

**ADNYAMATHANHA NATIVE TITLE CLAIM GROUP**  
**("Adnyamathanha Claim Group")**

- and -

**DIERI NATIVE TITLE CLAIM GROUP**  
**("Dieri Claim Group")**

**AGREEMENT**

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**THIS AGREEMENT** dated the \_\_\_\_\_ day of \_\_\_\_\_ 2006

**BETWEEN:**

**THE ADNYAMATHANHA CLAIM GROUP, Vincent Coulthard, Angelina Stuart, Mark McKenzie, Gordon Coulthard, May Buzzacott, Geraldine Anderson, Gertie Johnson, Stewart Patterson and Beverley Patterson,** by the registered native title claimant in relation to native title determination application number SAD6001/98 in the Federal Court of Australia

**("Adnyamathanha Claim Group")**

**AND:**

**THE DIERI CLAIM GROUP, Edward Landers, David Mungeranie, Irene Kemp, Rhonda Kennedy-Gepp, Sylvia Stewart and a deceased person,** the registered native title claimant in relation to native title determination application number SAD6017/98 in the Federal Court of Australia

**("Dieri Claim Group")**

**RECITALS**

- A. The Adnyamathanha Claim Group claim native title in all of the Claim Area shown in Schedule 1 and have filed a Native Title Application under section 61 of the *Native Title Act* 1993 (Cth) (as amended) ('Native Title Act') with the Federal Court of Australia in Proceeding Number SAD6001/98 for a determination of native title in respect of the specified Claim Area.
- B. The Dieri Claim Group claim native title in all of the Claim Area shown in Schedule 2 and have filed a Native Title Application under section 61 of the Native Title Act with the Federal Court of Australia in Proceeding Number SAD6017/98 for a determination of native title in respect of the specified Claim Area.
- C. The Adnyamathanha Claim Group and Dieri Claim Group Claim Areas overlap to the extent depicted in Schedule 3.
- D. The Adnyamathanha Claim Group native title claim has been referred for mediation under the Native Title Act, for the resolution of the overlaps.
- E. The Dieri Claim Group native title claim has been referred for mediation under the Native Title Act.
- F. The Adnyamathanha Claim Group and the Dieri Claim Group participated in a mediation facilitated by the National Native Title Tribunal including a mediation meeting held at Port Augusta on 20<sup>th</sup> of June 2006.
- G. In accordance with this Agreement, the Parties agree to resolve the overlap between their respective Claim Areas and to recognise and cooperate in relation to Shared Country as depicted in Schedule 4

**NOW THIS AGREEMENT WITNESSES** as follows:

**1. INTERPRETATION AND OTHER MATTERS**

- 1.1 The Recitals and the Schedules form part of the Agreement and shall be used in its interpretation and construction, however the clauses in the Agreement shall prevail over any inconsistent provisions in any Recital or Schedule to the Agreement.
- 1.2 Unless the contrary intention appears in the Agreement:
- (a) monetary references are references to Australian currency;
  - (b) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of the legislation and any legislative provision substituted for, and all legislation and statutory instruments and regulations issued under the legislation or legislative provision;
  - (c) the singular includes the plural and vice versa and reference to a gender includes all genders;
  - (d) a reference to an individual or person includes a company, corporation, partnership, joint venture, association, authority, trust, state, government or body whether incorporated or not, and vice versa;
  - (e) the headings in the Agreement are for convenience of reference only and shall not be used in its interpretation or construction;
  - (f) the meaning of general words will not be limited by reference to accompanying specific words;
  - (g) a reference to a recital, clause, paragraph, schedule or annexure is to a recital, clause, schedule or annexure of or to the Agreement;
  - (h) Recitals and Schedules form part of the Agreement;
  - (i) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
  - (j) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
  - (k) any term or expression used herein which is defined in the Native Title Act has the same meaning as in that legislation.
- 1.3 The Agreement shall be governed by and construed in accordance with the laws of the State of South Australia and of the Commonwealth of Australia and each party hereby submits to the jurisdiction of the appropriate Courts of that State and of the Commonwealth of Australia and any Courts competent to hear appeals therefrom. The Parties agree that appeals from the Courts of the Commonwealth of Australia will be filed in the South Australia District Registry of the Federal Court of Australia.
- 1.4. No modification, variation or amendment to the Agreement shall be of any force unless in writing and executed by each party. No waiver by a party of any of the provisions of the Agreement shall be binding unless made in writing and any such

waiver shall relate only to the specific matter, non-compliance or breach in respect of which it is given written notice and shall not apply to any subsequent or other matter, non-compliance or breach.

