

SA Indigenous Land Use Agreement (ILUA) Statewide Negotiations

AGREEING ON NATIVE TITLE

**Indigenous Land Use Agreements - A Local
Government Template**

June 2006

This package includes:

- 1. Background Information**
- 2. Local Government Indigenous Land Use Area Agreement (ILUA) Template**



These parties to the SA ILUA Statewide Negotiations (Aboriginal Legal Rights Movement, Local Government Association and State Government) have prepared this package of information for parties interested in participating in negotiations to develop Indigenous Land Use Agreements related to Local Government.

AGREEING ON NATIVE TITLE

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1. BACKGROUND INFORMATION

1) **Background**

In South Australia 24 native title claims have been lodged in the Federal Court seeking determinations about the nature and extent of native title rights and interests. These claims cover most of the State. Of these only one has made its way through trial. This has taken over 10 years at enormous financial cost and that of the relationships between the parties.

2) **What is Native Title?**

Native title is recognition in the law of Australia of the laws and customs that Aboriginal people have practised over centuries.

Only those laws and customs that are currently observed and practised are recognised and only if they give rise to rights and interests specifically over land and waters. Sometimes these rights will be exclusive but more often they will be shared rights with other landholders.

Native title claim groups must also establish that they operate as a society practising laws and customs that has its origins in a social structure that functioned at the time of European settlement.

Native title law recognises that in some circumstances particular grants of land will extinguish native title and that it may also be extinguished in some circumstances by particular activities that have taken place over land.

Much of the way that native title and other law about landholding interact is governed by the *Native Title Act 1993 (Commonwealth) (the NTA)*.

The NTA deals with the past effect of landholding on native title rights and interests, (that is whether native title has been extinguished or not.) It also provides a “future act scheme” which regulates the way future activities can take place over land where native title may still exist.

3) **What is an Indigenous Land Use Agreement (ILUA)?**

Indigenous land use agreements (ILUAs) are legally binding agreements that allow parties to a native title claim to work out their own way of regulating future activities over an area of land or waters by altering or modifying the future act scheme in the NTA. They may also deal with extinguishment and compensation for extinguishment or suppression of native title for the period of the agreement.

Although ILUAs deal with native title rights and interests, they may nevertheless deal with other matters. For example an ILUA may also create a protocol for dealing with Aboriginal heritage (which is different from native title and is governed by the *Aboriginal Heritage Act (1988) SA* and not the NTA). They may also provide for economic and social benefits for Aboriginal communities.

ILUAs can be as wide or as narrow in their operation as the parties decide between themselves since they can also deal with issues outside native title.

Not all parties to a native title claim need to be involved in each ILUA. For example in the case of local government ILUA negotiations the parties would be the State, the claimants and local councils and the area affected by ILUA discussions may be the whole or merely a portion of a claim area. Similarly, council areas may be wholly or only partially within a claim area.

ILUA negotiations are entered into voluntarily and take place outside the court process. Although only a court can determine where native title exists, these agreements operate regardless of whether there has been a determination of native title or not. In fact an ILUA may make a court decision about native title unnecessary and can provide a short-cut through the expensive and lengthy court process.

An ILUA is a contract between the parties but to be valid and modify the effect of NTA, the ILUA must be registered with the National Native Title Tribunal (NNTT). When it is registered an ILUA then has the advantage of binding all of the signing parties, as well as all native titleholders for the area of the ILUA whether they are parties to the ILUA or not.

4) **Other Ways of Resolving Native Title Claims**

Native title claims can be resolved by:

- a) obtaining a ruling from the court about the nature and extent of native title rights and interests. This is made after the court has heard evidence;
- b) obtaining a consent determination which is a court order made after all parties have agreed the existence or otherwise of native title rights and interests and their extent. The court must also be satisfied that there is sufficient evidence to support the determination; or by
- c) negotiating an ILUA as a result of court ordered mediation managed by the National Native Title Tribunal. This is different from a voluntary ILUA as the Tribunal can refer the matter back to the court straight away if there is no agreement.

Although it is for each party to a native title claim to obtain its own legal advice about whether or not to commence voluntary ILUA negotiations, it is worth noting that: -

- i) these discussions give control of the process and its outcomes to the parties;
- ii) costly and protracted litigation can be avoided;
- iii) if the matter goes to court, the court will not decide in detail how native title rights and interests are to be exercised on the ground. This creates uncertainty for all parties in the future, and means that, in practical terms, parties will have to reach an agreement in any case;
- iv) litigation can divide parties who could otherwise work together for the period of negotiations and into the future; and
- v) the discussions in a voluntary ILUA can deal with other matters that affect the parties in addition to native title.

5) **The Statewide ILUA Process**

As a response to the delays and costs involved in litigating native title claims (one claim through the trial process in SA at an estimated total cost of \$15 million) the peak body representatives of all major parties to native title claims have decided that a Statewide voluntary Indigenous Land Use Agreement process provides an effective way to streamline negotiations and resolve native title claims and avoid litigation.

Over the past three years the State, ALRM, the Local Government Association, the Chamber of Mines and Energy; the South Australian Farmers Federation; South Australian Fishing Industry Council and the Seafood Council have been working towards developing example Indigenous Land Use Agreements or “templates” covering each sector of interest i.e. local government, minerals, pastoral, fishing and parks.

The templates have been drafted with input from all parties from each sector. They have been designed as useful practical guides to the parties in their attempts to resolve native title.

These templates are a starting point to the discussions between the parties. The terms of the example ILUAs are not binding on any party until they are formally agreed. As they stand the templates are a series of suggestions for the parties to each negotiation to work with, extend and modify to suit their own individual circumstances.

6) **Aboriginal Culture**

As the templates deal with more than native title it is necessary to have an understanding of some of the different ways that Aboriginal culture is dealt with, specifically in legislation.

Aboriginal people are referred to in a number of pieces of legislation. A number of different terms are used to describe different groups and sub-groups depending on, among other things, position and varying degrees of responsibility.

Aboriginal Tradition and Culture refers to the body of tradition, custom and beliefs that are observed by Aboriginal people generally or by a particular community or group of Aboriginal people. It includes any traditions, observances or customs and beliefs relating to particular persons, areas, objects or relationships and includes those customs and beliefs that have evolved or developed from tradition that pre-dates European colonisation.

Traditional Owner refers to those people who, through membership in a descent group or clan, have responsibility for caring for particular country, of an Aboriginal site or object and means an Aboriginal person who in accordance with Aboriginal tradition, has social, economic or spiritual affiliations with, and responsibilities for, the site or object. Traditional Owners are authorised to speak for country and its heritage. Authorisation to speak for country and heritage may come from being a senior traditional owner, an elder, or as a registered Native Title claimant.

Custodian refers to those people who have ties to specific country and have responsibilities for that country, to look after the stories and ceremonies that travel through that country and to protect it. Sometimes, that person looks out for that country on behalf of another and they may also look after the stories and ceremonies.

Native Title Claimant Group refers to those people(in relation to in an application for a determination of native title) who according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed.

7) **Local Government and Future Acts ILUA Template.**

The Local Government ILUA Template was developed as a result of consultations between the Aboriginal Legal Rights Movement, the Local Government Association and the State Government.

The Local Government ILUA template was drafted with the benefit of the experience of the first local government and future acts ILUA negotiations. These negotiations took place over a two year period between representatives of four local councils on

Yorke Peninsula, the Narungga People, Aboriginal Legal Rights Movement and the State.

