



Victoria Government Gazette

No. S 406 Tuesday 11 August 2020
By Authority of Victorian Government Printer

Traditional Owner Settlement Act 2010

REGISTRATION OF LAND USE ACTIVITY AGREEMENT

Pursuant to section 72(1) of the **Traditional Owner Settlement Act 2010**, the Attorney-General Jill Hennessy has lodged for registration a Land Use Activity Agreement entered into, as part of a Recognition and Settlement Agreement, between the State and the Taungurung Land and Waters Council Aboriginal Corporation on 26 October 2018 and an associated Deed of Variation to the Recognition and Settlement Agreement, entered into on 16 March 2020 (together 'the agreement').

Pursuant to section 72(2)(b) of the **Traditional Owner Settlement Act 2010**, I give notice that I have registered the agreement onto the Register of Land Use Activity Agreements.

The Land Use Activity Agreement comes into operation on the date specified in Clause 3 of the agreement.

A copy of the Land Use Activity Agreement can be inspected, free of charge, during business hours by appointment at 121 Exhibition Street, Melbourne or online on the Register of Land Use Activity Agreements at <http://www.justice.vic.gov.au/>

DEAN COWIE

Registrar

Register of Land Use Activity Agreements
Department of Justice and Community Safety

SPECIAL

NATURAL RESOURCE AGREEMENT

between

Taungurung Clans Aboriginal Corporation
Indigenous Corporation Number 4191

and

The State of Victoria

Table of contents

1. Interpretation and Definitions
 2. Commencement
 3. Ministerial consent
 4. Participation in management of Natural Resources
 5. Land to which this Agreement applies
 6. Agreed Activities
 7. Exemption from certain regulations
 8. Public Land Conditions
 9. Subsidiary decision making powers under this Agreement
 10. Partnership Framework
 11. Section 80D of the Act unaffected
 12. Confirmation of membership
 13. Act or omissions of Members
 14. General
- Schedule 1 Public Land Conditions
- Schedule 2 Discretionary Authority
- Schedule 3 Partnership Forum Principles and Participation Strategy Principles
- Schedule 4 Sustainability Principles
- Schedule 5 Means for Verifying Traditional Owner Membership
- Schedule 6 Procurement Strategy for Natural Resource Management
- Schedule 7 Ministerial Consents

Date 2018

Taungurung Clans Aboriginal Corporation
Indigenous Corporation Number 4191 (the Corporation)

and
The State of Victoria (State)

Background

- A. The Parties entered into the Recognition and Settlement Agreement.
- B. Pursuant to section 8 of the Act, a Recognition and Settlement Agreement may include a natural resource agreement with the Traditional Owner Group Entity in relation to land that is the subject of a Recognition and Settlement Agreement.
- C. The Parties intend to enter into this Agreement, being a natural resource agreement as contemplated by section 8 and Part 6 of the Act.
- D. This Agreement is intended to give effect to the exercise of Traditional Owner Rights of the Taungurung People.

AGREED TERMS

1. Interpretation and Definitions

1.1 In this Agreement:

Act means the **Traditional Owner Settlement Act 2010** (Vic.);

Agreed Activity means any activity listed in clause 6.2;

Agreed Animal List means a list of Animals agreed through the Partnership Forum that varies which Animal species may be hunted, taken or used, or any conditions applying to the hunting, taking or use of specific Animals species (including as to area), on a temporary or permanent basis and which is adopted as a Further Agreement;

Agreed Vegetation List means a list of Vegetation agreed through the Partnership Forum that varies which Vegetation species may be taken or used, or any conditions applying to the taking or use of specific Vegetation (including as to area), on a temporary or permanent basis and which is adopted as a Further Agreement;

Agreement means this natural resource agreement;

Agreement Area means the area defined in Schedule 1 of the Recognition and Settlement Agreement;

Animals means all animals, including Fauna and Fish whether of any taxon or community and whether Wildlife or introduced animals, on or depending on the land;

Authorised Officer has the same meaning as in section 81(2) of the Act;

Business Day means Monday to Friday excluding public holidays in Victoria;

Corporation means Taungurung Clans Aboriginal Corporation (Indigenous Corporation Number 4191);

Decision Making Principle means the principle that prior to approving any project, making any decision, or entering any Further Agreement that may affect the Traditional Owner Group's rights to Natural Resources under this Agreement, the State will obtain the free and informed consent of the Traditional Owner Group through its Representative Structures, in accordance with international law and Article 32(2) of the UNDRIP;

Effective Date means the later of:

- (a) the date of registration of the Indigenous Land Use Agreement on the Register of Indigenous Land Use Agreements;
- (b) the date that notice of the registration of the Land Use Activity Agreement is published in the Government Gazette; and
- (c) the date on which this Agreement is published in the Government Gazette;

Fauna has the same meaning as in the **Flora and Fauna Guarantee Act 1988** (Vic.);

Fish has the same meaning as in section 5 of the **Fisheries Act 1995** (Vic.);

Flora has the same meaning as in section 3 of the **Flora and Fauna Guarantee Act 1988** (Vic.);

Forest Produce has the same meaning as in section 79 of the Act;

Further Agreement means a further agreement entered into in accordance with section 80C of the Act;

Game means any Wildlife declared to be game under the **Wildlife Act 1975** (Vic.);

Indigenous Land Use Agreement means the indigenous land use agreement under the **Native Title Act 1993** (Cth) that forms part of the Settlement Package;

Land Use Activity Agreement means the land use activity agreement that forms part of the Recognition and Settlement Agreement;

Law means:

- (a) common law and equity; and
- (b) Commonwealth, Victorian or local government legislation, regulations, by-laws and other subordinate regulations, rules of law or equity established by decisions of courts within the Commonwealth of Australia;

Member means a member of the Traditional Owner Group;

Natural Resource means land, and, in relation to land, Vegetation, Animals, Water and Stone;

Non-Commercial Purposes, in relation to a Traditional Owner Group, means the purposes of providing for any personal or domestic needs of the members of the Traditional Owner Group or any non-commercial communal needs of the members of the Traditional Owner Group;

