## Explanatory Note: Obligations of ‘Responsible Persons’ under the Taungurung Land Use Activity Agreement

*This document provides general information about the obligations of a Responsible Person. It is not intended to be, or to replace, legal advice. See also the general information available on the DJCS website. <URL for Taungurung LUAA Overview page>*

The Taungurung LUAA (Land Use Activity Agreement) gives effect to general provisions in the *Traditional Owner Settlement Act 2010.* That Act distinguishes between the roles of the Decision Maker and the Responsible Person (RP). In some cases, the same person or body has both roles.

The Decision Maker is required to ensure that the LUAA has been complied with before deciding to proceed with an activity. That includes ensuring that the Responsible Person has fulfilled their obligations under the *Traditional Owner Settlement Act 2010* and the LUAA.

The RP is required to negotiate with the Taungurung Land and Waters Council (TLaWC) for activities defined in the LUAA as Negotiation activities or Agreement activities.

### Negotiation about whether the activity can proceed, and on what conditions

#### Agreement activities

For all Agreement activities, the RP must seek the consent of TLaWC. Without that consent, the activity cannot proceed.

#### Negotiation activities (Class A and Class B)

For Negotiation activities, the RP and TLaWC must negotiate in good faith about the activity. This may include whether the activity proceeds, and on what conditions.

If agreement cannot be reached after at least six months of good faith negotiations, either party may apply to VCAT for an order.

For any Negotiation activity, VCAT can make orders about:

* what conditions may be placed on the activity
* whether a Community Benefit payment must be made, and in what amount.[[1]](#footnote-1)

For Negotiation (Class A) activities, VCAT may also make orders about whether the activity may proceed. For Negotiation (Class B) activities, VCAT cannot order that the activity not be allowed to proceed.

### Negotiation about Community Benefits

Where the State is the RP, or where it is issuing a Public Land Authorisation (i.e. a lease, licence or permit under specified legislation), it will provide Community Benefits. The value of these benefits is determined using formulas in Schedule 7 of the LUAA. That Schedule also allows the parties to reach agreement about providing some or all of the Community Benefits in non-monetary form.

However, Schedule 7 does not apply where the RP is:

* an applicant for an ERIA (Earth Resources or Infrastructure Authorisation) that is a Negotiation activity, or
* a person or body who is both Decision Maker and Responsible Person, but is not a State agency (e.g., a local government or statutory authority).

In those situations, the RP and TLaWC must negotiate about the value and form of Community Benefits. They may agree to base their negotiation on the provisions of Schedule 7, but they are not required to do so. As noted above, either party may apply to VCAT for an order if they are unable to reach agreement after at least six months of good faith negotiations.

### Costs of negotiation

The RP must pay TLaWC’s reasonable negotiation costs, except if TLaWC applies to VCAT for an order. Reasonable costs are calculated as prescribed by the *Traditional Owner Settlement (Negotiation Costs) Regulation 2015.*

### After reaching agreement

Any agreement with TLaWC about a Negotiation or Agreement activity must be written and signed by both parties (by all parties, if more than two).

The RP and TLaWC must give a signed notice to the Decision Maker that such an agreement has been reached. The Decision Maker may then decide that the activity can proceed.

1. VCAT may also make orders about other matters, such as the classification of the activity, whether the parties have negotiated in good faith, or the assessment of reasonable negotiation costs. [↑](#footnote-ref-1)