

**Regional Indigenous Land Use Agreement
for Small Scale Mining
(Area Agreement)**

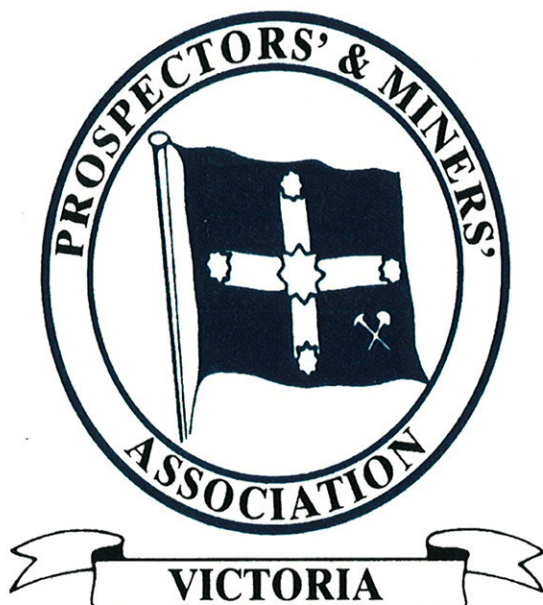
**Subdivision C of Division 3 of Part 2 of the
*Native Title Act 1993 (Cth)***

between

The Dja Dja Wurrung People

and

Prospectors & Miners' Association of Victoria Incorporated



**Dja Dja Wurrung Clans
Aboriginal Corporation**

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THIS INDIGENOUS LAND USE AGREEMENT is made

2009

PARTIES **NATIVE TITLE SIGNATORIES* ON BEHALF OF THE DJA DJA
WURRUNG PEOPLE BEING:**

- GARY JOHN MURRAY, ROBERT HERBERT NICHOLLS, RODNEY JOHN CARTER, GRAHAM JOHN ATKINSON, CARMEL PRISCILLA BARRY and CONNIE HARRISON-EDWARDS for native title determination application Federal Court No. VID6001/00;
- GARY JOHN MURRAY, GEORGE NELSON, GRAHAM JOHN ATKINSON and FAY CARTER for native title determination application Federal Court No. VID6003/99;
- CARMEL PRISCILLA BARRY for native title determination application Federal Court No. VID6043/98

of c/- Native Title Services Victoria Ltd, Level 2, 642 Queensberry Street,
North Melbourne, Victoria ("**Native Title Signatories**")

AND

PROSPECTORS & MINERS ASSOCIATION OF VICTORIA
INCORPORATED ABN 47 352 796 896 of c/- GPO Box 1706 Melbourne
3000 ("**PMAV**")

It is agreed as follows:

1. Definitions and Interpretation

1.1 In the ILUA*:

"Aboriginal human remains has the same meaning as in s4 of the AHA*, being –
the whole or part of the bodily remains of an Aboriginal person but does not include-

- (a) a body, or the remains of a body, buried in a public cemetery (within the meaning of the Cemeteries and Crematoria Act 2003) that is still used for the interment of human remains; or
- (b) an object made from human hair or from any other bodily material that is not readily recognisable as being bodily material; or
- (c) any human tissue –
 - i. dealt with or to be dealt with in accordance with the Human Tissue Act 1982 or any other law of a State, a Territory or the Commonwealth relating to medical treatment or the use of human tissue; or
 - ii. otherwise lawfully removed from an Aboriginal person

"Aboriginal object" has the same meaning as in s4 of the AHS being –

- (a) an object in Victoria or the coastal waters of Victoria that
 - i. relates to the Aboriginal occupation of any part of Australia, whether or not the object existed prior to the occupation of that part of Australia by people of non-Aboriginal descent; and
 - ii. is of cultural heritage significance to the Aboriginal people of Victoria; or
- (b) an object, material or thing in Victoria or the coastal waters of Victoria –
 - i. that is removed or excavated from an Aboriginal place; and

ii. is of cultural heritage significance to the Aboriginal people of Victoria –

but does not include

- (c) an object that has been made, or is likely to have been made, for the purpose of sale (other than an object made for barter or exchange in accordance with Aboriginal tradition; or
- (d) Aboriginal human remains.

“Aboriginal person” has the same meaning as in s4 of the AHA, being a person belonging to the indigenous peoples of Australia, including the indigenous inhabitants of the Torres Strait islands and any descendants of those peoples.

“Aboriginal place” has the same meaning as in s5 of the AHA being

- (1) an Aboriginal place is an area in Victoria or the coastal waters of Victoria, that is of cultural heritage significance to the Aboriginal people of Victoria.
- (2) For the purpose of (1) above, “area” includes any one or more of the following-
 - a. An area of land;
 - b. An expanse of water;
 - c. A natural feature, formation or landscape;
 - d. An archaeological site, feature or deposit;
 - e. The area immediately surrounding any thing referred to in paragraphs c and d to the extent that it cannot be separated from the thing without diminishing or destroying the cultural heritage significance attached to the thing by Aboriginal people;
 - f. Land set aside for the purpose of enabling Aboriginal human remains to be re-interred or otherwise deposited on a permanent basis;
 - g. A building or structure.

"Aboriginal tradition" has the same meaning as in s4 of the AHA meaning

- (a) the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people; and
- (b) any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships;

"AHA" means the *Aboriginal Heritage Act 2006* (Vic);

"applicable laws" means every law and regulation (whether of the Commonwealth or of the State*) from time to time in operation in the State which is applicable to mining*, and without limiting the generality of the foregoing, includes any laws relating to native title*, mining, small scale mining*, the environment*, or Aboriginal cultural heritage;

"Applicant" means an applicant for a Mining Licence*. Once the Applicant signs a Deed, the Applicant becomes the Miner*;

"business hours" means the hours between 9.00 a.m. and 5.00 p.m. Victorian time, excluding weekends and Victorian public holidays;

"consent" means any authorisation, lease, licence, permit, approval, certificate, direction or notice from any government or governmental or other competent authority which is necessary or desirable for the carrying out of small scale mining under the Mining Licence;

"CPI" means the Consumer Price Index for Melbourne published from time to time by the Australian Statistician or if the Consumer Price Index for Melbourne is suspended or discontinued, the words "CPI" will mean the price index substituted by the Australian Statistician or if no price index is substituted, "CPI" will mean five per cent (5%) per annum;

"Crown land" means land that is, or that is by any statute deemed to be unalienated land of the Crown and includes:

- (a) land of the Crown that is reserved permanently or temporarily by or under any statute;

- (b) land of the Crown occupied by a person under a lease, licence or other right under the MRSDA* or any other statute; and
- (c) waters;

“Cultural Heritage Co-ordinator” means the Dja Dja Wurrung Clans Aboriginal Corporation or other nominee appointed from time to time by the Native Title Signatories under item 3 of Schedule* 3 (and identified to the Miner by the Native Title Signatories), to conduct on their behalf, the cultural heritage management role described in that item; .

“cultural heritage consultant” means an anthropologist, archaeologist or other heritage specialist appointed in accordance with item 4.2 in Schedule 3;

“Deed” means an executed deed of assumption in the form of the template deed of assumption in Schedule 4;

“Dja Dja Wurrung Clans Aboriginal Corporation” means the Incorporated Aboriginal Association incorporated under the *Aboriginal Councils and Associations Act 1976* (Cth) with responsibility for, inter alia, managing the native title rights and interests of the Dja Dja Wurrung People or any other body authorised by the Native Title Group to represent it in relation to native title matters under this ILUA.

“environment” includes all aspects of the surroundings of human beings, whether affecting human beings as individuals or social groupings, including the physical, biological, economic, cultural and social aspects; and **“environmental”** has a corresponding meaning.

“Force Majeure Event” means an event or circumstance which is beyond the reasonable control of the Party* affected by the event or circumstance including war, insurrection, civil disturbance, blockade, riot, embargo, earthquake, storm, flood, explosion, fire or lightning, ceremony or other cultural activity according to Aboriginal tradition, and government action or inaction (including change of law);

“Future Act” has the same meaning given to that term in section 233 of the NTA*;

“grant” or **“granted”** refers to the grant, renewal, or variation of the Licence by the State pursuant to the MRSDA. The definition is intended to cover a renewal or

variation where the Licence Area and/or term is extended or additional rights in the Licence are created.

"Guidelines" refers (at the date of execution of the ILUA) to *'The Guidelines for Environmental Management in Exploration and Mining'* as published by Minerals & Petroleum Division, Department of Primary Industries, Victoria, and amended from time to time; more specifically:

- Part 1 - Exploration and Rehabilitation of Mineral Exploration Sites;
- Part 2 - Abandonment of Mineral Drillholes; and
- Part 3 - Rehabilitation and Environmental Aspects of Mining and Extractive Work Plans,

and includes other applicable guidelines or procedures published by the Department responsible for administering the MRSDA from time to time.

"Heritage Act" means the *AHA*.

"ILUA" means this indigenous land use agreement including its Schedules*;

"ILUA area" means the land to which the ILUA* applies, being the area as described and shown on the map in Schedule 1;

"Land Use Conditions" mean the conditions attached in Schedules 2 and 3;

"licence confirmation letter" means a letter that is signed by the Dja Dja Wurrung Clans Aboriginal Corporation and sent immediately to the Applicant or Miner after a cheque provided by the Applicant for the benefits set out in item 1 of the Land Use Conditions clears, the pro forma format for which is attached at Schedule 5;

"Miner" means a person who

- (a) seeks grant of a Mining Licence*; and
- (b) has executed a Deed.

