DESERT KNOWLEDGE CRC

Undertaking projects and research in Central Australia

CLC protocols and the development of protocols for projects and research in the CLC region

Central Land Council

Report 8

October 2005

CRC AUSTRALIA

DESERT KNOWLEDGE CRC

Undertaking projects and research in Central Australia

CLC protocols and the development of protocols for projects and research in the CLC region

Central Land Council

October 2005

CRC AUSTRALIA

DESERT KNOWLEDGE CRC

Contributing author information

Michael Davis, Central Land Council, Alice Springs, Northern Territory.

Acknowledgements

The CLC would like to thank Michael Davis for his work on this project. A number of CLC staff have been involved in the project, namely: David Ross, Jayne Weepers, Siobhan McDonnell, Harold Furber, Carolyn Pearce, Leon Terrill, Melanie Cocks, Michael Prowse, David Jagger, Brian Connolly, David Alexander, Tina Bain, Nick Gambold, Jenny Atkins, Richard Tuckwell, Phillip Watkins and Tegan Cook. Thanks must also go to Mark Stafford Smith and Jocelyn Davies for their comments on the draft protocols and guidance with the project. Thanks also to the Tangentyere staff from the research hub who provided detailed comments and practical input on the workings of the protocol documents. These staff were Jane Ulrik, Raylene Williams, Donna Campbell and Julia Mitchell. Final thanks to Donna Craig from Charles Darwin University and Sean Kerins from the Northern Land Council for their insightful comments.

Desert Knowledge CRC Report Number 8

Information contained in this publication may be copied or reproduced for study, research, information or educational purposes, subject to inclusion of an acknowledgement of the source.

ISBN: 1 74158 006 4 (Print copy)
ISBN: 1 74158 007 2 (Online copy)
ISSN: 1832 6684

Citation

Davis, M 2005, *Undertaking projects and research in Central Australia,* A report prepared by Central Land Council and Desert Knowledge Cooperative Research Centre, Alice Springs.

The Desert Knowledge Cooperative Research Centre (DK-CRC) is an unincorporated joint venture with 27 partners whose mission is to develop and disseminate an understanding of sustainable living in remote desert environments, deliver enduring regional economies and livelihoods based on Desert Knowledge, and create the networks to market this knowledge in other desert lands.

For additional information please contact

Desert Knowledge CRC
Publications Officer
PO Box 3971
Alice Springs NT 0871, Australia
Telephone +61 8 8950 7130 Fax +61 8 8950 7187
www.desertknowledgecrc.com.au

© Desert Knowledge CRC 2005

Contents

Section 1: The CLC protocols for conducting research and other activities in the CLCregions V
The way these protocols work VII
General Research Protocol 1
Introduction 1
Application for a permit to enter Aboriginal land 4
Protocol for anthropological work 1
Introduction 1
Application for a permit to enter Aboriginal land 4
Protocol for environment and conservation activities 1
Introduction 1
Application for a permit to enter Aboriginal land 4
Protocol for linguistic work 1
Introduction 1
Application for a permit to enter Aboriginal land 4
Protocol for photography, film and recording 1
Introduction 1
Application for a permit to enter Aboriginal land 4
Introduction 1
Protocol for tourism activities 1
Application for a permit to enter Aboriginal land 3
Section 2: The development of protocols for conducting research and other activities in the Central Land Council regions 9
Abbreviations/Acronyms 10
The Central Land Council 1
1. Introduction 3
2. An overview of the project 5
3. Review of protocols and other instruments 7
3.1 What does a protocol contain? 7
3.2 Guiding principles for developing protocols 8
3.3 International examples 9
3.4 National and local examples 9
3.5 Moving towards contracts and agreements 9
4. The CLC protocols 11
4.1 Protecting Aboriginal Cultural and Intellectual Property 11
4.2 The way these protocols work 12
5. Key ideas that inform the CLC protocols 13
i) Aboriginal initiated research 13
ii) Benefits for Aboriginal communities 13
iii) Aboriginal peoples are experts 13
iv) Aboriginal governance structures 14
6. Future directions 15
Selected bibliography 17
Appendix A 19
Examples of Protocols, Guidelines, Codes of Conduct and Codes of Ethics 19

Section 1:

The CLC protocols for conducting research and other activities in the CLCregions

The purpose of this book is to ensure that projects and research undertaken in central Australia respect Aboriginal rights, culture and intellectual property, whether or not on Aboriginal land.

The first section of this book contains protocols to be followed for various projects. The protocols aim to achieve respect for Aboriginal rights, culture and intellectual property by:

- checking sufficient information is provided to Aboriginal people about projects
- ensuring that Aboriginal people are consulted about projects on their land
- enabling Aboriginal people to be involved in projects as far as is practical
- providing for agreements to protect cultural and intellectual property rights
- ensuring that project applicants obtain a permit for work on Aboriginal land.

The second section contains the report to the Desert Knowledge Cooperative Research Centre about the development of the protocols. This section may be of interest to researchers and others who wish to learn more about how the protocols came about.

This book is mainly aimed at:

- Communities in the Central Land Council region to assist them to deal with projects in their area, and
- Institutions which conduct research in the CLC region to inform them about protocol requirements.

The CLC will require a protocol application to be made for any project on Aboriginal land. Communities dealing with project applications that are not on Aboriginal land may seek the assistance of the CLC to ensure the protocols are met as much as possible: call the CLC Legal Unit on (08) 8951 6238.

Under the Aboriginal Land Act (NT) it is an offence to enter Aboriginal land without a permit. The CLC issues permits to enter Aboriginal land for visitors and projects. For further information call the CLC Permit Officer on (08) 8951 6320.

The way these protocols work

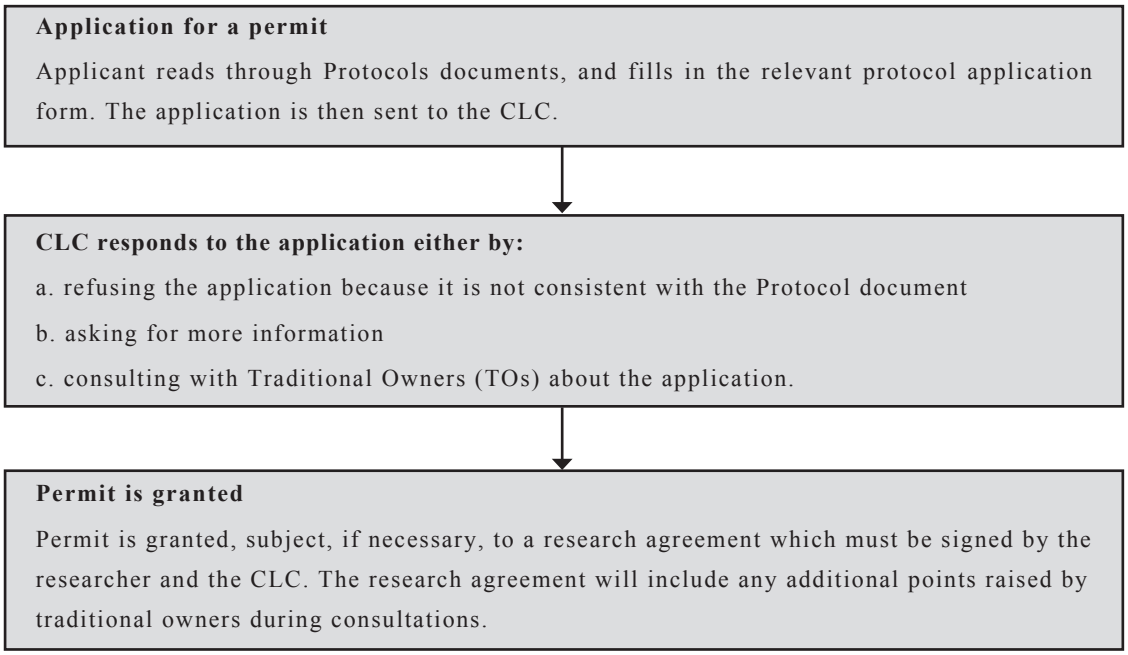
While the aim of the protocols is to respect Aboriginal rights, culture and intellectual property throughout central Australia, the protocols are an integral part of the CLC permit system regulating entry on to Aboriginal land.

The permit application process for projects is as follows:

- First project applicants need to work out which protocol best fits their project. The protocols cover various projects: film/recording, anthropology, archaeological, linguistics, environment, conservation, tourism, and other general research.
- Second, the applicant needs to submit an application covering all the information requested in the relevant protocol.
- Third, the CLC will consult with traditional owners for the area concerned, including any affected Aboriginal communities. The CLC will pay particular attention to ensuring participation of Aboriginal people where possible and protecting rights with an additional agreement where appropriate. The CLC can not approve the application without the informed consent of traditional owners.

To avoid the need for further consultations and unnecessary delay, it is in the interests of the applicant and traditional owners for the applicant to supply as much information about the project as possible. If consent is granted by traditional owners for the project, the CLC will draw up the permit, with additional agreement where necessary, setting out the terms of the project.

The following diagram describes the application process:



General Research Protocol

Introduction

This Protocol provides general guidance for proposals to conduct research on Aboriginal lands. It should also serve as a guide for those wishing to visit and/or work in Aboriginal communities and areas in the Central Land Council region.

This Protocol is designed to be consistent with the standards set out in the AIATSIS *Guidelines for Ethical Research in Indigenous Studies*.

1. PRIOR INFORMED CONSENT

1.1 All applications for research activities must have obtained, through the CLC, the prior informed consent of the Traditional Owners.

1.2 To assist the CLC in seeking prior informed consent from Traditional Owners, applicants who wish to obtain a permit to enter Aboriginal land in order to conduct research should provide to the CLC full details of the proposed project, as detailed in the attached application.

2. PARTICIPATION BY ABORIGINAL PEOPLES

2.1 All applications should acknowledge Aboriginal peoples' customary laws, practices and local expertise. Aboriginal peoples should be provided with opportunities to participate at all stages of project, where appropriate.

2.2 Aboriginal participation may be facilitated by utilising existing Aboriginal organisations. For major projects, the establishment of an Aboriginal steering committee should also be considered.

2.3 The employment and training of Aboriginal peoples should be considered in all aspects of the work, including as guides, interpreters, and informants, as well as in the collection and analysis of research data.

3. BENEFITS FOR ABORIGINAL PEOPLES

3.1 Aboriginal peoples have the right to expect that research conducted on their land, and in their communities, will be of benefit to them. One way of ensuring this is by designing projects in conjunction with Aboriginal peoples.

3.2 Aboriginal peoples working on the project must be paid at fair and equitable rates.

3.3 In ensuring that the project benefits Aboriginal peoples, applicants should consider the range of ways in which such benefits may be provided (please see Introduction). These may include both monetary, and non-monetary benefits such as skills and training, and capacity building for communities. Project budgets should include provisions for any financial and other benefits.

3.4 Aboriginal peoples value opportunities to visit country. In order to generate goodwill, you may wish to consider including extended family on any trips onto country.

4. ABORIGINAL CULTURAL AND INTELLECTUAL PROPERTY RIGHTS

4.1 The term 'Aboriginal cultural and intellectual property' is a general term which includes all aspects of Aboriginal peoples' cultural products and expressions, as well as their intangible cultural knowledge. Aboriginal cultural and intellectual property means the totality of cultural heritage of Aboriginal peoples, including, without limitation, their intangible heritage (such as songs, dances, stories, ecological and cultural knowledge), and cultural property, which includes Aboriginal human remains, artefacts, and any other tangible cultural objects.

4.2 Applications for research projects must demonstrate a commitment to respect and uphold the rights of Aboriginal peoples, under their Traditional Law, to full ownership and control over any Aboriginal cultural and intellectual property that is in existence prior to the conduct of the project. This includes rights in Aboriginal cultural knowledge.

4.3 Applications must demonstrate a commitment to negotiating fully and equitably with Aboriginal peoples who are involved in the research, and to protecting the rights and interests of Aboriginal peoples in any intellectual property that results from the research.

5. ETHICS APPROVAL

5.1 Research proposals should have obtained clearance from a formally constituted Human Research Ethics Committee or equivalent body. Applicants are encouraged to discuss their project with the Central Australian Ethics Committee.

6. METHODOLOGY

6.1 Applications shall provide full details of the methodology to be used in the proposed research work. This should include information about how the applicant will manage outcomes and data from the project in accordance with Aboriginal peoples' rights and interests. For example, how the project will provide for Aboriginal community retention of research data.

7. PHOTOGRAPHY, FILM AND RECORDING

7.1 Proposed projects that involve photography, film and recording activities must provide full details. For greater detail refer also to the User-Specific Protocol for Photography, Film and Recording.

8. PUBLICATION AND OTHER DISSEMINATION OF RESEARCH OUTCOMES

8.1 Applicants should uphold the rights and interests of Aboriginal peoples regarding control over publication and other dissemination of research outcomes. Applications to conduct research activities on Aboriginal lands must provide full details in their Application of any plans for publication and dissemination, where known. This should include details of any collaborative approaches to publication with Aboriginal peoples.

