of Council or the Ngarrindjeri for the purposes of obtain advice relating to Council's or the Ngarrindjeri' obligations under this Agreement;

10.2.3. To a contractor when such disclosure is needed to ensure that the contractor will not damage an area of significance;

10.2.4. To the extent such information is already, or becomes, in the public domain without breach of this Clause;

- 10.3. Except otherwise provided by this Agreement the Ngarrindjeri and the Survey Team shall not be required to provide to Council any information or disclose any knowledge relating to any areas of significance or Aboriginal heritage or any other matter relating to the Nominated Areas.
- 10.4. The Parties recognise that information supplied by the other is of a commercially sensitive nature and shall not divulge any such information to any third party except to the extent necessary for the conduct of the Clearance Survey by the Survey Team and in general terms to the Ngarrindjeri which may be affected by Council's activities;
- 10.5. The obligation of the Parties under this Clause shall survive termination of this Agreement.

11. NGARRINDJERI FURTHER OBLIGATIONS

Notwithstanding the timing provisions specified herein the Ngarrindjeri and the Survey Team shall use their best endeavours to meet their commitments under this Agreement as soon as reasonably practicable.

12. DISCOVERY OF OBJECT OR SITE OR AREA OF SIGNIFICANCE DURING THE COURSE OF ACTIVITIES

- 12.1. Council will inform on-site employees and contractors of their obligations under the relevant provisions of the *Aboriginal Heritage Act* and this Agreement in relation to:
 - 12.1.1. Disturbance and damage to Aboriginal sites; and
 - 12.1.2. Disturbance and/or removal of artefacts and like objects, and shall be responsible for compliance with the *Aboriginal Heritage Act*.
- 12.2. If, at any time in the course of carrying out the activities in accordance with this Agreement, Council (despite the Clearance Survey) discovers any object and/or Aboriginal Site which Council suspects to be an Aboriginal object or an Area of Significance then in addition to obligations under the *Aboriginal Heritage Act* and the *Aboriginal and Torres Strait Islander Heritage Protection Act*, Council will cease work on that worksite immediately and report the object and/or Aboriginal Site to the Co-ordinator.
- 12.3. The Co-ordinator will endeavour to assess any such report as soon as practicable to determine whether in the circumstances the location of the Aboriginal Site or object may be safely isolated by an exclusion zone so as to allow the Activities in the other areas to continue.
- 12.4. In any event the result of any such find is that the location must be treated by Council as though no Clearance has previously been given and any relevant Aboriginal site or object will be left in situ without being moved or interfered with until another Survey Team, at Council's cost has had the opportunity to make a reassessment of the area.
- 12.5. The Co-ordinator will endeavour to facilitate a reassessment of the worksite as soon as practicable, but in any event within fourteen (14) days of written notification by Council, by a Survey Team comprising of not more than six (6) persons will be assembled by the Co-ordinator to reassess the area.

13. NOTICES

Notices given by one party to another pursuant to this Agreement shall be in writing and sent to the respective addresses and shall be deemed served at the time of transmission if sent by facsimile or upon the earlier of four (4) clear working days if posted by ordinary pre-paid post (if posted within Australia) of the date of actual receipt. For the purposes of this Clause the addresses to which notices are to be sent shall be

For the Ngarrindjeri:

Shaun Berg
Hunt & Hunt
Solicitors
26 Flinders Street
ADELAIDE SA 5000
Telephone: (08) 8414 3333
Facsimile: (08) 8211 7362

For Council:

Tim Drew
Chief Executive Officer
Coorong District Council
Meningie Office
49 Princes Highway
Meningie SA 5264
Telephone: (08) 857511008
Facsimile: (08) 8571516

14. ENTIRE AGREEMENT

This Agreement represents the entire understanding of the Parties in connection with the matters discussed within this Agreement.

15. COSTS OF AGREEMENT

Council shall bear its own costs and the reasonable costs of the Ngarrindjeri in respect of this Agreement including all legal costs associated with the negotiation, preparation and execution of this Agreement. Council shall pay all such legal costs no later than five (5) days after execution of this Agreement by the Ngarrindjeri.

