

## KUNGUN NGARRINDJERI YUNNAN AGREEMENT

This Agreement is dated the

2009.

### **BETWEEN:**

**NGARRINDJERI TENDI INCORPORATED, NGARRINDJERI HERITAGE COMMITTEE INCORPORATED AND NGARRINDJERI NATIVE TITLE MANAGEMENT COMMITTEE FOR AND ON BEHALF OF THE NGARRINDJERI PEOPLE** care of the Ngarrindjeri Land and Progress Association Incorporated Camp Coorong Race Relations and Cultural Education Centre of Post Office Box 126 Meningie SA 5264 ('**NGARRINDJERI**')

-And-

**CROWN IN RIGHT OF THE STATE OF SOUTH AUSTRALIA REPRESENTED BY THE MINISTER FOR ENVIRONMENT AND CONSERVATION, THE MINISTER FOR ABORIGINAL AFFAIRS AND RECONCILIATION, THE MINISTER FOR THE RIVER MURRAY, AND THE MINISTER FOR AGRICULTURE, FOOD AND FISHERIES ('MINISTERS')**

### **RECITAL**

- A. The Ngarrindjeri People as descendents of the original indigenous inhabitants of the lands and waters of the Murray River, Lower Lakes and Coorong and adjacent areas assert control over these lands and waters by the continuation of their culture upon their traditional lands to pursue their economic, social and cultural development of the land and waters located within the boundary of Claim SC 98/4 being the Ngarrindjeri Native Title Claim as described therein ('the Native Title Claim').
- B. The Ngarrindjeri People are the traditional owners (as that term is defined in the Aboriginal Heritage Act, 1988 (SA)) of Aboriginal Sites, Objects and Remains within the area of the Native Title Claim.
- C. The Ngarrindjeri People act through their representative bodies being Ngarrindjeri Tendi Incorporated, Ngarrindjeri Heritage Committee Incorporated and Ngarrindjeri Native Title Management Committee. These bodies, with other representative bodies within the Ngarrindjeri community have formed a peak body called the Ngarrindjeri Regional Authority Inc for the purpose of coordinating activities and resources of the Ngarrindjeri community and high level interactions with the State Government of South Australia.
- D. The Ministers have expressed a desire for a new relationship between the State of South Australia and Ngarrindjeri based upon mutual respect and trust acknowledging that Ngarrindjeri consider protection and maintenance of culture and cultural sites upon its land and waters central in every respect to Ngarrindjeri community well being and existence.
- E. By this Agreement the Ministers wish to provide support and resources to the Ngarrindjeri Regional Authority Inc and enter into negotiations and consultations with the Ngarrindjeri about the maintenance and protection of Ngarrindjeri culture and cultural sites and the natural resources of the Land.
- F. The Parties seek to negotiate and consult to enable Ngarrindjeri cultural values to become integral to all planning and future management arrangements that are made with respect to the Land and aim to recognize and assure active Ngarrindjeri participation in those arrangements. To this end both parties commit to a negotiation and consultation framework in this Agreement that will lead to a better understanding between themselves and enable the achievement of these goals.

- G. For the purpose of achieving the objectives referred to in this Agreement each of the Ministers will be represented by an authorized representative from a relevant government department under their jurisdiction in consultations and negotiations that fall outside the quarterly meetings between the Ministers and the Ngarrindjeri Regional Authority.
- H. The agreement may be referred to by the title: “Kungun Ngarrindjeri Yunnan Agreement”, which translates to mean, “Listening to Ngarrindjeri People Talking Agreement”.

IT IS AGREED:

1. Definitions

‘Ministers’ means the Minister for Environment and Conservation, Minister for Aboriginal Affairs and Reconciliation, the Minister for the River Murray, and the Minister for Agriculture, Food and Fisheries, and includes any and all departments and instrumentalities of the South Australian Government that the Ministers are accountable for, or any of their agents, employees, officials or representatives.

‘Agreement’ refers to this Agreement and includes the schedules;

‘Commencement Date’ is the date of execution of this Agreement;

‘Cultural Knowledge’ means all and any cultural knowledge, whether such knowledge has been disclosed or remains undisclosed by the Aboriginal people represented by the Ngarrindjeri, including but not limited to:

- (a) traditions, observances, customs or beliefs;
- (b) songs, music, dances, stories, ceremonies, symbols, narratives and designs;
- (c) languages;
- (d) spiritual knowledge;
- (e) traditional economies and resources management;
- (f) scientific, spatial, agricultural, technical, biological and ecological knowledge; and includes documentation or other forms of media arising therefrom including but not limited to archives, films, photographs, videotape or audiotape.

