

Carbon Farming and Native Title

A guide for SA pastoralists to negotiating consent with Native Title holders



Government
of South Australia



Natural Resources
SA Arid Lands

Disclaimer

***Important:** This guide should be used for guidance only and is not intended to provide business or financial advice or be a substitute for legal or other professional advice in relation to your business. It provides information to be used as part of your overall research into carbon farming so you can make an informed choice as to how to or whether to take part in a carbon farming project.*

November 2015



This project is supported by funding
from the Australian Government

This document may be cited as:

Newman. P. 2015. Carbon Farming and Native Title. A guide for SA Pastoralists to negotiating consent with Native Title holders

Natural Resources SA Arid Lands.

Cover images:

Native Title Clearance Manunda Creek 2013. (J. Love, P Newman)

Copies of the report can be obtained from:

Natural Resources Centre, Port Augusta
T: +61 (8) 8648 5300
E: saaridlands@sa.gov.au

Contents

Introduction.....	4
Steps to Negotiating with Native Title Holders - Overview	6
Step 1: Identify who has Native Title over your proposed project area	7
Step 2: Contact the Native Title Body Corporate as per ILUA.....	8
Step 3: If you don't have an ILUA.....	8
Step 4: Does the <i>Registered Native Title Body Corporate</i> have carbon right?	9
Step 5: Meeting with Native Title stakeholders.....	9
Step 6: Costs	10
Step 7: Assistance with negotiations	10
Step 8: Consent, Agreements and Management Plans	11
Carbon Farming, Native Title and Best Practice	12
Key Government Resources	13
Other useful Resources:.....	15
APPENDIX 1 - Definitions	16
Carbon Farming and Aboriginal Heritage	16
APPENDIX 2. - Protecting Aboriginal Heritage on Pastoral Country.....	19

Carbon Farming and Native Title

A guide for SA pastoralists to negotiating consent with Native Title holders

Introduction

This guide has been developed to assist you, as a project proponent, to negotiate consent from Native Title holders when you plan for a carbon farming project on pastoral leasehold land in South Australia.

Under the *Carbon Farming Act 2011* the Clean Energy Regulator requires you to seek consent for your carbon farming project from Native Title holders.

This guide is a supporting document to the SA Arid Land NRM Board's "[Step by Step guide to establishing a Carbon Farming Project in the SA Rangelands](#)" 2015

It is also recommended that you refer to the Norton Rose Fulbright document "[CFI Legal and Contracts Guide \(2013\)](#)" which provides an integrated single source of legal information about carbon farming and will help to demystify the complexity of the CFI legislation

This guide examines the issue of [eligible interest holder](#) consent under the *Carbon Farming Act 2011* in relation to Native Title, and assumes you have already addressed the questions:

- Who is responsible for the project?
- Do you have the legal right to carry out the project?
- Who is the owner of the carbon rights to this project?
- Have other parties with an *eligible interest* in your project signed the "[Eligible Interests Consent Form](#)". These people include the Minister for Sustainability, Environment and Conservation, who administers Crown Lands, any financial institutions or business partners.

Who are Native Title holders?

Native Title holders are those Traditional Owners who are represented by a *Registered Native Title Body Corporate* that have a Native Title determination or Indigenous Land Use Agreement (ILUA) relating to your proposed project site.

The granting of Native Title recognises the traditional rights and interests to land and waters of Aboriginal and Torres Strait Islanders and can take the form of a Native Title Claim, a Native Title determination or an ILUA.

Native Title can, and often does run parallel to, or co-exist with other land tenures such as pastoral leases. The majority of Pastoral Leases in the SA Arid Lands have a Native Title determination over them

In some cases different indigenous groups can exercise their Native Title over the same land. Further definitions and associated concepts relating to Native Title can be found at [Appendix 1](#)

Native Title and Aboriginal Heritage

In this guide we have separated Native Title and Aboriginal Heritage matters. Native Title primarily addresses traditional ownership and access to land while Aboriginal Heritage is mainly concerned with physical and cultural sites within the landscape. Figure 1 shows an example of a map of Native Title determinations. For a detailed version of this map go to: [SA Native Title Map](#). Other maps relating to Native Title can be found at the [National Native Title Tribunal website](#).