As a consequence of being developed in tandem with the Narungga Area ILUA, the Local Government template has been drafted in significant detail. It provides an essential core from which to negotiate individual agreements.

8) **The Broad Scheme of the Template**

The main focus of the Local Government ILUA Template is to provide the parties with an alternative, more practical system for managing future acts.

The future act process in the ILUA:

- a) Dispenses with the future act provisions of the *NTA* and creates a simple “notifiable act” scheme, which applies in limited circumstances over agreed “sensitive land” within the claimed area;
- b) triggers a scheme whereby the claim group can request input into the effect that any development may have on Aboriginal heritage before development starts;
- c) provides a system for the claim group to be engaged by the council or State to conduct cultural surveys on sensitive land where the group has concerns about the protection of Aboriginal heritage; and
- d) implements a planning protocol that allows the claim group to be regularly notified about all development authorisations on sensitive land and notifies developers of their responsibilities under the *Aboriginal Heritage Act*.

A “notifiable act” includes all those activities currently listed in section 24KA of the *NTA* (which authorises public works); major earthworks; the division of an allotment into four or more sub-allotments and the grant of any freehold or leasehold interest in land. The template also deals with the effect of notifiable acts on native title.

“ Sensitive land” can include all Crown land, all Crown land dedicated and declared to be under the care, control and management of any council and any other land identified by a native title group as being sensitive.

This notifiable act scheme provides an early warning system that is designed to stem potential conflict about future developments and to avoid breaches of the *Aboriginal Heritage Act 1988 (SA)*.

The template also provides a detailed method for dispute resolution and looks to the future relationship of the parties by providing for a Liaison Committee to be set up comprising representatives of all the parties. The objects of the Committee are set out in the ILUA and have at their heart the promotion of the interests of all parties within the local community.

9) **Matters to be negotiated by the Parties**

The template is not designed to limit the parties in their discussions with each other.

There will be other significant matters, such as benefits, which the parties will want to open up for discussion and agreement in addition to those covered by the template. Similarly more limited matters, such as what might be identified as sensitive land (apart from Crown and dedicated Crown land), will need further discussion.

As an ILUA is a voluntary arrangement and each of the parties must agree on its terms, Councils will choose to sign on an individual basis. The ability to adapt and expand the template to meet a diversity of local interests will be a hallmark of the success of individual negotiations.

The parties to the Statewide ILUA process are confident that the template will be of great practical assistance to those parties seeking to resolve native title by agreement.

10) Some Frequently Asked Questions

a) **How are native title negotiations funded?**

The costs of negotiating ILUA agreements are borne by the State Government and the Commonwealth Government. Each party will only be responsible for funding their own negotiation costs and these may be met by a commitment from the Commonwealth Government upon application. All local councils were funded by the Commonwealth Government in the Narungga local government ILUA negotiations.

b) **Once the ILUA is registered, who pays the ongoing administrative costs?**

The responsibility for ongoing costs after the ILUA is signed will be set out in the ILUA and is a matter for negotiation.

The template ILUA provides that a liaison committee is to be set up within twelve months of signing of the ILUA and that it is to meet at intervals of not more than six months.

A council within the ILUA area may end up providing a venue for the meetings and perhaps secretarial services. The council would be able to plan for this support and any costs, in advance.

As the meetings form a convenient forum to discuss a range of matters with Aboriginal people, it is probable that such involvement would be required in normal course of council business.

c) **How does an ILUA deal with the Councils obligations under the Aboriginal Heritage Act (1988) SA?**

The Aboriginal Heritage Act (the AHA) imposes an obligation on the Minister to protect sites, objects and remains of significance to aboriginal culture. Once a site is found and registered by the Minister it can only be disturbed with the Minister's consent.

Even if sites are not listed on the register they must not be disturbed without the Minister's consent.

Because the Minister does not have the resources to identify and list all sites of significance in SA a system for managing the risks of disturbance of sites has grown up outside of the AHA.

It has become the practice for developers (including local councils and the State) to seek advice from traditional owners about whether or not a site may be disturbed by the development. This usually involves a site survey (paid for by the Council or other developer) being done by traditional owners and other experts on Aboriginal culture.

The template ILUA has its own risk management protocol for the council and State to use when they are developing land.

This protocol gives adequate notice to the claim group of all developments on sensitive land. It sets out a method for survey work to be done (including set fees) and allows the claim group to identify the individuals within their group who are best able to speak for that particular site.

One of the most useful parts of the protocol is that it allows the group to self

manage heritage and does not rely on the council or the State to decide with whom they must consult.

The advantage of the protocol in the ILUA is that it ties notification of acts that may affect native title and Aboriginal heritage together and then sets out a system for the claim group and the council or the State to manage concerns about disturbance of land. The effect of this is to give advance warning to the claim group of all developments over land which they have deemed sensitive.

If no survey is requested then the council can proceed with its work with confidence. The council is not put in a position of reacting to heritage concerns as they arise, nor of itself identifying the right aboriginal people to do the survey work. It therefore provides a streamlined system that is activated well in advance of any development.

This system cannot replace the Minister's decision with the claim group's decision but it manages the risk in a better way than it is currently being managed by councils and claimants alike.

d) **Can a council be prosecuted for damage to a site if it has followed the system provided for in the ILUA?**

The heritage protocol in the ILUA is a risk management tool. The only certainty that can be delivered under the AHA is for the Minister to make a determination that there is no site or if there is one, it can be disturbed. These determinations can take a lot of time and there is a backlog of requests for determinations.

Whilst it is possible that a council could be prosecuted for breaches of the AHA the heritage protocol in the ILUA minimises the risk of prosecution to an acceptable level. Councils already use risk management when dealing with Aboriginal heritage, this system improves it.

It is worth noting that in the twenty years since the AHA was enacted there has only been one prosecution and this was unsuccessful.

e) **Are ILUAs enforceable against the Minister if he later decides to exercise his discretion under the Act?**

ILUA agreements are only enforceable between the parties. However it is extremely unlikely that a Minister would upset the arrangements entered into as a result of using the protocol. The State government after all is a party to the ILUA and will only sign it where it is satisfied that it offers real comfort to the parties about dealing with Aboriginal heritage.

f) **What is the State Government doing about the AHA?**

The State-wide ILUA negotiations Maintable has made submissions to the State Government about putting a better system in place to manage Aboriginal heritage that will recognise the arrangements reached in ILUAs. At this stage the State is not proposing to amend the Act. However as the State is a party to and beneficiary of ILUAs it will not undermine the agreements reached in ILUA's by legislation.

g) **What happens if a council damages a site without getting the Minister to authorise damage under section 12 of the AHA?**

Only the Minister can prosecute breaches of the AHA. Individual Aboriginal people cannot launch prosecutions. It is true to say the Minister has the obligation to consult with a wide group of people under the AHA but ultimately it is in his discretion to prosecute, make a declaration about a site or allow disturbance when a site is discovered.

The protocol in the ILUA does not permit the claim group to authorise disturbance to sites. If a site is identified it is more likely that the development

will be modified as a result of discussions between the council, the claim group, the State and the developer to accommodate any sites. As a last resort the parties can seek a determination from the Minister where agreement cannot be reached.

- h) **Why can't all the culturally sensitive sites be listed in the ILUA?**
The preservation of certain sites as sacred to a particular group is an integral part of Aboriginal culture. The systematic identification of specific sites could lead to a knowledge of sacred places outside the group, which would infringe Aboriginal law and custom. There is no reason why this aspect of Aboriginal culture should be disturbed without good reason when a fair system is in place to deal with the general protection of sites.

