



Victorian Government
Solicitor's Office

Traditional Owner Land Management Agreement

under s 82P of the Conservation, *Forests and Lands Act 1987* (Vic)

**The Hon Lily D'Ambrosio MP, for and on behalf of the State
of Victoria**

and

**Barengi Gadjin Land Council Aboriginal Corporation
RNTBC (ICN 4395)**

and

**The Secretary to the Department of Environment, Land
Water and Planning as the body corporate pursuant to
section 6 of the Conservation, *Forests and Lands Act 1987*
(Vic)**

Table of Contents

1.	Commencement	1
2.	Establishment of Traditional Owner Land Management Board	2
2.1	Agreement to facilitate the establishment of the Traditional Owner Land Management Board.....	2
2.2	Appointed Land of the Board	2
2.3	Minister may vary lands with the Corporation's consent	2
2.4	Variation of Board's role, functions, powers and duties	2
2.5	Appointments and removal of members of the Board.....	3
3.	Joint Management Plans.....	4
3.1	Notice to the Board	4
3.2	Management prior to commencement of Joint Management Plan	4
3.3	Joint Management Plan	5
3.4	Joint land management principles.....	6
3.5	Obligation to observe Land Management Acts and plans.....	7
3.6	Regional and State policies	7
3.7	Reviewing, amending and updating the Joint Management Plan	7
3.8	Completion of or agreement to Joint Management Plan.....	7
4.	Dispute resolution	8
4.1	Parties must follow Dispute resolution procedure	8
4.2	Notice of Dispute	8
4.3	Meeting of the panel	8
4.4	Mediation.....	8
4.5	Agreement continues	9
5.	Variation.....	9
6.	Breach.....	9
6.1	Notice of breach.....	9
7.	Agreement to bind the Corporation's successors	9
8.	General.....	9

8.1	State's Obligations Conditional	9
8.2	Communications	10
8.3	Entire understanding	10
8.4	Governing Law	10
8.5	Compliance with Laws	10
8.6	Time to act.....	10
8.7	Severability.....	10
8.8	Counterparts	11
9.	Definitions and Interpretation	11
9.1	Definitions	11
9.2	Interpretation	12
Schedule 1	Parties' Representatives	15
Schedule 2	Determination to establish the Traditional Owner Land Management Board pursuant to s 82B of the <i>Conservation, Forests and Lands Act 1987</i> (Vic)	16
Attachment 1	Appendix 1 to Determination	23
Schedule 3	Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk People	
Ancestors	26	

Date

28 OCTOBER 2022

**The Hon Lily D'Ambrosio MP, for and on behalf of the State of
Victoria in her capacity as the responsible Minister administering
the Conservation, *Forests and Lands Act 1987* (Vic)**

of Level 17, 8 Nicholson Street, East Melbourne Victoria 3002

(the Minister)

**Barengi Gadjin Land Council Aboriginal Corporation RNTBC (ICN
4395)**

of PO Box 1255, Horsham Victoria 3402

(the Corporation)

and

**Secretary to the Department of Environment, Land, Water and
Planning as the body corporate pursuant to section 6 of the
Conservation, Forests and Lands Act 1987 (Vic)**

of Level 16, 8 Nicholson Street, East Melbourne Victoria 3002

(the Secretary)

Background

- A. The Corporation has entered into a Recognition and Settlement Agreement with the State under the *Traditional Owner Settlement Act 2010* (Vic).
- B. The State and the Corporation have entered into this Traditional Owner Land Management Agreement (**Agreement**) to enable the establishment of a Traditional Owner Land Management Board (**Board**) and joint management of the Appointed Land. This will give effect to the Recognition and Settlement Agreement and enable the knowledge and culture of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk People (WJJWJ People) to be recognised in the management of the Appointed Land. The Minister will use best endeavours to establish a Board in relation to the Appointed Land.
- C. Both this Agreement and the Recognition and Settlement Agreement are part of the Expanded Settlement Package.

Agreed terms

1. Commencement

This Agreement commences on the Effective Date.

2. Establishment of Traditional Owner Land Management Board

2.1 Agreement to facilitate the establishment of the Traditional Owner Land Management Board

- (a) The Minister will use best endeavours to establish a Traditional Owner Land Management Board pursuant to Part 8A of the Act by determination as set out in Schedule 2 published in the Government Gazette.
- (b) This Agreement is an agreement made under Division 5 of Part 8A of the Act which:
 - (i) the Minister must have regard to under s 82B(3), 82F(3), 82G(4) and 82M(4) of the Act;
 - (ii) the Secretary must have regard to under s 16A(3) of the *National Parks Act 1975* (Vic); s 18B(3) of the *Crown Land (Reserves) Act 1978* (Vic); s 28(2) of the *Forests Act 1958* (Vic); s 18A(2) of the *Wildlife Act 1975* (Vic); and s 4B(2) of the *Land Act 1958* (Vic); and
 - (iii) the Minister and the Secretary must take all reasonable steps to give effect to, under s 82AB of the Act.
- (c) The Board will perform the role and have the functions, powers and duties described in the draft determination in Schedule 2.

2.2 Appointed Land of the Board

The Appointed Land is described in the draft determination set out at Appendix 1 of the determination in Schedule 2.

