

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**ABORIGINAL LAND (LAKE CONDAH AND FRAMLINGHAM
FOREST) BILL 1987**

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SCHEDULE 1

LAND IN THE PARISH OF CONDAH TO BE VESTED IN THE KERRUP-JMARA
ELDERS ABORIGINAL CORPORATION

SCHEDULE 2

LAND IN THE PARISH OF PURNIM TO BE VESTED IN THE KIRRAE WHURRONG
ABORIGINAL CORPORATION

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 25 March 1987

(Minister for Aboriginal Affairs)

A BILL

FOR

An Act to provide for the vesting in certain Aboriginal communities of certain land at Lake Condah and Framlingham owned by the State of Victoria, and for related purposes

WHEREAS Condah Land and Framlingham Forest are situated in the State of Victoria:

AND WHEREAS the Government of Victoria acknowledges:

(a) that:

- 5 (i) that part of Condah land shown shaded and hatched on the plan in Part A of Schedule 1 was originally Aboriginal land and was on 22 February 1984 acquired under the *Crown Land (Reserves) Act 1978* of Victoria and is deemed to be temporarily reserved under that Act as an area of historic and archaeological interest;
- 10 (ii) that part of Condah land was traditionally owned, occupied, used and enjoyed by Aboriginals in accordance with Aboriginal laws, customs, traditions and practices;

- (iii) the traditional Aboriginal rights of ownership, occupation, use and enjoyment concerning that part of Condah land are deemed never to have been extinguished;
 - (iv) that part of Condah land has been taken by force from the Kerrup-Jmara Clan without consideration as to compensation under common law or without regard to Kerrup-Jmara Law; 5
 - (v) Aboriginals residing on that part of Condah land and other Aboriginals are considered to be the inheritors in title from Aboriginals who owned, occupied, used and enjoyed the land since time immemorial; 10
 - (vi) that part of Condah land is of spiritual, social, historical, cultural and economic importance to the Kerrup-Jmara Community and to local and other Aboriginals;
 - (vii) it is expedient to acknowledge, recognise and assert the traditional rights of Aboriginals to that part of Condah land and the continuous association they have with the land; and 15
- (b) that:
- (i) Framlingham Forest was originally Aboriginal land and was later part of lands reserved temporarily from sale and for the use of Aboriginals under the exercise of the power vested in the Government of the State of Victoria with the advice of the Executive Council by Act No. 24 Victoria 117 and pursuant to the order of the Executive Council made on 19 September 1861; 20
 - (ii) Framlingham Forest was traditionally owned, occupied, used and enjoyed by Aboriginals in accordance with Aboriginal laws, customs, traditions and practices; 25
 - (iii) the traditional Aboriginal rights of ownership, occupation, use and enjoyment concerning Framlingham Forest are deemed never to have been extinguished; 30
 - (iv) Framlingham Forest has been taken by force from the Kirrae Whurrong (Pertobe) Clan without consideration as to compensation under common law or without regard to Kirrae Whurrong Law;
 - (v) Aboriginals residing at Framlingham Forest and other Aboriginals are considered to be the inheritors in title from Aboriginals who owned, occupied, used and enjoyed Framlingham Forest since time immemorial; 35
 - (vi) Framlingham Forest is of spiritual, social, historical, cultural and economic importance to the Kirrae Whurrong community and to local and other Aboriginals; 40
 - (vii) it is expedient to acknowledge, recognise and assert the traditional rights of Aboriginals to Framlingham Forest and the continuous association they have with Framlingham Forest: 45

AND WHEREAS the Government of Victoria has requested the Parliament of the Commonwealth to enact an Act in the terms of this Act:

AND WHEREAS the Commonwealth does not acknowledge the matters acknowledged by the Government of Victoria, but has agreed to the enactment of such an Act:

BE IT THEREFORE ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*.

Commencement

2. (1) Part I shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on a day or days to be fixed by Proclamation.

Interpretation

3. (1) In this Act:

“Aboriginal” means a member of the Aboriginal race of Australia;

“Community Council” means the governing committee of the Kirrae Whurrong Aboriginal Corporation;

“Condah land” means the land shown shaded and hatched on the plan in Part A, and shown hatched on the plan in Part B, of Schedule 1;

“Corporation” means the Kerrup-Jmara Elders Aboriginal Corporation or the Kirrae Whurrong Aboriginal Corporation, as the case requires;

“Crown” means the Crown in right of the Commonwealth or of the State of Victoria, or of both, as the case requires;

“day of vesting”, in relation to a Corporation, means the day on which the relevant land is vested in the Corporation under section 6 or 7;

“Framlingham Forest” means the land shown shaded and hatched on the plan in Schedule 2;

“Framlingham Reserve” means the lands shown on the plan in the First Schedule to the *Aboriginal Lands Act 1970* of Victoria;

“Governing Committee” means the governing committee of the Kerrup-Jmara Elders Aboriginal Corporation;

“interest”, in relation to land, means:

(a) a legal or equitable estate or interest in the land; or

(b) a right, power or privilege over, or in connection with, the land;

“Kerrup-Jmara Elders Aboriginal Corporation” means the body that is known as the Kerrup-Jmara Elders Aboriginal Corporation and is incorporated under the *Aboriginal Councils and Associations Act 1976*;

“Kirrae Whurrong Aboriginal Corporation” means the body that is known as the Kirrae Whurrong Aboriginal Corporation and is incorporated under the *Aboriginal Councils and Associations Act 1976*;

“mineral” means:

(a) a mineral within the meaning of paragraph (a), (b) or (c) of the definition of “mineral” in subsection 3 (1) of the *Mines Act 1958* of Victoria, other than living matter or a substance declared under that Act not to be a mineral for the purpose of that definition to the extent to which and in the circumstances in which the declaration is expressed to apply;

(b) petroleum within the meaning of the *Petroleum Act 1958* of Victoria; or

(c) stone within the meaning of the *Extractive Industries Act 1966* of Victoria;

“mining operation” means any operation carried out for mining purposes;

“mining purposes” means the purposes of:

(a) prospecting for a mineral or winning a mineral from a place where it occurs naturally;

(b) extracting from its natural state a mineral previously won from a place where it occurred naturally if the extraction occurs at or in the vicinity of the place where the mineral occurs naturally;

