



Victorian Government
Solicitor's Office

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.
- B. Pursuant to s 8 of the Act, a Recognition and Settlement Agreement may include a natural resource agreement with the Traditional Owner Group Entity in relation to land that is the subject of a Recognition and Settlement Agreement.
- C. The Parties enter into this Agreement, being a natural resource agreement as contemplated by s 8 and Part 6 of the Act.
- D. This Agreement is intended to give effect to the exercise of the Traditional Owner Rights of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk 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 6(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 natural resource agreement.

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(2) 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.

Effective Date has the same meaning as in the Recognition and Settlement 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 80C of the Act.

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

Identified Ancestors means:

- (a) the ancestors from whom the WJJWJ Native Title Holders are descended in accordance with the Consent Determination; and
- (b) the ancestors of family groups who have met the requirements of paragraph (b) of the definition of 'WJJWJ People' at the date of this Agreement.

Law means:

- (a) common law and equity; and

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

Member means a member of the Traditional Owner Group.

Natural Resource means land, and, in relation to land, Vegetation, Animals, Water and Stone.

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.

NRA Land means the land described in clause 5.

NRM Funding means funding paid to the Corporation under clause 6 of the Recognition and Settlement Agreement to enable the Corporation to participate in the management of Natural Resources.

Participation Strategy Principles means the principles set out in Schedule 3.

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

Partnership Forum means the group established under clause 11 of this 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.

Procurement Strategy for Natural Resource Management means the strategy contained in Schedule 6.

Public Land means land within the Agreement Area which falls within the definition of public land in s 3 of the Act.

Public Land Conditions means the conditions contained in Schedule 1.

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

Relevant Minister means each Minister required to consent to this Agreement under s 80A of the Act.

Representative Structures means those entities or groups that represent the Traditional Owner Group, being the Corporation and 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 4.

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 Conditions has the same meaning as in the Traditional Owner Land Natural Resource Agreement.

Traditional Owner Land Natural Resource Agreement means the traditional owner land natural resource agreement entered into under s 81A of the Act in Attachment 2 of the Recognition and Settlement Agreement, and which forms part of the Expanded Settlement Package.

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 Native Title Holders means the people determined to hold native title in the Consent Determination.

WJJWJ People means:

- (a) the WJJWJ Native Title Holders; and
- (b) other persons who are the descendants of an ancestor not included under paragraph (a):
 - (i) where there is evidence that the ancestor held native title rights and interests in the Agreement Area in accordance with the traditional laws and customs of the WJJWJ People; and
 - (ii) who are accepted by other members of the WJJWJ People as belonging to the Agreement Area in accordance with the traditional laws and customs of the WJJWJ People.

The Identified Ancestors are set out in Schedule 14 of the Recognition and Settlement Agreement. The WJJWJ People are the Traditional Owner Group for this 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 Effective Date.

3. Ministerial consent

The consent of each Relevant Minister is attached at Schedule 7.

4. Participation in management of Natural Resources

- (a) The Parties agree that the Corporation has the right to participate in the management of the Natural Resources of the land, and the Parties will work together to develop strategies to enable the Corporation to:
- (i) participate; and
 - (ii) obtain employment for Members,
- in the management of Natural Resources utilising in the first instance the NRM Funding specified for this purpose.
- (b) The strategies referred to in clause 4(a) will be developed through the Partnership Forum and in accordance with the Participation Strategy Principles.

5. Land to which this Agreement applies

This Agreement is made under s 80 of the Act and applies to all Public Land, except for any Public Land:

- (a) on which infrastructure exists as at the day on which this Agreement commences; and
- (b) the infrastructure has the effect of excluding public access, either practically or by regulation, continuously or from time to time.

6. 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 6(a), all Members may carry out any of the following activities on NRA 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 6(b)(i) to (v) above.
- (c) Subject to clause 6(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 sap-ringed; or
 - (iv) otherwise similarly dealt with.

7. Exemption from certain regulations

The State agrees that any Agreed Activity undertaken in accordance with this Agreement, is part of Aboriginal tradition, to the extent that term is defined in the National Parks Regulations 2013.

