

ALMAC MAPPING SURVEY PROCEDURES

(SCHEDULE 4 TO FRAMEWORK ILUA)

1. Definitions and Interpretation

1.1 Definitions

In these *mapping survey procedures*, unless the context otherwise requires:

Aboriginal record has the meaning given in the *Aboriginal heritage act*;

Aboriginal tradition has the meaning given in the *Aboriginal heritage act*;

accessible land means the whole or relevant portion(s) of the *mapping survey area* to which, subject to:

(a) obtaining a *mapping authorisation*; and

(b) the conditions, if any, set out in that *mapping authorisation*,

any *explorer* is entitled to have access for purposes of carrying out *specified exploration activities*, by reason of an *exploration mapping survey* and *exploration mapping report*;

cultural confidence means any cultural information, including information held in an *Aboriginal record*, disclosure of which is by *Aboriginal tradition* restricted or forbidden;

cultural mapping report means a written report which is prepared pursuant to clause 5.4(b) and which specifies the matters referred to in that clause;

exploration mapping report means a written report which is prepared pursuant to clause 5.4(a) and which specifies the matters referred to in that clause;

mapping access procedures means the procedures annexed to the *exploration contract conditions* as annexure B, as such annexure is amended from time to time pursuant to the *framework ILUA*;

mapping authorisation means an authorisation issued pursuant to clause 3.2 of the *mapping access procedures* by the *mapping caretaker* to an *explorer* authorising the *explorer* to carry out *authorised exploration activities* subject to any conditions specified in the authorisation;

mapping caretaker means the person appointed from time to time pursuant to clause 8.1;

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mapping notice means a notice requesting the carrying out of a *mapping survey* given by the *association* pursuant to clause 8.1 of the *framework ILUA*;

mapping report means an *exploration mapping report* or a *cultural mapping report*;

mapping survey approval means approval by a *mapping survey team* pursuant to an *exploration mapping survey* and *exploration mapping report* for *specified exploration activities* to be undertaken on *accessible land*;

mapping survey area means the whole, part or parts of the *ILUA area* in respect of which a *mapping survey* is undertaken as agreed to between the *state* and the *association* pursuant to clause 8.3(b)(i) of the *framework ILUA*;

mapping survey budget means a budget for undertaking a *mapping survey* established pursuant to clause 4;

mapping survey team means a team organised for purposes of carrying out a *mapping survey* in accordance with clause 5;

specialist means an anthropologist or archaeologist or both, as appropriate, appointed pursuant to clause 5.2(a)(i) for the purposes of carrying out a *mapping survey*;

specified exploration activities means the *exploration activities* in respect of which a *mapping survey* is undertaken as agreed to between the *state* and the *association* pursuant to clause 8.3(b)(iii) of the *framework ILUA*;

WCI base means the *WCI index* prevailing at 31 July 2003;

WCI current means the *WCI index* prevailing at the time when daily rates are required to be calculated under clause 4.2(b);

WCI index means the wage cost index (ordinary time hourly rates of pay excluding bonus, for South Australia) published by the Australian Bureau of Statistics or its successors; and

other terms in italics defined or used in the *native title act* or the *mining act* bear their defined meanings when used in these *mapping survey procedures*.

2. Purpose and Application

- (a) These *mapping survey procedures* set out the procedures which are to be followed in relation to carrying out:
 - (i) an *exploration mapping survey*; or
 - (ii) an *exploration mapping survey* and a *cultural mapping survey*.
- (b) These *mapping procedures* also set out the procedures which apply to the appointment and the functions of the *mapping caretaker*.

3. Survey Conditional

The undertaking of a *mapping survey* is conditional on the *state* and the *association* agreeing on the matters referred to in clause 8.3 of the *framework ILUA*.

4. Budgets

4.1 Agreed budget

The *association* and the *state* must use their respective best endeavours to agree upon the budget for undertaking a *mapping survey* within 20 *business days* of the date of the *mapping notice* in respect of that *mapping survey*.

4.2 Contents

Any *mapping survey budget* must:

- (a) be substantially in the form set out in Appendix A;
- (b) reflect that any additional reasonable administrative costs and expenses constitute no more than 10% of the aggregate of all other costs and expenses comprised in the *mapping survey budget*.

4.3 Amended budget

The *state* and the *association* may at any time agree to amend any *mapping survey budget*.

