**PROCESS GUIDELINE
Consulting with TLaWC on Advisory activities under the LUAA**

Introduction

Consultation is a procedural requirement for Advisory activities under the *Traditional Owner Settlement Act 2010*. This guideline seeks to assist officers in carrying out that consultation.

**Consultation on the proposed Advisory activity must comply with or exceed the minimum requirements set out in the *Ministerial Directions as to Advisory Activities*** <link to Ministerial Directions, provided elsewhere in the materials>.

See also What’s the Process – Taunguring LUAA <link to that page> for more information and template materials in relation to Advisory activities.

Process overview

Under the *Traditional Owner Settlement Act* *2010* and the Land Use Activity Agreement, a government department, agency or council must notify TLaWC (the Taungurung Land and Waters Council) when activities classified as ‘Advisory’ are proposed.

The **purpose** of the notification is to provide TLaWC with an opportunity to comment or make submissions about a proposed activity. It is important that the notification includes (at a minimum) all the content specified in the Ministerial Directions, so that TLaWC can properly assess the impact it may have on Traditional Owner rights.

The consultation process is **triggered** when TLaWC is given notice and advises that it wishes to be consulted about the proposed Advisory activity and its effects on Traditional Owner rights (as recognised under the 2018 Recognition and Settlement Agreement). This may be expressed in the form of comments responding to a notification sent by a decision maker, as a written request for further information, or as a request for a meeting.

Such a response must be made within the **initial period** set out in the notice. That period must be a minimum of 28 days from (and inclusive of) the notification date.

The process of consultation is flexible and will vary depending on the nature and circumstances of the matter. It must involve giving TLaWC a meaningful opportunity to express its views, and properly considering those views before a making a decision. The time taken on consultation should be reasonable and proportionate to the activity under consideration.

The Ministerial Directions specify, as a minimum standard, that the decision maker must:

* + - provide a response that acknowledges receipt of those comments;
		- actively consider those comments and, where practical, discuss those comments, and possible ways to resolve the issues with the Corporation; and
		- send a letter (where requested by the Corporation) after making the decision detailing what, if any, action was taken in response to the comments received.

Appropriate topics for consultation may include, for example:

* + - ways of minimising the impact of the proposed activity on Traditional Owner rights in land and water,
		- Traditional Owner access to lands and waters,
		- the manner in which the activity or anything authorised by the activity might be done.

The requirement for decision makers to consult with TLaWC **does not give TLaWC a right to negotiate or a right of veto**. The decision maker does not need to seek TLaWC’s consent to the proposed activity.

However, in your decision-making, you must always act in accordance with the principles of natural justice and take into account all relevant considerations when making your decision about the activity. These include all relevant comments or submissions from TLaWC. This ensures that the potential impact of the proposed activity on Traditional Owner rights and interests is considered before a decision is made to proceed.

Comments received may be minor and easily incorporated into the activity. Or they may require deep consideration, provision of additional information, face-to-face meetings or inspecting the site of the proposed activity. In some cases, your consideration of TLaWC’s comments may result in a decision to proceed in a modified way, or to not proceed.

What to consider if a meeting is requested

Meetings are not a necessary component of every consultation process. However, as noted above, they may be requested by TLaWC and may be an appropriate way of meeting or exceeding the minimum standards specified in the Ministerial Directions. The following guidance is offered to help you do so.

1. **Preparing for the meeting**

In preparing for the meeting, consider the following:

* all relevant comments received from TLaWC
* preparation of visual materials such as maps, plans, design drawings
* any necessary travel arrangements
* catering, and
* what, if any, next steps you might consider.

State agencies and other decision makers are responsible for adequate internal resourcing of their consultation, by way of budget and having appropriately skilled personnel within their agencies to manage LUAA processes. There is no legal obligation for the State to resource TLaWC to respond to Advisory activities (unlike Negotiation activities). However, it may be mutually beneficial for decision makers to support TLaWC’s involvement in consultation processes.

1. **Holding the meeting**

The meeting is a time to consult.

* Explain the proposed activity (including through maps, plans, etc.).
* Listen.
* Answer questions and discuss options.

The conversation at the meeting should cover:

* ways of minimising the impact of the proposed activity on Traditional Owner rights
* the access to the proposed activity area (if relevant); and
* the way in which the activity may be done (if relevant).

Make an accurate **record** of the consultation.

Where appropriate, use part of the meeting to **walk through the proposed activity area**. This may provide a useful way to explain and discuss the proposed activity, proposed area, any access issues and its potential impact on Traditional Owners.

It is possible that as a result of the meeting **further consultation** is required or requested by the TLaWC. This could be in the form of another meeting or through the provision of further information (such as modified plans/design drawings) for comment.

The time of, and need for, further consultation will be decided on a case-by-case basis.

Finalising your decision about the proposed activity

Whether you received written comments, met with TLaWC, or both, you now need to finalise your decision.

Ensure that you **consider all relevant comments**.

Record your decision as to whether you will:

* 1. proceed with no changes to the activity,
	2. proceed in a modified way (for example, adjusting the location or the design of the project), or
	3. not proceed.

It is good practice to explain your decision, including your response to any comments, to TLaWC. If TLaWC requests it, you must send a letter that details what, if any action, was taken in response to the comments you received from them.