

# **MEMORANDUM OF UNDERSTANDING**

**between**

**Dja Dja Wurrung Clans Aboriginal Corporation**

**and**

**Grampians Wimmera Mallee Water Corporation**

**Recognition of Cultural Heritage and Native Title within the  
South West Loddon Pipeline Project**



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## MEMORANDUM OF UNDERSTANDING

### The Recognition of Cultural Heritage and Native Title within the South West Loddon Pipeline Scheme

This **Memorandum of Understanding** is made between Grampians Wimmera Mallee Water Corporation (ABN 35 584 588 263) (GWMWater) of 11 McLachlan Street, Horsham, 3400

and

Dja Dja Wurrung Clans Aboriginal Corporation (ICN 4221 ABN 52 459 162 679) (DDWCAC) of Unit 1, 70 Powells Avenue, Bendigo, 3552

#### 1 Background

GWMWater, in partnership with DDWCAC, Loddon Shire Council, Coliban Water, Goulburn Murray Water, and both the Victorian and Commonwealth Governments, is planning to construct approximately 1,300 km of stock and domestic pipeline to service the south west of Loddon Shire and Dja Dja Wurrung Country.

The pipeline will connect the Waranga Western Channel with the Wimmera Mallee Pipeline, further expanding the Victorian Water Grid and providing a secure water supply to more than 630 rural properties, which currently rely on local rainfall and catchment dams to supply their farms. Environmental benefits are expected to also be achieved by less dependence on farm storages that currently intercept water that could benefit regional rivers and wetlands.

The DDWCAC and GWMWater Vision is for lands and waters to be in good condition and actively managed to protect the values and to promote the laws, culture and rights of all Dja Dja Wurrung People.

Before non-Aboriginal colonisation, the natural places within Dja Dja Wurrung Country were well known, had a name and song and were celebrated as part of Dja Dja Wurrung culture. Dja Dja Wurrung clans maintained an economy, a political system, the resources and the means to take care of its people. These values are maintained by Dja Dja Wurrung People today through living culture, by being a Registered Aboriginal Party, the Dja Dja Wurrung Land Use Activity Agreement with the State of Victoria, and expressly through the *Dhelkunya Dja Dja Wurrung Country Plan 2014-2034* (Country Plan) and by active involvement in management and protection of natural and cultural values on Country.

Construction of the South West Loddon pipeline will result in works being undertaken on land where Aboriginal cultural heritage values are present. The extent of these values is presently not fully understood and GWMWater respects that some areas within scope of the South West Loddon Project will be of cultural heritage significance to the Dja Dja Wurrung People.

The Country Plan reaffirms the aspirations and describes the future of Dja Dja Wurrung People, as the Traditional Owners of Dja Dja Wurrung Country. This MOU is about GWMWater's respect for Aboriginal Cultural and working in partnership with the DDWCAC to protect the stated aspirations for all Victorians in to the future.



The MOU endeavours to strengthen the knowledge of Dja Dja Wurrung cultural heritage values, including places, landscapes, stories, language, customs, practices and responsibilities for looking after Country, whilst maintaining the health and wellbeing of Dja Dja Wurrung people through the South West Loddon Water Supply Project.

A small section of the South West Loddon Project has already been approved and for the area under contract, a Cultural Heritage Management Plan (CHMP 13999) has been developed and approved. A concept design for the remainder of the project has been developed; and as this is to be delivered as a Design and Construct Project, the contractor will develop the detailed design and alignment of the pipeline.

In the context of this MOU, GWMWater is seeking to sponsor a desktop cultural heritage assessment to inform the market of the significance of cultural heritage in the area. It is expected the contractor will engage suitably qualified heritage advisors and sponsor the implementation of standard and complex cultural heritage assessments as required. The contractor will liaise with DDWCAC to complete a Cultural Heritage Management Plan for the project.

GWMWater's Indigenous Engagement Policy recognises:

- the valuable contribution of Indigenous cultures to the heritage of all Australians;
- the historical habitation of the Wimmera and Mallee regions by Aboriginal peoples;
- the importance of sites of significance and artefacts; and
- the spiritual relationship between Indigenous peoples and the land and water.

Under this Policy, GWMWater commits to:

- Effective engagement with Indigenous peoples through direct dialogue, referrals, project management and regional partnership opportunities;
- Developing a better understanding of Indigenous culture and heritage among staff;
- Incorporating Native Title and Aboriginal cultural heritage considerations in project planning and management;
- Avoiding and minimising the impact of construction works to Aboriginal cultural heritage values; and
- Following the principles of equal employment opportunity and striving for diversity in the workplace.

## **2 Intent**

This Memorandum of Understanding (MOU) is to form the basis for co-operative relationships between the parties, in particular to:

- Recognise the role of DDWCAC in management, protection, and promoting cultural heritage within the project area.
- Address the impact of construction works for the South West Loddon Pipeline Project on cultural heritage through appropriate mechanisms in accordance with the Aboriginal Heritage Act 2006 as amended.

- Provide for open communication, collaboration and cooperation to effectively deliver the South West Loddon Pipeline Project without adversely impacting the cultural heritage of the region.