(c) disposing of a mineral in connection with operations for a purpose mentioned in paragraph (a) or paragraph (b);

(d) disposing of waste substances resulting from operations for a purpose mentioned in paragraph (a) or paragraph (b); and

(e) treating, storing or stacking earth in connection with operations for a purpose mentioned in paragraph (a) or paragraph (b) if the treating, storing or stacking earth occurs at or in the vicinity of the place where the mineral occurs naturally;

“mining tenement” means:

(a) an exploration licence under Part V. of the *Mines Act 1958* of Victoria, a searching permit under subsection 514 (7) of that Act, a prospecting area licence under section 325 of that Act, a permit to search for stone under section 27 of the

Extractive Industries Act 1966 of Victoria or a petroleum exploration permit under Part IV. of the *Petroleum Act* 1958 of Victoria; or

- (b) any other lease, licence, permit or other authority under the *Mines Act* 1958 of Victoria or the *Petroleum Act* 1958 of Victoria;

“relevant land” means:

- (a) in relation to the Kerrup-Jmara Elders Aboriginal Corporation, the Condah land; and

- (b) in relation to the Kirrae Whurrong Aboriginal Corporation, Framlingham Forest.

(2) In provisions of the *Lands Acquisition Act* 1955 as applying by virtue of this Act:

- (a) “Supreme Court” means the Supreme Court of Victoria;

- (b) “date of acquisition”, in relation to land, means the date of commencement of section 6 or 7, as the case requires;

- (c) “this Act” means:

- (i) the *Lands Acquisition Act* 1955 as applying by virtue of this Act; or

- (ii) this Act; and

- (d) “claimant”, “court of summary jurisdiction”, “mortgagee” and “mortgagor” have the meanings they have in the *Lands Acquisition Act* 1955.

Crown

4. This Act binds the Crown in right of the Commonwealth and in right of the State of Victoria.

Delegation

5. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to a Minister of the Crown of the State of Victoria or an officer of the Department all or any powers that are conferred on the Minister by or under this Act.

(2) A Minister of the Crown of the State of Victoria to whom a power has been delegated under subsection (1) may, by writing signed by that Minister, authorise another person to exercise the power so delegated.

- (3) An authority under subsection (2) may be given to:

- (a) a specified person; or

- (b) the person for the time being occupying or performing the duties of a position in the public service of the State of Victoria, being a position specified in the instrument by which the authority is given.

(4) Any act or thing done in the exercise of a power by a person to whom that power has been delegated by the Minister under subsection (1) or by a person authorised by a delegate of the Minister under subsection (2) to exercise that power has the same force and effect as if it had been done by the Minister.

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(5) Where the exercise of a power by the Minister is dependent upon the opinion, belief or state of mind of the Minister in relation to a matter and that power has been delegated under subsection (1), that power may be exercised by the delegate or by a person authorised by the delegate under subsection (2) upon the opinion, belief or state of mind of the delegate or of the authorised person, as the case may be, in relation to that matter.

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(6) A delegation under subsection (1) does not prevent the exercise of a power by the Minister.

(7) The giving of an authority under subsection (2) does not prevent the exercise of a power by the person by whom the authority was given.

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(8) Where a person purports to exercise a power conferred or expressed to be conferred on the Minister by this Act, it shall be presumed, unless the contrary is established, that the person is duly authorised by a delegation under subsection (1) or by an authority under subsection (1), given pursuant to such a delegation, to exercise the power.

20

PART II—VESTING OF CONDAH LAND AND FRAMLINGHAM FOREST

Vesting of Condah land

6. (1) On the commencement of this section, the Condah land, other than minerals in the Condah land is, by force of this Act:

25

- (a) vested in the Kerrup-Jmara Elders Aboriginal Corporation; and
- (b) freed and discharged from all interests (other than interests in minerals), trusts, restrictions, dedications, reservations, obligations, contracts, licences, charges and rates;

to the intent that the legal estate in the land and all rights and powers incident to that legal estate are vested in the Kerrup-Jmara Elders Aboriginal Corporation.

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(2) On the commencement of this section, the lands delineated and shown hatched on the plan in Part A of Schedule 1 are closed as roads and all rights, easements and privileges existing or claimed either in the public or by any body or person as incident to any past dedication or supposed dedication of them or by user or by any fiction of law cease to exist.

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Vesting of Framlingham Forest

7. (1) On the commencement of this section, Framlingham Forest, other than minerals in Framlingham Forest, is, by force of this Act:

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- (a) vested in the Kirrae Whurrong Aboriginal Corporation; and

- (b) freed and discharged from all interests (other than interests in minerals), trusts, restrictions, dedications, reservations, obligations, contracts, licences, charges and rates;

5 to the intent that the legal estate in the land and all rights and powers incident to that legal estate are vested in the Kirrae Whurrong Aboriginal Corporation.

10 (2) On the commencement of this section, the lands delineated and shown hatched on the plan in Schedule 2 are closed as roads and all rights, easements and privileges existing or claimed either in the public or by any body or person as incident to any past dedication or supposed dedication of them or by user or by any fiction of law cease to exist.

Conversion of interests into claims for compensation

8. On the commencement of section 6 or 7, as the case requires:

- 15 (a) the property of the State of Victoria in the Condah land or in Framlingham Forest (other than property in minerals); and
(b) each interest of a person (other than the Kerrup-Jmara Elders Aboriginal Corporation or the Kirrae Whurrong Aboriginal Corporation) in the Condah land or in Framlingham Forest (other than interests in minerals);

20 is converted into a right to compensation under this Act.

Notice to owners

25 9. (1) The Minister shall, as soon as practicable after the commencement of section 6 or 7 cause a copy of a notice of vesting of the land, in accordance with a form approved by the Minister, to be served upon each person who had an interest in the land immediately before the commencement of that section (in this section referred to as an "owner"), or such of them as can, after careful inquiry, be ascertained.

(2) If:

- 30 (a) the Minister is unable, after careful inquiry, to ascertain the identity of an owner; or
(b) service on an owner cannot be effected;

service on that owner may be effected by causing a copy of the notice of vesting to be published in a newspaper circulating in the district in which the relevant land is situated.