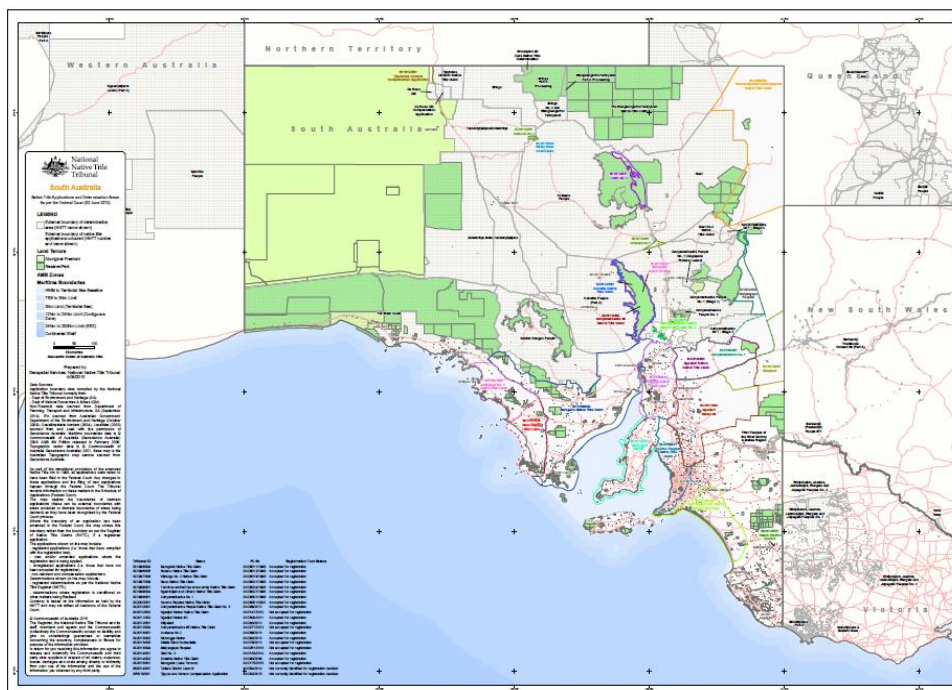


Figure 1. Native Title determinations in South Australia

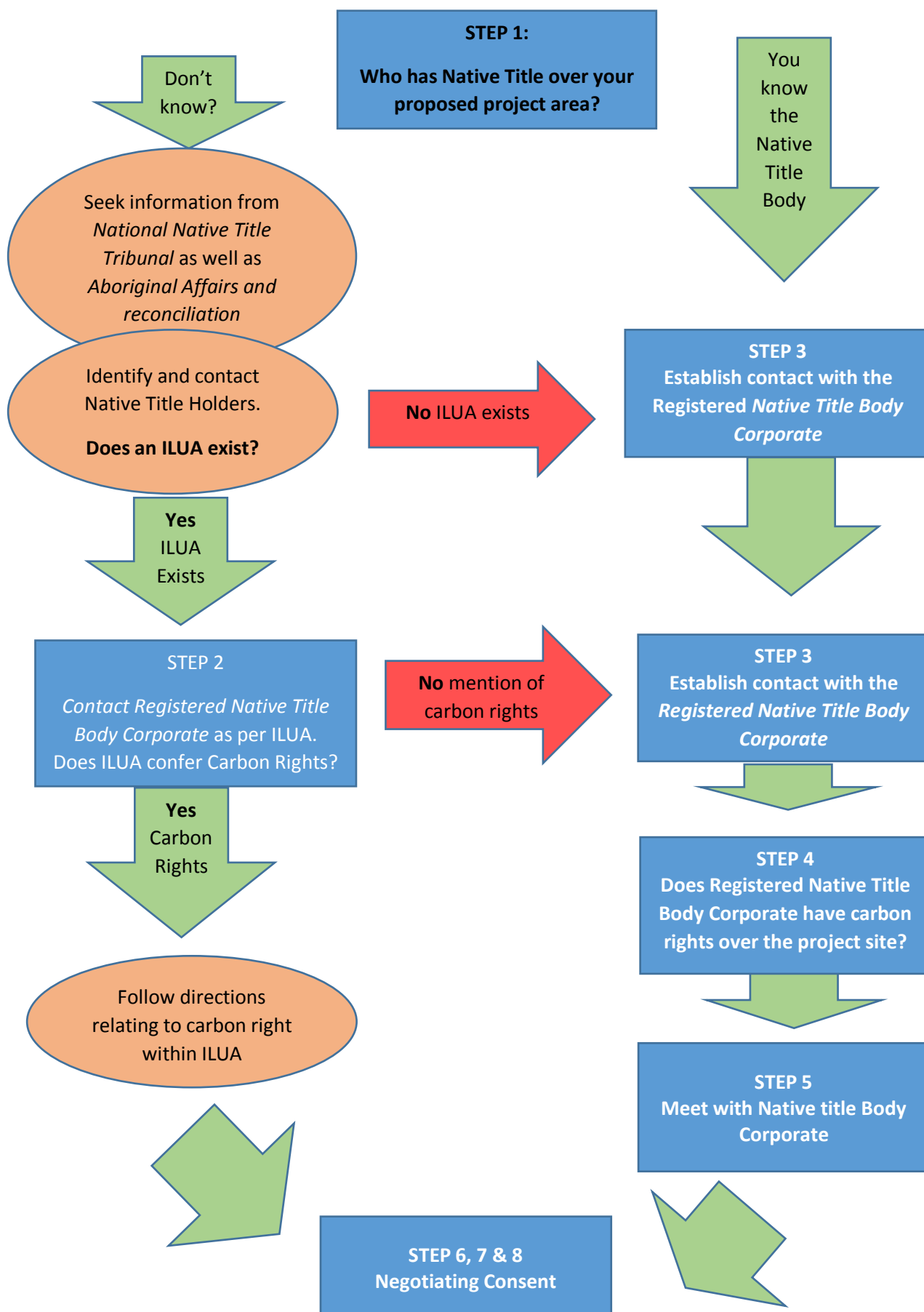


Items of Aboriginal Heritage and cultural sites are likely to be found on most pastoral properties

Further information on Aboriginal Heritage and carbon farming can be found in [APPENDIX 1](#) and [APPENDIX 2](#).