- 1.5 Each Party agrees to execute such deeds and documents and do such further acts and things as shall be necessary to give effect to the terms of the Agreement.
- 1.6 If any Court or other competent authority declares, or if any statute or regulation renders, any part of the Agreement ineffective, void, voidable, illegal or unenforceable or if by reason of a declaration by any Court or other competent authority or any statute or regulation the Agreement would, if any part hereof were not omitted therefrom, be ineffective, void, voidable, illegal or unenforceable then:
- (a) that part shall, without in any way affecting the effectiveness, validity, legality or enforceability of the remainder of the Agreement, be severable therefrom and, the Agreement shall be read and construed and take effect for all purposes as if that part were not contained herein; and
  - (b) the Parties shall attempt to renegotiate, in good faith, that part and seek to achieve a result as near as reasonably practicable as is consistent with the severed component.

## 2. DEFINITIONS

In the Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:

- 'Adnyamathanha Claim Group'** means the Adnyamathanha Native Title Claim Group.
- 'Agreement'** means this agreement, including its recitals, schedules and annexures;
- 'Claim Area'** means the area of land and any waters which are the subject of a Native Title Application by the specified native title claim group. The Claim Area for a particular native title claim group is referred to in the Recitals and included as a Schedule to the Agreement;
- 'Commencement Date'** means the date of the Agreement or another date agreed in writing by the parties;
- 'Dieri Claim Group'** means the Dieri People Native Title Claim Group;
- 'Native Title Act'** means the *Native Title Act 1993 (Cth)* (as amended);
- 'Native Title Application'** means the application for determination of native title filed in the Federal Court of Australia on behalf of the specified native title claim group;
- 'Overlap Area'** means the area of land and any waters which are overlapping between two specified Claim Areas;
- 'Parties'** means the Parties to the Agreement;

**'Shared Country'**

means country [as depicted in Schedule 4] for which the specified native title claim groups have agreed to recognise each other's mutual interests and rights.

**3. COMMENCEMENT**

The Agreement commences on the Commencement Date.

**4. AUTHORITY TO ENTER INTO AGREEMENT**

- 4.1 Each Party represents and warrants that all necessary authorisations have been obtained to enter into the Agreement and the Agreement is valid and binding and enforceable in accordance with its terms against the respective native title claim group and all persons on whose behalf the Native Title Application is made.

**5. RESOLUTION OF OVERLAP AREA AND IDENTIFICATION OF SHARED COUNTRY**

**REDACTED**

## 6. DISPUTE RESOLUTION

### 6.1 Guiding Principle

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.

### 6.2 Priority of Procedures

Unless otherwise provided in the Agreement, if a dispute arises between the Parties concerning the 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.

### 6.3 Notice of Dispute

Any Party claiming that a dispute has arisen under the Agreement ('Complainant') must give written notice ('Notice of Dispute') to the other Party ('Respondent'). The notice must adequately identify and provide details of the dispute and refer to any documentary evidence of the matters claimed in the dispute and designate a senior representative of the Complainant who has the authority to negotiate and settle the dispute.

### 6.4 Response to Dispute

Within fourteen (14) days after the Respondent receives a Notice of Dispute, the Respondent must give written notice to the Complainant. That notice must adequately define 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 for each Respondent who has the authority to negotiate and settle the dispute.

### 6.5 Negotiations

Senior representatives designated pursuant to the preceding paragraphs 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 paragraph 6.4, investigate, negotiate and endeavour to settle the dispute.

### 6.6 Mediation

- (a) If, within one 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 5 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 days, the mediator shall be appointed by the President of the Law Society of South Australia for the time being.