2.3 Minister may vary lands with the Corporation's consent

- (a) Before making any variations to the Appointed Land under s 82F(1)(a) of the Act, the Minister must notify the Corporation of any proposal to vary the Appointed Land.
- (b) In accordance with s 82FA(a) of the Act, the Minister must, before varying the Appointed Land, first obtain the consent of the Corporation.
- (c) The Corporation or the Secretary may make a proposal to the Minister at any time to vary the Appointed Land.
- (d) The Minister must notify the Corporation and the Board of the Minister's decision to make, or refuse to make, any such variation and, if requested by the Corporation, give a statement of reasons for the Minister's decision.

2.4 Variation of Board's role, functions, powers and duties

- (a) Before making any variation to the:
 - (i) role of the Board; or
 - (ii) the functions, powers or duties of the Board,

under s 82F(1)(b) or 82F(1)(c) of the Act, the Minister must notify the Corporation of any such proposed variation.

- (b) A notice given by the Minister under clause 2.4(a)(ii) of the proposed removal of functions, powers or duties from the Board must stipulate the period, being no less than 60 days, for the Corporation to make any submissions in relation to the proposed removal.
- (c) Before removing any functions, power or duties from the Board, the Minister must consult the Corporation and consider any submission which the Corporation makes to the Minister under clause 2.4(b).
- (d) Before making any variation of the kind referred to in clause 2.4(a), the Minister must obtain the consent of the Corporation to the proposed variation.
- (e) The Corporation or the Secretary may make a proposal to the Minister at any time for a variation of the kind referred to in clause 2.4(a).
- (f) The Minister must:
 - (i) notify the Corporation and the Board of the Minister's decision to make or refuse to make any such variation and, if requested by the Corporation, give a statement of reasons for the Minister's decision; and
 - (ii) if a proposal for a variation under clause 2.4(e) is made by the Corporation, notify the Corporation and the Board of the Minister's decision within 90 days from the receipt of the proposal (or such longer period as may be agreed).
- (g) The Minister may at any time vary the management functions, powers or duties of the Board pursuant to an agreement made under s 82P(1)(b) of the Act made with the Corporation and with the consent of any Relevant Land Minister.

2.5 Appointments and removal of members of the Board

- (a) Within twelve months (or as otherwise agreed) of the commencement of this Agreement, the Corporation must submit to the Minister a panel of not less than five names of persons who the Corporation nominates for appointment to the Board in accordance with s 82M(3)(a) of the Act.
- (b) The Corporation must include two nominees for appointment as the Board chairperson (and any preference between them) in the panel of the names it submits under clause 2.5(a).
- (c) For the purposes of clause 2.5(a) the Corporation must have regard to any relevant government guidelines, issued from time to time relating to appointments to boards and statutory bodies.
- (d) If any casual vacancy in the membership of the Board occurs in relation to a person appointed under s 82M(3)(a) of the Act, the Corporation must as soon as reasonably practicable submit to the Minister a panel of no less than two names of persons who the Corporation nominates for appointment to the Board to fill the vacancy.

- (e) The Minister may request further nominations for appointment to the Board from the Corporation.
- (f) If the Minister makes a request pursuant to clause 2.5(e), the Corporation must as soon as reasonably practicable submit to the Minister a further panel of no less than two names.
- (g) After receipt by the Minister of a panel or further panel, as the case may be, of no less than two names under clause 2.5(d) or clause 2.5(e) the Minister must as soon as reasonably practicable appoint a person to fill the casual vacancy in the membership of the Board.
- (h) The Minister may dismiss a member of the Board under s 82M(2) of the Act, and a Party may request at any time that the Minister make such a dismissal.
- (i) If the Minister does not dismiss a member of the Board pursuant to a request made under clause 2.5(h), the Minister will give the Party who made the request a statement of reasons in relation to not dismissing the member.
- (j) If the Minister dismisses a member of the Board under s 82M of the Act, and that member had been appointed under s 82M(3)(a), then the Minister must provide the Corporation and the Secretary with reasons for the dismissal.

3. Joint Management Plans

3.1 Notice to the Board

- (a) The Secretary must as soon as reasonably practicable after the appointment of the first Board members:
 - (i) notify the Board of the existing land management arrangements and land managers in relation to the Appointed Land; and
 - (ii) notify the Board of a contact officer of the Department for initial communications between the Board and the Department.
- (b) The Secretary must notify the Board from time to time as necessary of any substitute officer of the Department.

3.2 Management prior to commencement of Joint Management Plan

- (a) Subject to clause 3.2(b), until the commencement of the first Joint Management Plan, the Appointed Land will continue to be managed under all existing land management arrangements and Land Management Plans (if any).
- (b) The Secretary may alter the land management arrangements or make or alter a Land Management Plan (if any) at any time prior to the commencement of the first Joint Management Plan.
- (c) Before altering the land management arrangements or making or altering a Land Management Plan (if any) in a manner which affects the Appointed Land, the Secretary must:

- (i) if the Board has not yet been established, notify the Corporation and give the Corporation a reasonable time to make submissions in relation to the proposed alteration or alterations; or
 - (ii) if the Board has been established, but the first Joint Management Plan has not yet taken effect, notify the Board and give the Board a reasonable time to make submissions in relation to the proposed alteration or alterations.
- (d) Before altering the land management arrangements or making or altering a Land Management Plan (if any), in a manner which affects the Appointed Land, the Secretary must have regard to any submissions made by the Corporation or the Board.
- (e) If the Secretary alters the land management arrangements or makes or alters a Land Management Plan in a manner that is inconsistent with any submissions made by the Corporation or the Board, the Secretary must give a statement of reasons in relation to the inconsistency to the Corporation and the Board as soon as reasonably practicable.
- (f) For the purposes of this clause Land Management Plan means a management plan prepared under ss 17(2)(d), 17B, 17D(3)(c), 18(2)(d) of the *National Parks Act 1975* (Vic) or a management plan prepared for an area of State Forest.
- (g) The Secretary will direct the land manager to consult with the Board regarding the adoption or alteration of management plans related to the Appointed Land, which are not otherwise included within the meaning of clause 3.2(f).