8.2 Copies of all research results and outputs shall be made available, in an appropriately accessible form, to Aboriginal peoples upon request.

9. PROFESSIONAL CREDENTIALS

9.1 Applicants who wish to conduct research work must be registered members of an appropriate professional or industry body.

Application for a permit to enter Aboriginal land

This form is used to apply for permission to enter, remain on, and to travel through Aboriginal land in order to conduct research work. The CLC will use the details that you provide on this form to consider your application and, where appropriate, consult with the Traditional Owners regarding the granting of a permit.

The protocols that are included in this package should be used to guide you in preparing your application. They are designed to ensure that the information you provide in completing this application is used so that Traditional Owners are fully informed, and on that basis can make their decisions regarding the issuing of a permit.

If your application is successful, you will be issued with a permit that is to be used for a specific purpose, a specific place, and for a specific period of time. The permit will not allow you to enter Aboriginal land for any other purpose other than that stated on the permit. The permit may be issued subject to special conditions, set out in an agreement.

This application is to be used to apply for ENTRY onto Aboriginal land. If your purpose is to enter Aboriginal land for a single transit from one point to another, you should use the TRANSIT application form. See our website www.clc.org.au for further information.

Applications take some time to process. To allow sufficient time to consider your application, and to consult with Traditional Owners, please submit your application to the CLC well in advance of your intended date of entry to Aboriginal land. Please print clearly.

Please remember that it is important to respect, and to protect Aboriginal peoples' cultural and intellectual property rights, including their cultural knowledge.

Please read the general conditions set out below and provide as much detail as possible.

1. Applicant details

Your name: .....

Phone number(s): .....

Fax number: .....

Email address: .....

Home address: .....

Postal address (if different from above): .....

.....

List below the names of all other persons accompanying you:

....

....

....

2. Where do you want to go? When do you want to go?

How are you proposing to get there?

Details of community and/or language groups to be visited:

Community	Date in:	Date out:	Person supervising stay:
.....	.....	.....	.....
.....	.....	.....	.....

List the language group/s you wish to visit:

1……

2……

3……

Have you been in contact with members of this community or other relevant Aboriginal peoples to discuss your project?

……

Have you worked with Aboriginal communities or peoples in the Central Australian region before? Please give details.

……

.....

.....

.....

3. Professional credentials

Are you and others in your team registered members of an approved professional research organisation? Please give details.

……

.....……

If you do not qualify for the above criterion, please provide a letter of support from a person who is a member of a professional body, or from an equivalent organisation or research institution.

4. Research ethics clearance

Has the project received formal clearance from an authorised professional ethics committee or an equivalent body? Please provide details.

……

.....……

COMMUNITY COUNCIL & TRADITIONAL OWNER USE ONLY

Approved: ……..…… ……..……..
Signature: Date:

Not Approved: .....
Name of Community Council

More information needed from Applicant? Yes No

5. Logistics of your visit to the community/communities

Are you staying overnight in the community? Yes No

How long do you intend to stay in the community? .....

Will you be staying in different communities? Yes No

If so, which ones, and for how long?

....

....

....

If you are not staying in a community or outstation, please state where you intend camping, and for how long.

……

Nature of travel

List the roads you propose to travel on to reach your destination. Attach a map if necessary.

……

.....

.....

Will you be traveling by vehicle? If possible, please provide details of type, make and model and registration number.

……

Will you be traveling by aircraft? If possible, please provide details.

……

6. Project details

Please provide the following details about the project. It is in your interests, and also of the CLC and Traditional Owners, to provide as much detail as possible.

What is the purpose of the project? Please describe the aims and objectives.

……

.....

.....

Is this a new project, or part of an ongoing research project?

.....

Who will be involved?

……

.....

How is the project funded?

.....

What is the project timeframe?

.....

Methodology and approach

Please provide details of the methodology and approach to the activity and/or project. Include details of research activities such as survey and sampling, collection and screening of samples, oral histories:

……

……

……

7. Aboriginal cultural and intellectual property rights

It is very important to ensure that Aboriginal peoples' cultural and intellectual property rights are adequately respected and protected. What provisions does your proposed activity include to ensure that Aboriginal peoples' cultural and intellectual property rights are properly protected? For example, will Aboriginal peoples retain the copyright in any work produced or will negotiations occur to license the product? Has a collaborative approach been developed that allows for input by Aboriginal peoples to the project?

……

.....

.....

.....

.....

8. Aboriginal participation

What plans do you have to engage Aboriginal peoples in the research work? This includes details about Aboriginal peoples' participation in the project. Does your project include provisions that acknowledge and recognise Aboriginal peoples' skills and local expertise? This may include developing a collaborative approach to Aboriginal peoples' involvement in publications, for example as co-authors or contributors.

.....

.....

Will the project be carried out collaboratively with any Aboriginal organisations? Please give details.

.....

.....

Please outline any steps taken to establish an Aboriginal steering committee for this project.

.....

.....

9. Benefits to Aboriginal peoples

Does the activity/project have well-defined plans to return benefits to Aboriginal peoples? If so, please give details.

.....

.....

.....

Monetary benefits

If there are measures to provide monetary benefits, such as payments to Aboriginal peoples for work on the project, please provide details:

……

……

……

Non-monetary benefits

What, if any, types of non-monetary benefits will be provided to the community/ communities? (e.g., skills and training, facilities, awareness and education support, infrastructure, capacity development).

Has the project been designed in response to Aboriginal peoples' research agenda and priorities? Please give details.

……

……

……

……

……

10. Dissemination, distribution, presentation and publication

Please provide details of any plans regarding dissemination, presentation and publication of outcomes and products of the research and/or other activity.

How do you plan to disseminate the outcomes? In what forms, and to what forums?

.....

.....

11. Photography and filming

Please provide details about any plans to include photography, film and sound recordings as part of your research project.

.....

.....

Protocol for anthropological work

Introduction

This Protocol provides guidance for applications by researchers to conduct anthropological work on Aboriginal land. It should also serve as a guide for those wishing to visit and/or work in Aboriginal communities and areas in the Central Land Council region.

This Protocol is designed to be consistent with the standards set out in the AIATSIS *Guidelines for Ethical Research in Indigenous Studies*, the Australian Anthropological Society *Code of Ethics* and the Australian Heritage Commission *'Ask First' Guide to Respecting Indigenous Heritage Places and Values*.

1. PRIOR INFORMED CONSENT

1.1 All applications for anthropological work must have obtained, through the CLC, the prior informed consent of the Traditional Owners.

1.2 To assist the CLC in seeking the prior informed consent of Traditional Owners, applications should provide full details of the proposed project, as detailed in the attached application.

2. PARTICIPATION BY ABORIGINAL PEOPLES

2.1 All applications should acknowledge Aboriginal peoples' customary laws, practices and local expertise. Aboriginal peoples should be provided with opportunities to participate at all stages of the project, where appropriate.

2.2 Aboriginal participation may be facilitated by utilising existing Aboriginal organisations. For major projects, the establishment of an Aboriginal steering committee should also be considered.

2.3 The employment and training of Aboriginal peoples should be considered in all aspects of the work, including as guides, interpreters, and informants, as well as in the collection and analysis of research data.

3. BENEFITS FOR ABORIGINAL PEOPLES

3.1 Aboriginal peoples have the right to expect that research conducted on their land, and in their communities, will be of benefit to them. One way of ensuring this is by designing projects in conjunction with Aboriginal peoples.

3.2 Aboriginal peoples working on the project must be paid at fair and equitable rates.

3.3 In ensuring that the project benefits Aboriginal peoples, applicants should consider the range of ways in which such benefits may be provided (please see Introduction). These may include both monetary and non-monetary benefits such as skills and training, and capacity building for communities. Project budgets should include provisions for any financial and other benefits.

3.4 Aboriginal peoples value opportunities to visit country. In order to generate goodwill, you may wish to consider including extended family on any trips onto country.

4. ABORIGINAL CULTURAL AND INTELLECTUAL PROPERTY RIGHTS

4.1 The term 'Aboriginal cultural and intellectual property' is a general term which includes all aspects of Aboriginal peoples' cultural products and expressions, as well as their intangible cultural knowledge. Aboriginal cultural and intellectual property means the totality of cultural heritage of Aboriginal peoples, including, without limitation, their intangible heritage (such as songs, dances, stories, ecological and cultural knowledge), and cultural property, which includes Aboriginal human remains, artefacts, and any other tangible cultural objects.

4.2 Applications for anthropological projects must demonstrate a commitment to respect and uphold the rights of Aboriginal peoples, under Aboriginal Traditional Laws, to full ownership and control over Aboriginal cultural and intellectual property that is in existence prior to the conduct of the project.

4.3 Applications must demonstrate a commitment to negotiating fully and equitably with Traditional Owners and other Aboriginal peoples who are involved in the research, and to protecting the rights and interests of Traditional Owners and other Aboriginal peoples in any intellectual property that results from the research.

5. ETHICS APPROVAL

5.1 Research proposals should have obtained clearance from a formally constituted Human Research Ethics Committee or equivalent body. Applicants are encouraged to discuss their project with the Central Australian Ethics Committee.

6. METHODOLOGY

6.1 Applications shall provide full details of the methodology to be used in the proposed anthropological work. This should include information about how the applicant will manage outcomes and data from the project in accordance with Aboriginal peoples' rights and interests. For example, how the project will provide for Aboriginal community retention of research data.

7. PHOTOGRAPHY, FILM AND RECORDING

7.1 Proposed projects that involve the use of photography, film and recording must provide full details. For greater detail refer also to the User-Specific Protocol for Photography, Film and Recording.

8. PUBLICATION AND OTHER DISSEMINATION OF RESEARCH OUTCOMES

8.1 Applicants should uphold the rights and interests of Aboriginal peoples regarding control over publication and other dissemination of research outcomes. Applications to conduct anthropological activities on Aboriginal land must provide full details in their application of any plans for publication and dissemination, where known. This should include details of any collaborative approaches to publication with Aboriginal peoples.

8.2 Copies of all research results and outputs shall be made available, in an appropriately accessible form, to Aboriginal peoples upon request.

9. PROFESSIONAL CREDENTIALS

9.1 Applicants who wish to conduct anthropological work must be registered members of the Australian Anthropological Society, affiliated organisations, or equivalent bodies.

Application for a permit to enter Aboriginal land

This form is used to apply for permission to enter, remain on, and to travel through Aboriginal land in order to conduct research work. The CLC will use the details that you provide on this form to consider your application and, where appropriate, consult with the Traditional Owners regarding the granting of a permit.

The protocols that are included in this package should be used to guide you in preparing your application. They are designed to ensure that the information you provide in completing this application is used so that Traditional Owners are fully informed, and on that basis can make their decisions regarding the issuing of a permit.

If your application is successful, you will be issued with a permit that is to be used for a specific purpose, a specific place, and for a specific period of time. The permit will not allow you to enter Aboriginal land for any other purpose other than that stated on the permit. The permit may be issued subject to special conditions, set out in an agreement.

This application is to be used to apply for ENTRY onto Aboriginal land. If your purpose is to enter Aboriginal land for a single transit from one point to another, you should use the TRANSIT application form. See our website www.clc.org.au for further information.

Applications take some time to process. To allow sufficient time to consider your application, and to consult with Traditional Owners, please submit your application to the CLC well in advance of your intended date of entry to Aboriginal land. Please print clearly.

Please remember that it is important to respect, and to protect Aboriginal peoples' cultural and intellectual property rights, including their cultural knowledge.

Please read the general conditions set out below and provide as much detail as possible.

1. Applicant details

Your name: .....

Phone number(s): .....

Fax number: .....

Email address: .....

Home address: .....

Postal address (if different from above): .....

.....

List below the names of all other persons accompanying you:

....

....

....

2. Where do you want to go? When do you want to go?

How are you proposing to get there?

Details of community and/or language groups to be visited:

Community	Date in:	Date out:	Person supervising stay:
.....	.....	.....	.....
.....	.....	.....	.....

List the language group/s you wish to visit:

1……

2……

3……

Have you been in contact with members of this community or other relevant Aboriginal peoples to discuss your project?

……

Have you worked with Aboriginal communities or peoples in the Central Australian region before? Please give details.

……

.....

.....

.....

3. Professional credentials

Are you and others in your team registered members of an approved professional research organisation? Please give details.

……

.....……

If you do not qualify for the above criterion, please provide a letter of support from a person who is a member of a professional body, or from an equivalent organisation or research institution.

4. Research ethics clearance

Has the project received formal clearance from an authorised professional ethics committee or an equivalent body? Please provide details.

……

.....……

COMMUNITY COUNCIL & TRADITIONAL OWNER USE ONLY

Approved: ……..…… ……..……..
Signature: Date:

Not Approved: .....
Name of Community Council

More information needed from Applicant? Yes No

5. Logistics of your visit to the community/communities

Are you staying overnight in the community? Yes No

How long do you intend to stay in the community? .....

