



Kokatha Aboriginal Corporation RNTBC
ABN: 17 649 502 722 ICN: 8093

KOKATHA ABORIGINAL CORPORATION RNTBC (ICN: 8093) (KAC)

HERITAGE SURVEY REPORTS ACCESS POLICY

APPROVED BY THE KAC CORPORATION
ADVISORY GROUP/BOARD 30 JULY 2020



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CONTENTS

HERITAGE SURVEY REPORTS - ACCESS POLICY	2
A BACKGROUND.....	2
B DEFINITIONS.....	3
C INTELLECTUAL PROPERTY	4
1. Copyright and intellectual property of cultural content.....	4
2. Elders and confidential cultural information	4
3. Gender	5
4. Rights of Common Law Holders.....	5
5. Contracts for cultural heritage consultants	5
C PROCEDURES.....	5
1. For the release of past heritage reports:	5
2. For the release of future heritage reports:.....	6
SCHEDULE 1	7
HERITAGE TEAM – RELEASE OF SURVEY INFORMATION & COPYRIGHT.....	7
SCHEDULE 2	8
CHECKLIST FOR RELEASING HERITAGE REPORTS.....	8



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HERITAGE SURVEY REPORTS - ACCESS POLICY

A BACKGROUND¹

1. The *Aboriginal Heritage Act 1988* (SA) protects Aboriginal heritage in South Australia. The Act applies to all persons, including those operating under the *Mining Act 1971*, *Opal Mining Act 1995*, *Offshore Minerals Act 2000*, *Petroleum and Geothermal Energy Act 2000*, and the *Petroleum (Submerged Lands) Act 1982*. The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) also applies but is subordinate to the State legislation.
2. Under the *Native Title Act 1993* (Cth), *Aboriginal Heritage Act 1988* (SA) and various Aboriginal land holding Acts, mining companies are expected to take reasonable steps to involve the relevant Aboriginal organisations in the project planning of operations to assess the likely impacts on Aboriginal heritage before commencing ground-disturbing exploration or development. Some mining activities will be prohibited if they would damage Aboriginal sites.
3. Only a small portion of the Aboriginal heritage sites in South Australia have been registered or recorded. Many significant areas of traditional land use and occupation in South Australia have never been documented but are known to the traditional owners. Aboriginal sites which are not registered are still protected by the *Aboriginal Heritage Act 1988* (SA).
4. In South Australia, Part 9B of the *Mining Act* and Part 7 of the *Opal Mining Act* set out the native title requirements that apply to mineral resource activities and opal mining. They are approved alternative native title schemes under the *Commonwealth Native Title Act*. Energy resource activities under the *Petroleum and Geothermal Energy Act* must comply with the 'right to negotiate' provisions in the *Native Title Act*.
5. To progress the development of resource projects on native title land there must be a court determination, native title mining agreement (NTMA) or ILUA that authorises the activities.
6. Where NTMAs or ILUAs are negotiated, it is standard practice for the native title party to require the mining company to undertake Aboriginal heritage surveys over the land.
7. The mining company must advise KAC of the proposed area and the proposed activity. A survey of the area is conducted by KAC's Aboriginal heritage team, together with the mining company and the cultural heritage consultant(s).
8. The heritage survey teams must include male and female elders which know the survey area and can identify and locate Aboriginal sites.

¹ The Background uses the "*Aboriginal heritage guidelines for resource projects in South Australia*, Report Book 2017/00035, Mineral and Energy Resources. Department of the Premier and Cabinet, South Australia, Adelaide" as reference. We note that the *Mining Act 1971* has been amended since the production of this report, and there will be new Regulations in the coming months.



Kokatha Aboriginal Corporation RNTBC

ABN: 17 649 502 722 ICN: 8093

9. The heritage reports are drafted by the cultural heritage consultant, based on the results of the survey. One or more drafts are supplied to KAC and/or the mining company for corrections. The report cannot be objected to unless there is a major error of recording the evidence given by the traditional owners.

B DEFINITIONS

In this policy the following words and expressions have the following meanings:

1. **Aboriginal site** has the same meaning as in the *Aboriginal Heritage Act 1988* (SA) being an area of land—
 - (a) that is of significance according to Aboriginal tradition; or
 - (b) that is of significance to Aboriginal archaeology, anthropology or history,and includes an area or an area of a class declared by regulation to be an Aboriginal site but does not include an area or an area of a class excluded by regulation from the ambit of this definition;
2. **Copyright** has the same meaning as in the *Copyright Act 1968* (Cth) meaning a right belonging to the owner or licensee of a literary, artistic or dramatic work, film or sound recording, to reproduce, perform or otherwise deal with the work;
3. **Cultural heritage consultant** means an archeologist or anthropologist engaged by KAC to conduct a heritage survey;
4. **Cultural information** means information held by an Aboriginal person and/or traditional owner regarding an Aboriginal site or object;
5. **Heritage report** means a report drafted by a cultural heritage consultant engaged by KAC on the information provided as part of a heritage survey;
6. **Heritage survey** means a survey of an area of land to identify Aboriginal sites;
7. **Intellectual property** includes intangible and tangible aspects of cultural heritage from cultural property, cultural sites to languages, human remains and documentation of Indigenous peoples;
8. **KAC Elder** means an Aboriginal person who is accepted and recognised as being a Kokatha Elder by the Kokatha community;
9. **Traditional Owner** has the same meaning as in the *Aboriginal Heritage Act 1988* (SA) meaning an Aboriginal person who, in accordance with Aboriginal tradition, has social, economic or spiritual affiliations with, and responsibilities for, an Aboriginal site or object.