"mining" has the same meaning given to that term in section 4 of the MRSDA, being extracting minerals from land for the purpose of producing them commercially, and includes processing and treating ore.

"Mining Licence" means the Mining Licence that is applied for by the Miner and may be granted* and registered by the State pursuant to the MRSDA, which Mining Licence is located wholly or partly within the ILUA area*, and includes any renewal or variation of Mining Licence by the State pursuant to the MRSDA or any other applicable laws. **"Mining Licence"** also includes any other application for and grant* of any other Mining Licence to the Miner in respect of the ILUA area that is included in a Deed;

"mining tenement" refers to a Mining Licence granted pursuant to the MRSDA;

"Minister" means the Minister responsible for the grant of the Licence pursuant to the MRSDA;

"Monitor" means the person (1) nominated to the Miner from time to time by the Cultural Heritage Co-ordinator* under item 3.21. of Schedule 3 to undertake the Monitor's role in Schedule 3;

"MRSDA" means the *Mineral Resources (Sustainable Development) Act 1990 (Vic)*;

"National Native Title Register" has the same meaning given to that term in section 253 of the NTA;

"National Native Title Tribunal" has the same meaning given to that term in section 253 of the NTA;

"native title" has the same meaning given to that term in section 223 of the NTA:

"native title determination application" means the native title determination applications Federal Court numbers VID6001/00, VID6003/99 and VID6043/98 made on behalf of the Native Title Group*;

"Native Title Group" is the Dja Dja Wurrung People, being the Native Title Signatories and those persons described in Schedule A of the native title determination applications*;

"Native Title Registrar" has the same meaning given to that term in section 253 of the NTA;

“native title rights and interests” has the same meaning given to that term in section 223 of the NTA;

“Native Title Signatories” refers to the persons who are registered native title claimants* who sign the ILUA* for and on behalf of the members of the Native Title Group*;

“NTA” means the *Native Title Act 1993* (Cth);

“NTSV” means Native Title Services Victoria Ltd, being the body performing functions of a representative Aboriginal/Torres Strait Islander body for Victoria, under section 203FE of the NTA, and its successor body or bodies, if any (including any body established under Part 11 of the NTA);

“Party” or **“Parties”** means a Party or Parties to the ILUA and, where the context permits, the Miner*. “Party” or “Parties” includes that Party or Parties’ successors, permitted assignees, executors, administrators and substitutes;

“PMAV” means the Prospectors and Miners Association of Victoria Incorporated (ABN 47 352 796 896);

“Register of Indigenous Land Use Agreements” has the same meaning given to that term in section 253 of the NTA;

“registered native title body corporate” has the same meaning given to that term in section 253 of the NTA;

“registered native title claimants” has the same meaning given to that term in section 253 of the NTA;

“Report” means a cultural heritage report referred to in Schedule 3 that is prepared by the Monitor* during any inspection, monitoring and other on-site attendance involving the Monitor under Schedule 3, the pro forma format for which is attached at Schedule 6;

“Schedule” means the Schedules to the ILUA;

“small scale mining” means any mining* undertaken on a mining tenement* of 5 hectares or less in size;

“State” means the State of Victoria and all its instrumentalities;

“Work Plan” has the same meaning given to that term in the MRSDA.

1.2 In the ILUA, unless the contrary intention appears:

- the definitions contained in clause 1 apply to the ILUA, the Schedules and a Deed;
- an asterisk following a word in the ILUA signifies that it is a defined term listed in the “Definitions and Interpretation” clause;
- 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 issued under, that legislation or legislative provision;
- the meaning of general words is not to be limited by the meaning of accompanying specific words;
- the singular includes the plural and vice versa;
- 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;
- a reference to a clause, sub-clause or schedule is to a clause, sub-clause or schedule of or to the ILUA;
- the Introduction forms part of the ILUA;
- the Schedules form part of the ILUA;
- a reference to any agreement, document or deed is to that agreement, document or deed (and where applicable, any provisions) as amended, novated, supplemented or replaced from time to time;
- where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

- the reference to 'business days' in the 'Notices' clause excludes a Saturday, Sunday or public holiday in Victoria;
- headings are for convenience or reference only and do not affect the interpretation of the ILUA;
- a reference to a Minister*, department, authority, body or person includes the Minister, department, authority, body or person for the time being performing the functions of such Minister, department, authority, body or person; and
- monetary references are to Australian currency.

1.3 The ILUA shall be governed by and construed in accordance with applicable laws and the terms and conditions of the ILUA shall apply to the full extent that they are capable of operating concurrently with applicable laws.

2. Introduction

2.1 The Native Title Signatories are the registered native title claimants in relation to Crown Land* in the ILUA area.

2.2 The Native Title Group* assert that they hold native title* over land and/or waters in the ILUA area*, and that they have rights and obligations to speak for and protect these lands and/or waters in accordance with traditional laws and customs.

2.2.1 The Native Title Group has filed the native title determination applications* in the Federal Court pursuant to section 13(1) of the *Native Title Act* 1993 (Cth) ("*NTA*") over Crown land within the ILUA area. The native title determination applications have the Federal Court matter number: VID6001/00, VID6003/99 and VID6043/98.

2.2.2 The native title determination applications were accepted for registration under section 190A of the *NTA* on the following dates:

- 15 August 2000 for VID6001/00; AND
- 27 May 1999 for VID6003/99;

- 2.2.3 Native title determination application VID6043/98 was not accepted for registration.
- 2.3 The Native Title Signatories agree that the Applicant*, upon satisfying the conditions contained at clause 2.8 and upon becoming the Miner*, may exercise its rights and obligations under the Mining Licence subject to the Land Use Conditions* and the Native Title Signatories agree that a breach of the ILUA by any Party does not nullify the consent of the Native Title Signatories to the grant and use of the Mining Licence.
- 2.4 The Native Title Signatories have appointed the Dja Dja Wurrung Clans Aboriginal Corporation* to perform certain administrative functions under this ILUA on behalf of the Native Title Group*.
- 2.5 The PMAV* is an organisation whose role it is to represent the interests of prospectors and smaller-scale miners operating in Victoria. The PMAV is under the executive control of its committee of management.
- 2.6 The Applicant seeks the grant by the State of the Mining Licence pursuant to the MRSDA to the Miner, in respect of Crown land and other land and waters in the ILUA area.
- 2.7 The Parties* understand that the State may grant the Applicant the Mining Licence under the MRSDA and other applicable laws.
- 2.8 The Parties agree that the Mining Licence may be validly granted only if the Applicant executes a Deed* and, on or prior to the date of execution of the Deed, all of the following conditions are satisfied:
- 2.8.1 The Applicant notifies the Dja Dja Wurrung Clans Aboriginal Corporation that it intends to execute a Deed;
- 2.8.2 The Dja Dja Wurrung Clans Aboriginal Corporation issues a *tax invoice* pursuant to clause 31.3 of the ILUA to the Applicant;
- 2.8.3 The Applicant provides in full the benefits referred to in clause 4 of this ILUA; and

2.8.4 The Dja Dja Wurrung Clans Aboriginal Corporation acknowledges receipt of the benefits referred to in clause 2.8.3 by sending the licence confirmation letter* to the State and a copy to PMAV* and the Applicant*.

2.9 The ILUA is made under Subdivision C of Division 3 of Part 2 of the NTA.

2.10 The ILUA sets out the terms and conditions of the agreement which has been reached between the Parties and that bind the Miner* as a Party to the ILUA upon satisfaction of the conditions at subclauses 2.8.1 – 2.8.4 and execution of a Deed by the Applicant.

3. Scope of the ILUA

3.1 The ILUA relates, among other things, to the terms for the grant and use of the Mining Licence by the Miner; and

3.2 Subject to the ILUA and the rights and obligations of the Miner under the Mining Licence, the Miner may gain access to and conduct small scale mining* in the ILUA Area*.

3.3 The Parties acknowledge that an Applicant seeking a new Mining Licence after the dismissal or withdrawal of the native title determination applications is not obliged to sign a Deed that relates to that new Mining Licence.

4. Benefits

4.1 In consideration for entering into the ILUA and as full compensation to the Native Title Group from the Miner for any impact of the grant or use of the Mining Licence upon any native title rights and interests* of the Native Title Group, the Miner agrees to provide the benefits set out in item 1 of the Land Use Conditions attached in Schedule 2.

4.2 The Native Title Signatories* agree that the benefits provided to the Native Title Group under Schedule 2 are in full and final satisfaction of any liability upon the Miner to pay compensation to any member of the Native Title Group for the effect of small scale mining in the ILUA area on native title rights and interests. To avoid doubt, this means that no further compensation (if any) is payable in cash or kind by the Miner to the Native Title Group for the effect of the grant and use of the Mining

Licence on any native title rights and interests under any applicable laws, including the MRSDA and the NTA.

4.3 For the purpose of this clause 4 and Schedule 2 of the ILUA, the Applicant agrees to pay the benefits referred to in this clause as if the Applicant were the Miner.

4.3.1 Subject to the benefits owing under item 1.1.4 of Schedule 2, payment of the benefits by the Applicant pursuant to sub-clause 4.2 is full consideration of the Miner's obligations under clause 4.1 of the ILUA.

4.3.2 The Applicant agrees to execute the Deed after paying the benefits referred to in this clause 4 and upon receipt of the licence confirmation letter pursuant to clause 2.8.4 of the ILUA.

