



Victorian Government  
Solicitor's Office

# **Traditional Owner Land Natural Resource Agreement**

**between**

**The State of Victoria**

**and**

**Barengi Gadjin Land Council Aboriginal Corporation  
RNTBC Indigenous Corporation Number 4395**

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**Date**

**2022**

**The State of Victoria**

**(State)**

**and**

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

**(the Corporation)**

## **Background**

- A. The Parties entered into the Recognition and Settlement Agreement, which includes the Natural Resource Agreement.
- B. The Parties enter into this Agreement, being a traditional owner land natural resource agreement as contemplated by Division 2A of Part 6 of the Act.
- C. This Agreement is intended to give effect to the exercise of Traditional Owner Rights of the WJJWJ People.

## **Agreed terms**

### **1. Definitions and Interpretation**

#### **1.1 Definitions**

In this Agreement:

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

**Agreed Activity** means any activity listed in clause 4(b).

**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 Animal 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 traditional owner land natural resource agreement entered into by the Parties under s 81A of the Act.

**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 s 81 of the Act.

**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 Barengi Gadjin Land Council Aboriginal Corporation RNTBC (Indigenous Corporation Number 4395).

**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.

**Dispute** means a dispute relating to the interpretation or operation of this Agreement.

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

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

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

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

**Forest Produce** has the same meaning as in s 79 of the Act.

**Further Agreement** means a further agreement entered into in accordance with s 81B of the Act.

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

**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.

**Natural Resource Agreement** means the natural resource agreement which forms part of the Recognition and Settlement Agreement.

**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.

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

**Partnership Forum** means the group established under clause 10 of the Natural Resource 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.

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

**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.

**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 3.

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

**Traditional Owner Group** has the same meaning as in s 3 of the Act and, for the purpose of this Agreement, is the WJJWJ People.

**Traditional Owner Group Entity** has the same meaning as in s 3 of the Act and, for the purpose of this Agreement, is the Corporation.

**Traditional Owner Land** means all land within the Agreement Area in which the Corporation, a subsidiary of the Corporation, or a Member has an estate in fee simple.

**Traditional Owner Land Conditions** means the conditions contained in Schedule 1.

**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.

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

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

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

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) an expression defined in the Act (including in s 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, schedule 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 day on which the Natural Resource Agreement commences.

## 3. Land to which this Agreement applies

This Agreement applies to Traditional Owner Land.

## 4. Agreed Activities

- (a) All Members may only carry out Agreed Activities in accordance with:
  - (i) this Agreement; and
  - (ii) the Law.
- (b) Subject to clause 4(a), all Members may carry out any of the following activities on Traditional Owner Land:
  - (i) access, occupy and use the land;
  - (ii) as to a Natural Resource other than land:
    - (A) access, hunt, take, use or interfere with the Natural Resource; or
    - (B) cut, dig up or remove the Natural Resource; or
    - (C) sell or give away any of the Natural Resource; or
    - (D) any other similar activity in relation to the Natural Resource;
  - (iii) take or use Water from a waterway or bore in accordance with s 8A of the *Water Act 1989* (Vic);
  - (iv) enter, remain on and camp on the land;
  - (v) gather together to conduct non-commercial cultural activities on the land; and
  - (vi) 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 4(b)(i) to 4(b)(v) above.
- (c) Subject to clause 4(a), for the purpose of carrying out an Agreed Activity a Natural Resource may be:
  - (i) approached, damaged, destroyed, fished, hunted, killed, injured, obstructed, released or otherwise interfered with; or
  - (ii) possessed, kept, moved or processed; or
  - (iii) felled, ringbarked or sapringed; or
  - (iv) otherwise similarly dealt with.



## **5. Traditional Owner Land Conditions**

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

## **6. Consent for carrying out Agreed Activities**

- (a) An Agreed Activity must not be carried out on Traditional Owner Land under this Agreement unless the Member carrying out the activity has first obtained the consent of the owner of the relevant Traditional Owner Land to the carrying out of the activity.
- (b) This Agreement does not restrict or limit the rights of any registered proprietor of an estate in fee simple in the Traditional Owner Land.

## **7. Subsidiary decision making powers under this Agreement**

- (a) 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.
- (b) Those people given discretionary authority pursuant to clause 7(a) may also be members of the Partnership Forum.
- (c) The Parties acknowledge that Further Agreements may provide for the carrying out of activities for commercial purposes as provided for by the Act.
- (d) Further Agreements may be made independently of the Partnership Forum.

## **8. Section 80D of the Act unaffected**

Nothing in this Agreement limits the power of the Minister pursuant to s 80D of the Act.

## **9. Confirmation of membership**

Schedule 4 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.

## **10. Act or omissions of Members**

- (a) 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.
- (b) Subject to clause 10(c), 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).
- (c) The Parties agree that the Corporation is not responsible for actively policing compliance by Members of this Agreement, any Further Agreement or any other document connected with this Agreement.

## **11. 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 if a dispute arises in relation to this Agreement.

## **12. General**

### **12.1 Variation**

- (a) This Agreement may only be varied by the Parties by mutual agreement in writing.
- (b) Without derogating from clause 12.1(a), the Parties may vary any deadlines in this Agreement by an exchange of letters.
- (c) 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.