Steps to Negotiating with Native Title Holders - Overview

Following the steps outlined in this section will ensure you address Native Title matters in planning your carbon farming project. In each section there are links to sources of more information and assistance. The table below outlines the main steps you should undertake with reference the relevant text in this section.



Step 1: Identify who has Native Title over your proposed project area

The aim of this step is to determine the legal holders of Native Title for your project area.

Aboriginal people who are Traditional Owners or Native Title holders will normally be represented by a *Registered Native Title Body Corporate*. This body should be your primary point of contact.

The *Registered Native Title Body Corporates* will tell you who the individual Traditional Owners are that should be consulted over matters of consent. They should also be able to tell you what determinations have been made and if there are any Indigenous Land Use Agreements in place over your project area

Actions and sources of information to assist you in Step 1:

- Check your property records for any ILUAs that have been negotiated in the past
- Using the *National Native Title Tribunal's* web site, check the map of Native Title Claims and determinations at: <http://www.nntt.gov.au/assistance/Geospatial/Pages/Maps.aspx>
- Search the *National Native Title Tribunal* [web site](#) for any ILUAs, Claims or Registered Native Titles for your project area. In South Australia the list of claimants and determinations is reasonably small, so simply entering the name of the State will bring up the list of claimants and determinations. Note that often only an abstract of an ILUA is available to the public via the web site so you may have to contact the *National Native Title Tribunal* for a full copy. However, the extract will give you the name of the contact person and the address of the *Registered Native Title Body Corporate* you need to deal with and will generally list pastoral leases encompassed by the Native Title determination or claim.
- Also contact the *National Native Title Tribunal* direct and request a search of their register in order to identify Native Title interests or claims over your site. These searches are free of charge and generally have a turnaround of 3-5 working days. You will need to provide information on the project location, such as the lease number and some map coordinates
- If there is no determination and therefore no *Registered Native Title Body Corporate* for your area, contact the Aboriginal Heritage Team in the *Aboriginal Affairs and Reconciliation* section of the Department of State Development in order to identify any potential Native Title claim group.
- Check with the *National Native Title Tribunal* on the status of any claims before the court to ascertain if it is likely a determination could be handed down during the carbon farming project implementation phase.
- Other agencies that can assist you identify the Native Title holders, Traditional Owners or claimants in your area are Native Title Services SA and Aboriginal Land Councils

Step 2: Contact the Native Title Body Corporate as per ILUA

The aim of this step is to ensure that if an ILUA exists, you access it and follow its directions.

When dealing with Native Title holders referring to an ILUA will save a lot of time.

ILUAs relating to a pastoral property would normally be in the possession of the lessee. If you don't have a copy of a relevant ILUA, an extract can be found at the *National Native Title Tribunal* [web site](#) or a full version can be obtained by contacting the *National Native Title Tribunal* office.

ILUAs normally contain protocols for engagement with Native Title holders, will often list Traditional Owners and may mention also Aboriginal Heritage matters.

Actions:

- Check if the ILUA mentions carbon ownership
- If you have an ILUA, contact the nominated contact person(s) in that document, outline your plans and arrange a meeting to discuss consent with the *Registered Native Title Body Corporate* members or representatives

Step 3: If you don't have an ILUA

The aim of this step is to establish communication protocols with the *Registered Native Title Body Corporate* that has Native Title over your proposed Carbon Farming site.

Most *Native Title Body Corporates* will have preferred ways to deal with project proponents so you need to find out what these are and who you should be dealing with. You should also prepare a synopsis of your project that when required, you can send to the *Native Title Body Corporate* or its nominated delegates or legal advisors.

Actions:

- Contact the *National Native Title Tribunal* and seek a copy of the Native Title extract from the Native Title Register.
- Using the information from that Title extract, contact the *Registered Native Title Body Corporate* by mail and seek a list of people you should consult with.
- In your letter include a brief outline of your Carbon Farming proposal and if land disturbance is required, the locations that will be affected. Offer to meet with the *Registered Native Title Body Corporate* to explain your proposed project.
- It is important to have confirmed in writing or email the names of those you should be discussing your project with. These people may be traditional owners, committee members, nominated representatives, staff or legal representatives.
- Contact these representatives and arrange to meet to discuss your project

Step 4: Does the *Registered Native Title Body Corporate* have carbon rights?

The aim of this step is to ensure there are no conflicting carbon rights over the proposed carbon farming project.