4.4 The Native Title signatories warrant that they will direct the Dja Dja Wurrung Clans Aboriginal Corporation to refund:

4.4.1 the benefits referred to in item 1.1.1 to Schedule 2 of the ILUA if the State decides not to grant the Mining Licence to the Miner; or

4.4.2 the benefits referred to in item 1.1.1 to Schedule 2 of the ILUA if:

4.4.2.1 the State decides not to approve the Work Authority under section 40 of the MRSDA; and

4.4.2.2 the Miner surrenders the Mining Licence; or

4.4.3 to the Miner any excess payment of benefits in the event that the Mining Licence is granted for a period shorter than that provided for by payments of benefits pursuant to clause 4.1

5. Area of the ILUA

5.1 The ILUA area is the area defined as "ILUA area" in clause 1.

6. Commencement, Term and Review

6.1 The ILUA takes effect from the day it is executed by all Parties (in accordance with clause 21).

6.2 The ILUA is terminated:

6.2.1 Subject to clause 6.2.2, by the agreement in writing of the Native Title Signatories and PMAV; or

6.2.2 By the removal of the ILUA from the Register of Indigenous Land Use Agreements* under section 199C of the NTA; or

6.2.3 5 years from the anniversary date of the expiry of the last Mining Licence granted subject to the provisions of the ILUA.

6.3 Within 7 days of the termination of this ILUA under sub-clause 6.2, the Dja Dja Wurrung Clans Aboriginal Corporation and PMAV will advise the Native Title Registrar* in writing of the termination, in accordance with section 199C(1)(c)(ii) of the NTA.

6.4 As soon as is practicable upon the termination of the ILUA, the Dja Dja Wurrung Clans Aboriginal Corporation and PMAV will meet to discuss the ongoing operation of the Cultural Heritage Management Procedures referred to in Schedule 3 of the Land Use Conditions.

6.5 Any outstanding liability and obligations which accrue up to the date of termination of the ILUA will survive any termination of the ILUA.

6.6 Commencing on or before the 5th anniversary of registration of the ILUA, Dja Dja Wurrung Clans Aboriginal Corporation and PMAV shall meet to determine the need for a review of the ILUA (and such meeting shall not be subject to clause 14). The purpose of any agreed review will be to ascertain whether or not the ILUA needs to be amended.

7. Replacement of Future Act* Procedure

7.1 The Parties agree that the right to negotiate provisions in Part 2, Division 3, Subdivision P of the NTA are not intended to apply to the grant* and use of the Mining Licence.

7.2 Subject to compliance by the Parties with the provisions of the ILUA and compliance by the Miner with a Deed, the Parties agree to the doing of certain Future Acts* in respect of the ILUA area, being:

- 7.2.1 the grant by the State of the Mining Licence to the Miner and to any consent required by or on behalf of the Miner pursuant to the Mining Licence; and
- 7.2.2 the use of the Mining Licence and any consent required pursuant to the Mining Licence by the Miner.

8. Commencement & Registration as an Indigenous Land Use Agreement

- 8.1 Upon execution, the ILUA becomes an Indigenous Land Use Agreement (area agreement) under Subdivision C of Division 3 of Part 2 of the NTA.
- 8.2 As soon as is reasonably practicable after execution of the ILUA:
 - 8.2.1 the Native Title Signatories through NTSV agree to make written application under section 24CG of the NTA to the Native Title Registrar for registration of the ILUA on the Register of Indigenous Land Use Agreements; and
 - 8.2.2 the Parties agree to do all things necessary to help the expeditious completion of the registration process, and to ensure that the application by the Native Title Signatories through NTSV meets the requirements of the NTA, and of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth).

9. Warranty of the Native Title Signatories and PMAV

- 9.1 The Native Title Signatories warrant that they are authorised to execute the ILUA for and on behalf of the Native Title Group in accordance with section 251A of the NTA.
- 9.2 The Native Title Signatories agree that the ILUA binds them and the other members of the Native Title Group.
- 9.3 PMAV warrants that it is authorised to execute the ILUA for and on behalf of its members.

10. Warranty of the Miner

- 10.1 The Miner represents and warrants that it is authorised and has capacity to execute a Deed and to bind itself.

10.2 The Miner warrants that immediately upon signing a Deed, it shall provide a signed copy of the Deed to the following:

10.2.1 The Dja Dja Wurrung Clans Aboriginal Corporation;

10.2.2 PMAV;

10.2.3 NTSV; and

10.2.4 The State.

10.3 The Miner agrees to immediately advise PMAV, the Dja Dja Wurrung Clans Aboriginal Corporation and NTSV when the Mining Licence has been granted* and any required consent provided.

10.4 The Miner warrants that it will carry out small scale mining in accordance with:

10.4.1 the ILUA and all applicable laws; and

10.4.2 the terms and conditions of the Mining Licence.

11. Acknowledgments

11.1 The Parties acknowledge that:

11.1.1 neither the execution of the ILUA, nor the grant of the Mining Licence constitutes recognition by the Miner or the State that native title rights and interests exist within the ILUA area or are held by the Native Title Group;

11.1.2 the non-extinguishment principle, as defined in section 238 of the NTA, applies to the grant of the Mining Licence, and to any work done pursuant to such Mining Licence.

11.2 Subject to clause 3.3 and 6.2 of the ILUA, each of the Parties agrees that their or its respective rights or obligations under the ILUA are not dependent upon or subject to any finding, declaration, determination, order or other form of decision made or to be made by the National Native Title Tribunal*, the Federal Court or any other judicial or administrative body regarding the existence, nature or scope of native title* in respect of the ILUA area or any part of the ILUA area, and that these rights and obligations will continue to have effect in accordance with their terms despite

any such finding, declaration, determination, order or other form of decision so made or to be made.

- 11.3 The Native Title Signatories acknowledge that PMAV and the Miner may be or may become a Party (or in PMAV's case, an agent for a Party) to the native title determination applications but PMAV and the Miner agree that they will not oppose the native title determination applications.

12. Access to the ILUA area

- 12.1 Subject to the Miner's:

- Work Plan*;
- safety and security obligations;
- access requirements to the ILUA area; and
- rights of small scale mining under the Mining Licence, any required consents, and applicable laws;

the Miner shall not hinder and will minimise interference with the entry, occupation and use of any part of the ILUA area by the Native Title Group.

13. Resolving Disputes

- 13.1 Where any Party has a dispute, the Parties will follow the processes set out in this clause 14 below.
- 13.2 This clause 14 also applies where the Native Title signatories or the Miner consider that any of the Land Use Conditions have been breached.

14. Discussions

- 14.1 If a dispute arises, the Parties to the dispute agree to first meet and hold discussions in good faith in an effort to resolve the dispute, before seeking mediation under sub-clause 14.2.
- 14.1.1 The process in sub-clause 14.1 will be initiated by any Party to the dispute serving a notice on any other Party or Parties requiring that the relevant

Parties meet within 14 days of the date of the notice to hold discussions under sub-clause 14.1.

Mediation

- 14.2 If the dispute is not resolved under sub-clause 14.1 within 28 days of the date of the notice under sub-clause 14.1.1 being served, any Party to the dispute will give the other Party or Parties a notice requiring that an attempt be made to resolve the dispute with the assistance of a mediator to be appointed by the agreement of the Parties. If the Parties do not agree on a mediator within 7 days after the notice is given, a request will be made by either Party to the Chairman of the Victorian Chapter of The Institute of Arbitrators and Mediators Australia to appoint a mediator suitably expert in the matters subject to dispute. The mediation will be conducted in accordance with sub-clause 14.3 – 14.5.
- 14.3 The mediator will decide how to enquire into the matter and, acting as an independent expert and not an arbitrator, the mediator will (for the purposes of assisting the Parties to resolve the dispute) give the Parties to the dispute a written report within 28 days of being appointed or within such further time as those Parties may agree.
- 14.4 The Parties to the dispute must co-operate fully with any reasonable requests of the mediator.
- 14.5 The Parties to the dispute must pay an equal share of the mediator's fees and expenses, unless the mediator otherwise directs.

Arbitration

- 14.6 If the dispute is not resolved within 14 days of a report being given to the Parties under sub-clause 14.3, any Party to the dispute must give the other Party or Parties a notice requiring that the dispute be resolved by an arbitrator suitably expert in the matters subject to dispute to be appointed by the Chairman of the Victorian Chapter of The Institute of Arbitrators and Mediators Australia. Each of the Parties must co-operate fully with any reasonable requests of the arbitrator.
- 14.7 The arbitration is to be conducted in accordance with the Institute's Rules for the Conduct of Commercial Arbitrations. Those rules and the arbitrator's decision are binding on the Parties.

- Each of the parties to the dispute must co-operate fully with any reasonable requests of the arbitrator.
- 14.9 The Parties to the dispute must pay an equal share of the arbitrator's fees and expenses, unless the arbitrator directs otherwise.
- 14.10 The Parties to the dispute agree that the arbitrator's decision is binding upon them and to accept and to comply in good faith with the arbitrator's decision.

Rights to other relief

- 14.11 Except in circumstances where a binding arbitrated decision has been given under sub-clause 14.10, the Parties agree that any dispute resolution process undertaken by them in accordance with this clause 14 shall be without prejudice to the Parties' rights to apply for any other order, relief or remedy (including injunctive or declaratory relief) against each other and any other person that may be available to them at law or in equity.