16. DISPUTE RESOLUTION

- 16.1. The parties agree that every effort should be made to ensure that disputes do not arise and that if a dispute does occur the Parties should make every reasonable effort to resolve the dispute without recourse to this Clause.
- 16.2. Unless otherwise provided in this Agreement, if a dispute arises between the Parties concerning this Agreement no party may commence any Court proceedings relating to the dispute unless it has complied with the following paragraphs of this Clause, except where the party seeks urgent interlocutory relief or where the Ngarrindjeri prove to the reasonable satisfaction of Council that they do not have the financial means to pay for mediation pursuant to Sub-Clause 16.6.
- 16.3. Any party claiming that a dispute has arisen under this Agreement between Council and the Ngarrindjeri ("Complainant") must give written notice to the other party ("Respondent"). The notice must adequately identify and provide

details of the dispute and designate a Senior Representative of the Complainant who has the authority to negotiate and settle the dispute.

- 16.4. Within fourteen (14) days after the Respondent receives the notice referred to in the preceding paragraph, the Respondent must give written notice to the Complainant that notice must adequately define that the Respondent's response to the dispute and provide details and refer to any documentary evidence in support of its response to the dispute and designate a Senior Representative of the Respondent who has the authority to negotiate and settle the dispute.
- 16.5. Senior Representatives designated pursuant to the preceding paragraph of this Clause must, within ten (10) days (or within such further period as the Senior Representatives may agree is appropriate) after the receipt of the notice referred to in Sub-Clause 16.4 investigate, negotiate and endeavour to settle the dispute.
- 16.6. If, within one (1) month of the date of the Notice of Dispute, the parties are either unable to resolve the dispute or no meeting has been held, the parties must mediate the dispute in accordance with the guidelines set out in Schedule 4 hereto or as otherwise agreed by the parties, and shall seek to agree upon the appointment of an independent Mediator with relevant experience of the matter in dispute or, failing agreement within fourteen (14) days, the mediator shall be appointed by the Senior Member in South Australia and the National Native Title Tribunal established pursuant to the NTA.
- 16.6. The Senior Member (in determining who to appoint as the Mediator) shall have regard to the parties' intentions in this Agreement for the preservation and protection of the way of life and Aboriginal Heritage of the Ngarrindjeri and shall take account of statutory obligations and commercial considerations of Council.
- 16.7. The Mediator in conducting the mediation shall have regard to the parties' intentions in this Agreement for the preservation and protection of the way of life and Aboriginal Heritage of the Ngarrindjeri who shall take account of statutory obligations and commercial considerations of Council.
- 16.8. If within one (1) month after the date of the Mediator's appointment, mediation has not taken place, or has failed to resolve the dispute, or in the event no Mediator has been appointed within one (1) month of the Notice of Dispute, then any of the parties may by notice terminate the mediation process and may seek such remedies as they decide.
- 16.9. Any date or period of time referred to in this Clause may be varied or amended by agreement between the parties.
- 16.10. None of the parties may commence Court proceedings or arbitration concerning this Agreement unless it has first complied with the dispute resolution provisions contained in this Clause. The parties agree that this Agreement may be pleaded as a bar to any Court action commenced prior to termination of the mediation process other than another application for urgent interlocutory relief.
- 16.11. In any case, each party shall bear its own costs for the mediation.

16.12. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this Clause is an attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this Clause for any other purpose.

17. TERM OF AGREEMENT

This Agreement comes into effect upon execution hereof by both parties and will continue until all obligations under this Agreement are completed.

18. COUNTER-PARTS

This Agreement may be signed simultaneous or seriatim in any number of counter-parts with the same effect as if the signatures were on the same instrument. Any single counter-part executed by a Party shall constitute a full and original Agreement for all purposes.

19. HERITAGE AND NATIVE TITLE

19.1. This Agreement is made as an act of good faith and is not intended to affect, extinguish, or derogate from any subsisting legal rights, powers, interests or obligations of the Ngarrindjeri People, including, but not limited to any such Ngarrindjeri sovereign rights, native title rights and interests, or rights under the *Aboriginal Heritage Act*, (SA) 1988 or *Aboriginal and Torres Strait Islander Heritage Protection Act* 1984 (Commonwealth).

19.2. For the sake of clarity, this Agreement does not comprise an Indigenous Land Use Agreement as defined the Native Title Act, 1993 (Commonwealth), nor comprise an agreement to alter, extinguish, surrender or derogate from common law, equity or statutory native title rights of the native title applicants to assert native title for and on behalf of the native title claimant group.