8. Commercial Tours

- (a) The State agrees to waive the fee for any commercial tour operator licence under the Tour Operator Licence Fee Regulations current at the Effective Date for which the Corporation or any Member applies in respect of any commercial cultural tours to be conducted within the Agreement Area.
- (b) The Corporation or a Member:
 - (i) must obtain any commercial tour operator licence to which clause applies before conducting commercial tours within the Agreement Area; and
 - (ii) remains liable to pay all costs associated with conducting a cultural tour in accordance with any relevant tour operator licence.
- (c) At the expiry or termination of the current Tour Operator Licence Fee Regulations the Corporation or a Member must comply with any replacement regulations as they apply to the Corporation or a Member.
- (d) For the purposes of this clause Tour Operator Licence Fee Regulations means the:
 - (i) *Forests (Tour Operator Licence Fee) Regulations 2021;*
 - (ii) *Land (Tour Operator Licence Fee) Regulations 2021;*
 - (iii) *National Parks (Tour Operator Licence Fee) Regulations 2021;*
 - (iv) *Wildlife (Tour Operator Licence Fee) Regulations 2021; and*

- (v) *Crown Land (Reserves) (Tour Operator Licence Fee) Regulations 2021.*

9. Public Land Conditions

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

10. 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 10(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.

11. Partnership Forum

- (a) The Parties will establish the Partnership Forum, on the commencement of this Agreement.
- (b) The purpose of the Partnership Forum is to:
 - (i) review the implementation and effectiveness of this Agreement and the Traditional Owner Land Natural Resource Agreement;
 - (ii) exchange data and expertise regarding the general health, welfare and abundance of Natural Resources in the Agreement Area;
 - (iii) develop, agree, implement, monitor and review strategies which promote or enable Members to participate in Natural Resource management, including through the Participation Strategy Principles;
 - (iv) develop and consider the content of or amendments to:
 - (A) an Agreed Vegetation List; or
 - (B) an Agreed Animal List;
 - (v) consider whether any Further Agreement is desirable and, if so, prepare draft terms to be considered by the Parties;
 - (vi) consider whether the provisions in Schedule 1 and the Traditional Owner Land Natural Resource Agreement are appropriate, and whether they should be amended to allow for increased:
 - (A) efficacy;

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- (B) ease of use and application;
 - (C) recognition of the Traditional Owner Rights of the Members;
 - (D) permissible commercial purposes; or
 - (E) protection or sustainability of a Natural Resource;
- (vii) review the application of Item 4(b)(i) of Schedule 1 and resolve any issues raised by either Party as to the areas or Agreed Activities to which that Item applies.
- (c) The Partnership Forum will hold its initial meeting within 3 months of the commencement of this Agreement.
- (d) At its initial meeting, the Partnership Forum will:
- (i) consist of:
 - (A) two representatives of the State; and
 - (B) three representatives of the Corporation,appointed by the relevant Party, all of who must be in attendance for the forum to have quorum;
 - (ii) meet:
 - (A) at the cost of the State; and
 - (B) at an agreed location within the Agreement Area;
 - (iii) be chaired by a representative of the Corporation; and
 - (iv) make decisions:
 - (A) by consensus;
 - (B) guided by the Sustainability Principles; and
 - (C) in accordance with the Decision Making Principle; and
 - (v) consider and determine its ongoing composition, decision-making processes, and terms of reference, which must be consistent with the Partnership Forum principles in Schedule 3.
- (e) The Partnership Forum does not prevent either Party from engaging with each other and other agencies, bodies, or persons in relation to Natural Resources or matters for which the Partnership Forum has responsibilities.
- (f) The Corporation will report on levels and manner of take of Animals at the Partnership Forum to allow for mortality and welfare to be accounted for in relevant state-wide and national estimates and reports, and to assist the Partnership Forum's discussions on sustainability and Animal welfare.