15. Confidentiality

- 15.1 The following information is confidential information:
- 15.1.1 Information provided by a Party to the other Party which the first mentioned Party requests be treated as confidential;
 - 15.1.2 Information given to the Miner concerning any Aboriginal place*, Aboriginal object or Aboriginal human remains* that is expressly identified by the Cultural Heritage Co-ordinator* as confidential information;
- 15.2 The Parties agree not to disclose any of the confidential information referred to in sub-clause 15.1 except:
- 15.2.1 to the officers, employees, members, directors, servants, agents, contractors and sub-contractors of the Parties whose duties require such disclosure;
 - 15.2.2 to the Parties' accountants, legal advisers, auditors or other professional advisers;

- 15.2.3 to the extent necessary to comply with any applicable laws and the Rules of the Australian Stock Exchange;
 - 15.2.4 where disclosure is necessary in performing obligations or enforcing rights under the ILUA;
 - 15.2.5 to the extent that such information is already part of the public domain otherwise than by breach of this clause;
 - 15.2.6 with the prior written approval of the other Parties.
- 15.3 Each Party shall take all steps reasonably necessary to ensure that the confidential information referred to in sub-clause 15.1 is known only to such persons as may reasonably require knowledge thereof in the course of their duties or functions and, notwithstanding the provisions of sub-clause 16.2, each Party shall, to the extent permitted by law, require any person to whom it intends to disclose such information (who is not under a statutory, professional or contractual duty to keep such information or data confidential) to give an undertaking to keep such information confidential.
- 15.4 If the rest of the ILUA is terminated:
- 15.4.1 the Native Title Signatories and the other members of the Native Title Group shall, (subject to sub-clause 15.2) continue to treat as confidential all categories of information obtained by them under the ILUA or in the course of small scale mining that are requested to be kept confidential by the Miner; and
 - 15.4.2 the Miner shall continue to treat as confidential information obtained by it under the ILUA or in the course of carrying out small scale mining with respect to the locations of, and traditions associated with, Aboriginal places and Aboriginal objects that have been specified as confidential under sub-clause 15.1.2. If requested by the Dja Dja Wurrung Clans Aboriginal Corporation, the Miner shall deliver all such information to the Dja Dja Wurrung Clans Aboriginal Corporation (to the extent it is capable of delivery) as soon as it is no longer required for the purposes of small scale mining.

16. Covenants

- 16.1 Without limiting any other express or implied obligation under the ILUA, the Native Title Signatories covenant with the other Parties not to take any action which:
- 16.1.1 challenges or disputes, or has the effect of challenging or disputing the validity of the ILUA, or that the ILUA constitutes an Indigenous Land Use Agreement under section 24CA of the NTA;
 - 16.1.2 challenges or disputes, or has the effect of challenging or disputing the validity of any Mining Licence validly granted in accordance with the MRSDA, or any other action validly taken by the State in authorising small scale mining under the ILUA; and/or
 - 16.1.3 unlawfully affects any activity required or authorised by the Mining Licence, the MRSDA or any other applicable laws.
- 16.2 The Native Title Signatories shall not be liable for any unintentional breach of the covenants referred to in sub-clause 16.1. The onus of proving that any such breach was unintentional shall rest on the Native Title Signatory who is alleged to have breached the covenant.

17. Assignment

- 17.1 Subject to sub-clause 17.2 and any applicable laws, the Miner may at its absolute discretion, assign, transfer or novate the whole or any part of its interests in or obligations under (as the case may be) the Mining Licence or the ILUA.
- 17.2 The Miner must not assign, transfer, or novate any of its interests or obligations referred to in sub-clause 18.1, except to a person who agrees to execute a deed under which it is bound by the ILUA, as if it were a Party to it. Where such a deed is executed, the Miner will provide a copy of that deed to the Dja Dja Wurrung Clans Aboriginal Corporation and PMAV.
- 17.3 In the event that:
- 17.3.1 the Federal Court makes a determination that native title exists over the ILUA area, and is held by the Native Title Group; and

17.3.2 a registered native title body corporate* is created by an entry in the National Native Title Register* (under section 197 and section 193(2)(d)(iii) of the NTA) of the details of any prescribed body corporate that holds the native title on trust or that is determined under section 57 in relation to the native title;

the Native Title Signatories shall use their best endeavours to assign the ILUA to that registered native title body corporate, provided that the registered native title body corporate executes a deed under which it is bound by the ILUA as if it were a Party to it.

17.4 Subject to sub-clause 17.5 and any applicable laws, PMAV may at its absolute discretion, assign, transfer or novate all of its rights and obligations under the ILUA.

17.5 PMAV must not assign, transfer, or novate any of its rights and obligations referred to in sub-clause 17.4, except to a person who agrees to execute a deed under which it is bound by the ILUA, as if it were a party to it. Where such a deed is executed, PMAV will provide a copy of that deed to the Dja Dja Wurrung Clans Aboriginal Corporation.

18. Force Majeure

18.1 If a Party is unable, as a result of a Force Majeure Event*, to wholly or in part perform any obligation under the ILUA for a period of greater than 12 months, that Party must give notice to the other Parties of that Force Majeure Event outlining reasonably full particulars of the Force Majeure Event in which case the obligation is suspended for the duration of the Force Majeure Event.

19. Variation

19.1 The ILUA can only be varied by the written agreement of the Native Title Signatories and PMAV.

20. Severance

20.1 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

- 20.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the ILUA, but the rest of the ILUA is not affected.

21. Entire Agreement

- 21.1 The ILUA supersedes any prior representation, understanding or arrangements made by the Parties in relation to its subject matter, whether orally or in writing.

22. Governing Law

- 22.1 The ILUA is governed by and is to be construed in accordance with the laws of the Commonwealth of Australia and the State of Victoria.
- 22.2 The Parties submit to the non-exclusive jurisdiction of the courts of Victoria and any other courts competent to hear appeals from those courts.
- 22.3 Any proceedings commenced relating to the ILUA will be issued in the State of Victoria.

23. Counterparts

- 23.1 The ILUA is properly executed if each Party executes either the ILUA, or identical counterpart Agreements. In the latter case, the ILUA takes effect when the separately executed Agreements are exchanged between the Parties. All counterparts taken together will constitute one instrument.

24. Liability

- 24.1 The Native Title Signatories agree that all liabilities and obligations imposed upon them and other members of the Native Title Group by the ILUA are imposed upon them and each member of the Native Title Group jointly and severally.
- 24.2 The Miner agrees that all liabilities and obligations imposed upon it by the ILUA are imposed upon it jointly and severally.
- 24.3 PMAV will comply with all liabilities and obligations imposed on it by the ILUA.

25. Waiver

25.1 The failure of a Party at any time to require performance of any obligation under the ILUA is not a waiver of that Party's right:

25.1.1 to insist on performance of, or to claim damages for breach of, that obligation unless that Party acknowledges in writing that the failure is a waiver; and

25.1.2 at any other time to require performance of that or any other obligation under the ILUA.

26. Independent Legal Advice

26.1 The Parties acknowledge that they have had the benefit of independent legal advice with respect to all aspects of the ILUA.

27. Relationship

27.1 The ILUA does not create a relationship of employment, agency or partnership between the Parties.

28. Further co-operation

28.1 The Parties must do anything (including executing any agreement) which another Party reasonably requires of them in order to give full effect to the ILUA and the transactions it contemplates.

29. Agreement to benefit and bind successors

29.1 The ILUA continues for the benefit of, and binds, a successor in title of a Party, including a person to whom a Party's rights and obligations are assigned, transferred or novated in accordance with the ILUA.

30. Costs

30.1 Unless otherwise agreed by the Parties, each Party will pay their own legal costs and other expenses for and incidental to the preparation, negotiation, completion and registration of the ILUA.

31 GST

GST Definitions

31.1 For the purposes of this clause 32:

“**GST**” has the same meaning given to that term in the GST Act;

“**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended;

“**GST Law**” means the GST Law as defined in the GST Act and includes any Statute of the Commonwealth of Australia and/or the State that imposes or deals with GST;

In addition to the above, expressions set out in italics in this clause 32 have the same meaning as those expressions in the GST Act.

Liability for GST

31.2 Where a party makes a *taxable supply* under this ILUA for *consideration*:

31.2.1 The *consideration* for that supply represents the *value* of the *taxable supply* and does not include GST; and

31.2.2 The Party liable to pay the *consideration* for the *taxable supply* will also pay the Party making the supply, at the same time and in the same manner as the *consideration* payable by that party, the amount of GST payable in respect of the *taxable supply*.

31.2.3 If either Party (the ‘first Party’) has a right under the ILUA to be reimbursed or indemnified by the other Party (the ‘second Party’) for any cost or expense incurred by the first Party under the ILUA, the first Party will not be entitled to be reimbursed or indemnified by the second Party for that component of a cost or expense for which the first Party can claim an *input tax credit*.

Tax Invoices

- 31.3 A party's right to payment of GST under this clause is subject to a valid tax invoice being delivered to the *recipient* of the *taxable supply*. The tax issue must be issued at the time of payment.

32. Notices

- 32.1 Subject to the ILUA, any notice, request, consent, proposal, or other communication ('notice, etc.') must be in writing and signed by the Party giving it. A notice, etc. is only given or made if it is:

32.1.1 delivered or posted to that Party at the address in Schedule F (or such other address as notified and set out in Schedule 6 from time to time); or

32.1.2 faxed to that Party at the fax number in Schedule 6 (or such other address as notified and set out in Schedule 6 from time to time).

- 32.2 Parties must notify each other and the State within 7 days of any change of address or fax details.