20. GOODS AND SERVICES TAX

20.1. Expressions used in this clause have the meaning given to them in the GST Act.

20.2. An amount payable by a party under this Agreement in respect of a taxable supply by the other party is not expressed in this Agreement to include GST and the recipient must, in addition to that amount and at the same time, pay to the supplier of the supply, the GST payable in respect of the supply.

20.3. A party is not obliged under this clause, to pay the GST on a taxable supply to it under this Agreement, until the party is given a valid tax invoice for the supply.

21. EDUCATION

21.1. Council will undertake to educate all employees contractors and subcontractors who may be involved with Activities pursuant to this Agreement:-

21.1.1. to ensure that employees contractors and subcontractors have an awareness of and an understanding of native title; and

21.1.2. to ensure that employees contractors and subcontractors are aware of their obligations under the relevant provisions of the *Aboriginal Heritage Act*, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) and this Agreement in relation to avoiding disturbance, damage and interference to any Area of Significance; and

21.1.3. to ensure compliance by employees contractors and subcontractors with the *Aboriginal Heritage Act*, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) and this Agreement in relation to matters dealt with in this Agreement.

22. ABORIGINAL CULTURE

22.1. Council will endeavour to ensure that all non-Aboriginal people engaged directly or indirectly by or on behalf of Council in connection with Activities relevant to this Agreement are given appropriate instruction for the following purposes:

22.1.1. to familiarise such persons with relevant Aboriginal tradition and culture;

22.1.2. to promote a knowledge and understanding of and respect for Aboriginal tradition and culture; and

22.1.3. to foster good relations between them and the Ngarrindjeri.

22.1.4. Council and Ngarrindjeri will co-operate in formulating the instruction referred to in clause 26.1 and also clause 24. Where information is relevant to an understanding of Ngarrindjeri society, culture, history or other matters identified as important by Ngarrindjeri, Council will seek assistance from Ngarrindjeri for provision and presentation of this information.

22.2. The Council acknowledges:

22.2.1. the Ngarrindjeri are the Traditional Owners of land and waters within the Council Area and that according to their traditions, customs and spiritual beliefs its lands and waters remain their traditional country; and

22.2.2. the rights, interests and obligations of Ngarrindjeri to speak and care for their traditional country, lands and waters in accordance with their laws, customs, beliefs and traditions, and to this end it will commit:

22.2.2.1. to seek ways together to uphold Ngarrindjeri rights and to advance Ngarrindjeri interests when decisions are being made about their traditional country, lands and waters;

- 22.2.2.2. to work together to advance harmonious community relations and promote the interests of the whole community;
- 22.2.2.3. to develop greater community understanding of Ngarrindjeri traditions, culture, laws and spiritual beliefs in the Council Area;
- 22.2.2.4. to work together to determine, and to advance the community recognition of a framework agreement for the protection of objects, articles and remains in the possession of the Council;
- 22.2.2.5. to the formulation of a model or models of best practice for consultation in relation to development assessment within the meaning of the Development Act 1993 (SA) to occur in the Council Area, which reflects the rights, interests and obligations of the Ngarrindjeri.

23. EMPLOYMENT AND TRAINING

- 23.1. Council will (and will encourage any of his contractors and subcontractors to) seek to engage members of the Ngarrindjeri and to give them employment where practicable (on like terms and conditions as apply to all such employees), in undertaking Activities pursuant to this Agreement.
- 23.2. If Council dismisses any employee being a member of the Ngarrindjeri, Council will provide reasons for his or her dismissal. Further Council will provide written notice to Ngarrindjeri and give reasons for, the dismissal from employment of any member of the Ngarrindjeri within seven (7) days after such dismissal or termination. Council will be responsible for requiring any contractors or subcontractors to comply in the same way.

EXECUTED AS AN AGREEMENT.