Will you be staying in different communities? Yes No

If so, which ones, and for how long?

....

....

....

If you are not staying in a community or outstation, please state where you intend camping, and for how long.

……

Nature of travel

List the roads you propose to travel on to reach your destination. Attach a map if necessary.

……

.....

.....

Will you be traveling by vehicle? If possible, please provide details of type, make and model and registration number.

……

Will you be traveling by aircraft? If possible, please provide details.

……

6. Project details

Please provide the following details about the project. It is in your interests, and also of the CLC and Traditional Owners, to provide as much detail as possible.

What is the purpose of the project? Please describe the aims and objectives.

……

.....

.....

Is this a new project, or part of an ongoing research project?

.....

Who will be involved?

……

……

How is the project funded?

.....

What is the project timeframe?

.....

Methodology and approach

Please provide details of the methodology and approach to the activity and/or project. Include details of research activities such as survey and sampling, collection and screening of samples, oral histories:

……

……

……

What plans are there for making language recordings available – e.g., on databases, catalogues, indexes?

.....

Approximately how many informants will be involved? What languages and/or dialects?

.....

Please give details of other kinds of research activity that are planned. This might include, for example, collection of oral histories, associated ethnographic data, and other activities.

.....

7. Aboriginal cultural and intellectual property rights

It is very important to ensure that Aboriginal peoples' cultural and intellectual property rights are adequately respected and protected. What provisions does your proposed activity include to ensure that Aboriginal peoples' cultural and intellectual property rights are properly protected? For example, will Aboriginal peoples retain the copyright in any work produced or will negotiations occur to license the product? Has a collaborative approach been developed that allows for input by Aboriginal peoples to the project?

.....

.....

.....

.....

.....

8. Aboriginal participation

What plans do you have to engage Aboriginal peoples in the research work? This includes details about Aboriginal peoples' participation in the project. Does your project include provisions that acknowledge and recognise Aboriginal peoples' skills and local expertise? This may include developing a collaborative approach to Aboriginal peoples' involvement in publications, for example as co-authors or contributors.

.....

.....

Will the project be carried out collaboratively with any Aboriginal organisations? Please give details.

.....

.....

Please outline any steps taken to establish an Aboriginal steering committee for this project.

.....

.....

……

9. Benefits to Aboriginal peoples

Does the activity/project have well defined plans to return benefits to Aboriginal peoples? If so, please give details.

.....

.....

.....

Monetary benefits

If there are measures to provide monetary benefits, such as payments to Aboriginal peoples for work on the project, please provide details:

……

……

……

Non-monetary benefits

What, if any, types of non-monetary benefits will be provided to the community/ communities? (e.g., skills and training, facilities, awareness and education support, infrastructure, capacity development).

Has the project been designed in response to Aboriginal peoples' research agenda and priorities? Please give details.

……

……

……

……

……

10. Dissemination, distribution, presentation and publication

Please provide details of any plans regarding dissemination, presentation and publication of outcomes and products of the research and/or other activity.

How do you plan to disseminate the outcomes? In what forms, and to what forums?

.....

.....

11. Photography and filming activities

Please provide details about any plans to include photography, film and sound recordings as part of your research project.

.....

.....

Protocol for environment and conservation activities

Introduction

This Protocol applies to proposals for environment, conservation and biodiversity related activities. It applies to the survey, screening and/or collection of any plant or animal matter, parts and/or derivatives of these, germplasm and other biological and genetic materials, and knowledge and practices relating to these.

The Protocol has regard to relevant international, national, regional, state, territory and local laws and standards. It is consistent with Australia's obligations under the United Nations Convention on Biological Diversity, the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (especially the Regulations for Access to Biological Resources), and relevant Northern Territory laws. It is also informed by standards set out in the AIATSIS *Guidelines for Ethical Research in Aboriginal Studies*, and the Australian Science, Technology and Engineering Council (ASTEC) *National Principles and Guidelines for the Ethical Conduct of Research in Protected and Environmentally Sensitive Areas*.

1. PRIOR INFORMED CONSENT

1.1 All applications for environment and conservation activities must have obtained, through the CLC, the prior informed consent of the Traditional Owners.

1.2 To assist the CLC in seeking the prior informed consent of Traditional Owners, applicants should provide full details of the proposed project, as detailed in the attached application.

2. PARTICIPATION BY ABORIGINAL PEOPLES

2.1 All applications should acknowledge Aboriginal peoples' customary laws, practices and the expertise that Aboriginal peoples have in relation to biological resources. Aboriginal peoples should be provided with opportunities to participate at all stages of project, where appropriate.

2.2 Aboriginal participation may be facilitated by utilising existing Aboriginal organisations. For major projects, the establishment of an Aboriginal steering committee should also be considered.

2.3 The employment and training of Aboriginal peoples should be considered in all aspects of the environment and conservation work, including as advisors, rangers, botanists, guides, interpreters, and informants, as well as in the collection and analysis of research data.

3. BENEFITS FOR TRADITIONAL OWNERS AND OTHER ABORIGINAL PEOPLES

3.1 Aboriginal peoples have the right to expect that research conducted on their land, and in their communities, will be of benefit to them. One way of ensuring this is by designing projects in conjunction with Aboriginal peoples.

3.2 Aboriginal peoples working on the project must be paid at fair and equitable rates.

3.3 In ensuring that the project benefits Aboriginal peoples, applicants should consider the range of ways in which such benefits may be provided (please see Introduction). These may include both monetary and non-monetary benefits such as skills and training, and capacity building for communities. Project budgets should include provisions for any financial and other benefits.

3.4 Applicants are encouraged to develop, in negotiation with Aboriginal communities, access and benefit sharing agreements that:

a) Recognise Aboriginal peoples' rights in their traditional knowledge relating to biological and genetic resources
b) Are based on the principles of prior informed consent
c) Are negotiated on a basis of mutually agreed terms and conditions.

3.5 Aboriginal peoples value opportunities to visit country. In order to generate goodwill, you may wish to consider including extended family on any trips onto country.

4. ABORIGINAL CULTURAL AND INTELLECTUAL PROPERTY RIGHTS

4.1 The term 'Aboriginal cultural and intellectual property' is a general term which includes all aspects of Aboriginal peoples' cultural products and expressions, as well as their intangible cultural knowledge. Aboriginal cultural and intellectual property means the totality of cultural heritage of Aboriginal peoples, including, without limitation, their intangible heritage (such as songs, dances, stories, ecological and cultural knowledge), and cultural property, which includes Aboriginal human remains, artefacts, and any other tangible cultural objects.

4.2 Applications for environment and conservation projects must demonstrate a commitment to respect and uphold the rights of Aboriginal peoples, under Aboriginal Traditional Laws, to full ownership and control over Aboriginal cultural and intellectual property that is in existence prior to the conduct of the project.

4.3 Applications must demonstrate a commitment to negotiating fully and equitably with Traditional Owners and other Aboriginal peoples who are involved in the research, and to protecting the rights and interests of Traditional Owners and other Aboriginal peoples in any intellectual property that results from the research.

5. ETHICS APPROVAL

5.1 Environment and Conservation project proposals should have obtained clearance from a formally constituted Human Research Ethics Committee or equivalent body. Applicants are encouraged to discuss their project with the Central Australian Ethics Committee.

6. METHODOLOGY

6.1 Applications shall provide full details of the methodology to be used in the proposed research work. This should include information about how the applicant will manage outcomes and data from the project in accordance with Aboriginal peoples' rights and interests, for example, how the project will provide for Aboriginal community retention of research data.

7. PHOTOGRAPHY, FILM AND RECORDING

7.1 Proposed projects that involve photography, film and recording activities must provide full details. For greater detail refer also to the User-Specific Protocol for Photography, Film and Recording.

8. PUBLICATION AND OTHER DISSEMINATION OF RESEARCH OUTCOMES

8.1 Applicants should uphold the rights and interests of Aboriginal peoples regarding control over publication and other dissemination of research outcomes. Applications to conduct research activities on Aboriginal lands must provide full details in their application of any plans for publication and dissemination, where known. This should include details of any collaborative approaches to publication with Aboriginal peoples.

8.2 For any ethnobotanical publications and/or reports, applicants should provide for either:

a) Aboriginal peoples to retain copyright control over all material produced or collected; or
b) To negotiate with Aboriginal peoples to use, through license, all or some material produced or collected during, and resulting from the project.

8.3 Copies of all research results and outputs shall be made available, in an appropriately accessible form, to Traditional Owners and other Aboriginal peoples upon request.

9. PROFESSIONAL CREDENTIALS

9.1 Applicants who wish to conduct environment and conservation activities must be registered members of the relevant professional bodies.

Application for a permit to enter Aboriginal land

This form is used to apply for permission to enter, remain on, and to travel through Aboriginal land to undertake environment and conservation activities. This includes proposals for the survey, screening and/or collection of any plant or animal matter, parts and/or derivatives of these, germplasm and other biological and genetic materials, and knowledge and practices relating to these.

The protocols that are included in this package should be used to guide you in preparing your application. They are designed to ensure that the information you provide in completing this application is used so that Traditional Owners are fully informed, and on that basis can make their decisions regarding the issuing of a permit.

If your application is successful, you will be issued with a permit that is to be used for a specific purpose, a specific place, and for a specific period of time. The permit will not allow you to enter Aboriginal land for any other purpose other than that stated on the permit. The permit may be issued subject to special conditions, set out in an agreement.

This application is to be used to apply for ENTRY onto Aboriginal land. If your purpose is to enter Aboriginal land for a single transit from one point to another, you should use the TRANSIT application form. See our website www.clc.org.au for further information.

Applications take some time to process. To allow sufficient time to consider your application, and to consult with Traditional Owners, please submit your application to the CLC well in advance of your intended date of entry to Aboriginal land. Please print clearly.

Please remember that it is important to respect, and to protect Aboriginal peoples' cultural and intellectual property rights, including their cultural knowledge.

Please read the general conditions set out below and provide as much detail as possible.

1. Applicant details

Your name: .....

Phone number(s): .....

Fax number: .....

Email address: .....

Home address: .....

Postal address (if different from above): .....

.....

List below the names of all other persons accompanying you:

....

....

....

2. Where do you want to go? When do you want to go?

How are you proposing to get there?

Details of community and/or language groups to be visited:

Community	Date in:	Date out:	Person supervising stay:
.....	.....	.....	.....
.....	.....	.....	.....

List the language group/s you wish to visit:

1……

2……

3……

Have you been in contact with members of this community or other relevant Aboriginal peoples to discuss your project?

……

Have you worked with Aboriginal communities or peoples in the Central Australian region before? Please give details.

……

.....

.....

.....

3. Professional credentials

Are you and others in your team current members of a professional conservation and/or research organisation? Please give details. Please give details.

……

.....……

If you do not qualify for the above criterion, please provide a letter of support from a person who is a member of a professional body, or from an equivalent organisation or research institution.

4. Research ethics clearance

Has the project received formal clearance from an authorised professional ethics committee or an equivalent body? Please provide details.

……

.....……

COMMUNITY COUNCIL & TRADITIONAL OWNER USE ONLY

Approved: ……..…… ……..……..
Signature: Date:

Not Approved: .....
Name of Community Council

More information needed from Applicant? Yes No

5. Logistics of your visit to the community/communities

Are you staying overnight in the community? Yes No

How long do you intend to stay in the community? .....

Will you be staying in different communities? Yes No

If so, which ones, and for how long?

....

....

....

If you are not staying in a community or outstation, please state where you intend camping, and for how long.

……

Nature of travel

List the roads you propose to travel on to reach your destination. Attach a map if necessary.

……

.....

.....

Will you be traveling by vehicle? If possible, please provide details of type, make and model and registration number.

……

Will you be traveling by aircraft? If possible, please provide details.

……

6. Project details

Please provide the following details about the project. It is in the Applicant's interests, and also in the interest of the CLC and Traditional Owners to provide as much detail about the project as possible.

……

What is the purpose of the project? Please provide details about the aims and objectives of the project.

……

What is the project timeframe?

……

Who will participate in the project, and what are their roles and functions?

……

Is this a new project, or part of ongoing environment and/or conservation work?

……

How is the project being funded? Please include here details of funding sources, responsible departments, agencies and organisations.

……

Methodology and approach

Please detail any particular species to be surveyed, screened, collected or otherwise included in the proposed research or activity.

……

Please give full details of your proposed fauna and flora sampling strategy, including quantities and types of faunal samples, plants, plant products, seeds, biological and genetic materials and any other parts or derivatives of these that are to be collected.

……

Please provide here full details, if known, of any actual or potential domestication, hybridisation, and/or commercialisation plans or proposals, including especially those with regard to possible intellectual property applications (e.g., patents, plant breeder rights and other means of seeking intellectual property rights in the research and its products).

……

Will the project involve any bioprospecting or biodiscovery activities? Please give details, including all partners involved. Any companies and commercial interests must be fully detailed.

……

Has the project incorporated an awareness of the Commonwealth Government's *Environment Protection and Biodiversity Conservation Act 1999*? Applicants are especially advised to refer for guidance to the draft regulations being developed under this Act for access to biological resources.