In addition the costs to the council of having every site within its area surveyed would be prohibitive particularly when it may prove a waste of time if no development is to occur there.

It has been suggested that the State should pay the costs of partial heritage surveys of areas of land. The reason that the State will not do this is that it is the responsibility of the developer of land to comply with the AHA and the State will not carry the risks of survey and clearance for other parties.

- i) **What is the advantage of the future act scheme in the template ILUA?**
It provides a simpler system for managing developments on land by only requiring notice about certain types of dealings over sensitive land and reduces the level of notification that is currently required under the NTA.

Whilst it cuts down the notification requirements under the NTA it ensures that all acts which may affect Aboriginal heritage in sensitive land are notified. It also means that the area over which the notification is to be given is only that which the claim group itself considers to be culturally important.

- j) **What are the costs of complying with the notification and survey protocol under the ILUA and how can these be predicted?**
The costs of surveys are specified in the ILUA and the ILUA can specify these in as much detail as the parties wish. There is no compulsion for the Council to agree to a survey if one is requested. The initial meeting with the group which is programmed into the protocol will give the claim group and the council a good opportunity to discuss whether a survey is necessary.

Councils are already managing Aboriginal heritage outside of the AHA and are budgeting for survey costs. The advantage of the ILUA is that the costs of survey are set with a claim group with whom the council can deal with confidence. This will avoid further surveys down the track when heritage concerns that are raised late in the piece and could cost in terms of development delays.

So far as claim groups are concerned payment for all heritage clearance work is negotiated in advance and the group can negotiate all costs in this process without the need to start from square one each time it wishes to ensure that Aboriginal heritage is being protected.

The claim group is kept in the loop about developments and allows their concerns about heritage to be taken in to account before it is too late.

- k) **What are the costs of the dispute resolution process in the ILUA?**
The process is designed to keep the parties out of court and to keep the relationship functioning. It is common to include these types of arrangements in commercial contracts to reduce legal costs in the event of a dispute.

If the parties were arguing matters concerning the agreement in court it would cost far more and the losing party would usually pay. The costs of mediation are much lower and lawyers need not necessarily be involved.

l) **Will the native title claimants have sufficient funds to fulfil their obligations under the ILUA?**

The cost burden to claim groups is not high, although travel may be a factor in more remote areas. Where travel costs are an issue this may be negotiated with the State as well as the Council.

Meetings of the liaison committee are programmed every six months to avoid a heavy cost burden on the claimants.

m) **Who pays compensation for any past or future extinguishment of native title rights under the ILUA?**

This is a matter for the State not the council. Compensation will form part of the overall benefits package negotiated in each individual ILUA

(Native Title Claim Group) Local Government Indigenous Land Use Area Agreement Template

[insert name of relevant Minister]

For and on behalf of the State of South Australia

and

[insert claim group name]

and

Aboriginal Legal Rights Movement Inc

and

[insert Council name(s)]



The intellectual property of this document rests with the Parties to the ILUA Main Table. Requests in writing will be considered for its use by those out side the ILUA Main Table.

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Schedule 1 – ILUA Area

Schedule 2 – Notice Details

Schedule 3 – Sensitive Land

Schedule 4 – Reconciliation Statement

Schedule 5 – Crown Land and Crown Land Under Care, Control and Management of the Councils

Date	This Agreement is entered into on the day of 2004
Parties	<p>BETWEEN</p> <p>1. <i>[insert responsible Minister's name and details]</i> (State)</p> <p>AND</p> <p>2. <i>[insert claim group name and details]</i> AND</p> <p>3. Aboriginal Legal Rights Movement Inc ABN 32 942 723 464, an incorporated association incorporated under the Associations Incorporation Act No 30 of 1985 (SA), of Level 4, 345 King William Street, Adelaide, South Australia 5000 (ALRM) AND</p> <p>4. [<i>insert council name and details</i>](Council) AND</p> <p>5.</p> <p>6.</p> <p>7. (Parties 4 to ? inclusive are collectively referred to as the Councils and a reference to a Council means any one of the ??? Councils)</p>
Recitals	<p>A <i>[insert claim group name]</i> assert traditional ownership and native title in relation to land and waters in the ILUA area.</p> <p>B</p> <p>C</p> <p>D</p> <p>E <i>[insert claim group rep name?]</i>:</p> <p> (a) enters into this ILUA in the performance of its functions of managing the asserted traditional ownership and native title of <i>[insert claim group name]</i> in relation to land and waters in the ILUA area and all matters relating to them; and</p> <p> (b) by signing this ILUA confirms that <i>[insert claim group rep name]</i> has been authorised by <i>[insert claim group name]</i> to enter into this ILUA on behalf of the <i>[insert claim group name]</i>.</p> <p>F ALRM is the representative Aboriginal/Torres Strait Islander body for the ILUA area pursuant to the Native Title Act.</p>

- G Before signing this ILUA ALRM has, as far as practicable, consulted with and had regard to the interests of [*insert claim group name*] and other persons (if any) who hold or may hold native title in relation to land or waters in the ILUA area.
- H The State:
- (a) is the Crown in right of the State of South Australia;
 - (b) through the minister, its departments and agencies:
 - (i) administers the Crown Lands Act 1929 (SA) which provides, among other things, for the grant of interests in land capable of affecting native title; and
 - (ii) administers the Development Act 1993 (SA) which provides, among other things, for planning and the regulation of development in South Australia; and
 - (c) is the first respondent to all native title determination applications in South Australia.
- I The Councils are constituted under the Local Government Act No 62 of 1999 (SA) and have the statutory powers and capacities conferred on them under that Act and any other Act.
- J Each party recognises the interests of each other party, and of land owners and occupiers, in relation to the ILUA area.
- K In particular the parties recognise that:
- (a) the relationship of Aboriginal people to land and waters is central to their well being and to their continuing connection to the religious, emotional, spiritual and non-human world;
 - (b) [*insert claim group*] assert that native title exists in relation to land and waters in the ILUA area and that the [*insert claim group*] constitute the group that claims to hold native title in relation to land and waters in the ILUA area; and
 - (c) Aboriginal sites, objects and remains within the ILUA area are of significance to the [*insert claim group*] and that it is in the interests of the general community within the ILUA area that those sites, objects and remains be preserved and protected.

L *[insert claim group]* the ALRM, the State and the Councils have negotiated with each other for this ILUA, which, amongst other things, provides for:

- (a) the parties to agree to the validation of all invalid acts done by the State or any of the Councils in the ILUA area before the registration date;
- (b) the parties to consent to the doing of all future acts in the ILUA area by the State and each of the Councils;
- (c) a protocol for the preservation and protection of Aboriginal sites, objects and remains in the ILUA area;
- (d) a planning protocol providing for:
 - (i) notification to *[insert claim group notifiable body]* of certain types of development on certain land; and
 - (ii) notification to certain developers of their obligations under the Aboriginal Heritage Act;
- (e) the establishment of a liaison committee to carry out functions relative to the common interests of the parties; and
- (f) certain benefits for *[insert claim group]* as compensation for the purposes of the Native Title Act,

on the terms of this ILUA.

M The provisions of this ILUA apply instead of the right to negotiate procedure, which is not intended to apply to the doing of any future act in the ILUA area by the State or any of the Councils.

