

(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)]



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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 BETWEEN

1. *[insert responsible Minister's name and details]*
(State)

AND

2. *[insert claim group name and details]*

AND

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

4. *[insert council name and details]*(**Council**)

AND

5.

6.

7. (Parties 4 to ? inclusive are collectively referred to as the **Councils** and a reference to a Council means any one of the ??? Councils)

Recitals

A *[insert claim group name]* assert traditional ownership and native title in relation to land and waters in the ILUA area.

B

C

D

E *[insert claim group rep name?]:*

(a) enters into this ILUA in the performance of its functions of managing the asserted traditional ownership and native title of *[insert claim group name]* in relation to land and waters in the ILUA area and all matters relating to them; and

(b) by signing this ILUA confirms that *[insert claim group rep name]* has been authorised by *[insert claim group name]* to enter into this ILUA on behalf of the *[insert claim group name]*.

- F ALRM is the representative Aboriginal/Torres Strait Islander body for the ILUA area pursuant to the Native Title Act.
- 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.

1. Preliminary

1.1 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);

(a)

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

- (a) 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);
- (b) the division of any allotment into four or more sub-allotments;
- (c) 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:

[this is to be negotiated between the parties];

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.

1.2 Interpretation

In this ILUA, unless the context otherwise requires:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) 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;
- (f) a reference to a clause includes a reference to a sub-clause, paragraph or sub-paragraph of that clause;
- (g) 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;
- (h) 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);
- (i) 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;
- (j) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (k) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;

- (l) 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;
- (m) a reference to dollars and \$ is to Australian currency;
- (n) 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;
- (o) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (p) 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
- (q) 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.

1.3 Headings

Headings do not affect the interpretation of this ILUA.

1.4 Schedules and annexures

Schedules, annexures and appendices form part of this ILUA.

2. Term

2.1 Term

- (a) 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.
- (b) 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.

3. Notifiable Act Process (Future Acts and Heritage)

3.1 State or Council Notice

- (a) 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.

- (b) Where the notifiable act takes place:
 - (i) over sensitive land that is:
 - (A) *[to be negotiated by the Parties]*,
 the notice must relate to native title; and/or
 - (ii) over sensitive land identified as sensitive by *[to be negotiated by the Parties]*,
the notice must relate to Aboriginal heritage.
- (c) The State or Council's notice under clause 3.1 must:
 - (i) 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**);
 - (ii) request *[insert claim group notifiable body]* to respond to the notice within 30 days of the date of the notice; and
 - (iii) 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]*.
- (d)
- (e) .

3.2 ***[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:

- (a) 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
- (b) where that notice states that it relates to the *[insert claim group]*'s Aboriginal heritage interests:
 - (i) that the relevant notifiable act will not, in their view, damage, disturb or interfere with any Aboriginal site, object or remains; or
 - (ii) 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

- (iii) a request that a heritage survey of the notified area be undertaken. In doing so *[insert claim group notifiable body]* will:
 - (A) give the State or a Council reasons for that request; and
 - (B) submit to the State or a Council a draft survey budget pursuant to clause 4.3 for that heritage survey; and
- (c) 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.

3.3 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.

3.4 State or Council Compliance

- (a) 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.
- (b) 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:
 - (i) the undertaking of the notifiable act;
 - (ii) the response of *[insert claim group notifiable body]*; and
 - (iii) any decision made by the State or Council about conducting a heritage survey;
- (c) 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.
- (d) In doing the relevant notifiable act the State or Council must consider:
 - (i) the contents of *[insert claim group notifiable body]*'s notice; and
 - (ii) the discussions at any meeting held

3.5 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.

3.6 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.

3.7 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:

- (a) the State or Council may take such measures as it considers necessary in the circumstances;
- (b) the provisions of clauses 3 and 4 do not apply to prevent or impair the taking of those measures;
- (c) the State or a Council must as soon as reasonably practicable notify [*insert claim group notifiable body*] of the emergency situation; and
- (d) 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.

3.8 Application of this section

- (a) This section is not mandatory until the ILUA is registered.
- (b) This section is not mandatory if there is a determination that the [*insert claim group*] does not hold native title.

4. Heritage Survey

4.1 Aboriginal Heritage Act

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

4.2 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:

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

- (i) 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
 - (ii) 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.
- (b) the survey team(**survey team**) must comprise:
- (i) not more than 2 representatives of *[INSERT CLAIM GROUP NOTIFIABLE BODY]*; and
 - (ii) if required for purposes of the survey team performing its functions, a specialist, approved by the State or Council.
- (c) *[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;
- (d) the functions of the survey team are to assess the relevant notified area for the purpose of:
- (i) 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
 - (ii) 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;
- (e) the survey team will discharge its functions by:
- (i) conducting an inspection and assessment of the relevant notified area
 - (ii) 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;
 - (iii) promptly providing the report to the State or Council.

4.3 Survey Budget

- (a) A heritage survey must be undertaken in accordance with a survey budget (**survey budget**) which must:
- (i) 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;

- (ii) 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;
 - (iii) reflect the reasonable costs of travel for attending at any heritage survey of any survey team member; and
 - (iv) 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.
- (b) 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.
 - (c) The State or Council and *[INSERT CLAIM GROUP NOTIFIABLE BODY]* may at any time agree to amend the survey budget.
 - (d) The State or Council is not responsible for any costs or expenses of carrying out the heritage survey which exceed the agreed survey budget.