……

How will information be recorded and documented? Will ethnobotanical databases be developed and/or used? Please give full details.

……

What other kinds of information will be gathered? (e.g.,, informant interviews, oral history collection, survey questionnaires, participant-observation techniques).

……

7. Aboriginal cultural and intellectual property rights

It is very important to ensure that Aboriginal peoples' cultural and intellectual property rights are adequately respected and protected. What provisions does your proposed activity include to ensure that Aboriginal peoples' cultural and intellectual property rights are properly protected? For example, will Aboriginal peoples retain the copyright in any work produced or will negotiations occur to license the product? Has a collaborative approach been developed that allows for input by Aboriginal peoples to the project? What plans are being developed to protect Aboriginal peoples' traditional ecological knowledge?

.....

.....

.....

.....

8. Aboriginal participation

What plans do you have to engage Aboriginal peoples in the research work? This includes details about Aboriginal peoples' participation in the project. Does your project include provisions that acknowledge and recognise Aboriginal peoples' skills and local expertise? This may include developing a collaborative approach to Aboriginal peoples' involvement in publications, for example as co-authors or contributors.

.....

.....

Will the project be carried out collaboratively with any Aboriginal organisations? Please give details.

.....

.....

Please outline any steps taken to establish an Aboriginal steering committee for this project.

.....

.....

9. Benefits to Aboriginal peoples

Does the activity/project have well-defined plans to return benefits to Aboriginal peoples? If so, please give details.

.....

.....

.....

Monetary benefits

If there are measures to provide monetary benefits, such as payments to Aboriginal peoples for work on the project, please provide details:

.....

.....

Non-monetary benefits

What, if any, types of non-monetary benefits will be provided to the community/ communities? (e.g., skills and training, facilities, awareness and education support, infrastructure, capacity development).

Has the project been designed in response to Aboriginal peoples' research agenda and priorities? Please give details.

……

……

……

……

……

10. Dissemination, distribution, presentation and publication

Please provide details of any plans regarding dissemination, presentation and publication of outcomes and products of the research and/or other activity.

How do you plan to disseminate the outcomes? In what forms, and to what forums?

.....

.....

11. Photography and filming activities

Please provide details about any plans to include photography, film and sound recordings as part of your research project.

.....

.....

Protocol for linguistic work

Introduction

This Protocol provides guidance for the conduct of linguistic research on Aboriginal lands. It should also serve as a guide for those wishing to visit and/or work in Aboriginal communities and areas in the Central Land Council region.

This Protocol is designed to be consistent with the standards set out in the AIATSIS *Guidelines for Ethical Research in Aboriginal Studies* and the Australian Heritage Commission *'Ask First' Guide to Respecting Aboriginal Heritage Places and Values*.

1. PRIOR INFORMED CONSENT

1.1 All applications for linguistic work must have obtained, through the CLC, the prior informed consent of the Traditional Owners.

1.2 To assist the CLC in seeking prior informed consent from Traditional Owners, Applicants who wish to obtain a permit to enter Aboriginal land in order to conduct linguistic work should provide to the CLC full details of the proposed project, as detailed in the attached application.

2. PARTICIPATION BY ABORIGINAL PEOPLES

2.1 All applications should acknowledge Aboriginal peoples' customary laws, practices and local expertise. Aboriginal peoples should be provided with opportunities to participate at all stages of project, where appropriate.

2.2 Aboriginal participation may be facilitated by utilising existing Aboriginal organisations. For major projects, the establishment of an Aboriginal steering committee should also be considered.

2.3 The employment and training of Aboriginal peoples should be considered in all aspects of the work, including as guides, interpreters, and informants, as well as in the collection and analysis of research data.

3. BENEFITS FOR ABORIGINAL PEOPLES

3.1 Traditional Owners and other Aboriginal peoples have the right to expect that linguistic activities conducted on their lands, and in their communities, will be of benefit to them. One way of ensuring this is by designing projects in conjunction with Aboriginal peoples.

3.2 Aboriginal peoples working on the project must be paid at fair and equitable rates.

3.3 In ensuring that the project benefits Aboriginal peoples, applicants should consider the range of ways in which such benefits may be provided (please see Introduction). These may include both monetary and non-monetary benefits such as skills and training, and capacity building for communities. Project budgets should include provisions for any financial and other benefits.

3.4 Aboriginal peoples value opportunities to visit country. In order to generate goodwill, you may wish to consider including extended family on any trips onto country.

4. ABORIGINAL CULTURAL AND INTELLECTUAL PROPERTY RIGHTS

4.1 The term 'Aboriginal cultural and intellectual property' is a general term which includes all aspects of Aboriginal peoples' cultural products and expressions, as well as their intangible cultural knowledge. Aboriginal cultural and intellectual property means the totality of cultural heritage of Aboriginal peoples, including, without limitation, their intangible heritage (such as songs, dances, stories, ecological and cultural knowledge), and cultural property, which includes Aboriginal human remains, artefacts, and any other tangible cultural objects.

4.2 Applications for linguistic projects must demonstrate a commitment to respect and uphold the rights of Aboriginal peoples, as provided by Aboriginal Traditional Laws, to full ownership and control over Aboriginal cultural and intellectual property that is in existence prior to the conduct of the project.

4.3 Applications must demonstrate a commitment to negotiating fully and equitably with Traditional Owners and other Aboriginal peoples who are involved in the research, and to protecting the rights and interests of Aboriginal peoples in any intellectual property that results from the research.

5. ETHICS APPROVAL

5.1 Linguistic project proposals should have obtained clearance from a formally constituted Human Research Ethics Committee or equivalent body. Applicants are encouraged to discuss their project with the Central Australian Ethics Committee.

6. METHODOLOGY

6.1 Applications to conduct linguistic work shall provide to the CLC full details of the methodology to be used. This should include information about how the applicant intends to manage outcomes and data from the project in accordance with Aboriginal peoples' rights and interests, for example, how the project will provide for the Aboriginal community to retain data.

7. PHOTOGRAPHY, FILM AND RECORDING

7.1 Proposed projects that involve photography, film and recording activities must provide full details. For greater detail refer also to the User-Specific Protocol for Photography, Film and Recording.

8. PUBLICATION AND OTHER DISSEMINATION OF RESEARCH OUTCOMES

8.1 Applicants should uphold the rights and interests of Aboriginal peoples regarding control over publication and other dissemination of research outcomes. Applications to conduct linguistic activities on Aboriginal lands must provide to the CLC full details of any plans for publication, where known. This should include details of any collaborative approaches to publication with Aboriginal peoples.

8.2 Copies of all research results and outputs shall be made available, in an appropriately accessible form, to Aboriginal peoples upon request.

9. PROFESSIONAL CREDENTIALS

9.1 Applicants who wish to conduct linguistic work must be registered members of the relevant professional bodies, affiliated organisations, or equivalent bodies.

Application for a permit to enter Aboriginal land

This form is used to apply for permission to enter, remain on, and to travel through Aboriginal land in order to conduct research work. The CLC will use the details that you provide on this form to consider your application and, where appropriate, consult with the Traditional Owners regarding the granting of a permit.

The protocols that are included in this package should be used to guide you in preparing your application. They are designed to ensure that the information you provide in completing this application is used so that Traditional Owners are fully informed, and on that basis can make their decisions regarding the issuing of a permit.

If your application is successful, you will be issued with a permit that is to be used for a specific purpose, a specific place, and for a specific period of time. The permit will not allow you to enter Aboriginal land for any other purpose other than that stated on the permit. The permit may be issued subject to special conditions, set out in an agreement.

This application is to be used to apply for ENTRY onto Aboriginal land. If your purpose is to enter Aboriginal land for a single transit from one point to another, you should use the TRANSIT application form. See our website www.clc.org.au for further information.

Applications take some time to process. To allow sufficient time to consider your application, and to consult with Traditional Owners, please submit your application to the CLC well in advance of your intended date of entry to Aboriginal land. Please print clearly.

Please remember that it is important to respect, and to protect Aboriginal peoples' cultural and intellectual property rights, including their cultural knowledge.

Please read the general conditions set out below and provide as much detail as possible.

1. Applicant details

Your name: .....

Phone number(s): .....

Fax number: .....

Email address: .....

Home address: .....

Postal address (if different from above): .....

.....

List below the names of all other persons accompanying you:

....

....

....

2. Where do you want to go? When do you want to go?

How are you proposing to get there?

Details of community and/or language groups to be visited:

Community	Date in:	Date out:	Person supervising stay:
.....	.....	.....	.....
.....	.....	.....	.....

List the language group/s you wish to visit:

1……

2……

3……

Have you been in contact with members of this community or other relevant Aboriginal peoples to discuss your project?

……

Have you worked with Aboriginal communities or peoples in the Central Australian region before? Please give details.

……

.....

.....

.....

3. Professional credentials

Are you and others in your team registered members of an approved professional research organisation? Please give details.

……

.....……

If you do not qualify for the above criterion, please provide a letter of support from a person who is a member of a professional body, or from an equivalent organisation or research institution.

4. Research ethics clearance

Has the project received formal clearance from an authorised professional ethics committee or an equivalent body? Please provide details.

……

.....……

COMMUNITY COUNCIL & TRADITIONAL OWNER USE ONLY

Approved: ……..…… ……..……..
Signature: Date:

Not Approved: .....
Name of Community Council

More information needed from Applicant? Yes No

5. Logistics of your visit to the community/communities

Are you staying overnight in the community? Yes No

How long do you intend to stay in the community? .....

Will you be staying in different communities? Yes No

If so, which ones, and for how long?

....

....

....

If you are not staying in a community or outstation, please state where you intend camping, and for how long.

……

Nature of travel

List the roads you propose to travel on to reach your destination. Attach a map if necessary.

……

.....

.....

Will you be traveling by vehicle? If possible, please provide details of type, make and model and registration number.

……

Will you be traveling by aircraft? If possible, please provide details.

……

6. Project details

Please provide the following details about the project. It is in the Applicant's interests, and also in the interest of the CLC and Traditional Owners to provide as much detail about the project as possible.

What is the purpose of the project? Please provide details about the aims and objectives of the project.

……

Is this a new project, or part of ongoing linguistic work?

……

How is the project being funded?

……

What is the project timeframe?

……

Please provide details about project personnel (how many people involved, and their roles and functions).

……

Methodology and approach

What approach(es) are to be used to collect linguistic data, how will recordings be made, what kinds of language recordings will result, and what plans are there for archiving of language recordings?

……

What plans are there for making language recordings available – e.g., on databases, catalogues, indexes?

……

Approximately how many informants will be involved? What languages and/or dialects?

……

Please give details of other kinds of research activity that are planned. This might include, for example, collection of oral histories, associated ethnographic data, and other activities.

……

7. Aboriginal cultural and intellectual property rights

It is very important to ensure that Aboriginal peoples' cultural and intellectual property rights are adequately respected and protected. What provisions does your proposed activity include to ensure that Aboriginal peoples' cultural and intellectual property rights are properly protected? For example, will Aboriginal peoples retain the copyright in any work produced or will negotiations occur to license the product? Has a collaborative approach been developed that allows for input by Aboriginal peoples to the project?

.....

.....

.....

.....

8. Aboriginal participation

What plans do you have to engage Aboriginal peoples in the research work? This includes details about Aboriginal peoples' participation in the project. Does your project include provisions that acknowledge and recognise Aboriginal peoples' skills and local expertise? This may include developing a collaborative approach to Aboriginal peoples' involvement in publications, for example as co-authors or contributors.

.....

.....

Will the project be carried out collaboratively with any Aboriginal organisations? Please give details.

.....

.....

Please outline any steps taken to establish an Aboriginal steering committee for this project.

.....

9. Benefits to Aboriginal peoples

Does the activity/project have well-defined plans to return benefits to Aboriginal peoples? If so, please give details.

.....

.....

.....

Monetary benefits

If there are measures to provide monetary benefits, such as payments to Aboriginal peoples for work on the project, please provide details:

……

……

……

Non-monetary benefits

What, if any, types of non-monetary benefits will be provided to the community/ communities? (e.g., skills and training, facilities, awareness and education support, infrastructure, capacity development).

Has the project been designed in response to Aboriginal peoples' research agenda and priorities? Please give details.

……

……

……

……

……

10. Dissemination, distribution, presentation and publication

Please provide details of any plans regarding dissemination, presentation and publication of outcomes and products of the research and/or other activity.

How do you plan to disseminate the outcomes? In what forms, and to what forums?

.....

.....

11. Photography and filming activities

Please provide details about any plans to include photography, film and sound recordings as part of your research project.

.....

.....

Protocol for photography, film and recording

Introduction

This protocol is designed to ensure protection of Aboriginal peoples' rights and interests in the context of proposed activities by people and organisations wishing to conduct photographic, film and recording activities on Aboriginal land. It should also serve as a guide for those wishing to visit and/or work in Aboriginal communities and areas in the Central Land Council region.