SIGNED by TIM DREW, CEO
COORONG DISTRICT COUNCIL }
in the presence of:-

[Signature]
Witness

[Signature]

SIGNED for and on behalf of
NGARRINDJERI TENDI INCORPORATED
in the presence of:-

Geoff Rigney
Witness

[Signature]
George Trevorrow, Chair
3/9/07

SIGNED for and on behalf of
NGARRINDJERI HERITAGE COMMITTEE
INCORPORATED
in the presence of:-

T.S. Trevorrow
Witness

T.S. Trevorrow
Thomas Trevorrow, Chair
3/9/07

SIGNED for and on behalf of
NGARRINDJERI NATIVE TITLE
MANAGEMENT COMMITTEE
in the presence of:-

M. Rigney
Witness

[Signature]
Matthew Rigney, Chair
3/9/07

SCHEDULE ONE

DEFINITIONS AND INTERPRETATIONS

- DEFINITIONS

The following terms shall have the following meanings:-

- **“Aboriginal”** means a person who is a member of the Aboriginal race of Australia;
- **“Aboriginal Heritage”** includes any fact, matter, activity or thing which has affected or may be likely to affect an Aboriginal or any Aboriginal tradition or culture including an Aboriginal Object Area of Significance, Remains, or Native Title Rights;
- **“Aboriginal Heritage Act”** means the *Aboriginal Heritage Act 1988 (SA)*;
- **“Aboriginal Tradition”** has the same meaning as in the *Aboriginal Heritage Act*;
- **“Aboriginal object”** means any ‘Aboriginal object’ as defined in the *Aboriginal Heritage Act 1988 (SA)*;
- **“Aboriginal remains”** means any ‘Aboriginal remains’ as defined in the *Aboriginal Heritage Act 1988 (SA)*;
- **“Aboriginal site”** means any ‘Aboriginal site’ as defined in the *Aboriginal Heritage Act 1988 (SA)*;
- **“Activities”** means any work or activities specified in the Clearance Survey Request whatsoever to be undertaken by Council to occur on the Nominated Areas;
- **“Applicable Law”** means every law and regulation of South Australia or the Commonwealth from time to time in operation in South Australia which is applicable to the activities of Council;
- **“Area of significance”** means an area within the Nominated Areas which is of cultural, social or spiritual significance to Aboriginal people traditionally responsible for those areas and includes any “Aboriginal site”, “Aboriginal object” or “Aboriginal remains” as defined in the *Aboriginal Heritage Act* and a “significant Aboriginal area” as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act (1984)* (Commonwealth);
- **“Budget”** means a financial costing of the performance of the Clearance Surveys prepared and agreed in accordance with Schedule 3;
- **“Clearance”** means the approval by a Survey Team of the Nominated Areas or any part thereof as not having an area of significance that would be adversely affected by Council undertaking Activities and the word “cleared” has a corresponding meaning;
- **“Clearance Survey”** means the task of inspecting and assessing the Nominated Areas undertaken by the Survey Team so as to identify areas which are cleared and those areas which are not cleared for the Activities;
- **“Clearance Survey Request”** means the written request made by Council referred to in Clause 4 which includes the information in Schedule 2 for the Ngarrindjeri to undertake a Clearance Survey;

“**GST**” means GST within the meaning of the GST Act A New Tax System (*Goods and Services Tax*) Act 1999;

“**GST Act**” means the GST Act A New Tax System (*Goods and Services Tax*) Act 1999;

“**Nominated Areas**” means the land identified in the maps contained in Schedule 5;

“**NTA**” means the *Native Title Act (1993) (Commonwealth)* as amended;

“**Party/parties**” means Council and the Ngarrindjeri;

“**Report**” means a written report prepared pursuant to Clause 8 to include notification of each nominated area inspected, assessed and cleared or not cleared by a survey team in accordance with Clause 5.4 hereof;

“**Specialist**” means an appropriately qualified person to assist the Aboriginal members of the Survey Team examples of which include anthropologists and archaeologists;

“**Survey Team**” means a survey team organised from time to time in accordance with Clause 5.

- INTERPRETATIONS

Referenced to Act include any regulations made pursuant to that Act and any Amendments to the Act or Regulations for the time being in force and also to any Act or Regulations passed in substitution thereof.

The singular includes the plural and vice versa and words importing gender include any other gender.

The reference to a person includes a firm, counsel operation, governmental authority (State or Commonwealth) or body whether incorporated or not.

Reference to a clause means a clause in this Agreement.

The meaning of a word or words followed by the word “includes” or “including” is not limited only to the meaning of the word or words following the word “includes” or “including” .

Headings are for convenience of reference and do not affect the interpretation of this Agreement.

The Background Recitals form part of this Agreement.