‘Land’ means the land and waters referred to in the Ngarrindjeri & Others Native Title Claim, being Federal Court Action No. SG 6027/98;

‘Parties’ shall mean the Ministers and Ngarrindjeri;

‘Schedule’ means a schedule under this Agreement;

**2. Acknowledgement**

- 2.1 The Ministers acknowledge that the Ngarrindjeri are the Traditional Owners of the Land and that according to their traditions, customs and spiritual beliefs its lands and waters remain their traditional country.
- 2.2 The Ministers also acknowledge and respect the rights, interests and obligations of Ngarrindjeri to speak and care for their traditional country, lands and waters in accordance with their laws, customs, beliefs and traditions.



- 2.3 The Ministers also acknowledge and respect the knowledge skill and experiences of the Ngarrindjeri to speak and care for their respective traditional country, lands and waters in accordance with their laws, customs, beliefs and traditions.
- 2.4 In order to enter meaningful negotiations and consultations with Ngarrindjeri the Ministers wish:
- 2.4.1 To respect the interest and aspirations of Ngarrindjeri people and to give due recognition to the ability of those Ngarrindjeri people to make a significant contribution to the promotion of the principles of ecologically sustainable development in relation to the use and management of natural and other resources;
  - 2.4.2 To promote a cooperative approach in the protection and management of the environment by the involvement of Ngarrindjeri people;
  - 2.4.3 To recognise the role of Ngarrindjeri people in the conservation and ecologically sustainable use of Australia's biodiversity;
  - 2.4.4 To promote the ethical use of Ngarrindjeri people's knowledge of biodiversity by the involvement of and cooperation with the owners of the knowledge;
  - 2.4.5 To promote a partnership approach to environmental protection, heritage and biodiversity conservation through recognising and promoting Ngarrindjeri people's role in and knowledge of the conservation and ecologically sustainable use of biodiversity.
- 2.5 The Ministers in consultations with Ngarrindjeri people shall consider the role and interest of Ngarrindjeri peoples in the conservation and ecologically sustainable use of natural resources in the context of relevant obligations under international treaties.
- 2.6 The Parties acknowledges that the Recitals are true and correct.

### **3. Commitments by Ministers to Ngarrindjeri**

- 3.1 To enable the Ngarrindjeri to actively participate fully in the on ground management and rehabilitation of the Land the Ministers will ensure that:
- 3.1.1 an amount of no less than \$2.5M is committed to programs to be conducted by the Ngarrindjeri Regional Authority Inc or its related entities from the Coorong, Lower Lakes and Murray Mouth Rehabilitation Works Program; such programs to be within the funding framework articulated by the Commonwealth Government in their funding criteria to the South Australian Government and conditional upon the State of South Australia obtaining funding in that amount, for that purpose;
- 3.2 To enable recognition of the significance of Ngarrindjeri cultural values to the Land the Ministers will ensure:
- 3.2.1 That should there be an allocation of fifty (50) GL of fresh water, to Lake Alexandrina within the next twelve months in accordance with criteria specified by the Commonwealth Government, that the Minister for Water Security will consult with Ngarrindjeri concerning their cultural water requirements and flows in determining its use within the ambit of the criteria specified by the Commonwealth Government;

- 3.2.2 That there is a public acknowledgment of the positive findings of the Federal Court decision in *Chapman v. Luminus (No. 5)* by von Doussa J. that the cultural beliefs held by Ngarrindjeri persons were genuine beliefs based upon Aboriginal tradition and that this matter had not been fully or properly explored in the Hindmarsh Island Bridge Royal Commission, and that such acknowledgement occur by an agreed protocol determined between the South Australian Government and the Ngarrindjeri Regional Authority Inc.

