KUNGUN NGARRINDJERI YUNNAN AGREEMENT

This Agreement is dated the 7 March 2008.

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

THE RURAL CITY OF MURRAY BRIDGE of 2 Seventh Street Murray Bridge SA 5253 ("Council")

BACKGROUND

1. The Council is a statutory body constituted under the Local Government Act 1999 for its Council Area (the Council Area).
2. The Ngarrindjeri are the Traditional Owners of, and assert control under traditional laws over their land and waters ("Lands and Waters of the Ngarrindjeri").
3. The Council and the Ngarrindjeri wish to protect Aboriginal sites, objects and remains of the Ngarrindjeri across the Council Area in accordance with the terms and conditions of this Agreement, and set in place agreed consultative mechanisms.
4. 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 and Interpretations

'Aboriginal object', Aboriginal site' and Aboriginal remains' have the same meaning in this Agreement as prescribed in the Aboriginal Heritage Act 1988 (SA).

'Agreement' refers to this Agreement and includes the schedules;

'Commencement Date' is the date of execution of this Agreement;

'Development' as defined by the Development Act, 1993.

'Highly Sensitive Areas' refers to an area or areas of high cultural and/or heritage importance to the Ngarrindjeri; set out in Schedule 3
Managed Areas' refer to an area or areas for which the Council and Ngarrindjeri will devise an indigenous management plans to ensure that Aboriginal sites, objects and remains are protected and/or managed;

'Parties' shall mean the Council and Ngarrindjeri;

'Schedule' means a schedule to this Agreement;

'Sensitive Area' refers to the lands and waters and adjacent lands and waters of the River Murray within the Council Area; and Council and the Ngarrindjeri will determine in consultation with each other the definition of sensitive sites and/or area with this area – that is, determine a defined zone'

'Traditional Owners' refers to the Ngarrindjeri People as represented by the Ngarrindjeri Heritage Committee Incorporated, Ngarrindjeri Native Title Management Committee and the Ngarrindjeri Tendi Incorporated, within the meaning in the Aboriginal Heritage Act, 1988 (SA).

2. Apology

2.1 The Council apologises to the Ngarrindjeri as the Traditional Owners as expressed in the statement in Schedule 1 of this Agreement and the Ngarrindjeri accept the apology as expressed in Schedule 2.

2.2 The statement in Schedule 1 is an aspirational document and does not create any legal obligations or give rise to any claims of any nature whatever and however arising, on the part of either the Council or the Ngarrindjeri.

3. Acknowledgement

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

3.2 The Council acknowledges that the Recitals referred to in the Background are true and correct.

4. Commitment

4.1 The Parties commit to seek ways together to uphold Ngarrindjeri rights and to advance Ngarrindjeri interests when decisions are being made about their traditional country, lands and waters.

4.2 The Parties commit to work together to advance harmonious community relations and promote the interests of the whole community.

4.3 The Parties commit to develop greater community understanding of Ngarrindjeri traditions, culture, laws and spiritual beliefs in the Council Area.

4.4 The Parties commit to work together to determine, and to advance the community recognition of a framework agreement for the protection of objects, articles and remains in the possession of the Council.

4.5 The Parties commit to the formulation of a model or models of best practice for consultation in relation to development assessment within the meaning of the Development Act 1993 (SA)
to occur in the Council Area, which reflects the rights, interests and obligations of the Ngarrindjeri.

4.6 The Parties via the Ngarrindjeri will establish a joint committee comprising equal numbers of Ngarrindjeri and Council representatives to develop a strategy for the implementation of the commitments expressed herein, whose name will be determined by the committee.

4.7 This Clause 4 is made as an act of good faith and is not intended to affect the legal rights, powers, obligations or interests of either Party.

5. Communication

5.1 The Council, Ngarrindjeri Heritage Committee Inc. Ngarrindjeri Native Title Management Committee and Ngarrindjeri Tendi Incorporated acknowledge that the relevant bodies to communicate in relation to the issues that may affect Ngarrindjeri interests within the Council Area are:

5.1.1 For Aboriginal Heritage:

5.1.1.1 Ngarrindjeri Heritage Committee Inc.
Chairperson: Mr Thomas Trevorrow

5.1.2 For Native Title:

5.1.2.1 Ngarrindjeri Native Title Management Committee
Chairperson: Mr Mathew Rigney

5.2 Ngarrindjeri Tendi Incorporated is the relevant body with which to communicate in circumstances in which directions are to be taken from elders.