NRA Land means the land described in clause 5;

NRM Funding means funding paid to the Corporation under clause 6 of the Recognition and Settlement Agreement to enable the Corporation to participate in the management of Natural Resources;

Participation Strategy Principles means the principles set out in Schedule 3;

Parties mean the parties to this Agreement, being the Corporation and the State;

Partnership Forum means the group established under clause 10 of this Agreement;

Precautionary Principle means the principle that if there is a threat of serious or irreversible environmental damage, lack of full scientific certainty will not be used as a reason for postponing measures to prevent environmental degradation;

Procurement Strategy for Natural Resource Management means the strategy contained in Schedule 6;

Public Land means land within the Agreement Area which falls within the definition of public land in section 3 of the Act;

Public Land Conditions means the conditions contained in Schedule 1;

Recognition and Settlement Agreement means the recognition and settlement agreement, of which this Agreement forms a part, entered into by the Corporation and the State under section 4 of the Act dated on or about the date of this Agreement;

Register of Indigenous Land Use Agreements has the same meaning as in section 253 of the **Native Title Act 1993** (Cth);

Relevant Minister means each Minister required to consent to this Agreement under section 80A of the Act;

Representative Structures means those entities or groups that represent the Traditional Owner Group, being the Corporation, people delegated discretionary authority on behalf of, or appointed to the Partnership Forum by, the Corporation, as relevant;

Settlement Package means the agreements entered into by the Parties pursuant to the **Native Title Act 1993** (Cth), the **Conservation, Forests and Lands Act 1987** (Vic.) and the Act being the Indigenous Land Use Agreement, the Recognition and Settlement Agreement, the Traditional Owner Land Management Agreement and the Traditional Owner Land Natural Resource Agreement;

State of Victoria or **State** means the Crown in right of Victoria;

Stone means stone, gravel, limestone, lime salt, sand, loam, clay, brick, earth, salt, guano, shell grit, soil and other similar materials, but not gold, silver, metals or minerals;

Sustainability Principles means the principles in Schedule 4;

Taungurung or **Taungurung People** means the Taungurung People as recognised by the Recognition and Settlement Agreement. The Taungurung People are the Traditional Owner Group for the Settlement Package;

Timber Resources has the same meaning as in the **Sustainable Forests (Timber) Act 2004** (Vic.);

Traditional Owner Group has the same meaning as in section 3 of the Act;

Traditional Owner Group Entity has the same meaning as in section 3 of the Act;

Traditional Owner Land Conditions has the same meaning as in the Traditional Owner Land Natural Resource Agreement;

Traditional Owner Land Management Agreement means the traditional owner land management agreement under section 82P of the **Conservation, Forests and Lands Act 1987** (Vic.) in Attachment 1 of the Recognition and Settlement Agreement and which forms part of the Settlement Package;

Traditional Owner Land Natural Resource Agreement means the traditional owner land natural resource agreement entered into by the Parties under section 81A of the Act in Attachment 3 of the Recognition and Settlement Agreement, and which forms part of the Settlement Package;

Traditional Owner Rights means the traditional owner rights recognised in clause 3.1 of the Recognition and Settlement Agreement;

UNDRIP means the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly on Thursday, 13 September 2007;

Vegetation means all vegetation, including Flora and Forest Produce (other than Timber Resources), on or depending on the land;

Verification Document means a document as described in, and issued in accordance with Schedule 5;

Water means water (whether or not it contains impurities) that is in, on or under the land; and

Wildlife has the same meaning as in section 3 of the **Wildlife Act 1975** (Vic.).

1.2 In this Agreement, unless the context otherwise requires:

- (a) an expression defined in the Act (including in section 79 of the Act) has the same meaning when used in this Agreement;

- (b) a reference to any person includes a reference to that person's personal representatives, successors and transferees (whether by assignment, novation or otherwise pursuant to law);
- (c) a reference to any group includes a reference to the members of that group from time to time;
- (d) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation or instruments of a legislative character issued under, that legislation or legislative provision;
- (e) the singular includes the plural and vice versa;
- (f) a reference to an individual or person includes a company, corporation, partnership, firm, joint venture, association (whether incorporated or not), body, authority, trust, state or government and vice versa;
- (g) a reference to a part, clause, sub-clause, or attachment is to a part, clause, sub-clause, schedule or attachment of or to this Agreement;
- (h) the Background paragraphs and Schedules form part of this Agreement;
- (i) a reference to any agreement, arrangement, understanding, document, deed or protocol is to that agreement, arrangement, understanding, document, deed or protocol (and, where applicable, any provisions) as amended, novated, supplemented or replaced from time to time;
- (j) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (k) headings are included for convenience and do not affect the interpretation of this Agreement;
- (l) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and
- (m) the term 'includes' in any form is not a word of limitation.

2. Commencement

This Agreement commences on the Effective Date.

3. Ministerial consent

The consent of each Relevant Minister is attached at Schedule 7.

4. Participation in management of Natural Resources

4.1 The Parties agree that the Corporation has the right to participate in the management of the Natural Resources of the land, and the Parties will work together to develop appropriate strategies to enable the Corporation to:

- (a) participate; and
- (b) obtain employment for Members,

in the management of Natural Resources utilising in the first instance the NRM Funding specified for this purpose.

4.2 The strategies referred to in clause 4.1 will be developed through the Partnership Forum and in accordance with the Participation Strategy Principles.

4.3 In recognition of the Taungurung's special association with the Goulburn River, if a proposal is made by:

- (a) the Corporation; or
- (b) a Member, with the support of the Corporation,

to participate in, or take a role in the management, oversight or protection of the Goulburn River, or the Goulburn River systems, the State commits to consider the proposal, and where reasonable, take steps agreed with the Corporation or the Member to support the proposal.

5. Land to which this Agreement applies

This Agreement is made under section 80 of the Act and applies to all Public Land, except for any Public Land on which infrastructure:

- (a) exists as at the day on which this Agreement commences; or
- (b) is subsequently constructed or established pursuant to the Recognition and Settlement Agreement,

and the infrastructure has the effect of excluding public access, either practically or by regulation, continuously or from time to time.