N This ILUA is an area agreement pursuant to sections 24CA to 24CL of the Native Title Act 1993 (Cth) and regulation 7 of the Native Title (Indigenous Land Use Agreements) Regulations 1999 (Cth) and is intended to be registered on the register.

O The parties enter into this ILUA for the purpose of improving relationships between each of them and to enhance development within the ILUA area for the social and economic well being of all people living and working on the *{geographic name of area to which ILUA applies}*

It is agreed as follows.

Preliminary

Definitions

In this ILUA, unless the context otherwise requires:

Aboriginal site, object or remains means any of:

- (a) an "Aboriginal site", an "Aboriginal object", or "Aboriginal remains" as defined in the Aboriginal Heritage Act 1988 (SA)

commencement date means the date on which the parties to this ILUA execute it;

development authorisation means an authorisation granted in respect of a notifiable act pursuant to the Development Act 1993 (SA);

future act has the meaning provided under the Native Title Act 1993 (Cth) but excludes any such act that is the compulsory acquisition of the whole or any part of native title rights and interests;

ILUA means this Indigenous land use agreement;

ILUA area means the geographical area in relation to which this ILUA applies, as specified in schedule 1;

native title has the meaning given in the Native Title Act 1993 (Cth);

notifiable act means any of the following (where done during the term):

earthworks which cause major disturbance to land or to the bed or subsoil under waters (including any works covered by s24KA of the NTA and any sewerage treatment facilities);

the division of any allotment into four or more sub-allotments;

the grant of any fee simple or leasehold interest in land including any easement;

register means the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act;

registrar has the meaning given in the Native Title Act;

registration date means the date upon which this ILUA is registered and entered on the register as an area agreement pursuant to sections 24CA to 24CL of the Native Title Act 1993 (Cth) and regulation 7 of the Native Title Indigenous Land Use Agreements Regulations 1999 (Cth);

sensitive land means:

land identified as sensitive by [insert claim group] as specified in Schedule 3;

all Crown land (as defined in the Crown Lands Act) within the ILUA area; and

all dedicated lands (as defined in the Crown Lands Act) within the ILUA area declared to be under the

**care, control and management of any of the
Councils pursuant to the Crown Lands Act,**

[this is suggested approach but is to be negotiated between the parties and may include or exclude all land within the outer boundaries of any built up area within any township or settlement as contained in the public map];

specialist means an anthropologist or archaeologist appointed pursuant to clause 4.2(b)(ii) for purposes of carrying out any heritage survey;

term means the term of this ILUA set out in clause 2.1;

terms defined in the Native Title Act 1993 (Cth) and Aboriginal Heritage Act and not otherwise defined in this ILUA bear their defined meanings when used in this ILUA; and

other terms which are defined elsewhere in this ILUA bear their defined meanings when used in this ILUA.

Interpretation

In this ILUA, unless the context otherwise requires:

the singular includes the plural and conversely;

a gender includes all genders;

if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;

a reference to a clause, schedule, annexure or appendix is a reference to a clause of, or a schedule, annexure or appendix to, this ILUA;

a reference to a clause includes a reference to a sub-clause, paragraph or sub-paragraph of that clause;

a reference to an agreement, deed or document (including this ILUA) is a reference to the agreement, deed or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this ILUA or that other agreement, deed or document;

- a reference to a party to this ILUA or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, legislation or a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
- a reference to a document includes an agreement (referred to in paragraph (k)) in writing and any certificate, notice, instrument and document of any kind;
- a reference to dollars and \$ is to Australian currency;
- a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- a reference to agree, approve or consent on the part of a party is a reference to agree, approve or consent (as the case may be) on the part of that party in writing; and
- nothing in this ILUA is to be interpreted against a party solely on the ground that the party put forward this ILUA or any part of it.

Headings

Headings do not affect the interpretation of this ILUA.

Schedules and annexures

Schedules, annexures and appendices form part of this ILUA.

Term

Term

This ILUA commences on the commencement date and continues for an indefinite period thereafter subject to earlier termination pursuant to this agreement or by operation of law.

If this ILUA is not registered pursuant to clause 4 within 12 months of the commencement date then any party may terminate it by written notice given to the other parties.

Notifiable Act Process (Future Acts and Heritage)

State or Council Notice

Where the State or Council proposes to undertake or authorises a notifiable act on sensitive land it must give *[insert claim group notifiable body]* a notice not less than 60 days before undertaking that notifiable act.

Where the notifiable act takes place:

over sensitive land that is:

[to be negotiated by the Parties],

the notice must relate to native title; and/or

over sensitive land identified as sensitive by

[to be negotiated by the Parties],

the notice must relate to Aboriginal heritage.

The State or Council's notice under clause 3.1 must:

set out details of the relevant notifiable act (and whether it relates to the *[insert claim group]* native title rights and/or Aboriginal heritage interests) and of

the relevant area within which the State or Council proposes to carry out a notifiable act (notified area);
request *[insert claim group notifiable body]* to respond to the notice within 30 days of the date of the notice;
and
nominate a date or alternative dates not less than 45 days from the date of the State or Council's notice as the date for representatives of the State or Council and *[insert claim group notifiable body]* to meet for the purpose of discussing the undertaking of that notifiable act and the response of *[insert claim group notifiable body]*.

[insert claim group] Response

Within 30 days of the State or Council's notice given under clause 3.1(a), *[insert claim group notifiable body]* may give the State or a Council a response setting out:

where that notice states that it relates to the *[insert claim group]* native title rights, *[insert claim group notifiable body]*'s comments on the effect, if any, that the relevant notifiable act will have on those native title rights within the notified area and any proposals *[insert claim group notifiable body]* has to reduce or exclude that effect;
and/or

where that notice states that it relates to the *[insert claim group]*'s Aboriginal heritage interests:

that the relevant notifiable act will not, in their view, damage, disturb or interfere with any Aboriginal site, object or remains; or

that in their view an Aboriginal site, object or remains is located within the relevant notified area and, in doing so, provide the State or Council with sufficient details to enable it to undertake that notifiable act without damaging, disturbing or interfering with that Aboriginal site, object or remains; or

a request that a heritage survey of the notified area be undertaken. In doing so *[insert claim group notifiable body]* will:

*give the State or a Council reasons for that request; and
submit to the State or a Council a draft survey budget
pursuant to clause 4.3 for that heritage survey;
and*

if the State or a Council has nominated alternative dates pursuant to clause 3.1(c)(iii) as a date for a meeting, the date selected by *[insert claim group notifiable body]* for that meeting.

Failure to Respond

If *[insert claim group notifiable body]* does not respond to a notice given pursuant to clause 3.1 within 30 days of the date of that notice, *[insert claim group notifiable body]* is deemed to have given consent to the carrying out by the State or a Council of that notifiable act subject to the provisions of Aboriginal Heritage Act.

State or Council Compliance

If *[insert claim group notifiable body]* responds under clause 3.2(b)(iii) the State or Council must notify *[insert claim group notifiable body]* of its decision either to conduct or not to conduct a heritage survey of the area, within 14 days of the date of *[insert claim group notifiable body]*'s response.

On the agreed date representatives of the State or Council and *[insert claim group notifiable body]* must meet (unless the parties agree that it is not necessary to meet) to discuss, as relevant:

the undertaking of the notifiable act;

the response of *[insert claim group notifiable body]*; and

any decision made by the State or Council about conducting a heritage survey;

Where a meeting is required to be held, the State or Council must not do the relevant notifiable act until after the date for that meeting.