#### **4. Support of Ngarrindjeri Regional Authority Inc**

- 4.1 To achieve the commitments referred to in this Agreement and to be a suitable body for consultation and discussion, the Ngarrindjeri have formed the Ngarrindjeri Regional Authority Inc.
- 4.2 The purpose of the Ngarrindjeri Regional Authority Inc in the context of this Agreement is:
- 4.2.1 to ensure that information is exchanged between State Government Departments and the Ngarrindjeri;
- 4.2.2 that there is a clear avenue for regular and clear communications between the State Government Departments and the Ngarrindjeri;
- 4.2.3 that proper consideration is given by State Government Departments to Aboriginal Heritage matters and to ensure the interest of the traditional owners represented by the Ngarrindjeri of any land or other natural resources are considered;
- 4.2.4 to develop programs which align with caring for country objectives of the Ngarrindjeri in the protection of land, water and marine environments and the achievement of culturally appropriate outcomes for soils, water resources, geological features and landscapes, native vegetation, animals, other organisms and the ecosystems by the institution of relevant programs and the creation of a research institute and other supporting infrastructure;
- 4.2.5 to promote capacity building, infrastructure and well being within the Ngarrindjeri community; and
- 4.2.6 to promote and develop cultural awareness and skills training.
- 4.3 The Ministers agree to commit six hundred thousand dollars (\$600,000.00) over the next three (3) years to support the development of the Ngarrindjeri Regional Authority Inc and to resource the Ngarrindjeri with respect to consultation under this Agreement and any other agreements that may fall out of any consultation herein; such payment to be made by payment of \$200,000 upon execution of this Agreement and \$200,000 thereafter on the first and second anniversary of this Agreement or at other agreed times.

#### **5. Consultation**

- 5.1 Subject Matters for Consultation
- 5.1.1 The Ministers acknowledge that it is important for the Ngarrindjeri to gain economic benefit from the management of protected areas including game reserves, marine parks, conservation parks and national parks, including the training and employment of Ngarrindjeri rangers and other staff, and the



delivery of cultural interpretation services and will consult with Ngarrindjeri about these matters pursuant to this clause.

- 5.1.2 The Ministers acknowledge that it is crucial for Ngarrindjeri to be involved in planning and implementation processes with respect to management plans for parks and reserves, water resources and waters that are the subject of this Agreement and will consult with Ngarrindjeri about the best way to achieve this input.
- 5.1.3 The Ministers wish to ensure that Ngarrindjeri interests are included in the planning, development and allocation of funding by the South Australian Government for the Murray Futures Lower Lakes and Coorong programs funded by the Commonwealth Government by consulting with the Ngarrindjeri Regional Authority Inc pursuant to this clause.
- 5.2 The Ministers and the Ngarrindjeri Regional Authority Inc shall meet quarterly to consult, discuss and consider issues pertinent to the matters contained in clause 5.1 and such other matters as the parties agree that are properly within the subject matter of this Agreement.
- 5.3 The Ngarrindjeri Regional Authority Inc and the Ministers shall each produce a quarterly report to be included as a minuted item and attachment to minutes of meetings.
- 5.4 The Ministers and the Ngarrindjeri agree to consult in good faith with each other from time to time in addition to the quarterly meetings for the purpose of discussing any and all issues relevant to each of them in relation to matters contained in clause 5.1 and such other matters as are properly the subject of this Agreement as may be agreed from time to time.
- 5.5 The persons appointed as the contact for each of the parties are listed below. Either Party may appoint replacement or additional persons and shall inform the other Party in writing of the names of such persons.
- 5.6 All and any notices under this Agreement shall be sent to:
  - 5.6.1 For Ngarrindjeri  
To be advised within 28 days of the execution of this Agreement.
  - 5.6.2 For the Ministers:  
To be advised within 28 days of the execution of this Agreement.

Each Party may appoint replacement or additional persons and shall inform the other Party in writing of the names of such persons.

## **6. Negotiation**

### **6.1 Subject Matters for Negotiation**

- 6.1.1 The Ministers acknowledge that Ngarrindjeri desire a hand-back of all existing and future conservation parks and national parks and a management role in other protected areas, including game reserves and marine parks, by negotiated agreements and that it will acknowledge the Ngarrindjeri aspirations for the hand back and future management of these areas as part of a negotiation about co-management of parks and reserves.

6.1.2 The Ministers will negotiate in good faith with Ngarrindjeri about co-management of parks and reserves and this negotiation will take place within the context of native title claim resolution negotiations and pursuant to this Agreement.