3.3 Joint Management Plan

- (a) A Joint Management Plan must meet the requirements of s 82PB of the Act.
- (b) A Joint Management Plan must provide for the sustainable management of the Appointed Land and may include strategies for:
 - (i) the conservation of natural values and cultural values (including heritage protection);
 - (ii) managing flora and fauna (including threatened flora and fauna);
 - (iii) the recognition and utilisation of WJJWJ People knowledge and customs;
 - (iv) attracting and managing visitors;
 - (v) managing authorised and adjacent uses (including third party interests);
 - (vi) community awareness and involvement;
 - (vii) managing public use and access to the land;
 - (viii) plan implementation;

- (ix) providing operational support to the Board of Management;
 - (x) promoting, encouraging and assisting the WJJWJ People to take advantage of employment, training and contracting opportunities relating to the land;
 - (xi) managing commercial activities;
 - (xii) managing fire consistently with the Secretary's directions; and
 - (xiii) any additional matters contained in relevant Ministerial guidelines.
- (c) A Joint Management Plan may specify performance measures and targets, and strategies for reviews, monitoring and evaluating performance, operation and implementation of the Joint Management Plan.

3.4 Joint land management principles

- (a) A Joint Management Plan must set out a statement of objectives for achieving sustainable management of the Appointed Land in accordance with the following principles:
- (i) recognising, respecting and incorporating the WJJWJ People's culture, use, knowledge and decision-making processes;
 - (ii) utilising the combined land and forest management skills and expertise of both the State and the WJJWJ People;
 - (iii) providing quality educational, recreational and other experiences for all park visitors, where applicable;
 - (iv) conserving, protecting and enhancing natural and cultural values;
 - (v) recognising and addressing the need for institutional support and capacity building of the WJJWJ People; and
 - (vi) building relationships between the Board and land managers including catchment management authorities.
- (b) The objective of joint management is to establish an equitable partnership between the State and the WJJWJ People to ensure innovation and excellence in joint management, including the following purposes:
- (i) benefiting the WJJWJ People by recognising, valuing, promoting and incorporating their culture, knowledge, skills and decision-making processes;
 - (ii) benefiting the community needs of all Victorians and visitors for public education and enjoyment through quality experiences, services and information;
 - (iii) conserving, protecting and enhancing natural and cultural values;
 - (iv) enjoying widespread community support; and
 - (v) ensuring the well-being of country and the well-being of people.

3.5 Obligation to observe Land Management Acts and plans

The Joint Management Plan must:

- (a) identify and describe the Appointed Land to which it applies;
- (b) specify the Land Management Act or Acts under which the Appointed Land is managed; and
- (c) be consistent with the Land Management Act or Acts applying to the Appointed Land.

3.6 Regional and State policies

A Joint Management Plan must be prepared consistently with any relevant regional or State management policies for management of Public Land.

3.7 Reviewing, amending and updating the Joint Management Plan

- (a) The Joint Management Plan continues to have effect until an amended or revised Joint Management Plan is approved by the Minister.
- (b) A Joint Management Plan must specify the manner of the making of subsequent Joint Management Plans, and the timing of the making of them.
- (c) A Joint Management Plan must provide for a review or reviews of the Joint Management Plan at periodic intervals stipulated in the Joint Management Plan, and may specify who will undertake the review and the manner in which the review will be carried out.
- (d) A Joint Management Plan may provide for interim reviews of the Joint Management Plan on the happening of specified events including, but not limited to, a variation to the Appointed Land.
- (e) If the findings of a review recommend proposed amendments to the Joint Management Plan, the Secretary and the Board may submit an amended Joint Management Plan reflecting those findings to the Minister for approval under s 82PH of the Act.
- (f) The Board may submit a report to the Secretary following a review of the Joint Management Plan under clause 3.7(c) or 3.7(d) on any matter to which clause 3.7(e) does not apply and the Secretary must as soon as reasonably practicable after receipt of it, consider the report and provide a written response to the Board.

3.8 Completion of or agreement to Joint Management Plan

- (a) If, at any time after taking all reasonable steps as required by the Act, the Secretary and the Board disagree on a Completed Joint Management Plan or an Agreed Joint Management Plan, the Secretary may, and if requested by the Board will, refer the matters of difference to an appropriately qualified expert consultant agreed between the Secretary and the Board, to prepare a report and to make binding recommendations for resolution of those matters of difference.

- (b) After any changes to the Joint Management Plan based on the process in clause 3.8(a) have been made, the Secretary will submit the Joint Management Plan to the Minister for approval under s 82PH(1)(c) of the Act.
- (c) In this clause Completed Joint Management Plan means a joint management plan completed for the purposes of s 82PD(1) of the Act prior to publication of a notice for public comment and Agreed Joint Management Plan means an agreed joint management plan for the purposes of s 82PG(1) of the Act.

