

Land Use Activity Processes

FACT SHEET 2

This fact sheet provides a summary of the processes for Land Use Activities set out in the LAND USE ACTIVITY AGREEMENT (LUAA).

The first step is to confirm the categorisation of the activity. Schedule 3, Items 1-4 of the LUAA include explanations and examples of each category of Land Use Activity.

Where activities may fall under more than one category of Land Use Activity, the higher categorisation will apply.

If you are unsure of the categorisation, you should reach out to DJAARA's Dja Dja Wurrekatjalangu Team responsible for implementing the LUAA via luaa@djadjawurrung.com.au. Dja Dja Wurrekatjalangu translates to "we say yes to each other", an expression for a reached agreement reflecting the agreement-making nature of the Team and its successes in many meaningful and mutually beneficial agreements.

Formal Notifications

Who Must Notify and When?

DJAARA must be formally notified of all Advisory, Negotiation and Agreement Activities before the activity commences.

Advisory Activities – the Decision Maker for the Land Use Activity must notify DJAARA.

Negotiation and Agreement Activities – the Responsible Person for the Land Use Activity must notify DJAARA.

To confirm who must provide the notice, contact the land manager of the area where the activity is proposed (usually a local council or State agency). You will need to provide information about the activity to the land manager to be included in the notification.

More information about when notifications for Agreement, Negotiation and Advisory Activities must be provided can be found in the relevant sections below.

For a notification template reach out to DJAARA's Dja Dja Wurrekatjalangu Team via luaa@djadjawurrung.com.au. DJAARA's [LUAA Activity Information Checklist](#) sets out the information DJAARA requires in a notification.

LUAA Site Inspections

Have you obtained a Cultural Heritage Management Plan (CHMP) for your activity?

1. If you answer 'Yes' to this question, you should provide the CHMP number to the Dja Dja Wurrekatjalangu Team.
2. If you have determined that you do not need a CHMP, you should:
 - a. provide a copy of your due diligence assessment to DJAARA; and
 - b. contact DJAARA to book a LUAA Site Inspection.

A LUAA Site Inspection is necessary for DJAARA to understand what impact the activity will have on Djaara's Traditional Owner Rights but does not satisfy your Cultural Heritage obligations under the Aboriginal Heritage Act 2006 (Vic).

1. Agreement Activities

Requires a formal notification to, and agreement with, DJAARA before the activity commences. DJAARA has the right to veto and must consent to the activity.

- ① The Responsible Person notifies DJAARA of the proposed activity. DJAARA's [LUAA Activity Information Checklist](#) sets out the information DJAARA requires in a notification.
- ② Engage in good faith negotiations with DJAARA's Dja Dja Wurrekatjalangu Team about any conditions DJAARA may require for the activity to proceed, including Community Benefits. The method of calculating Community Benefits depends on the type of activity and who is the Responsible Person for the activity. More information about how Community Benefits will be calculated for your activity is set out below.
- ③ Once the parties agree on outcomes, the Team must brief the DJAARA Board of Directors to seek consent for the activity to proceed in return for the agreed outcomes.
- ④ If the Board consents, DJAARA will prepare a formal contract.
- ⑤ Once the formal contract is signed by all parties, the proponent can proceed with the activity in accordance with the agreed conditions.
- ⑥ Pay DJAARA's invoice for reasonable cost of negotiating.

For more information on this process, refer to the Government's First Peoples – State Relations website [HERE](#).

2. Negotiation Activities

Requires a formal notification to, and agreement with, DJAARA before the activity commences. Negotiation activities are divided into two classes:

Negotiation Class A

Includes certain mining and exploration activities, and commercial leases with terms between 10 and 21 years.

Negotiation Class B

Includes the installation of services, Major Public Works, licences and permits for more than 10 years, Community Purpose Leases for more than 21 years, and Timber Release Plans.

Both Negotiation Class A and Class B activities follow the same procedure as Agreement Activities. However, if after 6 months of negotiating in good faith agreement cannot be reached, either DJAARA or the Responsible Person may apply to VCAT for an order.

For more information on this process, refer to the Government's First Peoples – State Relations website [HERE](#).

3. Advisory Activities

Require a formal notification to DJAARA and the opportunity for DJAARA to comment on the activity before it commences.

1. The Decision Maker notifies DJAARA of the proposed activity at least 28 days in advance of the date you intend on commencing your activity (this date should be specified in your notification). You should notify DJAARA as early as possible to avoid potential delays.
 - a. DJAARA's [LUAA Activity Information Checklist](#) sets out the information DJAARA requires in a notification.
 - b. DJAARA will confirm receipt within 7 days of receiving a notification.
 - c. If DJAARA has not confirmed receipt of the notification within 7 days, please follow up to confirm it was delivered successfully.
2. Await a response to the notification from DJAARA for a period of at least 28 days from the date the notice was delivered to DJAARA.
 - a. DJAARA may request additional time or information to understand the activity and its impact on Djaara's Traditional Owner Rights. This should be factored in when planning the timeframe for sending a notification.
 - b. If you do not receive a response and intend on proceeding with the activity in absence of a response, you should advise DJAARA before doing so.
 - a. When a response is received, acknowledge DJAARA's comments and any recommendations in writing and, if requested, meet with DJAARA.
3. Actively consider DJAARA's comments and discuss any possible ways to resolve DJAARA's concerns, if any.
4. After considering DJAARA's comments and any recommendations, decide whether any changes to the activity can be made to reduce the impact on Djaara's Traditional Owner Rights.
5. Notify DJAARA of your decision and explain how your decision will address DJAARA's concerns or recommendations, if any.

