Deed of Variation

The Honourable Michael John Atkinson, Attorney-General and
Minister for Mineral Resources Development and
William Herbert Lennon Snr, Ian Crombie, Keith Smith
Snr, David Brown, Herbert Joseph Lennon and Jean Wood, as registered native title claimants for and on behalf of the Antakirinja native title claim group and
Antakirinja Land Management Aboriginal Corporation and
Aboriginal Legal Rights Movement Inc and
South Australian Chamber of Mines and Energy Inc.

to vary the ALMAC Area Indigenous Land Use Agreement
dated 5 December 2003 and
registered by the Native Title Registrar (Registration No. SI 2003-007) on 18 May 2004
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Date: 30th of November 2004

Parties

1. The Honourable Michael John Atkinson, Attorney-General for and on behalf of the Crown in right of the State of South Australia of Level 11 ING Building, 45 Pirie Street Adelaide South Australia 5000 (state)

2. Minister for Mineral Resources Development a corporation sole constituted by Section 11 of the Mining Act No. 109 of 1971 office is situated at 17th State of South Australia (minister)

3. William Herbert Lennon Snr, Ian Crombie, Keith Smith Snr, David Brown, Herbert Joseph Lennon and Jean Wood, as registered native title claimants for and on behalf of the Antakirinja native title claim group in application no SG 6007/98 in the Federal Court of Australia, of care of Mr T J Wooley, Aboriginal Legal Rights Movement Inc, 4th Floor, 345 King William Street, Adelaide SA 5000 (native title parties)

4. Antakirinja Land Management Aboriginal Corporation, an Aboriginal Association incorporated under the Aboriginal Councils and Associations Act No 186 of 1976 (Cth), of care of Mr T J Wooley, Aboriginal Legal Rights Movement Inc, 4th Floor, 345 King William Street, Adelaide SA 5000 (association)

5. 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 SA 5000 (ALRM)

6. South Australian Chamber of Mines and Energy Inc ABN 62 620 804 910, an incorporated association incorporated under the Associations Incorporation Act No 30 of 1985 (SA), of 4 Greenhill Road, Wayville SA 5034 (SACOME)

Recitals

A. The parties are parties to the ALMAC area indigenous land use agreement.

B. The parties wish to amend the ALMAC area indigenous land use agreement to:

(a) provide for an expanded ILUA area to include areas of land which were at the time of the registration of the ALMAC area indigenous land use agreement subject to the two separate overlapping native title claims of Ted Roberts (SG 6005/98) and the Kokotha Munta (SG 6003/99) and which overlaps have subsequently been removed due to agreements between the association and Ted Roberts dated 23
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May 2004 and the association and Kokotha Munta dated 24 May 2004; and

(b) to provide that an explorer may, where the native title parties have provided their prior written consent on the acceptance document to the explorer entering into the accepted exploration contract, sign the acceptance document to enter into the accepted exploration contract in circumstances where the explorer has given notice to initiate negotiations under the right to negotiate procedure in relation to any of the exploration tenements and may have entered into an agreement with the native title parties pursuant to the right to negotiate procedure in relation to any of the exploration tenements.

C The parties have agreed to record those amendments to the ALMAC area indigenous land use agreement in this deed.

It is agreed as follows.

1. Preliminary

1.1 Definitions

In addition to the following definitions, the definitions in this deed have the same meaning as the definitions in the ALMAC area indigenous land use agreement:

ALMAC area indigenous land use agreement means the area agreement made between the parties on 5 December 2003 and registered by the native title registrar pursuant to sections 24CA to 24CL of the native title act and regulation 7 of the Native Title (Indigenous Land Use Agreement) Regulations 1999 (Cth);

ALRM means the party referred to in item 5 under the heading “Parties”;

amendment date means the date upon which the agreement constituted by this deed is registered by the native title registrar pursuant to section 199B the native title act, notwithstanding the date of execution of this deed;

Association means the party referred to in item 4 under the heading “Parties”;

Minister means the Minister of the Crown in the right of South Australia for the time being administering the Mining Act No. 109 that Minister’s duly authorised delegate being the party referred to in item 2 under the heading “Parties”;

native title act means the Native Title Act No. 11

native title parties means the native title claim group and includes the registered native title claimants being the party referred to in item 3 under the heading “Parties”;

native title registrar means the Native Title Registrar appointed under Part 5 of the native title act;
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parties means the parties to this deed and party means any one of the parties;
register means the Register of Indigenous Land Use Agreements established and kept under Part 8A of the native title act;
registered native title claimants means the registered native title claimants (as defined in the native title act) from time to time in respect of the native title claim;
SACOME means the party referred to in item 6 under the heading “Parties”; and
state means the party referred to in item 1

1.2 Interpretation

In this deed, 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 deed;
(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 deed) is a reference to the agreement, deed or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this deed or that other agreement, deed or document;
(h) a reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail;
(i) a reference to a party to this deed or another agreement or document includes the party’s successors, permitted substitutes and permitted assigns (and, where applicable, the party’s legal personal representatives);
(j) 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;
(k) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
(l) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
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(m) a reference to a document includes an agreement (referred to in paragraph (l) in writing and any certificate, notice, instrument and document of any kind;

(n) a reference to dollars and $ is to Australian currency;

(o) 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;

(p) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;

(q) 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

(r) nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or any part of it.