1. PRINCIPLES

1.1 The rights and interests of Aboriginal peoples in images, representations, texts and other portrayals and perceptions of their cultures and persons must be at all times respected and protected.

1.2 Aboriginal cultural and intellectual property rights in visual and aural and other expressions and representations must be respected and protected at all times.

2. PRIOR INFORMED CONSENT

2.1 All applications for photography, film and sound activities must have obtained, through the CLC, the prior informed consent of the Traditional Owners.

2.2 To assist the CLC in seeking prior informed consent from Traditional Owners, applicants who wish to obtain a permit to enter Aboriginal land in order to conduct these activities should provide to the CLC full details of the proposed project, as detailed in the attached application.

3. PARTICIPATION BY ABORIGINAL PEOPLES

3.1 All applications should acknowledge Aboriginal peoples' customary laws and practices and local expertise. Aboriginal peoples should be provided with opportunities to participate at all stages of project, where appropriate.

3.2 Aboriginal participation may be facilitated by utilising existing Aboriginal organisations. For major projects, the establishment of an Aboriginal steering committee should also be considered.

3.3 The employment and training of Aboriginal peoples should be considered in all aspects of the work, including as guides, equipment operators, camera and sound persons, interpreters and informants, as well as in the collection and analysis of research data.

4. BENEFITS FOR ABORIGINAL PEOPLES

4.1 Aboriginal peoples have the right to expect that photography, film and recording activities conducted on their lands, and in their communities, will be of benefit to them.

4.2 Aboriginal peoples working on the project must be paid at fair and equitable rates.

4.3 In ensuring that the project benefits Aboriginal peoples, applicants should consider the range of ways in which such benefits may be provided (please see Introduction). These may include both monetary and non-monetary benefits such as skills and training, and community infrastructure support. Project budgets should include provisions for any financial and other benefits.

4.4 Aboriginal peoples value opportunities to visit country. In order to generate goodwill, you may wish to consider including extended family on any trips onto country.

5. ABORIGINAL CULTURAL AND INTELLECTUAL PROPERTY RIGHTS

5.1 The term ‘Aboriginal cultural and intellectual property’ is a general term which includes all aspects of Aboriginal peoples’ cultural products and expressions, as well as their intangible cultural knowledge. Aboriginal cultural and intellectual property means the totality of cultural heritage of Aboriginal peoples, including, without limitation, their intangible heritage (such as songs, dances, stories, ecological and cultural knowledge), and cultural property, which includes Aboriginal human remains, artefacts, and any other tangible cultural objects.

5.2 Applications for projects to undertake photography, film and recording activities must demonstrate a commitment to respect and uphold the rights of Aboriginal peoples to full ownership and control over Aboriginal cultural and intellectual property. Applicants should also refer to sections below concerning Conduct of Activities (7) and Publication, Presentation and other Dissemination of Images, Recordings and Data (8).

5.3 Use of any photography, film and recording output resulting from the project will be regulated by an agreement between the applicant and the CLC, on the basis of consultations with Traditional Owners.

6. PHOTOGRAPY, FILM AND RECORDED REPRESENTATIONS OF ABORIGINAL PEOPLES

6.1 Applicants for permits, and holders of permits are forbidden to portray Aboriginal peoples in ways that distort or misrepresent Aboriginal cultures and societies.

7. CONDUCT OF ACTIVITIES

7.1 Projects shall ensure that Aboriginal peoples who are the subjects of photography, film and recording activities, or who are involved in some other ways, in negotiation with the applicant and others involved in the project:

a) Retain copyright control over all images, recordings and data; or
b) Negotiate use through license to use all or some images, recordings and data produced during, and resulting from the project.

7.2 Photography, filming and recording involving areas where there are sacred sites, places, and/or objects are restricted. If such activities are to occur in these areas, this must be negotiated with the CLC before commencing the project.

7.3 Photography, filming and recording activities should not take place without the express agreement of the Aboriginal peoples who are the subject of the activity.

8. PUBLICATION, PRESENTATION AND OTHER DISSEMINATION OF IMAGES, RECORDINGS AND DATA

8.1 Permit applications should include full details of publications.

8.2 Efforts must be made to return the photography, film and recording products created as part of the project to the community organisations and Aboriginal peoples involved in the project. Presentations should be made in a way that is accessible and meaningful to the Aboriginal peoples concerned.

8.3 Images, recordings, and captured data of Aboriginal peoples, including family members, must not be disseminated, presented or published in any form without the express knowledge and written consent of the Aboriginal peoples who are the subjects of these images, recordings and data, or who are otherwise involved in the project activities.

8.4 Images and recordings involving deceased Aboriginal persons must not be published without the express permission by relatives of the deceased.

Application for a permit to enter Aboriginal land

This form is used to apply for permission to enter, remain on, and to travel through Aboriginal land for the purpose of carrying out photography, film and recording work. The CLC will use the details that you provide on this form to consider your application and, where appropriate, consult with the Traditional Owners regarding the granting of a permit.

The protocols that are included in this package should be used to guide you in preparing your application. They are designed to ensure that the information you provide in completing this application is used so that Traditional Owners are fully informed, and on that basis can make their decisions regarding the issuing of a permit.

If your application is successful, you will be issued with a permit that is to be used for a specific purpose, a specific place, and for a specific period of time. The permit will not allow you to enter Aboriginal land for any other purpose other than that stated on the permit. The permit may be issued subject to special conditions, set out in an agreement.

This application is to be used to apply for ENTRY onto Aboriginal land. If your purpose is to enter Aboriginal land for a single transit from one point to another, you should use the TRANSIT application form. See our website www.clc.org.au for further information.

Applications take some time to process. To allow sufficient time to consider your application, and to consult with Traditional Owners, please submit your application to the CLC well in advance of your intended date of entry to Aboriginal land. Please print clearly.

Please remember that it is important to respect, and to protect Aboriginal peoples' cultural and intellectual property rights, including their cultural knowledge.

Please read the general conditions set out below and provide as much detail as possible.

1. Applicant details

Your name: .....

Phone number(s): .....

Fax number: .....

Email address: .....

Home address: .....

Postal address (if different from above): .....

.....

List below the names of all other persons accompanying you:

....

....

....

2. Where do you want to go? When do you want to go?

How are you proposing to get there?

Details of community and/or language groups to be visited:

Community	Date in:	Date out:	Person supervising stay:
.....	.....	.....	.....
.....	.....	.....	.....

List the language group/s you wish to visit:

1……

2……

3……

Have you been in contact with members of this community or other relevant Aboriginal peoples to discuss your project?

……

Have you worked with Aboriginal communities or peoples in the Central Australian region before? Please give details.

……

.....

.....

.....

3. Professional credentials

Are you and others in your team current members of a professional photography, film, sound, print or other organisation?

……

.....……

COMMUNITY COUNCIL & TRADITIONAL OWNER USE ONLY

Approved: ……..…… ….....……..
Signature: Date:

Not Approved: .....
Name of Community Council

More information needed from Applicant? Yes No

4. Logistics of your visit to the community/communities

Are you staying overnight in the community? Yes No

How long do you intend to stay in the community? .....

Will you be staying in different communities? Yes No

If so, which ones, and for how long?

....

....

....

If you are not staying in a community or outstation, please state where you intend camping, and for how long.

……..……

Nature of travel

List the roads you propose to travel on to reach your destination. Attach a map if necessary.

……..…….....

.....

.....

Will you be traveling by vehicle? If possible, please provide details of type, make and model and registration number.

…….....……

Will you be traveling by aircraft? If possible, please provide details.

…….....……

5. Project details

Please provide the following details about the project. It is in the Applicant's interests, and also in the interest of the CLC and Traditional Owners to provide as much detail about the project as possible.

What is the purpose of the project? Please provide details about the aims and objectives of the project.

……

Is this a new project, or part of ongoing linguistic work?

……

How is the project being funded?

……

What is the project timeframe?

……

Please provide details about project personnel (how many people involved, and their roles and functions).

……

Methodology and approach

What approach(es) are to be used to collect linguistic data, how will recordings be made, what kinds of language recordings will result, and what plans are there for archiving of language recordings?

……

What plans are there for making language recordings available – e.g., on databases, catalogues, indexes?

……

Approximately how many informants will be involved? What languages and/or dialects?

……

Please give details of other kinds of research activity that are planned. This might include, for example, collection of oral histories, associated ethnographic data, and other activities.

……

6. Aboriginal cultural and intellectual property rights

It is very important to ensure that Aboriginal peoples' cultural and intellectual property rights are adequately respected and protected. What provisions does your proposed activity include to ensure that Aboriginal peoples' cultural and intellectual property rights are properly protected? For example, will Aboriginal peoples retain the copyright in any work produced or will negotiations occur to license the product? Has a collaborative approach been developed that allows for input by Aboriginal peoples to the project?

.....

.....

7. Aboriginal participation

What plans do you have to engage Aboriginal people in the project? This should include details about Aboriginal peoples participation in the project. Does your project include provisions that acknowledge and recognise Aboriginal people's local expertise and skills? Include all details such as estimated number of persons, who they will be (if known) how they will be engaged and in what capacity?

.....

.....

What, if any, measures have you put in place to develop collaborative links with Aboriginal community organisations? Please provide details.

.....

.....

Please outline any steps taken to establish an Aboriginal steering committee for this project.

.....

8. Benefits to Aboriginal peoples

Does the activity/project have well-defined plans to return benefits to Aboriginal peoples? If so, please give details.

.....

.....

.....

Monetary benefits

If there are measures to provide monetary benefits, such as payments to Aboriginal peoples for work on the project, please provide details:

.....

.....

.....

Non-monetary benefits

What, if any, types of non-monetary benefits will be provided to the community/ communities? (e.g., skills and training, facilities, awareness and education support, infrastructure, capacity development).

Has the project been designed in response to Aboriginal peoples' research agenda and priorities? Please give details.

……

……

……

……

……

9. Dissemination, distribution, presentation and publication

Please provide details of any plans regarding dissemination, presentation and publication of outcomes and products of the research and/or other project activity.

This section asks for the following kinds of details.

• Publication of images, recordings and data, including the outcomes from the activities, in refereed journals, books, edited collections and other formal works;

• Presentation of the images, recordings and data in workshops, seminars or conferences;

• Dissemination of the images, recordings and data in websites, on-line journals or other multi-media applications.

Please refer also to the protocol.

How do you plan to disseminate the products of the research?

……

What plans are there to return the products back to the community/ communities?

……

Protocol for tourism activities

Introduction

The conduct of well planned, resourced and managed tourism activities in the Central Land Council region can provide real social, cultural and economic benefits to Traditional Owners. This protocol should serve as a guide to people wishing to conduct tourism activities in the Central Land Council region.

1. PRIOR INFORMED CONSENT

1.1 All applications for tourism activities must have obtained, through the CLC, the prior informed consent of the Traditional Owners and other Aboriginal peoples.

1.2 To assist the CLC in seeking prior informed consent from Traditional Owners, applicants who wish to obtain a permit to enter Aboriginal land in order to conduct tourism activities should provide to the CLC full details of the proposed project, as detailed in the attached application.

2. PARTICIPATION BY ABORIGINAL PEOPLES

2.1 All applications should acknowledge Aboriginal peoples' customary laws, practices and local expertise. Aboriginal peoples should be provided with opportunities to participate at all stages of the tourism project, where appropriate.

2.2 Aboriginal participation may be facilitated by utilising existing Aboriginal organisations. For major tourism projects, the establishment of an Aboriginal steering committee should also be considered.

2.3 The employment and training of Aboriginal peoples should be considered in all aspects of the work, including as guides, interpreters and informants.

3. BENEFITS FOR ABORIGINAL PEOPLES

3.1 Traditional Owners and other Aboriginal peoples have the right to expect that tourism activities and projects conducted on their lands, and in their communities, will be of benefit to them. One way of ensuring this is by designing projects in conjunction with Aboriginal peoples.

3.2 Aboriginal peoples working on the project must be paid at fair and equitable rates.

3.3 In ensuring that the project benefits Aboriginal peoples, applicants should consider the range of ways in which such benefits may be provided (please see Introduction). These may include both monetary and non-monetary benefits such as skills and training, and capacity building for communities. Project budgets should include provisions for any financial and other benefits.

3.4 Aboriginal peoples value opportunities to visit country. In order to generate goodwill, you may wish to consider including extended family on any trips onto country.

4. ABORIGINAL CULTURAL AND INTELLECTUAL PROPERTY RIGHTS

4.1 The term 'Aboriginal cultural and intellectual property' is a general term which includes all aspects of Aboriginal peoples' cultural products and expressions, as well as their intangible cultural knowledge. Aboriginal cultural and intellectual property means the totality of cultural heritage of Aboriginal peoples, including, without limitation, their intangible heritage (such as songs, dances, stories, ecological and cultural knowledge), and cultural property, which includes Aboriginal human remains, artifacts, and any other tangible cultural objects.