35 Registration of vesting

40 10. (1) After the commencement of section 6 or 7, as the case may require, the Secretary to the Attorney-General's Department or a person authorised under subsection 55E (4) of the *Judiciary Act 1903* shall lodge with the Registrar-General for Victoria or other proper officer of Victoria a copy of the notice of vesting referred to in section 9, certified by writing signed by the Secretary or a person so authorised.

(2) The officer with whom the copy of a notice of vesting is lodged in pursuance of subsection (1) may register the acquisition in the manner as nearly as may be in which dealings with land are registered, and may deal with and give effect to the copy of the notice of acquisition as if it were a grant, conveyance, memorandum or instrument of transfer of the land to the Corporation duly executed under the laws in force in Victoria. 5

Compensation

11. Part IV of the *Lands Acquisition Act 1955* applies in relation to interests in the Condah land or Framlingham Forest that have been vested in the Corporation by force of this Act as if the land had been acquired by compulsory process under the *Lands Acquisition Act 1955* on the commencement of section 6 or 7, as the case may require, and as if the right to compensation under section 8 of this Act were a right to compensation under section 11 of the *Lands Acquisition Act 1955*. 10

Miscellaneous

12. Sections 13, 55, 58, 59 and 62, of the *Lands Acquisition Act 1955* apply in relation to interests in the Condah land or Framlingham Forest that have been vested in the Corporation by force of this Act as if the land had been acquired by compulsory process under the *Lands Acquisition Act 1955* on the commencement of section 6 or 7, as the case requires. 15 20

PART III—MANAGEMENT OF CONDAH LAND

Management, transfer or lease of land

13. (1) Upon the vesting of the Condah land in the Kerrup-Jmara Elders Aboriginal Corporation, the Corporation has:

- (a) the full power of management, control and enjoyment of the Condah land, subject to the law of Victoria and the Commonwealth; 25
- (b) the power to transfer its interest in the Condah land to another Aboriginal group which is incorporated under the *Aboriginal Councils and Associations Act 1976*, subject to subsection (2); and
- (c) the power to give a lease of the Condah land or a licence over the Condah land to the Crown, a public authority of the State of Victoria or of the Commonwealth or any other person, subject to subsection (3). 30

(2) The Kerrup-Jmara Elders Aboriginal Corporation shall not transfer its interest in the Condah land to another Aboriginal group if there is an objection from a member of the Kerrup-Jmara Committee of Elders or any other adult member of the Corporation. 35

(3) The Kerrup-Jmara Elders Aboriginal Corporation shall not give a lease of the Condah land or a licence over the Condah land that is for a period of more than 3 years to a person who is not the Crown or a public 40

authority of the State of Victoria or the Commonwealth unless the Minister has approved the giving of that lease or licence.

Rights of access over Condah land

5 14. (1) Any legal rights of access over the Condah land existing immediately before the day of vesting (other than the right of access provided by the roads shown hatched on the plan in Part A of Schedule 1) continue to exist on the same terms and conditions as those on which they existed immediately before the day of vesting.

10 (2) Except as otherwise provided in this Act, a person may, in the performance of functions under this Act or otherwise in accordance with this or any other Act or any law of the State of Victoria, enter and remain on the Condah land.

By-laws

15 15. (1) The Kerrup-Jmara Elders Aboriginal Corporation may make by-laws, not inconsistent with any law of the Commonwealth or the State of Victoria, for or with respect to:

- (a) economic enterprise on the Condah land;
- (b) cultural activities on the Condah land;
- 20 (c) the management, access, conservation, fire protection, development and use of the Condah land;
- (d) the declaration of sacred or significant sites or other areas of significance to Aboriginal people on the Condah land;
- (e) the activities to be permitted on the Condah land or any part of it;
- 25 (f) protection and conservation of flora or fauna found on the Condah land;
- (g) in relation to the Condah land, the cutting, removal and sale of timber, the granting of revocable licences and the payment of royalties for timber to the Corporation;
- (h) hunting, shooting and fishing on the Condah land;
- 30 (j) control of visitors in, and charging fees (to be paid to the Corporation) for entrance to, the Condah land;
- (k) the regulation and control of motor traffic and parking on the Condah land; and
- 35 (m) the appointment of persons to enforce the by-laws, and the powers and duties of those persons.

(2) The by-laws may provide that a contravention of a by-law is an offence.

(3) The regulations may provide, in respect of an offence against the by-laws, for the imposition of:

- 40 (a) if the offender is a natural person—a fine not exceeding \$500; or
- (b) if the offender is a corporation—a fine not exceeding \$2,500.

(4) The regulations may make provision for and in relation to enabling a person who is alleged to have committed an offence against the by-laws to pay to the Commonwealth, as an alternative to prosecution, a penalty not exceeding:

- (a) in the case of a natural person—\$100; or
- (b) in the case of a corporation—\$500.

(5) If the Kerrup-Jmara Elders Aboriginal Corporation makes a by-law, the Governing Committee shall, within 7 days after making it, give a copy of the by-law to the Minister.

(6) A by-law has no effect unless it has been approved by the Minister.

(7) Where the Minister approves any by-laws, the Minister shall:

- (a) cause the by-laws to be notified in the *Gazette*; and
- (b) cause a copy of the by-laws to be laid before each House of the Parliament within 15 sitting days of that House after giving the approval.

(8) By-laws take effect from the day on which they are notified in the *Gazette*, or, where a later date is specified in the by-laws, from that later date.

(9) If a copy of any by-laws is not laid before each House of the Parliament under subsection (7), the by-laws shall be void.

(10) Where a copy of a by-law has been laid before a House of the Parliament under this section, the provisions of section 48 (other than subsections (1), (2) and (3)) and sections 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to the by-law as if, in those provisions, references to regulations were references to by-laws and references to repeal were references to revocation.

Sacred and significant sites

16. (1) The Kerrup-Jmara Elders Aboriginal Corporation shall compile a register of sites on the Condah land that are sacred or significant to Aboriginals or any group of Aboriginals and shall record in the register:

- (a) if a site has been specifically identified, the boundaries of the site; or
- (b) if a site is known to exist but has not been specifically identified, the boundaries of the site as it is known to exist.

(2) The Kerrup-Jmara Elders Aboriginal Corporation shall keep the register in a manner that is appropriate to prevent disclosure of its contents (otherwise than for the purposes of Part IIA of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*) without the permission of the Governing Committee.