In doing the relevant notifiable act the State or Council must consider:

the contents of *[insert claim group notifiable body]*'s notice; and

the discussions at any meeting held

Aboriginal Heritage Protocol

If *[insert claim group notifiable body]* request a heritage survey in response to the State or Council's notice and the State or Council elects to conduct a heritage survey of the notified area for the relevant notifiable act, the provisions of clause 4 will apply.

State or Council to Notify of Decision

The State or Council must notify *[insert claim group notifiable body]* within 7 days of making a decision to undertake or not to undertake a notifiable act on sensitive land.

Emergency

If any emergency situation occurs anywhere within the ILUA area, then, where the State or Council would otherwise have to comply with clauses 3 and/or 4:

the State or Council may take such measures as it considers necessary in the circumstances;

the provisions of clauses 3 and 4 do not apply to prevent or impair the taking of those measures;

the State or a Council must as soon as reasonably practicable notify *[insert claim group notifiable body]* of the emergency situation; and

after the emergency, the State or a Council and *[insert claim group notifiable body]* must consult with each other in relation to any further measures to be taken.

Application of this section

This section is not mandatory until the ILUA is registered.

This section is not mandatory if there is a determination that the *[insert claim group]* does not hold native title.

Heritage Survey

Aboriginal Heritage Act

The State or Council must comply with the Aboriginal Heritage Act 1988 in any actions it takes pursuant to this ILUA.

Heritage Survey Procedure

If *[insert claim group notifiable body]* gives the State or Council a notice under clause 3.2(b)(iii) and the State or Council elects to conduct a heritage survey (**heritage survey**) of the notified area, the following provisions apply:

subject to a survey budget, being agreed or determined, *[insert claim group notifiable body]* must :

ensure that that heritage survey is undertaken within 30 days of the State or Council's notice given pursuant to clause 3.4(a); and

give the State or Council notice not less than 7 days before the start of that heritage survey of the dates on which it will start and finish.

the survey team(survey team) must comprise:

not more than 2 representatives of *[INSERT CLAIM GROUP NOTIFIABLE BODY]*; and

if required for purposes of the survey team performing its functions, a specialist, approved by the State or Council.

***[INSERT CLAIM GROUP NOTIFIABLE BODY]* must ensure that the persons in the survey team have the traditional knowledge and authority to advise whether there is any Aboriginal site, object or remains within the relevant notified area;**

the functions of the survey team are to assess the relevant notified area for the purpose of:

advising their view of whether the relevant notifiable act will damage, disturb or interfere with any Aboriginal site, object or remains within that notified area; and

nominating the conditions, if any, which in their view are necessary, and which should accordingly apply in order to protect each Aboriginal site, object or remains within that notified area from damage, disturbance or interference by that notifiable act;

the survey team will discharge its functions by:

conducting an inspection and assessment of the relevant notified area

in conjunction with the specialist, providing a report detailing whether and to what extent survey

approval (survey approval) is given to the notifiable act and what if any conditions apply to the survey approval;

promptly providing the report to the State or Council.

Survey Budget

A heritage survey must be undertaken in accordance with a survey budget (survey budget) which must:

reflect daily rates (which must be pro-rated for any part day) for each survey team member (other than the specialist) for undertaking the heritage survey, of \$300 per day, or as otherwise agreed between the parties but in any event not more than the prevailing market rate;

reflect daily rates (which must be pro-rated for any part day) for the specialist for undertaking the heritage survey, as agreed between the specialist and the State or Council;

reflect the reasonable costs of travel for attending at any heritage survey of any survey team member; and

reflect that any reasonable administrative costs and expenses constitute no more than 10% of the aggregate of all other costs and expenses comprised in the survey budget.

A survey budget must be agreed within 21 days or such other period as the parties agree after the State or Council's notice under clause 3.4(a) is issued, failing which the provisions of clause 7 will apply to the determination of that budget.

The State or Council and *[INSERT CLAIM GROUP NOTIFIABLE BODY]* may at any time agree to amend the survey budget.

The State or Council is not responsible for any costs or expenses of carrying out the heritage survey which exceed the agreed survey budget.

Payment

***[INSERT CLAIM GROUP NOTIFIABLE BODY]* may invoice the State or Council the costs and expenses of carrying out**

a heritage survey (up to a maximum of the amount stated in the survey budget) as follows:

30% not less than 21 days prior to the mobilisation of the survey team to undertake that heritage survey;

40% upon completion of that heritage survey; and

30% or the balance thereof within 14 days of receipt of the report and an invoice of all costs and expenditure incurred in carrying out that heritage survey.

Any payment by the State or Council pursuant to clause 4.3(a) must be made within 14 days of receipt of a tax invoice from [INSERT CLAIM GROUP NOTIFIABLE BODY].

Evidence

Any invoice provided to the State or Council pursuant to clause 4.3(a) must be supported by evidence, reasonably satisfactory to the State or Council, that the relevant costs and expenses have been incurred properly.

State or Council's Representative

The State or Council may make a representative available at the notified area for consultation by the survey team at reasonable times during a heritage survey, but the representative may not otherwise be present whilst that heritage survey is being undertaken, except when requested by the survey team.

Alternative Area

During the undertaking of a heritage survey the survey team and the State or Council's representative may agree upon any alternative area or location on the notified area within or at which the State or Council may carry out the notifiable act.

Survey Team Report

Within 14 days of completion of a heritage survey [insert claim group notifiable body] must provide to the State or Council a written report (survey report) in relation to that heritage survey.

The survey report must:

state whether and to what extent survey approval is given to the notifiable act and what, if any, conditions apply to the survey approval ; and

be signed by the specialist.

The copyright in the report vests in [insert claim group]

Consequences of Report

The State or Council must consider a survey report in good faith and may make changes to that notifiable act to take account of the report.

Non disclosure

Nothing in this ILUA requires [*insert claim group notifiable body*] or any member of any survey team to disclose the location and/or significance of any Aboriginal site, object or remains, if they consider the location and/or significance to be a matter of cultural confidence, but they must disclose sufficient information in accordance with clause 4.8(b) to enable the State or Council, its employees, contractors and subcontractors to carry out the relevant notifiable act on the area given survey approval, without damaging, disturbing or interfering with the relevant Aboriginal site, object or remains;

[*insert claim group notifiable body*] must not disclose to any person any information provided by the State or Council to [*insert claim group notifiable body*] or any member of the survey team in connection with any heritage survey, which is designated by the State or Council as confidential information.

(For the purposes of this clause *a matter of cultural confidence* means any cultural information, including information held in an Aboriginal record, where disclosure of that information is restricted or forbidden by Aboriginal tradition);

Failure by [*insert claim group notifiable body*]

If within 7 days of the date by which:

a heritage survey is required to be carried out, it has not been carried out for any reason; or

[*insert claim group notifiable body*] is required to provide a report to the State or Council, it has failed to do so,

the State or a Council may give notice to [*insert claim group notifiable body*] requiring that:

the relevant heritage survey be carried out; or

a report be provided to the State or Council

within 14 days of the State or Council giving that notice.

A notice provided under clause 4.11(a) must state that, if *[insert claim group notifiable body]* does not comply with that notice within that period, the State or Council intends to proceed with the relevant notifiable act.

If the State or Council has given a notice pursuant to clause 4.11(a) and *[insert claim group notifiable body]* fails to comply with it, the State or Council may carry out the relevant notifiable act.