It is unlikely that carbon rights will be owned by Native Title holders on a pastoral lease in South Australia as the Crown owns carbon bio-sequestered on pastoral leases. However this *could* be an issue if:

- Carbon ownership is identified in a Native Title determination or ILUA
- Your project location is on Native Title land you are sub-letting
- You are partnering in a project with an owner of Native Title land such as an Aboriginal Lands Council

Actions:

- If a carbon right is referred to in a Native Title determination or ILUA, ensure you notify the *Registered Native Title Body Corporate* that you wish to negotiate for that carbon right to be signed over to you as well as seeking consent from them for your carbon farming to commence. The *Registered Native Title Body Corporate* may want to negotiate a share of income from the carbon farming project

Step 5: Meeting with Native Title stakeholders

The aim of this step is to ensure you come out of initial meetings with all parties agreeing on the parameters and structure for negotiation.

How successful the meetings with Native Title holders are may ultimately revolve around the relationship and trust you build with them. Carefully consider the best practice suggestions listed in the [Carbon Farming, Native Title and Best Practice](#) section of this guide.

Continue to take advice from the *National Native Title Tribunal* and/or *Aboriginal Affairs and Reconciliation*. One or both of these may offer to assist in facilitating discussions between yourself and Native Title holders.

Actions:

At the first meeting with the Native Title Body Corporate (or their representatives):

- Make it a priority to establish lines of communication for future discussions
- Confirm who you should be dealing with and how you will communicate with each other
- Confirm the land area you are all talking about (have maps prepared)
- If not already identified, discuss if any Aboriginal Heritage matters may require assistance from *Aboriginal Affairs and Reconciliation*
- Record all discussion and agreement points and get agreement on the summary of the meeting

Over subsequent meetings:

- Ensure all the information you have to date on your project is available for discussion
- Ensure everyone understands why you are looking at a carbon farming project and the basic science behind it
- Identify if any actions relating to your project will conflict with Native Title rights or aspirations
- Record discussions and points of agreement and disagreement and check with those involved that the record is accurate

Step 6: Costs

The aim of this section is to ensure you, as the proponent of a carbon farming project, are aware that some parts of the process of seeking consent may incur costs.

If the *Registered Native Title Body Corporate*, *Aboriginal Affairs and Reconciliation* or *National Native Title Tribunal* require onsite visits, surveys or meetings of Native Title holders there may be costs associated which you, the proponent of the project will be asked to cover. These costs normally include transport, accommodation and food for Traditional Owners to attend. It could also include wages and fees for anthropologists to survey, record and plan preservation of heritage sites.

It is common practice for *Registered Native Title Body Corporates* to negotiate and write up an agreement relating to costs before any on ground meetings or visits take place.

You may wish to seek legal advice before signing any such agreements.

Action:

- At the time of initial contact with *Registered Native Title Body Corporates*, *Aboriginal Affairs and Reconciliation* or *National Native Title Tribunal*, request a list of likely costs you may incur for various activities
- Have an agreement drafted that outlines these costs. This may also form part of a broader agreement with the *Registered Native Title Body Corporate* that covers matters such as who you are to negotiate with as well as location and dates of meetings

Step 7: Assistance with negotiations

The aim of this step is to check that both you and the Native Title holders have adequate legal advice and feel confident they can proceed with discussions and negotiations.

Generally Native Title holders will seek assistance from their own *Native Title Body Corporate*, their legal advisers, or the *National Native Title Tribunal*.

The *National Native Title Tribunal* can also provide you the proponent with advice on Native Title matters.

Aboriginal Affairs and Reconciliation can provide advice on Aboriginal Heritage matters relating to your project and assist you with making any applications necessary.

Actions:

- Ensure you have taken advice from the *National Native Title Tribunal* and /or *Aboriginal Affairs and Reconciliation* as well as independent legal advice from agents familiar with Native Title matters
- Ensure that the *Native Title Body Corporate* also has suitable assistance before you commence negotiations about consent or Aboriginal Heritage matters

Step 8: Consent, Agreements and Management Plans

The aim of this section is to ensure that you separate the different types of agreement and consent that you may encounter and to ensure that agreements made today are preserved for the life of your carbon farming project.

During the process of seeking consent for your carbon farming project a number of agreements may be negotiated between you and Native Title holders. Broadly these are likely to be:

Agreements relating to Native Title may cover matters such as which Traditional Owners you should consult on Native Title matters. They may also describe processes such as when and where site visits will take place and costs associated with these visits. Agreements associated with Native Title or Indigenous Land Use Agreements (ILUAs) are registered with the National Native Title Tribunal.

Agreements relating to Aboriginal Heritage may relate to preservation of heritage sites, artifacts or Traditional Owner access to significant locations on or near your project site. The final draft of any part of an agreement relating to Aboriginal Heritage is normally completed by the South Australian Attorney General's Department before being registered with the *National Native Title Tribunal*.