(3) The Governing Committee shall make the register available to the Minister, if he or she so requests, for the purposes of determining an application for permission to carry on mining operations.

Committee of Elders

5 17. The Kerrup-Jmara Committee of Elders is that body of persons who are members of the Kerrup-Jmara Elders Aboriginal Corporation and are considered by Aboriginal tradition and practice and by recognition of the Kerrup-Jmara Community to be the Committee of Elders.

Powers of Committee of Elders

10 18. (1) The powers of the Kerrup-Jmara Committee of Elders are:

(a) subject to the *Aboriginal Councils and Associations Act 1976*, to declare a specified person to be eligible to be a member of the Kerrup-Jmara Elders Aboriginal Corporation or any body created by that Corporation;

15 (b) to determine anything with respect to:

(i) matters of spiritual, cultural and religious significance to the Corporation;

(ii) the management or development of any sacred or significant site on the Condah land;

20 (iii) the maintenance and application within the Corporation of the traditional lores, customs and practices of the Corporation; and

(iv) the harvesting, taking, use or pursuit of animal and vegetable life (including fish and bird life) found on the Condah land with limitations as to time, volume and circumstances; and

25 (c) to hear and determine disputes within the Corporation about breaches of traditional customs lores and practices.

(2) A decision of the Committee of Elders is final and binding on all members of the Corporation.

30 (3) The Corporation shall act in accordance with the decisions of the Committee of Elders about all matters in respect of which the Committee has power to make decisions.

(4) Nothing in this section has effect so as to confer judicial power on the Committee of Elders.

35 (5) Subject to the *Aboriginal Councils and Associations Act 1976*, a person is eligible to be a member of the Kerrup-Jmara Elders Aboriginal Corporation if, and only if, a declaration under paragraph (1) (a) is in force in relation to the person.

40 (6) Where, immediately before the commencement of this section, a person was a member of the Kerrup-Jmara Elders Aboriginal Corporation, a declaration under paragraph (1) (a) shall be deemed to be in force in relation to that person.

Winding up

19. If the Kerrup-Jmara Elders Aboriginal Corporation is wound up and its interest in the Condah land has not been transferred to another Aboriginal group under this Act:

- (a) by force of this Act, that interest in the Condah land is vested in the Commonwealth; and 5
- (b) the Governor-General may, to the extent of that interest, execute a deed of grant of an estate in the Condah land to another Aboriginal group which is approved by the Minister and is incorporated under the *Aboriginal Councils and Associations Act 1976* and the members of which are the descendants of the Kerrup-Jmara clan. 10

Change of ownership of land

20. If the Condah land is transferred or granted to another Aboriginal group in accordance with this Act:

- (a) this Act has effect in relation to the group and to the Condah land as if: 15
 - (i) a reference in this Act to the Kerrup-Jmara Elders Aboriginal Corporation were a reference to the group; and
 - (ii) references to the Committee of Elders or the Governing Committee of the Corporation were references to such Committee of Elders or Governing Committee as is declared by the Governor-General by Proclamation for the purposes of this section; and 20
- (b) the group to which the land is transferred or granted is deemed to be the successor in law of the Corporation or group in or to which the Condah land was last vested or granted and has all the powers, duties, rights and liabilities of that Corporation or group. 25

PART IV—MANAGEMENT OF FRAMLINGHAM FOREST

Management, transfer or lease of Framlingham Forest

21. (1) Upon the vesting of Framlingham Forest in the Kirrae Whurrong Aboriginal Corporation, the Corporation has: 30

- (a) the full power of management, control and enjoyment of Framlingham Forest, subject to the law of Victoria and the Commonwealth;
- (b) the power to transfer its interest in Framlingham Forest to another Aboriginal group which is incorporated under the *Aboriginal Councils and Associations Act 1976*, subject to subsection (2); and 35
- (c) the power to give a lease of Framlingham Forest or a licence over Framlingham Forest to the Crown, a public authority of the State of Victoria or of the Commonwealth or any other person, subject to subsection (3). 40

(2) The Kirrae Whurrong Aboriginal Corporation shall not transfer its interest in Framlingham Forest to another Aboriginal group if there is an objection from a member of the Kirrae Whurrong Committee of Elders or an adult member of the Corporation.

5 (3) The Kirrae Whurrong Aboriginal Corporation shall not give a lease of Framlingham Forest or a licence over Framlingham Forest that is for a period of more than 3 years to a person who is not the Crown or a public authority of the State of Victoria or the Commonwealth unless the Minister has approved the giving of that lease or licence.

10 **Rights of access over Framlingham Forest**

15 22. (1) Any legal rights of access over Framlingham Forest existing immediately before the day of vesting (other than the right of access provided by the roads shown hatched on the plan in Schedule 2) continue to exist on the same terms and conditions as those on which they existed immediately before the day of vesting.

(2) Except as otherwise provided in this Act, a person may, in the performance of functions under this Act or otherwise in accordance with this or any other Act or any law of the State of Victoria, enter and remain in Framlingham Forest.

20 **By-laws**

23. (1) The Kirrae Whurrong Aboriginal Corporation may make by-laws, not inconsistent with any law of the Commonwealth or the State of Victoria, for or with respect to:

- 25 (a) economic enterprise in Framlingham Forest;
- (b) cultural activities in Framlingham Forest;
- (c) the management, access, conservation, fire protection, development and use of Framlingham Forest;
- (d) the declaration of sacred or significant sites or other areas of significance to Aboriginal people in Framlingham Forest;
- 30 (e) the activities to be permitted in Framlingham Forest or any part of it;
- (f) protection and conservation of flora and fauna found in Framlingham Forest;
- 35 (g) in relation to Framlingham Forest, the cutting, removal and sale of timber, the granting of revocable licences and the payment of royalties for timber to the Corporation;
- (h) hunting, shooting and fishing in Framlingham Forest;
- (j) control of visitors in, and charging fees (to be paid to the Corporation) for entrance to, Framlingham Forest;
- 40 (k) the regulation and control of motor traffic and parking in Framlingham Forest; and

(m) the appointment of persons to enforce the by-laws, and the powers and duties of those persons.

(2) The by-laws may provide that a contravention of a by-law is an offence.