- (b) The President of the Law Society of South Australia (in determining who to appoint as the mediator) shall have regard to the Parties' intentions in the Agreement:
- (i) for the preservation and protection of the native title rights and interests of each of the Parties; and
  - (ii) for the resolution of the Overlap Area;
- and shall take account of the fact that the Agreement constitutes a traditional Indigenous commercial agreement.
- (c) The mediator, in conducting the mediation shall have regard to:
- (i) the Parties' intentions in the Agreement for the preservation and protection of the Aboriginal traditions of each Party.
- (d) If within one 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 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.
- (e) Any date or period of time referred to in this clause may be varied or amended by agreement between the Parties.
- (f) Neither Party may commence court proceedings or arbitration concerning the Agreement unless it has first complied with the dispute resolution provisions contained in this clause. The Parties agree that the Agreement may be pleaded as a bar to any court action commenced prior to termination of the mediation process other than an application for urgent interlocutory relief.
- (g) In any case, each Party shall bear its own costs for the mediation.

#### 6.7 Without Prejudice

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.

### 7. NOTICES

- 7.1 Subject to any other provision of the Agreement to the contrary, any notice, request, consent, proposal or other communication must be in writing and signed by the person giving it and shall be addressed as follows:

Adnyamathanha: Mr Richard Bradshaw  
Johnston Withers  
17 Sturt St  
ADELAIDE SA 5000

Dieri: Mr Stephen Kenny,  
Cammatta Lempens



1<sup>st</sup> Floor 345 King William Street  
ADELIADE SA 5000

- 7.2 In the event that any Party changes its address for notices that Party must advise the other Parties in writing within seven (7) days of its new address, and from that time all Parties must address any notices to the new address.
- 7.3 A notice sent by mail will be deemed received by the Party to whom it is addressed on the next business day following its posting. Notices transmitted by facsimile are deemed delivered on the day of transmission subject to confirmation of complete transmission.

**8. COUNTERPARTS**

The Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.



**EXECUTED BY THE PARTIES AS AN AGREEMENT**

**SIGNED** for and on behalf of each member of  
the Adnyamathanha Claim Group by the said  
**VINCENT COULTHARD** in the presence of:-



Vincent Coulthard



Witness

Name **RICHARD BRADSHAW**  
Address **17 First Street, Adelaide**  
Occupation **Solicitor**

**SIGNED** for and on behalf of the  
Adnyamathanha Claim Group by the said  
**ANGELINA STUART** in the presence of:-

.....  
**Angelina Stuart**

Witness

Name  
Address

Occupation

**SIGNED** for and on behalf of the  
Adnyamathanha Claim Group by the said  
**MARK MCKENZIE** in the presence of:-

.....  
**Mark McKenzie**

Witness

Name  
Address

Occupation

**SIGNED** for and on behalf of the )

Adnyamathanha Claim Group by the said )  
**GORDON COULTHARD** in the presence of:- )

*G. Coultard*  
.....  
**Gordon Coultard**

*R. Bradshaw*  
.....

Witness

Name **RICHARD BRADSHAW**  
Address **17 First Street**  
**Adelaide**  
Occupation **Solicitor**

**SIGNED** for and on behalf of the )  
Adnyamathanha Claim Group by the said )  
**MAY BUZZACOTT** in the presence of:- )

*M. Buzzacott*  
.....  
**May Buzzacott**

*S. Brown*  
.....

Witness

Name **SARA BROWN**  
Address **12 UNION ST**  
Occupation **GRAVEL SITES**  
**SOLICITOR**

**SIGNED** for and on behalf of the )  
Adnyamathanha Claim Group by the said )  
**GERALDINE ANDERSON** in the presence of:- )

*G. Anderson*  
.....  
**Geraldine Anderson**

*R. Bradshaw*  
.....