- 32.3 A notice, etc. is to be treated as given or made at the following time:

32.3.1 *If it is delivered*, when it is left at the relevant address;

32.3.2 *If it is sent by post*, 2 business days after it is posted;

32.3.3 *If it is sent by fax*, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

If a notice, etc is delivered, or an error free transmission report in relation to it is received by a Party after business hours*, it will be treated as having been given or made at the beginning of normal business hours on the next business day.

33. Provisions of ILUA not conditions of grant

- 33.1 The Parties agree that the provisions of the ILUA (including the Land Use Conditions) are not conditions of the grant of the Mining Licence under the MRSDA or any other applicable laws.

Executed by the Parties as an Agreement this

day of

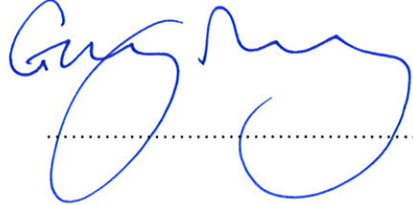
20

Signed, sealed and delivered by

Gary John Murray

for and on behalf of the **Native Title Claim Group**

in the presence of:

) 
)
)
)



Signature of Witness



Print full name of Witness

Date: 

Signed, sealed and delivered by

Robert Herbert Nicholls

for and on behalf of the **Native Title Claim Group**

in the presence of:

) 
)
)
)



Signature of Witness




Print full name of Witness

Date: 

Signed, sealed and delivered by
Rodney John Carter
for and on behalf of the **Native Title Claim Group**
in the presence of:

)
)
) 
)



.....
Signature of Witness

DREW BERICK
.....
Print full name of Witness

Date: **23 / 04 / 09** .

Signed, sealed and delivered by
Graham John Atkinson
for and on behalf of the **Native Title Claim Group**
in the presence of:

)
)
) 
)


.....
Signature of Witness

HELEN MARY GROTZNER
.....
Print full name of Witness

Date: **21 / 4 / 09** .

Signed, sealed and delivered by
Carmel Priscilla Barry
for and on behalf of the **Native Title Claim Group**
in the presence of:

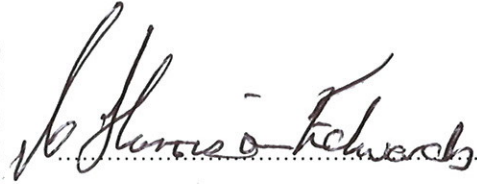
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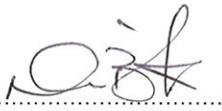

.....
Signature of Witness

DREW BERICK
.....
Print full name of Witness

Date: **27 / 8 / 09** .

Signed, sealed and delivered by)
Connie Harrison-Edwards)
for and on behalf of the **Native Title Claim Group**)
in the presence of:)




.....
Signature of Witness

DREW BERICK
.....
Print full name of Witness

Date: 1 / 7 / 09 .

Signed, sealed and delivered by)
Fay Carter)
for and on behalf of the **Native Title Claim Group**)
in the presence of:)





.....
Signature of Witness

Helen Mary Gratzman
.....
Print full name of Witness

Date: 21 / 2 / 09 .

Signed, sealed and delivered by)
George Nelson)
for and on behalf of the **Native Title Claim Group**)
in the presence of:)




.....
Signature of Witness

DREW BERICK
.....
Print full name of Witness

Date: 3 / 9 / 09 .

Signed, for and on behalf of)
)
the **Prospectors & Miners Association of**)
Victoria Incorporated)
ABN 47 352 796 896 by)

 - 16/12/08 .
Signature of Committee Member

.....
RITA BENTLEY, PRESIDENT, PMAV
.....

 16/12/08
Signature of Committee Member

.....
GEOFF STRANG, SECRETARY AND PUBLIC OFFICER, PMAV
.....

Schedule 1: the ILUA area

Map created by: Geospatial Services,
National Native Title Tribunal (18/07/2008)
Agreement/Applications/Determination boundary
data compiled by NNNTT from data sourced from
DSE (Vic).
Topographic image data is © Commonwealth of
Australia and is used under licence from
Geoscience Australia

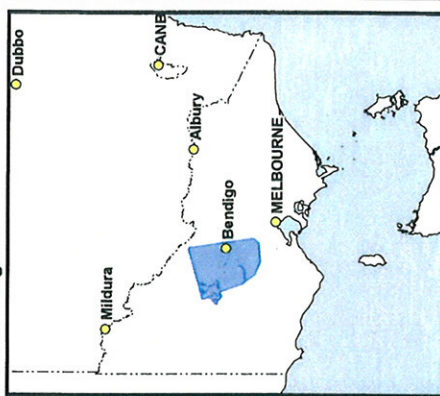
NOTE: Topographic images should be used as a guide only.

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Location Diagram



PMAY ILUA (VI2008/006)

Description

Commencing at the north east corner at Longitude 144.300303° East, Latitude 35.963331° South then extend south easterly, generally south westerly and generally north westerly through the following coordinate points:

Longitude East	Latitude South
144.553998	37.350911
144.417702	37.462309
143.914260	37.498619
143.596987	37.394255
143.348290	37.105683

Then north westerly to a point on the high water mark on the southern bank of the Avon River at Latitude 36.695433° South; then generally north westerly along that high water mark to the junction with the Richardson River; then generally northerly along the high water mark of the western bank of the Richardson River to Latitude 36.310138° South; then northerly to Longitude 142.958419° East, Latitude 36.259125° South; then north easterly back to the commencement point.

The agreement area excludes any area within the external boundaries of the following Native Title Determinations:

- *Native title determination VID6001/95 Yorta Yorta (VC94/1) as determined on 18 December 1998.*
- *Native title determination VID6002/98 Wotjobaluk Jaadwa Jadavadjali Wergaia and Jupagulk Peoples No #1 (VC95/2) as determined on 13 December 2005.*

The agreement area also excludes any area within the external boundaries of the following Native Title Determinations Applications:

- *Native title determination application VID6002/98 Wotjobaluk People (VC95/2) as accepted for registration on 11 June 1999.*
- *Native title determination application VID6001/99 Dja Dja Wurrung (VC99/6) as accepted for registration on 19 August 1999.*
- *Native title determination application VID6006/98 Dja Dja Wrung/ Whurung People (VC99/9) as accepted for registration on 17 September 1999.*

Note

Data Reference and source

- Agreement boundary data compiled by National Native Title Tribunal based on data sourced from Dept of Sustainability and Environment (Vic).
- Rivers based on cadastral data sourced from Public Sector Mapping Agency (May 2008).

Reference datum

Geographical coordinates have been provided by the NNTT Geospatial Services and are referenced to the Geocentric Datum of Australia 1994 (GDA94), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time.

Use of Coordinates

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Prepared by Geospatial Services, National Native Title Tribunal (16 July 2008).

Schedule 2: Land Use Conditions

1. Crown land Access Benefits

- 1.1 Subject to Item 1.2 of this Schedule, the Miner shall pay the following benefits to a trust account that is established on behalf of all the members of the Native Title Group by the Dja Dja Wurrung Clans Aboriginal Corporation:
- 1.1.1 A one-off Mining Licence access fee of \$2,500.00 (plus GST) for a Mining Licence granted for a term of 5 years or \$500.00 (plus GST) for each year the Mining Licence is granted for;
 - 1.1.2 The benefits referred to in clause 1.1.1 are to be paid in full by the Miner before the grant of the Mining Licence by the State;
 - 1.1.3 The Dja Dja Wurrung Clans Aboriginal Corporation undertakes to refund in full (less a 10% administration fee) the benefits referred to in clause 1.1.1 in the event that the State does not grant the Mining Licence to the Miner;
 - 1.1.4 An upfront fee of \$1,250 (plus GST) for any subsequent renewal of the Mining Licence for a term of not less than 5 years or an upfront fee of \$250.00 (plus GST) for each year a renewal of the Mining Licence is granted.
- 1.2 The benefits shall be increased by CPI* annually on the anniversary date of the registration of the ILUA by the National Native Title Tribunal* (at the CPI rate that exists at that anniversary date).

2. Access to the ILUA area:

- 2.1 Subject to the Miner's
- 2.1.1 Work Plan*;
 - 2.1.2 Safety and security obligations;
 - 2.1.3 Access requirements to the Mining Licence area; and

- 2.1.4 Rights of small scale mining under the Mining Licence, any required consent*, and applicable laws:

The Miner shall not hinder and will minimise interference with the entry, occupation and use of any part of the Mining Licence area by members of the Native Title Group.

3. Environmental Management

- 3.1 The Miner agrees to conduct small scale mining within the ILUA area in accordance with the Guidelines* and applicable laws.

4. Information and Communication

- 4.1 The Miner shall promptly provide to the Dja Dja Wurrung Clans Aboriginal Corporation:
- 4.1.1 A copy of each Mining Licence following its grant;
 - 4.1.2 copies of any consent in relation to small scale mining and/or
 - 4.1.3 Information reasonably requested by the Native Title Signatories which relates to small scale mining and to the Miner's obligations under the ILUA.

Schedule 3: Land Use Conditions (Cultural Heritage Management Procedures)

1 Interpretation

- 1.1 Nothing in this Schedule 3 replaces or modifies or is intended to replace or modify any of the Parties' obligations, rights or procedures under the Heritage Act*.
- 1.2 The provisions of the Heritage Act prevail over this Schedule 3 to the extent of any inconsistency.