For more information on this process, refer to the Government's First Peoples – State Relations website [HERE](#).

4. Routine Activities

Do not require a formal notification to DJAARA, but proponents should keep a record of the activity. You do not need to book a LUAA Site Inspection for a Routine Activity.

For more information on this process, refer to the Government's First Peoples – State Relations website [HERE](#).

Community Benefits for Negotiation and Agreement Activities

Negotiation and Agreement Activities have a greater impact on Djaara's Traditional Owner Rights. As such, DJAARA may be entitled to Community Benefits.

The method of calculating Community Benefits will depend on the type of activity.

For the clearing and carrying out of works

Community Benefits are calculated using the principles from the High Court of Australia's precedent case *Northern Territory v Mr A. Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwurru and Nungali People* [2019] HCA 7, known as the Timber Creek case, or as the Griffiths Case. The Timber Creek case establishes a precedent for monetary compensation at the rate of 50% of the unimproved market value (UMV) of the affected land for the economic loss to the land, plus an amount for non-economic or cultural loss, assessed on a case-by-case basis.

The Timber Creek precedent is applied by:

- a. DJAARA and the proponent jointly engaging a valuer to determine the UMV of the affected land (at the proponent's cost); and
- b. A CHMP or LUAA Site Inspection informing DJAARA in relation to the non-economic/cultural loss resulting from the activity. The cultural loss component will be a minimum of 10% of the UMV.

For more information about the Timber Creek precedent, please review the [Timber Creek Case Summary document](#).

For Public Land Authorisations

Community Benefits will be a percentage of the rental, licence or permit fees for the term of the authorisation.

The formulae at Schedule 7 of the LUAA may or may not apply and will be determined on the facts of each case.

Negotiation Outcomes (Community Benefits)

When negotiating Community Benefits, DJAARA is open to considering a wide variety of meaningful outcomes for the Dja Dja Wurrung community, not only monetary outcomes.

Outcomes can include:

1. Engaging DJAARA's service provider, [DJANDAK](#), for works including construction, landscaping, light civil works, ongoing maintenance or natural resource management;
2. education or employment for Djaara;
3. recognition of Djaara culture through the project (e.g., through artwork or naming of the site); and
4. including DJAARA in decision making for the site.

For more details about options for outcomes and for information on the capability of and services provided by DJAARA's enterprises, please refer to [FACT SHEET 3](#).

Your Obligations in relation to Cultural Heritage

Despite any CHMP, or other cultural heritage inspection, report, plan or agreement, you must comply with your obligations under the *Aboriginal Heritage Act 2006* (Vic). In particular, you should be aware of sections 27 and 28 of the Act.

The Victorian Government's First Peoples – State Relations website has lots of information about Aboriginal Cultural Heritage and helpful fact sheets showing what you need to look out for when undertaking your activity. You can access the website [HERE](#).

DJAARA has also developed an [Aboriginal Object Collections fact sheet](#) about Aboriginal Cultural Heritage, including, what are Aboriginal objects and places, what to do if you think you have found an Aboriginal object or place, what can be done with unwanted collections, and what is the law.

Resources

A list of resources referred to in this Fact Sheet, along with more information about DJAARA, Djaara history and the LUA process, can be found below:

[FACT SHEET 1](#)

Land Use Activity Processes

[FACT SHEET 3](#)

Opportunities for Engagement with DJAARA and Potential Negotiation Outcomes

[FACT SHEET 4](#)

The Road to the Dja Dja Wurrung RSA

[DJAARA Website](#)

[Dja Dja Wurrung Recognition and Settlement Agreement \(RSA\)](#)

[Dja Dja Wurrung Land Use Activity Agreement \(LUA\)](#)

DJAARA's aspirations, plans, and strategies for managing and healing Country (as set out on the right) and more resources can be found [HERE](#).

- [Dhelkunya Dja – Dja Dja Wurrung Healing Country Plan 2014-2034](#)
- [Turning 'wrong way' climate, 'right way' - Dja Dja Wurrung Climate Change Strategy 2023-2034](#)
- [Nyauwi Mutjeka 'To keep the Sun' - Dja Dja Wurrung Renewable Energy Strategy](#)
- [Galk-galk Dhelkunya - Forest Gardening Strategy 2022-2034](#)
- [Dhelkunyangu Gatjin Working together to heal water - Djaara Gatjin Strategy](#)
- [Djandak Wi \(Country Fire\) Strategy – dhelkunya wi \(healing fire\) 2024-2034](#)

Contacts

DJAARA's Dja Dja Wurrekatjalangu Team

(RSA Team) - luaa@djadjawurrung.com.au

DJAARA's Malamiya Team (Cultural Heritage Team)

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Please note this Fact Sheet does not constitute legal advice.

If you require legal advice regarding the interpretation or application of relevant laws, you need to seek this advice independently.