6. Agreed Activities

6.1 All Members may only carry out Agreed Activities in accordance with:

- (a) this Agreement; and
- (b) the laws of Victoria, including any exemptions enlivened by this Agreement.

6.2 All Members may carry out any of the following activities on NRA Land:

- (a) access, occupy and use the land;
- (b) as to a Natural Resource other than land:
 - (i) access, hunt, take, use or interfere with the Natural Resource; or
 - (ii) cut, dig up or remove the Natural Resource; or
 - (iii) sell or give away any of the Natural Resource; or
 - (iv) any other similar activity in relation to the Natural Resource;
- (c) take or use Water from a waterway or bore in accordance with section 8A of the **Water Act 1989** (Vic.);
- (d) enter, remain on and camp on the land;
- (e) gather together to conduct non-commercial cultural activities on the land;
- (f) possess or use any Animal or any equipment, vehicle or other thing on the land for the purpose of carrying out an activity specified in subclauses 6.2(b) to (e) above.

6.3 For the purpose of carrying out an Agreed Activity, a Natural Resource may be:

- (a) approached, damaged, destroyed, fished, killed, injured, obstructed, released or otherwise interfered with; or
- (b) possessed, kept, moved or processed; or
- (c) felled, ringbarked or sapringed; or
- (d) otherwise similarly dealt with.

7. Exemption from certain regulations

The State agrees that any Agreed Activity undertaken in accordance with this Agreement, is part of Aboriginal tradition, as that term is defined in the:

- (a) *Forests (Recreation) Regulations 2010*; and
- (b) *National Parks Regulations 2013*.

8. Public Land Conditions

All Agreed Activities must be carried out in accordance with the Public Land Conditions.

9. Subsidiary decision making powers under this Agreement

9.1 The Parties give discretionary authority to those people specified in Schedule 2 to enter into Further Agreements with respect to any matter dealt with in this Agreement.

9.2 Those people given discretionary authority pursuant to clause 9.1 may also be members of the Partnership Forum.

9.3 The Parties acknowledge that Further Agreements may provide for the carrying out of activities for commercial purposes as provided for by the Act.

9.4 Further Agreements may be made independently of the Partnership Forum.

10. Partnership Framework

10.1 The Parties will establish the Partnership Forum, on the commencement of this Agreement.

10.2 The purpose of the Partnership Forum is to:

- (a) review the implementation and effectiveness of this Agreement and the Traditional Owner Land Natural Resource Agreement;
- (b) exchange data and expertise regarding the general health, welfare and abundance of Natural Resources in the Agreement Area;
- (c) develop, agree, implement, monitor and review strategies which promote or enable Members to participate in Natural Resource management, including through the Participation Strategy Principles;
- (d) develop and consider the content of or amendments to:
 - (i) an Agreed Vegetation List; or
 - (ii) an Agreed Animal List;
- (e) consider whether any Further Agreement is desirable and, if so, prepare draft terms to be considered by the Parties;
- (f) consider whether the provisions in Schedule 1 and the Traditional Owner Land Natural Resource Agreement are appropriate, and whether they should be amended to allow for increased:
 - (i) efficacy;
 - (ii) ease of use and application;
 - (iii) recognition of the Traditional Owner Rights of the Members;
 - (iv) permissible commercial purposes; or
 - (v) protection or sustainability of a Natural Resource; and
- (g) review the application of Item 4.2(a) of Schedule 1 and resolve any issues raised by either Party as to the areas or Agreed Activities to which that Item applies.

10.3 The Partnership Forum will hold its initial meeting within 3 months of the commencement of this Agreement.

10.4 At its initial meeting, the Partnership Forum will:

- (a) consist of:
 - (i) two representatives of the State; and
 - (ii) three representatives of the Corporation,appointed by the relevant Party, all of who must be in attendance for the forum to have quorum;
- (b) meet:
 - (i) at the cost of the State; and
 - (ii) at an agreed location within the Agreement Area;
- (c) be chaired by a representative of the Corporation; and
- (d) make decisions:
 - (i) by consensus;
 - (ii) guided by the Sustainability Principles; and
 - (iii) in accordance with the Decision Making Principle; and
- (e) consider and determine its ongoing composition, decision-making processes, and terms of reference, which must be consistent with the Partnership Forum principles in Schedule 3.

- 10.5 The Partnership Forum does not prevent either Party from engaging with each other and other agencies, bodies, or persons in relation to Natural Resources or matters for which the Partnership Forum has responsibilities.
- 10.6 The Corporation will report on levels and manner of take of Animals at the Partnership Forum to allow for mortality and welfare to be accounted for in relevant state-wide and national estimates and reports, and to assist the Partnership Forum's discussions on sustainability and Animal welfare.
- 10.7 The Parties will make arrangements for Members to discuss levels of take and expected take with local Authorised Officers in addition to reporting through the Partnership Forum.
- 10.8 If either Party determines that the taking, use or management of Natural Resources under this Agreement or the Traditional Owner Land Natural Resource Agreement is adversely impacting on the sustainability or welfare of those Natural Resources (**an Adverse Impact**), it may write to the other party:
- (a) outlining the scope and cause of the Adverse Impact;
 - (b) providing any evidence or data it has in relation to the Adverse Impact; and
 - (c) convening a Partnership Forum.
- 10.9 Provided the Parties agree that an Adverse Impact has occurred, a Partnership Forum may:
- (a) exchange data and expertise regarding the Adverse Impact;
 - (b) develop processes or action plans to address the Adverse Impact;
 - (c) determine any areas where the taking of Natural Resources should be modified, restricted or limited; and
 - (d) consider whether:
 - (i) an Agreed Vegetation List;
 - (ii) an Agreed Animal List; or
 - (iii) any other Further Agreement,is necessary or desirable.
- 10.10 Where clause 10.9 applies and the Partnership Forum cannot agree on a position regarding the take and use of an individual species, the Precautionary Principle will apply to mitigate the risk to the particular species potentially under threat.
- 10.11 The Parties will give effect to the Procurement Strategy for Natural Resource Management.
- 11. Section 80D of the Act unaffected**
Nothing in this Agreement limits the power of the Minister pursuant to section 80D of the Act.
- 12. Confirmation of membership**
Schedule 5 sets out the agreed means by which an Authorised Officer is able to verify that a person purporting to act under this Agreement is a Member.
- 13. Act or omissions of Members**
- 13.1 The Corporation will not be held liable for any act or omission of a Member, including any act or omission which is not in accordance with, or is a breach of, any term of this Agreement.
- 13.2 Where the Corporation becomes aware of a contravention of the terms of this Agreement by a Member, it will take appropriate disciplinary action (as determined by the Corporation).
- 14. General**
- 14.1 Variation**
- (a) This Agreement may only be varied by the Parties by mutual agreement in writing.
 - (b) Without derogating from clause 14.1(a), the Parties may vary any deadlines in this Agreement by an exchange of letters.