2 Notification

- 2.1 In the event that the Miner is required to take any action under the Heritage Act, the Miner will notify the Cultural Heritage Co-ordinator and the Monitor before taking that action

3 Cultural Heritage Co-ordinator

- 3.1 The Dja Dja Wurrung Clans Aboriginal Corporation has appointed the Cultural Heritage Co-ordinator to act on their behalf with respect to cultural heritage management in the ILUA area and to liaise with any other relevant body or person under the Heritage Act.
- 3.2 The Dja Dja Wurrung Clans Aboriginal Corporation has arranged for the Cultural Heritage Co-ordinator to:
 - 3.2.1 Nominate the Monitor and provide the Miner with the address and contact details of the Monitor;
 - 3.2.2 Organise and co-ordinate the activities of the Monitor; and
 - 3.2.3 Process and invoice to the Miner any payments to be made to the Monitor under Item 12 of this Schedule.

4 Monitor and Cultural Heritage Consultant*

- 4.1 The Native Title Signatories agree that the Monitor nominated by the Cultural Heritage Co-ordinator is the appropriate Aboriginal person for the Miner to deal with, with respect to the procedures in this Schedule 3.

- 4.2 If the Monitor and the Miner agree, the Miner will engage an appropriately qualified cultural heritage consultant*, approved by the Monitor, the Dja Dja Wurrung Clans Aboriginal Corporation through the Cultural Heritage Co-ordinator and the Miner, to assist the Monitor and the Miner to meet their obligations under the Heritage Act and this Schedule 3.
- 4.3 In the event that the Monitor or the cultural heritage consultant is not available when required, then the Dja Dja Wurrung Clans Aboriginal Corporation, through the Cultural Heritage Co-ordinator, will nominate appropriate replacements (with the replacement cultural heritage consultant to be agreed between the Miner and the Cultural Heritage Co-ordinator).
 - 4.3.1 The Native Title Signatories agree that, in the event that the Monitor is not available to undertake his/her duties under this Schedule 3 for any reason, the replacement Monitor nominated under this item will be available immediately by way of replacement.

5 Consultations about the Work Plan

- 5.1 Subject to item 5.2, the Applicant will provide the Monitor with duplicate copies of the draft Work Plan.
- 5.2 The Applicant is not obliged to provide the Monitor with a draft Work Plan:
 - 5.2.1 If the works to be done pursuant to the Mining Licence in the Licence area will only involve non-ground disturbing activity. In this event items 5.3-5.8 do not apply.

Inspections by Monitor of work sites proposed under the draft Work Plan

- 5.3 Within 28 days of the draft Work Plan being provided to the Monitor, or such other timeframe as may be agreed between the Parties, the Cultural Heritage Co-ordinator will arrange for the Monitor to conduct an inspection of the work sites proposed on the Mining Licence area under the draft Work Plan.
- 5.4 The Monitor may ask (giving no less than 72 hours notice to the Applicant of the time and place of the inspections) that an appropriately qualified and authorised representative of the Miner attend the item 5.3 inspections to:

- 5.4.1 Explain and clarify the details of the draft Work Plan; and
- 5.4.2 If required, precisely locate (eg by pegging) the work sites proposed under the draft Work Plan.
- 5.5 The Monitor's inspection of the work sites proposed on the Mining Licence area is a one-off inspection taking a maximum of one day (eight hours duration in all).
- 5.6 The Parties agree that the Monitor's inspection of the work sites under item 5.3 will take place before the grant of the Mining Licence.
- 5.7 Subject to item 5.8, once the Monitor has completed the item 5.3 inspections, s/he will immediately complete a Report* that shall be jointly signed in duplicate by the Monitor and the Applicant, with a signed copy of the Report then given to the Cultural Heritage Co-ordinator and the Applicant by the Monitor.
 - 5.7.1 The Applicant will forward a copy of the Report to the State with the executed Deed of Assumption.
- 5.8 If the item 5.3 inspections determine that the proposed works under the Work Plan affect any Aboriginal place, Aboriginal object or Aboriginal human remains, the Monitor will immediately notify the Applicant, who will communicate with the Monitor with a view to reaching agreement within 14 days of being so notified as to the alteration of the proposed works to the reasonable satisfaction of the Monitor.
- 5.9 If agreement is reached under item 5.8, then a new Work Plan, incorporating any alterations that have been made as a result of agreement, will be provided to the Monitor.
 - 5.9.1 If the Applicant cannot agree to the requested alteration in its entirety or at all (because of significantly greater cost or inconvenience) then, subject to the Heritage Act, the obtaining of a work authority under the MRSDA, and to any other applicable laws, the Miner will conduct its Mining Licence works where practicable taking into consideration the Monitor's requests for alterations.
- 5.10 The Parties agree that to the extent that the item 5.3 inspections involve the engagement of a cultural heritage consultant to assist the Monitor by undertaking an archaeological survey, the cultural heritage consultant will if required under

section 36(1) of the AHA apply to the Secretary of the Department of Planning & Community Development for a Cultural Heritage Permit.

5.11 The Parties acknowledge that in order to comply with the Heritage Act, the Miner may need to consult with other people or bodies (including AAV) who are not members of the Native Title Group.

5.12 If the Miner proposes to make a variation to the Work Plan (whether by formal variation under the MRSDA or otherwise) which would substantially or materially vary an activity which has been approved by the Monitors under this Schedule A:

5.12.1 the Miner will provide a new Work Plan to the Monitors under item 5.1; and

5.12.2 the provisions of this item 5 shall then be applied to the new Work Plan.

6 Monitoring of the Licence Works

6.1 The Miner will notify the Cultural Heritage Co-ordinator at least 7 days prior to commencing any new works to be done pursuant to the Mining Licence ("Mining Works") except:

6.1.1 where the Mining Works only involve non-ground disturbing activity; or

6.1.2 where the Mining Works are not conducted on Crown land.

6.2 If required the Cultural Heritage Co-ordinator shall appoint the Monitor to monitor Mining Works.

6.3 If the Monitor is required to monitor the Mining Works, the Miner shall induct them as to its safety procedures. Subject to item 6.4, the Monitor will then be entitled to be present at the Mining Works.

6.4 Any Monitor present during the Mining Works will at all times comply with the work practices and safety requirements of the Miner and the MRSDA (and other applicable laws) and follow all instructions of the Miner, its employees and contractors.

7 Discovery of Aboriginal Objects*

- 7.1 If an object suspected to be an Aboriginal object is discovered by the Miner, its employees or contractors (except material suspected to be human remains – see item 8 below), the following provisions will apply:
- 7.2 as required under s24(2) of the Heritage Act, the discovery will be promptly reported or otherwise notified to the Secretary of the Department of Planning & Community Development and/or any other relevant government authority;
- 7.3 all Mining Works at the place where the object was discovered and within that immediate area will stop immediately and:
 - 7.3.1 the Monitor and the Cultural Heritage Co-ordinator will be promptly notified, if they are not present at the time of the discovery;
 - 7.3.2 the procedures set out in item 7.4 will be followed;
- 7.4 Subject to any applicable laws, any Cultural Heritage Management Plan under the Heritage Act and any lawful direction by AAV and/or any other relevant government authority:
 - 7.4.1 the Monitor shall take immediate steps to determine whether the object is an Aboriginal object, and its significance and immediately inform the Miner, AAV, and/or any other relevant government authority as to their opinion;
 - 7.4.2 if the Monitor's opinion is that the object may be or is an Aboriginal object, then unless there is a material risk that the object may be damaged, the Mining Works may recommence and continue one hundred metres distant from the object (or less than one hundred metres if agreed by the Monitor). If objects which may be Aboriginal objects are also encountered at the site proposed for the relocated works, this recommencement procedure will be repeated until no such objects are encountered;
 - 7.4.3 if the Monitor's opinion is that the object may be or is an Aboriginal object, the appropriate course of action will be determined by the Monitor in consultation with the Miner, and/or any other relevant government body as appropriate under the Heritage Act. This may consist of recording the location of the object or removal of the object, or protection of the object as appropriate; and

7.4.4 subject to the Heritage Act and other applicable laws, where agreement as to an appropriate course of action cannot be reached between the Monitor and the Miner within 72 hours of the time of discovery, or such longer period as the Monitor and the Miner may agree, the dispute shall be resolved in accordance with the terms of clause 13 of the Agreement [Resolving Disputes].

8 Discovery of Human Remains

8.1 If during Mining Works, an object suspected to be human remains is discovered:

8.1.1 the Miner will promptly report the discovery to Victoria Police;

8.1.2 all Mining Works at the place where the object was discovered and within that immediate area will stop immediately and:

8.1.2.1 the Monitor and the Cultural Heritage Co-ordinator will be promptly notified;

8.1.2.2 the procedures set out in item 8.1.3 and 8.1.4 will be followed;

8.1.3 Victoria Police will be permitted to examine the object to determine whether the object is human remains and, if so, whether the remains may be Aboriginal human remains; and

8.1.4 subject to the consent of Victoria Police, the Monitor may also be permitted to examine the object.

8.2 If:

8.2.1 Victoria Police consider that the object is not human remains; and

8.2.2 the object is not an Aboriginal object;

then Mining Works may immediately recommence. If however, the object is not human remains but is or is suspected to be an Aboriginal object then the procedures set out in item 7 of this Schedule 3 will be followed.

8.3 If Victoria Police consider that the object is human remains which are or are suspected to be Aboriginal human remains, the Miner will immediately:

- 8.3.1 report the discovery to the Secretary of the Department of Planning & Community Development under s17(3) of the AHA. The Miner shall suspend all Mining Works to the extent necessary to protect the remains, pending a direction from the Secretary of the Department of Planning & Community Development as to any action to be taken in relation to the remains under section 18 of the AHA;
- 8.3.2 notify the Monitor (if not already notified) as to the Miner's report in item 8.3.1.