Witness

Name **RICHARD BRADSHAW**  
Address **17 First Street, Adelaide**  
Occupation **Solicitor**

**SIGNED** for and on behalf of the )  
Adnyamathanha Claim Group by the said )  
**GERTIE JOHNSON** in the presence of:- )

.....  
**Gertie Johnson**

.....  
Witness )

Name )  
Address )

Occupation )

**SIGNED** for and on behalf of the )  
Adnyamathanha Claim Group by the said )  
**STEWART PATTERSON** in the presence of:- )

  
.....  
**Stewart Patterson**

  
.....  
Witness )

Name )  
Address )

Occupation )

*as above*

**SIGNED** for and on behalf of the )  
Adnyamathanha Claim Group by the said )  
**BEVERLEY PATTERSON** in the presence of:- )

  
.....  
**Beverley Patterson**

  
.....  
Witness )

Name )  
Address )

Occupation )

**RICHARD BRADSHAW**  
*17 First Street  
Adelaide*  
*Solutor*

**SIGNED** for and on behalf of the Dieri Claim )  
Group by the said **EDWARD LANDERS** in the )  
presence of:- )

  
.....  
**Edward Landers**

  
.....  
Witness )

Name )  
Address )  
Occupation )

SIGNED for and on behalf of the Dieri Claim Group by the said **DAVID MUNGERANIE** in the presence of:-

*David Mungeranie*

David Mungeranie

Witness

Name

Address

Occupation

*S. J. Kennedy*  
345 KING WILLIAM ST  
ADELAIDE  
SOLICITOR

SIGNED for and on behalf of the Dieri Claim Group by the said **IRENE KEMP** in the presence of:-

*Irene Kemp*

Irene Kemp

Witness

Name

Address

Occupation

*S. J. Kennedy*

SIGNED for and on behalf of the Dieri Claim Group by the said **RHONDA KENNEDY-GEPP** in the presence of:-

*Rhonda Kennedy-Gepp*

Rhonda Kennedy-Gepp

Witness

Name

*S. J. Kennedy*

Address )

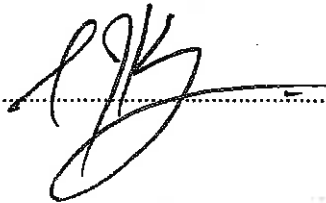
Occupation )

