*Note: this template is for use by government agencies and statutory authorities when they are both the Decision Maker and the Responsible Person for a Negotiation (Class B) activity (e.g. Major Public Works).*

*See separate template for where the Decision Maker is not the Responsible Person.
See separate template for Negotiation (Class A) activities.*

{Correspondence reference}

20 October 2020

{Insert name of relevant TLaWC employee}

RSA Implementation Manager

Taungurung Land and Waters Council

PO Box 505

Broadford VIC 3658

rsa@taungurung.com.au

Dear {Insert name of relevant TLaWC employee},

**Notification of a Negotiation (Class B) activity under the Land Use Activity Agreement**

Please find enclosed notification of a Negotiation (Class B) activity.

In accordance with the *Traditional Owner Settlement Act 2010*, {name of your organisation} is both the Responsible Person and the Decision Maker for this activity under the Land Use Activity Agreement (LUAA). As such we are required to negotiate and reach agreement with you on any conditions you may wish to include as part of providing consent to the activity. We will pay your reasonable negotiation costs.

|  |
| --- |
| *State agencies who are the ‘Responsible Person’ or who are issuing a Public Land Authorisation:*Please note, the State will provide Community Benefits for this activity. Their value is determined in accordance with the formulas contained in Schedule 7 of the LUAA. They may be provided in monetary form or, if agreement is reached, in non-monetary form.*OR (other organisations) – delete whichever paragraph does not apply:*Please note, Community Benefits are negotiable for this activity. They may be, but are not required to be, assessed with reference to the formulas in Schedule 7 of the LUAA. They may be in monetary or non-monetary form. |

As a starting point to the negotiations we ask that you acknowledge receipt of this notification, and provide some initial thoughts regarding the proposed activity and the types of community benefits that may be appropriate in this instance.

Please contact me on {phone number} or email {email address} if you have any questions, require further information about the activity, or wish to arrange a meeting.

Yours sincerely,

**{Name and role}**

NOTIFICATION OF INTENTION TO UNDERTAKE A

**NEGOTIATION (CLASS B) ACTIVITY**

UNDER DIVISION 2 OF PART 4,
*TRADITIONAL OWNER SETTLEMENT ACT 2010*

**This notice relates to a proposal to {summary of activity} which is a Negotiation (Class B) activity under section 32(2)(c) of the *Traditional Owner Settlement Act 2010.***

**GIVEN TO:** Taungurung Land and Waters Council

**GIVEN BY:** {Name of organisation}

**DATE OF NOTICE:** 20 October 2020 **REFERENCE: {number}**

**THE PROPOSED LAND USE ACTIVITY**

|  |
| --- |
| {This section MUST include a detailed description of the proposed activity: * What is the proposed activity?
* What is its purpose?
* A detailed description of any project of which this is a part
* The period when the activity is expected to be carried out
* Any plan that relates to the carrying out of the activity}
 |

***LEGAL AUTHORITY***

|  |
| --- |
| This activity is act authorised by {reference to the Act under which the activity is authorised (e.g. *Crown Lands (Reserves) Act* 1978)}, if the requirements of the *Traditional Owner Settlement Act 2010* are also met. |

***DESCRIPTION OF THE LAND OR WATERS AFFECTED***

|  |
| --- |
| {Insert detailed cadastral description: Allotment, Section, Parish, County.} {Insert local road or street address or description of geographical location GPS} {Refer to and attach: * Cadastral plan extract,
* Copy of topographic map at scale that clearly shows site or links to known geographical features,
* Where appropriate, copies of drawings, plans or specifications,
* If available, digital, aerial or other photographs of the site}

 |

***VALUATION***

|  |
| --- |
| {Include any valuation by the Valuer-General of the monetary value of the relevant agreement land, rental to be paid, or other information that is relevant to the consideration of community benefits} |

***PARTIES ARE REQUIRED TO NEGOTIATE IN GOOD FAITH***

Both {Name of organisation} and Taungurung Land and Waters Council must negotiate with each other in good faith. Enclosed with this notification is a statement relating to good faith negotiating.

***SUMMARY OF THE PROCESS TO BE FOLLOWED***

We are each required to negotiate in good faith regarding the proposed activity and any conditions to which the activity is subject. In doing so, we must consider the nature of the activity and its impact on the Traditional Owner rights of the Taungurung people.

If agreement is reached, we are required to prepare and sign an agreement in writing.

If agreement cannot be reached after six months of good faith negotiation, either party can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a variety of determinations.

***FURTHER INFORMATION***

Please contact me on {phone number} or {email address} for further information or explanation of the proposed activity.

Yours sincerely,

**{Name and role}**

**Good Faith Negotiating Statement**

Good faith negotiating requires the parties to come to the table with open minds, and with a genuine desire to reach an agreement, as opposed to simply adopting a rigid, pre-determined position.

Negotiation involves communicating, having discussions, or conferring with a view to reaching an agreement. Negotiation will often involve making concessions in order to achieve agreement. The expression ‘good faith’is understood to involve honesty and sincerity of purpose or intention. In the context of the *TOS Act*,good faith negotiations also involve considering whether, in the circumstances of each case, there has been a reasonable effort to negotiate in order to reach agreement.

A preparedness to shift position or compromise in order to achieve agreement is an important part of good faith negotiations. But good faith does NOT mean that a party has an obligation to give up and agree to the other party’s views, or that a negotiated agreement must be reached between the parties. Good faith is about the quality of the party’s conduct by reference to what it has done or failed to do in the negotiations.

**DO:**

* Give special regard as to the nature of the activity you are proposing and the impact on the Traditional Owner rights of the Traditional Owner group
* Respond to communications with the other party within reasonable timeframes
* Make proposals or provide options for reaching agreement at the first instance
* Remain open minded, and be frank and open in your communication
* Be prepared to compromise
* Keep the lines of communication open with the other party
* Follow up matters with the other party if they haven’t responded
* Attempt to organise meetings between yourself and TLaWC
* Take reasonable steps to facilitate and engage in discussions with TLaWC
* Respond to reasonable requests for relevant information within a reasonable time
* Make counter proposals
* Go beyond merely facilitating discussions. Good Faith negotiating requires active participation in discussions and the making of proposals, and
* Keep accurate records of any information pertaining to the negotiations.

**DON’T:**

* Unreasonably delay initiating communications in the first instance
* Fail to make proposals in the first instance
* Stall negotiations by unexplained delays in responding to correspondence or telephone calls
* Unnecessarily postpone meetings
* Send negotiators without authority to do more than argue or listen
* Refuse to agree on trivial matters
* Shift position just as agreement seems in sight
* Adopt a rigid non-negotiable position
* Engage in conduct which may harm the negotiating process *(e.g. issuing inappropriate press releases)*
* Refuse to sign a written agreement in respect of the negotiation process or otherwise
* Fail to do what a reasonable person would do in the circumstances
* Fail to disclose facts or legal argument that you intend to rely on, or
* Otherwise engage in misleading or other unsatisfactory or unconscionable conduct.