6.1.3 The Ministers will negotiate in good faith with the Ngarrindjeri to develop an agreement that acknowledges Ngarrindjeri ownership of Cultural Knowledge and ensures that the all Cultural Knowledge is managed consistently with that ownership.

6.1.4 The Ministers and Ngarrindjeri agree to negotiate in good faith with each other for the purpose of resolving other matters that are properly the subject of this Agreement as agreed from time to time.

6.1.5 To achieve successful and lasting agreements, the process of the Negotiation must embody:

6.1.5.1 Commitment

There should be a serious resolve and commitment by each of the Parties to reach agreement. The Parties should match their commitment with sufficient resources to support the process.

6.1.5.2 Conducted in South Australia

To meet the circumstances of the negotiations, the process should be located and managed in South Australia.

6.1.5.3 Fair

The process should provide a level playing field where no party is disadvantaged because of the process.

6.1.5.4 Impartial

No one party should have control of the process. All Parties should be equal parties in its management.

6.1.5.5 Effective

The process should encourage effective negotiations which are efficient, and avoid creating barriers to progress.

6.1.5.6 Understandable

Each party should clearly understand its duties and responsibilities in the negotiations process.

6.2 To ensure the Negotiation occurs in accordance with the principles stated in Clause 6.1, including equal access by both Parties to resources to conduct the Negotiation:

6.2.1 The Ministers will be responsible for the costs of the Ngarrindjeri in undertaking the Negotiation, including reasonable costs of expert support; in such amount as is agreed between the parties.



- 6.2.2 The Ministers and Ngarrindjeri agree that they will follow the process for the Negotiation set out in Schedule 1 where agreed.
- 6.3 The parties will appoint persons who are properly authorized to negotiate with respect to the particular subject matter and legal context.
- 6.4 It is agreed that the following criteria apply in determining whether a Party is ready to negotiate ('Agreed Negotiation Readiness Criteria'):
- 6.4.1 The Ngarrindjeri is ready when it:
- 6.4.1.1 Has identified subject matters they wish to include in the Negotiation. ;
- 6.4.1.2 Has consulted its community;
- 6.4.1.3 Has adopted a ratification process and is duly authorized according to law.
- 6.4.2 The Ministers are ready when:
- 6.4.2.1 They have identified the subject matters they wish to include in the Negotiation;
- 6.4.2.2 They have established a mechanism for consultation with non-Indigenous interests and have consulted with them;
- 6.4.2.3 They have identified and instructed a negotiator and have adopted a ratification process within the relevant Agency or Agencies.
- 6.5 All and any notices under this Agreement shall be sent to:
- 6.5.1 For Ngarrindjeri
- Shaun Berg  
Berg Lawyers  
18 – 20 Grenfell Street  
Adelaide SA 5000
- 6.5.2 For the Ministers :
- To be advised within twenty eight days of this Agreement being executed.

## 7. Heritage and Native Title

- 7.1 This Agreement is made as an act of good faith and is not intended to affect, extinguish, or derogate from any subsisting legal rights, powers, interests or obligations of the Ngarrindjeri People, including, but not limited to any such Ngarrindjeri or sovereign rights, native title rights and interests, or rights under the *Aboriginal Heritage Act 1988 (SA)* or *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Commonwealth)*.
- 7.2 For the sake of clarity, this Agreement does not comprise an Indigenous Land Use Agreement as defined under the *Native Title Act 1993 (Commonwealth)*, nor comprise an agreement to alter, extinguish, surrender or derogate from common law, equity or statutory native title rights of the native title applicants to assert native title for and on behalf of the native title claimant group.

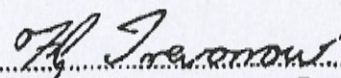
8. Miscellaneous

- 8.1 This Agreement does not supersede or affect any prior agreements and understandings between the Parties.
- 8.2 No amendment or variation of this Agreement is valid or binding on a Party unless made in writing executed by all Parties.
- 8.3 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- 8.4 No failure to exercise nor any delay in exercising any right, power or remedy by a Party operates as a waiver. 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. A waiver is not valid or binding on the Party granting that waiver unless made in writing.
- 8.5 The Ministers will bear all costs of the Parties arising out of the negotiation, preparation and execution of this Deed. All stamp duty which may be payable on or in connection with this Agreement will be borne by the Ministers.
- 8.6 This Agreement may be executed in counterparts. The date on which the last counterpart is signed is the date of execution of the Agreement.
- 8.7 An amount payable by a Party under this Agreement in respect of a taxable supply by another Party is not expressed in this Agreement to include GST and the recipient must, in addition to that amount and at the same time, pay to the supplier of the taxable supply the GST payable in respect of the supply.

