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## NGARRINDJERI SPEAKING AS COUNTRY DEED

This Deed is made on the 27 day of December 2014.

### Between:

**NGARRINDJERI REGIONAL AUTHORITY INC** of 50 Princes Hwy, Murray Bridge, SA 5253 for and on behalf of the Ngarrindjeri People ('Ngarrindjeri')

-and-

**MINISTER FOR SUSTAINABILITY, ENVIRONMENT AND CONSERVATION** a body corporate pursuant to the *Administrative Arrangements Act 1994* (SA), to be administered by Department of Environment, Water and Natural Resources (South Australia) of GPO Box 1047 ADELAIDE, South Australia, 5001, ABN 36 702 093 234 ("the Minister")

### Recitals:

- A. Ngarrindjeri and 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 entered into an agreement titled 'Kungun Ngarrindjeri Yunnan Agreement' on 5 June 2009 ('KNY Agreement').
- B. The KNY Agreement created a respectful basis upon which Ngarrindjeri and the relevant Ministers have been able to develop and expand their relationship.
- C. The Murray Mouth ('Mouth') is a dynamic system, influenced by the flow of River Murray water over the barrages and inward tidal movement from the Southern Ocean. When River Murray flows to South Australia are low, barrage releases are low and sand deposition occurs inside the Mouth causing restrictions and increasing the risk of closure.
- D. It is important that the Mouth stays open to maintain connectivity between the River, the Coorong and the Southern Ocean, to discharge salt and other nutrients out to sea, and to maintain healthy ecosystems in the Coorong.
- E. During the past year, inflow conditions in the River Murray System and South Australia have been relatively low. Since late 2013, as a result of these lower flow conditions, the Mouth has become severely constricted, and is now at risk of closure. The Minister will commence dredging of the Mouth as soon as practicable to maintain an open Mouth.
- F. Dredging has been shown to be the most effective method for keeping the Mouth open under periods of restricted flow over the barrages, in terms of cost and environmental criteria, compared with a range of structural and other methods.
- G. The Parties agree about the importance of freshwater flows down the River Murray.
- H. The Parties acknowledge that the Murray-Darling Basin Plan states an outcome will be pursued of ensuring the mouth of the River Murray is open without the need for

dredging in at least 95% of years, with flows every year through the Murray Mouth Barrages.

- I. The Minister considers that dredging in and around the mouth of the River Murray is necessary for the health of the River Murray, Lower Lakes and Coorong and has requested that the Ngarrindjeri assist in relation to this process. The Minister is committed to ensuring the dredging process is carried out when necessary as quickly and with minimal inconvenience as is reasonably possible.
- J. The Ngarrindjeri assert they have an inherited customary right and duty under their traditional laws and customs to speak for, control and care for their country, knowledge, objects, articles and remains. Ngarrindjeri say:

*'The Meeting of the Waters is a fundamental aspect of the Ngarrindjeri world where all things are connected, whether they are living, from the past and/or for future generations. The Meeting of the Waters makes manifest core concepts of Ngarrindjeri culture that bind land, body, spirit, and story in an integrated, interfunctional world. The principles that flow from this cultural system are based upon respect for story, country, the old people, elders and family. The pursuit of these principles is contingent upon maintaining a relationship with country. The violation of these respect principles are manifest through the destruction of Ngarrindjeri yarlumar ruwe (a concept that embodies the connectedness and interfunctionality of their culture) and their effect upon the behaviours and survival of ngatji (the animals, birds and fish). According to these principles and contingent beliefs the "environment" cannot be compartmentalised: the land is Ngarrindjeri and Ngarrindjeri are the land. All things are connected and interconnected. Ngarrindjeri philosophy is based on maintaining the integrity of the relationship between place and person. It is the responsibility of the living to maintain this continuity. The past is not and cannot be separated from the here and now or the future. To break connections between person and place is to violate Ngarrindjeri culture. The objective in undertaking activities upon Ngarrindjeri country should be to not cause violence to Ngarrindjeri culture.'*

- K. The Minister recognises that the area in and around the mouth of the River Murray is culturally sensitive and forms part of the Aboriginal Registered Site No. 6626-4727 titled 'the Meeting of the Waters' ('Site'). Ngarrindjeri and the Minister wish to promote a broader understanding of the Site and what actions are desirable to allow it to remain culturally and physically healthy.
- L. The Ngarrindjeri and the Minister wish to implement strategies and programs from time to time where they work together to enhance and foster the cultural well being of the area encompassing the site, including but not limited to achieving fresh water flows down the River Murray sufficient to clear the mouth of the River Murray and support and enhance the inputs of Ngarrindjeri in these processes and activities.
- M. The Minister has agreed to fund the Ngarrindjeri to undertake a number of activities that promote the importance of the Site and develop ways to improve the health of this area.