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- (g) The Parties will make arrangements for Members to discuss levels of take and expected take with local Authorised Officers in addition to reporting through the Partnership Forum.
- (h) If either Party determines that the taking, use or management of Natural Resources under this Agreement or the Traditional Owner Land Natural Resource Agreement is adversely impacting on the sustainability or welfare of those Natural Resources (an Adverse Impact), it may write to the other Party:
- (i) outlining the scope and cause of the Adverse Impact;
 - (ii) providing any evidence or data it has in relation to the Adverse Impact; and
 - (iii) convening a Partnership Forum.
- (i) Provided the Parties agree, acting reasonably, that an Adverse Impact has occurred, a Partnership Forum may, taking into account any action the State has taken or is proposing to take in regulating or limiting the right of the general public to take, use or manage the relevant Natural Resource:
- (i) exchange data and expertise regarding the Adverse Impact;
 - (ii) develop processes or action plans to address the Adverse Impact;
 - (iii) determine any areas where the taking of Natural Resources should be modified, restricted or limited; and
 - (iv) consider whether:
 - (A) an Agreed Vegetation List;
 - (B) an Agreed Animal List; or
 - (C) any other Further Agreement,is necessary or desirable.
- (j) Where clause 11(i) applies and the Partnership Forum cannot agree on a position regarding the take and use of an individual species, the Precautionary Principle will apply to mitigate the risk to the particular species potentially under threat, provided that applying the Precautionary Principle does not have the effect of imposing greater restrictions on the rights of the Members under this Agreement than any equivalent rights of the general public.
- (k) The Parties will give effect to the Procurement Strategy for Natural Resource Management.

12. Section 80D of the Act unaffected

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

13. Confirmation of membership

Schedule 5 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.

14. 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 14(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.

15. General

15.1 Variation

- (a) This Agreement may only be varied by the Parties by mutual agreement in writing.
- (b) Without derogating from clause 15.1(a), the Parties may vary any deadlines in this Agreement by an exchange of letters.

15.2 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.

15.3 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.

15.4 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.

15.5 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, except where the Expanded Settlement Package otherwise provides.

15.6 Counterparts

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

15.7 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.

15.8 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.

15.9 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 the **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 Public Land Conditions

1. Interpretation and Definitions

In this Schedule:

Camping Ground means any area reserved or otherwise set aside for the purposes of camping and associated recreational use by the general public.

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).

Domestic Firewood Collection Rules means rules regarding the collection of firewood or timber from a Firewood Collection Area which are provided for in regulations or a determination published in the Government Gazette.

Firewood Collection Area has the same meaning as in s 3 of the *Forests Act 1958* (Vic).

Grasstree means any plant of the taxon *Xanthorrhoea*.

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) A Member must not carry out Agreed Activities for commercial purposes with respect to Animals or Water.
- (b) A Member may carry out Agreed Activities with respect to Vegetation or Stone on land for commercial purposes that are consistent with the purpose for which the land is managed if:
 - (i) the quantity of Vegetation or Stone taken is no more than the quantity that the Member would take for Non-Commercial Purposes;
 - (ii) 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; and
 - (iii) the Member does not take any logs which are visibly hollow or which have growing moss or fungi.

4. General

- (a) In carrying out Agreed Activities, Members must comply with any Agreed Vegetation List or Agreed Animal List, and
 - (i) the Sustainability Principles; and
 - (ii) WJJWJ People's 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:
 - (A) to the extent that the Agreed Activity is permitted under the determination or notice;
 - (B) as provided for in Item 5(b) (regarding Vegetation); and
 - (C) as provided for in Item 7 (permitted camping);
 - (ii) cannot be carried out on land over which exclusive possession rights and interests exist; and
 - (iii) 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. Vegetation and Stone

- (a) Members may carry out any of the Agreed Activities in clause 6(b)(ii) of this Agreement with respect to Vegetation and Stone, unless prohibited by an Agreed Vegetation List.
- (b) The restriction in Item Schedule 14(b)(i) does not apply to Agreed Activities in respect of Vegetation in an area of forest reserve or forest park that has been set aside for the purpose of protection, planting or re-establishment of trees or Vegetation.
- (c) Firewood and timber may be collected only from the forest floor.
- (d) If a determination has been made regarding the collection of firewood for a class of persons for a Firewood Collection Area, then Members may take firewood or timber from that area in accordance with the Domestic Firewood Collection Rules which apply to that class of persons.
- (e) If a determination has not been made regarding the collection of firewood for a class of persons for Firewood Collection Area, then Members may take firewood and timber from that area in accordance with the Domestic Firewood Collection Rules which apply to members of the public.