8.4 The Miner will:

- 8.4.1 comply with its obligations under the Heritage Act; and
- 8.4.2 if the Monitor reasonably requests and where no significantly greater cost or inconvenience is likely, cease Mining Works at the location of the remains and within such area around the remains as the Monitor reasonably considers should not, according to Aboriginal tradition*, be disturbed by the Mining Works.

9 Report

- 9.1 Immediately following any inspection, monitoring or site attendances under items 5, 6, 7 or 8 of this Schedule 3, the Monitor shall complete a Report* that shall be jointly signed in duplicate by the Monitor and the Miner, with a signed copy of the Report then given to the Cultural Heritage Co-ordinator and the Miner by the Monitor.

10 Cultural Instruction

- 10.1 During the term of the Mining Licence, the Miner will use its best endeavours to ensure that its employees and contractors who are engaged directly or indirectly by or on behalf of the Miner are given appropriate instruction from time to time to help ensure compliance with the Heritage Act and to foster good relationships with members of the Native Title Group.

11 Proceeding with the Licence Works

- 11.1 Subject to the Heritage Act and other applicable laws, where the Monitor, the Cultural Heritage Co-ordinator, the Native Title Signatories and/or the Native Title

Group fail to comply with any timeframes referred to in this Schedule 3 or such other timeframes as agreed by the Monitor and the Miner, then the Miner may immediately proceed at its own risk with the Mining Works.

11.2 The Miner shall notify the Monitor and the Native Title Signatories in writing that it has proceeded with the Licence Works.

12 Cultural Heritage Payments

12.1 Subject to receipt by the Applicant of an invoice from the Cultural Heritage Co-ordinator, the Applicant shall make payments to the Cultural Heritage Co-ordinator for the Monitor's activities under this Schedule 3 as follows:

12.2 \$495 (plus GST) flat rate indexed* for a maximum 1 day one off site inspection of the Licence Area by the Monitor under item 5.3 on completion of the site inspection.

12.3 To avoid doubt, there are no fees payable by the Miner for site attendances by the Monitor carried out under items 6, 7 or 8 of Schedule 3.

12.4 The cultural heritage payments shall be increased annually by CPI* on the anniversary date of the registration of the ILUA (at the CPI rate that exists at that anniversary date).

Schedule 4

TEMPLATE DEED OF ASSUMPTION BY APPLICANT

Name and Address of Mining Licence applicant: _____

(The "Applicant")

RECITALS

- A. The Applicant has applied for a Mining Licence.
- B. The ILUA allows for the grant of Mining Licences on certain conditions including that the Mining Licence is subject to the Land Use Conditions and that the Applicant has made payment of the benefits owing under the ILUA by the date of Execution of this Deed.
- C. The ILUA provides that the Land Use Conditions are enforceable as if they were a contract between the Miner and the Native Title Signatories.
- D. By signing this Deed, the Applicant assumes the rights and obligations of the Miner under the ILUA as if the Applicant were the Miner referred to in the ILUA.

1 INTERPRETATION

Unless otherwise provided, words and expressions used in this Deed have the same meaning as provided for in the ILUA.

2 DEFINITIONS

In this Deed:

Mining Licence means the Mining Licence <insert MLA number or numbers > that is applied for by the Applicant and may be granted and registered by the State pursuant to the MRSDA which Mining Licence is located wholly or partly within the ILUA area, and includes an renewal or variation of the Mining Licence by the State pursuant to the MRSDA or any other applicable laws;

Mining Licence Area means the area the subject of the Mining Licence, a map of which is attached to this Deed;

<Note: the Applicant should provide maps of any Mining Licence to the Native Title Signatories>

ILUA means the indigenous land use agreement between the Native Title Signatories, on their own behalf and on behalf of the native Title Group and PMAV signed on [insert date];

3 APPLICATION FOR GRANT OF MINING LICENCE

- 3.1 The Applicant has applied for the grant of the Mining Licence within the ILUA area.
- 3.2 By signing this Deed, in relation to the Mining Licence, the Applicant:
 - 3.2.1 assumes the rights and obligations of the Miner under the ILUA as if the Applicant were the Miner referred to in the ILUA; and
 - 3.2.2 acknowledges that the ILUA is enforceable as between the Native Title signatories and the Applicant as if the Applicant were the Miner referred to in the ILUA; and
 - 3.2.3 Warrants that the Applicant has provided in full the benefits referred to in item 1.1.1 to Schedule 2 of the ILUA to the Native Title Signatories; and
 - 3.2.4 acknowledges that it is legally bound by the ILUA as if it were a contract between the native Title Signatories and the Applicant.

4 TERM OF DEED AND EFFECT OF WITHDRAWAL OR DISMISSAL OF NATIVE TITLE DETERMINATION

- 4.1 The Applicant agrees that it is bound by this Deed for the term of the Mining Licence.
- 4.2 The Applicant for a new Mining Licence, that is applied for after the withdrawal or dismissal of the native title determination applications, is not obliged to sign a Deed that relates to the new Mining Licence.

5 INDEPENDENT LEGAL ADVICE

- 5.1 The Applicant acknowledges that he or she has had an opportunity to seek independent legal advice with respect to all aspects of this Deed and the ILUA.

6 NOTICES

- 6.1 For the purposes of clause 30 and Schedule 6 of the ILUA, the address for service of the Applicant is
 - Name:
 - Contact:
 - Address:
 - Telephone number:
 - Facsimile number:
- 6.2 Immediately upon signing this Deed, the Applicant shall provide a signed copy of the Deed, with a copy of any Mining Licence application and map and a copy of the licence confirmation letter acknowledging receipt of payments referred to in clause 3.2.3 of this Deed to the following:
 - 6.2.1 The Native Title Signatories;
 - 6.2.2 PMAV;
 - 6.2.3 NTSV; and
 - 6.2.4 The State

Executed by the Applicant as a Deed this _____ day
of _____ 20

Attachment 1: Sealing Clauses

<Note: the correct form of sealing clause for a corporate Applicant in accordance with section 127 of the *Corporations Act 2001* (Cth) is set out in options 1-7 below. For an individual, option 8 should be used. The type of corporate sealing clause to use will depend on the constitution of the relevant company, and who is proposing to sign the Deed – eg power of attorney, sole director or signed under seal etc.

<Note: the Applicant is advised to seek legal advice on this matter>

Option 1

<Note: to be used if a company has a common seal and 2 directors who are present to witness the execution of the Agreement (s127(2)(a) Corporations Act 2001 (Cth)).>

The common seal of <[insert company name])
(ACN)> was affixed in accordance with)
its constitution in the presence of <.....> and)
<.....> <insert directors' names>:)

.....
(Signature of director)

.....
(Signature of director)

.....
(Full name in print)

.....
(Full name in print)

Date:/...../.....

Date:/...../.....

Option 2

<Note: to be used if a company has a common seal and a director and a company secretary who are present to witness the execution of the Agreement (s127(2)(b) Corporations Act 2001 (Cth)).>

The common seal of <[insert company name])
(ACN)> was affixed in accordance with)
its constitution in the presence of <.....> and)
<.....> <insert name of director and)
company secretary>:)

.....
(Signature of company secretary)

.....
(Signature of director)

.....
(Full name in print)

.....
(Full name in print)

Date:/...../.....

Date:/...../.....

Option 3

<Note: to be used if a proprietary company has a common seal, and a sole director who is also the sole company secretary (s127(2)(c) Corporations Act 2001 (Cth)).>

The common seal of <[insert company name])
(ACN)> was affixed in accordance with)
its constitution in the presence of <.....>)
<insert name of director >:)

.....
(Signature of sole director/secretary)

.....
(Full name in print)

Date:/...../.....

Option 4

<Note: to be used if the company does not want to affix its common seal (or does not have one) and 2 directors are present to execute the Agreement (s127(1)(a) Corporations Act 2001 (Cth)).>

Executed by <[insert company name])
(ACN)> in accordance with section)
127(1)(a) of the *Corporations Act* 2001 (Cth) in)
the presence of <.....> and <.....> <insert)
directors' names>:)

.....
(Signature of director)

.....
(Signature of director)

.....
(Full name in print)

.....
(Full name in print)

Date:/...../.....

Date:/...../.....

Option 5

<Note: to be used if the company does not want to affix its common seal (or does not have one), and a director and company secretary are present to witness the execution of the Agreement (s127(1)(b) Corporations Act 2001 (Cth)).>

Executed by <[insert company name])
(ACN)> in accordance with section)
127(1)(b) of the *Corporations Act* 2001 (Cth) in)
the presence of <.....> and <.....> <insert)
name of director and company secretary>:)

.....
(Signature of company secretary)

.....
(Signature of director)

.....
(Full name in print)

.....
(Full name in print)

Date:/...../.....

Date:/...../.....

Option 6

<Note: to be used if a proprietary company does not want to affix its common seal (or does not have one), and the company has a sole director who is also the sole company secretary (s127(1)(c) Corporations Act 2001 (Cth)).>

Executed by <[insert company name])
(ACN) in accordance with section)
127(1)(c) of the *Corporations Act 2001* (Cth) in)
the presence of <.....> <insert name of)
director>:)

.....
(Signature of sole director/secretary)

.....
(Full name in print)

Date:/...../.....