14.2 Agreement to bind the Corporation's successors

The Corporation will do all things that the State reasonably requires it to do to ensure that any corporation that succeeds the Corporation and is appointed by the Taungurung People as the Traditional Owner Group Entity becomes bound by and has the benefit of this Agreement.

14.3 State's Obligations Conditional

The performance of the State's obligations under this Agreement is conditional on the Corporation being the Traditional Owner Group Entity at the relevant time for the purpose of any particular obligation.

14.4 Communications

- (a) The Parties will send any correspondence or notices in connection with this Agreement to the relevant Party's representative specified in Schedule 14 to the Recognition and Settlement Agreement.
- (b) A Party may change its contact details from time to time by notice in writing to the other Party.
- (c) Any correspondence or notices in connection with this Agreement shall be taken to be delivered or served as follows:
 - (i) in the case of delivery in person or by courier, when delivered;
 - (ii) in the case of delivery by post, five Business Days after the date of posting;
 - (iii) in the case of facsimile transmission, on receipt by the sender of a transmission report from the despatching machine showing: the date of transmission, the relevant number of pages, the correct telephone number of the destination facsimile machine and the result of the transmission as satisfactory; and
 - (iv) in the case of electronic mail, if the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), when acknowledgment of receipt is recorded on the sender's computer.

14.5 Entire understanding

The Settlement Package contains the entire understanding between the Parties as to its subject matter. There are no other representations, warranties, explanations, arrangements or understandings, (whether written or oral, express or implied, or before or after the signing of this Agreement) between the Parties which qualify or supplement the written terms of the Settlement Package.

14.6 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

14.7 Governing Law

- (a) This Agreement is governed by Law.
- (b) The Parties irrevocably and unconditionally submit to the jurisdiction of the courts of the State of Victoria and any courts that may hear appeals from those courts and waive any right to object to proceedings being brought in those courts.

14.8 Time to act

If the time for a Party to do something is not specified in this Agreement, the Party will do what is required within a reasonable time.

14.9 Severability

Any part, clause, sub-clause, paragraph or sub-paragraph of this Agreement which is invalid or unenforceable shall be read down, if possible, to be valid and enforceable. Where that part, clause, sub-clause, paragraph or sub-paragraph cannot be read down it shall be severed without affecting the remaining parts of this Agreement.

Executed as an Agreement

**Signed by the Honourable Martin Pakula
MP, Attorney General** for and on behalf of the
State of Victoria in the presence of:

DEAN COWIE

Signature of witness

MARTIN PAKULA

Name of witness (please print)

Date: 26 October 2018

Signed for and on behalf of **Taungurung
Clans Aboriginal Corporation (ICN 4191)** in
accordance with section 99-5 of the
**Corporations (Aboriginal and Torres Strait
Islander) Act 2006 (Cth)**

GRANT HANSON

Signature of director

PATSY SMITH

Signature of director

Name of director (printed)

Name of director (printed)

Date: 26 October 2018

Date: 26 October 2018

SCHEDULE 1 Public Land Conditions**1. Interpretation and Definitions**

1.1 In this Schedule:

Camping Ground means any area reserved or otherwise set aside for the purposes of camping and associated recreational use by the general public;

Code of Practice for the Welfare of Animals in Hunting means the code of practice of that name issued under section 7 of the **Prevention of Cruelty to Animals Act 1986** (Vic.);

Domestic Firewood Collection Rules means rules regarding the collection of firewood or timber from a Firewood Collection Area which are provided for in regulations or a determination published in the Government Gazette;

Firewood Collection Area has the same meaning as in section 3 of the **Forests Act 1958** (Vic.);

Grasstree means any plant of the taxon *Xanthorrhoea*;

Marine National Park has the same meaning as in section 3 of the **National Parks Act 1975** (Vic.);

Marine Sanctuary has the same meaning as in section 3 of the **National Parks Act 1975** (Vic.);

Protected Flora has the same meaning as in section 3(1) of the **Flora and Fauna Guarantee Act 1988** (Vic.); and

Reserved Tree means a tree declared as reserved by Governor in Council Order under section 60 of the **Forests Act 1958** (Vic).

2. Agreed Activities for Non-Commercial Purposes

A Member may carry out any Agreed Activities for Non-Commercial Purposes.

3. Agreed Activities for commercial purposes

3.1 A Member must not carry out Agreed Activities for commercial purposes with respect to Animals or Water.

3.2 A Member may carry out Agreed Activities with respect to Vegetation or Stone on land for commercial purposes that are consistent with the purpose for which the land is managed if:

- (a) the quantity of Vegetation or Stone taken is no more than the quantity that the Member would take for Non-Commercial Purposes;
- (b) the Member only takes Grasstree, Grasstree fronds and regulated tree ferns in accordance with the conditions of trading relating to valid tags under the Flora and Fauna Guarantee (Taking, Trading in, Keeping, Moving and Processing Protected Flora) Order 2004; and
- (c) the Member does not take any logs which are visibly hollow or which have growing moss or fungi.

4. General

4.1 In carrying out Agreed Activities, Members must comply with any Agreed Vegetation List or Agreed Animal List, and comply with:

- (a) the Sustainability Principles; and
- (b) the Taungurung People's law and custom, to the extent that it does not conflict with this Agreement.