6. 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.

7. Camping

- (a) A Member may camp at any Camping Ground in accordance with any rules or regulations, and must comply with any booking or other allocation system.
- (b) If the land manager agrees to a Member camping on land that is reserved under regulation 45 of the Wildlife (State Game Reserve) Regulations 2014 as an area where camping is prohibited then the restriction in Item Schedule 14(b)(i) does not apply.
- (c) No fee is payable for:
 - (i) camping; or
 - (ii) for using a vehicle for camping in a forest reserve,unless the Agreed Activity is undertaken on an area of land that is leased or licenced to a third party for a commercial purpose.

8. Campfires

A Member may light, kindle or maintain a campfire or barbeque, that uses solid fuel and that is in the open air in a regulated fire area within the meaning of the *Forests Act 1958* (Vic) where:

- (a) the area of the campfire or barbeque is more than one square metre in any direction; or
- (b) a dimension of any piece of the solid fuel that is being used in the campfire or barbeque is more than one metre,

if the Member is authorised in writing by an Authorised Officer or the relevant land manager.

9. Organised events

Members may gather together and conduct organised non-commercial events on the land if:

- (a) they give reasonable prior notification to the land manager; and
- (b) the land manager confirms that no prior authorisation has been granted to any other person to occupy or use the area of land in a manner that would be inconsistent with the proposed use by Members.

Schedule 2 Discretionary Authority

The persons given discretionary authority in accordance with clause 10 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.

Schedule 3 Partnership Forum Principles and Participation Strategy Principles

1. Partnership Forum Principles:

The Partnership Forum will:

- (a) make decisions by consensus;
- (b) have a majority of its members at each meeting representing the Corporation;
- (c) meet at least annually;
- (d) permit the attendance of guests with expertise relevant to the Partnership Forum's responsibilities; and
- (e) establish subcommittees and working groups as appropriate, which may include the Partnership Forum's members and others with expertise or knowledge relevant to Natural Resources and the Partnership Forum's responsibilities.

2. Participation Strategy Principles:

- (a) The Parties will develop a common understanding of participation and employment in the management of Natural Resources in the context of this Agreement.
- (b) The Parties will develop appropriate strategies to enable the Corporation and the Members the opportunity to participate in, or obtain employment in, the management of Natural Resources, in accordance with the following principles:
 - (i) The Parties acknowledge that the WJJWJ People have traditionally managed Natural Resources within the Agreement Area over thousands of years, and have a right as well as a cultural obligation to continue to participate in its management.
 - (ii) The Parties will approach the management of Natural Resources as partners and will develop appropriate strategies in good faith.
 - (iii) The strategies will give effect to the WJJWJ People country plan (as amended or replaced from time to time), its priorities, aims and aspirations.
 - (iv) Where the State has Natural Resource management functions or responsibilities in the Agreement Area, the strategies will include, at a minimum, that the State will:
 - (A) provide the Corporation with the opportunity for active participation in the design, decision making, development, review and monitoring of all Natural Resource management policies, programs, projects, strategic plans, management plans, action plans, research, assessments, investigations and reviews;