5.3 The Council and Ngarrindjeri shall develop a communication protocol for the purpose of facilitating the communication process referred to in this Clause 5.

6. Development

6.1 Highly Sensitive Areas

6.1.1 It is agreed that Council and Ngarrindjeri shall use their best endeavours to ensure that no development or disturbance will occur on or near the Highly Sensitive Areas referred to Schedule 3.

6.1.2 In addition to Clause 6.1.1, it is agreed that from time to time Ngarrindjeri shall at its sole discretion advise, and Council shall at its sole discretion consider and agree to acknowledge and classify additional areas within the Council Area as being Highly Sensitive Areas, and in which case, Clause 6.1.1 applies to those areas.

6.1.3 Under no circumstances whatsoever, shall the Ngarrindjeri be prejudiced in any of its dealing with Council or any other third party by its decision to classify or not to classify any additional areas as being Highly Sensitive Areas.

6.2 Managed Areas

6.2.1 The Ngarrindjeri in consultation with Council shall devise mutually agreed indigenous management plans for the Managed Areas referred to in Schedule 4.
6.2.2 The purpose of the indigenous management plan referred to in Clause 6.2.1 shall be for development to proceed in the Managed Areas in a manner consistent with Ngarrindjeri cultural and heritage interests. For example: defining areas for which development can proceed without restrictions or effect upon Ngarrindjeri cultural or heritage interests, where some restrictions or strategy to minimise risk applies, or where no development should occur. Development Plan objectives to be acknowledged in the development of such Plans so as not to prejudice development per se.

6.2.3 Neither party shall be obliged to enter into an indigenous management plan for any Managed Areas.

6.2.4 In addition to Clause 6.2.1, it is agreed that from time to time Ngarrindjeri shall at its sole discretion advise, and Council shall at its sole discretion consider to agree to acknowledge and classify additional areas within the Council Area as being Managed Areas, and in which case, Clause 6.2.1 applies to those areas.

6.2.5 Under no circumstances whatsoever, shall the Ngarrindjeri be prejudiced in any of its dealing with Council or any other third party by its decision to classify or not to classify any additional areas as being Managed Areas.

6.2.6 It is acknowledged that Managed Areas may contain Highly Sensitive Areas.

6.3 Sensitive Areas

6.3.1 Ngarrindjeri and Council shall by mutual agreement and consultation determine a process for proceeding with development in Sensitive Areas which results in compliance with the requirements of the Aboriginal Heritage Act, 1988 (SA). Council to ensure conditions or notes are placed on all Development Approvals noting the developer’s responsibilities in relation to the Native Title Aboriginal Act and Aboriginal Heritage Act.

6.3.2 Under no circumstances whatsoever, shall the Ngarrindjeri be prejudiced in any of its dealing with Council or any other third party by its decision to classify or not to classify any additional areas as being Sensitive Areas.

6.3.3 It is acknowledged that Sensitive Areas may contain Highly Sensitive Areas.

6.4 Open Spaces and Zoning

6.4.1 Ngarrindjeri and Council shall discuss endorsement of Open Space as being accessible by Ngarrindjeri for cultural uses (such uses being consistent with the use of Open Space by other members of the public).

6.4.2 Ngarrindjeri and Council shall discuss the introduction into zoning or planning criteria within the Council Area criteria capable of minimising the risk of interference with, or disturbance to Aboriginal Sites, Aboriginal Objects and Aboriginal Remains.

6.5 Development Plan

6.5.1 Notwithstanding anything to the contrary contained in clauses 6.1 to 6.4, those clauses are subject to the provisions of this clause 6.5.

6.5.2 Without detracting from the generality of clause 6.5.1, no agreed outcome of any consultation or discussion under this clause 6 will become operative or binding on Council unless and until any amendment to the Plan undertaken pursuant to this
clause 6 is finally approved according to the procedures in the Development Act 1993 (SA) and Regulations.

6.5.3 Council must use its best endeavours to amend the Development Plan – Murray Bridge (RC) (Plan) to reflect the proposals in this clause 6.

6.5.4 Council specifically commits to use its best endeavours to amend the Plan to include within it a table or tables and associated maps, following Table MuBr/4 which identify or identifies Highly Sensitive Areas and Managed Areas.

6.5.5 Council specifically commits to use its best endeavours to amend relevant zoning and planning provisions of the Plan to reflect the agreed outcomes of consultation and discussion between the Ngarrindjeri and Council pursuant to this clause 6.

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 native title rights and interests, or rights under the Aboriginal Heritage Act, (SA) 1988 or Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth).