4.2 Agreed Activities:

- (a) cannot be carried out on land where access to the land or the Agreed Activity is prohibited (temporarily or otherwise), regulated or controlled by a determination or notice under any act, regulation or by-law, except:

- (i) to the extent that the Agreed Activity is permitted under the determination or notice;
- (ii) as provided for in Item 5.2 (regarding Vegetation); and
- (iii) as provided for in Item 7 (permitted camping);
- (b) cannot be carried out on land over which exclusive possession rights and interests exist; and
- (c) may be carried out on any area that is licensed to a third party, provided the activity does not unreasonably impact on the rights of the licensee.

5. Vegetation and Stone

5.1 Members may carry out any of the Agreed Activities in clause 6.2(b) with respect to Vegetation and Stone, other than:

- (a) Reserved Trees;
- (b) Flora that is listed as threatened under section 10 of the **Flora and Fauna Guarantee Act 1988** (Vic.); and
- (c) Protected Flora that is listed in the Advisory List of Rare or Threatened Plants in Victoria (DEPI 2014) with a conservation status code of 'v', 'e', or 'x' or 'r',

unless permitted by an Agreed Vegetation List.

5.2 The restriction in Item 4.2(a) does not apply to Agreed Activities in respect of Vegetation in an area of forest reserve or forest park that has been set aside for the purpose of protection, planting or re-establishment of trees or Vegetation.

5.3 Firewood and timber may only be collected only from the forest floor.

5.4 If a determination has been made regarding the collection of firewood for a class of persons for a Firewood Collection Area, then Members may take firewood or timber from that area in accordance with the Domestic Firewood Collection Rules which apply to that class of persons.

5.5 If a determination has not been made regarding the collection of firewood for a class of persons for Firewood Collection Area, then Members may take firewood and timber from that area in accordance with the Domestic Firewood Collection Rules which apply to members of the public.

6. Animals

6.1 Where carrying out an Agreed Activity with respect to Animals, Members must comply with any acts and regulations relevant to the Agreed Activity relating to:

- (a) safety; and
- (b) the welfare and humane treatment of animals.

6.2 Hunting may only be carried out in accordance with the Code of Practice for the Welfare of Animals in Hunting.

6.3 All kangaroos and wallabies may only be shot in accordance with the principles of the National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Non-Commercial Purposes (2008).

6.4 If firearms are used from a boat, the boat must be operating at a speed of 5 knots or less to hunt or take Animals.

6.5 Members must not take or attempt to take fish or fishing bait, or use recreational fishing equipment in a Marine National Park or a Marine Sanctuary.

6.6 Members may not fish where access to a waterway is prohibited, regulated or controlled by notice or determination under any act, regulation or by-law, unless fishing is permitted under the notice or determination.

6.7 Members may not hunt, take or destroy cetaceans (whales or dolphins), other than parts of dead stranded cetaceans taken by agreement with a Department of Environment, Land, Water and Planning incident controller, or relevant regional delegate if no incident controller is in place.

7. Camping

7.1 A Member may camp at any Camping Ground in accordance with any rules or regulations, and must comply with any booking or other allocation system.

7.2 If the land manager agrees to a Member camping:

- (a) on land that is an area of a forest park where camping is prohibited under regulation 46 of the Forest (Recreation) Regulations 2010; or
- (b) on land that is reserved under regulation 45 of the Wildlife (State Game Reserve) Regulations 2014 as an area where camping is prohibited;

then the restriction in Item 4.2(a) does not apply.

7.3 No fee is payable for:

- (a) camping; or
- (b) for using a vehicle for camping in a forest reserve,

unless the Agreed Activity is undertaken on an area of land that is leased or licenced to a third party for a commercial purpose.

8. Campfires

8.1 A Member may light, kindle or maintain a campfire or barbeque, that uses solid fuel and that is in the open air in a regulated fire area within the meaning of the **Forests Act 1958** (Vic.) where –

- (a) the area of the campfire or barbeque is more than one square metre in any direction; or
- (b) a dimension of any piece of the solid fuel that is being used in the campfire or barbeque is more than one metre,

if the Member is authorised in writing by an Authorised Officer or the relevant land manager.

8.2 A member must not at any time light, kindle or maintain a campfire or barbeque in the following areas, to the extent that those areas are NRA Land:

Description of Areas	Period of restriction
(i) All State forest which is in the Shire of Bright in the Parish of Porepunkah and bounded by the Ovens River in the south, Roberts Creek in the west and the Everton to Bright railway line in the north and east.	The period commencing on 15 November in each year and ending on 30 April in the following year.
(ii) All State forest in the Shire of Benalla within those parts of the Parishes of Toombullup and Toombullup North shown hatched on Plan No. LEGL./09-283 lodged in the Central Plan Office.	The whole of the year
(iii) All the reserved forest which is in the Shire of Yarra Ranges, the Parish of Manango and bounded in the west by the Yarra Ranges National Park boundary, in the south and east by the Yarra River, the township of Reefton and the Warburton–Woods Point Road, and in the north by the southern extremity of the catchments of the Armstrong Creek Weirs (abutting the Yarra Tributaries Forest Reserve) as shown on Plan No. LEGL./09-229 lodged in the Central Plan Office.	The whole of the year

9. Organised events

9.1 Members may gather together and conduct organised non-commercial events on the land if:

- (a) they give reasonable prior notification to the land manager; and
- (b) the land manager confirms that no authorisation has been granted to any other person to occupy or use the area of land in a manner that would be inconsistent with the proposed use by Members.