- (B) provide the opportunity for employment of Members in the management of Natural Resources including in policy engagement, planning, emergency management, compliance, education, and research roles;
 - (C) subject to agreement by the Corporation, explore measures to better incorporate traditional ecological knowledge, where and when available, into natural resource management decisions, planning and policy making processes;
 - (D) require the development of policy area-specific agreements with the Corporation on how the actions in Items Schedule 32(b)(iv)(A)-Schedule 32(b)(iv)(C) will be achieved within 12 months from the Effective Date (or such other time as agreed) and revised annually (as required); and
 - (E) provide support to WJJWJ People in the development of safeguards to maintain, control, protect and develop intellectual property over the WJJWJ People traditional ecological knowledge.
- (c) Where the State does not have Natural Resource management functions or responsibilities in the Agreement Area, the strategies will provide, at a minimum, that the State will:
- (i) engage the relevant State Agency or body that does have those functions or responsibilities; and
 - (ii) encourage the State Agency or body referred to in Item Schedule 32(c)(i) to work in partnership with the Corporation, and to make the same commitments as set out in Item Schedule 32(b)(iv).
- (d) The State will notify the Corporation of opportunities for Members to be appointed to boards of State Agencies, and any other relevant bodies with Natural Resource functions or responsibilities.
- (e) The strategies will be reviewed, monitored and evaluated:
- (i) on an ongoing basis by the Partnership Forum; and
 - (ii) as part of the monitoring and evaluation plan put in place in relation to the Recognition and Settlement Agreement.
- (f) In this Schedule, 'State Agency' includes all:
- (i) public statutory authorities;
 - (ii) State owned enterprises; and
 - (iii) committees of management, where the Secretary of a government department, a public statutory authority or a State owned enterprise is appointed as the committee of management;
- but does not include any council (as that term is defined in the *Local Government Act 1989* (Vic)).

Schedule 4 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 5 Means for Verifying Traditional Owner Membership

- (a) 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.
- (b) 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.
- (c) With respect to the issuing and management of Traditional Owner Rights Documents:
- (i) The Corporation may issue a Traditional Owner Rights Document to Members who propose to carry out any activities pursuant to this Agreement.
 - (ii) The Traditional Owner Rights Document must be indelible and must be issued and administered by the Corporation.
 - (iii) The Traditional Owner Rights Document must include the following details of the holder:
 - (A) name;
 - (B) residential address; and
 - (C) a unique emblem or insignia of the Corporation.
 - (iv) 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.
 - (v) 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).
 - (vi) 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.
 - (vii) 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:

- (A) 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
 - (B) in accordance with any existing alternative protocol agreed in writing between the Corporation and the State.
- (viii) 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.
- (ix) 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).
- (x) 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.

Schedule 6 Procurement Strategy for Natural Resource Management

1. Preamble

- (a) The Recognition and Settlement Agreement Natural Resource Management procurement strategy (**RSA Procurement Strategy**) is agreed to by the State of Victoria and Barengi Gadjin Land Council Aboriginal Corporation (**ICN 4395**) (**Corporation**) as the Traditional Owner Group Entity appointed by WJJWJ People for the purposes of the Recognition and Settlement Agreement under the *Traditional Owner Settlement Act 2010* (Vic).
- (b) The State of Victoria is committed to fostering the development of traditional owner businesses in natural resource management works and related services (**NRM**), including by promoting opportunities for these businesses to undertake contracts in order to increase their commercial activity in the Victorian economy.
- (c) The RSA Procurement Strategy gives effect to this commitment by supporting the Corporation to access procurement opportunities for NRM in the Agreement Area. The RSA Procurement Strategy is also a tool to recognise the WJJWJ People' role as the traditional owners of the Agreement Area, their unique relationship to Country, and to achieve business and employment outcomes for the WJJWJ People and the Corporation under the Recognition and Settlement Agreement.
- (d) The RSA Procurement Strategy is a commitment under the Recognition and Settlement Agreement and is also intended to assist the State to meet its Aboriginal Business Procurement Strategy targets.

2. RSA Procurement Strategy

- (a) The RSA Procurement Strategy establishes an annual target for each State Agency to procure NRM from the WJJWJ Contractors in the Agreement Area. The target is 10% of each State Agency's 'total spend' on procuring NRM in the Agreement Area each financial year. The 'total spend' on NRM procurement will be calculated annually by departments when budgets and forward work programs are set.
- (b) The 10% target can include joint-venture projects where the Corporation and the State develop joint projects that the WJJWJ Contractors deliver.
- (c) To support the Corporation's self-determination, and the growing of capacity and capability, the RSA Procurement Strategy also commits the State and the Corporation to jointly establish a 'Right of First Refusal Process' to be followed by the Parties.
- (d) For the avoidance of doubt, where the RSA Procurement Strategy is inconsistent with the policies of the Victorian Government Purchasing Board (**VGPB**), or with individual departmental procurement policies, the RSA Procurement Strategy is to prevail.
- (e) Otherwise, those policies above remain in force where relevant to the procurement that is the subject of this strategy.