The overriding principles of the MOU will be to:

- To use the learnings and discovery that will occur through the development of the cultural heritage management plan(s) and oversight of the project to expand the narrative of Aboriginal relationships with Dja Dja Wurrung Country.
- Strengthen our understanding of Aboriginal cultural heritage on Dja Dja Wurrung Country.
- Protect and manage Aboriginal cultural heritage values.
- Compliance with the conditions of approved cultural heritage management plan/s.
- Facilitate the outcomes of collaboration to promote healing and reconciliation, to enable teaching Dja Dja Wurrung People about their Country and laws, and to raise cultural awareness among the broader community.

The MOU does not replace legislative requirements, but supports the achievement of these obligations.

Reasonable cost of activities identified in this MOU will be met by GWMWater.

### 3 Definitions

For the purposes of this MOU, the following terms shall have the meanings as indicated:

**DDWCAC** refers to Dja Dja Wurrung Clans Aboriginal Corporation, the Registered Aboriginal Party and Traditional Owners of Country subject to this MOU.

**CHMP** refers to a Cultural Heritage Management Plan

**Construction works** refers to the construction of South West Loddon Pipeline Project.

**GWMWater** refers to Grampians Wimmera Mallee Water Corporation.

**Initiating party** refers to the party bringing a dispute against the other party.

**Mediator** refers to an independent expert in the field to which a dispute relates.

**Party** refers to each of the signatory organisations or their designated representatives.

**Project Area** refers to the activity area which includes all activities and associated ancillary activity areas required to undertake the construction and completion of the project.

**RAP** means the Registered Aboriginal Party.

**Responding party** refers to the party required to respond to a dispute.



## **4 Regulatory Responsibilities**

### **4.1 Dja Dja Wurrung Clans Aboriginal Corporation**

- 4.1.1 DDWCAC is the Registered Aboriginal Party (RAP) and may elect to evaluate a CHMP in accordance with the Aboriginal Heritage Act 2006 as amended.
- 4.1.2 DDWCAC has Native Title rights and a Land Use Activity Agreement that relates to public land within the project area.

### **4.2 GWMWater**

- 4.2.1 GWMWater is a statutory corporation seeking to construct a series of raw water pipeline networks and associated infrastructure throughout the South West of the Loddon Shire.

## **5 Undertakings**

### **5.1 General**

- 5.1.1 Both parties have a mutual interest in maintaining a cooperative and constructive working relationship that aims to facilitate an ongoing strengthening of this relationship.
- 5.1.2 Collaboration and partnership between DDWCAC and GWMWater will be based on mutual respect and a commitment to uphold the spirit and facilitate implementation of this MOU;
- 5.1.3 Collaboration and partnership between DDWCAC and GWMWater will be based on shared responsibilities and respect for culture and cultural heritage values;
- 5.1.4 DDWCAC and GWMWater will have a joint commitment to fostering sustainable economic, social and environmental development as a result of collaboration and partnership activities;
- 5.1.5 DDWCAC and GWMWater will have a joint commitment to promote sustainable management practices and engagement principles.

### **5.2 GWMWater will undertake to:**

- 5.2.1 Conduct construction works in a manner that minimises the impact of such operations on cultural heritage and the environment, and respects the connection of Dja Dja Wurrung People, past and present, as the recognised Traditional Owners of their Country.
- 5.2.2 In addition to any regulatory requirement, undertake to complete a CHMP/s and seek approval from Dja Dja Wurrung when operating in known areas of cultural heritage significance, or when requested by DDWCAC.
- 5.2.3 Ensure that systems are in place to comply with conditions of any approved CHMP and to ensure no GWMWater staff or agent or contracted personnel of GWMWater by an act or omission and knowingly, recklessly or negligently harms Aboriginal cultural heritage.

- 5.2.4 Consult directly with DDWCAC as soon as GWMWater becomes aware of potential non-compliance with the conditions of an approved CHMP and address any non-compliance matters in accordance with approved conditions.
- 5.2.5 Involve DDWCAC in conversations regarding its overall project planning and delivery matters which has the potential to impact on cultural heritage, including staging and or scheduling of the project.
- 5.2.6 Through DDWCAC engage Dja Dja Wurrung Cultural Heritage Field Representatives during construction of the project and enter into a contract for these services, as required.
- 5.2.7 Ensure Heritage Advisors are suitably qualified and experienced.
- 5.2.8 Ensure all project staff and contractors undertake cultural awareness training/cultural heritage inductions when engaged to work on the construction works.
- 5.2.9 Consider Native Title rights and the impact of works in relation to the Land Use Activity Agreement (LUAA) and negotiate a positive outcome in good faith.
- 5.2.10 Protect the beneficial uses of waterways, including cultural and spiritual values, as expressed in the State Environment Protection Policy Waters of Victoria.
- 5.2.11 Promote the cultural heritage learnings from the project within GWMWater staff training, project management processes and public communications, where agreed with Dja Dja Wurrung.