Option 7

<Note: to be used if the Agreement is to be executed by a person to whom the company has granted a power of attorney to execute this class of document. [NB. the person executing the document must provide a copy of the relevant power of attorney.]>

Executed by <[insert company name])
(ACN)> by its attorney <insert)
attorney's name> pursuant to a power of)
attorney dated <.....> who certifies)
that at the date of signing he/she has not)
received a notice of revocation by the grantor,)
in the presence of <insert name of witness>:)

.....
(Signature of witness)

.....
(Signature of attorney)

.....
(Name of witness in print)

.....
(Attorney's position within
company/Occupation)

Date:/...../.....

.....
(Full name in print)

Date:/...../.....

Option 8

<**Note:** to be used when an individual executes the Agreement.>

Signed by <insert name of individual> in the)
presence of:)

.....
(Signature of Witness)

.....
(Signature)

.....
(Print full name & address of Witness)

.....
(Full name in print)

Date:/...../.....

.....
(Occupation of Witness)

Date:/...../.....

Schedule 5

Template licence confirmation letter

<insert name of Applicant>
<insert Applicant's address>

Date

Dear < >

Re Application for Mining Licence < insert number> by <insert name of Applicant>

The Dja Dja Wurrung Clans Aboriginal Corporation is authorised to administer native title business for the Dja Dja Wurrung People, the traditional owners of the land the subject of the above Mining Licence application.

You have applied for a small scale Mining Licence <insert number> (5 ha. or less) which falls wholly or partly within the area covered by the Regional Indigenous Land Use Agreement for Small Scale Mining – Dja Dja Wurrung People and PMAV (Area Agreement) V12008/006 ("the Agreement").

We acknowledge receipt of benefits of <insert \$ amount> being the access fee for Mining Licence <insert number> for a <insert number> year term paid by you. If the licence is granted for a lesser period of years, you will be refunded the difference.

Under clause 4.3.2 of the Agreement, you may now sign the Deed of Assumption to the Agreement and lodge it with the Department of Primary Industries. By signing the deed of Assumption, you will comply with the future act provisions of the *Native Title Act 1993* (Cth). We look forward to receiving your signed Deed of Assumption in due course. We will confirm the term of years for Mining Licence <insert number> once it is granted.

If you have any queries about this letter, please contact the Dja Dja Wurrung Clans Aboriginal Corporation c/o NTSV on (03) 9321 5300.

Yours sincerely

Drew Berick
Public Officer
Dja Dja Wurrung Clans Aboriginal Corporation

Cc. PMAV
GPO Box 1706
Melbourne 3001; and

Zuzanna Lelito
Tenements Officer and Native Title Coordinator
Department of Primary Industries
55 Grey Street
Traralgon VIC 3844

Schedule 6

TEMPLATE MONITOR'S REPORT

[Monitor to complete this page and relevant Annexure. Complete a new Report for each day/part day]

- MONITOR'S NAME _____
- MONITOR'S START AND FINISH TIMES/DATES _____
- LOCATION _____
- GPS COORDINATES OF LOCATION (IF AVAILABLE) _____
- APPLICANT/MINER'S NAME _____
- MINING LICENCE NUMBER _____
- DESCRIPTION OF PROPOSED WORKS RELEVANT TO THIS REPORT _____

• MONITOR'S DUTIES (tick relevant box)

- | | | |
|----|--|--------------------------|
| 1. | One off 1 day site inspection of crown land areas detailed in the Miner's Work Plans (complete Annexure A) | <input type="checkbox"/> |
| 2. | Monitoring of Mining Works on Crown land areas (complete Annexure B) | <input type="checkbox"/> |
| 3. | Site attendance: Aboriginal object/place (complete Annexure C) | <input type="checkbox"/> |
| 4. | Site attendance: suspected Aboriginal human remains: (complete Annexure D) | <input type="checkbox"/> |

• ADDITIONAL COMMENTS BY MONITOR _____

• ADDITIONAL COMMENTS BY MINER _____

• SIGNED BY MONITOR _____

• SIGNED BY APPLICANT (CONFIRMATION OF MONITOR'S START AND FINISH
TIMES/DATES) _____

• DATE _____

.....

HAS THE REPORT BEEN SIGNED IN DUPLICATE BY MONITOR AND MINER

(INCLUDING RELEVANT

☐

ANNEXURE BY MONITOR?)

YES

☐

NO

*MONITOR TO SEND SIGNED COPY OF REPORT TO CULTURAL HERITAGE CO-
ORDINATOR*

*CULTURAL HERITAGE CO-ORDINATOR TO PROCESS REPORTED START AND
FINISH TIMES/DATES AND PREPARE AND FORWARD AN INVOICE TO THE MINER*

ANNEXURE A

[to be completed by Monitor for inspections of areas of Crown land detailed in the Miner's Work Plans: see item 5 of the Cultural Heritage Management Procedures]

- Has the Monitor received a copy of the Work Plan? *[please circle appropriate response]*
Yes/No
- Has inspection of areas of Crown land detailed in the Work Plan been completed?
Yes/No
- Will the proposed Mining Works associated with the Work Plan affect an:
 - (1) Aboriginal object/place **Yes /No**
 - (2) Aboriginal human remains? **Yes/No**
- Has agreement been reached between Monitor and Miner regarding alteration of proposed Mining Works so that Aboriginal place/object and/or remains are not disturbed?
Yes/No
- If YES, Miner to provide Monitor with agreed new Work Plan
- Did a cultural heritage consultant also participate in inspection? **Yes /No**
- If YES, insert name of Cultural Heritage Consultant_____
- Has the Cultural Heritage Consultant's report been provided to the Monitor and Miner/?
Yes/No

Outcome/Comments of Monitor _____

SIGNED BY MONITOR _____

DATE _____

ANNEXURE B

[to be completed by Monitor where there has been monitoring of Mining Works on crown land by the Monitor: see Item 6 of the Cultural Heritage Management Procedures]

- Has the Monitor been inducted by the Miner as to safety procedures? [please circle appropriate response] **Yes/No**
- What is the location of the Monitoring (written description and GPS coordinates, if available)? _____

- Will the Mining Works affect an:

(1) Aboriginal object/place **Yes /No**

(2) Aboriginal human remains? **Yes/No**

- If YES, go to Annexure C if Aboriginal object/place or Annexure D if suspected Aboriginal human remains

Outcome/Comments of Monitor _____

SIGNED BY MONITOR _____

DATE _____

ANNEXURE C

***[to be completed by Monitor IF Mining works will affect an aboriginal object/place:
see item 7 of the Cultural Heritage Management Procedures]***

- What is the description of the Aboriginal object/place? _____

- What is the significance of Aboriginal object/place? [please circle appropriate response]
high moderate low

- What is the location of Aboriginal object/place (written description and GPS coordinates if available) _____

- Has the Monitor informed the Secretary of Department of Planning & Community Development about Aboriginal place/object? **Yes/No**
- Have the Mining Works been altered so that they can continue without affecting the Aboriginal object/place? **Yes/No**
- If NO, do the Miner and Monitor agree to use dispute resolution process (clause 14 of ILUA)? **Yes/No**

Outcome/Comments of Monitor _____

Signed by Monitor _____

Date _____

ANNEXURE D

[to be completed by Monitor if Mining works will or may affect suspected Aboriginal object/place: see item 8 of the Cultural Heritage Management Procedures]

- Has the Miner notified Victoria Police of the discovery? [please circle appropriate response] **Yes/No**
- Have Mining works stopped in the vicinity? **Yes/No**

Monitor to await consent of Victoria Police to inspect

- Have Victoria police inspected the suspected remains? **Yes/No**
- Do Victoria Police consider that they are not human remains? **Yes/No**
- Do Victoria police consider that they are, or are suspected to be, Aboriginal objects/human remains? **Yes/No**
- Has the Monitor inspected the suspected remains? **Yes/No**
- Does the Monitor believe that the object/remains are an Aboriginal object/human remains? **Yes/no**
- Has the Miner reported the discovery to the Secretary of the Department of Planning & Community Development? **Yes/No**
- Has direction been received from the Minister for Aboriginal Affairs regarding action in relation to the human remains? **Yes/no**

Outcome/Comments of Monitor _____

Signed by Monitor _____

Date _____

Schedule 7: Notices

Native Title Group

Gary John Murray, Robert Herbert Nicholls, Rodney John Carter, Graham John Atkinson,
Carmel Priscilla Barry, Connie Harrison-Edwards, George Nelson and Fay Carter
c/- Native Title Services Victoria Ltd
Attention: CEO
642 Queensberry Street
North Melbourne Vic 3051

Phone number: (03) 9321 5300

Facsimile number: (03) 9326 4075

Dja Dja Wurrung Clans Aboriginal Corporation

c/- Native Title Services Victoria Ltd
Attention: CEO
642 Queensberry Street
North Melbourne Vic 3051

Phone number: (03) 9321 5300

Facsimile number: (03) 9326 4075

Prospectors & Miners Association of Victoria Incorporated

Attention: The Secretary
GPO Box 1706
Melbourne VIC 3000

Phone number: 0408 176 496

Facsimile number: (03) 9553 1032

Native Title Services Victoria Ltd

Attention: CEO
642 Queensberry Street
North Melbourne Vic 3051

Phone number: (03) 9321 5300

Facsimile number: (03) 9326 4075

The State

Department of Primary Industries
Attention: Mr D Boothroyd, Manager Minerals and Petroleum Tenements
1 Spring Street
Melbourne VIC 3000

Phone number: (03) 9658 4439

Facsimile number: (03) 9658 4499