**SIGNED** for and on behalf of the Dieri Claim Group by the said **SYLVIA STEWART** in the presence of:- )

*Sylvia Stewart*

.....  
Sylvia Stewart

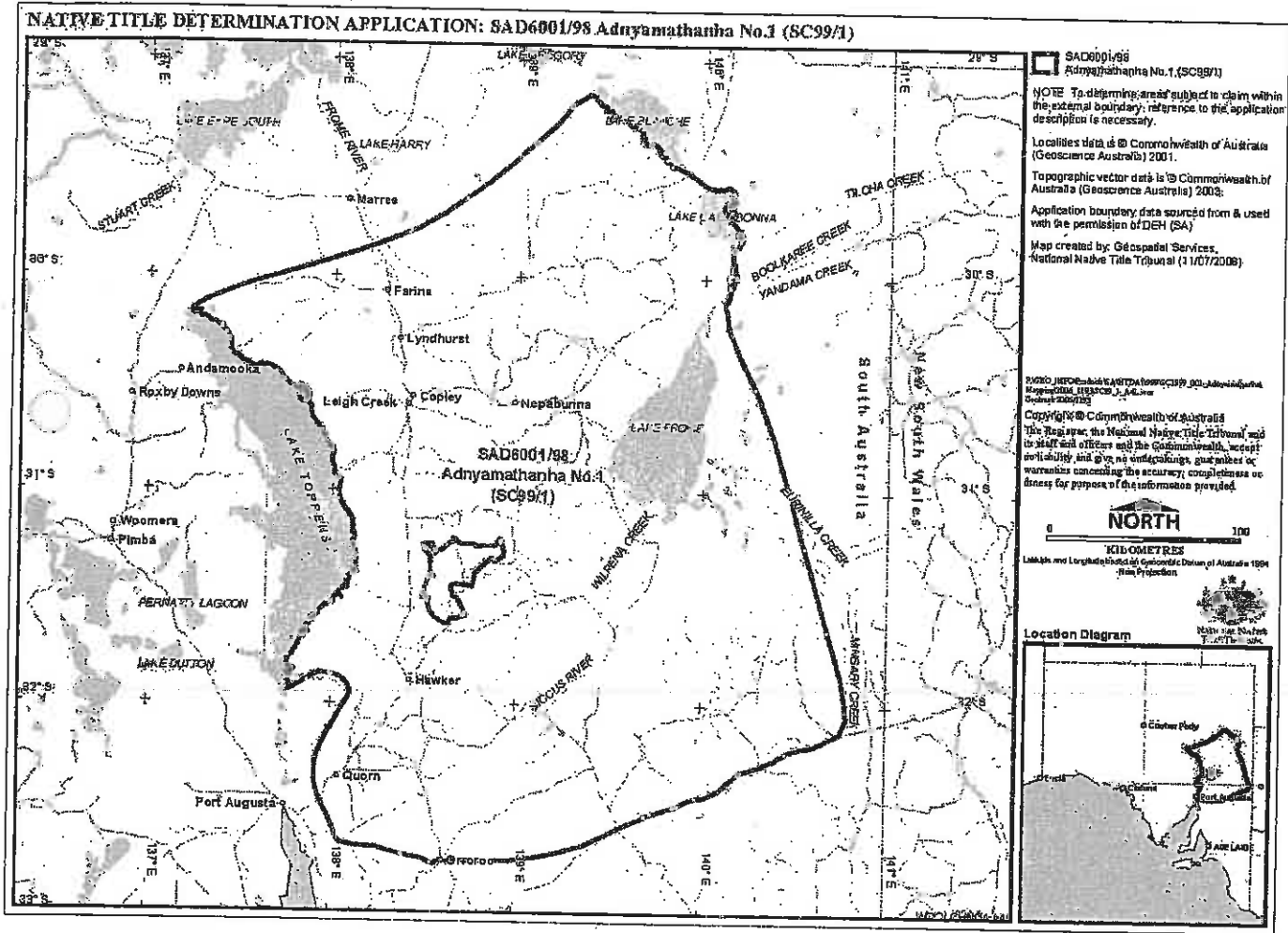
.....  
Witness )



Name )  
Address )

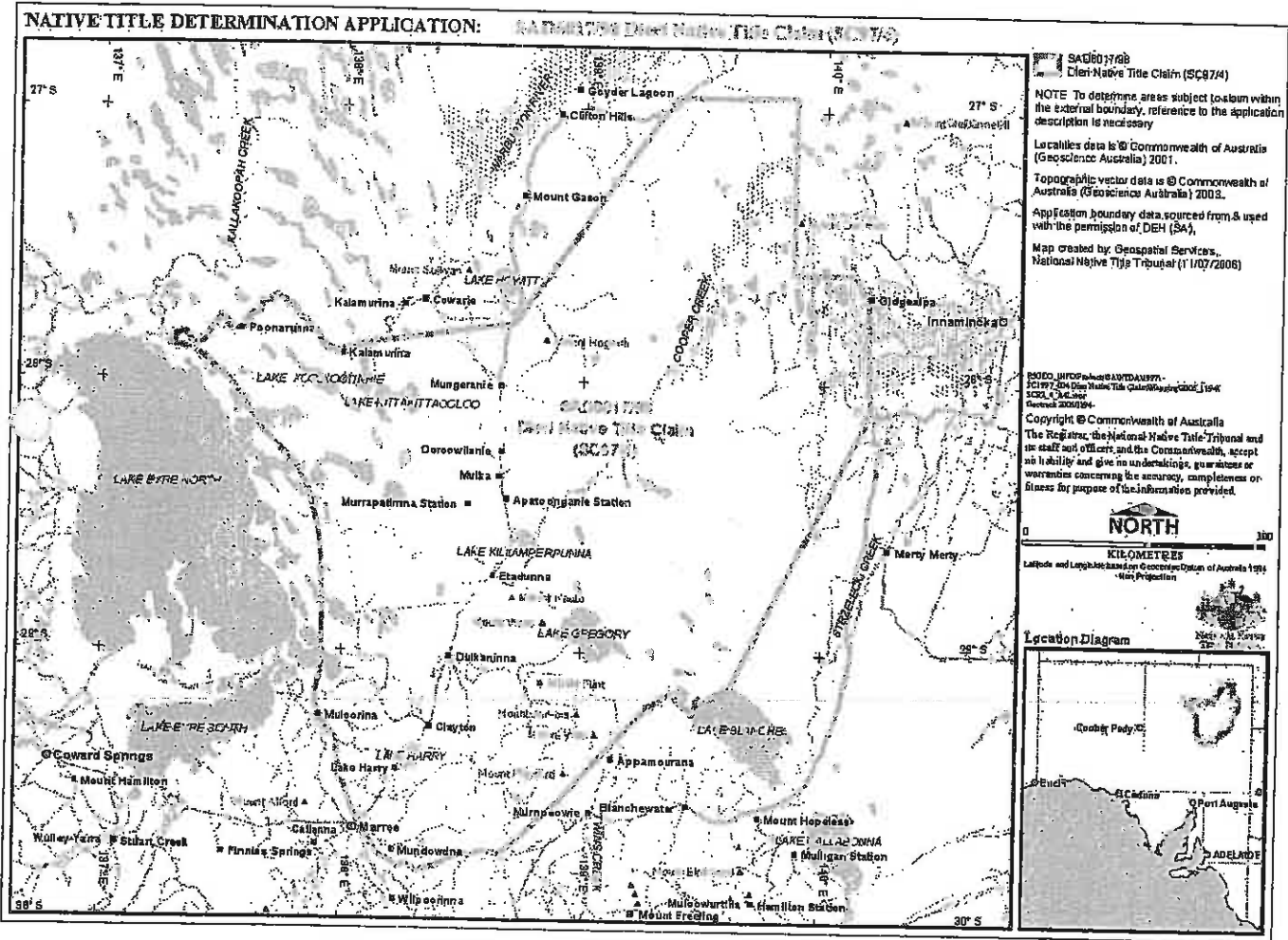
Occupation )