SCHEDULE TWO

CLEARANCE SURVEY REQUEST

A Clearance Survey Request by Council must include the following materials:

1. Two (2) copies of a 1:25000 scale or other appropriate and general available map and other additional maps and aids (if any) as may be reasonably required clearly identifying the location of the Nominated Area to be inspected during the conduct of the Clearance Survey; and
2. Particulars of:
 - (a) The nature scope and objectives of [Insert Company Name]'s proposals to be carried out at the Nominated Area;
 - (b) The estimated duration and timetable for the proposal specified in 2(a) hereof in respect of:
 - (i) planning stage;
 - (ii) development stage.
 - (c) The techniques, infrastructure and major facilities to be established and a timetable for any such developments;
 - (d) The proposed camp sites, access routes for personnel and equipment both to and within the Nominated Area, including particulars of vehicle access and any proposals to construct or upgrade roads or other access facilities;
 - (e) Any water, timber or other resources proposed to be obtained or cleared from the nominated areas;
 - (f) The likely effect of the proposed planning and development activities on the environment and proposal to minimise both their environmental impact and disturbance to the Ngarrindjeri and an outline to Council's rehabilitation requirements and environmental protection requirements;

- (g) The identity of any contractors and sub-contractors (if known at this time) engaged or likely to be engaged and that the minimum and maximum number of personnel likely to be on the Nominated Area from time to time and their roles in carrying out the proposed activities;
- (h) Copies of all notices, proclamations, gazettals, guidelines issued by the South Australian Government (or its instrumentalities) or received by Council in respect of the Nominated Area and any developments thereon.

SCHEDULE THREE

BUDGET

Clearance Team Coordinator's time (@ \$300/day)	\$
Reimbursement costs of Clearance Team Coordinator	\$
Specialist costs	\$
Administration (use of office facilities)	\$
Motor vehicle costs	
Accommodation costs	
Other costs	
Clearance Team (\$300/day)	\$
Reimbursement costs of Clearance Team	\$
Community meeting (where agreed)	\$
- venue	
- catering	
- travel reimbursement costs for members	
TOTAL BUDGET	\$

SCHEDULE FOUR

GUIDELINES TO MEDIATION

The following is a guideline to the mediation process should a dispute arise and be referred to dispute resolution pursuant to Clause 16.

1. Role of Mediator

1.1 The mediator will be neutral and impartial. The mediator will assist the parties to attempt to resolve the dispute by helping them to:

- (a) systematically isolate the issues in dispute;
- (b) develop options for the resolution of those issues;
- (c) explore the usefulness of these options; and
- (d) meet their interests and needs.

1.2 The mediator may meet with the parties together or separately.

1.3 The mediator will not give legal or other professional advice to any party, impose a resolution on any party or make a decision for any party.

1.4 The mediator will not accept an appointment in relation to any proceedings concerning the dispute.

1.5 Neither party will take action to cause the mediator to breach paragraph 1.4.

2. Conflict of Interest

The mediator must prior to commencement of mediation disclose to the parties to the best of the mediator's knowledge any prior dealings with any of the parties as well as any interests in the dispute. If in the course of the mediation the mediator becomes aware of any circumstances that might reasonably be considered to affect the mediator's capacity to act impartially, the mediator must immediately inform the parties of those circumstances.

3. Cooperation

The parties must cooperate in good faith with the mediator and each other during the mediation.

4. Conduct of Preliminary Conference

As part of the mediation, the mediator will establish a preliminary conference at a time and venue convenient to the parties to establish a timetable for mediation.

- 5.** The parties must attend the mediation with authority and instructions to reach a reasonable resolution of the dispute. At the mediation each party may have one or more other persons including legally qualified persons to assist and advise them.

6. Communication between Mediator and Parties

Any information disclosed to a mediator in private is to be treated as confidential by the mediator unless the party making the disclosure states otherwise.

7. Confidentiality of the Mediation

The parties and the mediator will not disclose to anyone not involved in the mediation any information or document given to them during the mediation unless required by law to make such disclosure.

- 8.** The parties and the mediator agree that other than in the course of enforcement of the settlement agreement for the dispute by judicial proceedings, the following will be privileged and will not be disclosed in or be in the subject of a subpoena to give evidence or to produce documents in any proceedings in respect of the Dispute:

- (a) Any settlement proposal whether made by a party or the mediator;
- (b) The willingness of a party to consider any such proposal;
- (c) Any statement made by a party or the mediator during the mediation;
- (d) Any information prepared for the mediation.