4.4 Excess costs

The *state* is not responsible for any costs or expenses in relation to carrying out any *mapping survey* to the extent that they exceed, or are not provided for, in the *mapping survey budget* for that *mapping survey*, if applicable, as amended pursuant to clause 4.3.

5. Mapping Survey Process

5.1 Survey Dates

Within 20 *business days* of the *state* and the *association* agreeing pursuant to clause 8.3 of the *framework ILUA* that a *mapping survey* is to be undertaken, the *association* must notify the *state* of the date(s) on which the *association* proposes that the *mapping survey* be undertaken.

5.2 Mapping survey team

- (a) Each *mapping survey team* must comprise:
 - (i) up 2 qualified *specialists* of appropriate qualifications and gender necessary for undertaking the relevant *mapping*

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survey, to be engaged by the *association* with the approval of the *state* which approval must not be unreasonably withheld; and

- (ii) the number of Aboriginal persons required to ensure the integrity of the relevant *mapping survey* up to a maximum of 8 persons, consisting of such members of men and women as are considered by the *association* to be appropriate in accordance with *Aboriginal tradition*.
- (b) Where required for purposes of carrying out the relevant *mapping survey* and approved by the *state*, the *mapping survey team* may also include either a male or a female person or both to act as interpreter for the persons referred to in clause 5.2(a)(ii), but the *association* will use its best endeavours to appoint persons referred to in clause 5.2(a)(ii) as interpreters.
- (c) The *association* must ensure that the persons referred to in clause 5.2(a)(ii):
 - (i) have knowledge of the relevant *mapping survey area*; and
 - (ii) have the traditional knowledge and authority to determine whether there is any *Aboriginal site, object or remains* within that *mapping survey area*.
- (d) If at any time more persons than permitted under clause 5.2(a) are comprised in a *mapping survey team*, the *state* is not liable for any costs or expenses of those persons, unless otherwise *agreed* between the *state* and the *association*.

5.3 Mapping survey team functions

The functions of each *mapping survey team* are to assess the relevant *mapping survey area*:

- (a) in the case of an *exploration mapping survey*:
 - (i) for the purpose of determining whether the *specified exploration activities* would damage, disturb or interfere with any *Aboriginal site, object or remains*; and
 - (ii) nominating the conditions, if any, which are necessary and which should accordingly apply in order to protect each *Aboriginal site, object or remains*; and
- (b) in the case of a *cultural mapping survey*, for the purposes of preserving, protecting, maintaining or enhancing the culture of the *native title parties* in relation to each *Aboriginal site, object or remains*.

5.4 Discharge of functions

- (a) Each *mapping survey team* will discharge its functions in undertaking any *exploration mapping survey* by:

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- (i) conducting an inspection and assessment of the relevant *mapping survey area* in order to determine whether *mapping survey approval* will be given or withheld in relation to it;
 - (ii) in conjunction with the *specialists*, providing an *exploration mapping report* detailing which parts of that *mapping survey area* are given, and which parts are not given, *mapping survey approval*;
 - (iii) in conjunction with the *specialists*, identifying in that *exploration mapping report* any conditions, necessary in order to preserve and protect any *Aboriginal site, object or remains*, upon which *mapping survey approval* is given; and
 - (iv) promptly providing that *exploration mapping report* to the *association*.
- (b) Each *mapping survey team* will discharge its functions in undertaking any *cultural mapping survey* by:
- (i) conducting an inspection and assessment of the relevant *mapping survey area* for the purposes referred to in clause 5.3(b);
 - (ii) in conjunction with the *specialists*, providing a *cultural mapping report* detailing each *Aboriginal site, object or remains* identified in the course of that *cultural mapping survey* and their significance to the culture of the *native title parties*; and
 - (iii) promptly providing that *cultural mapping report* to the *association*.

5.5 Budget

Each *mapping survey* must be undertaken in accordance with the *mapping survey budget* for that survey.

6. Mapping Survey Team Reports

6.1 Mapping Survey Reports

- (a) Each *mapping survey report* must be in writing and be signed by the *specialists*.
- (b) The *association* is entitled to retain any *mapping survey report*.
- (c) The copyright in any *mapping survey report* vests in the *indigenous parties*.

6.2 Exploration Mapping Reports

- (a) As soon as practicable after the completion of any *exploration mapping survey*, the *association* must provide to the *state* a copy of the *exploration mapping report* in relation to that *exploration mapping survey*.
- (b) An *exploration mapping report* must identify those parts of the relevant *mapping survey area* which are:
 - (i) given *mapping survey approval* as *accessible land*, and
 - (ii) not given *mapping survey approval* as *accessible land*.
- (c) An *exploration mapping report* must also specify any conditions, necessary to preserve and protect each *Aboriginal site, object or remains*, attaching to the carrying out of any *specified exploration activities* on any *accessible land*.