### **5.3 DDWCAC will undertake to:**

- 5.3.1 Advise GWMWater on appropriate standards and methods for assessing the impact of the construction works on cultural heritage and standards for procuring and implementing work such as mitigation, whilst achieving value for money at all times.
- 5.3.2 Mediate where, in relation to activities potentially affecting areas Aboriginal cultural heritage, differences of opinion are raised about the correct assessment of the significance of these areas or the appropriateness of measures proposed to avoid or minimise impact to them. Matters of difference between GWMWater or its agents and DDWCAC should first be discussed between the relevant Contact Officers.
- 5.3.3 Be responsible for providing sufficient and competent resources (at GWMWater's cost) for timely approvals, advice and requests from GWMWater in relation to the project scope.
- 5.3.4 Notwithstanding statutory requirements, ensure that sufficient time is dedicated to replying to requests, issuing of approvals or providing resources necessary for GWMWater to progress with the project.
- 5.3.5 Uphold appropriate conduct by people in relation to the project, including safe standards of work.



#### **5.4 Both DDWCAC and GWMWater will explore:**

- 5.4.1 The opportunity for employment for Indigenous people during the construction works.
- 5.4.2 A strengthening of our understanding of Aboriginal cultural heritage values within the project area and promote cultural awareness and respect amongst the broader community and where appropriate to consider opportunities for cultural tourism. This may involve but is not limited to: recognition of Aboriginal places, cultural and natural values through signage, undertaking research, documenting story-telling and other community awareness raising strategies.
- 5.4.3 Partnership opportunities in cultural heritage research across the construction works area.
- 5.4.4 Dual naming of key pipeline infrastructure.
- 5.4.5 Ownership of any rights associated with recognition.

#### **6 Indemnity**

- 6.1 GWMWater will remain responsible for any claim or action that is made threatened or commenced, and any liability, loss, damage or expense (including legal costs) that it may incur or suffer under this MOU.
- 6.2 The indemnity given by GWMWater to DDWCAC is limited to the extent that it does not apply to the extent that DDWCAC caused or contributed to the loss.

#### **7 Consultation**

- 7.1 Each party shall appoint a contact officer for the purposes of managing this MOU.
- 7.2 At the date of execution of this MOU the contact officers shall be the persons specified in Schedule 1 and each party shall give notice of any change of its contact officer, as soon as practicable after the change is made.
- 7.3 Each party will ensure its contact officer
  - (a) is available at all reasonable times to address any questions, concerns or disputes raised by the other party, arising out of the operation of this MOU; and
  - (b) arranges (in conjunction with the other party's contact officer) such meetings of appropriate staff of the parties as may be necessary to facilitate the effective operation of this MOU.

#### **8 Resolution of Disputes**

- 8.1 All disputes or differences arising from this MOU or from the performance of any party to its obligations under this MOU shall be decided as follows:



- (a) Either party shall submit and specify the matter at issue in writing to the other party.
- (b) The receiving party shall as soon as practicable thereafter give its response and proposed actions (if any) in writing to the initiating party.
- (c) If the initiating party is dissatisfied with the response and proposed actions (if any) of the responding party, the initiating party may within 28 days after receipt of such advice, notify the responding party in writing that the matter at issue is to be referred to mediation.
- (d) Where the initiating party gives notice in compliance with subclause (c) then mediation is to be effected.
- (e) By the mediator agreed in writing by both parties within 28 days of the day on which the notice is received by the initiating party; or
- (f) Failing that agreement by a mediator selected by the responding party from a panel of three persons nominated by the initiating party (none of whom shall be an employee or contractor of the initiating party or associated with the work of the contract).
- (g) The cost of engaging a mediator and the facilitation of such mediation process shall be borne equally between both parties.

## Schedule 1

Item 1 Contact Officers	GWMWater	Mr Mark Williams Managing Director
	DDWCAC	Dr Diana Smith Program Manager - Cultural Heritage
Item 2 Contact Address	GWMWater	11 McLachlan Street, Horsham 3400
	Dja Dja Wurrung	Unit 1, 70 Powells Avenue, Bendigo, 3552
Item 3 Contact number	GWMWater	1300 659 961
	Dja Dja Wurrung	(03) 5444 2888
Item 3 Contact email	GWMWater	<a href="mailto:info@gwmwater.org.au">info@gwmwater.org.au</a>
	Dja Dja Wurrung	<a href="mailto:info@djadjawurrung.com.au">info@djadjawurrung.com.au</a>

## STATEMENT OF UNDERSTANDING

This document is a statement of understanding and is not intended to create binding or legal obligations on either party.

EXECUTED as a Deed

SIGNED FOR AND ON BEHALF OF THE DJA DJA WURRUNG CLANS  
ABORIGINAL CORPORATION BY:



Signature

TRENT NELSON

Name



Witness

Date:

6 / 10

/2016



SIGNED FOR AND ON BEHALF OF GRAMPIANS WIMMERA MALLEE  
WATER CORPORATION BY ITS CHAIRMAN:



Signature

PETER VOGEL

Name



Witness

Date:

6 / 10

/2016





# Annexure South West Loddon Pipeline Map