4. Dispute resolution

4.1 Parties must follow Dispute resolution procedure

- (a) If a Dispute arises between the Parties, the Parties agree to attempt to resolve the Dispute pursuant to this clause before commencing any proceedings in relation to the Dispute in any court or tribunal.
- (b) This clause does not prevent a party to the Dispute from seeking interlocutory injunctive relief.
- (c) The provisions of this clause do not apply to any review of the Expanded Settlement Package pursuant to clause 12 of the Recognition and Settlement Agreement.

4.2 Notice of Dispute

- (a) If a Dispute between the Parties arises, the Party who alleges the existence of the Dispute must, by notice in writing to the other Parties, refer the Dispute to a dispute resolution panel constituted in accordance with clause 4.2(b). The notice must adequately identify, and provide details of, the Dispute.
- (b) The dispute resolution panel must consist of:
 - (i) two persons nominated by the State; and
 - (ii) two persons nominated by the Corporation.

4.3 Meeting of the panel

If the Dispute is referred to the dispute resolution panel, the panel must meet to resolve the Dispute within 10 Business Days of service of the Dispute notice, or such other time as the Parties agree.

4.4 Mediation

- (a) If the dispute resolution panel does not resolve the Dispute within 10 Business Days of its first meeting pursuant to clause 4.3 or within such other time as the Parties agree, a Party to the Dispute may refer the matter to mediation by giving notice in writing to the other Party.
- (b) If the matter is referred to mediation, the Parties to the Dispute will jointly appoint an appropriately qualified mediator, which may be from the Federal Court of Australia's List of Native Title Mediators.

- (c) If the Parties to the Dispute do not agree on a mediator pursuant to clause 4.4(b), the Parties agree to jointly request the Chairperson of the Victorian Bar Council to appoint an appropriately qualified mediator, which may be from the Federal Court of Australia's List of Native Title Mediators.
- (d) The Parties to the Dispute must cooperate fully with the mediator and use their best endeavours to reach agreement within a reasonable time.
- (e) Where the Dispute relates to an issue which by its nature is likely to arise with respect to other Traditional Owner Groups in the State of Victoria, the State must pay the mediator's reasonable fees and expenses. Otherwise, the Parties must pay an equal share of the mediator's reasonable fees and expenses.

4.5 Agreement continues

The Parties will continue to perform and observe their respective obligations under this Agreement pending resolution of a Dispute under this clause 4.

5. Variation

- (a) This Agreement may only be varied by the Parties by agreement in writing.
- (b) Without derogating from clause 5(a), the Parties may vary any deadlines in this Agreement by an exchange of letters.

6. Breach

6.1 Notice of breach

- (a) If, in the reasonable opinion of a Party (in this clause 6, '**first party**'), another Party has breached a condition of this Agreement (in this clause 6, '**other party**'), the first party may serve a notice on that other party (in this clause 6, '**notice**').
- (b) A notice must specify the nature of the breach and nominate a reasonable period within which the other party must rectify the breach.
- (c) If the breach is not remedied in accordance with the notice, the first party may refer the matter for resolution in accordance with clause 4.

7. 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 WJJWJ People as the Traditional Owner Group Entity becomes bound by and has the benefit of this Agreement.

8. General

8.1 State's Obligations Conditional

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

8.2 Communications

- (a) The Parties will send any correspondence or notices in connection with this Agreement to the relevant Party's representative specified in Schedule 1.
- (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 will 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; and
 - (iii) 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.

8.3 Entire understanding

The Expanded 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) between the Parties which qualify or supplement the written terms of the Expanded Settlement Package.

8.4 Governing Law

- (a) This Agreement is governed by the laws of the State of Victoria.
- (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.

8.5 Compliance with Laws

Each Party must, in performing its obligations under this Agreement, comply with the Law.

8.6 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.

8.7 Severability

Any part, clause, sub-clause, paragraph or sub-paragraph of this Agreement which is invalid or unenforceable will 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 will be severed without affecting the remaining parts of this Agreement.

8.8 Counterparts

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

9. Definitions and Interpretation

9.1 Definitions

In this Agreement, unless the context otherwise requires:

Act means the *Conservation, Forests and Lands Act 1987* (Vic).

Agreement means this traditional owner land management agreement, entered into under s 82P of the Act.

Appointed Land means the Public Land to which the Board is appointed under the Act as described in Appendix 1 in Schedule 2.

Board and Board of Management means the Traditional Owner Land Management Board to be established under Part 8A of the Act and provided for under Schedule 2, and as named by the Corporation and agreed by the Parties.

Business Day means Monday to Friday, excluding public holidays in Victoria.

Consent Determination means the determination in *Clarke* on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v Victoria [2005] FCA 1795.

Corporation means the Barengi Gadjin Land Council Aboriginal Corporation RNTBC (Indigenous Corporation Number: ICN 4395), being the Traditional Owner Group Entity appointed by the WJJWJ People.

Department means the Department of Environment, Land, Water and Planning.

Dispute means a dispute relating to the interpretation or operation of this Agreement, but does not include a dispute relating to the interpretation, operation or implementation of a Joint Management Plan.

Effective Date means the date on which the Natural Resource Agreement is published in the Government Gazette.

Expanded Settlement Package has the same meaning as in the Recognition and Settlement Agreement.

Joint Management Plan has the same meaning as in s 82A of the Act.

Land Management Act means any of:

- (a) *Crown Land (Reserves) Act 1978* (Vic);
- (b) *National Parks Act 1975* (Vic);
- (c) *Forests Act 1958* (Vic);
- (d) *Land Act 1958* (Vic); or

(e) *Wildlife Act 1975* (Vic).