**It is Agreed:**

**1. Acknowledgements**

- 1.1 The Minister repeats the acknowledgments in the KNY Agreement.
- 1.2 The Minister acknowledges that Ngarrindjeri will be guided by their cultural obligations and protocols in devising strategies and programs which are encompassed within the concept of 'Ngarrindjeri speaking as country'.
- 1.3 The Ngarrindjeri acknowledge that the Minister has responsibilities under the Ramsar Convention to maintain the ecological character and Indigenous interest of the Coorong and Lakes Alexandrina and Albert wetland of International importance, including through the maintenance of an open Murray Mouth.

**2. Commitment**

- 2.1 The Parties commit to together, seek ways to consider Ngarrindjeri rights and to advance Ngarrindjeri interests when decisions are being made about their traditional country, lands and waters including the registered Aboriginal Site titled 'Meeting of the Waters'.
- 2.2 The Ngarrindjeri are committed to ensure that sufficient fresh water is available in the River Murray system at relevant times of the year to enhance the health of the country generally and to minimise the need for interventions in the future, such as the dredging of the mouth of the River Murray.

**3. Interpretation and Definitions**

- 3.1 The Parties consider the acknowledgments and commitments referred to in this Deed are true and correct.
- 3.2 The following interpretation rules shall apply to this Deed:
  - 3.2.1 Reference to an Act includes any regulations made pursuant to that Act and any Amendments to the Act or Regulations for the time being in force and also to any Act or Regulations passed in substitution therefore.
  - 3.2.2 The singular includes the plural and vice versa
  - 3.2.3 The reference to a person includes a firm, council operation, governmental authority (State or Commonwealth) or body whether incorporated or not.
  - 3.2.4 Reference to a clause means a clause in this Deed.
  - 3.2.5 The meaning of a word or words followed by the word "includes" or "including" is not limited only to the meaning of the word or words following the word "includes" or "including"

- 3.2.6 Words and phrases defined in the *Aboriginal Heritage Act 1988* have the same meaning in this Deed.
- 3.2.7 Headings are for convenience of reference and do not affect the interpretation of this Deed;
- 3.3 The following words have the meanings set out below:
- “NTA” means the *Native Title Act (1993) (Cth)* as amended;
- “Party/Parties” means the Minister and the Ngarrindjeri.

#### 4. Funding to Ngarrindjeri

- 4.1 The funding as agreed to be supplied by the Minister to the Ngarrindjeri Regional Authority on behalf of the Ngarrindjeri by way of Deed of Grant dated 27 December 2014 and will be applied in the following way:
- 4.2 To establish and support a Working group to develop proposals to be considered by the Minister to:
- 4.2.1 Promote greater community understanding by the public and relevant statutory bodies of Ngarrindjeri traditions, culture, laws and spiritual beliefs in the River, Coorong and Lakes Alexandrina and Albert, and adjacent areas including a specific focus upon of the Site, including by way of cultural education, interpretive signage and digital media presentations;
- 4.2.2 Devise strategies and undertake discussions with each other and other parties which endeavour to assist in obtaining water flows down the River Murray at relevant times of the year and otherwise maintain the general health of the Site and its surrounds and to minimise the need for interventions in the future, such as the dredging of the Mouth;
- 4.2.3 Identify potential funding sources for such activities;
- 4.2.4 Provide Ngarrindjeri input to inform decisions being made about the lands and waters of the Site and surrounds;
- 4.2.5 Facilitate, monitor and progress those proposals that are approved.

## **5. Advancing Relationship**

5.1 The Parties acknowledge that to achieve successful and lasting outcomes, the discussions between them must embody:

### **5.1.1 Commitment**

There must be a serious resolve and commitment by each of the Parties to reach an outcome. Subject to the availability of resources, the Parties must endeavour to match their commitment with sufficient resources to support the process.

### **5.1.2 Fairness**

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

### **5.1.3 Effectiveness**

The process must encourage processes which are efficient, and avoid creating barriers to progress.

### **5.1.4 Understandable**

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

## **6. Working Group**

6.1 Upon the principles expressed in Clause 3.1 of this Deed, Ngarrindjeri and the Minister have agreed to form a working group about the matters referred to in Clause 2.1 of this Deed.

6.2 The working group shall meet from time to time on a regular basis, and in any event no less than every three (3) months, to formulate the strategies committed to in Clause 2.1 herein.

6.3 The persons comprising the working group shall consist of 3 representatives of each party to this Deed to be nominated by the respective parties from time to time.

## **7. Dredging of the Mouth and related matters**

7.1 The Minister shall, through his representatives (including but not limited to public servants or contractors) in undertaking the dredging, comply with the dredging conditions as described in Schedule 1 of this Deed.

7.2 The Minister commits to consult with Ngarrindjeri about any changes to the dredging conditions including proposed dredging depth parameters, stop work protocols for the dredging contractor, and to support their perspectives being taken into account in the design of the proposed dredging channel configuration.