SCHEDULE 2 Discretionary Authority

The persons given discretionary authority in accordance with clause 9 are:

- (a) For the Corporation, any person or body delegated the discretionary authority by a resolution of the Corporation's board of directors.
- (b) For the State:
 - (i) the Regional Director, Department of Environment, Land, Water and Planning, Hume Region, for all matters relating to land or Natural Resources (excluding Game) under the:
 - (A) **Crown Land (Reserves) Act 1978** (Vic.);
 - (B) **Flora and Fauna Guarantee Act 1988** (Vic.);
 - (C) **Forests Act 1958** (Vic.);
 - (D) **Land Act 1958** (Vic.);
 - (E) **National Parks Act 1975** (Vic.);
 - (F) **Water Act 1989** (Vic.); and
 - (G) **Wildlife Act 1975** (Vic.).
 - (ii) the Chief Executive Officer, Game Management Authority, for all matter relating to Game;
 - (iii) the Executive Director, Animal Welfare Victoria; and
 - (iv) the Chief Executive Officer of the Victorian Fisheries Authority for all matters relating to Fish under the **Fisheries Act 1995** (Vic.), except for matters also concerning Fish regulated under the **Flora and Fauna Guarantee Act 1988** (Vic.), in which case the Regional Director, Department of Environment, Land, Water and Planning, Hume Region, also is given discretionary authority.

SCHEDULE 3 Partnership Forum Principles and Participation Strategy Principles**1. Partnership Forum Principles:**

- 1.1 The Partnership Forum will:
- (a) make decisions by consensus;
 - (b) have a majority of its members at each meeting representing the Corporation;
 - (c) meet at least annually;
 - (d) permit the attendance of guests with expertise relevant to the Partnership Forum's responsibilities; and
 - (e) establish subcommittees and working groups as appropriate, which may include the Partnership Forum's members and others with expertise or knowledge relevant to Natural Resources and the Partnership Forum's responsibilities.

2. Participation Strategy Principles:

- 2.1 The Parties will develop a common understanding of participation and employment in the management of Natural Resources in the context of this Agreement.
- 2.2 The Parties will develop appropriate strategies to enable the Corporation and the Members the opportunity to participate in, or obtain employment in, the management of Natural Resources, in accordance with the following principles:
- (a) The Parties acknowledge that the Taungurung have traditionally managed Natural Resources within the Agreement Area over thousands of years, and have a right as well as a cultural obligation to continue to participate in its management.
 - (b) The Parties will approach the management of Natural Resources as partners and will develop appropriate strategies in good faith.
 - (c) The strategies will give effect to the Taungurung country plan, its priorities, aims and aspirations.
 - (d) Where the State has Natural Resource management functions or responsibilities in the Agreement Area, the strategies will include, at a minimum, that the State will:
 - (i) provide the opportunity for active participation in the design, decision making, development, review and monitoring of all Natural Resource management policies, programs, projects, strategic plans, management plans, action plans, research, assessments, investigations and reviews;
 - (ii) provide the opportunity for employment of Members in the management of Natural Resources including in policy engagement, planning, emergency management, compliance, education, and research roles in and roles;
 - (iii) subject to agreement by the Corporation explore measures to better incorporate traditional ecological knowledge, where and when available, into natural resource management decisions, planning and policy-making processes;
 - (iv) require the development of policy area-specific agreements with the Corporation on how the actions in Items 2.2(d)(i)–(iii) will be achieved within 12 months from commencement of this Agreement (or such other time as agreed) and revised annually (as required); and
 - (v) provide support to Taungurung in the development of safeguards to maintain, control, protect and develop intellectual property over Taungurung traditional ecological knowledge.
- 2.3 Where the State does not have Natural Resource management functions or responsibilities in the Agreement Area, the strategies will provide, at a minimum, that the State will:
- (a) engage the relevant State Agency or body that does have those functions or responsibilities; and

- (b) encourage the State Agency or body referred to in Item 2.3(a) to work in partnership with the Corporation, and to make the same commitments as set out in Item 2.2(d) (i)–(v).
- 2.4 The State will notify the Corporation of opportunities for Members to be appointed to boards of State Agencies, and any other relevant bodies with Natural Resource functions or responsibilities.
- 2.5 The strategies will be reviewed and monitored:
 - (a) on an ongoing basis by the Partnership Forum; and
 - (b) as part of the monitoring and evaluation plan put in place in relation to the Recognition and Settlement Agreement.
- 2.6 In this Schedule, ‘State Agency’ includes all:
 - (a) public statutory authorities;
 - (b) State owned enterprises; and
 - (c) committees of management, where the Secretary of a government department, a public statutory authority or a State owned enterprise is appointed as the committee of management,but does not include any council (as that terms is defined in the **Local Government Act 1989**) (Vic.).

SCHEDULE 4 Sustainability Principles**1. Sustainable level of Natural Resource use**

The productivity of the environment will be maintained for the benefit of future generations by ensuring that the use (or harvest) of Natural Resources does not occur beyond the capacity of the environment to replace, regrow or replenish the natural resource.

2. Benefit sharing – the fair allocation of Natural Resources

To ensure a share of the overall allocation of Natural Resources to traditional owners, Non-Commercial Purposes and commercial purposes (where permitted by this Agreement) will be recognised as an allocation within the following natural resource categories: Vegetation, Stone, Animals, and Water.

3. Avoiding harmful unintended consequences

Effort should be made to avoid harmful unintended consequences to the environment, for example, to non-target species and ecosystem health and stability.

4. Precautionary Principle

Where there is a lack of information upon which to base decisions about access to and use of natural resources the Precautionary Principle will prevail.

SCHEDULE 5 Means for Verifying Traditional Owner Membership

The agreed means by which an Authorised Officer is able to verify that a person is acting under this Agreement is if the person produces, upon reasonable request a Verification Document, being a valid identity card issued by the Corporation, identifying them as a Member who is bound by this Agreement.