4.2 Applications for tourism and tourism related activities must demonstrate a commitment to respect and uphold the rights of Aboriginal peoples, as provided by Aboriginal Traditional Law, to full ownership and control over Aboriginal cultural and intellectual property that is in existence prior to the conduct of the project.

5. PHOTOGRAPHY, FILM AND RECORDING

5.1 Tourism projects that involve photography, film and recording activities must provide full details of these activities. For greater detail refer also to the User-Specific Protocol for Photography, Film and Recording.

5.2 The taking of photographs, making of film, video and sound recordings should be conducted sensitively, and should not involve sacred sites, areas or objects.

5.3 Any Aboriginal peoples who are the subject of photographs, film, video or sound recordings conducted as part of tourism projects should be asked first for their permission, and their right to refuse should be respected.

Application for a permit to enter Aboriginal land

This form is used to apply for permission to enter, remain on, and to travel through Aboriginal land for the purpose of conducting tourism activities. The CLC will use the details that you provide on this form to consider your application and, where appropriate, consult with the Traditional Owners regarding the granting of a permit.

The protocols that are included in this package should be used to guide you in preparing your application. They are designed to ensure that the information you provide in completing this application is used so that Traditional Owners are fully informed, and on that basis can make their decisions regarding the issuing of a permit.

If your application is successful, you will be issued with a permit that is to be used for a specific purpose, a specific place, and for a specific period of time. The permit will not allow you to enter Aboriginal land for any other purpose other than that stated on the permit. The permit may be issued subject to special conditions, set out in an agreement.

This application is to be used to apply for ENTRY onto Aboriginal land. If your purpose is to enter Aboriginal land for a single transit from one point to another, you should use the TRANSIT application form. See our website www.clc.org.au for further information.

Applications take some time to process. To allow sufficient time to consider your application, and to consult with Traditional Owners, please submit your application to the CLC well in advance of your intended date of entry to Aboriginal land. Please print clearly.

Please remember that it is important to respect, and to protect Aboriginal peoples' cultural and intellectual property rights, including their cultural knowledge.

Please read the general conditions set out below and provide as much detail as possible.

1. Applicant details

Your name: .....

Phone number(s): .....

Fax number: .....

Email address: .....

Home address: .....

Postal address (if different from above): .....

.....

List below the names of all other persons accompanying you:

....

....

....

2. Where do you want to go? When do you want to go?

How are you proposing to get there?

Details of community and/or language groups to be visited:

Community	Date in:	Date out:	Person supervising stay:
.....	.....	.....	.....
.....	.....	.....	.....

List the language group/s you wish to visit:

1……

2……

3……

Have you been in contact with members of this community or other relevant Aboriginal peoples to discuss your project?

……

Have you worked with Aboriginal communities or peoples in the Central Australian region before? Please give details.

……

.....

.....

.....

COMMUNITY COUNCIL & TRADITIONAL OWNER USE ONLY

Approved: ……..…… ….....……..
Signature: Date:

Not Approved: .....
Name of Community Council

More information needed from Applicant? Yes No

3. Logistics of your visit to the community/communities

Are you staying overnight in the community? Yes No

How long do you intend to stay in the community? .....

Will you be staying in different communities? Yes No

If so, which ones, and for how long?

....

....

....

If you are not staying in a community or outstation, please state where you intend camping, and for how long.

……

Nature of travel

List the roads you propose to travel on to reach your destination. Attach a map if necessary.

……..…….....

.....

.....

Will you be traveling by vehicle? If possible, please provide details of type, make and model and registration number.

……

Will you be traveling by aircraft? If possible, please provide details.

……

4. Project details

Please provide the following details about the tourism activities. It is in the Applicant's interests, and also in the interest of the CLC and Traditional Owners to provide as much detail about the activities as possible.

Please provide details about personnel (how many tourists involved, and tour guides, drivers, cooks, interpreters if any, etc).

……

Please give details of the tourism company or companies.

……

5. Aboriginal cultural and intellectual property rights

It is very important to ensure that Aboriginal peoples' cultural and intellectual property rights are adequately respected and protected. What provisions does your proposed activity include to ensure that Aboriginal peoples' cultural and intellectual property rights are properly protected? For example, will Aboriginal peoples retain the copyright in any work produced or will negotiations occur to license the product? Has a collaborative approach been developed that allows for input by Aboriginal peoples to the project?

.....

.....

.....

6. Aboriginal participation

What plans do you have to engage Aboriginal peoples in the tourism project? This includes details about Aboriginal peoples' participation in the project. Does your project include provisions that acknowledge and recognise Aboriginal peoples' skills and local expertise?

.....

.....

Will the project be carried out collaboratively with any Aboriginal organisations? Please give details.

.....

.....

Please outline any steps taken to establish an Aboriginal steering committee for this project.

.....

.....

7. Benefits to Aboriginal peoples

Does the activity/project have well-defined plans to return benefits to Aboriginal peoples? If so, please give details.

.....

.....

Monetary benefits

If there are measures to provide monetary benefits, such as payments to Aboriginal peoples for work on the project, please provide details:

……

……

Non-monetary benefits

What, if any, types of non-monetary benefits will be provided to the community/ communities? (e.g., skills and training, facilities, awareness and education support, infrastructure, capacity development).

Has the project been designed in response to Aboriginal peoples' desire to conduct tourism activities? Please give details.

……

……

……

……

8. Photography and filming activities

Please provide the following details about any plans to include photography, film and sound recordings as part of your tourism project.

.....

.....

Section 2:
The development of protocols for conducting research and other activities in the Central Land Council regions

Abbreviations/Acronyms

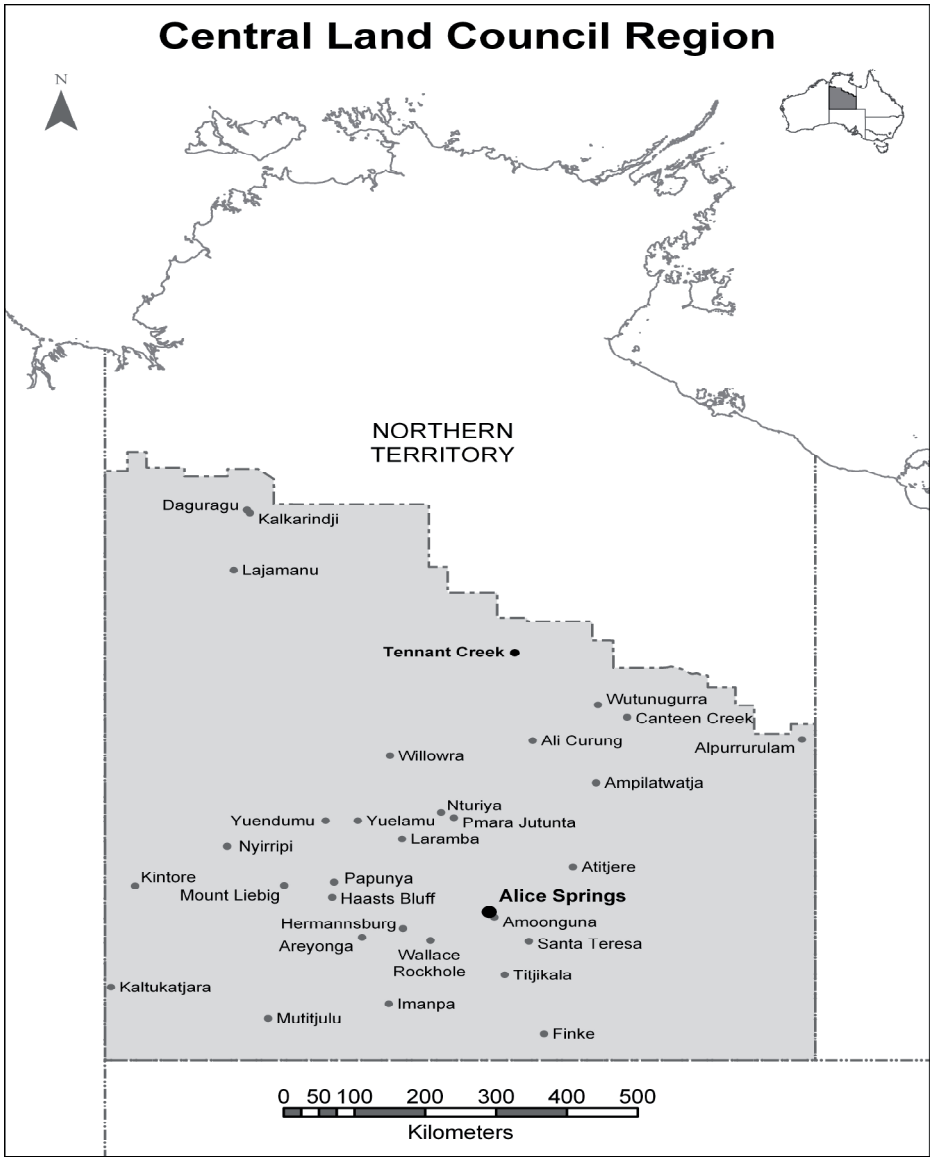
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ALRA	Aboriginal Land Rights Act
ASTEC	Australian Science, Technology and Engineering Council
CLC	Central Land Council
DK-CRC	Desert Knowledge Cooperative Research Centre
ICIP	Indigenous Cultural and Intellectual Property
IUCN	International Union for the Conservation of Nature and Natural Resources (World Conservation Union)
KLC	Kimberley Land Council
NGO	Non-government organisation
NLC	Northern Land Council
TO	Traditional Owner
WTMA	Wet Tropics Management Authority
WCPA	World Commission on Protected Areas
WWF	World Wildlife Fund

The Central Land Council

The Central Land Council (CLC) is a Statutory Authority established under the Commonwealth *Aboriginal Land Rights Act (Northern Territory) 1976* (ALRA). The CLC is also a Native Title Representative Body established under the *Native Title Act 1993*. The CLC is located in the southern portion of the Northern Territory and covers an area of 775,963 km^2, of which 381,792 km^2 is Aboriginal Freehold claimed under the ALRA (see map below).

The ALRA contains provisions for regulating access to Aboriginal lands in the Northern Territory. Regulation is achieved through a permit regime administered by the statutory land councils established under the ALRA.

The CLC is directed by its Council, which consists of 90 members who represent traditional landowners and communities throughout the CLC region. The CLC represents approximately 18,000 Aboriginal peoples resident in the CLC region.



1. Introduction

The purpose of this project was to develop a set of best-practice protocols to provide guidance for proposals to conduct research or other activities on Aboriginal land. It is also hoped that these protocols serve as a guide for those wishing to visit and/or work in Aboriginal communities and areas in the Central Land Council (CLC) region.

This project was, in part, a response to the increasing amount of research activity being conducted in the CLC region. An important driver for this research activity has been the establishment of the Desert Knowledge Cooperative Research Centre (DK-CRC) based in Alice Springs. The DK-CRC has the aim of conducting and promoting leading-edge research and applied projects to enhance sustainable community livelihoods in Australia's arid regions. The CLC is one of the core partners in the DK-CRC.

Building on the idea of a partnership between Aboriginal and western knowledge systems, the DK-CRC has also had a particular interest in Aboriginal intellectual property rights, capacity building and governance. To focus these interests and concerns, a DK-CRC Indigenous Intellectual Property Protocol has been drafted, that will eventually become an element of the core Centre Agreement. It is also with this DK-CRC protocol in mind that the CLC has sought to embark on an examination of relevant issues concerning Aboriginal intellectual property rights.

In October 2003 the CLC submitted to the DK-CRC a project for *The development of protocols and systems for the recognition, protection and utilisation of Indigenous cultural knowledge, innovations and practices for Aboriginal communities in central Australia*. In summary the project proposed to develop a series of protocols that provided:

- A template for Aboriginal intellectual property protection and permit applications that has validity and viability across the whole CLC operation
- General principles, including a code of ethics for research and other activities
- Criteria for evaluation of permit applications.

As stated in the project application, some of the areas that were considered in developing Aboriginal community protocols, codes of conduct and contracts and agreements included:

- What is to be protected
- Confidentiality requirements for sacred and secret cultural sites, areas, objects, performances, expressions and knowledge
- Provisions for prior informed consent
- Ethics for conducting research and gaining access to communities, lands, resources and culture
- Parameters for recording, distribution, use, storage, access, dissemination, and publication (including audio and visual) of lands, sites, cultural objects, knowledge, genealogies and other ethnographic data, and research notes and outcomes
- Provisions for ongoing and periodic review and revision. These will have regard for appropriate mechanisms and processes for consultation, negotiation and participation by Aboriginal communities as determined by the Central Land Council

- Provisions for implementation, monitoring, review, and feedback on protocols, guidelines, contracts and agreements
- Consistency with, and relationship to other comparative developments, processes and mechanisms (e.g., similar work by other Land Councils etc)
- Conformity and consistency with legislative aspects, especially with regard to the *Native Title Act 1993*, and the *Aboriginal Land Rights (Northern Territory) Act 1976*, and also parks, heritage, environment and conservation laws and policies.