4.4 Payment

- (a) *[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:
 - (i) 30% not less than 21 days prior to the mobilisation of the survey team to undertake that heritage survey;
 - (ii) 40% upon completion of that heritage survey; and
 - (iii) 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.
- (b) 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]*.

4.5 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.

4.6 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.

4.7 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.

4.8 Survey Team Report

- (a) 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.
- (b) The survey report must:
 - (i) 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
 - (ii) be signed by the specialist.
- (c) The copyright in the report vests in [*insert claim group*]

4.9 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.

4.10 Non disclosure

- (a) 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;
- (b) [*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);

4.11 Failure by [*insert claim group notifiable body*]

- (a) If within 7 days of the date by which:

(i) a heritage survey is required to be carried out, it has not been carried out; or

(ii) *[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:

(iii) the relevant heritage survey be carried out; or

(iv) a report be provided to the State or Council

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

(b) 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.

(c) 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.

4.12 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.

5. Planning Protocol

5.1 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.

5.2 Notice to Developers

- (a) 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.
- (b) 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.

6. Liaison Committee

6.1 Establishment

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

6.2 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.

6.3 Membership

- (a) 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.

6.4 Chairperson

- (a) The members of the Committee will appoint a chairperson of the Committee at each meeting of the Committee.
- (b) The chairperson must be a member of the Committee.

- (c) The chairperson holds office for the meeting at which he or she is appointed.
- (d) The chairperson does not have a casting vote.

6.5 Secretary

- (a) A person nominated by the Councils from time to time will act as the secretary of the Committee.
- (b) The secretary is not required to be a member of the Committee.
- (c) The costs of providing the secretary *[to be negotiated by the parties]*.
- (d) 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.

6.6 Proceedings of Committee

- (a) 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.

6.7 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.

6.8 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.

7. Dispute Resolution

7.1 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.

7.2 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.

7.3 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.

7.4 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.

7.5 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.

7.6 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.

7.7 Capacity of Expert

The Expert is an expert and not an arbitrator.

7.8 Expert's Determination

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

7.9 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.

7.10 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.

7.11 Survival

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

8. Communications

8.1 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.

8.2 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.

8.3 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.

9. Reconciliation Statement

- (a) This statement is attached as Schedule 4.
- (b) This statement is an aspirational document and does not create any legal obligations.

10. Benefits to *[insert claim group notifiable body]*

[these benefits are to be negotiated by the parties]

11. Warranties and Authority

11.1 Native title warranties

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

- (a) **[insert appropriate warranties for claim group]**
- (b) 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.

11.2 Other Warranties

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

- (a) it has the power to enter into this ILUA and perform its obligations under it; and
- (b) the persons who have executed this ILUA on its behalf have the necessary authority to do so.

12. Native Title Act Statements

12.1 Future Acts

The parties:

- (a) 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
- (b) 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.

12.2 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)

12.3 Limited Extinguishment

- (a) 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.
- (b) 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:
 - (i) has done or does any validated future act referred to in clause 12.1(a); or
 - (ii) does any future act referred to in clause 12.1(b),
where the relevant validated future act or future act is:
 - (iii) any facility for services to the public as provided for by section 24KA of the Native Title Act;
 - (iv) any public work; and
 - (v) any grant of a freehold or leasehold interest in land including any easement.
- (c) The surrender of native title rights and interests pursuant to clause 12.3(b) extinguishes the surrendered native title rights and interests.
- (d) The extinguishment of native title rights and interests pursuant to clause 12(c) takes effect in respect of:
 - (i) any surrender of those rights and interests referred to in clause 12.3(b)(i), upon the registration date; and
 - (ii) 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.

12.4 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.

12.5 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).

12.6 Acknowledgment that Compensation is Final

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

- (a) 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
- (b) for the purposes of section 24EB of the Native Title Act, those amounts and benefits are compensation provided for by this ILUA; and
- (c) the *[insert claim group]* do not have any entitlement to any compensation other than for the amounts payable and benefits provided under this ILUA.

12.7 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.

12.8 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.

12.9 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:

- (a) all persons bound by this ILUA; and
- (b) all persons entitled to any of the benefits under this ILUA.

13. Registration

13.1 Application of ILUA

The parties state that:

- (a) this ILUA applies to the ILUA area; and
- (b) 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).

13.2 Application for Registration

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

13.3 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.

13.4 Removal from Register

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

13.5 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:

- (a) the [*insert names of indigenous parties*] (Indigenous parties) must use their best endeavours to ensure that the registered native title body corporate:
 - (i) 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
 - (ii) assumes the rights and obligations of [*insert name of claim group*] in relation to the whole or that part of the ILUA area;
- (b) 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
- (c) 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.

14. 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**.

15. General

15.1 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.

15.2 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.

15.3 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.

15.4 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.

15.5 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.

15.6 Minister's Discretion

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

15.7 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.

15.8 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.

15.9 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.

15.10 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