Consent to operate a Carbon Farming Project is provided to the Clean Energy Regulator via the [Eligible Interest Holder Consent Form](#). The eligible interest holder, in this case the *Native Title Body Corporate* must sign the Eligible Interest Holder Consent Form which is submitted to the Clean Energy Regulator. Note that copies of final agreements or ILUAs will also be required by the Clean Energy Regulator as part of the process of registering your carbon farming project.

Actions:

- Be clear on what type of agreement you are dealing with.
- Seek and follow the advice from both the *National Native Title Tribunal* and *Aboriginal Affairs and Reconciliation (SA)* on the registration of agreements.

Aboriginal Affairs and Reconciliation
Telephone 8226 8917
or by writing to:
Principal Heritage Officer
Aboriginal Affairs and Reconciliation
GPO Box 320, Adelaide SA 5001
www.statedevelopment.sa.gov.au

Native Title Claim Resolution Unit of the Attorney-General's Department.
Telephone 8207 1728 or by writing to:
Executive Director
South Australian Native Title Claim Resolution Unit
Attorney-General's Department
GPO Box 464s, Adelaide SA 5001

You can find additional information about the ILUA Team and the ILUA process at:
<http://www.iluasa.com>

Carbon Farming, Native Title and Best Practice

Always follow the advice from agencies such as *National Native Title Tribunal, Aboriginal Affairs and Reconciliation* and Native Title Services as these agencies will have the most up to date knowledge of Native Title matters and the Native Title group you are dealing with.

While formal steps must be followed when dealing with Native Title matters, the day to day working relationships with key stakeholders is paramount to ensure positive outcomes and avoid misunderstandings. To this end some tips are listed below:

- Undertake research and checks to ensure you know who you should be dealing with. Who are the Native Title Claimants in your region? Is there an ILUA relating to your property? (See the [Resources](#) section at the end of this document) and research any Aboriginal Heritage values for your site.
- Take advice from Native Title stakeholders about the most appropriate consultation process at the beginning of discussions.
- Engage stakeholders early. The earlier you start the conversation with stakeholders, the less chance there is that someone gets missed.
- Prepare your information. Ensure you have concepts and ideas clear in your mind and where possible, have maps or plans available when discussing your project. Don't have these "locked in" until Native Title stakeholders have had their input.
- Invite stakeholders to "walk and talk" around proposed development sites. Give people space to walk, talk and discuss issues amongst themselves. Ensure the Native Title holders have adequate time and space to talk about their point of view and what is important to them. Some matters discussed may not initially seem relevant to your project, but if these potential concerns are not discussed they could become obstacles or objections to the project in the future.
- Ensure you genuinely understand the point of views of the Native Title holders and their priorities for the land they are custodians of. These priorities are unlikely to be the same as yours as the lessee.
- Note that most Native Title rights on pastoral properties relate to access and protection of significant sites and access to country for traditional ceremonies or traditional activities such as hunting. The *aspirations* of the Native Title Holders and Traditional Owners might go further than this and also include for example, the preservation of natural ecosystems that support significant plants and animals of that region or the desire for employment opportunities for their families. These aspirations may not be articulated in Native Title documents such as an ILUA, but can be very important to the Native Title Holders and Traditional Owners of the land so should be discussed and common ground sought.
- Allow time to listen to each other's background and story about the land you are both living and working in.
- Allow time for trust to build without rushing the agenda at initial meetings.
- Ensure adequate timelines for discussion and feedback from Native Title stakeholders. Do not pressure Native Title stakeholders with short deadlines. If necessary, allow people to go away to discuss matters and return later (either that day or another time).
- Be genuinely open to ideas or changes to your plan including alternative locations for structures. Invite comment and suggestions. Don't lock in ideas and plans before engaging stakeholders.
- Continue the dialog and contact with Native Title stakeholders throughout the planning, development and implementation phases of your project and celebrate the completion or start up with them.

Key Government Resources

National Native Title Tribunal

<http://www.nntt.gov.au/aboutus/Pages/default.aspx>

The Sydney Office serves New South Wales, South Australia and the Australian Capital Territory.

Contact Details:

Level 16, Law Court Building
Queens Square
Sydney NSW 2000
GPO Box 9973
Sydney NSW 2001
Telephone: (02) 9227 4000
Freecall: 1800 640 501
Facsimile: (02) 9227 4030
Email: nswenquiries@nntt.gov.au

National Native Title Tribunal - Register of Indigenous Land Use Agreements

<http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-Register-of-Indigenous-Land-Use-Agreements.aspx>

This register contains information about Indigenous Land Use Agreements which are voluntary agreements between Native Title parties and others about the use and management of land and waters. Information stored includes:

- the area covered by the agreement
- the names and addresses of each party to the agreement
- the time period the agreement is to operate (if specified)
- any statements about the surrender of Native Title, the doing of future acts, contracting out of the right to negotiate, the validation of future acts already done or changing the effect of validation of an intermediate period act if they are included in the agreement.

You can request a search of the Tribunal registers in order to identify Native Title interests over a particular area. These searches are free of charge and generally have a turnaround of 3-5 working days.