Discoveries During Operations

If any time during the carrying out of any notifiable act the State or Council identifies any site, object or remains which it suspects may be an Aboriginal site, object or remains, the State or Council must, in addition to any other obligations under the Aboriginal Heritage Act:

- (a) promptly report the location of that site, object or those remains to *[insert claim group notifiable body]*; and
- (b) cease to carry out that notifiable act on the relevant site or the location of the relevant object or remains; and
- (c) leave where discovered, and not damage, disturb or interfere with, the relevant object or remains,

unless and until it is lawful for the State or Council to proceed.

Planning Protocol

Notice to [insert claim group notifiable body]

Within 14 days of the end of each month during the term:

- (a) the State must, in respect of all development authorisations for notifiable acts on sensitive land granted during that month by a Minister of the Crown in right of South Australia or the Development Assessment Commission; and
- (b) each Council must in respect of all development authorisations for notifiable acts on sensitive land granted during that month by it,

give [*insert claim group notifiable body*] copies of the relevant decision notification forms.

Notice to Developers

At the same time that development authorisation is given to a person for any notifiable act in the ILUA area:

- (i) the State must, in respect of any such authorisation granted by a Minister of the Crown in right of South Australia or the Development Assessment Commission; or
- (ii) a Council must, in respect of any such authorisation granted by it,

give that person a notice regarding the provisions of the Aboriginal Heritage Act.

Any notice given pursuant to clause 5.2(a) must specify:

- (i) that it is an offence under the Aboriginal Heritage Act to damage, disturb or interfere with any Aboriginal site, object or remains;
- (ii) the contact details of [*insert claim group notifiable body*]; and
- (iii) that [*insert claim group notifiable body*] is responsible for undertaking heritage surveys in the ILUA area.

Liaison Committee

Establishment

A liaison committee (*Committee*) shall be established within twelve months of the commencement date and will comprise the members and have the functions set out in this clause.

The liaison committee will continue in existence from the date of its establishment until the date of termination or expiry of this ILUA.

Functions

The functions of the Committee are to:

- (a) make recommendations or give advice to the parties concerning any matter under or relating to this ILUA;

- (b) help maintain liaison between the parties and between the parties and other persons;
- (c) make recommendations or give advice to the parties regarding mechanisms to achieve recognition within the general community in the ILUA area of the *[insert claim group]* as the Aboriginal group that asserts traditional ownership of the ILUA area;
- (d) make recommendations or give advice to the parties regarding economic development opportunities within the ILUA area for the parties;
- (e) make recommendations or give advice to the parties regarding Aboriginal training, employment, contracting and business opportunities and strategies within the ILUA area;
- (f) make recommendations or give advice to the parties regarding street names within Council areas and signage on State and Council land, places and buildings, all within the ILUA area which adopt *[insert claim group]* language and/or recognise the *[insert claim group]*'s asserted traditional ownership of the ILUA area;
- (g) make recommendations or give advice to the parties regarding service delivery by the State, the Councils and other persons to the *[insert claim group]* and other Aboriginal people living within the ILUA area;
- (h) make recommendations or give advice to the parties regarding the dedication by the Crown and the placing under the care, control and management of *[insert claim group]* (either alone or jointly with any of the Councils) of Crown land situated within the ILUA area;
- (i) make recommendations or give advice to the parties in relation to funding of any activities arising out of this ILUA and make application for such funding upon behalf of the parties or any of them;
- (j) establish such sub-committees as considered necessary to pursue any matter to advance this ILUA; and
- (k) such other functions as may be agreed upon by the parties.

Membership

The Committee will be comprised of the following persons:

- (i) *[no. to be negotiated by parties]* persons nominated by *[insert claim group notifiable body]*;
- (ii) *[no. to be negotiated by parties]* person nominated by each of the Councils;
- (iii) *[no. to be negotiated by parties]* person nominated by the ALRM for a period of three (3) years from the commencement date; and
- (iv) *[no. to be negotiated by parties]* person nominated by the State,

for purposes of each meeting of the Committee.

- (l) No notice of nomination of a person as a member of the Committee is required to be given.

Chairperson

The members of the Committee will appoint a chairperson of the Committee at each meeting of the Committee.

The chairperson must be a member of the Committee.

The chairperson holds office for the meeting at which he or she is appointed.

The chairperson does not have a casting vote.

Secretary

A person nominated by the Councils from time to time will act as the secretary of the Committee.

The secretary is not required to be a member of the Committee.

The costs of providing the secretary *[to be negotiated by the parties]*.

The secretary must ensure that:

- (i) an agenda, and papers, setting out the time and place and business to be conducted at each meeting of the Committee are distributed to members of the Committee and their alternates not less than 7 days before each meeting of the Committee or such shorter period agreed to by the members of the Committee;

- (ii) draft minutes of each meeting of the Committee are circulated to all members of the Committee within 14 days of each meeting of the Committee; and**
- (iii) the approved minutes of each meeting of the Committee are kept and maintained at such location(s) agreed to by the members and are available for inspection and copying by all members and their alternates.**

Proceedings of Committee

Subject to the provisions of this clause 6, the Committee may:

- (i) meet together either in person, by telephone, by other means of instantaneous communication or in such other manner as the members of the Committee may approve from time to time; and**
 - (ii) adjourn and otherwise regulate its meetings and proceedings as the members think fit .**
- (b) The committee must meet:**
- (i) at intervals of not more than 6 months, the first Committee meeting to be held within 3 months of the commencement date; and**
 - (ii) in any event within 28 days of a request for a meeting from 2 or more parties entitled to nominate a member or members to the Committee.**
- (c) The venue for each meeting of the Committee will be determined by the Committee.**
- (d) Regard being had to the provisions of clause 6.6(e), there are no quorum requirements for any meeting of the Committee.**
- (e) Decisions of the Committee will be made as follows (and, if so made, bind the Committee):**
- (i) the members will use their best endeavours to make decisions on an unanimous basis; or**
 - (ii) if a decision is not able to be made on an unanimous basis, but only affects some of the parties, the members appointed by the parties which will be affected by the decision will use their**

best endeavours to make a decision on an unanimous basis.

Engagement of Advisers

The Committee has the right to decide to engage advisers and other persons and to determine the terms and conditions of any such engagement.

Invitees

Each member of the Committee has the right to invite a reasonable number of non-members to attend and speak (but not vote) at any Committee meeting as observers or spokespersons having regard to the matters on the agenda for the relevant meeting.

Dispute Resolution

Clause applies

All disputes or differences between any of the parties in connection with the interpretation, effect or any other matter in any way relating to this ILUA, other than in relation to what constitutes an Aboriginal site, object or remains, (**dispute**) will be dealt with in accordance with this clause 7 whether the dispute is first raised before, during or after the term.

Avoidance

The parties agree that:

- (a) they will make every effort to ensure that disputes do not arise;**
- (b) if a dispute does arise, they must make every reasonable effort to resolve the dispute in accordance with this clause 7 and without recourse to litigation or arbitration proceedings; and**
- (c) the provisions of clauses 7.1 and 7.2(b) do not apply to litigation proceedings for injunctive, interlocutory or declaratory relief.**

Notification

A party (**notifying party**) will, within 30 days after the dispute arises, give a notice to the other party or parties with which it has the dispute (**notified party**) and a copy of that notice to the other parties setting out details of the dispute and any other matter that may, in the reasonable opinion of the notifying party, be relevant to the resolution of the dispute.

Initial Meeting

Within 7 days of the date of the notice the notifying party and notified party (dispute parties) will meet and use their respective reasonable endeavours to resolve the dispute within a further period of 14 business days.