(3) The regulations may provide, in respect of an offence against the by-laws, for the imposition of: 5

(a) if the offender is a natural person—a fine not exceeding \$500; or

(b) if the offender is a corporation—a fine not exceeding \$2,500.

(4) The regulations may make provision for and in relation to enabling a person who is alleged to have committed an offence against the by-laws to pay to the Commonwealth, as an alternative to prosecution, a penalty not exceeding: 10

(a) in the case of a natural person—\$100; or

(b) in the case of a corporation—\$500.

(5) If the Kirrae Whurrong Aboriginal Corporation makes a by-law, the Community Council shall, within 7 days after making it, give a copy of the by-law to the Minister. 15

(6) A by-law has no effect unless it has been approved by the Minister.

(7) Where the Minister approves any by-laws, the Minister shall:

(a) cause the by-laws to be notified in the *Gazette*; and 20

(b) cause a copy of the by-laws to be laid before each House of the Parliament within 15 sitting days of that House after giving the approval.

(8) By-laws take effect from the day on which they are notified in the *Gazette*, or, where a later date is specified in the by-laws, from that later date. 25

(9) If a copy of any by-laws is not laid before each House of the Parliament under subsection (7), the by-laws shall be void.

(10) Where a copy of a by-law has been laid before a House of the Parliament under this section, the provisions of section 48 (other than subsections (1), (2) and (3)) and sections 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to the by-law as if, in those provisions, references to regulations were references to by-laws and references to repeal were references to revocation. 30

Sacred and significant sites 35

24. (1) The Kirrae Whurrong Aboriginal Corporation shall compile a register of sites in Framlingham Forest that are sacred or significant to Aboriginals or any group of Aboriginals and shall record in the register:

(a) if a site has been specifically identified, the boundaries of the site; 40
or

- (b) if a site is known to exist but has not been specifically identified, the boundaries of the site as it is known to exist.

5 (2) The Kirrae Whurrong Aboriginal Corporation shall keep the register in a manner that is appropriate to prevent disclosure of its contents (otherwise than for the purposes of Part IIA of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*) without the permission of the Community Council.

10 (3) The Community Council shall make the register available to the Minister, if he or she so requests, for the purposes of determining an application for permission to carry on mining operations.

Membership

15 25. (1) A person is eligible to be a member of the Kirrae Whurrong Aboriginal Corporation if, and only if, the person has resided on Framlingham Reserve for a continuous period of more than 12 months (whether before or after, or before and after, the commencement of this subsection).

(2) At least one-half of the members of the Community Council shall be persons who are residents of the Framlingham Reserve.

(3) This section has effect notwithstanding anything to the contrary in the *Aboriginal Councils and Associations Act 1976*.

20 **Committee of Elders**

25 26. (1) The Kirrae Whurrong Committee of Elders is that body of persons who are members of the Kirrae Whurrong Aboriginal Corporation and are considered by Aboriginal tradition and practice and by recognition of those Aboriginals living in the Framlingham Forest area to be the Committee of Elders.

(2) At least one-half of the members of the Kirrae Whurrong Committee of Elders shall be persons who are residents of Framlingham Reserve.

Powers of Committee of Elders

27. (1) The powers of the Kirrae Whurrong Committee of Elders are:

- 30 (a) subject to section 25 and to the *Aboriginal Councils and Associations Act 1976*, to declare a specified person to be eligible to be a member of the Kirrae Whurrong Aboriginal Corporation or any body created by the Corporation;
- (b) to determine anything with respect to:
- 35 (i) matters of spiritual, cultural and religious significance to the Corporation;
- (ii) the management or development of any sacred or significant site in Framlingham Forest;

(iii) the maintenance and application within the Corporation of the traditional lores, customs and practices of the Corporation; and

(iv) the harvesting, taking, use or pursuit of animal and vegetable life (including fish and bird life) found in Framlingham Forest with limitations as to time, volume and circumstances; and

(c) to hear and determine disputes within the Corporation about breaches of traditional customs lores and practices.

(2) A decision of the Committee of Elders is final and binding on all members of the Corporation.

(3) The Corporation shall act in accordance with the decisions of the Committee of Elders about all matters in respect of which the Committee has power to make decisions.

(4) Nothing in this section has effect so as to confer judicial power on the Committee of Elders.

(5) Subject to the *Aboriginal Councils and Associations Act 1976*, a person is eligible to be a member of the Kirrae Whurrong Elders Aboriginal Corporation if, and only if, a declaration under paragraph (1) (a) is in force in relation to the person.

Winding up

28. If the Kirrae Whurrong Elders Aboriginal Corporation is wound up and its interest in Framlingham Forest has not been transferred to another Aboriginal group under this Act:

(a) by force of this Act, that interest in Framlingham Forest is vested in the Commonwealth; and

(b) the Governor-General may, to the extent of that interest, execute a deed of grant of an estate in Framlingham Forest to another Aboriginal group which is approved by the Minister and is incorporated under the *Aboriginal Councils and Associations Act 1976* and the members of which are the descendants of the Kirrae Whurrong (Pertobe clan).

Change of ownership of land

29. If Framlingham Forest is transferred or granted to another Aboriginal group in accordance with this Act:

(a) this Act has effect in relation to the group and to Framlingham Forest as if:

(i) a reference in this Act to the Kirrae Whurrong Aboriginal Corporation were a reference to the group; and

(ii) references to the Committee of Elders or the Community Council were references to such Committee of Elders or

Governing Committee as is declared by the Governor-General by Proclamation for the purposes of this section; and

- 5 (b) the group to which the land is transferred or granted is deemed to be the successor in law of the Corporation or group in or to which Framlingham Forest was last vested or granted and has all the powers, duties, rights and liabilities of that Corporation or group.

PART V—MINING

Mining operations

10 30. (1) A person shall not, after the day of vesting of the relevant land in the Corporation, without any necessary permission under section 31 from the Corporation:

- (a) carry out any mining operation on the relevant land; or
(b) enter the relevant land for the purpose of carrying out any mining operation.

15 Penalty:

- (a) for an offence against paragraph (1) (a):
 (i) if the person is a natural person—\$5,000; or
 (ii) if the person is a body corporate—\$25,000; or
(b) for an offence against paragraph (1) (b):
20 (i) if the person is a natural person—\$1,000; or
 (ii) if the person is a body corporate—\$5,000.