1.3 Headings

Headings do not affect the interpretation of this deed.

1.4 Schedule

The schedule to this deed forms part of it.

2. Amendment of ALMAC Area Indigenous Land Use Agreement

2.1 Variation

(a) The parties acknowledge and agree that, with effect from the amendment date, the ALMAC area indigenous land use agreement is amended as reflected in the schedule to this deed by:

(i) the deletion of all provisions struck through in the schedule; and

(ii) the insertion of all provisions underlined in the schedule.

(b) For reference purposes only, the provisions of the ALMAC area indigenous land use agreement to which amendments are made are as follows:

(i) framework ILUA, clauses 5.1(a)(i), 5.1(c)(i) and (ii), 5.1(f) and Schedule 1, Item 1;

(ii) ALMAC exploration contract conditions, clause 1.1 “amendment date” and clause 13.3; and

(iii) acceptance documents clauses 1, 2(a), 3.1 and the execution clause.
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2.2 No Other Amendments
Except as amended as set out in those provisions indicated in clause 2.1 above, the parties confirm indigenous land use agreement in all other respects.


3.1 Entire agreement
This deed 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.

3.2 Amendment
No amendment or variation of this deed is valid or binding on a party unless made in writing executed by all parties.

3.3 Assignment
The rights and obligations of each party under this deed are personal and cannot be disposed of, encumbered or otherwise may attempt, or purport, to do so without the prior written consent of the other parties.

3.4 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.

3.5 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 deed and the transactions contemplated by it.

3.6 No merger
(a) The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this deed.
(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.
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3.7 Costs and stamp duty
(a) Each party must bear its own costs arising out of the negotiation, preparation and execution of this deed.
(b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this deed and any instrument executed under this deed must be borne by the state.

3.8 Governing law and jurisdiction
(a) This deed is governed by the laws of South Australia.
(b) Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this deed.

3.9 Counterparts
(a) This deed may be executed in any number of counterparts.
(b) All counterparts when exchanged will be taken to constitute one document.

3.10 Relationship
(a) The relationship between the parties is that of independent contractors.
(b) The parties are not partners, joint venturers or principal and agent.

Executed as a deed in South Australia.

SIGNED by the HONOURABLE
MICHAEL JOHN ATKINSON
Attorney-General, for and on behalf of the Crown in right of the State of South Australia

Signature

ELIZABETH ANN FATTS
Full name of witness
(B
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THE COMMON SEAL of the
MINISTER FOR MINERAL
RESOURCES DEVELOPMENT
was hereunto affixed in the presence
of:

Signature of witness

CAROLYN ANNE SYNCH
Full name of witness
(BLOCK LETTERS)
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SIGNED by WILLIAM HERBERT LENNON SNR for and on behalf of the Antakirinja Native Title Claim Group in the presence of:

Signature of witness

Full name of witness (BLOCK LETTERS)

SIGNED by IAN CROMBIE for and on behalf of the Antakirinja Native Title Claim Group in the presence of:

Signature of witness

Full name of witness (BLOCK LETTERS)

SIGNED by KEITH SMITH SNR for and on behalf of the Antakirinja Native Title Claim Group in the presence of:

Signature of witness

Full name of witness (BLOCK LETTERS)
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SIGNED by DAVID BROWN for )
and on behalf of the Antakirinja )
Native Title Claim Group in the )
presence of: )

Signature of witness

DAVID BROWN

SIGNED by HERBERT JOSEPH LENNON for and on behalf of the )
Antakirinja Native Title Claim Group )
in the presence of: )

Signature of witness

HERBERT JOSEPH LENNON

SIGNED by JEAN WOOD for and )
on behalf of the Antakirinja Native )
Title Claim Group in the presence of: )

Signature of witness

JEAN WOOD

Full name of witness
(BLOCK LETTERS)
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THE COMMON SEAL of the
ANTAKIRinja LAND
MANAGEMENT ABORIGINAL CORPORATION
was hereunto
affixed in accordance with its
constitution in the presence of:

Signature of director

[Signature]

Name of director

[Name]

THE COMMON SEAL of the
ABORIGINAL LEGAL RIGHTS
MOVEMENT INC was hereunto
affixed in the presence of:

[Signature]

Chairperson

[Signature]

Executive Member

[Signature]
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THE COMMON SEAL of the
SOUTH AUSTRALIAN
CHAMBER OF MINES AND
ENERGY was hereunto affixed
in the presence of:

[Signatures]

President

Chief Executive
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SCHEDULE
AMENDED ALMAC AREA INDIGENOUS LAND USE AGREEMENT