3. Tenders or contracts in or relating to the Agreement Area

- (a) In relation to any public invitation by a State Agency to tender for NRM related goods or services in the Agreement Area, the Corporation or a WJJWJ Contractor may make a commercial proposal in accordance with this clause. Such proposals may be in relation to the employment of members of the WJJWJ People, the ability of the Corporation and/or WJJWJ Contractors to subcontract or joint venture with the successful tenderer, or the ability of the Corporation and/or WJJWJ Contractors to supply goods or services in relation to the proposed tender.
- (b) If the State considers the commercial proposal to be commercially viable, then it shall request that each tenderer incorporate or address the proposal in their tender bid and in their Indigenous Participation Plan.

4. Procurement Working Group

- (a) A Procurement Working Group will be established to carry out the Establishment Commitments at set out in the table clause 5 below. The Procurement Working Group will consist of representatives from the Corporation and from relevant State Agencies.
- (b) The Working Group will consider whether there are opportunities to strengthen the procurement strategy between commencement of the Settlement Agreement and the Five Year/Initial Outcomes Review.

5. Commitments

The commitments of the Parties under the RSA Procurement Strategy are as follows:

Establishment Commitments		
	Who	Commitment
1.	The State	<p>The State will establish a centrally-coordinated Pre-Approval Process to ensure current and planned capacity and capability, and industry standard quality management, environment and safety standards are met by the WJJWJ Contractors. Processes to ensure value for money will also be established as a key component of the Pre-Approval Process.</p> <p>The State will also appoint the coordinating agency lead who will be responsible for managing the operation of the RSA Procurement Strategy.</p>
	All	<p>The State and the Corporation will jointly establish a Right of First Refusal Process to be followed by the Parties.</p> <p>The Right of First Refusal Process will be used to guide departments in their selection of contracts to be offered to the WJJWJ Contractors.</p>
Ongoing Commitments		

	Who	Commitment
	The Corporation	The WJJWJ Contractors will undertake the Pre-Approval Process, and any ongoing assessment as necessary by 31 July.
	The State	<p>The State will confirm whether the conditions of the Pre-Approval Process have been met by the WJJWJ Contractors by 31 August.</p> <p>The State will provide ongoing assessment of the Pre-Approval Process to ensure currency and compliance.</p>
	The Corporation	On occasion, the Corporation may provide to the State details of any WJJWJ Contractors, including how they qualify as WJJWJ Contractors, the goods or services they can provide, their level of skill or expertise, their availability and their contact details.
	The State	<p>Upon request, the State will assist the WJJWJ Contractors by:</p> <ol style="list-style-type: none"> 1. Identifying future relevant contracting and tendering opportunities with the State for which they may be eligible; 2. Advising on steps that they might take to improve their chances of securing those contracts or tenders; 3. Advising whether there are any relevant government grants or industry assistance programs that might assist them; 4. Providing introductions to relevant State employees; 5. Providing introductions to the State's existing contractors or tenderers; and 6. Providing any other appropriate advice or assistance that the State considers may be beneficial.
	The State	<p>The State will request that the State Agencies (via the coordinating agency lead) estimate their 'total spend' on NRM in the Agreement Area for the forthcoming financial year, by 30 September.</p> <p>The coordinator will use the estimated 'total spend' value to calculate and publish the annual target of 10% to be allocated to the WJJWJ Contractors for the Right of First Refusal Process. Meeting the target of 10% is based on the expectation that the WJJWJ Contractors have met the conditions of the Pre-Approval Process, including value for money.</p>