For information about Native Title search procedures and to access the search request form, see the following link: <http://www.nntt.gov.au/assistance/Pages/Searches-and-providing-Register-information.aspx>

Alternatively, *Native Title Vision* is the Tribunal mapping database available to stakeholders and the public. You are able to generate a username and password online and visually overlay Native Title information over different areas on state and regional maps. <http://www.nntt.gov.au/assistance/Geospatial/Pages/NTV.aspx>

Register of Native Title Claims

The National Native Title Tribunal has a Register of Native Title Claims containing information about all claimant applications that have been registered. The Registrar is responsible for maintaining the Register of Native Title Claims. Applications are registered when they meet the registration test conditions which are set out in sections 190B and 190C of the Native Title Act. When an application is registered, the applicants have procedural rights and other benefits, including the right to negotiate with governments or the right to be consulted about proposed developments (future acts). They may also oppose non-claimant applications that seek a determination as to whether or not Native Title exists in a certain area.

You can find summary information about all Native Title applications (registered and unregistered) on the Tribunal's [website](#) under the 'Applications and determinations' section, along with further information about the registration testing of claims.

To find out whether an area of land or water is, or may be, affected by a Native Title claim you can also ask the Tribunal to search the Register of Native Title Claims. A charge may be associated with this service.

Department of State Development, *Aboriginal Affairs and Reconciliation*

This branch of the South Australian Government is the lead agency for administration of Aboriginal Affairs including the *Aboriginal Heritage Act 1988*.

Contact:

Aboriginal Heritage Branch
Department of State Development
Level 7, 11 Waymouth Street
Adelaide SA 5000
GPO Box 320 Adelaide SA 5001

<http://www.statedevelopment.sa.gov.au/aboriginal-affairs/aboriginal-affairs-and-reconciliation>

Any queries re the Aboriginal Heritage Sites database should be directed to dsdaarheritagesites1@sa.gov.au or 8226 8900

South Australian Pastoral Board

The Pastoral Board is a statutory authority responsible to the Minister for the administration of the [Pastoral Land Management and Conservation Act 1989](#) for:

- the administration of the pastoral lease system
- determining, managing and enforcing lease terms and conditions with regard to [Natural Resources Management \(NRM\) Plans](#) and Indigenous Land Use Agreements
- assessing and reporting on the condition of leased land
- determining lease land management conditions, including the number and type of stock to be run
- the implementation of property plans and other measures to prevent land degradation
- collecting and recording annual stock returns
- producing an [annual report](#)
- assisting the Valuer General in determining pastoral rents
- the administration of the Pastoral Land Management Fund

The Pastoral Board of SA
Level 1, 1 Richmond Road
Keswick SA 5035
(GPO Box 1047, Adelaide SA 5001)

Phone: 8124 4837
Fax: 8463 4828
Freecall: 1800 678 447

Natural Resources SA Arid Lands

Natural Resources SA Arid Lands (SAAL) is a division of the [Department of Environment, Water and Natural Resources](#). The majority of pastoral leases are within the SA Arid Land NRM Board region.

Level 2, 9 Mackay Street,
or PO Box 78, Port Augusta, SA 5700
naturalresources.sa.gov.au/aridlands
(08) 86 485 300

Natural Resource Centre, Murray Darling Basin

Natural Resource Centre, Murray Darling Basin is a division of the [Department of Environment, Water and Natural Resources](#). Note that a number of pastoral leases are managed by the DEWNR Pastoral team from the SA Arid Land NRM Board region.

Natural Resources Centre - Berri
2 Wade Street, Berri, SA, 5343
Ph: 08 8580 1800

Other useful Resources:

Aurora Project

Useful general information and definitions about Native Title matters.

http://www.auroraproject.com.au/what_is_native_title

Agreements, Treaties and Negotiated Settlements Project site:

The Agreements, Treaties and Negotiated Settlements database is an online gateway to information relating to agreements between indigenous people and others in Australia and overseas. <http://www.atns.net.au/locate2.asp>

Aboriginal Heritage Training video: <https://vimeo.com/80713807>

STEP-BY-STEP PROCESS – Produced by a collaboration of Government, private sector and SA Museum including industries and mining companies. This video is an easy to follow template, induction and training tool. It covers the whole process from identifying who to talk to, negotiating and managing agreements, site surveys, heritage monitoring, protection and Work Health and Safety requirements.

Help to negotiate an ILUA: The [National Native Title Tribunal](#) can assist all parties to in negotiating and ILUA.

Also, an excellent document from the “[Steps to an Indigenous Land Use Agreement](#)” will guide you through the process of negotiation and registering an ILUA.