7.2 This Agreement does not comprise an indigenous Land Use Agreement as defined the Native Title Act 1993 (Cth), 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.

7.3 The definition of Highly Sensitive Areas, Managed Areas, and Sensitive Areas in this Agreement shall not stop or inhibit in any manner whatsoever the Ngarrindjeri from referring to other areas of importance to the Ngarrindjeri.
EXECUTED as an Agreement.

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

[Signature]
Signature of authorised person

GEORGIE TREVORROW
Name of authorised person
(BLOCK LETTERS)

[Signature]
Witness

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

[Signature]
Signature of authorised person

THOMAS E. TREVORROW
Name of authorised person
(BLOCK LETTERS)

[Signature]
Witness

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

[Signature]
Signature of authorised person

[Signature]
Name of authorised person
(BLOCK LETTERS)

[Signature]
Witness

Signed for and on behalf of the RURAL CITY OF MURRAY BRIDGE by:

[Signature]
Signature of authorised person

ALAN D. DAVIES
Name of authorised person
(BLOCK LETTERS)

[Signature]
Witness

17/13/2008
SCHEDULE 1 APOLOGY

Sincere expression of sorrow and apology to the Ngarrindjeri People

To the Ngarrindjeri people, the traditional owners of the land and waters within the region, the Rural City of Murray Bridge expresses sorrow and sincere regret for the suffering and injustice that you have experienced since colonisation and we share with you our feelings of shame and sorrow at the mistreatment your people have suffered.

We respect your autonomy and uniqueness of your culture. We offer our support and commitment to your determination to empower your communities in the struggle for justice, freedom and protection of your Heritage, Culture and interests within the Council area and acknowledge your right to determine your future.

We commit to work with you. We acknowledge your wisdom and we commit to ensuring our actions and expressions best assist your work. We accept your frustrations at our past ways of misunderstanding you.

We are ashamed to acknowledge that there is still racism within our communities. We accept that our words must match our actions and we pledge to you that we will work to remove racism and ignorance.

We will recognise your leadership, we honour your visions, and we hope for a future of working together with respect for each other.

We look forward to achieving reconciliation with justice.

We ask to walk beside you, and to stand with you to remedy the legacy of European occupation of your land and waters and control of your lives.

The work of the Rural City of Murray Bridge will be guided by your vision of a future where reconciliation through agreement making may be possible and we may walk together.

Signed for and on behalf of the Rural City of Murray Bridge by

Mayor Alan Arbon

Witnessed for the Council by the Chief Executive Officer, David Altmann

Witnessed for the Ngarrindjeri People by the Rupelle of the Ngarrindjeri Tendi,

Mr George Trevorow

Witnessed for Ngarrindjeri People by the Chair of Ngarrindjeri Native Title Committee Mr Matthew Rigney

Witnessed for the Ngarrindjeri People by the Chair of Ngarrindjeri Heritage Committee Mr Tom Trevorow
SCHEDULE 2
Acceptance of Apology

To the Rural City of Murray Bridge

The Ngarrindjeri people acknowledge the sorrow and regret expressed by the Rural City of Murray Bridge SA Council for the suffering and injustice experienced by our people since colonization.

We respect your commitment to work with us and your offer of support to empower our communities in the struggle for justice, freedom and protection of our heritage.

We embrace your vision of a future where reconciliation may be possible and offer our commitment to achieving this common goal.

We acknowledge that you recognise our connection to the land and waters and appreciate your commitment to fostering respect for our culture and interests.

Signed for and on behalf of the Ngarrindjeri Tendi by the Rupelle
Mr. George Trevorow

Witnesed for the Ngarrindjeri People by the Chair of the Ngarrindjeri Native Title Committee Mr. Matthew Rigney

Witnesed for the Ngarrindjeri People by the Chair of the Ngarrindjeri Heritage Committee Mr. Tom Trevorow

Witnesed for the Rural City of Murray Bridge
By Mayor Allan Arbon.

Witnesed for the Rural City of Murray Bridge
By Chief Executive Officer David Altmann.
SCHEDULE 3
HIGHLY SENSITIVE AREAS

1. Long Island (as described in Appendix A hereto)
2. Granite Outcrop on both sides of River Murray adjacent to new Swanport Bridge. (as described in Appendix B hereto)
SCHEDULE 4
MANAGED AREAS

1. Narooma Reserve (as described in Appendix C hereto)
2. Railway Precinct (as described in Appendix D hereto)
3. Sturt Reserve (as described in Appendix E hereto)