Law means:

- (a) common law; and
- (b) Commonwealth, Victorian or local government legislation, regulations, by-laws and other subordinate regulations.

Minister means the Minister of the Crown for the time being with responsibility for the administration of Part 8A of the Act.

Natural Resource Agreement means the natural resource agreement under the *Traditional Owner Settlement Act 2010* (Vic) that forms part of the Recognition and Settlement Agreement.

Party means a party to this Agreement.

Public Land has the same meaning as in s 82A of the Act.

Recognition and Settlement Agreement means the recognition and settlement agreement entered into by the Corporation and the State under s 4 of the *Traditional Owner Settlement Act 2010* (Vic) dated on or about the date of this Agreement.

Relevant Land Minister has the same meaning as in Part 8A of the Act;

Secretary means the body corporate established pursuant to s 6 of the Act.

State means the Crown in right of the State of Victoria.

State Forest has the same meaning as in s 3 of the *Forests Act 1958* (Vic).

Traditional Owner Group has the same meaning as in the *Traditional Owner Settlement Act 2010* (Vic).

Traditional Owner Group Entity has the same meaning as in the *Traditional Owner Settlement Act 2010* (Vic).

Traditional Owner Land Management Board has the same meaning as s 3 of the Act.

Traditional Owner Land Natural Resource Agreement means the traditional owner land natural resource agreement under s 81A of the *Traditional Owner Settlement Act 2010* (Vic) in Attachment 2 of the Recognition and Settlement Agreement.

WJJWJ People has the same meaning as in the Recognition and Settlement Agreement.

9.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) 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);

- (b) a reference to any group includes a reference to the members of that group from time to time;
- (c) 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;
- (d) the singular includes the plural and vice versa;
- (e) 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;
- (f) a reference to a part, clause, sub-clause, schedule or attachment is to a part, clause, sub-clause, schedule or attachment of or to this Agreement;
- (g) the 'Background' paragraphs and Schedules form part of this Agreement;
- (h) 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;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) headings are included for convenience and do not affect the interpretation of this Agreement;
- (k) 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
- (l) the term 'includes' in any form is not a word of limitation.

Signing page

Executed as an agreement.

Signed by the Honourable Lily D'Ambrosio MP,
Minister administering the *Conservation,
Forests and Lands Act 1987 (Vic)* for and on
behalf of the State of Victoria in the presence of:




Signature of witness

PAUL TREVASKIS

Name of witness (please print)

26-10-22

Date:



Lily D'Ambrosio

Executed by Barengi Gadjin Land Council
Aboriginal Corporation RNTBC (ICN 4395) in
accordance with section 99-5 of the *Corporations
(Aboriginal and Torres Strait Islander) Act 2006
(Cth)*

Signature of director

Name of director (printed)

Date:

Signature of director

Name of director (printed)

Date:

The Official Seal of the Secretary to the
Department of Environment, Land, Water and
Planning, a body corporate established under the
Conservation, Forests and Lands Act 1987, was
affixed on 24/10/22 by:



Secretary (signature)

ALAINNAH CALABRO

Name (printed)

24/10/2022

Date:

(Seal)



Witness (signature)

Signing page

Executed as an agreement.

Signed by the **Honourable Lily D'Ambrosio MP**,
Minister administering the Conservation,
Forests and Lands Act 1987 (Vic) for and on
behalf of the State of Victoria in the presence of:

Signature of witness

Lily D'Ambrosio

Name of witness *(please print)*

Date:

Executed by **Barengi Gadjin Land Council**
Aboriginal Corporation RNTBC (ICN 4395) in
accordance with section 99-5 of the *Corporations*
(Aboriginal and Torres Strait Islander) Act 2006
(Cth)



Signature of director

Signature of director

BRENDAN WILLIAM MUIR

Name of director *(printed)*

Name of director *(printed)*

25 October 2022

Date:

Date:

The Official Seal of the Secretary to the
Department of Environment, Land, Water and
Planning, a body corporate established under the
Conservation, Forests and Lands Act 1987, was
affixed on _____ by:

(Seal)

Secretary *(signature)*

Name *(printed)*

Witness *(signature)*

Date:

Signing page

Executed as an agreement.

**Signed by the Honourable Lily D'Ambrosio
MP, Minister administering the
Conservation, Forests and Lands Act 1987
(Vic) for and on behalf of the State of Victoria
in the presence of:**

Signature of witness

Lily D'Ambrosio

Name of witness *(please print)*

Date:

**Executed by Barengi Gadjin Land Council
Aboriginal Corporation RNTBC (ICN 4395)
in accordance with section 99-5 of the
Corporations (Aboriginal and Torres Strait
Islander) Act 2006 (Cth)**

Signature of director


Signature of director

Name of director *(printed)*

ROBERT JARRAN FRY
Name of director *(printed)*

Date:

Date:
28-10-2022

Schedule 1 Parties' Representatives

State Representative (as at the execution date of this Agreement)

Name/Position	Contact Details
Dean Cowie Executive Director Land Justice Unit Department of Justice and Community Safety	Level 24, 121 Exhibition Street Melbourne Vic 3000 Phone: 0419 114 096

Corporation Representative (as at the execution date of this Agreement)

Name/Position	Contact Details
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**Schedule 2 Determination to establish the Traditional Owner
Land Management Board pursuant to s 82B of the
*Conservation, Forests and Lands Act 1987 (Vic)***