7. Payment

7.1 Liability

The *state* is liable for the costs and expenses of carrying out any *mapping survey* up to a maximum of the amount stated in the *mapping survey budget*.

7.2 Payment

Subject to clause 7.3, the *state* must pay the *nominated body* those costs and expenses (up to a maximum of the amount stated in the *mapping survey budget*) as follows:

- (a) 25% not less than 5 *business days* prior to the mobilisation of the *mapping survey team* to undertake the relevant *mapping survey*,
- (b) 50% upon completion of that *mapping survey*, and
- (c) 25% or the balance thereof within 5 *business days* of receipt of the *exploration mapping report* and an invoice of all costs and expenses incurred in carrying out that *mapping survey*.

7.3 Evidence

- (a) The *association* must ensure that the *nominated body* provides the *state* with an invoice for each amount required to be paid by the *state* pursuant to clause 7.2 not less than 10 *business days* before the due date for payment of the relevant amount.
- (b) The *association* must ensure that any invoice provided by the *nominated body* to the *state* pursuant to clause 7.2(c) is accompanied by evidence, reasonably satisfactory to the *state*, of the incurral of the costs and expenses of the carrying out of the relevant *mapping survey*.

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- (c) That evidence must include evidence that any costs and expenses claimed on a per kilometre basis are in respect of kilometres properly travelled and recorded in the log book kept pursuant to clause 12.3.

7.4 Nominated Body

- (a) The *nominated body* is the agent of the *indigenous parties* in relation to all amounts paid to the *nominated body* pursuant to this clause 7.
- (b) Any payment to the *nominated body* is a good and sufficient discharge of that payment as regards each of the *indigenous parties* and the *association*.

7.5 WCI Index

- (a) If the WCI Index ceases to be published or the basis upon which the WCI Index is calculated is changed to such a material extent that it is no longer appropriate to be used, the *indigenous parties* and the *state* must meet to endeavour to agree upon another appropriate index or indices with the intention that neither will be disadvantaged or benefit by the substitution.
- (b) If the *indigenous parties* and the *state* are unable to agree under clause 7.5(a), then either may request the President for the time being of the Institute of Actuaries of Australia or that person's nominee to provide (on the basis that neither party will be disadvantaged or benefit thereby) alternative figures or indices which will be equivalent to the WCI Index and such figures or indices will then for the purposes of these *mapping survey procedures* be deemed to be the WCI Index and be binding on the *indigenous parties* and the *state*.

8. Mapping Caretaker

8.1 Appointment

The *mapping caretaker* will be the [Chief Executive Officer of the Department of Aboriginal Affairs and Reconciliation of the *state*, or its successor].

8.2 Functions

The functions of the *mapping caretaker* are to:

- (a) hold a copy of each *exploration mapping report*;
- (b) provide information to any *explorer* regarding the existence of any *exploration mapping report*, a copy of which is held by the *mapping caretaker*, and the area to which it relates;

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- (c) assess *mapping access applications* and the *authorised exploration activities* to which they relate by reference to the information contained in the *exploration mapping report* and the *specified exploration activities* to which it extends; and
- (d) after assessing any *mapping access application* to issue or refuse to issue a *mapping authorisation* in relation to that *mapping access application*.

8.3 Funding

The *state* is responsible for the cost and expenses of the appointment of the *mapping caretaker* and the performance by it of its functions.

8.4 Consent to Provisions of Copies

The *indigenous parties* consent to the *mapping caretaker* providing, and the *state* must ensure that the *mapping caretaker* provides, copies of any *exploration mapping report* to an independent statutory authority established for the purpose of the protection and preservation of Aboriginal heritage pursuant to the *Aboriginal heritage act*.