Native Title Report 2010: Chapter 3: Consultation, cooperation, and free, prior and informed consent: The elements of meaningful and effective engagement

<https://www.humanrights.gov.au/publications/native-title-report-2010-chapter-3-consultation-cooperation-and-free-prior-and-informed#Heading65>

Useful fact sheets and documents can be found at the [Forms and Publications](#) site of the National Native Title Tribunal (NNTT)

APPENDIX 1 - Definitions

Native Title recognises the traditional rights and interests to land and waters of Aboriginal and Torres Strait Islander people. Under the *Commonwealth Native Title Act 1993*, Native Title claimants can make an application to the Federal Court to have their Native Title recognised by Australian law. Native Title can run parallel to or co-exist with other interest groups rights such as pastoral leases. In some cases different indigenous groups can exercise their Native Title over the same land. For more information see the brochure "[Native Title Facts](#)" and the [Aurora Project Website](#)

As a carbon farming project developer you will need to know what form of Native Title interest is over your land, what conditions may be linked to that Native Title and which legal representatives have an "eligible interest" in your land. These people may be required to provide you with written permission to undertake some types of carbon farming activities if it affects Native Title.

Carbon Farming and Aboriginal Heritage

In South Australia, the *Aboriginal Heritage Act* (1988) covers all areas of South Australia, providing blanket protection for Aboriginal remains, Aboriginal sites and objects of significance to Aboriginal archaeology, anthropology, history and tradition. The *Aboriginal Heritage Act 1988* is managed by the Aboriginal Heritage Team in the *Aboriginal Affairs and Reconciliation* section of the Department of State Development (SA).

You will need to establish whether any Aboriginal Heritage sites, objects or remains exist within your project area. The Aboriginal Heritage Team maintains a central archive of registered and reported Aboriginal heritage sites. You will need to provide information on the location such as the lease number and some map coordinates. It should be noted that the central archive is not a comprehensive listing of all sites in South Australia and is not a substitute for consultation with Native Title holders.

The Aboriginal Heritage team can advise you about what to look out for when planning on-ground works, who to contact to discuss Aboriginal Heritage matters and the application of the *Aboriginal Heritage Act 1988* to your project. See also the fact sheet: [Protecting Aboriginal Heritage on Pastoral Country](#). A summary of advice from that fact sheet is at [Appendix 2](#).

Recommended reading: [Information on the Aboriginal Heritage Act 1988 for Natural Resource Managers](#). To be found on the [SA Arid Lands NRM Website](#).

Aboriginal Cultural Heritage

Aboriginal Cultural Heritage consists of places and items that are of significance to Aboriginal people because of their traditions, observances, lore, customs, beliefs and history. It provides evidence of the lives and existence of Aboriginal people before European settlement through to the present. Aboriginal Cultural Heritage is dynamic and may comprise physical (tangible) or non-physical (intangible) elements. It includes things made and used in traditional societies, such as stone tools, art sites and ceremonial or burial grounds. It also includes more contemporary and/or historical elements such as old mission buildings, massacre sites and cemeteries. Tangible heritage is situated in a broader cultural landscape and needs to be considered in that context and in a holistic manner.

Aboriginal Cultural Heritage also relates to the connection and sense of belonging that people have with the landscape and each other. It recognises that Aboriginal people understand cultural heritage and cultural practices as being part of both the past and the present and that cultural heritage is kept alive and strong by being part of everyday life.

Aboriginal Cultural Heritage is not confined to sites; it also includes peoples' memories, storylines, ceremonies, language and 'ways of doing things' that continue to enrich local knowledge about the cultural landscape. It involves teaching and educating younger generations. It is also about learning and looking after cultural traditions and places, and passing on knowledge. It is enduring but also changing. It is ancient but also new.

Aboriginal Cultural Heritage and Cultural Knowledge provides crucial links between the past and present and therefore represents an essential part of the identities of Aboriginal people and all Australians.

Australian Carbon Credit Units (ACCUs): Carbon credits are tradable units that relate to emissions reduction or sequestration activities, such as tree planting, improving energy efficiency or capturing methane from landfill and are issued for Australian emission reduction or sequestration projects regulated by the [Clean Energy Regulator](#)

Native Title Claims: Generally Native Title Claims are made by a group or a body representing an Aboriginal group who are seeking to get a determination regarding their rights and interests over an area of land or water. In most cases the claimant will be a "*Native Title Body Corporate*" who are registered and have a committee and public office holders such as a chair person.

Registered Native Title Body Corporate: The legal, registered entity recognised under Australian law to represent a group of Aboriginal people making up the "Native Title Claimants". Usually has a committee and public office holders such as a chair person. This is the body that most pastoralists will be dealing with on Native Title matters.

Indigenous Land Use Agreement (ILUA) is an agreement under the *Commonwealth Native Title Act 1993* covering how a body of land or water will be used or managed. It is a legally binding agreement between parties registered with the Native Titles Tribunal.

Native Title Determinations: Native Title Claimants may increase their legal and social recognition of their association with a body of land or water by lodging a claim with and obtaining a Federal Court determination of their rights and interests.

Land Rights Land: Similar to freehold land. Is normally land under the exclusive control of a *Registered Native Title Body Corporate* for example the APY Lands in the North West of South Australia.