CONSERVATION, FORESTS AND LANDS ACT 1987

Determination PURSUANT TO section 82B to establish a Traditional Owner
Land Management Board TO BE KNOWN AS THE [name TO BE
PROVIDED] LAND MANAGEMENT BOARD

Preamble

- A. Under section 82B(1) of the Act, the Minister may by determination published in the Government Gazette establish a Traditional Owner Land Management Board.
- B. The WJJWJ People are the Traditional Owner Group for the Appointed Land.
- C. The WJJWJ People have appointed the Barengi Gadjin Land Council Aboriginal Corporation RNTBC as their Traditional Owner Group Entity.
- D. The Minister and the Secretary have entered into an agreement under Division 5 of Part 8A of the Act with the Barengi Gadjin Land Council Aboriginal Corporation RNTBC dated _____ to facilitate the establishment of the Board.
- E. For the purpose of s 82B(1A) of the Act, the Minister is establishing a Traditional Owner Land Management Board to give effect to a Recognition and Settlement Agreement with the Barengi Gadjin Land Council Aboriginal Corporation RNTBC, dated _____.
- F. Under section 82B(3) of the Act, the Minister is required in making this determination to have regard to the agreement under Division 5 of Part 8A of the Act. The Minister has done so and the Minister now establishes the Board.

The Minister therefore determines—

1. Definitions and Interpretation

Definitions

In this determination, unless inconsistent with the context or subject matter—

Act means the *Conservation, Forests and Lands Act 1987 (Vic)* as amended from time to time, or any other re enactment or consolidation thereof.

Appointed Land means the area described in Part 3 of this determination.

Board means the [Name to be provided] Land Management Board established by this determination.

Corporation means the Barengi Gadjin Land Council Aboriginal Corporation RNTBC (Indigenous Corporation Number 4395) registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*.

Minister means the Minister for the time being with responsibility for the administration of Part 8A and where required includes the relevant land Minister within the meaning of that Part.

Part 8A means Part 8A of the Act.

Public Land has the same meaning as in s 82A of the Act.

Recognition and Settlement Agreement means the recognition and settlement agreement entered into by the Corporation and the State under s 4 of the *Traditional Owner Settlement Act 2010* (Vic).

Secretary has the same meaning as in s 3 of the Act.

Traditional Owner Group Entity means the Corporation.

Traditional Owner Land Management Board has the same meaning as in s 82P of the Act.

2. Establishment of Board

Effective from the date of publication of this determination in the Victoria Government Gazette, there is established a Traditional Owner Land Management Board known as the [**Name to be provided**] Land Management Board.

Note: Under section 82C of the Act, the Board is a body corporate with perpetual succession and has an official seal. The Board may—

- (i) sue and be sued;
- (ii) acquire, hold and dispose of personal property;
- (iii) acquire, hold and dispose of leases or sub-leases in real property;
- (iv) do and suffer all acts and things that a body corporate may, by law, do and suffer.

Note: Under section 82D of the Act, the *Public Administration Act 2004* applies to the Board as if the Board were a public entity (but not a small entity) within the meaning of that Act.

3. Appointed Land

The Appointed Land of the Board is set out and described in Appendix 1.

4. Role of the Board in relation to the Appointed Land

The role of the Board is to enable the knowledge and culture of the WJJWJ People to be recognised and incorporated into the management of the Appointed Land, through the carrying out by the Board of its functions, powers and duties as set out in this determination.

5. Manner and timing of the making of subsequent joint management plans

- (a) For the purposes of sections 82B(5)(ba) and 82PA(2)(b) of the Act, preparation of joint management plans subsequent to the first joint management plan of the Board:
- (i) may commence at any time within 3 years before the relevant date; and
 - (ii) must be completed, and agreement to the plan must take place, at least 3 months before the relevant date.
- (b) In paragraph (a), relevant date means:
- (i) the expiry date of the previous joint management plan; or
 - (ii) if there is no expiry date in the previous joint management plan, the date that is 10 years after the commencement of the previous joint management plan.

Note: Under section 82PA(2)(a) of the Act, preparation of the first joint management plan of the Board must occur within 3 years of the appointment of the Board, unless a later date is determined by the Minister. Section 82PA(2)(b) of the Act requires the Minister to specify in this determination the timing and manner of preparation of subsequent joint management plans.

Note: Under Division 5A of Part 8A:

- (i) once a joint management plan is complete, it is required to undergo a public consultation process under sections 82PE, 82PF and 82PG;
- (ii) once the public consultation process is complete and any modifications have been made to the joint management plan as a result of that process, the Secretary and the Board must agree on the final plan under section 82PH;
- (iii) once the plan is agreed under section 82PH, the Minister may approve the plan under section 82PH and the plan then takes effect under section 82PI.

6. Functions Powers and Duties of the Board

6.1 Functions of the Board

The functions of the Board are:

- (a) to prepare joint management plans under Division 5A of Part 8A;
- (b) to comment or make submissions to any person or body on matters affecting or concerning the use or management of the Appointed Land;

- (c) to prepare policies about the Board and its operation and engagement with external parties;
- (d) to provide advice and make recommendations to the Minister and the Secretary in relation to the management of the Appointed Land, including in relation to policies that affect the management of the Appointed Land;
- (e) any other functions pursuant to section 82H of the Act in relation to the management functions conferred by management agreement or delegation to the Board; and
- (f) to monitor and encourage compliance with and performance of the joint management plan.