With respect to the issuing and management of Verification Documents:

- (a) The Corporation must issue a Verification Document to any person who is bound by this Agreement who proposes to carry out any activities pursuant to this Agreement.
- (b) The Verification Document must be indelible and must be issued and administered by the Corporation.
- (c) The Verification Document must include the following details of the holder:
 - (i) name;
 - (ii) residential address;
 - (iii) date of birth; and
 - (iv) a unique emblem or insignia of the Corporation.
- (d) The Corporation agrees to maintain an accurate register of those persons to whom the Verification Document has been issued. When requested by Authorised Officers, the Corporation agrees to confirm, by reference to this register, whether or not an individual is the holder of the Verification Document.
- (e) The State will respect the privacy of any person holding a Verification Document and will comply with the **Privacy and Data Protection Act 2014** (Vic.) and the **Privacy Act 1988** (Cth).
- (f) When an Authorised Officer encounters a person asserting entitlement to carry out activities in respect of Natural Resources in accordance with this Agreement, the Authorised Officer will verify that person's membership by inspecting the Verification Document. The Authorised Officer may act to ensure compliance with this Agreement.
- (g) If the person fails to produce the Verification Document to establish their entitlement:
 - (i) the Authorised Officer may act in accordance with their statutory duties;
 - (ii) but, if the person is later able to provide the Verification Document, then any fine, caution, reprimand or penalty to which they would have been subject because they had not established their entitlement, will be withdrawn, not enforced and of no further effect.
- (h) The State and the Corporation agree to review the operation of the Verification Document as means for verifying traditional owner membership, if either Party requests this in writing.

SCHEDULE 6 Procurement Strategy for Natural Resource Management

1. Preamble

The Recognition and Settlement Agreement Natural Resource Management procurement strategy (**RSA Procurement Strategy**) is agreed to by the State of Victoria and **Taungurung Clans Aboriginal Corporation (ICN 4191) (Corporation)** as the Traditional Owner Group Entity appointed by the Taungurung People for the purposes of the Recognition and Settlement Agreement under the **Traditional Owner Settlement Act 2010** (Vic.).

The State of Victoria is committed to fostering the development of traditional owner businesses in natural resource management works and related services (**NRM**), including by promoting opportunities for these businesses to undertake contracts in order to increase their commercial activity in the Victorian economy.

The RSA Procurement Strategy gives effect to this commitment by supporting the Corporation to access procurement opportunities for NRM in the Agreement Area. The RSA Procurement Strategy is also a tool to recognise the Taungurung People's role as the traditional owners of the Agreement Area, their unique relationship to Country, and to achieve business and employment outcomes for the Taungurung People and the Corporation under the Recognition and Settlement Agreement.

The RSA Procurement Strategy is a commitment under the Recognition and Settlement Agreement and is also intended to assist the State to meet its Aboriginal Business Procurement Strategy targets.

2. RSA Procurement Strategy

The RSA Procurement Strategy establishes an annual target for each State Agency to procure NRM from the Corporation's suppliers in the Agreement Area. The target is 10% of each State Agency's 'total spend' on procuring NRM in the Agreement Area each financial year. The 'total spend' on NRM procurement will be calculated annually by departments when budgets and forward work programs are set.

The 10% target can include joint-venture projects where the Corporation and the State develop joint projects that the Corporation's suppliers deliver.

To support the Corporation's self-determination, and the growing of capacity and capability, the RSA Procurement Strategy also commits the State and the Corporation to jointly establish a 'Right of First Refusal Process' to be followed by the Parties.

For the avoidance of doubt, where the RSA Procurement Strategy is inconsistent with the policies of the Victorian Government Purchasing Board (VGPB), or with individual departmental procurement policies, the RSA Procurement Strategy is to prevail.

Otherwise, those policies above remain in force where relevant to the procurement that is the subject of this strategy.

3. Commitments

The commitments of the Parties under the RSA Procurement Strategy are as follows:

Establishment Commitments		
	Who	Commitment
1.	The State	<p>The State will establish a centrally-coordinated Pre-Approval Process to ensure current and planned capacity and capability, and industry standard quality management, environment and safety standards are met by the Corporation's suppliers. Processes to ensure value for money will also be established as a key component of the Pre-Approval Process.</p> <p>The State will also appoint the coordinating agency lead who will be responsible for managing the operation of the RSA Procurement Strategy.</p>

2.	All	<p>The State and the Corporation will jointly establish a Right of First Refusal Process to be followed by the Parties.</p> <p>The Right of First Refusal Process will be used to guide departments in their selection of contracts to be offered to the Corporation's suppliers.</p>
Ongoing Commitments		
	Who	Commitment
3.	The Corporation	The Corporation's suppliers will undertake the Pre-Approval Process, and any ongoing assessment as necessary by 31 July.
4.	The State	<p>The State will confirm whether the conditions of the Pre-Approval Process have been met by the Corporation's suppliers by 31 August.</p> <p>The State will provide ongoing assessment of the Pre-Approval Process to ensure currency and compliance.</p>
5.	The State	<p>The State will request that the State Agencies (via the coordinating agency lead) estimate their 'total spend' on NRM in the Agreement Area for the forthcoming financial year, by 30 September.</p> <p>The coordinator will use the estimated 'total spend' value to calculate and publish the annual target of 10% to be allocated to the Corporation's suppliers for right of first refusal. Meeting the target of 10% is based on the expectation that the Corporation's suppliers have met the conditions of the Pre-Approval Process, including value for money.</p> <p>The State will also request that State Agencies who have identified an NRM spend in the Agreement Area will provide the coordinator in early October with lists of contracts to be offered to the Corporation's suppliers. Contracts could be allocated an anticipated cost.</p>
6.	All	<p>In mid-October the coordinator will provide the lists of possible contracts for the financial year to the Corporation's suppliers for consideration.</p> <p>The Corporation's suppliers will provide quotes for contracts for the financial year pursuant to the Right of First Refusal Process by the due date specified for each contract. The Corporation's quotes will be based on value for money, as established during the Pre-Approval Process.</p> <p>Normal procurement processes apply to any contracts that the Corporation's suppliers do not provide quotes for by the due date specified on the contract.</p>
7.	All	<p>From November to July usual departmental policies relevant to NRM procurement will be in force.</p> <p>For the avoidance of doubt, the Corporation's suppliers are eligible to tender for contracts under normal procurement processes.</p>
8.	The State	<p>The State will request that the State Agencies report annually to the Secretary of the Department of Justice and Regulation on their actions under the procurement strategy, including on their:</p> <ul style="list-style-type: none"> ● actual spend on NRM in the Agreement Area; ● actual spend on the Corporation's suppliers; and ● performance in relation to the target of 10%.