(2) Subsection (1) does not apply in relation to anything done in the exercise of rights conferred by:

- 25 (a) a mining tenement; or
(b) a renewal or extension of a mining tenement;

where the tenement, renewal or extension was in force before the commencement of section 6 or 7, as the case requires.

Permission to carry out mining operation

30 31. (1) A person who has applied for a mining tenement, or for the renewal variation or extension of a mining tenement, in relation to the relevant land may, with the approval of the Minister, apply to the Corporation for permission to carry out the operations to which the first-mentioned application relates.

- 35 (2) An application:
(a) shall be in writing;
(b) shall be lodged with the Corporation; and
(c) shall include or be accompanied by all the information submitted by the applicant in support of the application for or relating to the mining tenement.

(3) If the Corporation so requests, the applicant shall supply it with any further information in writing that it reasonably requires so that it can decide whether to grant the application.

(4) As soon as practicable after applying for permission, or after supplying any further information to the Corporation, the applicant shall give the Minister a copy of the application, or of the further information. 5

(5) After receiving an application for permission, the Corporation may:

- (a) refuse permission;
- (b) grant permission without any conditions; or
- (c) grant permission on any conditions that it considers appropriate and are not inconsistent with any law of the State or the Commonwealth in force in Victoria. 10

(6) As soon as practicable after granting or refusing permission, the Corporation shall give notice in writing to the applicant of that decision.

(7) The applicant shall, within 7 days after receiving the notice, give a copy of the notice to the Minister. 15

(8) If, at the end of 120 days after applying, an applicant has not received notice from the Corporation of its decision on the application, the Corporation shall be deemed to have made a decision to refuse permission.

(9) The Corporation may require the applicant to pay a reasonable fee for expenses incurred by it in processing the application. 20

(10) If the Corporation receives fees from an applicant and later grants permission to the applicant on the condition that the applicant give any payment or other consideration to the Corporation, the Corporation shall treat the amount of the costs and expenses received as payment towards the payment or consideration. 25

Payments and other consideration

32. (1) If:

- (a) the Corporation grants permission to a person to carry out mining operations; 30
- (b) the person agrees to the conditions on which the permission is granted; and
- (c) the conditions provide that the person gives any payment or other consideration to the Corporation;

the person shall, within 14 days after agreeing to the conditions, notify the Minister of the terms of the agreement. 35

(2) The payment or other consideration:

- (a) shall be reasonable for any disturbance to the relevant land and to the traditional owners of the land and their lifestyle that has resulted or is likely to result from the granting of a mining tenement; 40

- 5 (b) in the case of an application for a licence or permit referred to in paragraph (a) of the definition of "mining tenement" in section 3— shall not exceed any amount that would have become payable as compensation under an Act of Victoria mentioned in that paragraph in respect of any operations carried out under that licence or permit; and
- 10 (c) in the case of an application for a lease, licence, permit or other authority referred to in paragraph (b) of that definition—may exceed any amount that would have become payable as compensation under an Act of Victoria mentioned in that paragraph in respect of any operations carried on under that lease, licence, permit or other authority.

Conciliation and review

15 33. (1) If an applicant under section 31 notifies the Minister that the Corporation has granted permission on any conditions to which the applicant objects, or has refused permission, the Minister shall arrange to meet with the Corporation and the applicant to attempt to resolve the matter by conciliation.

20 (2) If the conciliation is unsuccessful, the applicant may request the Minister to appoint an arbitrator to review the decision of the Corporation.

(3) The Minister shall, after receiving a request, appoint an Arbitrator, being a person whom the Minister considers to be in a position to deal with the matter impartially.

25 (4) In reviewing the decision of the Corporation, the arbitrator shall consider the following factors:

- (a) the effect that the entry onto the relevant land and the carrying out of mining operations on the land would have on:
- 30 (i) the preservation and protection of the lifestyle, culture and traditions of the traditional owners of the land;
- (ii) the proposals and wishes of the traditional owners of the land about its management, use and control;
- (iii) the development of the social, cultural and economic structures of the traditional owners; and
- 35 (iv) the freedom of access of the traditional owners of the land and their freedom to carry out, in accordance with tradition, rites, ceremonies and other activities on the land;
- (b) the suitability of the applicant to carry out the proposed mining operations and the applicant's capacity, in carrying out those operations, to minimise any disturbance to the traditional owners and the land;
- 40 (c) the preservation of the natural environment;
- (d) the economic and any other significance of the proposed mining operations to the State of Victoria and to the Commonwealth.

(5) The arbitrator shall make a decision:

- (a) confirming the decision of the Corporation;
- (b) varying the decision of the Corporation; or
- (c) setting aside the decision of the Corporation and making a decision (being a decision that the Corporation could have made under this section) in substitution for the decision of the Corporation. 5

(6) The decision of the Corporation as varied by the arbitrator, or a decision made by the arbitrator in substitution for the decision of the Corporation shall, except for the purposes of subsection (2), be deemed to be a decision of the Corporation and has effect, unless the arbitrator otherwise determines, on and from the day on which the decision of the Corporation had effect. 10

Sacred or significant sites

34. (1) If a person applies for a mining tenement in relation to relevant land after the day of vesting, the Minister shall consult with the Corporation to ascertain whether the land to which the application relates includes the whole or part of any sacred or significant site registered under section 16 or 24. 15

(2) If the Minister is satisfied that the land does include the whole or part of a registered sacred or significant site: 20

- (a) the Minister shall give the applicant any information about the site and its location that the Minister considers appropriate; and
- (b) the Corporation shall be deemed to have advised the Minister under Part IIA of the *Aboriginal and Torres Strait Islanders Heritage Protection Act 1984* that it considers that a declaration under section 21E of that Act should be made. 25

(3) Unless the Minister otherwise determines in a particular case, this section does not apply in relation to the renewal or extension of a mining tenement.