Consideration of these areas has produced a series of protocols. These protocols cover the following areas: archaeology, anthropology, linguistics, and activities that relate to the environment, conservation and tourism. There is also a general research protocol. Each protocol is matched by a permit application which asks for further specific details to guide Traditional Owners (TO) in the permit approval process. It is hoped that the guidelines set out in the protocols will inform research practice beyond the CLC region.

2. An overview of the project

The CLC's project began formally in April 2004. The timeframe for the project was short, with the project completed in mid-December 2004.

The project began with a review conducted by the consultant (Michael Davis) of mechanisms and processes – legal, policy and administrative – within the CLC, relevant to the recognition, protection, and appropriate management of Aboriginal cultural knowledge, innovations and practices. Specifically, this took into account the permit system for access to Aboriginal lands currently operating under the *Aboriginal Land Rights (Northern Territory) Act 1976*, and related processes under parks management, environment, heritage and conservation, and Native Title legislation.

In April 2004 a one-day workshop was held with the consultant and key CLC staff to outline the main issues that staff thought needed consideration in drafting the protocol documents. Staff from the Policy, Legal, Native Title, Anthropology and Land Management sections of the Central Land Council provided input to the workshop. Based on this workshop the consultant produced an initial set of protocol, agreement and permit documents. These documents were then further developed by staff during another round of consultations held with separate sections in the CLC in September (20–22). These consultations helped to further refine the draft protocols, permits and agreements.

Efforts were made to engage with other Land Councils about the development of the Protocols. Sean Brennan from the Northern Land Council (NLC) provided detailed input to the protocols, with reference to the protocols that have been developed in the NLC region and his work in developing similar Indigenous Cultural and Intellectual Property (ICIP) approaches with Maori. Approaches were also made to the Kimberley Land Council (KLC). While the KLC were supportive of the project, and interested in looking at the final protocol documents they were unable to contribute any ongoing resources to the project.

An essential component to this project has been consultation with Aboriginal peoples about the areas of intellectual and cultural property that they wish to be protected. These issues, and the more general issues of guidelines for researchers, were discussed with the CLC Executive and with the 90 Traditional Owners who are members of the Central Land Council. At a council meeting on October 7 council members worked through a questionnaire relating to these issues, discussing the questions in regional groups (of approximately 10 people). Some of the questions asked of council members are included below:

- When researchers come onto country what kinds of problems can they cause?
- If someone wants to come and do research on your country, what kinds of things would you want to know before saying yes or no?
- Is research that involves Aboriginal peoples a good thing? Why or why not?
- What are the really important things about Aboriginal law and culture that need to be protected from outsiders who may want to use the knowledge (there is no need to be too detailed)?
- Have you got any bad stories of where Aboriginal peoples' law and culture has been stolen?

- Have you got any good stories of where Aboriginal peoples' law and culture has been kept safe?
- Do you want to be involved in research? If so, how do you want to be involved?
- If someone wants to come and take photos or film on your country what kinds of rules would you want to put on them?

Responses to these questions were broad ranging and informed by the experience Aboriginal peoples have of research being conducted in their region. Many council members spoke of the negative experiences that they have had of research which is conducted on, rather than by, Aboriginal peoples and where they have little control over the research or the results. However, council members also spoke of research being useful where it is directed by Aboriginal peoples and meets an Aboriginal research agenda.

Responses to these questions were used to reshape the project and ensure that the protocol and other documents were on the right track, in the sense of meeting the needs of Aboriginal peoples in central Australia.

Another draft of the documents was prepared in response to the concerns expressed by council members.

A final one-day workshop was conducted with the consultant, key CLC staff, and external stakeholders, including staff from Tangentyere, the Centre for Remote Health, Charles Darwin University and the Desert Knowledge CRC. The Northern Land Council also provided input to the draft documents. This final workshop and feedback has led to considerable re-drafting of the documents, and some change in emphasis. The CLC is grateful for the commitments made by these organisations to this project. It is disappointing, however, that the Northern Territory government was unable to provide any input to this project.

The final document produced in this project thus reflects a successful collaborative approach between the Central Land Council members, CLC staff, the consultant and other external stakeholders to drafting these documents.

3. Review of protocols and other instruments

A protocol is defined by the Oxford Dictionary as a 'formal statement of transaction', or as [the] '(observance) of official formality and etiquette' (Clarendon Press 1976). Protocols can take many forms and may serve a variety of purposes. As voluntary documents they require commitment and dedication to implement. They can also serve as quasi legal documents (private law), or as schedules to legislation.

Protocols can include principles designed to inculcate appropriate ethical behaviour, and to establish and maintain standards.

3.1 What does a protocol contain?

Protocols can be a basis for enabling the community to set out how they expect research to be conducted, to make clear what it is they wish to protect, and for asserting their rights. In its simplest form this kind of protocol might contain at least the following elements:

- A statement of inherent Aboriginal rights in traditional knowledge, ensuring the need for recognition, and protection against unwarranted access or disclosure
- An outline of the range and extent of community traditional knowledge and Aboriginal intellectual property
- A statement of principles for correct conduct to ensure respect for community rights, recognition and participation, and protection for traditional knowledge and Aboriginal intellectual property
- An outline of requirements and obligations to ensure recognition, respect and protection – e.g., prior informed consent, proper communication, consultation and negotiation regarding access, and handling of results and outcomes from research and development activities.
- Recognition of the rights of Aboriginal peoples to their cultural knowledge, practices and innovations
- Recognition of Aboriginal rights to lands and resources, and of their special relationships to their country
- Right to full participation in research and development
- A recognition that the basis of community protocols lies in Aboriginal law and custom, and is informed by collective (clan, family, kin) rights and interests
- An obligation by proponents for development and research, and potential users of Aboriginal cultural knowledge, to ensure effective communication, negotiation and consultation with Aboriginal peoples.

3.2 Guiding principles for developing protocols

The literature review conducted by the consultant identified a number of guiding principles in developing community protocols. These are:

- Protocols are not legally binding instruments.
- They must properly reflect Aboriginal peoples' needs and aspirations.
- They provide a platform for Aboriginal communities to define their own cultural knowledge, innovations and practices, and resources.
- They should be considered as active documents, and introduce a process for ongoing feedback and if necessary, revision of the protocols.
- They must be well communicated to all parties – to make sure there is general awareness of them, and that they are adequately understood.
- They should contain provisions regarding their implementation, monitoring and reporting.

Further, the literature review also identified a number of common elements contained in research protocols, guidelines and codes of ethics. These are detailed below.

Research should:

- Have respect for values and customary obligations
- Provide benefits to, and empower Traditional Owners
- Acknowledge Aboriginal peoples' connections to their traditional environments, including lands and seas (waters)
- Protect their rights to own and control their knowledge and intellectual property
- Protect their right to receive the full protection afforded by relevant international instruments ratified by the Australian Government.

Researchers must:

- Negotiate all aspects of research with Traditional Owners
- Obtain the prior informed consent of Traditional Owners before beginning or continuing any research in areas where permits are required
- Disclose to Traditional Owners all aspects of the research proposed, including the objectives and methodology, as well as how the results might be used and who will benefit
- Acknowledge Aboriginal peoples' rights to control any use of their knowledge or intellectual property by the researcher; their entitlement to fair remuneration for the use of their knowledge, and their right to exclude from publication and/or keep confidential any of their intellectual property
- Acknowledge Aboriginal peoples' rights to share in any profits derived from the use of their knowledge in the development and subsequent sale of bioproducts or publications
- Ensure full participation by Aboriginal peoples in all phases of research from inception to completion, including in management decisions.
- Ensure education and training opportunities for Aboriginal peoples where they use Aboriginal knowledge for science and humanity.
- Acknowledge the right of Aboriginal peoples to compensation for any adverse impacts on them as a result of research.

3.3 International examples

Guidelines and protocols have been developed at many international levels for setting standards and encoding ethical approaches in contexts of research, development, and cross-cultural engagement. A survey of these, drawing on common elements, provides a useful basis for developing the CLC guidelines and protocols. A brief list of these international examples is contained below (for a more detailed list see Appendix A):

- International Society of Ethnobiology. *Code of Ethics*
- Secretariat of the Convention on Biological Diversity, *Akwe: Kon Guidelines*
- Pew Conservation Fellows, *Ethical Guidelines*
- CBD Bonn *Guidelines on Access and Benefit Sharing*
- Dene Cultural Institute guidelines
- IUCN – World Conservation Union/WCPA – World Commission on Protected Areas/WWF *Principles and Guidelines on Indigenous and Traditional Peoples and Protected Areas*
- University of Victoria, British Columbia, *Protocols and Principles for Conducting Research in an Indigenous Context*
- American Indian Law Center, *Model Tribal Research Code*
- Assembly of Alaska Native Educators *Guidelines for Respecting Cultural Knowledge*

3.4 National and local examples

There are relatively few examples at the national level of guidelines, protocols and codes of ethics for engagement with Indigenous peoples. One of the most cited is the AIATSIS *Guidelines for Ethical Research in Indigenous Studies*.

An example of a local guideline is the *Balkanu Draft Statement of Principles* regarding Biophysical Research in the Aboriginal lands, Islands and Waters of Cape York Peninsula.

3.5 Moving towards contracts and agreements

The development of Aboriginal community protocols, guidelines and codes of conduct can form an excellent basis for Aboriginal peoples to negotiate with potential users of Aboriginal knowledge, resources, practices and innovations, and proponents of development and research.

Community-based protocols can function as charters for correct behaviour by those wishing to work with Aboriginal communities. To achieve this, they must be the basis for active and ongoing processes, not just static documents. In this regard it is essential that community protocols are agreed, and adopted at all levels, and that they are respected and adhered to by those in the wider community who wish to engage with Aboriginal communities (especially in regard to research and development).

Importantly, Aboriginal community protocols can form the foundation upon which the communities may enter into negotiations with the wider community for access and benefit-sharing agreements.

4. The CLC protocols

These CLC protocols are designed primarily for people who are applying to enter Aboriginal land in the Central Land Council (the CLC) region, in order to carry out research or to undertake activities such as tourism. Under the *Aboriginal Land Rights (Northern Territory) Act 1976*, applicants require a permit from the CLC to enter land that has been declared Aboriginal land under the Act.

It is also intended that these documents will provide a useful guide for people involved in research or related activities who wish to visit Aboriginal communities that are not on Aboriginal land, or that are on Aboriginal land outside the Northern Territory. While a permit from the CLC is not required in these situations, other legal restrictions may apply. The same principles of allowing Aboriginal peoples control over activities and research in their communities, and of protecting their Aboriginal cultural and intellectual property rights must be respected.

The fundamental purpose of all these documents is to ensure that Aboriginal peoples' traditional rights under Aboriginal Law are recognised and protected.

4.1 Protecting Aboriginal Cultural and Intellectual Property

The protocols and agreements in this package are designed as a guide to people wishing to work on Aboriginal land in the CLC region. They are also designed to protect the rights of Aboriginal peoples in their Aboriginal cultural and intellectual property.

The term 'Aboriginal cultural and intellectual property' is a general term which includes all aspects of Aboriginal peoples' cultural products and expressions, as well as their intangible cultural knowledge. Aboriginal cultural and intellectual property means the totality of cultural heritage of Aboriginal peoples, including, without limitation, their intangible heritage (such as songs, dances, stories, ecological and cultural knowledge), and cultural property, which includes Aboriginal human remains, artefacts, and any other tangible cultural objects.

It is important to understand that this Aboriginal cultural and intellectual property is not the same as intellectual property in the western legal sense, such as copyrights, patents, designs, trademarks, and plant breeder rights. Aboriginal cultural and intellectual property is generally a collective bundle of rights, interests and responsibilities, and is much broader than the western concept of intellectual property. For a useful guide to Indigenous cultural and intellectual property, see for example, *Our Culture, Our Future: Protection of Australian Indigenous Cultural and Intellectual Property Rights* (Janke 1998).

4.2 The way these protocols work

These protocols and agreements are designed to be used as an important part of the existing CLC permit system. The process by which these documents are used in the permit system is outlined here, and illustrated diagrammatically below.