9. Confidentiality

9.1 Reports

- (a) Nothing in these *mapping survey procedures* requires the *indigenous parties* or any member of any *mapping survey team* to disclose all or any part of any *cultural mapping report* to any other person.
- (b) Nothing in these *mapping survey procedures* requires the *indigenous parties* or any member of any *mapping survey team* to disclose in any *exploration mapping report*:
 - (i) the location of any *Aboriginal site, object or remains*, if they consider that location to be a matter of *cultural confidence*, but they must disclose sufficient information in accordance with clause 6.2(b) to ensure that the *mapping access procedures* are able to be implemented on a basis that enables an *explorer*, its employees, contractors and subcontractors to carry out *specified exploration activities* within those parts of the relevant *mapping survey area* in respect of which *mapping survey approval* is given, without damaging, disturbing or interfering with the relevant *Aboriginal site, object or remains*, or
 - (ii) the significance of, or any *cultural confidence* regarding, any *Aboriginal site, object or remains* on, or in the vicinity of, the relevant *mapping survey area*.

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9.2 Mapping Caretaker

The *state* must ensure that the *mapping caretaker* keeps confidential and does not disclose to any person:

- (a) the location of any *Aboriginal site, object or remains*, if the *mapping caretaker* considers that location to be a matter of *cultural confidence*, but the *state* must ensure that the *mapping caretaker*, in granting any *mapping authorisation* pursuant to the *mapping access procedures*, discloses sufficient information in accordance with clause 3.3(c) of the *mapping access procedures* to enable the *explorer*, its employees, contractors and subcontractors to carry out *specified exploration activities* within those parts of the relevant *mapping survey area* in respect of which a *mapping authorisation* is granted to the *explorer* without damaging, disturbing or interfering with the relevant *Aboriginal site, object or remains*;
- (b) the significance of, or any *cultural confidence* regarding, any *Aboriginal site, object or remains* on, or in the vicinity of, the relevant *mapping survey area*; or
- (c) any information provided by the *explorer* to the *mapping caretaker* which is designated by the *explorer* as confidential information.

10. Status

10.1 Relationship

Nothing in the *framework ILUA* or these *mapping survey procedures* creates the relationship of:

- (a) employer and employee, principal and agent, partners or joint venturers between any of those persons and the *state*; and
- (b) employer and employee, partners or joint venturers between either of the *indigenous parties* and any member of the *mapping survey team*.

10.2 Agent

Each member of a *mapping survey team* is an agent of the *indigenous parties* authorised by them to carry out the functions set out in these *mapping survey procedures*.

11. Compliance with laws

The *indigenous parties* must ensure that all applicable *laws* are complied with in relation to:

- (a) the performance by them of their obligations under these *mapping survey procedures*; and

- (b) the employment, retention or engagement of any person for the purposes of performing their obligations under these *mapping survey procedures*, including under the Workers Rehabilitation & Compensation Act 1986 (SA), the Occupational Health Safety & Welfare Act 1986 (SA), the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth).

12. Vehicles

12.1 Provision

The *state* must provide sufficient and appropriate all terrain 4 wheel drive vehicles for use by a *mapping survey team* for the purposes of undertaking any *mapping survey*.

12.2 Insurance and Spare Parts

The *state* must ensure that all vehicles provided pursuant to clause 12.1 for purposes of undertaking any *mapping survey* are:

- (a) registered and comprehensively insured; and
- (b) equipped with sufficient spare parts for the duration of the relevant *mapping survey*.

12.3 Log Book

The *association* must cause a log book to be kept and must ensure that the following information is recorded in the log book in relation to each vehicle used in relation to any *mapping survey*:

- (a) date;
- (b) place of departure;
- (c) destination;
- (d) reason for the journey;
- (e) name of driver; and
- (f) number of kilometres travelled.

12.4 Inspection

The *association* must make any log book maintained pursuant to clause 12.3 available to the *state* for inspection upon request.

APPENDIX A

MAPPING SURVEY BUDGET							
Native Title Claim Group:				Date:			
Mapping Survey Area:							
Item	Description	Remarks	Units	Quantity	Unit Rate \$	Survey Costs	NOTES
	<i>Personnel</i>						
	Specialist #1		days				
	Specialist #2 ⁱ		days				
	Mapping survey team		days				
1	TOTAL PERSONNEL						
	<i>Vehicle & Travel Costs</i>						
	Air Travel Costs*	Economy					
	Private Vehicle Travel Costs - 2WD allowance*		km				
	Private Vehicle Travel Costs - 4WD allowance*		km				
2	TOTAL VEHICLE & TRAVEL						
	<i>Accommodation & Food</i>						
	<i>Food</i>		days				
	<i>Accommodation</i>		nights				
3	TOTAL ACCOMMODATION & FOOD						
4	SUB-TOTAL						
5	Administrative Expenses						
6	GST						
7	GRAND TOTAL						

ⁱ Delete if not applicable