Mining tenement ineffective in certain circumstances 30

35. A person shall not, after the day of vesting, under the grant, renewal or extension of a mining tenement relating to relevant land, carry out any mining operation if:

- (a) the Minister has not declared, in writing, that he or she is satisfied that the corporation was given a reasonable opportunity to make submissions to the relevant Minister of the Crown of the State of Victoria about the conditions on which the grant, renewal or extension should be made; or 35
- (b) if section 34 applies—the Minister has not declared, in writing, that he or she is satisfied that any registered sacred or significant site has been appropriately protected. 40

Offences

36. A person shall not, without the consent of the Minister, give or offer, or agree to give or offer, any payment or other consideration (not being payment or other consideration given as a complete or partial discharge of a liability under this Act or payment of a royalty under this Act for any minerals recovered from the relevant land) for the purposes of obtaining the permission of the Corporation to carry out any mining operation on the relevant land.

Penalty:

- (a) if the person is a natural person—\$2,000; or
(b) if the person is a body corporate—\$10,000.

Entry onto relevant land and mining tenements

37. Subject to section 35, if the Corporation grants permission to a person to carry out any mining operation on the relevant land, the person and the person's agents, contractors and employees, may enter the relevant land:

- (a) for the purpose of carrying out the mining operation; and
(b) subject to any conditions upon which permission is granted; and
(c) subject to the *Mines Act* 1958 of Victoria, the *Petroleum Act* 1958 of Victoria and the *Extractive Industries Act* 1966 of Victoria, but without requiring any further permission to enter the land under any of those Acts.

Offences by corporations

38. (1) Where, in proceedings for an offence against this Act in respect of any conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that a director, servant or agent of the corporation, being a director, servant or agent by whom the conduct was engaged in within the scope of actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a corporation:

- (a) by a director, servant or agent of the corporation within the scope of actual or apparent authority; or
(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the corporation, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of any proceedings for an offence against this Act, to have been engaged in by the corporation.

(3) A reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose

of the person and the person's reasons for the intention, opinion, belief or purpose.

PART VI—TRUST FUNDS

Trust funds

39. (1) A trust fund is established to be known as the Condah Land Trust Fund. 5

(2) There shall be paid into the Condah Land Trust Fund, from time to time, out of the Consolidated Revenue Fund, amounts determined by the regulations.

(3) A trust fund is established to be known as the Framlingham Forest Trust Fund. 10

(4) There shall be paid into the Framlingham Forest Trust Fund, from time to time, out of the Consolidated Revenue Fund, amounts determined by the regulations.

(5) The Consolidated Revenue Fund is appropriated for the purpose of making the payments referred to in subsections (2) and (4). 15

(6) The Minister shall establish and administer an Aboriginals Advancement Trust Fund for the purpose of furthering the social and economic advancement of Aboriginal people living in the State of Victoria.

(7) Moneys in the Condah Land Trust Fund shall be distributed by the Minister as follows: 20

(a) one-half shall be paid to the Kerrup-Jmara Elders Aboriginal Corporation;

(b) one-half shall be paid into the Aboriginal Advancement Trust Fund.

(8) Moneys in the Framlingham Forest Trust Fund shall be distributed by the Minister as follows: 25

(a) one-half shall be paid to the Kirrae Whurrong Aboriginal Corporation;

(b) one-half shall be paid into the Aboriginal Advancement Trust Fund.

(9) The Minister may pay money out of the Aboriginal Advancement Trust Fund for any of the purposes mentioned in subsection (6). 30

(10) The Minister may, at any time, direct that, from a specified date:

(a) the funds of the Aboriginals Advancement Trust Fund at that date are to be transferred to; and

(b) one-half of the royalties paid into the Framlingham Forest Trust Fund or the Condah Land Trust Fund (which would otherwise be paid into the Aboriginals Advancement Trust Fund under paragraph (7) (b) or (8) (b)) are to be paid to; 35

a body nominated by that Minister that is representative of Aboriginals and is established and administered by Aboriginals for the advancement of Aboriginals.

5 (11) A Trust Fund shall be a Trust Account for the purposes of section 62A of the *Audit Act 1901*.

(12) Interest received from the investment of money standing to the credit of a Trust Fund forms part of that Fund.

PART VII—MISCELLANEOUS

Exemption from land tax

10 40. The Condah land and Framlingham Forest are exempt from land tax under the *Land Tax Act 1958* of Victoria.

Compensation for acquisition of property

15 41. (1) Where, but for this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by the Commonwealth such reasonable amount of compensation as is agreed upon between the person and the Commonwealth or, failing agreement, as is determined by the Federal Court.

(2) In subsection (1), “acquisition of property” and “just terms” have the same respective meanings as in paragraph 51 (xxxi) of the Constitution.

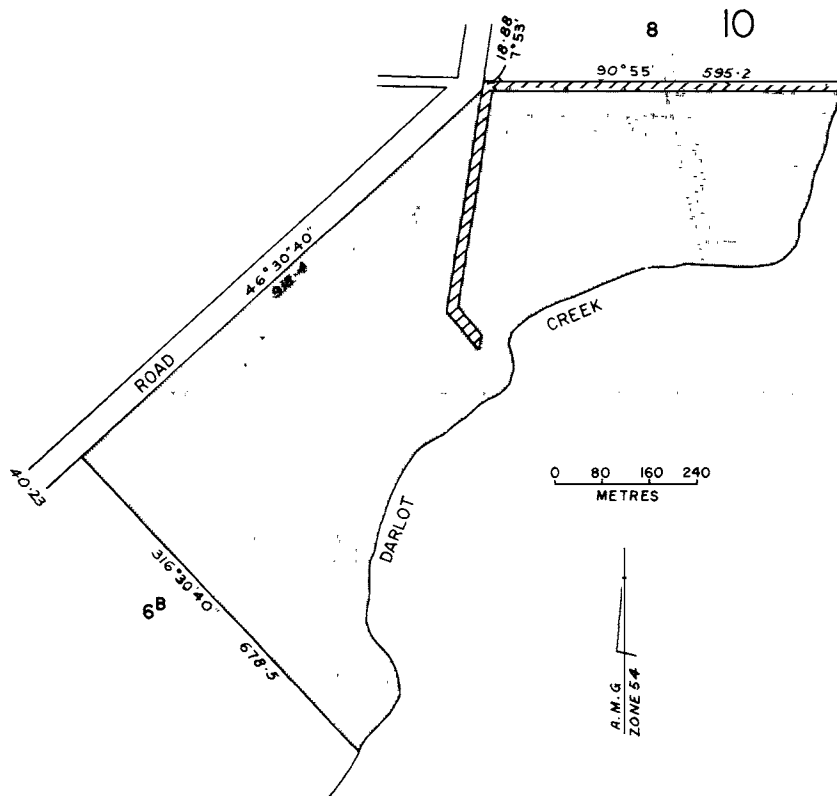
20 Regulations

42. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- 25 (a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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SCHEDULE 1