Mediation

If a dispute is not resolved in accordance with the provisions of clause 7.4 :

- (a) any dispute party may request the President for the time being of the President of the Law Society of South Australia Inc (or his or her nominee) to appoint a mediator to mediate that dispute;**
- (b) within 7 days of a mediator being appointed, the mediator will convene an initial meeting of the dispute parties in an attempt to resolve that dispute; and**
- (c) if that dispute is not resolved at that initial meeting, the mediator will convene such further meetings of the dispute parties during the subsequent 14 days as the mediator reasonably considers necessary for the purpose of resolving that dispute.**

Expert

- (a)** If a dispute is not resolved in accordance with the provisions of clause 7.5 then within 7 days, the parties may agree to appoint a person who has an understanding of or experience in the subject matter of the dispute (***Expert***) to determine the dispute.
- (b)** If the parties fail to agree a mutually acceptable expert, then within 7 days any dispute party may request the President for the time being of the President of the Law Society of South Australia Inc (or his or her nominee) to appoint an Expert to determine the dispute.

Capacity of Expert

The Expert is an expert and not an arbitrator.

Expert's Determination

The Expert's determination is final and binding on the dispute parties.

Determination costs

- (a) The Expert may determine that any dispute party must pay the whole or a specified portion of the costs and expenses of the other dispute party in relation to the Expert's determination.**

- (b) **Unless clause 7.9(a) applies, each dispute party will bear its own costs and expenses in relation to the Expert's determination.**

Expert's Fees

- (a) **The Expert may determine that any dispute party must pay all, or that the dispute parties must pay in specified portions, the Expert's fees and expenses and the cost of the Expert's determination.**
- (b) **Unless clause 7.10(a) applies, the dispute parties will pay in equal shares the Expert's fees and expenses and the cost of the Expert's determination.**

Survival

The provisions of this clause 7 survive the expiry or termination for whatever reason of this ILUA.

Communications

Writing required

Subject to this ILUA, any notice, direction, request, response, consent, approval, demand, report or other communication (**communication**) to be given under this ILUA will be in writing and be addressed for the attention of the representative(s) of the party or parties as set out in Schedule 2.

Manner of giving

A communication may be delivered by hand, sent by prepaid post or sent by facsimile or other electronic transmission to the address of the party or parties to which it is being given and is deemed to have been received:

- (a) **if delivered by hand, upon delivery;**
- (b) **if sent by post, 3 days after posting; and**
- (c) **if sent by facsimile or other electronic transmission, on receipt by the sender of a confirmation report.**

Change of details

Details specified in Schedule 2 in respect of a party may be changed by the party by not less than 7 days notice to the other parties.

Reconciliation Statement

This statement is attached as Schedule 4.

This statement is an aspirational document and does not create any legal obligations.

Benefits to *[insert claim group notifiable body]*

[these benefits are to be negotiated by the parties]

Warranties and Authority

Native title warranties

[insert claim group or notifiable body] represents and warrants to the other parties to this ILUA that:

it enters into this ILUA in the performance of its functions of managing the asserted traditional ownership, native title and heritage in relation to the land and waters in the ILUA area and all matters relating to them; and

by signing this ILUA confirms that *[notifiable body]* has been authorised by the *[insert claim group]* to enter into this ILUA on behalf of the *[insert claim group]*; and

[insert appropriate warranties for claim group where there is a registered claim]

it represents and, in accordance with Aboriginal tradition, has the authority to speak for, and is authorised to enter into this ILUA on behalf of, the traditional owners and other Aboriginal People who, in accordance with Aboriginal tradition, have the authority to speak for land and waters in the ILUA area.

[Note 11.1 (a) and (b) and (d) will only apply where there is no registered claim and (c) and (d) only will apply where there is a registered claim]

Other Warranties

Each party represents and warrants to the other parties to this ILUA that:

it has the power to enter into this ILUA and perform its obligations under it; and

the persons who have executed this ILUA on its behalf have the necessary authority to do so.

Native Title Act Statements

Future Acts

The parties:

agree to the validation of all future acts done by the State or any of the Councils that have already been done invalidly within the ILUA area before the registration date; and

consent, subject to clauses 3.4 and 4.4(c), to the State and each of the Councils doing each future act within the ILUA area during the period commencing on the registration date and continuing thereafter for the remainder of the term. Such consent does not imply permission by the traditional owners to do an act which in whole or part may affect Aboriginal heritage and that would otherwise amount to a contravention of the Aboriginal Heritage Act.

No right to negotiate procedures

The parties agree that the right to negotiate procedure is not intended to apply to the doing of any future act by the State or any Council within the ILUA area during the period commencing on the registration date and continuing thereafter for the remainder of the term.

(for the purposes of this clause the *right to negotiate procedure* means the procedures described in Part 2, Division 3, Subdivision P of the Native Title Act 1993 (Cth) and includes any alternative provisions having effect in South Australia instead of that subdivision)

Limited Extinguishment

Subject to clause 12.3(b), the non-extinguishment principle applies to each validated future act referred to in clause 12.1(a) and each future act referred to in clause 12.1(b), done by the State or Council within the ILUA area.

The [*insert claim group*] surrender to the State all of their native title rights and interests in relation to the land and/or waters within the ILUA area, as referred to in Schedule 5 being [*to be negotiated by the parties*], in respect of which the State or Council:

has done or does any validated future act referred to in clause 12.1(a); or

does any future act referred to in clause 12.1(b),
where the relevant validated future act or future act is:
any facility for services to the public as provided for by
section 24KA of the Native Title Act;
any public work; and
any grant of a freehold or leasehold interest in land
including any easement.

The surrender of native title rights and interests pursuant to
clause 12.3(b) extinguishes the surrendered native title
rights and interests.

The extinguishment of native title rights and interests
pursuant to clause 12(c) takes effect in respect of:

any surrender of those rights and interests referred to in
clause 12.3(b)(i), upon the registration date; and

any surrender of those rights and interests referred to in
clause 12.3(b)(ii), when the State or Council
undertakes the relevant act referred to in clause
12.3(b)(iii), (iv) or (v) or when a plan or other
instrument under the Real Property Act 1886
giving effect to that act is lodged with the Registrar
General, whichever is the earlier.

Consent Conditional on Compliance with Clauses 3 and 4

The consent of the parties in clause 12.1(b) in relation to the doing of any future act is conditional on the State or Council complying with the provisions of clauses 3 and/or 4 which are applicable to the relevant future act.

Other Native Title Holders

The parties acknowledge and agree that this ILUA is binding pursuant to section 24EA(1)(b) of the Native Title Act 1993 (Cth) on all persons holding native title in relation to any of the land and/or waters in the ILUA area who are not members of the *[insert claim group name]* in the same way as the native title group (as defined in section 24CD(2) or (3) of the Native Title Act).

Acknowledgment that Compensation is Final

[insert claim group] acknowledges and agrees that, subject to clause 12.8:

any amounts payable and any benefits provided under this
ILUA to *[insert claim group]* are in full and final
satisfaction of any compensation rights or entitlement
to which the *[insert claim group]* would be entitled
whether under the Native Title Act, common law,

equity, any other statute or otherwise in respect of any act done by the State or the Councils prior to or pursuant to this ILUA; and

for the purposes of section 24EB of the Native Title Act, those amounts and benefits are compensation provided for by this ILUA; and

the *[insert claim group]* do not have any entitlement to any compensation other than for the amounts payable and benefits provided under this ILUA.