- 7.3 The Parties state that the plans for dredging as set out in Schedule 1 (or as agreed from time to time by the Parties to this Deed) is an appropriate risk management strategy to ensure that the dredging activities will not damage, disturb or interfere with the Site.
- 7.4 The Minister will seek to procure with SA Water to permit Ngarrindjeri people safe access to the dredging activities.
- 7.5 Each party will advise the other which person is the nominated Project Co-ordinator for the purposes of Schedule 1.

## **8. Term of Deed**

- 8.1 This Deed comes into effect upon execution hereof by both Parties and will continue, unless terminated by either party or by mutual agreement. The Ngarrindjeri agree to not bring this Deed to an end before 30 June 2016, without the agreement of the Minister. The Parties will undertake a review of the Deed prior to 29 May 2016 to consider future arrangements.

## **9. Disputes**

- 9.1 The Parties record their intention that, if any dispute or difference arises out of or in relation to this Deed, it is to be resolved in a spirit of good faith between senior representatives of each Party and adopt agreed procedures as required from time to time.

## **10. Waiver**

- 10.1 A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 10.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 10.3 A waiver is not effective unless it is in writing.
- 10.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## **11. Assignment**

- 11.1 Neither Party may assign, license or otherwise deal with the benefit of any of its rights under this Deed to any person without the prior written approval of the other Party.

## **12. Proper Law**

- 12.1 The proper law of this Deed is the law of or applicable in South Australia.

### **13. Notices**

- 13.1 Notices given by one Party to another pursuant to this Deed shall be in writing and sent to the respective addresses and shall be deemed served at the time of transmission if sent by facsimile or email or upon the earlier of four (4) clear working days if posted by ordinary pre-paid post (if posted within Australia) of the date of actual receipt. For the purposes of this clause the addresses to which notices are to be sent shall be –

For the Ngarrindjeri:

Shaun Berg  
Berg Lawyers  
37 Hurtle Square  
ADELAIDE SA 5000  
Telephone: (08) 8232 4360

For the Minister:

Janice Goodwins  
Program Leader, Strategy and Business  
Department of Environment, Water and Natural Resources  
GPO Box 1047  
ADELAIDE SA 5001  
Telephone: (08) 8204 9069

## SCHEDULE ONE – DREDGING CONDITIONS

### Section 4.5.1 of the Murray River Mouth Dredging Plan, November 2014

1. The Minister will employ a cutter suction dredge to remove sand obstructing the Mouth, and will seek to maintain water flow through both Goolwa and Tauwitchere channels to the specifications defined below, which are estimated to be within the accumulated sand within the estuary.
2. The Cutter Suction Dredging is proposed to be undertaken on a 24 hour, 7 days a week schedule and each dredger can pump up to 4,000m<sup>3</sup> of sand per day for deposition in the approximate vicinity of the high water mark of the ocean beaches of both Sir Richard Peninsula and Young Husband Peninsula;
3. Both Parties acknowledge that it is intended that a single dredger will operate for the initial month and then a second dredger will be operated for at least the next 17 weeks. The Minister's Project Coordinator will maintain regular consultation with the Ngarrindjeri Project Coordinator regarding the dredge operations, and any planned changes.
4. The Minister asserts that the material to be dredged from the Murray Mouth has been recently deposited via tidal processes from the Southern Ocean.
5. It is proposed that the channels be dredged in both the Goolwa and Tauwitchere Channels will have the following approximate dimensions:
  - 5.1 To a depth of -3.0 metres;
  - 5.2 To a width of 80 metres;
  - 5.3 For such length as is professionally recommended.
6. The term "**Cutter Suction Dredging**" for Schedule 1 means dredging that is undertaken through the cutter suction method of removal of materials by pumping sluice into a dewatering dam or similar structure, and is primarily employed for large dredging operations, or operations that take place in deep water. This dredge utilizes a cutting mechanism at the suction inlet to loosen materials and transports it to the suction mouth and causes significant disturbance of and damage to materials interacting with the cutter.



**EXECUTED as a Deed**

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

*T. J. Hartman*  
.....  
Signature of authorised person

*Timothy James HARTMAN*  
.....  
Name of authorised person  
(BLOCK LETTERS)

*L. S. Yarron (Luke Joshua Trevorrow)*  
.....  
Witness

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

**MINISTER FOR SUSTAINABILITY,** )

**ENVIRONMENT AND CONSERVATION** )

by his duly authorised delegate )

**SIGNED by:** *[Signature]* )  
**Acting Chief Executive, Department** )  
**of Environment, Water and Natural** )  
**Resources** )

Dated: *24/12/2014* .....

In the presence of: *[Signature]* .....

Witness Print Name: *JANCE GODWIN* .....