LAND IN THE PARISH OF CONDAH TO BE VESTED IN THE
KERRUP-JMARA ELDERS ABORIGINAL CORPORATION
PART A

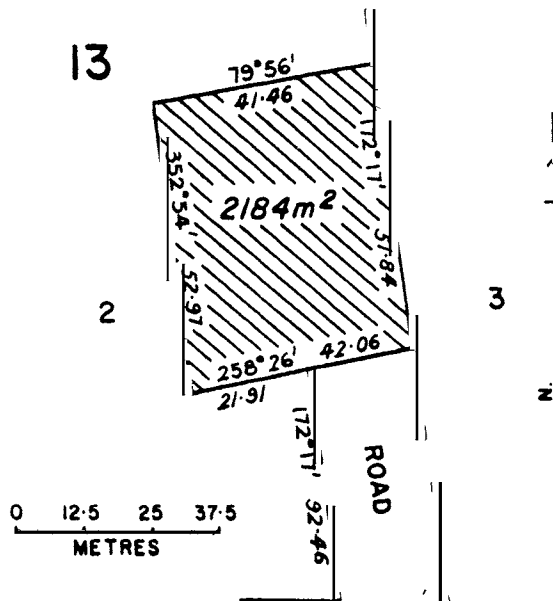
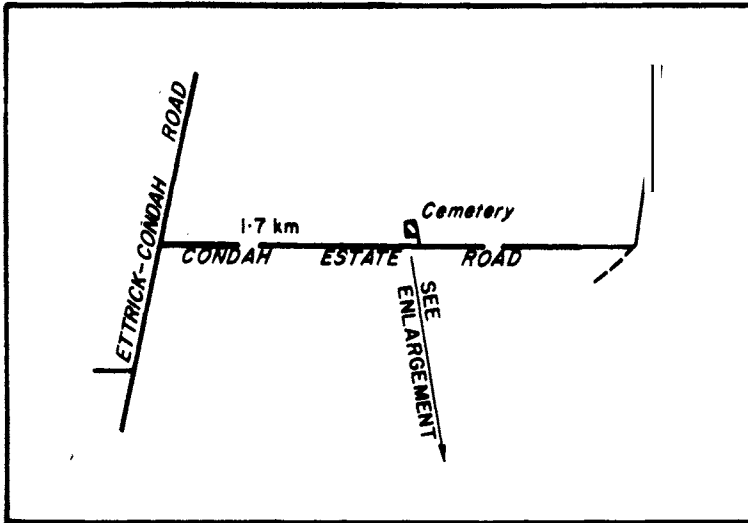


TOTAL AREA 53ha±

<p>PARISH OF CONDAH COUNTY OF NORMANBY</p>
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SCHEDULE 1—continued

PART B

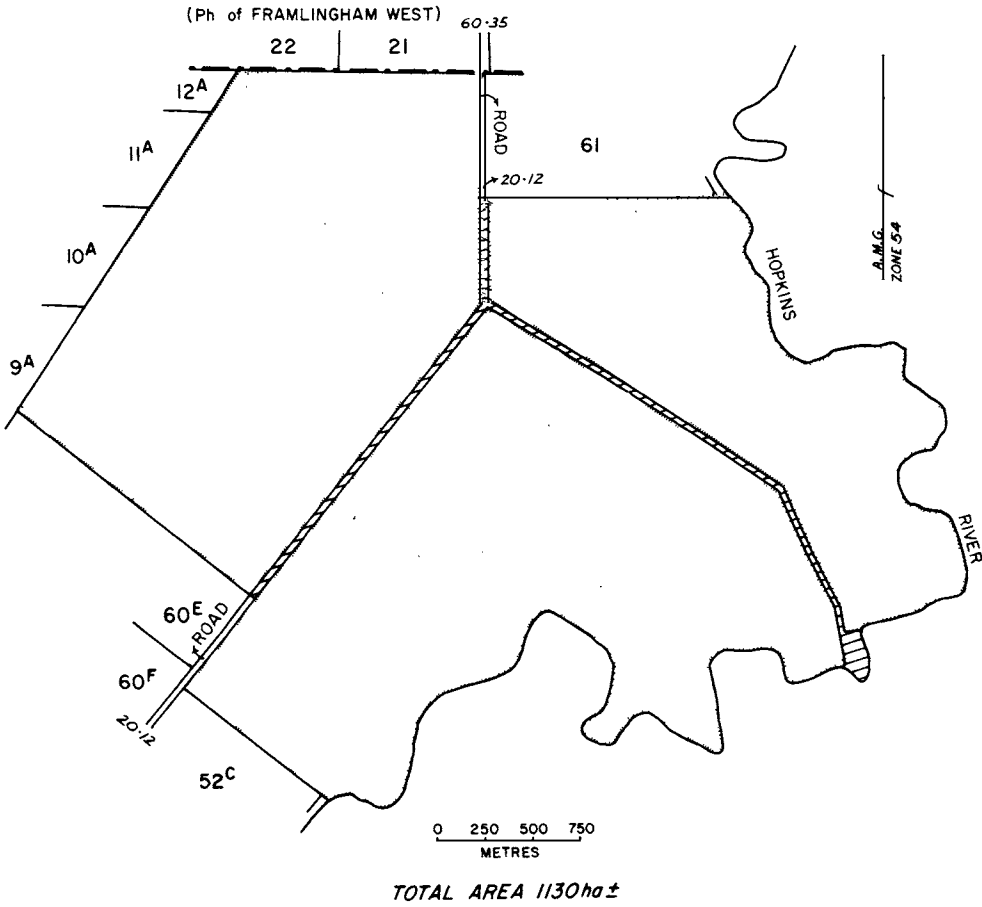


PARISH OF CONDAH

SCHEDULE 2

Section 7

**LAND IN THE PARISH OF PURNIM TO BE VESTED IN THE
KIRRAE WHURRONG ABORIGINAL CORPORATION**



PARISH OF PURNIM
COUNTY OF VILLIERS