### SCHEDULE 1 - MAP OF ADNYAMATHANHA CLAIM AREA

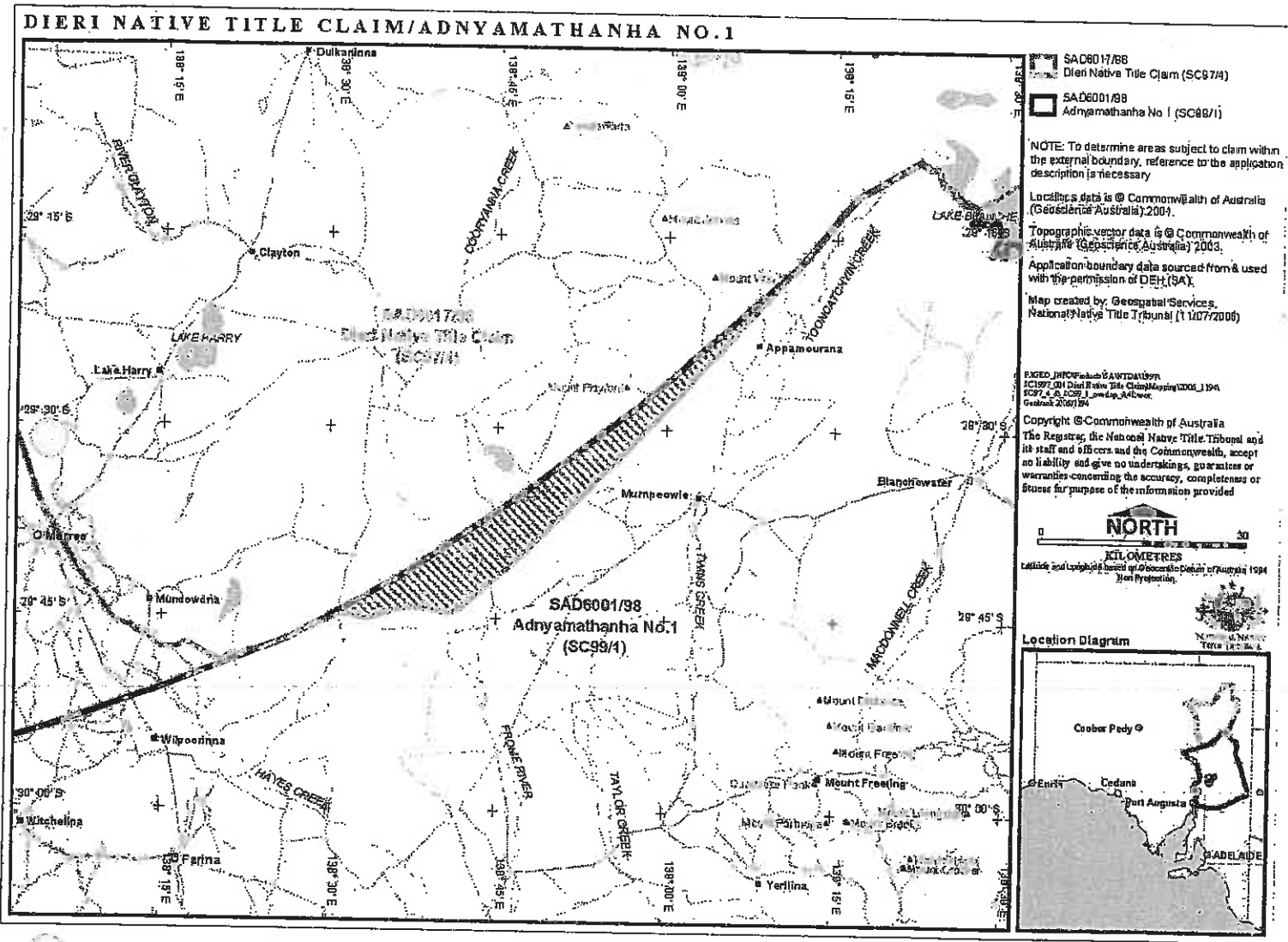




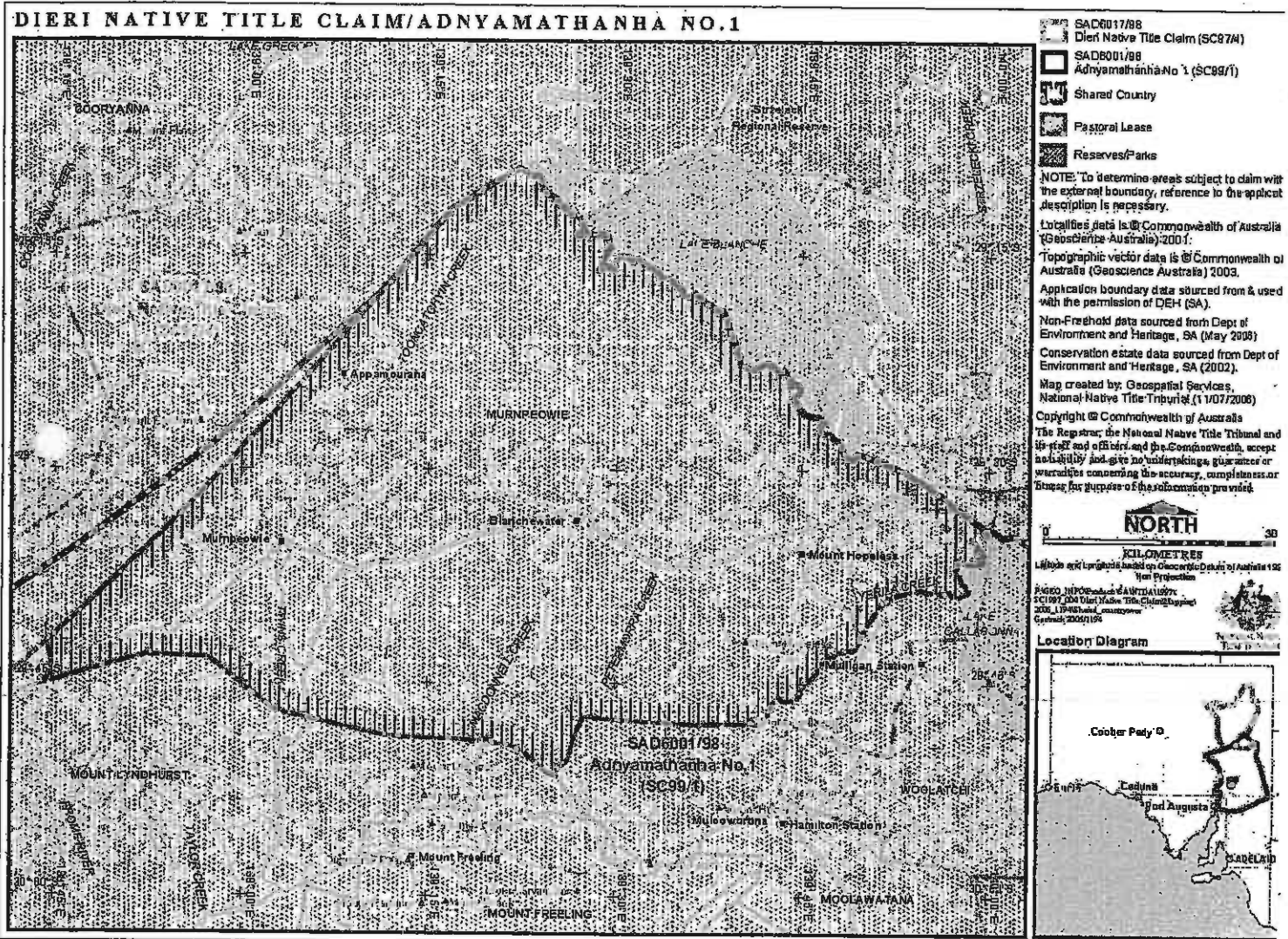
SCHEDULE 2 - MAP OF DIERI CLAIM AREA



**SCHEDULE 3 - MAP OF OVERLAP AREA**



**SCHEDULE 4 – MAP OF SHARED COUNTRY**



## **SCHEDULE 5 - GUIDELINES TO MEDIATION**

The following is a guideline to the mediation process should a dispute arise and be referred to mediation pursuant to clause 6.

### **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. Co-operation**

The Parties must co-operate 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. At the mediation each Party may have one or more 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 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; and
- (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 Party may enforce the terms of the settlement agreement by judicial proceedings. Any Party may call evidence:

- (a) for the purposes of this clause; and
- (b) of the settlement agreement including evidence from the mediator and 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 the 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 the Agreement.

**13. Costs**

The Parties are separately liable to the mediator in equal proportions for the mediator's fees.



**CLAUSE FOR FURTHER DISCUSSION:**

- 5.4. Either Claim Group (the First Group) may notify the other (the Second Claim Group) in writing of any Aboriginal Sites of significance to any of the members of the First Group which lie within the Second Group's Claim Area, but outside the Shared Country. The parties agree that where the Second Group receives a notice, pursuant to Section 29 of the Native Title Act 1993(Cth) or Part 9B of the Mining Act 1971 (SA) and/or any request for a work area clearance or heritage survey in relation to an area which includes such a notified Aboriginal Site, then the Second Group shall;
- a. advise the First Group accordingly, and consult it in relation to measures to ensure the protection of that Aboriginal Site; and
  - b. If so requested by the First Group, include a nominee of the First Group as part of the relevant survey team.

**Agreement between the Adnyamathanha and Dieri People**  
 Made at Pt Augusta on the 20<sup>th</sup> of June 2006.

Dieri	Adnyamathanha
<p>Edward Jambha                      O Migeranie                      Edward Stuart                      Raelene Warren                      Raymond Baland                      [Signature]                      [Signature]                      [Signature]                      Sylvia Stuart                      Rhonda Lynn                      [Signature]                      S. Wayshell                      R. Warren                      B. Stewart                      d. Bates.                      I. Kemp.                      NOREEN GIBBS                      [Signature]</p>	<p>agreed in principle and                      will recommend for                      approval by the Claim                      Group.</p> <p>[Signature]                      [Signature]                      M. Boulton                      Stewart Patton                      [Signature]                      Beverly Patton                      Angela Stuart                      May Buzzcott                      M. McKenzie                      [Signature]</p> <p>[Signature]</p>