9. Termination of the Mediation

A party may terminate the mediation at any time after consultation with the mediator.

10. Settlement of the Dispute

If settlement is reached at the mediation, the terms of the settlement must be written down and signed by the parties before they leave the mediation.

11. Enforcement of the Settlement Agreement

Any part may enforce the terms of the settlement agreement by judicial proceedings.

Any part may call evidence:

- (a) For the purposes of this clause;
- (b) Of the settlement agreement including evidence from the mediator any other person engaged in the mediation.

12. Exclusion of Liability

The parties acknowledge that any mediator appointed will not be liable to them for any act or omission in the performance of the mediator's obligations under this Agreement.

The parties undertake to indemnify the mediator against any claim for act or omission in the bona fide performance of the mediator's obligations under this Agreement.

13. Costs

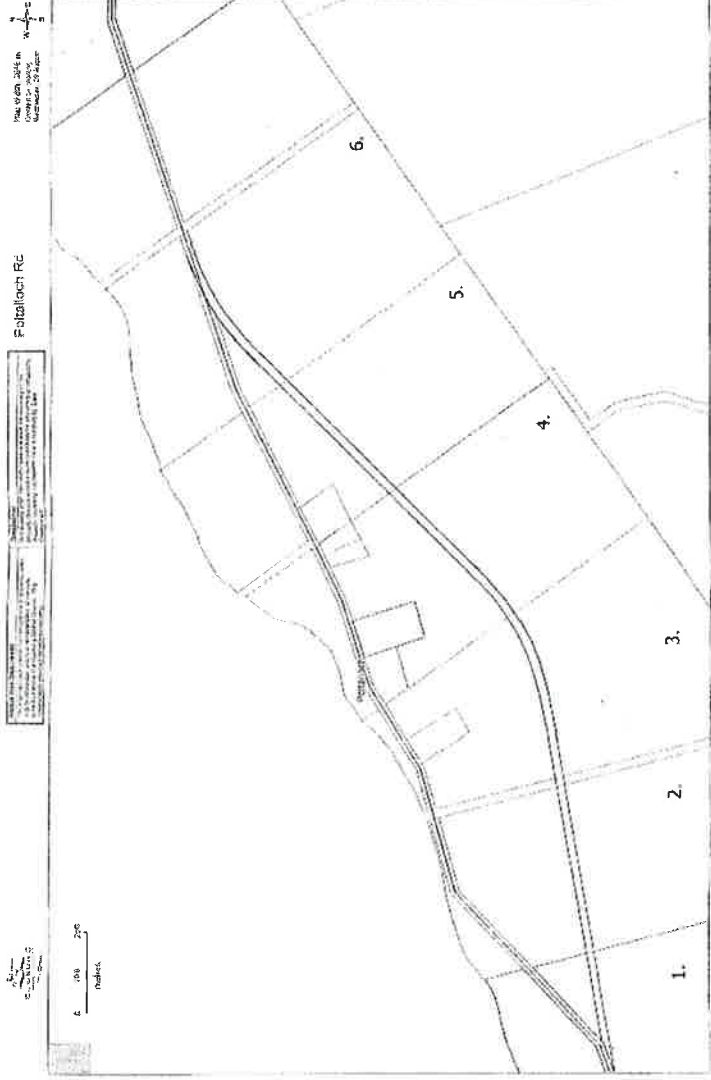
Council is liable to the mediator for the mediator's fees.

SCHEDULE 5

NOMINATED AREAS

[MAPS ATTACHED]

PROPOSED ROAD REALIGNMENT BEHIND POLTALLOCH STATION, POLTALLOCH ROAD



PROPOSED ROAD REALIGNMENT BEHIND POLTALLOCH STATION, POLTALLOCH ROAD

All Property owned by:

CA Cowan
"Poltalloch Station"

C/- CJT Cowan

PMB 3

TAILEM BEND SA 5260

1. Lot 14 Hd Malcolm; DP F506, CT 5832/685
2. Lot 215 Hd Malcolm; DP F207645, CT 5832/156
3. Lot 8 Hd Malcolm; DP F2775, CT 5514/764
4. Lot 5 Hd Malcolm; DP F2776, CT 5514/763
5. Lot 6 Hd Malcolm; DP F2774, CT 5514/755
6. Lot 222 hd Malcolm; DP F207652, CT 5514/161