### **12.2 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.

### **12.3 Communications**

- (a) The Parties will send any correspondence or notices in connection with this Agreement to the relevant Party's representative specified in Schedule 13 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; 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.

### **12.4 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, between the Parties which qualify or

supplement the written terms of the Expanded Settlement Package, except where the Expanded Settlement Package otherwise provides.

## **12.5 Counterparts**

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

## **12.6 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.

## **12.7 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.

## **12.8 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.

## Signing page

Executed **as an agreement**

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



Signature of witness



Jaclyn Symes

I confirm that all of the requirements of section 12 of the *Electronic Transactions (Victoria) Act 2000* have been met.

Ken Macpherson

Name of witness (*please print*)

25/10/2022

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*)

Name of director (*printed*)

Date:

Date:

## **Schedule 1      Traditional Owner Land Conditions**

### **1.      Interpretation and Definitions**

In this Schedule:

- (a) Code of Practice for the Welfare of Animals in Hunting means the code of practice of that name issued under s 7 of the *Prevention of Cruelty to Animals Act 1986* (Vic);
- (b) Grasstree means any plant of the taxon *Xanthorrhoea*;
- (c) Protected Flora has the same meaning as in s 3(1) of the *Flora and Fauna Guarantee Act 1988* (Vic); and

### **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**

A Member may carry out Agreed Activities with respect to Vegetation (including Protected Flora) or Stone for commercial purposes provided that 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.

### **4.      General**

- (a) In carrying out Agreed Activities, Members must comply with any Agreed Vegetation List or Agreed Animal List, and comply with:
  - (i) the Sustainability Principles; and
  - (ii) WJJWJ People law and custom, to the extent that it does not conflict with this Agreement.
- (b) Agreed Activities:
  - (i) 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 to the extent that the Agreed Activity is permitted under the determination or notice; and
  - (ii) 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.      Animals**

- (a) 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:
  - (i) safety; and

- (ii) the welfare and humane treatment of animals.
- (b) Hunting may only be carried out in accordance with the Code of Practice for the Welfare of Animals in Hunting.
- (c) 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).
- (d) 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.
- (e) 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.

## Schedule 2 Discretionary Authority

The persons given discretionary authority in accordance with clause 6 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, Grampians 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;
  - (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, Grampians Region also is given discretionary authority; and
  - (v) Chief Conservation Regulator.

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## **Schedule 3      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 WJJWJ People, 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 4 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 membership document issued by the Corporation, identifying them as a Member who possesses rights under this Agreement (Traditional Owner Rights Document). Minors (under the age of 18) do not need to establish their entitlement to exercise rights under this Agreement if they are in the company of an adult who possesses such rights.

The State and the Corporation may agree in writing to alternative protocols for establishing entitlement under this Agreement, particularly in relation to Members who have sensitivities or vulnerabilities relating to the carrying of identification documents.

With respect to the issuing and management of Traditional Owner Rights Documents:

- (a) The Corporation may issue a Traditional Owner Rights Document to Members who propose to carry out any activities pursuant to this Agreement.
- (b) The Traditional Owner Rights Document must be indelible and must be issued and administered by the Corporation.
- (c) (The Traditional Owner Rights Document must include the following details of the holder:
  - (i) name;
  - (ii) residential address; and
  - (iii) a unique emblem or insignia of the Corporation.
- (d) The Corporation agrees to maintain an accurate register of those Members to whom the Traditional Owner Rights 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 Traditional Owner Rights Document.
- (e) The State will respect the privacy of any person holding a Traditional Owner Rights Document and will comply with the *Privacy and Data Protection Act 2014* (Vic).
- (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 requesting to inspect the Traditional Owner Rights Document. The Authorised Officer may act to ensure compliance with this Agreement.
- (g) If the person fails to produce the Traditional Owner Rights Document to establish their entitlement to exercise rights under this Agreement, the Authorised Officer shall adopt a flexible approach, taking into account the person's social and cultural circumstances, to otherwise establish their entitlement, such as:
  - (i) by checking the person's Victorian Driver's Licence or Victorian Firearm Licence against the Corporation's membership register or a confirmation of Aboriginality issued by the Corporation to the Member; or

- (ii) in accordance with any existing alternative protocol agreed in writing between the Corporation and the State.
- (h) If the person is an unaccompanied minor then their entitlement to exercise rights under this Agreement may be confirmed by subsequent telephone call to the Corporation, or subsequently in the presence of their parent or guardian, where the parent or guardian is confirmed to possess an entitlement to exercise rights under this Agreement.
- (i) If the person is not able to establish their entitlement to exercise rights under this Agreement then the Authorised Officer may act in accordance with their statutory duties. However, if the person is later able to provide a Traditional Owner Rights Document, then any fine, caution, reprimand or penalty to which the Member may have been subject because they had not established their entitlement to exercise rights under this Agreement will be withdrawn, not enforced and of no further effect (where permitted under law).
- (j) The State and the Corporation agree to review the operation of the Traditional Owner Rights Document as a means for verifying Traditional Owner Group membership, if either Party requests in writing. Facilitating the exercise of traditional owner rights by Members who have sensitivities or vulnerabilities relating to the carrying of identification documents will be considered as part of any such review.