Note: In addition to the functions specified above, the Board has the following management functions under section 82H of the Act:

- (a) those management functions conferred on the Board by agreement under the Act under which the appointed land is managed;
- (b) those management functions that are delegated to the Board by a person or body who has those management functions in relation to the appointed land;
- (c) those functions in relation to joint management plans conferred under Division 5A of the Act.

6.2 Powers of the Board

Subject to this determination and the Act, the Board may exercise such powers as are necessary or convenient to perform its functions and duties including the power to—

- (a) employ staff, including an executive officer to be responsible to the Board for implementing the decisions of the Board and carrying out its functions and duties;
- (b) enter into arrangements or agreements with any other person or body for the carrying out of its functions and duties;
- (c) carry out works on the Appointed Land if required by one of the functions of the Board;
- (d) delegate any of its functions, powers or duties to a member of the Board or an employee of the Board; and
- (e) act as delegate or agent of a person or body who has management functions, powers or duties in relation to the Appointed Land when so appointed by that person or body.

7. Duties of the Board

The duties of the Board are to:

- (a) diligently carry out its functions in accordance with:

- (i) the Act and this determination;
 - (ii) the Board's powers; and
 - (iii) the agreement under Division 5 of Part 8A of the Act in force between the Corporation, the Minister and the Secretary; and
- (b) keep full and proper records of its proceedings.

Note: Under section 82J of the Act, any function, power or duty conferred or imposed upon the Board is subject to the provisions of the Act under which the Appointed Land is managed.

8. Membership of the Board

8.1 Number of positions

The Board has up to eight members appointed by the Minister by further determination published in the Government Gazette.

8.2 Method of appointment of Chair and Deputy Chair

The Chairperson and deputy Chairperson of the Board are to be appointed from among the members of the Board by the Minister. The Chairperson of the Board must be a member of the Board nominated by the Corporation and appointed to it under s 82M(3)(a) of the Act. The Deputy Chairperson must be a member of the Board of the Minister's choosing.

Note: Under section 82M(3)(a) of the Act, the Minister is required to ensure that a majority of the positions on the Board are occupied by persons nominated by the Traditional Owner Group Entity.

Note: Under section 82M(3)(b) of the Act, the Minister is required to ensure that all members of the Board have the qualifications, attributes, skills and experience that are relevant to the role, functions and operation of the Board.

Note: Under section 82M(3)(c) of the Act, the Minister is required to ensure that at least one member of the Board is appointed on the nomination of the Secretary.

8.3 Terms and conditions for individual members

- (a) A member of the Board:
 - (i) is, subject to the Act, entitled to hold office for such term not exceeding 3 years as is specified in the instrument of appointment and is eligible for re appointment;
 - (ii) is entitled to be paid such remuneration and travelling and other expenses, if any, as fixed by order made by the Minister; and
 - (iii) is subject to the *Public Administration Act 2004* (other than Part 3 of that Act) in respect of the office of the member.

- (b) A member of the Board is not liable for any loss or damage arising from any bona fide exercise or non-exercise of a power or duty or authority or discretion conferred or imposed upon him or her under the Act, or any other Act, or this determination save and except loss and damage resulting from a wilful act, default, negligence or fraud.

Note: Under section 82M(2) of the Act, the Minister may at any time dismiss a member of the Board but in doing so the Minister must have regard under section 82M(4) to any traditional owner land management agreement.

Note: Under section 82N of the Act, a person who is a member of the Board ceases to hold the office of a member of the Board if the person—

- (a) resigns in writing addressed to the Minister; or
- (b) dies; or
- (c) is dismissed by the Minister under section 82M of the Act; or
- (d) is absent from three consecutive meetings without approval of the Board to be so absent; or
- (e) becomes an insolvent under administration; or
- (f) is convicted of an indictable offence.

9. General proceedings of the Board

- (a) Meetings of the Board must be presided over by the Chairperson, or if the Chairperson is absent, by the Deputy Chairperson of the Board.
- (b) If at any time fixed for the commencement of any meeting of the Board the Chairperson or Deputy Chairperson is not present, the members present must elect one of their number to preside at the meeting.
- (c) The number of members required to constitute a quorum of the Board is five, provided always that the majority of members of a quorum are members appointed under section 82M(3)(a) of the Act.
- (d) Subject to presence of a quorum the Board may act notwithstanding a vacancy in its membership.
- (e) The Board members will strive to reach a consensual position in their deliberations.
- (f) If matters cannot be resolved by consensus they are to be determined by a majority of votes.
- (g) In the event of an equality of votes being cast on any question for decision of the Board, the Chairperson, or presiding member will have a second or casting vote.
- (h) Any member of the Board having a pecuniary interest whether directly or indirectly in any business of the Board must declare the interest on every occasion where any business in which he or she has a pecuniary interest is being considered at a meeting at which he or she is present and will not be

entitled to vote on any subject in which he or she has such a pecuniary interest.

- (i) The official seal of the Board must be kept in the custody that the Board directs and must not be used except as authorised by the Board.
- (j) The Board will meet as often as is required to perform the duties of the Board and in any case at least 4 times each year.
- (k) Subject to the Act and this determination the Board may regulate its own procedures.

THIS DETERMINATION MADE THE ____ DAY OF _____ BY

THE HON Lily D'Ambrosio MP

MINISTER FOR ENERGY, ENVIRONMENT AND CLIMATE CHANGE

[*The relevant Minister is the Minister for the time being with responsibility for the administration of Part 8A of the *Conservation, Forests and Lands Act 1987*. If the Minister is not also the Minister administering the *National Parks Act 1975* then the Minister will require the consent of that Minister before making this determination.]

