



19th April 2023

Protected and Conserved Areas Policy Section
Department of Climate Change, Energy, the Environment and Water
Australian Government
Email: nrs.environment@dcceew.gov.au

Re: Submission on the Draft Principles to guide recognition of other effective area-based conservation measures in Australia.

The Federation of Victorian Traditional Owner Corporations (the Federation) is a state-wide body advocating for the rights and interests of Victorian Traditional Owner Corporations. We welcome the opportunity to make a submission on the *Draft Principles to guide recognition of other effective area-based conservation measures (OECMs) in Australia (the Draft Principles)*. Our focus is on the potential opportunities and impacts on the interests of Victorian Traditional Owners.

Traditional Owners have rights, interests, and responsibilities to care for Country that stem from their own systems of governance and Indigenous concepts around caring for Country¹. Victorian Traditional Owners have a strong commitment to extending their ability to be leaders in activities that enable them to put into practice their cultural obligations to care for Country.

Aboriginal self-determination, a policy principle adopted by both Victorian and Commonwealth governments, can only meaningfully be progressed if underpinned by economic self-determination at a group-by-group level. The development of the Draft Principles provides an opportunity to recognise the value of culture and to ensure Australia's Traditional Owner groups are afforded substantive rights that support full economic participation in the recognition, management and monitoring of OECMs.

¹ 'Country' is a well-known and widely used Aboriginal term and concept that describes all living, non-living and spiritual parts of the world, as well as the interactions between them. People are responsible for maintaining health of Country by 'caring for' it according to cultural obligations.

The Federation understands recognition of OECMs is focussed on biodiversity conservation. However, the Principles which will guide recognition, management and monitoring of OECMs must fall in line with Australia's commitments under UNDRIP and the Charter of Human Rights to enable and enhance outcomes for Traditional Owners to heal and manage Country. For decisions that impact First Nations people, best practice consent processes must be the standard including Traditional Owner control over cultural knowledge and practices through Indigenous Cultural and Intellectual Property (ICIP) protections.

Through our submission we emphasise the interconnection between biodiversity, culture and self-determination and seek close involvement of Traditional Owners in implementation.

We strongly encourage the meaningful involvement of Traditional Owner representatives in the design of the OECMs.

The Federation would welcome the opportunity to support further Traditional Owner input into the design of the OECMs and other measures to achieve Australia's 30 by 30 target. For further clarification on our submission, please contact Tanya Vernes at tanya.vernes@fvto.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Paton', with a small dot at the end.

Paul Paton

CEO, Federation of Victorian Traditional Owner Corporations

Key points:

Are there principles missing?

- An additional principle is required to recognise cultural values intertwined with biodiversity.

The principles have a weak reference to Indigenous Knowledges (IK) and practices and could show the link between cultural and biodiversity conservation more strongly. Biodiversity management often has cultural management and outcomes, but not always. The biocultural diversity management of Country has both biodiversity and cultural outcomes.

- An additional principle is required to include building resilience to the physical impacts of climate change.

Is anything unclear in the principles?

- How the OECMs recognise the full spectrum of Indigenous legal rights

Native title is not the only avenue for Indigenous legal rights concerning management of Country. In Victoria, agreements made under the *Traditional Owner Settlement Act 2010* as well as Commonwealth Native Title legislation must be recognised. Other forms of legal recognition may be required in other states and territories such as the Aboriginal Land Rights Acts.

Do the principles give you confidence that high quality / robust sites will be identified?

- No, currently there is a lack of real recognition of the Indigenous cultural and biodiversity values or management.

Principles should better acknowledge Indigenous knowledge (IK) and First Nations' significant contribution to conservation and sustainable use of biodiversity and explore ways to put this into practice. For example, through cultural management (Cultural landscapes, see: [Cultural Landscapes Strategy — FVTOC](#)) which encompass values broader than biodiversity.

Do you have a view on the minimum long-term timeframe required for an OECM?

- Timeframe – the long term nature of management is inferred yet not clearly defined.

The management will only be possible with financial and other support for management, which will impact the timeframe. Similar to Australia's Indigenous Protected Areas, the government must provide long term (e.g. min 5 years) for management of biocultural outcomes of OECMs. This may be through voluntary agreements similar to IPAs for a certain length of time, agreed by both parties.

Do you see opportunities for OECM recognition?

- Reinstatement of Traditional Owner management and subsequent change to on-site biodiversity values must be enabled.

Protected Areas prioritise biodiversity values over cultural or biocultural values and are often not consistent with Indigenous worldviews, knowledge and practice. OECMs offer an alternative pathway to enabling Traditional Owner governance and management that achieves biodiversity outcomes as a consequence of biocultural management of Country. These may be preferable to further protected area designations. However, as with all forms of management – inaction or under resourcing the governance or management of OECMs will result in failure. It is not the designation, but the management of Country that is the goal – keeping the emphasis on this can embed Traditional Owner management and effect transformational change in future management through a collaborative and strengths-based approach. OECMs offer this outcome as a positive future legacy.