		The State will also request that State Agencies who have identified an NRM spend in the Agreement Area will provide the coordinator in early October with lists of contracts to be offered to the WJJWJ Contractors. Contracts could be allocated an anticipated cost.
	All	<p>In mid-October the coordinator will provide the lists of possible contracts for the financial year to the WJJWJ Contractors for consideration.</p> <p>The WJJWJ Contractors will provide quotes for contracts for the financial year pursuant to the Right of First Refusal Process by the due date specified for each contract. The WJJWJ Contractors' quotes will be based on value for money, as established during the Pre-Approval Process.</p> <p>Normal procurement processes apply to any contracts that the WJJWJ Contractors do not provide quotes for by the due date specified on the contract.</p>
	The State	If requested by a WJJWJ Contractor, the State will facilitate an introduction of the WJJWJ Contractor to any of the State's existing contractors or tenderers.
	All	<p>From November to July usual departmental policies relevant to NRM procurement will be in force.</p> <p>For the avoidance of doubt, the WJJWJ Contractors are eligible to tender for contracts under normal procurement processes.</p>
	The State	<p>The State will request that the State Agencies report annually to the Secretary of the Department of Justice and Community Safety on their actions under the procurement strategy, including on their:</p> <p>actual spend on NRM in the Agreement Area;</p> <p>actual spend on the WJJWJ Contractors; and</p> <p>performance in relation to the target of 10%.</p>
	All	The State and the Corporation will report on the procurement strategy as part of the monitoring and evaluation activities pursuant to the Agreement, including at annual joint reflection workshops.
	All	The State will review the contract performance and deliverables of the WJJWJ Contractors and provide regular feedback to the Corporation on performance, including on management of under-performance if required.

6. Commencement and Interim Measures

- (a) The RSA Procurement Strategy commences on the Effective Date.
- (b) In the period prior to the Effective Date, the State will request that State Agencies commence activity to implement the 10% procurement target. This includes establishing baseline data on spend on NRM in the Agreement Area and their spend on the WJJWJ Contractors. The Establishment Commitments in Items 1 and 2 of the table above will be implemented during this period. From the Effective Date, State Agencies are expected to meet or exceed the 10% procurement target.
- (c) Following the commencement of the RSA Procurement Strategy, departmental secretaries will be responsible for reporting annually to the Secretary of the Department of Justice and Community Safety on their actions under the RSA Procurement Strategy.

7. 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 the RSA Procurement Strategy.

8. Review

- (a) Clause 12 of the Recognition and Settlement Agreement commits the State and the Corporation to undertake a review (**Initial Outcomes Review**) of the outcomes of the Expanded Settlement Package within five years of the Effective Date. Clause 9 of the Recognition and Settlement Agreement commits the Parties to consider access by the Corporation, its subsidiaries and WJJWJ People members to economic development opportunities as part of the Initial Outcomes Review.
- (b) The Initial Outcomes Review will take place within five years of the Effective Date. The Initial Outcomes Review and subsequent outcomes reviews (which will occur every five years following the Initial Outcomes Review) will consider the RSA Procurement Strategy, including whether the 10% target should be increased and whether the definition of NRM is sufficient.

9. Definitions

Agreement Area	Has the same meaning as in clause 1 of the Recognition and Settlement Agreement.
WJJWJ Contractor	Means the Corporation and a contractor certified by the Corporation to be a WJJWJ Contractor, and that is: <ul style="list-style-type: none"> (a) a related body corporate or subsidiary of the Corporation; (b) a person who is a member of the WJJWJ People; or (c) a body corporate, trust, partnership, joint venture or other entity in which members of the WJJWJ People have at least 50% ownership or equity stake.

Pre-Approval Process	The pre-approval process described in the table in Item 5 (Commitments) of this Schedule.
Natural resource management works and related services (NRM)	<ul style="list-style-type: none"> • Restoration and regeneration of landscapes; • Establishment of biodiversity corridors; • Landscaping and maintenance activities; • Fencing; • Environmental management plans; • Managing the impact of feral animals and pest plants; • Weed control; and • Environmental consulting.
Effective Date	Has the same meaning as in the Natural Resource Agreement.
Right of First Refusal Process	The right of first refusal process described in the table in Item 5 (Commitments) of this Schedule.
State Agencies	Includes all departments and agencies that do or might undertake NRM procurement in the Agreement Area.
Total spend	Each State Agency's total external spend on procuring natural resource management works and related services in the Agreement Area in a financial year, as calculated by departments once budgets and forward work programs have been set.

Schedule 7 Ministerial Consents