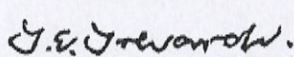


**EXECUTED AS AN AGREEMENT.**

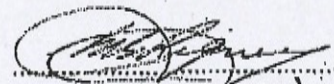
Signed for and on behalf of the NGARRINDJERI )  
**TENDI INCORPORATED** )  
for and on behalf of the Ngarrindjeri People )

  
Signature of Frank George Trevorrow .....  
Date 5/6/09

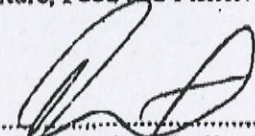
Signed for and on behalf of the NGARRINDJERI )  
**HERITAGE COMMITTEE INCORPORATED** )  
for and on behalf of the Ngarrindjeri People )

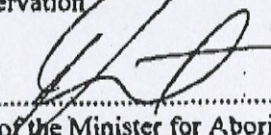
  
Signature of Thomas Edwin Trevorrow .....  
Date 5/6/09

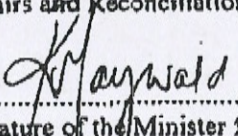
Signed for and on behalf of the NGARRINDJERI )  
**NATIVE TITLE MANAGEMENT COMMITTEE** )  
for and on behalf of the Ngarrindjeri People )

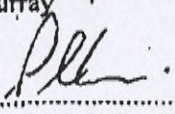
  
Signature of Matthew Rigney .....  
Date 5/6/09

Signed by the CROWN IN RIGHT OF THE )  
**STATE OF SOUTH AUSTRALIA** represented by )  
the Minister for Environment and Conservation, the )  
Minister for Aboriginal Affairs and Reconciliation, )  
the Minister for the River Murray, and the Minister )  
for Agriculture, Food and Fisheries )

  
Signature of the Minister for Environment )  
and Conservation ..... )  
Date 11/6/08

  
Signature of the Minister for Aboriginal )  
Affairs and Reconciliation ..... )  
Date 11/6/08

  
Signature of the Minister for the River )  
Murray ..... )  
Date 28.05.09

  
Signature of the Minister for Agriculture, )  
Food and Fisheries ..... )  
Date 26.05.09





## SCHEDULE 1

The process which the negotiations follow should be:

### **Stage 1: Exchange Submission of Statement of Intent**

The Statement of Intent should identify a preliminary list of issues considered important to the negotiations;

### **Stage 2: Preparations for the Negotiation**

Following the lodgment of the Statement of Intent, a preliminary meeting should be held between the Parties.

The purpose of the meeting would be to:

- Exchange information;
- Consider criteria to be used to determine the Parties' readiness for the Negotiation;
- Identify studies/research carried out or to be carried out in preparation for the Negotiation;
- Identify in a general way the issues to be negotiated.

### **Stage 3: Negotiation of Framework Agreement**

A Framework Agenda is negotiated which:

1. Identifies the subjects for and objectives of the Negotiation; and
2. Establishes a timetable and any special procedural arrangements for the Negotiation.

### **Stage 4: Negotiation of Agreement in Principle**

The Parties should negotiate the major terms which will form the basis of the Agreement. The Parties should again confirm the process for ratification and establish a mechanism to develop an implementation plan.

Ratification process allows Parties to:

- Review the emerging agreement and approve, reject or seek amendment of its provisions;
- Provide their negotiators with a mandate to conclude an Agreement

### **Stage 5: Negotiation to Finalize and Agreement**

The Agreement will:

- Formally embody the principles which underpin the new relationship;
- Provide the implementation plan by which all Parties will give effect to the agreements;
- Resolve technical and legal issues in the settlement of the terms of the Agreement, but should not be used as an opportunity to re-open issues already settled;
- Be formally ratified and signed.

### **Stage 6: Implementation of the Agreement**

Implementing legislation or authorities may be required by each of the Parties. Implementation of the Agreement will require continuing goodwill, commitment and efforts on the part of all Parties.