Table 1: Response to Draft principles

<i>Principle No. and title</i>	<i>Description in discussion paper</i>	<i>Response</i>
4.1 Consent	Consent of the site’s governance authority must be obtained before an eligibility assessment is undertaken.	<i>Change principle to: Consent of the site’s governance authority and the FPIC of Traditional Owners must be obtained before an eligibility assessment is undertaken.</i> Any and all crown land should require the Free Prior and Informed Consent (FPIC) of Traditional Owners regardless of current Native Title status. In Victoria, consent of the governing authority must extend to both Recognition and Settlement Agreements under the <i>Traditional Owner Settlement Act 2010</i> as well as Commonwealth Native Title legislation.
4.1.1 FPIC	Assessment and recognition of potential OECMs governed by First Nations people, requires the free, prior and informed consent of those governance authorities.	As for 4.1, all OECMs should require FPIC of Traditional Owners (under Native Title and TOSA legislation).
4.2 Biodiversity Values	OECMs must have important biodiversity values, documented in detail at the time of the site	<i>Change principle to: OECMs must have important biodiversity or biocultural values, documented in detail at the time of the site</i>

	assessment. These values are to be maintained in the long-term.	<p>assessment. These values are to be maintained in the long-term.</p> <p>OECMs are an opportunity for cultural management of Country, which encompasses both cultural and biodiversity values, activities and knowledges. The assessment process for biocultural values must be undertaken under the guidance or by the relevant Traditional Owners of that Country. Current biodiversity values assessments can impose barriers to Traditional Owner management of Country: OECMs must not reinforce these barriers.</p>
4.2.1 Prioritisation of areas of particular importance for biodiversity	Areas of particular importance for biodiversity should be prioritised for assessment and designation as a formal protected area, or recognition as an OECM	<p><i>Change principle to:</i> Areas of particular importance for biodiversity and biocultural diversity should be prioritised for assessment and designation as a formal protected area, or recognition as an OECM</p> <p>This should not result in management for biodiversity values being promoted over Traditional Owner’s cultural values in priority areas. Reinstatement of cultural landscapes as the planning scale can encompass cultural and biodiversity values together. Biocultural values should be the aim and methodologies developed with Traditional Owners such as Reading Country, must be included.</p> <p>We emphasise the interconnection between biodiversity,culture and self-determination and seek close involvement of Traditional Owners in implementation for Healing Country.</p>
4.2.2 Restoration sites	<p>A site that is severely degraded, damaged or destroyed and not yet under restoration is not appropriate for OECM recognition.</p> <p>A site under ecological restoration may be recognised as an OECM, once delivering demonstrable and significant biodiversity outcomes.</p>	<p>As for 4.2 and 4.2.1 this should not result in management for biodiversity values being promoted over Traditional Owner’s cultural values in priority areas.</p> <p>Healing Country sites should be recognised for restoration of bio-cultural values outcomes.</p>

	Restoration actions must include actions that address the cause of the original degradation / biodiversity loss.	
4.3 Protected Area consideration	A site's suitability for protected area designation should be considered first. Suitability for OECM recognition should be considered in circumstances where formal protected area designation is not appropriate, achievable or desirable.	The connection between colonisation and the declaration of protected areas (such as national parks) that 'locked out' Indigenous peoples from their traditional lands and prevented ongoing connection to Country and culture, or the practice of Healing Country obligations must not be repeated in any expansion of OECMs.
4.4 Geographically defined area	OECMs must be geographically defined, that is, have clear and agreed boundaries that can be accurately identified on maps and on the ground	Agree
4.5 Land tenure	OECMs can be recognised on all forms of land tenure in Australia. To be recognised on leasehold land, conservation must be compatible with lease conditions / legislation.	A cultural landscape across land tenure types with future governance arrangements involving all landholders and guided by Traditional Owners and their healing and management of Country must not be precluded where some or all of this area falls on pastoral lease. For example, an IPA is able to be recognised over leasehold land and the same should apply for OECMs.
4.6 Governance	The following governance types will be recognised: governments; private individuals or organisations; First Nations people; and shared or jointly managed areas.	As above.
4.7 Site Management	Management objectives and activities must not be incompatible with biodiversity conservation. Sites with a primary or secondary conservation objective should have a site management plan or arrangement that includes (at a minimum), a section on biodiversity conservation that outlines the conservation	<i>Change principle to:</i> Management objectives and activities must not be incompatible with enabling Traditional Owner objectives and activities or with biodiversity conservation <i>And add:</i> Restoration and reinstatement of Aboriginal and Torres Strait Islander knowledges and practices in healing and caring for Country should be prioritised and enabled through resourcing, governance and management arrangements.

	<p>objectives for the site, adaptive management actions, and relevant jurisdictional land management requirements.</p> <p>Sites should meet minimum management requirements set by jurisdictions, relating to invasive / feral species management, fire risk management, and any other minimum requirements set out in jurisdictions' regulations.</p> <p>Aboriginal and Torres Strait Islander knowledge in caring for Country should be considered in OECM management arrangements.</p>	<p>Recognition of and support for the sites should better acknowledge Indigenous knowledge (IK) and First Nations' significant contribution to conservation and sustainable use of biodiversity.</p>
<p>4.8 Sustained long-term</p>	<p>For a site to be recognised as an OECM with a primary or secondary biodiversity conservation management objective, and ancillary OECMs where applicable, at a minimum, there must be:</p> <ul style="list-style-type: none"> • a clear long-term intention for the continuation of management arrangements that deliver in-situ biodiversity conservation outcomes • a commitment to a minimum timeframe for management arrangements that deliver in-situ biodiversity conservation outcomes, determined at the time of site assessment • no intention to sell or develop the site in a manner incompatible with biodiversity conservation • no land use zoning on the site that is incompatible with biodiversity conservation 	<p>Current distribution of biodiversity may not be consistent with the cultural landscape and restoration of biocultural values must be enabled.</p> <p>Conservation covenants and other similar mechanisms may have perverse outcomes for Traditional Owners, such as the prevention of cultural practices, Healing Country methodologies, or resource usage. This must be specifically addressed. Of particular concern is the use of covenants to 'lock-in' the biodiversity outcomes and which may result in Traditional Owner management utilising Indigenous Knowledge and practice being 'locked-out' in perpetuity.</p>