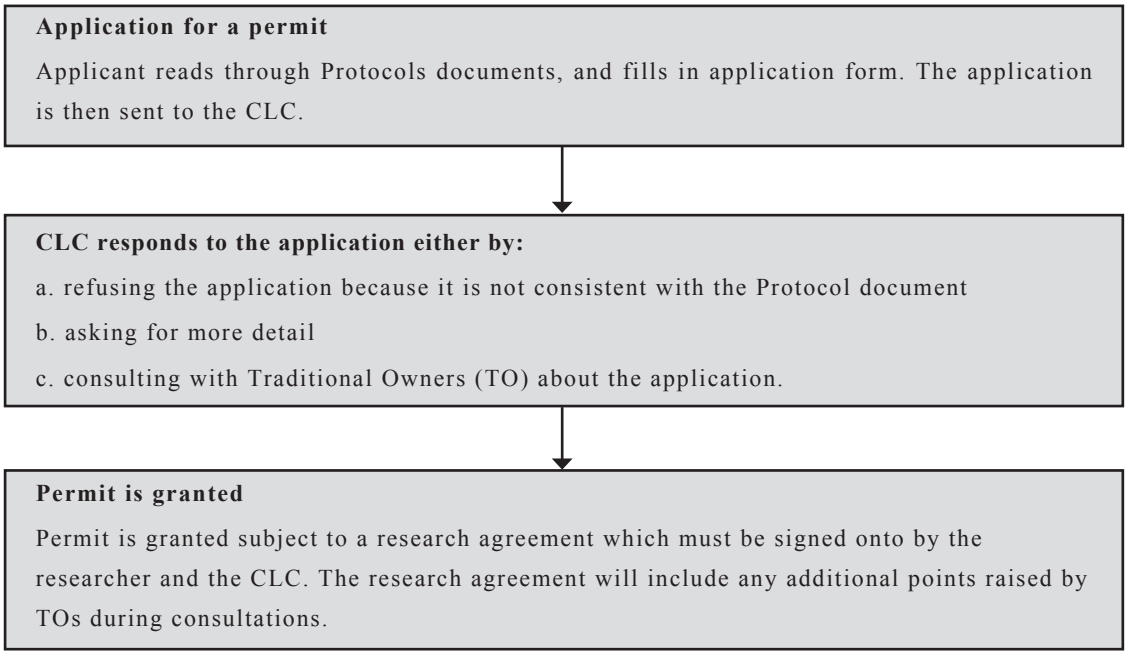
Applicants are required to follow the application process outlined below. Applicants should start by reading the protocol which relates to the activity they wish to undertake in the CLC region.

The Applicant should submit the application for a permit together with a detailed proposal setting out the proposed activity and referring to the information requested in the protocols. When the CLC receives an application for a proposal, especially one that has implications for Aboriginal Cultural and Intellectual Property, or for land-related matters, it must consult with the Traditional Owners for the area in which the applicant wishes to work, and with other affected Aboriginal communities. The CLC can not approve the application without the prior informed consent of the Traditional Owners. However, applications that do not relate to Aboriginal Cultural and Intellectual Property or other land-related issues may not require consultation with Traditional Owners, and may be approved by CLC staff.

It is in the interests of the Applicant, as well as of the Traditional Owners and the CLC, for the Applicant to supply as much information about the project as possible in the first instance, to avoid the need for further consultations and unnecessary delay.

If this prior informed consent is granted, the CLC will then draw up an Agreement which sets out clearly the terms of the project. When there is agreement between the CLC and the Applicant as to the terms of this Agreement it is signed by both parties and the CLC issues the Applicant a permit.

The following diagram describes the application process:



5. Key ideas that inform the CLC protocols

i) Aboriginal initiated research

Many Aboriginal peoples feel chronically over-researched. They often feel that research is of career benefit to non-Aboriginal people, but of little benefit to Aboriginal peoples. One of the ways that research can benefit Aboriginal peoples is if it addresses their research needs and interests, and accords with their priorities.

The CLC strongly encourages researchers to work alongside Aboriginal peoples in central Australia to design research projects that address Aboriginal peoples' needs for research in specific areas. Research that is designed in response to Aboriginal peoples' research agendas, and has the support of Traditional Owners or other Aboriginal peoples, will be viewed favorably by the CLC in the permit application process.

The CLC understands that where Aboriginal peoples are involved in the project development, researchers may not have a defined project when applying for a permit. The CLC is happy to accept applications for permits that describe an iterative methodology for project development. Where project applications state specific communities that a researcher wants to work with, these will be forwarded to the community concerned.

ii) Benefits for Aboriginal communities

Aboriginal peoples have the right to expect that research conducted on their land, and in their communities, will be of benefit to them.

Benefits flowing back to Aboriginal communities can comprise a combination of both monetary, and non-monetary benefits. Monetary benefits can comprise up-front payments, and staged methods of providing such payments. Non-monetary benefits can comprise training and skills assistance, community infrastructure provision, education and awareness, and community capacity development. It is advantageous to negotiate the kinds of benefits – both monetary and non-monetary – with Aboriginal communities.

iii) Aboriginal peoples are experts

Researchers are sometimes unaware of the expertise that Aboriginal peoples possess in a range of areas. This is particularly the case in areas of Land Management and Aboriginal Cultural and Intellectual Property. Research in these areas can benefit greatly from input by Aboriginal peoples. The CLC encourages researchers to consider including a role for Aboriginal peoples as paid experts in these areas. Such a role would, in turn, go some of the way to providing Aboriginal peoples with meaningful engagement in research. It also allows Aboriginal peoples to maintain a livelihood while still living on country.

iv) Aboriginal governance structures

Another mechanism that can significantly enhance the research outcomes for a project is some form of Aboriginal governance structure. Researchers may wish to develop their own Aboriginal governance structure for a project or they may wish to utilise some already existing Aboriginal governance structure, such as a community council. In both cases the Aboriginal governance structure should provide advice on project development and interpretation of results. Researchers should also be aware that in many cases Aboriginal peoples who participate in these governance structures need to be paid, and researchers should budget accordingly. The CLC is strongly of the opinion that successfully operating Aboriginal governance structures can greatly enhance the outcomes of a research project.

6. Future directions

At the completion of this project it is clear that there are two other pieces of work that are required so as to adequately respond to Aboriginal peoples' concerns. These are:

a) A re-drafting and production of a plain English version of the protocols that can be made available to all community councils and other Aboriginal organisations in the central Australia region.
b) Further work to be conducted on bio-prospecting issues that are being raised by DK-CRC projects.

During the drafting process and discussions which occurred during the course of the project, it became increasingly clear that in order for the protocols and related documents to achieve their aim – that is, stronger guidance of research and other activities on Aboriginal land – the documents would best be prepared as a comprehensive and accessible package. No protocols, guidelines or similar documents can be effective unless the users are fully aware of them, and know how to make the best use of them. It is suggested here then, that these documents can most effectively achieve their aims by further refinement into a clear, reader-friendly package. Ideally such a package would be enhanced by including some visual illustrations. An awareness and implementation strategy would also greatly increase the capacity for these protocols and associated documents to realise their purpose.

There is another aspect of Aboriginal cultural and intellectual property protection that is likely to warrant further development by the CLC and/or the DK-CRC: 'bioprospecting'. This activity – while not yet readily apparent in the CLC region – looms as a real possibility, especially with the growth of research involving biological and genetic materials in the Northern Territory. This will also be critical as the Commonwealth Government's regulatory scheme governing access to biological resources on Commonwealth lands (under the Environment Protection and Biodiversity Conservation Act 1999) is completed and implemented. The anticipated Northern Territory policy and legislative system concerning bioprospecting will create a further imperative for the CLC and DK-CRC to consider more comprehensively the rights and interests of Aboriginal peoples in bio-resources and Aboriginal knowledge. The Protocol for Environment and Conservation activities that is included in the documents drafted for this project begins to set out some of the kinds of ethical and cultural issues that must be considered in the context of bioprospecting. However, this is an area that needs further development.

It is hoped that these protocols can, once fully implemented by the CLC, provide a useful template or case study of 'best practice' at a local/regional level within Australia, for practical measures to protect Aboriginal peoples' cultural and intellectual property rights.

Selected bibliography

Clarendon Press 1976, *The Concise Oxford Dictionary of Current English*, Oxford.

Davis, Michael 1997, *Indigenous Peoples and Intellectual Property Rights*, Research Paper No 20, Canberra, Information and Research Services, Department of the Parliamentary Library.

Davis, Michael 1998, *Biological Diversity and Indigenous Knowledge*, Research Paper No. 17, Canberra. Information and Research Services, Department of the Parliamentary Library.

Davis, Michael 1999, 'Indigenous Rights in Traditional Knowledge and Biological Diversity: Approaches to Protection', *Australian Indigenous Law Reporter*, Vol. 4, No. 4: 1–32.

Davis, Michael 2001, 'Law, Anthropology, and the Recognition of Indigenous Cultural Systems', in Rene Kuppe and Richard Potz, eds, *Law and Anthropology: International Yearbook for Legal Anthropology*, Vol. 11. The Hague, Netherlands, Martinus Nijhoff Publishers: 298–320.

Hansen, Stephen A, and VanFleet, Justin W 2003, *Traditional Knowledge and Intellectual Property: A Handbook on Issues and Options for Traditional Knowledge Holders in Protecting their Intellectual Property and Maintaining Biological Diversity*, Washington DC, American Association for the Advancement of Science.

Janke, Terri 1998, *Our Culture, Our Future: Protection of Australian Indigenous Cultural and Intellectual Property Rights*, Canberra, ATSIC and AIATSIS.

Laird, Sarah A ed. 2002, *Biodiversity and Traditional Knowledge: Equitable Partnerships in Practice*, London, Earthscan Publications Ltd.

Nijar, Gurdial Singh 1996, *In Defence of Local Community Knowledge and Biodiversity: A Conceptual Framework and the Essential Elements of a Rights Regime*, Penang, Malaysia, Third World Network.

Posey, Darrell A 1996, *Traditional Resource Rights: International Instruments for Protection and Compensation for Indigenous Peoples and Local Communities*, Gland, Switzerland, IUCN.

Posey, Darrell A and Dutfield, Graham 1996, *Beyond Intellectual Property Rights: Towards Traditional Resource Rights for Indigenous Peoples and Local Communities*, Ottawa, Canada, IDRC.

Appendix A

Examples of Protocols, Guidelines, Codes of Conduct and Codes of Ethics

Non-government organisations:

An example of a non-government organisation document is the World Conservation Union (IUCN), the World Wide Fund for Nature (WWF), and the World Commission on Protected Areas 1996 *Principles and Guidelines on Indigenous and Traditional Peoples and Protected Areas*.

Government:

Governments too produce Guidelines and Protocols. One example is the Wet Tropics Management Authority (WTMA).

In 1998, under provisions in its *Wet Tropics Management Plan*, WTMA produced *Interim Protocols for Aboriginal Participation in Management of the Wet Tropics World Heritage Area. It also produced Guidelines for Consulting Aboriginal People Particularly Concerned with Land in the Wet Tropics Area*.

The WTMA Guidelines and Interim Protocols were developed to encourage better consultation with, and participation by Aboriginal peoples in the management of the Wet Tropics, and in the assessment of permit applications.

Professional and research institutions:

- AIATSIS *Guidelines for Ethical Research in Indigenous Studies*
- Australian Science, Technology and Engineering Council's *National Principles and Guidelines for the Ethical Conduct of Research in Protected and Environmentally Sensitive Areas*
- An example of a combined approach by medical and research institutions and government departments is the *National Principles of Intellectual Property Management for Publicly Funded Research*. This was produced by the ARC, National Health and Medical Research Council, educational bodies, Australian Vice-Chancellors' Committee, Department of Education, Training and Youth Affairs, and Department of Industry, Science and Resources
- The Australian Housing and Urban Research Institute has produced *Ethical Principles and Guidelines for Indigenous Research*.

Indigenous organisations, representative bodies and research institutions:

- Inuit Research Guidelines *Research Principles for Community-Controlled Research with the Inuit Tapirisat of Canada*

- Dene (Canadian Northwest) Cultural Institute Guidelines – *Guidelines for the Conduct of Participatory Research to Document Traditional Ecological Knowledge for the Purpose of Environmental Assessment and Management*
- Balkanu Cape York Development Corporation's *Draft Statement of Principles Regarding Biophysical Research in the Aboriginal Lands, Islands and Waters of Cape York Peninsula*
- Northern Territory University's *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services*
- Northern Land Council, *Research/Survey Permit*
- Australian Anthropological Society *Code of Ethics*.

Some other protocols and similar documents by and/or for local and Indigenous communities are:

- *Model Tribal Research Code* by the American Indian Law Center
- University of Victoria (British Columbia, Canada) *Protocols and Principles for Conducting Research in an Indigenous Context*.

Those by professional, conservation and other bodies

- *Guidelines for Researchers and Local Communities Interested in Accessing, Exploring and Studying Biodiversity* (developed by the Biodiversity and Ethics Working Group of Pew Conservation Fellows).

As well as documents, some very useful handbooks have recently been released. These are for Indigenous and local communities, development proponents, NGOs and governments, and provide in accessible language, excellent guides for protecting, sharing, and appropriate use of Indigenous knowledge. Two examples of these handbooks are:

- *The American Association for the Advancement of Science Handbook on Issues and Options for Traditional Knowledge Holders in Protecting their Intellectual Property and Maintaining Biological Diversity*.
- The World Bank and Canadian International Development Agency funded a publication called *Integrating Indigenous Knowledge in Project Planning and Implementation*.

The following presentations are available:

- Presentation by David Ross to *The Living Desert*, a CDU Symposium. http://www.cdu.edu.au/cdss0411/presentations.html
- Presentation by Siobhan McDonnell to the DK-CRC Workshop.
- www.desertknowledge.com.au/crc or contact the DK-CRC Publications Officer (08) 8950 7130.