Attachment 1 Appendix 1 to Determination

Appointed Land

The Appointed Land in relation to the Board is the Public Land set out and described as follows:

1. Black Range State Park

Land Description

All those pieces or parcels of land containing 11 700 hectares, more or less, situated in the Parishes of Daahl, Mockinya, Tyar and Yat Nat, County of Lowan, being the land delineated and bordered red or bordered green or coloured yellow excepting therefrom the roads shown as excluded in a plan lodged in the Central Plan Office and numbered N.P. 77.

2. Mount Arapiles-Tooan State Park

Land Description

All those pieces or parcels of land containing 7470 hectares, more or less, situated in the Parishes of Arapiles, Gymbowen, Kalingur and Tooan, County of Lowan, being the land delineated and coloured pink in a plan lodged in the Central Plan Office and numbered N.P. 81/3.

3. Wyperfeld National Park

Land Description

All those pieces or parcels of land containing 359 445 hectares, more or less, situated in the Counties of Karkaroc and Weeah, being the land delineated and coloured pink in the plan lodged in the Central Plan Office and numbered N.P. 19/5.

4. Little Desert National Park

Land Description

All those pieces and parcels of land containing 132 647 hectares more or less in the Parishes of Moray, Nateyip, Beewar, Curtayne, Ding-a-Ding, Minimay, Mortat, Catiabrim, Spinifex, Koonik Koonik, Coynallan, Jungkum, Cooack, Duchembegarra, Pomponderoo, Watchegatcheca, Winiam and Woraig-worm, County of Lowan being the land delineated and bordered red or coloured yellow in a plan lodged in the Central Plan Office and numbered N.P. 9/3.

5. Lake Albacutya Park

Land Description

All those pieces or parcels of land containing 8300 hectares, more or less, situated in the Counties of Karkaroc and Weeah, being the land delineated and bordered red or bordered green in a plan lodged in the Central Plan Office and numbered N.P. 47/1.

6. Lake Hindmarsh Lake Reserve

Land Description

All those pieces or parcels of land containing 15 341 hectares, more or less, and being Crown Allotments 13B, 13C, 16A, 1C and 3B, Parish of Nanowie; Crown Allotments 17D, 23E, 24E, and 24F, Parish of Tullyvea; Crown Allotments 27B, 27C, 27D and 2B, Parish of Hindmarsh; Crown Allotments 39D, 41A and the portion of Crown Allotment 43A within the lake reserve boundary, Parish of Jeparit; Crown Allotments 45A, 59A and 59B, Parish of Werrap; Crown Allotments 5A and 5B, Parish of Perenna and Crown Allotments 6A and 6B, Parish of Babatchio.

7. Barrabool Flora and Fauna Reserve

Land Description

All those pieces or parcels of land containing 1036 hectares, more or less, and being Crown Allotments 13A and 3A, Parish of Marma; Crown Allotment 234A, Parish of Ashens and Crown Allotments 70B, 70C and 70D, Parish of Longerenong.

8. Wail State Forest (portion only)

Land Description

A portion of Wail State Forest, being Crown Allotment 81A, Section A, Parish of Dimboola; Crown Allotment 18, Section 3, Parish of Wail; and Crown Allotment 2020, Parish of Wail, with the exception of that portion of Crown Allotment 2020 (Wail State Forest Land) to be excised and granted to the Corporation as an estate in fee simple in accordance with the Recognition and Settlement Agreement.

9. Big Desert Wilderness Area

Land Description

All those pieces or parcels of land containing 1423 square kilometres, more or less, situated in the County of Weeah, being the land delineated and shown by diagonal hatching in a plan lodged in the Central Plan Office and numbered N.P. 39/1.

10. Red Rock Bushland Reserve

Land Description

The parcel of land containing 58 hectares, more or less, and being Crown Allotment 64C, Parish of Connangorach.

11. Horsham Police Paddock Reserve

Land Description

The pieces or parcels of land containing 51 hectares, more or less, and being Crown Allotments 4M and 4N, Parish of Dooen.

12. Ararat Regional Park (portion east of the Western Highway)

Land Description

The pieces or parcels of land that are east of the Western Highway, containing 2,710 hectares, more or less, and being Crown Allotments 31B, 73A and 74A, Section 3A, Parish of Ararat; Crown Allotment 5G, Section 3, Parish of Ararat; Crown Allotment 73, Section 15B, Parish of Ararat; Crown Allotments 2031, 2030, and 2023, Parish of Ararat; Crown Allotments 28 and 30, Section Y, Parishes of Concongella South and Ararat; Crown Allotment 29, Section Y, Parish of Concongella South; and Crown Allotments 32A and 32B, Parish of Bulgana.

Schedule 3 Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk People Ancestors

The identified WJJWJ People ancestors are:

- (a) Richard Kennedy born 1853 at Morton Plains
- (b) Captain Harrison Senior born 1838 at Donald
- (c) Archibald Pepper born 1859 at Nypo Station
- (d) Thomas Marks born 1844 at Lake Hindmarsh
- (e) Pelham Cameron born 1854 at Morton Plains
- (f) Albert Coombes born 1852 at Antwerp
- (g) Augusta Robinson born 1855 at Richardson River
- (h) Arthur Wellington born 184