Exception

The provisions of clause 12.6 do not apply to any compensation to which the *[insert claim group]* would be entitled against any other party to this ILUA arising by reason of any breach of this ILUA by that party.

Sharing

[insert claim group name] agrees that the amounts payable and the benefits provided under this ILUA to *[insert claim group name]* are held on behalf of all members of the *[insert claim group name]* and all persons (if any) who hold native title in relation to the whole or any portion of the ILUA area.

Application Survival

The provisions of clauses 12.6, 12.7 and 12.8 survive the removal of the details of this ILUA from the register for whatever reason and the termination of this agreement and remain in those circumstances binding on:

all persons bound by this ILUA; and

all persons entitled to any of the benefits under this ILUA.

Registration

Application of ILUA

The parties state that:

this ILUA applies to the ILUA area; and

this ILUA is intended to be registered on the register as an area agreement under sections 24CA to 24CL of the Native Title Act 1993 (Cth) and regulation 7 of the Native Title (Indigenous Land Use Agreements) Regulations 1999 (Cth).

Application for Registration

The parties (other than the State) authorise and direct the State to apply to the registrar for this ILUA to be

registered and entered on the register as an area agreement pursuant to sections 24CA to 24CL of the Native Title Act 1993 (Cth) and regulation 7 of the Native Title Indigenous Land Use Agreements Regulations 1999 (Cth).

Subject to clause 13.2(c) the State agrees to comply with the authorisation and direction in clause 13.2(a).

For the purposes of registering and entering this ILUA on the register as referred to in clause 13.2(a) ALRM will certify in accordance with the Native Title Act 1993 (Cth) the application to the registrar referred to in clause 13.2(a).

Best endeavours

Each of the parties agrees to use its best endeavours to obtain the registration of this ILUA as soon as practicable after the commencement date.

Removal from Register

All of the parties may request the registrar pursuant to section 199C(1)(c)(ii) of the Native Title Act 1993 (Cth) to remove the details of this ILUA from the register by advising the registrar in writing that they wish to terminate this ILUA.

The parties acknowledge that the registrar is required to remove the details of this ILUA from the register in the circumstances set out in sections 199C(1)(b), (c)(i) and (c)(iii) of the Native Title Act.

Upon details of this ILUA being removed from the register the provisions of clause 12.1 cease to apply to any future act done after that removal.

The provisions of clauses 13.4(a), (c) and (d) survive the expiry or termination for whatever reason of this ILUA.

Registered Nature of the Body Corporate

If a determination of native title is made in respect of the whole or any part of the ILUA area and a registered native title body corporate is determined to hold the rights and interests from time to time comprising the native title in trust for the native title holders:

the ***[insert names of indigenous parties]*** (Indigenous parties) must use their best endeavours to ensure that the registered native title body corporate:

becomes a party to this ILUA in substitution for ***[insert name of claim group]*** in relation to the whole or

relevant part of the ILUA area in respect of which the native title body corporate is determined to hold native title in trust; and

assumes the rights and obligations of [*insert name of claim group*] in relation to the whole or that part of the ILUA area;

the parties (other than the Indigenous parties) to this ILUA consent to the registered native title body corporate becoming a party to this ILUA and assuming the rights and obligations of [*insert name of claim group*] in accordance with clause 13.5(a); and

each of the parties to this ILUA must sign such documents as are necessary to give effect to the provisions of this clause 13.5.

GST

The parties agree that, if a goods and services, value-added or a comparable tax (**gst**) applies under the “A New Tax System (Goods and Services Tax) Act 1999” or associated legislation (**gst legislation**) in relation to any taxable supply (within the **gst legislation**) (**taxable supply**) made by a party (**supplier**) to another party (**recipient**) under or pursuant to this ILUA:

- (a) the amount payable by the recipient to the supplier in respect of the taxable supply (payment) does not include gst;**
- (b) the supplier may, in addition to the payment, recover from the recipient (and the recipient will pay to the supplier) an additional amount on account of the gst, such additional amount to be calculated in accordance with the gst legislation; and**
- (c) the supplier will provide to the recipient a tax invoice (within the meaning of the gst legislation) in respect of the taxable supply as required by the gst legislation.**

General

Entire agreement

This ILUA contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

Amendment

No amendment or variation of this ILUA is valid or binding on a party unless made in writing executed by all parties to it.

Severability

Each word, phrase, sentence, paragraph and clause (**provision**) of this ILUA is severable and if a court determines that a provision is unenforceable, illegal or void the court may sever that provision which becomes inoperative and such severance will not affect the other provisions of this ILUA.

Force Majeure

If any party becomes wholly or partly unable because of force majeure to perform any of its obligations under this ILUA, then the party affected by the force majeure must give the other parties notice of the force majeure specifying:

- (a) details of the force majeure;**
- (b) insofar as it is known, the probable scope of the force majeure; and**
- (c) insofar as it is known, the probable duration for which it will be unable to perform the relevant obligation,**

and the relevant obligation shall be deemed to be suspended, but:

- (d) the suspension shall be of no greater scope nor longer duration than the consequences of the relevant event of force majeure; and**
- (e) the party affected by the force majeure must use all reasonable endeavours to counter it or to otherwise remedy its inability to perform.**

No waiver

- (a) No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver.**
- (b) A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.**
- (c) A waiver is not valid or binding on the party granting that waiver unless made in writing.**

Minister's Discretion

Nothing in this ILUA fetters the discretion of any Minister of the Crown in the right of South Australia.

Further assurances

Each party agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of this ILUA and the transactions contemplated by it.

No merger

- (a) The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this ILUA.
- (b) Those rights and obligations will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

Governing law and jurisdiction

- (a) This ILUA is governed by the laws of South Australia.
- (b) Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in South Australia in connection with matters concerning this ILUA.

Relationship

- (a) The relationship between the parties is that of independent contractors.
- (b) The parties are not partners, joint venturers nor, subject to clause 15.10(c), principal and agent.
- (c) *[insert status of claim group party].*

THE COMMON SEAL of the)
 ATTORNEY-GENERAL)
 was affixed by the Attorney-General)
 in the presence of:)

.....
Witness

.....
Name of Witness

.....

THE COMMON SEAL of the)
[*insert claim group*]was hereunto affixed)
in accordance with its constitution)
in the presence of:

.....
Chairperson	Member
.....
Name	Name
.....
Member	Member
.....
Name	Name

THE COMMON SEAL of the)
ABORIGINAL LEGAL RIGHTS)
MOVEMENT INC was hereunto affixed)
in the presence of:)

.....
Chairperson

.....
Executive Member

THE COMMON SEAL OF)
[*insert councils* was hereunto affixed in)
the presence of:)

.....
Mayor

.....
Chief Executive

Schedule 1 – ILUA Area

Schedule 2 - Notice Details

State

Address:

Attention:

Facsimile No.: (08)

[insert claim group]

Address:

Attention:

Facsimile No.: (08)

[insert claim group notifiable body]

Address:

Attention:

Facsimile No.: (08)

ALRM

Address: Aboriginal Legal Rights Movement Inc
4th Floor, 345 King William Street
Adelaide SA 5000

Attention: Executive Officer, Native Title Unit

Facsimile No.: (08) 8211 7424

COUNCILS

Address

Attention:

Facsimile No:

Schedule 3 – Sensitive Land

Map

Schedule 4 – Reconciliation Statement

[to be negotiated by parties where necessary]

Schedule 5 – Crown Land and Crown Land Under Care, Control
and Management of the Councils