Kokatha Aboriginal Corporation RNTBC
ABN: 17 649 502 722 ICN: 8093

C INTELLECTUAL PROPERTY

1. Copyright and intellectual property of cultural content

- 1.1. The ethnographic information provided by the Aboriginal heritage team as part of the survey or report production is intellectual property and must remain the property of those named Aboriginal persons and KAC.
- 1.2. Any primary research materials created as a result of information given by the Aboriginal heritage team in the course of the project must remain the property of KAC.
- 1.3. The heritage report must remain the property of KAC. A heritage report may not be used, copied, sold, published, reproduced or distributed wholly or in part without the prior written consent of KAC.
- 1.4. The consultants (anthropologists and archaeologists) retain no copyright over the reports.

2. Elders and confidential cultural information

- 2.1. Some information provided to a cultural heritage consultant as part of a survey may only be viewed by or shared with Elders, and may not be disclosed to others.
- 2.2. There may be other confidential information which an Elder may not wish to be included in the heritage report. This should be made clear when stated to a consultant.
- 2.3. This information may form part of the heritage report's findings, but must not be directly included in the final written heritage report.
- 2.4. This information remains the intellectual property of the Aboriginal person who has confidentially disclosed it.
- 2.5. The information must remain confidential and not be produced in the final written heritage report.
- 2.6. When they are employed, informants (including Elders) on the heritage survey team agree in writing to transfer their intellectual property rights for any cultural information which they authorise to be included in the heritage report. (See Schedule 1)
- 2.7. While informants still share copyright with KAC, in agreeing to be part of the heritage survey team, they agree to share their copyright with KAC for publication of the heritage report only.



Kokatha Aboriginal Corporation RNTBC

ABN: 17 649 502 722 ICN: 8093

3. Gender

- 3.1. Some information provided to a gender appropriate person as part of a survey may only be viewed by or shared with a certain gender.
- 3.2. It is essential that at each survey a male and female anthropologist is present.
- 3.3. This gender-sensitive information may form part of the heritage report's findings, but must not be directly included in the final written heritage report.
- 3.4. This information remains the intellectual property of the Aboriginal person who has confidentially disclosed it.
- 3.5. The information must remain confidential and not be produced in the final written heritage report.

4. Rights of Common Law Holders

- 4.1. Common Law Holders have the right to access the heritage reports produced as part of the surveys of the Kokatha native title land and Kokatha sites. This right extends beyond KAC members to all Common Law Holders (subject to gender and age restrictions)

5. Contracts for cultural heritage consultants

- 5.1. Cultural heritage consultants engaged by KAC must agree to this policy and incorporate it as provisions in their contract between them and KAC.

C PROCEDURES

1. For the release of past heritage reports:

- 1.1. There has been concerns raised by past heritage survey participants that unreleased and unapproved heritage reports contain confidential information which must not be published.
- 1.2. The relevant KAC advisory committee or staff member must consult with the traditional owner who holds the intellectual property rights over the confidential information contained in the report, and accordingly all such confidential information should be redacted from the report prior to its approval and release.



Kokatha Aboriginal Corporation RNTBC
ABN: 17 649 502 722 ICN: 8093

2. For the release of future heritage reports:

2.1. The mining company must provide its written permission to release the heritage report.

2.2. The mining company may give permission for the release of the report under the following conditions:

(a) Public viewing of the report; or

(b) Distribution only to restricted people.

2.3. KAC must provide its written permission to release the report having consideration of the following:

2.3.1. Any gender issues when releasing the report;

2.3.2. Any elder issues when releasing the report;

2.3.3. Whether the report is appropriate for public viewing, distribution to certain Kokatha people, or not appropriate for any distribution.



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SCHEDULE 1

HERITAGE TEAM – RELEASE OF SURVEY INFORMATION & COPYRIGHT

Personal information

Name:	
Address:	
Phone:	

Survey information

Date:	
Location:	
Mining company:	
Cultural heritage consultants:	

Use of cultural information

Cultural information which I provide as part of the survey will be used to identify Kokatha sites and be recorded in a heritage report. The heritage report is owned by KAC.

I understand that the heritage report may be released to Kokatha Common Law Holders, the KAC board and/or advisory groups, and published for public access.

Privileged cultural information

Any cultural information I hold which is secret to gender or Elders, will only be disclosed by me to the appropriate cultural heritage consultant in confidence, and will form part of the heritage report's findings, but will not be directly included in the final written heritage report.

Intellectual property rights

I retain intellectual property rights over any information I provide as part of this survey. I transfer my copyright of information provided by me and recorded in the heritage report to KAC for publication at KAC's discretion.

Signed _____ Dated _____

APPROVED JULY 2020



Kokatha Aboriginal Corporation RNTBC
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SCHEDULE 2

CHECKLIST FOR RELEASING HERITAGE REPORTS

The 3 following conditions must be considered before a heritage report can be released:

1. Has the mining company given its permission to release the heritage report?
 - 1.1. No – then the report may not be released.
 - 1.2. Yes – under what conditions has this permission been given:
 - a. Public viewing of the report; or
 - b. Distribution to restricted people.

2. Has the Aboriginal person who holds the intellectual property rights regarding the ethnographic information and site location given their permission to release the parts of the report over which they hold the intellectual property?
 - 2.1. Yes – then the report may be released.
 - 2.2. No – then those parts of the report must be redacted.

3. Has KAC given its permission to release the report having considered the following:
 - 3.1. Are there gender issues that need to be considered before releasing the report or redacted report?
 - 3.2. Are there Elder issues that need to be considered before releasing the report or redacted report?
 - 3.3. Is the report appropriate for public viewing, distribution to certain Kokatha people, or not appropriate for any distribution?