9.	All	The State and the Corporation will report on the procurement strategy as part of the monitoring and evaluation activities pursuant to the Agreement, including at annual joint reflection workshops.
10.	All	The State will review the contract performance and deliverables of the Corporation's suppliers and provide regular feedback to the Corporation on performance, including on management of under-performance if required.

4. Commencement and Interim Measures

The RSA Procurement Strategy commences when the Natural Resource Agreement commences. In the period prior to the 2019–2020 financial year, the State will request that State Agencies commence activity to implement the 10% procurement target. This includes establishing baseline data on spend on NRM in the Agreement Area and their spend on the Corporation's suppliers. The Establishment Commitments in Items 1 and 2 of the table above will be implemented during this period.

From 2019–2020, State Agencies are expected to meet or exceed the 10% procurement target. Following the commencement of the RSA Procurement Strategy, departmental secretaries will be responsible for reporting annually to the Secretary of the Department of Justice and Regulation on their actions under the RSA Procurement Strategy.

5. Dispute resolution

The State and the Corporation jointly agree to follow the dispute resolution process pursuant to clause 14 of the Recognition and Settlement Agreement should a dispute arise in relation to the RSA Procurement Strategy.

6. Review

Clause 12 of the Recognition and Settlement Agreement commits the State and the Corporation to undertake a review (Initial Outcomes Review) of the outcomes of the Settlement Package within five years of the Effective Date. Clause 9 of the Recognition and Settlement Agreement commits the Parties to consider access by the Corporation, its subsidiaries and the Taungurung People members to economic development opportunities as part of the Initial Outcomes Review.

The Initial Outcomes Review will take place within five years of the Effective Date. The Initial Outcomes Review and subsequent outcomes reviews (which will occur every five years following the Initial Outcomes Review) will consider the RSA Procurement Strategy, including whether the 10% target should be increased and whether the definition of NRM is sufficient.

7. Definitions

Agreement Area	Has the same meaning as in clause 1 of the Recognition and Settlement Agreement.
Pre-Approval Process	The pre-approval process described in the table in Item 3 (Commitments) of this Schedule.
Natural resource management works and related services (NRM)	<ul style="list-style-type: none"> ● Restoration and regeneration of landscapes; ● Establishment of biodiversity corridors; ● Landscaping and maintenance activities; ● Fencing; ● Environmental management plans; ● Managing the impact of feral animals and pest plants; ● Weed control; and ● Environmental consulting.
Effective Date	Has the same meaning as in the Natural Resource Agreement.
Right of First Refusal Process	The right of first refusal process described in the table in Item 3 (Commitments) of this Schedule.
State Agencies	<p>Includes all departments and agencies that do or might undertake NRM procurement in the Agreement Area:</p> <ul style="list-style-type: none"> ● Department of Economic Development, Jobs, Transport and Resources: <ul style="list-style-type: none"> – VicRoads – VicTrack – Agriculture Victoria ● Department of Education and Training; ● Department of Environment, Land, Water and Planning: <ul style="list-style-type: none"> – Coliban Water – Goulburn Broken Catchment Management Authority – Goulburn Valley Water – Melbourne Water – North Central Catchment Management Authority – North East Catchment Management Authority – North East Water – VicWater – Western Water ● Department of Health and Human Services; ● Department of Justice and Regulation; ● Department of Premier and Cabinet; and ● Department of Treasury and Finance.
Total spend	Each State Agency's total external spend on procuring natural resource management works and related services in the Agreement Area in a financial year, as calculated by departments once budgets and forward work programs have been set.

SCHEDULE 7 Ministerial Consents

I, Lily D'Ambrosio MP, as the Minister administering the:

- **Crown Land (Reserves) Act 1978** (Vic.);
- **Flora and Fauna Guarantee Act 1988** (Vic.);
- **Forests Act 1958** (Vic.);
- **Land Act 1958** (Vic.);
- **National Parks Act 1975** (Vic.);
- **Wildlife Act 1975** (Vic.);

have been consulted about the making of the Natural Resource Agreement, and for the purposes of section 80A of the **Traditional Owner Settlement Act 2010** consent to the making of this Natural Resource Agreement under Part 6 of the Act between the State of Victoria and the Taungurung Clans Aboriginal Corporation (Indigenous Corporation Number 4191).

Dated 23 October 2018

THE HON. LILY D'AMBROSIO MP
Minister for Energy, Environment and Climate Change

I, Jaala Pulford, as the Minister administering the:

- **Forests Act 1958** (Vic.);
- **Fisheries Act 1995** (Vic.);
- **Prevention of Cruelty to Animals Act 1986** (Vic.);
- **Wildlife Act 1975** (Vic.);

have been consulted about the making of the Natural Resource Agreement, and for the purposes of section 80A of the **Traditional Owner Settlement Act 2010** consent to the making of this Natural Resource Agreement under Part 6 of the Act between the State of Victoria and the Taungurung Clans Aboriginal Corporation (Indigenous Corporation Number 4191).

Dated 23 October 2018

THE HON. JAALA PULFORD MP
Minister for Agriculture

I, Lisa Neville MP, as the Minister administering the:

- **Water Act 1989** (Vic.);

have been consulted about the making of the Natural Resource Agreement, and for the purposes of section 80A of the **Traditional Owner Settlement Act 2010** consent to the making of this Natural Resource Agreement under Part 6 of the Act between the State of Victoria and the Corporation.

Dated 15 October 2018

THE HON. LISA NEVILLE MP
Minister for Water

This page was left blank intentionally

ive

The *Victoria Government Gazette* is published by IVE Group Limited with the authority of the Government Printer for the State of Victoria

© State of Victoria 2020

This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act.

Address all enquiries to the Government Printer for the State of Victoria
Level 2, 1 Macarthur Street
Melbourne 3002
Victoria Australia

How To Order



**Retail &
Mail Sales**

Victoria Government Gazette

Ground Floor, Building 8,
658 Church Street,
Richmond 3121

DX 106 Melbourne



Telephone

(03) 8523 4601



Fax

(03) 9600 0478

email

gazette@ivegroup.com.au

Price Code B