Native Title Rights: People who hold Native Title have a particular right over traditional lands and waters to continue to practice their law and custom. This may include a variety of rights and interests, such as living, hunting, gathering, fishing, ceremonial activities, right of access, use and occupation, and visits to protect important places. It may also include the right to be consulted about decisions or activities that could affect the enjoyment of Native Title rights and interests. Native Title may also vary depending on the rights of other people in the same area. For example, where people have leases, licences or a right of public access, Native Title may exist alongside these other rights. This is often called Native Title *coexistence*. Native Title cannot take away anyone else's valid rights to land, including owning a home, holding a pastoral lease or having a mining licence.

Co-existing Native Title rights: The most common form of Native Title rights found in SA pastoral country where pastoralists and Native Title Holders have negotiated a range of rights such as the right to access significant sites or traditional hunting areas. These rights are often described in an ILUA or Native Title determination.

Exclusive Native Title rights: Where Native Title results in the *Registered Native Title Body Corporate* having control over economic activity on that land including exclusive access to the carbon rights. There occasionally may be small areas on a pastoral property that due to high cultural significance are held under Exclusive Native Title rights.

Carbon Project Consent Rights: The *Carbon Farming Initiative Act 2011* provides "consent rights" to Native Title holders in relation to carbon farming projects so consent must be obtained in writing from Native Title holders before your project can proceed. In some instances an Indigenous Land Use Agreement (ILUA) may already provide consent for such a project. If no consent is contained within an ILUA, you will need to negotiate for consent from Native Title holders via their *Registered Native Title Body Corporate*. Consent rights only apply to Native Title holders where a *determination* has been made. It does not apply where there is a claim, but no determination has been made.

Future Acts: A future act is a proposal to deal with land in a way that affects Native Title rights and interests. Examples of future acts include the grant of a mining tenement or the compulsory acquisition of land. These acts must comply with the procedures set out in the Native Title Act. More information on Future Acts can be found at the Native Title Tribunal web site: <http://www.nntt.gov.au/futureacts/Pages/default.aspx>

National Native Title Tribunal: The [National Native Title Tribunal](#) is an independent agency established by the Native Title Act. The Tribunal is appointed by the Governor General to make decisions, conduct inquiries, reviews and mediations, and assist various parties with Native Title applications, and Indigenous Land Use Agreements ('ILUAs'). The National Native Title Tribunal maintains the National Native Title Register, the Register of Native Title Claims and the Register of Indigenous Land Use Agreements.

Indigenous Land Use Agreements (ILUAs):

Under the Act, there are three different types of ILUAs: Body Corporate Agreements, Area Agreements and Alternative Procedure Agreements

General information on Indigenous Land Use Agreements or ILUAs can be found at these two links on the National Native Title Web site: [ILUAs](#) or [Indigenous Land Use Agreements](#)

Body Corporate Agreement: A [Body Corporate Agreement](#) can only be made where a determination of Native Title has been made over the entire agreement area.

Area Agreements: An [Area Agreement](#) can be made even where there is no registered Native Title claimant for, or where no determination of Native Title has been made over the agreement area.

Alternative Procedure Agreement: A [Procedure Alternative Agreement](#) can be made where there is no registered Native Title claimant for the agreement area, or where no determination of Native Title has been made over the whole area.

APPENDIX 2. - Protecting Aboriginal Heritage on Pastoral Country.

A summary of advice from *Aboriginal Affairs and Reconciliation*

Aboriginal Heritage on your pastoral property

As lessee or station manager, there are a number of steps you could take to manage Aboriginal heritage on your property.

Find out if there are sites on your property

Contact *Aboriginal Affairs and Reconciliation* to find out if there are any registered or reported sites on your property. To help officers at AAR identify what sites are on your station, you will need to identify the various leases that make up your station. AAR can then inform you whether there are sites on your property and which areas it is best to avoid so as not to damage, disturb or interfere with them.

Talk to local Aboriginal people

A good way of managing heritage is to be in touch with local Aboriginal people who know the sites on your station. If you have a Native Title claim over your property, you may be dealing with Native Title claimants. When claims are settled, pastoralists and claimants often come to agreements about how to manage Aboriginal Heritage in a way that gives both sides greater certainty. In addition, *Aboriginal Affairs and Reconciliation* can provide you with contact details for your local Aboriginal Heritage organisation and you can discuss the sites on your station with its members.

Site conservation planning

Some sites may be considered of such high significance that they need a conservation or management plan. *Aboriginal Affairs and Reconciliation* can assist you with the process of developing a conservation plan in consultation with the local Aboriginal community. If you are interested in ensuring the conservation of sites on your property you should contact *Aboriginal Affairs and Reconciliation*.

Negotiate an Indigenous Land Use Agreement

If your station is covered by a Native Title claim, you and the relevant Native Title Claimants could negotiate an Indigenous Land Use Agreement (ILUA) dealing (amongst other things) with heritage. An ILUA can give you certainty about future improvements on your station and give Aboriginal people certainty about access and the protection of their heritage. You can contact *Aboriginal Affairs and Reconciliation* or the ILUA Negotiation Team at the Attorney-General's Department for further information.



Government
of South Australia



Natural Resources
SA Arid Lands